

# Balance of powers in Latin American presidentialism Government-Congress relations

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## **Abstract**

1

In Latin America, the presidential system governs, which suggests that these are strongly presidential governments with congresses that are required by constitutional order and democratic principle, the establishment of a system of balances, where control must prevail over the exercise of power in order to fulfill the purposes of the State. This leads us to reflect critically on government-congress relations and how these, being asymmetrical and despite reform attempts, are a determining factor in fulfilling this purpose. The analysis starts from how the Latin American presidential power tends to prevail in what should be balanced power relations and the effects that the imbalance brings with it.

## *I. Introduction*

This paper develops the thesis that, despite the process of constitutional evolution and political reforms in Latin America, which have sought to rationalise the system and presidential power, the tendency to break the principle of the balance of powers persists, that the executive in our times possesses a power that is difficult for the other institutions to intervene in and that, consequently, Congress has only a limited control over it, with previously known results, carried out only as far as the government itself allows it to do so. This paper argues that the government-Congress relationship has important implications for the presidentialist regime in Latin America, in such a way that it is basically configured as a scenario in which the relationship responds to hegemonic diplomacy with powerful majorities in Congress, to the detriment of the rights of minorities and democratic governance.

There is an institutional legal debate on the development of power relations that goes beyond the consideration of the principle of balance of power as the supreme value that should prevail, and this is the analysis of

87

the legal debate, not the consideration of the balance of power in presidentialism as a paradigm.

- 4 The pillars of the constitutional state are themselves its founding principles: equality, liberty, solidarity, justice, the common good and human dignity. Human dignity as a legal value and as a constitutional principle has to do with the right of every person to self-determination, under the actions of respect, protection and promotion by the state, avoiding and protecting them from any limitation in the exercise of their freedom. This implies the exercise of citizenship education, of a culture of respect for individuality, within the framework of the interaction of the rights and duties of the human being in relation to others.
- 5 On the other hand, the ideal of justice constitutes in itself, the set of values and principles that must be materialised by virtue of the democratic principle that indicates that the decisions of the majorities must respect the fundamental rights of minorities and that in this consensual exercise, the pluralist principle must be guaranteed, which consists of linking all social sectors of the social whole in such a way that the greatest possible well-being for the entire population is constituted.
- 6 The fickleness of the balance of power lies in the fact that the actors who participate in the balance are never fully satisfied with the position they occupy in it, they always aspire to something more; for this reason, when they try to improve their position, the interests of others are undermined. Perhaps this is the reason why (Niebuhr, 1965, p. 307) defines the balance of power as a partially controlled anarchy.

## *II. Balance of Political Power, the Basis of Power Relations in Constitutional States*

- 7 The primary function of the balance of power is to prevent a powerful actor from lacking a counterweight and thus to prevent him from dominating without rivals, to mitigate the likelihood of the strong overpowering the weak. Law, for example, is shaped by power, and is only obeyed as long as the balance of power that creates it persists, so any historical manifestation of justice is achieved by some sort of balance of power, which is the justification for speaking of balance of power in a presidentialist system, as is the tendency in Latin American states (Nohlen and Fernandez 1991), to encourage balance in the exercise of power, to restrict the expansive impulses of the powerful.

The balance of power facilitates the survival of weaker actors and encourages moderate politics and guarantees democracy. In the Latin American Constitutional State, the Constitution, when interpreted systematically, promotes the balanced exercise of political power, guaranteed by the establishment of fundamental rights, the functional division of public power, the principle of harmonious collaboration, and the existence of the Constitutional Courts as a strong third party that has the power to intervene directly in the exercise of power. 8

Rousseau Dominique (2013), states that today there is no longer a separation between the executive and legislative powers, a fusion, a unity of executive and legislative power is evident in all constitutions thanks to universal suffrage, which grants both powers to those who win the elections. As a result, the relationship between the powers is unbalanced, as there is no longer a legislative power that controls the executive. 9

Today there is no longer a separation in the strict sense of the word between the executive and the legislature, but a fusion, a unity of executive and legislative power, which is partly due to universal suffrage and which gives both powers to those who win the elections. Consequently, the relationship between the powers is unbalanced. 10

Self-limitation is thus one of the necessary tools of state control. A state that adheres to the correct execution of the law and compliance with the constitution determines this self-restraint. 11

This proposal is based not so much on a disregard for the principles of separation of powers, but rather on a transformation of the system of balances and mutual checks and balances into a system of integration and dialogue-based cooperation between powers, in which the need to reach agreements and commitments is balanced with the need to adopt decisions that represent the plurality of interests that converge in society and also allow for the efficient exercise of political control. In other words, the aim is not to deny the functionality of the presidential system, but to determine the danger of the dysfunctionality of the organs of power and the ineffectiveness of political control, which is a paradigm, insofar as no sphere of political power can exist without state control, which undoubtedly favours the processes of democratic governance in favour of the fulfilment of the state's goals. 12

### *III. Democracy and Presidentialism in Latin America*

- 13 The predominance of presidential power in Latin America is manifested through various factors: the tendency to personalised power in the person of the President of the Republic, a product of a precarious civic and political culture among citizens, the manipulation of Congress by the President through electoral favours, and corruption. Whatever the weight of each of the above factors in the different Latin American countries, there is at least one objective fact of a constitutional nature, which is the existence of the expansion of presidential powers in Latin America beyond those possessed by the President of the United States.
- 14 Another feature is related to the direct application of the Constitution, and consists of the extension of the effects of the Constitution to the relations between public authorities and citizens among themselves. The Constitution in itself constitutes the effective limit to the exercise of power, and the constitutionalisation of the State and the law implies that everyone is subject to the provisions of the Constitution in their actions, and fundamental rights are the most important tool for limiting the exercise of any power.
- 15 Democracy is thus consolidated as a triumph of constitutionalism and a guarantee of the balanced exercise of power, but there is concern about the functioning of this constitutional principle in Latin American countries, as it is possible that formal democracy in presidentialism may be an appearance that facilitates the strengthening of low-intensity authoritarianism, which facilitates caudillista presidentialism hidden under the exercise of democratic functions in order to maintain itself and make itself immune to criticism.
- 16 A characteristic feature of the Latin American political system has been the tendency for executive power to predominate over legislative power, and this has turned the government into a legislative body that replaces Congress in the regulation of technical and economic issues. This circumstance means that, in order to preserve representative democracy, the strengthening of political control by Congress must be reinforced.
- 17 A discussion on democracy and constitutionalism takes place by virtue of the control of constitutionality and the institution of the Constitutional Court. It is clear that governments are limited by fundamental rights and the rules of political exercise established in the constitution, and here it must be emphasised that the existence of the state is justified only to the extent that it can protect fundamental rights and guarantee them a consid-

erable degree of effectiveness. The Constitutional Court then exercises the protection of fundamental rights and the pillars of the constitutional state, in order to control the possible injustices of the government in office.

In Latin America, presidentialism has led the judiciary to play a role that did not correspond to it in the political system, which has been assumed with legitimacy. The concentration of power in the executive and the precarious political control of Congress has led the constitutional courts to act as a political watchdog of these two organs of power. This control, which had its starting point in objective legal control, based on constitutional interpretative techniques and the dogmatism of fundamental rights, has sometimes been directed at exercising political control, debating the contrast between the law and the Constitution, and the convenience or coherence of public policies. It should be said that, in this sense, constitutional justice has come to assume not only formal but also material control of acts of constitutional reform, when they have been formulated by the government and processed in Congress. 18

Today's democracy is sustained by political parties, as Kelsen rightly maintains, with his idea of constitutionalising parties and endowing them with internal democracy, programmes, statutes, discipline and organisation, as this leads to facilitating the shaping of the general will, thereby trying to overcome elitist and autocratic leaderships. 19

The Latin American experience allows us to infer that the constitutions enshrine provisions that attempt to make Congress more functional, modernise the organs of popular representation and improve territorial organisations in each country, but it is no secret that this has been precariously achieved (Arango 2004, p. 141). P, 141), that centralist structures that concentrate the power of the president have been strengthened, and that their contents enshrine important advances in fundamental rights, that the creation of the Constitutional Court and constitutional actions allow citizens to access their rights, but that this has sometimes led to a confrontation of powers to the detriment of democracy, which is a determining factor for the fulfilment of the purposes of the state. 20

The unbalanced exercise of power undermines the democratic principle and the very aims of the constitutional state. The following presuppositions are necessary in order to speak of democracy: fundamental rights, separation of the organs of power and constitutional control, these being the main ones. 21

The articulation of the powers of the state is not reduced to a diffuse principle of the limitation of power or to collaboration and reciprocal 22

control between the powers of the state (Mezey, 1995), but also incorporates freedom as a principle inherent to the organisation of the state, since this has no other justification than that of being a guarantee and sufficient cause for the realisation and validity of fundamental rights.

- 23 The arguments for separating the functions of public power are based on the fact that there is no freedom if the legislative and executive functions are combined in the same person or corporation, since it is feared that the ruler will make tyrannical laws in order to execute them despotically. On the contrary, peace of mind is created when the respective body makes just laws for the other to execute them equally and moderately.
- 24 The separation of powers guarantees freedom, establishes a system of checks and balances or checks and balances, and offers the vision of moderate government. It establishes a framework of functions proper to States in accordance with their nature and purposes, and the need for these three functions to be exercised by three organs, in defence of liberty against the abuses and arbitrariness resulting from the concentration of power. In conclusion, the articulation of the powers of the State must lead to guaranteeing the democratic and pluralist principle of the Constitutional State, which at the same time justifies its existence in defence of human dignity.

#### *IV. Why talk about imbalance?*

- 25 In Latin America, political power is increasing in the sphere of executive power, with decision-making becoming the driving force of government. This increase in power tends towards the gradual attainment of absolute power, which makes an effective formula for controlling this power essential. There can be no effective control of power if those who exercise it do not meet the following requirements: independence of the controlling body from the controlled body, clarification of the scope of what is controlled, and the information and publicity of the acts that can be subject to control, which are some of the factors that call these requirements into question:
1. Government interference in the legislative process: it frames the intensity of government intervention, depending on the type of government. The government, headed by the executive, tends to compromise or negotiate with the benches on the policies it intends to advance; it can resort to the urgency procedure for any bill, which makes it prevail over any other issue; on the other hand, any bill denied in the first debate can be

considered by the respective chamber at the government's request. The President has the possibility to introduce bills, present amendments and participate in the plenary through ministers.

2. Interference with the law that has not been enacted: in the Latin American presidential system, the government's inter-organic control over adopted laws is at a maximum, if the constitutional principle of coordination between the activities or functions of the different branches of government is taken into account. The sanctioning of the law, which makes it possible to demonstrate its acceptance by the government, has a definitive character; likewise, the government's possibility of objecting to laws, returning them to the chamber of origin, demonstrates the government's power to intervene in legislative production.
3. Legislative powers of the government: The Constitution gives the President exceptional authority to initiate legislation in certain policy areas (laws on structures of executive ministries, laws establishing salaries for civil servants and general rules for the regulation of exchange, foreign trade, national debt and tariffs), and on specific subjects already enumerated, in turn, exercises regulatory power, which it exercises by issuing Decrees, Resolutions, and Orders necessary for the fulfilment of the laws, and this, in itself, constitutes the undoubtedly most important attribute, the purpose of which is to comply with and execute the laws, which is, par excellence, the administrative power of the President. This corresponds to the argument of (Loewenstein, 1982 p. 274), when he states that the transformation of the State into the Constitutional and Administrative State leads to an important change in the dynamics of power; the constant governmental interventions in social and economic life make the orbit of state surveillance and regulation a denser field, highlighting the expansion in the interaction between the citizen and the administration.

However, if the government's important legislative powers are weighed up and assessed, it can be deduced that it intrudes into important congressional functions, which is a determining factor in the functions of the legislature and therefore its control functions. The logical relationship can be explained, for example, in the case of the "indicative quotas in Colombia", which are a vestige of the "cupos indicativos en Colombia" (indicative quotas in Colombia). These are vestiges of parliamentary aid, which historically have generated an unequal relationship between the government and Congress in the framework of the presentation and approval of the annual

26

budget bill, insofar as, according to the legal framework of the budgetary issue, there are spaces in which the indicative quotas are decisive for the relationship between the actors to be tilted in favour of the executive.

- 27 The relationship between the executive and the legislature tends to be asymmetrical, the real participation of Congress in the construction of the budget is limited to the approval of government initiatives, and the budget process easily resembles the process of issuing an administrative act jointly between the public authorities.
- 28 In the absence of a generic definition of "indicative quotas", the Constitutional Court in Ruling C- 1168 of 2001 has said "... they are known in public opinion under the names of 'indicative quotas', 'regional aids', 'parliamentary aids', etc.". In other words, it affirms that there are certain budget items or appropriations in the law in question "destined to be distributed discretionally by Congressmen". And in the same sentence, it warns that these are figures that constitute a new form of parliamentary aid aimed at financing regional works suggested by members of the legislature. From that moment onwards, the phenomenon of indicative quotas has continued to be applied, as a consideration from the national government to the members of Congress who accompany its initiatives in the discussion and approval within the Congress of the Republic.
- 29 This leads to the conclusion that there are legal and constitutional instruments that translate into resources to be invested at the regional level at the initiative of congressmen from the government coalition or who support the government's legislative initiatives, and it is precisely these relationships that logically tend to interfere in the processes of political control by Congress over the government and thus contribute to concentrated or unbalanced exercises of power.
- 30 According to (Linz, J. 1990), the cooperation, responsibility and control ensured by the Constitution prevent the abuse of power; however, this is not enough to guarantee the effectiveness of the balance and limits to power, nor the regulation of a system of control, but it is necessary to establish responsibilities and sanctions so that the powers do not exceed the margin of their competence.
- 31 Political control is an institutionalised control and those who are called upon to exercise it have a pre-established legal competence; it is, in short, a regulated power whose exercise is provided for by the legal system. In the same way, only institutionalised political agents can exercise this control, which is why it is not the parties that are called upon to exercise political

control, but the Congress, the congressmen and the benches, as is the case in Colombia.

The reason for control in a social state based on the rule of law is justified by the lack of clarity or ambiguity and complexity of the legal system, which allows different positions to exist, and it is precisely the legal system that must be respected and complied with when exercising power, which is why it is so imperative to seek a balance of power through control (Huerta, 2001). 32

Constitutional history shows how presidential power has increased at the expense of legislative power, and the disparate relationship is mainly due to reasons of a political nature. It is therefore necessary to recognise that the domination of the government coalition in the legislative and executive spheres has gradually built a constitutional engineering that endows the president with extensive powers, which must be reviewed and redesigned for the benefit of the constitutional state and its essential democratic regime. 33

In conclusion, the institutional relations developed under the protection of Latin American Constitutions are established under a fundamental principle of balance: the political direction and impulse corresponds to the government and its control corresponds to Congress; this is the basis for political and constitutional controls, and it is necessary to review them objectively and in depth in order to consolidate the institutionality of the state, guarantee governability within a framework of unrestricted respect for fundamental rights and the strengthening of democracy. But what to do when the state, in full exercise of its power, is unable to comply with the aims set out in the Constitution, what to do when its action or omission leads to the violation of fundamental rights or simply the non-fulfilment of human rights, where is the control, the coordinated and harmonious exercise of power precisely for the fulfilment of the state's aims? And this is where the equally growing power of the Constitutional Courts as supervisory bodies comes in, and which can legitimately overstep the boundaries of their competences and functions in the protection of fundamental rights, due to abuse of power or absence of the State. 34

The Constitutional document of each State, comprising the institutionalisation of values such as principles, provisions and fundamental rights, is materially guaranteed and legally enforceable not only through the Constitutional Courts or Tribunals, but also through the ordinary judges, who become constitutional judges by way of tutela. 35

- 36 On the other hand, with regard to relations between the government and judges, the issue of the functional division of powers and its relevance for the functioning of any state is based on compliance with the functions and collaboration between them in order to achieve the state's own ends, so that the problem of the effectiveness of rights, which is generated by the replacement of government functions by judicial bodies, can be avoided. Therefore, the most recurrent conflictual relations are those with the political power, which increasingly denounces that the constitutional jurisdiction sanctions its actions.
- 37 Attempts at constitutional reform, which have historically sought to re-establish the balance of powers, do not touch the core of the system of checks and balances between the legislature and the executive. In Colombia, for example, the imbalance has been historical, and not precisely because of the reforms surrounding presidential re-election, but for structural reasons that demarcate the exercise of politics and make it dependent on access to the state treasury.
- 38 Maintaining power and guaranteeing electoral reproduction, in a political system characterised by high levels of corruption and clientelism, generates a relationship that subjects collegiate bodies to administration and the emergence of "caudillista presidentialism". Political control is exercised only when there is a political force clearly in opposition.
- 39 Finally, there is no doubt that in recent years the credibility of democracy as a traditional establishment has been put to the test, and that it is the guarantee of pluralism, understood as the involvement in the decision-making process of all social sectors of society as a whole, in such a way that the greatest possible well-being is achieved for the entire population, which leads to the ideal of justice in a constitutional state.
- 40 In the world, not only in Colombia and Latin America, there has been a threat to the democratic principle of balance of power: populism, and in all continents it has common features. The word is usually associated with anti-democratic elements and is a whole new trend that identifies nationalist sentiments and national interests with government decisions. The idea is that government is ineffective because of its disconnection from the people, and direct channels of expression are sought, without so many intermediaries or representatives, without rules, bosses, political correctness and little political control.
- 41 It is necessary to mention that populism, as a problem of the degradation of democratic processes, brings with it the concentration of power, particularly in the executive, which is characterised by having greater clarity in

what it wants to bring down, rather than what should be built in its place, hindering any kind of cooperation, putting pacts in the background and ultimately the opposition in the background. The populist temptation and its effects generate uncertainty, which puts the principles of representative democracy at risk, concentrating power in the charismatic leader or caudillo, who captivates the electorate by presenting himself as the only figure capable of solving the nation's common problems, without overlooking the fact that one of the first keys to the concentrated exercise of power is the co-optation of Congress, which leads to hyper-presidentialism.

Despite the undeniable processes of constitutional evolution in Latin America, it is clear that the evolutionary process continues and that the action of unconstitutionality, the review of the constitutionality of laws and tutela are effective instruments for the protection of fundamental rights, and that the strengthening of liberal and democratic principles, as well as the strengthening of institutions, are called upon to maintain the principle of the balance of powers.

## *V. Latin American Presidentialism: Major Changes and Current Trends*

In the Constitutional debates in each Latin American state, and particularly in Colombia, the term hyper-presidentialism was used, which was characterised by the concentration of power in the figure of the President of the Republic, "considered to be the motor of the entire regime", all powers, constituting a "monstrously" unbalanced form in the exercise of power through the public powers, which implies an enormous effort in the consolidation of an effective system of checks and balances, and of control of political power from Congress to the Government. (Asamblea Nacional Constituyente, Comisión Tercera, 1991, p. 31).

In order for there to be a harmonious relationship between the Government and Congress, which responds to the democratic principle, it is necessary to avoid the concentration of power in either of them, especially in the executive, as this inevitably generates a violation of the country's democratic and political stability and ends up affecting governability and the fulfilment of the State's goals.

Several Latin American states share a similar constitutional design, fundamentally because they embody the principle of the division of powers, republicanism, the unitary form of government and presidentialism as core characteristics of their organisation. In this sense, for example, the

president of the different republics is recognised as the head of government, head of state and the highest commander of the military forces, as established in Article 99 of the Political Constitution of Argentina (1995), Article 118 of the Political Constitution of Peru (1993), Article 89 of the Political Constitution of Mexico (1917), and the Political Constitution of Mexico (1917), the Political Constitution of Mexico (1917) in Article 89, the Political Constitution of Chile (1980) in Article 32, the Political Constitution of Bolivia (2009) in Article 172, the Political Constitution of Ecuador (2008) in Article 147 and the Political Constitution of Paraguay (1992) in Article 238. All these provisions coincide in that the President of the Republic is the head of the executive branch and as such governs the government, directs the State in foreign relations and is the head of the military and police forces. He also possesses important powers by directing fiscal policy with the acquiescence of Congress and administering taxes and the national budget. It also has the power to appoint the various ministers of the different branches, the directors of the different national bodies, ambassadors, and it opens ordinary sessions of Congress or the National Assembly and calls for extraordinary sessions.

- 46 It is also common for the different constitutions to detail extensively, some more than others, the powers and functions of the president of the republic in such a way that the superior text contains such provisions in a broad and detailed manner in order to avoid possible manipulation by legal means and to generate stability and continuity in presidential performance throughout the different constitutional periods.
- 47 Thus, in Latin American states, the broad powers that have been constitutionally conferred on the figure of the president of the republic are palpable and have earned him the adjective of hyper-presidentialism.

## *VI. Characterisation of Presidential Government in Latin America*

- 48 The hegemony of the president of the republic is a characteristic element of the presidential system. The presidential system is identified because its structure is dominated by the unipersonal figure of the executive, which, together with universal suffrage, strengthens the president, giving him a leading role vis-à-vis the other state bodies, indicating that there is predominance, which should break the balance of powers, as long as the controls established in the Constitution work, and the purposes of the state are fulfilled (Nohlen and Fernandez, 2005). (Nohlen and Fernandez, 1991).

Some of the most important characteristics of the systems of government in Latin America, which are relevant to this study, starting from government-congress relations, and which allow us to understand the Latin American presidential regime, are the following: 49

- a. Relations between government and congress, the competences of each of them, especially those related to political control and legislative production, the president's nominating, regulatory and postulatory powers, the discretionality of the administration, more personal or more collegiate executive power and the powers of the ministers, the organisation of legislative power, the power of the chambers, the quorum and the strength of their committees and the meta-constitutional powers. This historically places presidential power in Colombia, as noted by Vásquez (1979), as a reference that has led the political regime to identify the "President as the almost totality of the State".
- b. The degree of political decentralisation and its effectiveness; the real transcendence of local and regional political action in the configuration of the party system and at the level of the central instances of government; the participation of party representatives in the orders of government; the power relations of the elected authorities and of the parties with society, including the bureaucracies.

In this respect, it must be said that, in the case of Colombia, national legislation, by equalising the territorial entities, automatically handed over powers that had been in the hands of the nation for more than a century, without first checking or verifying the real management capacity of the entities and without establishing transition periods that would allow time for the officials responsible to train and responsibly assume the new powers granted by the national legal system. 50

In this way, territorial decentralisation has been structured from the top down through the creation of laws. In this order of ideas, it is understandable why the process has generated deficiencies, which leads to an understanding of the reasons that have historically prevented an effective decentralisation of power in Colombia. 51

Decentralisation in Colombia responded to the need to provide an answer to the communities in the different regions of the country regarding the crisis of legitimacy of the state, as a large part of the regional population did not feel represented by the national government. In reality, the decentralisation process originated in the national government's strategy to formalise the discourse of decentralisation, thereby reducing political 52

violence and contradictions to central level policy, without there being effective mechanisms to grant real decision-making or management power to the territorial entities, as the central government continued to control planning and most of the execution of the national budget.

- c. The political party system, the degree of pluralism, the existence of internal statutes, legitimacy, alternation, the line of exchanges and cooperation, the electoral regime, the inclusion of diverse political options.
  - d. The main objective of the political reforms was to strengthen political parties as strong organisations that guarantee social pluralism, implementing measures such as: reform of the electoral system by electoral lists -open or closed- and, on the other hand, the rule of action in benches within the popularly elected corporations.
- 53 In turn, (Carpizo, 2009, p. 194) outlines a typology of Latin American presidentialism, which is framed within a predominant presidentialism, since the Constitution attributes to the president a large set of powers, including a relevant and main influence on economic processes, the balance between political powers tolerates an imbalance in favour of the executive body, and controls over it are weak, partly due to the fact that the control bodies enjoy little autonomy. It is clear that the constitution has established the president as the axis of the constitutional system and that the other state bodies revolve around him, to a large extent, as well as strong control guidelines for the balanced exercise of power.
- 54 There is no state in Latin America that can be described as a parliamentary presidential system, despite the fact that this is implied by the existence of a system of benches and the motion of censure, which are institutions that are far from fulfilling the functions designed to fit in with this model. The aim of the parliamentary nuances is to add controls to the executive power in order to achieve an adequate system of checks and balances, but essentially preserving the presidential regime.
- 55 Generally, countries have coalition governments and these are explained by the fact that the executive power is not compact, the cabinet is not made up of members of a single party but of two or more. Success depends on the relationship between the parties that decide to act in coalition, ideological distance, party discipline and the political context of the country. A coalition government can generate a balanced or successful presidentialism or a weak one if the president depends on whether he manages to efficiently integrate a cabinet, with rules and guidelines that allow him to execute his government programme.

In Colombia, for example, the elements that characterise presidentialism, as stipulated in the Constitution, are: the authority of the president: the executive power is centred in the head of the president whose legitimacy lies in his representative character (Article 190, PC); the ministers form a government, i.e. a body with its own tasks and responsibilities (Article 208, PC); independent relationship between government and congress (Article 200, PC); the executive branch, the president and his ministers have the executive power and the legislative branch, i.e. Congress, has the legislative power; each for the duration of their terms of office; and the legislative branch, i.e. Congress, has the legislative power: the executive branch, the president and his ministers, has executive power and the legislative branch, i.e. Congress, has legislative power; each for the duration of their terms of office. System of checks and balances: each organ has the possibility of conditioning and controlling the others in the exercise of their respective functions; from the system of checks and balances, it follows that political orientation corresponds to an agreement between Congress and the President, following a process of consultation and negotiation between the two branches (Estrada, 2003, p. 19).

Relations between the organs of power are based on the parameters of collaboration and control (Cortés, 2010). These relations must be based on the guidelines framed by the principle of separation of powers, which implies that: The instruments of control must be applied in such a way that each organ of power acts strictly within the scope of its functions; and controls cannot be conceived as political exchanges or negotiations or mechanisms derived from the struggle for power, as this would nullify their effectiveness; therefore, they must be aimed at compliance with constitutional provisions.

Generally speaking, Latin American constitutions have granted the President certain determining powers in the exercise of power in a preponderant manner: Direction of International Relations: With regard to the direction of international relations, it must be said that Colombia is a State that enjoys a long-standing presidential tradition, and this is the case insofar as the President of the Republic holds the qualities of both Head of State, Head of Government and Supreme Administrative Authority. Furthermore, and bearing in mind that states operate under the republican model of government, it is common for the President of the Republic to symbolise national unity, and consequently it is natural that by virtue of this prerogative he should represent the State, especially in the international sphere.

- 59 The power of nomination, whose importance is evidenced by the discretion with which it fills not only the most important posts in the national administration, but also its power to intervene in the composition of important constitutional bodies. It has the power of nomination, which is related to the presidential power to propose its own candidates to make up the shortlists for the appointment of judges to the Constitutional Court, the Disciplinary Chamber of the Superior Council of the Judiciary, as well as for the appointment of the Attorney General of the Nation, the Ombudsman and the Attorney General of the Nation. This shows that this is one of the powers whose exercise allows for interaction with the other branches of power, thus proving the important magnitude of its negotiating power.
- 60 Legislative power, the legislative initiative of the in the so-called "states of exception" the Constitution grants governments the power to issue legal norms that by their nature correspond to the legislative order, in situations of urgency or emergency and Director of the public force and supreme commander of the armed forces of the Republic.
- 61 The veto power in Latin America consists of the constitutional power of the president of the republic to object to or oppose the sanction and publication of a certain draft legal norm that has been approved by the congress or the national assembly.
- 62 Thus, for example, Article 72 of the Constitution of the United Mexican States establishes that "The draft law or decree rejected in whole or in part by the Executive shall be returned, with its observations, to the Chamber of origin" (1917, p. 183). (1917, p. 183). In turn, a similar phenomenon occurs in Guatemala: Article 178 of the Guatemalan Constitution states that "[w]ithin fifteen days of receiving the decree and after an agreement taken in the Council of Ministers, the President of the Republic may return it to Congress with the observations he deems pertinent, in exercise of his right of veto" (1985, p.30). (1985, p.30).
- 63 Along the same lines, the Colombian Constitution allows the President of the Republic to present objections to bills approved by the Congress of the Republic, and Articles 166 and 167 regulate the processing of the so-called objections of the executive, which must be considered by both chambers. Other Latin American states, such as Chile and Peru, are organised in a similar way, granting the President the possibility of objecting to, vetoing or observing bills approved by the different organs of popular representation.

However, this power of veto or observation does not in itself imply an unrestricted annulment of the majority decision of Congress, but rather represents a mechanism for the executive to participate in the legislative process when it considers the sanction and enactment of a law to be unfeasible for reasons of convenience or law. In this regard, the Constitutions of the aforementioned States stipulate that after the observations, objections or vetoes have been presented by the Executive, they will be returned to the popular body for it to decide on them, and in the event of obtaining a majority vote of two thirds of the members of Congress or of half plus one of them, the Executive must sanction the bill. This is so because the constitutional systems of Latin America consider their organs of popular representation as an expression of the majority and deliberative power through which popular sovereignty is expressed, preventing the head of the executive from possessing the power to unilaterally override majority decisions.<sup>64</sup>

Thus, the power of veto or objections in Latin American presidentialism does not represent a problem understood as a barrier or obstacle to the decisions of Congress, but rather as an expression of the system of checks and balances and as a last mechanism for the executive to provisionally oppose majority decisions, which, however, is not absolute and the solution to such a veto lies with the collegiate body itself, which has the last word on the executive in this matter. However, the decision taken by Congress places the President in a scenario that requires congressional majorities and may lead to the need to negotiate or co-opt the necessary votes in Congress to accept the objections or observations made to the bill. (a matter of how to negotiate with majorities so that their objections are accepted).<sup>65</sup>

These characteristics generally lead to the personalisation of power and to the struggle of parties to obtain the representation of national majorities. This leads to one outcome, the prize: the presidency, and the losers are determined by a rigid temporal period. (Pérez Gilhou, 2005, pp. 39–40). As a residual consequence, there is an exclusionary effect on the opposition by the winning political party and, in turn, the almost systemic need for the opposition to differentiate itself from the executive, confronting official projects in order to show itself to civil society as a "different option" that will allow it to fight again for the favour of the majorities in the next elections, the only objective allowed by the system.<sup>66</sup>

In other words, modern politics consists of a plebiscitary struggle, the ultimate triumph of which is the conquest of executive power. Such is the sense of the debate on neo-populism, a concept that explores the conditions<sup>67</sup>

of possibility of populism in the neoliberal era (Galindo, 2007, p. 148–151), anti-politics as a tool to re-legitimise the regime (Herrera, 2005, p. 54 et seq.), and the ungovernability of presidentialism (Medellín, 2006).

- 68 Having reviewed the constitutional competences, it can be deduced that the power wielded by the president in Latin America continues to be relevant and imposing. The president is tied to the need to negotiate and form coalitions in Congress through the exercise of bureaucracy. This verifies the existence of one of the factors that expand the power of the president, the power to negotiate and form coalitions in order to govern, which contributes to the sustainability and viability of government policies. The president (government) thus becomes the only effective power of the state, the only effective visible power of the state, to the detriment of the institutional image of Congress.
- 69 Presidentialism in Latin America empirically demonstrates the relationship between the inefficiency of governmental management and the generation of acute political crises and, in the absence of institutional solutions to the system, the breakdown of the democratic regime and judicial activism, a hyper-presidential exercise is revealed, which affects the fulfilment of the purposes of the Constitutional State, often resulting in massive, systematic and persistent Human Rights violations.
- 70 It is key to understand the situation of presidents with parliamentary minorities; one of the frequent problems faced by Latin American political regimes has been the tension between the executive power and the legislative power (Cheibub, 2002), regarding the advancement of the presidential agenda in Congress. This situation stems from the presidentialist institutional design that is common in Latin America, in which citizens participate in the election of congressional representatives and the president of the republic.
- 71 However, many of the decisions that the executive wishes to take in order to implement its government programme require legal or constitutional reforms that inexorably have to pass through the body of popular representation to be debated and approved. In this situation, the executive requires congressional majorities that allow it to implement its proposals without major difficulties. This situation becomes complex when there is insufficient support from the legislature, which truncates or makes it impossible for the president to act, so that the state faces a crisis that can create political instability to a greater or lesser extent (Pérez Linan, 2003).
- 72 Faced with this situation, the constitutional framework in Latin America does not contemplate models that provide solutions for presidents with

a parliamentary minority to continue with their programme plans, given that both congressmen and the president are understood to be legitimate and invested with popular power, and each acts in the exercise of their functions and under the principle of harmonious collaboration of powers in the system of weights and counterweights. Badillo (2007) argues that it is commonplace in Latin America that the parties of the heads of the executive branch do not represent congressional majorities. That is to say, although it is a characteristic of Latin American political systems, there are no mechanisms devised to deal with this situation. In this sense, "the mechanisms for governing with political stability depend on the capacity of both branches of government to achieve party coalitions and to pass the bills that are part of the government's agenda" (Badillo, 2007, p. 4). (Badillo, 2007, p. 159) or, in other words, such a situation imposes a need for political negotiation between the two powers to reach consensus in order to materialise legislative policies and the reforms that the executive intends to promote.

## *VII. Conclusion*

The main points that prove the existence of a concentration of power in the executive, to the detriment of the principle of democracy and with it the danger of possible human rights violations in the face of the principle of equity and transparency in the exercise of power (especially with regard to its legislative, proactive and nomination powers), are clarified, negotiated governability (agreements between the government and the parties that act in benches within congress to speed up the progress and approval of the government's legislative proposals), loss of territorial control and centralisation of political and economic power (the pressing needs are national, the territorial ones are affected and the territorial entities act in isolation without the necessary support), fracture of the social order, political decomposition (loss of party identity, the sense of the political man is lost due to the loss of the political identity of the political man, and the loss of the sense of the political man due to the lack of a political identity), the sense of the politician is lost for that of a negotiator-administrator), de-institutionalisation (loss of effectiveness in the functions of institutions such as political parties and Congress, as they are permeated by the interests of the government), confrontation between government and Congress (when the latter tries to recover legitimacy and independence), elections seen as the axis of political

activity, in the framework of the division and lack of ideological identity in the political framework. The lack of guarantees for the opposition, the institutional weakness of political parties, abstentionism, and serious problems of representation in a large part of the national territory, and weakness in the fulfilment of the legislature's functions in terms of bureaucratic quotas, which in turn generate weakness in the political control of the government and consequently the verification of the concentration of power in its head. To this end, it is necessary to strengthen the structure and function of the legislative branch of government and the electoral system.

- 74 The presidential system that prevails in Latin America gives the president certain advantages, for example: the power to control Congress, the definition of the official payroll, its remuneration and the budget are the tools used to achieve this purpose. The president can make private enterprise his main ally and partner, thus influencing the economy, and he can count on the media, which is generally not allowed to criticise him. On the other hand, the territorial entities have not achieved economic independence from the government, from the president, as there is no possibility of executing important works without the support of the national government, and their appointments do not need to be ratified by Congress.
- 75 Latin American presidentialism is made up of elements inherent to the political dynamic, such as the large bureaucratic quota available to the president, not simply the power to appoint, but the extent of this power; the ideological closeness of the political parties (Buenahora, 2002), which allows the president to always form a majority in Congress; and the electoral machines in the regions, which undoubtedly create a relationship of dependence at the time of the elections and then an obligation to pay for favours received when elected president, which also works to the detriment of the congressman who needs bureaucracy to maintain his electorate or his contacts in the region. And it is these factors that determine the scope and extent of the executive's power in institutional dynamics.
- 76 For their part, Congresses or legislative powers are multifunctional institutions of State power, assigned a heterogeneous range of functions, which can be explained by the role they must play in political processes, as instruments of the principle of popular sovereignty, intervening in different ways in the governmental political process (Cortés, 2013).
- 77 Congressional activity, or the legislative branch, is structured in such a way that it becomes complex to deal with national policy issues, and its members work under the deep-rooted habit of seeking incentives to cultivate particularist exchanges based on patronage and populism. This leads

to the system's difficulty in generating stable majorities to confront social problems, which means that, as a natural dynamic, it is the government, which produces decrees, that focuses its efforts on responding to popular clamour rather than Congress, and the opposition is still in precarious constitutional and real consolidation, in many cases silenced by violence.

Despite these realities, an exercise of modernisation of the state is required, which requires an institutional design designed to democratically manage conflicts and strengthen the perspective of the social rule of law, while seriously consolidating the activity of the opposition (Cortés, 2013). 78

The democratisation of the means of access to electoral politics and the establishment of a regulation that creates a party system, strengthens existing organisations and reviews and rethinks the role of the media in Colombia, which are generally biased towards the government, are acts conducive to re-establishing the balance in the exercise of power. 79

The presence of disciplined and programmatic political forces that transcend political practices, that in Congress the activity of stable groups is unleashed, not a game of coalitions formed according to debates and interests of the moment, that the intrinsic dynamics of permanent fragmentation, questioned by the procedures with which coalitions are made, is put to an end, would constitute the first step towards the recovery and strengthening of the legitimacy of the Congress of the Republic, which in my opinion is called upon to re-establish the balance in power relations in Colombia.

Taking into account the state complexity of our times, with the growth and variety of political, economic, social, cultural and environmental problems and demands; the complexity of the state system must be adapted by modifying its structures, functions, number of dependencies, quality of services, adaptation to new technologies, rethinking its relationship with the governed, based on the understanding of the balanced, harmonious and coordinated functional relationship of the public powers in order to achieve governance in democratic terms. 80

The intervention of interest groups in the organs of public power should be regulated, as their absence generates confusion between the general interests and those of the group that works intensively in their lobbying and the real role of political parties, which would be overwhelmed in their political function, contributing to an increase in the levels of corruption due to the irregular actions of these new emerging powers. Therefore, efforts should be made to redefine the scheme of relations between state, market and society, to strengthen the institutions of political leadership, to 82

reinvigorate political parties and to optimise the mechanisms of representation in order to maintain balanced power relations.