

LEGITIMACY IN A PERSISTENT DEMOCRACY: ECUADOR 1996-2007

by

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Abstract

The present dissertation reconstructs the notion of legitimacy in Ecuador between 1996 and 2007 in order to re-think our measurements and understanding of Latin American democracies. Empirically, the analysis is centered on the country's puzzling tendency to survive institutional volatility, bad economic performance and social unrest, while the theoretical section underlines the importance of the vertical and horizontal participatory components of legitimacy. After exploring different plausible explanations of Ecuador's puzzling mixture of political turmoil and regime endurance, this dissertation concludes that legitimacy helped democracy to endure in Ecuador. The main conclusion is that the horizontal components of political participation and the enactment of democratic values by social movements as well as new political parties played a key role in the survival of democracy. The dissertation contributes to the democratization literature by encompassing the normative elements of democracy, while at the same time contributes to democratic theory by pushing further the boundaries of a notion and a case that requires further attention.

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1. Introduction

According to Huntington “*legitimacy is a mushy concept that political analysts do well to avoid*” (Huntington, 1991; 48). He might be right in the sense that is a permeable notion that is often better understood according to the context in which it is used. However, he may be wrong because legitimacy is a concept that should be tackled rather than avoided. As it will be shown, the concept of legitimacy bridges the institutional and the sociological components of democracy.

This dissertation explores the concept of legitimacy in Latin American regimes by arguing that legitimacy helped Ecuador’s democracy to endure. In order to do so, Ecuador is presented as a regime imbedded in a context of executive crisis where democratic legitimacy, defined in terms of enactment of the law and democratic values, helped maintain democracy. In this sense, this dissertation comprises normative models of democracy with the necessity of measuring and understanding democracies. It contributes to our understanding of legitimacy in the comparative politics literature by deepening our understanding of legitimacy in democratic regimes, especially in South America.

The present dissertation contributes to the democratization literature by establishing a dialogue with democratic theory. As will be shown, the more methodologically driven approaches to the evaluation of legitimacy overlook the normative role that it plays. In order to overcome such impasse, the present dissertation takes into account a Habermasian framework that complements Ecuador’s political reality in order to explain Ecuadorian democracy’s persistent endurance. In the same

sense, it contributes to democratic theory by pushing further the boundaries of a notion that requires further attention. It is a study that bridges democratic theory with the democratization literature in order to offer an insightful examination of legitimacy in Latin American countries. The empirical evidence incorporates the theoretical framework in order to complement these subfields of political science.

The first section presents the case, by defining the persistent endurance of Ecuador as a puzzling characteristic that requires an explanation. The second section offers a conceptual approach to this notion by focusing its attention on the literature of democratization and democratic theory. This strategy is intended to bridge the fields in order to overcome deficiencies. The third section explores different explanations to the puzzle enlightened by the theoretical approach offered. Finally some conclusions and implications are offered.

2. The Persistent Endurance of Democracy in Ecuador

Ecuador is a democracy that raises many questions. As a case, Ecuador can help us examine legitimacy, and more particularly, the legitimacy of democratic regimes where the rules govern political debates in a context where regime performance is erratic. On the one hand, it is a country where there are no serious threats to the democratic rules. The vigorous civil engagement keeps democracy alive as the population and social movements are prone to act. On the other hand the institutional performance is highly questionable. Ecuador scored a low percentile in the World Bank “Government Effectiveness” indicator (less than 20% in governmental effectiveness since 2000¹). However, those poorly rated economic institutions manage to take the country from a big economic shortage at the end of the 1900’s to a more stable economic situation at present. In 1998, Ecuador’s economy was threatened by a 60% inflation in consumption goods and a 186% increase in production costs. This was accompanied by a 200% devaluation and a inflation of 100%². Currently, institutions are liberalizing the economy, and to a certain extent, aim to deliver the economic *promises of democracy*. Poor institutional performance may indicate that the democratic regime is unstable, but democracy still endures in Ecuador.

Ecuador’s political polarization is associated with the high levels of inequality. In 1999, 72.3% of the population was considered poor³. This index improved significantly

¹ For further details go to: <http://info.worldbank.org/governance/wgi/pdf/c66.pdf>

² A more detailed description of the situation can be found at the UN report on economic policy analysis: Analisis de las politicas de inversión. Ecuador.

³ This quantification regards two measurements: on the one hand the people that are considered “poor” when measured in consumption (pobreza de acuerdo al consumo), and those that fall into the category “indigence” (bajo la linea de indigencia). Official data from the

with “just” 51.1% of the population regarded as poor by 2002. In recent years Ecuador spent only 2.4% of GNP on health, and, according to the World Bank, it also has the third lowest spending on education (2.5% of the GNP) in the continent. The extreme differences between “la costa” [the coast] and “la sierra” [the mountains] is as great as the political differences between political left and right, or between the indigenous population and the “white” *mestizos*. Quito is the administrative centre of the country located in the mountains of the country, and important politicians, such as Fabian Alarcon and Sixto Duran were mayors of the city before becoming Presidents. The coastal city of Guayaquil holds close to half of the country’s population, and several political leaders started their career here, such as Abdala Bucharam or Rafael Correa. The power struggle between the elites of Quito and Guayaquil divides the country. In 2006 such differences were reflected by the fact that 81.4% of the people in the rural areas live under conditions of poverty, contrasting with the 29.7% for people that live in urban areas⁴. The rivalry between Quiteños and Guayacos also seems to define different styles of politics. The regime features highly centralized power, leaving little autonomy to the *provincial, cantonal and parroquial* levels.

In spite of the low level of support for the presidency, the congress and judicial courts, there is evidence that belief in the regime is not in peril. In a study done in the northern part of Ecuador, Michael Seligson found that trust in the municipal government was 44% in rural areas and 48% in urban areas (Seligson, 2001; 6). Such a score is actually higher than the national average. This implies that overall the regime is poorly regarded, despite a considerable acceptance of local politicians. A conventional

National Institute of Statistics and Census (Instituto Nacional de Estadística y Censos). www.inec.gov.ec

⁴ Data collected for 2006. This percentage also accumulates both levels of poverty and levels of indigence. (see previous footnote)

measure of legitimacy (belief in the regime) is not sufficient evidence for understanding the persistent endurance of Ecuadorian democracy. In reality, the country provides mixed signs of both improvement and deterioration.

The Latin American Index of Democratic Development (IDD-Lat) indicates that Ecuador has recently seen a relative democratic improvement. The country went from being the worst rated country in 2002 (17 out of 17 countries examined and with a score of 1,694, scoring below 0 on the economic indicators), to number 15 in 2003 and 2004 (with a score of 2,825 and 3,122 respectively), to 13 in 2005 (with a score of 3,658) and drawing back to the number 17 again in 2006 (scoring 2,237). Astoundingly, during this period of rapid change, elections were held normally and drew more voters. Voter turnout increased dramatically during this period, from a 35.78% in the 1996 elections to 45.9% in the 2002 elections. In 2006, voter turnout increased up to 49.13%. In Ecuador democracy seems to improve slowly, yet this survey failed to capture such obvious augmentation. According to the LAPOP⁵, only 29.5 % of the population supported the regime in 2001. This support fluctuated during the years, with a qualification of 42.1% for 2004 and 37.4% in 2006. Why does Ecuador present contradictory conclusions through the evaluation of different studies?

Ecuador is a country that is regarded as a democracy under a minimal procedural definition: elections are held periodically and in cases where an incumbent is impeached, elections appoint the next elected official and the congress is elected by popular vote. Currently, the country is going through a process of constitutional change, and an approbatory referendum was held on September 28, 2008. During the

⁵ The measurement of regime stability in this survey includes the support towards the political system and tolerance [apoyo al sistema politico y tolerancia]. Seligson, Donoso, Moreno, Orces, Schwarz-Blum, 2007. P.p. 130-151.

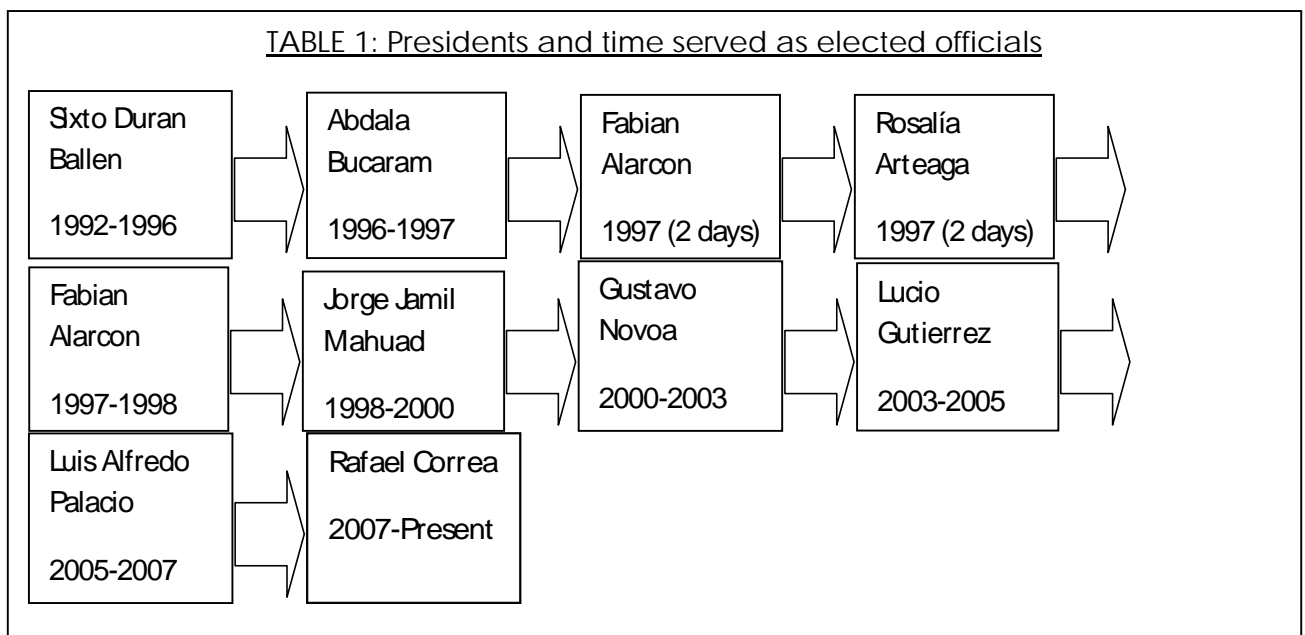
constitutional transition, the constitutional assembly will be fulfilling the functions of the legislative branch. The process to change the constitution started with a referendum held on April 15 2007 and was led by the then recently established President Rafael Correa. The constitutional change reflected the pressing matter of redistributing power between governmental branches, strengthening the checks and balances and fighting corruption, with 81.72% in favour and 12.43% of the votes against the constitutional transformation. All of the above are positive signals of a modern democracy. Thus, it is clear that Ecuador provides mixed signals.

In order to understand the paradoxical nature of Ecuador, this dissertation presents different potential explanations for the regime's *continued legitimacy*. This concept is linked with a regime and a political process that endures despite recurrent leadership crises. The continued stability of Ecuador can only be understood by examining closely eleven years of Ecuadorian history. The next two sections dig into the 1995-2006 period to identify: first, the tendency to replace easily the president whenever a crisis was encountered, as a process that developed through time; and, second, the way in which citizens behave towards its leaders during a crisis situation, as a critical conjuncture.

2.1. The Presidencide era

In Ecuador democracy survived eleven years of crisis in the executive branch that would have meant a major breakdown for any country. Despite bad institutional performance democracy still lives in Ecuador. The last president who completed his four year term was Sixto Durán Ballén, appointed for the 1992-1996 term. Between 1996 and the present day, Ecuador experienced the worst executive crisis in its history:

Abdala Bucaram was elected, yet he was only able to complete 7 months, after the congress declared him insane. Fabian Alarcon, former head of the legislature, was appointed through an interpretation of the constitution. That decision was challenged, which led to the appointment of the vice president Rosalia Arteaga who was only president for two days, because the congress challenged the decision and re-appointed Alarcon as president. His government lasted an entire year. This led to the election of Jorge Mahuad, whose presidency ended after the contested decision of the dollarization (*dolarizacion*), which helped to end the inflation crisis. He faced an exponential increase in the levels of inflation that fluctuated between 30,7% in 1997 and 91% in 2000⁶ (<http://www.bce.fin.ec>) forcing the executive to take the decision to abandon the *Sucre* and to adopt the dollar in order to avoid another increase in inflation rate. He was deposed after several days of protests from indigenous groups, led by the Pachakutik, and other high ranked military officers. Table 1 summarizes the transitions of Presidents for the period 1992 to present day.



⁶ For more information go to: <http://www.bce.fin.ec/home1/estadisticas/bolmensual/IEMensual.jsp>

This tendency towards *presidencia* demonstrates the tension between the legislative and the executive power in Ecuador. It was presumed that the crises and challenges of the regime were the head of the state's responsibility, and by merely "severing the head" off the executive branch the country's problems would be solved. I will demonstrate that this strategy is flawed. Why was the regime maintained after the series of derogated elected officials and the high levels of inflation? The fact that legitimacy does not rest upon the executive branch yields a partial explanation for Ecuador's tendency towards coups.

After winning the 1996 elections, Abdala Bucaram acted as president for seven months. He was a charismatic candidate, who used populist tactics and personality based politics to win over voters. Interestingly it was not the first public office that he was forced to abandon. During his political career he was elected Mayor of Guayaquil in 1984, an office that he resigned from a year and a half later due to a corruption scandal. After his resignation, he served time in prison and was tortured there by the anti-drug police after they allegedly found cocaine in his car⁷. He was the first president that left office due to mental incompetence in the history of the country. To assess the real impact of his time in office, it's worthwhile to quote an official document addressing his presidency and style of governing:

He spent the state funds in buying the peoples' love and the congress cooperation, and achieved neither one, and in the long run, at least completely, nor the other. He tolerated and promoted corruption in the customs service, dismantling its computer system by hustling check and balances, and camouflaged by military intervention the excesses of the customs mafia [sic] of his friends and the loaners of his campaign [sic]. He abused with nepotism even in the Foreign Service. Although he promoted peace with Peru, trade with Colombia and foreign investment, his accomplishments were diluted by the

⁷ All the information regarding Bucaram's political career was taken from the official web site of the government of Ecuador. <http://www.presidencia.gov.ec/modulos.asp?id=104>

image projected from him over the country, which was perceived as anarchic, tropical, unstable, not serious [sic]. He stomped on the dignity of the presidency with his singing and dancing, which included the presence of cheap and low reputation dancers. These images were transmitted by international television. He promoted a cult to himself, and wanted to be on everything, even in the most popular football [soccer] club of Ecuador. (<http://www.presidencia.gov.ec>)⁸

Some of his eccentricities will remain in Ecuadorians memories. The charismatic Abdala Bucaram named a welfare plan after himself: The milk ABDALAC was distributed as part of his scheme to win the hearts of the people. The polemical subsidy was an attempt to “give himself to the people” by means of his alimentary aid. On live television, he sang songs and danced during New Years Eve. The numerous corruption scandals involving himself and his staff, including the mysterious circumstances of his resignation when Bucharam was Mayor of Guayaquil, gave ammunition to the opposition during his presidency. There are several scandals and allegations surrounding his departure with a briefcase and three million dollars, but investigations are inconclusive. Due to the intensity of the accusations, the former president fled to Panama before he could be formally charged.

To attain the presidency, Lucio Gutierrez built a coalition that fell apart amidst several scandals. The most notorious of these was the destitution of 27 of the 31 magistrates of the Supreme Court. This major threat to judicial independence was denounced by Jose Vivianco, in the 2004 Humans Right Watch report for Ecuador. He

⁸ Free translation. See: <http://www.presidencia.gov.ec/modulos.asp?id=104> “Gastó los fondos públicos en comprar el afecto del pueblo y la cooperación del Congreso, y no logró ni lo uno ni, a la larga, al menos completamente, tampoco lo otro. Toleró y fomentó la corrupción en las aduanas, cuyo sistema de computación desmontó hostigando a las verificadoras y camuflando con la intervención militar los desafueros de la mafia aduanera de sus amigos y acreedores de campaña. Abusó del nepotismo hasta en el Servicio Exterior. Aunque buscó la paz con el Perú y el comercio con Colombia y la inversión extranjera, borró sus logros con la imagen que desde su persona se proyectaba sobre el país visto como anárquico, tropical, inestable, nada serio. Pisoteó la dignidad presidencial con canciones y bailes transmitidos a la televisión internacional y con la presencia de bailarinas baratas y de poca reputación. Fomentó el culto a su persona, quiso estar en todo hasta en la presidencia del club de Fútbol más popular del Ecuador.”. Some of the grammar problems were left as from the original.

participated in the so-called “triumvirate” (a coalition between himself, a former member of the Supreme Court and the indigenous group CONAIE -Confederation of Indigenous Nationalities of Ecuador) that overcame the presidency of Jamil Mahuad in the year 2000. Although he was elected by a coalition of left wing parties (which included the indigenous organization CONAIE, the Pachakutik movement and the *Movimiento Popular Democrático*), he abandoned them and built new alliances with the right wing forces, including the former president Bucaram’s political party (*Partido Roldosista Ecuatoriano*), and *Partido Social Cristiano*. He immediately authorized the suspension of order to arrest former presidents Bucaram, Noboa, and Dahik, who had returned from exile. Unsurprisingly, the warrants for their arrest involved corruption charges. As a result, Mahuad was overthrown by the congress, and has been exiled in Brazil since then.

Due to the performance of presidents such as Mahuad and Bucaram, there is little surprise that Ecuadorians distrust politicians. The combination of recurrent economic crises with different particular circumstances, such as charismatic and unpredictable characters, led to a period of unrest in the presidency between 1996 and 2005. What is perplexing about this case is how democracy prevailed while the executive, legislative and judiciary crashed.

2.2. The Outlaw Rebellion [*la Rebelion de los Forajidos*]

During the Gutierrez presidency there was a moment of significant relevance for the study of democracy. The social movement called the Outlaw Rebellion [*la Rebelion de los Forajidos*] was a moment of contestation towards a regime that violated the separation of powers and the independence of the judiciary. On April 20th of 2005, the

Congress deposed the president, by making a very questionable call of “position abandonment” [*abandono del cargo*], while still exercising functions. The rebellion could be defined as a democratic critical juncture, following Collier’s definition as a moment of significant change in a society (1991; 29). After the description of the presidencide era, it is not surprising to say that a president was impeached because he abandoned his position. From a democratization standpoint, the role that different actors play is more significant than the fact that the president was deposed.

At the end of 2004, President Gutierrez started to have some discrepancies with his political allies, particularly with the CONAIE. The president and his party started to build alliances to overcome the Supreme Court, in order to dismiss magistrates that were opposing President Gutierrez’s rule. After several clashes with the judicial branch, the head of the executive made an attempt to dismiss three of the seventeen magistrates of the Supreme Court. Perhaps most striking is the fact that the newly appointed magistrates also tried to nullify the corruption trials of former presidents Gustavo Novoa and Abdala Bucaram.

The congress was caught between its support of the president and upholding democratic rules. The discrepancy quickly became a heated debate. The congress ruled that there was no possible solution based on their capacities. Opposing political parties, *Democratic Left* [*Izquierda Democratica*] and *Social Christian Party* [*Partido Social Cristiano*] called their supporters to the streets. A mixture of social movements and protests gathered in front of the presidential house and stayed there for three weeks. The protest was initiated by a heterogeneous group that included supporters of the traditional parties, spontaneous oppositionists, unions that had opposed Gutierrez since 2004, members of indigenous communities that were opposed to negotiations

with the incumbent (especially the divisive issue of Free Trade Agreements) and students. The situation was covered by the media and presented another sign of Ecuador's instability. Images of people marching on the streets circulated, increasing the reputation of a volatile democracy.

This "rebellion" earned its name when President Gutierrez himself called the protesters outside the presidential house "outlaws" [*forajidos*]. The name-calling angered the participants, and in response, the rallies took this nickname, incorporating it in their slogans. According to the independent media covering the event, people shouted: "out with Lucio" [*fuera Lucio*] and "everyone out!" [*que se vayan todos!*]⁹. This bold strategy proved ineffective as the president called for "emergency measures" [*Estado de sitio*]. By using emergency powers to end the struggle, Gutierrez challenged the power equilibrium, thorough giving the executive extraordinary powers against the protestors. His actions were poorly received by the congress and the struggle became even more heated than before. The strategy of name-calling the protestors backfired.

Amidst such a volatile environment, Gutierrez lost the support of the military. The chief of police, Jorge Poveda resigned; on April 20th 2005 Victor Rosero *chief of the Joint Command* [*Jefe del Comando Conjunto*] made a public statement announcing that the military would no longer support the president. Suspecting the possibility of a coup, Gutierrez went into exile. After his departure to Brazil, the president was "impeached" by the congress in a voting of 62 to 0. This convenient and belated decision questions the behaviour of congress. Palacio's words during his presidential

⁹ More information can be found at: <http://ecuador.indymedia.org/es/2005/10/11685.shtml>, <http://www.voltairenet.org/article138027.html> and <http://icci.nativeweb.org/boletin/73/editorial.html>

oath demonstrate what this rebellion signified: "The people of Ecuador, particularly the people of Quito, today have ended the dictatorship, the immorality, the great power, the terror of fear. (...) The people of Ecuador today have decided to save the republic, a republic of hope, in whose streets and green fields should flower dignity, hope, equality and happiness" (www.presidencia.gov.ec). In this state of affairs, the congress made an *a posteriori* deposition to preserve the constitution and democracy prevailed; or at least partially endured.

When the president tried to overpower the independence of the judiciary –and particularly the judicial process of former president Bucharam-, mechanisms of direct participation controlled the democratic drawback. The vertical accountability prevented the violation to the constitutional order. Both the president and the congress produced the crisis yet only the president was impeached. The congress was responsible for the dismissal of the magistrates, yet at the same time it played its part in the impeachment of Gutierrez. The reluctance to swiftly deal with the crisis does not seem to be a role model of democratic behaviour. It is clear that the actions of civil society and the congress authority prevented a democratic drawback, by maintaining the stability of the regime. Once again this case problematizes our understanding of political processes: democracy lived on while the executive, legislative and judiciary stumbled in their performance, and social movements managed to maintain the limping regime.

2.3. Instability and Endurance in Ecuador

In Ecuador, the regime has the tendency to survive in conditions that would normally lead to a collapse. The executive failed to deliver the economic promises of democracy. The frequent corruption scandals that involved the three branches of

political power dissolved trust in the regime. The deficiencies are dire and yet, democracy endures. Ecuador's enduring democracy has coped with the deficiencies caused by its unstable branches. The incomplete equilibrium between the three branches presents a peril to democracy, yet it was not enough to defeat democratic rules. Instability threatens the regime, yet it is not enough to shake the foundations of a democracy that could be, at a superficial level, labelled as 'unstable'. Democracy in Ecuador persists. Since democracy is *sustained* through several tests, it is plausible to argue that the regime is somewhat *stable*. Therefore, the *persistent endurance* of Ecuador is evidenced by its tendency to survive under the above mentioned conditions. Nonetheless, the direct causal role legitimacy plays in democratic regimes remains elusive.

As a case study, the democratic regime of Ecuador is useful because it is a classic example of a third wave democracy, making the transition from authoritarian rule in 1978. Since then, democracy endured amidst several tests. The *presidencia* and the *outlaw rebellion* suggest different problems for the analysis of democracy. By understanding the democratic behaviour of the country in a set time period and during a critical juncture, it is possible to tease out different elements for understanding legitimacy in a democracy that persists despite several crises. People's behaviour during the social movements and rallies can be used as evidence of either a strong or a volatile democracy. The civic organizations and the social movements are lively, and both threaten and maintain democracy. In Ecuador, institutions, social movements and political parties enact and overwhelm democracy. The façade of instability is intertwined with political practices that maintain the regime. If a regime survives such challenges, where does legitimacy reside?

Being a country with a highly volatile institution of presidency, Ecuador can provide important evidence regarding where legitimacy resides. Its performance is highly questionable (especially *economic performance*), with high levels of inequality, as well as an enormous increase in the inflation in 1999 which led to dollarization to release the pressure. Three possible explanations for Ecuador's problematic *persistent endurance* will be explored: First, an apathetic attitude of the people towards the regime may explain such endurance amidst crises. It could be argued that political apathy maintained poorly performing regimes. Second, it could be argued that legitimacy resides in informal norms that favour the status quo. This means that the inertia of the social system is an obstacle to enact democratic values, thus maintaining the regime despite the recurrent crisis. Third and most plausibly, democratic rules are legitimate by themselves, implying that democratic values and procedures delineate political struggles, and relevant actors use them. In order to understand these alternatives, we must understand first what is legitimacy and how to measure it. The next section offers some reflections regarding the theoretical role that it plays as well as it offers some clues of where legitimacy may reside.

3. What Legitimacy is... and is not¹⁰.

The notion of legitimacy can bridge the normative necessity of democracy with the empirical imperative of observing and theorizing about social processes in contemporary societies. Thus, a dialogue between democratization literature and democratic theory will help us understand the role that legitimacy plays in Ecuador's persistent regime. In order to clarify the way in which this concept has been studied, this dissertation follows a basic distinction between normative and empirical approaches. The first subsection aims at understanding the uses and measurements of legitimacy in order to draw a few lessons to understand it. The second subsection explains the theoretical function played by democratic rules and stresses the sociological components of legitimacy as an authority validation process. Therefore, in order to suggest a comprehensive view on legitimacy and explain Ecuador's situation, an understanding of the different strategies used by these two subfields is required.

The literature on democratic processes is highly contested. For example, the definition of democracy itself is perpetually challenged by scholars. In an attempt to define democracy, Schmitter and Karl avoided the conceptual obscurity by establishing the confines of what is democratic and what has been bounded with this concept (1991; 75-88). The authors recognized that the denomination of "democratic" became almost a catchall phrase for all struggles towards freedom, making the boundaries of the concept itself contested (Schmitter, Karl, 1991; 76). In an attempt to examine the concept of legitimacy, this section follows Schmitter and Karl's strategy, by offering a definition of

¹⁰ The present title paraphrases Schmitter and Karl's text: "What democracy is... and is not" (1991). *Journal of Democracy*, Vol 2. No.3.

legitimacy based upon the elements that constitute the phenomenon itself from those that simply are part of other concepts used in the discipline.

There are several discrete interstices and overlapping concepts in the literature on democracy. Concepts such as rule of law, transition and consolidation are intertwined. These concepts are related, but it is difficult to draw distinctions between and identify causal relations among them. A similar problem occurs with legitimacy, which is a widely used concept with dissimilar meanings and lost its distinction due to blurred limits and malleable uses. Legitimacy is often associated with institutional crisis, institutional credibility, a regime's failure to deliver the promises of democracy (Diamond, 1997; Grugel, 2002, Przeworski et. al., 2000) and regime instability (Seligson, Muller, 1987). Moreover, the concept is affiliated with the prerequisites of democracy (Lipset, 1959) as well as in discussing the tools of political activism against sultanistic regimes (Ganji, 2005).

3.1. Legitimacy: its Uses and interstices

Following the strategy traced at the beginning of this dissertation, the first sub-subsection takes into account the different ways used to measure legitimacy, in order to clarify the way in which this concept has being studied. The second subsection evaluates the conceptual gaps that make legitimacy a distinct concept from others in the literature. These interstices will shed light on the differences and overlaps of the discipline of democratization when defining and measuring legitimacy.

3.1.1. The Uses of Legitimacy in the Democratization Literature.

Throughout the discipline, the empirical approaches to the study of legitimacy have taken two forms. The first group focused their attention on the approval by the people of a particular system of rule (Beetham, 1991). Although closer to Lipset's idea of *legitimacy as performance*, they differ by measuring the support towards the regime (or justification to rule). Beetham's research was focused on understanding the justifications used to dominate, rather than the reasons to follow a command. More accurately, he suggested three criteria to establish when a power is legitimate: Firstly, the capability of establishing the rules; secondly, the rules are justified by shared beliefs between those exercising power and those subjected to it; and thirdly, there is consent to the power that is exercised. Despite such gradation, Beetham presented legitimacy through a binary approach: a form of power is either legitimate or it is not. He does not present alternatives. This will prove to be too monolithic and general, in the sense that it is very hard to breakdown the components of the system.

A second group of empirical studies have taken a slightly different approach. Researches, such as the Latin American Public Opinion Project (LAPOP) of Vanderbilt University, try to understand if people's expectations of the government are met, leaving aside what is expected of a democratic government. According to Canache, Mondak and Seligson the approval or disapproval of democracy has been confused in the surveys with the satisfaction levels of with democracy (2001; 507-510). This statement implies that there are some connotations regarding the performance of democracy – classical source of legitimacy from nondemocratic regimes- rather than the increase of socialization of the population that was the expected outcome of the consolidation process, in adrift. *“When survey respondents are asked to evaluate “the way democracy*

works,” they are implicitly required to contrast the actual nature of democracy with some standard of performance” (Canache, Mondak and Seligson, 2001; 511). By these standards, legitimacy becomes the support of the regime. There seems to be no distinction between the popularity of the regime and the actual reason of obedience. Perhaps Beetham’s approach was more critical in this point, especially the second element, the shared belief in what constitutes the rules. Consenting to power and sharing the beliefs in which the rules were established is closer to a definition of consolidation, rather than legitimacy.

The empirical studies presented focus on the source of authority, implying that their scope captures government’s justifications to rule. However, the empirical approach to citizen’s reasons to comply focuses on asking directly if people believe in democracy. Public opinion polls attempt to measure legitimacy by focusing on what people say about government performance and “satisfaction with democracy”, which means that they often fail to distinguish between the reasons to comply with the government and governments’ popularity (Yun-Han et. al., 2008; Canache et. al., 2001).

The empirical approaches to legitimacy require a stronger theoretical framework that grasps legitimacy in a bottom up, rather than in a top down manner. Legitimacy is better understood when asking the reasons to comply. The public opinion polls are useful for understanding motives and public values. The researches based on Beetham perspective are appealing to policy analysis. But the sociological component of legitimacy seems to be still missing. It is necessary to isolate legitimacy from other concepts in the literature before comprising a theoretical framework.

3.1.2. The Interstices of Legitimacy

The interstices are the small gaps that reside between mental maps. In the case of the literature on democratization, it is possible to say that they are the small breaches between concepts that seemingly overlap. Because of its contested nature, the democratization subfield entangles and constrains different concepts (like consolidation, rule of law or stability), making the disentanglement of such concepts an unattainable theoretical task. There are many concepts that fall in between, rather than within other groups of theories. In the present section five interstices are presented: First, the dangerous interstice that links legitimacy with ideology. Second, there is an obscure gap that exists between the concepts of legitimacy and consolidation. The third interstice lies between legitimacy, consolidation and stability. A fourth interstice resides between the concepts of legitimacy, stability and the debate on regime type. And the last one falls between legitimacy and rule of law.

First, legitimacy does not depend upon a particular ideology. In a recent take on the role of surveys of satisfaction with democracy, Seligson related legitimacy with ideology:

“Being on the left in Latin America has implications beyond the ballot box. For the region as a whole, those on the left are less likely to believe that their country’s political system is legitimate, and are less likely to believe that despite all its flaws, democracy is still the best available form of government. Moreover, in most countries, the left is more likely to support strong leaders who offer weak support or even hostility to the checks, balances, and procedures that mark liberal democracy. A second and related trend is the rise of populist figures and governments, especially in South America. This trend emerges, no doubt, in part from the very low level of trust that many citizens place in key institutions of liberal democracy—especially parties, the courts, and the legislature. In some countries, such as Ecuador, trust in these institutions is abysmally low” (Seligson 2007; 93).

Although the levels of support towards institutions might be related to being “on the left” or “on the right” of the political spectrum, the relevant issue here is the relation between legitimacy and the rise of charismatic forms of dominance. Populism is, somehow, related to the role played by outsiders of a political system coming into power as well as the rise of “the new left” in Latin America. This charisma based form of leadership is a useful strategy to politicians that wish to enter into political systems with high levels of participation and high levels of exclusion. Being outsiders, most of the *populistas*’ demagogic discourses encourage polarization by opposing certain political institutions. The peril of outsiders coming into power and disregarding check and balances in the name of peoples’ will, is the potential erosion of democracy. The fact that some left wing leaders are hostile towards check and balances does not imply that democracy is not legitimate. Is it possible that there are different legitimacy sources from different ends in the political spectrum? Does this mean that there is a tendency towards stability in a particular political position? Can this difference be related to the problems of consolidating democracy? This point requires further theorization and a case analysis that explores deeply the implications of legitimacy for what O’Donnell called “*delegative democracies*”. A particular ideology is not the basis of legitimacy.

Legitimacy is also not the same as consolidation. There is a small interstice between them, in so far as the validation of a democratic authority is different from the process in which democracy consolidates, thus becoming the “only game in town” (Diamond, 1997). The entanglement of consolidation with legitimacy seems to prove an important point. Legitimacy could be associated with the idea of consolidation. Because the debate tries to explain the next step after a regime finished its transition from authoritarian rule, legitimacy is a highly regarded attribute. This means that stability

could be the outcome of a process where the goal is to deepen [consolidate] democracy. According to Diamond, consolidation is equivalent to a robust legitimacy in the sense that legitimacy is reflected as first, a normative commitment of the actors towards the regime and, second, a behavioural "*habitation*" of the democratic rules, expressed with an internalization of the norms which reflects the compromise towards democracy (Diamond, 1997). However, legitimacy also played the role of the antecedent in a relation where the outcome will be consolidation. This double role reflects its importance as outcome and part of the causal factors of the democratization process. He proposed that this double commitment should be reflected into a double axis, which involves three different levels of actors: first, the elites, involving top decision makers, organizational leaders, political activists and opinion shapers; the second, organizations, including parties, organizations and movements; and the third group is constituted by the mass public.

From this distinction, legitimacy is relevant as part of the norms and beliefs of each specific actor. The elites should believe in the legitimacy of democracy. The organizations should not reject legitimacy of the rules or the institutions. In the mass public is reflected as a preference towards democracy, with at least 70% support of democracy and non as much as 15% of the population supporting authoritarian forms of government. For Diamond, then, a robust legitimacy as an outcome of the consolidation process is exhibited in the regime, when its most relevant actors show a normative and behavioural commitment towards democracy; in other words, when the commitment and the belief in democracy is not instrumental. Yet, legitimacy, as part of the process, resides in the norms and beliefs of the actors. From this point of view, there might not be a difference between regime consolidation and legitimacy. One implies the other,

and at the same time the causal relation it is not clear. Which one goes first? Does legitimacy cause consolidation? Or is it consolidation what allows a “robust legitimacy”? Are they part of the same process? Legitimacy is not the same as consolidation.

The interstice between legitimacy and consolidation can be removed by unearthing the way in which both deal with stability. The relationship between legitimacy and regime stability was first explored by Lipset in 1939. He argued that stability is not related to economic crisis. Rather, the stability of the regime depends on the interaction between legitimacy and the effectiveness of the government. “Effectiveness means actual performance, the extent to which the system satisfies the basic functions of government as most of the population and such powerful groups within it as big business or the armed forces see them. Legitimacy involves the capacity of the system to engender and maintain the belief that the existing political institutions are the most appropriate ones for the society”. (Lipset, 1939: 77)¹¹ But, can democracy be legitimate merely by means of effectiveness? Once again the frontiers between concepts are blurry. Although there might be come causal relation between them, legitimacy is not the same as stability.

Another interstice can be found on the concepts of legitimacy, stability and the debate on regime type. On the debate over presidential versus parliamentary regimes fuelled by Linz, stability was one of the reasons why the former regime was superior to the latter. According to Linz, “the vast majority of stable democracies in the world today are parliamentary regimes, where executive power is generated by legislative majorities and depends on such majorities for survival” (Linz; 1990). More in depth, one of the reasons to assess the difference between parliamentary versus presidential regimes

¹¹ This fragment is Seligson and Mueller quoting Lipset. (Seligson, Muller, 1987; 303)

was the “pressure valve” that is released in case of a crisis. In parliamentary regimes, when cabinet crisis arise, it is “easier” to substitute the prime minister. Although this could lead to a constant change in MP, the evidence and the debates argue otherwise. He called this the “superficial volatility” of parliamentary regimes. Despite an unstable facade, parliamentary regimes tend to be built upon power tensions in the legislative branch, which takes pressure off the Prime Minister. In the case of the historically more unstable regime type, presidentialism, the Vice-president or a minister might be released in case of crisis. However, because the regime itself bestows more power upon the president, when the performance of the executive branch falls, the whole system falls apart. Again, for Linz performance seems to be the key element when analyzing stability, not the legitimacy of the regime.

The strength of his argument resides in stability, as a key factor of the superiority of parliamentary over presidential regimes. However, the legitimacy of the regime is not in question. Because of the focus, this body of literature focuses on the institutional framework itself. The approval or disapproval of the regime is not in question; merely the tendency towards stability of a particular regime type. Is it possible that legitimacy depends on the institutional arrangement? What if democracy endures, even in a highly questioned presidential regime? The case of Ecuador definitively challenges this assumption.

There is still one more gap to unearth: legitimacy is different from the rule of law. Because legitimacy appeals to the validation of a system of authority, and democracy appeals to the rules and the equality guaranteed, it is hard to distinguish it from the predictability of the application of the rules in a dynamic interaction between law and society. It is possible to trace two different branches where legitimacy and the rule of

law are different. First, O'Donnell showed that horizontal accountability and the rule of law are intertwined. *"For horizontal accountability to work, there must be a democratic state of law, especially in relation to the upper echelons of the state –the executive and congress- where historically it has been more difficult to control and eventually sanction the respective officials. This effectiveness is the republican dimension of democracy"* (O'Donnell, 2007; 101). Because of this close relation, a healthy working rule of law does not depend only on the top vertical interaction of law and society.

On the other hand, O'Donnell made a distinction between "rule of law" and a "democratic rule of law". From his point of view, a plain "rule of law" is related to the function of the judiciary system (specifically to the courts), while a "democratic rule of law" is the legally based rule of a democratic state (O'Donnell, 2004). This implies that the system itself is democratic when: *1) It upholds the political rights, freedoms, and guarantees of a democratic regime; 2) it upholds the civil rights of the whole population; and 3) it establishes networks of responsibility and accountability which entail that all public and private agents, including the highest state officials, are subject to appropriate, legally established controls on the lawfulness of their acts"* (O'Donnell, 1994; 36). This means that the rule of law is a concept that appeals to the way in which the state guarantees the application of the law to everyone. Legitimacy is not the same as rule of law.

By unearthing such interstices and establishing more clearly the boundaries of the concept of legitimacy, legitimacy does not depend on a particular ideology, it is different from the notion of consolidation, it is easily entangled with the ideas of consolidation and stability, it exists in both presidential and parliamentary regimes and it is not the same as rule of law. But as puzzling as it might be, the strategies used by the

empiricist approaches to legitimacy mentioned conflate the idea of legitimacy with broader notions. Legitimacy has been used from comparative politics as a gimmick wild card to complement other theories, i.e. the consolidation paradigm (Diamond, 1997), government performance (Grugel, 2002) or stability (Seligson, Muller 1987). In this sense, the empiricists' approaches to legitimacy are scattered efforts of threading theories together. In order to complement these lessons, the next subsection deals with the theoretical components of legitimacy.

3.2. A Theoretical Assertion of Legitimacy

So far, this dissertation established that the empirical approaches of legitimacy conflate this concept with other notions. The most inconclusive issue presented is the fact that often legitimacy is associated with governments' popularity. Democratic theory has a clearer notion of where to look for legitimacy. Barnard suggested a distinction between the concept of legitimacy by "itself" and the entanglement with *the justifications that governments use to rule over the people*.

"The self-limiting ideas of liberal democracy undoubtedly are a problematic issue in that they give rise to the objection that, although they usefully serve as a justification for curbing governmental power, they at the same time negate the power of the popular will and thus fail to legitimate democracy in and for itself" (Barnard, 2001; 5).

Barnard argued that defining the concept in terms of the *justification* used by governments to rule, opens the door to a *broader range of normative reasons*, while regarding the *legitimation* [sic] (by itself) of a political system provides a *narrower notion*, in so far as the claims have no claim to universal normativeness (Barnard, 2001; 5). Any form of rule can justify its action, thus democratic and non-democratic rule can be legitimate. This implies that a government may achieve compliance without necessarily attaining legitimacy. More than insisting upon this difference, and its alleged

repercussions, this insight provides the necessary distinction between the *justifications to rule* and the understanding of legitimacy as a *process*.

Barnard argued that in order to understand legitimacy, it is necessary to grasp the interaction between different dimensions of it. He is discussing the *electoral right to rule*, the *procedural* and *substantive* legitimacy. By the former, he is referring to the constitutional framework that encloses the governments' authority. It might be argued that this dimension is related to the liberal and republican conceptions of the constitution as a meta-law that frames struggles of power. However, Barnard defined it as a "constitutional" component. His model mostly takes into account the ambivalence of plural and a political society, in order to show the way in which claims are simultaneously contested on procedural and substantive grounds (Barnard, 2001; 201). By *procedural legitimacy* Barnard understands a stem of the reflections on legitimacy that is focused on the way in which procedures are applied. The *procedural legitimacy* does not take into account the normative commitment of certain processes, concerning only with the way in which procedures are applied. He argued that this follows Weber's perspective of legitimacy, in so far as both share their preoccupation with no morally prescriptive doctrine (Barnard, 2001; 32). By substantive legitimacy he is referring to the notion of *democratic rightness*: those forms of power that are being accepted as intrinsically self-sustaining, regardless of constitutional provisions or the outcome of elections (Barnard, 2001; 32-33).

For Barnard, legitimacy resides in the tension between a governments' right to rule and the people's right to be autonomous; he emphasizes the perils of the constitutive *oneness* between the rulers and the ruled. Since he is taking into account diverse societies, the interaction of different normative claims with the procedures

generates a tension. The way in which such tension is resolved determines the extent up the conditionality of democracy. This leaves us with a “*dual*” model of democracy, in so far as it is the separation that maintains the safeguards towards tyranny; democratically instituted law from “administrative fiat” (Barnard, 2001; 208). Such perspective seems different to the idea of vertical legitimacy. As stated before, the idea of a *vertical legitimacy* implies a dominance of the rules. Such conception of regulation in terms of a *deus ex machina* that comes from above, giving the citizens the option of either to comply or deny it. There is no socialization process, only a regulation and the potential to either resist it or obey it. A perpendicular approach is linked with the liberal conceptions of democracy in so far as they share its limitation to address a dimension of legitimacy, by looking at vertical relations of power.

Rather than presuming that legitimacy exists in modern law, we might have to examine other type of social processes. Neither modern laws by themselves nor government`s popularity determines a legitimate government. Barnard`s distinction of constitutional, procedural and substantial components of legitimacy questions heavily the approaches towards the measurements examined in comparative politics literature. The next two subsections focus on understanding two different strategies used by political theorists in order to incorporate the challenges that contemporary democracies pose to our understanding of legitimacy.

3.2.1. Understanding Legitimacy as a Complex Interaction

David Held proposed a normatively driven model of democracy that incorporates the best components of different pre-existing models. The ruling principle of such task is that we can not be satisfied with existing models of democratic politics. He rightfully

argued that different models can teach us valuable lessons, thus overcoming their current limitations (and ours for what matters). Such strategy is consistent with Dahl's idea of having a high bar for democracy, but its factual reality does not seem that apparent. His model is based upon a definition of autonomy that is connected with the human capacities of reason, self-consciousness, self-reflection and self determination.

His beliefs are translated into what he called the principle of autonomy:

“persons should enjoy equal rights and, accordingly, equal obligations in the specification of the political framework which generates and limits the opportunities available to them; that is, they should be free and equal in the processes of deliberation about the conditions of their own lives and in the determination of these conditions, so long as they do not deploy this framework to negate the rights of others” (Held, 2006; 264).

This principle takes into account different concerns expressed by political theorists and different models, such as the necessity to limit political authority, enhance equality, include citizens' duties, the individual pursuit freedom and the relevance of deliberation in the political. But perhaps the most outstanding feature of his principle is the fact that it is entwined in the foundations of democratic consent. This implies that Held's perspective uses a bottom-up, rather than a top-down approach towards legitimacy building. It is not the acceptance or rejection of the law that matters, rather the way in which people become participants of the process is what seems definitive. In other words, Held proposed a shift in the interpretation of legitimacy in so far as what determines legitimacy it is not the reasons to comply (or not to do so) with democracy; rather, the processes that enrich and comprise the framework of the political is what constitute the *legitimacy of democracy*. This is different than the vertical approach to legitimacy in the sense that it refers to the scope of the use of power, providing an insight into where we should be looking for when understanding democracy: the complex social interactions of individuals that are determining their ruling structure.

Held's contrivance is shaped by the particular way of understanding democracy as a process that articulates the state and civil society (2006; 275-280). This joint understanding is presented as a *double democratization*, where state and civil society should be interdependent. Although there are certain valid critiques that could be made to this approach¹², Held's contributions to the understanding of democracy should not be brushed aside carelessly. This self proclaimed eclectic model presents an innovative approach towards legitimacy as it incorporates a holistic approach to democracy. Held's point takes into account citizens' reasons to obey, brushing aside government's justification to rule. Therefore legitimacy is a built-in component of the complex interaction and construction of democracy itself. This does not mean that legitimacy is given, rather, that it is a constitutive component of the democratic processes. In a nut shell, and using his own words, "democracy has been championed as a mechanism that bestows legitimacy on political decision when they adhere to proper principles, rules and mechanisms of participation, representation and accountability" (Held, 2006; 261). Providing the evidence presented by Held's model, the *enactment of the principle of autonomy* should be considered when examining the legitimacy of democracy. This implies looking into the complex interaction between the government and the governed when attempting to more fully understand democratic legitimacy.

¹² Among the potential critiques, there are two that stand out: First, Held organized an uneven group of theories in a category (i.e. Marxism or liberalism), which may be useful to understand and explain different approaches, yet such smooth presentation is problematic in the sense that it presumes a given and fixed approach. Second, Held's perspective interprets in an asymmetric fashion the retrospective significance of a given statement and the meaning of such statement for the author himself (what Skinner called the mythology of prolepsis). Held's mental set organize the past in order to enhance his understanding of complex contemporary societies.

3.2.2. The External Relation Between Facticity and Validity: Legitimacy

Under the Deliberative Democracy Model

Jurgen Habermas provides a second model of democracy. This author's model of deliberative democracy is particularly relevant because of his interpretation of communicative reason and the way in which it is articulated with legitimacy. The word *articulate* is determinant, since legitimacy was never incorporated inside of the model as Held did; this notion remains as an attribution rather than as a characteristic of the overall. At the end this provides a double edge approach to legitimacy that "take the legal system seriously by internally reconstructing its normative content, and describe it externally as a component of social reality" (Habermas, 1996; 43). Habermas' model provides insights into the way in which power and rules come to life by means of their enactment. He also elaborated participation in deliberative processes as a mechanism to uphold democratic values. For Habermas it is in the constitutive actions of production and reproduction of the law where we can understand legitimacy. He restructured Parsons' sociology in order to understand "*a legal community that determines itself through the common practice of associated citizens*" (Habermas, 1998; 79)

In order to locate the place where legitimacy resides, we must take into account Habermas idea of communicative reason. It is in the constitutive actions of production and reproduction of the law where legitimacy can be understood. Habermas developed a twofold strategy in order to grasp how those actions are inscribed in different processes. In the process of deliberation itself, citizens engage in horizontal relations, collectively establishing legitimacy. By participating in the process of deliberation they are building legitimacy as well as integrating in the enactment of democratic rule by participating in the law-making process (Habermas, 1998; 82-131). This is presented as

a vertical process that is constructed bottom-up rather than top down. Therefore there is a need to develop a new strategy capable of capturing the validity claims in the process in which they are formulated (thus the horizontal application of validity claims) and the way in which they are enacted (the vertical reproducibility of the validity claims in the system of rule). His idea of communicative reason entails a notion of social action that stretches our understanding of social behaviour by making democracy come to life by means of its practices, contents and procedures.

Habermas' concept of legitimacy is innovative by means of his double edge approach. On one hand, legitimacy is integrated to the classical liberal approach of participation in law making processes. He regarded dearly the role of *legal rules* as a *higher level of legitimate orders*. On the other hand, legal symbolism and the competences acquired by means of legal socialization became lifeworld components, thus enacting law in/from the societal level. The promulgation of law becomes a process of production and reproduction, in so far as the interaction between institutions and a society that deliberates is maintained. This idea of *communicative reason* entails a notion of action that stretches our understanding of social behaviour by making democracy come to life by means of its practices without brushing aside its normative content, yet leaving aside its prescriptive downside. Hence, the outcome of Habermas elucidation is a dual legitimacy that constitutes itself by virtue of two separated, yet synchronized processes.

From a theoretical point of view it is crucial to understand how the challenges of complex societies affect the way in which we understand democracy if we ought to grasp legitimacy. In theoretical models, legitimacy becomes a fundamental piece of the puzzle that binds together the law and the idea of lifeworld. The enactment of the

principle of autonomy as well as Habermas` examination of the communicative reason as a dual simultaneous process bridges the empirical as well as theoretical components of legitimacy. There is still the challenge of translating these lessons into an accurate measurement of political realities in Ecuador.

3.3. What do We Understand as “Legitimacy”?

So far it has been demonstrated that the empirical approaches to legitimacy focus their attention on either approval of a form of domination or on the idea of satisfaction with democracy. Empiricist approaches do not capture the source of legitimacy, since their scopes aim at the vertical top down relation, rather than comprise different interactions that bridge the normative commitment of societies with democratic values. Ecuador’s “*persistent endurance*” challenges further the vertical top down approach towards legitimacy. This liberal misapprehension entangles a state-centric vision that we must overcome for understanding contemporary societies.

Furthermore, political theory aims at idealized and intrinsically complex processes that are really hard to grasp and measure in political practices. In order to capture this notion in a country where democracy prevails after several tests, legitimacy must be considered as a process in which authority is validated by citizens that enact democratic values. Such validation consists of a simultaneous yet interdependent process of vertical bottom-up (rather than top-down) and horizontal legitimacy. From a sociological point of view, authority validation will be captured in the interaction of Barnard’s three constitutive components: constitutional, procedural and substantive. Such dimensions comprise the realm of the political.

There are four issues that seem relevant in the understanding of legitimacy. First, it must be understood as a process of authority validation. Second the reasons to comply, rather than the justifications to rule, are a more determinant factor when understanding legitimacy. Different systems of rule will use several justifications to command obedience. Political theory showed that in order to understand legitimacy in complex contemporary societies the interactions between state and society, as well as the different socializations that bring laws to life must be taken into account. Only in such interdependence the political processes can be understood. Third, the complex interaction between the constitutional, electoral and normative components of democracy help to decipher, at an institutional level, the simultaneous yet independent relationship between horizontal and vertical legitimacy. Fourth, legitimacy can only be understood when considering its vertical as well as horizontal components. Habermas definition of legitimacy takes into account such complex interaction in terms of simultaneity and interdependency. The idea of horizontal and vertical legitimacy is both relevant and insightful in so far as the process of deliberation as a new socialization form is taken into account. Although, to analyze the sociological component of deliberation processes surpasses the context of the present dissertation we have to understand this idealization in order to grasp his idea of interdependent and simultaneous legitimacy.

In order to fully grasp legitimacy as a process of authority validation, it is imperative to understand how it might be inextricably linked with the law, in the sense that it becomes legitimate in democratic practices. As political theory established, there is something about the democratic rules that is important: the way in which a particular regime enacts the law as well as the interaction between the components of legitimacy.

As the democratization literature demonstrated, the perils of conflating legitimacy with governments` popularity must be overcome, while at the same time reassuring the necessity of building theories and indicators. The next section hypothesizes the causes that can explain Ecuador`s *persistent endurance* under the parameters of legitimacy defined earlier.

4. What Kind of Legitimacy Exists in Ecuador?

As previously stated, democratic theory focused its attention on understanding the challenges posed by contemporary societies, leading the debates of legitimacy towards the interpretation of horizontal political relations and leaving aside the vertical approach. The displacement of the state as the center of political inquiry goes hand in hand with such a shift in the scope. In order to grasp both vertical and horizontal legitimacy, the present section discusses different explanations regarding the processes and interactions that constitute the legitimacy of Ecuador's democratic regime.

As argued in the previous section, legitimacy, like "democracy", is not a concept that you can assess by merely arguing that it exists or not in a country. Legitimacy is a concept that is better understood with regard to relations between the government and the people, as well as between citizens' interactions; between the complex interaction of law, the executive branch and the legislative with the lifeworld, civil society, political participation and the enactment of the law. It is hard to believe that legitimacy in Ecuador resides in either the executive or the legislative. The evidence drawn from LAPOP showed that Ecuadorians do not BELIEVE in the judiciary either. Is there any kind of legitimacy in Ecuador? In order to assess where legitimacy lies in Ecuador, the present section explores the theoretical and empirical components of the three different explanations of democratic stability presented earlier. The competing hypotheses are three different plausible explanations, from a theoretical point of view, of Ecuador's sustained stability in terms of legitimacy. The first hypothesis assumes that the puzzling behaviour could be explained by means of political apathy, while the second explores

the possibility that legitimacy resides on informal rules and the third one is the conjecture that there is some sort of a procedural legitimacy. A deeper exploration of these hypotheses demonstrates how the procedural legitimacy explains Ecuador's persistent endurance better than the others.

4.1. Apathy

The first feasible hypothesis to be tested is the idea that the persistent endurance of Ecuador is explained by certain inertia of the system associated with citizens' reluctance to participate. The theory is that people are apathetic to participation, making them reluctant to overthrow a poor performing regime which explains the endurance of the regime. Theoretically speaking, apathy towards the regime is connected with the idea of legitimacy developed here in so far as the enactment of the political does not work because of a lack of interest in participating. By following Habermas' idea of the horizontal component of legitimacy it is possible to argue that if people do not engage fully in the law making process, deliberation will not become the centre of democratic practices. Thus legitimacy is not complete if the political behaviour does not fulfill the normative necessity of participation.

Theoretically speaking the apathy of the population towards political participation means a low civic engagement. Nevertheless in the literature it has been argued that apathetic behaviour can be functional for democracy (Prothro and Grigg 1960). For Diamond and Verba both passive political orientations and citizen's active attitude constitute the balance that creates a healthy civic culture (1963, 492-93). However, their approach is helpful for understanding the role of apathy on civic culture, an issue that is not related for the present dissertation. In other words, apathy here should be

considered simply as indifference towards political processes. The motivations for political apathy may be as complicated as the unwillingness to participate by means of being afraid of authoritarian behaviour (Lechner, 1990). Cases such as Chile may illustrate this point, where participation is scarce and is left to the new generations to civically engage in public affairs, as happened with the “Penguin Revolution”. At the end, the reasons to be apathetic are subjective, although the consequence for the regime is the same: people are reluctant to participate in political processes. It is not hard to imagine a case where citizens are so apathetic that they are not willing to tear down a regime that does not perform.

In a democratic regime the participation in the law making process and the enactment of the democratic values contained in constitutions and laws enrich the procedural, constitutional and substantial components of legitimacy. It is possible to picture a regime where citizens are reluctant to participate in either procedural mechanisms or non conventional mechanisms. The deficiencies will be spotted if a regime has a constant decrease in the voting turnout as well as a scarce participation of social movements or grassroots governance mechanisms as well as if the mechanisms of direct participation (such as referendums) have never being used. Such political behaviour goes beyond the idea of apathy as a political position in the sense that the engagement in the political and the deliberation are essential components of the process of authority validation. A regime with such characteristics will have low levels of legitimacy by means of apathy.

In the case of Ecuador, it is possible to observe that participation is vast. In terms of voter turnout the increase from 35% in 1996 to 49% in 2006 indicates that participation in the ballot box is increasing, although it is far from ideal

(<http://www.tse.gov.ec>). Such an increase happened in the same period as the presidencie, meaning that despite the fact that governments` performance was highly questioned, Ecuadorians were increasingly interested in participating in democracy, which shows that they supported democracy and were willing to participate. If this hypothesis was true, then apathy might be explained by means of governments` acts. A bad performance instigated people to participate, rather than increase the apathy in the regime. On the other hand, in Ecuador there are political parties, such as the Movimiento de Unidad Plurinacional Pachakutik-Nuevo País, that are based on indigenous social movements. The Pachakutik was the political front of the organization CONAIE that organized the rallies in the year 2000. In this year, Ecuador faced another massive rally that protested against a president. In this case they were rallying against Jamil Mahuad, who faced a mayor economic drawback that was solved by means of the dollarization. The elimination of the national currency, *el Sucre*, was an unpopular political measurement that signalled the doom of Mahuad. Once again social movements played a crucial role in Ecuador`s political decisions of the country, which might indicate that the executive does not seem to be the source of legitimacy in Ecuador. Regarding the participation of social movements, the outlaw rebellion and the Pachakutik demonstrated that Ecuador has a robust participation. The regime has flaws related to nepotism and corruption. However, the fact that incumbents are held accountable to their actions by means of direct participation implies that the government right to rule is lively upheld. In other words, despite the potentially damaging scandals citizen participation stopped the democratic drawback by active participation. As plausible as it might be, this theory does not seems to be sufficient to explain Ecuador`s elusive legitimacy.

4.2. Legitimacy Resides in Norms that Favour the Status Quo.

The second hypothesis to be tested is that the legitimacy of the regime resides outside formal democratic institutions, more specifically in norms that favour the status quo. Although in an ideal democracy institutions and social norms coincide, in Ecuador, as was discussed in the first section, there is enough evidence to show that government's performance and social movements are not "on the same page". As presented in the previous section, democratic rules are an important component in the legitimacy of the regime. Thus, if norms bind social conduct more heavily than democratic procedures, legitimacy does not fulfill its normative commitment. In this case the inertia of the social system will impede democratic rules to be enacted. This hypothesis is closer to Weber's idea of tradition as the source of legitimacy in the sense that what always existed is valid, therefore people are reluctant to change. Theoretically speaking, the systems' reluctance to change is explained by means of transaction costs, uncertainty or loss aversion. Samuelson and Zeckhouser called this phenomena status quo bias (1988). They argue that such psychological anchorage must be considered when understanding *uncertainty* in rational choice theories (Samuelson, Zeckhouser, 1988; 41). This hypothesis is particularly interesting in so far as the sunk costs of certain decisions will weigh heavily on maintaining poor governmental performance.

Although social changes take a certain amount of time and the habituation of democratic values is not something to be expected in a short time span, the enactment of the democratic values is a requisite of legitimacy. If the present theory is true, democratic rules are not enacted because there are certain norms that bind heavily the behaviour of the people. Particularly speaking, a dominant social group will establish

and perpetuate itself by means of such norms, even in the case that the political systems do not deliver the promises of democracy. A sustained voting turn-out for the same political parties through time, and incumbents selected from the same families over and over may be likely to occur. The status quo bias will also be seen in demonstrations, in the sense that they will be called for and rallied by traditional politicians as disagreement between elites.

This theory may be supported by analysts that argue that a certain elite group perpetuates itself in power, displacing the interests of the less favoured Ecuadorians. Juan Paz argued that Ecuador became an entrepreneurial state that only upholds the interests of the more powerful groups, systematically excluding other interests (Paz, 2006). He evaluated the changes that took place after the transition from authoritarian rule in order to differentiate two models of economic development: a developing-state and an entrepreneurial state (Paz, 2006; 90-94). According to him, this raises a historical debt with the excluded from economic development that politicians have not addresses yet (Paz, 2006; 98). This may support this hypothesis in so far as the development of such economic model requires the support of political parties and politicians that include it in their political agendas, thus deepening the relation of power.

In the case of Ecuador, participation is increasing. As mentioned before, formal mechanisms of participation are increasingly being used by citizens. This means that participation is not held constant, which implies that the present hypothesis might not be true, in the sense that formal political mechanisms are not being assimilated by the status quo. Ecuador has political parties that were founded in the XIX century and still get some votes. However, at the moment there are thirty three active political parties in the country, and several of them are new. The parties that elected the latest presidents

Bucharam, Mahuad, Gutierrez and Correa are not traditional parties. The *Partido Roldosista Ecuatoriano* (PRE) that supported the candidacy of “*el loco*” was founded in 1982; Mahuad was elected by the *Democracia Popular-Union Democrata Cristiana* (DP-UDC) coalition of political parties, which was founded in 1978; Gutierrez was appointed as the candidate of the *Partido Sociedad Patriótica 21 de Enero* (SP), a political party that was created after the political protests of 2000; Finally, Correa led the creation of the political party *Alianza PAIS—Patria Altiva y Soberana* ["Proud and Sovereign Fatherland Alliance"] (AP) at 2006. The long established political parties were no longer a decisive force at the ballot box. As a matter of fact, even the mayor rival of those presidents is not a traditional party: The *Partido Renovador Institucional Accion Nacional* (PRIAN) is a recently created political party that rallied around Gustavo Noboa¹³. This political party was founded in 2002 with the purpose of supporting his aspiration of becoming president and has a right wing political agenda. The three times presidential candidate (1998, 2002 and 2006) lost in runoffs an equal number of times. Nonetheless his party has a very strong position in the congress. The fact that participation increase and political parties and social movements increased in the last years indicates that the status quo bias does not rule Ecuadorians political decisions in the formal mechanisms of participation.

The outlaw rebellion provides an insight to test if direct participation is being assimilated by the norms that favour status quo. A key element to analyze is the participants in rallies. The outlaw rebellion started as a middle class rally that motivated different groups, such as indigenous population, unions as well as traditional parties.

¹³ For more information go to www.prian.org.ec

Politicians like Paco Velasco¹⁴ or the members of the *Ruptura 25* gained certain popularity by the role they played in the Rebellion. Such heterogeneity of participants weighs heavily on political participation, by strengthening democracy through means of programmatic rather than a partisan or status quo bias attitude. The fact that the outlaw rebellion is remembered because of its call of “*fuera todos*” [everybody out] is clearly an anti-systemic sign. Hence, this theory does not explain Ecuador’s persistent endurance. The anti-systemic participation and the rise of new political actors challenge this interpretation of inertia. Legitimacy does not rest upon norms that reinforce a status quo bias in Ecuador.

4.3. Democratic Rules are Legitimate by Themselves

The third and last plausible explanation to be tested is that legitimacy resides on democratic rules. Such conjecture follows Weber’s idea that rational/legal domination as the source of legitimacy. This means that legitimacy does not reside in the emotional attachment to a person or an extraordinary attribute, nor does it on tradition. This theory takes some time from his point of view in the sense that it is not because there is a personal belief in the rationality of the system that the system is validated. Legitimacy rests on the assumption that it is possible to find some evidence that people enact constitutional principles because of their rational believe in them. It is possible to find evidence of such thing in the agenda of political actors, as well as in the voter turnout for the constitutional assembly.

This hypothesis does not presume that all democratic rules are legitimate. Rather that some evidence of legitimacy can be found in the fact that democratic values

¹⁴ Paco Velasco is the former director of Radio la Luna, that continuously called for people to go to the streets and used such popularity to be elected in the constitutional assembly in 2007.

are part of practices and constitutional principles ruled and delineate the political. Ecuador is a very interesting case to test this hypothesis since the performance of institutions is clearly poor. For example, people protested against the institutions that allowed the economic crisis in the year 2000, as well as they did in 2005 when the separation of power was violated. In other words, this theory presumes that it is likely to observe that legitimacy resides on a place different than formal institutions.

If legitimacy resides in the democratic rules it does not reside solely in state institutions like the executive, legislative or judiciary. Ecuador is a case where there is no trust in performance whatsoever, yet there is an unexplained persistent endurance. By assuming that legitimacy resides on the rules means that there is something particular about the enactment of the law, which is different from saying that democratic rules are intrinsically legitimate. It could be argued that the way in which different political actors converge in the outlaw rebellion in order to claim for transparency and maintain the separation of powers entails a normative claim. It stands for a particular idea of democracy, where the branches of power are separated in order to prevent abuses. The fact that such separation was also written down in Ecuador's constitution implies a normative and a procedural claim. Thus, democratic rules must be understood, not as self-contained procedures, but rather as an interaction between normative claims and procedures. In this sense, in Ecuador contestation of a procedure entangled a normative challenge as well.

If this hypothesis is true, then it is feasible to imagine a country where democratic rules are upheld and play a central role in the political. Such hypothesis does not idealize rules and presumes that citizens' follows them. Rather, than there should be some evidence that people use and value democratic rules. Such observation may be

difficult to assert in an empirical level. However, the critical juncture studied here can provide some insights. The outlaw rebellion called for a leadership change when the president was exceeding his power. Since protestors maintained at bay such power expansion, it is possible to argue that citizens upheld democratic values. From a liberal point of view, democracy was maintained by limiting governments' powers. From a republican point of view, the citizens kept government at bay by means of fulfilling their civic duties. In either case, they showed commitment to democratic values.

In terms of institutional change it is possible to observe that one of the changes that Ecuador's constitutional assembly debated is the impeachment process. The lack of clarity of the procedures that should be followed when impeaching and succeeding a president fuelled the chaos in 1997, 2000 and 2005. Although politicians tried to take advantage of this gap, democratic procedures were reinforced, rather than discarded. The chaotic situation may lead to disregard democratic procedures, but Ecuadorians used the assembly to clarify such legal void. Since we learned that there is an interstice between the rule of law and legitimacy, it is possible to say that we are not trying to understand how rules are applied. Rather the observation indicates that there is evidence of the connection between participation and institutional change.

From a theoretical point of view, it is possible to think that we also may be able to find that there is evidence of an increase in the participation by means of an increase in voting turnout and the use of direct democracy mechanisms. As demonstrated before, there is an increase in the formal mechanisms of participation. The fact that politicians' corruption and failed promises increased (rather than decrease) political participation indicates that people are unhappy with politicians, not with democratic procedures. The quantitative increase in voting can be reflected in the contrast between the over four

million of votes casted in the elections of 1996 with the over nine million votes for the constitutional assembly (<http://www.tse.gov.ec>). Such dramatic change in terms of formal political participation proves the point further. In terms of civic engagement, in Ecuador social movements are calling for more elections and more transparency in public officers. The members of the outlaw rebellion were not calling for a different regime. They were merely claiming for the Gutierrez's resignation since he failed to maintain the separation of powers. In the protest of 2000 they called for a better economic performance. The social groups that participated in the rallies were different every time: in 1997 a mixture of diverse social actors joined the rallies against the dollarization; in 2000 the indigenous groups were the protagonists of the protests; and in 2005 middle class went to the streets. The quantitative increase in the mechanisms of direct participation and the qualitative increase of formal participation indicate that democratic procedures are growing stronger in Ecuador.

The horizontal component of Ecuadorians' validity claims was reflected by the enactment of democratic principles in the new constitution. After years of sustained crises and permanent rallies, the changes that people were asking for can be reflected in the constitutional change. The fact that politicians and interest groups -like Paco Velasco and Ruptura 25- participated in both the Outlaw Rebellion and the constitutional assembly demonstrates this point further. Since political actors that were claiming for a better country enact their claims in the constitution, it is plausible to believe that there is a strong connection between validity claims and the law making process.

Ecuador's persistent endurance may be explained by means of rules that are legitimate by themselves in so far as we showed that there are different social practices

that enact constitutional principles. Although this hypothesis is suitable for the case of Ecuador, it may not be able to explain other Latin American cases regarded as delegative democracies, where a leader impersonates state power. Such form of validating authority requires further exploration and may be a part of a broader research that pretends to generalize about legitimacy in presidential regimes. Such pretention escapes the generalizable capacity of the present dissertation.

5. Conclusion

The present dissertation began as an exploration of the causal relation between stability and legitimacy. However, the causal processes were unclear and the notions imprecise. Stability is a problematic concept in the literature that is hard to define. An explanation that presumes such causal relation does not reflect accurately Ecuador's political situation. As it was shown in the first section, Ecuador's institutions seemed in peril, yet the foundations of democracy were not questioned. In a more theoretical level, as it was shown in the second section, legitimacy bridges law and social processes without taking into account institutional stability. As asserted in the third section, democratic procedures were determinant of Ecuador's sustained endurance. Therefore, stability fails to cope with either Ecuador's combination of institutional unsteadiness and democratic endurance or the normative components of the concept itself.

There is enough evidence to say that Ecuador has a particular way of maintaining its stability: Democracy survived because legitimacy resided in democratic procedures that were enacted by the Ecuadorians. In this sense, legitimacy helped to maintain an incomplete democratic regime. Because legitimacy did not rest on the executive power, when the leadership crisis began during the presidency of the self proclaimed "loco" Bucaram, with the *golpista* Gutierrez or the doubtful Arteaga, not believing in the president was not synonymous with challenging the democratic rules. Moreover, citizens' participation and enactment of democratic principles throughout the *Outlaw Rebellion* complemented the regimes' institutional deficiencies. The legitimacy of the democratic rules in terms of legitimacy's enactment maintained the limping regime,

even if institution`s performance threatened stability and even after the executive tried to overthrow the separation of powers.

Overall, the four components of the notion contrived (authority validation, the examination of the reasons to comply, the complex interaction of its constitutive components and its simultaneity and interdependency), are useful for improving the precision of measurements of democracy in Latin American countries. This perspective encompasses the theoretical components of democratic legitimacy for contemporary societies and the empirical examination of a particular regime. Paradoxically, legitimacy seems “clearer” as a complex concept, rather than a variable in a survey. Legitimacy is better understood as a process of authority validation enriched by a bottom up approach that comprises the constitutional, electoral and normative components of democracy by enacting the vertical and horizontal components of the concept in a simultaneous and interdependent manner. The Habermasian approach offered provides an insight on vertical and horizontal components of the law making process, incorporating the application and reproducibility of validity claims in the system of rule.

Democratic procedures and the way in which they are enacted are crucial for democratic legitimacy in Ecuador. Nevertheless, further work may be required to establish a source of legitimacy for all democratic regimes. Delegative democracies like Colombia or Venezuela and eastern European single party systems could provide interesting cases for a comparative analysis. Therefore it may be appealing to contrast cases of charismatic domination or tradition with this legal based legitimacy in order to identify which source of legitimacy helps democracies endure and fulfill its promises.

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