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Populism by the rules? A study of the radical right in presidential governments and its (constitutional) confrontation with non-majoritarian institutions

Campos, Felipe

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Populism by the rules?

A study of the radical right in presidential governments and its
(constitutional) confrontation with non-majoritarian institutions



MSc Thesis

By Felipe Campos

Student no.: s3838986

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ABSTRACT

This thesis explores how the populist radical right seeks to control non-majoritarian liberal institutions through democratic means. Specifically, I test this theory within presidential systems, examining whether a radical right government leads to an increase in legislative proposals that target the disempowerment of constitutional courts. Therefore, **my hypothesis is that the number of legislative bills aiming to overcome the autonomy of constitutional courts is higher under populist radical right governments than under non-radical ones.** I employ a mixed-method approach, starting with four longitudinal quantitative research and then applying in-depth analyses conducted in Brazil, El Salvador, the Philippines, and the United States to compare instances of radical right governance with those of previous non-radical coalitions in each country. The results generally support the hypothesis, except for a notable deviant case observed in the United States.

INTRODUCTION

Within the liberal democratic framework, checks and balances form the bedrock for safeguarding fundamental freedoms. Yet, paradoxically, "democracy's assassins use the very institutions of democracy [...] to kill it" (Levitsky and Ziblatt 2019 p.7). This thesis explores how the populist radical right seeks to control non-majoritarian liberal institutions through democratic means. Specifically, I test this theory within presidential systems, examining whether a radical right government leads to an increase in legislative proposals that target the disempowerment of constitutional courts. Therefore, **my hypothesis is that the number of legislative bills aiming to overcome the autonomy of constitutional courts is higher under populist radical right governments than under non-radical ones.** I employ a mixed-method approach, starting with four longitudinal quantitative research and then applying in-depth analyses conducted in Brazil, El Salvador, the Philippines, and the United States to compare instances of radical right governance with those of previous non-radical coalitions in each country. The results generally support the hypothesis, except for a notable deviant case observed in the United States.

The thesis hypothesis relies on the theory that populists often use democratic means because they do not inherently reject democracy per se, but rather contest liberal democracy (Mudde 2021; Stanley 2008; Weyland 2001). In this context, although the study of the role of constitutional courts within populist governments has gained traction (Arato 2019; Rovira-Kaltwasser and Taggart 2015a; 2015b; Stanley 2015), there remains a gap in understanding how this dynamic unfolds within the legislative bodies of presidential systems under the radical right. Therefore, the period of analysis is noteworthy. I have intentionally framed my research within the context of the "fourth wave of the far-right," which began in 2010 and is

characterized by the mainstreaming and normalization of extreme and radical right actors and ideas worldwide (Mudde 2019). In addition, some key challenges of presidential systems need to be considered, including conflicts of legitimacy between the president and legislators, the potential impact of fixed presidential terms on democracy, the 'winner-takes-all' nature of presidential elections, and the influence of the 'style of presidential politics' on democratic processes (Linz 1990; Mainwaring and Shugart 1997). The choice of presidentialism is, then, the selection of a political system that highlights characteristics of populists which are crucial for testing the thesis's hypothesis. In other words, the conflicts that arise between presidents, legislators, and non-majoritarian institutions provide a unique perspective for assessing the behaviour of the populist radical right when in power.

The next section outlines the theoretical framework for the research and dissects the mechanisms which populists use to overcome non-majoritarian institutions. I describe some features of the populist radical right, going beyond its European references, and discuss the inherent challenges of presidentialism, as well as the distinct characteristics of the role of constitutional courts in presidential systems. For a clear assessment of the mechanisms of confrontation with constitutional courts in the legislative arena, I rely on the work of Arato (2019), which identifies four methods populists may employ to control the judiciary: removal and/or packing of the courts (renamed as “compositional change”), “jurisdiction reduction,” “manipulation of rules of appointment,” and “change of voting rules.” The thesis proposes to extend beyond Arato's work by delving into the legislative processes and doing so under the specific context of the "fourth wave".

In the subsequent section, I explain my case selection highlighting that their variation in geographical, economic, social, and cultural factors allows for an extensive examination and stresses the hypothesis under investigation. I then detail the chosen methodology, starting with gathering all proposed bills of law and equivalent legislative measures suggesting any

functional changes in the role of constitutional courts during both the identified radical right-wing government and the preceding non-radical administration. I then categorize all suitable bills based on Arato's framework. Following the quantitative results, I proceed with an in-depth analysis of the data. By closely examining each case, it is possible to determine whether it is the populist strand that drives more conflicts with constitutional courts through parliamentary means. This mixed-method approach also has the advantage of creating reusable data that can be replicated in other studies. The Results section presents the research outcomes including an assessment of the deviant case, which considers the strong liberal institutions in America and suggests a distinction between populism *in* government and populism *as* the government. The thesis concludes with an interpretation of the outcomes, classifying the nuances between cases and shedding light on the varying degrees of success for these governments. I also present the limitations of the tested hypothesis, its theoretical implications, and potential avenues for future research on the topic.

THEORETICAL FRAMEWORK

POPULISM AND THE RADICAL RIGHT

Populism in its ideational approach is defined as a thin-centred ideology that assumes that society is divided into the pure people and the corrupt elite and advocates that politics should express the general will of the common people (Mudde 2004, p. 543). Because it is a thin-centered ideology, its concept is malleable enough to align with other "thick" ideologies, such as socialism or nationalism (Stanley 2008, p.106-107). While the study of populism and its confrontation with constitutional courts has gained traction in recent years (Arato 2019; Moffit 2016; Mudde 2004; Rovira-Kaltwasser and Taggart 2015a, 2015b), a gap remains in the understanding of this dynamic in presidential systems. More specifically, to understand this confrontation in a populist radical right presidential government. Therefore, two crucial aspects

of its ideational approach have important implications: first, its monistic and moralistic nature. Populists regard the people not just as a unified entity but also as a morally right one. If the elite is perceived as corrupt, populists argue that they "do not deserve the rights and protections of a legitimate opposition" (Mudde 2021 p.579). The second aspect concerns its relationship with democracy. "Populism is pro-democracy but anti-liberal democracy" (ibid). Democracy in this context refers to majoritarian democracy or a system that represents the combination of popular sovereignty and majority rule. Liberal democracy combines these principles with the protection of minority rights, the rule of law, and the separation of powers. In the best concise explanation, it is "the idea that it is legitimate to establish limits to popular sovereignty in the name of liberty" (Mouffe 2000, p.4). Populism opposes liberal democracy assuming that, once the people are in power, "nothing can stand above that, not even a Supreme Court" (Mudde 2021 p.579).

But "populism can tell us only part of the story about 'the rise of populism.'" (Mudde 2021 p.580). To understand its relevance nowadays, it is important to assess its recent success ascending together with the "thick" ideologies of the far right. Mudde (2019) describes it under the idea of four waves. He argues that these movements, marked by strong nationalism, authoritarian tendencies, and opposition to liberal democracy, have been rising in waves since the 1940s. The fourth and most recent one started in 2010 and is characterized by the normalization and mainstreaming of its actors and ideas. It is divided between the Radical Right and the Extreme Right. While the latter rejects core democratic principles, including popular sovereignty and majority rule, the former accepts the essence of democracy but opposes crucial elements of liberal democracy, such as minority rights (Mudde 2019). In that sense, radical right parties, movements, and leaders are fundamentally populist.

Two other features are important for understanding the radical right phenomenon: authoritarianism and nativism. Authoritarianism is the belief in a strictly ordered society in

which challenges to authority are met with severe punishment. Nativism is "an ideology, which holds that states should be inhabited exclusively by members of the native group ('the nation') and that non-native elements (persons and ideas) are fundamentally threatening to the homogenous nation-state" (Mudde and Rovira-Kaltwasser 2007 p.19). It must be stated that this definition fits well the criteria of the radical right in Europe, but it can be problematic as a defining criterion for categorizing other right-wing movements elsewhere. Mainly where the concept of an idealized homogeneous nation-state is absent. In Latin America, for example, right-wing populists take an inverted form, exalting European immigrant societies instead of native populations, evoking the 19th-century debate between civilization and barbarism. Kestler (2022) suggests a similar feature that works as a "functional equivalent" (p.292). He uses the concept of natural order or the idea of "a natural or religious origin of society and a person's essential rootedness in her social environment." (ibid). He argues that "the assumption of a natural order governing human relations is fundamentally antagonistic to the voluntaristic, egalitarian, and universalist ideas of the left, and it expresses itself in different forms, including not just the notion of natural hierarchies or inequalities among humans, but also nationalism, religious fundamentalism, and communitarianism' (p.292-293). The concept of the natural order, therefore, provides a broader conceptualization of the nativist principle for understanding radical right-wing populism outside Europe.

PRESIDENTIALISM AND CONSTITUTIONAL COURTS

To move further, it is important to define that populist radical right-wing presidents can only exist in the context of at least some form of electoral democracy, a system of governance in which citizens participate in relatively free and fair elections. For the thesis' purpose, presidentialism is to be understood as a presidential democracy, which has three distinguishing features. First, the election of the head of government and the government per se are not dependent on the legislature. Second, the president is elected for a fixed period. Third, the head

of the government is also the head of the state. (Linz 1990; Lijphart 1984; Mainwaring 1990; 1993) Therefore, the specificities of presidential systems are significant due to their unique characteristics regarding the relationship between the government and the legislature and how the former holds strong majority coalitions. Linz (1990) outlines four challenges that presidentialism may encounter in comparison to parliamentary systems. These challenges encompass conflicts of legitimacy between the president and the legislature (dual-legitimacy); the potential impact of fixed presidential terms on democracy, stimulating short-term commitments; the 'winner-takes-all' logic of presidential elections; and the influence of the 'style of presidential politics' on democratic processes, or the president's sense of being the solely representative of the entire nation (Mainwaring and Shugart, 1997).

Encompassing at least part of each of these four challenges pointed out above, Linz states that in presidentialism there is a clear inclination to perceive the head of state as the legitimate representation of the people. This plebiscitary "style of presidential politics" may lead to the common interpretation that the President's policies are direct expressions of the popular will while characterizing the views of opponents as self-serving or against the interests of the common ones. As Linz aptly notes, "This identification of leader with people fosters a certain populism that may be a source of strength. It may also, however, bring on a refusal to acknowledge the limits of the mandate that even a majority – to say nothing of a mere plurality – can claim as democratic justification for the enactment of its agenda" (p. 61-62). In other words, there is little incentive for a president with populist tendencies to recognize and respect the legislature or any other democratic institution as legitimate representatives of society. The choice of presidentialism is, therefore, a selection of a political system that highlights specific characteristics of populists which are crucial for testing the thesis's hypothesis. The conflicts that arise between presidents, legislatures, and non-majoritarian institutions provide a unique perspective for assessing the behaviour of the radical right while in power.

Another key feature is related to some distinct characteristics of constitutional courts in presidentialism. By “constitutional courts” I refer to all high courts (usually termed apex courts or supreme courts) responsible for the interpretation and validation of the Constitution, regardless of whether other superior juridical instances coexist. “Presidential systems are less likely to feature independent constitutional courts because they often degenerate into ‘superpresidentialism’ or populism that ignores ‘horizontal accountability’ mechanisms designed to check the executive, such as courts” (Kim and Nolette 2023 p.4). In other words, the “perils of presidentialism” is due to create potential conflicts with constitutional courts alone. When occupied by a populist government, the original conflict is highlighted by the president's interpretation of popular sovereignty. Arato (2019) points out that “by identifying the genuine people's will with its own, the populist leader or group inevitably sees the intervention of courts as linked to the secret work of an oligarchical enemy, the deep state, or an external power”. Therefore, the main goal of populists is to absorb constitutional courts and make them “instruments of the executive, unable to police the separation of powers or to defend the rights of individuals and minorities when populist governments, true to their principles, come to threaten them” (p. 331-333).

MECHANISMS AND HYPOTHESIS

Once again: The populist radical right believes in majoritarian democracy but is at odds with the non-majoritarian institutions of a liberal democracy. This is because they have a monistic and moralistic view of the people and do not accept any instance between the common citizen and his leader. Since populists need to prove they are in some way democratic, and since populism is a major defining characteristic of the radical right, it is the populism strand that drives these leaders to use the parliamentary arena to try to reduce constitutional courts' autonomy instead of, for example, an authoritarian manoeuvre. Under the context of four very distinct countries with presidential systems, I test the hypothesis that **the number of legislative**

bills aiming to overcome the autonomy of constitutional courts is higher under the populist radical right governments than under non-radical ones. I expect to find significant similarities regarding the mechanisms that populists use when confronting non-majoritarian institutions and the essence of liberal democracy. For example, the common rhetoric of framing judges as representatives of an established elite which still holds some control over the system and will use it to sabotage the people's representative actions. Or the struggle to accept constitutional limits for the Presidency's power under the assumption that any attempts against an elected government represent an attack against democracy itself.

For a clear assessment of these mechanisms in the legislative arena, this thesis relies on the framework of Arato (2019) on how populists tend to attack constitutional courts (defined as "apex courts" in his work). He separates four classifications of attempts to control these institutions via legislative tools (See Figure 1). "The attack on apex courts [via legislatures] reveals a great deal concerning the logic of populism [...]. Apex courts, from a democratic point of view, guard the differentiation (separation and division) of powers, none of which have the right to monopolize speaking in the name of the popular sovereign." (p.331). In other words, their attempt to weaken constitutional courts via parliament works as a most likely crucial case to assess its attempts on other branches of government.

Figure 1

Forms of Bringing "Apex Courts" under Government Control (Arato 2019)

- 1 Removal and/or packing (which I refer to as "compositional change")
- 2 Jurisdiction reduction
- 3 Manipulation of rules of appointment
- 4 Change of voting rules

Note: Drawn inspired by the work of Arato (2019 p.321)

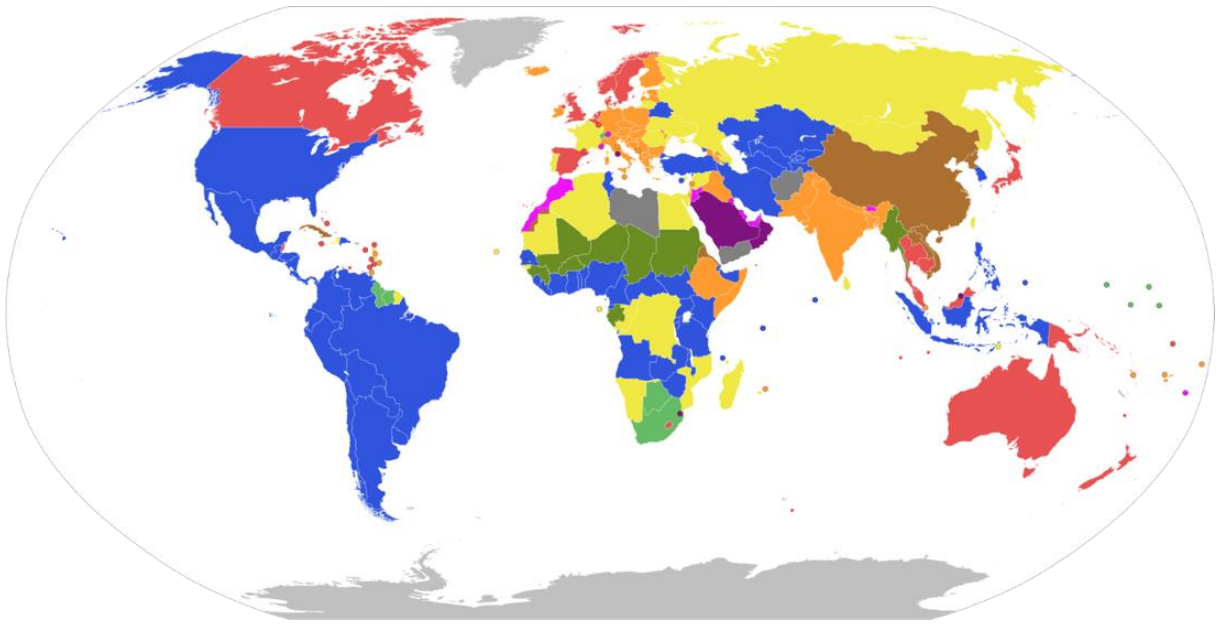
Another important mechanism pointed out by Arato and Cohen (2021) that has proved relevant after assessing the results is that these attempts are a key indication of populism *in* government trying to move toward establishing itself as what the author calls a "populist regime", or

populism *as* the government. The latter occurs when institutions are ruled under a populist idea of democracy. “While populism in merely governmental power is certainly 'illiberal,' it generally remains tied to electoral and plebiscitary legitimacy usually interpreted in a radically majoritarian fashion. [...] Nevertheless, this means that some constitutional rules still trump arbitrary will or decision. That stress on rules is not there under fascist governments and authoritarian socialist forms of power, both of which in any case rapidly establish new, revolutionary regimes. Yet the same stress may slowly disappear or be gradually reduced or eroded in the case of populism in government” (p.329). Overall, the combination of quantitative research in longitudinal comparison, the categorization of the data under Arato’s framework, and the in-depth analysis over four very distinct presidential systems enabled a comprehensive examination of these mechanisms to test the thesis’ hypothesis.

CASE SELECTION

The selection of the study cases included, at first, all countries with presidential systems where, at some point within the specific period of the far-right fourth wave (from 2010 to 2023), a radical right government ascended into power. Therefore, I started by identifying all presidential democratic countries from this period relying on the definitions from V-Dem (Coppedge et al. 2023) and The Economist Democracy Index (2023), as illustrated in Figure 2.

Figure 2



Note: Countries with presidential systems (blue). From "Forms of government with Freedom House", by The_Tom, own work from existing Wikimedia blank world map, melding with data from "Freedom House electoral democracies 2006.png" CC BY-SA 3.0

I then used the annual report of the "Tony Blair Institute for Global Change 'Change Repel and Rebuild: Expanding the Playbook Against Populism", which encompasses an index of countries ruled by populist governments, according to the ideational definition of populism (Meyer 2023, p.7). My selection encompassed all countries with at least one year of populist government starting in 2010. There were three caveats considered. First, the institute does not base its report on leaders while in office, but rather on when they won office (ibid). Second, it maintains its "populist" definition even if a country backslides from an electoral democracy and succumbs to "competitive authoritarianism" (Levitsky and Way 2002). Third, there is a significant limitation to the number of countries monitored. Countries such as Russia, El Salvador, and most of the African continent are out of reach. Therefore, the list of countries ruled by populist governments was reviewed, and I included countries that fit the precise characteristics mentioned above.

With these two lists in hand, I have developed a table (Figure 3) of all countries that fit these two criteria: democratic presidential systems and a populist government since 2010. A third criterion added is if the government has other radical right-wing characteristics, which I dissect in a case-by-base analysis. As Figure 4 shows, Brazil, and Jair Bolsonaro's government of 2019-2022; Rodrigo Duterte's rule in the Philippines in 2016-2022; the United States and Donald Trump's government of 2016-2020; and Recep Tayyip Erdogan in Turkey (2018-current) are the four cases that fit the criteria. A fifth case is included since Nayib Bukele's government in El Salvador (2019-current) fits the criteria of a presidential system and a populist radical right-wing government, as I show in more detail below.

Figure 3

Free or Partly Presidential Democracies <i>Freedom House 2023</i>	Populists in government since 2010	A radical right government?
Argentina	Yes. Cristina Fernández de Kirchner 2007 – 2015	No
Bolivia	Yes. Evo Morales 2006 – 2019	No
Brazil	Yes. Jair Bolsonaro 2019 – 2022	Yes
Chile	No.	No
Colombia	Yes	No
Costa Rica	No	No
Ecuador	Yes. Rafael Correa 2007-2017	No
Ghana	No	No
Guatemala	Yes	No
Honduras	Yes	No
Indonesia	No	No
Kenya	No	No
Mexico	Yes. Andrés Manuel López Obrador 2018 – current	No
Nigeria	No	No
Paraguay	No	No
Panama	No	No
Peru	Yes	No
The Philippines	Yes. Rodrigo Roa Duterte 2016 – 2022	Yes
South Korea	No	No
Tunisia	No	No
Turkey ¹	Yes. Recep Tayyip Erdoğan 2018 – current	Yes
United States of America	Yes. Donal Trump 2016-2020	Yes
Uruguay	No	No
El Salvador ²	Yes. Nayib Bukele 2019 – current	Yes

¹ Country that changed its political system in 2018.

² Country not monitored by the Tony Blair Institute for Global Change during the period of 2010 – 2023.

BRAZIL

In 2018, Jair Bolsonaro, a backbencher member of the *Câmara dos Deputados* (Brazil's lower house), from the far-right fringe of the political spectrum, won the presidential election. His political behaviour has been characterized by the resurgence of a distinct type of nativism, a return to traditionalist values, and a strong military and authoritarian rhetoric (Kestler 2022 p.297). In Bolsonaro's view, the elite represents a left-wing “globalist” establishment. The people, as outlined in his 2019 inauguration speech (Folha de São Paulo 2019), are portrayed as "good citizens, workers, conservatives, Christians who preserve family values" against the enemies whom he commonly frames as “communists”. Bolsonaro also positioned himself as an outsider defending the decent people against "gender ideology" and political correctness

promoted by the left elite. He constantly offended indigenous communities (Boadle, 2020) and has consistently throughout his political career praised the Brazilian former military dictatorship and its agenda of law and order (Hunter and Power 2019, p.70). His conflict with non-majoritarian institutions was clearly shown by his almost daily attacks on non-majoritarian institutions, the media, and his opponents (p.79). Bolsonaro fits all criteria in the research design, and I compare his term with former president Michel Temer (2015-2018), a non-populist centre-right politician of the National Democratic Mobilization party (MDB), who ascended to power after serving as vice-president of impeached president Dilma Rousseff (PT).

EL SALVADOR

In El Salvador, Nayib Bukele stands out for his unique political approach, described by Melendez-Sanchez (2021) as "millennial authoritarianism". This strategy combines elements of populism, authoritarianism, and a modern youth-oriented image (p.21). Bukele became President in 2019, as an underdog challenger from a third party who broke 17 years of bipartisan rule. During his presidency, he has framed his political movement as a historic mission to return power to the people and challenge a perceived corrupt elite, often referred to as "the same ones as always" (ibid). Moreover, Bukele displayed authoritarian tendencies. In a notable incident in February 2020, he entered the parliament with armed soldiers to pressure legislators to approve an international loan (p.21). Bukele often emphasizes patriotism and confronts international organizations, which he views as threats to the nation's sovereignty. This study draws comparisons between Bukele's government and the former president, Salvador Sánchez Cerén (2014-2019), a non-populist politician from the mainstream centre-left party Farabundo Martí National Liberation Front (FMLN).

THE PHILIPPINES

Rodrigo Duterte, President of the Philippines from 2016 to 2022, is known for his strong stance on crime, typified by his "war on drugs" campaign. He openly challenged democratic norms and the rule of law by endorsing extrajudicial killings as a means of curbing criminality (Teehankee 2016 p.79). He also employed a populist rhetoric appealing to those who feel disillusioned by the political establishment, promising to return power to the hands of ordinary citizens (Arguelles 2019; Curato 2016; Teehankee 2016). His brash and unfiltered communication style, often criticized for its vulgarity, resonates with his base, which perceives it as a rejection of political correctness (Arguelles 2019 p.428-429). Moreover, Duterte's administration emphasized nativist policies, particularly regarding territorial disputes in the South China Sea (Teehankee, 2016, p.71). During his term, he appointed 13 judges to the 15-member Supreme Court and governed with an unusual bloc of political support extending beyond his formal coalition parties. I draw comparisons between Duterte's government and the last non-populist president Noynoy Aquino (2010-2016), from the Liberal Party.

THE UNITED STATES

Of all cases, Donald Trump's political ascent shares the most similarities with Europe's contemporary populist radical right. His nativist rhetoric, akin to politicians like Geert Wilders in the Netherlands or Marine Le Pen in France, frequently links immigration with crime, capitalizing on the perception that illegal immigration leads to an increase in criminal activity (Mudde 2017 p.32). Additionally, Trump exhibits authoritarian tendencies through his consistent efforts to undermine the media (labelling it "fake news"), attacks on political opponents (e.g., "lock her up" accusations against Hillary Clinton), and the use of executive orders to bypass congressional processes (Inglehart and Norris 2017, p.452). His campaign slogan "Make America Great Again" resonates with the idea of returning America to its common people and is often used in the context of the antagonization of the evil elite of Washington against the hard-working (white) class of real America. Trump's presidency was

populist, nativist, and authoritarian, making him a fitting subject. I compare Trump's government with former president Barack Obama (2009-2017), a non-populist politician from the Democratic party.

TURKEY

Although Recep Tayyip Erdogan's regime falls under the classification of right-wing populism (Bashirov and Yilmaz 2018; Weyland 2020), for the specific purpose of this research's method, which involves a longitudinal analysis comparing populist governments with their non-populist predecessors, Erdogan's situation in Turkey is incompatible. Erdogan governed Turkey's presidential system since its inception in 2018, following a referendum that transitioned to the previous parliamentary system. Consequently, there is no previous presidential government to serve as a basis for comparison. Therefore, the Turkish case was not included.

RESEARCH METHODS

To test the hypothesis that the number of legislative bills aiming to overcome the autonomy of constitutional courts is higher under populist radical right governments, I began by collecting all proposed bills of law and equivalent legislative measures that mentioned the role of constitutional courts. This was done in two different periods: During the identified radical right-wing government and the preceding administration. The primary source consisted of the parliament's official websites. All representative houses of the four countries provide online mechanisms to research legislative procedures. In two cases, Brazil and El Salvador, it was necessary to request additional information from the designated legislative department relying on freedom of information laws. I then categorized all suitable data based on Arato's framework (Figure 1). I also classified, whenever possible, whether the bill was proposed by a member of the government coalition or the government itself; and, in cases of bicameral parliaments, in which house it was proposed. In the end, the El Salvadoran data collected lacked many of these

details. I only had access to approved decrees as it was published in the legislative official yearbook and even the “Department of Legislative Index”, as responded by e-mail, “only has information on the Legislative Decrees approved by this institution, which are classified by a correlative number of approvals in each legislature”. Given that the thesis involves a longitudinal comparison, this lack of information did not compromise the use of the country as a case study, and the small data gathered offered some important insights under an in-depth analysis, as I show in the Results section.

In total, there were 267 bills classified. Some bills fell into more than one category. For example, the proposed amendment to the Brazilian Constitution (PEC 16/2019), from Senator Plínio Valério (PL-AM), suggested a 20-day limit for the process of appointing a judge to the Supreme Court, forcing a reduction of the period of congressional inquiry and the public scrutiny traditionally led by the media. It also proposed in the same bill to implement temporary terms for the serving judges. Therefore, the bill was classified under the categories of “Manipulation of Rules of Appointment” and “Compositional Change”. Another important borderline case regarded the permanent debate in the US about the permission for televising Supreme Court proceedings, sometimes referred to as the “Sunshine in the Courtroom Act”. I first classified any bill suggesting broadcasting the US Supreme Court hearings as a “Change of voting rules”, based on concerns about potential political adverse effects, particularly increased pressure on judges. A total of 28 bills fell under this theme, with 16 from Democrats and 12 from Republicans. It is important to note that in a scenario involving the exclusion of these bills or their reclassification into another category, the outcome did not change. The features observed in the United States case persist, as more thoroughly explained in the Results section.

After the quantitative results, I then proceeded through an in-depth analysis of the data, which offered “a much-needed complement to overcome the limitations of and improve experimental

and large-n research" (Barakso et al. 2013 p.193). This qualitative approach was focused on underlying the mechanisms that drove these actions and in which context. By closely examining each case, it was also possible to determine whether it was the populist strand of the radical right, rather than authoritarianism, nativism, or any other factor, that drove more conflicts with constitutional courts through parliamentary means. In summary, the choice for a mixed-method approach was useful because, in addition to creating reusable data that can be replicated in other studies, it provided detailed insights into the mechanisms that drove these governments in very different scenarios. For example, in the Philippines, although most of the bills classified under Duterte came from non-coalition members, an in-depth look has shown that the actions of these legislators were aligned with the President's efforts against supreme judges. "A focus on causal mechanisms goes beyond observing a relationship between two variables, as it explores in detail the precise way in which an independent variable affects a dependent variable" (p.188).

In this sense, the complexity of government coalitions and party identities found in three of the countries studied is noteworthy. Gathering more data beyond the formal coalitions and assessing the caveats of each case was important to identify similarities and differences in distinct contexts. The only case where it was possible to define a clear distinction between the government and the opposition was the United States and its rigid dual-party system. Therefore, for Brazil, El Salvador, and The Philippines, instead of a simple antagonistic separation between the governing coalition and the opposition, I preferred to use the terms "coalition" and "non-coalition", which offer a more flexible definition for cases where a non-aligned legislator acts as a strong ally of the government. Lastly, there was considerable variation in legislative prerogatives among the four countries. The different procedures, rituals, and political practices represented a challenge in terms of data comparison, which attested to the importance of choosing a temporal analysis rather than a cross-country one. Longitudinal analyses using

fixed-effects models address omitted variable-bias problems, which are prevalent in cross-national research. (p. 172). It would be imprecise to assess a direct correlation between different types of petitions, resolutions, amendments and decrees. As an example, to compare Brazil's number of citizen's petitions in the Federal Senate asking to impeach supreme judges to El Salvador's process of removal of all the members of the constitutional court in just one decree, it was necessary to address each case in its context.

RESULTS

Data indicated an increase in parliamentary attempts to suppress constitutional courts in populist radical right governments in three out of the four cases (see Figure 4.1), with particularly noteworthy results in the "compositional change" category (see Figure 4.2). Only the United States represented a deviant case, maintaining an impressive equilibrium between the two governments when compared. This intriguing finding is further assessed in its subsection, departing from the obvious distinction of comparing a bicentennial-democracy with established liberal institutions, and the three other countries, which only transitioned to the current electoral democracies during the late 20th century as part of what is known as the third wave of democratization (Huntington 1992).

Figure 4.1 Average of parliamentary attempts against constitutional court (bill/year)

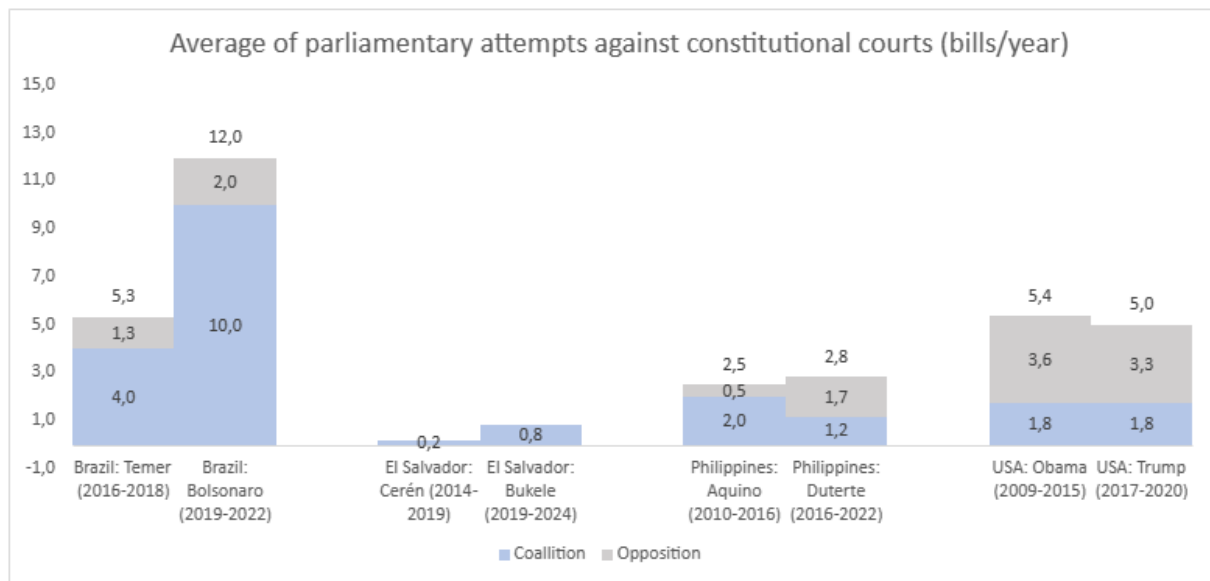
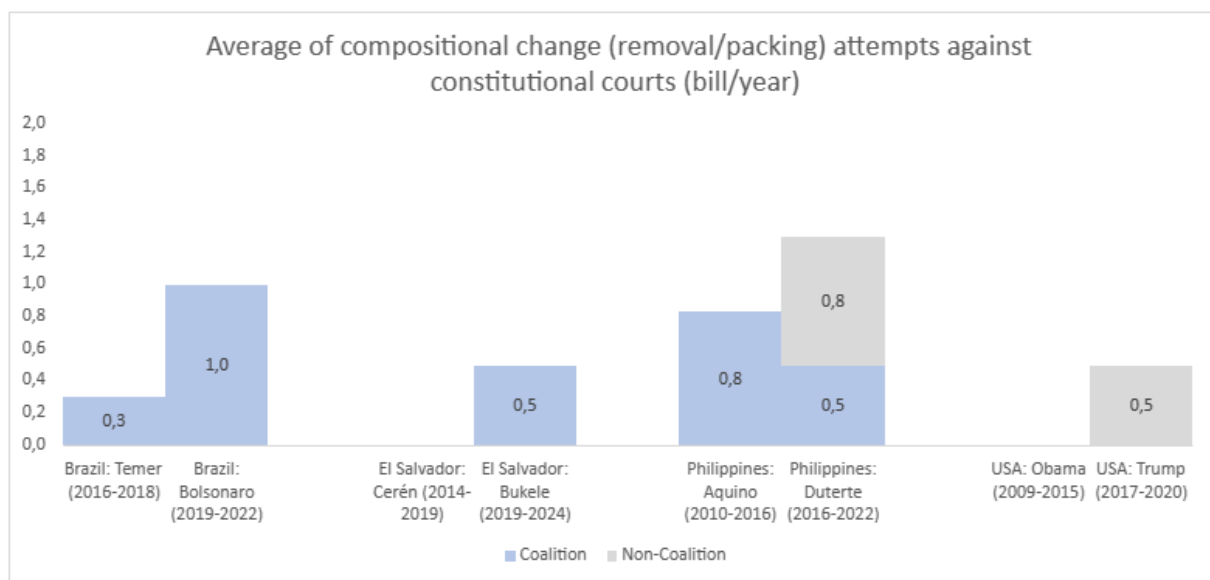


Figure 4.2 Average of compositional change (removal/packing) attempts against constitutional courts (bill/year)



Note: Nayib Bukele's government is observed between its inauguration, on 01/06/2019, until 30/11/2023.

BRAZIL

The Brazilian case provided the most consistent data in terms of both quantitative (largest number of bills) and qualitative (most details for each bill) analysis. In summary, there was a significant increase in all four of Arato's classifications of attempts against the Brazilian Supreme Court, marked by a surge of 126% in parliamentary bills per year and a 131% increase concerning formal coalition parties. From attempts to reduce the obligatory retirement age of

supreme judges to prohibiting monocratic decisions, each year from 2019 to 2022 during Bolsonaro's term surpassed any of Temer's previous three years in power (see Figure 5.1 and Figure 5.2).

Figure 5.1 Brazil: Number of bills classified under Arato's framework by year (coalition vs non-coalition)

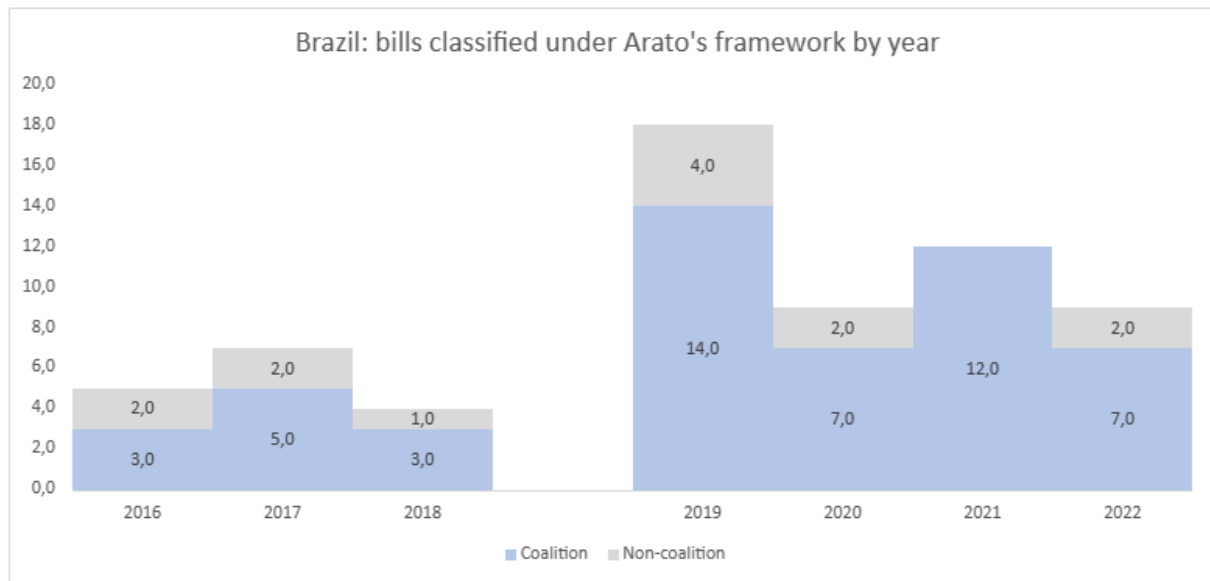
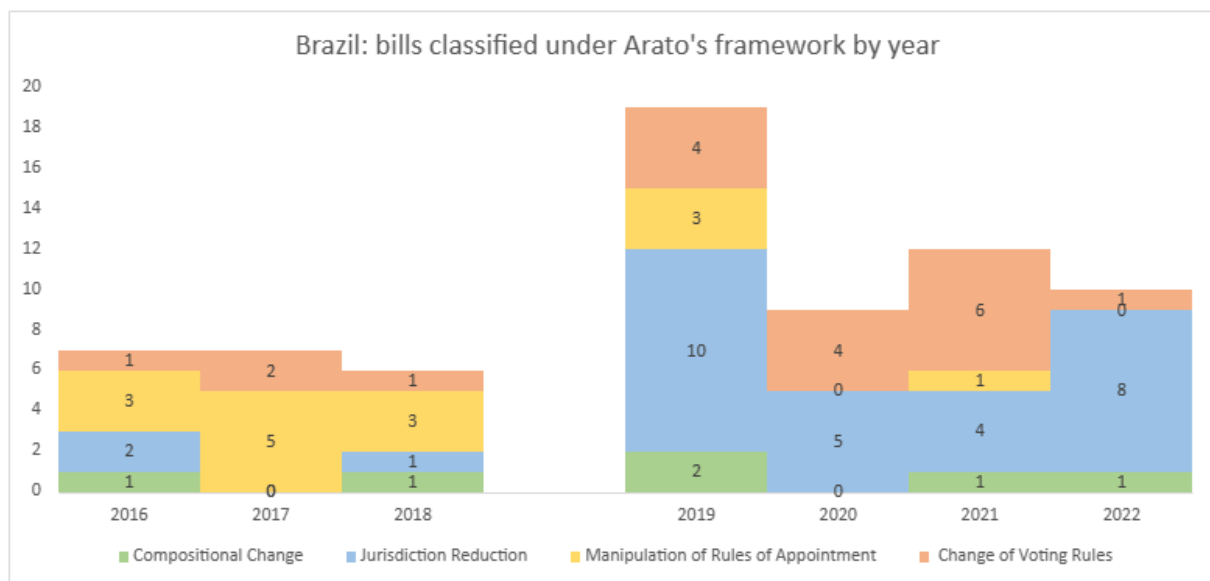


Figure 5.2 Brazil: Number of bills classified under Arato's framework by year



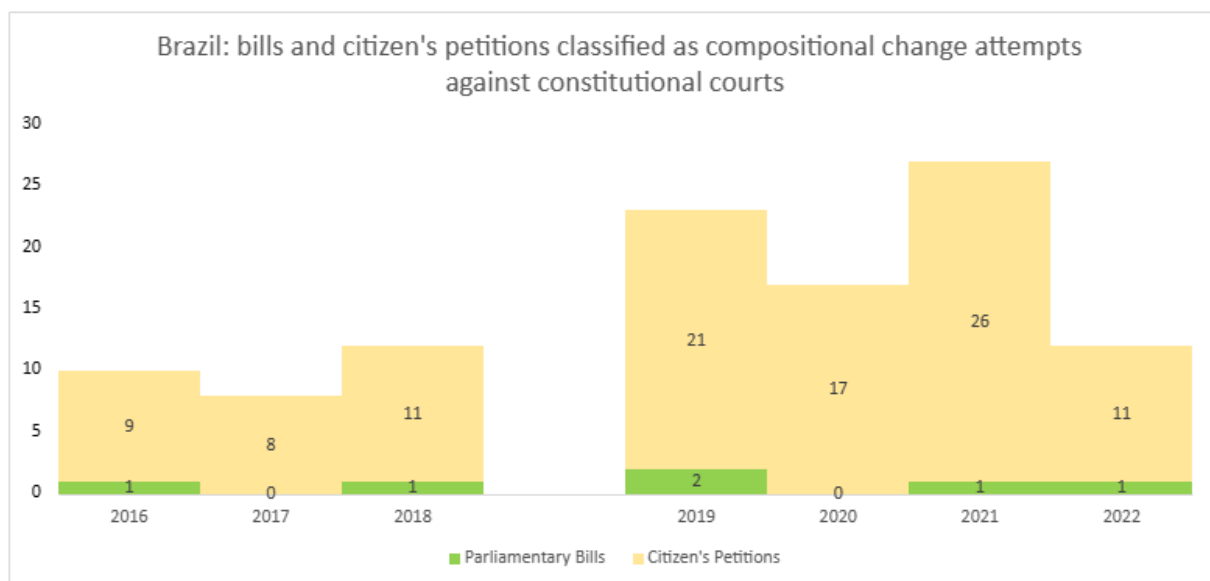
Note: Some bills were classified under two or three categories since their content aimed at more than one alteration regarding the Supreme Court. For the 5.2 figure, these bills were counted more than once.

Another noteworthy observation is the increase in initiatives seeking to curtail the jurisdictional role of the Supreme Court. During Temer's term, the average number of proposals per year was one, contrasting significantly with the average of 6.75 proposals during Bolsonaro's administration. One of these proposals was the Proposal of Amendment to the Constitution 40/2022, from Senator Carlos Viana (PL-MG), a loyal *bolsonarista*. He suggested adding an article in Brazil's Constitution prohibiting any public manifestation of a Supreme Court judge that could be interpreted as political discourse. As part of the formal justification addressed within the bill, the legislator argues that "the Ministers of the STF [Supreme Court] have been causing obstacles to governability by restraining the Executive and Legislative Powers without a constitutional basis for doing so" (Viana 2022). Seven additional proposals related to "jurisdiction reduction" specifically targeted the prohibition of monocratic verdicts by supreme judges. During Bolsonaro's term, he and his allies consistently sought to cast doubt on the integrity of Brazilian elections and the electronic voting system (Savarese 2022). In response, the Supreme Judge presiding over the Electoral Superior Tribunal (TSE), Alexandre de Moraes, acted by monocratic verdicts aimed at thwarting the attempts of Bolsonaro and his allies, even going so far as to request the banning of some politicians' social media profiles (Brito and Araujo 2023). In response, *bolsonaristas* legislators introduced several proposed bills aimed at compelling supreme judges to render decisions only through the traditional collegiate process.

Another idiosyncratic feature of Brazil's case is the notable number of citizens' petitions formally submitted to the Federal Senate. This legislative prerogative, which can be initiated by any ordinary citizen, saw a significant increase in the number of petitions registered in Brazil's upper house concerning claims for the impeachment of a Supreme Court judge. This number rose from an average of 9 per year during Temer's term to a record high of 18.75 during each year of Bolsonaro's administration (see Figure 5.3). Surprisingly, this surge included a

petition signed by President Bolsonaro himself (PET 20/2021), requesting, as a simple citizen, the impeachment of Judge Moraes (Marcello 2021). This anecdote aligns with the increase in parliamentary bills regarding the removal of Supreme Court judges, which rose from an average of 0.3 to 1 (see Figure 5.3). For all these reasons, Bolsonaro's confrontation with non-majoritarian institutions prompted loyal legislators to challenge the autonomy of the Supreme Court using parliamentary tools. His appeal against what he consistently framed as the "*Ditadura do Supremo*" ("Supreme Dictatorship") set the tone that his allies embraced in the legislature during his four-year term in Brazil's democracy."

Figure 5.3 Brazil: Bills and citizen's petitions classified as compositional change (removal/packing) attempts against the Supreme Court

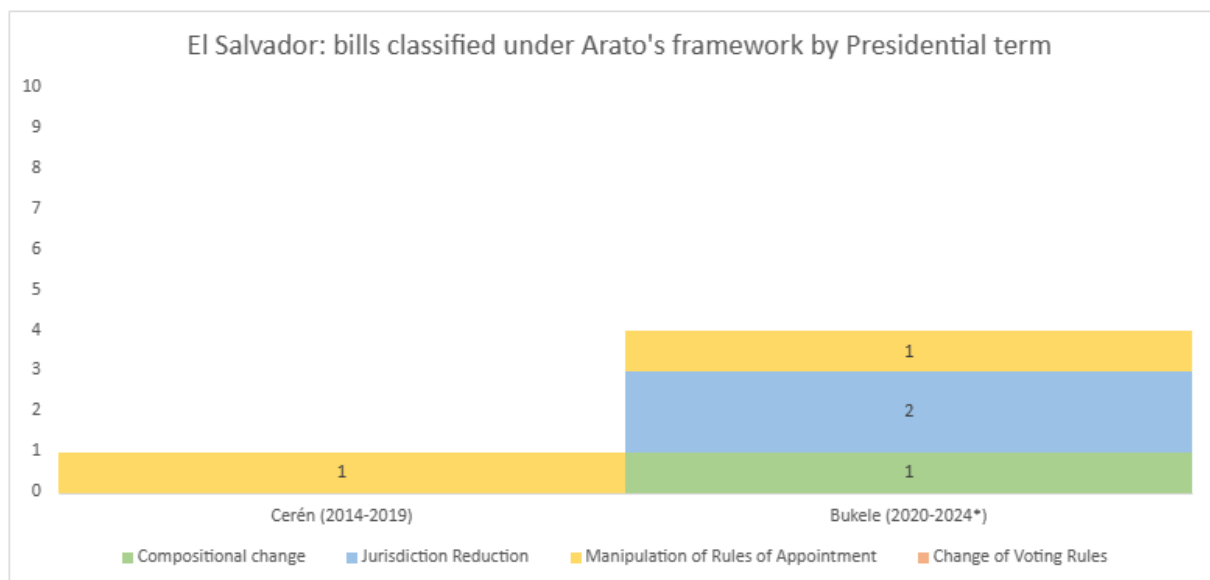


EL SALVADOR

The El Salvadoran case provided the least amount of statistical data, yet the numbers and stories behind them indicate an increase in the bills identified under Arato's classification. In total, only five legislative bills were classified, four during Bukele's term and only one during Cerén's government (see Figure 6.1). One primary explanation for this is the configuration of El Salvador's unicameral legislature, which lacks much of the constitutional autonomy

observed in the other three cases. The Presidency often takes on legislative prerogatives and initiates most decrees related to its interests (Tobar 2020, p.73-74). Additionally, Bukele's government secured a supermajority in the legislative elections of 2021, resulting in a new composition with an impressive support level of at least 73% of the Legislative Assembly (Al Jazeera 2021). The most notable demonstration of its influence occurred on the very first day of the newly elected *Asamblea Legislativa* when the entire Supreme Court was impeached and replaced with loyal judges (*Decreto 002/2021*). Consequently, by 2021, both the Legislative and Judicial branches were virtually under the control of Bukele.

Figure 6.1 El Salvador: Bills classified under Arato's framework by year



Note: Nayib Bukele's government is observed between its inauguration, on 01/06/2019, until 30/11/2023.

Before delving deep into *Decreto 002/2021*, it is opportune to assess the first bill identified in this research, *Decreto 594/2020*, which was still voted under the previous legislature, only one month after Bukele assumed power. This response to the outbreak of the Coronavirus pandemic led to the very first institutional crisis between the Presidency and the Legislature. The bill, classified as “Jurisdiction Reduction”, suspended the court’s autonomy to judge constitutional guarantees “strictly necessary [...] to ensure the health of the entire population” (Asamblea

Legislativa de El Salvador 2023). As explained by Tobar (2020), “the authoritarian attitude of President Bukele, materialized in the disrespect for the separation of powers and the rule of law in previous months, generated an environment of political instability that permeated the management of the crisis and affected the dynamics between the Executive and the Legislature” (p.76). This crisis influenced two pivotal episodes. First, an authoritarian attempt: in February 2020, President Bukele entered the legislative assembly accompanied by armed police and soldiers, purportedly for the "security" of the legislature, all while urging the approval of a \$109 million loan to enhance the capabilities of the country's security forces. This act, seen as an unprecedented act of intimidation, led to widespread condemnation both domestically and internationally. The Salvadoran Supreme Court ordered President Nayib Bukele to desist, to which he complied. Despite the controversy, Bukele remained popular among the public, forging his rhetoric as the representative of the popular will against a judicial elite.

A year later, now under the 13th legislature, Bukele tried the populist response. After obtaining his supermajority, the President's loyal legislators approved, on the very same inauguration day, a decree impeaching the whole court (Renteria 2021). The five judges and their substitutes were dismissed by a single legislative bill just hours after the legislature established itself. This crystal-clear case of removal and packing of a constitutional court was built over accusations of corruption and that they had obstructed the government's strategy to control the pandemic (BBC 2021). Once the whole court was packed and the president held a supermajority in the legislature, there was little need to overcome institutions that were already loyal to him. To summarize: The use of the legislature by the populist radical right president was successful in overcoming and controlling the constitutional court of the country under the rhetorical argument of “the same ones as always”. With a packed court, Bukele went on unchallenged to pass legislation in his favour without any restraint on his rule over the next years of his Presidency.

THE PHILIPPINES

The Philippines operates under a distinct bicameral system, which consists of a Senate composed of 24 senators; and the House of Representatives. This latter is composed of two types of legislators: one representing provinces and districts, and the other as a party-list member representing ethnic minorities. These caveats are important to assess the data comparing the six years of Rodrigo Duterte's government (2016-2022) and the previous Noyonoy Aquino administration (2010-2016), which revealed a modest 13% increase in the number of proposed bills classified under Arato's framework (Figure 7.1). Upon closer examination, it is noted that only 41% of the bills during Duterte's government were proposed by formal coalition members of the legislature, in contrast to the 80% observed during Aquino's rule. A qualitative analysis of the data provides some explanation regarding the volatile nature of party identity in a country where party affiliations may not necessarily reflect a legislator's stance. As noted, politicians repeatedly switch from one party to another, making it impossible to measure total electoral volatility (Ufen 2008, p.331). Furthermore, the need for the survival of political dynasties, coupled with the substantial influence of Duterte over public discourse and common pork barrel practices, has resulted in most Members of the Legislature becoming dependent on Federal power. This dependence makes it challenging to discern a clear opposition front in terms of formal coalitions (p.338). Therefore, these caveats regarding the lack of clarity between ruling parties and non-coalition members were considered while assessing the data.

Figure 7.1 The Philippines: bills classified under Arato's framework by Congress terms (coalition vs non-coalition)

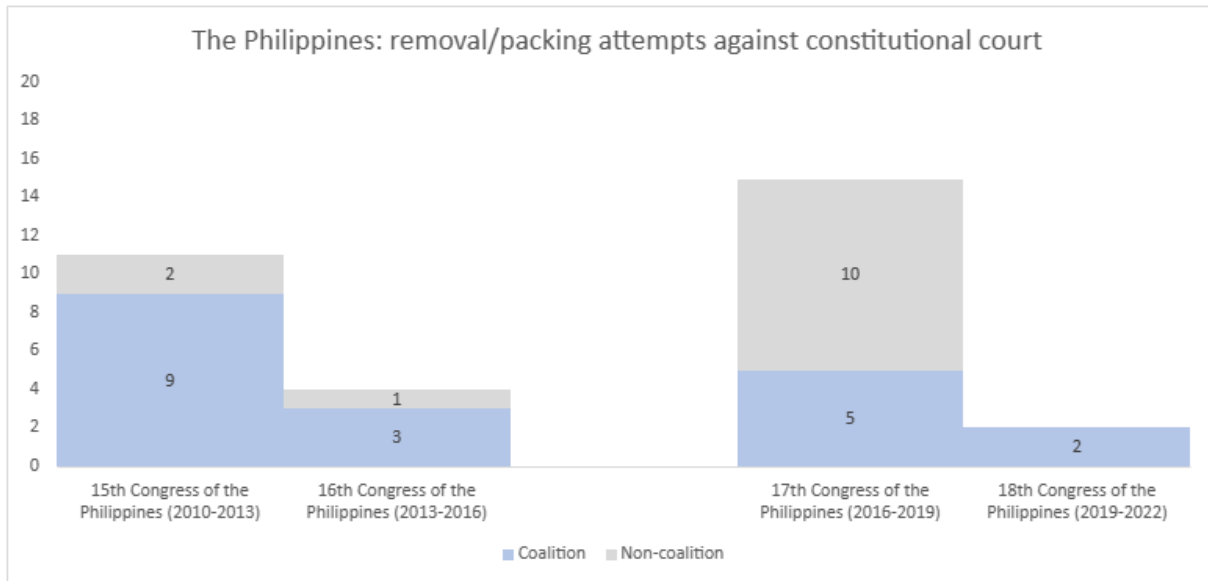
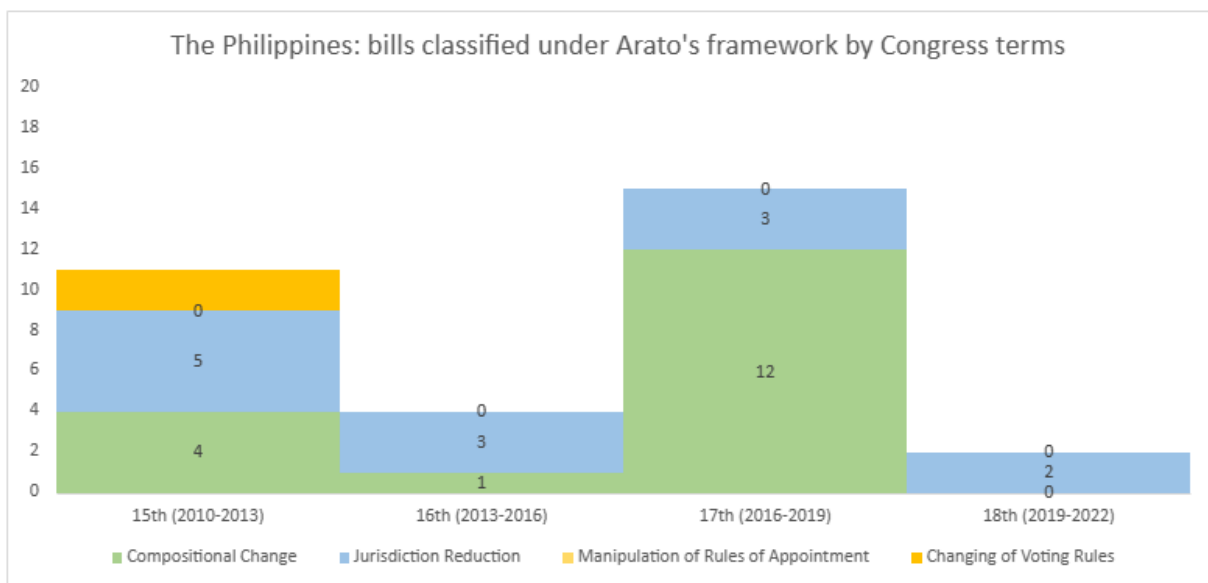


Figure 7.2 The Philippines: bills classified under Arato's framework by Congress terms (four categories)



Going further, although the number of actions only showed a slight increase, the surge in the number of bills identified in the “compositional change” category is notable. An increase of 140% (from 5 to 12) which is a strong remark that corroborates with the results found in El Salvador and Brazil (see Figure 7.2). To understand its origins and consequences, I take a key example of the ousting of Chief Justice Maria Lourdes Sereno, the main subject of three propositions. Tensions between the Executive and the Chief Justice during Duterte's term grew when Sereno began publicly criticizing Duterte's disregard for the rule of law in his flagship

“War on Drugs” (Ibarra, 2021). The impeachment process was initiated in 2017 under allegations of “lack of integrity” (ibid) with a bill signed by 25 members of the House of Representatives, not all of them from coalition parties. Concurrently, a petition challenging the validity of her appointment as Chief Justice was proposed in the Supreme Court and eventually ended up removing her from the court before the conclusion of the impeachment process in the House. Either way, the three legislative propositions aiming at the removal of Sereno were unprecedented. She ended up being the first ever high officer to be sacked by judicial intervention. At the end of his term, Duterte was able to reshape the Supreme Court with the consent of the Senate, which is responsible for approving presidential appointments. He appointed 13 justices to the 15-member Supreme Court. During all this time, loyalist MPs were responsible for increasing the pressure on judges in the public debate. In total, 12 requirements asked for the removal of a Supreme Court member during Duterte’s term against only 5 in the previous government (see Figure 2).

THE UNITED STATES

The United States stands out as the only deviant case. There was a notable equilibrium between the administrations of Barack Obama (2009-2016) and Donald Trump (2017-2020) in the number of classified bills: 43 during the eight-year term of the Democrat and 20 under Trump's four-year term. This translates to an average of 5.38 bills per year for the Democrats compared to 5 bills per year for the Republicans (see Figure 8.1). This remarkable balance is also evident when the data is classified between coalition and opposition proponents, with the two established parties changing roles depending on who oversees the Executive. Throughout Obama's term, the Democrats were responsible for 14 bills, averaging 1.75 per year, while the Republicans, under Trump, proposed 7 bills, also averaging precisely 1.75 per year (See Figure 8.2). In other words, during the 12 years under investigation, it was consistently the opposition party that proposed more bills aimed at some form of control or reduction of the Supreme

Court's power. The Republicans proposed 29 bills during the Obama administration, averaging 3.63 per year, while the Democrats were responsible for 13 during Trump's era, averaging 3.25 per year.

Figure 8.1 The US: bills classified under Arato's framework by year of the proposal (Ruling Party vs Opposition)

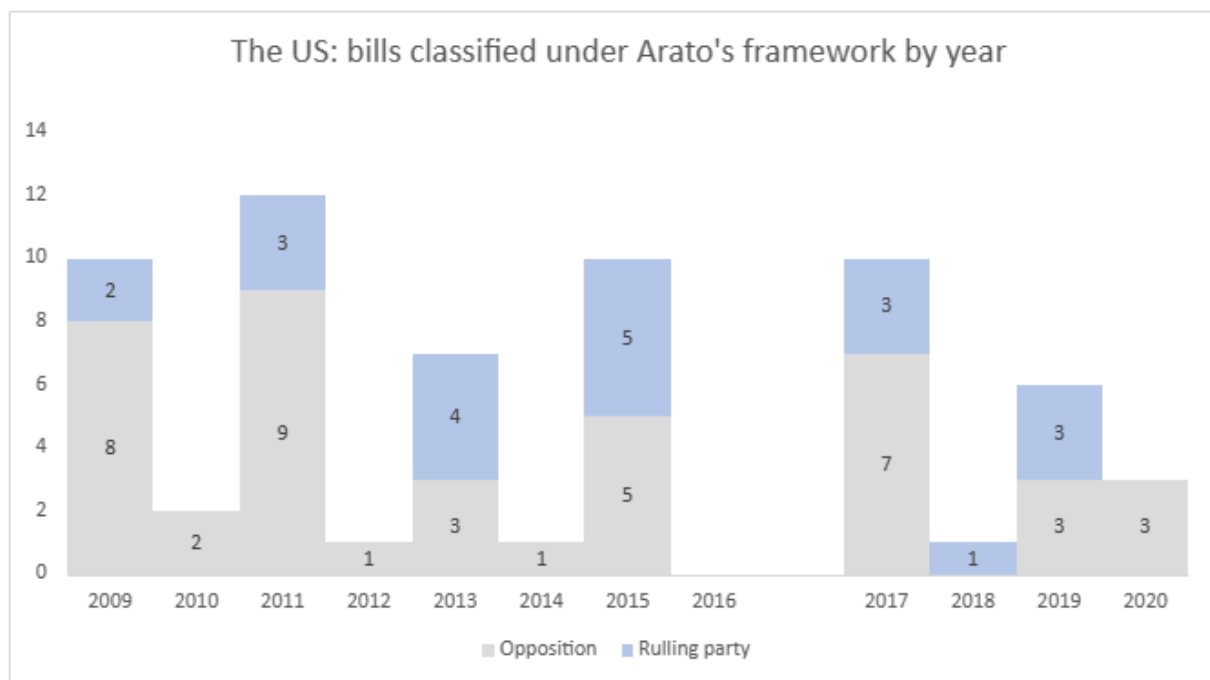


Figure 8.2 The US: Average of parliamentary attempts against constitutional courts (coalition vs non-coalition)

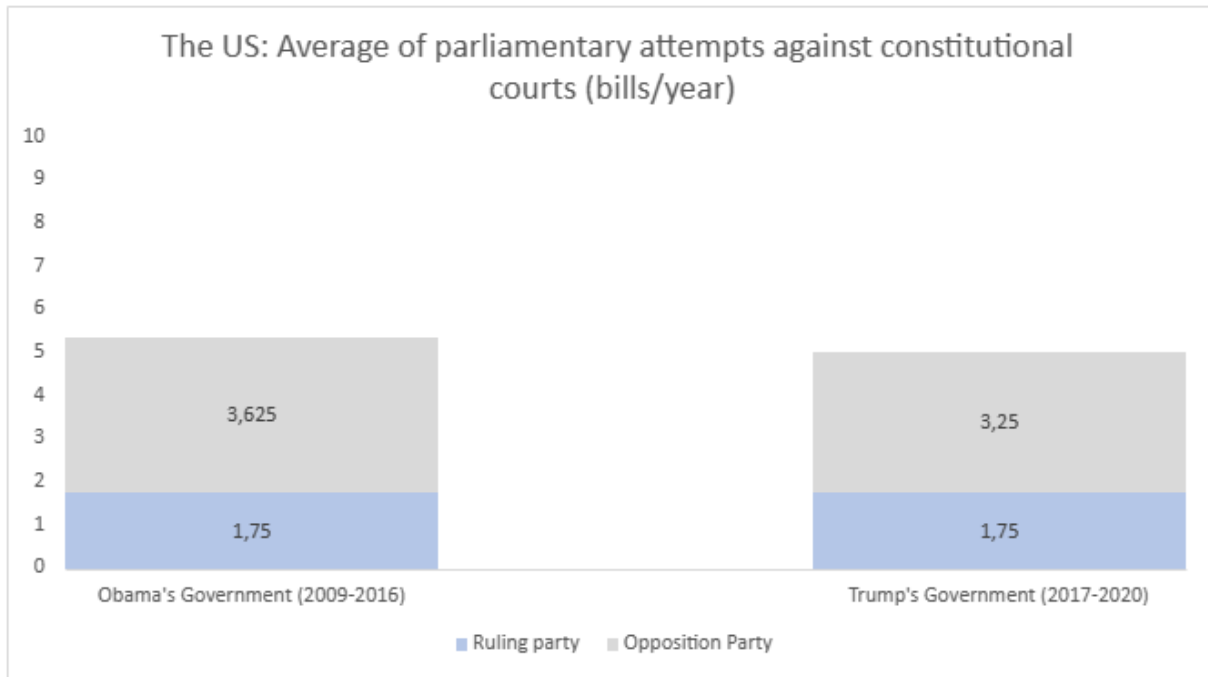
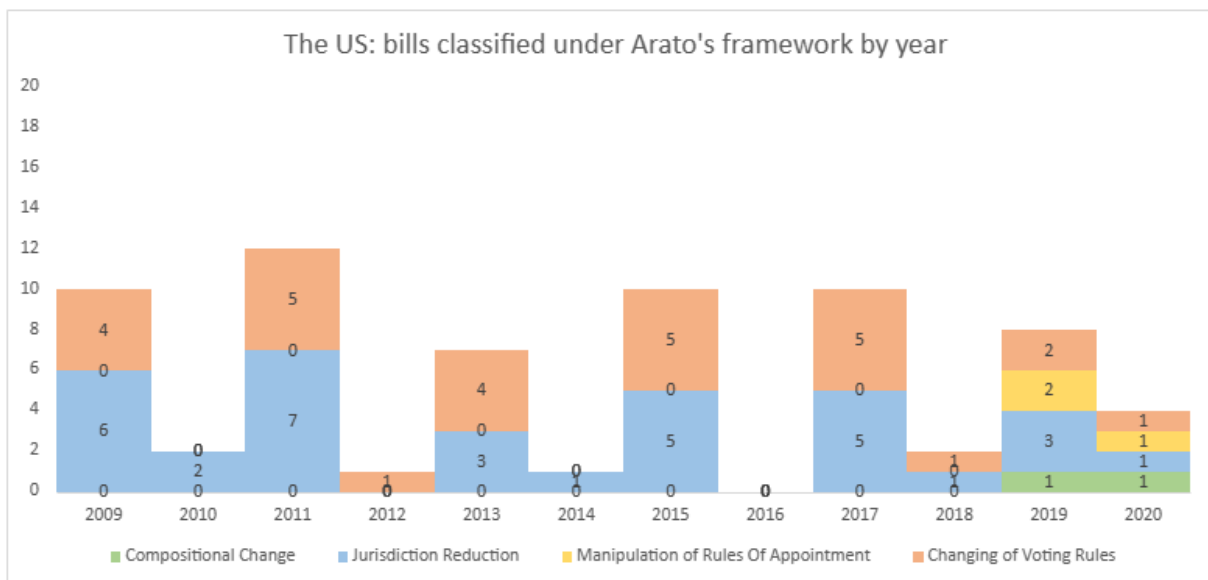


Figure 8.3 The US: bills classified under Arato's framework by year of proposal (under the four categories)



Once again, the "Compositional change" categorization revealed a statistical increase when comparing radical right and non-radical governments, although this requires clarification (see Figure 8.3). No bills were classified under this category during Obama's eight years, while two bills were identified during Trump's term. Both were proposed by an opposition representative and had no relation to the president's agenda. Therefore, they were not considered as evidence

supporting the thesis hypothesis. It is also important to note that this assessment of parliamentary bills cannot tell the whole story in the American case. During the transition between administrations, significant changes in the appointment of judges to the Supreme Court and other federal courts occurred. After Justice Antonin Scalia died in 2016, Obama nominated Merrick Garland, a centrist liberal, to replace him, but the Republican-controlled Senate refused to consider the candidate. It was an unprecedented break with the Senate's tradition of forbearance since 1866 (Levitsky and Ziblatt 2019, p.145). Although this was a clear sign of an institutional manoeuvre that could be classified under the "manipulation of rules of appointment" category, it cannot be associated with Trump's administration *per se*, since it was the Republican Party itself and without any hindsight on Trump's ascension. "Trump, a serial norm breaker, is widely (and correctly) criticized for assaulting America's democratic norms. But the problem did not begin with Trump. The process of norm erosion started decades ago—long before Trump descended an escalator to announce his presidential candidacy" (p.146).

The American results suggest some limitations of the thesis's hypothesis. As Levy (2008) points out, deviant cases can help identify new variables or factors that were not considered in the original theory or hypothesis. These new variables can then be incorporated into the theory, making it more comprehensive and offering some new insights (p.13-14). The obvious starting point is the comparison of a bicentennial democracy with strong liberal institutions and the other three countries that underwent late processes of democratization. "Indeed, with the passage of time, democracies achieve a substantial boost in immunity not only against coups but also against 'incumbent takeovers,' which includes suffocation by democratically elected populists (Svolik 2015; as cited in Weyland 2020 p.391). In that sense, the United States stands as an exemplary model of institutional stability. The enduring presence of a constitution for over 230 years, with a restrained number of constitutional amendments, underscores this

resilience. (p.400). Furthermore, in any democracy index, the US consistently scores significantly higher than the other cases. For instance, in the V-Dem Liberal Democracy Index (2023), the US is the sole country to achieve a score above 0.7 on a scale of 0 to 1, which measures 'the importance of protecting individual and minority rights against the tyranny of the state and the tyranny of the majority' (ibid).

In addition, Weyland (2020) suggests an important framework of conditions for the suffocation of democracy by populist leaders, divided into two clusters: institutional weakness and exogenous conjuncture. In his words, the United States' "great institutional stability helps block populist sneak attacks. The checks and balances system and the stringent requirements for constitutional amendments hinder democracy's dismantling through formal/legal channels. [...] The litigiousness of political forces and a vibrant civil society expose infringements to immediate judicial challenges, and the continuing strength and deep polarization of the two-party system limit Trump's popular support and guarantee intense opposition." (p.399). In short, the US with its notorious gridlock in Congress and a rigid and stable constitution offer tougher conditions for a populist *in* government to prevail than any of the other three cases. "Comparative analysis suggests that in the United States, especially, 'democracy trumps populism'" (ibid). One last remark is that Trump never held control of the Republican party the same way Bolsonaro, Bukele and Duterte held over their coalitions. Even in the temporary context of a majority in both houses and a Supreme Court majority of GOP's appointees, most of the party senior officers kept some distance from the populist leader.

These considerations shed some light on the varying degrees of success of populist radical right governments by the maturity of the local institutions. Arato and Cohen (2021) argue that "populism can be said to be well on the way to being 'the government' when its party alone controls at the very least the executive and legislative branches. Even here we must be careful, because of the possible importance of the third, judicial branch, and more so in the case of

federalism. A populist party has all the governmental power only when it controls the courts and the majority of either provincial or state governments or has instruments that can guarantee the supremacy of the 'political' branches and the central (in the US: 'federal') government” (p.123-124). Here, a direct comparison with Bukele’s example is opportune. By assuring a supermajority in the legislature, the El Salvadoran president had virtually no constraints in removing the whole constitutional court, packing it with loyalists and, therefore, gathering virtual control over all three branches of power. Bukele’s administration can be framed as a populism *as* the government or a populist regime. On the other side, Trump’s administration never had any chance of doing something similar. He never held a supermajority in either of the houses and he even lost control of the House of Representatives in the midterm election of 2018. “What characterizes populism 'in' government is not only the electoral conquest of the executive but the ongoing battle of that branch against the independence of the other branches” (ibid).

CONCLUSION

The hypothesis that **the number of legislative bills aiming to overcome the autonomy of constitutional courts is higher under populist radical right governments than under non-radical ones** has been partially confirmed, particularly concerning propositions aimed at removing judges or packing the courts with loyal appointees (compositional change). In cases where consistent data supported this trend, qualitative analysis revealed that the driving force behind such efforts was the populist strand within the radical right. This is because their goal is to confront non-majoritarian institutions of liberal democracy, rather than the concept of a democracy per se. In other words, to overcome constitutional courts not by authoritarian measures, but rather through a “democratic” route. Notable examples such as Bukele's *los mismos de siempre* rhetoric, Bolsonaro personally petitioning for the impeachment of a supreme judge, and Duterte’s legislative persecution against non-aligned justices illustrate a

consistent pattern. The mechanism is to frame and confront an allegedly corrupt judicial elite, standing against the will of the people personified by the elected president

Additionally, the method of longitudinal research in four very distinct countries with presidential systems has yielded unexpected insights. A clear deviation was identified in the only advanced liberal democracy studied. If populism is the driving force behind the radical right's confrontation against non-majoritarian institutions, and if presidentialism provides a unique perspective for assessing the behaviour of the radical right while in power, this thesis also provides a new perspective into varying levels of success, strongly influenced by the maturity of these institutions. Moreover, if achieving a populist regime is the common objective of populist leaders, this thesis allows us to draw a spectrum among the four cases, with the U.S. and El Salvador representing opposite extremes, and Brazil and the Philippines positioned in a transitional space in between. Further research could explore these differentiations, examining which institutional constraints present more significant barriers against the ambitions of the populist radical right.

Another line of research might focus on “the day after”. For instance, Brazil’s path to return to democratic normality after Bolsonaro’s defeat against Luiz Inácio Lula da Silva in 2022 is marked by the episode of January 8th when *bolsonaristas* stormed the presidential palace, supreme court, and congress. In contrast, the Philippines had a somewhat peaceful transition between Duterte’s term and the return of the “Marcos” family dynasty under the new incumbent Bongbong Marcos. However, both cases still hold similarities. The elements of institutional crisis in the parliamentary arena are still present, with constant attempts against supreme courts. Not to mention that both populists were succeeded by representatives of traditional political groups who based their campaigns on nostalgia for previous governments. Conducting new longitudinal research to compare the former radical right with these new governments can offer fresh insights into the legacy of these populists' attempts against non-majoritarian institutions.

In delving into Levitsky and Ziblatt's thought-provoking paradox, this quest to unravel the mystery of "democracy's assassins" has proved to be a prolific effort with enormous space for improvement. It is essential to keep scrutinizing their stage, dissecting their methods, and examining the efficacy of what safeguards their targets. This thesis aims not only to illuminate part of these manoeuvres but also to provide new insights contributing to the ongoing effort of preserving the survival of liberal democracy.

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