

A tale of two Latin American countries within the same region and a very
different democratic rule of law experience

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Abstract:

The following thesis analyzes why is the democratic rule of law stronger in Uruguay than in Mexico? This work focuses on the state of the democratic rule of law in Mexico and Uruguay. The premise of this thesis is that there is a gap in the literature on causes that have historically made Uruguay the country with the strongest democratic rule of law in Latin America and Mexico one with the weakest democratic rule of law. Historical institutionalism is used to see how the evolution of the sequencing of political regimes as well as the evolution of civil-military relations in the two countries may explain the divergent outcomes. Emphasizing path-dependency, this analysis is conducted using a methodology of process-tracing. This research serves to put forward propositions in the form of a testable hypothesis on the causes that have led Mexico and Uruguay down different paths when it comes to the democratic rule of law. It also serves to fill a gap in the literature as cross-national differences on rule of law in Latin America have not been sufficiently well-explained.

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Introduction

The following research question is analyzed throughout this thesis: why is the *democratic rule of law* stronger in Uruguay than in Mexico? The research intends to explain the strength of the *democratic rule of law* in two different Latin American countries: Uruguay and Mexico. In the next chapters, I present extensive research that aims to analyze two hypotheses that are part and parcel of making a contribution to the literature of the *democratic rule of law* by doing a comparison between Uruguay and Mexico. I have chosen to compare Uruguay and Mexico because they are both crucial cases to study since the strength of their *democratic rule of law* differs significantly. The premise of my work is to articulate a comparative comprehension of the *democratic rule of law* in Uruguay and Mexico that complements existing literature in this subject that generally analyzes Mexico and Uruguay relative to other countries, but not between each other.

My thesis analyzes the following hypotheses. The first one is how the simultaneous presence of two conditions during the 1990s and 2000s in Mexico are necessary for the absence of the *democratic rule of law*: A) the presence and persistence of a path-dependence relationship of clientelism in the regime transition, and B) the historical persistence of the *fuero militar*¹ in this country. This argument is made by showing how the conjunction of these two conditions is necessary for the outcome of weak *democratic rule of law*. For Uruguay, the second hypothesis stipulates the opposite, as the simultaneous presence of two conditions during the 1990s and 2000s in Uruguay are necessary for the strong presence and existence of a strong *democratic rule of law*: A) the absence of a path-dependence relationship of clientelism in the regime transition, and B) the restriction of the *fuero militar* in this country. This argument is made by demonstrating the conjunction of these two conditions is necessary for the outcome of strong *democratic rule of law*. Furthermore, throughout this thesis a historical institutionalism theoretical framework is used and is further explained in the section below.

I have selected historical institutionalism as the theoretical approach because it is one of the most relevant theories for analyzing how institutions shape action. I am analyzing how

¹ Spanish terminology to explain the military jurisdiction, including the presence of military courts and military tribunals.

judicial institutions were created, how they have evolved and how they have affected or constricted actors' actions through the existence and persistence of institutional weaknesses.

Due to the fact that I am using a historical institutionalism approach to the study of politics, I have decided to employ process-tracing as my methodology as they go hand-in-hand. One of the most important facts about process-tracing is that it is related to a historical analysis of events that occurred in the past. These events determine the causal mechanism, which will aid the understanding of the causality between the independent and the dependent variables. In the following section, there is a brief overview of what each chapter encompasses and what each one analyzes in order to answer the main research question, which is: why is the *democratic rule of law* stronger in Uruguay than in Mexico?

The first chapter of this thesis provides a general overview of the main components found throughout this thesis. Chapter One opens with a brief introduction about the choice of research question and the background information that led me to select this particular research question. Furthermore, Chapter One provides the reader with an exhaustive literature review used as the basis of academic works making particular reference to the rule of law or any concepts related to the rule of law in Uruguay and in Mexico. This section contains three sub-sections: the first one deals with the rule of law concept in the Latin American region in general; the second sub-section deals with the rule of law concept in Uruguay; and the third sub-section deals with the rule of law concept in the specific case of Mexico. The next section of this first chapter provides insight into the theoretical framework used throughout this thesis. Right after the theoretical section, the reader finds the methodology section with three sub-sections. The first sub-section of the methodology deals with process-tracing more generally, while the second sub-section specifically explains how process-tracing operates throughout my thesis. The third and final sub-section of this first chapter provides an explanation about the measurement of variables.

The second chapter of this thesis provides a specific analysis of Mexico and Uruguay in regards to the nature of Mexico and Uruguay's civil-military relations; in particular, it analyzes the *fuero militar*, explained through path-dependence. The first part of the chapter analyzes the case of Mexico. This part starts with the antecedent conditions; in particular, it analyzes the civil-military relations in the historical period from 1917 to 1946. It then goes into the analysis of the inexistent critical juncture of the 1946 civil-military pact.

Furthermore, it analyzes the structural existence and persistence of the *fuero militar*. After, it looks at the structural existence and persistence of the Military Code of Justice. Finally, this section observes the reactive sequences in regards to historical civil-military repercussions existent in Mexico. The second half of this second chapter analyzes the case of Uruguay. In this section, the first part looks at the historical background leading up to the dictatorship that took place from 1973 to 1984. The second part looks at the critical juncture, which is seen through the institutional changes and the dictatorship that forced these changes. Then it analyzes the structural change of the *fuero militar*. The final section of this chapter finishes with the analysis of the post-dictatorship change in civil-military relations and the evolution of these relations.

The third chapter of this thesis provides an analysis of the existence of a path-dependent relationship of clientelism in Mexico's regime transition and the absence of this relationship in Uruguay. The chapter begins with a historical background before the democratic change in Mexico. It then observes the historical existence and persistence of clientelism in Mexico's political history. The third sub-section analyzes the absence of a critical juncture, and the continuation of clientelism in Mexico even after 1994's judicial reforms. The chapter then offers an explanation of the structural impasse, the continuation of the judiciary's inefficiency and clientelism. The chapter continues with an analysis of the case of Uruguay by looking at the historical institutional background existent before the dictatorship of 1973 to 1985 took place. Following is an analysis of the structural change making particular reference to the return of the democratic rule of law in 1985 in Uruguay. Finally, the chapter finishes with the post-structural change in particular reference to the democratic institutional reproduction after democracy was re-instituted.

The final chapter of this thesis provides a conclusion that serves to highlight key important aspects presented throughout the thesis. More specifically, the conclusion brings together an analysis of the major differences found throughout the research that make the case of Uruguay and Mexico very different. Furthermore, the conclusion observes the nature of the civil-military relations in particular reference to the *fuero militar* for both countries. It also observes the path-dependence relationship of clientelism in Mexico and the absence of it in Uruguay. Ultimately, the conclusion highlights key aspects that are central to

understanding the *democratic rule of law* difference and to answering the research question, why is the *democratic rule of law* stronger in Uruguay than in Mexico?

Chapter One

Introduction

This first chapter aims to explain my rationale for my choice of research question, literature review, theoretical framework and methodology. The first chapter has been divided in four major sections: In the first section I develop a detailed justification of the research question; in the second I include an annotated literature review that is divided into three sub-sections. The first sub-section develops an account of the *democratic rule of law* in the Latin American region. The second sub-section develops an analysis of the *democratic rule of law* in Uruguay. The third sub-section develops a review of the works written on the *democratic rule of law* in Mexico. The third section explains the theoretical framework for my thesis. The last section of this chapter develops an explanation of the methodology used. Within this fourth section, there are three sub-sections, the first of which includes a breakdown and an explanation of process-tracing. The second sub-section discusses the operationalization, and the last sub-section states the measurement that is used for my thesis.

Research Question

Why is the *democratic rule of law* stronger in Uruguay than in Mexico? The research intends to explain the strength of the *democratic rule of law* in two different Latin American countries: Uruguay and Mexico. The hypotheses analyzed are explained below in the methodology section. To begin with, the World Justice Project created what is called the *Rule of Law Index*². This index includes the following eight different indicators: 1) Limited Government Powers, 2) Absence of Corruption, 3) Order and Security, 4) Fundamental Rights, 5) Open Government, 6) Regulatory Enforcement, 7) Civil Justice and 8) Criminal Justice. In a regional ranking out of 16 countries, Uruguay ranks 1st or 2nd in every single one of these indicators; therefore it is the country with the strongest rule of law in the Latin American region. On the contrary, Mexico ranks anywhere between 5th and 15th, which renders it the country with one of the weakest rules of law in Latin America. For example in

² The World Justice Project, “*WJP Rule of Law Index*”. Web. April 11th, 2013.
<http://worldjusticeproject.org/rule-of-law-index>. Accessed on April 11th, 2013.

civil justice and fundamental rights, Mexico ranks 14th and 11th, respectively, while Uruguay ranks 1st and 1st, respectively. However, this is not the only reason that Uruguay and Mexico are crucial cases for study.

The premise of my work is to articulate a comparative comprehension of the *democratic rule of law* in Uruguay and Mexico that complements existing literature in this subject that generally analyzes Mexico and Uruguay relative to other countries, but not between each other. There are certain works that deal with judicial reforms in Uruguay (Skaar, 2003); others that look into judicial performances and reforms in a cross-case analysis with Argentina and Chile (Macaulay, 2007; Staats, Bowler, & Hiskey, 2005); others that look at institutional change and separation of powers (Cason, 2002; Hammergren, 2006); and even others that look at the protection of human rights after the dictatorship ended in this country (Burt, Amilivia & Lessa, 2013; Skaar, 1999; Skaar, 2007). However, there is less investigation on this topic that deals with the historical causes that have placed Uruguay in such a prominent position in comparison to Mexico.

The premise of my work for the case of Mexico is similar to that of Uruguay. For Mexico, one of the countries that holds the weakest *democratic rule of law* in Latin America, there is also less investigation that provides the causes that have historically placed Mexico in this particular position in comparison to Uruguay. There are several works dealing with judicial reforms in Mexico (Edmonds-Poli & Shirk, 2012; González-Gómez & González-Chávez, 2007; Inclán Oseguera, 2009); other works that deal with democracy and the importance of the rule of law for democratic stability (Krauze, 2006); others that deal with corruption, law enforcement and the enforcement of laws by the judicial power (Nagle, 2010; Ríos-Figueroa & Taylor, 2006; Ríos-Figueroa, 2007); and even others that deal with the armed forces and the military's role as well as their impunity (Ai Camp, 2005; Ai Camp, 2011; Díez, 2008; Pereira, 2012; Pion-Berlin, 2012).

While different specialists of the Latin American region (Carothers, 1998; Inclán Oseguera, 2009; Krauze, 2006; Ríos-Figueroa, 2007; Shirk, 2005; Villamil & Scherer Ibarra, 2007; among others) have provided different definitions of the rule of law, it is O'Donnell (2004) that provides the most encompassing definition of the core aspects of this concept. O'Donnell (2004) defines a truly *democratic rule of law* as that which “ensures political rights, civil liberties, and mechanisms of accountability which in turn affirm the political

equality of all citizens and constrain potential abuses of state power” (p. 32). O’Donnell goes even further to argue that without the presence of a “vigorous rule of law, defended by an independent judiciary, rights are not safe and the equality and dignity of all citizens are at risk” (Ibid.). In other words, all state institutions and officials, along with individuals that are part and parcel of the society, have to be held accountable to the law. Thus, nobody is *de legibus solutus*, or above the law (O’Donnell, 2004). The importance and main characteristic of the rule of law, as defined in English language, is that it “does not refer directly to any state agencies other than courts” (O’Donnell, 2004, p. 36). However, O’Donnell (2004) expands this definition to encompass a true *democratic rule of law*, *estado de derecho*³ and *état de droit*⁴. He conceives the definition to be more than just a mere understanding of a country’s legal system and the performance of the judicial power. O’Donnell (2004) defines the *democratic rule of law* as part and parcel of a “legally based rule of a democratic state” (p. 36). In his holistic definition there are central premises such as the fact that there has to be a legal system in a specific country that is itself democratic. By democratic, it means that the legal system should protect the freedoms, political rights, and basic guarantees of all individuals, a system that upholds and protects civil rights as well as the creation of accountability and responsibility, where everybody is subject to appropriate legal sanctions through legally established controls when committing unlawful acts, such as crimes (O’Donnell, 2004). Once a state has achieved this level it is more than just the *rule of law*; it then becomes a state that enacts and upholds a *democratic rule of law*. Furthermore, O’Donnell (2004) highlights several flaws that are present in the *democratic rule of law* application in the Latin American region. He highlights flaws such as those in existing law, for example: judicial criteria and administrative regulations discriminating against women and discriminating against minority groups, especially indigenous groups. Other flaws lie in the application of the law, where elites are usually exempted from the law. There are flaws in the relationships between state agencies and citizens, such as deprivation of human and civil rights for disadvantaged citizens. Finally, O’Donnell also highlights the flaws in fair access to the judiciary and due process, with an ineffective, expensive and slow system that denies equal access to everyone in society. For the purpose of my thesis, O’Donnell’s (2004)

³ This is the conception of the term *Rule of Law* in Spanish.

⁴ This is the conception of the term *Rule of Law* in French.

extended definition is key, as it encompasses a more holistic approach. Basing my work on this specific definition, I evaluate what has caused the difference in the *democratic rule of law* in two Latin American countries, Mexico and Uruguay.

The *democratic rule of law* includes different central aspects that make a country achieve a strong or weak democratic rule of law. The literature review here presented highlights two main aspects of the rule of law that have helped to inform the strength in Uruguay and the weakness in Mexico of the *democratic rule of law*. For Uruguay, certain experts elucidate the fact that in order to return to a democracy in 1984 when coming from the dictatorship of 1973, during the transition negotiations Uruguay severely restricted the *fuero militar*, which is what in fact helped the return to democracy for that country (Gillespie, 1991 and De Brito, 1997; Gros Espiell & Esteva Gallicchio, 2008). For Mexico, several authors have touched upon the clientelistic nature of the Mexican political system, some of them during the Revolutionary Institutional Party (PRI in Spanish) period (Ai Camp, 2005; Di Tella, 2005; Gillingham, 2012; Levy & Bruhn, 2006; and Smith, 2012), while others explain that it is not only a PRI quality but rather a condition embedded in the Mexican political system at large, either with the PRI or as with other political parties in power (Roniger, 1990; Hilgers, 2008). In addition to this, Hilgers (2011) points to the fact that clientelism has lost its power to be descriptive, and, therefore she does a reconceptualisation to define what it is in order to distinguish this concept from other close concepts such as vote-buying or corruption. The definition that is followed for this thesis is Greene's (2001), who says that "[c]lientelism describes the deployment of material advantages by politicians to specific constituencies in exchange for political support" (p. 3). There are two main ways in which the exchanges can take place: 1) face-to-face or 2) institutionalized relationships "between constituency groups and party organizations" (Greene, 2001, p. 3). Although the latter one has been argued to be more modern than face-to-face, it always requires the willingness of politicians and personnel of the party in the exchange position. This definition has been used because it is one that encompasses both the individual level clientelism and the institutional clientelism that is sometimes missed in works on clientelism. Therefore, for the purpose of this thesis, I concentrate on the study of clientelism and the civil-military relations, putting especial emphasis on the *fuero militar*. It is sufficient to focus on the *fuero militar* for both countries, because the extensive literature

about Uruguay demonstrates that a critical change that made the difference for the return to democracy in that country in 1984, as well as one of the largest differences from that case with others in the Latin American region after dictatorships ended, is the restriction of the *fuero militar*. The impact that the *fuero militar* has on the Mexican society is very significant in Mexico, whereas in Uruguay it is not because of the restriction of this after the dictatorship ended. Therefore, in simple terms the *fuero militar* has a much rather direct and strong impact in Mexico and since the restriction in Uruguay, it has not had an impact in the political sphere. Clientelism has been a central variable throughout the literature review concerning Mexico because it's noteworthy that clientelism has not only been associated with the Revolutionary Institutional Party at large, but it has been a path-dependent relation that has existed at federal level of politics, as well as state and municipal levels of politics as demonstrated by the Revolutionary Democratic Party (PRD in Spanish) (Hilgers, 2008; Hilgers, 2011). Within the cases presented here, for the Mexican case, clientelism determines how political relationships are formed and conducted in Mexico, while the absence of it in Uruguay has historically determined the democratic strength of the country.

Having defined what the *democratic rule of law* implies in Uruguay and Mexico, the problem lies in the fact that there have been several studies that focus on certain aspects related to the concept of the *democratic rule of law*, such as judicial reforms, democracy and law enforcement, institutional changes and judicialisation of policies (Ackerman, 2010; Ai Camp, 2005; Ai Camp, 2011; Cason, 2002; Díez, 2008; Edmonds-Poli & Shirk, 2012; Inclán Oseguera, 2009; Krauze, 2006; Levy & Bruhn, 2006; Nagle, 2010; Nagle, 2010; Ríos-Figueroa, 2007; Ríos-Figueroa & Taylor, 2006; Staats *et al.*, 2005). However, none of these authors looks at the causes that have rendered the different *democratic rule of law* strengths and weaknesses in a comparative study of Uruguay and Mexico. Therefore, the contribution of my research is to generate hypotheses that explore the causes that drove Mexico to have a weak *democratic rule of law* and Uruguay to have a strong *democratic rule of law*. My research work aims at exploring first the case of Mexico, as it is a country that has not gone through a military dictatorship since the 1930s and is a democracy; thus, the expected outcome is that it should have attained a strong *democratic rule of law*, but this did not occur. Conversely, Uruguay, having gone through a dictatorship from 1972 to 1985 and not

having undergone severe judicial reforms should have acquired a weak *democratic rule of law*, but it rather has a strong one.

I recognize the need to expand the knowledge of the concept of *democratic rule of law* and exploit its applicability in the Latin American context. I intend to articulate a comparative comprehension of the *democratic rule of law* in Uruguay and Mexico, which complements existing literature in this subject. The multi-faceted hypothesis being developed could help elucidate important aspects that I consider to be in need of closer examination in Latin American countries in order to improve the state of the *democratic rule of law* across the continent.

Exhaustive Literature Review

In this literature review, I cover multiple works related to my research topic so as to evaluate the general literature that deals with the historical evolution of institutions. Second, I cover the works that deal specifically with institutions in Uruguay, among them the judicial power. Third, I cover the scientific research that deals with institutions in Mexico, among them the judicial power and the military.

1) The Rule of Law in the Latin American Region

The following works are related to the Latin American region in general, sometimes making direct reference to Mexico and Uruguay, but more importantly, these works explain the contextual reality of the Latin American region and the state of the *democratic rule of law* across the subcontinent. This literature will serve as background information to explain the context in which the two cases that I am analyzing are located, to be able to further analyze them within a larger context and not as two mutually exclusive cases.

Prillaman's (2000) book entitled *The Judiciary and Democratic Decay in Latin America: Declining Confidence in the Rule of Law* offers an interesting theoretical insight elaborating the relationship between the rule of law and what is considered a healthy democracy. This theoretical work has significant connections to O'Donnell's (2004) work, entitled *The Quality of Democracy: Why the Rule of Law Matters?* which elucidates the importance of similarities between a democratic regime and the inclusion of the rule of law in order to arrive at a healthy democratic level. The main focus of this book is to point out

central problems such as independence, corruption, efficiency, and access to courts that have led to the slow evolution of the judicial system in Latin America and the lack of applicability of the rule of law. Like Staton's (2010) work entitled *Judicial Power and Strategic Communication in Mexico*, the author also analyzes the idea of accountability and transparency needed for the operation of the judicial system before de-centralization occurs. Thus, the author presents a change from previous arguments, raising the point that in certain situations, such as the one in Mexico, de-centralizing the judicial branch can be detrimental for democracy.

Méndez's (1999) chapter entitled *Institutional Reform, Including Access to Justice: Introduction*, discusses the lack of modernization in judiciaries and adaptation of courts to changing realities in Latin America. More specifically, he addresses the countries where internal conflicts, such as drug wars, require a more advanced judicial system. In addition, the author points out the lack of evolution in the judicial institutions in close reference to the democratic evolution of the Latin American region. The author analyzes the historical importance of courts losing credibility as well as prestige in public opinion and elected leaders manipulating, undermining and corrupting the independence of the judiciary in the Latin American region.

Méndez (1999) devotes this second introductory chapter entitled *Problems of Lawless Violence: Introduction* to different problems with the application of the rule of law in Latin America. One of the problems analyzed by Méndez, and directly related to my thesis, is the theme of crimes that go generally uninvestigated and regularly unpunished. This shows the corruption and inability of the judiciary to provide equal access and equal protection to all citizens. A second level of his analysis concentrates on the security forces such as the military and the police operating with impunity and without legal control from the side of the judicial power and the state. Most importantly, he presents the historical connection between the legacies of authoritarianism in the legal system and the impossibility of bringing law enforcement bodies under democratic control. All of this relates to O'Donnell's (2004) central theme that for the *democratic rule of law* to be operable nobody is above the law.

Ungar's (2002) work entitled *Elusive Reform: Democracy and the Rule of Law in Latin America* raises the important argument about low independence and efficiency of Latin

American judicial powers looking at internal problems, as well as the strong politicization found through a cross-case analysis of multiple executive branches in Latin America. One of the major problems that the author observes and analyzes, and that connects back to Uildriks and Tello Peón's (2010) analysis entitled *Mexico's Unrule of Law: Implementing Human Rights in Police and Judicial Reform under Democratization*, is the application of criminal law, which has served to systematically weaken the judicial defence of the protection of basic human rights even if democracies have strengthened.

2) The Rule of Law in Uruguay:

Different authors highlight the historical political and judicial development of Uruguay's institutions (Burt *et al.*, 2013; Correa Sutil, 1999). Some of them even emphasize the under-development of Uruguay's judicial system during and after the dictatorship that ended in 1985 (Skaar, 2007). Through historical institutionalism, the authors present central themes such as protection of human rights, institutional evolution, impunity from the state, and absence of corruption. Furthermore, Daniel M. Brinks' (2008) work entitled *The Judicial Response to Police Killings in Latin America: Inequality and the Rule of Law* demonstrates that Uruguay's legal system is one of the least evolved in South America. However, he argues that it is also one of the most effective, especially when dealing with corruption, transparency and accountability.

Skaar's (2007) work entitled *Legal development and human rights in Uruguay: 1985-2002* highlights the restrictive measures taken by Uruguayan judges aided by the executive power in an aggressive anti-human rights policy promotion expressed through the national amnesty law passed in 1986. However, the author fails to analyze the evolution of legal development and judicial changes that occurred after 2002. She also has a misinterpretation when comparing the case of Uruguay to that of Brazil. She does not do a thorough within-case analysis of Uruguay, concentrating instead largely on a cross-case analysis. The problem of a cross-case analysis is that the author has to avoid certain characteristics that are specific to each system, such as separation of powers, in order to be able to develop an analysis that can be applied across cases.

Burt *et al.* (2013) work entitled *Civil Society and the Resurgent Struggle against Impunity in Uruguay (1986-2012)* offer a continuation to Skaar's (2007) argument as the

authors start their analysis with the development of the judicial branch a year after Skaar's (2007) analysis, but extend the historical institutional analysis up to 2012. Thus, it is very important to apply the historical institutionalism approach as it allows for a full evaluation and interpretation of those critical junctures that created changes in the judicial branch and the separation of powers. Therefore, Burt *et al.* (2013) are able to include the approval of Law 18.831 in 2011 where the Uruguayan parliament voted alongside the willingness of the judiciary to challenge and overturn the 1986 Expiry Law. This shows once again the importance and centrality of the judicial power in Uruguay and the central role that this institution plays in the country, even if the separation from the executive power is still highly debated. On the one hand, this article helps point out the important years of historical institutional evolution missed by Skaar from 2002 to 2012. On the other hand, the authors illuminate the role of civil society pressure that aided the overturn of a legal decision that served to protect impunity from the military during the dictatorship years (1972 – 1985), arriving at the conclusion that even though the decision was highly contested, it was the people through a legal plebiscite that decided the prosecution fate of the crimes committed by military members during the dictatorship. Overall, my analysis posits a “bottom-up” and “top-down” mixed analysis, which encompasses the historical period that Skaar misses. Ultimately, this article needs to be analyzed alongside Pinheiro's (2005) work entitled *Démocratie et Etat de non-droit au Brésil: analyse et témoignage*, as it makes a comparison between the transition path taken by Brazil and the similarities between Brazil and Uruguay's decisions, especially when the pacts led by conservatives and military elites were protected under amnesty laws until 2011.

Pinheiro's (2005) article entitled *Démocratie et Etat de non-droit au Brésil: analyse et témoignage* follows a historical institutional analysis of the change in government from a dictatorship to a democracy. Even though the author uses Brazil as his case study, other authors have pointed out, such as Burt *et al.* (2013), O'Donnell (2004), and Pinheiro (2000) that there are many similarities between the cases of Uruguay and Brazil. The most important similarity is the peaceful transfer from a dictatorship to a democratic government by the military itself. Thus, both countries provide an exemption for military officials involved in the torture and disappearance of citizens through similar amnesty laws. Through this article, Pinheiro (2005) develops an interesting theoretical approach taking O'Donnell's

(2004) definition of *democratic rule of law* and providing evidence about citizenship movements, reconciliation strategies and paradoxes of democracy after 1990 in Brazil. One of the most important conclusions is that nobody should renounce the achievement of reconciliation, a fully consolidated democracy, and they should do all of this through citizenship movements to raise awareness of the constant unfavorable situation under which citizens live in Brazil.

Correa Sutil's (1999) chapter entitled *Judicial Reforms in Latin America: Good News for the Underprivileged?* develops an analysis of the "Consejos de la Magistratura" or *councils* that governed the judicial branches during and immediately after the dictatorship ended in Uruguay. Correa Sutil through a historical institutional analysis, explains why the "Consejos de la Magistratura" were repealed by Uruguay almost immediately after recovering democracy in 1985. His analysis provides evidence about the historical importance of the *councils*, which during and after the dictatorship constituted a branch of government. In theory the *councils* are not supposed to represent the branch of government immediate interests, but in practice they were representing those branches' interests. Thus, this action was blocking the evolution of the judicial system. In addition, Correa Sutil also examines external funding agencies such as the Inter-American Development Bank financing and guidance in judicial reform. Therefore, Correa Sutil's analysis is key to exploring the external financing going into judicial reforms in Uruguay, providing a contrast with internal problems faced by Uruguay during the dictatorship in terms of judicial control and absolute dominance from the military. Overall, contrary to within-case analyses of Skaar (2007) and Burt et al. (2013), Correa Sutil's adds an analysis of the external forces acting within Uruguay. This analysis not only shows the internal forces that shaped the institutions and their historical evolution, but also adds an external perspective that played a central role in how institutions evolved and changed during these years.

Daniel M. Brinks' (2008) book, entitled *The Judicial Response to Police Killings in Latin America: Inequality and the Rule of Law*, is also important for two reasons: first, it is one of the only academic works that provides a cross-case analysis of the effectiveness and inequality in the legal systems in Argentina, Brazil and Uruguay. This represents an advancement of the literature, as it provides extensive evidence about the judicial effectiveness in a cross-case analysis of three different countries that have similar, but at the

same time very different legal systems. Second, his analysis concludes that Uruguay is the country that has demonstrated the strongest results with quite weak institutions in terms of judicial response to police killings. Through the use of qualitative historical institutional analysis, the author looks at the evolution and changes within the judicial systems in Argentina, Brazil and Uruguay. However, in order to assess the judicial effectiveness and response times in terms of accounting and processing those guilty of illegal police killings, he conducted an analysis that included field data. This was gathered through participant observation and surveys done in different prisons, as well as to police officers in the three countries. He concludes that Uruguay is the country with one of the least reformed and older systems; however, it is the country that provides the strongest results.

Following Daniel M. Brinks (2008) and Correa Sutil's (1999) analysis, Stephen Gregory (2009) work entitled *Intellectuals and Left Politics in Uruguay, 1958-2006* highlights important changes within the armed forces that led to their rise to power and the complete abolition of the rule of law and the judicial branch in Uruguay during the dictatorship. Gregory addresses, for example, the change in the administration of the prison system, which passed from being under the administration of the Ministry of Education and Culture to the Ministry of Defense. Therefore, Gregory's book highlights important details about these changes that later led to the complete abolition of the rule of law at the same time as torture of civilians was taking place. This reinforced the historical halt of institutions during the dictatorship. Furthermore, the author highlights the break from democracy as a homogenous and peaceful, free society to one where there is a *parenthesis* where none of these values is present. Overall, this author, as well as Skaar (2007), provides a "top-down" and "bottom-up" analysis that serves to highlight two different perspectives on the issue of institutional void in the country during the dictatorship years.

Vanger (2010) work entitled *Uruguay's José Batlle y Ordoñez: The Determined Visionary, 1915-1917* provides a recapitulation and detailed historical institutional analysis of Uruguay's initial constitution, alongside political and judicial gains that historically evolved through the beginning of Uruguay's democratic regime until the dictatorship. Vanger's book highlights important details of legal as well as civil rights such as the creation of the eight-hour work day, legal voting rights for women and most important of all, access to justice for minority groups such as the working classes and black communities. It also

sheds light on the beginning of democracy and its advancements until the dictatorship, which is helpful to understand the history and evolution of institutions prior to their decay during the dictatorship years.

3) *The Rule of Law in Mexico*

Many authors in the literature analyzed below have highlighted the historical, legal, and judicial underdevelopment of Mexico's judicial system (Magaloni, 2012; Olvera Rivera, 2006; Rodríguez Castañeda, 2010). The authors, through different historical institutionalism analyses, address central themes such as the violation of human rights, institutional stagnation, impunity from the state, and presence of corruption. Furthermore, the authors point to different judicial problems inherited from the authoritarian regime of the Revolutionary Institutional Party (PRI in Spanish). On the other hand, the authors demonstrate the highly closed and restrictive access for the poor and marginalized, as well as the slow evolution of the judicial system in Mexico.

Olvera Rivera (2006) chapter entitled *Social Accountability in Mexico: The Civic Alliance Experience* develops an analysis of the capacity to appeal in courts when a violation of human or civil rights has occurred and having access to the law for the underprivileged and minority groups in Mexico. The author connects these limitations in access to justice with themes of avoidance of clientelistic and corporatist pressures. This discussion is very important for my thesis dealing with the strength of the *democratic rule of law* in Uruguay and Mexico as it develops the idea of denouncing corruption, systematic governmental violation of the *democratic rule of law* and the disputes over the observance and respect of the law by judges in Mexico's judicial system. All in all, it presents an argument about the importance of how horizontal accountability prescribed by the law is ignored, bypassed and faked by judges in the judicial branch.

Domingo (2005) chapter entitled *Judicialization of Politics: The Changing Political Role of the Judiciary in Mexico* develops an argument around the concept of the judicialization of politics that started to evolve in the mid-1990s in Mexico and continues today. The judicialization of politics refers to the judicial power engaging in unprecedented levels of judicial activism with very important political and economic consequences. Taking a positive view on the judicial system of Mexico, the author, contrary to Olvera Rivera

(2006), analyzes the prospects of instating the *democratic rule of law* in a young democracy. By doing a systematic institutional analysis, the author looks at how embedded society is in the state and the impacts that further embedding has had for Mexican citizens in the transition period from an authoritarian regime into a democratic one. Finally, this chapter has to be read critically as her argument centers on the fact that the judicialization of politics improves the prospects for the construction of the *democratic rule of law*.

Magaloni (2012) work entitled *Arbitrariness and Inefficiency in the Mexican Criminal Justice System* provides a different result to that presented by Domingo (2005) chapter entitled *Judicialization of Politics: The Changing Political Role of the Judiciary in Mexico*. Her chapter starts off with a highly critical question asking why the criminal justice system in Mexico has spectacularly failed to tackle serious crime. She continues her analysis with a second critical question: why can the current justice system in Mexico do nothing but fail? Although it is important to note that Magaloni (2012) takes a negative stance in the criminal justice system in itself and not the entire judicial system. She nevertheless presents quantitative data to explain that the more arbitrary the criminal justice system is, the more inefficient it is. She complements her analysis with an institutionalist approach following a path-dependence analysis to conclude that the dysfunctional justice system in Mexico is primarily authoritarian due to a path-dependency of authoritarian practices rather than democratic ones, despite the official change to a democratic regime in 2000. Contrary to Domingo (2005), Magaloni's (2012) provides a much more insightful and detailed analysis to show the causes that have led to a systematic historical failure of the criminal justice system in Mexico.

Uildriks and Tello Peón (2010) work entitled *Mexico's Unrule of Law: Implementing Human Rights in Police and Judicial Reform under Democratization* take a more neutral stance and aim at analyzing and understanding the Legal Reform Bill passed by ex-president Vicente Fox Quesada, (2000 to 2006) and also include an analysis of the Judicial Reform Package implemented under ex-president Felipe Calderón Hinojosa (2006 to 2012). They analyze in detail the devolution of police impunity, constant historical violation of human and civil rights, and the under-development of the judicial branch including the minor institutional advancement of courts as well as the corrupt behavior of judges within those institutions. These authors concentrate on Mexico's democratic regime. Therefore the

analysis has to be taken with some degree of reservation, as it does not include a comparison with the authoritarian period analyzed by Magaloni (2012) and Domingo (2005). However, they provide a detailed historical institutional analysis dedicating an entire chapter to the challenges within the criminal justice system in Mexico. They also devote another chapter to analyzing a within-case analysis of a specific corrupt Mexican police case in Mexico City that occurred in 2008 where violation of human rights and low levels of accountability were present.

Pinheiro (2000), article entitled *Democratic governance, violence, and the (un)rule of law*, in contrast to the above, can also be applied to the case of Mexico. This is due to the fact that Pinheiro (2000) evaluates the use of force and use of police forces, specifically of police tortures and misinterpretation of their legal roles, to force suspects to be brought in front of courts through torture or other human rights abuses. The author shows the use of corruption, impunity, and little accountability as well as police and military brutality used in Brazil to demonstrate the slow evolution of the rule of law in that country. This analysis connects very well to Uildricks and Tello Peón's (2010) case study of police brutality and excessive use of force in their case study of Mexico City. In addition, this analysis also relates directly to impunity and abuse of the military's treatment of civilians in their internal security and police's role in Brazil with that one highlighted by Rodríguez Castañeda (2010) who argues in his book entitled *Los Generales: La militarización del país en el sexenio de Felipe Calderón* about the militarization of Mexico during the presidential period of Felipe Calderón Hinojosa and his War on Drugs.

Castañeda (2010) work entitled *Los Generales: La militarización del país en el sexenio de Felipe Calderón* underscores the current impunity of the Mexican military and the abuse of the judicial system in Mexico by providing a "bottom-up" approach. He conducted surveys, ethnographic studies and engaged in participant observation of how the military behaves in treating possible suspects in the War on Drugs in Mexico and the mistreatment of civilian prisoners prior to a court appeal.

Staton's (2010) book entitled *Judicial Power and Strategic Communication in Mexico* offers a very interesting analysis of the historical institutional changes of the Mexican Supreme Court. His analysis starts with ex-president Zedillo's 1994 reforms, which intended to promote larger legitimacy and transparency problems in the Mexican Supreme

Court. However, the most important part of Staton's analysis is his examination of *Amparos*, which are Mexico's traditional constitutional actions developed in the 19th century. Through a historical institutionalism and qualitative analysis, the author provides further insight into the idea that private and public "artificial" persons can have access to *Amparos*, which produces a constant constraint to the evolution of the judicial branch in Mexico. Most important of all are the mixed methods used by the author, who uses data gathered from Freedom House from 1971 to 2013 to conduct an analysis on civil rights protection and freedom of expression in Mexico. The author also provides a cross-case analysis with other countries such as Bulgaria and Russia to show Mexico's detrimental situation. Although the scope of his analysis is beyond my main thesis, the cross-case comparison serves to highlight and put into context the serious problems that the Mexican judicial system has faced and continues to face.

Rowland's (2006) chapter entitled *Local Responses to Public Insecurity in Mexico* analyzes the systematic discrimination against underprivileged groups, concentrating particularly on access to justice for these minority groups. Her analysis directly serves to demonstrate the flaws posited by O'Donnell (2004) as being continuously present across Latin America. Moreover, Rowland analyzes the differences between the community police forces in a cross-case comparison with the municipal and police forces. Through this institutional analysis, the author looks at why certain communities that have not gained access to justice and have faced corruption at the federal justice level have instead looked for alternative protective and justice methods through the creation of community police forces. Thus, the paradox presented by the author is that, in theory, democratization and decentralization have to lead to a positive evolution of the judicial system; however, in the Mexican case, it has rather served citizens to look for alternative justice protection systems such as the community police.

Moloeznik's (2006) chapter entitled *Public Security and Police Reform in Mexico* demonstrates the complexity and limited operating capacity of the Mexican state apparatus. The author develops the argument that impunity and the inability to guarantee public security are present and constantly affecting judicial evolution in the Mexican state. Through quantitative data, which relate the number of crimes reported to the authorities and the number of cases prosecuted and sentenced through the courts, the author demonstrates

Mexico's constant legal delay and public security problems as well as the repercussion that these have on the protection of Mexican citizens' individual rights. Finally, the author concludes, in a similar way as other authors mentioned above, that the societal groups mostly affected are the poor, the indigenous groups and women.

Roman and Velasco Arregui (2013) chapter entitled *Neoliberal Authoritarianism, the "Democratic Transition," and the Mexican Left* presents one of the most relevant analyses for my thesis. The authors develop a qualitative analysis of the destruction of social rights and access to justice for Mexican citizens, as well as the transformation during Calderón Hinojosa's presidency to a more repressive, militarized and exclusionary regime where the rule of law is reverted back to authoritarian regime levels in Mexico. More importantly, the authors re-visit causes such as clientelism, co-optation and corruption, as being present and embedded in Mexico's legal system, despite the reforms. This source is also important because, as the most recent one, it helps to shed light on the reality of present-day Mexico and thus contextualize the lagged development of the judicial system in this country.

In conclusion, the works included above have analyzed multiple aspects of the *democratic rule of law* in Latin America and some of them with particular emphasis on Uruguay and Mexico. However, there is still a gap, which is that there are no comparative works explaining the similarities and differences between the cases of Uruguay and Mexico. Although several works have analyzed particular aspects of the *democratic rule of law* in these countries, none of the authors have concentrated on the possibility of multiple causes that acting together have influenced the particular outcome for each one of these cases in Uruguay and Mexico. Therefore, my work aims to fill this gap by finding the multiple causes that have affected the outcome being analyzed in my thesis by conducting a comparative analysis of Uruguay and Mexico.

Theoretical Framework

This section includes important works that help develop an encompassing theoretical and methodological approach for my thesis.

The introductory book by Gazibo and Jenson (2004) entitled *La Politique Comparée: Fondements, enjeux et approches théoriques* goes straight to the point in terms of explaining the importance and centrality of the neo-institutionalism theoretical approach. Although it is

an introductory book, it helps bring to light many of the central tenets of this theoretical approach such as the centrality and place that institutions occupy in the political process. More specifically, the explanation of path-dependence will help connect back this analysis to that of Magaloni (2012) that is explained above, who argues that the judicial power in Mexico has not managed to evolve because it has followed the authoritarian path that was set before becoming a democracy and continued down that path. On the contrary, the same could not be applied to Uruguay, where path-dependence in the judicial system before the dictatorship cannot be seen. More specifically, changes that have occurred once the dictatorship ended have affected the path-dependence of that country such as the elimination of the *councils* that are explained above in the section on Uruguay.

The importance of Nikolenyi's (2005) work entitled *Institutional Change and Its Consequences: The Rational Foundations of Party System Change in India* is that his analysis looks at the historical transformation of the evolution of the national party system in India. However, his analytical framework can be applied to the analysis of the national party system in Mexico. More specifically, it can be applied to the connection between the evolution and changes at the judicial level when the PRI was losing power back in 1994 as a consequence of the first judicial reform. Just as the national party system and the role of institutions' evolution played an important role in India, in Mexican institutions the lost power of the PRI within those institutions led to the judicial reforms of 1994 which in turn led to the PRI losing the federal elections in 2000.

In order to conduct this research project I use a historical institutionalism theoretical approach. It is important to note "the central theoretical argument of new institutionalism is that institutions shape action" (Lecours, 2005, p. 8). Furthermore, methodologically speaking, new institutionalists are concerned with using institutions either as key intervening variables or independently (Ibid.). The reason for choosing new institutionalism is that I am investigating how the simultaneous presence of two conditions during the 1990s and 2000s in Mexico are necessary for the absence of the *democratic rule of law*: A) the presence and persistence of a path-dependence relationship of clientelism in the regime transition, and B) the historical persistence of the *fuero militar*⁵ in this country. This argument is made by

⁵ Spanish terminology to explain the military jurisdiction, including the presence of military courts and military tribunals.

showing how the conjunction of these two conditions is necessary for the outcome of weak *democratic rule of law*. For Uruguay, the second hypothesis stipulates the opposite, as the simultaneous presence of two conditions during the 1990s and 2000s in Uruguay are necessary for the strong presence and existence of a strong *democratic rule of law*: A) the absence of a path-dependence relationship of clientelism in the regime transition, and B) the restriction of the *fuero militar* in this country. This argument is made by demonstrating the conjunction of these two conditions is necessary for the outcome of strong *democratic rule of law*. The reason for choosing a historical institutionalism theoretical approach is that I am analyzing how judicial institutions were created, how they have evolved and how they have affected or constricted actors' actions through the existence and persistence of institutional weaknesses. Thus, this approach is the most appropriate for institutional analysis. I am also analyzing the relationship between institutional powers and levels of separation in each country; therefore historical institutionalism allows me to fully investigate these institutions. Furthermore, I am also analyzing the military institutions and the existence of the *fuero militar* as a limitation to actors' actions and institutional inefficiency. A key tenet of historical institutionalism is that it allows the researcher to start his or her analysis at crucial moments, like revolutions or wars (Gazibo and Jenson, 2004). Furthermore, historical institutionalism takes a larger responsibility in defining and studying temporality and sequence, thus giving a larger historical understanding of why and how institutional changes have occurred, not only of *what* happens but *when* it happens (Hall & Taylor, 1996). Also relevant for my thesis is the work of James Mahoney (2001), whose work is primarily concerned with the application of path-dependency components, including concepts of critical juncture and legacy in analyzing diverging regime trajectories in the 19th and 20th centuries in Central America. Mahoney's (2001) analysis is significant for my own work because he not only conducts empirical work related to my region of study, but more importantly he provides a review of central components that can be applied towards substantiating my own hypothesis. Overall, Mahoney's (2001) analysis is very relevant because of his proposition of a specific type of explanation that occurs through a series of sequential stages see also Appendix 1). Before analyzing these sequential stages, it is important to define path-dependency, which can be understood as an explanation for a historical case consisting of a series of events in a particular sequence over time (George and

Bennett, 2004). More specifically, it is the identification of key historical processes that have set cases in a particular trajectory of development or change, although these processes can rest in the immediate as well as in the distant past (Mahoney, 2001). Closely related to path-dependency is the concept of *critical juncture*, which has been defined by Mahoney (2001) as a “particular option (e. g. a specific policy, coalition, institution, or government) [which] is selected from among two or more alternatives” (p. 112). It is very important to define this concept, as once choices are made during a critical juncture, that choice will in turn be consequential to the creation of institutional patterns that might endure over time and the return to the initial point where other alternatives were available become more complicated (Mahoney, 2001). Among the key tenets discussed by Mahoney (2001) are antecedent conditions, critical junctures, structural persistence, reactive sequences, and outcomes (see Appendix 1). Furthermore, in a path-dependency analysis, once the researcher arrives at a key historical point, otherwise known as a *critical juncture*, a particular option that needs modification has to be selected (Mahoney, 2001). For example, the critical juncture in my thesis is the need to modify the respective judicial systems in Mexico and Uruguay. This was mainly because with the onset of a democratic regime in Mexico and the return to democracy in Uruguay, the *democratic rule of law* became part and parcel of these countries having an enduring and stable democracy (O’Donnell, 2004). Furthermore, O’Donnell (2004) demonstrates that a critical institution needed to safeguard a strong democratic rule of law in a country is the judiciary and the judicial independence in that particular country. Therefore, the strength and independence of the judiciary is central so that nobody is above the law. Additionally, Mahoney (2001) argues “the choice made during a critical juncture is consequential because it leads to the creation of institutional patterns that endure over time” (p. 112). This point is also important in order to analyze why the slow and inefficient changes in the judicial system in Mexico have endured over time (Staton, 2010; Rodríguez Castañeda, 2010). This particular tenet of the analytical structure outlined here will help me investigate why the Uruguayan system is one that has demonstrated the strongest results with quite weak institutions in terms of judicial response in the judicial system (Brinks, 2008).

Finally, Mahoney (2001) also raises the point that once the institutions have been formed and are going down a specific path, actors respond through a series of predicted responses. This part of the analytical structure can be applied, for example, to measure the

degree of weak separation between the executive, legislative and judicial powers, especially the presence of an independent judiciary, which is measured by the Latinobarómetro. Lastly, Mahoney (2001) centrally argues that “path dependence occurs when the choices of key actors at critical juncture points lead to the formation of institutions that have self-reproducing properties” (p. 111). Therefore, Mahoney’s (2001) theoretical approach is crucial to investigating my hypotheses, as it will allow me to concentrate on the institutional changes to the criminal justice system, as well as the Mexican military. This allows for measuring separation levels across these institutions, as well as the importance of having an independent judiciary operating separately from the executive power. Furthermore, it will also allow me to observe the changes within the Mexican military justice system.

In conclusion, the relevant scholarly literature notes the importance of the historical institutionalism approach. For example, the *Routledge Handbook of Latin American Politics* (2012) dedicates a chapter specifically to analyzing the importance of institutionalism approaches and the blossoming over the past two decades of this theoretical approach to the analysis of Latin American politics (Pérez-Liñán & Castañeda Angarita, 2012). These authors also specifically point out the importance of analyzing compliance with formal rules that have not been and continue to be ignored and are also never guaranteed in Latin America. Therefore, there is room for further analysis and investigation of the importance of the *democratic rule of law* and the compliance of formal rules in Latin America (Pérez-Liñán & Castañeda Angarita, 2012).

Methodology

In the next few pages I present the methodology for my hypothesis including my rationale for process-tracing. I discuss the research question, case selection, process-tracing and operationalization, concluding with how I measured the outcome of my research work.

My research intends to explain the strength of the *democratic rule of law* in two different Latin American countries, Uruguay and Mexico. Therefore, this investigation now turns to the operationalization of these hypotheses through process-tracing, more specifically through *smoking gun tests* as defined by James Mahoney (2012) in *The Logic of Process Tracing Tests in the Social Sciences*.

Process-tracing

The methodology that I use for my thesis is process-tracing (Falletti, 2013; George and Bennett, 2004; Mahoney, 2012). This methodology is selected because I use a historical institutionalism approach to the study of politics. The reason for this choice is that I am analyzing how judicial institutions were created, how they have evolved and how they have affected or constricted actors' actions within these institutions; therefore this approach is one of the most pertinent for judicial institutional analysis. The importance of process-tracing is that it is in fact related to a historical analysis of events that occurred, which will aid the understanding of the causality between X and Y. Process-tracing is therefore appropriate for my thesis and is used to examine histories, archival documents, interview transcripts, and other sources through which the researcher can see "whether the causal process a theory hypothesizes or implies in a case is in fact evident in the sequence and values of the intervening variables in that case" (George & Bennett, 2004, p. 6). Process-tracing can be used to test whether the differences between two similar cases were causal or not in producing a difference in the outcomes of the cases under study (Ibid.). Furthermore, it serves other purposes such as the intensive study of one deviant case, such as cases that fail existing theories, therefore providing significant theoretical insights (Ibid.). It is also a central tool for theory testing and theory development because it generates multiple observations within a case and also because these observations can then be linked in particular ways to developing an explanation of the case at hand (George & Bennett, 2004). Moreover, in relation to other methods, process-tracing has important implications for theory testing: a single unexpected piece of process-tracing evidence can require altering the historical interpretation and theoretical significance of a case (Ibid.). It is important to note that process-tracing is a necessary tool for theory development or hypothesis-generating because process-tracing allows the researcher to generate multiple observations of specific cases, and because all of these observations then need to be linked in specific detailed ways to create different explanations for particular cases (George & Bennett, 2004). George and Bennett (2004) argue "it is the very lack of independence among these observations that makes them a powerful tool for inference" (p. 207). Before moving into applying the importance of process-tracing to my own work, entitled *A tale of two Latin American*

countries within the same region and a very different democratic rule of law experience, it is necessary to evaluate the importance of case-selection for this thesis.

After a careful literature review, I have intended to avoid flaws in case selection such as not overstating the relationships among variables; I have also concentrated on heterogeneous causal relationships that may contribute to future research in this area (George & Bennett, 2004). Thus, it is central to explore the case of Mexico as it is a country that did not have a military dictatorship in the 1990s or 2000s; it became a democracy in 2000, yet it has not attained a strong *democratic rule of law*. Despite several major reforms in the judicial system undertaken in 1994 and 2008, it is a country that lags behind the rest of Latin America, as shown by the Rule of Law Index (see Appendix 2).

It is also critical to explore the case of Uruguay, as it is a country that did have a dictatorship from 1972 to 1985. Yet it has managed to attain a strong *democratic rule of law*. Despite minor reforms of the judicial system and having one of the least evolved systems in Latin America, it is leading in the region regarding the *democratic rule of law* according to the Rule of Law Index (see Appendix 2).

Lijphart's (1971) article entitled *Comparative Politics and the Comparative Method* is helpful in explaining and defending the position of having a focus on comparable cases. This is very important in comparing the outcome in which they are going to be dissimilar, which is the *democratic rule of law*, being stronger in Uruguay than in Mexico, indicated by the dissimilar levels of clientelism in both countries. Also Lijphart's theory-confirming and theory-infirming case studies are very important. As with the use of the cases of Mexico and Uruguay I intend to develop hypotheses that explain the difference in the *democratic rule of law* levels for both countries. Although there might be very limited evidence, as the judicial branch of the Uruguayan government appears to be the least developed in Latin America, it is one of the most effective systems, as demonstrated by Daniel M. Brinks (2008). My research might prove that Uruguay is a deviant case analysis, which might in turn help illuminate why Uruguay having the least evolved judicial power compared to other countries in Latin America still proves to be one of the most effective judicial systems in the region.

Thus, I have decided to select the *most similar cases' research design* using Mexico and Uruguay for my thesis (George and Bennett, 2004). The reason for this selection is that these two cases differ in the dependent variable and although they differ in the independent

variables as well, they both also differ extremely in one main independent variable, namely the existence and presence of the *fuero militar* in Mexico and restriction of it in Uruguay (Ibid.). The selection of these cases is based on data collected from the Latinobarómetro and the Rule of Law Index where Mexico shows an extremely weak rule of law value and Uruguay an extremely strong rule of law value. Both of these cases are analyzed in order to generate a hypothesis about what has caused such extreme values in the rule of law scale for both cases.

Operationalization

In order to address the aforementioned hypotheses, the logic of process-tracing testing involves my making a strong claim on the basis that A and B altogether are necessary for Y (*democratic rule of law*) using cross-case evidence (Mahoney, 2012). Given this process, I intend to prove that A (path-dependence of clientelism) and B (historical persistence or absence of *fuero militar*) are necessary for Y; in a counterfactual absence of either A or B, Y would be eliminated (Ibid.).

The structure of my argument is thus as follows:

A →

B → → → Y

Where:

A= path-dependence of clientelism

B= historical persistence or absence of *fuero militar*

Y= strength of the *democratic rule of law*

→= a hypothesized necessary condition relationship (Mahoney, 2012)

This section now moves into the explanation and importance of *smoking gun tests* in process-tracing and path-dependence for both cases under study.

Measurement

A *smoking gun test* has been selected because after an extensive literature review, historical data show that causes A and B aforementioned are necessary in order to observe the outcome being analyzed, a stronger *democratic rule of law* in Uruguay and a weaker *democratic rule of law* in Mexico (Mahoney, 2012). A *smoking gun test* is a method that is

used to construe the existence of historical facts that a researcher cannot always directly observe. Therefore, if the case being analyzed passes the test, it is then sufficient to validate a hypothesis. More specifically, I built a hypothesis where there is an observed cause or outcome that took place, but by passing a *smoking gun test*, I can confirm the existence of the causes and the outcomes that might have not been observed or might not be obvious at first sight (Mahoney, 2012). Mahoney (2012) argues “the test is used to explore whether a case experienced a particular cause or outcome typically inquires about auxiliary traces for which the cause or outcome is a necessary condition” (p. 576). The causes analyzed here together with the outcome have left subsequent traces that are not always evident in the analytic scope of the researcher. If I manage to demonstrate or prove that these traces are present, I can safely infer that the causes and the outcome took place (Mahoney, 2012). My work develops a hypothesis around the fact that smoking gun evidence is gathered through the close analysis of sequence and temporality that determines the proximity of events and observes if events are closely connected or not in evaluating the importance of each event and the relationships with the dependent variable. For example, the fact that the military in Uruguay saw the loss of power in sight, led them to decide to agree on a pact with the civilian government in 1985 to bring democracy back to the country. This is not evident at first sight, but by analyzing the referendum proposed by the Uruguayan military to change the Constitution in 1980, it can be seen that this action left traces that put in evidence the loss of power in sight for the military as the referendum was rejected by Uruguayan society. Therefore, it becomes clearer that this trace left behind by the decision of Uruguayan society affected the cause, direction and decision of the Uruguayan military to agree to a pact with the civilian government. Without these traces, the cause of the Uruguayan civil-military pact cannot be studied, and it is not evident at first sight. In conclusion, using a *smoking gun test* will not only allow me to properly measure the variables presented above, but at the same time it is a contribution to the literature as this particular test has not been applied to the cases of Uruguay and Mexico in respect to the *democratic rule of law*.

Chapter Two Part One: Mexico – The Nature of Mexico’s Civil-Military Relations Explained Through Path-Dependence

Introduction

The *democratic rule of law* in Mexico has been detrimental. In order to fully answer the research question of *why the rule of law is stronger in Uruguay than in Mexico*, the nature of civil-military relations has to be looked at individually. Thus, the case of Mexico is examined thoroughly throughout this chapter. I aim to elucidate key areas where civil-military relations have been under stress causing great occlusion in the consolidation of the *democratic rule of law* in Mexico. In short, the civil-military relations in Mexico suffer from a historical delay and institutional malfunctioning that did not advance with the onset of democracy in the year 2000. Furthermore, it is imperative to analyze this relation, as the gap between civil and military justice is directly a major weakness in strengthening the *democratic rule of law* in Mexico. The chapter is organized in the following way: the first section analyzes the antecedent conditions that set the path for the particular evolution of civil-military relations in Mexico. The second section deals with the inexistent critical juncture that did not take place during the 1946 civil-military pact. The third section evaluates the historical existence and persistence of the *fuero militar* as part of the Mexican political system. Fourth, this chapter examines how the active persistence of the *Military Code of Justice* directly affects the *democratic rule of law* in this country. Finally, this chapter observes the reactive sequences, in particular, the civil-military repercussions for a constant presence of a weak *democratic rule of law* in Mexico.

Antecedent Conditions: 1917 – 1946 civil-military relations

In order to understand the nature of the civil-military relations in Mexico, it is central to do a careful evaluation of the events that led the military to hand over some of their political power to the civil government at the time, and to evaluate how the Mexican pact of 1946 between the military and the civil government was achieved. Therefore, it is necessary to conduct a brief recount of the historical events in the next section in order to understand the historical legacies and traces that have been left throughout Mexican history that have continued to intercede in the improvement of the *democratic rule of law*.

The military's direct political governing power decreased after the Mexican Revolution ended in 1917 and kept decreasing considerably until 1946 when the first civilian president, Miguel Alemán Valdés, was finally elected. After the last phase of the Mexican Revolution that ended in 1917, there was a period of military government that took place from 1917 to 1946, and ever since 1946 there have been civil governments in Mexico (Medina, 1977). However, even though the political governing formal direct power of the Mexican Armed Forces decreased after the pact was signed in 1946, the military kept the *fuero militar* and the *Military Code of Justice* that only served to reinforce a certain legitimacy and authority of military power over the civil power. As Calleros (2009) explains, "[t]he main problem observable in Latin American military courts is that the military is unduly judge and party when dealing with charges of human rights abuses committed by their personnel" (p. 127). Therefore, the direct political military power decreased, but in reality it has kept its power; it has only changed form through which the military applies and enforces this power. As Calleros (2009) argues, "the judicial power has no oversight over the military court system at all." (p. 131).

Historically, there are many international as well as national factors that need to be taken into account that marked the civil-military relations in Mexico and therefore explain the absence of a critical juncture in 1946 for Mexico. In the next section, I analyze the evolution of the military institution in itself, the international factors that affected the changes, as well as the economic and political national factors that led into the 1946 civil-military pact. All of this is done in order to fully understand the change in military political power and the limited subordination to the civil government.

After the Mexican Revolution ended in 1917, the military power started to decline in comparison to the period during the Mexican Revolution (1910-1917). Also, this decline in power accelerated after the onset of World War Two. On the one hand, the first reason to explain this historical change is the fact that with the onset of World War 2, there was international pressure on the Mexican Government to professionalize the Mexican Armed Forces, thus forcing the Mexican Government to modify the Mexican military institution (Medina, 1977; Ai Camp, 2005). Secondly, there were internal institutional changes within the Mexican Military. For example, during the presidency of Plutarco Elías Calles (1924-1928), the *Colegio Militar* (Military College) was reconstituted and reopened ready to create

a new generation of “professionally trained officers” (Ai Camp, 2005, p. 19). Thirdly, the fact that Mexico, contrary to other Latin American countries such as Uruguay, was not looking into the strengthening of democracy, rather it was looking towards institutionalizing a revolutionary regime through the PRI. Thus, this decision had a cost in the consolidation of the *democratic rule of law* later in Mexican history, especially after the regime change that took place in the year 2000.

In the international sphere, the payment of the Mexican debt to the United States government in 1942 and the presence of World War 2, together they created an international space for Mexicans that was non-existent before. This meant that Mexico had to look inwards, but also outwards to safeguard their international reputation, and Mexico had to deal with the historical pressure coming from the United States that demanded a stable civil government that did not exist at this point in history (Ai Camp, 2005; Medina, 1977). On the other hand, going forward to the 1946 elections, the politico-military figures were a minority due to the fact that they did not have the qualifications required for the new challenges that Mexico faced, politically and economically.

Politically, the appearance of political parties, syndicates, confederations of commerce and industry, among others, such as the bankers’ association, were all considered pressure and interest groups, and they all demanded more of a real political presence with diverse ideas and not merely a military charisma which is what had dominated until the elections of 1946 (Medina, 1977). Likewise, in the presidential period from 1940 to 1946, the number of strictly military members that were going to participate in the next election, which was going to be held in 1946, were already in a significant decline. There were five civil candidates presented as well as four military candidates that did not enjoy higher political merits than their civil counterparts (Medina, 1977). The significance of this is that even though some of the candidates were part and parcel of the military ranks, most of them had already participated in civil positions before the elections, such as governors and senators. For example, the military educated candidate, Enrique Calderón, had already taken part as a diplomat, where he gained diplomatic experience having served as consul general in San Francisco (Medina, 1977). All in all, even though there were four military candidates that presented themselves for the 1946 presidential elections, they were academically, politically, and economically more prepared than the military counterparts that were ruling

the country until this period. Additionally, from 1940 to 1946 under the presidency of Manuel Ávila Camacho, the Revolutionary Mexican Party (PRM in Spanish) was further separated from the army (Garmendia, 1989). Conversely, hand-in-hand with the aforementioned changes, there was the transformation of what used to be the National Revolutionary Party into a civilian party, the PRI that would end up governing Mexico until the year 2000 (Schatz, 2011; Gillingham, 2012; Levy and Bruhn, 2006; Ai Camp, 2005; Di Tella, 2005; Anaya, 2009). The success of the PRI party has been analyzed elsewhere (Ai Camp, 2005; Levy and Bruhn, 2006); however, what is important to mention is that Mexico was not looking into a consolidation of a democratic regime, rather it was looking into the institutionalization of the revolution. Despite the fact that the military was not similar to the one before 1946 due to the different national and international necessities the country faced at this time, it does not mean that the military power disappeared after the pact was signed in 1946. On the contrary, after signing the pact in 1946, the military reinforced the *Military Code of Justice* protected under the *fuero militar* that gave the military legitimacy and authority of military power over the civil one. Finally, the political problems were not in themselves the only issue, as Mexico was also facing economic problems that required serious attention.

Economically, there were changes needed inside the country as almost 35 years had already passed since the Mexican Revolution had finished and Mexico was facing a deep economic crisis. Added to this, is the fact that there was an internal urge to professionalize the army to be more capable of coping with newer demands (Medina, 1977; Ai Camp, 2005). Hence, during the years 1917 to 1946, the *caudillo military* figures were in decline, as the population was having other problems such as the onset of World War 2 and a large economic backlash that required the knowledge of economic, as well as political solutions, instead of military ones (Ai Camp, 2005; Levy and Bruhn, 2006; Medina, 1977). Overall then, the Mexican Revolution had left an image of hardships and internal war. The Mexican citizens after 1917 wanted more tranquility and stability, politically and economically. Hence, there existed a general will or “desire for a lasting peace” (Ai Camp, 2005, p. 18). At this point in history, Miguel Alemán Valdés, before being president elect in 1946, said while being the secretary of government, “the politico-military went into a second-in-command position and left the political-civil power, with increased support in place” (as cited in

Bardallo Bandera, 2012, p. 150). However true this is, the part that is missing in this explanation is the fact that the military, after leaving the direct political power, managed by keeping the *Military Code of Justice* protected under the *fuero militar* to impose a legitimacy and authority of military power over the civil one. This is because the military kept the military courts, which Calleros (2009) has argued to be “inconsistent with a democratic rule of law [...]” (p. 127). Calleros (2009) argues that in order for the military to be consistent with the rule of law “they should have jurisdiction over military personnel only, while on duty or in wartime for violations of military regulations” (p. 127). Most importantly, military courts should never have to judge or interrogate civilians, because they will most likely violate their legal rights (Calleros, 2009). All in all, Mexico at the turn of the 1940s was at a historical point where the country was experiencing benefits from having a larger participation in the international sphere; nevertheless the military power was still persistent. Each of the limitations aforementioned have been analyzed and emphasized separately by various specialists, thus pointing out the diversity of problems that existed all at the same time during the period between 1917 to 1946 for the Mexican society (Ai Camp, 2005; Benítez Manaut, 2010; Díez, 2012; Garmendia, 1989; and Medina, 1977).

In conclusion, the decline in direct military political power at the presidential level in Mexico did not occur over night, but it was rather a process that indirectly began after the Mexican Revolution ended in 1917 and continued in decline until the 1940s when it was ousted by a civilian president, Miguel Alemán Valdés, in 1946. However, this decline in direct military power was not accompanied by the elimination or the control of the *fuero militar*. Thus, Miguel Alemán Valdés was the first Mexican civil president after the Mexican Revolution finished to govern the country from 1946 to 1952 (Medina, 1977). In 1946, at the time the pact was agreed upon, stability was key for the Mexican Government and it seemed to be the correct decision for the future of the country for different economic and political necessities at the time. However, the decision was taken without realizing the severe long-run limitations that this would create for the establishment of a *democratic rule of law* in years to come. The consequences are not desirable for any democratic government, as the military power trumps the legitimacy and authority by enacting the *fuero militar*. Furthermore, the fact that the Mexican government was looking into the institutionalization of the Revolution instead of building a strong democratic state based on a strong *democratic*

rule of law, furthered the historical impasse in the implementation of the *democratic rule of law* for that country.

The Absence of a Critical Juncture: The 1946 Civil-Military Pact

The establishment of a complete and coherent *democratic rule of law* includes the elimination of regulations that discriminate against women and indigenous groups, regulations that do not exempt the elites from the law, that do not deprive of human and civil rights to the citizens of a country, as well as one of the most important pillars that is to grant equal and effective access for everyone in society to a fair and just trial in court (O'Donnell, 2004). Furthermore, without the presence of an independent judiciary the equality and dignity of all citizens is not present. Therefore, a key factor in building a strong *democratic rule of law* is not only the aforementioned pillars, but also the existence of an independent judiciary that can hold citizens accountable to the law, and where no one is above the law (O'Donnell, 2004). For the purpose of this thesis and due to the scope of this work, I analyze how the civil-military relations, more specifically, how the existence and persistence of the *fuero militar* trumps the basic tenets of the *democratic rule of law*. Also, I look at how limited judicial independence severely affects the civil-military relations and the *democratic rule of law*. In 1946, the creation of a one-party government and one-party state by means of subordinating the military seemed an effective way forward; historically, however, this decision became a detrimental problem for Mexico's *democratic rule of law* and civil-military relations. The limitations created by the *fuero militar* are several, and traces have been left that have helped the institution to reproduce itself historically without accounting for impunity and human rights violations. This goes exactly in line with what Mahoney (2001) emphasized as "once a particular option is selected, it becomes progressively more difficult to return to the initial point when multiple alternatives were still available" (p. 113). This is exactly what happened with the civil-military pact of 1946 and the evolution of the detrimental state of the *democratic rule of law* in Mexico.

The civil-military pact concluded in 1946 with the arrival of the first civil president, Miguel Alemán Valdés, who governed the country from 1946 to 1952, marking what is historically understood in the academic literature as the new beginning of civil-military relations in Mexico (Ai Camp, 2005; Benítez Manaut, 2010; Díez, 2012; Garmendia, 1989;

Medina, 1977). At the time, the arrival of Miguel Alemán Valdés sought to represent “a new kind of professional politician,” away from the military figures seen until this point in history and an upcoming promise of a different presidency with a civilian in power (Ai Camp, 2005). At the time, the pact seemed to be a positive solution envisioned nationally by the upcoming civil-government, as well as internationally, by other countries such as the United States. It was a way of directly removing the military from the political power and establishing a new political order with hopes of economic success. However, in the years after 1946, this decision marked what could be observed today as a detrimental blockage to the full establishment of a complete and coherent *democratic rule of law*. This is due to the fact that in 1946 when the pact was signed, what happened in reality was that the military kept the *Military Code of Justice* protected under the *fuero militar* that is protected under the Mexican Constitution and in exchange left the direct political power to the civil government. Thus, Calleros (2009) argues that military tribunals are inconsistent with a *democratic rule of law* “because the protections of due process established in ordinary court systems for producing fair trials are not as valid there” (p. 127). Furthermore, another limitation is the fact that inside military courts, “the military is unduly judge and party when dealing with charges of human rights abuses committed by their personnel” (p. 127). For example, in Mexico “[c]ivilians appear from time to time in military courts, not to be tried, but only as witnesses” (Calleros, 2009, p. 131). Therefore, this phenomenon is a façade, where at the surface level there is an exchange of military power at the presidential level for a civil one. However, on the other hand, the military kept their *fuero militar* as well as their institutional power outside the political sphere, therefore giving institutional legitimacy and authority of the military power over the civil one. In fact, this shows that there is no critical juncture, as there was not a major change undertaken in the way justice is applied to the military. With the *fuero militar* for the military, the *democratic rule of law* becomes inexistent, as the access to courts and access to a fair and just trial that is one of the key pillars that builds a strong *democratic rule of law* is inexistent. For example, Calleros (2009) argues that in certain special cases, “individuals accused of having committed a crime are interrogated in the ‘Campo Militar Número Uno’ (Military Garrison Number One) without the presence of any lawyers or witnesses” (as cited in Calleros, 2009, p. 131). Unlike other countries such as Uruguay, where there is a clear change in the way civil-military relations are undertaken,

Mexico did not experience this. Thus, Mexico has not achieved a critical juncture where a clear change in civil-military relation occurs. It has therefore gone down through a path-dependence relation of status quo.

The inexistence of a critical juncture when the pact was signed is detrimental to the establishment of a strong democratic rule of law. The antecedent events analyzed above leading up to the pact, together with the political and economic problems that the country faced at the time, helped give the military a legitimacy and authority of military power over civil ones, together with institutional independence and autonomy rather than the envisioned decision of subordination. More specifically, the historical factors that could have defined available options to change the status quo of the *fuero militar* were absent in Mexico. Therefore, in 1946, Mexico did not experience a critical juncture where there was a radical change of the *fuero militar*. For example, the absence of subordination to the civil executive power can be better exemplified by the fact that Mexico has a significant absence of civilians within the Ministries of the Navy and Defense as well as the Armed Forces, being completely ungoverned by a civilian minister of defense (Díez, 2012). Certain historical traces such as the civilian exchange of larger autonomy given to the military for more civil power has remained unchanged. Thus, the decision to follow the status quo of the *fuero militar* has caused an important impasse within Mexico's democratic stage from the year 2000 onwards, where the military is still protected by the *fuero militar*. This is a two-faced problem, as the military is not accountable to Mexican society or the Mexican government (Ai Camp, 2005). Mexico, unlike other governments in Latin America, such as that of Uruguay, has not managed to subordinate the military to decrease their autonomy and achieve democratic control over the Armed Forces (Díez, 2012). Thus, O'Donnell (2004), who argues that the *democratic rule of law* "ensures political rights, civil liberties, and mechanisms of accountability which in turn affirm the political equality of all citizens and constrain potential abuses of state power" (p. 32). With the presence of the *fuero militar*, the persistence of it affects the fact that a "vigorous rule of law, defended by an independent judiciary, rights are not safe and the equality and dignity of all citizens are at risk" (Ibid). With the existence of the *fuero militar*, the military is above civil control and directly affects the legitimacy and power of the civil government because it cannot try the military when they commit a violation of human rights. For example, anti-guerrilla activities since 1994 in

Mexico, such as those against the EZLN (Ejército Zapatista de Liberación Nacional) in Chiapas, among others, “have included the detention and interrogation of individuals in military garrisons and military facilities for several days before being turned over the General Prosecutor office and the civilian court system” (Calleros, 2009, p. 131). Thus, this directly violates civil rights, fundamental rights and rights to a fair trial. Clearly, the Mexican Government that envisioned this civil-military change in 1946 was concentrated in the short-term goals of reducing military power and bringing political and economic stability to Mexico. However, the institution reproduced itself in the long-term showing limitations that were part and parcel of the pact that was signed in 1946.

In conclusion, although the pact can be interpreted in itself as the critical juncture where two different decisions could have been taken in 1946, this was not the case. In fact, what happened is that the institution reproduced itself without legal limitations, as the *Military Code of Justice* and the *fuero militar* were and are still present and persistent in Mexico. This is not a critical juncture as in reality only one option was provided and only one option was taken, which was to create and reinforce a justice system benefitting the military, away from the civil one and inflicting a legitimacy and authority of military powers over civil ones. However, the pact in itself does not give an exhaustive explanation of the limitations of Mexico’s deficiency in regards to a complete and coherent *democratic rule of law*. The existence and persistence of this institutional production and reproduction has blocked the establishment and existence of a full *democratic rule of law* for Mexico that includes the elimination of regulations that discriminate against women and indigenous groups, the elimination of regulations that exempt the elites from the law, elimination of regulations that deprive human and civil rights to the citizens of a country, as well as the implementation of one of the most important pillars that is to grant equal and effective access for everyone in society to a fair and just trial in court (O’Donnell, 2004).

Structural Existence and Persistence: Fuero Militar

One of the most important features of the path-dependence approach is the fact that once a choice has been made, it becomes really difficult to reverse these changes back to that original point of decision (Lecours, 2005; and Mahoney, 2001). Once the decision has been taken, “institutions will persist over time” (as cited in Mahoney, 2001, p. 114). Even if

certain actors want to change those decisions, they will persist “provided that a powerful elite that benefits from the existing arrangement has sufficient strength to resist its transformation” (Mahoney, 2001, p. 114). This is exactly what happens in Mexico. The importance of the existence and persistence of the *fuero militar* is that without the removal of it, the military will never be accountable either to civilians or the government. Hence, without the removal of the *fuero militar*, the *democratic rule of law* is non-existent and cannot be implemented because the very basic tenets of it being equal access to justice for everyone, no judicial exceptions including the elites, as well as the respect for human and civil rights are non-existent. A specific analysis of what the *fuero militar* is and what it entails is therefore necessary.

The *fuero militar* is an unaccountability procedure that has been historically present since the Spaniards conquered the Americas (Benítez Manaut, 2010; Calleros, 2009; Díez, 2012; Ungar, 2002). This Spaniard institutional trace blurs the line between the military and civilian justice, together with the fact that it creates a parallel justice system with separate laws and legal functions. Historically, the military inherited this system from the new independent republics that were formed with this legal tradition (Benítez Manaut, 2010; Calleros, 2009; Díez, 2012; Ungar, 2002). Specifically, the *fuero militar* is defined as “constitutional provisions that allow the military to be controlled by a separate body of laws” (Díez, 2012, p. 274). Other authors have explained it as a privilege that the military has to be “unaccountable to the judicial branch” (Calleros, 2009, p. 114). Furthermore, civil courts are placed below military courts that are in fact located above all (Calleros, 2009). In sum, the existence of the *fuero militar* together with the *Military Code of Justice* serves to reinforce the presence of a separate military judicial system parallel and unaccountable to the civilian one. The *fuero militar* has therefore been interfering historically with the civil justice system, and it has not been changed in Mexico’s history.

Historically, Mexico had a long period of military presence in power as it basically saw “the arrival of eighteen presidents through military coups” between 1821 and 1934 (Benítez Manaut, 2010; Díez, 2012). Furthermore, since Mexico became an independent country, it has had twenty-nine civilian governments as well as thirty-nine military ones (Benítez Manaut, 2010). Historically, then, Mexico has had more military governments than it has had civilian ones. This historical evidence serves to reinforce the imminent fact that

Mexico has had a long history of military presence in power or as an active institution under civil governments. Thus, this fact demonstrates that democratic elected leaders have not dominated historically, therefore making it harder to establish a full, strong *democratic rule of law*.

Certain specialists point to the fact that Mexico since the 1930's has been the "only country in the region not to have experienced a military coup" (Díez, 2012, p. 266). This is in part due to what has been discussed earlier that after the end of the Mexican Revolution, the military power started to decrease symbolically as the civil-military relation saw the coming of a "political pact" between the military and the civil government (Díez, 2012, p. 266). However, Mexico was looking into the institutionalization of the Revolution after 1917, not in building a strong democratic state. The nature of this revolutionary regime is something very important for why the rule of law was not promoted in Mexico. More specifically, Mexico was not looking into building a democratic country, but rather to leave the revolution institutionalized for years to come. The importance of this is that the historical impasse of not having built a strong democratic state caused larger historical limitations in the implementation of a strong *democratic rule of law* for Mexico after 1946. In addition to this, the civil-military relations in Mexico might not have caused specifically a coup d'état since the 1930s and a dictatorship might not have taken place; however the *democratic rule of law* is not defined in terms of number of coups but rather encompasses a large number of factors that builds a country (O'Donnell, 2004). There has to be a legal system in a specific country that is in itself democratic. By democratic it means that the legal system should protect the freedoms, political rights and basic guarantees of all individuals, a system that upholds and protects civil rights as well as the creation of accountability and responsibility, where everybody is subject to appropriate legal sanctions through legally established controls when committing unlawful acts such as crimes (O'Donnell, 2004, p. 36). Therefore, the fact that Mexico has not experienced a coup d'état does not mean that it has not seen a constant violation of human rights from the military, in particular due to the War on Drugs that took place from 2006 to 2012 that is further analyzed below (Díez, 2012). In all of these instances of human rights violations, it is usually impunity and extra-legal solutions that are part and parcel of the military justice system in Mexico. Therefore, the inexistence of a dictatorship has acted as a disguise, where the military remains under a parallel justice

system without accountability, without respecting human rights and without providing equal access to justice for everyone in society. In Mexico's particular case, the structural persistence of the *fuero militar* has in fact continued to allow the Mexican military to administer a justice system in several different areas (Díez, 2012; Schatz, 2011). For example, "[f]rom 1999 until 2004 the National Human Rights Commission received 1,069 complaints of abuses perpetrated by the armed forces, and the commission issued [only] nine recommendations" (Díez, 2012, p. 273). This is because the National Human Rights Commission does not have access to any of the Armed Forces' members that have committed these abuses. Additionally, among other major problems in Mexico has been the enormous autonomy given to the military through their protection under the *Military Code of Justice*.

In conclusion, the Mexican military from 1946 until today has enjoyed enormous autonomy making it very difficult for the civil governments to bring the Mexican military under full civil control especially when it involves the judiciary. From a historical point of view, this poses a direct threat to the *democratic rule of law*, as the democratic transition experience in Mexico that took place in the year 2000 was not accompanied by a very much-needed civil-military reform. In the words of an expert in the subject matter, Jorge Díez (2012), "the transition to democratic rule in Mexico has not been accompanied by a fundamental reform to civil-military relations" (p. 266). Díez (2012) also highlights the fact that between the civil and military power "their most fundamental characteristics have remained intact" (Díez, 2012, p. 266). Due to the fact that civil-military relations have remained unchanged it has been and will be extremely difficult to bring the military to account for their constant violations of human rights.

Structural Existence and Persistence: The Military Code of Justice

The *fuero militar* analyzed in the previous section is very important to understand as it points out the limitations that the military justice system has historically enjoyed in Mexico. However, as important as the *fuero militar*, is an analysis of the *Military Code of Justice* that is protected under the *fuero militar*. In this next section, the *Military Code of Justice* that is protected by the *fuero militar* is analyzed.

The Military Code of Justice is further protected under the Mexican Constitution under Article 13, which stipulates that:

The power of court martial for crimes and actions against military discipline exists, but in no case will military tribunals extend their jurisdiction to persons who do not belong to the armed forces. When a crime or action against military discipline has affected a civilian, the corresponding civil authority will be notified⁶.

This is what the *Military Code of Justice* stipulates; however, Calleros (2009) argues that “the judicial power has no oversight over the military court system at all” (p. 131). Even when certain cases have been notified to the civil authority, the actions taken are far from fair and just for the affected civilian. For example, from 2006 to 2010, there have been 4,944 complaints for violations of human rights; among these were tortures, forced disappearances, and murders (as cited in Carrasco Araizaga, 2011). As well, out of these 4,944 complaints there had only been 72 recommendations emitted, but no actions taken (Ibid.). In addition, the mere presence and existence of the *Military Code of Justice* shows the clear civil institutional limitation over the Mexican Armed Forces. When there are crimes committed against civilians from the part of the military, they are judged and trialed within close doors in the military compound. The civilian cannot attend the judgment nor be judged alongside the soldier that violated his rights. Also, once the crime or action has been committed and the Armed Forces notify the civil authority, they usually take a long time in doing this (Schatz, 2011; “Human Rights Watch”, 2009). Moreover, article 13 stipulates that the corresponding civil authority will be notified in case that a civilian has been affected. However, it has been constantly argued by experts that civil-military relations in Mexico in the pre-transition period as well as in the post-transition period have been marked by the incapacity of the judiciary to bring the military to justice (Calleros, 2009). More specifically, Calleros (2009) argues, “autonomy of the military from the civilian rule of law creates an oasis of impunity” (p. 134). For example, as stipulated by Calleros (2009), in Latin

⁶ Don Mabry, Historical text archive, Mexican Constitution as of 2009. Trans. Ron Pamachena. January 1, 2009. <http://historicaltextarchive.com/sections.php?action=read&artid=93> (accessed April 4, 2013).

American military courts there is a double role being played by judges, one of unduly judging and a second one of party when human rights violations have been committed by the military. Even within the democratic political transition that Mexico experienced in the year 2000, this limited reform has given the Mexican military and the military institution overall a large degree of autonomy both politically and institutionally (Díez, 2012). This can be exemplified by the Military having vetoed the *Military Code of Justice* reform from actors outside the military system as well as the blockage of access to information about certain misdeeds from the part of the military in the student repressions during the events of 1968, including the War on Drugs that took place from 2006 to 2012 (Benítez Manaut, 2010). Among the institutional limitations that force the civil authority outside the military jurisdiction is the fact that under the *Military Code of Justice*, the “military authorities [are allowed] to punish soldiers for not obeying an order, irrespective of whether such punishment violates a civil law or the constitution” (Díez, 2012, p. 275). All of the examples provided above point to the fact that the jurisdiction of civilian courts into military affairs is extremely limited in Mexico. Also, it is extremely difficult to bring the military to account for violations of human rights. This is not the only limitation, as the military tribunals are also problematic and have not provided transparent processes.

Furthermore, military tribunals where the soldiers are trialed are not independent, as specialist on the matter, Jorge Díez (2012), argues “as judges and the military attorney general are appointed directly by the ministers of defense and the navy and can be removed at any time” (p. 275). Thus, if the judgment is not the one that superiors expected, the judges could be removed at any time; therefore, they will not follow certain specific cases of violations of human rights to protect their jobs. Thus, all of this directly affects the *democratic rule of law*, as Calleros (2009) argues “[military tribunals] are inconsistent with a *democratic rule of law*, because the protections of due process established in ordinary court systems for producing fair trials are not as valid here [in the military tribunals]” (p. 127). In order to be able to forge a strong *democratic rule of law*, the military tribunals should have “jurisdiction over military personnel only, while on duty or in wartime for violations of military regulations” (Calleros, 2009, p. 127). Even when certain cases are trialed, they all take place within the hierarchy of the security forces. An example of the Inter-American Commission of Human Rights 1999 Report on the Situation of Human Rights in Colombia

that can be applied to the case of Mexico, as the institution operates in the same way, argues that “the members of the court martial respond hierarchically to their superiors” (para. 25). The IACHR therefore argued that “it is thus difficult, if not impossible, for these individuals to become independent and impartial judges free from the influence of their commanders or other superiors” (para. 25). Although this represents the reality in Colombia, the same could be applied to Mexico as the *fuero militar* and the *Military Code of Justice* are applied in the same manner in this country. Therefore, several authors have highlighted the military institutional limitation in particular with reference to equality before the law, together with access and protection of human rights under the law (Ai Camp, 2005; Benítez Manaut, 2010; Calleros, 2009; Díez, 2012). All of the aforementioned authors emphasized the clear limitations of human rights, which points directly to the larger void in the existence of a strong *democratic rule of law*. This void and the constant impunity can be clearly seen through the constant Human Rights violations that go unpunished or unobserved in Mexico.

In conclusion, the elimination of the *Military Code of Justice*, or at least the reformulation of this Code to be under the civil government control is central. Without the control of this Code, together with the existence and persistence of this Code until this date, the military is allowed to operate in a parallel justice system, affecting directly the key pillars of a strong *democratic rule of law*.

Reactive Sequences: Civil-Military Repercussions

One particular fact about the Mexican military that I have tried to bring to the forefront throughout this thesis is the fact that even though the military has been modernized since the aftermath of the Mexican Revolution in 1917, and to some extent professionalized, it has not yet been depoliticized. The active role of the Mexican Armed Forces is analyzed in the next section together with an extensive explanation of the military justice system limitations seen through the violations of human rights that go unpunished. All of these have been part and parcel of the civil-military history of Mexico, as has been pointed out by several experts in the matter (Cruz et al., 2012; Eisenstadt & Yelle, 2012; Calleros, 2009; Schatz, 2011). There are three inter-related historical problems that need to be studied individually because of their repercussions on civil-military relations in democratic Mexico. The first problem is the inefficiency of other law enforcement agencies to secure the country

from drug-trafficking operations and drug cartels. The second problem is the specific role of the military and the evolution of these roles in regards to the challenges that certain national problems have posed to Mexico historically. The third one is the timing and sequencing of the War on Drugs and the repercussion that this had for civil-military relations.

Due to a constant failure of the police in controlling drug-trafficking and drug cartels as well as the presence of large levels of corruption within the police forces, the military is usually the chosen institution to provide control in the country. The role of the Mexican military against drug-trafficking operations and drug cartels cannot be fully analyzed without previously performing a thorough analysis of certain major failures of other law enforcement agencies to secure the country. During the first democratic presidential period of Vicente Fox Quesada from 2000 to 2006, delinquency, crime, impunity and insecurity were at the centre-stage of national politics (Cruz et al., 2012; Cossío Díaz, 2010; Díez, 2008; Eisenstadt & Yelle, 2012; Smith, 2012). More specifically, there were homicides that would “account for between 20 and 30 percent of total violent deaths each year” (Cruz et al., 2012, p. 325). Furthermore, federal jurisdiction figures indicate that drug-trafficking crimes increased from “75,000 crimes per year at the end of the 1990s, rising to almost 90,000 in 2005” (Cruz et al., 2012, p. 325). However, Vicente Fox Quesada was unable to correct these problems at a macro scale. Therefore at the end of his presidential period, Eduardo Medina Mora, who was the then Minister of Public Security, argued that there was not a single zone in the country free from organized crime (Benítez Manaut, 2010). Likewise, Medina Mora assured that “the business was on the order of \$8.5 billion, approximately 1% of the nation’s gross domestic product” (Benítez Manaut, 2010, p. 176). Moreover, the Mexican Military has been further involved in national security missions due to the failure of the 1,661 separate police forces that exist nationally, which have been unable to cope with drug-related challenges. During the democratic years of Mexico, “in 2001, 7.61 percent of judicial police had criminal proceedings against them,” and in 2003 it went down to only 6.56 percent (Benítez Manaut, 2010, p. 175). Although the numbers improved, these numbers depict the corruption, impunity and unaccountability within police institutions in Mexico. The problem of insecurity in Mexico has been so damaging that at the beginning of 2006, there was a survey made by the Latin American Public Opinion Project based in Vanderbilt University that posed a question in reference to crime, delinquency, and insecurity in Mexico as a possible

threat to the future of the country⁷. The results demonstrated that 64.9% of respondents saw crime as a threat to the well-being of Mexico and its future. Added to the aforementioned security problems of crime, impunity, insecurity, and corruption within the police institutions in Mexico, there is a larger and more severe problem of drug-trafficking and drug cartels that has been much more severe and important in the Mexican civil-military relations.

The role of the Mexican Military has mainly been in DN2 and DN3 operations. The DN2 operations stand for “to protect the internal security of the country” (Benítez Manaut, 2010, p. 165). On the contrary, DN3 operations have been related to “defense against natural disasters” (Ibid). Although the Mexican military has historically participated in DN3 operations such as the rescue of people during the 1968 earthquake, it has been the role taken as DN2 that has progressively worsened the civil-military relations. This is due to the fact that there are certain violations of human rights that go unpunished or unresolved, therefore creating serious impunity in Mexico. For example, Calleros (2009) highlights the anti-guerrilla activities since 1994 in Mexico, where violations of human rights have “included the detention and interrogation of individuals in military garrisons and military facilities for several days before being turned over to the General Prosecutor office and the civilian court system” (p. 131). Additionally, the problems increased as the Mexican military has always acted under the *due obedience* mandate where the military will follow an order even though that order might signify a violation of the Constitution and a violation of a Civil Law (Benítez Manaut, 2010). For example, Calleros (2009) points to the fact that “several extrajudicial killings against members of social organizations in Guerrero have been constantly denounced” (p. 131). The military impunity creates a larger legal constraint as the legal punishment and accountability of officers is crucial to the larger positive civil-military relations (Carrasco Araizaga, 2010; Carrasco Araizaga, 2011). The war on drug trafficking commenced in the 1940s, however, the War on Drugs in itself did not become a national security problem until the 1970s, and since then it has only worsened (Ai Camp, 2005; Benítez Manaut, 2010; Díez, 2012). This has been due to the fact that after the U.S. interdiction operations in the Gulf commenced, on the one hand drugs coming from South

⁷ Americas Barometer, *Cultura política de la democracia en México: 2006* (Mexico City: Vanderbilt University and LAPOP, 2006). <http://www.vanderbilt.edu/lapop/mexico.php> (accessed April 11th, 2013).

America, especially Colombia, started passing through Mexico to the United States (Ai Camp, 2005). On the other hand, once the major drug cartels were disintegrated in the 1980s and 1990s in Colombia, the production, distribution, transportation and overall business shifted to Mexican organized crime groups that thanks to this phenomenon, started to grow in size and power at the time (Ai Camp, 2005; Garay Salamanca and Salcedo-Albarán, 2012). Drug trafficking has been much more significant than other types of illegal businesses or crimes in Mexico as it creates enormous profits. There are estimated profit levels of at least \$6 billion to \$7 billion annually, so the cartels are sometimes better equipped than other law enforcement agencies (Edmonds-Poli and Shirk, 2012). Thus, since the 1990s there has been a shift away from traditional military roles, into more active roles particularly in drug trafficking, affecting the civil-military relations even further, specifically in respect to the violation of human rights. Even during the democratic political period from Vicente Fox Quesada, just in the year 2005, there were 338,000 Federal Judicial Police members in Mexico, of which almost half were also in the military (Benítez Manaut, 2010; Lizárraga y Castellanos, 2010). Although these members belonged to the police, they had been trained and were part and parcel of the military. The main problem rests in the fact that in Mexico as Benítez Manaut (2010) argues “the strong-arm approach has always been identified with the use of the armed forces and possible violations of human rights” (p. 175). These violations of human rights usually go unpunished or unresolved as the *fuero militar* protects the military from being tried in civil courts. The military’s presence and the military’s impunity have increased exponentially since 2006. This clearly demonstrates the deterioration of civil-military relations, especially because the military is protected under the *Military Code of Justice* and the *fuero militar*, thus creating friction with civil society as they are exempted from being judged in a civil court.

In sum, military affairs are dealt with within close doors, without the supervision or the participation of any civilian, thus trumping civil justice. This poses a direct influence on the weakening of the *democratic rule of law* in Mexico, because human rights violations go unpunished and when cases are tried within the military justice system, they are usually “without the presence of any lawyers or witnesses” (Calleros, 2009, p. 131). Thus, this has a direct impact in the accountability and transparency that these cases have when dealt with inside the military justice system without being accountable to the civil system. Furthermore,

the year 2006 marked the beginning of a new presidential period, that of Jesús Felipe Calderón Hinojosa, who became Mexico's 56th president from 2006 to 2012. During this period, ex-president Calderón Hinojosa initiated the War on Drugs. In order to combat the drug cartels and drug trafficking operations in Mexico, the military was called once again to conduct national security missions. However, this time it was an internal war between the democratically elected government at the time and the drug cartels. This caused major violations of human rights and extra-judiciary power from which the military benefitted extensively; this directly demonstrates the power that the military holds in relation to the civil power. In fact, this has only served to worsen the civil-military relations in Mexico due to the constant violation of human rights that went unresolved or that did not receive a fair and just trial.

The initiation of the War on Drugs marked an important point in Mexican history, as the timing and sequencing of events after this war started have been detrimental for civil-military relations and the existence of a strong *democratic rule of law*. When the War on Drugs started in 2006, there was and still is the persistence and existence of the *fuero militar* in Mexico. Although the two aforementioned causes are central to the explanation, there is another very important reason that cannot be excluded; this is the intra-level institutional corruption existing in Mexico (Edmonds-Poli and Shirk, 2012). Intra-institutional corruption creates problems of transparency, accountability and impunity from the law (Edmonds-Poli and Shirk, 2012). As a brigade general argued, "we [Mexican military] really run the risk of increasing corruption in the military because of the amounts of money involved" (Ai Camp, 2005, p. 112). Furthermore, as a historian, professor and specialist in international drug problems for UNESCO, Luis Astorga assures that with the passage of these Mexican military elements into narco-trafficking organizations Mexico will be entering a different logic, going from drug lords to lords of war, financed by narco-trafficking money (Carrasco Araizaga, 2010). This is exactly what has been going on with the increasing strength of *Los Zetas*. Among the members of *Los Zetas* there are specialists in explosives, military intelligence, counter-insurgency training, and counter-spy training, among others such as the elimination of guerillas (Osorno, 2012). For example, among the *Los Zetas* members there is Heriberto Lazcano Lazcano alias *El Lazca o el Verdugo*, who was part of the Mexican Special Forces, together with Arturo Guzmán Decena *ZI* member of the Mexican Special

Forces as well, who became an expert in explosives, military intelligence and in counter-spy operations (Osorno, 2012). Most of *Los Zetas* members come from Mexico's Special Forces (GAFEs in Spanish), while others, although not as specialized, are being trained in military training camps designed by *Los Zetas* to resemble the official military training camps of the Mexican Special Forces (GAFEs) (Osorno, 2012). In fact, it should be emphasized that out of 31 deserters from the Mexican military operating in *Los Zetas*, among other new recruits, most of them come from the Mexican Special Forces. The first and one of the most important reasons for this, is that the agents operating within these institutions usually operate outside the range of the law without being punished. For example in an autobiography of a Mexican *sicario* (assassin), he acknowledges that when training in the United States as a policeman, "among the five elements receiving this training, it is very possible that two or three...[are] already receiving money from banks in the United States, money that comes from the narco-trafficking organizations" (Molloy and Bowden, 2011, pp. 159-160). Furthermore, this assassin used to receive \$150 pesos while training, while at the same time receiving a \$1,000 US dollars from the narco-traffickers (Molloy and Bowden, 2011, p. 160). In parallel to this problem is the existence of the *fuero militar* and *Military Code of Justice* that complicates the situation even further, because it makes it very difficult to bring the soldiers that have been part and parcel of corruption and illegal activities to justice. This goes in line with O'Donnell's (2004) argument about not having equal access to justice for everyone in society. Furthermore, it has been argued that those who can pay bribes always go unpunished. It is usually the poorest people, women, indigenous people and other marginalized groups within Mexico that do not see their rights respected, thus reinforcing the presence of a weak *democratic rule of law*. For example, since 1994 in Chiapas and Guerrero there has been a larger active presence of the military and "several extrajudicial killings against members of social organizations in Guerrero have been constantly denounced" (Calleros, 2009, p. 131). These extrajudicial killings have seen a path-dependence and have continued to be part and parcel of Mexico's reality since 1994 until today. The reality has not improved from 1994 onwards; on the contrary, it has in fact maintained a status quo situation of impunity which has only worsened. The issue becomes more complicated as another reality is the one where those who receive bribes sometimes might be themselves part of a larger chain of corruption where they might have to pay or

give a quota to a superior; therefore no one is in the end held accountable for the illegality of these actions (Edmonds-Poli & Shirk, 2012). Additionally, certain experts on the matter have argued that for the reason of the existence of a chain of corruption, “it is often difficult to build a case to implicate high-level officials for drug-related corruption” (Edmonds-Poli & Shirk, 2012, p. 265). Overall, it becomes almost impossible to uncover the corruption charges within the military ranks. None of these limitations have been improved or were taken into consideration before the War on Drugs initiated; therefore this generates impunity without accountability. The timing and sequence of events of the War on Drugs was detrimental for this, as these institutional limitations are still unreformed. Therefore, within the more than 60,000 deaths during the War on Drugs, there have not been so many cases where the military has been charged⁸. This is especially worrisome due to the fact that the military judicial system does not allow for civilian participation or civilian investigation of their operations. Thus making it even more difficult to judge or investigate the military’s actions and resolutions taken within closed doors to the civilian population. A closer look at the civil-military relations in respect to the violation of human rights in Mexico by observing concrete cases will put the explanation aforementioned into a clearer perspective.

Several human rights violations have passed inadvertently and unattended to during the War on Drugs that started in 2006. As mentioned earlier, between 2006 until 2010, there were 4,944 complaints for violations of human rights (Carrasco Araizaga, 2011) with no actions taken (Ibid.). Once again, the aforementioned *fuero militar* and *Military Code of Justice* complicates the situation even further, by making it impossible to bring the soldiers that committed the human rights violations under justice. In 2010 alone, “Mexico had, on average, at least thirty drug-related murders per day.” (Edmonds-Poli & Shirk, 2012, p. 260). In addition, Human Rights Watch, which has been one of the few non-governmental organizations following the War on Drugs in Mexico has pointed out clear violations of human rights done by the military in a report that includes 17 cases of atrocious crimes committed by the Mexican military against more than 70 victims⁹. The conclusions have

⁸ Human Rights Watch, *Impunidad Uniformada: Uso indebido de la justicia militar en México para investigar abusos cometidos durante operativos contra el narcotráfico y de seguridad pública*. Mexico, April 29, 2009. <http://www.hrw.org/en/reports/2009/04/28/impunidad-uniformada> (accessed November 1st, 2013).

⁹ Human Rights Watch, *Impunidad Uniformada: Uso indebido de la justicia militar en México para investigar abusos cometidos durante operativos contra el narcotráfico y de seguridad pública*. Mexico, April 29, 2009. <http://www.hrw.org/en/reports/2009/04/28/impunidad-uniformada> (accessed November 1st, 2013).

been detrimental as none of these military investigations have concluded in legal punitive measures. Moreover, not a single soldier has been punished for the violations of human rights committed during the War on Drugs. Instead of protecting the civilians from drug cartels and narco-traffickers, the military have themselves violated human rights that have in turn deteriorated civil-military relations as the population lost confidence in the military (Sicilia, 2011). A clear example happened on May 1st, 2007 in Michoacán, where five soldiers abused, randomly detained, beat and tortured 36 civilians and sexually raped 4 civilians (“Human Rights Watch”, 2009). Another specific example happened in Michoacán on May 1st, 2007, where there was the arbitrary detention of 36 people, among them 5 minors, who were held under custody at the military base in the 21st Military Zone for up to 84 hours (Ibid.). While being held under custody, these people were raped, their heads submerged in water, beaten, and their skin burned in order to oblige them to talk. After two years of these violations of human rights, the military courts were still investigating at the end of 2009 the responsibility of the abuses committed by soldiers that were present at that time. Similarly, on May 7th, 2007, in the military complex of the 43rd Military Zone, soldiers tortured four people, among them a minor; their tortures ranged from beating and, kickings, to covering the civilians’ heads with plastic bags (“Human Rights Watch”, 2009). These are all cases that highlight the limitations mentioned by Calleros (2009). The limitations range from impunity, to procedural problems with military courts as well as the trial of certain individuals without the presence of a lawyer or witness which are some but not all of the limitations highlighted by experts in the matter. The War on Drugs and the human rights violations committed by the military during it, serve to highlight the historical impasse of the elimination of the *fuero militar* and serve to point to the fact that the military impunity has existed and continues to exist in democratic Mexico.

In conclusion, the examples mentioned above serve to highlight and demonstrate the weak legal situation that democratic Mexico is undergoing at the present moment. It has been extremely hard to bring the military to account for their human rights violations, and this is because of their low levels of commitment to respect and follow the *democratic rule of law* and the constant violation of it in multiple cases. This points directly into the difficulties of forging a stable and lasting *democratic rule of law* that will provide human rights and the protection of them for everyone in society, despite class, age, gender, or

socioeconomic position. Additionally, there is a need to ensure that there is the existence of an independent judiciary that can overlook human rights for civilians in Mexico. Thus, the case of Mexico presents detrimental results, and it is basically with the existence of the *fuero militar* and the *Military Code of Justice* that has been so difficult to bring the military to account for their crimes and violations of human rights, which leads into a historical presence of impunity and unaccountability on the part of the military.

Chapter Two Part Two: Uruguay– The Nature of Uruguay’s Civil-Military Relations Explained Through Path-Dependence

Introduction

The *democratic rule of law* in Uruguay has been much stronger than in Mexico. The following chapter aims to highlight key areas where civil-military relations had been under stress during the Uruguayan dictatorship (1973 – 1984) therefore constricting the consolidation of the *democratic rule of law*. Furthermore, the chapter elucidates key areas in which the civil-military relations improved helping the consolidation of the *democratic rule of law* after 1985, when democracy returned. In short, civil-military relations in Uruguay suffered major reforms with the onset of the dictatorship that took place from 1973 to 1984, during which the *democratic rule of law* was eliminated completely. However, with the reinstitution of the *democratic rule of law* in 1985, Uruguay recovered the status of being an exceptional case in Latin America by being a country that provides stability, democratic institutions and a strong *democratic rule of law* to its citizens. Added to this, it is important to analyze this relation as the gap between civil and military justice caused by the presence of the *fuero militar* was a major weakness of the *democratic rule of law* before the dictatorship. However, with the reinstitution of democracy in 1985, the *fuero militar* was severely restricted, thus the civil-military gap was eliminated, improving the strength of the *democratic rule of law* overall. The following chapter is organized as follows: the first section analyzes the historical background leading up to the dictatorship and the particular devolution of civil-military relations in Uruguay. The second section deals with the critical juncture that took place during the dictatorship from 1973 to 1984 when the *democratic rule of law* was restricted. The third section evaluates the structural change in the existence and persistence of the *fuero militar* as part of the Uruguayan political system. Finally, this chapter observes the post-structural changes that occurred after the *fuero militar* was blocked. These reactive sequences include the civil-military relations after the dictatorship, the return of democracy to Uruguay and the issue of human rights violations exemplified by the approval of the Amnesty Law 15.848.

Historical Background Leading Up to the Dictatorship (1973 – 1984)

In order to understand the nature of the civil-military relations in Uruguay, it is critical to undertake a careful evaluation of the events that led the civil government in 1973 to hand over the political power to the military, and how this action helped the instauration of the dictatorship that followed in Uruguay. Therefore, a brief explanation of the historical events leading up to the dictatorship is done. The goal is to demonstrate how the historical background leading up to the dictatorship left democratic institutional traces that have been kept throughout Uruguayan history and how they have continued to nourish the improvement of the strong *democratic rule of law* in Uruguay after the dictatorship ended.

Historically, Uruguay obtained its independence in 1828, but just two years after its independence, in 1830, Bernabé Rivera commanded the forces that massacred the last Uruguayan Indians, the *charrúas* (Roniger, 1997). Even though the *charrúas* had been eliminated, there was not a real state-building situation since there were different groups organized separately, but none that would bring national unity. This can be explained in part by the fact that there was no professional army organized that could bring the monopoly of the use of force to the country (Rock, 2000). Furthermore, in 1851, due to civil disputes throughout the country, it became a habit to have pacts between the central contenders for power (Finch, 1971; Taylor, 1954). However, most of these pacts were short-lived. In addition to this, up until the 1870s the governments in power were very weak and would be ousted in a short period of time for incompetency or lack of policy proposals. Governments will come and go, and the parties in power were normally short-lived (Gillespie, 1991). It was not until 1904 that national power started to dominate over departmental or sectorial power (Gillespie, 1991; Taylor, 1954). Once the disputes started to settle, all of these factors added together created a unique environment, as Uruguay's nation was formed mainly with European-descent citizens, otherwise known as a homogeneous society (Altman, 2008; Edelmann, 1969; Fitzgibbon, 1952; Taylor, 1954). Furthermore, Uruguay's political development that occurred from 1904 onwards was based on political pacts between the two dominant parties, the *Blancos* and the *Colorados* (Altman, 2008; Edelmann, 1969; Finch 1971; Fitzgibbon, 1952; Gillespie, 1991; Rock, 2000; Taylor, 1954). Even after the civil war of 1904 ended, the pact between parties remained. The importance of pacts in Uruguay's political development is a key factor to understand the difference between Mexico and

Uruguay. Contrary to Mexico that achieved a pact between a civil and a military government in 1946, Uruguay had historically agreed to pacts between political parties without military presence. Furthermore, as argued by Taylor (1954), some of the features of these pacts are that they were “mere working agreements whereby laws and constitutional amendments have been written by mutual consent and compromise” (p. 393). This was very important at the time because as Uruguay was developing its democratic base from 1904 onwards, these pacts allowed the communication and positive relationship between the two parties. It must be understood that conflicts were still occurring; however, they were not as severe as the civil wars that existed prior to 1904. Thus, this positive relationship served for the implementation and continuation of a strong democracy with a strong *democratic rule of law* in the country. Over the course of this period, a phenomenon that was unique in its kind in Latin America occurred that permitted “the development of extensive personal and group freedoms” (Taylor, 1954, p. 394). Furthermore, during the same period in both the Uruguayan democracy and in the larger context of Latin America, Uruguay did not have a dominant executive, but rather it opened a political space for other parties to take part in it as well (Altman, 2008; Edelmann, 1969; Fitzgibbon, 1952; Taylor, 1954; Vanger, 2010). This was extremely important at the time, and for the return of the *democratic rule of law* in 1985 because as part of the Naval Club Pact negotiations, it was an agreement achieved by different political parties and the military in order to return democracy to the country. This was in part because this consensus and mutual agreement helped to stop civil wars occurring in the country, and it also helped to form a political sphere where different citizens felt represented through these main political parties. Consequently, parties found the institutional place to carry out their actions. From the beginning of Uruguay’s history, the country was a laboratory for different political ideals and institutional arrangements that made this country an exception in Latin America at the time. Furthermore, there was also the fact that members of the elite, mainly of European descent, helped consolidate a national democratic project in that country. Thus, Uruguay avoided class conflicts that were all too often in other Latin American countries at the time. All in all, before 1973, Uruguay was seen as one of the most democratic countries in Latin America (Altman, 2008; Finch, 1971; Fitzgibbon, 1952; Polack, 2004; Rial, 2006; Roniger, 1997; Sondrol, 1992; Taylor, 1954). The reasons for this label relate to two main facts: first, the country did not have a professional army during the

political development of the country from 1904 onwards, and second, there were historical pacts and agreements achieved between the two traditional political parties, *Blancos* and *Colorados*. In sum, Uruguay had multiple developments that occur at the same time, and it is the interdependence of these occurrences that gave Uruguay the democratic political stability to form strong democratic institutions from 1904 onwards. However, before the dictatorship, Uruguay also had the *fuero militar* that was inherited from the Spaniard institution. The creation of this institution served to provide “the right granted to the military explorers during the Conquest of America to be tried exclusively by military courts” (Calleros, 2009, p. 115). Thus, although the progressive political reality of Uruguay marked a strong tendency in building democratic institutions, the presence and existence of the *fuero militar* was part of this development. However, before moving to a detailed analysis of the *fuero militar*, it is important to observe the immigration tendency in Uruguay in order to fully grasp the simultaneous political changes at the time that gave Uruguay a strong democracy and a strong *democratic rule of law*.

The immigration tendency that Uruguay had together with the absence of the military formed a unique environment that allowed the elites to develop a national democratic project for the country. Additionally, the elites also accommodated demands for other social classes at the time, therefore reinforcing the democratic institutions. Certain experts have reinforced this idea by stating that in Uruguay, “agreements among members of the elite permitted consolidation of a national project and strengthened both the state and democracy in the process” (Perelli, 1993, p. 35). This was possible for three main reasons: The first reason supported by Perelli (1993) is that the type of immigrants that arrived in Uruguay helped the political culture in Uruguay to become “equalitarian(sic), anticlerical, anti-militaristic and self-reliant in both democratic and legal procedures to settle differences” (p. 35). The second reason that is as important is that with the extermination of the native indigenous population, the *charrúas*, it was easier to accommodate for the rest of society, as the original people of the land were no longer existent. The third and perhaps the most important reason is that the military stayed outside the political sphere; a reality that was unimaginable in Mexico. All of these three factors combined helped to build the state and also democratic institutions. Within the democratic process, there was already the idea of holding strong institutions that acted for the benefit of society and that maintained the order. On the one hand, this was a

very important part of the democratic development of Uruguay because it allowed the evolution of a *democratic rule of law* that “ensures political rights, civil liberties, and mechanisms of accountability which in turn affirm the political equality of all citizens and constrain potential abuses of state power” (O’Donnell, 2004, p. 32). Furthermore, fundamental and human rights were safe in Uruguay, and the equality and dignity of all citizens were not at risk, and this is central as they are key pillars of a strong *democratic rule of law*. Additionally, the political history of the country, together with the civil-military relations, where the military despite having the *fuero militar* managed to stay outside the political governing sphere, served to reinforce the political development and reinforce the strong *democratic rule of law* in Uruguay. In sum, the features that the Uruguayan political system had, such as the pacts between parties, the civil-military relations, as well as a particular political development with strong institutions allowed Uruguay to be called the *Switzerland of the Americas* because it enjoyed a stable, participatory, pluralist and liberal democracy since 1904 until 1973 (Altman, 2008; Finch, 1971; Fitzgibbon, 1952; Polack, 2004; Rial, 2006; Roniger, 1997; Sondrol, 1992; Taylor, 1954).

Uruguay’s elevated status represented what Sondrol (1992) states as “exceptional in Latin America when juxtaposed to a rather monotonous history of reactionary dictators, oligarchs and praetorian militaries elsewhere” (p. 189). Furthermore, the military in Uruguay was so marginal that it was argued that the armed forces played a marginal role in society and were mildly despised by the Uruguayan population (Perelli, 1993). The Uruguayan citizenry saw them useful for relief during natural disasters and for disciplining the middle class that was at times reluctant to follow the democratic rules (Perelli, 1993). Historically, it is evident that the military in Uruguay had a second role in society and was seen at a lesser level than any other respected institution such as the judiciary or the executive and the legislative powers. Moreover, factionalism was historically inexistent or very limited within the military in Uruguay. For the first 150 years of Uruguay’s independence, the military was completely marginalized from civilian affairs and never attempted to intervene through a coup d’état (Biglaiser, 2003). However, it is worth noting that the *fuero militar* was dormant but still existent for much of the twentieth century, and this would affect the country later on in its history when the dictatorship starts in 1973. In sum, Uruguay from 1904 until 1967 enjoyed institutional stability, plurality, and a solid citizenship representation, together with

being a pacifist nation in the Southern Cone. Even though the Uruguayan democratic history was so exceptional in the years leading up to the 1973 dictatorship, there were a series of events that occurred at the same time that forced internal changes, not only within the civil power, but also within the military. Eventually, the two events combined created what was detrimental for Uruguay: the 1973-1984 dictatorship. In order to grasp a full understanding of how the dictatorship came about, it is necessary to understand, on one hand, the national factors, such as the economic problems in respect to high inflation and lower exports, and, on the other hand, the political factors such as the emergence of armed resistance movements such as the *Movimiento de Liberación Nacional – Tupamaros* or National Liberation Movement – Tupamaros (MLN – Tupamaros in Spanish), that set the path for a dictatorship to take place (Calloni, 2001; Gillespie, 1991; Labrousse, 2009; Meade, 2010; Perelli, 1993; Rey Tristán, 2005; Roniger, 1997). The analysis below observes the most important traits of the historical period from 1950 to 1973 that serve to highlight the main economic and political changes that occurred in Uruguay.

In the 1950s and 1960s, Uruguay, just like its South American counterparts, started to face economic and political problems that affected its overall institutional performance. One of the major economic problems was the dependence or over-dependence on primary commodities or export of raw materials. More specifically, Sondrol (1992) blames it on the “[o]ver-reliance on traditional commodity exports of wool, mutton, cattle and grains, coupled with a small domestic economy augured against industrialization” (p. 189). Not only was the over-reliance on commodity exports negatively influencing the Uruguayan economy, but also the limited technology used in the production and distribution of products in the country further relegated it at the international sphere. Furthermore, after the Korean War ended, there was a reduction in world demand for Uruguayan products as the country was now competing against the introduction of synthetic fibres that directly affected the Uruguayan traditional economy (Porzecanski, 1977; Sondrol, 1992). When Uruguayan markets were hit and affected by these problems, the government had to borrow money from international organizations and banks; therefore Uruguay’s economy saw its demise by being hit by debt and inflation at the same time (Porzecanski, 1977; Sondrol, 1992). Added together, these problems had a direct consequence on the Uruguayan political exception seen prior to 1973 and the Uruguayan political balance. Although the *democratic rule of law* was

not yet affected, there were imbalances at the political level that affected the overall political stability of the country. Although huge economic disparities were a rarity in Uruguay due to its small economic market, rural and poor workers were more affected than the middle and higher classes that lived in the capital, Montevideo. In sum, Uruguay started suffering from economic constraints and conflicts between the rural poor workers and the middle and higher classes that lived in Montevideo. Despite these problems, the military was still outside the political sphere at this time in history. However, due to a large economic decline causing high inflation and generating labour unrest in various areas of the country, Raúl Sendic, started organizing the workers under one movement. (Labrousse, 2009; Rey Tristán, 2005).

In 1950, in response to the many socioeconomic problems affecting Uruguayans, and only limited political and economic changes happening, Raúl Sendic, a law student at the time, started organizing the workers and the proletariat class. Sendic organized these two classes from the center to the north of the country, into one movement (Labrousse, 2009; Rey Tristán, 2005). Among the members of the movement, there were sugar cane workers known in Spanish as *cañeros*, as well as workers that managed the cultivation of rice, among others (Labrousse, 2009; Rey Tristán, 2005). By being a specialist in law, Sendic helped the *cañeros* and other agricultural producers to form syndicates, in particular the Union of Sugar Cane Workers of Artigas (UTAA in Spanish), which was founded in 1961 (Labrousse, 2009; Rey Tristán, 2005). It would later become one of the main units of the *MLN – Tupamaros*. The other important factor in the establishment of the *MLN – Tupamaros*, was the national constant defeats of leftist political parties (Gillespie, 1991; Labrousse, 2009; Rey Tristán, 2005). After the elections of 1962, the results showed that the coalition of parties did not receive the votes expected and did not win the elections. Therefore, leader Raúl Sendic, noticing that the electoral legal way of achieving changes was slow and ineffective, decided to form the *MLN – Tupamaros* along with other militants of the radical wings of the Socialist Party, such as Julio Marenales, Jorge Manera, Andres Cultelli, and Eleuterio Fernandez Huidobro (Labrousse, 2009; Rey Tristán, 2005). Therefore, in 1962, the *MLN – Tupamaros*, who would later become a guerilla-type movement, was officially founded (Calloni, 2001; Gillespie, 1991; Labrousse, 2009; Meade, 2010; Rey Tristán, 2005; Roniger & Sznajder, 2009). Up to this point, the foundation of this movement was not a problem in itself but

rather the actions that the movement undertook that directly affected the democratic status quo existent in the country until now.

In 1962, it was mainly students that formed the *MLN – Tupamaros* movement. Thus, this initiative was able to make two major changes in Uruguay. The main one envisioned by the student members was to transform the faith of the constant electoral losses of the leftist political parties experienced up to this point in Uruguay, and, the second one was to reach real economic and political reforms (Gillespie, 1991; Labrousse, 2009; Rey Tristán, 2005). It is crucial to understand that when the *MLN – Tupamaros* was constituted, the original plan of this armed branch was to defend the lower strata of Uruguayan society rather than to attack or to take power offensively. This marks a historical moment during which citizens started to disagree with economic and political decisions made, and labor conflicts became a more common occurrence. More specifically, as argued by Perelli (1993), there were “a series of general strikes led by Leftist trade unions that almost paralyzed the economy” (p. 35). At the same time these groups were being created, the Uruguayan military was strengthened externally and internally. In addition, although the *fuero militar* had not been used until now, it was a dormant institutional arrangement that was still present in Uruguay.

At the end of the 1950s, the Uruguayan military started receiving foreign aid through the Military Aid Program (MAP) coming from the United States (Biglaiser, 2003; Perelli, 1993). On the one hand, the aid was welcomed, but on the other, it was received with certain resentment. Although the aid was meant for the renovation of military equipment, which was a welcomed initiative, it also came with a set of conditions that forced changes in the internal structure of the Armed Forces (Perelli, 1993). Even though the military aid forced internal changes within the Uruguayan military, the Uruguayan Armed Forces had in fact done very few changes, and far from the United States’ minimum expectations (Perelli, 1993). Up to the 1950s, the military had not participated in civilian affairs and had not directly intervened in the country’s political life, even if they had the *fuero militar* to exempt them from being accountable to the civil power. Also, the Uruguayan military had a high degree of professionalism constructed through a good education, preparation and career opportunities within the military system. Among other features that the military had, there was the promotion system based on merit, and the dominance of the military in other services such as humanitarian aid when the country needed it (Biglaiser, 2003; Perelli, 1993; Vanger,

2010). Thus, Uruguay avoided the reality of lower ranked soldiers owing favors to higher ranked soldiers that has been existent in Mexico (Benítez Manaut, 2010; Calleros, 2009). In sum, the professionalism of the military kept them outside the political sphere. Between 1904 and 1950, the degree of professionalism of the Uruguayan military was much larger and more established than other Latin American Armed Forces. During the 1950s and up to 1967, the military was so marginalized of the country's political life that when they wanted to advance something within their ranks, they had to strongly lobby politicians to achieve any gains, hence they did not intervene in politics because they had no real opportunity to do so (Perelli, 1993; Pion-Berlin, 2011). Furthermore, at that time in history, the Uruguayan Armed Forces had not been prestigious, even despised at times by the population, and kept far away from any political sphere and political decisions (Biglaiser, 2003; Gillespie, 1991; Perelli, 1993). However, this changed with the emergence of certain armed resistance movements such as the *MLN – Tupamaros*.

The emergence of certain guerilla-type groups forced the larger intervention of the military in politics (Calloni, 2001; Gillespie, 1991; Labrousse, 2009; Meade, 2010; Roniger, 1997; Roniger & Sznajder, 2009; Rey Tristán, 2005). The emergence of these groups combined with the economic problems, and the military's larger exposure to foreign aid, forced the military's expanded participation in the political sphere. More specifically, the foreign aid supported training in counter-insurgency and torture methods, among other security doctrines that were taught at the Army School of the Americas in Panama. The foreign aid and the exposure to these new techniques unknown to the military at the time opened a space in the political sphere for the military and forced a change in the democratic reality of Uruguay (Gillespie, 1991; Perelli, 1993). Uruguayan politicians were already resenting this help before the dictatorship occurred because it meant a larger presence of the United States in the country, especially in the form of military training (Perelli, 1993). However, the fear of having a military take over the civil power was clearer in 1970 as high-ranking generals "owed their appointments to politicians" (Gillespie, 1991, p. 43). Added to this is the fact that after the *MLN – Tupamaros* was defeated, the military had primarily two visions. The first one was to eliminate the grounds where the leftist guerilla-type groups were breeding, and the second vision after the defeat was that the military saw the civil power as "corrupt or ineffective" (Gillespie, 1991, p. 43). Although the elimination of *MLN*

– *Tupamaros* by the military was highly doubted, since the police had already dominated and defeated the group by then, the military still saw the civil power as corrupt and ineffective (Gillespie, 1991; Perelli, 1993; Pion-Berlin, 2011). Consequently, the image of Uruguay as the *Switzerland of the Americas* perished, and the military became the center stage of Uruguayan politics in 1973. Certain experts such as Gillespie (1991) have argued that Uruguay's crisis after 1968 comprised five different aspects that formed part and parcel of the democratic demise. These are “(a) ideological extremism, (b) economic instability, (c) labor-industrial strife, (d) mounting violence, and (e) military ‘role expansion’” (Gillespie, 1991, p. 34).

In conclusion, it is imperative to understand that there was not only one factor that sparked the dictatorship in Uruguay. Rather, it was a series of events, aided by the civil power in place at the time that culminated in the demise of the Uruguayan democracy and the creation of a dictatorship in Uruguay that would last from 1973 to 1984.

Critical Juncture: Institutional Changes and the Dictatorship (1973 – 1984)

Uruguay in 1967 saw the demise of the *democratic rule of law*. However, the instauration of a formal dictatorial regime arrived six years later in 1973. Uruguay's dictatorship would last from 1973 to 1984. Before 1973, Uruguay and its population used to be interpreted and appreciated worldwide for being an almost European nation, composed of democratic citizens living in a democratic country built upon strong democratic institutions (Roniger, 1997; Finch, 1971). However, in 1973, the Uruguayan Armed Forces started ruling by imposing themselves through violence, repression and intolerance. In addition, there are a series of institutional changes that took place in 1967 paving the way to what later became the dictatorship. These central changes are analyzed below.

Óscar Diego Gestido was president of Uruguay from March 1st, 1967 until his sudden death on December 6th, 1967. Before president Gestido's death, he had already issued an order to ban the Socialist party because it portrayed the wrong political ideas for the future of Uruguay. This was done on the basis that the Socialist party had called for a national liberation campaign. More specifically, the party had called for guerilla warfare within Uruguay (Gillespie, 1991). This was the first time since 1904 where the military was called in order to control the situation in Uruguay. Added to this was the fact that up to this point,

there had not been a discussion about the *fuero militar*. Therefore, the military is called to take action, but the *fuero militar* is acting in full force, thus weakening the strength of the *democratic rule of law*, as the military starts interfering with the independence of the judiciary, which is a central pillar in the conception of the *democratic rule of law*. Furthermore, upon Gestido's sudden death, Jorge Pacheco Areco, who was the vice-president at the time, assumed the executive position as president from December 6th, 1967 to March 1st, 1972. Once he assumed power, Pacheco Areco "introduced nonparty technocrats into the cabinet, began to rule by emergency decree, and used the military to repress strikes" (Gillespie, 1991, p. 33). In addition, in September 1971, the *MLN – Tupamaro* guerrilla had gained strength and was being directly repressed by the military. A year before, on July 28th, 1970, Daniel A. Mitrione, who was disguised as an expert for the international agency for development (USAID), but who was in fact a spy for the American government within the Uruguayan Security Services, was apprehended by the *MLN – Tupamaros* (Calloni, 2001; Labrousse, 2009; Rey Tristán, 2005). On August 9th, 1970, Mitrione was shot dead by the guerrilla group (Labrousse, 2009; Rey Tristán, 2005). As a result of these actions, in 1971, there was the "suspension of the right of habeas corpus on the basis of a declaration of 'internal war'" (Gillespie, 1991, p. 33). Thus, the *democratic rule of law* became inexistent at this point, not only because the independence of the judiciary was fully compromised, but because fundamental and civil rights were no longer being protected for everyone in society by an independent and strong judiciary. Additionally, the president Pacheco Areco bypassed parliament to intervene against the guerilla groups (Gillespie, 1991). This action led to the creation of the *Estado Mayor Conjunto* (ESMACO) or the Joint Chiefs of Staff (Gillespie, 1991). Simultaneously, the *Junta de Oficiales Generales* or Military Junta was also created. This Junta was composed of 21 top-ranking generals that overlooked the Joint Chiefs of Staff (Gros Espiell & Esteva Gallicchio, 2008). Thus, traits about the strong *democratic rule of law* were erased at once, by a legal system that was no longer democratic in itself but rather militaristic and hierarchical. Thus, following O'Donnell's (2004) definition of a *democratic rule of law*, it can be argued that there are no traits of an independent judiciary that can oversee for the fundamental and civil rights of everyone that can be safeguarded within an independent judiciary that it is in itself democratic.

That same year, in 1971, due to the precarious economic and political environment under which Uruguay was living, there were contested and heated elections that were held in November 1971, that were won by the Colorado candidate, Juan María Bordaberry, who was inaugurated in March 1972 (Schneider, 2007). A year after, Bordaberry, suspended a range of constitutional guarantees and approved the *Law of State Security and Public Order* (Gillespie, 1991; Schneider, 2007). This law permitted the military to try “alleged subversives” (Gillespie, 2009, p. 33). Even with Bordaberry as elected president, the economic and political situation of the country remained stagnant. Inflation and devaluation of the currency were part and parcel of his presidency (Schneider, 2007). Furthermore, violence and repression were increasing. On the one side, the military was enforcing its strength and, on the other, the *MLN – Tupamaros* was mobilizing more than before and struck more often. During that historical period, the presence of a truly *democratic rule of law* in Uruguay was inexistent as there was no civil authority or active civil courts that could provide political rights, civil liberties, and political equality for all citizens by protecting them from potential state power abuses (O’Donnell, 2004). In addition to this, the independence of the judiciary had been fully compromised and the military was now controlling the executive, as well as, the judicial sphere, therefore trumping all civilian supremacy in Uruguay. Furthermore, abuses of state power were now part and parcel of the Uruguayan reality. The only rule of law that existed was the one provided and accepted by the military. The military had the superior control through the military judicial power, and the civil courts could not intervene in their decisions. In sum, the *MLN-Tupamaros* took several guerrilla-type actions that sparked military repression and would eventually open the space for larger military strength and power aided by the civilian government at the time. Taken together, these factors explain why a dictatorship took place from 1973 to 1985.

In February 1973, observing an important deterioration of the situation, Bordaberry decided to give a larger degree of executive power to the military. Henceforth, military law became the rule undermining the existent *democratic rule of law* defended by an independent judiciary. Seeing as the Uruguayan Congress did not agree with these measures, “Bordaberry dissolved the congress, installing in its place a twenty-five member appointed Council of State dominated by the military” (Schneider, 2007, p. 368). After this decision, on July of 1973, there was a strike that was broken and “a month later the government ended

union autonomy and banned labor's central organization" (Schneider, 2007, p. 368). The opposition parties and Bordaberry's own Colorado party did not support him in some of these extreme measures; therefore Bordaberry "went to the Boisso Lanza air-force base outside Montevideo to negotiate a pact with the military" (Gillespie, 1991, p. 47). As part of this pact, the National Security Council dominated by the military was created to control promotions to general ranks (Gillespie, 1991). However complicated this period was for Uruguay, once the military had managed to acquire institutional control, it kept increasing its power and was in full control of the dictatorship. For example, the elections that were supposed to occur in 1976 were cancelled (Gillespie, 1991; Porzecanski, 1977). The military handpicked Aparicio Méndez Manfredini, a former public health minister and a civilian representing the National Party. Méndez Manfredini became the civilian "puppet" to represent the Executive power for a five-year term (Porzecanski, 1977; Schneider, 2007). However, the fact that a civilian assumed power did not mean that the *democratic rule of law* was restored; on the contrary, "he promptly deprived of their political rights individuals actively involved in political affairs during the 1966-1973 period" (Schneider, 2007, p. 368). Even though hard measures were being taken and the military was gaining more control as years went by, the economic and political situation of the country was worsening overall. Therefore, since economic problems were not improving within Uruguay and, having defeated the *MLN – Tupamaros*, the military started to have external as well as internal problems, such as not having any future vision for the regime. In addition, the Navy did not always partake in the Army's general decisions (Gillespie, 1991). More importantly, once the *MLN – Tupamaros* was defeated, the military envisioned bringing the "Uruguayan traditions" back to the table, thus handing the power back to civilians (Gillespie, 1991, p. 138). Even if the military wanted to bring the traditions back to Uruguayans, there was no talk about justice, or the presence of the *fuero militar*. However, considering that the economic and political situation of the country was stagnant, the military proposed a change in the Constitution through a referendum.

Thus, a new constitution was proposed in 1980. Instead of imposing the Constitution, the military decided to consult the population via a referendum. In the words of Gillespie (1991), "[i]n 1980, in an extraordinary referendum, Uruguayans decisively rejected the military's proposed repressive new constitution, opening the way to the final phase of the

regime” (p. 51). This demonstrates that even though the regime was extremely coercive and abrupt, the regime had kept certain democratic traces that were existent before the dictatorship took place, such as the use of referendums in national consultations. Furthermore, the military regime decided to abide by the results that rejected the new constitution, instead of acting against the population. They realized that their time in power was coming to an end as the Armed Forces were experiencing a legitimacy crisis. The military saw its own demise and was in need of an urgent change after Uruguayans denied the referendum. They envisioned holding elections that would turn out to be different from those experienced in 1976. In these elections, political parties, especially the *Blancos* and *Colorados* were invited to run against the military government. However, the Left was kept at the margins and was not allowed to run for office. Historically, it has not been exactly established why the military decided to hold elections allowing the participation of traditional parties (Gillespie, 1991). However, this was the first move towards the possibility of restoring democracy in Uruguay. However, until this point, there had not been any talks about the restriction of the *fuero militar*.

At the end of January 1983, there was a talk between the Armed Forces Commission on Political Affairs (COMASPO) and a group of moderate members of the *Blanco* and *Colorado* parties (Gillespie, 1991). On the one hand, the *Blancos*, advocated and wanted “a return to the 1967 constitution, immediate elections, changes in economic policy, and contacts with other political and social organizations” (as cited in Gillespie, 1991, p. 116). On the other, the *Colorado* party wanted “the complete restoration of the constitution and derogation of the institutional acts” (Gillespie, 1991, p. 116). This first talk proved to be completely inefficient. First of all, both parties demanded too much. More specifically, given the economic and political hardships that were being experienced in Uruguay at the time, it was impossible for the military to change their economic policies, and they could not accept having political contact with the Left, whom they had been fighting against for years. Secondly, the parties did not exactly explain how they were going to approach important questions of transition of power, such as upholding the power and achieving a peaceful transition to democracy, together with the restriction of the *fuero militar* which was a central premise in order to bring back the strong *democratic rule of law* to the country. Thirdly, there were disagreements between different members within the parties. This was partly

because the parties had been internally divided over the years, and not everyone within the party wanted the same outcome. There were also external pressures coming from some political leaders that were living in exile, who wanted to see more immediate and drastic changes. Furthermore, the military generals wanted to retain the National Security Council among other things such as “allowing the president to declare a state of subversion, the holding of suspects for 15 days, and incorporation of military judges into the judiciary” (Gillespie, 1991, p. 117). All of these demands would be the responsibility of the Executive into a democratically elected president after the transition. In fact, most of these demands had already been present in the military proposed referendum in 1980. However, the most important parts needed for a successful negotiation were not present, which was the full restoration of *habeas corpus*. The full restoration of *habeas corpus* would bring all prisoners to be tried in a civil court with an appointed civilian judge. This would not only help bring democracy back, but would also re-establish the strong *democratic rule of law*, one that was understood as the “legally based rule of a democratic state” (O’Donnell, 2004, p. 36). Also, re-establishing the right of *habeas corpus* would allow the return of the independent judiciary that could safeguard the protection of fundamental and civil rights as well as protect the equality and dignity of all citizens that were at risk during the dictatorship years. Furthermore, especially with tortures and disappearances encouraged by political propaganda during the dictatorship, a full restoration of freedom of expression was necessary for a change to occur. Additionally, through the full restoration of these two basic principles (*habeas corpus* and freedom of expression), political parties would not be tortured, misinterpreted or persecuted for making political claims during elections or the transition itself. A resolution would open a space for civil liberties and political rights to be returned to the Uruguayan population. Furthermore, the freedom of expression would help the parties recruit their followers to vote for them in the next upcoming elections. Also, these basic principles would also help different political parties express their views freely without being prosecuted by the military. At the time, this first attempt to negotiate did not bring about the necessary changes. All parties present at Parque Hotel, where the negotiations took place, felt that their points of agreement in the negotiation were not exactly any better than before and did not promise a feasible change (Gillespie, 1991). However, the negotiations opened the space for political parties to come face to face with the military and re-think and re-plan

their strategies needed to reach an agreement that would satisfy both parts. Although first negotiations failed, there was an attempt to organize a second set of negotiations that took place at the Naval Club. In the end, these second negotiations included larger changes such as the restriction of the *fuero militar* and were the ones that allowed the restoration of the *democratic rule of law* in Uruguay in 1985.

Structural Change: Fuero Militar

In 1984, the negotiations held at the Naval Club resulted in a civil-military pact. The military allowed the full restoration of the *democratic rule of law* by a civilian government and accepted their return to the barracks by losing some formal direct power in the dictatorship as well as the control of military judicial power that was historically existent in Uruguay through the existence and persistence of the *fuero militar*. The *fuero* was part and parcel of the negotiations achieved at the Naval Club Pact of 1984 where there was the simultaneous creation of *habeas corpus*, full legal mechanisms and the derogation of the *Organic Military Law* (Calleros, 2009; De Brito, 1997; Gillespie, 1991). As argued in the previous section about Mexico, the importance of the *fuero militar* is that as Calleros argues, “[i]t locates military courts above civilian ones, even after the democratic transition experienced by most Latin American countries” (p. 114). Thus, the main issue is that the military judicial power trumps the civilian one and serves to legitimize the military’s independent justice system. As Calleros (2009) argues “one of the privileges enjoyed by the military institution is to be unaccountable to the judicial branch by virtue of the military ‘fuero’ that allows the armed forces to have their own justice system: the military judicial system” (p. 114). This military privilege has been restricted in Uruguay since 1984. This process did not occur immediately but was rather a successive process that took years to be accomplished. How this process was achieved is the subject matter of the analysis provided below.

It is vital to understand that prior to the Naval Club Pact, there had been certain attempts at other agreements or pacts between the political and military powers. However, none of the previous negotiations finished in a pact because the military and the political parties were each asking for too much. Overall, both sides were not willing to give up major points, such as human rights violations (De Brito, 1997; Gillespie, 1991). A clear example of

these previous talks is the one held in Parque Hotel (De Brito, 1997; Gillespie, 1991). Even if these previous negotiations failed, Julio María Sanguinetti who became president elect in 1985, succeeded in organizing the Naval Club Pact. The Pact became officially the Civil-Military Naval Club Pact that took place in August 1984 between the *Broad Front* (FA in Spanish), the *Colorados*, and the *Unión Cívica* (UC).

In August 1984, the Institutional Act number 19 marked the end of the dictatorship and the beginning of a new democratic era for Uruguay came to life. The latter Act evolved so that on June 30th, 1985, the military agreed that the National Security Council would be kept just as an advisory body under the new Executive's command (De Brito, 1997; Gillespie, 1991; Gros Espiell & Esteva Gallicchio, 2008). Another extremely important change that occurred is that military justice would only be applied by the military during periods of emergency, later defined to specify a *state of insurrection*, but this could only be declared by the President and approved by parliament (De Brito, 1997; Gillespie, 1991; Gros Espiell & Esteva Gallicchio, 2008). This was part of the necessary changes, as the *fuero militar* was finally restricted, and the military was subordinated to the Executive power. Among other changes, there is the system of military promotions that started to be overlooked by the President, and it would be him or her who would promote generals from a list of possible candidates provided by the military institution (De Brito, 1997; Gillespie, 1991; Gros Espiell & Esteva Gallicchio, 2008). All of these changes played an important role; however, there is a critical change in regards to military justice that became the envy of other Latin American countries and that made Uruguay an exemplary case in comparison to other cases such as Mexico.

This important change is, as Barahona de Brito (1997) argues, “[t]he military justice system was limited to military crimes in time of war and, if voted by the parliament, in times of State of Insurrection” (p. 74). This decision was taken after a long negotiation, because originally, the military wanted to keep their *fuero militar* and hold their jurisdiction over civilians. However, as time and negotiations progressed, the military finally agreed that “common crimes committed by military personnel in time of peace, wherever they are committed would be submitted to the ordinary justice system” (De Brito, 1997, p. 77). Thus, the *democratic rule of law* would return in full form allowing a legally based rule to come back, and the courts were re-established to ensure access to civil justice for citizens. These

courts would ensure political and civil liberties as well as the presence and existence of an independent judiciary that would safeguard the dignity of all citizens at risk (O'Donnell, 2004). After this decision was taken, the Uruguayan military court system lost its legal authority to protect military personnel in a civilian trial as in Mexico. Also, if new violations of civil rights occurred after the dictatorship ended, civil courts would try them (Calleros, 2009; De Brito, 1997). This was a significant move towards the consolidation of a *democratic rule of law* that would “ensure political rights, civil liberties, and mechanisms of accountability, which in turn affirm the political equality of all citizens and constrain potential abuses of state power” (O'Donnell, 2004, p. 32). Also, the reinforcement of the *democratic rule of law* came about thanks to the regained independence that the judiciary enjoyed after the dictatorship ended, thus allowing the judiciary to safeguard fundamental and civil rights of the Uruguayan citizens. Furthermore, the legal system of Uruguay is in itself democratic, which is one of O'Donnell's key pillars in order to achieve what is understood as a strong *democratic rule of law*. However, an issue remained when it came to considering previous violations of human rights committed during the dictatorship years and how to rectify them.

A solution to long-standing arguments between the parties and the military over the violations of human rights during the dictatorship was proposed on December 19th 1986, by the *Partido Blanco*, who presented to the lower house an Amnesty Law named *Ley de caducidad de la pretensión punitiva del Estado* (Achugar, 2007; De Brito, 1997; Gillespie, 1991; Gros Espiell & Esteva Gallicchio, 2008; Polack, 2004; Rial, 2006; Roniger & Sznajder, 1997). The law N. 15.848 was passed in the Chamber of Deputies with 60 out of 97 votes on December 20th, 1986; on December 21st, 1986 it passed the Senate with 22 out of 31 votes, and it was finally adopted as an official law on December 22nd, 1986 (De Brito, 1997; Gros Espiell & Esteva Gallicchio, 2008). There has been much debate nationally and internationally from a political and a judicial point of view in regards to the Amnesty Law. However, the reality of Uruguay's violations of human rights during the dictatorship came to an end with the ratification of Amnesty Law 15.848. On April 16th, 1989 in a national referendum in Uruguay, 57% of the electorate voted for the ratification of the Amnesty Law 15.848 (Calleros, 2009; De Brito, 1997; Gillespie, 1991; Rial, 2006; Roniger & Sznajder, 1997). With this decision, the past was closed and a new democratic beginning with the full

restoration of the *democratic rule of law* took place in Uruguay. On the one hand, the newly elected democratic president, Julio María Sanguinetti, and other political experts argued at the time that stability was necessary for maintaining a reliant democracy and a strong *democratic rule of law* in the future (Calleros, 2009; Gillespie, 1991). Therefore, having an Amnesty Law was central to upholding the stability in Uruguay and to be able to fully reinstate democratic institutions existent in the country before the dictatorship took place. On the other hand, legal specialists are not fully convinced by this fact. Their arguments have been analyzed elsewhere (Gros Espiell & Esteva Gallicchio, 2008; López Goldaracena, 2008). However, their basic argument is that Amnesty Laws violate international human rights standards. Despite the different views regarding the transition, it is important to put the emphasis on the fact that a referendum on this matter was voted and supported by the Uruguayan citizens in a democratic way. The law 15.848 was ratified by 57% of the electorate during a referendum on April 16th 1989, where the participation rate was 84.78% (Calleros, 2009; De Brito, 1997; Gillespie, 1991; Rial, 2006; Roniger and Sznajder, 1997). Therefore, once again the transition demonstrates that there have been extensive institutional changes when the *fuero militar* was severely restricted. Furthermore, there was full restoration of the *democratic rule of law*. The executive and the judiciary recovered their institutional power and independence in comparison to previous democratic periods. In addition, citizens were able to ensure their political, civil rights, and access to a proper justice system that could ensure the protection of these rights. Despite the human rights violations, the referendum that provided the creation of the Amnesty Law showed that people that voted agreed with the decision to leave human rights violations in the past. However, certain sectors of the Uruguayan population did not necessarily agree with this resolution, and they undertook other measures to make the military accountable for the abuses committed during the dictatorship years. For example, the imprisonment of Juan María Bordaberry has been a move forward towards larger accountability on the military side (Pion-Berlin, 2011).

In conclusion, at the time of transition, the military was legally and politically severely restricted. In fact, the military lost its *fuero militar* and civil courts have taken over. The only time the military could use their legal power is under a state of insurrection, and this state has to be defined and accepted by the president and approved by parliament in

order for the military to act. It was a challenging path for Uruguay to achieve the control and regulation of the *fuero militar*; but since then, the military has taken on a secondary role and a pre-dictatorial insignificant institutional stance within the Uruguayan political sphere.

Post-Dictatorship Change: Civil-Military Relations' Evolution

It has been already explained throughout this chapter that there were a series of events, aided by the civil power at the time, which permitted the demise of the Uruguayan *democratic rule of law* and the creation of an authoritarian regime that lasted from 1973 to 1984. However, the next section is devoted to explaining some institutional changes that were not taken by the military during the dictatorship that allowed the return of the strong *democratic rule of law* to Uruguay in 1985. The reactive sequences that sparked after the dictatorship ended were mostly due to some of these limited changes during the dictatorship such as the non-re-engineering of the political system, the restriction without the elimination of political parties, and the preservation of the Constitution that are analyzed in larger detail below.

By the end of 1972 and beginning of 1973, the period that was considered the formal beginning of the dictatorship, the military assured that they did not want to re-engineer or reform the political system from above. Rather, the Armed Forces limited and suspended the political parties, but without eliminating them (Gillespie, 1991). Political parties on the Left and the more radical wings of the *Blancos* and *Colorados* were more restricted than the rest. However, from 1976 to 1980, the military was driven by the idea of cleaning democracy and democratic procedures as well as strengthening democracy, not eliminating it. This example becomes clearer with the military's communiqué of 12th June 1976 where they stipulate that they did not want to share alongside the civil power, the responsibility for the abolition of political parties in Uruguay (Gillespie, 1991). At the time, the civilian president, Aparicio Méndez Manfredini, advocated for the abolition of parties in Uruguay and the full control of the state by the military. However, the military refused and instead continued governing alongside a civilian puppet figure placed at the executive power. Institutionally, the military was organized in a very specific way to prevent the concentration of power in one person. More specifically, once the military had control of the political and economic sphere of Uruguay, there were rotating generals as leaders, not just one. As Gillespie (1991) argues,

another reason that explains why the military did not want their own party “seems to have been fear of concentration of power in too few hands” (p. 67). More specifically, two of the most salient characteristics of the dictatorial governing system pointed out by Gillespie (1991) are the “collegiality” and the “influence of technocrats” (p. 55). The main characteristic of the collegiality is that leaders would rotate to prevent the concentration of power. More specifically, the commanders rotated every two to three years. For the latter, the importance was centered on businessmen, also known as technocrats, especially of the private sector, that helped the military government lead the country by giving economic advice. Although the military had the authoritarian regime installed, they succeeded in avoiding having one leader in power, which is considered an important trait of the Uruguayan dictatorship, leaving space for a rotating collegiate to govern the country (De Brito, 1997; Gillespie, 1991; Porzecanski, 1977). The fact that there was never only one leader imposing full control of the country through a complete re-engineer of the political system was one important factor that helped the peaceful transition to democracy in 1985. From a military’s perspective, this was seen as an important problem that led the Armed Forces to its demise after 1985. By not securing a military political party, the military had to run and eventually lost against civil political parties in the 1985 democratic elections. Despite the militarization of the public administration, the military never established a new party or intended to form any particular alliance with the existing traditional parties at the time (Gillespie, 1991; Pion-Berlin, 2011). Furthermore, not only did the military not have a strategic plan, but since they did not envision eliminating the political parties, it allowed them to maintain some of the main political institutions working in a semi-democratic manner, such as the executive power. In general, the military did not manage to fully co-opt political parties (Gillespie, 1991). Therefore, what remains very interesting until today is the unwillingness of the military to secure power through one dictatorial figure. The military could have easily placed one dictator at the command of the forces. Thus, by having avoided this concentration, the transition to democracy and democratic institutions was easier in Uruguay than in other Latin American countries. However, the most important of the democratic traits that was left untouched by the military was the Constitution. The military managed to amend the Constitution to formalize their power, but they never fully reformed the Constitution.

The change of the Constitution was not satisfactory even after a referendum that took place in 1980. Throughout the dictatorship years, the military had only managed to create institutional acts. As Gillespie (1991) argues, “[t]he military promised that no fundamental alterations would be made to the Constitution, but warned that it would be made more “flexible” through the enactment of transitory constitutional laws” (p. 55). The military managed to freeze some of the existing democratic powers, such as the civil judicial system that was part and parcel of the strong *democratic rule of law* existent before the dictatorship. However, when the military tried to do a complete reform of the Constitution, they held a referendum in which the population voted against their proposal. The military even accepted the citizens’ will to leave the original Constitution intact, which was surprising given that dictatorships do not typically respond favorably to people or ideas that oppose their own. Gillespie (1991) states, “[i]n 1980, in an extraordinary referendum, Uruguayans decisively rejected the military’s proposed repressive new constitution, opening the way to the final phase of the regime” (p. 51). Additionally, this referendum was a shock to the military, as they did not expect the negative response. The denial of these changes by the population opened a space for the political parties to start negotiating with the military, and for the Armed Forces to realize that their presence in power was neither legitimate nor accepted by the majority of citizens. The timing of these events is extremely important for the full restoration of democracy and the *democratic rule of law*. As aforementioned, during their time in power, the military proceeded to amend the Constitution for their own benefit by implementing decrees known as institutional acts. However, some of these acts were improvised, as the early years of the authoritarian regime were mainly characterized by uncertainty, disagreements, and little knowledge of administration processes due to a limited intellectual preparation of the military to fulfill these political roles (Gillespie, 1991). However, as the regime continued, the subsequent institutional acts were more severe, as they abolished basic rights such as civil servants’ immunity from being fired, stripped the judiciary of its power transferring them to the executive, and the military further tightened the restrictions on elections by not allowing certain parties and registered candidates from presenting themselves for office (Gillespie, 1991). For example, when the fourth institutional act was signed, it banned 15,000 individuals from engaging in any political activity for 15

years (Gillespie, 1991; Pion-Berlin, 2011). However, there are certain decisions in regards to the referendum that remain exceptional during the Uruguayan dictatorship:

a) the timing of the referendum. The military decided to have a referendum in 1980 when the economic and political situation of the country was not changing; therefore the denial of it by the population was clear;

b) advocating for a referendum in 1980 after eight years of dictatorship is in itself a representation of the democratic traits that were left from earlier democratic years. This is due to the fact that Uruguay had historically advocated for and used referendums to take important political decisions during the democratic years prior to the dictatorship, so the fact that the military proposed a referendum shows a democratic trait present during the authoritarian regime years;

c) the military's acceptance of their defeat in respect to Constitutional changes. The military could have forced their repressive Constitution; however, as the population denied the referendum, the military assumed their defeat and realized the loss of legitimacy that they were experiencing. Added to this is the time and sequencing of events. The fact that the military had not undertaken major economic or political changes, and had not managed to create a political party was not well taken by Uruguayan society, who were historically accustomed to the presence of strong political parties;

d) due to the fact that the Constitution was not modified at this time, it became much easier for the democratically elected government after the civil-military transition in 1985 to bring the democratic institutions back to its original democratic sphere. Among the most important institutions that directly enforced the *democratic rule of law* in Uruguay was the civil judicial power, which was brought back to the democratic stage after the institutional act number 19 was approved (Gros Espiell & Esteva Gallicchio, 2008; Pion-Berlin, 2011). Additionally, the military was so convinced to not want single-handedly the full political power of Uruguay, that even during the transition period to restore democracy in 1985, military members campaigned for a gradual return to democratic institutions. More specifically, towards the end of the dictatorship, the Armed Forces had installed a "National Council of twenty-five handpicked civilians and twenty-one military officers for the purpose of electing a new chief executive" (Schneider, 2007, p. 368).

Despite the many institutional changes that the military avoided that helped the restoration of democracy in Uruguay in 1985, there have been multiple violations of human rights. However, during the transition period, there was also a resolution taken about the violation of human rights committed during the dictatorship that cannot be excluded from the analysis.

The violation of human rights in Uruguay was abrupt as it was one of the most severe regimes in South America in terms of securing control over civil society. The military even classified every citizen as A, B or C according to political preferences (Gillespie, 1991; Pion-Berlin, 2011; Rial, 2006; Sondrol, 1992). This was possibly primarily due to the country's size and population, but also because of the nature of the regime itself. Furthermore, Gillespie (1991) writes, based on Amnesty International estimates, that "Uruguay had the highest per capita prison population in South America during 1976" (p. 50). The military dictatorship in Uruguay ensured complete physical control of the country as the Armed Forces envisioned a purification of the country, meaning the elimination of the Left and any political affiliation with Socialism, Marxism or any other kind of affiliation associated with the political Left (Gillespie, 1991; Pion-Berlin, 2011; Rial, 2006). However, in Uruguay, the tortures, disappearances and overall violations of human rights during the dictatorship were mainly due to the fact that the military did not have a strategic or specific plan envisioned to produce a major institutional and political change. Therefore, the institution devoted its entire force to subdue the Left and to restrict them from participating in the democratic process of the country. In order to deal with the multiple violations of human rights committed during the dictatorship and the peaceful restoration of a strong *democratic rule of law* in Uruguay, the Amnesty Law 15.848 was approved by a referendum. This Law helped leave behind the atrocities and human rights violations committed during the dictatorship, and also helped with the release of political prisoners. Human rights violations committed by the military during the dictatorship have not been solved in its entirety. However, there have been certain cases such as the one of ex-president Juan María Bordaberry, who was imprisoned for human rights violations during the dictatorship. Thus, this action shows a legal opening for a different interpretation of the Amnesty Law. Bordaberry's example shows that the Uruguayan *democratic rule of law* is strong and also shows that civil judicial courts are above military courts. Furthermore, this action proves the elimination of the *fuero militar*. Thus, in theory and practice, Uruguay demonstrated the

evolution of the *democratic rule of law* and the strengthening of it after the dictatorship ended.

In conclusion, the decision of the military to keep the political parties, the decision of the Armed Forces to not impose changes to the Constitution, and acceptance of the military to eliminate the *fuero militar* in the transition period, are some of the main institutional factors that allowed the restoration of a full *democratic rule of law* in Uruguay in 1985. Since the political parties were not eliminated, this allowed the parties to be restored and to be able to run against the military in an open election that also served to contribute to the restoration of the *democratic rule of law*. Due to the fact that the Constitution was left unchanged, it left the military with restricted powers. Also, the fact that the military accepted their defeat in the referendum and left the Constitution intact, gave Uruguayans the chance to go back to the previous existing Constitution with only minor changes to be made, such as the elimination of institutional acts that had been imposed during the dictatorship. Ultimately, during the transition itself, the negotiations that allowed full control and subordination of the military together with the elimination of the *fuero militar*, opened a space for what became the future of democratic Uruguay from 1985 onwards.

Chapter Three Part One: Mexico – The existence of a clientelistic path-dependent relationship in Mexico’s regime transition

Introduction

The *democratic rule of law* has been historically much weaker in Mexico than in Uruguay. The presence and existence of a path-dependent relationship of clientelism in Mexico’s regime transition is studied in this chapter in order to explore why the *democratic rule of law* has been weaker in Mexico. I aim to highlight key areas where the civil-military original political model of Mexico differentiates itself from that of Uruguay, making it weak for institutional creation. The chapter starts first with an overview of the historical background that existed before the democratic presidential election of the year 2000. Within this first section, the importance and centrality of clientelism and absence of democratic traits found in Mexico is further studied. Second, this chapter looks at the existence and persistence of clientelism in Mexico’s political history. Third is an analysis of the absence of a critical juncture and the continuation of clientelism after 1994. Fourth, this chapter looks at the structural impasse highlighted through the continuation of the judiciary’s inefficiency and clientelistic nature.

Historical Institutional Background Existent Before the Democratic Change

In order to fully understand the authoritarian regime that existed in Mexico until the year 2000 and the institutional clientelistic political foundations of Mexico, it is necessary to study the failure in establishing strong democratic institutions and the direct influence of these on the strength of the *democratic rule of law* throughout Mexican history. The definition that is followed for this thesis is Greene’s (2001) who argues that “[c]lientelism describes the deployment of material advantages by politicians to specific constituencies in exchange for political support” (p. 3). There are two main ways in which the exchanges can take place: 1) face-to-face or 2) institutionalized relationships “between constituency groups and party organizations” (p. 3). Although the latter one has been argued to be more modern than face-to-face, it always requires the willingness of politicians and personnel of the party in the exchange position. This definition has been used because it is one that encompasses both the individual level clientelism and the institutional clientelism that is sometimes

missed in works on clientelism. The following section analyzes each of these aspects individually in order to provide a full description of the historical presence of clientelism that has directly affected the strength of the *democratic rule of law*.

Mexican elections have been historically based on patron-client relations and other informal arrangements that gave the PRI the electoral authoritarian regime for 71 years. Gillingham (2012) argues, “modern Mexican elections have in the main been dismissed as epiphenomenal to the real business of recruiting elites, reproducing power, and constituting a political system” (p. 53). Daniel C. Levy and Kathleen Bruhn (2006) have argued that “[e]lections could take place so regularly in part because they were so safe and predictable” (p. 87). This has been the historical reality of Mexico; however, this has not happened at once, rather there have been a series of events and institutional changes that have permitted the authoritarian clientelistic regime to flourish in Mexico’s political history.

Mexico’s political independence did not occur until 1821. At the time, the colonial rule was weakening, and the accumulation of political and economic setbacks were constantly affecting the Mexican population (Levy & Bruhn, 2006). The group of privileged mestizos together with the criollos confronted the colonizers, but they did not fight for the equality of the masses (Ibid). More specifically, “Mexico differed from Spain’s other rebel colonies in its involvement (albeit aborted) of many Indians” (Levy & Bruhn, 2006, p. 39). The War for Independence that lasted from 1810 to 1821 was extremely decentralized, very complicated and most important of all, the masses did not benefit from it and they felt unfulfilled (Levy & Bruhn, 2006). Therefore, Mexico achieved independence from Spain when the elites decided to turn against the established colonizer government. Therefore, the elites were building the political class in Mexico leaving the masses outside of that process. Additionally, once Mexico achieved independence, the country lacked strong leaders that could build a base for strong democratic institutions, which would then reinforce the existence of a strong *democratic rule of law*. The reason for this reality is that Mexico was not able to achieve political stability until Porfirio Díaz came to power in 1876. Therefore, the legal system at this time for Mexico was not in itself democratic. Also, the rule of law was not defended by an independent judiciary as it was inexistent at the time, and the rights and equality of all citizens were at risk as the elites benefitted over the masses. Therefore, following O’Donnell’s (2004) definition of the *democratic rule of law*, the basic premises to

build a strong *democratic rule of law* were missing for Mexico. Once Mexico had gained its independence from Spain, “[o]nly two presidents completed their four-year terms during the thirty-five year span from 1821 to 1856” (Levy and Bruhn, 2006, p. 40). Mexico from 1821 to 1856 did not have a strong leader, but also most of the failures to stay in power were due to major disagreements about the design and construction of political institutions (Levy & Bruhn, 2006). More specifically, “[d]uring the twenty years from 1824 to 1843 the Republic adopted three constitutions (in 1824, 1836, and 1843) and had twenty governments and more than one hundred cabinets” (Rodríguez O., 2012, p. 39). Thus, this demonstrates that Mexico did not enjoy a stable democratic base with strong institutions. At the time, there were weak political parties, a strong military, and there was a major disagreement between the factions of Liberals and Conservatives throughout the country. At the time, all of the governments would govern for the upper classes and the elites. The only means available to the masses to gain political rights and political participation were revolts. In turn, Mexican society did not participate in the foundation of institutions and the strengthening of them. From its early foundations, clientelism benefitted certain privileged sectors of society over others. Furthermore, the government lacked a just and balanced distribution of resources. Thus, the governments could not even afford to pay the army, and military coups occurred all too often. Throughout most of this period until the *porfiriato* in 1876, the reality in Mexico was of inexistent socio-economic and political equality. All in all, from its independence until 1876, Mexico could not build a strong democracy nor strong democratic institutions that would serve everyone in society through democratic means instead of patron-client relations. Thus, it was a period of short-lived regimes that governed mainly for the upper and elite classes without having achieved democratic stability and equality. Once the nineteenth century came to an end, the leaders had left a country without a strong democracy and without strong democratic institutions with an inexistent *democratic rule of law* where a few benefitted over the many. In this historical political instability, Díaz became the supreme leader and installed a dictatorship that lasted from 1876 to 1910.

Díaz was a military general that fought for Mexico against the French and became the supreme leader once the fight was over. He governed from 1876 to 1910, and his dictatorial regime is historically known as the *porfiriato*. Due to the fact that Mexico could not manage to build strong democratic institutions and have strong political parties to

represent its citizens, the strong-hand of a military leader was what occurred instead. This period clearly shows what Levy and Bruhn (2006) explain as “[g]overnment[s] had come and gone so often that the military had become a desirable career for mobile mestizos, offering access to power and corruption” (p. 42). The period known as *porfiriato* brought with it very important improvements that were needed in Mexico at the time. On the positive side, during this period Mexico gained order and stability through economic growth and this provided Mexico with the opportunity of having economic modernization. However, due to the fact that Díaz was a dictator, there was no intent to achieve or even design a democratic government, nor create democratic institutions that could look over the *democratic rule of law*. Therefore, there was authoritarian stability, but not democratic stability. In addition to this, clientelism and corruption still reigned within the system. Díaz only gave Mexico economic stability and a certain military government stability that had not been seen historically until this point. However, there were no political institutions being built. The only law that existed was Díaz’s own and during this period, “free elections and political liberties (such as freedom of speech and freedom of the press) were lost” (Levy & Bruhn, 2006, pp. 42-43). It is clear that Mexico did not enjoy any democratic institution or any future vision in regards to the *democratic rule of law* during the *porfiriato*. In addition to this, for much of the nineteenth century clientelism existed where the elites and upper classes would benefit their own groups without spreading the benefits to the masses or the army. More specifically, during the *porfiriato*, the clientelistic reality was not any different to the period before, as “[t]he government co-opted peasants and bandits by offering good salaries, uniforms and power; it then unleashed these *rurales* to repress dissent in the countryside” (Levy & Bruhn, 2006, p. 43). It can be clearly seen that clientelism existed and was at the center of Díaz’s government, as patron-client relations were common in order to maintain order and benefit certain sectors of society over others. However, this was a general Mexican reality as Díaz “was no more authoritarian than his predecessors, Juárez and Laredo” (Rodríguez O., 2012, p. 47). Furthermore, the military was developing its own personal corporate identity while it operated without being subversive to the civil power. Díaz had initiated a caste mentality and a caste system that is “a characteristic which continues to affect civil-military relations in Mexico in the twenty-first century” (Ai Camp, 2005, p. 17). This caste mentality benefits certain soldiers and certain ranks over others, creating patron-

client relations even within the military system. Since the beginning of Mexico's political history, the clientelistic relations and handpicked military officers were part and parcel of the system. Although the system was more professional than before, Díaz still personally influenced the institution. Towards the end of Porfirio Díaz's regime, a reborn liberal movement "demanded, at a minimum, free elections, a free press, and a return to the Reform's 1857 constitution" (Levy & Bruhn, 2006, p. 44). Thus, this move from the liberal movement demanded a space for change, and the fact that Díaz was automatically reelected started forcing certain changes at the interior of the Mexican society. In order to bring the changes envisioned, the Mexican Revolution took place from 1910 to 1917 where Díaz was thrown out of power. However, this Revolution did not bring about the envisioned changes.

The first president to replace Díaz was Francisco I. Madero, but his mandate failed to provide what Mexico needed. Madero from the beginning governed just for the elites as he believed in political liberty but did not follow on the creation of political equality through the foundation of strong democratic institutions (Levy & Bruhn, 2006). Therefore, Madero could not manage to accommodate democracy and democratic institutions for all; instead he governed for the few. Also, Madero was unable to change the clientelistic traits left by Díaz in terms of politicians, army, and economic interests that existed during the *porfiriato*. For the first time since 1876, he managed to legitimize a short-lived civilian presidency (Ai Camp, 2005). However, Madero was murdered in 1913 through a coup and replaced by dictator Victoriano Huerta, who managed to eliminate the political freedom created by Madero. Nevertheless, he did not change any of the previous economic and political arrangements left over by Díaz such as governing for the elites. Therefore, the Mexican Revolution did not bring about the anticipated change. Throughout most of the Mexican Revolution, even though there were three main forces confronting each other, the one that came victorious out of the Revolution repeated the same pattern seen historically in Mexico until this period as having institutions governing and benefitting the elites.

The first force partaking in the Mexican Revolution was that of Emiliano Zapata, who favored the peasants and demanded land for this sector of the Mexican society. The second force was the army under Pancho Villa who followed certain populism, an ideology that drove them through the revolution. Finally, the third force was the "constitutionalists" headed by Venustiano Carranza and they were considered self-made men and ranchers that

did not belong to previous established elites, though they were economic elites themselves. Although the three forces were very important, for the purpose of this thesis, the most important force was the *constitucionalistas* who would be seen as the victors of the Revolution. This group is central to the analysis presented because clientelism was part and parcel of the *constitucionalistas*, as “Carranza himself had been a landlord, a senator during the Díaz regime, a governor during the Madero era, and a *cacique* (regional strongman with his own army)” (Levy & Bruhn, 2006, p. 45). Carranza did not bring about any large-scale political or institutional reforms, especially due to his non-revolutionary personal values. Additionally, as can be seen from the information above, he was part of the elite group during Díaz’s dictatorship and continued being part of the elite during Madero’s government and was a strong figure within his own army. There was no interest to produce major changes as he was benefitting the economic elite at the time that did not belong to the political elite class but who wanted to become part and parcel of the political ruling class. Despite the few changes, in order to secure his regime, Carranza had to support the 1917 Constitutional Convention, where “[t]he Constitution, like Mexico’s earlier Reform efforts, also replicated many U.S. concepts of democracy including federalism, separation of powers, a bicameral congress, and an elaborate Bill of Rights” (Levy & Bruhn, 2006, p. 45). In theory, this was a move forward towards the democratic future of Mexico, but the reality was completely different. The implementation of this Constitution was severely limited and the future of Mexico would see a one-party authoritarian government. In fact, Carranza was killed because he wanted to install a successor handpicked by him. Therefore, the reforms never achieved the importance that was supposed to bring with them. After Carranza’s death, Mexico saw the appearance of Plutarco Elías Calles, who assumed the presidency in 1924; he wanted to handpick his successor Álvaro Obregón; but Obregón was killed, and his original plan of handpicking his successor failed. The most important fact about Calles’s presidency was that he officially managed to establish the basis for Mexico’s uniquely one-party system (Levy & Bruhn, 2006; Medina, 1977). Calles did manage to achieve the institutionalization of the National Revolutionary Party (PNR) (Ai Camp, 2005). Thus, the revolutionary nature of the regime was something central to the non-promotion of the rule of law. More specifically, democracy was not being implemented, as there was no intention to have a democratic regime, but rather to institutionalize the Revolution, which is detrimental

for the construction of a strong *democratic rule of law*. In 1938, this party was renamed from National Revolutionary Party to the Party of the Mexican Revolution (PRM) (Ai Camp, 2005). Later on, this party would be renamed again to become the *Partido Revolucionario Institucional* or PRI in Spanish that was the dominant single party until the year 2000. This was in fact the desired plan by the governing elites at the time, to institutionalize the Revolution for years after. Thus, this was a major impasse in implementing the *democratic rule of law* historically. This is because although the PRI was successful in other areas once the Revolution was institutionalized, it has been demonstrated by others specialists (Benítez Manaut, 2010; Calleros, 2009; Díez, 2012; Levy & Bruhn, 2006) that this has been a historical impasse towards the implementation of a strong *democratic rule of law*. This is especially because the main pillars needed in order to build a strong *democratic rule of law* such as an independent judiciary, a strong democratic government, and democratic institutions that can protect fundamental and civil rights were not and are still not present in Mexico. The next section explains in detail how the PRI historically used patron-client relations from its beginning as well as the abuse of power to govern.

Once the Institutional Revolutionary Party came to be the official political party, it followed a path-dependence relation of clientelism. More specifically, Torcuato S. Di Tella (2005) argues that the PRI “was never legally a single party, but the use and abuse of power made challenges ineffectual, both from the conservative PAN and from the sectarian Left” (p. 21). This party from its beginning tried to represent many different groups within it, always in a semi-corporatist and clientelistic arrangement. Within this party, the labor, peasantry and military branches were represented historically (Di Tella, 2005). However, the popular fourth branch of this party governed for bureaucrats and other entrepreneurs, therefore leaving the masses outside the political representation (Di Tella, 2005). Furthermore, the creation of the party was another intent to bring the needed stability and order that did not exist after the Mexican Revolution ended. Therefore, Calles was in a sense forced to create the PRI as he was unable to secure the election of Obregón to replace him. Calles was left with two options: the first one was that of founding the party to accommodate the elites or the second option was the continuation of chaos and death existent during and after the Mexican Revolution had ended. Historically, Mexico had not intended to set the base for a strong democracy, strong democratic institutions with political stability through

co-participation of parties, political stability and equality, and a strong democratic base for the future of the country. Rather the governing elites were looking to institutionalize the Revolution, which would be detrimental for the creation of a *democratic rule of law*, and the enhancement of a strong *democratic rule of law* after the PRI lost its presidential powers. For most of the nineteenth century, Mexico did not create strong democratic institutions.

In conclusion, throughout Mexican history, every president governed for the elites already established or for the incoming elites such as was the government of Carranza. This made Mexico's democracy and democratic institutions inexistent historically. However, clientelism and patron-client relations were at the forefront of Mexican institutions historically. In great part, this decision made certain movements by the masses to democratize the country or to make the government more accountable impossible to achieve. As presented in the previous section, every leader governed for his own interests through patron-client relations by paying dues or giving something in exchange. The masses were excluded, and even though there was an attempt by Lázaro Cárdenas, who governed from 1934 to 1940, to include the masses, the reforms did not have a far-reaching experience for the poor as "[p]easants got land in small plots, without the adequate capital, irrigation, or skills to develop them" (Levy & Bruhn, 2006, p. 46). Therefore, even if the masses achieved a small improvement during Cardenas's presidency, this change was limited in nature and did not produce any material improvement for the masses. Added to this is the fact that Cárdenas's reforms were always top-down rather than bottom-up, excluding the participation of citizens and their necessities. Furthermore, once Cárdenas replaced Calles in 1934, corruption and clientelism continued. Government was ruling with a heavy hand, as had been the case historically; however, some trade unions and peasant groups that did not acquiesce with the main political party started forming at this time (Di Tella, 2005). Even though there was one presidential period that tried to change the reality of Mexico and open a democratic space for every citizen in the country this did not work. In fact, presidential leaders in Mexico from 1920 to December 1946 with the exception of Cárdenas, were all military in nature (Ai Camp, 2005). Thus, by taking political power and dominating from the executive position down to other decision-making positions within government, the military "legitimized for all Mexicans the military's direct role in politics" (Ai Camp, 2005, p. 18). Therefore, Mexico never saw the strong foundation of democratic institutions and a strong

democracy that could provide a strong *democratic rule of law* for its citizens. Mexico saw the military holding the presidential position and saw the executive power governing for the elites and this built a society that was dependent upon patron-client relations to function and to have clientelism as part and parcel of the political system. What happened in Mexico after the *porfiriato* (1884 – 1910) and after the Mexican Revolution (1910 - 1917) ended is that, due to the number of deaths and the few survivors that feared instability and regenerated violence, the governments had to provide stability (Ai Camp, 2005; Levy and Bruhn, 2006). However, by having provided stability, and having institutionalized the revolution, the governments did not provide strong democratic institutions, and the *democratic rule of law* did not flourish in Mexico's political system. Rather, the governments were based on a strong authoritative executive position that would govern for the elites, either economic or political ones, but without taking into consideration the other sectors of society (Smith, 2012). Once the PRI consolidated its political power and consolidated its presidential political victory through patron-client relations, it governed until the year 2000. The section below analyzes the period after the first civilian president was elected to govern in 1946.

Historical existence and persistence of clientelism in Mexico's political history

After the crisis of 1930s ended, Mexico's PRI political party already had the power and political grip to continue governing Mexico. Even though during the Second World War, the *Partido de Acción Nacional* or National Action Party (PAN) was founded in 1944, the party did not dominate and did not partake in elections until later in history (Ai Camp, 2005; Middlebrook, 2004; Shirk, 2005). The 1946 elections were inflated and the result was far from being transparent (Di Tella, 2005). However, these elections managed to select the first civilian candidate, Miguel Alemán Valdéz who was finally elected and governed from 1946 to 1952. Valdéz came to power because after the Revolution ended, the PRI had managed to establish itself as a political party even if it only represented the elite sectors of the Mexican society. Also, the PRI had managed to achieve economic growth and economic development; however both growth and development had been unevenly distributed (Di Tella, 2005). Gillingham (2012) explains that there are four reasons as to why the PRI could enjoy such an electoral win and how this allowed the PRI to maintain its electoral authoritative regime for 71 years through patron-client relations (for full description please

refer to page 55). However, the main reasons for the purpose of this analysis are: a) the fact that the PRI won by overwhelming majorities from 1910 until 1994, b) the institutional measures employed to block other parties, and win the overwhelming majority by coercing the electorate. Everything began in 1910, as the failure of having a strong president elected in 1910 sparked the Mexican Revolution that lasted until 1917. However, in 1911 when Díaz retired, Madero became president-elect since he was the only candidate for the presidency due to the fact that the forerunner candidate was refused to postpone the election in order to be ready for it. Therefore, Madero won with 98 percent of the votes. This marked the period of absolute majority for the PRI through coercion and clientelism that set the regime's history until the year 2000 when it lost its presidential power. The following elections, those of 1920, 1924 and 1928, did not require massive fraud due to the economic situation and the civilian absence in political power making the transitions much easier during that time. However, during the 1930 presidential election, those against Calles were being discouraged, especially through a "systematic harassment and violence: on election day government gunmen killed nineteen in the capital alone, and one year later one hundred bodies were discovered in a mass grave in Topilejo" (Gillingham, 2012, p. 57). This has been also known and remembered as being the "year of the first great post revolutionary fraud" (Gillingham, 2012, p. 57). At this time in history, there was a political opening for a right-wing officer called Juan Andreu Almazán, who was "promising local democracy, votes for women, support for collective farms as well as smallholdings, the rights of workers as well as the defense of capital" (Gillingham, 2012, p. 57). Through coercion, Andreu Almazán was left outside the political sphere with the overwhelming victory of Manuel Ávila Camacho, who won with 99% of the votes (Gillingham, 2012, p. 57). Thus, the politics of coercion, corruption, and clientelism continued. In 1970, 1976 and 1982, the PRI presidential candidates continued winning very comfortably by winning informally and institutionally without major problems, especially without real political competition (Gillingham, 2012, p. 58). This continued until 1988 when certain changes sparked within the PRI authoritarian regime. At this time, Mexico was living under a very severe debt crisis and economic decline, and there was the appearance of a leftist political party, the Frente Democrático Nacional or National Democratic Front (FDN). The elites within the PRI responded to the economic decline and the debt crisis by moving rightward and incurring to block the leftists

leading figures such as Cuauhtémoc Cárdenas. When the PRI presidential candidate became Carlos Salinas de Gortari, Cárdenas left the PRI and ran for the FDN. At this point in history, the FDN had formed a strong base and different dissidents from the PRI added to other followers, non-sympathizers with the PRI, were supporting and joining the newly formed FDN. This opportunity was seen as the end of the PRI authoritarian rule. However, on election day, the computerized vote counting had a failure: in Spanish it was known as *el sistema se cayó* (Anaya, 2009; Gillingham, 2012). Therefore, the real leader that won in 1988 is unknown. However, Salinas came out as the PRI newly-elected president with 50.48 percent of the votes (Gillingham, 2012). Historically, this had been the way the system operated and it kept on working in the same way. Although the change for the PRI authoritarian government was close, it failed to materialize in 1988.

The explanation above is pivotal to understanding the patron-client relations existing in Mexico and more specifically the presence and persistence of clientelism in the country throughout its history. However, the main explanation remains that Mexican elites fixed informally and formally the election results, and therefore the existence and persistence of the authoritarian regime. At the beginning of the regime, physical coercion and violence applied to other political parties kept them outside the political sphere for a long time. This physical coercion existed historically; however, as the system evolved, it also had to change the way it coerced other political parties. Among these, there was the manipulation of the voting system on Election Day itself. Thus, affecting the system by prohibiting the existence of clean, transparent and democratic elections. There are four arenas that Gillingham (2012) explains as being the most important ones in the PRI survival. The four arenas are: 1) the establishment of a ruling party at its foundation. This means the creation of the PRI as a strong single party that can out-rule the competitors; 2) to centralize candidate selection, so that no outlier will be selected in order to govern the system;. 3) the co-optation, limitation and exclusion of women, militant Catholics, and Communists. Although these groups were limited throughout different times, one of the most important ones had been women, who were limited from 1910 to 1952. Therefore, universal suffrage including women and men within a clean democratic electoral system was inexistent historically in Mexico; 4) the fourth and last arena is the institutional control. Within this arena, there exists the control everywhere from the electoral commission to the security forces, going through the control

of the polling booths too. Therefore, the authoritarian electoral regime controlled every sphere of the political system. The PRI forced and reinforced the authoritarian regime, excluding most sectors of society, and forcing limited institutions that appeared to be transparent. However, in reality clientelism operated at the center stage throughout the PRI governing years. Therefore, the PRI's regime has been defined as having been based on "mixed coercion with co-optation" (Gillingham, 2012, p. 61). Mexico's authoritarian regime did not fall all at once and clientelism continued even after the demise of the PRI authoritarian regime. The demise from a structural level has been argued by Peter H. Smith (2012) to be because "processes of societal modernization, generational change, and persisting urbanization gradually undercut the popular base of the ruling party, which had long been stronger in the countryside than in the cities" (p. 79). These are some of the main structural problems that helped the end of the regime, but the economic crisis of the 1980s and the presence of other political parties at the time helped to de-legitimize the PRI authoritarian regime. However, even though the regime had been de-legitimized, and the regime was not as strong as before, they still managed to win and keep their power, as the PRI controlled every institution and held the power at the Executive, Legislative and Judicial level. Furthermore, the judicial power was not independent and would very often side with the political party in decision-making. Although this section has emphasized the creation of clientelistic institutions that were historically producing and reproducing themselves, it is very important to analyze the judiciary's independence in order to see the clear absence of a strong *democratic rule of law* and the presence of clientelism within the system.

The Absence of a Critical Juncture: The Historical Persistence of Clientelism in Mexico

It is necessary to understand the judiciary's independence in Mexico to see how the presence of clientelism within the system affects the existence of a strong *democratic rule of law*. O'Donnell's (2004) definition explains that the *rule of law* in itself "does not refer directly to any state agencies other than courts" (p. 36). Furthermore, the basic premise of the *democratic rule of law* requires the existence of a strong independent judiciary that can protect fundamental and human rights and this legal system has to be in itself democratic. Due to the importance of the judiciary within the definition of a *democratic rule of law*, the section below is devoted to analyzing the historical existence of clientelism in Mexico as

well as the limited judiciary's independence in this country. It has been largely argued that one of the main ways to strengthen the weak *democratic rule of law* in Mexico and eliminating the clientelistic relations is by the strengthening of the judicial power (Domingo, 2000; Beer, 2006; Davis, 2006; Calleros, 2009; Eisenstadt & Yelle, 2012). Thus, if the judicial power is strengthened, it will become on the one hand more independent and therefore able to judge the presidential power in Mexico, among other functions such as providing fair and just access to everyone to a fair trial. Furthermore, if the judicial power is effective, it will be able to eliminate clientelism from the Mexican political system by becoming an independent, transparent body that overlooks the rights of everyone without differentiating one group over another. This goes in line with the basic premise proposed by O'Donnell (2004), who defines a truly *democratic rule of law* as that which "ensures political rights, civil liberties, and mechanisms of accountability which in turn affirm the political equality of all citizens and constrain potential abuses of state power" (p. 32). O'Donnell goes even further to argue that without the presence of a "vigorous rule of law, defended by an independent judiciary, rights are not safe and the equality and dignity of all citizens are at risk" (Ibid.). It is very important to note that although the judiciary is an extremely central part of an institutional and *democratic rule of law* analysis, it has remained an understudied area (Domingo, 2000). Having argued this, the next section is devoted to show the problem with the judicial system's limited reforms and the direct influence of this in clientelism and the *democratic rule of law*.

Historically, the judiciary had been politically subordinated to the PRI for its 71 years in power. Throughout these years, the judiciary was extremely passive, subservient to the executive power, and within a system concentrated in an authoritarian regime (Domingo, 2000). More specifically, "the judiciary was in effect politically subordinated to the logic of dominant party rule through both specific constitutional reforms since 1917 that weakened the possibility of judicial independence and a politics of institutional and political co-optation" (Domingo, 2000, p. 705). Thus, the judiciary did not enjoy the independence they needed to influence, check upon, or even rule over the authoritarian government decisions for most of the PRI's authoritarian regime. There have been, since 1986 when the student movement had a confrontation with the military onwards, certain pressures to protect human rights, end impunity and clientelism and protect the *democratic rule of law*. However, these

changes have remained very limited. The PRI was able to build its regime due to constitutional reforms that forced the subordination of the judiciary reinforcing the relationship between the executive and the judiciary. Judges had been politically and institutionally influenced by many coercive actions that impeded them from effectively administering justice. Among the most important of these actions were direct clientelism between the executive and the judiciary, where the judiciary becomes the client of the executive power and also corrupt through bribery that was part and parcel of the system. It has been argued that “[t]he Supreme Court is viewed as a branch which has traditionally been subordinated to the executive in a strongly presidentialist and essentially undemocratic regime” (Domingo, 2000, p. 709). Thus, the Mexican judicial system has not been driven historically by the *democratic rule of law*. Domingo (2000) believes that “the Mexican political system is strongly underpinned by a *state of legality*, although not by rule of law proper” (p. 710). Historically, there were intents to change the model or to improve the model throughout PRI history such as in the years 1928, 1934 and 1944; however, since 1944 until 1994, the judicial power largely remained unchanged (Domingo, 2000). Therefore, checks and balances on the Executive power had been historically inexistent. Also, appointments within the Judiciary were done by the Executive and were based on minimal requirements, thus reinforcing the clientelistic system. Throughout the period of PRI hegemony from 1946 to 1988, “presidents used unwritten norms to control the legislature, the judiciary, and state and local governments” (Beer, 2012, p. 121). Although there was a Constitution in place throughout this time in Mexico, the political ruling party and the president controlled every institution. In fact, clientelism was so embedded in this system that it has been argued that this system “cemented the president’s power by creating a circulating political elite that was always looking to the president for the next job, and it meant that political elites were constantly moving from one government institution to another” (Beer, 2012, p. 122). This is exactly what happened throughout the entire PRI authoritarian regime; most workers were handpicked and appointed by the president to certain posts. Therefore, these handpicked workers owed their position and their job opportunities to the president. Thus, clientelism was part and parcel of the system. More importantly, the system did not have any checks and balances more known with a democratic regime, as the legislature, the judiciary and the state remained weak and always

dominated by the presidential figures (Beer, 2012). Therefore, the judiciary had no independence and was constantly being impeached by the system. Furthermore, as the PRI controlled most of the legislature, which was the body in charge of the appointment and nominations of judges, the judiciary was very much influenced, and it was almost impossible to have a check on the president himself (Beer, 2012; Domingo, 2000). After president Salinas de Gortari finished his mandate in 1994, the next president Ernesto Zedillo who governed from 1994 to 2000 would undertake certain reforms to make the system more accountable. Although there were changes that started in 1994 and continued happening well into the democratic era of Mexico, which commenced in 2000, these changes have remained very limited, therefore clientelism is still existent and the *democratic rule of law* is still very weak, which I discuss below.

Ernesto Zedillo's presidency was pivotal in Mexico's improvement of clientelism and in trying to strengthen the *democratic rule of law*. However, the reforms were very few and the changes extremely limited. In the 1994 elections, the PRI had lost some legitimacy due to the reasons mentioned above, among them the economic crisis and the loss of power within municipal elections. Zedillo was also not the favorite candidate for the 1994 elections to represent the PRI in the presidency (Beer, 2012). Therefore, Zedillo came into his presidential period with a lot of problems to fix and not a whole lot of the economic and political power that was part of the historical PRI authoritarian regime. Zedillo introduced the idea of *Nuevo Federalismo* or New Federalism where he strengthened the legislature as well as the judicial powers (Beer, 2012). However, clientelism was so embedded in the system that it was extremely difficult, if not impossible to eradicate the clientelistic operating system. A clear example is the case of Roberto Madrazo Pintado, who spent more than ten times the legal limit allowed for his campaign finance, but who nevertheless became governor of the state of Tabasco in 1994 (Beer, 2012). Even after this scandal, Madrazo Pintado became elected as the PRI presidential candidate for the year 2000, although he did not win in these elections. This example, among others, clearly demonstrates the crippling of institutions and institutional independence. The judicial power was unable to change this situation and even Zedillo himself was unable to oust Madrazo Pintado from power. Therefore, although Ernesto Zedillo tried to improve the system and make the judiciary more independent, clientelism was so embedded in the system that it was very difficult to

eradicate. For example, since the 1994 reforms, the system has seen some changes, among them the fact that the executive is more limited in the Supreme Court appointments. However, even though the members before 1994 had been dismissed and Zedillo presented a renewed list to the Senate, “the PRI senators voted with marked ballot papers, thus effectively resulting in a packed court again” (Domingo, 2000, p. 714). Consequently, there was a path-dependence relationship of clientelism and unaccountability that continued at the judicial level even after the 1994 reforms. Thus, the judiciary was a political arrangement and a support mechanism to the PRI hegemonic power, as it was historically part and parcel of the clientelistic nature of Mexico’s political system (Domingo, 2000). At the same time, there were reforms being done within other political parties that helped them prepare for the next presidential election. The PAN, who had historically held elections behind close doors benefitting the elite sector of society with impressive credentials over others, started to open an adherent group where other sectors of society could join the party and belong to the party with less bureaucratic requirements (Wuhs, 2012). The result was a series of events over time that allowed the democratic change in the year 2000; it was not due to a critical juncture in Mexican history. However, although a democratic change occurred in 2000, the patron-client and clientelistic relations continued as before as they were part and parcel of the system by now. This can be clearly seen at the judicial level, which is one of the most important institutions, as it is the one that overlooks the *democratic rule of law* and opens the space for citizens to be protected under the law (Beer, 2006; O’Donnell, 2004).

As mentioned above, Ernesto Zedillo tried to improve the system and make the judiciary more independent, but clientelism was so embedded in the system that it was very difficult to eradicate. Zedillo managed to achieve certain reforms that separated the judiciary from the executive and the legislative power. However, these changes were very limited and did not produce a great change. Before Mexico’s transition to democracy, there were gentlemen’s agreements or *concertaciones* between the main parties, the PRI and the PAN. Through these *concertaciones*, the PAN, and sometimes even the PRD, lost state elections but received something in return such as “an interim mayorship or at the very least a proportional representation city council seat” (Eisenstadt & Yelle, 2012, p. 213). These arrangements were not formal arrangements, rather they were agreements that existed informally outside the main political system. Thus, without reinforcing a clear and clean

political party competition, the historical competition had been through patron-client relations between the political parties, too. Furthermore, although the judicial power had gained more independence, the courts were only weakly exercising them after these reforms took place in 1994 (Eisenstadt & Yelle, 2012). As although Zedillo had undertaken large reforms within the Mexican judicial system and in the separation of powers, it must not be forgotten that the courts investigated and forced a former head of one of the banks within this study, Banco Unión to declare “the \$25 million in loans assumed by the public debt went to financing the PRI’s 1994 election campaign” (Eisenstadt & Yelle, 2012, p. 221; Staton, 2004, pp. 44-45). However, Zedillo did not lose his political power, nor did the courts apply the law to make him responsible for violating the law during his electoral campaign. All in all, even though the judicial system in Mexico has seen larger independence from political party subordination in the 2000 transition to democracy, it has not managed to protect human rights and enforce the rules; therefore, the *democratic rule of law* remains very weak.

Structural Impasse: The Continuation of the Judiciary’s Inefficiency and Clientelism

The historical structural judicial impasse existent at the civil level in Mexico is highlighted through the criminal justice system. The reason for choosing the criminal justice system is that the *democratic rule of law* as defined by O’Donnell (2004) specifically observes the protection of human and fundamental rights for an individual in a society. Therefore, by analyzing the criminal justice system, it is easier to see where changes have been lacking and where the violation of human rights and the lack of a strong and independent judiciary are present in Mexico. Historically, the criminal justice system has been extremely weak, and through this system, the judicial weaknesses are evidenced. More specifically, a clear example of modern Mexico that serves to bring to light the weaknesses of the criminal justice system is the War on Drugs, which initiated in 2006. Through this war, these weaknesses emerged clearly, how they have flourished and how they have been at the centre stage of modern Mexican politics, from 2006 to 2012. Therefore, these actions highlight the necessary legal structural reforms for the prosecution of criminals, elimination of clientelism between the judiciary and the criminals, and finally, the strengthening of the

democratic rule of law. A brief history of the evolution of the Mexican legal system needs to be delineated in the next section in order to understand its present state.

The first time that the Supreme Court of Justice was separated from direct political influence was under president Ernesto Zedillo Ponce de León, who was president from 1994 to 2000 (Domingo, 2000; Eisenstadt & Yelle, 2012). President Vicente Fox Quesada's presidential period from 2000 to 2006 also managed to achieve a very limited reform that gained legislative support for a law that supported access to information. Fox also changed certain civil service reforms to try and improve the level of corruption and the effectiveness of governance. Although both presidents tried to do a number of reforms, certain crucial changes did not take effect within these reforms, such as "systemic backlogs, delays, and ineffectiveness in the justice system" (Edmonds-Poli & Shirk, 2012, p. 269). In 2006, Felipe Calderón Hinojosa became Mexico's 56th president in a very close democratic election, winning by a very narrow margin and the smallest plurality since 1910 (Ai Camp, 2011). Calderón's election was considered the "closest presidential election since 1929" (Ai Camp, 2011, p. 153). This was a big surprise in the 2006 election, as Calderón was running behind López Obrador from the beginning and throughout the entire presidential race. Although the election was validated and approved by the Federal Electoral Tribunal (Tribunal Electoral del Poder Judicial de la Federación, TEPJF) and the Federal Electoral Institute (Instituto Federal Electoral, IFE), there were several irregularities present before, during, and after the 2006 presidential elections. However, these irregularities were never fully evaluated, and his presidency was accepted as legitimate. Once Calderón Hinojosa became president-elect, he started the War on Drugs; however, the judiciary had not been reformed and would not be reformed in time to cope with the newer demands. Therefore, impunity, violence, violation of human rights, and clientelism would continue to exist in Mexico's democratic stage.

President Felipe Calderón Hinojosa introduced on June 18th, 2008 a judicial reform package that introduced the major sets of changes to the Mexican criminal justice system. Several experts have indicated that these reforms included the introduction of oral trials, stronger due process protections for the accused, police and procedural reforms to strengthen public security, and efforts to combat organized crime (Edmonds-Poli & Shirk, 2012; Schatz, 2011). While the reform package was approved in 2008, the reforms are not designated to take place throughout the country until 2016 (Edmonds-Poli & Shirk). Thus,

the reforms seemed to point to a better future for Mexico, but this did not end up being the case, as backlog statistics indicate that from all prisoners in Mexico, roughly 40 percent of them are defendants awaiting a sentence (Edmonds-Poli & Shirk). Thus, impunity is still existent and persistent in Mexico. Moreover, access to an independent judiciary that is capable of having a due process is almost impossible as demonstrated by the 40% still awaiting a resolution on their case. Furthermore, the largest limitation that Calderón confronted was the “inadequate resources and too little time to properly implement the reforms” (Edmonds-Poli & Shirk, p. 269). However, these reforms did not lead to significant changes while major limitations remain.

One of the main limitations is the fact that unlike common-law systems, the Mexican civil-law system “lack[s] the flexibility of interpretation provided in common law systems” (Edmonds-Poli & Shirk, 2012, p. 118). Thus, in general terms the legal procedures cannot be decided on cases based on precedents by previous judicial rulings of similar cases. This is a detrimental limitation, particularly in the case of Mexico as it does not allow judges to compare the case of a narco-trafficking organization leader prosecuted and apprehended now with an older case such as the one of Amado Carrillo Fuentes, *El Señor de los Cielos* who was one of the most well-known narco-trafficker leaders in the history of Mexico (Ravelo, 2006). Among the other very important limitations within these institutions are the case overloads, *amparos*, as well as difficulties in providing the necessary punishment for human rights violators. The severity of inefficiencies in the system and high levels of impunity are so grave that even high-impact violent crimes, including murder, rape, and kidnapping, are usually not prosecuted (Schatz, 2011). Furthermore, the general probability of a trial by a judge of a person who has committed a crime in Mexico has been estimated to be 33% (Schatz, 2011, p. 118). The judiciary weakness has created a situation in Mexico of crime without punishment. Despite the historical changes in the judiciary and the larger changes envisioned by president Felipe Calderón Hinojosa, the reality in Mexico is that the judiciary is very weak and clientelism where the client escapes unpunished and goes untried is still the reality.

A crucial issue that needs to be further advanced in the criminal justice system in Mexico is the existence and persistence of the *amparo* that was considered an innovation of Mexico’s 1857 Constitution (Domingo, 2000; Edmonds-Poli & Shirk, 2012). The *amparo*

suit means that “the Court’s ruling does not have *erga omnes* effect, that is, it does not lead to the abrogation of the law or act in question, but only protects the affected plaintiff” (Domingo, 2000, p. 716). However, the *amparo* has been seen more specifically as being an undemocratic procedure as it undermines the equality of everyone before the law (Domingo, 2000). Consequently, the Mexican judicial system has this institutional aspect for its judicial reviews that has been historically weak and failing to provide the necessary protection of equality for everyone before the law. Thus, this *amparo* reinforces the existence and persistence of a weak *democratic rule of law* in Mexico and reinforcement of clientelism, as it benefits those that can afford an *amparo* over others that cannot. More specifically, the situation of the *amparo* shows that its effectiveness diminishes as 77% of the *amparo* cases are dismissed and discarded without proper procurement in respect to the constitutionality or unconstitutionality of the laws or acts that were claimed as part of the *amparo* law suit (Rubio et al., 1994). Clientelism was and is still clear, as for one reason or another, institutional loyalty to the government interests had prevailed either one way or another against the citizens. Once democracy was achieved in the year 2000, there were certain limited changes to increase the independence of the judiciary from the executive power as well as stronger judicial power in electoral matters. However, in the criminal justice system, there are many changes that have not occurred and that have reinforced the detrimental weak system for the Mexican society.

Since the War on Drugs started in 2006, less than 5 percent of drug murders have been investigated (Watt & Zepeda, 2012). Despite the changes envisioned by president Felipe Calderón Hinojosa and the reform plan already in effect, by mid-2010, there were still severe institutional limitations persistent at the judiciary, which “remained a serious cause of impunity for homicide (civil, political, and drug-trafficking related)” (Schatz, 2011, p. 19). More specifically, despite the introduction of oral trials in December 2006, by 2009, out of 2,082 drug-related homicides, only 584 were reported by state courts to have reached the court agenda with only 100 sentences delivered (Schatz, 2011). Furthermore, in a report for the University of Miami’s Center for Hemispheric Policy, scholar Luis Rubio wrote “there are regions of the country where all vestiges of a functioning government have simply vanished” (Grayson, 2010, p. 271). Due to the limited power of the judiciary to imprison the persons guilty of committing organized crime or any other related killings, there are areas of

the country without a proper functioning government. More importantly, in certain areas of the country the “climate of impunity, extortion, protection money, kidnapping and, in general crime has(sic) become pervasive” (Grayson, 2010, p. 271). The present reality is that “forty-three out of 63 federal penal judges (68%) receive protection and have increased their own security in the face of ‘veiled or direct’ threats from jail organized crime members” (Schatz, 2011, p. 20). Results of a poll conducted by Castillo (2010) from the Mexican newspaper Reforma suggest that 40% of the Mexican citizens were concerned with the judiciary’s independence and impartiality, while 80% thought that corruption was the biggest and most pressing issue of the judiciary (p. 4). Although there have been many limitations at the judicial level, it does not help that the military, during the War on Drugs, was helped by the *fuero militar*, and have gone unpunished, thus reinforcing the clientelistic relations benefitting one sector over another one as well as abusing the judiciary’s power and having its own parallel judicial system. A clear example of the *fuero militar* in action and the weakness of the Mexican criminal justice system can be clearly seen through the use of “casas de arraigo”. This was originally introduced in the Mexican Constitution in the year 2008, the original idea was to have a federal initiative to detain and deprive of liberty those suspects of belonging to organized crime (“Comisión Mexicana de Defensa y Promoción de los Derechos Humanos A.C.”, 2012, p. 2). However, it has been demonstrated by a report prepared by the Mexican Commission for the Defense and Promotion of Human Rights that this violates basic human and fundamental rights as people can be detained for 40 days and this period can be extended to 80 days (“Comisión Mexicana de Defensa y Promoción de los Derechos Humanos A.C.”, 2012, p. 3). Thus, the simple action of “casas de arraigo” is a direct violation of human rights, and the way this has been implemented in Mexico has been random and has been abused by the Mexican Government and the Mexican Armed Forces during the War on Drugs as the use of the “arraigo” has increased by more than 100% each year since 2008 (Ibid, p. 2). This is not the only limitation in the reforms undertaken by Calderón in 2008, as there is also the Military Code of Justice protected by the *fuero militar* that operates in Mexico against the protection of human and fundamental rights as demonstrated below.

The Military Code of Justice that is protected by the *fuero militar* under the Mexican Constitution creates limitations to which soldiers that have violated human rights are held

accountable, reinforcing the reality that “institutions that can apply pressure on the armed forces to prosecute perpetrators remain weak” (Díez, 2012, p. 275). The abuse of human rights on the part of the military has been an endemic practice in Mexico, and this has been in part largely due to limitations in the judiciary power in Mexico (Ai Camp, 2005). The reforms in the Mexican legal system and national system of public security had been already announced and urged by the Inter-American Commission on Human Rights back in the presidency of Ernesto Zedillo Ponce de León from 1994 to 2000. However, at the end of 2009, during Felipe Calderón Hinojosa’s presidency, there was again an urgent request for change and the evidence of failures found in the judiciary that pointed to several human rights abuses committed by the Mexican military (Carrasco Araizaga, 2011). However, there has been a lack of substantial debate on the role of the military in Mexico throughout the last two PAN presidential periods in democratic Mexico, Vicente Fox Quesada’s from 2000 to 2006 and Felipe Calderón’s Hinojosa’s from 2006 to 2012 (Díez, 2012; Lizárraga & Castellanos, 2010). All of these limitations together have in fact allowed for the absence of a strong *democratic rule of law* protected by an independent judiciary capable of ensuring the protection of fundamental as well as civil rights within a democratic government and the existence of patron-client relations benefitting the military over civilians. Furthermore, several human rights violations have passed inadvertently and unattended during the War on Drugs that started in 2006, thus reinforcing the abuse on the part of the military which is protected by the *fuero militar*. It also shows the weakness of the judiciary, the access to justice, the reinforcement of clientelism, and the weakening of the *democratic rule of law*. According to the Human Rights National Commission (CNDH), there have been 4,944 complaints for violations of human rights (Carrasco Araizaga, 2011). Among the most common types of crimes are tortures, forced disappearances, and murders. Furthermore, out of these 4,944 complaints, there have been a limited number of recommendations emitted (only 72) and no actions taken (Carrasco Araizaga, 2011). More importantly, the reality of Mexico remains that with such an autonomy on the part of the military aided by the *fuero militar*, added to a minimum control of civilian authorities that operated unsuccessfully from January 1st, 2006 to December 1st, 2008, according to the Mexican Commission for the Defense and Promotion of Human Rights the reports of the military’s human rights violations has increased by 600 percent (Carrasco Araizaga, 2011; Díez, 2012). The

aforementioned violations of human rights on the part of the Mexican military not only demonstrate the abuse of civilians' human rights, but at the same time prove the weak *democratic rule of law* existent and persistent in Mexico. Furthermore, the structure of embedded clientelism that has historically existed in Mexico has not changed and is still operational. The benefit of the military over civilians as well as the protection of the violators of human rights that are within the military ranks clearly shows that there are certain sectors of society being benefitted over others. Furthermore, the fact that Fox and Calderón did not want to discuss the role of the military and continued with the status quo also implies that the military is being benefitted over other sectors of society. The presence and existence of military impunity places the institution above all others, therefore delegitimizing and directly affecting the *democratic rule of law*, rendering Mexico one of the countries with the weakest rule of law in Latin America.

In conclusion, the judicial reforms that were seen as being very important and central in 2008 did not materialize within the democratic political sphere of Mexico. Although the judicial system has enjoyed more independence in comparison to previous PRI regime periods, it has not yet attained the necessary independence to regulate and enforce the strong *democratic rule of law* in Mexico with all the basic requirements listed by O'Donnell (2004). Therefore, Mexico still has clientelism, impunity, corruption and weak institutions that cannot protect human rights violations or strengthen the *democratic rule of law*. Clientelism has been part and parcel of the historical political foundation of Mexico, and it has operated at different levels throughout the entire history of this country. Once democracy was achieved in the year 2000, many changes were implemented towards the eradication of clientelism. However, clientelism has been so embedded in the institutions, that it has been extremely difficult to eradicate it completely. There are still handpicked government workers, military officers, and judges, among others in democratic Mexico. Thus, clientelism has been rooted in the system since its foundation. There has not been a clear rupture in the form of a critical juncture that has forced a sharp change in the operation and evolution of the institutions. Therefore, this absence of a critical juncture serves to explain the reason why Mexico has historically seen its political system operate through clientelistic relations. The existence and persistence of these relations directly nurtures the reality of a weak *democratic rule of law*.

Chapter Three Part Two: Uruguay – The absence of a clientelistic path-dependent relationship in Uruguay's regime transition

Introduction

The strength of Uruguay's *democratic rule of law* over Mexico can be explained by the absence of a path-dependence relationship of clientelism in Uruguay's regime transition. I aim to elucidate key areas where the civil political model of Uruguay differentiates itself from that of Mexico, making it unique. I begin with an overview of the historical institutional background that existed before the dictatorship (1973-1985). Within this first section, the importance and centrality of certain democratic traits found in Uruguay are further analyzed. For example, Uruguay had an Executive Collegiate that labeled the country as the "*Switzerland of the Americas*" (Altman, 2008; Fitzgibbon, 1952; Roniger, 1997; Sondrol, 1992). This is more specifically known as *colegiado*, or Executive Collegiate, and was implemented twice in Uruguay, from 1919 to 1933 and 1952 to 1966. This trait comes originally from Switzerland, and was applied to Uruguay's political model to prevent the executive power from being unaccountable, clientelistic, and corrupt. The idea of having a *colegiado* failed for reasons that I explain later. However, the *colegiado* marked general traits in the Uruguayan political sphere as being accountable, democratic and minimally clientelistic. Furthermore, this idea also shows that Uruguay's political system has historically been a constant political laboratory for innovations and advancements that have served to reinforce the *democratic rule of law* in the country. Although the *colegiado* failed, it opened the space for other democratic traits that have remained in Uruguay until today, such as: the eight-hour workday, universal suffrage for women, public and free education for every citizen up to university, and divorce legislation. Next, this chapter looks at the dictatorship from 1973 to 1985 and the abolition of democratic rights previously enjoyed by Uruguayan society throughout much of the 20th century. The direct suppression of human and civil rights that added to the decrease in democratic spaces are emphasized throughout this second section. In the same section, the traces of democratic institutions that the military maintained during the dictatorship are analyzed. For example, the plebiscite undertaken in a constitutional amendment in 1980 that was voted against by the population shows the presence of a democratic institutional trace during the dictatorship. On the one hand, this

action shows that the historical democratic trait of plebiscites and referendums in matters of the state existed and was part and parcel of Uruguay's political system. On the other hand, the fact that the military respected the answer chosen by citizens who voted against the referendum shows that the institutional characteristics of the former Uruguayan democracy were still present during the dictatorial period.

The third part of this chapter examines the structural change that occurred after the dictatorship ended. This section concentrates on the elimination of certain institutional acts imposed by the military as well as on the return to democratic institutions that were existent before the dictatorship. For example, upon the agreement of the Naval Club Pact, the elimination of the Institutional Act number 19 marked the end of the dictatorship and the full return to a democratically elected government. Finally, this chapter closely observes post-structural changes evident in Uruguay in civil-military relations as well as the strengthening of institutions like the judiciary.

Historical Institutional Background Existent Before The Dictatorship (1973-1985)

In order to fully analyze the absence of a path-dependence relationship of clientelism in Uruguay's regime transition, a revision of O'Donnell's (2004) definition of the *democratic rule of law*'s core aspects is required.

O'Donnell (2004) defines a truly *democratic rule of law* as that which "ensures political rights, civil liberties, and mechanisms of accountability, which in turn affirm the political equality of all citizens and constrain potential abuses of state power" (p. 32). It is important to understand that the *democratic rule of law* encompasses much more than just the independence of the judiciary or the power of courts to be above other political powers, such as the Executive and the Legislative. The concept of *democratic rule of law* gives citizens of a specific country a lot more than just granting mere access to legal protection or to a civil court. A true *democratic rule of law* exists if clientelism is avoided so that the mechanisms of accountability can work independently of the executive's power control. In this respect, Uruguay was portrayed as an exception during two specific periods (1919-33 and 1952-1966). During these two periods, Uruguay was unique in the Latin American continent as the country created a precedent for its future democracy by constructing strong democratic institutions (Altman, 2008; Cason, 2000; Edelmann, 1969; Fitzgibbon, 1952;

Gillespie, 1991 and Vanger, 2010). Today, Uruguay is the country with the strongest *democratic rule of law* in Latin America. The following section examines the political history of Uruguay and highlights key years where the country developed its strong *democratic rule of law*.

The Uruguayan state was not formed until the 1900s. Although the population and the country's production increased, the rate of expansion within the country was not happening at the same pace (Rock, 2000). Although Uruguay started to look into economic productivity and expansion, it was not at the same pace than its close neighbors, Brazil and Argentina, during the same historical period. The limited growth was in part due to the country's small size and the path taken for the country's development was rather different than its close neighbors. In the words of David Rock (2000), "[i]n Uruguay merchants became more powerful than landowners, and political parties became stronger than the military, thereby hindering state formation" (p. 178). At the time, having strong parties, a weak military, and strong merchants hindered the development of the country because there was no military force that had the monopoly over the use of force to help build democracy in Uruguay. As Rock (2000) states "[t]he small force represented all that existed of a professional army in Uruguay and remained a *Colorado* as opposed to a genuine Uruguayan army" (p. 189). However, the fact that Uruguay's origins were based on strong political parties and a weak democracy would be extremely important later in the history of the country. This is mainly because the military was not a centerpiece in its first democratic period and did not partake at all in the political sphere. Also, having had strong political parties helped build a democratic sphere where citizens felt represented through elections and not through war or internal conflict, especially after 1904. It is very important to understand that when the state was first being constructed, even though there were still conflicts occurring throughout the country, two major political parties, the *Blancos* and the *Colorados*, were already present (Altman, 2008; Edelmann, 1969; Finch 1971; Fitzgibbon, 1952; Rock, 2000). Of equal importance is the affirmation made by Rock (2000) who stipulates "Uruguayan politics retained a more popular hue by virtue of the vertical social linkages between the party *caudillos* and their gaucho followers" (p. 180). These linkages were central in the formation of the Uruguayan state, as Uruguay managed to survive the oligarchic and elitist presence of political figures in positions of political power. Therefore,

Uruguay also managed to survive the patron-client relations found in Mexico. Due to the strong presence of two political parties, Uruguayan citizens did not owe anything to any of the political parties and could choose freely which one to follow. Historically, with the exception of the dictatorship from 1973 to 1985, what dominated in Uruguay was the presence of strong political parties, absence of military presence and the absence of clientelism. This was an impediment to original state formation. However, when finally formed, the state had a strong democratic basis without a strong ruling military or without *caudillo* militaristic figures in power. Instead, the strong political parties allowed important democratic characteristics to be existent from the origin of Uruguay's political history.

From the beginning, the *Blancos* and the *Colorados* became the main bodies of the Uruguayan government, as they negotiated with each other for political power and to take the Executive position (Altman, 2008; Edelmann, 1969; Finch, 1971; Fitzgibbon, 1952; Rock, 2000). More specifically, the creation of a *Lema Law* (which means the name of a political party) in 1910 reinforced this process (Finch, 1971). The approval of this law encouraged the process of factionalization within the two main political parties by providing the opportunity for political parties to split into factions but still have the chance to come under a single *Lema* (or unite under a single larger political party) for electoral purposes (Finch, 1971). The idea behind this decision was to ensure that the electoral strength of these factionalized parties was not weakened and could be maintained during elections. Furthermore, since 1931, the concept of co-participation has been implemented. The co-participation means that minority parties have a share in the country's government (Finch, 1971; Pion-Berlin, 2011; Polack, 2004). This co-participation agreement was an evolution of the already existent peace treaty that was signed in 1872 known as *paz de abril* or April's peace through which the *Blancos* and the *Colorados* "shared territorial control, public offices and seats in the Legislative Assembly" (Rock, 2000). Moreover, the decision of co-participation occurred towards the end of the nineteenth century, as the political parties had already designed a system, in 1872, through which peace could be kept, and the parties could share their representation in the Executive power. The concept of co-participation was a unique double simultaneous voting system, which allowed factions within each political party to run their own list of candidates even if they did not belong to the main political party. More specifically, Pion-Berlin (2011) argues that "[t]he vote tallies for each faction

were combined to determine the party's total and thus which party would prevail" (p. 5). The co-participation ensured that each party could govern the country without concentrating power in one party. Furthermore, co-participation also allowed the tolerance of different ideological currents within the main political parties as well as another characteristic that turned out to be less successful in the future of the country. That characteristic was that a faction within the main party could win the presidency with a small plurality of the votes (Finch, 1971; Pion-Berlin, 2011). In sum, Uruguay had an already established political system based on two main political parties, the *Blancos* and the *Colorados*, where the system already allowed smaller factions to be represented within these parties. Thus, this strong democratic institution allowed the absence of clientelism. The basis of this two-party system was constructed from the beginning of Uruguay's political history. Furthermore, the existence of these two parties has provided stability to democracy through electoral results (Finch, 1971). Smaller factions felt represented and could also see that they would have electoral participation; therefore, there was no need to build institutionalized relations. This is as Greene (2001) argues that "[c]lientelism describes the deployment of material advantages by politicians to specific constituencies in exchange for political support" (p. 3). There are two main ways in which the exchanges can take place: 1) face-to-face or 2) institutionalized relationships "between constituency groups and party organizations" (p. 3). This was one of the features that gave Uruguay the foundations to build a strong *democratic rule of law* during that time without clientelism. The creation of this system allowed Uruguayan citizens to see their civil and political rights protected. Indeed, they could vote for their party of choice to represent them at the Executive level without suffering from concentration in one political party or from having one political option. Historically, Uruguay started to be one of the most stable democracies in Latin America due to the fact that its citizens could vote and see their vote in action with a representative government in power. In addition, during José Batlle y Ordóñez's presidency, there were several democratic reforms that helped improve the protection of civil and human rights while reinforcing the strong *democratic rule of law* that Uruguay experienced during the 20th century.

In 1901-1902, when José Batlle y Ordóñez was campaigning for president in Uruguay, what became the centerpiece of his mandate was to give Uruguayans lasting peace. Batlle y Ordóñez led the country in his second presidential appointment from 1903 to 1907,

returning for re-election in 1911. Analyzing his presidencies is important to expose the advancements that José Batlle y Ordóñez envisaged for Uruguay and to understand the existence of a strong *democratic rule of law* in Uruguay. Batlle y Ordóñez lived in Europe between his second presidential appointment that ended in 1907 and the third one, which commenced in 1911. During his time in Europe, Batlle y Ordóñez learned a lot from European countries' political systems and approaches to democracy. Therefore, during his third presidential appointment that commenced in 1911, Batlle y Ordóñez proposed a project to reform the Constitution to “replace the presidency with a plural executive, the Colegiado” (Vanger, 2010, p. 5). Batlle y Ordóñez managed to set the stage for what became the *Switzerland of the Americas*. In the words of Milton I. Vanger (2010), Batlle y Ordóñez procured everything “from a state insurance bank to agronomy stations, to *liceos* (secondary schools) in every department, to divorce at the sole request of the wife [among others]” (p. 11). One of the most important institutional reforms that took place in 1919 and that marked part of the institutional evolution in Uruguay was the creation of the *colegiado*.

The *colegiado* would have, as Milton I. Vanger (2010) explains “nine members, with seven elected, one annually, for seven years by the voters, and two elected for six-year terms by the legislature” (p. 99). Among other important features of this plural executive was the fact that the president of the *junta* (or group of members) could not dominate the system by earning more than other members, not even the chief of the Armed Forces (Vanger, 2010). Among the most innovative features of this new system was the fact that the *junta* “could submit a bill rejected by the legislature to the voters in a plebiscite within ten days of the legislature’s action” (Vanger, 2010, p. 99). This initiative was essential because it already allowed the usage of plebiscites through which citizens could decide to express their disagreement with a decision taken by the legislature, thus strengthening the democratic process in the country. Therefore, voters felt that not only could their opinions and view of Uruguay’s democracy be expressed through the institutions, but voters did not have to recur to clientelism to incite changes. Additionally, if one fifth of the registered voters wanted a plebiscite, they would have it and the law could be eliminated within the first 60 days of its approval (Vanger, 2010). This institutional change was an innovation at the time, and it was also a unique project in the Latin American region. Additionally, the project was also considered unique because it had been originally designed to accommodate a heterogeneous

Swiss society (Altman, 2008; Edelmann, 1969; Fitzgibbon, 1952). However, the *colegiado* was now being implemented to satisfy the Uruguayan homogeneous contemporary society, therefore making it harder for the system to work properly by accommodating everyone. However, the collegiate executive was fundamental to the building of democracy. Due to the fact that nine members were elected by voters, and two by the legislature, the system was much more accountable than other presidential systems elsewhere in Latin America at the time (Finch, 1971). Thus, the *colegiado* rendered the process more democratic and gave power to other institutions, such as the legislature, to overlook the decisions made by the executive. Thus, all of these changes added together created a strong democratic base where the *democratic rule of law*, specifically with respect to the protection of civil and human rights, could be constructed. The presence of nine members helped with accountability and the government function in a democratic accountable manner to the citizens of Uruguay. Furthermore, there were internal elections where the Legislature selected two candidates, in order to safeguard the accountability of the system. Both of these innovations helped reinforce the democratic principles of Uruguay's political system. It further prevented the strong military caudillo figures that took power individually at the executive position and then exerted patron-client relations, which was common in other Latin American countries at the time. Additionally, while the *colegiado* was being implemented, many other democratic advancements and resolutions in the form of laws were created and approved. These laws provided the existence and persistence of the *democratic rule of law* while helping build the base for Uruguay's democracy.

On November 17th, 1915, José Batlle y Ordóñez managed to create the eight-hour-day bill that has been one of the most innovative labor laws in Uruguay's history (Vanger, 2010). The law was designed to protect civil and human rights. More specifically, it was designed to protect workers from work abuse as "all stores and businesses would close at the same time, that it covered all workers, industrial and commercial, in small and large urban enterprises, and that it forbade overtime" (Vanger, 2010, p. 41). The technicalities of how the bill became a law have been analyzed elsewhere (for full details please refer to Vanger, 2010). For the purpose of this thesis, it is important to note that the idea behind the approval of this law was to protect workers from being abused and underpaid by their employers at work and provide them with rights that could be protected by civil courts or the judiciary.

More importantly, the central idea behind this law was to leave free time for workers to become informed, participate in society, and help build the Uruguayan democracy (Vanger, 2010). This goes hand in hand with the Uruguayan *democratic rule of law*, which was based on a strong judicial power that was being built alongside the Uruguayan democracy without the existence of clientelism. Batlle y Ordóñez was concerned with human dignity and the protection of the human rights of workers, who were exploited and underpaid at the time. There was also the problem of foreign companies forcing employees to work for less pay or work longer hours. Among other features covered under this law was a day of rest every seven days of work and a maximum of forty-eight hours per week. The eight-hour-day bill became an official law on November 17th, 1915. This was one of the largest reforms that José Batlle y Ordóñez made during his time as president of Uruguay that has since been embraced by Uruguayan society. However, this was only one of several reforms.

Among the bills that were advanced during Batlle y Ordóñez's presidency, is the *liceo* bill (secondary education bill), which was approved by Senate in a single session on December 31st, 1915 (Vanger, 2010). With the approval of this bill, free education was established in every department. This improved education and literacy rates in Uruguay at a much faster pace. At the time the law was passed, 40% of school age children did not attend school (Vanger, 2010). With the approval of this bill, the next step was the elimination of university fees. It was in January 1916 that as Vanger (2010) argues, "Uruguayans could now boast that theirs was the only country in the world to provide a free education from primary school through the university and even through a doctorate" (p. 75). With the elimination of higher education fees and public education being available for everyone, the Uruguayan population partook of a strong democratic state. In this state, citizens could actively participate in democratic decisions and could do this through electoral means. Furthermore, the population with a high level of education could participate in the generation of ideas and decisions to build Uruguay's future. Additionally, by understanding how the system worked, society made the government more accountable than other Latin American countries. In sum, these are many of the reform laws that were approved at the time, although there are others that have been central in Uruguay as well as in the international sphere.

In 1909, Uruguay abolished the death penalty, and this abolition later became law 16.461, which was incorporated into the Constitution in 1918 (“Poder Legislativo: Pena de Muerte”, 1907)¹⁰. This was an important move forward to the democratic stability of Uruguay and the strengthening of the *democratic rule of law* as it was easier for the judiciary to protect civil and fundamental rights, such as the right to life. However, the most important fact remained the protection of human rights for Uruguayan citizens, which was already granted before the 1930s. Another example was the approval of Law 6.102 in 1918, called *Ley de la Silla* or Law of the Chair, which stipulated that every woman had the right to have a chair to take breaks as needed throughout the day during their work time. It applied regardless of their place of work or of the type of work done anywhere in the country (“Poder Legislativo: Ley de la Silla”, 1918)¹¹. Uruguay was also the first Latin American country to approve women’s right to vote in 1927 through a plebiscite known as *Plebiscito de Cerro Chato* or Cerro Chato’s Plebiscite (Smink, 2013)¹². With women partaking in elections, larger sectors of society could feel that their ideas and decisions were being represented through a democratically elected government. Furthermore, Uruguay was still at the democratic vanguard throughout the continent, as in 1946 the country approved Law 10.783 to give the same civil equalities to women than men (“Poder Legislativo: Capacidad Civil de la Mujer”) ¹³. In sum, Uruguay was historically at the frontline of democracy in the continent and this helped build a strong *democratic rule of law*. It made Uruguay the exception in the Latin American region and the most stable democracy for the majority of the 20th century (Biglaiser, 2003; Gillespie, 1991; Perelli, 1993; Porzecanski, 1977; Rial, 2006; Roniger, 1997; Taylor, 1954; Selios, 2006). Despite all this, Uruguay had a period of

¹⁰ República Oriental del Uruguay. Poder Legislativo. *Pena de Muerte*. <http://www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=16461&Anchor=> (accessed February 10th, 2014)

¹¹ República Oriental del Uruguay. Poder Legislativo. *Ley de la silla*. <http://www0.parlamento.gub.uy/parlamenta/genero2.html> (accessed February 9th, 2014)

¹² Smink, Veronica (2013). BBC Mundo, Cono Sur. *5 precursoras del voto femenino en América Latina*. http://www.bbc.co.uk/mundo/noticias/2013/10/131018_100_mujeres_bastiones_feminismo_vs.shtml (accessed February 16th, 2014)

¹³ República Oriental del Uruguay. Poder Legislativo. *Capacidad Civil de la Mujer*. <http://200.40.229.134/leyes/AccesoTextoLey.asp?Ley=10783&Anchor=> (accessed February 8th, 2014)

instability between the first *colegiado* that ended in 1933 and the installation of the second *colegiado* in 1954.

From 1952 to 1966, Uruguay's executive was once again headed not by one President, but rather by a committee of nine men. Six were from the party that had won the majority in the elections and three from the minority parties (Altman, 2008; Edelmann, 1969; Porzecanski, 1977). As argued by Finch (1971), "these changes have been regarded as inventiveness in the search for the right degree of executive power" (p. 181). Despite the fact that some changes were envisaged that would separate this second intent of a *colegiado* from the first by Batlle y Ordóñez, there were some traits that had not been modified. Some of the traits left untouched that contributed to the demise of this second *colegiado* was the committee of nine men. Through these nine members, there were too many different interests represented within the committee at the same time. Therefore, when major decisions had to be made, it was harder to come to agreements between the members. Second, the method of tabulating election results became more complicated than before. It was difficult to achieve 50% or more of the votes during the elections to win. Indeed, victories occurred with less than 30% of the votes (Pion-Berlin, 2011). More specifically, as Pion-Berlin (2011) explains, "between 1958 and 1971 no candidate winning the presidency came to office with more than 27 percent of the vote" (p. 5). Therefore, this *colegiado* was about to see its demise instead of its reform. However, the idea to bring back this type of *colegiado* as it had already been implemented before in 1919 was to keep the accountable government that would safeguard the democratic institutions that Uruguay had enjoyed. The demise of the system occurred in 1966, when a referendum was held and the constitution was modified to provide one president for the executive branch. With the demise of the second *colegiado* together with the over concentration of power in a presidential figure, Uruguay saw the demise of its democracy and its *democratic rule of law* approaching. In sum, the *colegiado* failed in 1966 to provide what Uruguay needed to move forward in terms of economic and political decisions, especially due to internal disorganization between the elected members.

Notwithstanding their eventual demise, both *colegiados* were effective for two main reasons. The first reason is the fact that a caudillo individualistic military figure was avoided in Uruguay. Therefore, clientelistic arrangements were not required to advance the citizens'

interests through the Uruguayan democratic political system. Additionally, the progressive policies from Batlle y Ordóñez and its successors helped build a strong base for democracy and a strong *democratic rule of law* in Uruguay. These changes working together prevented the existence of the executive's corruption. Second, because the *colegiado* was implemented twice, it gave Uruguay the opportunity to build upon the first experience to avoid errors during the second time from 1952 to 1966. This was mainly because by having nine members governing at the same time, seven elected by the voters and two elected by the legislature, it was very difficult for one figure or a single party to take over all others. Thus, the *colegiado* prevented parties from using clientelistic relations with the Uruguayan citizens to further their electoral interests. Thus, the *colegiado* added an important part to the already existing system of political rule defined by Roniger and Sznajder (1997) as a "system of political rule shared by both the majority and minority political forces that upheld civilian rule and instilled the values of citizenship, republicanism, and consensus in the population" (p. 57). Overall, the *colegiado* did not endure, but it helped build the democratic base that made Uruguay the strongest democratic country in Latin America in the 20th century.

Unfortunately, the end of the second *colegiado* also marked the beginning of the demise of the strong *democratic rule of law* in Uruguay. One of the key pillars of a strong *democratic rule of law* is the presence of civil courts that can constrain potential abuses of state power and protect the political equality of all citizens under the law. From 1966 onwards, this key pillar was severely affected and restricted.

Critical Juncture: The Elimination of Democratic Institutions from 1973 to 1985

Up to 1966, the penal justice system, the Supreme Court of Justice and the civil courts had not seen many reforms. In part, these institutions had not experienced reforms because they were not necessary as the system worked efficiently. Furthermore, the judicial power was already independent in Uruguay at this point in history. However, from 1966 until 1985, Uruguay saw the demise of democratic institutions and the *democratic rule of law* altogether. This was a shock induced to the Uruguayan society, as this had not been seen for much of the 20th century.

President Gestido's election in 1966 marked the end of the second advent of the *colegiado* executive, found under the 1952 Constitution, and the introduction of a single

executive led by one civilian president (Porzecanski, 1977). This change came in combination with the fact that president Gestido died a year after these changes occurred in 1967. Therefore, Gestido was not able to accomplish much during his time in power. Rather, he replaced the Latin American institutional exceptionality of the *colegiado* by a strong presidential government like those found in other countries (Finch, 1971). Furthermore, upon Gestido's death, vice-president Pacheco Areco filled the presidential power vacuum governing from 1968 to 1971. Pacheco Areco came to power with a strong presidential government not seen in Uruguay up to that point. Among the main changes that aided the democratic demise of Uruguay is the fact that Pacheco Areco started benefitting economic changes for the middle class. However, these benefits were not positively distributed over to the working classes (Finch, 1971). These relations were inexistent before this period in Uruguay. Additionally, Pacheco Areco did not govern with the institutional legitimacy that existed before, as there were little to no public expositions of policies, and no attempts to achieve civil conciliation or overall understanding of the economic problems that Uruguay was experiencing at the time (Finch, 1971). While Pacheco Areco assumed power, along with the demise of democracy benefitting the few against the many, Uruguay saw the creation of certain guerrilla-type groups that tried to reverse this reality. In 1962, the appearance of the *MLN – Tupamaros* marked the beginning of a new political period for Uruguay unprecedented during the first half of the 20th century (Calloni, 2001; Gillespie, 1991; Labrousse, 2009; Meade, 2010; Rey Tristán, 2005). Pacheco Areco used the military to suppress the Leftist movements, including the *MLN – Tupamaros*, and he covered up the utilization of this force against the movements by a continuation of the constitution (Finch, 1971; Labrousse, 2009; Rey Tristán, 2005). However, Pacheco Areco agreed to destroy the guerilla type groups in Uruguay and decided to hand over the operation directly to the Armed Forces of Uruguay (Pion-Berlin, 2011). During this time, the constitution was still in place, but Pacheco Areco was ruling by an emergency decree that allowed him to install *Medidas Prontas de Seguridad* (MPS) or Prompt Security Measures (Pion-Berlin, 2011). From this point on, the judicial power and the civil courts were overridden as these measures directly suppressed the right of *habeas corpus*. Therefore, the situation of the country continued to worsen after Pacheco Areco left power in 1971.

Pacheco Areco finished his mandate in 1971, with president Juan María Bordaberry replacing him in 1972 (Gillespie, 1991). Upon his arrival to the executive power, Bordaberry introduced a security legislation that became known as the National Security Doctrine (Gillespie, 1991; Pion-Berlin, 2011). With the introduction of this security doctrine, all the basic tenets of a *democratic rule of law* were eliminated. Also, the independent power of the judiciary was starting to be affected at this time, as the presidents were unilaterally making decisions. Everyone who participated or sympathized with leftist political parties was excluded from politics and the citizens who followed the other political parties were benefitting. Civil and human rights, together with the protection of these rights under the civil courts were eliminated. Uruguay started to face an internal democratic crisis not seen until this point in the country's history. It has been argued that "the elements of dictatorship were falling into place under democratic rule, well before the coup of June 27, 1973" (Pion-Berlin, 2011, p. 5). At the same time, the *democratic rule of law* was falling over a series of events that appeared in the Uruguayan political sphere over a period of time from 1967 to 1973. Particularly, the abuse of the executive power was present. In addition to this, the judicial power lost all of its institutional freedoms and was marginalized abruptly during the dictatorship years.

When the dictatorship started in 1973, there were a series of events that started eliminating civil, human, and other democratic rights such as the access to justice through civilian courts for Uruguayan citizens. It should be noted that Uruguayan judges were never accomplices of the dictatorship in Uruguay. Rather, they were abruptly marginalized during the military government (Skaar, 2003). Changes continued as the military handpicked a former health minister, Aparicio Méndez Manfredini to take the executive position. Once Méndez Manfredini assumed power, the first institutional act was created. Through this act, the military stripped of political rights for fifteen years any members or affiliate to a leftist party in the two elections prior to the dictatorial period (Gillespie, 1991; Gros Espiell & Esteva Gallicchio, 2008; Pion-Berlin, 2011). Furthermore, the institutional reforms of article 8 in 1977 and 11 in 1981 changed the organization of the judicial power (Skaar, 2003). Although the courts remained generally intact, the military took the positions of inferior judges, and they assumed that higher ranked judges were going to back them up in their decisions, which did not occur (Skaar, 2003). Therefore, the military created two parallel

institutions, the *Ministerio de Justicia* or Ministry of Justice and the *Consejo de la Magistratura* or Magistrate Council to control every aspect of justice (Correa Sutil, 1999; Gros Espiell & Esteva Gallicchio, 2008; Skaar, 2003). Through the creation of these two institutions, the military blocked the actions of the General Assembly, who was responsible for selecting judges during the earlier democratic years of Uruguay. Instead, it replaced the selection of these judges by direct appointments coming from the military. The military controlled every institution and could appoint anyone from within the military ranks. However, civilians were marginalized and left out of the political sphere. Through the creation of these institutions and the marginalization of the judicial branch of government, the independence of the judicial power was strongly affected from June 27th, 1973 until 1985, when democracy was finally restored.

On June 12th 1976, when the dictatorship was fully implemented, the Armed Forces decided to create another institution, the *Consejo de la Nación*. It was made out of military officers who were only responsible for the selection of high-ranking members of the Supreme Court of Justice (Gros Espiell & Esteva Gallicchio, 2008). Following this resolution, there was the Constitutional decree number 3 approved in September 1st, 1976 by the military that created the Ministry of Justice (Gros Espiell & Esteva Gallicchio, 2008; Porzecanski, 1977). This was known as the second institutional act and it had severe effects as “it abolished the Supreme Court and replaced it with a ministry of justice within the executive branch of the government” (Porzecanski, 1977, p. 85). Under this ministry, the executive, the judicial, and all other jurisdictional entities, except the military, had to obey and cooperate with their resolutions and could not undertake an independent activity. Therefore, at this point in Uruguay’s history, the judicial and the executive were side by side with neither autonomy nor independence. Also, the members of both the judicial and the executive were handpicked and appointed by the military, without participation of a democratically elect civilian leader. Historically, there had not been the need to create a Ministry of Justice, as the country had never seen the need for one. Rather, the judicial power related competences were assigned under the Ministry of Education and Culture (Gregory, 2009). In sum, the military had created a series of extreme changes that had not only eliminated the autonomy to the judicial power, but it had also placed the judiciary and the independence of the courts in the hands of the Executive power. Thus, reinforcing

clientelism, where military members that wanted to advance their career within the military dictatorial regime, had to provide favors face-to-face to higher ranked generals to be appointed to better posts. However, even though the autonomy had been lost, the institutions themselves had not been eliminated. Rather, they had been marginalized and modified to fit the military authoritarian regime at the time. This decision was not only undertaken to restructure the institutions, it was taken to acquire more military power at the expense of the democratic institutions and to enable the country's governance by a military decree with stronger powers. In 1976, after the military ousted president Juan María Bordaberry for trying to have an institutional order to eliminate all political parties, the Armed Forces handpicked candidate, Aparicio Méndez Manfredini, who came to power on September 1st, 1976 (Porzecanski, 1977). At this time of the military authoritarian regime, the Armed Forces had a clearer vision as to where their regime was going as opposed to before 1976. This was the first time the military had talked about their vision towards the future. Their vision included having a puppet president for five years, then a semi-transition period with a candidate selected by the military alongside the two major traditional parties, and then, five years after, there was finally going to be a democratic free election in 1985 (Porzecanski, 1977). Although their general plan did not work as they envisioned it, the military handpicked their candidates throughout the dictatorship. Thus, clientelism started to appear throughout the dictatorship when certain members of the military owed favors to other generals to advance their career, although it did not evolve within the political system. After these reforms were approved and a full military dictatorship was implemented, human rights violations increased. Furthermore, the military started taking more control institutionally and physically throughout the country.

The military authoritarian regime managed to use institutional acts 1, 3, 4 and 5 to restrict and ban political activity, suspend democratic elections, and make human and civil rights subordinate to the National Security Doctrine (Gros Espiell & Esteva Gallicchio, 2008; Pion-Berlin, 2011). At this point of the regime, there were around 15,000 individuals that were banned from political activity and had lost their political rights (Gillespie, 1991; Pion-Berlin, 2011). Furthermore, the military managed to co-opt labor leaders and unions by placing them under the labor ministry, which was also controlled by the military (Gillespie, 1991; Pion-Berlin, 2011). At this time, the military directly violated multiple human rights

by arresting professors and students and torturing citizens. It has been argued that some torture measures “required the complicity of medical doctors who would instruct the guards on how much electric voltage could be applied short of lethality” (Pion-Berlin, 2011, pp. 11 and 12). Furthermore, due to the country’s small size, every citizen was classified either as A, B or C (Gillespie, 1991; Pion-Berlin, 2011; Rial, 2006; Sondrol, 1992). Category A allowed the person to maintain full employment at the job they held at the time. In the second category, the citizen had to be closely monitored by the military. In category C the person’s civil rights were removed by having his or her passport confiscated and often was sent to prison. Furthermore, Amnesty International estimated that there were more political prisoners in Uruguay than in any other country in Latin America at that time (Gillespie, 1991; Porzecanski, 1977). It is clear that the military dictatorship in Uruguay had eliminated any traits of the *democratic rule of law* seen prior to the dictatorship. However, the military had a series of failures that forced it to re-think its strategy to maintain full authority over the country. The military had a series of three problems that led to its demise. The first problem was the Constitutional referendum that the military held to reform the Constitution to align it with their repressive measures that was denied by the Uruguayan citizenry. It showed the absence of popular support that the military imagined having. The second problem had to do with the economic and the political situation of the country that was worse than before the dictatorship. Finally, the military were having internal disagreements, as the Navy did not always support the decisions of the Army (Gillespie, 1991). In sum, the military political reality of Uruguay was seeing its demise as “[t]he military’s failure to develop linkages with important social, economic, or political groups proved to be its undoing” (Pion-Berlin, 2011, p. 17).

Structural Change: The Return of the Democratic Rule of Law in 1985.

In 1980, the Constitutional referendum proposed by the military to gain full legitimacy of their government was rejected by 57% of the votes during the referendum (Rial, 2006; Roniger and Sznajder, 1997; Gillespie, 1991, Calleros, 2009; De Brito, 1997). That was a shock to the military; however, they could not transfer all the power at once, it had to be done over a series of negotiations.

The first set of negotiations took place at the Parque Hotel in 1983 and ended up being a complete failure (Gillespie, 1991; Pion-Berlin 2011; Roniger and Sznajder, 1997). The negotiations broke off because the parties wanted too much and the military was not willing to give what the parties wanted. It has also been argued that the military presented the same repressive strategies that they had throughout their authoritarian regime; therefore, neither of the sides achieved an agreement. However, in 1985, the situation was very different and the negotiations resulted successfully in restoring the *democratic rule of law* in Uruguay because it will bring democracy, as well as, judicial independence that could oversee the fundamental and human rights of the Uruguayan citizens.

In 1985, there was another round of negotiations that ended up being called the Naval Club Pact. Major changes occurred at the same time. The first one was the re-establishment of democratic elections by eliminating the Institutional Act number 1 (Gros Espiell & Esteva Gallicchio, 2008; Pion-Berlin, 2011). The second decision was that the National Security Council be subjugated to the democratic parties and would only act as an advisory board while it would no longer have a major or central power in Uruguay (Gros Espiell & Esteva Gallicchio, 2008; Pion-Berlin, 2011). This represented the first step towards the restoration of the *democratic rule of law*, especially by eliminating institutions that directly blocked the judiciary's independence. This also advanced the fact that "future constitutional reforms would be written by a constituent assembly" (Pion-Berlin, 2011). The most important change of all was the elimination of the *fuero militar*. Indeed, civilians could now be tried in civil courts and would only be tried in military courts during a state of insurrection. Thus, the handpicked judges and the handpicked executive leaders would be eliminated. More important is the fact that the president was the only one who could determine the state of insurrection. Such a decision had to be approved by parliament for it to take place and for the military to be able to act under these circumstances. All of these changes did not come without a price for Uruguay and its people.

There was a law that protected political prisoners at this time: law number 15.737, called *Ley de pacificación nacional* or Law of national pacification (Achugar, 2007; Gros Espiell & Esteva Gallicchio, 2008). Article 1 of this Law stipulates that there will be amnesty granted to those who committed political or common crimes from January 1st of 1962 to March 8th, 1985. Yet this Law also protects those that committed crimes while being

part of guerilla-type groups such as the *MLN – Tupamaros*. Furthermore, during the transition to democracy in 1986, there was another Amnesty Law called *Ley de caducidad de la pretensión punitiva del estado* number 15.848 (Achugar, 2007; Gillespie, 1991; Polack, 2004; Rial, 2006; Roniger & Sznajder, 1997). It granted Amnesty to those members of the military or the Armed Forces that committed human rights violations during the dictatorship. With these two laws, neither the civilians that had acted in guerilla-type groups or any other violent movement were going to be tried or persecuted, nor the military for all the human rights violations that had been committed during the dictatorship years. The law 15.848 was ratified by the electorate during a referendum on April 16th 1989, where the participation rate was 84.78% and where 57% of the voters agreed to keep the law as it is (De Brito, 1997; Gillespie, 1991; Rial, 2006; Calleros, 2009; Roniger & Sznajder, 1997). In addition to this, these laws were going to be reviewed and overlooked by a completely restored independent judiciary where judges were being selected through a democratically elect process. However, the institutional transition to fully restore the *democratic rule of law* did not end with these two laws. It was rather an ongoing process with democratically elected presidents after the dictatorship ended in 1985.

With the restoration of democracy in 1985, democratic president-elect Julio María Sanguinetti recognized the judicial institutions that had seen their powers revoked during the dictatorship and ordered to have them restored through the law 15.750 called *Ley Orgánica de la Judicatura* or Organic Law of the Judiciary (Skaar, 2003). Through the passage of this law, the Ministry of Justice created by the military regime was eliminated and the Judicial Power was restored under the administration of the Ministry of Education and Culture, where it had been historically placed in pre-dictatorial years. The *Consejos de la Magistratura* or Higher Council of Judges was also eliminated, as they were considered a dictatorial institution (Correa Sutil, 1999; Gregory, 2009; Skaar, 2003). The return to the strong *democratic rule of law* was in need of certain changes and reforms within the judicial system to be able to address newer demands that the country had in 1985 and after. Therefore, a series of changes occurred at the judicial level that allowed the return of the *democratic rule of law*, reinforcement of the institutions as they existed prior to the dictatorship.

Among some of the most important changes, there was the introduction of oral procedures, the introduction of a modified Civil Code and the introduction of a system within the courts of previous hearings (Skaar, 2003). Most of these changes were done to adapt to newer demands that did not exist in previous decades, and all of these changes were accepted in 1989. Also, oral procedures allowed for more transparent and accountable trials. The changes in the judiciary were critical, as this institution has been considered historically as “one of the country’s central institutions” (Roniger & Sznajder, 1997, p. 71). One of the most important changes was the introduction of oral procedures during civil hearings as this did not exist in previous decades, but were very much necessary with the return of democracy. Furthermore, the Civil Code that was originally in place since 1879 was changed in 1989 to modernize the judicial system in Uruguay. This was done in order to cope with newer demands with respect to human rights violations and to change the efficiency of the judiciary, especially in hearing cases. Among other important reforms undertaken, there was the change to introduce a system of previous hearings where the two accused citizens could try and come to an agreement before the court proceedings occurred. Thus, this change reinforced the *democratic rule of law* and the transparency of the judicial institutions. The other reform was in the process itself so as to be fair to the person being tried; the courts allowed the interrogation of witnesses and preliminary arguments where both parts can present their case clearly. There was also a reform in the due diligence or final part of the process to make it more accountable to the citizens being tried and to provide a just sentence to the case. With these changes, the courts were able to adapt to newer necessities of the democratic demands of the country after 1985. On the one hand, clientelism among certain sectors of society and the military that were being tried would be eliminated because every person being tried could now present their evidence at the same time in front of the same judge. On the other hand, the judiciary would have more evidence to proceed with a fair trial and come to adequate conclusions adjusted to the Uruguayan laws. These changes not only showed the importance of the judicial power, but also the independence of this power within the Uruguayan political system. The first move by Sanguinetti was to restore the full capabilities of the judicial power independently from the executive power to restore the order of the country and to bring back the *habeas corpus* (Gillespie, 1991). The restoration of *habeas corpus* was central to the full restoration of transparent and accountable courts and

the law itself, which are both basic principles of a strong *democratic rule of law*. The restoration of the Judiciary's independence will give the institution its full independent powers back. Previous to the dictatorship, it was the judicial power that created space for citizens to see their civil and human rights protected under the law. During the dictatorship, this was lost, as all the cases were tried under military courts. However, with the restoration of democracy in 1985, the military justice system was eliminated, together with the *fuero militar*, and full civil power was restored to the Uruguayan courts (Calleros, 2009; Gillespie, 1991).

In sum, the return to democracy in 1985 happened because of negotiations between the civil government that was elected through democratic elections in 1985 and the military that was governing at the time. The restoration of democracy and democratic institutions was not impossible for Uruguay for different reasons. Among the most important reasons is the fact that the military put referendums in place for important matters, such as the reform of the Constitution. This was a democratic trait that existed because of earlier democratic institutions in Uruguay and was respected by the military even during the dictatorship period. The fact that the military respected the people's choice not to reform the Constitution and to bring democracy back, demonstrates that even though the regime was extremely repressive, there had been democratic institutional traits left in the country. Among these, the respect for referendums and the respect for people's opinion in referendum matters opened a space for the democratic transition and the return of the *democratic rule of law* in 1985. Further, the fact that the judiciary was subordinated to the executive power and marginalized, but not eliminated from its judicial activities helped the return of this central democratic institution in 1985. The fact that it was not eliminated made the return of the judiciary much easier in Uruguay than in other countries. If the military had eliminated the judicial power completely, it would have been much more difficult to restore the *democratic rule of law* in Uruguay and to eliminate clientelism from within. Thirdly, the military never acquired full control through one dictator, rather they governed through a military collegiate. The military decided to govern with a collegiate organization like what existed prior to 1967. Thus, the fact that the military did not have one dictator helped during the Naval Club pact, as it was an agreement made among several military officials with the political parties present at the negotiation instead of only one military figure negotiating with the political

parties. In fact, the Armed Forces argued throughout the dictatorship that they did not want to have power concentrated in too few hands. That is why they decided to govern with a board of members that kept everyone in their own place without taking power over other military units. Even during the dictatorship, there were certain democratic institutional traits left from the *Colegiado*. Those institutional traits demonstrated the strength of the rule of law already existing prior to the dictatorship as well as the degree of democratic institutions present in Uruguay that both helped the return to democracy in 1985.

Post-Structural Change: Democratic Institutional Reproduction

After the dictatorship ended in 1985, there was an urgency to restore democracy in Uruguay. However, in the transition process the restoration of democratic institutions and the *democratic rule of law* were central to this process. During the military-civil transition that took place in 1985, the *fuero militar* was immediately eliminated and the civil courts managed to retake their original power (Calleros, 2009). However, the movement towards the protection of human rights had been limited. It happened for two main reasons: The first reason, which was explained above, was the fact that the restoration of democracy and the *democratic rule of law* were of immediate importance for the consolidation of the new democratic regime emerging after the dictatorship ended. Also, the full restoration of *habeas corpus* had to come alongside as a basic premise to keep the military out of power and be able to fully reinstate the democratic government. Furthermore, clientelism had to be eliminated in itself and the strength of democratic institutions brought back in order for the system to function in a democratic manner. The second reason that I present below is how some historical democratic traits had endured in the Uruguayan society throughout the dictatorship and how these helped during the restoration of the *democratic rule of law* in 1985. Among the most important democratic traits was the importance of having the full restoration of political parties and with them, the institutional changes that allowed justice for human rights violations committed during the dictatorship. However, clientelism, which had not been common in Uruguay's history prior to the dictatorship also had to be avoided at all costs.

In the year 2000, after Julio María Sanguinetti's second presidential period ended, the presidency of Jorge Batlle took human rights violations more seriously. It helped through

the creation of a *Comisión Nacional* or National Commission to find out what happened to the disappeared during the dictatorship (Polack, 2004; Rial, 2006). The creation of this commission was in line with article 4, a clause attached to the Amnesty Law, which stipulated that the Executive power, after the return of democracy in 1985, had the responsibility to investigate the fate of those who were detained and disappeared because of state agents during the dictatorship (Delgado, 2000). It was the first time in 15 years of democratic governance post-dictatorship that the head of state met with relatives of the disappeared (Delgado, 2000; Pion-Berlin, 2011). This governmental association was created to investigate the disappeared persons during the dictatorship and to make a collection of information about the human rights abuses committed during the dictatorship. The commission was informative and investigative and whatever information they found, it was sent directly to the judiciary for review. Thus, by following this process, the executive passed the responsibility to a body that could manage these decisions and avoided taking sides either towards the military or to the civil side. Thus, the main idea of sending the cases to judicial civil courts was for the executive to not intervene in the process. Overall, the commission treated over 200 cases and finished its mandate in 2003 (Rial, 2006). The importance of this commission was not necessarily placed in the results, although they proved to be a move forward. The importance of the commission was that it showed the political importance of human and civil rights within the Uruguayan democracy. It also showed that the executive once again avoided taking sides, thus reinforcing the strong democratic traits that existed prior and after the dictatorship. The commission also reinforced the fact that Uruguayans, through consultations and democratic institutions, wanted to have more than the justice they received through Amnesty Laws after the dictatorship ended in 1985. Although the commission did not do an exceptional job, it did manage to create a case against the Foreign Relations Minister during the dictatorship, Juan C. Blanco. He was not protected under the Amnesty Laws and received the prison sentence he deserved for the violation of human rights committed during the dictatorship (Pion-Berlin, 2011). This was the first post-dictatorship democratic effort to create an institution supported, but not dominated, by the civil government to do investigations of these human rights violations that took place during the dictatorship. Thus, it demonstrates not only the strength of the democratic institutions, but it also demonstrates the power of the judiciary that had been

marginalized during the dictatorship. The judicial power managed to recover its power and accountability after the dictatorship ended. This case shows the decision-making independence of the judiciary, as it sentenced to jail this case of human rights violations without the interference of the executive power. This first attempt set the precedents for other changes that came after.

Tabaré Vázquez was a groundbreaking figure in Uruguay's political history for two main reasons. The first one is that he assumed power in 2005 representing the Leftist political party *Frente Amplio* or Broad Front (FA in Spanish) that had been banned almost immediately after its creation in 1971 until the end of the dictatorship (Polack, 2004). This is important in itself, because it was the first time in Uruguay's history that the party in power was neither the *Blancos* nor the *Colorados*, demonstrating that the democratic institutions were working once again at a normal level. Indeed, party competition had been officially restored and now, instead of only being a bipartisan race, there was the presence of a third party. The presence of this party at the presidential level marked the return of what Finch (1971) argues as being the pillars of Uruguay's democracy: "[t]he long tradition of universal suffrage in Uruguay, the lack of marginal unpoliticized groups, the absence of electoral abuses, [and] the very high level of political participation" (p. 182). In addition to this, when Tabaré Vázquez assumed power, he helped to open again a series of investigations to find out what happened to the disappeared. During 2005, there was an arduous job of excavating different locations of the country to find the bodies of those that disappeared and were killed during the dictatorship (Rial, 2006). Among the successful cases that were apprehended and transferred to the respective civil courts was the case of Gregorio Álvarez in October 2009. Álvarez was the army's former commander in chief during the dictatorship and was sentenced to 25 years in prison having been accused of 37 homicides (Pion-Berlin, 2011). These investigations opened an unprecedented space in Uruguayan political history and justice. With the sentence of general Álvarez, other cases could be brought to justice. Also, the fact that a commander in chief was put in prison by civil courts demonstrated the judiciary's independent power in comparison to other military justice institutions as civilians *and* military officers were being put in prison. In fact, with the democratically elected José Mujica in 2010, other cases were sentenced and no one group was benefitted over another group of citizens.

After the remarkable case aforementioned and the election of another democratically elected president in 2010, José Mujica of the Broad Front, there were more efforts to achieve justice. Mujica, himself a strong supporter of human rights protection due to the fact that he was himself imprisoned for over ten years during the dictatorship, continued financing the commissions to investigate the violation of human rights during the dictatorship. In this case, even if the executive helped finance the commissions, it did not necessarily entail the executive being able to make decisions over these cases, as they were all sent to the judiciary for review. All cases studied by the commission were referred to the civil court for trial and final judgment. Therefore, the civil courts, on February 10th, 2010, successfully convicted former president Juan María Bordaberry and sentenced him to 30 years in prison for violating the constitution during the dictatorship (Pion-Berlin, 2011). These cases directly demonstrate the independence and power of the judiciary, as it acted independently from the executive and the military institutions. The judiciary ended up sentencing these two cases independently and following the law. Thus, the *democratic rule of law* which “ensures political rights, civil liberties, and mechanisms of accountability, which in turn affirm the political equality of all citizens and constrain potential abuses of state power” had been restored (O’Donnell, 2004, p. 32). Furthermore, not only did the executive power accept the sentencing of these two persons, but the military accepted the sentencing of a former officer. It demonstrates the independence and superiority of the judicial power over military courts that Uruguay enjoyed. The power of civil courts was taken away during the dictatorship and was restored immediately with the return of the strong *democratic rule of law*. Thus, Uruguay was and is once again appreciated for its stability, democracy, *democratic rule of law*, and its capacity to innovate or accommodate change for its society (Finch, 1971).

The commissions that investigate human rights violations, together with the sentencing of those that violated human rights during the dictatorship, are not over. However, some of the decisions taken during the 1985 Naval Club Pact have been reformulated or reinterpreted through different laws and constitutional changes that took place since the restoration of democracy in 1985, for example the legal understanding of the Amnesty Law 15.848 (Gros Espiell & Esteva Gallicchio, 2008). It is very important to emphasize how the democratic traits left by the democratic institutions before the dictatorship helped transition back to democracy in 1985. Furthermore, the *democratic rule*

of law and the democratic regime that existed before the dictatorship, which avoided clientelism, managed to be restored to their former state after the dictatorship ended. This was mainly due to the fact that democratic institutions without clientelism were very strong during the 20th century, and even though clientelism was present at times during the dictatorship, it did not permeate and become part of the institutions and the Uruguayan political system. Furthermore, the democratic institutional tradition in Uruguay had been present and has been reinforced since its restoration in 1985. Therefore, the avoidance of overriding of powers has allowed in part the judiciary to be independent, as provided by the Constitution. Meanwhile, the executive has been in charge of taking responsibility for article 4 of the Amnesty Law to keep on financing commissions to look into disappearances and those that were affected during the dictatorial regime.

Ultimately, Uruguay has shown the strong democratic institutions and the establishment of a strong *democratic rule of law* without the presence of clientelism that ensures basic political and civil rights as well as ensuring the constant protection of these rights under an independent judiciary for everyone. Since 1985, the military has lost its *fuero militar*, which eliminated their institutional power to override the political power. Furthermore, the election of two presidential candidates from the Left, Vázquez and Mújica, shows that the strong political party presence in Uruguay is still present. Thus, the existence of strong political parties that rotate at the executive level proves that clientelism is limited, as each political party has its turn within the Uruguayan democratic sphere. Also, the fact that the military has not intervened since 1985, even though there have been two leftist presidential periods at the executive level demonstrates that the democratic institutions are present and that the strong *democratic rule of law* is in full existence.

Conclusion

As I have explained in this thesis, there are certain works that deal with judicial reforms in Uruguay (Skaar, 2003); others that look into judicial performances and reforms in a cross-case analysis with Argentina and Chile (Macaulay, 2007; Staats, Bowler, & Hiskey, 2005); others that look at institutional change and separation of powers (Cason, 2002; Hammergren, 2006); and even others that look at the protection of human rights after the dictatorship ended in this country (Burt, Amilivia & Lessa, 2013; Skaar, 1999; Skaar, 2007). However, there is less investigation on this topic that deals with the historical causes that have placed Uruguay in such a prominent position in comparison to Mexico. The premise of my work for the case of Mexico has been similar to that of Uruguay. For Mexico, one of the countries that holds the weakest *democratic rule of law* in Latin America, there is also less investigation that provides the causes that have historically placed Mexico in this particular position in comparison to Uruguay. There are several works dealing with judicial reforms in Mexico (Edmonds-Poli & Shirk, 2012; González-Gómez & González-Chávez, 2007; Inclán Oseguera, 2009); other works that deal with democracy and the importance of the rule of law for democratic stability (Krauze, 2006); others that deal with corruption, law enforcement and the enforcement of laws by the judicial power (Nagle, 2010; Ríos-Figueroa, 2007; Ríos-Figueroa & Taylor, 2006); and even others that deal with the armed forces and the military's role as well as their impunity (Ai Camp, 2005; Ai Camp, 2011; Díez, 2008; Pereira, 2012; Pion-Berlin, 2012). The premise of my work has been to articulate a comparative comprehension of the *democratic rule of law* in Uruguay and Mexico, which serves to complement existing literature in this subject that generally analyzes Mexico and Uruguay relative to other countries but not to each other.

Among the other contributions that this work has aimed to pursue has been to operationalize a historical institutionalism approach using process-tracing as the methodology in order to do a comparison between Uruguay and Mexico. To my knowledge, this has not been done before in a comparison between these two countries, and therefore it serves as a methodological as well as a theoretical advancement in terms of the cases being compared throughout this thesis. More specifically, I analyzed how the simultaneous presence of two conditions when acting together can cause either a weak *democratic rule of*

law in the case of Mexico or a strong *democratic rule of law* as is the case for Uruguay. In future works, the simultaneous presence of these two conditions should be applied to different cases in order to be able to study a possible correlation between these cases and others to advance the theory even further.

Having used Greene's (2001) definition of clientelism has allowed me to analyze Mexico and Uruguay from a more holistic perspective that allowed me to observe not only face-to-face clientelism, but also what Greene (2001) defines as institutionalized relationships. Furthermore, there are two main ways in which the exchanges can take place: 1) face-to-face or 2) institutionalized relationships "between constituency groups and party organizations" (p. 3). Throughout this thesis, I have tried to apply this definition because it is one that encompasses both the individual level clientelism and the institutional clientelism that is sometimes missed in works on clientelism at large.

On the other hand, throughout this thesis I have used O'Donnell's (2004) definition of the *democratic rule of law* that looks not only at the fundamental and civil rights that need to be protected by an independent judiciary, but also looks at the importance of having judicial institutions operating within a democratic government. Thus, I have looked at the *democratic rule of law* from this perspective, because it offers not only an understanding of the rule of law, but also acknowledges the importance of democratic stability in order to achieve an operable level of the judicial institutions. This understanding has also enlightened my analysis of the *fuero militar* that, as demonstrated throughout this thesis, has been central for Uruguay to seek a return to having a strong *democratic rule of law* after the dictatorship ended in 1985. Meanwhile in Mexico, even within the changes taken to improve the judicial system and the military justice system since 2008, the *fuero militar* has continued to intercede with the strengthening of the *democratic rule of law*, as exemplified throughout this thesis with the "casas de arraigo".

One of the most important events I presented is that Uruguay in 1985 restored democracy rather than implemented for the first time. This gives Uruguay not only the opportunity of improving the democratic institutions existent before the dictatorship, but also gives it the opportunity to return to a model that had historically worked for this country. Contrary to Mexico, who had not experienced democracy before the year 2000, therefore when it is implemented there were many authoritarian traits left within the institutions that

did not allow them to develop in a fully democratic and independent way. Another key finding throughout this thesis is the fact that the Uruguayan citizenry historically had access to a democratic institutional framework where political parties could push their demands and reforms and where the masses had a space for their demands to be heard. In fact, this open institutional space enhanced the absence of clientelistic relations to make politics for Uruguay. Mexico did not have this at all, especially during the authoritarian PRI government for 71 years. Therefore, neither the masses nor political parties had any space for demands. As a matter of fact, this close institutional space enhanced the reliance on clientelistic relations to make politics. In sum, this thesis has served to demonstrate the importance of having an institutional space to make demands by the citizenry as well as having an institutional space where political parties can further their ideals. This is a small contribution to the existing literature by showing that Uruguay had the institutional framework for this to happen while Mexico did not. Thus, in future works this could be applied to other cases in order to see if Mexico and Uruguay offer any comparative value to these other cases or not.

Ultimately, the existence and persistence of strong democratic institutions in Uruguay from 1904 onwards gave this country strong institutions where citizens felt represented and could advance their propositions. As part of these institutions, there was an independent judiciary that could protect fundamental and civil rights historically, not only benefitting the elite sectors of society, but also the masses. Therefore, Uruguayan society at large, the elite sectors as well as the masses could advance their demands through a democratic political system, instead of outside the system. Therefore, Uruguay and Uruguayans had the opportunity to live under institutions that worked well and that “ensure[d] political rights, civil liberties, and mechanisms of accountability which in turn affirm[ed] the political equality of all citizens and constrain potential abuses of state power” (O’Donnell, 2004, p. 32). All of these gave the country the label of *Switzerland of the Americas* for much of the 20th century. However, with the critical juncture of the dictatorship from 1973 to 1985, Uruguay lived through a period of complete inexistence of a strong *democratic rule of law*. Once these democratic institutions and the *democratic rule of law* were lost, Uruguayans did not agree with the other military proposed model. Therefore, the first change envisioned once the dictatorship ended, was to go back to what Uruguay had already experienced historically from 1904 prior to the dictatorship. Therefore, the limitation

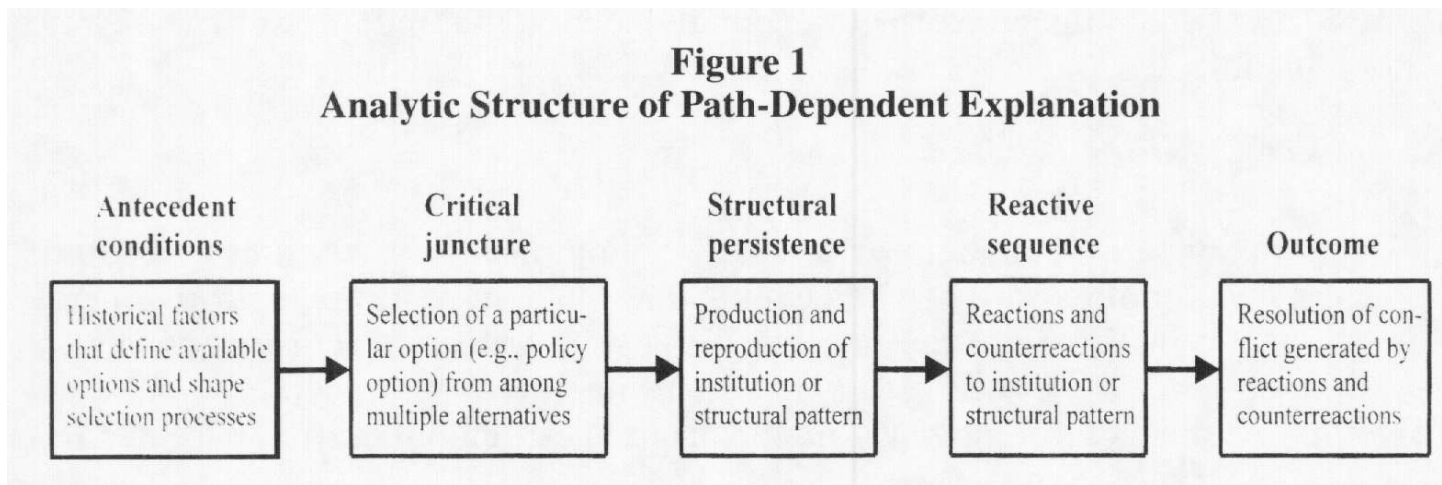
of the *fuero militar* and the *Organic Military Law* were part and parcel of the negotiations that took place at the Naval Club in 1984. However, Mexico did not enjoy the same fate, and this affected the country until today.

Mexico was living under weak institutions until the *porfiriato* started in 1867 that did not give Mexico strong and solid democratic institutional foundations. Once Porfirio Díaz came to power in 1867, he provided Mexico with stability until 1910, but this economic stability was not a stable democracy. Once the Mexican Revolution occurred, and after it ended in 1917, Mexico institutionalized the Revolution for the next 71 years. The violent and military history of Mexico until 1917 served to perpetuate a *weak rule of law* that did not allow for strong democratic institutions to flourish. In addition, they did not build strong democratic institutions and a strong democratic background. Therefore, with the historical absence of a critical juncture that might have forced the elimination of the *fuero militar* and the *Military Code of Justice*, Mexico experienced a path-dependence relationship of clientelism and the existence and persistence of the *fuero militar* that gave certain legitimacy and authority of military power over the civil one. Thus, Mexico did not experience the absence of clientelism, nor the existence and persistence of a strong *democratic rule of law* as was the case in Uruguay.

Throughout my analysis, there have been certain factors that have presented themselves that will require further study in future works and due to the limited space, they have not been analyzed individually. Among some of the factors that have not been fully accounted for within this thesis, but that have had a historical impact in both countries' evolutions, has been the historical relationships between the Spanish colonizers with its colonies prior to independence and after. Spanish colonialism and the early history of each country prior to independence has influenced the military and political development of each country since independence. For example, Mexico saw a much more active presence of *caudillo military* figures supported by Spanish colonizers within the political sphere than Uruguay did. Also, another factor that might have influenced the military and political evolution of these two countries could have been the existence of indigenous populations in Mexico and the inexistence of them in Uruguay in its early political developments. Mexico, politically, had to accommodate different socioeconomic classes at the time in a much more heterogeneous society. However, Uruguay did not have the disparity between the

socioeconomic classes present in Mexico nor the presence of a heterogeneous society. Uruguay as a much more homogeneous society was able to achieve pacts between the two main political parties and keep the military outside the political sphere. These are some of the facts that have come up throughout the analysis provided here; however, due to limited space they have not been further analyzed. These and other facts that might have been missed out could only help build upon the existing theoretical, empirical and methodological approaches.

Figure 1
Analytic Structure of Path-Dependent Explanation



Source: Mahoney, J. (2001). Path-dependent explanations of regime change: Central America in comparative perspective. *Studies in Comparative International Development*, 36(1), 113.

Appendix 2

COUNTRY PROFILE

URUGUAY

Montevideo, Salto, Paysandu

1. WJP Rule of Law Index

Income Upper middle income Region Latin America & Caribbean Population 3m (2012) 93% Urban 45% in three largest cities	WJP RULE OF LAW INDEX FACTORS	SCORE	GLOBAL RANKING	REGIONAL RANKING	INCOME GROUP RANKING
	Factor 1: Limited Government Powers	0.70	26/97	2/16	3/30
	Factor 2: Absence of Corruption	0.78	17/97	1/16	1/30
	Factor 3: Order and Security	0.70	56/97	2/16	14/30
	Factor 4: Fundamental Rights	0.75	22/97	1/16	1/30
	Factor 5: Open Government	0.62	24/97	2/16	4/30
	Factor 6: Regulatory Enforcement	0.71	18/97	1/16	2/30
	Factor 7: Civil Justice	0.71	15/97	1/16	1/30
	Factor 8: Criminal Justice	0.50	45/97	2/16	12/30

Source: The World Justice Project, “*WJP Rule of Law Index*”. Web. April 11th, 2013.
http://worldjusticeproject.org/sites/default/files/country-profiles/Uruguay_CP.pdf

COUNTRY PROFILE

MEXICO

Mexico City, Guadalajara, Monterrey

1. WJP Rule of Law Index

Income Upper middle income Region Latin America & Caribbean Population 115m (2012) 78% Urban 25% in three largest cities	WJP RULE OF LAW INDEX FACTORS	SCORE	GLOBAL RANKING	REGIONAL RANKING	INCOME GROUP RANKING
	Factor 1: Limited Government Powers	0.55	50/97	6/16	12/30
	Factor 2: Absence of Corruption	0.37	74/97	11/16	27/30
	Factor 3: Order and Security	0.50	91/97	15/16	28/30
	Factor 4: Fundamental Rights	0.56	60/97	11/16	18/30
	Factor 5: Open Government	0.53	32/97	5/16	8/30
	Factor 6: Regulatory Enforcement	0.49	56/97	8/16	20/30
	Factor 7: Civil Justice	0.40	89/97	14/16	29/30
	Factor 8: Criminal Justice	0.35	91/97	13/16	29/30

Source: The World Justice Project, “*WJP Rule of Law Index*”. Web. April 11th, 2013.
http://worldjusticeproject.org/sites/default/files/country-profiles/Mexico_CP.pdf

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