Constitutional Design and Decision-Making Processes in Presidential Systems: An Analysis of the President’s Executive Powers Over Cabinets

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Abstract
Our objective in this paper is to analyze the degree of political dominance exercised by the executive power on cabinets in presidential systems. According to the 1990s debate, in contrast to parliamentary systems where a joint decision-making process is prevalent, presidential systems are characterized by a non-collegial decision-making process, led and personalized in the figure of the president (Lijphart 1992; Sartori 1997; Amorim Neto 2006). The key argument of this paper is that, although all presidents have the constitutional power to remove cabinet ministers, the executive decision-making process in presidential systems is not necessarily vertical or based on a non-collegial process. We found a significant variation on executive power exerted by presidents over the cabinets, and that this variation has not been addressed by current literature. To classify the degree of political dominance of the presidents over the cabinets, we analyzed 18 Latin American constitutions focusing on the rules of the cabinet’s decision-making process.

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1 INTRODUCTION

In the 1980s and 1990s, political science started a debate that came to be foundational in comparative politics. In an attempt to distinguish presidential, parliamentary and hybrid systems, the controversy surrounding the definition of presidentialism took over the research agenda on government systems (see for instance Shugart and Carey 1992; Lijphart 1992; Linz 1994; Sartori 1997; Amorim Neto 2006). The impact of this debate in the literature was indisputable, creating the basis for comparisons between systems of government, as well as its effects on regime breakdowns (Cheibub 2002; Perez-Liñan 2004), veto players (Tsebelis 1995), governance types (Moe and Caldwell 1994), and legislative powers of cabinets (Cheibub, Przeworski and Saiegh 2004).

According to Lijphart’s seminal argument (1992), contrary to what would occur in parliamentary systems—where the decision-making process is collegiate and horizontal—the chief executive in presidential systems would not only be responsible for writing and directing the government, but also for the decision-making process. In this sense, the power of the president over the cabinets is seen as hierarchical and vertical, from the top (president) to the bottom (ministers and government officials). Lijphart’s argument is supported by Sartori (1997), Amorim Neto (2006), and accepted by the mainstream of comparative politics on government systems.

In this paper we challenge this argument, for we believe that the central conclusion of this debate is anchored in weak evidences. By analyzing 18 Latin American constitutions we show that, contrary to what happens in parliamentarism, although presidential constitutions centralize in the presidency the responsibilities to compose and administrate the government, we cannot automatically imply that, 1. all presidential constitutions are necessarily vertical, or 2. that the power to select and remove the ministers makes the presidential power over ministers unrestricted or unbounded.

This paper is structured as follows: in Section 2 we explore the puzzle that guides this study, and we present our argument; data and method are presented in Section 3; in Section 4 we present and discuss our findings, and; in Section 5 we present our final
comments.

2 President’s Executive Powers Over Cabinets: Building the Puzzle

The debate on constitutional designs and decision-making processes of presidential systems reappeared in modern political science due to the third wave of democracy (Huntington 1993). According to Carey (2005), the third wave of democracy exposes some important trends such as the establishment of democratic regimes in countries with no previous democratic experience, re-establishment of democracy in countries that have experienced periods of authoritarian regimes, and the expansion of independent states after the collapse of Soviet and European communism. An important consequence of these transitions is the special attention given to the constitutional rules regulating the competition and the exercise of political authority in a democracy.

One of the fundamental aspects of a constitutional design is the choice between parliamentarism, presidentialism or some hybrid format that combines aspects of both systems of government. With the publication of Presidential or Parliamentary Democracy: Does It Make a Difference? (Linz 1994), comparative scholars initiated a debate on what would be the best system of government for the consolidation of new democracies, and what would be the best way to define and distinguish presidential and parliamentary systems (see for instance Shugart and Carey 1992; Lijphart 1992; Linz 1994; Sartori 1997; Cheibub, Elkins and Ginsburg 2014).

The definition offered by Lijphart (1992), based on some of Verney’s propositions (Verney 1979), is the one in which we can find direct implications for the incipient debate on the powers of the chief executive in decision-making processes of presidential offices. According to Lijphart (1992), the distinctiveness of government systems is defined in terms of mutually exclusive factors. In presidentialism, the head of government has a constitutionally-established fixed term, and can not be, under normal conditions,
deprived by the legislative body. Also, presidential systems have one person, a non-collegial executive, and the head of government is elected directly (or in some cases indirectly, such as in the United States) by the voters. In parliamentarism, the head of government depends on the confidence of the legislative body and can be removed by a vote of no confidence or censure. In parliamentary systems, the head of government—usually called prime minister—is selected by the legislature, and the prime minister and the cabinet form a collective executive body, whose decision-making process has a collegiate character.

According to Amorim Neto (2006), the main contribution of Lijphart (1992) to the definition of government systems is his emphasis on the nature of the decision-making process within the executive power. However, Lijphart’s definition (1992) presents two problems. The first problem is the mistaken proposition that the concentration of executive power in the president does not favor the formation of coalition governments, which necessarily involve the sharing of power. Amorim Neto (2006) reveals that there are coalition governments in several presidential democracies. Thus the “sole executive” is not a distinctive feature of presidentialism. The second problem of the Lijphartian definition, and the focus of our study, is the argument that the president has a vertical control over the executive branch. Unlike prime ministers in parliamentary systems, presidents would have a vertical control. Therefore, this argument assumes that in every presidential system there is a hierarchical relationship between the chief executive and the cabinets. The argument is supported by Sartori (1997) when he states that “the line of authority is clearly defined from the top down.”

In fact, several presidential constitutions define cabinet’s members as heads of ministries or public agencies, and “mere” presidential advisers. However, as highlighted by Amorim Neto (2006), some constitutions require the counter-signature of a member of the cabinet for all or some acts of the president, while other constitutions establish some form of collegial decision-making within the executive branch. This is the case, for example, of the former Venezuelan Constitution of 1961, which in Article 190 states that the president can only declare a state of emergency within the Council of Ministers
(cabinets). Article 147 of the current Costa Rican Constitution, in turn, states that
the president and cabinet shall jointly exercise the powers in an eventual declaration of
a state of emergency and they jointly appoint and dismiss ambassadors. Article 167 of
the current Salvadoran Constitution states that the president must obtain the support
of all ministers in order to ask for emergency powers. The same applies to the Peruvian
constitutions of 1979 and 1993, where the president must win the vote of the majority
of the members of the cabinet to issue a decree and declare a state of emergency.

According to Amorim Neto (2006), the aforementioned constitutional articles show,
first, that from a formal point of view, Lijphart would be incorrect in assuming that the
absence of collegiate decision rules is a defining and universal feature of presidentialism.
However, from a substantive point of view, the fact that the president has power to
dismiss his ministers at any time leads Amorim Neto (2006) to agree with Lijphart
(1992) and Sartori (1997), assuming that the presidential power to dismiss his ministers
verticalizes the president’s relationship with the cabinet members. In this paper, we
challenge this second point. The president’s power to select and remove ministers do
not automatically imply a non-collegial or vertical decision-making process.

Our objective in this study is to understand the degree of presidential dominance
over the decision-making process. For this, we analyze 18 Latin American constitutions.
Our argument is that, by assuming that the power of the president to remove
ministers makes the decision-making process verticalized or non-collegial, current liter-
ature has underrated the possible variation that may exist in the degree of presidential
dominance over the cabinets. If the institutional theory is correct in predicting politi-
cal phenomena from the effects of rules on the behavior of individuals, it is reasonable
to expect that different cabinets’ decision rules can lead to different decision-making
processes in presidential governments. The costs of a presidential decision to remove
ministers, for example, may vary depending on other institutional factors such as rules
that empower ministers. It may also vary according to other political factors, such as
the pivotal character that the party of a minister may have to maintain the coalition in
the legislature. Thus, taking into account the variation of how powerful the president
is *vis-a-vis* the cabinets is of fundamental importance.

3 Analyzing Presidential Constitutions in Latin America

In this section, we present the research design and the data we used, and we analyze how powerful the president is according to specific constitutional rules that *verticalize* or *horizontalize* the decision-making processes of the executive power in 18 Latin American democracies.

3.1 Research Design and Data

In an attempt to measure the degree of presidential governmental dominance, we taken into account five decision rules: 1. Cabinet removal; 2. Minister’s countersignature for executive decisions; 3. The restrictions of eligibility to the office of minister; 4. Legislative powers of ministers, and; 5. Cabinets’ selection procedures. By having constitutions as units of analysis, a database was built with details of the rules that *verticalize* or *horizontalize* the decision-making processes in 18 Latin American constitutions: Argentina (1994), Bolivia (2009), Brazil (2014), Chile (2014), Colombia (2013), Costa Rica (2011), Dominican Republic (2010), Ecuador (2011), El Salvador (2003), Guatemala (1993), Honduras (2013), Mexico (2007), Nicaragua (2005), Panama (2004), Paraguay (2011), Peru (2009), Uruguay (2004) and Venezuela (2009). The information was gathered initially from the site http://www.constituteproject.org/, and later revised directly from the original constitutions in order to increase the reliability of the data. Table 1 below presents the variables’ names that we use in our analysis and also presents some descriptive statistics for our measurement of the president’s executive power over cabinets.

Most of the countries analyzed in this research have recently enacted new constitutions, or had their constitutions recently modified (updated). The oldest constitution
is from Argentina, adopted in 1853 and updated in 1994. The most recent constitution was adopted in 2010 (Dominican Republican). From our database, the Chilean and Brazilian constitutions are the ones that underwent the most recent updates (constitutional amendments), in 2014. In order to measure the presidential executive dominance over cabinets, we created a summation index of the codified rules regarding the executive powers of the president vis-a-vis cabinet ministers, ranging from 0 to 5, with 0 indicating the absence of presidential dominance and the value 5 indicating the absolute predominance of the president over cabinets. As we can see in Table 1, no country received the maximum value of 5 in the variable “presidential power over cabinets.” From the 18 Latin American Constitutions analyzed in this research, the observed values for this variable are distributed between 0 and 4.

The procedure for cabinet removal is the set of rules that limits or increases the presidential autonomy to dismiss cabinet ministers. If there are no limits for the presidential autonomy, the lower the cost of removal for the president, and consequently, the greater will be the presidential dominance over the cabinets. This variable is measured as a binary variable, where the value 1 is assigned to the rule of the president to freely remove the ministers, and 0 in those cases where the power of the president to remove ministers is limited (for example, when the president needs the support of other political actors to remove ministers).

The need for ministerial counter-signature for executive decisions indicates the col-
legiate character of the cabinet. The absence of this rule implies a greater sole character of the cabinet, resulting in a higher dominance of the president. This measurement is a binary variable, wherein the need for counter-signature by ministers is assigned with the value 0, and the absence of a counter-signature rule is assigned with the value 1.

Restrictions on eligibility for the cabinet offices indicate that ministers need to meet certain requirements to be appointed by the president. The greater the number of restrictions on eligibility, the greater the cost of presidential ministerial replacement, and consequently, the smaller the predominance of the president over the cabinets. This binary variable receives a value of 0 in the presence of restrictions, and a value of 1 in the absence of this rule.

The distribution of legislative powers of the cabinets indicates whether ministers have some legislative prerogative or not. If ministers have power to legislate, given the bargaining power of ministers, the smaller the presidential dominance over the cabinet will be. This binary variable receives a value of 0 when ministers have legislative powers, and a value of 1 when ministers have no power to initiate legislative proposals.

Lastly, cabinet selection indicates whether the president can freely appoint his cabinet ministers or if there is any institutional rule that limits this power (for example, whether the president needs the ratification by other political actors of the ministers appointed). If the presidential nomination is free, the greater the dominance exercised by the chief executive is. This binary variable is assigned with the value 1 when the president is free to appoint his ministers, and it is assigned with the value 0 if there is a rule conditioning the presidential appointment.

3.2 Analyses

The examination of presidential dominance over cabinets based on our index will be made by depth and descriptive analysis of 18 constitutions. In such analysis we hope to explore the dispersion and central tendency of the aforementioned rules. Where appropriate and necessary, we will explore the specific information through graphics. In Figure 1, for example, we depict the degree of presidential dominance over cabinets
in the current constitutions of 18 Latin American countries.

Figure 1: Degree of Presidential Dominance Over Cabinets in Latin American Constitutions

As we can see in Figure 1, Bolivia presents the most “horizontal” decision-making process concerning the presidential executive power *vis-a-vis* the cabinet ministers. In other words, according to the Bolivian constitution, none of the criteria that compose our index of presidential dominance over cabinets is met. In the other extreme, Guatemala, Panama and Venezuela are the countries where the presidential dominance over cabinets presents the higher value. It is important to note that, according to our index, of the 18 countries analyzed in this paper, four of them—Bolivia, Argentina, Peru and Uruguay—have a value below the average (2.8) for the region analyzed. Below we present in more detail how the values of our index vary among the countries and within each country, as well as how the index of each country is composed.

*Source:* Elaborated by the authors.
3.2.1 Bolivia

The Bolivian Constitution, approved in a popular referendum in January of 2009, is the most “collegial” or “horizontal” of all presidential constitutions analyzed in this paper. Article 158 of the Bolivian Constitution determined that the president should respect the multinational character of the country, and the gender equality in the selection of his cabinet. At the same time, as stated in Article 160, the president must have the consent of the Senate to appoint ambassadors or plenipotentiary ministers. There is no presidential cabinet removal provision in the 2009 Bolivian Constitution. Therefore, the Plurinational Assembly has the exclusive power to remove ministers, which may occur whenever a minister of state is censored by two-thirds of the members of the Assembly. In addition of taking into account multiple nationalities and gender criteria to appoint ministers, the president’s power is also restricted by other rules such as who is eligible to be a minister in the country. Besides the basic eligibility criteria such as nationality and to be 25 years old, members of the Plurinational Legislative Assembly (Congress) as well as directors, owners and shareholders of financial institutions or companies that have contractual relationships or conflicts of interest with the government, are not eligible to be ministers. Finally, cabinet ministers have power to initiate legislation, may propose and contribute to the formulation of general policy, and are co-authors of supreme decrees signed by the state president. Thus, among all the constitutions analyzed, the Bolivian Constitution is the most horizontal in its regulation of the relationship between the president and cabinet ministers.

3.2.2 Argentina

Although it is slightly more vertical than the Bolivian Constitution, the Constitution of Argentina is also characterized by the horizontalization of the intra-executive decision-making process. The Argentine Constitution of 1994 is a revision of the constitution of 1853. In one hand, as stated by its Article 99, the Argentine president may freely select and remove the head of the cabinet of ministers, other ministers of the cabinet, and consular officers and political appointees within ministries. On the
other hand, as in the Bolivian case, presidents can only appoint and remove ambassadors and plenipotentiary ministers with the consent of the senate. Therefore, there are restrictions on both the cabinet selection and removal by the Argentine president. Nevertheless, there is no relevant restriction for eligibility for the office of minister, which facilitates the presidential choice of cabinet and reduces replacement costs in removal cases. In fact, the ministerial eligibility with few and basic restrictions is the only factor of presidential dominance in the executive decision-making process of the Argentine Constitution. According to Article 100, the Argentine president must rely on the ministerial counter-signature—without which his actions have no legal effect. Ministers’ counter-signatures and support are also needed in the approval for urgency decrees. The same article also allows the head of the cabinet and other ministers of state to initiate legislation on the matters of their jurisdiction, as well as on the Argentine national budget.

3.2.3 PERU

Partly similar to the Argentine Constitution, the Peruvian Constitution gives the president executive power vis-a-vis cabinet ministers as a result of free ministerial eligibility, but emphasizes the verticality of the executive power with the absence of ministerial legislative powers. According to the article 122 of the 2009 Peruvian Constitution, the president can freely select and remove the cabinet’s president. However, the president needs to obtain the formal consent of the cabinet’s president in order to select and remove all other ministers. Articles 125 and 128 also establish that decisions on legislative initiative of the president such as projects, resolutions, legislative and emergency decrees, require a ministerial countersignature.

3.2.4 URUGUAY

The Uruguayan Constitution of 2004 is a revision of the Constitution of 1966. It has the same degree of verticality of the Peruvian Constitution (2), below average (2.8). As stated in Article 174, the Uruguayan president can freely remove ministers, but must
rely on the consent of the senate to select consular and diplomatic personnel (Article 168). Also, resolutions and communications of the executive branch require ministerial countersignature as well. Article 181 gives legislative powers to ministers. Regarding the eligibility for ministers, there is no restriction beyond the basic restrictions such as nationality and age in the Uruguayan Constitution.

3.2.5 Brazil

The Brazilian Constitution of 1988, including the amendments preceding 2015, gives the president the power to freely select the ministers of the federal government, including the Union’s General Attorney and the members of the Council of the Republic (Article 84). However, the selection of the president and the directors of the Central Bank—an agency with ministerial status—is subject to the consent of the Brazilian Senate. On one hand, there is a limitation on the presidential power for cabinet selection, and on the other hand, there is no restriction on ministerial removal (also in Article 84). The Brazilian Constitution also verticalizes the decision-making process of the cabinet by not imposing any significant restrictions to the eligibility of the ministers (Article 87). In the same article, the verticalization in the decision-making process is enhanced by the absence of any ministerial legislative power. According to the Brazilian Constitution, another limitation to the dominance of the president over the cabinets is the requirement of countersignature by the ministers. The president’s actions and decrees must be countersigned by Ministers of State, who also have the power to dispatch instructions on the enforcement of laws, decrees and regulations.

3.2.6 Chile

According to the Chilean Constitution of 1980, including the amendments preceding 2015, the president has extensive selection powers, without any restriction for most cabinet positions or across the public administration such as government ministers, undersecretaries, intendants and governors; ambassadors, diplomatic ministers, and representatives of international organizations; occupants of positions of political appointment
in the government bureaucracy; members of the Constitutional Court appointed by the
president; commanders of the army, air force and the carabineer’s general director.
However, the nomination for the Comptroller General of the Republic must rely on
the consent of the senate. Nevertheless, there is no restriction on cabinet removal,
which increases the decision-making power of the president. Nor is there any rele-
vant eligibility criterion for ministers or legislative powers assured for ministers, which
also verticalizes the government. Furthermore, Article 35 of the Chilean Constitution
provides that regulations and executive orders of the president must be signed by the
respective ministers and should not be obeyed without the ministers’ countersignature
requirement.

3.2.7 Colombia

The Colombian Constitution of 1991, reformed in 2013, provides that the Colombian
president has the power to freely select and remove agents such as cabinet ministers,
directors of administrative departments, diplomatic and consular agents, presidents,
directors and managers of public national agencies, and all individuals performing public
jobs in which the process to be hired is not based on a civil service exam (Article 189).
Among all the constitutions analyzed thus far in this paper, the Colombian Constitution
is the only one that does not impose restrictions on presidential power to select and
remove public officials. Moreover, there are no restrictions beyond nationality and age
on the eligibility for being a minister in Colombia. Nevertheless, according to Article
214, a ministerial countersignature is required in various contexts such as in popular
consultations for important transcending national decisions (in this case the consent
of the senate is also required), in declaration of internal disturbance state (Article
213), in declaration of a state of emergency, for issue decrees with the force of law
during a state of emergency (Article 215), and for legislative decrees during the state of
emergency (Article 214). Another limitation of the presidential dominance over cabinets
in Colombia is the legislative power ensured to ministers, in accordance of the Article
208 of the Colombian Constitution.
3.2.8 **Costa Rica**

The Costa Rican Constitution of 1949, last updated in 2011, attributes to the president free powers to select and remove ministers of government (Article 139), something thus far found only in the Colombian Constitution in our analysis. Also, the Constitution of Costa Rica does not impose any relevant restriction on the cabinet eligibility. However, as stated by Article 140, the Costa Rican Constitution allows ministers to legislate along with the president, and to veto legislation passed by the legislature. The same article also establishes that president and ministers should together send the national budget proposal to the National Assembly. At least, presidential decisions such as decrees, agreements and resolutions of the executive branch require the signature of the minister responsible for policies under his/her jurisdiction and, in some cases, shall require the agreement of the Government Council.

3.2.9 **Dominican Republic**

According to the 2010 Dominican Republic Constitution, the president can freely select ministers, vice-ministers and officials who hold positions of free appointment in any organ of the Dominican State. However, as can be read in Article 128, to appoint the abroad ambassadors and the heads of permanent missions in international organizations, as well as the other members of the diplomatic body, the Dominican president must have the consent of the senate. Furthermore, as stated in the same article, the president has power to remove from office any member of the executive branch. The presidential power is considered limited particularly because there is an important restriction on the eligibility of government ministers (and vice-ministers). As stated in Article 135, there can be no minister or vice-minister that exercise business or professional activities that may create conflicts of interest with the cabinet position. Nevertheless, as stated in Article 96, by not giving any legislative power to ministers, but only to the president as part of the executive branch, this rule verticalizes the decision-making of the cabinet.
3.2.10 ECUADOR

The Ecuadorian Constitution of 2008, approved by referendum and popular consultation in 2011, gives the president the power to freely select and remove government ministers and other public servants guaranteed by the constitution (Article 147). The Ecuador’s Constitution also verticalizes the relationship between president and cabinets by not requiring a ministerial countersignature of the actions and decisions of the chief executive. However, the constitution restricts the ministerial eligibility by prohibiting any individual to the cabinet’s office who hold contracts with the government for the execution of public works, public service or exploitation of natural resources through concession, association or any other contractual modality. Similarly, as provided in Article 152, members of the Armed Forces and National Police on active duty are also not eligible to be ministers. According to its Article 154, the Ecuadorian constitutional design also empowers ministers with legislative initiative power.

3.2.11 EL SALVADOR

El Salvador’s Constitution of 1983, reformed in 2003, gives the chief executive, through Article 162, the power to freely appoint, remove, accept resignations from and bestow licenses to ministers and vice-ministers of state, as well as the head of public security and the head of government intelligence. Also, the Salvadoran constitution does not limit the presidential dominance over the cabinets due to the absence of any relevant criterion for ministerial eligibility beyond nationality and age. Nevertheless, this presidential dominance over cabinets is limited by Article 163, which states that the decrees, agreements, orders and actions of the President of the Republic shall be approved and communicated by the ministers in their respective branches or by vice-ministers, if applicable. Without the countersignature of ministers, no presidential action will be considered legally authentic. Article 167 of the constitution also horizontalizes the executive branch by giving legislative powers to ministers, and by stating that the Council of Ministers has the ability to formulate and present the government budget in the Legislative Assembly at least three months before the start of the new
fiscal year.

3.2.12 Honduras

According to the 1982 Honduran Constitution, reformed in 2013, the president can freely select and remove state secretaries, under-secretaries, and other officials whose appointment is not assigned to other authorities (Article 245). The Honduran president can also freely appoint the heads of diplomatic and consular missions, as well as the presidents and vice-presidents of state banks. However, there are important limitations to eligibility for ministers in the Honduran Constitution. Article 250 states that, those who have managed or explored public and nature resources and have not yet divested their account, or those who have debts with the Treasury, or those who have service and public job contracts funded by state resources, or those who have pending accounts with the state, are not eligible for cabinet offices such as secretaries or under-secretaries of state. Moreover, according to Article 248, decrees, orders, regulations, agreements and other president’s provisions should be authorized by the Secretaries of the State in their respective cabinets, or by under-secretaries (when applicable). Without the countersignature of the ministers, the president’s acts will have no legal force. Although the Honduran Constitution verticalizes the relationship between president and cabinets by restricting ministers’ eligibility and by requiring a ministerial countersignature, it does not ensure any legislative power to Honduran ministers, limiting its powers vis-à-vis the President of the Republic.

3.2.13 Mexico

In the 2007 reform of the Mexican Constitution of 1917, the sum of the rules that verticalizes the relationship between president and cabinets is slightly above average (see other similar cases in Figure 1 above). According to Article 89 of the Mexican Constitution, the president can freely select only the dispatcher secretary and other union employees whose appointment is not determined otherwise by the constitution. Therefore, the appointment of ministers, diplomats and general consuls must have
the approval of the senate. Senators’ consent is also required for appointments of colonels, army officers, national air force officers, as well as the top employees of the Mexican Department of Finance and the General Attorney of the republic. On the other hand, the Mexican president has the power to freely remove all agents appointed by himself and there is no restriction on the eligibility for ministerial positions. Although Mexican ministers have no legislative power, Article 92 of the constitution empowers ministers in the decision-making process by determining that all regulations, decrees, agreements and orders of the president must be countersigned by them. Without the countersignature of the Mexican ministers, the president’s acts will have no legal force.

3.2.14 NICARAGUA

The Constitution of Nicaragua analyzed in this paper was adopted in 1987, and includes all the amendments preceding 2006. Article 150 of Nicaraguan Constitution establishes that the president can freely select and remove the ministers and vice-ministers, presidents or directors of autonomous and government agencies, heads of diplomatic missions and other officials whose appointment or removal is not determined otherwise by the constitution and laws of the country. However, Article 152 imposes relevant restrictions to cabinet eligibility, preventing the appointment of those who have debts with the Treasury and military on active duty. Also, according to Article 151, all presidential decrees and provisions must be approved and countersigned by ministers of their respective cabinets. Nevertheless, Nicaraguan ministers have no power to initiate bills.

3.2.15 PARAGUAY

Article 238 of the Paraguayan Constitution of 1992, reformed in 2011, establishes one important restriction on presidential power to select agents of public administration: the appointment of ambassadors should be supported by the senate. All other agents, such as ministers of the executive branch, General Attorney of the Republic, government employees whose appointment and tenure in office are not otherwise regulated by the
constitution or by country’s laws, as well as commanders of the Armed Forces (military), shall be freely appointed and removed by the Paraguayan President. Furthermore, in the Constitution of Paraguay there is no restrictions to the eligibility of ministers beyond nationality and age. However, Article 242 states that all acts of the president have to be countersigned by the ministers, who are formally the heads of their respective ministerial areas. Notwithstanding, the Paraguayan ministers have no power to initiate legislation in the House.

3.2.16 GUATEMALA

The Constitution of Guatemala analyzed in this study was adopted in 1985, and includes all the amendments incorporated before 1994. Article 183 establishes that the president may freely select and remove cabinet ministers, vice-ministers, secretaries and undersecretaries of the presidency, as well as ambassadors and other officials related to the presidency. Also, the Guatemalan Constitution posits no restrictions on the eligibility of ministers. The vertical nature of the Guatemalan Constitution is also expressed by the fact that the Guatemalan president possesses the prerogative (within the executive branch) to initiate legislative proposals (Article 183). The Guatemalan president has his executive power limited only by the requirement that its decrees, regulations and agreements must be ratified by the ministers. Otherwise, the president’s actions will have no validity (Article 194).

3.2.17 PANAMA

The Panamanian Constitution of 1972, including the amendments preceding 2005, states that the president is free to select and remove, exclusively, ministers of state (Article 183). According to Article 184, the Panamanian president is also empowered, along with ministers, to freely select and remove directors and other members of the police services, people in public positions or national jobs whose provision does not correspond to another employee or corporation, as well as leaders, managers and directors of autonomous and semi-autonomous public agencies. Therefore, the presidential power
of selection and removal is unlimited. Similar to most of the constitutions analyzed in this study, there is no restriction on eligibility for Panamanian ministerial offices. Furthermore, there is no mention of a requirement of ministerial countersignature in the constitution of Panama, which verticalizes the decision-making process of the Panamanian executive power\(^1\). The only factor that seems to *horizontalize* the Panamanian decision-making process is the power that ministers have to send and co-author with the president, the state’s general budget proposal to the legislative branch.

### 3.2.18 Venezuela

The 1999 Constitution of Venezuela, including the amendments made before 2010, is one of the most vertical Latin American Constitutions, along with the Constitutions of Guatemala and Panama. According to Article 236 of the Venezuelan Constitution, the president may freely select and remove the vice president, the ministers of the state, and government officials. Nevertheless, that same Article 236 also determines that the appointment of the General Attorney of the Republic and the heads of permanent diplomatic missions must be authorized by the National Assembly. In any case, the Venezuelan Constitution also verticalizes the decision-making process by not requiring relevant criteria for ministerial eligibility and by not requesting ministerial countersignature to presidential decisions and acts. Furthermore, Venezuelan ministers cannot initiate legislative proposals.

### 4 Discussion

From the analysis of the variation of presidential dominance index on cabinets in Latin American constitutions, we can infer at least three clear standards: countries that have 1. low, 2. average, and 3. high verticalization in their intra-governmental decision-making processes.

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\(^1\)The agreement between president and cabinet council in a series of presidential acts is mentioned in Article 200 of Panamanian Constitution, but it is not clear how this constitutes a restriction in the dominance of the Panamanian president over its cabinets.
Bolivia, Argentina, Peru, Uruguay and the Dominican Republic are the five countries whose constitutions present smaller empowerment of the president vis-a-vis ministers and government officials. The values below the mean (2.8) of our index show that not all presidential constitutions create a hierarchical governmental decision-making process. The Bolivian presidency is the most restricted executive power among Latin American constitutions, with a value of 0 in our index, followed by the Argentine presidency who receives a value equal to 1 in our index, and the Peruvian, Uruguayan and Dominican presidencies, whose indices are equal to 2.

Constitutions of countries such as Ecuador, El Salvador, Brazil, Chile, Colombia, Costa Rica, Honduras, Nicaragua, Paraguay and Mexico posit an average empowerment of their presidents, representing an amount equivalent to 3 according to our index—slightly above the mean value of 2.8. The value index of 3 of the constitutions of these countries verticalize the decision-making process of the governments a little bit more, ensuring more dominance to the president over the cabinets.

Finally, Guatemala, Panama and Venezuela present the strongest dominance of the president over cabinets among the Latin American countries, with an index equal to 4. Therefore, Guatemalan, Panamanian and Venezuelan presidents are those with the highest predominance in executive decision-making process.

Therefore, it can be argued, that the Lijphartian argument (1992) that the vertical character of presidentialism opposes the collegial character of parliamentary systems, accepted by Sartori (1997), Amorim Neto (2006), as well as by the consolidated literature on presidential systems, cannot be sustained in light of our analysis. The degree of dominance exercised by the chief executive on the cabinets as a whole has at least three distinct patterns if we take into account the current constitutions of 18 presidential Latin American countries. The variation in the dominance rate of the presidents in the executive decision-making process ranges from 0 to 4, and corroborates our argument according to which the presidential constitutions centralize in the presidency the responsibilities to compose and administrate the government do not automatically imply that, 1. All presidential constitutions are necessarily vertical, or 2. That the
power to select and remove the ministers makes the presidential power over ministers unrestricted or unbounded.

A possible counter-argument, in favor of the Lijphartian argument consolidated by the mainstream of comparative analysis on presidential systems, would be that of the 18 countries analyzed in our study, 10 of them feature indices with the same value, which explains the low value of the standard deviation. However, the same value for our index in these countries hides important differences within these cases. The fact that Ecuador, Brazil and Costa Rica were assigned with an index equal to 3, does not mean that Ecuadorian, Brazilian, and Costa Rican presidents have the same restrictions on the selection and removal of ministers, on their options to select their ministers, on the requirement of ministerial countersignature, or on the prerogative to initiate legislative proposals. In other words, there is a variability in the rules that compose our index within the countries assigned with the same values.

As can be seen in Table 2 below, the distribution of countries according to each verticalization or horizontalization factor that composes our index varies significantly among the constitutions analyzed in this study.
Table 2: Dominance of presidents over cabinets: Distribution of Latin American countries according to the rules of *verticalization* or *horizontalization*

<table>
<thead>
<tr>
<th>Selection</th>
<th>Removal</th>
<th>Eligibility</th>
<th>Countersignature</th>
<th>Legislative Power</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Yes</strong> <em>(Verticalization)</em></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Colombia</td>
<td>Brazil</td>
<td>Argentina</td>
<td>Dominican Republic</td>
<td>Brazil</td>
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<td>Brazil</td>
<td>Ecuador</td>
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<td>Colombia</td>
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<td>Panama</td>
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<td>Colombia</td>
<td>Paraguay</td>
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<td>Dominican Republic</td>
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<td>Peru</td>
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<td>Nicaragua</td>
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<td>Panama</td>
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<td>Panama</td>
<td>Honduras</td>
<td>Paraguay</td>
<td></td>
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<tr>
<td><strong>No</strong> <em>(Horizontalization)</em></td>
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<td>Argentina</td>
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<td>Bolivia</td>
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</tbody>
</table>
According to Table 2, although the Bolivian Constitution horizontalizes the government’s decision-making in all factors of our index, all other constitutions empower their presidents differently; with certain factors giving dominance to the presidents, and others restricting their powers. Also, we can see that in eight countries—among them Colombia, El Salvador and Panama—the president is free to select its ministers and the agents of the public service. However, 10 countries—among them Brazil, Paraguay and Uruguay—limit the presidential power of cabinet selection. A similar framework can be seen on the presidential power to remove members of the government. Nevertheless, the variation for the rule of cabinet removal is much smaller compared to the rule of cabinet selection. Fifteen countries, including Brazil, Dominican Republic, Honduras, Mexico, Nicaragua and Venezuela, provide free presidential power to remove ministers, and only three restrict the presidential power to remove ministers—Argentina, Bolivia and Peru. These three countries are also among the four countries—including Uruguay—who the executive decision-making process is considered more horizontal. In sum, our evidence goes against Amorim Neto’s claim (2006) that in all presidential systems the chief executive has unlimited power to remove their ministers.

Regarding the ministerial eligibility criteria, it may affect the costs of presidential decision to replace a minister to the extent that a ministerial nomination depends on rules not controlled by the president that can go much beyond the basic requirements of nationality and age. Among the 18 constitutions analyzed in this study, 13 have no restrictions on the eligibility for ministerial position—such as Peru, Chile, Costa Rica and Venezuela. Nevertheless, in five countries—Bolivia, Dominican Republic, Ecuador, Honduras and Nicaragua—there are significant restrictions on the choices available for the president.

The absence or presence of the requirement for ministerial countersignature of presidential decisions and actions is also a factor that varies between countries. The number of countries in which presidents can act freely without the need for formal acquiescence of the ministers to his/her actions is rather small—among them we can cite Dominican Republic, Ecuador, Panama and Venezuela. Thus, in 14 countries—including Ar-
gentina, Chile, Honduras, Paraguay and Uruguay—presidential actions need the countersignature by the ministers in order to be considered legal and valid.

Lastly, when we analyze in which constitutions the president has, within the executive branch, the prerogative to initiate legislation, we found a significant variation. Nearly half of the constitutions analyzed in this study empowers the president the prerogative to initiate laws. The other half provides either co-authoring capabilities to ministers to propose bills, or even the autonomous power to legislate. If on one hand presidents of Brazil, Mexico and Venezuela are actors with exclusive power to legislate within the executive branch, on the other hand the Argentine, Dominican and Uruguayan presidents do not have this prerogative. In these last three cases, the ministers have legislative powers ensured by the constitution.

5 CONCLUSIONS

According to Lijphart’s argument (1992), supported by Sartori (1997) and by the consolidated literature on presidential systems, by centralizing in the presidency the responsibilities to compose and administrate the government, presidential constitutions would make ministers submissive to the presidents. In other words, the executive decision-making process would be seen as a vertical process dominated by the president. However, as we revealed in this study, this argument lacks consistency when empirically confronted. There are significant costs in the presidential acts of selecting, removing and replacing ministers, and its costs can vary depending on the rules and contexts that empowers the chief executive and his/her ministers. In this research, five of these rules were considered: cabinet removal, cabinet selection, eligibility of ministers, countersignature of ministers, and legislative powers of ministers.

Our analysis revealed significant variation of presidential dominance over cabinets in Latin American presidential constitutions. We inferred at least three clear standards: Countries that have 1. low, 2. average, and 3. high verticalization in their executive decision-making process. Moreover, according to our index, regarding the ex-
ecutive powers of the president vis-a-vis cabinet ministers, we revealed variance across countries, and also within countries. In sum, regarding the decision-making process, presidential systems are not necessarily vertical, and presidential powers over ministers are not necessarily unrestricted or unbounded.

Next steps of this research include analyzing in more detail how each of the rules that compose our index works, and increasing the number of countries analyzed and their respective constitutions. Thus, we will be able to increase the number of our observations, but also capture possible differences between presidential, parliamentary and hybrid constitutions associated with constitutional delegation and decision-making processes.
REFERENCES


