



PROJECT MUSE®

Colombia's Surprising Resilience

Lindsay R. Mayka

Journal of Democracy, Volume 27, Number 3, July 2016, pp. 139-147 (Article)

Published by Johns Hopkins University Press

DOI: <https://doi.org/10.1353/jod.2016.0050>



➔ *For additional information about this article*

<https://muse.jhu.edu/article/623615>

Delegative Democracy Revisited

COLOMBIA'S SURPRISING RESILIENCE

Lindsay R. Mayka

Lindsay R. Mayka is assistant professor of government at Colby College in Waterville, Maine. In 2013, she received the Martin Diskin Dissertation Award from the Latin American Studies Association and Oxfam.

Throughout much of the twentieth century, Colombia's political stability marked it as one of Latin America's happier exceptions. In the 1960s and 1970s, when other countries in the region were falling prey to brutal military dictatorships, Colombia remained a democracy. In the 1980s and 1990s, when the debt crisis was roiling the politics of its neighbors, it avoided macroeconomic upheaval. Colombia's democracy was not inclusive, but it enjoyed a stable party system, a competent and skilled bureaucracy, and strong institutions of horizontal accountability.¹ Even in the face of a decades-long civil conflict, the balance of power among the various liberal-democratic institutions held steady and strong.

Yet as the twenty-first century began, rising violence threatened democracy's foundations. In 2002, Colombians elected Alvaro Uribe as president, seeking a strongman who would use whatever means necessary to save the country from the escalating security crisis. Uribe adopted a *mano dura* (hard-handed) approach, concentrating authority on security matters in the presidency and the military. Congress failed to provide any meaningful check on the executive. According to Uribe, anyone who got in the way was aiding and abetting the violent criminals and "terrorists" who were endangering the country. In many ways, Colombia in the 2000s under Uribe matched Guillermo O'Donnell's 1994 description of a "delegative democracy":

Whoever wins election to the presidency is thereby entitled to govern as he or she sees fit, constrained only by the hard facts of existing power relations and by a constitutionally limited term of office. The president is taken to be the embodiment of the nation and the main custodian and definer of its interests. . . . In this view, other institutions—courts and legislatures, for instance—are nuisances. . . . Accountability to such institu-

tions appears as a mere impediment to the full authority that the president has been delegated to exercise.²

Yet Colombia also diverged from O'Donnell's model, and in unexpected ways. Despite Uribe's attacks (members of his administration illegally wiretapped judges), the judiciary retained remarkable autonomy, so much so that the Constitutional Court was able to stop the wildly popular Uribe from running for a third term in 2010.³ Even more surprising, the trend toward illiberal democracy was reversed following the election of Uribe's successor, Juan Manuel Santos, in 2010. Delegative democracy in Colombia has proven ephemeral.

The Colombian case raises two important questions. First, to what extent should we consider Colombia's concentration of power an instance of delegative democracy? And second, what are the theoretical implications of Colombia's experience for O'Donnell's model of delegative democracy? Whereas other delegative democracies arose in the face of economic challenges, Colombia's version emerged to meet a security crisis. Conflict had been going on with the leftist Armed Forces of the Colombian Revolution (FARC) and other guerrilla groups for most of half a century, but it was reaching new and alarming levels as the year 2000 approached. In 2001, there were 3,854 extrajudicial killings, plus 1,965 deaths in combat between the military and Colombia's guerrilla groups. These fatalities combined with a staggering 21,271 homicides that year to give Colombia one of the world's highest violent-death rates, running at an average of more than 76 deaths per day.⁴

As the security situation worsened, popular opinion grew more supportive of a hard-line approach to subduing the guerrillas. In a 2001 Americas Barometer survey, 64.5 percent of respondents said security was the biggest problem facing the country.⁵ Security issues emerged at the top of the 2002 presidential campaign. The 39-year-old Uribe ran as a candidate of the right, vowing to rule with a "firm hand and big heart" (*mano firme, corazón grande*). He needed no runoff, winning the May 2002 first round with 53 percent of the vote.

Illiberal Democracy Under Uribe

The formal expression of Uribe's *mano dura* approach was his Democratic Security program, which concentrated power in the presidency and the military. The guerrillas were redefined as terrorists who would have to be annihilated in order for peace to be achieved. According to World Bank figures, Colombia's military budget rose from 3 percent of GDP in 2000 to 3.9 percent in 2009, by which time it was making up almost 16 percent of all central-government spending. In August 2002, Uribe declared a "state of exception" under Articles 213 and 214 of the 1991 Constitution. This empowered the police and military to make

warrantless arrests of civilians. In 2003, troops received additional authority to arrest and interrogate civilians, collect evidence, and do other things typically handled by the judicial system.

In 2008, the so-called False Positives scandal showed how such steps put civil liberties and liberal-democratic institutions at risk. That year, the bodies of 22 men who had disappeared from the poor Bogotá suburb of Soacha turned up in a mass grave nearly five-hundred miles away, dressed as FARC combatants. A system of cash bonuses for each combatant killed in battle had led to the kidnapping and murder of more than three-thousand innocent civilians between 2002 and 2008.⁶ According to analyses by the attorney-general's office (also known as the *Fiscalía*) and Human Rights Watch, the False Positives killings were not the actions of isolated soldiers, but rather involved the oversight of the commanders of more than 180 units.⁷ With horizontal checks against military discretion removed, Democratic Security's bellicose strategy prioritized security statistics over basic civil liberties.

More generally, political authority shifted away from Congress and into the presidency in a way reminiscent of delegative democracy. In 2006, Uribe could count 68 percent of the 102 senators and 61 percent of the 106 representatives in the lower house as his allies. Public support that topped 70 percent for most of his time in office, plus a vindictive governing style, made it political suicide for legislators to oppose him.⁸ The few who dared were called guerrilla sympathizers and public enemies. For example, Rafael Pardo, Liberal Party leader and former defense minister, was accused of collaborating with the FARC. Under Uribe, Congress acted more as a rubber stamp than as a restraint.

The judiciary was a different story, however. It remained a strong force for horizontal accountability.⁹ The 23-member Supreme Court, which is responsible for investigating the president and legislators in case of malfeasance, took on the Uribe administration by investigating the *Parapolítica* scandal. This affair broke in 2004, when a former paramilitary officer named Salvatore Mancuso charged that more than a third of the members of Congress had ties with paramilitary forces. Journalist Claudia López's in-depth analysis of irregular election returns corroborated this claim.¹⁰ Many of the accused legislators were members of Uribe's congressional coalition. To the surprise of many, the Supreme Court defied the president and focused on investigating ties between members of Congress and the paramilitaries. In 2008, Uribe proposed eliminating the Court. When this narrowly lost in Congress, the administration made the Court a target of illegal wiretapping.¹¹ The Supreme Court pressed on undaunted, however, ultimately convicting five governors and 37 members of Congress including former Senate president Mario Uribe Escobar, the president's second cousin.

Constitutional interpretation falls within the purview of the nine-member Constitutional Court, which also acted to restrain Uribe. In 2004,

the Court ruled that the government was failing to protect the citizenship rights of Colombia's millions of internally displaced persons and would need to work with activists to develop an adequate policy response. Four years after that, it ruled that the national health system was failing to make good on citizens' constitutional right to care, and would have to be overhauled. Perhaps most dramatically, as already noted above, the Court in 2010 blocked the popular Uribe's attempt to run for a third term.

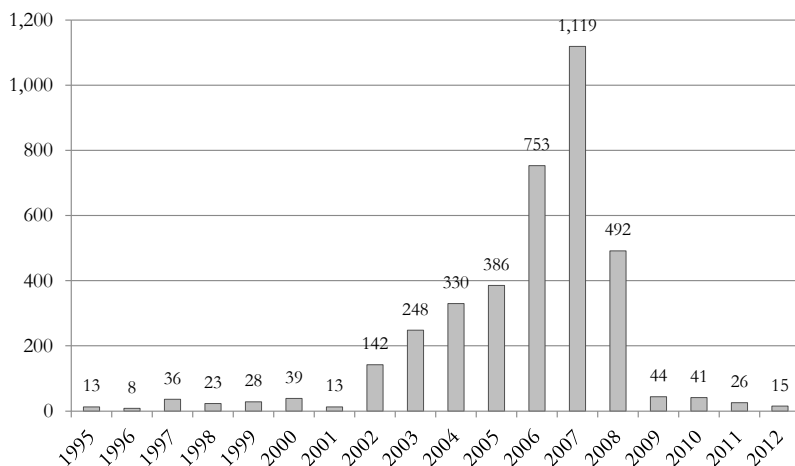
The judicial branch also pushed back on human rights. The head of the Fiscalía—who is called the attorney-general but is a Supreme Court appointee rather than a cabinet official chosen by the president—became a major player in investigating the False Positives outrage and in challenging military autonomy. The Fiscalía helped to convict 862 members of the armed forces for crimes related to the False Positives affair.

By the time Uribe's second term ended in 2010, he had stirred controversy among democracy and human-rights activists but had undeniably made the general public safer. The annual rate of homicide deaths per 100,000 residents plunged from 66.5 in 2000 to 31.8 in 2013. Kidnappings fell from 1,442 in 2004 to 299 in 2013. By 2009, just 39 percent of respondents were telling pollsters that security was the nation's number-one problem. Tourism, a significant indicator of how safe people perceived the country to be, underwent a revival. In 2001, the year before Uribe was elected, Colombia received just 534,000 foreign visitors. By 2007, that number had nearly tripled to 1.35 million.

Bolstered by new funding, more troops, and advanced technologies, Colombia's armed forces inflicted a string of devastating defeats on the FARC and other guerrilla groups. Top FARC leaders were dying—whether in combat or by natural causes—at a rate that the organization could not handle. It began to fall into disarray. In 2008 alone, two FARC founders and others from its high command were lost without being adequately replaced. Moreover, the military's antinarcotics efforts dismantled the FARC's supply chains for both weapons and drugs, thereby drying up the organization's main sources of funding. By 2014, the FARC had fewer than 7,000 combatants—a fraction of the more than 20,000 that it mobilized in the early 2000s.

The paramilitaries also fragmented during the Uribe administration. The largest one, the United Self-Defense Forces of Colombia (AUC), had demobilized by 2006 as part of a peace deal that the Uribe administration negotiated. Many key paramilitary figures, rather than retire, had merely reorganized into smaller groups known as *bandas criminales*. Yet with paramilitary activity reducing itself to a local scale, large numbers of Colombians began to view the security crisis as having been resolved.

The gains in security came throughout the 2000s, but at a cost. Extrajudicial killings such as the False Positives murders skyrocketed during the Uribe administration (see Figure). Many of the victims came from marginalized groups such as Afro-Colombians, landless peasants, and

FIGURE—EXTRAJUDICIAL KILLINGS IN COLOMBIA, 1995–2012

Source: Office of the Attorney General of Colombia. Data comprise extrajudicial killings by members of the armed forces and civilian collaborators, and include both false positives and other extrajudicial killings.

the urban homeless. These vulnerable populations also faced the threat of displacement. According to CODHES, a Colombian NGO, about three-million people (out of a total population counted at slightly under 43 million by the 2005 census) had to leave their homes during the Uribe era. In 2009, Colombia's Freedom House civil-liberties score worsened, going from 3 to 4 on a scale where 1 means most free and 7 least free. Freedom House was commenting on Colombia's poor record in terms of internal displacements, extrajudicial killings, and violence against protestors. The country became safer for the majority, and in particular for middle- and upper-class Colombians, but marginalized groups did not experience greater security in their own lives.

As security improved, the demand for a strongman president declined. With Uribe barred from a third term, his party colleague Juan Manuel Santos stepped in and won the presidency with 69 percent in the 2010 runoff. This seemed like continuity: As Uribe's defense minister from 2006 to 2009, Santos had presided over major wins against the guerrillas as well as serious violations of human rights. Yet Santos also marked a departure from his predecessor in the presidency. Santos, who had not been Uribe's first choice to be their party's candidate, had a technocratic style that contrasted with Uribe's populist persona.

Once Santos took office, the space between them widened. Santos saw the FARC as crippled by government-inflicted defeats, and favored negotiating with remaining FARC leaders rather than carrying on the Democratic Security program. His government opened talks with the FARC in Cuba. As of 2016, these have resulted in tentative plans for the FARC's full demobilization and an end to the civil conflict. Uribe and

his supporters, meanwhile, continue to call the FARC a terrorist group that cannot be peacefully reintegrated into Colombian society.

Santos's top legislative priority, the 2011 Victims' Law, also signaled a major departure from Uribe's hard-line approach. This legislation shifts the state's response to the conflict away from defeating armed groups and toward providing restitution to victims. The law establishes mechanisms to pay damages to relatives of civilians killed, as well as land restitution for millions of hectares of land that the displaced were forced to abandon. Importantly, the Victims' Law treats all victims—whether of guerrillas, paramilitaries, or the Colombian armed forces—equally. Uribe and his supporters, decrying what they see as an equating of the military with rebel groups, have sought to undermine the implementation of the land-restitution process.

Uribe retains a significant number of supporters in Congress, and they form Santos's main opposition. Among other things, this means that Congress has become more of a check on the executive. Whereas Uribe painted his political opponents as enemies of the state, Santos's response to pushback has been to avoid conflicts. His team has made the slogan "Don't fight with Uribe" its unofficial watchword.

Santos's relationship with the judiciary has hardly been harmonious, but it is less overtly antagonistic than Uribe's was. Santos too sought to shift power from the judiciary to the executive, but was more timid in his efforts. Shortly after taking office in 2010, he introduced a proposal for judicial reform that aimed to make the justice system faster-moving and more efficient, but also involved restricting the powers and budgetary autonomy of the judicial branch. There was strong public opposition, with critics charging that Santos would diminish the part of government that was the least tainted by drug-cartel and paramilitary influence. Congress eventually passed a modified version of this measure, but by that time the public outcry had grown so loud that Santos vetoed his own bill.

Delegative *Mano Dura*?

The Colombian case highlights the institutional tensions that arise from security crises. These tensions are quite distinct from those that O'Donnell described in his original model of delegative democracy. Writing in 1994, O'Donnell was thinking of newly democratized countries that were facing hyperinflation, a global debt crisis, and impending economic collapse. In Argentina, Bolivia, and the postcommunist world, presidents were elected in the 1990s to stave off economic crises. Soothing skittish investors and implementing sweeping economic reforms demanded speed and decisiveness. To the extent that oversight from institutions of horizontal accountability would bar presidents from accomplishing the vital economic-stabilization mission, these institutions would have to be—and even arguably *should* be—sidestepped.

O'Donnell assumed implicitly that political actors within horizontal

institutions—most notably, the legislature—would *want* to put checks on the presidency. With regard to the original cases of delegative democracy, this assumption made sense. The adoption of neoliberal economic reforms meant costs that well-organized interests such as unions, domestic businesses, and pensioners would have to pay. Many of these interests had potent legislative allies who might stop or at least slow the progress of reform. In delegative democracies in the 1990s, fulfilling the presidential duty to forestall economic crisis and respecting liberal-democratic institutions seemed mutually exclusive.

In the 2000s, Uribe concentrated power in the Colombian presidency in response to a security crisis, not an economic emergency. When it comes to where and how power is to be concentrated, these two types of crises have very distinct implications. Whereas responding to economic crises in the 1980s and 1990s required painful sacrifices by well-organized groups, a *mano dura* response to a security crisis may only impose costs on vulnerable groups that lack a potent political voice. Unlike the unions and domestic businesses harmed by neoliberal economic policies in the 1990s, the Colombians who bore the brunt of Democratic Security policies did not enjoy powerful representation in Congress. Consequently, Uribe's version of delegative democracy relied more on the voluntary delegation of authority from legislators, and less on the usurpation of power by the executive.

As the Colombian case suggests, during a security crisis resistance to the president is less likely to come from legislators than judges. In liberal democracies, legislatures serve as advocates of majority will, while judiciaries focus more on the protection of minority rights. So it makes sense that Uribe clashed most with the judiciary, which resisted the president's efforts to extend his rule, cracked down on corruption, and forced the executive to protect the rights of citizens in areas such as health care and internal displacement.

The ongoing autonomy of Colombia's courts and the Fiscalía signals that a president's desire to sideline the institutions responsible for enforcing horizontal accountability is not enough to make it happen. Uribe certainly tried to constrain the authority and autonomy of the Colombian judiciary. Other countries that currently face security crises, including El Salvador, Honduras, and Mexico, have weaker judicial institutions.¹² In these countries, attempts by the executive to concentrate power are more likely to succeed. Colombia's high courts have earned their reputations as some of Latin America's strongest: They withstood executive onslaughts while placing meaningful limits on Uribe's authority.¹³

Another implication of the Colombian case is that the emergence of delegative democracy need not permanently weaken liberal-democratic institutions. O'Donnell predicts that delegative democracy will produce feedback effects: Over time, institutional actors will grow wary of cooperation and will think in shorter time horizons. Across different branches of government, actors will become ever readier to break rules in search

of immediate advantage. This will erode the value and legitimacy of rules and other formal institutions, making them even less likely to be respected and starting a cycle that will be hard to escape once it has begun.

In light of this analysis, we should expect Colombia's liberal-democratic institutions to be weaker today than they were when Uribe took office in 2002. Yet in truth, the concentration of power in the presidency has declined in recent years. The president and the military have less discretion on security matters. Santos has met with checks in Congress (ironically at the hands of Uribistas) that Uribe never experienced. And relations with the judiciary may be tense, but they are well short of the boiling point.

Why has Colombia escaped the spiral of institutional weakening predicted by O'Donnell? First, because the crisis subsided. The case of Colombia reminds us of the need to examine the trajectories of a delegative democracy *after* the initial emergency has been met. As Colombia's security situation went from a raging fire to a manageable "problem," Congress gained room to begin discussing different views of how best to achieve lasting peace. When crisis abates, in other words, the institutional forces that fueled the concentration of power may also dissipate.

Second, the judicial branch stepped in. Colombia's courts and Fiscalía played a key role in interrupting the process of institutional weakening by demonstrating that institutional decline was not a foregone conclusion. Even at the height of insecurity, Colombia's judiciary achieved a number of victories: The Constitutional Court in particular stopped an extremely popular president from running for a third term. The cycle of institutional weakening described by O'Donnell is largely a matter of self-fulfilling expectations: Actors decide that no one else is going to play by the rules, and so throw caution to the wind and begin acting as if there is no tomorrow. Thus, the deepest victory of the Colombian courts lay less in checking any of Uribe's political and policy objectives and more in reaffirming faith among Colombians that democratic institutions *could, should, and would* matter in the future.

This observation that the robustness of Colombia's judiciary was crucial to halting the cycle of delegative democracy holds grim implications for the Latin American countries—they include El Salvador, Guatemala, Honduras, and Mexico—that now must face security crises without courts of that caliber. If the judiciaries of these countries prove unable (or unwilling) to push back against *mano dura* policies, then improvements in the security situation may not bring the resurgent checks and balances seen in Colombia. The patterns of delegative democracy may take different forms in security as distinguished from economic crises, but without a strong judicial branch, the downward spiral toward institutional collapse will be the same.

NOTES

1. Colombian politics long favored formally democratic institutions over popular representation, and was until recently exclusionary and elite-dominated. See Jonathan

Hartlyn, *The Politics of Coalitional Rule in Colombia* (Cambridge: Cambridge University Press, 1988) and Francisco Gutiérrez Sanín, *¿Lo que el viento se llevó? Los partidos políticos y la democracia en Colombia, 1958–2002* (Bogotá: Norma, 2007).

2. Guillermo O'Donnell, "Delegative Democracy," *Journal of Democracy* 5 (January 1994): 60.

3. Eduardo Posada-Carbó, "Latin America: Colombia After Uribe," *Journal of Democracy* 22 (January 2011): 137–51.

4. Data compiled by Gustavo Gallón, "Human Rights: A Path to Democracy and Peace in Colombia," in Christopher Welna and Gustavo Gallón, eds., *Peace, Democracy, and Human Rights in Colombia* (Notre Dame: University of Notre Dame Press, 2007), 358–59.

5. The Americas Barometer asked, "In your opinion, what is the most serious problem facing the country?" and did not give a list but allowed open-ended answers. The answers that I have recoded as fitting under the "security" rubric are: insecurity or lack of security or peace; the guerrillas; violence or armed conflict; displacement; kidnappings; narcotrafficking or drugs; and the president's dialogue with the guerrillas.

6. Chris Kraul, "In Colombia, 6 Sentenced in 'False Positives' Death Scheme," *Los Angeles Times*, 14 June 2012. The Colombian government at first denied that there were cash incentives, but Defense Ministry Directive 29 of 2005 outlined the criteria for paying roughly US\$1,500 for each armed rebel killed.

7. Human Rights Watch, "On Their Watch: Evidence of Senior Army Officers' Responsibility for False Positive Killings in Colombia," New York, 24 June 2015.

8. Data from Latinobarómetro. Uribe's approval rating was 64 percent when he took office and reached a high of 77 percent in 2008.

9. The strength of Colombia's judiciary dates back to the nineteenth century. The 1863 and 1886 Constitutions granted considerable prerogatives to the judiciary, enabling the high courts to provide important checks on executive powers. Throughout the twentieth century, political reforms further enhanced the judicial branch's power as a means of balancing the demands of competing political parties and securing peace. On the powers of the judiciary in the nineteenth and twentieth centuries, see Manuel José Cepeda Espinosa, "The Judicialization of Politics in Colombia: The Old and the New," in Rachel Sieder, Line Schjolden, and Alan Angell, eds., *The Judicialization of Politics in Latin America* (New York: Palgrave Macmillan, 2005).

10. Claudia López, ed., *Y refundaron la patria: De cómo mafiosos y políticos reconfiguraron el estado colombiano* (Bogotá: Debate, 2010).

11. The administration's wiretapping of the Supreme Court was part of a larger illegal-surveillance operation whose targets also included journalists, politicians, and human-rights workers who opposed Uribe's policies or investigated political corruption.

12. On El Salvador and Honduras, see Forrest D. Colburn and Arturo Cruz S., "Latin America's New Turbulence: Trouble in the 'Northern Triangle,'" *Journal of Democracy* 27 (April 2016): 79–85. On Mexico, see Gustavo Flores-Macías, "Latin America's New Turbulence: Mexico's Stalled Reforms," *Journal of Democracy* 27 (April 2016): 66–78.

13. On the Colombian high courts' role in checking executive power, see Daniel Brinks and William Forbath, "The Role of Courts and Constitutions in the New Politics of Welfare in Latin America," in Randall Peerenboom and Tom Ginsburg, eds., *Law and Development of Middle-Income Countries: Avoiding the Middle-Income Trap* (New York: Cambridge University Press, 2014); Rodrigo M. Nunes, "Ideational Origins of Progressive Judicial Activism: The Colombian Constitutional Court and the Right to Health," *Latin American Politics and Society* 52 (Fall 2010): 67–97.