

Law and Business Review of the Americas

Volume 16 | Number 2

Article 8

2010

Honduras: A Democracy Gone Awry the Forceful Ouster of a President

Alexander S. Farr

Follow this and additional works at: <https://scholar.smu.edu/lbra>

Recommended Citation

Alexander S. Farr, *Honduras: A Democracy Gone Awry the Forceful Ouster of a President*, 16 LAW & BUS. REV. AM. 311 (2010)
<https://scholar.smu.edu/lbra/vol16/iss2/8>

This Comment and Case Note is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Law and Business Review of the Americas by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

HONDURAS: A DEMOCRACY GONE AWRY THE FORCEFUL OUSTER OF A PRESIDENT

Alexander S. Farr

I. OVERVIEW

THE scene: the White House, in the dead of night; 200 military soldiers rush up the front lawn to the entrance, break down the door, disable the secret service, drag President Obama out of bed into a waiting vehicle, rush him off to the nearest airbase, and dump him unceremoniously on a plane to Mexico. While some U.S. citizens might rejoice at such events, not one could claim them to be democratic exercises of due process—not even if the Supreme Court had authorized it. But this is effectively the exact fate that befell President Manuel Zelaya of the Honduras on June 28, 2009, when he was dragged out of bed and jetted off to Costa Rica.¹

The military removal of Mr. Zelaya was the first coup in Latin America since the Cold War² and drew much international attention and media coverage as a result. Mr. Zelaya instigated the drastic reaction when he called for an referendum (traditionally a power left solely to the Honduran Congress under the country's constitution³) to include a consultative poll question on the November 2009 election ballots as to whether the Honduran people wanted to call a constituent assembly.⁴ Mr. Zelaya's political opponents feared he was imitating Venezuela's Hugo Chavez by calling for a constitutional reform that would allow him to run for another term in office,⁵ a result strictly prohibited by the current Honduran constitution.⁶ Mr. Zelaya's actions alienated him from the Congress, mil-

-
1. Editorial, *Booted Out: A Coup in Honduras Brings an Unwelcome old Habit Back to Latin America*, *ECONOMIST*, June 29, 2009, available at http://www.economist.com/world/americas/PrinterFriendly.cfm?story_id=13936693.
 2. Editorial, *Honduras Coup: Fidel Castro Says it Was 'a Suicidal Error'*, *DAILY TELEGRAPH*, June 29, 2009, available at <http://www.telegraph.co.uk/news/worldnews/centralamericaandthecaribbean/honduras/5683705/Honduras-coup-Fidel-Castro-says-it-was-a-suicidal-error.html>.
 3. Editorial, *Defying the Outside World*, *ECONOMIST*, July 2, 2009, available at http://www.economist.com/world/americas/PrinterFriendly.cfm?story_id=13952942.
 4. *Booted Out*, *supra* note 1.
 5. *Id.*
 6. See CONSTITUCION DE LA REPUBLICA DE HONDURAS 1982 art. 239, available at <http://pdba.georgetown.edu/Constitutions/Honduras/hond82.html>.

itary, and Supreme Court,⁷ especially after he attempted to remove the head of the armed forces, Romeo Vásquez Velázquez, for refusing to comply with his orders to distribute the contested ballot papers.⁸ Mr. Zelaya took matters into his own hands by leading a group of supporters to collect the confiscated ballot papers and distribute them himself;⁹ this was effectively the last straw for his opposition within the government.

After the coup, the Honduran government installed Mr. Roberto Micheletti, head of the Honduran Congress, as the interim president under a “lawful ‘constitutional succession.’”¹⁰ During his brief time in office:

[N]o country. . . recognized the de facto government of Mr. Micheletti. President Obama and other leaders in the hemisphere. . . insisted that Mr. Zelaya be returned to office, contending that he was removed in a coup. The United States, the European Union, the International Monetary Fund, and the World Bank. . . all suspended aid to Honduras in protest.¹¹

Despite international condemnation, Mr. Micheletti refused to sign the San Jose Accord, a treaty that would have permitted Mr. Zelaya to return to the presidency to serve out the remainder of his term until the November 2009 elections¹² and called Mr. Zelaya’s removal a legal act.¹³ But the Honduran government suffered economically for its refusal to negotiate: the United States suspended \$30 million in direct aid to Honduras,¹⁴ the Organization of American States (OAS) expelled Honduras and suspended aid,¹⁵ and the UN condemned the coup.¹⁶ Furthermore, “without OAS membership, Honduras faces trade sanctions and the loss of hundreds of millions of dollars in subsidized oil, aid and loans.”¹⁷ Mr. Micheletti remained steadfast throughout his few months as acting presi-

7. Kim Ghattas, *U.S. Treads Careful Path on Honduras*, BBC NEWS, June 30, 2009, available at <http://news.bbc.co.uk/go/pr/fr/-/2/hi/americas/8127772.stm>.

8. *Booted Out*, *supra* note 1.

9. *Id.*

10. Editorial, *Honduras Court Shuns Zelaya Deal*, BBC NEWS, Aug. 23, 2009, available at <http://news.bbc.co.uk/go/pr/fr/-/2/hi/americas/8217393.stm>.

11. Elisabeth Malkin, *Ousted Leader Returns to Honduras*, N.Y. TIMES, Sept. 22, 2009, available at http://www.nytimes.com/2009/09/22/world/americas/22honduras.html?_r=1&emc=eta1.

12. Marc Lacey, *New Plan to End Honduran Standoff Resembles Failed Ones of Past*, N.Y. TIMES, Aug. 28, 2009, available at <http://www.nytimes.com/2009/08/28/world/americas/28honduras.html>.

13. Malkin, *supra* note 11.

14. Ginger Thompson, *U.S. Suspends \$30 Million to Honduras*, N.Y. TIMES, Sept. 4, 2009, available at http://www.nytimes.com/2009/09/04/world/americas/04honduras.html?_r=1.

15. Editorial, *Time on Whose Side?*, ECONOMIST, July 30, 2009, available at http://www.economist.com/world/americas/PrinterFriendly.cfm?story_id=14140333.

16. Ghattas, *supra* note 7.

17. Armando Doronila, *Coup Comeback*, PHILIPPINE DAILY INQUIRER, July 8, 2009, available at <http://opinion.inquirer.net/inquireropinion/columns/view/20090708-214399/Coup-comeback>.

dent, until the inauguration of Porfirio Lobo in early 2010.¹⁸ When Mr. Zelaya attempted to return to the Honduran capital of Tegucigalpa by taking refuge in the Brazilian Embassy on September 22nd, Mr. Micheletti said that, “A court is ready to proceed against him legally, and a jail is also ready.”¹⁹

II. THE CONSTITUTIONAL AND DEMOCRATIC ISSUES IN HONDURAS

While a number of constitutional rewrites have recently passed in other Latin American nations, this is the first situation to result in a forcible removal of the executive.²⁰ The constitutionality of Mr. Zelaya’s actions depends on whether he was actually advancing a referendum or merely conducting “a non-binding survey” as one state department official put it.²¹ Only the Honduran Congress has the power to approve a national referendum calling for a constituent assembly to rewrite the constitution.²² The Honduran Congress and Supreme Court clearly interpreted Mr. Zelaya’s actions as those of a prohibited nature because the Attorney General filed criminal charges that the Supreme Court then certified.²³ Supreme Court Justice Rosalinda Cruz said the removal was not a coup because the military was acting under court orders that were the result of a unanimous decision by the fifteen justices on the court.²⁴ The court’s official statement was that “[T]he armed forces, in charge of supporting the constitution, acted to defend the state of law and have been forced to apply legal dispositions against those who have expressed themselves publicly and acted against the dispositions of the basic law.”²⁵

Even if Mr. Zelaya’s arrest was legal, many constitutional lawyers have since argued that “the army violated the rule of law by flying him out of the country, instead of allowing him a fair trial in Honduras.”²⁶ But Justice Cruz said the military’s decision to send Mr. Zelaya out of the country was a safety measure to prevent the spread of violence and riots that

18. José Manuel Zelaya, N.Y. TIMES, http://topics.nytimes.com/topics/reference/times-topics/people/z/jose_manuel_zelaya/index.html (last visited Mar. 16, 2010).

19. Malkin, *supra* note 11.

20. Editorial, *Latin America: Coups and Constitutions*, BBC NEWS, June 30, 2009, available at <http://news.bbc.co.uk/go/pr/fr/-/2/hi/americas/8126351.stm>.

21. Ghattas, *supra* note 7.

22. Mary Anastasia O’Grady, *Honduras Defends Its Democracy*, WALL ST. J., June 29, 2009, at A11, available at <http://online.wsj.com/article/SB124623220955866301.html>.

23. Frances Robles, *Coup in Honduras: In Honduran Debate over Coup, Lines Between Rich and Poor Never So Stark*, MIAMI HERALD, July 5, 2009, at A1.

24. Joshua Goodman & Blake Schmidt, *Honduras Supreme Court Judge Defends President Ouster*, BLOOMBERG, July 1, 2009, available at <http://www.bloomberg.com/apps/news?pid=20601086&sid=axGENUiy9yKs#>.

25. Jeremy McDermott, *Honduras Supreme Court ‘Ordered Army Coup’*, DAILY TELEGRAPH, Jun. 28, 2009, available at <http://www.telegraph.co.uk/news/worldnews/centralamericaandthecaribbean/honduras/5677026/Honduras-supreme-court-ordered-army-coup.html>.

26. Andres Oppenheimer, *Partisan Split on Honduras Can be Costly*, BRADENTON HERALD, July 25, 2009.

would result had he been detained for trial.²⁷

The Honduran government found itself in a predicament in the months following Mr. Zelaya's ousting: if it allowed him to return, it would essentially signal "approval of his unconstitutional acts; [but] if he [was] not allowed to return, then [it would approve] the unacceptable behavior of forcibly exiling a leader."²⁸ Rafael Lopez, an advisor for the International Foundation for Electoral Systems, condemned the latter message asserting that, "'No country on earth' can legally force an elected official into exile without a formal proceeding."²⁹ Furthermore, Jorge Heine of the Balsillie School of International Affairs perceived the situation as posing a greater systematic threat to the region, stating:

[T]he true significance of the coup, in one of the poorest and weakest countries in the hemisphere . . . lies in the test it poses to the inter-American system. False If the latter cannot succeed in restoring democracy in Honduras, it cannot do so anywhere. The message would thus be crystal clear: coup-makers can act with impunity.³⁰

Hence, allowing the coup to stand without recourse could propagate similar fates in weaker democratic progressive governments of the region.³¹

III. DEMOCRACY IN LATIN AMERICA

A. GENERAL PRINCIPLES AND ISSUES

In assessing the relative democratic principles and constitutional provisions behind the Honduran removal of former-President Zelaya, it would be inappropriate to look for a comparison with the "model democracy" of the United States. This is because Honduras and other Latin American nations have a drastically different history and socio-economic environment, which has led to the evolution of a democratic system targeted at mollifying specific regional issues and advancing principles favorable to members of that society. Furthermore:

[d]emocracy is not an all-or-nothing proposition. . .[it ranges] from purely façade democracies. . .to formal or procedural democracies. . .[to] substantive democracies, where you find not merely forms and procedures but also rights, a free press, effective legislative and judicial institutions, military subordination to legitimate, elected civilian authority. . .all the things, in short, that serve as a check on the abuse of power and give meaning to the concept of popular sover-

27. Goodman & Schmidt, *supra* note 24.

28. Mel Martinez, *Latin America: Foundations of Democracy Being Dismantled*, MIAMI HERALD, July 13, 2009.

29. Goodman & Schmidt, *supra* note 24.

30. Olivia Ward, *Raising the Stakes in Honduras*, TORONTO STAR, Sept. 6, 2009, available at <http://www.torontoforumoncuba.tyo.ca/?p=3754>.

31. Seumas Milne, *Dangers in U.S. Ambivalence to Ditched Honduran Democracy*, IRISH TIMES, Aug. 14, 2009, available at <http://www.irishtimes.com/newspaper/opinion/2009/0814/1224252546730.html>.

eignty or self government.³²

But Latin American democracies are facing a crisis because “[j]udicial systems are often weak [or] corrupt and citizen security is deteriorating in many nations.”³³ This is a serious issue because:

[i]n order to prevent governmental abuse and arbitrary action and make the legal system more predictable, nations implementing reforms require a judicial institution that is strong, independent, ethical, and effective. To achieve this goal, there is a need for a judiciary that can balance the power of the political branches while avoiding arbitrariness and tyranny.³⁴

The Inter-American Democratic Charter, advanced by the OAS as a response to democratic threats, established a framework for guiding democracies to protect the right of citizens to live in a functioning democratic system based on the rule of law.³⁵ The rule of law is “a legal fiction framing a set of norms, values, and legal traditions defining a code of conduct and boundaries necessary for the maintenance of a civil society and responsive government.”³⁶ The rule of law includes an application of formal or procedural justice, which requires the application of fair, consistent, and predictable rules by the legal system.³⁷

Looking at democracy from a procedural perspective, it is clear that some of the key conditions of an effective procedural democracy are an “adherence to constitutional rules” and “structures that ensure that the executive [(president)] can be held to account for decisions he or she has made.”³⁸ But a strong independent judiciary is a critical component for upholding such policies, and unfortunately “many of Latin America’s judicial systems are neither independent nor effective, often fail to ensure citizens enjoy their constitutional rights and suffer from political interference and corruption.”³⁹ While a strong judiciary is essential for checking the executive and legislative branches, the inflexibility of legal codes in Latin America results in “rulings. . .resistant to compromise as courts and judges apply the law rather than interpret it.”⁴⁰

B. THE ISSUE OF MILITARY COUPS IN LATIN AMERICA

Historically, Latin America has experienced more than its fair share of military coups. In many instances, military generals would simply topple

32. Donald E. Schulz, *The Growing Threat to Democracy in Latin America*, 31 *PARAMETERS* 1, June 30, 2001, available at http://findarticles.com/p/articles/mi_m0IBR/is_1_31/ai_73000542/?tag=content;coll.

33. *LATIN AMERICAN DEMOCRACY: EMERGING REALITY OR ENDANGERED SPECIES?* 2 (Richard L. Millet et al. eds., 2009).

34. *Id.* at 91.

35. *Id.* at 80.

36. *Id.* at 85.

37. *Id.* at 86.

38. GAVIN O'TOOLE, *POLITICS IN LATIN AMERICA* 104-105 (2007).

39. *Id.* at 136.

40. *Id.* at 189.

the legally elected president to prevent policies they did not like and would run the politics of the nation based on what was most favorable to the military.⁴¹ Latin American militaries would often serve “as ‘guarantors’ of the institutional order, and . . . often employed constitutional arguments to legitimize non-democratic forms of government.”⁴² While pure military coups have fallen off in recent years, the legislature may still enlist the help of the military to achieve its ends in a manner that is questionable from a democratic perspective. Such legislative coups usually involve two components: “dubious congressional procedures and active military participation—even military initiative False”⁴³ While the OAS amended its charter to suspend member countries for overthrowing democratic governments by force in an effort to protect fledgling democracies,⁴⁴ it is clear such policies have had little impact on the actions in Honduras.

C. THE ISSUE OF CONTINUISMO IN LATIN AMERICA

Latin American political history is rife with the recurrent theme of “continuismo” in which presidents nearing the end of their term in office amend or “reinterpret” the constitution of their country to allow themselves to run for additional terms—many times resulting in the emergence of an authoritarian regime.⁴⁵ This is an issue for many Latin American democracies, because it “gives the impression that constitutions are being manipulated so that certain presidents can stay in power indefinitely.”⁴⁶ Presidents who engage in tactics to extend their tenure are known as “caudillos” or “strongmen” due to their authoritarian position,⁴⁷ and even many “popular. . . presidents. . . have. . . been tempted to extend their terms through constitutional reforms or challenges.”⁴⁸ When the judiciary fails to legally challenge and prevent the exercise of such tactics, democracy and judicial independence suffer as a result.⁴⁹

In many cases, the constitutional challenges and reforms are the result of a president exercising his unilateral powers independent of the legislature including “decree powers, the ability to interpret and issue regulations in order to implement a general law. . . and the right to initiate bills and referendums.”⁵⁰ In an attempt to curb abuse of unilateral powers, many legislatures limit the president, such as in Honduras where referen-

41. *LATIN AMERICA’S STRUGGLE FOR DEMOCRACY* 4 (Larry Diamond et al. eds., 2008).

42. O’Toole, *supra* note 38, at 141.

43. Anibal Perez-Linan, *Presidential Impeachment and the New Political Instability in Latin America* 51 (Margaret Levi et al. eds., 2007).

44. *Id.* at 186.

45. Schulz, *supra* note 32.

46. *Id.*

47. Jose S. Sorzano, *Honduras is Right About Zelaya*, 65(24) *HUM. EVENTS*, July 13, 2009, available at <http://www.humanevents.com/article.php?id=32589>.

48. O’TOOLE, *supra* note 38, at 125.

49. *Id.*

50. *Id.* at 159.

dums require congressional approval. Ironically, it is when the legislatures try to weaken the powers of the executive that presidents feel threatened and employ unilateral powers to defend their position and policies.⁵¹

D. NO REELECTION: A CONSTITUTIONAL SAFEGUARD

As democracy began to reemerge in Latin America in the 1980s, in an effort to combat the historical issues of military dictatorship and authoritarian rule, legislatures often adopted the principle of “no reelection” with the intention of limiting “the advantages of presidential incumbency in countries where other forms of political accountability were weak.”⁵² The severity of the “no reelection” concept varies because “some countries allow no immediate reelection, some allow immediate reelection but limit the presidency to two terms, and some allow candidates to stand again after a hiatus of one or two terms.”⁵³ Honduras seems to embrace the strictest form by prohibiting reelection.⁵⁴ Despite criticism of the principle of no reelection centering on the fact that true democracies “demand that voters be allowed to vote for whomever they choose” the concept has prevailed in the region because it “does seem to keep power limited in time.”⁵⁵ In Honduras, Mr. Zelaya’s liberal push to seek “political and social transformation” against the conservative Honduran legislature followed the traditional regional “pattern of an incumbent president calling for a new constitution to strengthen the power of the presidency and permit a second term (or more).”⁵⁶

E. THE IMPEACHMENT POWER

In an effort to combat the overbearing executive and the trend of political instability, most government systems in Latin America have embraced the constitutional procedure of impeachment to remove the president from office.⁵⁷ And “an impeachment is intended not to be a criminal trial but a political procedure allowing the Senate to remove the president from office in response to accusations of treason, bribery, or other ‘high crimes and misdemeanors.’”⁵⁸

Latin American nations are exercising the process of impeachment with increasing frequency, which suggests that either “impeachments have simply displaced coups as the new model of regime change,” or alternatively, that in a region traditionally unconcerned with the exercise of

51. *Id.* at 178.

52. Editorial, *Honduras Crisis Reflects Regional Battle*, BBC NEWS, July 21, 2009, available at <http://news.bbc.co.uk/go/pr/tr/-/2/hi/americas/8159932.stm>.

53. O’Toole, *supra* note 38, at 158.

54. See CONSTITUCION, *supra* note 6, art. 239.

55. PRESIDENTIAL POWER IN LATIN AMERICAN POLITICS 23-24 (Thomas V. DiBacco ed., 1977).

56. *Honduras Crisis Reflects Regional Battle*, *supra* note 52.

57. Perez-Linan, *supra* note 43, at 2-3.

58. *Id.* at 6-7.

democratic due process “at the very least problematic presidents are called to heel and replaced through institutional rather than extra-institutional means.”⁵⁹ When presidential crises erupt and threaten political stability and democracy,⁶⁰ “in many cases a coup appears to be the only means of getting rid of an incompetent or unpopular president.”⁶¹

Loosely defined, a “presidential crisis” usually occurs where “the chief executive threatens to dissolve Congress or supports a constitutional reform having that purpose, attempts a military coup against Congress, or ‘suspends’ the term of the legislature until the next election.”⁶² Many legislatures concerned with combating such crises embrace some form of constitutional removal power including: “[a] conventional impeachment. . . ; an alternative model in which Congress authorizes a trial performed by the Supreme Court; a declaration of mental, physical, or moral incapacity of the chief executive; and even some rare quasi-parliamentary procedures.”⁶³

There is flexibility as to the specific method a nation may adopt so long as it is prescribed constitutionally because “the removal of the chief executive within the limits of constitutional law preserves the integrity of the regime.”⁶⁴ One popular model, similar to that employed in Honduras, is the judicial model in which the president is tried by the judiciary rather than legislature.⁶⁵ This model specifies, “the judiciary cannot rule on the case against the president unless Congress authorizes the trial” and that “the trial must be conducted by the Supreme Court and not by an ordinary court.”⁶⁶ This emphasizes the fact that “although Congress is not always the only player involved in the decision to remove the president from office, legislators *always* play a critical role in authorizing the trial.”⁶⁷

IV. REGIONAL INSTANCES OF PRESIDENTIAL REMOVAL

Unlike the United States, where impeachment has been employed only a handful of times, in Latin America beginning in the early 1990s congressional impeachment proceedings began to gain traction as a favored method for removing corrupt or economically failed presidencies, starting with Fernando Collor de Mello in Brazil in 1992. Collor assumed the presidency in 1990 following the departure of Jose Sarney, who left an office mired in corruption and mismanagement.⁶⁸ But it was only a short

59. *LATIN AMERICAN DEMOCRACY*, *supra* note 33, at 113.

60. O’Toole, *supra* note 38, at 161.

61. *PRESIDENTIALISM AND DEMOCRACY IN LATIN AMERICA* 30 (Scott Mainwaring & Matthew Soberg Shugart eds., 1997).

62. Perez-Linan, *supra* note 43, at 44.

63. *Id.* at 58.

64. *Id.*

65. *Id.* at 135.

66. *Id.*

67. *Id.* at 139.

68. *LATIN AMERICA, ITS PROBLEMS AND ITS PROMISE: A MULTIDISCIPLINARY INTRODUCTION* 486 (Jan Knippers Black ed., 1984) (2005).

time until Collor faced his own charges of corruption and scandal after executing failed economic policies and a congressional investigation led to the discovery of Collor's offshore bank accounts containing millions of dollars of corruption money.⁶⁹ He was quickly impeached and suspended by the Chamber of Deputies, and resigned three months later when the Senate authorized his prosecution.⁷⁰

A year later in Venezuela, President Carlos Andres Perez was also impeached on corruption charges amidst a major economic crisis.⁷¹ Then, in 1996 in Columbia, President Ernesto Samper, accused of receiving campaign funds from drug cartels, proposed resolving the situation either through a referendum or through early elections.⁷² While his opponents criticized allowing any solutions not embodied in their constitution, Samper was fortunate enough for his party to rally behind him and avoided impeachment when Congress agreed to acquit him of charges.⁷³ The Congress in Ecuador employed a different tactic that same year when it removed President Abdala Bucaram on after charging him with "mental incapacity."⁷⁴ Bucaram had the unfortunate luck of being the president whose party was the minority in Congress and thus unable to combat accusations of corruption and failure in the face of an economic crisis.⁷⁵

Economic issues and political corruption were not the only motivators for impeachment and presidential removal in Latin America. In Paraguay in 1999, President Raul Cubas Grau, shortly after taking office, attempted to pardon the former head of his party, General Lino Oviedo, whom the former president had arrested and charged with sedition.⁷⁶ Unable to pardon Oviedo, Cubas instead commuted his sentence and Oviedo was released soon thereafter.⁷⁷ The Supreme Court, at Congress's direction, determined Cubas had acted unconstitutionally and ordered him to recapture Oviedo or face impeachment.⁷⁸ Following violent riots outside the Congress building calling for Cubas's resignation, and foreseeing defeat in the Senate, he chose to resign.⁷⁹

After being reelected in 1995, Alberto Fujimori of Peru began to seek a constitutional reformation that would allow him to run for another term (as Zelaya was accused of doing prior to his removal).⁸⁰ But Fujimori

69. *Id.* at 487.

70. *Id.*

71. MONA M. LYNE, *THE VOTER'S DILEMMA AND DEMOCRATIC ACCOUNTABILITY: LATIN AMERICA AND BEYOND* 225 (2008).

72. CHECKING EXECUTIVE POWER: PRESIDENTIAL IMPEACHMENT IN COMPARATIVE PERSPECTIVE 72 (Jody C. Baumgartner & Naoko Kada eds., 2003).

73. *Id.* at 73.

74. *LATIN AMERICA'S STRUGGLE FOR DEMOCRACY*, *supra* note 41, at 6.

75. *Id.*

76. *Paraguay* EUROPA WORLD YEAR BOOK 2004, VOL. 2 3368 (Joanne Maher et al. eds., 2004).

77. *Id.* at 3369.

78. *Id.*

79. *Id.*

80. *LATIN AMERICA'S STRUGGLE FOR DEMOCRACY*, *supra* note 41, at 8.

never reached a third term because in 2000, after facing criminal charges and accusations of rigging the vote, he chose to resign rather than suffer impeachment.⁸¹ Most recently, Alfredo Palacio of Ecuador narrowly avoided impeachment in 2005 after taking steps similar to Zelaya in attempting “to call a referendum on re-writing the constitution without going through the legislature.”⁸² The Congress condemned his actions and claimed it would seek impeachment if he continued with his designs.⁸³ These cases exemplify the fact that a president need not go so far as to commit corruption or institute poor economic policies to be removed from office; simply acting contrary to Congress or the Courts could lead to removal.

V. WAS ZELAYA DEMOCRATICALLY REMOVED?

A. THE HONDURAN CONSTITUTION

In 1982, Honduras adopted a new democratic constitution after years of military rule, which included 379 articles, seven of which could not be repealed or amended, including a prohibition on reelection of the president.⁸⁴ While the Honduran Constitution can be amended much like the Constitution of the United States, “no amendment can ever change . . . the rules that limit a president to a single four-year term.”⁸⁵ Aside from limiting reelection, however, the Honduran Constitution does not clearly establish procedures regarding impeachment.⁸⁶ Most Latin American constitutions provide for impeachment “only if the president is alleged to be guilty of serious common crimes, abuses of authority or violations of the constitution or the law.”⁸⁷ The Honduran Constitution is largely “unclear about the impeachment process once charges are brought by a simple majority in the national assembly.”⁸⁸ And as mentioned above, the power for the president to call a referendum is severely limited in Honduras because “the power to convoke a referendum. . . can be. . . used by presidents to apply pressure on legislators to go along with their policy proposals, and to reaffirm their popular mandate and legitimacy.”⁸⁹

B. SUPPORTERS CLAIM THE REMOVAL WAS DEMOCRATIC

Supporters of the action taken by the de facto regime argued that by seeking a public opinion poll, Mr. Zelaya clearly violated the “unchange-

81. *Id.*

82. O'TOOLE, *supra* note 38, at 164.

83. *Id.*

84. Octavio Sanchez, *A 'Coup' in Honduras? Nonsense*, CHRISTIAN SCI. MONITOR, July 2, 2009, available at <http://www.csmonitor.com/2009/0702/p09s03-coop.html>.

85. Miguel A. Estrada, *Ouster of Zelaya Was a Legal Act*, MIAMI HERALD, July 10, 2009.

86. Op-Ed, *Lousy President, Terrible Precedent*, ECONOMIST, July 2, 2009, available at http://www.economist.com/opinion/PrinterFriendly.cfm?story_id=13944740.

87. J. Mark Payne et al., DEMOCRACIES IN DEVELOPMENT: POLITICS AND REFORM IN LATIN AMERICA 100 (2007).

88. *Id.* at 101.

89. *Id.* at 92.

able articles of the Constitution that deal with the prohibition of re-electing a president and of extending his term.”⁹⁰ According to Article 239 of the Honduran Constitution:

[N]o citizen who has already served as head of the Executive Branch can be President or Vice-President. Whoever violates this law or *proposes its reform* [emphasis added], as well as those that support such violation directly or indirectly, will *immediately* cease in their functions and will be unable to hold any public office for a period of 10 years.⁹¹

Under a strict, narrow reading and application of the constitution, by simply *proposing* reform of the constitutional “no reelection” provision, Mr. Zelaya automatically removed himself from office without requiring any further proceedings. The fact that the military took action in forcing him out of office was merely part of its duties “under Article 272. . .[to] enforce compliance with the Constitution, particularly with respect to presidential succession.”⁹² Furthermore, supporters have argued that under their understanding and interpretation of constitutional limits, if they did not act to remove Mr. Zelaya, “Article 375 would hold them legally liable for failing to oppose Zelaya’s crimes.”⁹³

C. THE COUP IS A THREAT TO TRUE DEMOCRACY IN HONDURAS

While the words of the Honduran Constitution are clear, the lack of procedure surrounding execution of Article 239 prohibitions is troubling, especially considering the general provisions for and successful use of presidential impeachment in many other countries of the region. Armando Sarmiento, former head of the tax service, commented on Mr. Zelaya’s removal stating, “Every citizen has the right to a fair trial and to defend themselves but he was not given that right. He was just thrown out of his homeland.”⁹⁴ Opponents of the actions in Honduras have argued that Mr. Zelaya did not even propose a true referendum, which would have been prohibited, but merely a survey of public opinion on whether a referendum should be proposed.⁹⁵ Assuming that Mr. Zelaya did in fact violate the constitution, “the Congress should have followed legal procedures to impeach him, rather than for the army pulling him out

90. Octavio Sanchez, *supra* note 84.

91. *Id.*; CONSTITUCION, *supra* note 6, art. 239.

92. Miguel A. Estrada, *supra* note 85.

93. Editorial, *Cuba Si, Honduras No? What the White House isn't doing to bolster democracy in Latin America*, THE GOV'T MONITOR, Sept. 13, 2009, available at http://thegovmonitor.com/world_news/usa/cuba-si-honduras-no-what-the-white-house-isnt-doing-to-bolster-democracy-in-latin-america-4770.html; CONSTITUCION, *supra* note 6, art. 375.

94. Philip Sherwell, *In Honduras coup, the truth is as strange as any 'banana republic' fiction*, DAILY TELEGRAPH, July 5, 2009, available at <http://www.telegraph.co.uk/news/worldnews/centralamericaandthecaribbean/honduras/5743512/In-Honduras-coup-the-truth-is-as-strange-as-any-banana-republic-fiction.html>.

95. Jules Siegel, *Honduras Supreme Court: It Was "Common Knowledge" That Zelaya Was No Longer President*, THE HUFFINGTON POST, July 13, 2009, available at http://www.huffingtonpost.com/jules-siegel/honduras-supreme-court-it_b_230621.html.

of bed and spiriting him out of the country in the dead of night.”⁹⁶

The Supreme Court’s narrow interpretation of the constitution, and claim that Mr. Zelaya automatically lost his status as president, effectively denied him the privileges of a high official “under Article 416 of the Honduran penal code, [under which] he would have been arraigned, tried and sentenced by magistrates drawn from the court itself, with ample protection for his various special legal rights.”⁹⁷ By failing to exercise a democratic procedure for removing Mr. Zelaya, the de facto Honduran government’s actions constituted an “insult to decades of Latin America’s hard-won, historic struggle with democracy.”⁹⁸ Furthermore, “[i]n a society based on Rule of Law, there are various mechanisms available for an opposition to make claims against a sitting administration”⁹⁹ including the process of impeachment, as discussed in detail above, which would have been an obvious option in the Honduran situation.

VI. CONCLUSION

Democracy in Latin America has drastically improved over the past three decades despite fitful controversies and ideological shifts. While far from perfect, regional constitutions and governments organized around supporting the principles of the rule of law and dedication to procedures promises that democracy will continue to flourish and drive out corruption and manipulation. But the recent events in Honduras surrounding the unceremonious removal of President Zelaya are a disturbing setback and signal that, “despite moves to greater levels of democracy in the hemisphere, many of the freely elected governments continue to face serious threats from forces which promote their removal by non-constitutional means.”¹⁰⁰ While the Honduran Constitution makes clear that Mr. Zelaya’s actions may have been prohibited and justified his removal from office, the lack of due process afforded the ousted president is a troubling sign of a weak and inflexible judiciary propped up by a shortsighted legislature. Regardless of the fact that the Honduran government has recently moved on with the inauguration of a new president, the people might still want to press the legislature to preserve their rights and the future of democracy in the country by amending the constitution regarding procedures for presidential removal. If the highest executive in the land cannot receive fair procedures and rights under the legal system, what guarantees can the common man expect?

96. Dr. Odeen Ishmael, *Honduras Coup Reveals Fragility of Latin American Democracy*, July 24, 2009, available at <http://www.venezuelanalysis.com/analysis/4656>.

97. Siegel, *supra* note 95.

98. Howard L. Berman, *Honduras: Make it Official—It’s a Coup*, L.A. TIMES, Sept. 3, 2009.

99. Bertha Olivia, *Honduras: No Justification for Coup*, MIAMI HERALD, July 15, 2009.

100. Ishmael, *supra* note 96.