

Strengthening Checks and Balances: Democracy Defence and Promotion in the Americas¹

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Introduction

Latin America has made significant strides toward democracy in recent decades, and the greatest challenge facing the newly emerging democracies is less to avoid a return to authoritarianism than to restrain democratically elected leaders from acting undemocratically. Although there is little tolerance for overt military rule in the international community, and little appetite for it among domestic political forces, there are few restraints on popularly elected leaders who chose to ignore their own constitutions and ride roughshod over other deliberative institutions. The greatest threats to democracy in Latin America stem from the deficit of what Guillermo O'Donnell (1998) has called horizontal accountability (loosely speaking, the checks and balances in a constitutional system of the separation of powers), and the Inter-American Democratic Charter must address this or risk irrelevance.

Concern to strengthen horizontal accountability is implicit in the “democracy clause” of the Declaration of Quebec City, the political statement issued by the 34 democratically elected leaders of the Western Hemisphere at the close of the 2001 Summit of the Americas (Summit of the Americas 2002). “Threats to democracy today

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take many forms,” said the leaders. In an implicit acknowledgment that regime changes short of coups also represent a threat to democracy, the leaders adopted the nomenclature “unconstitutional alteration or interruption of the democratic order” to describe the nature of these threats. Identical phraseology was incorporated directly into Article 21 of the Inter-American Democracy Charter, adopted by the Organization of American States (OAS) five months later in a General Assembly held in Lima, Peru (Organization of American States 2001).

The preoccupation with subtler threats to democracy arises from the fact that of the five countries in which the OAS had most actively worked to preserve and strengthen democratic systems since 1990—Haiti, Peru, Guatemala, Paraguay, and Venezuela—only Haiti (in 1991) experienced a successful military coup. Venezuela’s unsuccessful coup attempt in April 2002 resulted from efforts by the opposition to embroil reluctant military officers, already deeply politicized by the government, in their conspiracies. In every case—including recent events in Haiti—the OAS has been drawn into constitutional crises caused by democratically elected leaders or challengers who violated or threatened to violate the constitutional rules of the game.

This paper begins with a discussion of the horizontal accountability deficit in Latin America. It outlines a definition for the phrase “unconstitutional alteration or interruption of the democratic order.” It then analyzes two cases to illustrate the centrality of the problems identified.

Theoretical Considerations: Constitutionalism, Horizontal Accountability and Democracy

Guillermo O'Donnell coined the term horizontal accountability to focus attention on the network of “state agencies that are authorized and willing to oversee, control, redress, and if need be sanction unlawful actions by other state agencies” (1998: 110). The concept is closely linked to the separation of powers, an essential feature of the constitutional state that underpins liberal democracy. Whereas the doctrine of the separation of powers, as articulated by Montesquieu and the Federalists, holds that the branches of government should be divided into executive, legislative and judicial offices, each with a corresponding function, separate and exclusive membership, and minimal encroachment by one branch upon the other (Vile 1967: 13), horizontal accountability encompasses a wider range of oversight agencies, including “ombudsmen, accounting offices, *fiscalias* and the like” (O'Donnell 1998: 119).

O'Donnell (1998) attributes the precariousness of horizontal accountability in contemporary Latin American to the weakness of liberal and republican traditions. Others have focused on, *inter alia*: presidentialism (Linz 1994: 10-14); inchoate party systems (Mainwaring and Scully 1995: 24-25); corrupt, ineffective or inaccessible judicial systems (Diamond 1999: 111-112) and legislatures (Méndez 2000); and the insufficiently participatory nature of formal political institutions (Avritzer 2002: 129-134). Civilian supremacy over the armed forces is also critical to horizontal accountability. In Latin America, the armed forces have often defined their mission as guardians of internal order, guarantors of the constitution, and protectors of the national interest. This position has often brought them into conflict with civilian politicians they regard as opportunistic and corruption (Loveman 1999: xxiii-xxiv). By setting

themselves above the constitution, as arbiters of legality (Schirmer 1998; Barros 2002), military officers undermine the most basic principle of the rule of law: nobody is above the law.

The deficit of horizontal accountability threatens democracy by opening the way for one branch of government to encroach upon the jurisdiction and competence of another. In presidential self-coups, or *autogolpes*, presidents may suspend the constitution, fire the supreme court, close congress, and rule by decree until a plebiscite or a new election is held to ratify a new regime with wider executive powers (Cameron 1998: 125). In less extreme cases, presidents may stack courts, abdicate their authority over the military in cases of human rights violations, abuse executive decree authority, refuse to accept legislative oversight, limit freedom of the press, or use public resources to undermine the development of political parties and local governments. Such violations have, from time to time, been applauded by domestic audiences and tacitly condoned by the international community.

The challenge in many new democracies is to induce democratic governments to *govern* democratically and democratic oppositions to *oppose* democratically. What does it mean to govern or opposed democratically? Political scientists have been reticent to specify what democracy means beyond free and fair elections. Although most recognize that there is more to democracy than elections, considerable disagreement surrounds what if anything else should be bundled into the definition (Diamond 2002, 1999; Przeworski et al. 2000; Collier and Levitsky 1997; Schmitter and Karl 1991). Since elections in Latin America are embraced enthusiastically, but the democracies of the region lack the checks and balances inherent in the constitutional state based on the separation of powers,

it may be useful to clarify the connection between democratic regimes and other constitutional features of a democratic system, like the separation of powers.

By a constitution, I mean the arrangement or distribution of public roles and offices, including executive, deliberative, and judicial branches of government. Constitutions give rise to regimes, the system of government or rule involving the manner of access to and the exercise of public roles and offices. Constitutions that separate the branches of government provide the legal foundation for liberal democratic regimes. A constitution in which all three branches of government are fused into a single agency is inimical to self-government, as was repeatedly emphasized by Montesquieu and the Federalists. In less draconian terms, the separation of powers means that elected officials in one branch of government are not entitled to wholly encroach on the activities of another.² Equally importantly, elected officials cannot arbitrarily dismiss or ignore the rulings of judicial bodies. Less tolerable still is meddling by military officers in the competence of civilian authorities. Finally, the separation of powers provides the organizational guarantees necessary to ensure that state power is not used to repress regime opponents or steal elections.

In a democratic regime, legislative and executive offices are filled by means of free and fair elections. Such regimes can be threatened or undermined, short of the forceful overthrow of a democratically elected government, when its constitutional underpinnings are eroded by repeated violations of the separation of powers. Yet the international community is helpless to knowing how to respond to crises involving

² In a parliamentary system, for example, the executive is chosen by a majority in the legislature but cannot dismiss the legislature without also dissolving the government and calling new elections. Hence, while it is true that there is greater fusion of two branches of government in a parliamentary system, it is misleading to conclude that there is no separation of legislature and executive, much less that there is no separation of powers (Von Mettenheim 1997: 10-11).

undemocratic behavior by elected leaders and oppositions unless attention is focused systematically on the connection between democratic regimes and the constitutional order. The essence of this connection is that democracy, in its many forms, embodies the principle that those in power must provide reasons for their actions and defend them against criticism. Elections are one mechanism to ensure that those in power are held accountable, and they are absolutely necessary under the conditions of modern, large-scale political communities; the separation of powers is equally necessary because it provides the legal and constitutional conditions necessary for the practice of horizontal accountability.

Building on work by Brian Loveman (1993), Pablo Polizcer's essay in this collection makes a compelling that "Latin American constitutions are often ambiguous and contradictory documents" that offer wide scope for authoritarian abuses by the executive and the military. The task of democracy defence and promotion, therefore, should not be to uphold dysfunctional or authoritarian constitutions in the face of pressures for democratic change, but rather to defend those features of a constitutional order that are essential to the preservation and deepening of democracy.

While it may be impossible to determine such features *a priori*, the recent experience of constitutional crises in the region provides important lessons. In light of this experience, and guided by theories of horizontal accountability, I argue that the phrase "unconstitutional alteration or interruption of the democratic order" should be understood to encompass the following situations: (1) arbitrary or illegal termination of the tenure in office of any democratically elected official by any other elected or non-elected official; (2) arbitrary or illegal appointment, removal, or interference in the

appointment or deliberations of members of the judiciary or electoral bodies; (3) interference by non-elected officials, such as military officers, in the jurisdiction of elected officials; (4) use of public office to silence, harass, or disrupt the normal and legal activities of members of the political opposition, the press, or civil society; (5) failure to hold elections that meet generally accepted international standards of freedom and fairness.

All but the final point concern the constitutional separation of powers. The first point indicates that presidential self-coups count as unconstitutional interruptions of the democratic order; the second point covers court stacking or meddling in the judiciary by the executive; the third point affirms civilian supremacy over the military and challenges, among other things, military courts with jurisdiction over civilians; the fourth point protects regime opponents and civil society from the abuse of power by democratically elected governments; and the fifth point addresses the need for integrity in the core formal institution of modern democracy.

Peru and Venezuela illustrate the centrality of violations of the separation of powers in the crises of democracy that have riveted the attention of the international community. They are also important cases because the Democratic Charter was an initiative from Peru that came out of the role of the OAS in the resolution of the Peruvian crisis in 2000, while the crisis in Venezuela in 2002 was widely seen as the Charter's first major test. If, as seems likely, the Charter will contribute to a more activist strategy of mission diplomacy within the OAS, the leadership of that organization will undoubtedly encounter the problem of violations of the separation of powers with greater frequency. Peru and Venezuela are also important to compare because they illustrate the range of

problems to which the Charter may be applied. Whereas Fujimori repeatedly violated Peru's constitutional order, constitutionalism is more resilient in Venezuela. By pursuing constitutional change by legal means, Chávez avoided crossing the threshold that would trigger a collective response by the Inter-American community.

The Origins of the Charter: The Crisis in Peru and the OAS High Level Mission

A variety of factors conspired to undermine constitutional government in Peru throughout the 20th Century: divisions between the Creole culture of the coast and the indigenous culture of the highlands; administrative and political centralization in the capital city, Lima; the persistence of the power of rural landlords, or *gamonales*, late into the 1950s and 1960s; the exclusion of the majority of the indigenous population from the vote by means of a literacy requirement prior to 1978; and a military veto against occupancy of executive office by the largest political party in Peru, the American Popular Revolutionary Alliance (APRA) until the late 1970s. The transition from authoritarian rule that began with the constituent assembly elections in 1978 and presidential and congressional elections in 1980 marked the first period of unrestricted electoral democracy in the nation's history, but the military remained a major political actor, the judiciary an inaccessible, inefficient, and corrupt bureaucracy, and congress an elitist redoubt for influence peddling and patronage politics.

The forces unleashed by the breakdown of oligarchic domination in the period from the 1950s through the period of reformist military rule (1968-1980) could not be contained by electoral democracy. Economic mismanagement and corruption contributed to the worst economic crisis in Peru's republican history, and the land reform

implemented by the military government had the perverse effect of stimulating a major revolutionary movement that came to be led by a splinter from the Peruvian Communist Party called the Shining Path. When elections were held in 1990, Peruvian voters turned against established parties and politicians and elected Alberto Fujimori, a virtually unknown candidate who promised change through “honesty, technology and work.”

To understand the regime crisis in Peru and the international response it is essential to appreciate the historic significance of president Fujimori’s two terms (1990-1995; 1995-2000). More than any other leader in recent Latin American history, Fujimori represented the qualities of leadership that Max Weber called Caesarist: the plebiscitarian or providential style of the “hero” who bypasses parliamentary institutions and appeals directly to the masses, who in turn deposit their trust and faith in the leader (Weber 1978: 1451-1453). The raw emotional connection between the masses and Fujimori was forged on the success of the first Fujimori government (1990-1995) in defeating the Shining Path by capturing its leader, Abimael Guzmán, and restoring price stability and economic growth after a period of deep recession and hyperinflation (Cameron 1997). Like most Caesarist leaders, Fujimori’s weakened democracy—or, to be more exact, the constitutional separation of powers that underpins democracy. Following his 1992 *autogolpe*, Fujimori built a political system designed to provide impunity to the armed forces and shield the executive from criticism and accountability while co-opting or corrupting the legislature, judiciary, public ministry, tax superintendancy, and, above all, the national election board.

From 1992 onward the Fujimori government was in permanent violation of one or another of each of the conditions I have outlined as part of the definition of the

“unconstitutional alteration or interruption of the democratic order.” Not only did the government end the tenure of democratically elected politicians by closing congress in 1992, it repeatedly attempted to alter electoral outcomes *post facto* in Fujimori’s second term by bribing, threatening, or cajoling opposition municipal leaders to join the party of the government. When Fujimori failed to win a majority in congress in 2000 the government created a majority by bribing opposition leaders.

In 1997 the majority in congress arbitrarily removed the members of the constitutional court who opposed an unconstitutional law that opened the way for a bid by Fujimori for a third term in office. Remarkably, the measure did not receive so much as a rebuke from the OAS. Under the cover of “judicial reform” the government gained control over the key courts responsible for drug trafficking. The powers of the military were expanded under Fujimori to the point that faceless judges in military courts that lacked rudimentary elements of due process tried thousands of civilians. By the end of Fujimori’s second term in office a sophisticated machinery of espionage, intimidation and legal and paralegal harassment had been perfected against all regime opponents, including opposition politicians, the independent mass media, and non-governmental advocacy groups.

In spite of the ongoing abuses of power under Fujimori, the governments of the Western Hemisphere repeatedly sought to “normalize” diplomatic relations with Peru. It was not until the 2000 elections that the tide began to turn, in part because of the failure of Peru to hold elections that could be certified as meeting internationally accepted standards. An OAS electoral observation mission headed by former Guatemalan Chancellor Eduardo Stein clearly and unequivocally classified Peru’s general elections

(of April 9, 2000, and the subsequent May 28 run-off) as neither free nor fair. The Stein report built on similarly damning reports by the office of the Peruvian Human Rights Ombudsman, the Inter-American Court of Human Rights, and a number of independent election observers, both foreign and local.

Stein and the OAS electoral observation mission spent three months in Peru, witnessed the entire campaign, worked doggedly to prevent fraudulent vote counting and, in the end, gave up in disgust after the government and the opposition could not reach an agreement to postpone elections until minimally acceptable conditions could be guaranteed. The Stein mission was a watershed in international election monitoring; rather than confining its efforts to election day scrutinizing, the mission observed the unconstitutionality of Fujimori's candidacy, documented the control of the executive over the other branches of government, noted the lack of access to the media by opposition leaders and the use of public resources in pro-government campaigning, and provided a detailed picture of irregularities and sheer incompetence on the part of election officials (Organization of American States 2000, May 31). The mission reinforced the credibility of years of documentation of the non-democratic character of the Peruvian government by numerous independent inter-governmental and non-governmental organizations and denied the Peruvian government good standing in the community of democratic nations as long as Fujimori remained in power.

In spite of the fact that the Stein report provided irrefutable evidence that the elections in Peru were neither free nor fair, the OAS General Assembly, held in Windsor, Ontario in early June, decided not to demand new elections. The OAS could have invoked Resolution 1080, adopted in 1991, which empowered the OAS, "in the event of

any occurrences giving rise to the sudden or irregular interruption of the democratic political institutional process or of the legitimate exercise of power by the democratically elected government” to “adopt any decisions appropriate, in accordance with the Charter and international law,” including exclusion from the OAS until new elections.

Failure to use 1080 to force new elections was a mistake, but it reflected a pro-sovereignty sentiment among member states that is also supported in the OAS Charter. Moreover, there was little appetite for a more interventionist position among Peru’s neighbours, many of which (Venezuela, for instance) were facing similar internal problems. Brazil was keen to distance itself from any form of intervention; Mexico feared closer observation of its own impending elections; Ecuador had seen an elected president deposed by a rebellion of junior military officers in league with indigenous protesters. In the face of this resistance, the compromise that was hammered out in arduous negotiations at Windsor was the creation of a High Level Mission, led by Secretary General Cesar Gaviria and Foreign Minister, Lloyd Axworthy, who, because Canada was host of the Windsor meeting, was Chair of the General Assembly (Cooper and Legler 2001).

For reasons of political expediency the High Level Mission could neither call for new elections nor accept the legitimacy of the elections that had been held, but instead focused on promoting the underlying democratic reforms necessary to create the conditions for free and fair elections in the future. As a result, its attention shifted to the issue of reinforcing the constitutional separation of powers and to the elements I have identified as part of an “unconstitutional alteration or interruption of the democratic order.”

In their visit to Peru between June 27-29, 2000, Axworthy and Gaviria outlined sweeping recommendations for democratic reform that amounted to a total overhaul of the Peruvian political system (Organization of American States 2000, July 21). They called for an independent judiciary, re-establishment of the Constitutional Tribunal, and a better balance between human rights and security; they demanded freedom of the press, including opposition access to the media, and for a restructured electoral system to recover public confidence in electoral processes; finally, they recommended democratic control over the executive, the armed forces and the intelligence service. Axworthy bluntly requested Fujimori remove Montesinos. The OAS also proposed “mesas de dialogo” (dialogue tables), an idea that, ironically, had its origin in Venezuela.³ When Fujimori announced his resignation in September 2000, following the leak of a videotape showing Montesinos bribing an opposition member of congress, the dialogue tables provided the institutional framework for a successful transition to an interim government and new elections.

The main thrust of the recommendations of the High Level Mission was to restrain the executive from overreaching its authority and to commit to a set of rules that would result in election outcomes that all parties could respect. In so doing, the mission focused attention on the need for greater independence of the judiciary. The mission went beyond the Stein report in calling for congressional control over the armed forces, reform of the system of military justice, and a restriction in the activities of the intelligence system to matters of national security. This last point was especially important because the intelligence system was the source of most of the harassment,

³ Hugo Chávez created dialogue tables with civil society in Venezuela following the failure of “mega-elections” scheduled for May 2000. Canadian officials in preparation for the mission to Peru found the irony of using an idea of Chávez’s (who supported Peru in Windsor) against Fujimori irresistible.

intimidation, espionnage, and co-optation through blackmail and bribery suffered by the opposition and the media.

A key lesson from Peru is that persistent, systemic violations of the separation of powers tend to erode the quality of electoral democracy. In the 2000 elections, “Peru flunked the basic litmus test of democracy—that of holding clean elections” (Conaghan 2001: 2). Such an erosion of democracy was possible because Fujimori had exploited the political conditions of the early 1990s to construct a centralized, authoritarian regime. Free and fair elections cannot be separated from the issue of the independence of election authorities, the judiciary, and the legislature, freedom of the press, and civil and political rights. Only a system of effectively functioning checks and balances can guarantee the conditions under which political parties can operate freely in genuinely fair and competitive electoral processes.

The Democracy Charter’s First Test: Venezuela, April 2002

Constitutionalism has relatively deep roots in Venezuela, in part because the rural areas are not inhabited by a large sedentary peasantry, and thus the cleavage between the indigenous people and the Creole elite is less acute than in Peru, though by no means absent. The federal wars of the 19th Century destroyed the rural oligarchy, leading to a more egalitarian society and a less centralist public administration. Petroleum-based expansion provided opportunities for education and social mobility over many decades, and a rising per capita income that was the envy of Latin America. As a result, for 40 years, between 1958 and 1998, Venezuela enjoyed a remarkably stable, inclusive electoral democracy within the framework of a more or less accepted constitutional order.

The military remained under civilian control, and while other nations of the region oscillated between democracy and authoritarianism, Venezuela seemed to have found a democratic consensus that worked. The consensus was symbolized by the Punto Fijo power-sharing pact signed in 1958 that had committed the nation's main parties to respect election outcomes, avoid factional violence, and share office and patronage (Kornblith 1991: 70).

By the 1990s, however, the Pact of Punto Fijo had become an increasingly dysfunctional arrangement. Hugo Rafael Chávez Frías became its fiercest critic. He entered public awareness in an unsuccessful coup attempt against the government of President Carlos Andrés Pérez (1989-1993) in February 1992. To the surprise of the government, Chávez's efforts won wide public approval⁴ and he became a visible leader in the struggle against what was increasingly perceived as a corrupt political establishment.

For Chávez, the Pact of Punto Fijo symbolized the power of a corrupt oligarchy of party leaders. The system came to be known as a "partyarchy"—an ossified and exclusionary system in which all the basic features of electoral democracy were distorted by the control by party machines (Coppedge 1995). Chavez's primary objective was to destroy the reviled Pact of Punto Fijo. Once elected, Chávez delivered on his promise to hold a referendum on constitutional reform followed by elections for a constituent assembly to write a new constitution. The referendum passed in April 1999, and elections in July 1999, in which candidates were prohibited to run as members of parties,

⁴ As the coup fizzled, Chávez, who was in command of rebel troops in Caracas, asked for a few seconds on national television to encourage his comrades-in-arms elsewhere in the country to surrender. During those moments, Chávez assumed responsibility for the uprising and said the effort to overthrow the government had failed "for now." This contributed to his image as a responsible yet implacable regime opponent.

gave Chávez a 120-seat majority in an assembly of 131 seats. The new constitution was approved in a referendum in December 1999, and then new elections were held for every single elected office in the country (including the presidency) in July 2000, enabling Chávez to re-start his mandate with a longer term in office that would end in 2006. The primary effect of this dizzying succession of elections was to significantly erode the number of public offices controlled by the established political parties.

Unlike Fujimori, Chávez avoided a military-backed interruption of the constitutional order. Rather than use force to close congress, Chávez held a referendum—a strategy consistent with the stronger spirit of constitutionalism in Venezuela. However, the prohibition on parties violated their right to participate in the political process. It unfairly denied opposition parties to use their labels while it was obvious which candidates were running for Chávez. Moreover, Chávez encouraged the established congress to become defunct by prohibiting its sitting members from being part of the constituent assembly. The role of the constituent assembly was to re-write the constitution, but it immediately began to operate as the nation's congress. In effect, therefore, Chávez had arbitrarily terminated the mandate in office of the elected members of the congress. In that sense, the constituent assembly process can be considered an “unconstitutional alteration or interruption of the democratic order.” It should be noted, however, that the judiciary offered only feeble resistance to Chávez.

The centralization of power in the Chávez's hands was dangerously destabilizing. With establishment parties and elites in disarray, and riding high in the polls, there were few external checks on Chávez's power. Yet, hobbled by the lack of a strong party organization, Chávez was forced to rely on the armed forces as a source of loyal cadres

and to implement public works projects aimed at bolstering his support. He also began to sponsor the creation of “Bolivarian circles,” grassroots organizations in support of the revolution.

The all consuming struggle to re-write the constitution had absorbed the energies of both the executive and the assembly, so that by mid-2001 the government still had little to show in terms of legislation or policy reform. This led to a cascade of executive decrees introduced at the end of 2001 under the enabling law authority granted by the national assembly. These decree laws, which were introduced without prior consultation with affected interests, provoked the first major confrontation with Venezuelan business. In December 2001 the nation’s peak business association (FEDECAMARAS), with the support of the main trade union confederation (CTV) called a general strike. The strike was followed in April, 2002, when FEDECAMARAS and the CTV again joined forces to protest the efforts by the Chávez government to remove the directors of the nations largest crown corporation, the oil company PDV, and replace them with Chávez loyalists.

On April 11 a massive anti-government demonstration threaded its way through downtown Caracas. As it approached the presidential palace gunfire erupted, leaving 17 people dead and scores wounded. Later in the evening, senior military officers detained Chávez and installed Pedro Carmona, the putative leader of the opposition, as the head of a transitional government. Support for Carmona crumbled when he decreed the dissolution of the National Assembly and the Supreme Tribunal of Justice, arrogating dictatorial powers to himself in a bizarre swearing-in ceremony in which he proclaimed himself president in the presence of his cronies. With demonstrations spreading

throughout the country, a wavering and dazed military high command restored Chávez to power.

The circumstances surrounding the events of April 11-14, 2002, remain unclear (Rey 2002; Poleo 2002; Frances and Machado Allison 2002; Defensoria Del Pueblo 2002; República Bolivariana de Venezuela – Asamblea Nacional 2002). At what point did an “unconstitutional alteration or interruption of the democratic order” occur? If we assume, as the opposition claims, that Chávez created a “vacuum in power” by resigning, there is still no justification for the violation of the constitutional separation of powers by Carmona. The Carmona decrees amounted to: (1) an unconstitutional usurpation of the power of the National Assembly; (2) an illegal intervention in the Supreme Tribunal of Justice; (3) the establishment of a *de facto* military dictatorship; and (4) the creation of a political order in which no fundamental guarantees of basic rights and freedoms could be taken for granted. Indeed, in the few hours Carmona was in office his provisional government did jail and harass leaders of the Chávez government.

Notwithstanding the invocation of the Democracy Charter in the very first paragraph of the Carmona decrees, a clearer violation of the Charter would be hard to find. As Gaviria put it, Carmona’s rule “was broadly and widely rejected not only because of its origins, but also owing to its decisions, which resulted in the closing down of institutions established by popular vote, the intervention of the Judiciary and the so-called ‘moral power’ organizations, and in practice the derogation of the Constitution” (Organization of American States 2002, April 18).

Repudiation of the coup attempt was nearly universal among the nations of Latin America and the Caribbean, with Colombia standing as a conspicuous exception.

Meeting in Costa Rica under the auspices of the Group of Rio, most of the Latin nations invoked the Inter-American Democracy Charter, as did the domestic opponents of the coup in Venezuela (Organization of American States 2002, April 12). The United States, however, pushed for the recognition of the Carmona government. The arguments made by the US echoed the “power vacuum” thesis of the coup conspirators. Blaming the crisis on Chávez, the US argued that it was unclear whether there was a legally constituted government because Chávez had resigned. Only after Chávez was restored to power was the US reconciled to the Charter by a speech to the OAS by Secretary of State Colin Powell (U.S. Department of State 2002).

The Charter appeared to have survived its first major test, but not for long. It had served as a key point of reference in the debate about whether to recognize the Carmona government, which points to the robustness of the principles it upholds. However, the fact that all sides—Carmona, Chávez, the US, the Latin nations—used the Charter to justify diametrically opposed actions, underscores the imprecision in those principles. The fact that the Latin American and Caribbean nations strongly opposed the coup suggests that the idea of the multilateral defense of democracy has become widely accepted in the region. Yet the pro-sovereignty sentiment that inhibited a stronger response in the 2000 Peru crisis played no role in the Venezuela crisis where the Charter was used to defend not challenge the leader of a sovereign state. Moreover, the crisis was long in brewing, and continued after the April coup.

The situation in Venezuela continued to deteriorate after April 2002. In December 2002 a “civic strike” began that lasted well until February 2003. In an effort to mediate, Gaviria had traveled to Venezuela in early November. His solo performance

had little success bringing the two sides together and the Secretary General became a virtual hostage of the deteriorating crisis. Unlike the High Level Mission to Peru in 2000, Gaviria lacked a resolution from the floor of the OAS General Assembly empowering him to make recommendations for reform with the implied sanction of the application of Resolution 1080 in the event of persistent non-compliance.⁵ When the Permanent Council of the OAS met in December to debate the situation in Venezuela the assembled ambassadors failed to apply the Democratic Charter, handing a clear diplomatic victory to the Chávez government, weakening the position of Gaviria, and exhibiting once again the unwillingness of OAS member states to criticize one another (Organization of American States 2002, December 16).

The feebleness of the OAS's mediation efforts led to an initiative by a number of countries—notably the US and Brazil—to create a “Friends of Venezuela” group to support the Secretary General. The initiative promised to give Gaviria a bigger stick, but it still fell short of the application of the Charter. Chávez, meanwhile, downplayed the OAS's role, at one point suggesting that the Secretary General was operating at his own initiative, a view that was diplomatically rebuked by Gaviria (“Gaviria sí tiene mandato” 2003).

In February the strike collapsed when it became apparent that the regime would not crumble under pressure and the economic cost of continuing disruption was beginning to hurt Chávez's adversaries more than the regime. With the end of the strike, the government assumed the offensive, with arrest warrants issued for strike leaders. Carlos Fernández was detained and placed under house arrest, while Carlos Ortega went into exile in Costa Rica. Negotiations continued under the auspices of the Secretary

⁵ I am grateful to Lloyd Axworthy for this observation (personal communication, January 8, 2003).

General. In May the government and opposition signed an accord in which they agreed to seek a solution by constitutional means. The accord called for a mid-term recall referendum, in compliance with Article 72 of the 1999 Constitution, and for the selection of incumbents in the National Electoral Commission in whom both government and opposition leaders could deposit their trust (“Acuerdo” 2003).

The Venezuelan and Peruvian cases differ in two significant respects. First, Chávez was more careful to respect constitutional norms than Fujimori, with the result that the international community could do less to challenge his authority. Whereas Fujimori repeatedly violated first the 1979 and then his own 1993 constitution, Chávez has been more careful to alter the constitutional order by more or less constitutional means. Arguably, Chávez, like Fujimori, achieved an inordinate concentration of power in the hands of the executive branch of government, to the detriment of judicial independence and legislative autonomy and initiative. Whereas Fujimori treated constitutional norms as hindrances to achieving policy objectives, Chávez has made constitutional change his central goal. The down side of this strategy for Chávez was that he achieved fewer policy results, and had less sustained popular approval.

The other major difference between Peru and Venezuela lay in the behavior of the opposition. Whereas much of the opposition in Peru found ways of accommodating with the Fujimori regime, between 2001 and 2003 the Venezuelan opposition focused almost exclusively on removing Chávez from power. The principal leaders of the Venezuelan opposition would not commit themselves to operating within the Chávez’s Bolivarian Constitution, as was illustrated by the abortive Carmona government. The events of April 2002 did enormous damage to the credibility of the opposition to Chávez,

especially outside Venezuela, and made it much harder to challenge strong-handed measures by the Chávez government (as for example, in the case of the detention of the opposition leaders after the failure of the December 2002-February 2003 general strike).

Conclusion: Making the Charter Work

Does the Charter “reinforce” (that is, strengthen or give greater force to) “OAS instruments for the active defense of representative democracy,” as required by the Declaration of Quebec City? Does it provide the tools necessary for responding to the problem of democratically elected leaders who behave undemocratically? Can it be used not merely in response to crises, but as part of a more proactive and flexible response that builds on recent OAS experience in democracy defense and promotion?

The Democratic Charter did not arise *de novo*—it systematizes existing instruments and commitments to the collective defense of democracy. As a synopsis of the consensus on democracy in the Americas it is an incomplete document. There is what might be called a deeper “jurisprudence” that underpins the Charter, which remains unstated largely because it involves contested understandings of sovereignty, democracy, and constitutionalism. Although the Charter is not a strong statement of formal legal obligations, it can be a living document that accumulates experience to develop a repertoire of tools and strategies for both managing and averting future crises. The Charter makes no mention of “dialogue tables,” for example, even though they were used successfully in Peru and may play a role in Venezuela in the future, yet this idea has clearly become a part of the “toolkit” used by the OAS in crisis situations.

The primary weakness of the Charter is that it fails to specify what counts as an “unconstitutional alterations of the constitutional regime.” It is clear that an alteration to the constitutional order has occurred when elections are held that do not meet minimal international standards of the right to vote, access to the media, absence of physical coercion or intimidation, a secret vote and honest count, and a independent appeals process. I have argued that an unconstitutional alteration of a democratic regime should be considered to have occurred whenever four additional conditions have been met: (1) there has been an illegal termination of the tenure in office of a democratically elected official by another elected or non-elected official; (2) there has been an arbitrary or illegal appointment, removal, or interference in the appointment or deliberations of members of the judiciary or electoral bodies occurs; (3) there has been interference by non-elected officials, such as military officers, in the jurisdiction of elected officials; or (4) public office has been used to silence, harass, or disrupt the normal and legal activities of members of the political opposition, the press, or civil society.

By seeking to make the meaning of “unconstitutional alterations of the constitutional regime” more explicit it is not my intention to suggest that the determination of such an alteration are ever cut-and-dried, nor that such determinations are a matter of technical or expert judgment. The Charter is careful to stipulate that it is only concerned with alterations in the constitutional order that “seriously impairs the democratic order.” The determination as to whether a violation impairs the democratic order requires political judgment, and cannot be resolved a priori. However, political judgments can be improved by access to the best available evidence. Whereas reliable measures of economic performance are routinely gathered by international financial

institutions and provide benchmarks for the assessment of performance on a range of policy dimensions, nothing comparable is available to policymakers in the area of political performance and democratic reform. Extensive research is necessary to provide analytical and empirical foundations for assessing the impact of alterations in the constitutional order on democratic regimes.

There are serious problems with the decision-making process outlined by the Charter in its articles 17-22 concerning procedures for application. The Charter can only be applied when the Secretary General or the Permanent Council of the OAS determines that a situation has arisen in a country “that may affect the development of its democratic political institutional process,” yet such a determination cannot be made unless, “with prior consent of the government concerned,” the Secretary General can visit a country and make a report. In other words, a government that does not want the Charter to be applied can simply refuse to invite the Secretary General to make an assessment.

The OAS is a club of states loath to criticize one another. A more inclusive process of civil society consultation could stimulate the OAS to address problems when member states are reticent by monitoring events, reporting on them when they threaten to impair democracy, and lobbying their respective governments to address the problem through the OAS where appropriate. Although the Charter extols the importance of civil society it could do more to provide mechanisms for consultation with non-governmental organizations. There is nothing, of course, to prevent such mechanisms from being developed parallel to the Charter and outside the OAS. The United Nations Commission on Human Rights receives regular reports from human rights organizations.

One way of enhancing the effectiveness of the Democratic Charter would be to develop an institute to commission thematic or country reports on progress or backsliding in the democracies of the Americas. Regular reports would serve as a way to bring the spotlight of international publicity to bear on problems, to provide encouragement and benchmarks for governments undertaking democratic reforms, and would also serve as an early warning mechanism for the Inter-American system. Such a system could work in partnership with the Unit for the Promotion of Democracy.

Finally, the Charter emerged from the Summits of the Americas, and will ultimately have to be linked to the Free Trade Agreement of the Americas. If the Charter is to have “teeth,” they will come from the threat of expulsion not only from the OAS but also from commercial and investment arrangements with the rest of the region. Moreover, economic integration should be pursued in a manner consistent with the strengthening of democracy, and this may well require new rules to stabilizing global financial markets. One of the greatest threats to democracy in the region today is financial instability, as the bank crises in Argentina and Uruguay demonstrate, yet these have been treated as the exclusive purview of the International Monetary Fund and not of the Charter.

I began by suggesting that democracy is widely accepted as the most legitimate way to organize political life in nearly all of the nations of the Western Hemisphere, but political leaders and oppositions still routinely flout basic principles of the constitutional separation of powers. All too often presidents see themselves as embodying the popular will, and their opponents as unworthy of respectful treatment. In some cases, political opponents see themselves as the embodiment of democracy and virtue, while excoriating

government officials for their abuses of power. Deepening democracy will involve establishing more inclusive conceptions of citizenship and participation. The international community can best help by consistently reinforcing the principle of the separation of powers.

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