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Journal of Democracy, Volume 27, Number 3, July 2016, pp. 109-118 (Article)

Published by Johns Hopkins University Press

DOI: 10.1353/jod.2016.0040



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Delegative Democracy Revisited

ECUADOR UNDER CORREA

Catherine M. Conaghan

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In his pathbreaking 1994 essay on "delegative democracy" in these pages, Guillermo O'Donnell identified Ecuador as a member of this "new species." Delegative democracies formed a problematic class of regimes—democratic in a plebiscitarian sense but not particularly liberal or representative—that he saw emerging as Latin America moved on from an era marked by military rule.¹ Generals no longer ran things, but taking their place at the center of power was a new breed of ambitious civilian presidents. Chosen through free elections, these chief executives tended to claim a superior grasp of national interests while citing their wins at the polls and displaying a pronounced impatience—at once both populist and technocratic—with ordinary political give-and-take and the institutional restraints imposed by courts, legislatures, and other agencies of "horizontal accountability."

Whether or not Ecuador wholly fit the description of a delegative democracy at the time O'Donnell was writing, his unease about the country would prove prescient. Ecuador had ended seven years of military juntas and returned to elected, civilian rule in April 1979, making it an "early mover" in the wave of democratizations that was about to sweep Latin America. Yet Ecuador had trouble finding its way politically as a series of economic, political, and institutional crises pummeled its young democracy. In just the eight years between 1997 and 2005, public outrage at political elites forced no fewer than three presidents from office.

Riding to victory as a quintessential "outsider" candidate, a young economist named Rafael Correa (b. 1963) became president in 2006 under circumstances seemingly ripe for the consolidation of a full-spectrum delegative democracy. In much the way O'Donnell had outlined a

dozen years before, Ecuador's crisis-weary voters turned to a charismatic figure who promised a transformational presidency. Correa vowed to end partisan conflict and govern decisively. He spoke of carrying out a "Citizens' Revolution"—an ambitious left-of-center agenda that he said would revitalize the state, eradicate neoliberalism with all its asperities, and end poverty.

Declaring it his mission to remake Ecuador, Correa had come to power as an audacious technocrat who saw his electoral victory as a sweeping mandate to govern as he saw fit, with little concern for institutions.² He neutralized checks and balances with relative ease. A new constitution, ratified in 2008, and other legal changes shifted power to the executive branch. An executive-directed restructuring replaced numerous judges and ended judicial autonomy.³ Under the control of Alianza País (AP), Correa's movement, the legislature became a rubber stamp. The removal of horizontal accountability meant that a core condition of delegative democracy had been fulfilled.

O'Donnell offered no firm conclusions about where delegative democracies were headed. He acknowledged that Peru's delegative democracy, which had emerged under President Alberto Fujimori after his election in 1990, had turned into an authoritarian regime with Fujimori's April 1992 *autogolpe* (self-coup), when he closed Congress and "reorganized" the Peruvian judiciary. Yet O'Donnell still thought that delegative democracies were neither doomed to devolve into authoritarianism nor fated to tread the path back to representative democracy. Instead, he believed, any given delegative democracy might stabilize and become an "enduring" entity.

Ecuador's political system however, has not settled into stasis. Instead, delegative democracy there has gradually devolved in an authoritarian direction. The minimal political and civil rights that O'Donnell subsumed in his original description of the species have been shed.⁴ By 2013, Correa had transformed the state and its legal order in ways that not only truncated basic civil liberties but also effectively suppressed the new "participatory" rights mandated by his own constitution. In a way resembling the Venezuelan case as described by Javier Corrales, autocratic legalism—the methodical "*use, abuse, and non-use of . . . the law in service to the executive branch*"—became a defining feature of the regime.⁵ In his remaking of the state, Correa has not only built an institutional edifice devoid of horizontal accountability, but has used the law to limit vertical accountability. The freedoms of expression and association have been undermined by elaborate government regulations, and citizens' new right to initiate referenda—granted to them by the 2008 Constitution—has been denied in practice.

The Freedom House assessments of Ecuador between 2008 and 2015 captured the decline in civil liberties. In five of the seven categories used to measure freedom, Ecuador's scores worsened. "Associa-

tional/organizational freedoms” registered the largest loss, followed by “freedom of expression” and “political pluralism/participation.” After years of deteriorating “press freedom” scores, in 2013 Freedom House downgraded Ecuador to Not Free in that category. The country remains there today, alongside Venezuela and Cuba.⁶ International human-rights groups, along with monitors from the UN and the OAS, agreed with Freedom House. Likewise, many scholars joined in the pessimistic assessment of the regime, flatly characterizing it as authoritarian.⁷

Why and how did Ecuador’s delegative democracy take an authoritarian turn? What factors account for the dual assault on horizontal and vertical accountability? To answer such questions, we must take seriously the ideas that animated Correa’s presidency and consider their impact in relation to the president’s own political ambitions and the opportunity structures at hand since 2007.

There is no way to explain Ecuador’s political development without taking into account Correa’s policy priorities and his notions about how to achieve them. Like his fellow leftists Hugo Chávez in Venezuela and Evo Morales in Bolivia, Correa never aspired to build a standard liberal or representative democracy. Instead, he came to power on the promise that he would deliver something more: a project of radical institutional reinvention, expansive policies of social incorporation, and state-led economic development. Rejecting the “bourgeois state,” Correa told Ecuadorans that his would be *una democracia verdadera*—“a true democracy” that would deliver not procedural niceties, but substantial improvements in people’s lives. In his view, this would have to mean more power for the executive branch. It would also have to mean changing the “relation of forces” within society: All those who might hinder the historic transformation would have to be subdued.⁸

More Power to the Executive

After his January 2007 inauguration, Correa moved quickly to convene a constituent assembly. In an April 2007 referendum, voters backed his proposal for such a body by an overwhelming 87 percent. A year and a half later, in September 2008, fully 69 percent of them approved the new constitution that it had produced. Public confidence in institutions was at a low ebb. Traditional checks and balances had long seemed inoperative. Neither Congress, long wracked by corruption, nor the courts, long the targets of partisan tampering, had much legitimacy. Correa blamed the rule of the traditional parties (*la partidocracia*) for blighted institutions and vowed to sweep them all away.

Written by a pro-Correa majority, the 2008 Constitution maintains the substantial powers that the executive already enjoyed under the 1998 Constitution. The president can call national referenda, a power that

Correa would use to in 2011 in order to legitimize changes, made under executive-branch direction, that affected the judicial branch and the media. Another important tool is the president's ability to partially veto or amend laws passed by the unicameral National Assembly, which in such cases can restore the original legislation only by the vote of a two-thirds majority. Correa would use this provision to change laws at will, including some crafted by his own legislative majority.

Additional presidential powers were layered into the 2008 Constitution. Most strikingly, the new version drops the 1998 Constitution's ban on consecutive reelection of the president. This change transformed Correa from a lame duck limited to one four-year term into a president permitted to run again, first in 2009 (which was counted as his first election since it was the first that took place under the new constitutional rules) and then again in 2013.

Correa also has power under the 2008 document to dissolve the National Assembly and call fresh elections. He has not done this so far, though—in order to prevent any restiveness among lawmakers—he has at times warned that he might. For their part, the members of the AP's legislative majority know how heavily their electoral prospects depend on their charismatic leader, and rarely stray from official orthodoxy or spurn orders from above.

The chapter of the new constitution that deals with the executive branch fails to tell the full story of how presidential power has grown via constitutional restructuring. While not spelled out in the underlying constitutional theory, the introduction of a new branch of government dealing with “transparency and social control” has produced an additional power shift in favor of the executive branch. Charged with oversight functions, the branch is responsible for selecting the officials who run key agencies. These include the attorney-general, the comptroller-general, the human-rights ombudsman, and the members of the National Electoral Council. The national legislature used to have a say in choosing such officials, but no more. Under the new rules, the Council of Citizen Participation and Social Control, whose seven members are chosen through a procedure overseen by the National Electoral Council, makes appointments from short lists of executive-branch nominees. Although officially autonomous, this “fifth branch” of government (after the legislative, executive, judicial, and electoral branches) soon became a *de facto* extension of the executive. All council members have held executive-branch posts, and questions continue to swirl around the process by which they were chosen and their status as loyalists of the current government.⁹

Since the new constitution was ratified, a flood of laws (organic and ordinary), executive decrees, and bureaucratic rules has poured forth to transform legal norms and promote executive power. A host of executive appointees wield new regulatory powers. Correa amended the

higher-education law to beef up the powers of a new cabinet-level secretariat led by his appointee. In like manner, he added an agency charged with policing media conduct to the 2013 Law of Communication.¹⁰ New agencies now enforce antitrust laws, regulate small businesses, and oversee banks. Business and civil society groups have lost their seats on government boards, victims of a drive to “de-corporatize” the state. Every conceivable angle of policy making has become subject to greater executive control.

Hyperpresidentialism has advanced not only through legal changes, but also through control over political communications. A cabinet-level agency, the Secretariat of Communications orchestrates state-run media that include television, radio, print, and digital outlets. They provide the stage for an unrelenting campaign to promote Correa while private media are subjected to state control and critics of the president are harassed. Every Saturday morning, Correa does a live radio and television show to highlight his accomplishments and denounce his detractors. The government’s official line is reinforced through advertisements that private media are required to broadcast.

The Constitution’s Contradictions

Unlike President Evo Morales in neighboring Bolivia, Rafael Correa was not a notable leftist or social-movement leader prior to his election. Nonetheless, with Ecuador’s left in disarray by 2006 and political elites discredited, disparate groups embraced Correa as the best available standard-bearer for the social and political changes that they hoped to see.

For the leftist and social-movement activists who rallied around Correa, the 2008 Constituent Assembly was not just about endowing the president the powers to make change; it was about designing what they believed would be an emancipatory project meant to secure *sumac kawsay* (a Quechua term meaning “good living”) for all. With leftist intellectual Alberto Acosta serving as president of the assembly, the constitution became a vessel for the pent-up demands of social movements.

Like its counterparts in Bolivia and Venezuela, the new basic law in Ecuador drew on Latin America’s “new constitutionalist” school of thought. The 2008 document declares an expansive totality of social, economic, and political rights. It is in fact one of the most ambitious examples of “aspirational constitutionalism” the world has ever seen. It announces rights to food, clean water, and a healthy environment. Women, children, the disabled, migrants, patients with catastrophic illnesses, prisoners, consumers, indigenous people, coastal peasants, and those of African descent are listed as rights-bearers. “Nature” itself is accorded rights in a provision that the constitution says individuals and groups may invoke in order to safeguard the environment.

In keeping with “good living” doctrine, the constitution lays out an elaborate array of mechanisms for citizen engagement that includes watchdog committees and consultative councils at the national and sub-national levels. Citizens also have the rights to propose legislation to the assembly, petition for referenda, and demand recall elections.

Correa’s enthusiasm for the 2008 Constitution, like his alliance with the left, was fleeting. The contradictions inherent in the constitution’s expansive design did not take long to surface. As Roberto Gargarella observes, here was an instance of a common Latin American syndrome, namely, the centralization of authority in the executive coexisting uneasily with the ambitious extension of rights.¹¹ When citizens start taking their rights—especially their right to participation—seriously, clashes with the executive soon follow. As policy conflicts ramped up, Correa went from celebrating the 2008 Constitution to denouncing its rights-centric approach as “garantismo.” Negating the new participatory rights went hand-in-hand with stripping away traditional civil liberties.

In Correa’s view, his chief commitment was to bring Ecuadorans material well-being and eliminate poverty.¹² From 2006 to 2013, public spending rose from 21 to 41 percent of GDP.¹³ Infrastructure accounted for most of this, but social spending grew as well. Just before Correa, it had been accounting for about 5.6 percent of the national budget. From 2007 to 2012, it grew to 15 percent.¹⁴ Education was deemed a priority. By 2012, Ecuador led Latin America in measures of the “social investment” made in young people.¹⁵ Conditional cash transfers to low-income households, along with minimum-wage hikes and an overall expansion in the social-security and health systems, made for a significantly improved quality of life. According to the World Bank, the share of the populace living in poverty fell from 37.6 percent to 24.5 percent between 2006 and 2014. And as poverty has fallen, the middle class has grown; it is now thought to include about 35 percent of Ecuador’s sixteen-million people.

Despite plans to diversify the economy, the Correa government has continued to rely on petroleum exports, and practices “rentier populism” in order to stay popular and in power.¹⁶ High oil prices from 2010 to 2014, Chinese credit, and improvements in tax collection paid for the aggressive public spending that most voters welcomed. Until 2015, Correa’s approval rating never went below 50 percent; he won reelection easily in both 2009 and 2013. Prosperity spoke louder than the disparate opposition parties of the left and right with their critiques of creeping presidential authoritarianism.

Resource Extraction vs. the “Rights of Nature”

Whatever the 2008 Constitution says about the rights of nature, Correa has never been prepared to give up the pursuit of material improvements. He has routinely bashed the “infantile left” for question-

ing resource extraction as a way to bankroll public spending. The Correa government's hostility toward its own constitutional principles was highlighted in 2013 with the cancellation of a plan to save Yasuní National Park in Ecuador's Amazonian east from oil drilling. Formulated by Correa in mid-2007, the plan (known as the Yasuní-ITT initiative) called for international donors to give US\$3.6 billion so that Ecuador could forgo tapping deposits within the park that were thought to contain about a fifth of its total national oil reserves. With the project badly failing to meet its money targets, Correa backtracked after his February 2013 reelection and announced limited drilling.

Undeterred by Correa's pleas to ignore "charlatans" and to value "human rights" over the rights of nature, youth, environmental, and indigenous activists claimed the constitutional right to convene a national referendum on the issue.¹⁷ The "Yasunidos" began collecting signatures while Correa applied all the resources of his powerful presidency to stop them.¹⁸ Negative advertising, denunciations via the president's Saturday broadcasts, and police harassment were all brought to bear. Legal uncertainties swirled. The National Electoral Council refused to confirm that the referendum question met constitutional standards, while the Constitutional Court ruled that it could decide the constitutionality of the question only after all signatures had been gathered. In June 2014, the election authority rejected two-thirds of the signatures and thereby ended the process. Correa's "Citizens' Revolution" would feature no citizen-sponsored referendum. The National Assembly made this certain with a vaguely worded December 2015 constitutional amendment that barred the path to future referenda.

Throughout the course of the anti-Yasunido campaign, myriad regulations were deployed to curb civil liberties. Just before he made his drilling announcement, Correa unveiled new media and civil society controls. Consistent with his position that the media was a "de facto" power requiring government control, the June 2013 Law of Communications created an agency charged with monitoring media content. Its powers include fining outlets deemed to be violating its broadly framed rules on how to cover stories. Under the regulations, coverage of the Yasuní controversy and a wide range of other topics was stifled. Media outlets backed away from investigative journalism for fear of financially crippling sanctions. In December 2015, a constitutional-amendments package added to the state's authority over the media by declaring communication, even when carried out by private entities, a "public service" subject to regulation.

For their part, civil society groups have found themselves subjected to an elaborate legal-registration system imposed by executive decree. In particular, Decree 16 of June 2013 requires all organizations—whether social movements, advocacy groups, labor unions, or chambers of commerce—to follow complex reporting rules regarding their activities or

risk losing legal status. Moreover, the decree bans civil society groups from engaging in “partisan activity,” from “interfering” with public policy, or from threatening “internal security.” In December 2013, the Environment Ministry invoked Decree 16 to shut down the *Fundación Pachamama*, an environmental-advocacy group that backed the *Yasunidos* movement.

Although Decree 16 has not (so far) been deployed in a wholesale manner to eradicate existing organizations, it has plunged civil society into constant anxiety about questions of legal standing and what actions might prompt closure. With no effective avenues of redress through the executive-dominated judicial branch, the media and civil society have found themselves forced into self-censorship for fear of executive-branch retaliation.

Reelection and Regime Change

Until 2015, Correa appeared to be on a glide path to yet another reelection. Backed by a controversial Constitutional Court ruling, the AP’s National Assembly majority provisionally passed a constitutional amendment allowing the indefinite reelection of all public officials in 2014, with final passage expected in 2015. Shelving the plebiscitary tactics that had marked his earlier years in power, Correa maintained that the constitutional change required no referendum. For the first time, however, citizens disagreed massively with him: A whopping 80 percent of the public told pollsters that the permissibility of his running for reelection should be decided by means of a national referendum.¹⁹

The surging sentiment favoring a referendum coincided with the realization that Correa’s rentier populism had reached its limits. By early 2015, the dire budgetary implications of the ongoing collapse in global oil prices were clear. With the price of oil dropping to less than \$40 a barrel and billions in expected revenue vanishing from projections, the government turned to surtaxes on tariffs and cuts in public spending. Proposals to hike taxes on inheritances and real-estate transactions prompted massive protests in the nation’s capital in June 2015. Correa withdrew these ideas.

With the economy and public opinion turning adverse, AP lawmakers (with Correa’s approval) added language making indefinite reelection permissible only as of May 2017. In theory, this would stop Correa from running in the February 2017 election, but in practice would mean that he could come back during any election thereafter. This would include any election resulting from a presidential decision to dissolve the legislature and set new national elections for both branches. Thus if a future president, struggling with what may well still be a bad economy, runs into a showdown with the National Assembly, Correa could be waiting in the wings. The same scenario could apply if a handpicked successor

from the AP ekes out a 2017 win in a fragmented field of opponents and defers to Correa by staging fresh elections before 2021. Finally, Correa could have the Constitutional Court overrule the ban on reelection before May 2017, thereby allowing him to jump back into the race by the end of 2016.

In light of these possibilities, it is premature to take Correa's widely touted about-face on reelection and December's revised amendment as the last word. Indeed, the other amendments passed in the National Assembly's package—the provisions restricting citizen-sponsored referenda, declaring communication a public service, limiting the Auditor-General's investigative functions, and adding “internal security” to the military's portfolio—further aggrandize executive power, making the prospects for an “uneven playing field” between government and opposition even greater in the 2017 elections.

Whatever Correa's fate, his decade in power is certain to complicate Ecuador's future political development. Using the 2008 Constitution as a starting point and with help from the judicial branch, Correa has overseen an exhaustive legal restructuring. Whether in his hands or those of a successor, the illiberal features now thereby entrenched will allow for nondemocratic governance to continue. The opposition grasps this. Historian Enrique Ayala Mora argues that Ecuador will need another constituent assembly before long to reestablish the foundations of a democratic regime and restore the rights lost in a revolution gone awry. Whether, when, and how Ecuador can embark on a path toward regime change will be among the critical issues at stake in the 2017 elections.

NOTES

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