



USFQ LAW REVIEW

VOLUMEN VII • SEPTIEMBRE 2020



Impeachment in the United States and Muerte Cruzada in Ecuador: Analysis on the Legal Effectiveness of Both Figures

El impeachment en los Estados Unidos y la muerte cruzada en Ecuador: análisis sobre la eficacia legal de ambas figuras

MANUELA CÁRDENAS CIFUENTES*

Recibido / Received: 22/02/2020

Aceptado / Accepted: 23/04/2020

DOI: <https://doi.org/10.18272/ulr.v7i1.1697>

Citación:

Cárdenas Cifuentes, M. «Impeachment in the United States and Muerte Cruzada in Ecuador: Analysis on the Legal Effectiveness of Both Figures». *USFQ Law Review*, Vol. 7, n.º 1, septiembre de 2020, pp. 287-305, doi:10.18272/ulr.v7i1.1697.

* Universidad San Francisco de Quito USFQ, Law student, Post Office Box 17-1200-841, Quito 170901, Pichincha, Ecuador. E-mail: manucardenas818@gmail.com; mcardenas3@estud.usfq.edu.ec.
ORCID iD: <https://orcid.org/0000-0002-8696-8412>

ABSTRACT

The figure of impeachment in the United States and that of *muerte cruzada* in Ecuador are two political figures created with a double purpose. The first, is to demonstrate that there is a clear division of powers in the governmental sphere; and second, to serve as a checks and balances mechanism that controls the actions of the public power, especially those of the president of the nation. As such, these figures have an important role because they seek to maintain democracy and political, social and economic stability of the countries involved. The problem that arises when trying to put these tools into practice is that they clash with the power of the strongest political parties. Thus, its effectiveness is put at risk and the doubt of its true usefulness arises. This article will focus on analyzing how effective these figures have been to remove presidents from office. To achieve that end, research will be conducted, first of all, to define both figures and find a useful meaning in their existence; later, it will analyze if there are cases in which these political figures have been tried to be applied and if they succeeded or failed and, finally, determine if the figures in these countries are truly political tools to control public power, or if they are only rhetorical figures that have no practical use since there are barriers to their real and effective application.

KEYWORDS

Impeachment; *muerte cruzada*; checks and balances; division of powers; president of the nation; political tools and mechanisms; legitimate democracies

RESUMEN

El impeachment propio de Estados Unidos y la muerte cruzada de Ecuador son dos figuras políticas creadas con un doble fin: primero, demostrar que existe una división clara de poderes en el ámbito gubernamental; y segundo, servir como un mecanismo de checks and balances que controle las actuaciones del poder público, en especial las del presidente de la nación. Como tales, estas figuras tienen un papel importante pues buscan mantener la democracia y estabilidad política, social y económica de los países involucrados. El problema que se presenta al tratar de poner en práctica estas herramientas es que chocan con el poder de los partidos políticos más fuertes. Es así que su efectividad se pone en riesgo y surge la duda de su verdadera utilidad. El presente artículo se enfocará en analizar cuán efectivas han sido estas figuras para remover del cargo a presidentes. Para alcanzar ese fin, buscará en primer lugar, definir ambas figuras y encontrarle un sentido útil a su existencia; posteriormente, analizará si existen casos en los que se ha intentado aplicar estas figuras políticas y si es que estas tuvieron éxito o fracasaron y, finalmente, determinar si las figuras en estos países son verdaderamente herramientas políticas de control del poder público, o si son solamente figuras retóricas que no tienen utilidad práctica puesto que existen barreras para su real y efectiva aplicación.

PALABRAS CLAVE

Impeachment; *muerte cruzada*; checks and balances; *división de poderes*; *presidente de la nación*; *herramientas y mecanismos políticos*; *democracias legítimas*

1. INTRODUCTION

The United States and Ecuador have very different legal, social, economic, and political realities. Aside from being located in two separate continents, each with distinctive features, its history and evolution through time has been decisive in order to establish such marked differences. In order to understand why both countries diverge so much, it is imperative to determine the system each one follows or complies to. The United States has a common law system inherited by British influence, that as such, is comprised by many defining characteristics such as: absence of a homogenous codified written Constitution; binding nature of judicial decisions; states' autonomy to create their own legislation; importance of custom in political, governmental, and legal decisions; fewer or less government intervention through the application of previous, written laws¹. Ecuador, on the other hand, lives under a civil or continental law system based on Roman law that is completely opposite to the ideals and features of common law. Civil law systems rely on written laws for basically every area of law, including civil, criminal, procedural, administrative, tax, and many others, as long as they strictly oblige to the supremacy of the Constitution; furthermore, judicial decisions are rarely binding, allowing contradictions between inferior and superior Courts².

Having analyzed the difference in legal systems between both countries, one would expect or assume that finding similarities between them might be a complicated task. However, they do share a similar traits when it comes to exercise check and balances alongside separation of powers in order to control and/or question the political power, functions, and duties exercised by public authorities. Especially and in particular, when it comes to the major and most important figure of a State in the cases of a federation such as the United States and a republic like Ecuador: the President of the Nation. This similar trait or element shared in both legal systems is called impeachment in the case of the United States, and *muerte cruzada* in the case of Ecuador.

The following work, apart from contextualizing and comparing both legal figures; will prove that despite the differences in legal and political systems, two countries can have similar goals when it comes to the exercise of a legitimate

¹ Torr , Abelardo. *Introducci n al Derecho*. 14^a ed. Buenos Aires: Abeledo Perrot, 2003, pp. 400-407.

² World Bank Group. *Key features of Common Law or Civil Law systems*, 2016. <https://ppp.worldbank.org/public-private-partnership/legislation-regulation/framework-assessment/legal-systems/common-vs-civil-law> (accessed: 11/17/2019).

democracy. But most importantly, aside from the previously mentioned aspects, this article will seek to determine if these figures are truly effective when exercising checks and balances and division of powers because there is one big problem surrounding them: do they actually work in favor of democracy and political stability, or are they rhetorical tools that seek to satisfy the interests of the strongest political party? In order to try to answer this question, aside from contextualizing both legal figures according to each country's political system, research will also aim to analyze the attempts both countries have had throughout the years to apply these figures. In the end, the answer may turn disappointing to the reader considering the noble nature and contextualization of both figures. However, it will prove that the problem does not rely on the legal figures created in a political system; it all comes to the political actors and authorities that put into practice those figures, as well as their intentions or motives.

2. GLANCING AT CONSTITUTIONS

2.1. THE UNITED STATES CONSTITUTION

“We the People”³ is the first phrase with which the US Constitution begins its normative text. That fragment marks the whole spirit and essence of the United States as a country: the fact that the governments’ true and ultimate goal is to serve and work for its citizens. With pride, the United States can affirm that they are the only country in the world that has the written federal Constitution with longer lifespan in the world: to be precise 232 years since it was written, and 230 years since the country began living under its rules and legal provisions. A distinction should be made at this point in order to largely appreciate the longevity of the United States Constitution. The US system is divided into federal and state, and as such, there is a Constitution for the federal level, and several Constitutions for each state. Since states legislation within the United States have changed greatly throughout history, it is to be expected that each state Constitution has been modified several times. For the sake of argument, the Constitution that plays the predominant role as a document with greater lifespan, is the federal Constitution.

The history or path of creation of the US Constitution follows a rising conflict concerning the Articles of Confederation and the limited power vested upon the Congress of Federation. The limited faculties conferred to the Congress, given the fact that with many states involved in every decision-making process, making a unanimous vote regarding a certain topic was very complicated. Hence, the government could not actually govern because basically none

³ Constitution of the United States. Preamble. 1789.

of the decisions were adopted since they required unanimity. This reality led to the necessity of creating an integrated body of rules that reflected everybody's needs and concessions in order to be able to govern and make decisions based on those agreements and considering the vote of the majority. This integrated and unified body of law turned into the United States Constitution; a document that began its writing in 1787, and after 2 years of development, in 1789 was finally applied in day-to-day situations within the United States territory⁴.

The United States Constitution is a clear example of an enduring Constitution that has had a huge lifespan because of its design, and the environment under which it lives and develops every day. A few of the many reasons why this Constitution has endured is because of 2 factors that are considered essential in order to have a long-lasting fundamental legal text: a well-defined system of division of powers granting clear faculties and competences to each power, and finally, a fully functional system of checks and balances in order to work as a legal restraint against any potentially unlawful act⁵. However, despite its enduring character, the US Constitution has not been free of any legal amendments to its original text. In fact, only 2 years after the formal application of the US Constitution, the Bill of Rights was ratified in 1791 with the first 10 amendments to be applied in the constitutional text⁶. Overall, the United States Constitution has had approximately almost 30 amendments to the original text; preserving its initial spirit and essence but changing certain elements in order to go in accordance with modern times and normal evolutionary modifications.

2.2. THE ECUADORIAN CONSTITUTION

In 2008, Ecuador adopted a new Constitution after 10 years of relative stability in terms of legal and constitutional reality. After a short term of political crisis during the government of Lucio Gutierrez between 2006 and 2007, Ecuador decided that it was time to create a new text that would shape and run the lives of all Ecuadorians. This whole idea of creating a new fundamental text was initiated by socialist presidential candidate Rafael Correa, who eventually won the elections in 2007. When he formally began his Presidential career, ruling under the ideals of Socialism of the 21st Century, one of his first decisions was to call Ecuadorian citizens to vote for a new National Assembly specifically created to design the new maximum and ultimate legal body of

⁴ The White House. *The Constitution*.

<https://www.whitehouse.gov/about-the-white-house/the-constitution/> (accessed: 11/26/2019).

⁵ United States Senate. *Constitution of the United States*.

https://www.senate.gov/civics/constitution_item/constitution.htm#preamble (accessed: 11/27/2019).

⁶ Bill of Rights Institute. *Bill of Rights of the United States of America* (1791).

<https://billofrightsinstitute.org/founding-documents/bill-of-rights/> (accessed: 11/28/2019).

the country: The Constitution. After a majoritarian decision of voters, on April 2007, the National Assembly was created, and after a few months, they had a new Constitution approved. Consequentially, after they had a new constitutional text sanctioned by members of the Assembly, a call for referendum was necessary in order to determine if the people approved the new Constitution. Finally, on September 2008 a little more than half of the total voters, approved the 2008 Constitution of the Republic of Ecuador⁷.

Looking back at Ecuador's political and legal realities, it is highly likely to assure that its main legal body, the Constitution, will neither be stable nor long lasting. Ecuador has had, since its beginnings as a country that adopted a republican form of government, more than 15 Constitutions in less than 200 years. To be precise, Ecuador has had 20 Constitutions since 1830⁸. That means that in average, every Constitution has had a lifespan of about 8 years, clearly showing how unstable and malleable Ecuadorian legal, political, social, and economic realities are.

One of the Founding Fathers of the United States, Thomas Jefferson, believed that Constitutions should not last very long because it would mean that new generations are not being represented in the fundamental text. This is why he believed that Constitutions should have a lifespan of maximum 19 years in order to guarantee that the dead not govern the living⁹. Like Elkins et al suggest, Constitutional longevity is not the ideal scenario and it is particularly hard in countries with emerging democracies in Latin America and other regions outside of the United States and Europe. As Elkins et al properly articulate:

[...] constitutional change is a subspecies of institutional change. We assume that Constitutions are bargains among elites that are meant to be enduring. A Constitution will be maintained only if it makes sense to those who live under its dictates, so a crucial quality of any successful constitution is that it be self-enforcing. Our model of endurance also imagines that a political bargain, once adopted, will be stable so long as it is not subject to either endogenous or exogenous shocks, such as financial crisis, armed conflict, or the death of a long-serving leader¹⁰.

This means that a Constitution will have a longer lifespan as long as the institutional character of the country is maintained stable and free of "shocks". This, because when a country is stable institutionally speaking, people agree with their legal bodies and require no mechanism of change. Since Ecuador

7 Benavides Ordoñez, Jorge. *Reforma Constitucional y Límites en la Constitución Ecuatoriana del 2008*. Tesis de Doctorado. Universidad de Sevilla. Sevilla, 2016.

8 Ministerio de Relaciones Exteriores y Movilidad Humana. *Constituciones del Ecuador desde 1830 hasta 2008*. <https://www.cancilleria.gob.ec/constituciones-del-ecuador-desde-1830-hasta-2008/> (accessed: 11/26/2019).

9 Elkins, Zachary; Ginsburg, Tom, and Melton, James. *The Endurance of National Constitutions*. Cambridge: Cambridge University Press, 2009, p. 1.

10 *Id.*, pp. 8-11.

has had many “shocks” over its 189 years of existence as a Republic, it is very hard to have a Constitution that endures for a long time.

3. PROCEDURE AND METHODOLOGY OF IMPEACHMENT ACCORDING TO THE UNITED STATES CONSTITUTION

3.1. LEGAL DEFINITION AND BACKGROUND

Impeachment is a legal figure inside the United States Constitution that has served as an effective mechanism to remove unethical and law-breaker government officials. Article II, Section 4 of the US Constitution dictates: “The President, Vice President and all civil Officers of the United States, shall be removed from office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors”¹¹. The Constitution is clear on who can be subject for impeachment, not just the President, but all officers who hold a position in a government office.

Impeachment was not a legal figure created in the United States. The US, in fact, borrowed this figure from British Law whom, for centuries, had implemented this legal provision in order to remove the King’s Ministers, and later on, to ensure Parliament accountability. In the case of the United States, during the Philadelphia Convention (also known as Constitutional Convention) held in 1787¹², the inclusion of impeachment and its content was discussed mainly between two of the 55 delegates that became the Framers of the Constitution: James Madison and George Mason. Thanks to their input and exchange of ideas, the figure of impeachment has been a relatively useful tool in order to maintain a democratic and lawful American government and political system¹³.

Impeachment is a thorough, non-simple process that involves a series of steps and government institutions in order to follow a legitimate due procedure. The Constitution grants the power to impeach a government officer to two institutions, in the case of this article we refer to the President of the Nation. First, the House of Representatives, and then, the Senate; both of them, together, make the Congress of the United States government. Article I, Section 2 of the United States Constitution prescribes: “The House of Representatives shall have the sole Power of Impeachment”¹⁴. On the other hand, Article I,

11 National Archives. *The Constitution of the United States: A Transcription*, 2019.

<https://www.archives.gov/founding-docs/constitution-transcript> (accessed: 11/29/2019).

12 National Archives. *Meet the Framers of the Constitution*, 2020.

<https://www.archives.gov/founding-docs/founding-fathers> (accessed: 11/29/2019).

13 Ginsburg, Tom; Huq, Aziz Z. and Landau, David. “Designing Presidential Impeachment”. *University of Chicago Public Law Working Paper, No. 731* (2019), p. 21.

14 National Archives. *The Constitution of the United States: A Transcription*, 2019. <https://www.archives.gov/founding-docs/>

Section 3 dictates: “The Senate shall have the sole Power to try all Impeachments”¹⁵. Therefore, both, the House of Representatives have the legal faculty and competence to bring charges against a government officer, and the Senate, to grant the President with a proper trial before deciding to convict and remove him from office or not.

3.2. THE ROLE OF THE HOUSE OF REPRESENTATIVES

The House of Representatives is the government institution in charge of passing laws in the United States. It is one of the two bodies that integrate the Congress, and it is part of the Legislative Branch of Government¹⁶. The House, as Article I, Section 2 prescribes, is the one in charge of bringing charges against government officers, in our case the President, in order to proceed with impeachment. The House performs this task in accordance with its responsibility of investigating and overlooking at government officials’ activities and roles. The procedure can begin either when one or more Representatives of the House send a bill to introduce allegations of impeachment against the President, or when the entire House issues a Resolution with an impeachment inquiry. Either way, whether it is via bill or via Resolution, the Committee on the Judiciary receives the inquiry for impeachment of the President. Depending on the magnitude of work and information the Committee has to deal with, they can appoint (prior authorization of the House) a special Commission Staff to aid the Committee on the Judiciary in deciding whether to begin or not with a formal impeachment procedure. If the House of Representatives considers that there are enough and sufficient grounds and elements in accordance with Article II, Section 4 to begin an impeachment procedure, it will give full power to the Committee in order to perform any relevant investigation. Investigatory tasks can include, and are not limited to: subpoenas, testimonies, interrogations, to any person involved, including the President if needed. After these investigations have taken place, the Committee decides if, after gathering all the information required, they can exercise the constitutional power of impeachment. In order to do this, members of the Committee must vote and submit the results to the House. In order to move towards a Senate trial, the House needs a simple majority vote so as to issue a Resolution to progressively advance to the next stage of the impeachment process. The House needs to appoint Members or delegates in order to act as prosecutors in the trial to be held in the Senate against the President¹⁷. After all these due procedure steps have taken place, the inquiry becomes a formal

constitution-transcript (accessed: 11/29/2019).

¹⁵ *Ibid.*

¹⁶ United States House of Representatives. *The House Explained*. <https://www.house.gov/the-house-explained> (accessed: 11/29/2019).

¹⁷ Office of History, Art, and Archives of the House of Representatives. *Impeachment*. <https://history.house.gov/Institution/Origins-Development/Impeachment/#:-:text=The%20Constitution%20gives%20the%20House,disqualified%20from%20holding%20future%20office> (accessed: 11/29/2019).

case of impeachment against the President of the United States before all members of the Senate.

3.3. THE ROLE OF THE SENATE

The Senate is the second body that integrates the Congress of the United States after the House of Representatives. It is the organ in charge of holding the trial case against the President of the United States (and/or other government officers) after a simple majority of the House of Representatives votes in favor of moving on with the impeachment process. Curiously, not even half of the impeachment inquiries dealt and investigated under the House of Representatives faculties and competences, actually reach the trial phase at the Senate. In Presidential cases, only two have reached the Senate, both with an acquittal because they did not reach 2/3 of the votes.

As it was mentioned before, Article I, Section 3 dictates that “the Senate has the sole power to try all Impeachments”. Additionally, that same article prescribes the following:

When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law¹⁸.

From the text, it is clear that the only authority that has the faculty to preside the trial against the President of the United States, is the Chief Justice; granting a more formal and significant tone to the entire process. Furthermore, Article III, Section 2 prescribes that in cases of impeachment, the trial shall not be by jury¹⁹; meaning that only members of the Senate can vote in order to make a decision; they are the ones that act as jurors. Additionally, it has to be noted that in order for the impeachment process to be fully legitimate, the trial held in the Senate needs at least 2/3 votes of Senators in order to convict, if not, an acquittal proceeds.

The process of impeachment in the United States Senate is slightly different from the one held in the House of Representatives. The reason is that in the Senate, an actual trial is conducted in order to determine if the President has to be convicted according to the Constitution or not. The trial develops

¹⁸ National Archives. *The Constitution of the United States: A Transcription*, 2019.

<https://www.archives.gov/founding-docs/constitution-transcript> (accessed: 11/29/2019).

¹⁹ *Ibid.*

normally with the Defense (integrated by the President and his legal team) and the Prosecution (integrated by the appointed members chosen at the first stage in the House of Representatives) giving statements, discharging evidence, examining and cross-examining witnesses. After the trial is over, the Senate needs to gather and vote for convicting or acquitting the President. An important fact in this point, is that the voting can be somehow predictable according to which party has the majority at the Senate: Republicans or Democrats. If the voting is less than 2/3 of members, the President will not be convicted and will remain in office for as long as his Presidential period lasts. On the other hand, if the voting equals or exceeds 2/3 of members, the President is convicted with impeachment according to the US Constitution, will be removed from office, and will acquire the obligation to somehow fulfill or compensate for the damages caused²⁰.

4. CONCRETE EXAMPLES OF IMPEACHMENT AGAINST PRESIDENTS OF THE UNITED STATES

4.1. THE CASE OF FORMER PRESIDENT ANDREW JOHNSON

In 1868 took place the first case that dealt with Presidential Impeachment in the United States. Former President Andrew Johnson got involved in an impeachment inquiry at the House of Representatives, which later on, moved to the Senate in order to determine a conviction or not. The allegations made against President Johnson were that he exceeded the power granted, and also, due to a lack of respect for Congress' prerogatives, rules, and decisions²¹. The Former President was charged using the Tenure of Office Act, that overall, removed the President's authority to dismiss members of his cabinet²². After the trial concluded, President Johnson was acquitted because a sufficient number of members of the Senate believed that it was important to maintain a balance of powers and a secure office of the President²³. This meant, that the members of the Senate did not reach 2/3 of the votes needed to convict the President.

4.2. THE CASE OF FORMER PRESIDENT RICHARD NIXON

The year of 1974 was the second time in US history, that a President was under the spotlight in a possible case of impeachment. With President Nixon, it

20 Savage, Charlie. "How the Impeachment Process Works". *The New York Times*, 2019. <https://www.nytimes.com/2019/09/24/us/politics/impeachment-trump-explained.html> (accessed: 11/29/2019).

21 Committee on the Judiciary. *Report by the Staff of the Impeachment Inquiry on the Constitutional Grounds for Presidential Impeachment, Committee Print, Committee on the Judiciary*, 1974. <https://www.govinfo.gov/content/pkg/GPO-HPREC-DESCHLERS-V3/pdf/GPO-HPREC-DESCHLERS-V3-5-6.pdf> (accessed: 11/29/2019).

22 *Ibid.*

23 United States Senate. *The Impeachment of Andrew Johnson (1868) President of the United States*. https://www.senate.gov/artandhistory/history/common/briefing/Impeachment_Johnson.htm (accessed : 11/30/2019).

all began with the Watergate scandal that included evidence that the President and other administration officers had conspired in order to cover-up Nixon's involvement in several crimes and clear his path in order for re-election. Evidence against the President was abundant, and the House of Representatives decided to issue a Resolution to begin the impeachment inquiry and grant the Committee on the Judiciary to begin all formal and required investigations. Before the House moved to vote in order to begin an impeachment trial at the Senate, President Nixon resigned to his charge, and the impeachment process never moved forward²⁴.

4.3. THE CASE OF FORMER PRESIDENT BILL CLINTON

In relation to President Bill Clinton, the inquiry process of impeachment began due to his personal indiscretions regarding several women during his Presidential term. In a case regarding sexual harassment, President Clinton perjured himself in Court lying about his relationship with a woman. Aside from lying under oath, Clinton obstructed justice in order to cover-up his wrongful acts. Both actions, lying in court and obstructing justice, are crimes subject to initiate an inquiry of impeachment against a President. In fact, this is what actually happened, and in 1998, after discussing in the House of Representatives the House voted in favor of continuing the impeachment process in the Senate. As with the case of President Andrew Johnson, when the case reached the Senate and the trial concluded, members of the Senate fell short on convicting President Bill Clinton because they could not reach 2/3 of votes, necessary to convict a current President of the Nation for the actions prescribed in Article II, Section 4²⁵.

4.4. THE CASE OF PRESIDENT DONALD TRUMP

The fourth and latest case in US history involving an inquiry process to impeach a President, is with the current United States President: Donald Trump. His impeachment inquiry commenced after allegations of him pressuring Ukraine to spy on his political rivals (i.e. Joe Biden), in order to set the tone for re-election purposes. After those rumors started gaining force and more probative value, the House of Representatives decided to start an inquiry of impeachment against the President where they held a lot of private and public hearings in order to interrogate international and local political actors in this process²⁶. After evidence was collected, by the final days of October 2019,

24 Farnsworth, Malcolm. *Watergate Info – Impeachment*, 2019. <https://watergate.info/impeachment> (accessed: 11/30/2019).

25 Bill of Rights Institute. *The Impeachment of Bill Clinton*. <https://billofrightsinstitute.org/lessons/the-impeachment-of-bill-clinton/> (accessed: 11/30/2019).

26 Phillips, Amber. "What you need to know about the impeachment inquiry into Trump". *Washington Post*, 2020. 11/22/2019. <https://www.washingtonpost.com/politics/2019/09/25/what-you-need-know-about-impeachment-inquiry-into-trump/> (accessed : 11/28/2019).

the House approved a Resolution in order to move to the next phase of the impeachment inquiry; mainly, gather more information from documents and from various witnesses. Later on, around November, the House announced its first public hearing after collecting a considerable amount of evidence in order to analyze the potential constitutional grounds for impeaching President Trump. Finally, in January 2020, the House of Representatives voted to send the case to the Senate; now, it was not an impeachment inquiry, it turned into an impeachment trial. After a few days of trial at the Senate, and blocking additional help of witnesses in order to decide, the Senate held a speedy trial to acquit President Trump from all charges²⁷.

For the third time in US history, an impeachment trial with apparently sufficient evidence, was blocked by the strongest political party in the Senate. Now that impeachment as a legal figure in the United States has been analyzed, both by looking at its definition and background, and by analyzing concrete examples of impeachment inquiries and Senate trials; it is now time to compare that legal figure with the Ecuadorian figure of removal from office or *muerte cruzada*.

5. THE FIGURE OF *MUERTE CRUZADA* IN ECUADOR

5.1. LEGAL DEFINITION

As it was explained in previous paragraphs, the 2008 Ecuadorian Constitution introduced many political and legal changes in society. One of those major changes is the figure of *muerte cruzada*. Article 130 of the Ecuadorian Constitution prescribes:

Article 130. The National Assembly shall be able to remove the President of the Republic from office in the following cases:

1. For having taken up duties that do not come under his/her competence, after a favorable ruling by the Constitutional Court.
2. For severe political crisis or internal unrest.

Within seventy-two (72) hours, after concluding the procedure provided for by law, the National Assembly shall issue a ruling, with a statement of its reasons, on the basis evidence for his/her defense submitted by the President of the Republic. To proceed with the removal from office, the favorable vote of two thirds of the members of the National Assembly shall be required. If the motion to remove the President from office is adopted, the Vice-President shall take over the Office of the President of the Republic.

This power can only be exercised once during the legislative period, during the first three years of office.

²⁷ Janowski, Elizabeth. *Timeline: Trump impeachment inquiry*. 2019. <https://www.nbcnews.com/politics/trump-impeachment-inquiry/timeline-trump-impeachment-inquiry-n1066691> (accessed: 20/02/2020).

Within seven days at the most after publication of the ruling to remove the President from office, the National Electoral Council shall convene for a same date legislative and Presidential elections ahead of time for the rest of the respective terms of office. Installation of the National Assembly and the swearing in of the President-elect shall take place in accordance with the provisions of the Constitution, on the date set by the National Electoral Council²⁸.

The article briefly explains what is *muerte cruzada* or removal of the President by giving a notion of when it applies. Aside from doing this, the article explains the competence of both, the National Assembly and the Constitutional Court. However, a literal explanation or definition of the figure is not given.

If *muerte cruzada* is literally translated into English, it would not make a lot of sense because it joins two words that do not give a clear notion of what the legal figure is. However, in an attempt to give a translation, *muerte cruzada* in English would somewhat be a two-way or crossed death. Why a two-way/crossed death? Because if the National Assembly wants to remove the President of the Republic from office, the members of the National Assembly will also be removed after the National Electoral Council convenes for anticipated elections of both, the President, and members of the Assembly. In short, if the President leaves, the Assembly leaves as well. Additionally, it is a two-way death because not only the National Assembly can remove the President for the reasons described in the article; the President can also remove members of the Assembly for the reasons included in Article 148 of the Constitution²⁹.

Rafael Oyarte, a recognized constitutional legal expert in Ecuador, conceptualizes and analyzes the figure of *muerte cruzada*, or like he calls it, “plain and simple removal from office”. Aside from defining the figure, he emphasizes that the ruling of the Constitutional Court is only mandatory when the National Assembly invokes arrogation of functions; in the case of political crisis or internal unrest, there is no need for a Court ruling. The jurist questions this suppression of prior Constitutional Court ruling because a political crisis or internal unrest is not necessarily related to any Presidential act or omission; creating an unfair environment in relation to the second case that allows a Presidential removal³⁰. This lack of prior Constitutional Court ruling for internal crisis or political unrest is somehow suspicious because it is not uncommon for a President to initiate crisis in their countries. The following question arises: why is the President immune for a trial before the Constitutional Court in case of crisis? Maybe, it is a way of preventing the President to be directly responsible for certain acts committed during such period of crisis; making him free to do as he pleases during that period of unrest.

28 Political Database of the Americas – Georgetown University. *Constitution of the Republic of Ecuador*, 2011. <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html> (accessed: 11/30/2019).

29 Free. Translation. Constitución de la República del Ecuador. Artículo 148. Published in the Registro Oficial No. 449 on October 20, 2008.

30 Oyarte Martínez, Rafael Arturo. *Derecho Constitucional*. 2da.ed. Quito: Corporación de Estudios y Publicaciones, 2016.

In 2010, two years after the new Constitution was implemented, the Constitutional Court issued a ruling where they interpreted a few articles concerning the figure of *muerte cruzada*, including articles 130 and 148. In this ruling the Constitutional Court determined four major considerations or clarifications regarding the scope of articles 130 and 148:

1. When the National Electoral Council convenes for anticipated elections, those elections are for the remainder time the removed President still had before he was removed. Anticipated elections do not affect the right for re-election of the removed President.
2. If the President is removed, the Vice-President assumes the presidential role until the new President is elected.
3. The new elected President will remain in charge for the remainder time the removed President had before being removed, it does not count as an entirely new presidential period.
4. The faculty to remove the President can only be exercised once during the first three years of Presidential period³¹.

Furthermore, as depicted from Article 130, in the removal of the President of the Republic, both, the National Assembly and the Constitutional Court have important roles in allowing the removal. These involvements from different branches of government prove that *muerte cruzada* is a legal figure that attempts and pretends to have a clear notion of division of powers. Additionally, checks and balances is present throughout this process because with the legal control the National Assembly and the Constitutional Court (in some cases), there is somehow, a bigger guarantee of a lawful due process of removal of President or *muerte cruzada*.

5.2. THE ROLE OF THE NATIONAL ASSEMBLY (CONGRESS)

Article 130 previously quoted, emphasized the role of the National Assembly as the branch of government legitimized to propose a removal or *muerte cruzada*. In order to remove the President, the National Assembly requires the votes of 2/3 of the total number of members that comprise the Assembly, independently of the case applied according to article 130³². This role has been questioned by many lawyers that believe that granting the Assembly the faculty of removing the President, is more according to a Parliamentary system rather than a Constitutional system like the Ecuadorian. A true and pure Constitutional system involves two fundamental aspects such as: The President has to be elected by the People and the Congress or Assembly cannot remove the President during his Presidential period. Clearly, the legal

³¹ Free Translation. Corte Constitucional Interpretative Ruling No. 002-10-SIC-CC, September 09, 2010.

³² Free Translation. Constitución de la República del Ecuador. Artículo 130. Published in the Registro Oficial No. 449 on October 20, 2008.

figure of *muerte cruzada* created in the 2008 Constitution, challenges Article 1 that dictates that Ecuador is a Constitutional State that must oblige to the supreme legal norm. This challenge posed could turn undemocratic because it is not strictly following what the law says. Apparently, the Ecuadorian state, with the adoption of this figure, is slowly blending its pure Constitutional system with the features of a Parliamentary system³³.

5.3. THE ROLE OF THE CONSTITUTIONAL COURT

The Constitutional Court plays a fundamental role when the National Assembly wants to apply *muerte cruzada* or removal of the President when the first case of Article 130 wants to be invoked; this is arrogation of functions. In order to move forward with the process of removal, the Constitutional Court needs to dictate a favorable ruling with sufficient grounds using jurisprudence, the law, and a well-reasoned argument. The Court's ruling cannot include an analysis of whether the arrogation of functions was successfully proved. Its role is only related to establish that the facts mentioned by the National Assembly in its petition to remove actually correspond to an arrogation of functions³⁴.

6. ATTEMPTS TO APPLY *MUERTE CRUZADA* IN ECUADOR

In reality, *muerte cruzada* has never been applied in Ecuador; it has only existed as a theoretical figure yet to be implemented. Former President Rafael Correa, who mainly manufactured this whole idea of *muerte cruzada*, threatened to use this figure on several occasions between 2009 and 2013. This was mainly because he had constant ideas of potential boycotts against him because the National Assembly was not always alike with his proposals and legal projects. In 2017, Correa threatened to use this figure if the opposition won the elections³⁵. Finally, just recently in October 2019, Correa's supporters that still hold an important political role in the actual government, threatened to use the figure of *muerte cruzada* against current President Lenin Moreno if he complied to the recommendations on the International Monetary Fund in order to decrease the economic crisis Ecuador lives in³⁶. In short, this figure has never been applied, but since it has not been modified or eliminated from the current Constitution, it is still a viable and possible way to remove the President (and the National Assembly).

33 Banegas Cedillo, Mónica Eulalia. *La Muerte Cruzada en el nuevo texto constitucional: relaciones Ejecutivo-Legislativo*. Masters Degree Thesis. Universidad Andina Simón Bolívar. Quito, 2014.

34 Oyarte Martínez, Rafael Arturo. *Derecho Constitucional*. 2da.ed. Quito: Corporación de Estudios y Publicaciones, 2016.

35 CNN Español. ¿Qué es la "muerte cruzada" con la que amenaza Rafael Correa si gana Lasso?, 2017. <https://cnnespanol.cnn.com/2017/02/23/que-es-la-muerte-cruzada-con-la-que-amenaza-rafael-correa-si-gana-lasso/> (accessed: 04/04/2020).

36 "Correísmo buscaba salida de Lenin Moreno en dos frentes". *Diario El Universo*, 20 de octubre 2019. <https://www.eluniverso.com/noticias/2019/10/20/nota/7566341/correismo-buscaba-salida-moreno-dos-frentes> (accessed: 04/04/2020).

7. COMPARATIVE CHART: SIMILARITIES AND DIFFERENCES BETWEEN *MUERTE CRUZADA* AND IMPEACHMENT

MUERTE CRUZADA		IMPEACHMENT	
SIMILARITIES			
<ul style="list-style-type: none"> · They were both created with the intention to prove that a mechanism of checks and balances exists in both countries. · Reflects division of powers. · Attempts to apply a legality control of public duties performed by public actors (especially presidents). · Has to undergo a thorough legislative process in order to move forward (in the National Assembly in the Ecuadorian case and both, the House of Representatives and Senate in the U.S case). 			
DIFFERENCES			
<ul style="list-style-type: none"> · Can be applied to remove members of the legislative branch of government (National Assembly) or the President. 		<ul style="list-style-type: none"> · Can be applied to remove government officials in general, not only the President or members of the legislative branch of government. 	
<ul style="list-style-type: none"> · If the President's acts fall under any of the requisites for <i>muerte cruzada</i>, both, the President and the members of the National Assembly, have to leave office. 		<ul style="list-style-type: none"> · Only the government official under suspicion can be removed from office. 	

8. ANALYSIS OF THE EFFECTIVENESS OF *MUERTE CRUZADA* IN ECUADOR

The legal figure of *muerte cruzada* has not been truly applied since its creation in 2008. Therefore, it is very hard to determine how effective it can be due to the fact that there is no factual evidence that can serve as a guide. Despite the lack of use of this legal figure, an attempt can be made in order to determine how useful it can be. Taking into consideration that *muerte cruzada* was a legal mechanism created mainly to get rid of certain political figures, its nature seems, from the beginning, non-ideal for checks and balances. A legal figure intended solely for the purpose of checks and balances, needs a different motive, different mechanisms, and a true applicability no matter the person or the case. Even if *muerte cruzada* is intended to serve as an effective tool for removing harmful political figures such as Presidents and members of the National Assembly, this has not been the case for Ecuador. During the past 12 years of political history since the creation of this figure, there have been many political actors that would have been ideal subjects for undergoing a process of *muerte cruzada*. The reason behind this assertion is that these

political figures were part of a series of events that were consistent with the grounds established in the Ecuadorian Constitution in order to apply *muerte cruzada*. However, despite this reality, none of these people were accused of perpetrating conducts aligned with the requisites for applying *muerte cruzada*. Therefore, if this were a true and honest figure of checks and balances and division of powers to punish people that harm the political and social system; the figure would have been applied long time ago.

9. ANALYSIS OF THE EFFECTIVENESS OF IMPEACHMENT IN THE UNITED STATES

In the American case, the situation is very different from the Ecuadorian. Like it was previously mentioned, the US has had 4 cases of impeachment; but only 3 were truly analyzed, judged and reached the Senate. According to the evidence recovered from each case, the impeached presidents should have been removed from office. However, until now, this has not been the case because the majority of the members of the Senate, in almost every case, have been of the same political party as the President impeached. Even if impeachment is the figure by excellence of checks and balances and division of powers in the United States, the reality is that political affiliations and loyalties count more than truly controlling power. If an impeachment inquiry begins in the House of Representatives, it is because there is enough evidence in order to prove that the President has committed wrongful acts that configure grounds for impeachment and move the case to the Senate. Despite all that evidence, none of the 3 cases that have reached the Senate, have resulted into a removal of the President from office. This can be dangerous and irresponsible because it gives the wrong message to society. First, it tells people that Presidents are immune to wrongful acts, and second, it gives the notion that lying, or deceiving is something acceptable. More importantly, it de-emphasizes the importance of impeachment as a useful political mechanism and tool to control the government³⁷.

10. CONCLUSIONS

After thoroughly analyzing the legal systems under which the figures of impeachment and *muerte cruzada* are developed, it is highly interesting to see how they are alike despite the fact that they both come from two completely different legal systems (common and civil law). Impeachment is a figure that has been in the American legal system for almost 200 years; *muerte cruzada* has only been present in the Ecuadorian Constitution for 11 years. Despite that overwhelming difference in the amount of years applied, they both seek

³⁷ Harrington, Clodagh. *Did Donald Trump's impeachment kill impeachment?* 2020. <https://nationalinterest.org/blog/buzz/did-donald-trumps-impeachment-kill-impeachment-124571> (accessed: 02/20/2020).

pretty much the same thing: performing a procedure of checks and balances against presidents that are negligent in their actions and duties. In order to do this, both systems have somehow applied division of powers in order to assure that the removal of a President from office follows a due process and complete legitimacy.

One of the tasks of the article was to show that despite the enormous differences between both systems, not only in political and legal terms, two different countries can have the same goals and objectives in pro of democracy and the welfare of its citizens. However, despite the noble and well-intentioned goals of both of these figures, after a thorough analysis, democracy and welfare have not been enough reasons to apply these mechanisms. In the case of Ecuador, a question appears: was there a hidden agenda underlying the creation of *muerte cruzada*? The doubt arises because the reason behind introducing this new legal figure is deceiving in its nature due to the fact that, until now, the frustrated attempts to apply it, have been merely as a rhetorical tool. The political party keen to socialist ideas, has tried to use the figure of *muerte cruzada* not as a tool for checks and balances, but as a tool for manipulating the political, economic and social systems of the country. Now that Ecuador has a new government with different ideals, *muerte cruzada*, could actually stand a chance and be used to ensure an effective system of checks and balances and division of powers. In the case of US, on the other hand, impeachment has been applied over the centuries, but has failed to convict presidents that, according to abundant evidence, have committed wrongful acts against the stability of the country.

By studying common and civil law in the beginning, the attempt was to prove that both countries do actually have different legal systems and rules to live and act under. Later on, when analyzing both Constitutions and its history, further differences appeared, reaffirming the thought that the US and Ecuadorian systems are bluntly apart. When impeachment and *muerte cruzada* were thoroughly analyzed, the similarities appeared, and they were abundant; not only in terms of their definition and intentions, but also when it comes to the failure both have had when trying to fully apply those figures.

Going back to the main question and task of the article, anticipated in the introduction, both impeachment and *muerte cruzada* have not truly worked in pro of democracy and political stability because they have failed to convict presidents that have harmed both nations. In the end, this means that, until now, they have worked as rhetorical tools that do indeed satisfy the interests of those that have more power in the political sphere. Therefore, neither impeachment, nor *muerte cruzada*, have been effective mechanisms of checks and balances and division of powers in order to ensure legitimate democracies. This is not because there is something wrong with either of these legal

figures, but because history and research have shown that the authorities that wanted to apply them, did not have noble intentions and motives to do so.

Despite this negative reality concerning both legal figures, if applied correctly, without hidden agendas, and in pro of democracy and its citizens, they can turn out really beneficial for several reasons. First, they remove unwanted political actors from the political sphere; second, they create a public scrutiny against negligent presidents; and finally because they dissuade current and future presidents and other government officials from committing neglectful and illegitimate acts that cause harm not only to themselves and their public image, but also to an entire country. As a concluding note, it is necessary to mention that political tools or mechanisms need to exist and be effective in order to enhance and reinforce values of honesty, democracy and rule of law in every sphere of a country. In that way, by having upfront governments and politics, countries will work much better and society will grow as a whole.