

From strengthening institutions to a coup: Explaining the ouster of President Zelaya as an outcome of a game of institutional emergence

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Paper presented at the Coloquio Centroamericano, San José, Costa Rica, June 3-4, 2010,
sponsored by Tulane University and CIAPA.

NOTE: This paper is a draft, please contact the authors for an updated version.

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Honduras catapulted into world headlines on June 28, 2009 when President Zelaya was ousted by the military. Many in the international community viewed this as a threat to democracy in the region and a portent of a return to the military politics that had been so horrific in Latin America before the Third Wave of democracy. A return to military controlled politics is strongly opposed, and makes the international condemnation of the coup understandable. But this response does not reflect an understanding of the institutional battle – the attempt at checks and balances – that had been playing out in Honduras during the preceding year.

One of the many challenges that Honduras's democratic regime faced in order to consolidate was to establish a norm of checks and balances across the three branches of the government. Checks and balances are a requirement in presidential-style democracies to prevent the creation of "delegative democracy" where the president is legally elected but then has virtually unlimited powers (O'Donnell 1994). Yet establishing a precedent that the congress and court can check the president, and that the president will accept their power and legal right to do so is a difficult task for an unconsolidated democracy (Knight and Epstein 1996). The Honduran experience in 2009 illustrates this challenge. Unlike the case of *Marbury v. Madison* in 1803 in the U.S. that is credited with establishing the power of the US Supreme Court to check the president; in Honduras the president did not accept being checked. When the court and congress would not acquiesce, the result was a coup instead of an enhancement of the democratic regime.

In this paper we use the case of Honduran inter-branch relations in 2008-9 to expand upon existing studies of institutional emergence. Honduras provides a critical case for studying

how checks and balances develop due to the history of its Third Wave democracy as well as its prior political experience. The constitution installed with the democratic regime in 1982 provided a legal basis for the legislative and judicial branches to check the executive, but during the first 25 years of the regime neither branch exercised their rights. In addition, more than a century of political history created a strong president and caudillo politics where the president was the chief caudillo and other politicians, including Congress deputies and justices on the Court owed their job to the president (Stokes 1950, 280; Munro 1967, 125; Argueta 1989; Rosenberg 1987; Ruhl 1997; Taylor 1996; Taylor-Robinson 2011). With this history it is improbable that simply writing powers to check the president into the 1982 constitution would bring the president under constitutional control.

For our analysis we model the struggle for power between the executive and the other two branches of government as a game of chicken, and use the game to illustrate why, as the conflict progressed, the dominant strategy for both actors was to not back down. With the benefit of hindsight beginning this game of asserting the right to check the executive was destined to lead to a coup, but it did not look that way when the conflict began to develop in 2008. Initially it looked like the legislative and judicial branches of the Honduran government were finally starting to assert their legal right to check the executive branch. By the time the game of chicken had truly become dangerous it was too late for either actor to view backing down as a rational move.

Was the military the source of the coup?

Before analyzing the Honduran case as a game of chicken over institutional powers we must address the question of the military. Did the Honduran military independently initiate the

ouster of Pres. Zelaya on June 28, 2009? No. Much evidence indicates that the Congress, Court, and political parties had been at odds with Pres. Zelaya for a year. The military arrested the president, but they were not acting of their own volition. The Court had issued an arrest warrant, and the military was sent to carry out the arrest early in the morning because the Cuarto Urna election would be held that day. Pres. Zelaya had refused to call off the election despite being told multiple times to do so by the Attorney General, the Electoral Tribunal, and the Supreme Court, and his refusal to back down prompted the Court to order the military to arrest the president. It appears that the military did of its own initiative make the decision to send Pres. Zelaya to Costa Rica, rather than taking him into custody to stand trial for the charges brought against him. That decision, which the military claimed afterward, was made to prevent likely bloodshed, was a violation of Honduran law. Art.102 of the Constitution states that “no Honduran may be expatriated nor handed over to the authorities of a foreign State.” (See Ruhl 2010 for a detailed assessment of the military’s role.)

The evidence indicates that what happened was a confrontation between democratic institutions in a presidential democracy with the Court and Congress using their constitutional power to try to check the Executive. As 2009 began, multiple times the Executive branch took actions that were declared illegal by the Supreme Court, or were challenged by the Congress, and the tension between the three branches of government intensified. That the Cuarto Urna election was scheduled to take place on June 28, and Pres. Zelaya refused to cancel the election, created a classic game of chicken. In a game of chicken two drivers challenge each other to drive at top speed directly toward each other. One driver has to turn away, or the two cars crash. In Honduras in June 2009 the two drivers were the Executive (car 1), and the Supreme Court/Congress (car 2), and neither car swerved to avoid a crash. Pres. Zelaya did not call off

the Cuarto Urna election even after it had been declared illegal several times. He ordered the military to carry out the election, and when the military commander refused on the grounds that the election had been declared illegal, Pres. Zelaya fired the commander. The Supreme Court reinstated him to his office, saying that only the Congress can remove the military commander. Continuing with the game of chicken analogy, when Pres. Zelaya's supporters retook the election materials the Elections Tribunal had impounded, Zelaya "threw out his steering wheel." The Court responded by issuing an arrest warrant on June 26 charging Zelaya with crimes including treason for planning to change parts of the constitution that cannot be changed. On June 28, mere hours before the polls were prepared to open; the two cars were still driving toward each other at top speed. The Court/Congress was now convinced that the president would not accept their constitutional power to check the executive, so they sent the military to arrest the president. At that point a *confrontation* of the sort that is common in presidential democracies when the Congress or Court check the Executive became a *crisis*.

How an attempt to exercise checks and balances led to a crisis is the subject of this paper. The analysis builds on Knight and Epstein (1996) who offered a theory of institutional emergence and applied game theory to help understand how the US Supreme Court asserted its ability to check the president with the case of *Marbury v. Madison*. That case turned out positively for the development of presidential-style democracy in the US because the Court handed down a decision that checked the power of the executive, and the executive accepted the Court's ruling, thereby establishing the precedent of judicial review of actions of the executive. However, that positive outcome was not preordained, and the rumors at the time indicated that the president planned to impeach the justices, and shut down the court for at least a year. One justice had been impeached and the Court's schedule had already been cancelled for 14 months.

Had the Court been shut down, or all the justices ousted, Pres. Jefferson would have won the immediate conflict and asserted the strength of the executive branch over the judiciary, but checks and balances in the United States would have been severely weakened, and the US might have become the first case of what Guillermo O'Donnell (1994) calls "delegative democracy," illustrating what Juan Linz (1990) views as the "perils of presidentialism." Knight and Epstein's paper is particularly interesting for understanding the events in Honduras in 2009. They write that, "The ratification of a constitution marks only the beginning of a long process by which political institutions take shape; the real work begins *after* political actors agree on appropriate governing charters" and often hinges on the "short-run strategic choices of political actors" (p.88). "Political actors produce political institutions in the process of seeking advantage in the conflict over substantive political benefits" (p.90).

Context and background

Status of Honduras's democracy before 2009

Honduras's democracy had a rough start in the 1980s, after a democratically elected president and congress were installed in January 1982. No progress was made toward consolidating the democratic regime, and it was questionable whether the regime met more than a minimal procedural definition of democracy based on holding free and fair elections (Taylor-Robinson 2011: Chapter 4). The military violated human rights of members of leftist groups. The Constitution did not put the military under the control of the elected civilian president, and military leaders were known to negotiate defense policy directly with the US government and then tell the President what the policy would be. The military was able to negotiate autonomy in the new civilian regime as a condition for the transition to democracy, and in the context of that

heated era of the Cold War in the midst of the Central American crisis, the Honduran military could credibly claim that national security necessitated a powerful and autonomous military (Casper and Taylor 1996).

However, when the Central American civil wars drew to a close in the early 1990s, the Honduran military no longer had a credible claim for why it should have independence from civilian control, and Hondurans were fed up with the military's human rights abuses and corruption. In 1993 when Carlos Roberto Reina ran for president as the candidate of the Liberal Party (PLH), he was able to campaign that if elected he would change the constitution to bring the military under civilian control. Reina won the election, and when he took office in 1994 he began the negotiations with Congress and Honduran society to make the necessary changes in the constitution. While the military objected and tried to prevent the change (see Bowman 2002), the constitution was amended and the military was brought under civilian control, mandatory military service was ended, and the police were removed from the military. Pres. Flores (PLH 1998-2002) selected the first civilian head of the military and the military did not tell the president who its leader would be. Since then the military has shown that it can work for civilians, and it has regularly cooperated with the president when called upon to back up the police in fighting crime (Ruhl 2010). Honduras's democratic regime finally merited scores of "Free" and "fully democratic" from organizations like Freedom House, and scholars using systematic scoring systems to evaluate the democratic nature of regimes (Mainwaring et al. 2001; Bowman et al. 2005).

No precedent of checks and balances

Despite significant progress, Honduras's democratic regime was still not fully consolidated. The Congress and Court had not developed norms of exercising the power granted

to them in the Constitution to check the Executive.¹ In part this was because career building strategies for deputies and justices did not give them an incentive to check the president, because the president could influence their future political career chances. Since the president was the key player in determining political career options for other members of his party, it was not rational for deputies or justices to check the president. As Knight and Epstein (1996: 91) write, the factor that will cause one actor to accept the commitment of another actor to a particular course of action is “the asymmetries of bargaining power that exist in political competition.” In Honduras, the president had always been the strongest political actor because of his ability to grant political favors and influence other politicians’ career chances. However, when the rules for selecting justices changed with the 2001 constitutional reform, and election rule reform changed the way deputies were nominated and elected starting in 2005, the ability of the president to determine the future political careers of other politicians decreased.² Thus, in 2008 when the Congress asserted itself to check Pres. Zelaya by not rubber-stamping his foreign policy initiatives of joining PetroCaribe and ALBA, this appeared to be a sign of progress toward consolidation by Honduras’s democracy (Taylor-Robinson 2009).

Yet, not surprisingly, Pres. Zelaya did not like his power being checked. Presidents often rebel against checks on their power, even in democracies that are generally considered to be consolidated. Presidents’ objections to being checked are why making checks and balances work requires independent branches of government where members of congress or the court do not need to worry that by checking the president they will harm their future political careers because

¹ Other challenges to “deepening democracy” spring from the immense poverty of the population which makes it difficult for citizens to hold their officials accountable (Taylor-Robinson 2011), and a judicial system that is overloaded for its capacity to process people accused of crimes, a weak economy that does not generate sufficient jobs, violent crime that make the lives of already poor citizens (and those who are better off) even more difficult.

² See Taylor-Robinson (2006, 2007) for discussion of the move from closed- to open-PR lists for both nominating and electing members of the Honduran Congress and the potential implications of those changes.

the president will be able to sanction them personally for attempting to curtail the president's powers.

From the beginning of 2009 Pres. Zelaya faced more challenges from the other branches of government. In early January, business groups took their case to the Supreme Court to try to stop the president from raising the minimum wage during a time when the world economy was contracting. Later in January, when Pres. Zelaya named his Defense Minister to take the place of Vice-President Elvin Santos who had resigned to run as the Liberal Party candidate for president, the Court over-turned his appointment saying that the vice-president was elected by the people so the president could not appoint his successor. Also in January the Congress had to select the members of the new Supreme Court that would take office on January 25.³ The Congress selects the justices from a list of nominees presented by a committee of experts (*Junta Nominadora*), however, Pres. Zelaya was accused of trying to influence the justice appointments, first by putting pressure on the *Junta Nominadora*, and then by lobbying the Congress for specific appointees. The Congress objected to the President's meddling and a constitutional crisis almost occurred, but late at night on the last day before the new Court had to take office or the country would not have a Supreme Court the Congress elected a new set of justices. The people for whom Pres. Zelaya was said to have lobbied were not appointed to the Court (Cuevas 2009). This is the context of newly exercised checks on the executive in which the inter-branch confrontation over the Cuarto Urna took place.

³ In 2001 the Constitution was amended to expand the term of office of Supreme Court justices from 4 years, coterminous with the term of the president and congress, to 7 years. This constitutional change created a *Junta Nominadora* made up of delegates from the National Human Rights Commission, Supreme Court, College of Lawyers, the Private Business Council, the law faculty of the University of Honduras, civil society, and the Confederation of Workers. The *Junta Nominadora* would submit a list of 45 nominees from which the Congress would select the 15 new justices by a 2/3rds vote. These changes were made to try to make the Court an independent actor. These new appointment rules were first implemented in 2002, and in January 2009 the second Court appointed under these rules took office.

While it is normal for a president to not want their power to be checked by the other branches of government, the experience must have been particularly surprising to Pres. Zelaya. Throughout the 20th century the president was accustomed to having autonomy to make policy unhindered by the Congress or Court (Stokes 1950: 280; Munro 1967: 125; Argueta 1989). In that context it is understandable that Pres. Zelaya questioned the right of the Congress and Court to tell him no. The right and capability of presidents in Latin America to make policy without interference from other branches of government is further underscored by the development in many countries of hyper-powerful executives (for example, in Venezuela where Pres. Chavez rewrote the Constitution, or Argentina where Pres. Menem made extensive neoliberal economic policy by decree or Pres. Fernandez moved-up legislative elections in 2009 to benefit her party). In sum, executive-legislative relations in 2008 set the scene for conflict in 2009 when Pres. Zelaya continued to pursue policies that were not acceptable to other actors. In 2009 the conflict escalated when the Court ordered him to withdraw the degree calling the referendum and then the public opinion poll.

Growing distance in the preferences of key political players

Another important component of the inter-branch confrontation that led to the political crisis was that Pres. Zelaya had moved away from the ideological preference of the median member of the Congress or the Court, and from the conservative ideology of the major traditional political parties. Hondurans are generally conservative, as seen by self-placement on a left-right ideological scale in surveys. In the Latinobarometer survey for 2006 the average ideological score for Hondurans was 6.17 on a 0-10 scale where 0=left and 10=right, while the average for all 18 Latin American countries in the survey was 5.35. In the 2007 Latinobarometer

survey the average ideological score for Hondurans was 5.72 (regional average 5.30), and in 2008 it was 5.64 (regional average 5.24).

Honduras's traditional parties – the Liberals and Nationals – are not ideologically based. Both are traditional parties that defend the interests of the business elite (McDonald and Ruhl 1989; Ajenjo Fresno 2001; Ruhl 2010). Rather than competing on the basis of ideological platforms, clientelism has long been the foundation of electoral competition (Rosenberg 1987; Taylor 1996; Taylor-Robinson 2011). Nonetheless, even in a context of free and fair elections they still won 91% of the seats in the Congress in 2005 and they have won every presidential election since 1981. Three non-traditional parties compete in Honduras's elections and win seats in the Congress and a few mayoral posts, but they have never been major contenders for the presidency, and in 2005 and 2009 the seat share of the small parties did not continue its upward trajectory (see Table 1).

< insert Table 1 about here >

In surveys of deputies conducted by the University of Salamanca in 2006, the average *self*-placement on a 10-point left-right scale for deputies from the Liberal Party was 5.35, and 6.79 for deputies from the National Party. The only party in the Congress known to be leftist is Unificación Democrática (PUD), for whom the average self-placement of deputies on the same scale was 1.00 (PELA 2008). While the PUD represents a truly distinct platform and ideological option for Honduran voters, it has only won at most 5 of the 128 seats in the Congress. This indicates that either most Honduran voters prefer to vote for a conservative party, or they cast their ballot based on which party they believe will be able to deliver development projects to their community and particularistic benefits to them as individuals. Other data from the PELA project sheds additional light on the potential for a gulf to form between Pres. Zelaya and the

majority in the Congress when he moved to the left with his policies in 2008 (see Table 2). The relative placement of the Liberal and National Parties, the candidate of the National Party in 2005 (Porfirio Lobo), and the two main primary candidates of the Liberal Party in 2005 (Manuel Zelaya and Roberto Micheletti who lost his presidential bid but became president of the Congress) shows that at the beginning of his term Zelaya was a bit to the left of the median voter in the Congress, while Micheletti or Lobo were closer to the ideological center of the Congress.

< insert Table 2 about here >

Still, when Manuel Zelaya was the Liberal Party's candidate for president in 2005, he was not known to diverge notably from his party.⁴ He had been a Congress deputy and served in the cabinet, and his campaign platform in 2005 did not appear to have a left-leaning bent (Taylor-Robinson 2006, 2007; Ruhl 2010). The first two years of his presidency also did not indicate that he would diverge from the conservative norm of Honduran politics (Ajenjo Fresno 2007: 176; Ruhl 2010). He pursued some pro-poor policies, but his *Red Solidaria* umbrella social protection program only expanded the state's conditional cash transfer programs to encompass a few new groups such as 14-24 year old youths, women needing skills training and credit for micro-businesses, and the elderly (Moore 2008: 16-7, 25).⁵ Zelaya won international recognition for his new programs, that were run out of the executive branch under the auspices of the First Lady ("Honduras logra" 2008), but they would not have been considered threatening changes in state welfare programs as they could be targeted to clients of the governing party because the number of people who met the means qualifications for participating exceeded the

⁴ It is noteworthy, however, that in 2006 the survey of deputies (PELA) done by the University of Salamanca found that the percentage of deputies with some or a great deal of confidence in the president had decreased to 62.7% from the 74.9% found in 2002 PELA survey, and 80.3% found in the 1997 PELA survey (Alcántara Sáez 2009: 2)

⁵ Honduras's conditional cash transfer program is PRAF (*Programa de Asignaciones Familiares*), established in 1990. PRAF primarily focuses on programs to get poor children into school and to enhance the medical care of poor children and pregnant women.

supply of funds (Moore 2008). He also implemented promises from his presidential campaign to adopt a Transparency Law to make state records more accessible to Hondurans, and to create new opportunities for citizen participation through referenda and initiatives.

It was in 2008 that Pres. Zelaya's policies made a high-profile turn to the left. First he took Honduras into PetroCaribe, the subsidized petroleum program sponsored by Hugo Chavez's government. As a member of PetroCaribe Honduras would receive oil at a reduced price and the savings would be placed in a fund to support anti-poverty programs. The Congress objected to forming an alliance with Chavez, but in the case of Zelaya's PetroCaribe initiative the primary concern of the Congress was how the oil savings would be used and supervised – the Congress wanted to set up a program that would allow oversight. When that was arranged the Congress voted to join PetroCaribe. Next Pres. Zelaya said that Honduras would join Chavez's ALBA (*Alternativa Bolivariana para las Américas*), which was much more controversial, prompting loud opposition from the business community, both traditional parties (including Zelaya's own party), and from Hondurans working in the US under the TPS program who were worried that the US would end this legal work program.⁶ While many countries have joined PetroCaribe as a way to reduce their oil import bill, membership in ALBA has remained limited. At the time that Pres. Zelaya said he wanted Honduras to join, only Venezuela, Bolivia, Cuba, Dominica and Nicaragua were members of the organization set up by Chavez. Conservative parties and interest groups in Honduras did not see joining ALBA as beneficial to Honduras in the same way that PetroCaribe funds could be useful, and instead they viewed it as contrary to the country's international trade interests and in conflict with the country's long-time alliance with the U.S.

⁶ The US government set up the TPS program for Hondurans after Hurricane Mitch devastated the country in October 1998. This program enables thousands of Hondurans living in the US to work legally, making possible extensive remittances to Honduras which are an important support for the country's economy. The TPS program requires renewal by the US government, which causes anxiety for the program's Honduran beneficiaries in the U.S. and for the Honduran government.

The confrontation between Pres. Zelaya and the Congress over ALBA was the second clear instance of the Congress moving to check the president in Honduras's democratic regime, and unsurprisingly Pres. Zelaya did not want his power to be checked.⁷ It is interesting to note that the conflict over joining ALBA was resolved in an old-fashioned way, with Zelaya cutting a deal with Congress President Micheletti, saying that he would support Micheletti in the Liberal Party primary. National Party deputies abstained in the ALBA vote, and the Liberal Party voted to join (Moreno 2008; Ruhl 2010: 99).

From policy differences to crisis

The confrontation over inter-branch rights to check each others' power began in earnest in March of 2009 when Pres. Zelaya made a speech at a military promotion ceremony in which he said that he wanted to continue in power ("Mel acepta" 2009). Rumors quickly started that Zelaya wanted to amend the constitution so that he could be reelected. While rumors are not fact, they do influence political actors' perceptions about other actors' preferences and what moves they are likely to make in a political game. Pres. Zelaya issued a decree to hold a referendum asking the Honduran people whether they wanted to have a "cuarto urna" at the regularly scheduled November 29 elections that would ask if people wanted to convene a constituent assembly to reform the constitution.⁸ That proposal was interpreted by Zelaya's opponents as a first step toward his continuing in power, which would be a violation of the constitution. Zelaya's opponents had already determined that they did not like the direction his

⁷ Alcántara Sáez (2009: 3) shows that the median value for deputy attitudes on a 5-point scale (where 1 is preference for the state and 5 is preference for the market) was 3.48 in the 2006 PELA survey (compared to 3.93 in 1997 and 3.77 in 2002). From this he concludes that, "Sin embargo, esta posición media sigue quedando lejos de cualquier veleidad hacia el bolivarianismo que empezó a abrazar el presidente Zelaya a partir de agosto de 2008 y es una fuente de posible de explicación del repudio del Congreso Nacional a los pasos dados por Zelaya."

⁸ Elections were already scheduled, as called for in the constitution, to elect the next president, congress, municipal governments and Honduran delegates to the Central American Parliament. Primaries had already been held by both major parties to select their presidential candidates, and slates for each department's election of congress deputies.

policy was taking, and now it appeared that he wanted to stay in power past January 2010 when his constitutional term would end. It was now very important to Zelaya's opponents that the Congress or Court be able to check the president.

Here it is useful to use intuitions from game theory to understand Honduras's inter-branch conflict and how the outcome could be a coup and constitutional crisis (see Figure 1). The actors in the model are the Executive (*E*), the Court/Congress (*C*), and the Public. Knight and Epstein (1996: 13) discussed two classes of motivations for the actors in their analysis of judicial institution emergence in the US: political and institutional. Political motivations "mean that the actors care about the advancement of their partisan causes and their parties." In Honduras the political motives would be the issue of changing the constitution to allow reelection, and most immediately whether the June 28 election should occur. Institutional motives "mean that the actors are concerned with the relative power and authority of the political branches of government" (ibid, p.103). In Honduras this refers to the rights of the Courts and Congress to check the president – to actually exercise the power granted to them in the constitution. We collapse the Court and Congress into one actor because they appear to have very similar preferences to (a) stop the Cuarto Urna election, (b) keep Pres. Zelaya from continuing in power past the end of his single allowable term, and (c) assert their right to engage in checks and balances.⁹ The Executive clearly had a preference for holding a popular consultation election about whether to convene a constituent assembly to reform the constitution. The expectation of Zelaya's opponents was that his real preference was to stay in power past

⁹ Based on the partisan makeup of the Court and Congress, and the conservative views of both traditional parties, it is likely that both institutions had the same preferences. The Court in 2009 had 8 justices from the Liberal Party and 7 from the National Party. In the Congress the Liberal Party had a near majority and the Liberal and National parties together held 91% of the seats, though some Liberal Party deputies were supporters of Zelaya.

January 2010, probably through election to a second term.¹⁰ The Executive branch more generally also had a preference for retaining its autonomy from checks by the other branches of government. The worst outcome for Court/Congress appears to be Zelaya amending the constitution to allow him to stay in power, which would also signal the inability of the Court and Congress to check the executive if the president's actions exceeded constitutional bounds. The worst outcome for the Executive appears to be the Court and Congress solidifying their power to check the executive. Clearly the ouster of the president was an even worse outcome for Pres. Zelaya, but it did not seem to be a realistic consideration given the progress made in consolidating democracy by 2009, and thus may not have been a seriously considered "least preferred outcome" as the game of chicken began. The preference of the public was not homogeneous, so we conceive of the Public as a composite actor whose preferences and moves can be considered to be those of the median member of the public. We model the first move in the game as a move by nature that determines whether the public is "pro-Zelaya" or "pro-Court/Congress" to take into account the uncertainty about how much support there was for President Zelaya and what sectors of society supported him. *E* and *C* decide which strategy to pursue based on their assessments of the probability the public supports the president.

< insert Figure 1 about here >

On March 23, 2009 the cabinet issued Executive Decree #PCM-05 2009 to have a public consultation or referendum (*consulta popular*) on June 28 about adding a fourth ballot box to the November elections to ask people whether they wanted to convene a constituent assembly. The Court of Administrative Litigation responded in May by declaring the referendum illegal. The

¹⁰ Zelaya denied that he wanted to seek reelection, and the Cuarto Urna ballot was worded so that it did not make this preference clear. However, statements that Pres. Zelaya made at the military promotion ceremony in March, and in a discussion with Fidel Castro reported after he made a visit to Cuba (Central America and Caribbean Weekly Report 2009) appeared to indicate that extending his time as president was his desire.

decree could be considered the first move by *E* in the game – a move to “initiate”, and the declaration of the referendum as illegal could be viewed as the first move by *C* – a move to “obstruct”. When Pres. Zelaya issued another decree substituting a national poll for the referendum, government legal institutions also pronounced the new election illegal – another round in the game, with each round raising the cost to either actors of backing down.¹¹ From April to June the Supreme Court and lower level judicial branch offices several times declared the election illegal and issued orders for Pres. Zelaya to desist. The Congress also indicated its opposition to the election, and passed a resolution condemning the Organization of American States for planning to send observers to the June 28 election because the OAS delegation would lend legitimacy to an election that was not in compliance with Honduran law. Multiple “moves” were made by *E* and *C* clearly demonstrating that *C* did not want the June 28 election to occur and that *E* would not back down from the plan.

After Pres. Zelaya’s frustrations in 2008 when he was confronted unexpectedly with a Congress that tried to check his policy autonomy, *E* may have viewed other conflicts with *C* as opportunities to learn about the preferences of those two institutions and about their resolve to check the executive’s power. Given Honduran political history it is plausible that Pres. Zelaya may not have believed that he was really faced with a Court or Congress that would consistently seek to check the executive. However, the clashes with the Congress and Court in January should have strengthened Zelaya’s belief that the Court and Congress had changed from the past norm of being weak institutions, and that either or both would be willing to attempt to check the executive. If that belief was correct, than he needed to find a way to augment his power if he wanted to continue to be able to implement his own policy agenda. Demonstrating that he had

¹¹ See the report prepared by Gutierrez (2009) for the Law Library of Congress for detailed evaluation of the legality of the actions the Congress and Court took against Pres. Zelaya, and also a detailed listing of the events and various ways the Cuarto Urna was declared to be illegal.

popular support was a way that Pres. Zelaya could show his strength, and try to convince *C* to let him have his way.¹² The Cuarta Urna referendum (and later the public opinion poll that he substituted for the referendum) was a logical vehicle for demonstrating his support. Neither *E* nor *C* had reliable information about the mass public. By joining ALBA in August 2008 Pres. Zelaya had signaled that he might adopt some Chavez-like pro-poor policies, but he did not know if that signal had won him popular backing. *C* knew that business organizations opposed the ALBA proposal, but economic elites are a small minority of the country's population. Zelaya had won the 2005 elections by the slimmest of margins, and his opponent in 2005, Porfirio Lobo, had won the 2008 presidential primary for the National Party in a landslide with 73% of the vote.¹³ This uncertainty about the preferences of the mass public – were the people aware of the inter-branch conflict, did they care, did the people back Pres. Zelaya – made it difficult for either *E* or *C* to know how strong their position was. What they knew by June was that they had very different political and institutional preferences.¹⁴

¹² Obtaining the support of the military would be another way to strengthen his hand, and Ruhl (2010: 101) writes that “Zelaya had cultivated excellent relations with the armed forces from the beginning of his term and had more than doubled their budget.” Yet trying to win military support was a risky strategy as the military's senior officer corps was steeped in Cold War ideology and did not support Honduras allying with Venezuela's Chavez.

¹³ The 2008 AmericasBarometer survey in Honduras showed that by mid-term Pres. Zelaya's support had dropped about 5 points on a 100-point scale from what it was at the beginning of his term – from 52.1% of survey respondents saying that they approved of Pres. Zelaya's performance in early 2006 to 47.5% in January 2008 (Coleman and Argueta 2008: 186). In January 2008 56.3% of survey respondents who identified with Zelaya's party said that they approved of the president's performance, compared to 45.4% for respondents without a party affiliation, 44.0% for supporters of the National Party, and 44.2% for respondents with no party affiliation (p.196). The 2008 AmericasBarometer survey also asked respondents whether they had confidence in the presidency, and less than half (48.4%) of Liberal Party supporters gave a positive response (while supporters of other parties, as would be expected, were less likely to say they have confidence in the presidency) (p.181). These survey responses indicate that it was not clear the general public supported President Zelaya in January 2008, while there was also not a clear drop in his support since he had taken office. By early 2009, however, polls reported that Zelaya's support had dropped to the 30% range (Ruhl 2010: 99). These poll findings prompt us to interpret the situation as unclear to either *E* or *C* about whether the people would support Zelaya in the referendum, and what could matter most was who turned out to vote in the irregular election.

¹⁴ Seligson and Booth (2009; also Booth and Seligson 2009) use data from the AmericasBarometer to show that many Hondurans were dissatisfied with their democratic regime even by 2004. They present a measure of people who are “triple dissatisfied”, which is a combination of negative evaluations of support for democracy, support for national institutions, and evaluation of the government's economic performance. Honduras had the highest ratio of “triple dissatisfied” to “triple satisfied” survey respondents compared to seven other Latin American countries. The

The equilibrium path of the game depends on what *E* and *C* believe about the state of the political environment. In Honduras in 2009 there was uncertainty about whether the public supported Pres. Zelaya. No election results or polls indicated Zelaya had overwhelming support from popular sectors, and he clearly had lost support from the business sector. Yet the combination of uncertainty about the public and Zelaya's repeated actions that indicated he would not back down made the Court and Congress risk averse. In this Honduran game of institutional emergence a risk averse strategy for *C* meant taking action to stop the president. A risk neutral strategy would have been to wait and see what happened with the Cuarto Urna election on June 28. But *C* was risk averse in part due to concerns that Zelaya would rig the June 28 poll. *C*'s risk aversion probably had been heightened by the larger regional context of recent years where several presidents had rewritten constitutions to their advantage under questionable legal conditions, with the techniques of Hugo Chavez in Venezuela being the most frightening example to *C*. It appears that *C* did not believe Pres. Zelaya would back down, that regardless of the real state of the political environment (the move by nature at the beginning of the game) *E* would act as if he had public support.

Once the game started – the cabinet issued the decree to create the June 28 election, and the court declared it illegal – both actors were in a situation where they lost if they backed down. Had *C* known *E* would lose the June 28 election and that Zelaya would accept such a loss, *C* still would have needed to arrest Zelaya to obtain its preferred outcome of establishing the power of the Court and Congress to check the president. Had Zelaya perceived his bargaining power to be weaker, he should never have proposed the Cuarto Urna. He would have forfeited his presumed

2008 AmericasBarometer survey showed that the ratio of triply dissatisfied to triply satisfied respondents had increased in all but one country from the 2004 study, but Honduras still topped the list for triply negative evaluations. These types of data do not indicate whether the mass public would support Zelaya or the Court/Congress, but they do indicate that extra-constitutional actions by either actor might find popular backing.

goal of continuing in office, but he would have avoided the checks and balances standoff that could allow the Court or Congress to assert its power to check the executive.

The domestic political crisis and the international standoff created by the arrest of Pres. Zelaya and the military sending him to Costa Rica took months to resolve. But analyzing the situation as a game shows how what started out in 2008 as democratic institutions exploring their power and strength to engage in democratic checks and balances – an exploration that actually could have led to a strengthened democracy in Honduras – can lead to a political crisis. Knight and Epstein (1996) view such a negative outcome as a likely result of inter-branch conflict in a democracy that is still learning how its democratic institutions and inter-branch relations will work.

Conclusion

Attempts by the Congress in 2008, and the Court in 2009 to assert their legal powers to check the president could have strengthened the democratic regime by demonstrating the reality of checks and balances. President Zelaya, however, refused to accept the powers of the other branches. The Court and Congress took steps to protect their interests (both political and institutional) by issuing an arrest warrant for the president and ordering the military to take him into custody.¹⁵ The Executive and the Congress/Court had different preferences, and both were uncertain about their popular support. The Court/Congress had reasons to believe that they had the backing of the leadership of both of the traditional parties, as well as the small Christian Democratic Party, and the business community. Pres. Zelaya appears to have thought that he had popular support – that he would win the Cuarto Urna referendum and then also have his

¹⁵ Impeachment was not feasible in Honduras in 2009 because constitutional amendments in 2003 (Law 175-2003) repealed Art.205 section 15 that had given Congress the power to remove officials, including the president.

supporters elected to the constituent assembly that would result. That popular support was not certain, and the lack of massive popular uprisings after his ouster, combined with popular demonstrations (also of relatively small size) in support of the new government indicate that there was not overwhelming popular support for Pres. Zelaya's left-turn in policy since 2008.¹⁶ But the mood and preferences of the public were not clearly known at the time the inter-branch conflict came to a head in June 2009. Instead of one of the actors turning its car off the road, they crashed into each other at top speed. The outcome of this political game to establish the powers (or lack of powers) of the legislative and judicial branches to check the president could have defined the right and power of the Congress and Court to check the executive, but instead the outcome was a domestic and international political crisis that crippled Honduras's already poor economy.

If the Congress and Court had backed down and let the President pursue any policy he wanted even if it risked violating the constitution, with the opposition howling in the press but not able to take an effective stand, Honduras would have continued to go unnoticed by the rest of Latin America. The democratic regime would have been weakened, possibly regressing away from consolidating democracy, but no one would have commented since presidents that overstep the constitutional bounds of their power are a common occurrence. Instead the Court and Congress asserted their right to check the Executive – albeit in a situation where at least part of their reason for wanting to do so was because of an ideological disagreement with the president, and not just because the new methods of selecting the members of those institutions decreased

¹⁶ The victory by conservative presidential candidate Porfirio Lobo of the National Party in the November 2009 election, paired with the leftist PUD not winning more seats in Congress or a dramatic increase in votes may be another indication of lack of support for Zelaya's pro-Chavez policies. The AmericasBarometer (2010) poll conducted in March 2010 showed that a majority of Hondurans opposed Zelaya's ouster, though they also strongly objected to his attempt to change the constitution. The poll also found that 75% of respondents opposed Zelaya's Cuarto Urna election.

their incentives for loyalty to the president. The Executive refused to accept the concept of checks and balances that is fundamental to a presidential system of democracy, and conflictual inter-branch relations produced a political crisis. Because the ouster of a democratically elected president is not in the interest of elected heads of state and many other actors in Latin America, Honduras's political crisis became a regional cause célèbre and millions of dollars of aid were cut off from one of the poorest countries in the hemisphere. But even now, with the dust somewhat settled from this crisis (a new president, Porfirio Lobo of the National Party, has been inaugurated and Manuel Zelaya has gone into exile in the Dominican Republic, international attention has moved on to other countries), Honduras's democratic regime still faces the challenges of establishing a norm of checks and balances. As Mark Ruhl (2010: 105) writes, "democracy plainly is not 'the only game in town' in Tegucigalpa." Poverty, made worse by the economic crisis is the most immediate problem facing Honduras, but *rebuilding* democratic norms, and *building norms* of checks and balances are still challenges that must be addressed to move the regime toward consolidation. With this paper we have tried to illustrate, as did Knight and Epstein (1996) for the case of the US, that actors' preferences and the larger political environment in which actors play out their conflicts can help us to better understand the dynamic process of democratization and the emergence, or perhaps the decay, of political institutions.

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Table 1
Party Seats in Congresses since the Installation of Democracy

	Number of Seats Held by:					
	President's Party	Liberal Party	National Party	Innovation & National Unity Party	Christian Democratic Party	Democratic Unification Party
<i>Term:</i>						
1982-1985	Liberal	44	34	3	1	--
1986-1989	Liberal	67	63	2	2	--
1990-1993	National	55	71	2	--	--
1994-1997	Liberal	71	55	2	--	--
1998-2001*	Liberal	67	55	3	2	1
2002-2005	National	55	61	3	4	5
2006-2010	Liberal	62	55	2	4	5
2010-2014	National	45	71	3	5	4

Source: Taylor-Robinson (2011), compiled from election results published by the National Elections Tribunal

Notes: For the 1982-85 term the Congress had 82 members. For the 1986-89 term the number was increased to 134 as part of the Act of Compromise to resolve the crisis caused by President Suazo's maneuvers to hold on to power. Since the 1990-93 term the number of deputies has been fixed at 128.

* 1997 was the first time elections for president and congress were unfused.

Table 2
Average Ideological Placement of Parties and Politicians on a 0-10 Scale
 (0=left, 10=right)

	1994	1997	2001	2005
Liberal Party*	4.72	5.76	5.87	5.40
National Party*	8.48	8.37	8.65	8.81
Carlos Roberto Reina (PLH)	4.95			
Carlos Roberto Flores (PLH)		7.04		
Ricardo Maduro (PNH)			8.18	
Manuel Zelaya (PLH)				5.28
Porfirio Lobo (PNH)				7.73
Roberto Micheletti (PLH)				6.52

Source: Alcántara Sáez 2009 (Table 5 p.3), PELA surveys

* Ideological placement by deputies in other parties

Figure 1
Game Tree Diagramming How Inter-Branch Conflict Can Become a Crisis

