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**Democratic Backsliding and the Role of International Courts: An  
Analysis of Key Cases Before the Inter-American Court of Human  
Rights**

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Degree in Law, in the specialty of  
Security.

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To Vero, my best friend and the love of my life. Thank you for supporting me, laughing with me, and giving me the tools to enjoy life.

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## **Abstract**

Roughly fifteen years have passed since Larry Diamond published an article, warning the public about early signs of a democratic recession. Diamond's assessment motivated the academic community to explore what was causing this retreat from democracy. One suspect is democratic backsliding, or a gradual force that erodes democracy from within its institutions to the point where the governing regime can no longer be defined as a democracy. This has become the preferred method of democratic reversion in the 21st century as opposed to coups or violent revolutions in the 20th century. Consequently, it has prompted further study into what can be done to prevent or halt democratic backsliding. This thesis will explore one method of prevention that has mainly been ignored in this field, the role of international courts. By establishing a framework where the national judiciary is one of the strongest tools used against democratic backsliding, the paper explores how an international court can assist in strengthening the judiciary, in turn, protecting the country against backsliding. Using the Inter-American Court of Human Rights as the subject with Venezuela and Ecuador as case studies, the following will explore what role international courts have in the prevention of democratic backsliding. The results of this investigation demonstrate that the Inter-American Court of Human Rights lacks a strong, enforcement component to ensure compliance, but its role in the prevention of democratic backsliding is rooted in its ability to guide states on how to strengthen their democracies.

**Keywords: Democracy; Democratic Backsliding; Human Rights; Inter-American Court of Human Right; Latin America**

## **Resumo**

Passaram cerca de quinze anos desde que Larry Diamond publicou um artigo, alertando o público sobre os primeiros sinais de uma recessão democrática. A avaliação de Diamond motivou a comunidade académica a explorar a causa deste afastamento na democracia. Um dos suspeitos é o retrocesso democrático, ou uma força gradual que corrói a democracia dentro das suas instituições até ao ponto em que o regime governante já não pode ser definido como uma democracia. Este tornou-se o método preferido de reversão democrática no século XXI, em oposição aos golpes de estado ou revoluções violentas no século XX. Consequentemente, levou a estudos mais aprofundados sobre o que pode ser feito para prevenir ou travar o retrocesso democrático. Esta tese explorará um método de prevenção que tem sido principalmente ignorado neste campo: o papel dos tribunais internacionais. Ao estabelecer um quadro onde o poder judicial nacional é uma das ferramentas mais fortes utilizadas contra o retrocesso democrático, o documento explora como um tribunal internacional pode ajudar no fortalecimento do poder judicial, protegendo, por sua vez, o país contra o retrocesso. Utilizando o Tribunal Interamericano dos Direitos Humanos como tema e a Venezuela e o Equador como estudos de caso, esta tese explorará o papel que os tribunais internacionais têm na prevenção do retrocesso democrático. Os resultados desta investigação demonstram que o Tribunal Interamericano de Direitos Humanos carece de uma forte componente de aplicação para garantir o cumprimento, mas o seu papel na prevenção do retrocesso democrático está enraizado na sua capacidade de orientar os Estados sobre como fortalecer as suas democracias.

**Palavras-chave:** Democracia; Retrocesso Democrático; Direitos humanos; Corte Interamericana de Direitos Humanos; América latina



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## I. Introduction

The Third Wave of Democracy, beginning with the Carnation's Revolution of 1974 in Portugal (Huntington 199, 13) and culminating with the fall of the Soviet Union, ushered in a new era where democratic transitions were occurring at a rapid rate whilst the number of authoritarian regimes shrank from the international arena. This process, combined with the rise of globalization and a transition into a unipolar world led by a democratic state, created an optimistic aura around the globe. With the introduction of more than 30 new democracies to the world (Huntington 1991, 12-13), the optimism centered around the idea of the newfound democracies promoting human rights whilst producing a more inclusive society. However, this process began more than 30 years ago and the initial optimism on the success of this transition has been under scrutiny over the past 15 years and has evolved into concern about a democratic recession.

Larry Diamond, one of the founders of the *Journal of Democracy*, believes the retreat from democracy began around 2006 (Diamond 2015, 142). Whilst the beginning of this phenomena serves as an important marker in contemporary history, recent developments demonstrate how democratic backsliding can alter the existing world order. Leaders with authoritarian characteristics may cause a democracy to retrogress in some form, disrupting the international arena by implementing nationalistic policies, suppressing democratic norms and values, while also violating human rights. In the 20<sup>th</sup> century, the shift to authoritarianism had an element of swiftness, either with coups or revolutions being the preferred method. However, the beginning of the 21<sup>st</sup> century has led to a reevaluation amongst scholars that the techniques and tactics have changed. A key difference between democratic backsliding and other forms of democratic reversion is speed. As opposed to a dramatic change in regime, backsliding surreptitiously infiltrates established (democratic) institutions to veil the process of retrogression whilst providing a degree of legitimacy to the alterations (Bermeo 2016, 6). The gradual speed of backsliding is the precise reason that makes it such a serious threat to existing democracies. Everyday life appears to be the same: the electoral system remains the same, the institutions remain the same, until barely noticeable changes alter the electoral system or alter institutions that, over time, dramatically affect civil society.

The region at focus in this paper is Latin America. Many Latin American countries were participants in the Third Wave of Democratization, making them 'new' democracies. Their institutions do not have the same history or legitimacy that older democracies possess. As alluded

to above, and will be further explained later, democratic backsliding works through institutions. Simultaneously, those same institutions are the best stronghold against backsliding. That is why there exists much concern for newer democracies and how they may be more susceptible to democratic backsliding (Kapstein and Converse 2008, 58). The selected case studies touch on this idea due to their period of democratization. Venezuela democratized in 1958, nearly twenty years before the start of the Third Wave. Based on the ‘young democracy’ theory, its institutions should be stronger than those of Ecuador which democratized in 1979. However, as history, along with this paper will show, there are many more factors that can influence the downfall of a democracy than just its age. Before delving into the main focus of this paper, a brief discussion about democracy in Latin America is necessary. The region, historically speaking, has been greatly influenced by external factors including colonialism, the effects of the Monroe Doctrine, and the Cold War. In terms of democratic governance, there are many cases in the region during the 20<sup>th</sup> century where a democratically elected leader was overthrown by usurpers with the support of the United States (Dietz 1984, 3). In essence, for the last couple hundred years, some countries in Latin America were deprived of any say on how they wanted to be governed, which is a central tenet to democracy. Today, overt regime changes supported by a foreign power are no longer prevalent in the region where a majority of the countries practice democracy with varying levels of success.

However, a region with institutional failures like rampant corruption, combined with inequalities like pervasive poverty, can generate discontent for democracy in the region (Segovia, Pontarollo and Orellana 2021, 2). That discontent is merited when observing what a well-functioning democracy promises. It promises a more inclusive society through stronger human rights protections and is supposed to mitigate inequalities by providing everyone with the same number of votes on how to be governed. But when corruption and poverty are high, it can cause backlash against the system as it may not appear to be working for them. This is where the intersection between contemporary Latin America and the study of democratic backsliding exists. A weaker democracy or democracy inflicted with backsliding can allow corruption to go unpunished and provides a blank pardon for unequal treatment. By preventing democratic backsliding in the region, institutions will serve the people rather than those who seek to corrupt them. The institution that serves as the foundation for this paper is the judiciary.

A strong, independent judiciary is the backbone to any healthy democracy. Courts within the judicial system interpret, uphold and apply the law of the land to a state. This institution also checks power to both the executive and legislative branch with the aim of preventing them from becoming too powerful. The process of democratic backsliding along with the judicial system are intertwined in most cases. Levitsky and Ziblatt (2018, 91) utilize the analogy of “capturing the referees” to demonstrate this point. When a would-be authoritarian seeks to aggrandize power through democratic backsliding, they seek legitimacy. This legitimacy stems from other institutions like the judiciary that may deem that their actions are ‘legal’ or uphold controversial laws passed by the executive branch. To take hold of the courts, one could disbar sitting judges and replace them with loyalists or possibly rewrite the constitution to replace the court entirely. Then, once the referees are ‘captured,’ the executive may enjoy a reign with fewer legal obstacles. While this will be further outlined below, the power that the judiciary possesses to legitimize a backsliding regime also has the potential to protect democracy and stave off backsliding. This idea has a more substantial theoretical foundation than those regarding international courts and their capacity to prevent democratic backsliding. Therefore, the attention will now shift to what role those courts can play in maintaining a healthy democracy. Before further explanation into the role international courts play in protecting democracies, it is important to note a fundamental difference between the international and domestic judiciaries. A domestic court system draws its power and capacity from a constitution that outlines its responsibilities within a regime. International courts, on the other hand, receive their power via signatures of states that recognize its legitimacy. The key difference is that one’s authority stems from the supreme law of the land while the other needs to have states acting in good faith to adhere to their rulings. Nonetheless, it is advantageous to the current field to further investigate the following research question; What role do international/inter-regional courts have in the prevention of democratic backsliding?

There are few who have attempted to tackle this question with the exception of Tom Ginsburg, a distinguished academic in the field of democratic backsliding, and the occasional op-ed. The field is saturated with the case study of the European Court of Justice (ECJ) too. The decision to explore another region will contribute to diversifying this field of study. Compared to Europe, Latin America has an inferior record with healthy democracies, and the structure of the ECJ, along with the wider European Project, afford the court a stronger, more varied collection of tools to combat backsliding. Unlike the European Union (EU), where states give up rights for a

stronger collective, the Inter-American Court of Human Rights (IACHR), relies on the aforementioned subject of good faith treaties. The paper aims to illuminate what capacity this court has to hinder democratic backsliding and the efficacy of its tools to do so.

The thesis begins by conducting a review of existing work in the field. Doing so will provide the theoretical backbone for the thesis by examining what others have written about democratic backsliding and its relationship with Latin America as well as international courts. Once the theoretical framework is established and a brief background on the IACHR completed, the methodology will be outlined. Section IV examines *Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. The subsections examine the country profile, case summary, and compliance reports for that case. Section V follows the same procedure but for *Supreme Court Justice (Quintana Coello et al.) v. Ecuador*. A discussion that introduces corresponding data from the V-Dem dataset, compares the two cases and explores the future of the IACHR and democratic backsliding will follow. Lastly, a brief conclusion will revert back to the research question and postulate what more can be done in the field of democratic backsliding and international courts.

## **II. Related Work on Democratic Backsliding**

The subject of democratic backsliding has been the focus of scholars for over four decades. A notable piece for this field is *The Breakdown of Democratic Regimes* by Juan J. Linz and Alfred Stepan which was published in 1978. Prior to the release of this book, academic focus centered on the structural flaws within a political system that weakens democracy and subsequently enabled the emergence of an authoritarian regime. After Linz and Stepan’s book was published, academia shifted its attention to exploring how and why democratic backsliding occurs. The literature review begins with an overview on the study of democratic backsliding. Following the overview, this paper will narrow its focus to democratic backsliding in Latin America as the selected case studies are in that area. An exploration of existing literature on courts’ role during a period of democratic backsliding will follow. Lastly, I will examine what other authors write about the role of the IACHR in cases involving democratic backsliding.

### A. Democratic Backsliding

Before exploring the concept of democratic backsliding, it is crucial to define the concept of democracy. By doing so, one can fully recognize the effects of democratic backsliding when it occurs. A thorough understanding of the components of democracy allows for earlier recognition of situations which may lead to democratic backsliding.

At the core of democracy, at least in a minimalist perspective, is the holding of regular elections where citizens elect leaders to govern on their behalf (Lust and Waldner 2015, 2). From the maximalist perspective, there exists a strand of thought that democracy demands informed citizens to engage in constant deliberations with the goal of achieving equity in economic, cultural and social spheres (Lust and Waldner 2015, 2). Ultimately, the varying nuances of democracy need to be identified to demonstrate which aspects are affected during backsliding. Huq and Ginsburg look past the singular idea of democracy which solely focuses on elections by using the term “constitutional liberal democracy.” Rather than elections serving as the core concept of democracy, the establishment of fair and free elections needs to be integrated with other legal and institutions (Huq and Ginsburg 2018, 87). The end result is that a constitutional liberal democracy requires a democratic electoral system that adheres to free and fair practices, liberal rights to speech and association, and a rule of law which guarantees the “stability, predictability, and integrity of law and legal institutions” (Huq and Ginsburg 2018, 87). These can manifest themselves in the form of regular elections where the loser concedes power, courts maintain checks and balances, and the right to free speech, protest and press without fear of oppression or coercion thrive. Linz and Stepan’s definition differs slightly by arguing that a democracy requires non-violent political competition in which all citizens can participate (Linz and Stepan 1978, vii). This definition is indicative of the period of those authors. As mentioned earlier, the rate of sudden authoritarian reversions were more common during their era, meaning an emphasis on non-violence was certainly necessary as the likelihood of coups and violent revolutions was higher. However, the past four decades has demonstrated that democracies can fall with little to no violence, thus substantiating Huq and Ginsburg’s definition.

As the case studies selected for this paper are in Latin America, it is constructive to discuss democracy within the context of the region. This is a necessary point to distinguish as the region’s path to democratization differs greatly from that of the Western world. The democratization of Latin America falls under the Third Wave of democratization, a period between the 1970s and

1990s that witnessed between 76 to 117 new democracies enter the global world order (McCoy 2018, 19; Diamond 1997, 2). Rather than comparing the region with the United States or parts of Western Europe that have “old” democracies, the history of democracy in Latin America resembles ‘new’ democracies like those in Post-Soviet Europe and even Portugal and Spain. These countries were under military or authoritarian rule for much of the 20<sup>th</sup> century, and then underwent the process of democratization in the latter stages of it. Consequently, democratic institutions and the participation of civil society in some cases, are still relatively new. As will be shown later in the literature review, this condition can make a country more susceptible to democratic backsliding.

Returning to the concept of active participation in civil society as outlined above, it is worthwhile exploring the sentiment towards democracy in Latin America. These points are connected because at the heart of democracy is the idea that people or society rule the country by electing leaders to govern on their behalf. Growing frustration with the state of affairs may turn society against a democratic regime and lead to the degradation of an active civil society, a key facet of democracy. Historical examples of this include the rise of the Third Reich in Germany and the Estado Novo in Brazil. Today, observers suggest that exasperation towards democracy in Latin America is growing. McCoy cites the “erosion of government services, popular perceptions that political parties and leaders are uncaring and unrepresentative of their constituents, and the failure to budge high rates of income inequality” as reasons for growing frustration in the region (McCoy 2018, 20). Segovia et al. note that satisfaction with democracy in the region was at its highest during the decade of a commodities boom which led to a decrease in unemployment and poverty, while real wages, social rights and level of education all increased (Segovia, Pontarollo, and Orellan 2021, 417-420). However, by 2019, after an economic slowdown, corruption scandals and stagnated wages, the level of dissatisfaction reached its highest level in the region (Segovia, Pontarollo, and Orellan 2021, 417). These incidents can lead to society losing trust in its leaders, and broadly speaking, the political regime, democracy. With the conceptual understanding of democracy established, the paper can now explore democratic backsliding.

In the academic world, the term democratic backsliding lacks a precise definition, and, in some cases, researchers even dispute the semantics of the phrase. Nancy Bermeo, highlights six variations of democratic backsliding that although omits a formal definition, cites examples that are indicative of the occurrence of backsliding. These come in the forms of promissory coups,



executive coups, classic coup d'états, voter fraud and suppression, manipulating electoral strategies and executive aggrandizement (Bermeo 2016, 6-13). The logic behind her examples allows for a deduction that if one or more of these are occurring, democratic backsliding is taking place within the political regime. Each of the varieties mentioned above do represent an assault on democracy and its well-being. She does acknowledge that each form has its own level of severity and swiftness on the degradation of democracy (Bermeo 2016, 6-13). Her argument highlights why a singular, concise definition of democratic backsliding is difficult to develop.

Huq and Ginsburg go one step further to define backsliding. The decline of democracy, they argue, needs to be divided into two distinct threats that express their individual traits and features. One threat is authoritarian inversion where democracy incurs “a wholesale, rapid collapse into authoritarianism.” The other is an incremental decay of key aspects to democracy known as constitutional retrogression (Huq and Ginsburg 2018, 83). Authoritarian reversion mirrors two varieties of Bermeo's examples: classic coup d'états and executive coups. Constitutional retrogression on the other hand, permeates via shrinking the public sphere, constitutional amendments, centralizing and politicizing executive power and the elimination of political competition and institutional checks (Huq and Ginsburg 2018, 123). A central point of democratic backsliding is the gradual deterioration of democracy as there are governments that exist with democratic institutions, but few would argue they are liberal democracies i.e., Venezuela or Russia. Haggard and Kaufman's definition of democratic backsliding does not differ greatly from what has already been mentioned. They define backsliding as the “incremental erosion of institutions, rules, and norms that results from the actions of duly elected governments” (Haggard and Kaufman 2021, 27). This definition highlights that backsliding is a consequence of deliberate steps taken by the incumbent with the intention of damaging democracy. Backsliding is not a process that occurs spontaneously or by accident.

Gamboa does not use either of the terms mentioned thus far. She chooses to use the term democratic erosion which does encompass similarities to the previous definitions. In her view, democratic erosion is “a type of regime transition from democracy to autocracy that happens over time” (Gamboa 2017, 460). The similar components to democratic erosion and democratic backsliding include the utilization of constitutional amendments and altering electoral rules to favor the incumbent (Gamboa 2017, 460). What differs between democratic erosion and democratic backsliding is the outcome. Erosion implies that the political regime is no longer a

democracy, but an autocracy. As a result, one can understand that a democracy can still exist while undergoing democratic backsliding, but erosion results in a complete regime transition. Nonetheless, with persistent democratic backsliding, the democracy may reach the stage of erosion where it is under complete authoritarian control.

Another term used by scholars to describe democratic backsliding is authoritarian backsliding. The definition provided by Dresden and Howard cites authoritarian backsliding as the “decrease in competitiveness (or potential competitiveness) of the electoral playing field due to increasing concentration of power in the hands of the incumbent” (Dresden and Howard 2016, 1124). This definition accurately places fair elections at the heart of a successful democracy but does not neglect other aspects central to it. It acknowledges that backsliding can arise in the form of manipulating elections, infringing on civil liberties, creating an uneven playing field for democratic contestation, and reducing constraints on executive power (Dresden and Howard 2016, 1124). These mirror other aspects of backsliding already stated above. The authors describe the cause of backsliding as a reactionary process where incumbents make deliberate decisions in the face of challenges to their rule (Dresden and Howard 2016, 1123), something that has not been outlined in this review yet. To expand on this idea, the challenges may not exist, but rather are perceived challenges to the power of the incumbent. This is an important concept to call attention to as an incumbent that is elected democratically, with high popularity hence increased chances of re-electability does not need to alter the democratic rules in their favor to maintain power. However, if challenges arise, real or perceived, the incumbent can view them as a threat to their rule and initiate the process of backsliding to ensure they remain in power. One point of disagreement with the authors’ analysis is their belief that media manipulation or intimidation by the ruling power does not constitute backsliding (Dresden and Howard 2016, 1124). This idea is at odds with previously mentioned examples of backsliding.<sup>1</sup> As already mentioned, a key component of democracy is the freedom of the press and thus, an infringement on that right can be classified as backsliding. Dresden and Howard even contradict their own argument with this statement. This article describes backsliding in an election-centric manner where the phenomena occurs when elections are manipulated in some form. An election can easily be manipulated via

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<sup>1</sup> See Huq and Ginsburg; Linz and Stepan.

the media as the incumbent can refuse the same media access to the opposition while simultaneously using it to bolster their own campaign.

Levitsky and Way coined a term two decades ago that describes a type of hybrid regime that proliferated after the third wave of democratization: competitive authoritarianism. Competitive authoritarianism has democratic institutions that are widely seen as the means of “obtaining and exercising political authority” but, the ruling incumbents violate the rules of democracy so frequently that the regime fails to meet the standards for democracy (Levitsky and Way 2002, 52-53). The authors’ motivation for developing this term is a result of two weaknesses within existing literature: democratizing bias and prior terms like “semidemocratic” and “semi-authoritarian” that ignore differences amongst regime types (Levitsky and Way 2002, 51-52). The former is particularly relevant to this paper as one cannot assume that all democracies undergo the same conditions for democratization. The intersection between competitive authoritarianism and democratic backsliding is that the former serves as a useful indicator for a regime’s democratic standing. For example, a country may have institutions under the guise of a democracy, but its practices resemble that of an authoritarian regime. If a regime never meets the standards of democracy and lingers in the state of competitive authoritarianism, one cannot argue that backsliding occurs, because it was never a true democracy to begin with. However, if a regime has a successful democratization process but, backsliding occurs, it can revert into a competitive authoritarian regime.

After defining democratic backsliding, scholars search for reasons as to why it occurs. There are a variety of factors that explain the occurrence of democratic backsliding, ranging from political institutions, political leadership, political economy, political culture, political coalitions and social structures, and international factors (Lust and Waldner 2015, 10-14). Political culture, political leadership, and political institutions concern the political climate of a regime that underscore a society’s beliefs surrounding the existing democratic regime and the effect it has on its institutions (Lust and Waldner 2015, 10-13). The international factors refer to how foreign actors can influence a domestic democracy. Political economy consists of how economic elements affect a democracy (Lust and Waldner 2015, 12-14). Political coalitions and societal structures constitute the influence of politics via societal organization (Lust and Waldner 2015, 13).

In the domain of studying democratic backsliding, political leadership and institutions also draw the attention of observers. Some academics suggest that for democratic backsliding to occur,

a leader with authoritarian tendencies needs to be in power to initiate it (Levitsky and Ziblatt 2018, 8-9). If a leader's commitment to democracy and its corresponding norms and values are limited, they are more likely to subvert democracy if faced with obstacles to their regime (Levitsky and Ziblatt 2018, 91). The authors also contend that backsliding would not be possible without the assistance of political elites who allow the rise of political leaders with authoritarian tendencies (Levitsky and Ziblatt 2018, 13-24).<sup>2</sup> In these circumstances, political elites, seeing a potential leader as a conduit for their own agenda, provide legitimacy and a platform for the would-be authoritarian. Even after initial support, elites can still enable or validate anti-democratic ideals of the leader with authoritarian qualities (Levitsky and Ziblatt 2018, 81). By not condemning, dismissing, or even encouraging anti-democratic behavior by a leader, political elites can further exacerbate the effects of democratic backsliding. Complicit behavior by political elites normalizes undemocratic actions and allows for its permeation throughout civil society.

Democratic backsliding also calls attention to political institutions within a democracy. These include political parties, the courts, legislative branches and other institutions. The responses of these institutions when faced with an assault on democracy can be of critical importance. A consequence of democratic backsliding, Huq and Ginsburg argue, is the “decay of liberal democratic institutions” (Huq and Ginsburg 2018, 119). When the composition and foundations of institutions weaken, executive aggrandizement can flourish with diminishing checks and balances. However, institutions can constrain attacks on democracy by stifling attempts to undermine democracy and consequently, democratic backsliding will not materialize. Kapstein and Converse argue that the strength of institutions is based on the age of democracy (Kapstein and Converse 2008, 58). In their opinion, institutions require time to “build and develop credibility” (Kapstein and Converse 2008, 58). Based on their argument, countries, including those in Latin America, that democratized during the Third Wave are at an institutional disadvantage compared to older democracies. Naturally, as the case studies cited in this paper are in Latin America, it is important to review the literature surrounding democratic backsliding in that part of the world.

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<sup>2</sup> See Donald Trump securing the GOP nomination for the 2016 election, President Rafael Caldera pardoning Hugo Chavez after his coup attempt, and the rise of Adolf Hitler during the Weimar Republic.

## B. Democratic Backsliding in Latin America

As the case studies revolve around Latin American countries, it is imperative to review literature on democratic backsliding within the region itself. According to Mainwaring and Liñán, democracies in Latin America are at various levels which imply that overall, democracy is not eroding, but advancement is not occurring, and the quality of democracy is low (Mainwaring and Pérez Liñán 2015, 114-115). The authors also choose to group Latin American countries into four distinct groups: countries that have experienced democratic erosion (as of 2015), countries where democratic stagnation is occurring, stable democracies with shortcomings, and high-quality democracies (Mainwaring and Pérez Liñán 2015, 116-122). The classification is important to differentiate the varying levels of democracy that are present in the region. Authors classify both Venezuela and Ecuador of undergoing democratic erosion (Mainwaring and Pérez Liñán 2015, 116-117). The authors, in another joint article, examine the level of democracies in post Third Wave Latin America. They reach a conclusion similar to other authors. Mirroring the views of Kapstein and Converse, the authors argue that countries with stronger histories of democracy prior to the Third Wave are more democratic today (Kapstein and Converse 2008, 58; Pérez Liñán and Mainwaring 2015, 379). However, their reasoning behind the historical strength differs slightly. Rather than age giving time to develop credibility, a longstanding democracy, in the view of Liñán and Mainwaring, older democracies have stronger norms, principles, and historical underpinnings to bolster democracy (Pérez Liñán and Mainwaring 2015, 394).

Corrales uses Venezuela as a case study to explore how democratic backsliding can occur via electoral irregularities. The author gives an excellent analysis on electoral irregularities that demonstrates the difficulties in halting democratic backsliding. They elaborate by exploring how small irregularities are difficult to spot but can be very consequential, making it hard to counter (Corrales 2020, 59). At this point, the incumbents are inching towards backsliding already and possibly aggrandizing their power. The latter and more advanced stages of backsliding via electoral irregularities can successfully divide the opposition while declaring to their supporters that the regime is still democratic (Corrales 2020, 59). This practice ultimately makes electoral participation less competitive, an early symptom of democratic backsliding. Gamboa also chooses to use Venezuela as a case study to examine the role that the opposition has in democratic backsliding. She argues, using Colombia as a positive example and Venezuela as a negative one,

that the opposition's actions and reactions play a significant role in countering democratic backsliding (Gamboa 2017, 457-458).

Cameron opts to use the theoretical framework of competitive authoritarianism established by Levitsky and Wray to analyze regimes in Latin America. The author contextualizes democratic theory and competitive authoritarianism superbly within the region. He notes that the rule of law, a central tenet of democracy, is precarious and often undemocratic in Latin America (Cameron 2018, 8). O'Donnell theorizes that this precarity stems from a weakness in horizontal accountability. This term means that the state has agencies that are "legally empowered and factually willing and able to take actions ranging from oversight to criminal sanctions or impeachment in relation to possibly unlawful actions or omissions by other agents or agencies of the state" (O'Donnell 1998, 117). Without horizontal accountability, there is an absence of checks and balances, an environment for corruption flourishes, and diminishes accountability. Cameron's paper chooses to focus on hybrid regimes and does not mention the process of democratic backsliding. Nonetheless, his work is still relevant for this paper as it serves as a metric for identifying hybrid regimes in Latin America.

By fully understanding the nature of these regimes, it assists with studying backsliding since one can identify the status of backsliding within a regime, and if backsliding has resulted in a regime change i.e., democracy to hybrid regime. Cameron also examines whether some of the case studies used in this paper are competitive authoritarian regimes. For example, Venezuela, since Chavez's presidency and continuing under Maduro, can be classified as a competitive authoritarian regime due to harassment of the opposition, prohibiting rivals to run for office, misuse of public resources and the militarization of the regime (Cameron 2018, 12). While Cameron does acknowledge that Ecuador could fit within the competitive authoritarian framework, he is hesitant to classify it as such. Ecuador, under Rafael Correa, follows a similar route to a hybrid regime as Venezuela. Correa rewrote the constitution, weakened checks and balances, and used government resources to harass the opposition as well as the media (Cameron 2018, 13-14). However, when written in 2018, Cameron states that it is too early to judge whether Ecuador is a competitive authoritarian regime. The author argues that Correa maintained popular support throughout his tenure and willingly stepped down in 2017 (Cameron 2018, 14). Furthermore, Cameron's apprehension of Ecuador's regime classification needed more time to see if Correa's successor, who was democratically elected, would continue his undemocratic tactics

(Cameron 2018, 14). However today, Ecuador is governed by Guillermo Lasso, the leader of the opposition party during Correa's rule, which demonstrates a crucial aspect of democracy, the transfer of power from one group to another. Another source written just before Cameron's, writes with more certainty about Ecuador's status as a democracy. Guillermo and Suárez maintain that democratic erosion is occurring in Ecuador but to the degree where it is now considered a semi-democracy and not a competitive authoritarian regime (Guillermo Guerrero and Suárez Iskihata 2017, 39).

Leon explores a cause of democratic backsliding that is not common in literature from European or American authors. Leon argues that clientelism, a quid-pro-quo system of exchange of favors for political support caused by international rents,<sup>3</sup> is a source for democratic backsliding, especially more than populism in his opinion (Leon 2022, 280). This is an important work because it helps contextualize backsliding in the region. Clientelism is not as prevalent in the United States or Europe, where many scholars in this field are based, so it is not surprising that it fails to appear in their analyses of the causes of democratic backsliding. The influence of populists on the health of a democracy must not be understated either. Latin America especially, has now and has had in the past many populist leaders. Leaders like Chavez, Correa, Bolsonaro and Morales are all examples of Latin American populists that damaged democracies in their respective countries, although not to the same degree (Levitsky and Ziblatt 2018, 26). However, in the case of Lula in Brazil, he seems to encompass two characteristics that test this aforementioned trend. He is both a populist and vows to maintain and strengthen institutional checks and balances. Whether this is true requires an investigation that is not the focus of this paper.

### C. Role of Courts in Democratic Backsliding

The driving force behind this paper is the theory that domestic courts have proven to be substantial protectors against democratic backsliding. Not only do they have the power to inhibit backsliding, but historical evidence suggests that they are a target when backsliding occurs, which further highlights their importance in upholding a democratic regime. Outlining various works of authors below will demonstrate this idea, while dealing with the important question over the ability international or interregional courts have to protect democracies.

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<sup>3</sup> Rent-seeking behavior involves seeking economic gains or profits beyond what is needed to cover costs, typically occurring after all expenses have been accounted for. This behavior is frequently observed in clientelist systems.

There are many examples in contemporary history where courts become targets when a democratic regime is experiencing backsliding. In Poland, a law was passed in 2017 that lowered the age of retirement for the judges on the Supreme Court (Schmitz 2020). This incident is a clear example of democratic backsliding, as it was an attempt by the ruling party to purge members of the Supreme Court, allowing them to nominate new judges and give them a clear majority on the court. The effect of this law weakens checks and balances by using their newfound majority to write laws that will go unopposed and strengthen the incumbent party. Currently, Poland's attacks against the judiciary have resulted in European Union infringement proceedings against them (European Commission 2021). While the matter has not yet been resolved, an interregional court (Court of Justice of the European Union) has intervened to protect Polish democracy. However, not all countries where these actions occur have a system of regional governance where, through various treaties, countries concede certain domestic rights in order to ascend into a powerful international union. Sometimes the actions to weaken the judiciary are less covert. In Venezuela, Chavez dissolved the Supreme Court, replaced it with the Supreme Tribunal of Justice, and packed the new tribunal with loyalists (Levitsky and Ziblatt 2018, 98).<sup>4</sup> As a result, between 2004-2013, not one Supreme Tribunal ruling opposed the government actions (Levitsky and Ziblatt 2018, 98). Both examples above represent attacks on the judiciary, however, they also present the variety of methods used, both extreme and subtle, to subvert a critical institution of checks and balances. Ginsburg and Huq (2018) have produced a useful chart detailing the various modalities of constitutional backsliding in different states. Refer to Ginsburg and Huq's (2018) table in the page below to demonstrate the apparent frequency in which the courts are targeted to bend the rules of a democracy.

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<sup>4</sup> Chavez was able to dissolve the Supreme Court when he called for a constituent assembly, which the Supreme Court deemed was legal, and where the executive was awarded power to dissolve other institutions.



Table 1: Modalities of constitutional backsliding (Huq and Ginsburg, 2018)

Country	Prehistory of leader	Undermine institutional checks	Restrict electoral competition	Limit rights and restrict public sphere
Venezuela 1998-2015 [Chávez-Maduro ]	Failed coup attempt by Chávez in 1992	<ul style="list-style-type: none"> <li>abolish Congress and Supreme Court, and replace with 1999 Constitution</li> <li>intimidate and pack judiciary and bureaucracy</li> <li>reliance on military personnel and immediate family members</li> </ul>	<ul style="list-style-type: none"> <li>secure 119/125 seats in 1999 constituent assembly</li> <li>abolish term limits in 2009</li> <li>detain opposition leader in 2013</li> <li>undermine 2008 Caracas election</li> </ul>	<ul style="list-style-type: none"> <li>significantly abuse criminal process</li> <li>limit NGOs</li> <li>revoke media licenses</li> <li>nationalize television</li> <li>ensor press</li> <li>criminalize “disrespect” of public officials</li> </ul>
Thailand 2000-2014 [Shinawatre twice ]	Telecoms monopolist	<ul style="list-style-type: none"> <li>bribe and pack watchdogs</li> <li>manipulate tax law for personal gain</li> </ul>	<ul style="list-style-type: none"> <li>buy votes</li> <li>influence over election commission</li> </ul>	<ul style="list-style-type: none"> <li>extrajudicial killings campaign</li> <li>emergency rule in the South</li> <li>media intimidation</li> </ul>
Turkey 2003-present [Erdogan ]	Jailed political party leader	<ul style="list-style-type: none"> <li>attempt to pack the courts in 2006</li> <li>purge of government, army, academic, and courts in 2016</li> <li>intimidate constitutional court</li> </ul>	<ul style="list-style-type: none"> <li>local electoral fraud in 2009, 2014</li> <li>proposal to extend term limits with new constitution</li> </ul>	<ul style="list-style-type: none"> <li>mixed record - abolish death penalty and expand voting rights; poor record on Kurdish issue</li> <li>arrests of opponents</li> <li>arrests of firings of journalists</li> <li>seizure of newspapers and revocation of licenses</li> </ul>
Sri Lanka 2005-2015 [Rajapaksa]	MP	<ul style="list-style-type: none"> <li>governing through relatives</li> <li>centralize appointments, undermine civil service, and weaken independent bodies</li> <li>impeach chief justice in 2013</li> </ul>	<ul style="list-style-type: none"> <li>collusion with LTTE to block polls in Northeast</li> <li>jail opponent in 2010 election</li> <li>abolish term limits in Constitution in 2010</li> </ul>	<ul style="list-style-type: none"> <li>war crimes and impunity</li> <li>takings of property in Northeast</li> <li>abduction and murder of journalists</li> <li>manipulation of GDP data</li> </ul>
Hungary 2010-present [Orbán]	MP	<ul style="list-style-type: none"> <li>constitutional reform in 2011</li> <li>lower retirement age for judges in 2011</li> <li>in 2013, annul all constitutional court rulings before 2011</li> </ul>	<ul style="list-style-type: none"> <li>in 2014 election, win sixty-seven percent seats with forty-four percent of votes</li> </ul>	<ul style="list-style-type: none"> <li>NGO restrictions</li> <li>revisionist history curriculum</li> <li>criminalize “imbalanced news coverage” and “insulting the majority”</li> </ul>
Poland 2015 [Kaczyński]	Prime Minister	<ul style="list-style-type: none"> <li>undermine constitutional court in 2015</li> <li>control in civil service</li> </ul>		<ul style="list-style-type: none"> <li>take over state media from independent commission</li> </ul>

India 1917-77 [Gandhi]	Scion; war with Pakistan over Bangladesh	<ul style="list-style-type: none"> <li>• abuse emergency power and rule by decree</li> <li>• manipulate courts after <i>Kesavananda</i></li> </ul>	<ul style="list-style-type: none"> <li>• imprison political opponents</li> <li>• interfere with electoral machinery in 1975</li> </ul>	<ul style="list-style-type: none"> <li>• mass arrests</li> <li>• repression of strikes</li> <li>• censorship</li> </ul>
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(Huq and Ginsburg, 2018)

The table shows that in nearly all cases, the court or judiciary are targeted. By presenting all of these cases, it substantiates the theory that courts are crucial to limiting backsliding which makes them a bullseye for those looking to attack a democratic regime. The remainder of this section will discuss further why courts so often become targets of authoritarians.

Ginsburg provides an overview of the crucial responsibilities of the judiciary that help uphold democratic values and sustain a democratic regime. The courts, and especially the highest court in a country, play a role in ensuring that laws passed are constitutional, and may have a say in the validity of constitutional amendments depending on the system of governance. As the passage of constitutional amendments can be a form of democratic backsliding, the court's role in upholding or striking down amendments bestows it a great deal of power (Ginsburg 2018, 358-359). Consequently, this can make the judiciary the target if the executive has his or her agenda continuously blocked by the court. Aguilar agrees with this perspective as she cites that they are central components of checks and balances (Aguilar Aguilar 2023, 8). If the executive branch is aggrandizing, the institutions that have the capacity to prevent that can become targets of the authoritarian, such as the legislature and constitutional courts, which have the power to slow the narrowing of democratic space and limit the centralization of state authority (Huq and Ginsburg 2018, 125). There are other components of democracies that fall within the purview of the judiciary that can lead to conflict with the executive branch when an aspiring authoritarian holds office.

The courts also have the power to uphold institutions that promote accountability in a democratic regime (Ginsburg 2018, 360). Accountability, under a backsliding regime, can retreat simultaneously with democracy. This can come in the form of corruption or abuse of institutional power. The latter includes the use of institutions like the police, military or security services to do the bidding of the executive that can repress opposition and demonstrations. The former encompasses using one's political office to enrich and/or protect oneself and/or their inner circle. Courts uphold the law of the land, and government officials are not exempt from the rule of law. Therefore, courts have the responsibility to uphold accountability amongst even the most powerful people in society. By doing so, courts play a role in diminishing the abuse of power from elected

officials which can be a symptom of democratic backsliding. However, complicity by the courts can allow that abuse of power to run rampant, permitting democratic backsliding to flourish. Another example of the courts' role in democratic backsliding is the protection of free press, speech and protest.

The manipulation of the public sphere, specifically controlling or attacking academia and the media, can be rampant during a period of backsliding (Ginsburg 2018, 362). These actors have the potential to be critical of the ruling power and in turn, may face repression in a variety of ways. These include the revocation of licenses or an outright ban on content and harassment. However, courts, under some jurisdictions, have the capability to counter the infringement of free speech, press and protest. Courts can play a role in preventing governments from restricting these rights (Ginsburg 2018, 362) by striking down laws that would undermine them or deeming certain harassment as unconstitutional etc. As free speech and association is a critical tenet of a healthy democracy, the courts' protection of these rights can inhibit the effects of democratic backsliding.

Naturally, different courts have varying roles when upholding democracy. Many modern democracies have some form of a constitution that decides how a state will be governed. The overseers of a constitution, constitutional courts, can deem actions or legislation by the government either constitutional or unconstitutional. As they tend to have the final say in the legality of governmental affairs, constitutional courts are a formidable part of checks and balances. More specifically, constitutional courts have significant control over the exercise of democratic power and in the cases of newer democracies, ease the transition into a new democratic order (Issacharoff 2015, 12). High courts like these can easily block the policies of someone trying to gradually subvert democracy. The frustration of the undemocratic leader may lead them to target courts with varying methods, including threats towards the judiciary, judicial purges and packing the courts (Aguilar Aguilar 2023, 11).

The section above highlights the importance of the judiciary in a democratic government. Courts help protect liberal values and the democratic system itself. Their central role in the system of checks and balances assists with keeping the different institutions of government in equilibrium. Consequently, that makes them a target for those who wish to consolidate power and engage in democratic backsliding. This is especially apparent in their ability to push back against those who subvert democracy. Unfortunately, in some circumstances, they succumb to the power of aspiring authoritarians, either by weakening the institution itself or packing courts with loyalists. By doing

so, the subverter of democracy provides legitimacy to his regime as he is ‘backed’ by the courts and therefore, the law.

## **2.4 - International Courts and Democratic Backsliding**

The role of international courts in democratic backsliding is a topic in the field that has not received a lot of scholarly attention, and is a major motivating factor in writing this thesis. One court that has received more attention than others is the Court of Justice of the European Union (CJEU) (Bellamy and Kröger 2021, 620-621; Blauberger and Kelemen 2017, 322-323; Sadurski 2019, 193-196). The CJEU possesses various mechanisms to punish member states that violate EU treaties. Scholarly focus also weighs heavily towards the EU as they have two member states that exemplify contemporary democratic backsliding: Poland and Hungary. Some doubt the effectiveness of the CJEU’s capacity to limit democratic backsliding. They suggest that the CJEU is just one institution and that alone is not enough to stop backsliding (Blauberger and Kelemen 2017, 321). Rather, these authors suggest that EU leaders and European heads of government must simultaneously exert social pressure and impose their own sanctions along with judicial sanctions already applied from the CJEU (Blauberger and Kelemen 2017, 322). As the EU is one of the most institutionalized governmental organizations in the world, not to mention the history behind the EU is intertwined with decades of economic cooperation of budding democracies, it is arguable that they are more prepared to counter backsliding than other regions.

Ginsburg not only explores the supranational court of the EU, but also “similar” interregional courts in Africa and Latin America. The methodology of this work explores various cases that have come before The African Court on Human and Peoples’ Rights, The Inter-American Court of Human Rights and Democracy and European institutions. His conclusion is that courts in general can focus only on one case at a time and lack the ability to contend with structural issues, thus limiting the ability to inhibit systemic democratic backsliding (Ginsburg 2019, 287-288). Liñán reaches a similar conclusion in his piece on what role international courts play in the dismantling of democracy. International organizations, like the Organization of the American States (OAS) and the EU, from a realist perspective, are ineffective at reversing democratic erosion but can provide a mechanism of sorts to deny the competitive authoritarian regime the legitimacy it attempts to derive from the façade of democratic institutions (Pérez-Liñán 2021). This sobering argument leads to the belief that little can be done from the international

community when a democratic regime is experiencing backsliding. Ultimately, the domestic affairs and institutions outweigh any outside influence. However, the author does leave the reader with a glimmer of hope. Liñán floats the idea that international courts can utilize collective protection mechanisms that seek to protect national judiciaries that in-turn, combat democratic backsliding (Pérez-Liñán 2021). As demonstrated in the previous section, the domestic judiciaries are an excellent institution to combat democratic erosion. Therefore, by strengthening domestic judiciaries via international channels, international courts can play an indirect role in combating backsliding.

### **History of the Inter-American Court of Human Rights**

Before exploring specific case studies, it is necessary to review the history of the IACHR. By doing so, its capacities and structure will be more clearly understood resulting in a better grasp of the case studies.

The IACHR is a prong of the Inter-American Commission on Human Rights, hereby referred to as the Commission, that tends to human rights issues in member states of the OAS. The OAS is an inter-regional organization composed of 35 member states from North America, South America, and the Caribbean. Although officially created in 1948 via the signing of the Charter of the OAS, the earliest meeting of American states in this context took place in 1890 (OAS, n.d.). As outlined in the first article of the Charter, the goal of the organization is to achieve “an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence”<sup>5</sup> for the member states. Created in 1959, the Commission is the official organ of the OAS to address violation of human rights within member states. In its genesis, the objective of the Commission was to investigate human rights violations and merely document such instances, but could do nothing more than declare that a member is in violation of the American Declaration of the Rights and Duties of Man<sup>6</sup> (Medina, 440-441). However, in 1969, changes occurred that increased the capacity of the Commission and created the IACHR. In the same year, the American Convention on Human Rights or the “Pact of San Jose”, the main treaty that protects human rights in the Americas, was

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<sup>5</sup> Charter of the Organization of American States, 1948, Article 1.

<sup>6</sup> This was the first international human rights instrument in the world and was adopted at the same conference as the Charter of the OAS.

adopted by the States. However, the treaty did not come into force until 1978 when the eleventh nation ratified it and subsequently created the IACHR (Pasqualucci, 3-4).

The rights protected in the American Convention on Human Rights include rights to judicial and equal protection, participation in government, freedom of movement, residence and property. It also protects the rights of families and children, name, privacy, liberty, human treatment, assembly, fair trial and expression.<sup>7</sup> It is the duty of the Commission to uphold these rights throughout the American States, and by extension, the IACHR assumes responsibility to adjudicate human rights violations occurring in States party to the Pact of San Jose. These states include Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay and Venezuela (Pact of San Jose, Signatories and Ratifications). Some notable exemptions from the list are the United States and Canada while Trinidad and Tobago initially ratified the Pact, but denounced it seven years later.

### **Structure and Procedure of the Inter-American Court of Human Rights**

The IACHR is composed of seven judges with the “highest moral authority” and esteemed credentials while possessing nationality from an OAS member state.<sup>8</sup> Headquartered in San Jose, Costa Rica, but occasionally holding special sessions in other countries, the jurisdiction of the IACHR is to rule on whether a State violates an individual’s human rights according to the Pact of San Jose. (Pasqualucci, 10). States that are party to the Convention recognize the IACHR’s rulings as binding, *ipso facto*<sup>9</sup>. Another power of the IACHR is its ability to provide advisory opinions. The IACHR can provide advisory opinions for any OAS member state, not only those parties to the Convention. The principal goal of this jurisdiction is to provide a service, upon request of a member, to assist the State with fulfilling human rights obligations (Pasqualucci, 11). The IACHR also has the power to act in emergency situations to protect those who may be in grave danger. The capacity is granted to the IACHR in the Convention<sup>10</sup> where the Court may provide provisional measures to protect victims.

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<sup>7</sup> American Convention on Human Rights, 1969, Articles 3-25.

<sup>8</sup> Ibid., Article 52 The judges do not need to be from nations party to the American Convention of Human Rights, but there may not be more than two judges from the same nationality sitting on the IACHR at once.

<sup>9</sup> Ibid., Article 62.

<sup>10</sup> American Convention on Human Rights, 1969, Article 63 (2).

Before a case can go before the IACHR, an official complaint must be sent to the Commission first. Complaints filed to the Commission are not limited to individuals and can be submitted by groups or nongovernmental entities.<sup>11</sup> However, there are certain requirements that the complaint must adhere to before the case can be admitted to the Commission and the IACHR subsequently. These admissibility conditions are:

- a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;*
- b. that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment;*
- c. that the subject of the petition or communication is not pending in another international proceeding for settlement; and*
- d. that, in the case of Article 44, the petition contains the name, nationality, profession, domicile, and signature of the person or persons or of the legal representative of the entity lodging the petition.*<sup>12</sup>

A notable fact about the Inter-American human rights system is that the Commission usually receives well over one thousand petitions a year (two thousand in recent years) but roughly, only twenty petitions are sent to the IACHR (OAS Statistics, 2023). These admissibility conditions are also modeled after the European Court of Human Rights' conditions.

If the complaint is deemed admissible by the Commission, the next step is to obtain evidence from the State at violation. This is completed by requesting information from the government to investigate the fact, but if the government does not comply with the request, all information in the petition is deemed to be true (Medina, 445-446). The Commission may initially try to reach a friendly settlement between the two parties, but if that is not possible, a report will be drawn up by the Commission with the state facts and conclusions (Medina, 446). The IACHR can consider a case from the Commission after the initial investigation and draft report has been published. The other alternative is for a State party to the Convention to directly bring the case to the IACHR.<sup>13</sup> After an investigation completed by the IACHR, it will issue its judgment. Under Article 63 of the Convention, the IACHR will rule that if “there has been a violation of a right or

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<sup>11</sup> Ibid., Article 44.

<sup>12</sup> Ibid., Article 46.

<sup>13</sup> American Convention on Human Rights, 1969, Article 61.

freedom protected by this Convention, the IACHR shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated”<sup>14</sup>. As these States are party to the Pact of San Jose and recognize the legitimacy of the IACHR, their compliance is obligatory. If noncompliance issues arise, there are measures within the OAS infrastructure that manage those circumstances. the IACHR can submit to the General Assembly of the OAS which states have not complied with their judgments<sup>15</sup> and the Assembly may take political action ranging from public condemnation, diplomatic engagement with the State at fault, or in serious cases, possible suspension or expulsion from the OAS.

### **III. Methodology**

The goal of this Master’s thesis is to explore if international and/or regional courts are effective institutions for preventing democratic backsliding. The focus of the paper is to answer the question, “what role do international or regional courts have in the prevention of democratic backsliding?” As the selected case studies are within Latin America, the court of attention will be the IACHR. Thus, a sub-question is necessary to determine if the IACHR is effective in preventing backsliding in the region. The guiding question that pertains to this is, what impact has the IACHR’s judgments had on the prevention of democratic backsliding in Latin America?

To answer the questions above, the paper will examine two judgments from the IACHR in order to better understand the role that the Court has in preventing democratic backsliding. The first case is *Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela* and the second case is *Supreme Court Justice (Quintana Coello et al.) v. Ecuador*. The purpose of analyzing the cases is to better understand certain components that will help answer the research questions. The first component is identifying the instance of democratic backsliding that brought the petition to the Commission’s attention. This is necessary to establish that an act of backsliding has occurred and requires intervention from the Inter-American Human Rights system. The means of identifying backsliding in each country will be substantiated by existing theory outlined in the previous chapter. Another component of examining these cases will shed further light on what legal basis the IACHR and the Commission have to punish those who violate human rights and subsequent

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<sup>14</sup> Ibid., Article 63.

<sup>15</sup> Ibid., Article 65



engagement in democratic backsliding. Lastly, understanding what level of efficacy these penalties have for the prevention of backsliding is another important matter when examining these cases. Examining the penalties provides a ‘real-world’ test to judge if the reparations rectify the incident of democratic backsliding. For example, if the reparations are financial penalties rather than a corrective act that helps remedy the judiciary, this does not assist with reverting the initial incident of backsliding as it will continue to exist.

As for the justification for the selection of these cases, there are several reasons that have determined this choice. First, both judgments concern the independence of the judiciary as a core factor. The rationale behind selecting cases pertaining to judicial independence stems from the theoretical framework established earlier. As the judiciary serves as protectors of democracy and naturally becomes a target of backsliding, the methodology here scrutinizes whether the IACHR or, more broadly speaking, international courts, can serve as the protectors of the judiciary when the judiciary is under assault by backsliding factors. The petitions that brought the cases to the IACHR argue that the victims, the judges, were unfairly terminated from their posts. As stated before, purging the judiciary is a central component of democratic backsliding. The judiciary has the power to halt legislation of the incumbent’s agenda. These decisions may lead the judiciary to be viewed as an obstacle or even a threat by the executive or ruling party. Ultimately, the courts can become a target of an anti-democratic force which in extreme circumstances, can lead to unlawful removal of judges. After a judge(s) is removed from power, the executive or ruling party can appoint loyalists that will clear hurdles to their legislative agenda. The use of cases pertaining to independence of the judiciary is also relevant to the guiding theory of this paper that domestic courts are strong institutions that can limit, prevent and taper democratic backsliding. By selecting instances where the judiciary is compromised, it offers the opportunity to study what capacity the IACHR possesses to reverse the action and hopefully limit the effects of backsliding. Colloquially speaking, the case studies will be able to test if the IACHR can serve as a ‘last line of defense’ to defend the judiciary, and more broadly speaking, democracy itself.

It should be noted that in his article “International Courts and Democratic Backsliding,” Ginsburg does use the same examples. However, there are significant differences between this paper and his article. Ginsburg’s article completed only a partial analysis of international courts from different regions including Europe, Latin America and Africa (Ginsburg, 2019). As a result, this paper will add another layer to analyzing the cases since the intention is to only focus on one

court and one region. For example, one vital component that is lacking in the article is the failure to use compliance reports compiled by the IACHR to confirm if the country in question is adhering to the reparations ordered in the judgment. That will be one piece of the methodology that will be elaborated upon shortly.

As for the countries where the cases have been filed, Venezuela and Ecuador are two countries within the region who have had many petitions filed against them sent to the IACHR since 2006. In the past sixteen years, Venezuela has had 31 cases gone to the IACHR and Ecuador has had 38 in the same time period (OAS Statistics, 2023)<sup>16</sup>. While some of those cases may involve the infringement of human rights some may overlap with democratic backsliding. Using Venezuela and Ecuador as case studies is also relevant when studying democratic backsliding. Both are popular examples to use when describing scenarios in which backsliding is present in a country (Levitsky and Ziblatt, 2018; Mainwaring and Pérez Liñán 2015, 114-115). However, each country has experienced the phenomena to varying degrees. As they are situated within the same region, are party to the Convention<sup>17</sup>, and fall under the purview of the IACHR, Ecuador and Venezuela's similarities make them ideal examples to use in a comparative study. By utilizing two states with a shared history that scholars agree have a recent history with backsliding, the following research can show to what degree of efficacy the IACHR holds over states parties to the American Convention of Human Rights.

The research section will study each case separately using the following format. To begin, a background on the country's political situation will be conducted to demonstrate the democratic profile that the country had at the time the petition was made. To do so, primary sources like the nations' constitutions will be utilized to better comprehend the system of democratic governance of each country. This section will also make use of secondary sources of the writings of academics who are experts in Latin America, which should build a political profile of each country. After sufficient background information is provided, a case analysis will follow. Using the judgments themselves along with the assistance of summaries written by the Inter-American Court of Human Rights Project<sup>18</sup>, the context of what led to the petition will be outlined. Upon establishing the setting of the case, the analysis will continue with what decision was reached and why. Doing so

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<sup>16</sup> This is roughly 20% of all cases sent to the IACHR during the same time period.

<sup>17</sup> Venezuela did denounce the American Convention on Human Rights in 2013.

<sup>18</sup> The Inter-American Court of Human Rights Project is an initiative created by Loyola Law School that tracks cases of the IACHR and provides summaries and other information about them.

once again requires the use of the judgments as well as the American Convention of Human Rights which enables an explanation of what contents of the case are in violation of the Convention and which parts are not. During this section of the analysis, the case will continually be linked back to the concept of democratic backsliding to identify which parts may be contributing to a democratic decline in the countries of question, as this is the core focus of the dissertation.

The next part of the case analysis will scrutinize the compliance reports of each case. The compliance reports are conducted by the IACHR and examine the status of reparations that were handed down in the judgment if the country was ruled to be in violation of the Convention.<sup>19</sup> The compliance reports will assist with determining the capacity the IACHR has to promote democracy and counter democratic backsliding. The last subsection will include a discussion that encompasses quantitative analysis to assist with the assessment. The Varieties of Democracy Project's (V-Dem) dataset will be the method to do so. The V-Dem has become a popular tool amongst academics when measuring the quality of democracy for a country (Lindberg et al., 2018; Mechkova et al., 2017; Haggard and Kaufman, 2021). The V-Dem project measures five principles key to democracy: electoral, liberal, participatory, deliberative and egalitarian (V-Dem, 2023)<sup>20</sup>. A unique component to the V-Dem dataset is the reliance on the judgment of experts from the country of study. This concept is intrinsically connected to democratic backsliding as it amalgamates both written data and observations from experts (Marquardt, 2023). For example, a country's constitution may grant checks and balances to other institutions, in which case a researcher will see that the country has appropriate methods to prevent executive aggrandizement. However, experts in the field can provide data through their own experiences that can argue that checks and balances are underutilized and thus, perpetuating backsliding. The V-Dem dataset encapsulates this research in its methodology. For the purpose of this paper, the V-Dem dataset will showcase the indices in three different years for Venezuela and Ecuador. The dates used will be the year the petition was made against the country, the year after the IACHR's judgment and the year when the compliance reports were published. When compiled together, the data will ultimately show patterns of democratic backsliding or resistance to backsliding over a significant timeframe. Needless to say, there are external factors that may affect the score given. For example, while the

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<sup>19</sup> The compliance reports are written in the IACHR's Annual Report that summarizes cases from that year, compliance from previous cases as well as any significant human rights developments occurring in member states.

<sup>20</sup> For explanations of principles, see "V-Dem: A New Way to Measure Democracy."

IACHR is ruling on one matter, a state could be backsliding in other manners besides the judiciary that could affect its score.<sup>21</sup> The discussion also will include a comparison between the two judgments and compare that with the results of others who have used case law analysis using the Inter-American Human Rights Court as the theme. To summarize, the analysis will use the following questions to guide the research:

1. *What is the background of the case?*
2. *What was the decision of the IACHR and why?*
3. *Has the state complied with the decision of the IACHR?*
4. *What are lessons to be learned from the outcomes of both cases regarding judicial independence?*

By following the procedure above, the analysis will demonstrate how the compromising of judicial independence can lead to a subsiding of democracy. It also serves to show what steps the IACHR can take to combat subversion of democracy and, to a broader extent, if its capacity is sufficient to prevent further backsliding from future violators of states party to the Convention. The following chapter will begin by analyzing the case against Venezuela.

## **IV. Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela**

### **A. Country Profile**

Venezuela is a country in South America that, similar to Ecuador, gained its independence after the fall of Gran Colombia in 1830.<sup>22</sup> In contemporary times, Venezuela is infamous for a catastrophic downfall in wealth and regression into authoritarianism that has spurred one of the largest displacement crises in modern times (UNHCR 2023).<sup>23</sup> However, recent lamentable events should not undermine the democratic success that it experienced in the latter half of the 20<sup>th</sup> century. While also serving as a shining example of democracy in Latin America during that time

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<sup>21</sup> These can come in the form of clamping down on civil society, electoral irregularities becoming more frequent or sustained periods of executive aggrandizement.

<sup>22</sup> Gran Colombia was a state created by Simon Bolivar after winning independence from Spain. The state included the modern-day countries of Colombia, Ecuador, Panama and Venezuela.

<sup>23</sup> 7.7 million Venezuelans have left the country since 2014.

period, Venezuela's wealth grew tremendously by possessing one of the largest oil reserves in the world.

Prior to the creation of democratic institutions in Venezuela, the country was predominantly run by military strongmen in the first half of the 20<sup>th</sup> century (CIA World Factbook, 2023). In 1958, after the fall of the military dictator, Marcos Pérez Jiménez, three political parties created the *Pacto de Punto Fijo* or Punto Fijo Pact (McCoy 1999, 58). The parties were the social democratic party, *Accion Democratica* (AD), the social-Christian party COPEI, and Democratic Republican Union (URD). The creation of the Punto Fijo Pact was influenced by the push for democratization by the United States during the Cold War. As a result, the Punto Fijo Pact was signed in 1958 by the three political parties creating a democracy and corresponding constitution in Venezuela. Like all democracies, it was not a perfect democracy. One of the glaring discrepancies was that two other political parties, *El Partido Comunista* and *El Movimiento de Izquierda Revolucionaria* (MIR), were banned from political participation (Karl 1987, 82). As discussed above, a well-functioning, healthy democracy will not restrict participation in the civil sphere nor political sphere. Another flaw in this form of democracy is that power was only guaranteed for the signatories of the Punto Fijo Pact, specifically AD and COPEI. Although democratic elections were held in Venezuela during the Punto Fijo era and more than two political parties existed, the executive branch was transferred between AD and COPEI between 1959-1993. There are examples of democracies today that are two-party republics, yet they can welcome negative consequences with polarization being one of the most rampant. As will be discussed below, the structure of this system ultimately brought Hugo Chavez into the political scene whose influence on the country continues to plague Venezuela today.

Upon examining the Pact itself, there are a few components that outline the framework for a healthy democracy, but overall, the document has overtones that demonstrate Venezuela's commitment to avoid having another dictator. One aspect of the Pact is defending constitutionality and granting power to the party that garners the majority in an election (Pact of Punto Fijo, 1958). The peaceful transfer of power to prevent authoritarian reversions is a central tenet of democracy and is one of the first points drafted in the Pact. The document also upholds the value to share power between the three parties (Pact of Punto Fijo, 1958). On paper, this is an important part of a democracy; to share power with parties that have differing views. However, as mentioned earlier, power was not shared between *all* parties. This action is thoroughly outlined in the document under

the guise of “unity.” The word “unity” is frequently mentioned in the Pact. One can assume that the idea of unity demonstrates a country with bipartisan support for those with differing ideals, but upon closer examination of the Pact, this is not the case. The Common Minimum Program was an initiative drawn by the three signatories that guided the policies of whoever was elected. Consequently, ideas contrary to the Common Minimum Program were excluded from party platforms (Pact of Punto Fijo, 1958). Obviously, censorship on the grounds of differing ideals is undemocratic, yet *Puntofijismo* lasted until the 1990s. While Venezuela had a stable government during this period, its neighbors in Latin America experienced guerilla insurgencies and authoritarian rule (Coppedge 1993, 322). Thus, it may appear that *Puntofijismo* was a successful political regime with democratic components. But, the situation is far more complex than that.

The Punto Fijo regime can be divided into three distinct periods. The first is from 1959-1974 where bipartisan support is strong for the new regime. The following period of 1974-1979 is characterized by dollar fever and optimistic prosperity for Venezuelans. The final period from 1979-1993 embodies the crisis of the system due to economic crises and discontent (Rojas and Atehortua 2005, 257). The first two periods were buoyed by the large amount of oil revenues that the government received. After an economic shock in 1974, this amount grew as Venezuela nationalized the oil industry and the influx of revenue was mistaken for good policymaking (Hawkins 2016, 259). Naturally, when a country is dependent on one export resource, its economy possesses an overreliance for the resource. Therefore, in 1983 when oil prices devalued, Venezuela’s economy crashed, shaking the stable foundations of *Puntofijismo* (Hawkins 2016, 262). Rising discontent due to economic mismanagement in the country set the stage for a political outsider to change the course of Venezuela’s trajectory that has lasting effects to this day.

The unraveling of the Punto Fijo regime was self-inflicted with economic mismanagement that perpetuated class inequality and an alliance from one of the founders of Venezuelan democracy with a (in)famous junior military officer. That officer was Hugo Chavez, who in 1992 was imprisoned for two unsuccessful coups (Levitsky and Ziblatt 2018, 20). At the time, Rafael Caldera, the founder of COPEI and a signatory of the Pact of Punto Fijo, was running for president again. Caldera was seen as a political relic and to boost his chances of election expressed sympathy for leaders of the attempted coup (Levitsky and Ziblatt 2018, 21). By tapping into the sentiments of *Chavistas* and abandoning COPEI to run as an independent, Caldera broke the 30-year cycle of the presidency being held by an AD or COPEI party member, consequently ending *Puntofijismo*.

More significantly, in 1994 while Chavez was awaiting trial, Caldera dropped all charges against him for the attempted coup thinking that he would fall out of public favor eventually (Levitsky and Ziblatt 2018, 21). In the next presidential election (1998), Chavez easily defeated the establishment candidate, setting the stage for sweeping changes for Venezuela and its people.

Chavez's 14-year reign (1999-2013) until his death from cancer ushered in a transformative era for Venezuela that saw an overhaul of democratic institutions, consequently dragging the country into a competitive authoritarian regime. Not long after his inauguration in 1999, Chavez's government called for a constituent assembly election that would grant him power to dissolve other state institutions at his will (Levitsky and Ziblatt 2018, 98). As a result, the supreme court was disbanded and replaced with the Supreme Tribunal of Justice, a new court packed with 20 loyalists (increased to 30 in 2004) that from 2004-2013 never ruled against Chavez's government (Levitsky and Ziblatt 2018, 98). Chavez also immediately set out to rewrite the Venezuelan constitution, further changing the rules in his favor. The new 1999 Constitution eliminated the Senate, increased the power of the executive and gave the president the right to recall legislators via referendum; actions which weaken checks and balances in a democratic regime (Corrales 2015, 37). The *Organic Law of Telecommunications* (2000), *Law for Social Responsibility* (2004), and the 2005 *penal code reform* all promoted censorship in Venezuela (Corrales 2015, 38). By limiting participation in the public sphere, Chavez could rule by limiting and weakening the opposition as they faced stiff fees or even imprisonment for breaking those laws. By weakening checks and balances and using the state to kneecap the opposition and their views, Chavez's next move was to ensure continued electoral gains to remain in power. To do so, he took control of the National Electoral Council, the institution that governs electoral affairs in Venezuela (Corrales and Penfold 2007, 101). With Chavez's government gradually inching towards total control of both public and private life, it was inevitable that Venezuela would violate the American Convention of Human Rights.

#### B. Case Summary

Although the petition did not reach the courtroom until 2008, the origins of the case can be traced back to Chavez's victory in 1999. As mentioned earlier, Chavez immediately convened a constitutional assembly to rewrite the constitution, drastically altering the institutional structure of Venezuelan democracy. The judiciary in Venezuela immediately began to feel the ramifications

of Chavez's changes. Institutional bodies like The Commission for Operating and Restructuring the Judicial System, Executive Directorate of the Magistrates and the Inspectorate General of Courts (IGC) were established to impose disciplinary sanctions, monitor the judiciary by managing the governance and administration, and collect evidence for disciplinary proceedings respectively (Report on the Situation of Human Rights in Venezuela, OAS, 2003). The idea of judicial oversight is not inherently bad since an important institution like the courts must also be held to high ethical standards. Unfortunately, it is important to remember that these changes were implemented through the wishes of the executive. When studying democratic backsliding, a political move such as this one, aims to capture the 'referees' of democracy by either having a procedure in which to remove them or keep them in line. The court that is relevant to this case is the First Court of Administrative Disputes.

The Supreme Tribunal of Justice, a court created in the new 1999 Constitution replacing the Supreme Court of Venezuela, appointed the following people as provisional judges to the First Court of Administrative Disputes: Ana María Ruggeri Cova, Evelyn Margarita Marrero Ortiz, Luisa Estela Morales, Juan Carlos Apitz Barbera, and Perkins Rocha Contreras<sup>24</sup>. Between August 2002 – August 2003, the First Court handed down eleven unfavorable judgments affecting the new administration.<sup>25</sup> The theory outlined earlier begins to become a reality in this scenario. When a leader with authoritarian tendencies and weak commitments to democratic norms faces obstacles to their agenda, actions will be taken to punish those seen as barriers. Naturally, in September 2003, the IGC opened an investigation into five of the judges<sup>26</sup>. One month later, four out of the five judges were removed from their posts on the First Court of Administrative Disputes by The Commission for Operating and Restructuring the Judicial System (CORJS). After unsuccessfully filing for appeal through the Supreme Tribunal of Justice, the judges wrote a petition to the Commission against Venezuela in April 2004 (Loyola Case Summary, 2008). The Commission judged the request to be admissible and ordered Venezuela to reinstate the judges and compensate them for lost wages (Loyola Case Summary, 2008). The response received from the state in 2006 that it was unable to, meaning the case would go to trial in front of the IACHR.

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<sup>24</sup> Case of Apitz Barbera et al ('First Court of Administrative Disputes') v Venezuela, Preliminary objections, merits, reparations and costs, I/A Court H. R., Series C no 182, 05 August, 2008, Section I, Paragraph 2.

<sup>25</sup> Ibid., Section VI, Paragraph 112.

<sup>26</sup> Ibid., Section VI, Paragraph 36.



### C. Judgment

One aspect of the petition that the IACHR needed to determine in this case is whether there was a violation of the American Convention of Human Rights regarding the right to a fair trial and the right to judicial protection. To recap, Article 8 of the Convention guarantees the right to a fair trial where: every person has a right to a hearing, the accused is presumed innocent before proven guilty, the guilty statement will not be valid if there is coercion, a person acquitted of charges cannot be tried for the same cause and lastly, the case must be public unless to protect the interests of the justices. The other article relevant to the case is Article 25 of the Convention. This article guarantees that everyone has the right to recourse by a competent court to protect fundamental rights and states every party to the Convention undertake the task to ensure that, by providing a competent authority, develop possibilities for judicial remedies and that the authorities enforce the said remedies. Essentially, it guarantees a well-functioning legal system with an appeal system.

The first item observed in the case is if the provisional judges received a fair trial, but in their case, a fair removal process that regular, tenured judges would receive.<sup>27</sup> The State defended the idea that as temporary appointees, the provisional judges do not have the same protections as permanent judges. The IACHR, using a precedent set by the United Nations, states that all judges. The UN Human Rights Committee stated that when the executive dismisses judges prior to the end of their term, without reason or effective judicial protection, the independence of the judiciary is threatened.<sup>28</sup> The usage of this article by the IACHR demonstrates that there are international protections for the judiciary that, in turn, prevent democratic backsliding, and proceed to include that provisional judges deserve the same protections as permanent ones. However, the IACHR did acknowledge the procedure afforded to the victims by the CORJS but, the remaining question is what jurisdiction did the CORJS, a newly established judicial watchdog, possess to initiate and enact the removal of the judges? The IACHR's next item in the judgment is to determine whether the CORJS's actions were legitimate and within its jurisdiction. The victims' representative argued that the Plenary Chamber of the Supreme Tribunal of Justice was the only body that could remove the judges, not CORJS, while the State argued CORJS "has competent jurisdiction" to handle these

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<sup>27</sup> Case of Apitz Barbera et al ('First Court of Administrative Disputes') v Venezuela, Preliminary objections, merits, reparations and costs, I/A Court H. R., Series C no 182, 05 August, 2008, Section VI, Paragraph 42.

<sup>28</sup> United Nations, International covenant on civil and political rights, Human Rights Committee, CCPR/C/GC/32 23 August 2007, General Comment no. 32, Article 14, *supra* note 58, para. 20.

matters.<sup>29</sup> While acknowledging the CORJS's short-term status as an institution, as it was created in 1999 under the new constitution, the IACHR determined CORJS was within its jurisdiction and agreed that the victims were provided a hearing by CORJS that was in accordance with Article 8 of the Convention.<sup>30</sup> The next aspect of the IACHR's findings, related to Article 8, was to determine the impartiality of the CORJS as this helps further determine if the hearing process was fair.

As alluded to earlier, the CORJS, at least on the surface, appeared to be a tool to mold the judiciary and subjugate the judiciary to the executive, Chavez's wishes. This newly founded institution was charged with disciplining Venezuelan judges. With a responsibility as such, the chances of this institution being abused by a leader with authoritarian tendencies seemed inevitable. However, all that has been said up to this point is theory in democratic backsliding and the IACHR had to prove this was happening to the disbarred judges. This specific section on impartiality will focus solely on the topic of challenging the members of the CORJS while potential interference from other branches (the executive) will be covered later during the judicial independence part. The Commission itself has noted that the disciplinary procedure lacks the ability to challenge members of the CORJS.<sup>31</sup> The Commission's determination on this matter implies that the CORJS can act with a significant amount of impunity. After their hearing with the CORJS, two of the judges filed challenges against CORJS for lack of impartiality, but their challenges went unheard as the State argued that the CORJS and IGC will not be subject to challenge and only decline cases if it conflicts with the stipulations in Venezuelan law.<sup>32</sup> The IACHR concurred that the State did not intentionally disregard the right of victims to have an impartial hearing but did rule that the existing legislation prevented any opportunity to review potential impartiality, which they deemed to be in violation of Article 8 of the Convention.

The next issue relevant to the thesis in the case is the "duty to state grounds." This concept essentially signified that the accusers (the State) must name valid reasons why the accused were subject to disciplinary proceedings and subsequent suspension and removal from office. In doing so, credibility to the Law and its institutions remains intact, thus preventing unjust treatment that

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<sup>29</sup> Case of Apitz Barbera et al ('First Court of Administrative Disputes') v Venezuela, Preliminary objections, merits, reparations and costs, I/A Court H. R., Series C no 182, 05 August, 2008, Section VI, Paragraph 48.

<sup>30</sup> Ibid., Section VI, Paragraph 53.

<sup>31</sup> Ibid., Section VI, Paragraph 58.

<sup>32</sup> *Ley Orgánica de Procedimientos Administrativos*, 1981, Artículo 36.

can lead to democratic degradation. The issue the IACHR scrutinized was the Commission's allegation that the CORJS merely accepted the decision by the Chamber for Political and Administrative Matters (CPAM), an institution that disciplines other government institutions, rather than reviewing the decision themselves.<sup>33</sup> The other problem apparent to both the IACHR and Commission was that the allegations leading to disciplinary proceedings did not involve unlawful conduct or suitability to hold office. Rather, the judges were not tried for their actions, but for their legal judgment.<sup>34</sup> This poses a very serious issue and is directly linked to democratic backsliding. When the executive faced obstacles to his or her political agenda, the credibility of the Law as discussed earlier was disregarded and tactics to remove those obstacles by any means necessary became prevalent. In this case, the State cited severe judicial error to remove judges via proceedings that are reserved for unlawful conduct or unsuitability to hold office.

The IACHR then contended with the fickle act of balancing domestic law and international law. It first states the guidelines for removing or suspending judges must come from an act of misconduct or incompetence, not solely on their judgments that may be appealed and overturned by a higher court.<sup>35</sup> This provision was clearly drafted in international law to protect the integrity of the judiciary and maintain a strong system of checks and balances. The IACHR then substantiated its point by citing domestic case law where the STJ did require a difference to be made between general oversight jurisdiction and disciplinary jurisdiction and another where CORJS did contend whether judicial error warranted removal.<sup>36</sup> Both of the IACHR's statements here established that there is a difference between judicial error and misconduct with the latter only requiring disciplinary proceedings. The IACHR then ruled that the State failed to provide just grounds to remove the judges, which is in violation of Article 8 of the Convention. After their ruling on this specific matter, the attention then shifted to the broader issue of judicial independence.

The topic of judicial independence is two-fold in this scenario according to the IACHR. In the eyes of the IACHR, there were allegations of a lack of independence of the Venezuelan

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<sup>33</sup> Case of Apitz Barbera et al ('First Court of Administrative Disputes') v Venezuela, Preliminary objections, merits, reparations and costs, I/A Court H. R., Series C no 182, 05 August, 2008, Section VI, Paragraph 79.

<sup>34</sup> Ibid, Section VI, Paragraph 84.

<sup>35</sup> United Nations, International covenant on civil and political rights, Human Rights Committee, CCPR/C/GC/32 23 August 2007, General Comment no. 32, Article 14, *supra* note 58, para. 20.

<sup>36</sup> Case of Apitz Barbera et al ('First Court of Administrative Disputes') v Venezuela, Preliminary objections, merits, reparations and costs, I/A Court H. R., Series C no 182, 05 August, 2008, Section VI, Paragraph 85.

Judiciary and lack of independence of the CORJS.<sup>37</sup> Regarding the former, the representative of the victims presented evidence to substantiate claims of a lack of independence of the Venezuelan Judiciary. The representative presented statements from justices, former judges, expert opinions and a National Assembly member. However, with all the evidence presented, the IACHR did not deem it sufficient to determine that on a legal basis, the judicial independence was lacking in Venezuela. The IACHR rejected the evidence by saying that some of the statements used did not constitute political motivation, that expert opinions cannot constitute complete proof, another statement was taken out of context, an original copy was not submitted as evidence, and therefore rejected.<sup>38</sup> The only concession the IACHR made on this matter was simply acknowledging that the number of justices on the STJ increased from 20 to 32. The IACHR's judgment on this matter is rather concerning, but more telling is how difficult it is to prove in a court that the judiciary is threatened. There is a consensus amongst academics (Cameron 2018, Levitsky and Ziblatt 2018, Mainwaring and Pérez Liñán, 2015) that Chavez weakened the judiciary and packed the courts during this time period. However, the IACHR's rejection of the evidence demonstrates how the threshold is more difficult to achieve in the legal domain than in the academic sphere. In a hypothetical scenario, one could picture if the case was brought later, possibly when Maduro consolidated power, the evidence may be more convincing. Nonetheless, when navigating through the precarious path of democratic backsliding, this example demonstrates that by the time a case reaches the point where the evidence is overwhelmingly apparent, it might be too late to correct it.

The IACHR then examines the Commission's argument that the CORJS may be lacking independence. While the victims' representative could not prove the Venezuelan judiciary was being directly influenced by the executive branch, their attention turned to the disciplinary institution to explore if it is unfairly influenced by the executive. To do so, the IACHR first established that there was a campaign to discredit the First Court. The judgment that led to this overt criticism was against the government's *Plan Barrio Adentro* which would let foreign doctors come to Venezuela without needing to get recertification. The unfavorable ruling by the First Court against this plan led the President of Venezuela and the Minister of Health to openly discredit the

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<sup>37</sup> Case of Apitz Barbera et al ('First Court of Administrative Disputes') v Venezuela, Preliminary objections, merits, reparations and costs, I/A Court H. R., Series C no 182, 05 August, 2008, Section VI, Paragraph 95.

<sup>38</sup> Ibid., Section VI, Paragraph 101.

First Court by stating that they were not going to follow the ruling.<sup>39</sup> To contextualize this, the statements by both officials, along with many other unfavorable rulings by the First Court, explains the motive for the executive branch to misuse its power. The representative and Commission later argued that the conditions for initiating a criminal investigation, leading to a search of the First Court's premises, also constitutes a misuse of power. The incident leading to the criminal investigation revolved around one of the judge's drivers who was detained for concealing a public document as he was delivering it to the residence of an external rapporteur for the First Court.<sup>40</sup> The CORJS gave three of the judges 60-day suspensions while the investigation was ongoing, but two weeks later, the Criminal Cassation Chamber of the STJ ruled the detention of the driver was unfounded.<sup>41</sup> Shortly after the ruling, the President of Venezuela provided more discrediting remarks about the First Court, insinuating that they were corrupt and associated with "coup-plotters."<sup>42</sup> The IACHR's interpretation on this matter holds that the "the criminal proceeding, the disciplinary investigation and the precautionary measure of suspension against the judges of the First Court were excessive and created suspicion as to the true reason behind such actions."<sup>43</sup> The IACHR structured the section in this manner to establish that there is evidence suggesting that other institutions held beliefs to remove judges from the First Court. Statements from public officials, dubious grounds to search the First Court's premises, and exaggerated suspensions, all suggest that there existed an external pressure campaign to remove the judges.

The next task for the IACHR was to determine if the CORJS is an independent tribunal offering the victims sufficient guarantees that meet the requirements outlined in the Convention. Previously, the IACHR stated that one manner to achieve the independence of the judiciary is through a strong appointment process and term limits<sup>44</sup> which the CORJS does not have. The CORJS was established during the Constituent Assembly in 2000 (where Chavez's party held a strong majority) and its seven seats were filled by the same assembly. Members can be removed and appointed without procedure at STJ's discretion which the IACHR views as contrary to the

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<sup>39</sup> Case of Apitz Barbera et al ('First Court of Administrative Disputes') v Venezuela, Preliminary objections, merits, reparations and costs, I/A Court H. R., Series C no 182, 05 August 2008, Section VI, Paragraph 103-105.

<sup>40</sup> Ibid., Section VI, Paragraph 123.

<sup>41</sup> Ibid., Section VI, Paragraph 127.

<sup>42</sup> Ibid., Section VI, Paragraph 128.

<sup>43</sup> Ibid., Section VI, Paragraph 132.

<sup>44</sup> Case of the Constitutional Court v Peru, Merits, reparations and costs, I/A Court H. R., Series C No 71., 31st January, 2001, Section X, Paragraph 75.

Convention<sup>45</sup> as it cannot guarantee a fair hearing. The IACHR does digress that there are no established facts to connect the CORJS to the executive branch in this scenario but still finds the State in violation of the Convention for not guaranteeing an independent tribunal.

Ultimately, the State was found guilty of the following violations to the Charter<sup>46</sup>:

1. Violation of Article 8(1) for not securing the right to an impartial hearing.
2. Violation of Article 8(1) for failing to state cause or just grounds.
3. Violation of Article 8(1) for not having a fair trial with an independent court.
4. Violation of Article 8(1) for not being heard in a reasonable time.
5. Violation of Article 25(1) for not providing a simple recourse for the protection of rights in this article.

The reparations for these violations were reimbursement of costs to the victims, reinstatement to positions in the Judiciary, but if that were not possible due to legitimate reasons, payment to victims should be made instead. Other reparations include publishing the judgment and passing a judicial code of ethics.<sup>47</sup> Other notable aspects of the case are that it was not established that the Judiciary is not independent and that the State did not violate judicial protections.<sup>48</sup> Nonetheless, while the IACHR may not have ruled that these aspects of democratic backsliding were occurring, the other violations incurred a penalty to correct backsliding by reinstating the judges. The next section will examine if Venezuela complied with the reparations levied against them by the IACHR.

#### D. Compliance with Reparations

Using the compliance report written by the IACHR, this section will examine if Venezuela adhered to the reparations ordered by the Court for being in violation of the Convention. This section will provide insight into the capability of the IACHR and broadly speaking, the Inter-American Human Rights System, to influence domestic politics.

The compliance report (2012), while filled with good intentions, is a lackluster form of punishment that lacks substantial punitive measures. The report begins by reviewing the

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<sup>45</sup> Case of Apitz Barbera et al ('First Court of Administrative Disputes') v Venezuela, Preliminary objections, merits, reparations and costs, IACHR Series C no 182, 05 August 2008, Section VI, Paragraph 139.

<sup>46</sup> Ibid., Section X, Paragraph 267, sub-paragraph 2-15.

<sup>47</sup> Ibid., Section X, Paragraph 267, sub-paragraph, 16-20.

<sup>48</sup> Ibid., Section X, Paragraph 267, sub-paragraph 2-15.

reparations the State needed to make after the judgment was made four years prior. Unfortunately, before it could review if the State did in fact complete the reparations, the IACHR immediately needed to delve into the subject of Article 67 and 68 of the Convention which requires compliance with the Court's decisions. This was necessary because a couple months after the judgment in 2008, the STJ ruled that the IACHR's prescribed reparations are unenforceable and conflicts with domestic law.<sup>49</sup> This outlandish attempt to skirt reparations lacked a fundamental legal argument. As signatories to the Vienna Convention on the Law of Treaties (1969), Venezuela and others party to the treaty, cannot invoke domestic law to disobey a signed treaty.<sup>50</sup> This matter is also outlined in previous Court judgments and can be found in Article 68 of the Convention.<sup>51</sup> Therefore, the State's argument for defying the judgment did not have legal merit. The next stage of the compliance report, outlined which issues the State amended, and which ones they did not.

The report notes that nearly all the reparations ordered by the IACHR are still "pending compliance."<sup>52</sup> This legal jargon signifies that the State has virtually ignored the orders of the IACHR. The only measure that Venezuela complied with is implementing a Judicial Code of Ethics. However, the IACHR does note that the ethics code lacked a disciplinary structure which is needed to make the institution independent and free.<sup>53</sup> Reinstating the judges, retroactively paying their salaries during their illegal suspension, and issuing a public apology to the judges are the other reparations that were still 'pending' during the drafting of this report. One would assume that with such blatant insubordination shown to the IACHR, and widely speaking the Inter-American Human Rights System, the IACHR and OAS would inflict a harsher penalty in order to attain compliance from Venezuela. Regrettably, the IACHR does not have the capacity to do so.

The IACHR's decision in this compliance report, and the only option they could exercise is to refer to Article 65 of the Convention which will incorporate the noncompliance by Venezuela into their annual report they submit to the General Assembly of the OAS.<sup>54</sup> This report is compiled

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<sup>49</sup> Case of Apitz Barbera et al ('First Court of Administrative Disputes') v Venezuela, Monitoring compliance with judgment, Order of the IACHR, 12 November 2012, Paragraph 13.

<sup>50</sup> Vienna Convention on the Law of Treaties, 1969, Article 27.

<sup>51</sup> Case of Apitz Barbera et al ('First Court of Administrative Disputes') v Venezuela, Monitoring compliance with judgment, Order of the IACHR, 12 November 2012, Paragraph 27-31.

<sup>52</sup> Ibid., Paragraph 16.

<sup>53</sup> Ibid., Paragraph 19.

<sup>54</sup> Case of Apitz Barbera et al ('First Court of Administrative Disputes') v Venezuela, Monitoring compliance with judgment, Order of the IACHR, 12 November 2012, Paragraph 45.

by the Commission and the IACHR that details all cases adjudicated in that year, compliance reports of past judgments, as well as human rights situations in countries where the situation is in dire straits. The report also includes perceptive recommendations that could improve the circumstances of human rights in the targeted countries. But, when the report is delivered to the General Assembly, it is essentially sent to a graveyard as there does not exist a mechanism to punish a member state that does not comply. The most powerful weapon the OAS possesses are diplomatic measures which in realist terms is playing the shame game. The lack of teeth or bite, that accompanies the Organization, allows aspiring authoritarians like Chavez to flourish without actual repercussions. This is especially true as domestic options to stop Chavez had been exhausted, and this last resort effort to implement even a minor change in a democratic institution was made moot.

The report submitted to the General Assembly includes suggestions to protect free press, increase civil society's involvement, make elections fairer, reinstall checks and balances and others. These are ideas from the Commission and Court that would hinder democratic backsliding, but it would require the State to implement the changes themselves. The term that is central to Venezuela's noncompliance with the IACHR is *pacta sunt servanda*, the term used in the Vienna Treaty meaning treaties should be complied with in *good faith*.<sup>55</sup> This honor code system of international law is rendered irrelevant when mixed with the personality of a leader like Chavez. From a realist perspective, it was not in the interests of Chavez to adhere to the recommendations laid out in the annual reports. A weakened press protected his image, an inactive civil society dissuaded challenge to his power, instituting fairer elections could make it more difficult to get reelected, and reinstating checks and balances would hinder the ability to achieve items on his political agenda. In this regard, while the IACHR's judgment was in favor of protecting judicial independence and sought to reverse a small but vital area of backsliding in Venezuela, the infrastructure of the Inter-American Human Rights System lacks the proper tools needed to make States comply with the judgments and enact any real change.

Another flaw of this system that must be noted is the timing. Even in a hypothetical scenario where the Commission and Court had a stronger capacity to mandate compliance, the timeframe that this case operated under would have resulted in the same outcome. Although

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<sup>55</sup> Vienna Convention on the Law of Treaties, 1969, Article 26.



democratic backsliding is a slow-moving process, metaphorically speaking, it is the hare while the Inter-American Human Rights System is the tortoise. The timeline of the case arguably began in 2002 when the unfavorable decisions from the First Court began and ended ten years later in 2012 with the compliance report. Within that time period, Chavez was reelected twice, packed the Supreme Court with loyalists and made constitutional amendments to the constitution that he rewrote initially, further cementing his power and allowing Venezuela to undergo a rapid transformation. The time frame becomes more absurd when one realizes that at the beginning of the time frame, Chavez was three years into his tenure, and by the end of it, he was on his deathbed due to pancreatic cancer. The following section will now examine the case in Ecuador.

## **V. Supreme Court Justice (Quintana Coello et al.) v. Ecuador**

### **A. Country Profile**

Venezuela and Ecuador share a similar history in that both were Spanish colonies and a part of Gran Colombia. After achieving their independence in the 1800s, the country experienced a variety of regimes from dictators to military juntas and even a brief stint with democracy (BBC, 2018). However, in 1979, a new constitution was written to usher in the return of democracy to Ecuador (BBC, 2018). This era is when the deviations in political paths become more apparent between Ecuador and Venezuela. The Punto Fijo Pact was signed twenty years prior and created a political regime that allowed for the peaceful transfer of power between elected leaders (albeit coming from the same two parties). Ecuador, on the other hand, had a persistent lack of stability in their democratic regimes. Between 1997 and 2005, the public ousted three presidents from office (Conaghan 2016, 109).

The perpetual instability in the country left a vacuum for an outsider with large political ambitions to sweep to power. In 2006, Rafael Correa, a professor of economics and a man who never belonged to a political party, entered the presidential race and took office in 2007, beating his opponent by 13 points (Conaghan 2008, 47-48). Similar to Chavez, one of Correa's first decisions as president was to convene a Constituent Assembly to rewrite the constitution. The Assembly itself made swift changes to the institutional structure of Ecuador. While in session, it exerted "full powers" on institutions, including the lawmaking abilities of Congress while also firing the controller-general, the attorney general and the superintendents of companies and banks

(Conaghan 2008, 57). It should be noted that Ecuadorian institutions at the time were gravely unpopular with the public due to corruption and general ineptitude (Conaghan 2008, 58). Correa's early initiative to rewrite the constitution poses a dilemma for those studying democratic backsliding whereby an executive incorporates modes of backsliding to make the regime more democratic. The newly drafted constitution highlighted the inherent rights for food, water, and equality for women, migrants, and other disadvantaged members of society (Conaghan 2016, 113). The new constitution also sought to be more participatory and further engage civil society, a quality of a healthy democracy. In it exist mechanisms for citizen engagement and the ability for the public to propose legislation, call for referendums and request recall elections (Conaghan 2016, 113-114). While the new constitution gave more rights and power to the people, it also carved out more power for the executive.

Although three presidents under the previous constitution were ousted from office, the executive branch held substantial power which was maintained in the 2008 constitution. Under the 2008 constitution, the president can call referendums, amend laws, expand term limits and even dismiss the National Assembly (Conaghan 2016, 112). With virtually unchecked power, Correa sought to tighten control and the legitimacy of his agenda by turning his attention to the courts. In 2009 and 2011, the Supreme Court of Ecuador was restructured which allowed the president to pack the court with loyalists (De la Torre and Ortiz Lemos 2016, 225-226). These actions demonstrate how an outsider with authoritarian tendencies can rise to power and enact vast changes upon taking office. While Correa's actions during his tenure did merit cases in front of the IACHR, they did not pertain to independence of the judiciary. Rather, the case in question began in 1997 during the tenure of Interim President Fabián Alcarón Rivera after President Abdalá Bucram was removed from office and climaxed in 2004 during Lucio Gutiérrez's presidency. The timeline of this case poses interesting questions for the capacity of the IACHR. The analysis will reveal how the IACHR navigates prosecuting a state that, by the time of the judgment, had four presidents and two constitutions. To elaborate, in 2013, as shown earlier, Ecuador had a completely different institutional structure than when the case summary began, thus if found culpable, the state in charge was technically not the same state that initially violated the American Convention of Human Rights.

## B. Case Summary

As discussed earlier, after the removal of President Abdalá Bucaram from office in February 1997, Fabián Alcarón Rivera was appointed as Interim President. In an attempt to legitimize his government, he called for a popular referendum (Loyola Case Summary, 2013). The referendum (May 1997) altered the judiciary by granting life terms to those on the Supreme Court and allowed the National Congress to appoint judges just once.<sup>56</sup> In October of that year, the judges took office to serve their lifetime terms.

Fast-forward seven years and the opposition is preparing to impeach President Lucio Gutiérrez for embezzlement.<sup>57</sup> To remain in office, the president concocted a scheme with the opposition party, *Partido Roldosista Ecuatoriano*. Simultaneously, former President Bucaram, the leader of that party, was facing criminal charges overseen by the Supreme Court.<sup>58</sup> To avoid his impeachment, Gutiérrez worked to gain a supermajority with Bucaram's party and in return, dismiss the Supreme Court judges and appoint new ones.<sup>59</sup> In December of 2004, the judges were officially removed from their posts. Later that month, the twenty-seven judges that were stripped of their roles filed a petition with the Commission that was deemed admissible, leading to the case in front of the IACHR.

## C. Judgment

The focus of this judgment for the purpose of this paper will once again revolve around judicial independence, the dismissal of judges, and judicial protections. Whilst similar to the previous case which involved other violations of the Convention, concentrating on the judiciary aspects of the judgment is essential to the research and will assist with answering the research question. The other violations will be summarized in the conclusion of the section to have a complete understanding of the case.

To begin with the arguments on judicial protection, the IACHR noted arguments from the Commission, the victims' representative and the State. The IACHR recognized the Commission's

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<sup>56</sup> Supreme Court of Justice (Quintana Coello et al.) v. Ecuador, Interpretation of Judgment of Preliminary Objection, Merits, Reparations and Costs, I/A Court H. R., Series C No. 280, 23 August, 2013, Section VII, Paragraph 42-46.

<sup>57</sup> Ibid., Section VII, Paragraph 64.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid., Section VII, Paragraph 65-66.

reasoning that when the Constituent Assembly of 1997 created the new constitution, and by extension, the government, there existed no system to discipline or remove judges who were nominated for lifetime posts on the Supreme Court.<sup>60</sup> Therefore, one can presume that any attempt to remove the judges would be legally dubious. It is especially problematic when one branch of government (the legislature) conspires with another (the executive) to disrupt the judiciary given their supposed commitments to the Law. The jurisdiction of the National Congress is further called into question by the representative. The representative argued that congress assumed the role as both a tribunal and a judge and by removing the judges, there existed a possible violation of Article 23(1)(c) of the American Convention of Human Rights which ensures the right to participate in government.<sup>61</sup> The State had their own rebuttal about a possible Article 23 violation and the jurisdiction of the National Congress. They argued that Article 23 could not possibly be violated since the dismissed judges were still able to serve in other positions of government and the National Congress acted within their right as the Supreme Court was supposed to cease its function in 2003.<sup>62</sup> Their basis for this argument stems from a provision during the constitutional transition that stated that members appointed by the National Congress and Comptroller for four-year terms shall only be in those positions until 2003.<sup>63</sup> The Supreme Court is not mentioned in this provision meaning the State's rebuttal on this matter is factually incorrect.

The next matter for the IACHR was to determine what would motivate the National Congress to dismiss the Supreme Court without the proper legal framework. The Commission and victims' representative argued that without a legal framework, the treatment of the judges was simply punitive.<sup>64</sup> The State did not offer a defense to this accusation. The Commission and representative also argued that there was a lack of judicial protections for the judges when they were removed from their posts. The Commission stated that the Constitutional Tribunal did not offer adequate guarantees of independence to the judges while the representative stated that the

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<sup>60</sup> Supreme Court of Justice (Quintana Coello et al.) v. Ecuador, Interpretation of Judgment of Preliminary Objection, Merits, Reparations and Costs, I/A Court H. R., Series C No. 280, 23 August, 2013, Section VIII, Paragraph 106.

<sup>61</sup> Ibid., Section VIII, Paragraph 107.

<sup>62</sup> Ibid., Section VIII, Paragraph 111.

<sup>63</sup> República de Ecuador, Constituciones de 1998, Artículo 127.

<sup>64</sup> Supreme Court of Justice (Quintana Coello et al.) v. Ecuador, Interpretation of Judgment of Preliminary Objection, Merits, Reparations and Costs, I/A Court H. R., Series C No. 280, 23 August, 2013, Section VIII, Paragraph 113.

judges were not afforded remedies to protect their human rights.<sup>65</sup> Once again, the State did not dispute these arguments and accepted that it violated the Convention.

When making its judgment, the IACHR first noted the importance of protecting judicial independence. In prior cases, the IACHR has emphasized that judges, as compared to other officials, enjoy more guarantees to ensure the essential nature of having an independent judiciary.<sup>66</sup> This acknowledgement by the IACHR strengthens the theoretical backbone of this paper by substantiating that the judiciary is a key institution to protect democracy, or for the purpose of this paper, to limit democratic backsliding. When judging if the National Congress had the jurisdiction to dismiss the justices, the IACHR's basis for the decision was remarkably uncomplicated. Based on the 1998 Constitution, Article 130, the ability of the National Congress to impeach judges was removed as it was formerly allowed under the previous regime.<sup>67</sup> Therefore, the actions by the legislative branch were blatantly based on legal falsehoods that further perpetuated the idea that the motivation to remove the judges was indeed not due to disciplinary reasons, but politically motivated ones. To recap, the provision applied to officials appointed by the National Congress or Comptroller initially for four-year terms culminated in January 2003. The IACHR noted that not only did its usage by the National Congress lack legal basis, but also common sense. However, this only applied to officials nominated on August 10, 1998, who had four-year terms. The judges were nominated in 1997 and the 1998 Constitution permitted them to serve indefinitely.<sup>68</sup>

In this judgment, the State was found guilty of violating the following articles of the Charter<sup>69</sup>:

1. Violation of Article 8(1) for the dismissal of judges by an unauthorized body with no opportunity to be heard.
2. Violation of Article 8(1) for the consequential effects of the State's actions with regards to judicial independence.
3. Violation of Article 25(1) for denying a legal remedy to the victims.

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<sup>65</sup> Ibid., Section VIII, Paragraph 116.

<sup>66</sup> Supreme Court of Justice (Quintana Coello et al.) v. Ecuador, Interpretation of Judgment of Preliminary Objection, Merits, Reparations and Costs, I/A Court H. R., Series C No. 280, 23 August, 2013, Section VIII, Paragraph 144.

<sup>67</sup> Ibid., Section VIII, Paragraph 159.

<sup>68</sup> Ibid., Section VIII, Paragraph 166.

<sup>69</sup> Ibid., Section X, Paragraph 284, sub-paragraph 1-7.

The reparations ordered by the IACHR consisted of publishing the judgment, compensating the victims for the inability to return to the Supreme Court and covering pecuniary and nonpecuniary expenses.<sup>70</sup>

#### D. Compliance with Reparations

The reparation report for Ecuador is much less complicated than the one for Venezuela as Ecuador complied with the IACHR's judgment. On the face of it, their report is roughly fifty-five pages shorter than Venezuela's report. Whilst in the Venezuelan case, the State was mandated to either reinstate the judges or compensate them accordingly, Ecuador only needed to compensate the dismissed judges.<sup>71</sup> However, in terms of a correction to democratic backsliding, the punishment does not rectify the initial act of democratic erosion. The judges never returned to their post, but rather received a payout. This can be attributed to the issue already mentioned with the prior case; timeliness, or lack thereof, can prevent effective change from being implemented. At the time of judgment in 2013, Rafael Correa and his regime had already pushed through a new constitution that granted more power to the executive (Conaghan 2016, 110). By this point, there were already a few petitions against Correa's government in the IACHR's docket for violations of civil liberties. In this regard, the IACHR did little to reverse the trajectory of democratic backsliding under Guitiérrez's short-lived government, which instigated the rise of Correa who enjoyed a more stable tenure as President while making significant changes to empower his government. Whilst many changes were instituted under Correa's watch, he eventually stepped down (unlike Chavez or Maduro) in 2017. The voluntary ceding of power does not accord with an authoritarian regime, as they tend to grasp onto power as long as possible. Today, the opposition leader during Correa's presidency is the current President, indicating there has been a peaceful transfer of power within the country. The most pressing issue plaguing Ecuador is no longer the threat of democratic backsliding, but rather the danger of organized crime and gangs. The issues suggest that Ecuador's problem is not devolving into an authoritarian state, but a weak state. The final section in this paper will compile and compare the two cases while also examining the V-Dem dataset that occurred during the time of these cases.

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<sup>70</sup> Ibid., Section X, Paragraph 284, sub-paragraph 8-13.

<sup>71</sup> Supreme Court of Justice (Quintana Coello et al.) v. Ecuador, Monitoring compliance with judgment, Order of the IACHR, 30 January 2019, Paragraph 4-6.

## VI. Discussion

In the *Apitz Barbera* case, there are actions and statements by the IACHR that need to be dissected. One is the issue of the right to democracy guaranteed by Article 29 of the American Convention on Human Rights. The victims' representative argued that Article 29 had been violated as a result of persistent weakening of democracy and lack of independence from the Venezuelan authorities.<sup>72</sup> Unfortunately, the IACHR refuted that argument since in past cases, that Article is used for interpretation provisions.<sup>73</sup> The IACHR objected to the idea that Venezuela's democracy was faltering. This may be attributed to one of the traits of democratic backsliding: its slow moving nature. The IACHR was looking at evidence roughly between the years 2002-2004. At this point, Chavez was still in his first term, and the institutional changes being made were still in motion. The full effects of those changes had not yet peaked essentially. One could argue that IACHR was correct in this case with the evidence they had, but if they were using evidence gathered in the year the case was occurring (2008), there might have been a different outcome to this violation. A majority of the decisions against Venezuela in this case pertained to the violation of not having the right to a fair trial.<sup>74</sup> These matters are a lot easier to prove in court as either it did, or did not happen. Proving that there is some invisible force eroding the democratic institutions of Venezuela is a much more complicated matter to show beyond doubt. While the IACHR's intentions in this case are commendable, confronting democratic backsliding in an international courtroom is extremely difficult.

Likewise, in the *Supreme Court of Justice v. Ecuador* case, the judgments of the IACHR also merit further analysis. Similar to the Venezuelan case, the state was also found in violation of Article 8, not providing a hearing within a reasonable time nor by an independent tribunal.<sup>75</sup> The decision for the IACHR to hand down this violation was quite simple as well. It was well documented in the 1998 Constitution that neither of the institutions had the power nor legal merit

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<sup>72</sup> Case of *Apitz Barbera et al* ('First Court of Administrative Disputes') v Venezuela, Preliminary objections, merits, reparations and costs, I/A Court H. R., Series C no 182, 05 August, 2008, Section VIII, Paragraph 216.

<sup>73</sup> *Ibid.*, Section VIII, Paragraph 222-223.

<sup>74</sup> *Ibid.*, Section X, Paragraph 267, sub-paragraph 2-14.

<sup>75</sup> *Supreme Court of Justice (Quintana Coello et al.) v. Ecuador*, Interpretation of Judgment of Preliminary Objection, Merits, Reparations and Costs, I/A Court H. R., Series C No. 280, 23 August, 2013, Section VIII, Paragraph 158-162.

to remove the judges from their posts. The only other violation in the judgment was Article 25, the right of recourse. Here, the victims lacked a course of remedy to challenge their dismissal.<sup>76</sup> These two violations help explain why the reparations ordered by the Court were mild. For one, Ecuador had accepted most of the charges levied against by the Court, indicating there might have existed some form of leniency due to an admission of guilt. Unlike the Venezuelan case, no reparation existed to reinstate judges to their posts, a clear correction against democratic backsliding. A likely explanation for this is that since many years had passed since the judges were dismissed, their posts could be refilled since an overhaul of the judiciary and other institutions like the constitution had been underway under Correa since 2007.

The cases above demonstrate an obvious discrepancy in regard to their length. The Venezuelan case is notably longer than the Ecuador one. There are two reasons for the variance, one with the judgment, and the other with the compliance report. For the judgment, Venezuela fights every charge that the IACHR presents to it whilst Ecuador accepts most of the charges. This means that for every charge posed to the State of Venezuela, some form of defense must be offered. Ecuador, on the other hand, when presented with its charges, in most cases accepted it and in doing so, moved the case along at a quicker pace. Besides the differing lengths, the behavior shown by both states in these scenarios offer telling insights. Venezuela's frequent resistance to the charges demonstrates a less robust commitment to human rights and democracy. The point here is substantiated in some of their arguments during the judgment that lacked legal merit and were essentially viewed by the IACHR as dead on arrival. It is important to emphasize that in every court, the defendant does have the right to defend their innocence, but at some points during the judgment they exhibited legal flimsiness at best. While Ecuador did also engage in some daft legal defense tactics, their acceptance of most of the charges signaled sound accountability for the actions they committed. As one of the symptoms of democratic backsliding is a lack of accountability, this example alone exhibits a major distinction between both governments.

This is further amplified when comparing both compliance reports. Again, Venezuela's report is exponentially longer than that of Ecuador's. Ecuador's compliance is relatively straightforward; they complied with every reparation the IACHR levied against them. Venezuela, on the other hand, completed just one of the reparations halfheartedly as the IACHR stated it was

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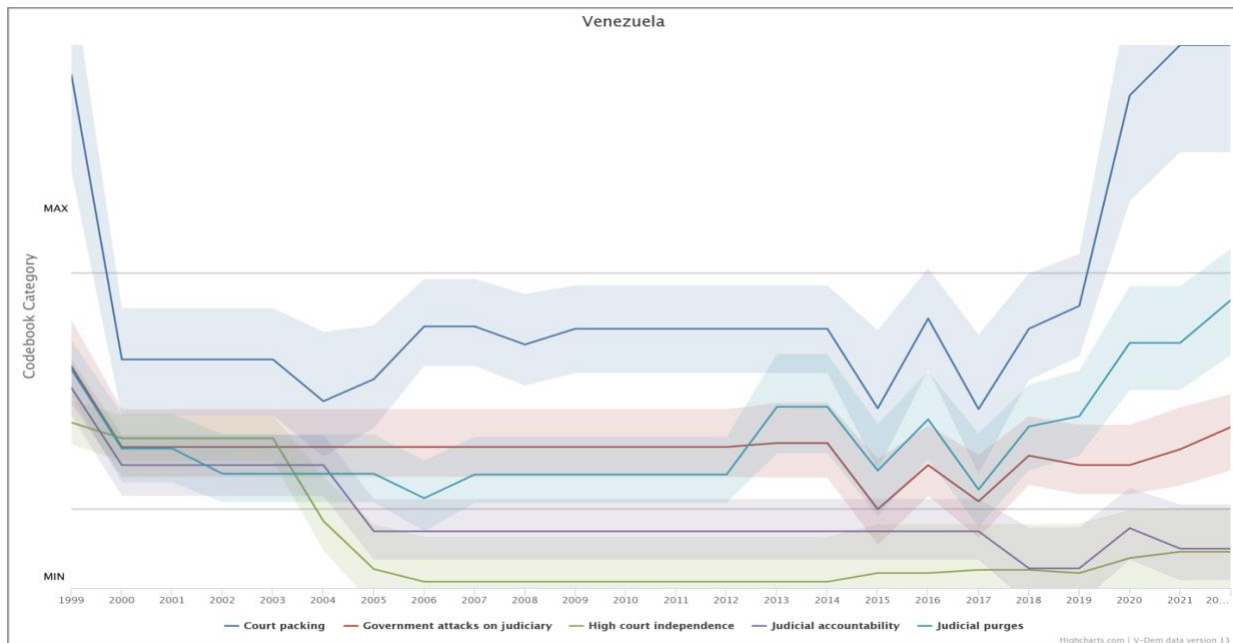
<sup>76</sup> Ibid., Section VIII, Paragraph 185-194.



a start but did not completely fulfill the reparation. The compliance report of Venezuela is further elongated by a lengthy section that summarized the authority of the IACHR and the Inter-American Human Rights System. This was necessary since shortly after the initial judgment, the STJ of Venezuela ruled the IACHR exercised no authority over domestic affairs. The difference in the compliance reports also offers an understanding of how each government treats the Law. One respects the wishes and authority of a court whilst the other disregards it. Respecting the function of institutions is a sign of a well-functioning, or at least a well-intentioned democracy. This is all indicative of which country has suffered worse from democratic backsliding: Venezuela. Now that will be authenticated with the quantitative analysis of the V-Dem dataset.

The graph below represents five indicators that are relevant to the thesis: court packing, high court independence, government attacks on the judiciary, judicial accountability and judicial purges. The timeframe is between 1999, Chavez's first year in office, to present day. The intention of this section is to illustrate Venezuela's democratic backsliding path and if the judgments or publishing of the compliance reports affected the pattern of any indicators. It is unreasonable to assume that these indicators can single handedly be influenced by the judgment of the IACHR. On the contrary, there exists a mix of factors that need to be taken into consideration when analyzing the reason for a shift in the graph. Other influential factors include a campaign targeting judges, the implementation of a judicial ethics code, the passage of laws reforming the court, the passage of laws that weaken the court, if the number of loyalists in courts increase or decrease and how often they side with the government in judgments. Both positive and negative examples have been provided to demonstrate various scenarios that can lead to some shift in the graph.

Figure 1: V-Dem Dataset Judicial Indicators of Venezuela



([V-Dem Country Graph, 2022](#))

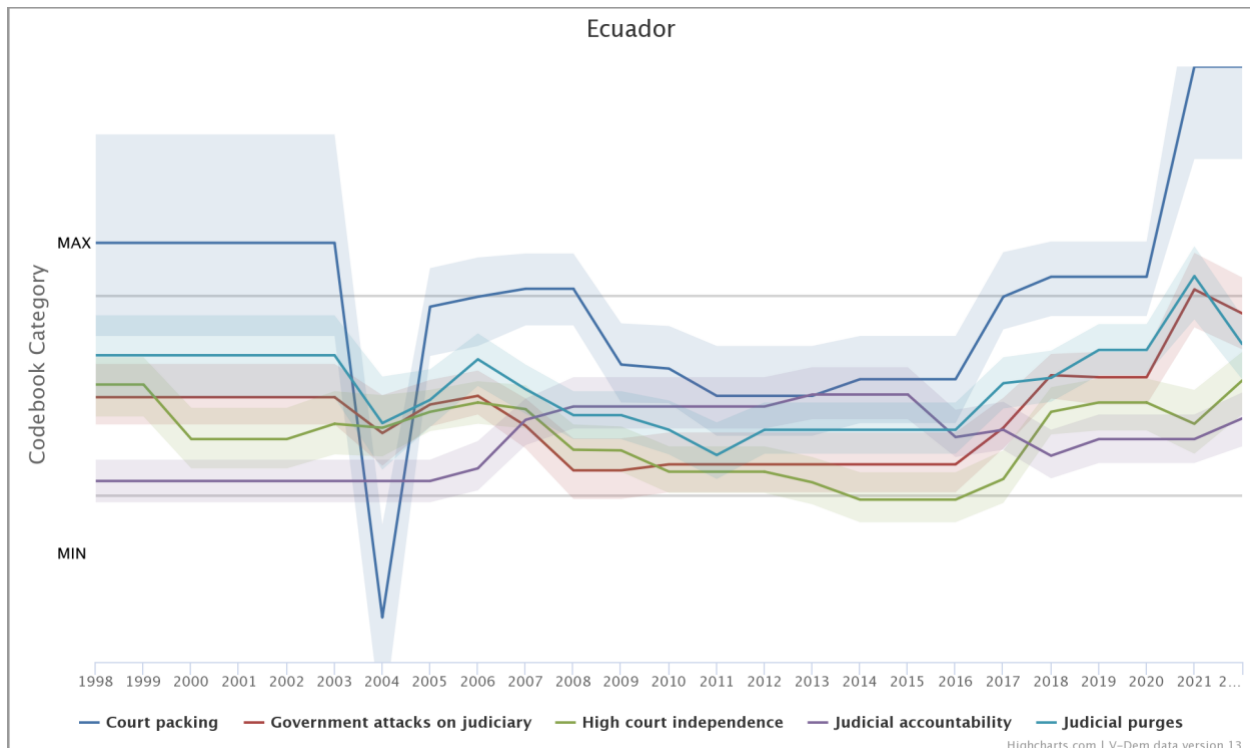
A noticeable observation occurred immediately after Chavez's election in 1999. All indicators have a sharp slope between 1999 and 2000. The most prolific is the court packing indicator which, using the accompanying codebook, states that there was limited, politically motivated court packing in important courts initially in 1999, but devolved into massive court packing across the entire judiciary the next year and for years to come (V-Dem Indicators 2021, 165). The graph shows that each indicator remained static until 2002-2003, when the initial occurrence that led to the complaint happened. From that point, there is another sharp drop in high court independence, judicial accountability, and judicial purges.<sup>77</sup> By the time the case reached the docket of the IACHR in 2008, the static period had already begun. A naïve optimist might interpret this development positively. However, when considered through the lens of democratic backsliding, it is recognized differently. The initial drops signified some form of backsliding that affected the judiciary. While the slopes may look significant, the scale is separated by years, marking the slow progress at which this occurred. But, when little change is seen between 2005-2013, the new regime caused by backsliding gradually becomes the new reality. There are no improvements in

<sup>77</sup> The accompanying codebook signifies there were massive, arbitrary purges of judges, that if a judge is responsible for misconduct, they are not removed from their post, and that the high court always sides with the government.

judiciary after the case in 2008 and in 2013, after the publishing of the compliance report, the indicators manage to decrease again. The IACHR's suggestions for Venezuela to reform its judiciary were clearly neglected by the state. were clearly met with deaf ears.

An explanation for further backsliding to occur after 2013 has to do with Chavez's successor, Nicolas Maduro. After he succeeded Chavez in 2013, he was met with fierce anti-government protests (Taylor 2014). Maduro needed to clamp down on civil society and consolidate executive power, further inducing democratic backsliding. In more recent years, the graph shows an uptick on all indicators. This does not signify a sudden realization of Venezuela of the need to adhere to the judgment of the IACHR. Rather, it exemplifies that the backsliding process is complete, and there is no longer a need to compromise the independence of the judiciary. Ultimately, the IACHR had no influence whatsoever on the backsliding trajectory of Venezuela. The V-Dem data paint a more positive picture for Ecuador.

Figure 2: V-Dem Dataset Judicial Indicators of Ecuador



([V-Dem Country Graph, 2022](#))

The dataset for Ecuador begins at the start of the new constitution written in 1998 during a period of instability. Whilst the executive branch may have been in turmoil for the first few years, threats to the judiciary were at a minimum. However, in 2003-2004, the year that initiated the petition for the case, nearly all the indicators worsened. The indicator “court packing” is significantly worse than the others. What is interesting about the court packing indicator is that it immediately reverts to its pre-descent levels the next year. This is not because of the IACHR’s actions as it did not reach the docket until 2013. In 2007, a gradual drop occurred across all the indicators. These changes were welcomed by the election of Rafael Correa. Compared to Venezuela, the descents are not as abrupt or severe in Ecuador, meaning that while there likely existed an apathetic attitude by Correa towards the rule of law, it did not equal the loathing that Chavez or Maduro held for it. Although Correa abolished term limits, he chose not to run again for president (AP News 2015). In doing so, he did show a degree of respect for the peaceful transfer of power, even if that was not displayed throughout his whole presidency. The people of Ecuador also managed to reverse earlier backsliding by passing a referendum that reinstates presidential term limits (The Guardian 2018). When the case reached the IACHR in 2013, there were no significant changes that year or the following years to the indicators until after Correa left office (2017). Since then, two different presidents have served with an upcoming election in October ensuring a third president will join that list. After Correa’s departure, Ecuador’s political situation shifted away from backsliding and more towards violence, both gang related and political (New York Times 2023). The final part of the discussion will compare the results of this paper to others which have studied the IACHR as well.

As mentioned earlier in the paper, there are not many authors who have written about democratic backsliding and international courts. A notable exception is Ginsburg as repeatedly mentioned in this paper. In his piece, Ginsburg noted the successes in the human rights field that the IACHR has been a part of since its creation, but acknowledged that its intentions to reverse democratic backsliding have not been particularly effective (Ginsburg 2018, 123 & 134). The failure to uproot democratic backsliding from Venezuela does not rest on the shoulders of the IACHR alone. Nor does the inefficacy with Ecuador demote the IACHR’s work to uphold democratic norms in the region. While not directly linked to the judiciary, the IACHR issued an advisory opinion on presidential term limits. Colombia presented the request to the IACHR to determine if indefinite presidential re- elections are within the legal framework of the American

Convention.<sup>78</sup> The decision of the IACHR to vote that prohibiting indefinite re-election is compatible with the Convention and having indefinite term limits are contrary to the principles of democracy<sup>79</sup> exemplify the IACHR's commitment to protecting democracies and keeping backsliding at bay. While not directly linked to the judiciary, that type of backsliding the IACHR is targeting here is executive aggrandizement. The ruling will inevitably assist with limiting aggrandizement which subsequently protects other institutions like the judiciary. The ruling of the IACHR vindicates the theme of this paper that for countries in Latin America that adhere to the rule of law, the IACHR can serve as a guiding force to strengthen their democratic regime. However, the issue persists for those who do not follow the rulings of the IACHR, thus leading those countries on a path to backsliding where the IACHR is effectively powerless to do anything to reverse it.

One study focusing on just the compliance from one year (2012) reached a similar conclusion. The author argues that the judgments from the IACHR are mostly symbolic (Bailliet 2013, 495). Although there is a degree of truth to this statement, it is far too simplistic. On paper, the judgments of the Court apply to the states party to the American Convention of Human Rights. Unfortunately, it is the lack of mechanisms able to enforce those judgments that makes some of them symbolic. Nonetheless, there are states that value the IACHR's rulings and apply them accordingly to their national legal system. This idea is reinforced by another article which states the success of judgments from the Court are only as effective to the degree to which they are implemented in member states (Camilleri and Krsticevic 2010, 244). There also exist detractors that do not believe the IACHR should have a role in democracy promotion. The basis for this argument stems from the idea that the model of democracy should not be implemented from the top-down (Zuñiga 2020, 501). The author has a valid point since democracy should be built upon the direction of the citizenry. However, what is omitted from this analysis is the fact that as a human rights court, promoting democracy is in the interest of the Court in order to limit human rights violations.<sup>80</sup>

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<sup>78</sup> Presidential Reelection Without Term Limits in the Context of the Inter-American Human Rights System, Advisory Opinion OC-28/21, 07 June, 2021, Section I, Paragraph 1.

<sup>79</sup> Ibid., Section VIII, Paragraph 2-4.

<sup>80</sup> Using the theoretical assumption that democracies incur fewer human rights violations than other regime types.

Another author breaks down the forms of compliance into six distinct categories: “restitution, rehabilitation, satisfaction, judicial investigation and punishment of those responsible, compensation and guarantees of non-repetition (Allessandri 2020, 179). The most pertinent to this study are compensation and guarantees of non-repetition. The compensation is for the lost wages and hardship the judges faced after their removal from the respective courts. Guarantees of non-repetition imply some sort of change or reform needs to occur to comply with the judgment. In the *Apitz Barbera* case, this comes in the form of reinstating the judges to their position as a corrective measure. While this author highlights the various forms the IACHR has to monitor compliance, he reaches a similar conclusion to this paper by noting the weaknesses in the compliance measures and calling for improvements to ensure compliance (Allessandri 2020, 183).

There is also cause for optimism for the future of the IACHR and its ability to inhibit human rights violations in the region. The Commission along with the United Nations Human Rights Council have created a roadmap to strengthen their partnership, specifically in the domain of information sharing (UNSPs 2018). The increase in information sharing will allow better monitoring of the ongoing situations in Latin America by external forces. In turn, those outside forces hopefully will be better equipped to advise and provide support to bolster human rights protections in Latin America. There have also been judgments by the IACHR that have arguably played a role in enacting positive change in the country. For example, in the case of *Atala Riffo and Daughters v. Chile* (2012), the Court ruled the state had discriminated against a lesbian mother for awarding custody of their daughters to the father.<sup>81</sup> *Atala Riffo v. Chile* was a landmark case for a few reasons. First, it was the first case related to LGBTQ rights the IACHR ruled on. Second, it established that sexual orientation was a part of the suspect category.<sup>82</sup> Meaning, like race or national origin, sexual orientation cannot be a basis for discrimination. Of course this has not ended LGBTQ discrimination in Latin America, but it certainly helps with normalizing their existence in society. There are notable changes underway in the region too. After the ruling, Brazil, Colombia, and Uruguay legalized same-sex marriage. A later ruling by the IACHR made same-sex legal in all states signatory to the American Convention of Human Rights.<sup>83</sup> The issue still persists of

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<sup>81</sup> Case of *Atala Riffo and Daughters v Chile*, Interpretation of Judgment of Preliminary Objection, Merits, Reparations and Costs, I/A Court H. R., Series C, no. 254, 24 February, 2012, Section I, Paragraph 1-6.

<sup>82</sup> *Ibid.*, Section VIII, Paragraph 314.

<sup>83</sup> Gender Identity, and Equality, and Non-Discrimination of Same Sex Couples, Advisory Opinion OC-24/17, 24 November, 2017, Section IX, Paragraph 229.

whether a state will enact the law, but there is a positive shift occurring in the region where currently seven countries have legalized same-sex marriage.

## **VII. Conclusion**

The goal of this paper is to deepen our understanding of democratic backsliding, specifically what effect external actors may or may not have on the process. The field has generated a lot of traction in the past decade as democratic backsliding has become more prevalent amongst democratic societies. Old and new democracies across the globe have fallen victim to this phenomenon at some point. Some studies in the field explore how or why it occurs. Others choose to examine what can be done to halt its progress. The focus of this paper concerns the latter, but uses the former to establish a theoretical framework. Meaning, by determining what are the causes of democratic backsliding, one can more easily deduce what measures can be taken to prevent it. One of these measures includes strengthening the judiciary which led to the focus on if international courts can assist in that process. Those who have written about this topic tend to focus on domestic factors like the opposition, the electoral system, the durability of civil society and the strength of institutions (Huq and Ginsburg 2018, 123; Gamboa 2017, 460; Kapstein and Converse 2008, 58). However, little attention has been paid to external actors and their ability to counter democratic backsliding in a state. The idea of outside actors playing a role in democratic governance is not a revolutionary concept. The democratic domino theory, developed decades ago, argued that one country's democracy can have a spillover effect to other countries that will assist the neighbors in the democratization process (Leeson and Dean 2009, 534). In the scenario of this paper, the foreign actor is international courts, and the subject is democratic backsliding. The regional subject of this paper, Latin America, also serves as a relevant example of an area that is experiencing the global trend of a democratic recession. There exists signs of public frustration over democracy within the region (Piccone 2019, 2). That is not to say that the entire region is doing poorly as some countries are excelling such as Costa Rica and Chile (Piccone 2019, 2), but there are others, like Venezuela, that have devolved from a democracy into an authoritarian regime. Others like Ecuador, Brazil, Peru, and Bolivia have also endured the test of democratic backsliding. Focusing on the region provides an opportunity to examine the effects of backsliding on a region that played a large role during the third wave of democratization in the late 20th century.

The research carried out in this thesis to answer the role that international and regional courts have in the prevention of democratic backsliding has been effective to some degree. To begin answering the question, it is more fruitful to explain what role the IACHR *does not* have in the prevention of democratic backsliding. For one, the IACHR is not an enforcer with judgments that are binding. While states that are party to the American Convention of Human Rights may recognize the jurisdiction of the IACHR, abiding by their judgments still requires states to act in good faith and implement the judgment through the domestic legal system. The IACHR does not have the tools or capabilities to punish a state for noncompliance with a judgment. As seen in the Venezuela case, the best option the IACHR had to force action in Venezuela, was to present their noncompliance in an annual report to be submitted to the OAS. From there, the OAS can only diplomatically scold the state in violation. To summarize, change cannot be forced onto a state party to the Convention, rather it must be willing to adhere to the treaty signed and welcome judgments by the IACHR. This is the area where the IACHR's role is most clearly defined regarding the prevention of democratic backsliding.

Whilst the Venezuelan case clearly did not reverse democratic backsliding and the Ecuadorian one had a gentle reparation that did not lead to the judges regaining their seats on the Supreme Court. Consequently, there is a clear role defined for the IACHR in terms of the prevention of democratic backsliding. That role is to serve as a mentor or guide to the states on how to keep improving their democracy. The IACHR has a tremendous commitment to democracy, and specifically to judicial independence, which can be found throughout the judgments. Even their suggestions in the Annual Report after Venezuela's noncompliance have valuable ideas to prevent further democratic backsliding and improve democracy. Tragically, Venezuela did not adhere to the judgment, and similar states would not listen because it would not serve their interest. If a country is too far entrenched in democratic backsliding, an unequal minority is reaping the benefits of power and is not keen on giving that up. There lacks a motivation to make changes by the state if they perceive they have more to lose if those changes are implemented, even if it would be better for society as a whole. However, countries that adhere to the IACHR's judgment and the larger Inter-American Human Rights System, can expect sound advice and guidance on how to improve one's democracy and lessen the number of human rights violations. Those countries, the ones that are committed to strengthening the rule of law, have the most to gain from compliance with the IACHR.



The IACHR's problem is not limited merely to its inadequate ability regarding enforcement of its judgements, but also to the inadequacy of its timeliness in issuing judgements. Both issues combine to hinder the IACHR's ability to effect real democratic change. This is a common problem amongst international courts and is not unique to the IACHR. Democratic backsliding is a gradual process, but no matter how gradual it is, it does require a response within a reasonable time frame to ensure it does not worsen. In both cases, the IACHR's response time was remarkably unhurried. The more time that elapses means states undergoing backsliding have more time to become further entrenched in it, thus making backsliding harder to reverse. Although the revelations in this paper have positively contributed to the knowledge on the role international courts play with preventing backsliding, there are gaps in the research that now need to be addressed.

For one, the paper examined only two cases of the IACHR which may not portray the full scope of the IACHR's impact on a state's judiciary and how that affects backsliding. Examining more cases would allow for a broader understanding of the IACHR's decision making process with regards to the independence of the judiciary. However, given that this paper has a limited amount of space, examining two cases does permit a comparative study to be conducted. Furthermore, the methodology primarily relies on case law. Focusing on case law may not capture the full extent of the IACHR's impact as quantifiable data might. The justification for using this method is based on the idea that studying case law reveals the intentions behind the IACHR's judgments. While a focus on more quantifiable aspects may have more easily shown what level of impact those judgments have on the states, it was not the direction sought in this paper. There also exists an element of simplicity when examining the compliance of judgments. Using the compliance reports to investigate if the state has complied with the IACHR can also be postulated as a 'yes or no' question. Even though this may be a simplistic approach, it does serve the purpose of exploring if the state did or did not comply with the IACHR. In addition, simplicity is an overstatement as the compliance reports further reveal what actions can be taken by the IACHR to strive for compliance.

Lastly, the framework established earlier does not fit neatly into this paper. By identifying the causes of democratic backsliding and the ways it manifests, one can more easily develop solutions to prevent it or halt its progress. One institution capable of doing so are national courts, which are some of the strongest protectors against backsliding and justify the exploration into whether international courts may be in a similar position. If international courts can strengthen or

reinforce the national judiciary, the country will be in a better situation to counter backsliding. However, the two are not equal. One derives its power from a constitution, while the other from an international treaty. Both have different levels of legitimacy as one sources legitimacy from society's faith in institutions, while the other finds legitimacy only through a state recognizing its jurisdiction. Nonetheless, the goal of the paper is to explore if an international court can serve as a protector of democracy when the domestic courts are no longer capable of doing so. With those limitations stated, there is more research to be done on this subject. While many focus on the domestic solutions to democratic backsliding, more academics should shift their attention to how external forces can aid in the prevention of backsliding. In some cases, domestic solutions have been exhausted and a procedure should exist in that event where another actor can be called upon to protect democracy. This requires more intensive studying to identify who those actors are and how their responsibilities and capabilities can assist with protecting democracy.

## Bibliography

### Journal Articles:

Aguilar Aguilar, Azul A. 2023. "Courts and the judicial erosion of democracy in Latin America."

*Politics and Policy* 51, no. 1 (February): 7-25.

Bailliet, Cecilia M. "Measuring Compliance with the Inter-American Court of Human Rights: The

Ongoing Challenge of Judicial Independence in Latin America." *Nordic Journal of Human Rights* 31, no. 4, (2013): 477-495.

Bellamy, Richard and Sandra Kröger. 2021. "Counter Democratic Backsliding by EU Member

States: Constitutional Pluralism and "Value" Differentiated Integration." *Swiss Political Science Review* 27, no. 3: 619-636.

Bermeo, Nancy. 2016. "On Democratic Backsliding," *Journal of Democracy* 27, no. 1 (January):

5-19.

Blauberger, Michael and R. Daniel Keleman. 2017. "Can courts rescue national democracy?

Judicial safeguards against democratic backsliding in the EU." *Journal of European Public Policy* 24, no. 3: 321-336.

Cameron, Maxwell A. 2018. "Making Sense of Competitive Authoritarianism: Lessons from the

Andes." *Latin American Politics and Society* 60, no. 2: 1-22.

Camilleri, Michael J. and Viviana Krsticevic. "Making International Law Stick: Reflections on

Compliance with Judgments in the Inter-American Human Rights System." *Derecho internacional y relaciones internacionales*, (2009): 237-249.

Conaghan, Catherine. 2016. "Delegative Democracy Revisited: Ecuador Under Correa". *Journal*

*of Democracy* 27, no. 3 (July): 109-18.

- Conaghan, Catherine M. 2008. "Ecuador: Correa's Plebiscitary Presidency." *Journal of Democracy* 19, no. 2: 46-60.
- Corrales, Javier. 2015. "The Authoritarian Resurgence: Autocratic Legalism in Venezuela." *Journal of Democracy* 26, no. 2: 37-51.
- Corrales, Javier, and Michael Penfold-Becerra. 2007. "Venezuela: Crowding Out the Opposition." *Journal of Democracy* 18, no. 2: 99-113.
- Corrales, Javier. 2020 "Democratic backsliding through electoral irregularities." *European Review of Latin American and Caribbean Studies* no. 109 (January-June): 41-65.
- de la Torre, Carlos, and Andrés Ortiz Lemos. 2016. "Populist Polarization and the Slow Death of Democracy in Ecuador." *Democratization* 23, no. 2: 221–241.
- Diamond, Larry. 1997. "Is the Third Wave of Democratization Over? – Working Paper #236" Kellogg Institute: 1-54.
- Diamond, Larry. 2015. "Facing Up to the Democratic Recession." *Journal of Democracy* 26, no. 1 (January): 141-155.
- Dietz, James L. "Destabilization and Intervention in Latin America and the Caribbean." *Latin American Perspectives* 42, no. 11 (Summer 1984): 3-14.
- Dresden, Jennifer Raymond and Marc Morjé Howard. 2016. "Authoritarian backsliding and the concentration of political power." *Democratization* 23, no. 7: 1122-1143.
- Gamboa, Laura. 2017. "Opposition at the Margins: Strategies Against the Erosion of Democracy in Colombia and Venezuela." *Comparative Politics* 49, no. 4 (2017):
- Ginsburg, Tom. 2018. "Democratic Backsliding and the Rule of Law." *Ohio Northern University Law Review* 44, no. 3: 351-369.

- Ginsburg, Tom. 2019. "International Courts and Democratic Backsliding." *Ecology Law Quarterly* 46, no. 1: 111-134.
- Guillermo Guerrero, Mario and Pedro Suárez Iskihata. 2017. "Entiendo la erosión democrática en América Latin: La República de Venezuela como un caso de "democratic backsliding" (período 2009-2017)." *CONfines* 13, no. 25 (Agosto-diciembre): 31-54.
- Haggard, Stephan, and Robert Kaufman. 2021. "The Anatomy of Democratic Backsliding." *Journal of Democracy* 32, no. 4 (Fall): 27-41.
- Hawkins, Kirk A. 2016. "Responding to Radical Populism: Chavismo in Venezuela." *Democratization* 23, no. 2 (August): 242-262.
- Hunter, Wendy and Timothy J Power. 2023. "Lula's Second Act." *Journal of Democracy* 34, no. 1: 126-140.
- Huntington, Samuel P. 1991. "Democracy's Third Wave." *Journal of Democracy* 2, no. 2 (Spring): 12-34.
- Huq, Aziz and Tom Ginsburg. 2018. "How to Lose a Constitutional Democracy." *UCLA Law Review* 65 no. 1: 80-168.
- Issacharoff, Samuel. 2015. *Fragile Democracies: Contested Power in the Era of Constitutional Courts*, Cambridge: Cambridge University Press.
- Kapstein, Ethan and Nathan Converse. 2008. "Poverty, Inequality and Democracy: Why Democracies Fail?" *Journal of Democracy* 19 no. 4 (October): 57-68.
- Karl, Terry Lynn. 1987. "Petroleum and Political Pacts: The Transition to Democracy in Venezuela." *Latin American Research Review* 22, no. 1 (January): 63-94.

- Leeson, Peter T. and Andrea M. Dean. "The Democratic Domino Theory: An Empirical Investigation." *American Journal of Political Science* 53, no. 3 (July 2009): 533-551.
- Leon, Daniel S. 2022. "Do international rents bolster democratic backsliding under populist governments? Evidence from Latin America." *International Area Studies Review* 25, no. 4 (December): 280-302.
- Levitsky, Steven and Lucan A. Way. "The Rise of Competitive Authoritarianism." *Journal of Democracy* 13, no. 2 (April): 51-65.
- Lindberg, Staffan I., Michael Coppedge, John Gerring, and Jan Teorell. 2014. "V-Dem: A New Way to Measure Democracy." *Journal of Democracy* 25, no. 3: 159-169.
- Lust, Ellen and David Waldner. 2015. "Unwelcome Change: Understanding, Evaluating and Extending Theories of Democratic Backsliding." *USAID from the American People*: 1-89.
- Mainwaring, Scott and Aníbal Pérez Liñán. "Cross Currents in Latin America." *Journal of Democracy* 26, no. 1 (January): 114-127.
- McCoy, Jenifer L. 2018. "Democratic Transformation in Latin America." *The Whitehead Journal of Diplomacy and International Relations*. (Winter/Spring): 19-29.
- McCoy, Jennifer L. 1999. "Latin America's Imperiled Progress: Chavez and the End of "Partyarchy" in Venezuela." *Journal of Democracy* 10, no. 3: 64-77.
- Mechkova, Valeriya, Anna Lührmann, and Staffan I. Lindberg. 2017. "How Much Democratic Backsliding?" *Journal of Democracy* 28, no. 4: 162-169.
- Medina, Cecilia. 1990. "The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights: Reflections on a Joint Venture." *Human Rights Quarterly* 12: 439-464.

- O'Donnell, Guillermo A. 1998. "Horizontal Accountability in New Democracies." *Journal of Democracy* 9, no. 3 (July): 112-126.
- Pasqualucci, Jo M. 2013. *The Practice and Procedure of the Inter-American Court of Human Rights*. Cambridge: Cambridge University Press.
- Pérez-Liñán, Aníbal and Scott Mainwaring. 2013. "Regime Legacies and Levels of Democracies." *Comparative Politics* (July): 379-397.
- Rojas Rivera, Diana, Atehortua Cruz, Adolfo. 2005. "Venezuela antes de Chávez: auge y derrumbe del sistema de Punto Fijo." *Universidad Nacional de Colombia Revistas electrónicas UN Anuario Colombiano de Historia Social y de la Cultura*. Montevideo: Universidad Nacional de Colombia.
- Saavedra Alessandri, Pablo. "The Role of the Inter-American Court of Human Rights in Monitoring Compliance with Judgments." *Journal of Human Rights Practice* 12, no. 1 (February 2020): 178-184.
- Segovia, Joselin, Nicola Pontarollo, and Mercy Orellana. 2021. "Discontent with democracy in Latin America." *Cambridge Journal of Regions, Economy and Society*: 417-438.
- Torres Zuniga, Natalia. "The Image of The Inter-American Court of Human Rights as an Agent of Democratic Transformation: A Tool of Self-Validation." *Revista Iberoamericana de Filosofía, Política, Humanidades y Relaciones Internacionales*, 23 no.46, (2021): 483-504.

### **Books:**

Levitsky, Steven and Daniel Ziblatt. 2018. *How Democracies Die*. New York: Penguin.

Linz, Juan and Alfred Stepan. 1978. *The Breakdown of Democratic Regimes*. Baltimore: John Hopkins University Press.

Sadurski, Wojciech. 2019. *Poland's Constitutional Breakdown*. Oxford: Oxford University Press.

#### **News Articles:**

AP. "Ecuador's President Correa May Skip 2017 Re-Election Bid. (Accessed August 30, 2023)

<https://apnews.com/article/a806b0fac3e243e7b72bad61222494a0>

Associated Press in Quito, Ecuador. "Ecuador Votes to Limit Presidents' Terms in Blow to Rafael Correa." *The Guardian*, February 5, 2018.

<https://www.theguardian.com/world/2018/feb/05/ecuador-votes-to-limit-presidents-terms-in-blow-to-rafael-correa>.

BBC. "Ecuador Profile: Timeline." February 07, 2018. <https://www.bbc.com/news/world-latin-america-19506216>.

Glatzky, Genevieve and José María León Cabrera. "How Narco Traffickers Unleashed Violence and Chaos in Ecuador." *New York Times*. August 17, 2023. <https://www.nytimes.com/2023/08/17/world/americas/ecuador-drug-trafficking-election.html>.

Schmitz, Rob. 2020. "Poland's Overhaul of its Courts Leads to Confrontation with European Union." February 13, 2020. <https://www.npr.org/2020/02/13/805722633/polands-overhaul-of-its-courts-leads-to-confrontation-with-european-union>.

Taylor, Alan. "Venezuela Gripped by Weeks of Anti-Government Protest." *The Atlantic*, February 26, 2014. <https://www.theatlantic.com/photo/2014/02/venezuela-gripped-by-weeks-of-anti-government-protest/100689/>.



## Other Sources:

CIA World Factbook. “Venezuela.” Last Updated August 03, 2023. <https://www.cia.gov/the-world-factbook/countries/venezuela/>.

Diamond, Larry. “The Democratic Rollback: The Resurgence of the Predatory State.” *Foreign Affairs*, March/April 2008.

European Commission. “Rule of Law: European Commission Refers Poland to the European Court of Justice to Protect Independence of Polish Judges and Asks for Interim Measures.” 31 March 2021 [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_1524](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1524).

Inter-American Commission on Human Rights. “Statistics.” Last Updated December 2022. <https://www.oas.org/en/iachr/multimedia/statistics/statistics.html>.

Loyola Law School. “Case Summary: Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela.” Last Modified 2014. <https://iachr.lla.edu/cases/apitz-barbera-et-al-first-court-administrative-disputes-v-venezuela>.

Loyola Law School. “Case Summary: Supreme Court of Justice (Quintana Coello et al.) v. Ecuador.” Last Modified 2017. <https://iachr.lla.edu/cases/supreme-court-justice-quintana-coello-et-al-v-ecuador>.

Marquardt, Kyle. “V-Dem Methodology.” Accessed May 31, 2023. <https://www.v-dem.net/about/v-dem-project/methodology/>.

Pérez-Liñán, Aníbal. “How independent international courts can challenge the dismantling of democracy.” Keough School of Global Affairs. June 03, 2021. <https://keough.nd.edu/how-independent-international-courts-can-challenge-the-dismantling-of-democracy-dd/>.

United Nations High Commissioner for Refugees. “Emergencies: Venezuela Situation.” Last Modified August 2023. <https://www.unhcr.org/emergencies/venezuela-situation>.

Varieties of Democracy. “About the V-Dem Project.” Accessed May 31, 2023. <https://v-dem.net/about/v-dem-project/>.

Varieties of Democracy. “Codebook.” March 2021. <https://www.v-dem.net/static/website/img/refs/codebookv111.pdf>.

Varieties of Democracy. “Country Graph.” Accessed September 01, 2023. [https://v-dem.net/data\\_analysis/CountryGraph/](https://v-dem.net/data_analysis/CountryGraph/).

## **International Instruments and Legislation**

American Convention of Human Rights “Pact of San Jose, Costa Rica.” November 22, 1969. San Jose, Costa Rica.

Charter of the Organization of American States. April 30, 1948. Bogota, Colombia.

Constitución Política de la República de Ecuador. 1998.

Ecuador. Constitución Política de la República de Ecuador. 1998.

Inter-American Court of Human Rights. Presidential Reelection Without Term Limits in the Context of the Inter-American Human Rights System, Advisory Opinion OC-28/21, 07 June 2021.

Inter-American Court of Human Rights. Case of Apitz Barbera et al (‘First Court of Administrative Disputes’) v Venezuela. Preliminary objections, merits, reparations and costs. I/A Court H.R., Series C no 182, 5th August, 2008.

Inter-American Court of Human Rights. Supreme Court of Justice (Quintana Coello et al.) v. Ecuador, Interpretation of Judgment of Preliminary Objection, Merits, Reparations and Costs. I/A Court H. R., Series C No. 280. 23 August, 2013.

Inter-American Court of Human Rights. Supreme Court of Justice (Quintana Coello et al.) v. Ecuador, Monitoring compliance with judgment. Order of the IACHR. 30 January 2019.

Inter-American Court of Human Rights. Case of Apitz Barbera et al (‘First Court of Administrative Disputes’) v Venezuela. Monitoring compliance with judgment, Order of the IACHR. 12 November 2012.

Inter-American Court of Human Rights. Case of the Constitutional Court v Peru, Merits, reparations and costs. I/A Court H. R., Series C No 71,, 31st January, 2001.

Inter-American Court of Human Rights. Case of Atala Riffo and Daughters v Chile. Interpretation of Judgment of Preliminary Objection, Merits, Reparations and Costs. I/A Court H. R., Series C, no. 254, 24 February, 2012.

Inter-American Court of Human Rights. Gender Identity, and Equality, and Non-Discrimination of Same Sex Couples. Advisory Opinion OC-24/17, 24 November 2017.

Organization of American States. 1969. “American Convention on Human Rights, ‘Pact of San Jose.’” Costa Rica. 22 November 1969.

Organization of American States. “Our History.” Accessed April 20, 2023.  
[https://www.oas.org/en/about/our\\_history.asp](https://www.oas.org/en/about/our_history.asp).

Pacto de Punto Fijo. 31 de Octubre, 1958. Caracas Venezuela.

United Nations. 1969. “Vienna Convention on the Law of Treaties.” Treaty Series 1155 (May): 331.

United Nations Human Rights Special Procedures and Inter-American Commission of Human Rights. “Roadmap between Special Procedures Mandate-Holders of the UN Human Rights Council and the Inter-American Commission on Human Rights.” December 2018.  
[https://www.ohchr.org/sites/default/files/Documents/HRBodies/SP/Roadmap\\_SP\\_MHs\\_I\\_ACHR.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/SP/Roadmap_SP_MHs_I_ACHR.pdf)

United Nations International Covenant on Civil and Political Rights: Human Rights Committee. General Comment No. 32, Article 14. CCPR/C/GC/32. 23 August 2007.

Venezuela. Ley Orgánica de Procedimientos Administrativos. Gaceta Oficial N° 2.818. Caracas, 1 de julio de 1981.