

THE REMOVAL OF THE CONSTITUTIONAL CHAMBER JUSTICES IN EL SALVADOR: A STORY ABOUT THE FRAGILITY OF JUDICIAL INDEPENDENCE

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Abstract

The work discusses a significant event that occurred on May 1, 2021, when the Legislative Assembly of El Salvador removed the Justices of the Constitutional Chamber of the Supreme Court of Justice before their term expiration, violating legal procedures. This action was facilitated by a combination of populist rhetoric from the President and abuse of power by the Legislative Assembly. Referred to as Constitutional Authoritarian-Populism, this trend undermines the rule of law. The text outlines the Salvadoran constitutional framework and discusses concepts like judicial independence, populism, abusive constitutionalism, and authoritarianism in the Latin American context. It then examines instances of Constitutional Authoritarian-Populism in El Salvador from 2019 to 2023, demonstrating that the removal of the Justices wasn't spontaneous. Finally, it analyzes the process of removal, the response from the removed Justices, and the subsequent decision by newly appointed Justices to authorize presidential re-election in El Salvador.

Keywords: Constitutional Authoritarian-Populism; Constitutional Chamber; Judicial Independence; Presidential Re-election; Removal

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I. INTRODUCTION

Contemporary democratic constitutional systems are characterized by their flexibility, allowing for various ideologies and manifestations of political power to coexist within the constitutional framework. However, all of these manifestations have conceptual and normative limits within the triumphs of liberalism, now known as constitutionalism. Constitutionalism or democratic constitutionalism is characterized by at least the following distinctive features: the principle of the rule of law, the separation of powers, the protection of fundamental rights, and the democratic ideal that the legitimacy of the state rests upon the consent of its citizens.¹

Both the principle of separation of powers and the guarantee of fundamental rights largely depends on the optimal functioning of an institution that, although relatively recent, is considered one of the most successful and influential legal inventions of the 20th century: constitutional courts. Few checks and balances on power have been as effective in Western democracies as constitutional courts. Through their main function, which is the declaration of unconstitutionality of laws and other public acts, they have proven to be true guardians of the Constitution.

However, this comes at a price. The valuable role of constitutional courts in preserving the rule of law has made them targets of illiberal movements that, once in power, seek to co-opt them through various means. One of these movements is populism, whose rise in the world, especially in Latin America, has put constitutional courts in their crosshairs. However, today's populist leaders are more sophisticated than those of the past. Once in power, they take advantage of the mechanisms provided by the legal system itself and use them for antidemocratic purposes. In many cases, these actions escalate, leading to the consolidation of authoritarian regimes.

¹ Carlos Bernal Pulido, "Constituciones sin constitucionalismo y la desproporción de la proporcionalidad. Dos aspectos de la encrucijada de los derechos fundamentales en el neoconstitucionalismo [Constitutions without Constitutionalism and the Disproportionality of Proportionality: Two Aspects of the Dilemma of Fundamental Rights in Neoconstitutionalism]," *Fundamentos: Cuadernos monográficos de teoría del estado, derecho público e historia constitucional* no. 9 (2016): 43, https://www.unioviado.es/constitucional/fundamentos/noveno/pdfs/o3_carlosbernal.pdf.

In this essay, we will analyze the case of El Salvador. On May 1, 2021, the Legislative Assembly removed the Justices of the Constitutional Chamber, even though they had six years remaining in their terms. The reason given was that the decisions issued by the Constitutional Chamber during the COVID-19 pandemic had endangered the lives of the Salvadoran population.

While it is true that the Salvadoran Constitution allows for the removal of the Justices of the Constitutional Chamber, we will need to analyze whether this mechanism was used in a legitimate manner. The importance of said analysis will be fundamental to determine to what extent judicial independence is a guarantee – and a global constitutional principle – considered by some to be quasi-absolute. Or if, on the contrary, it is so fragile that it is at the mercy of temporary legislative majorities that, for purely political reasons, can end it in one night, as in the case of El Salvador.

Furthermore, we will examine how the concentration of power guided by populist rhetoric is leading to actions that could be characterized as authoritarian, such as the suppression of checks and balances on power. We will refer to this combination of abusive use of constitutional rules, populism, and authoritarian acts as Constitutional Authoritarian-Populism.

II. A BRIEF OVERVIEW OF THE SALVADORAN CONSTITUTIONAL DESIGN

The Salvadoran constitutional system is largely unknown beyond its own borders.² The current Salvadoran Constitution was enacted on December 16, 1983, while the country was going through a bloody civil war that would end in 1992, with an estimated death toll of one hundred thousand.³

² Marcos Antonio Vela Ávalos, “Justicia dialógica en una ingeniería constitucional resistente al constitucionalismo dialógico: El caso de El Salvador [Dialogic Justice in a Constitutional Engineering Resistant to Dialogic Constitutionalism: The Case of El Salvador],” *Anuario Iberoamericano de Justicia Constitucional* 26, no. 1 (2022): 185, <https://doi.org/10.18042/cepc/aijc.26.07>.

³ The Commission on the Truth for El Salvador, “From Madness to Hope: The 12-Year War in El Salvador: Report of the Commission on the Truth for El Salvador” (United States Institute of Peace), accessed June 14, 2023, <https://www.usip.org/sites/default/files/file/ElSalvador-Report.pdf>.

The Constitution of El Salvador embodies a distinctly humanistic ideology, as it acknowledges the human being as the “source and purpose” of the State’s activities in Article 1, and the dignity of the people as the source of national coexistence, in the Preamble. From there on, it encompasses an extensive catalog of fundamental rights, including the right to life, equality, physical and moral integrity, freedom of expression, assembly and association, as well as property rights, among others, which are prevalent in contemporary liberal democracies.⁴

In its organic part, the Constitution recognizes, among other matters that we cannot delve into here, that El Salvador has a republican, democratic, and representative form of government (Article 85). It also acknowledges the principles of limited popular sovereignty (Article 83) and separation of powers (Article 86). Regarding this last component, it is important to highlight how the Constitution organizes and distributes political power. Article 86 establishes that the fundamental organs of the State are three: the Legislative, the Executive, and the Judiciary.

The Legislative Body (Articles 121 to 132) is represented by a unicameral body composed of deputies, known as the Legislative Assembly, whose main functions include enacting laws and constitutional reforms. The Executive Body (Articles 150 to 171) is headed by the President of the Republic (elected by popular vote), but also includes the Vice President, Ministers, Vice Ministers, and their subordinate officials. Its competencies are primarily executive and regulatory in nature.⁵ Finally, the Judicial Body (Articles 172 to 190) is responsible for the power to judge and enforce judgments in various matters, and is composed of the Supreme Court, Appellate Courts, and Ordinary Courts.

Speaking specifically about the judicial review of laws, this is exercised by the Constitutional Chamber, which is an organic part of the Supreme Court, composed by five Justices. The Constitutional Chamber was created by the current Constitution of 1983. It was conceived from the beginning as a genuine

⁴ Andrei Marmor, “Constitutionalism, Liberalism and Democracy,” in *Constitutionalism: Old Dilemmas, New Insights* (Oxford: Oxford University Press, 2021), 40–41.

⁵ Vela Ávalos, “Justicia dialógica,” 185.

constitutional court, primarily responsible for the judicial review of laws. This character as a constitutional court has been reaffirmed by the Chamber itself in its jurisprudence.⁶

Like any constitutional body, the competences of the Constitutional Chamber are defined by the Constitution. These are as follows: a) To hear cases of Unconstitutionality of laws, decrees, and regulations; b) To hear cases of Amparo; c) To hear cases of Habeas Corpus; d) To resolve disputes arising between the Legislative and Executive branches in the process of law formation; and e) To hear cases of suspension and loss of citizenship rights in the situations referred to in ordinal 2º and 4º of Article 74, and ordinals 1º, 3º, 4º, and 5º of Article 75 of the Constitution, as well as the corresponding restoration of rights.⁷

But judicial review of laws in El Salvador is not only practiced in a concentrated manner, carried out by the Constitutional Chamber, following the European-Kelsenian style. It also has a system of diffuse judicial review, following the American style, which authorizes all judges in the country to declare any law, decree, or international treaty that contravenes the content of the Constitution inapplicable (Article 85 of the Constitution).

In conclusion, the Salvadoran constitutional design is, at least formally, comparable to that of any other contemporary democratic State. It has a supreme and rigid Constitution, strongly protected by a Constitutional Chamber and by the power of all ordinary judges to exercise diffuse judicial review.⁸ Additionally, it includes a comprehensive catalog of fundamental rights, a system of separation of powers, and checks and balances aimed at preventing the concentration of power.

⁶ Manuel Adrián Merino Menjívar, “El control judicial de las reformas constitucionales en El Salvador: ¿Un control a medias? [Judicial Review of Constitutional Amendments in El Salvador: A Halfway Review?],” *UDA Law Review* 4 (2022): 46, <https://prisma.uazuay.edu.ec/index.php/udalawreview/article/view/611>. Also see Constitutional Chamber of El Salvador, *Judgment of Unconstitutionality 16-2011*, April 27, 2011.

⁷ *Ibid.* These competences are derived from Articles 138, 174, 182.7 (in relation to Articles 74 and 75), and 183 of the Constitution.

⁸ Regarding the qualities of the Salvadoran Constitution, see Rodolfo Ernesto González Bonilla, “Cualidades de la Constitución [Qualities of the Constitution],” in *Teoría de la Constitución. Estudios en Homenaje a José Albino Tinetti* (San Salvador: Corte Suprema de Justicia, 2020), 109–132.

III. REGARDING THE NOTIONS OF JUDICIAL INDEPENDENCE, POPULISM, ABUSIVE CONSTITUTIONALISM AND AUTHORITARIANISM

3.1. Judicial Independence in the Latin American Context.

The notion of judicial independence as an essential feature of the doctrine of separation of powers has been present since the very origins of constitutionalism.⁹ It is well known that Montesquieu asserted that there could be no genuine freedom if the Judiciary was not separated from the Legislative and Executive powers. If the Judiciary merged with the Legislative Branch, it would be arbitrary, as the judge would also be a legislator. If the Judiciary merged with the Executive Branch, it would be an oppressive power.¹⁰

This idea was echoed by Alexander Hamilton in *The Federalist*, asserting that judicial independence is necessary in a limited Constitution. This means that the limits of the Legislative Branch can only be ensured through the courts, whose role is to declare null and void any acts that are contrary to the Constitution. Without this, the preservation of fundamental rights is illusory.¹¹

The international community has always been aware of the need to ensure and strengthen the principle of judicial independence through binding instruments for the States parties. This is evident in Article 14.1 of the Universal Declaration of Human Rights, Article 14.1 of the International Covenant on Civil and Political Rights, Article 8.1 of the American Convention on Human Rights, and Article 6 of the European Convention on Human Rights, among others.

Entire treatises have been written on judicial independence throughout history, and it would not make sense to extensively delve into its historical and normative development on a global level here. Therefore, we will proceed to study its regulation within the framework of the Inter-American System of Human Rights, and particularly in the case of El Salvador.

⁹ Martin Loughlin, *Against Constitutionalism* (Cambridge: Harvard University Press, 2022), 44–48.

¹⁰ Montesquieu, *El espíritu de las leyes [The Spirit of the Laws]*, vol. 1 (Madrid: Librería General de Victoriano Suárez, 1906), 227–228

¹¹ Alexander Hamilton, “The Federalist Papers: No. 78 and 79,” (United States: Library of Congress), accessed June 21, 2023, <https://guides.loc.gov/federalist-papers/full-text>.

In Latin America, the transition from dictatorships to democracies in the 1980s had two essential components: a) The role that the Judicial Branch would play in the new democratic regimes, and b) That all efforts should be made to ensure judicial independence.¹² As seen before, this led to the creation of strong judicial bodies (Courts, Supreme Courts, or Constitutional Chambers), capable of effectively limiting political power and ensuring relative democratic stability in the countries of the region. The paradigmatic cases of these strong Courts are Colombia, Brazil and, recently, Ecuador.

The Inter-American Court of Human Rights, based in San José, Costa Rica, from its earliest jurisprudence¹³ has emphasized that the autonomous exercise of the judicial function must be guaranteed by the State, both institutionally in relation to the Judicial Branch as a system, and individually in relation to the specific judge. The objective dimension of judicial independence is related to essential aspects of the Rule of Law, such as the principle of separation of powers and the important role played by the Judiciary in a democracy. It goes beyond the individual judge and has a collective impact on society.

Separation and independence of public powers limit the scope of power exercised by each State organ, preventing undue interference and ensuring the effective enjoyment of greater freedom. The separation of powers aims to guarantee the independence of judges, and different political systems have devised strict procedures for their appointment and removal. The United Nations Basic Principles on the Independence of the Judiciary affirm the State's responsibility in guaranteeing judicial independence, and all governmental and non-governmental institutions must respect and uphold judicial independence.

¹² Owen M. Fiss, "The Limits of Judicial Independence," *The University of Miami Inter-American Law Review* 25, no. 1 (1993): 57, <https://www.jstor.org/stable/40176330>.

¹³ Inter-American Court of Human Rights, *Cases: Apitz Barbera y otros ("Corte Primera de lo Contencioso Administrativo") vs. Venezuela*, August 5, 2008; *Argüelles y otros vs. Argentina*, November 20, 2014; *Acosta y otros vs. Nicaragua*, March 25, 2017; *Chocrón Chocrón vs. Venezuela*, July 1, 2011; *Colindres Schonenberg vs. El Salvador*, February 4, 2019; *Cordero Bernal vs. Perú*, February 16, 2021; *Corte Suprema de Justicia (Quintana Coello y otros) vs. Ecuador*, August 23, 2013; *Cuya Lavy y otros vs. Perú*, September 28, 2021; *López Lone y otros vs. Honduras*, October 5, 2015; *Moya Solís vs. Perú*, June 3, 2021; *Palamara Iribarne vs. Chile*, November 22, 2005; *Reverón Trujillo vs. Venezuela*, June 30, 2009; *Rico vs. Argentina*, September 2, 2019; *Ríos Avalos y otro vs. Paraguay*, August 19, 2021; *San Miguel Sosa y otras vs. Venezuela*, February 8, 2018; *Tribunal Constitucional (Camba Campos y otros) vs. Ecuador*, August 28, 2013; *Tribunal Constitucional vs. Perú*, January 31, 2001; *Villaseñor Velarde y otros vs. Guatemala*, February 5, 2019. Advisory Opinions: *OC-8/87*, January 30, 1987 and *OC-28/21*, June 7, 2021.

The right to be judged by an impartial judge or tribunal is a fundamental guarantee of due process. The independence of judges requires an adequate appointment process, a defined term in office, safeguards against external pressures, and guarantees of stability. The objective of protecting judicial independence is to prevent undue restrictions on the judiciary and its members by external organs. Judges have specific guarantees due to the necessary independence of the Judiciary, which is essential for the exercise of their function. The removal of judges by the Executive Branch before the expiration of their term, without specific reasons and without effective judicial protection to challenge the removal, is incompatible with judicial independence.

The guarantee of stability and tenure for judges means that their removal should only occur for permitted causes, through a process that meets judicial guarantees, or upon completion of their term. Judges can only be dismissed for serious disciplinary offenses or incompetence, and any proceedings against judges must comply with established judicial behavior standards and fair procedures ensuring objectivity and impartiality according to the Constitution or the law.

The jurisprudence of the Constitutional Chamber of El Salvador has also dealt with the issue of judicial independence.¹⁴ The Chamber has stated that judicial independence can be understood as the absence of any kind of legal subordination and undue interference in the exercise of the judicial function by the Executive and Legislative powers, the parties to the proceedings, social actors of any nature, or other organs of the legal and political framework, presupposing the attachment of magistrates and judges solely to the Constitution and the law, as indicated in Article 172 of the Constitution of El Salvador. This “freedom” must be understood as the absence of subordination of the judge or magistrate to any legal or social power other than the Constitution and the law, as its purpose is to ensure the purity of the technical criteria that will influence the judicial elaboration of the irrevocable specific norm that resolves each case under trial.¹⁵

¹⁴ *Judgment of Unconstitutionality 56-2016*, November 25, 2016; and *Mandamiento Judicial de Inconstitucionalidad [Judicial Order of Unconstitutionality] 1-2021*, May 1, 2021.

¹⁵ At the secondary legislation level, this is regulated in Article 26 of the Judicial Career Law and Article 7 of the Judicial Code of Ethics.

The Constitutional Chamber has also recognized that judicial independence contributes to the legitimization of the judge, a legitimacy that cannot be of an electoral nature but is indeed democratic, justified to the extent that it is strictly technical or “argumentative”, as Robert Alexy would refer to it.¹⁶ One of the main concerns of the Constitutional Chamber has been to reaffirm that judges must be independent, particularly from partisan politics, as they should not have any material or formal affiliation with political parties. This requirement is even more pronounced in the case of Justices of the Constitutional Chamber, as the cases they will have to resolve will have, to a greater or lesser extent, political components.

In summary, judicial independence has at least two dimensions: an objective dimension, which serves as a principle or value that permeates the entire legal system, imposing on the State and, consequently, on each judge, the obligation to administer justice independently; and a subjective dimension, which translates into a fundamental right (subjective guarantee) of individuals to have their cases, regardless of their nature, resolved by independent judges.

3.2. Populism + Abusive Constitutionalism + Authoritarianism = Constitutional Authoritarian-Populism: A very Latin American Formula

Populism is not a new phenomenon. The emergence of this concept dates back to the late 19th century, represented by two emblematic movements: the Russian *narodnichestvo* and the American People’s Party movement.¹⁷ Defining populism is not an easy task. In fact, several legal scholars speak of “populisms” in the plural form. However, for our purposes, we will start with a definition proposed by Cas Mudde and Cristóbal Rovira, which is useful. They define populism as a *thin-centered ideology that views society as fundamentally divided into two homogeneous and antagonistic camps: “the pure people” versus*

¹⁶ Jorge Ernesto Roa Roa, “No(s) Representan los jueces Constitucionales? [Do Constitutional Judges Represent Us?],” in *Democracia, representación y nuevas formas de participación: una mirada en prospectiva. XXI Jornadas de Derecho Constitucional. Constitucionalismo en transformación. Prospectiva 2030* (Bogotá: Universidad Externado de Colombia, 2021), 279–281.

¹⁷ Guadalupe Salmorán Villar, *Populismo. Historia y geografía de un concepto [Populism. History and Geography of a Concept]* (México: UNAM, 2021), 13.

“the corrupt elite”. Populism argues that politics should be an expression of the general will of the people.¹⁸

Populist movements are often characterized by the presence of a leader (typically a man) who embodies the voice and will of the people. This leader is charismatic, strong, and possesses great persuasive power. He is a man of action rather than words, unafraid to make difficult decisions swiftly, even against expert advice. He presents himself as one of the people, showing disdain for intellectualism. In the case of male leaders, they may project an image of virility, almost resembling a superhero.¹⁹ We can find classic examples of these leaders in Juan Domingo Perón (Argentina), Silvio Berlusconi (Italy), Hugo Chávez (Venezuela), Rafael Correa (Ecuador), Evo Morales (Bolivia), Donald Trump (U.S.A.) and Santiago Abascal (Spain), among others.

Populism can be seen as a parasitic ideology that often targets liberal democracies as its preferred host. It undermines these democracies in at least two ways: in its characterization of “the people” and its treatment of opposition. Firstly, as evident from the adopted definition of populism in this work, the notion of “the people” as a homogeneous entity contradicts the idea of pluralism inherent in liberal democracies. The populist leader’s intention to homogenize the popular will leads to the annulment and repression of dissent, resulting in severe consequences for fundamental rights and the substantive dimension of democracy. This is closely related to the second way populism erodes liberal democracy, which is its refusal to recognize the legitimacy of any opposition. From the populist perspective, only the voice of “the people” is deemed legitimate in a democracy, rendering dissenting opinions from the opposition as invalid and unacceptable. Populists claim to have exclusive access to the “true” voice of “the people”.²⁰

¹⁸ Cas Mudde and Cristóbal Rovira Kaltwasser, *Populism: A Very Short Introduction* (Oxford: Oxford University Press, 2017), 6.

¹⁹ Kaltwasser, *Populism: A Very Short Introduction*, 62-66.

²⁰ Benjamin Moffitt, *Populismo. Guía para entender la palabra clave de la política contemporánea [Populism: A Guide to Understanding the Keyword of Contemporary Politics]* (Argentina: Siglo Veintiuno Editores, 2022), 135-137.

Populism found fertile ground in Latin America since the late 20th century. The turbulent social and political history of Latin America, marked by poverty, inequality, and corruption, provided the perfect breeding ground for the emergence of messianic figures, both from the left and the right, who promised to end political polarization and give the people the rightful place, making their voices heard. However, the Latin American reality indicates that all these leaders had a different intention than the one they proclaimed: to solidify power indefinitely from the Executive Branch and eliminate any mechanisms of control against them. These are the cases of Álvaro Uribe in Colombia, Hugo Chávez in Venezuela, Daniel Ortega in Nicaragua, Rafael Correa in Ecuador, Evo Morales in Bolivia, Jair Bolsonaro in Brazil, and Nayib Bukele in El Salvador.²¹

The final intention of the populist is not as noble as it may seem, that is, not only to give a voice to the historically forgotten people, but ultimately to bring about a transformation of the existing constitutional and democratic order, a change in the rules of the game that allows the populist leader to carry out their epiphanies. These changes must take place at all costs, while seemingly respecting the formal rules of the legal system. Such changes may require the elimination or co-optation of institutional obstacles that hinder the realization of the true will of “the people”. These obstacles are often represented by constitutional courts and political opposition. Populism does not tolerate control or dissent.²²

The populist’s rhetoric is of no use if, at the end of the day, they do not seize power. In modern times, populists come to power through legitimate means such as popular elections,²³ so they do not need to resort to violence (coups) or revolutions to achieve their purpose. Their charisma and, in some cases, their proposals are enough. Once power has been constitutionally obtained, the stage is set for the populist to begin disrupting the democratic regime at will.

²¹ Juan Pablo Sarmiento Erazo, “Populismo constitucional y reelecciones, vicisitudes institucionales en la experiencia suamericana [Constitutional Populism and Reelections: Institutional Vicissitudes in the South American Experience],” *Estudios Constitucionales* no. 1 (2013): 569–602, <http://www.estudiosconstitucionales.cl/index.php/econstitucionales/article/view/71>.

²² Nadia Urbinati, *Yo, el pueblo. Cómo el populismo transforma la democracia [Me the People: How Populism Transforms Democracy]* (México: Instituto Nacional Electoral-Grano de Sal, 2020), 21–36.

²³ This is the case in all the Latin American countries mentioned earlier.

This “transformation” is typically carried out through the use of constitutional change mechanisms that, despite being formally valid, result in a significantly less democratic State than before. This practice is referred to by David Landau as “Abusive Constitutionalism”.²⁴

Despite Landau’s focus on formal constitutional change mechanisms (constitutional reform and replacement) for the realization of abusive constitutional practices, the reality is that Abusive Constitutionalism now encompasses a broader spectrum and can also materialize through informal practices, as understood by the Constitutional Chamber of El Salvador. According to the Chamber, Abusive Constitutionalism occurs when any branch of the State attempts to break with the form and system of government through authoritarian means or under the cover of democratically distorted institutions. These, the Chamber argues, are seemingly legitimate constitutional changes that undermine the fundamental pillars of democracy.²⁵

Indeed, Landau argues that there is a conceptual link between Abusive Constitutionalism and Authoritarianism (or its variants), with the latter being the final stage of democratic degradation. For instance, Landau suggests that competitive authoritarian regimes often have constitutions that outwardly resemble democratic systems, complete with structural features like the separation of powers, but they employ informal tactics to undermine the effectiveness of those checks and balances. Rulers in such regimes can appoint sympathetic judges to the courts and can neutralize judges representing opposing interests through means such as bribery or threats. These practices erode the independence and integrity of the judiciary, allowing rulers to consolidate power and neutralize any significant opposition.²⁶

Landau makes a final remark, which is relevant to our study:

The weakening or removal of opposition figures is instrumental to the construction of competitive authoritarian regimes because it gives incumbents a greatly increased power to rework the state to their advantage. The trick,

²⁴ David Landau, “Abusive Constitutionalism,” *Davis Law Review* 47, no. 1 (2013): 195.

²⁵ *Mandamiento Judicial de Inconstitucionalidad [Judicial Order of Unconstitutionality]* 1-2021.

²⁶ Landau, “Abusive Constitutionalism,” 212.

as well, is that packing or dismantling a single institution will rarely have serious consequences for democracy, but sweeping away large parts of the institutional order — as was done in all of these cases — may allow rulers to entrench themselves in power for long periods of time.

In Latin America, the formula “Populism + Abusive Constitutionalism + Authoritarianism”, which could well be called “Constitutional Authoritarian-Populism”²⁷, has been the preferred mechanism for some leaders in recent history to achieve a common objective: staying in power for an extended or indefinite term, even when the constitutions expressly prohibit it. Authoritarian populists may choose to change or reform the constitution, as in the cases of Ecuador and Venezuela, but if that is not possible, highly politicized (and often non-independent) constitutional courts seem to be a perfect ally to achieve the same purpose, as has happened in Nicaragua, Honduras, Costa Rica, Bolivia²⁸ and El Salvador²⁹.

IV. THE DEMOCRATIC DEGRADATION IN EL SALVADOR: A TOUR OF SOME PRACTICES OF CONSTITUTIONAL AUTHORITARIAN-POPULISM BETWEEN 2019 AND 2023

4.1. The Context

After the signing of the Peace Accords on January 16, 1992, the Salvadoran political landscape could be characterized by three significant phenomena: political polarization, corruption, and insecurity. Between 1989 and 2019, El Salvador was governed by two political parties: the *Alianza Republicana Nacionalista* [Nationalist Republican Alliance] (ARENA), a right-wing party historically representing the

²⁷ José Ignacio Hernández G., “The Constitutional Chamber in El Salvador and Presidential Reelection: Another Case of Constitutional Authoritarian-Populism,” *Int’l J. Const. L. Blog*, September 10 (2021), <http://www.icconnectblog.com/2021/09/the-constitutional-chamber-in-el-salvador-and-presidential-reelection-another-case-of-constitutional-authoritarian-populism/>

²⁸ In the cases of Nicaragua, Honduras, Costa Rica and Bolivia see Roberto Viciano Pastor and Gabriel Moreno González, “Cuando los jueces declaran inconstitucional la Constitución: la reelección presidencial en América Latina a la luz de las últimas decisiones de las Cortes Constitucionales [When Judges Declare the Constitution Unconstitutional: Presidential Reelection in Latin America According to the Latest Decisions of the Constitutional Courts],” *Anuario Iberoamericano de Justicia Constitucional* no. 22 (2018): 165–198, <https://doi.org/10.18042/cepc/aijc.22.06>.

²⁹ In the case of El Salvador see Manuel Adrian Merino Menjivar, “When Judges Unbound Ulysses: The Case of Presidential Reelection in El Salvador,” *Int’l J. Const. L. Blog*, September 9, 2021, <http://www.icconnectblog.com/2021/09/when-judges-unbound-ulysses-the-case-of-presidential-reelection-in-el-salvador/>.

interests of the socially privileged classes in the country, and on the other hand, the *Frente Farabundo Martí para la Liberación Nacional* [Farabundo Martí National Liberation Front] (FMLN), a left-wing party formed by former members of the revolutionary forces (guerrilla). ARENA governed from 1989 to 2009, while the FMLN governed from 2009 to 2019.

Beyond those two political parties, other minor political parties did not have a significant impact on the decision-making process, allowing the traditional parties to use and abuse their power without much opposition. Out of the six former presidents from the post-war period, five have been or are currently being prosecuted, either criminally or civilly, for acts of corruption during their terms in office.³⁰

The third phenomenon that caused devastation in Salvadoran society was the issue of crime and insecurity. For many years, El Salvador was considered the most violent country in the Americas and one of the most violent in the world. This resulted in a high number of deaths, economic extortion, robberies, sexual assaults, and forced displacements both internally and across borders. No government was able to contain the wave of violence that plagued the Salvadoran people day by day.³¹ Furthermore, the last governments of the FMLN were accused of making deals with the largest gangs in the country (MS 13 and Barrio 18), granting them benefits in exchange for reducing the number of murders and extortions.³²

³⁰ La Prensa Gráfica, “Los cuatro expresidentes salvadoreños señalados por la justicia [The Four Former Salvadoran Presidents Indicted by the Justice System],” *La Prensa Gráfica*, August 24, 2021; Fiscalía General de la República, “Fiscalía salda deuda histórica al intervenir diferentes propiedades del expresidente Cristiani [Prosecution Settles Historic Debt by Intervening Various Properties of Former President Cristiani],” *Fiscalía General de la República*, June 2, 2023.

³¹ Roberto Valencia, “El Salvador, el país más violento de América: un asesinato cada 2 horas [El Salvador, the Most Violent Country in the Americas: One Murder Every 2 Hours],” *El Mundo.es*, January 3, 2010; Europapress, “El Salvador cerrará 2015 como el año más violento de su historia, con más de 6.600 homicidios [El Salvador Will Close 2015 as the Most Violent Year in Its History, with Over 6,600 Homicides],” *Europapress*, December 30, 2015; CNN Español, “¿Qué países tienen las tasas de homicidios más altas del mundo? El Salvador, entre los que encabezan la lista [Which Countries Have the Highest Homicide Rates in the World? El Salvador Among the Highest],” *CNN Español*, May 18, 2022.

³² Óscar Martínez et al., “Gobierno negoció con pandillas reducción de homicidios [Government Negotiated a Reduction of Homicides with Gangs],” *El Faro*, March 14, 2012; Carlos Martínez, “Pandillas admiten por primera vez que negociaron tregua con el Ejecutivo [Gangs Admit for the First Time That They Negotiated a Truce with the Executive],” *El Faro*, May 30, 2016.

The frustration of the population with the political class of that time was such that there was almost a plea for the emergence of a new political figure, young, without a political past, and with great leadership power. A spark of hope to achieve real change in the country. At that time, a young mayor of the Municipality of Nuevo Cuscatlán, called Nayib Bukele, affiliated with the FMLN at the time, began to draw attention (taking advantage of the rise of social media) for his good work in the administration of that small municipality. His rise was swift. By 2015, he was already the mayor of San Salvador, the capital of El Salvador. In 2017, he was expelled from the FMLN due to disagreements with its leaders, and he concluded his term as mayor of San Salvador in 2018.

Without a political party behind him, he decided to found his own political movement, called Nuevas Ideas [New Ideas], which later became a political party, the long-awaited new option for the Salvadoran people. Bukele ran for President of the Republic in 2019, and his campaign slogan, which led to a resounding victory over his rivals, was “*devuelvan lo robado*” [return what was stolen], referring to the corruption allegations against previous governments. To this day, the Salvadoran President enjoys unprecedented approval ratings in Latin American statistics.³³ The leader that the people had been waiting for had arrived.

The political party Nuevas Ideas was the necessary and ideal vehicle to access another branch of the State: The Legislative. On February 28, 2021, as a historical event, the political party Nuevas Ideas won 56 out of the 84 seats of the Legislative Assembly, that is the majority required by the Constitution to take --almost-- any important decision, as to: a) Elect the Attorney General, the Ombudsman and the Public Defender Officer (Article 192 of the Constitution); b) Elect the Justices of the Supreme Court of Justice, including the five Justices of the Constitutional Chamber (Article 186 of the Constitution); c) Elect the Magistrates of the Supreme Electoral Tribunal (Article 208 of the Constitution); d) Elect the Magistrates of the Court of Accounts (Article 131 n. 19°); e) Ratify

³³ Edwin Segura, “Bukele arranca 2023 con 91% de aprobación [Bukele Starts 2023 with a 91% Approval Rating],” *LPG Datos*, March 15, 2023

international treaties (Article 131 n. 7°); and f) Ratify constitutional amendments (Article 248); to mention a few.³⁴

With the Executive and the Legislative on his side, the Judiciary was the only obstacle. However, the concentrated power was enough to undertake certain actions that would ultimately lead, as will be seen later, to the removal of the Justices of the Constitutional Chamber. But before that, let's take a look at some practices of Constitutional Authoritarian-Populism that took place between 2019 and 2023, which paved the way for the fateful date of May 1, 2021, for the young and fragile Salvadoran democracy.

4.2. Practices of Constitutional Authoritarian-Populism between 2019 and 2023

4.2.1. The Armed Takeover of the Legislative Assembly

Article 167.7° of the Salvadoran Constitution authorizes the Council of Ministers, under the command of the President of the Republic, to convene the Legislative Assembly “when the interests of the republic so require”. Thus, through Agreement of session number 2 on February 6, 2020, it was agreed to convene the Legislative Assembly to hold an extraordinary session at 3:00 p.m. on February 9, 2020. The purpose of this requirement was the approval of a loan for 109 million dollars, to address public security issues.

On the appointed date, only a few deputies of the Legislative Assembly attended the convocation, failing to reach the necessary quorum for a vote, while the rest of the deputies who did not attend argued that the topic to be discussed was already scheduled for the following day, that is, Monday, February 10, 2020. Faced with this act of “disobedience”, the President of the Republic chose to militarize the Legislative Assembly and enter it. Once seated in the position of the President of the Legislative Assembly, he expressed that he would be patient, offered a prayer to God, and left the place. The symbolic significance of this act was evident.

³⁴ Manuel Adrián Merino Menjívar, “El Salvador,” in *The 2021 Global Review of Constitutional Law* (November 2022), <https://ssrn.com/abstract=4285035>.

The controversy, with many more details than can be narrated here³⁵, reached the Constitutional Chamber. The Chamber had to rule on whether the agreement by which the Council of Ministers had called the Legislative Assembly for an extraordinary session was unconstitutional. In the judgment of unconstitutionality No. 6-2020/7-2020/10-2020/11-2020, dated October 23, 2020, the Constitutional Chamber declared (*ex post facto*) that the aforementioned convocation was unconstitutional, as it did not fit within the assumption of urgency provided for in Article 167.7° of the Constitution. Additionally, the court took the opportunity to make a series of assessments on the rule of law, democracy, the principle of separation of powers, the right to insurrection, and the constitutional purposes of the armed forces and the National Civil Police, among other topics.

It is pertinent to transcribe the following assessment from the court:

It must not be overlooked that, although our political form of government is presidentialist, the exercise of powers by the Executive Branch cannot give rise to a *de facto* hyper-presidentialism, as the excessive dominance of this branch over the rest —and especially over the Legislative Branch— historically has led in Latin America to one of the worst forms of authoritarianism: low-intensity authoritarianism, which hides behind the exercise of democratic functions and thus manages to perpetuate itself and become immune to criticism.

4.2.2. Abuse of Power during the COVID-19 Pandemic

It would be redundant to discuss the well-known havoc caused by the COVID-19 pandemic worldwide. However, beyond the health crisis, a phenomenon occurred, more pronounced in some states than in others (especially in Latin America), regarding abuses of power and the violation of fundamental rights.³⁶ Here, we are interested in recounting specific events that took place in El Salvador and can be characterized as Constitutional Authoritarian-Populism.

³⁵ Valeria Guzmán et al., “Bukele mete al Ejército en la Asamblea y amenaza con disolverla dentro de una semana [Bukele Sends the Army into the Legislative Assembly and Threatens to Dissolve It Within a Week],” *El Faro*, February 10, 2020.

³⁶ Roberto Gargarella and Jorge Ernesto Roa Roa, “Diálogo democrático y emergencia en América Latina [Democratic Dialogue and Emergency in Latin America],” *MPIL Research Paper Series* No. 2020-21 (2020): 1–30, <http://dx.doi.org/10.2139/ssrn.3623812>.

The issue is that the activation of a “state of exception”, as referred to in the Salvadoran Constitution, is subject to rules, both formal and substantive, that limit such an extraordinary situation. Among the formal rules is the fact that it can only be decreed by the Legislative Assembly and, only in its absence, by the Executive Branch, in the event that the Legislative Assembly is unable to convene. Among the substantive rules, it can be mentioned that only certain rights can be suspended, and at no time can they be completely abolished, and the democratic system does not have to be affected.

In El Salvador, the pandemic exposed an abuse of power by the Executive Branch in two ways: the disregard for constitutional rules that allow for the declaration of a state of exception, and, on the other hand, the widespread violation of human rights through the practice of arbitrary detentions (disguised as quarantine measures) based solely on being present in a prohibited time or space.³⁷

Regarding the first point, through a series of Decrees, the Executive Branch sought to usurp the powers of the Legislative Branch by ordering mandatory home quarantines and movement restrictions within the territory of the republic. As for the second point, the same Decrees stipulated that those who violated the established rules would be transferred to confinement centers for quarantine, which in practice resulted in arbitrary detentions.

Once again, the matter reached the Constitutional Chamber. The tribunal ruled that Executive Decrees No. 5, 12, 14, 18, 19, 21, 22, 24, 25, and 26 were unconstitutional since the suspension of one or more fundamental rights in the whole or in part of the national territory is only possible through a state of exception adopted through constitutionally established channels.³⁸ In another decision, the Chamber granted Habeas Corpus in favor of “*all persons who have been deprived of their liberty since the night of Saturday, March 21, 2020, based on Executive Decree No. 12...*”³⁹

³⁷ Human Rights Watch, “El Salvador: Abusos Policiales en la Respuesta a la Covid-19 [El Salvador: Police Abuses in Response to COVID-19],” *Human Rights Watch*, April 15, 2020.

³⁸ *Judgment of Unconstitutionality 21-2020/23-2020/24-2020/25-2020*, June 8, 2020.

³⁹ *Judgment of Habeas Corpus 148-2020*, March 26, 2020.

These decisions did not sit well with the Executive. The President of the Republic expressed on several occasions that he would not comply with the rulings of the Constitutional Chamber because, in his opinion, these rulings “ordered him to kill thousands of Salvadorans”.⁴⁰ Furthermore, on one occasion, he stated that if he were a dictator, he would have already ordered the execution of the Justices of the Constitutional Chamber, stating, “saving thousands of lives in exchange for five”.⁴¹

V. THE REMOVAL OF THE CONSTITUTIONAL CHAMBER JUSTICES IN EL SALVADOR

The essence of constitutional courts lies in their counter-majoritarian nature. Their function of declaring laws and other acts unconstitutional clashes directly with the will of those who hold political power and with the will of the majority, whose interests are often represented by the members of the Parliament or Legislative Assembly who were democratically elected. The questioning of the democratic legitimacy of constitutional courts, known as the “counter-majoritarian objection”, is not new and can be summarized in the question: Why should judges have the power to overturn decisions made by democratically elected representatives?⁴² This is not the space to theorize about it, but rather to establish a starting point: Constitutional courts are inconvenient for political power, and their optimal functioning is a key component of the principle of separation of powers. Constitutional courts are often seen by authoritarian leaders as an obstacle that must be removed at all costs.

⁴⁰ BBC News Mundo, “Coronavirus en El Salvador: la polémica por la negativa de Bukele a acatar la orden de la Corte Suprema que prohíbe ‘detenciones arbitrarias’ durante la cuarentena [Coronavirus in El Salvador: The Controversy Over Bukele’s Refusal to Comply with the Supreme Court’s Order Prohibiting ‘Arbitrary Detentions’ During the Quarantine],” *BBC News Mundo*, April 16, 2020.

⁴¹ H. Sermeño and Eugenia Velásquez, “Bukele contra la Sala: ‘Si fuera un dictador, los hubiera fusilado a todos. Salvas miles de vidas a cambio de cinco’ [Bukele Against the Chamber: ‘If I Were a Dictator, I Would Have Executed Them All. You Save Thousands of Lives at the Cost of Five’],” *elsalvador.com*, August 10, 2020.

⁴² Alberto Macho Carro, “De la dificultad contramayoritaria al diálogo interinstitucional: mecanismos de equilibrio en la relación justicia constitucional – poder legislativo [From the Counter-Majoritarian Difficulty to Inter-Institutional Dialogue: Mechanisms of Balance in the Relationship Between Constitutional Justice and the Legislative Power],” *Anuario Iberoamericano de Justicia Constitucional* 1, no. 23 (2019): 235.

In its recent history, especially from the period of 2009-2018, the Constitutional Chamber of El Salvador was characterized by playing an active role in controlling political power. To mention a few examples, through its judgments: a) It authorized the participation of independent candidates for the position of deputy in the Legislative Assembly⁴³; b) Declared unconstitutional a constitutional amendment that aimed to reverse the aforementioned decision⁴⁴; c) Declared unconstitutional a constitutional amendment that sought to extend the term of mayors and deputies⁴⁵; d) Declared unconstitutional the General Budget of the Nation⁴⁶; e) Declared unconstitutional the appointment of public officials based on their affiliation with political parties⁴⁷; d) Recognized new rights, such as access to public information⁴⁸ and informational self-determination⁴⁹; e) Declared a state of unconstitutionality due to the overcrowded conditions in the country's prisons⁵⁰; f) Declared the Amnesty Law unconstitutional⁵¹; g) Declared the figure of substitute deputies unconstitutional⁵²; h) Granted amparos, obligating the public healthcare system to provide adequate medical treatments⁵³, among many other relevant decisions.

All political actors became aware that an independent and technical Constitutional Chamber was the greatest obstacle to fulfilling purposes that deviated from the framework of constitutionality.

5.1. The Fateful Night for Democracy

As mentioned before, in the general elections, to select the deputies of the Legislative Assembly, on February 28 of 2021, the political party Nuevas Ideas won 56 seats. The first session of this completely renewed

⁴³ *Judgment of Unconstitutionality 61-2009*, July 29, 2010.

⁴⁴ *Judgment of Unconstitutionality 7-2012*, December 16, 2013.

⁴⁵ *Judgment of Unconstitutionality 33-2015*, November 24, 2017.

⁴⁶ *Judgment of Unconstitutionality 1-2017/25-2017*, July 26, 2017.

⁴⁷ *Judgment of Unconstitutionality 122-2014*, April 28, 2015, among others.

⁴⁸ *Judgment of Amparo 713-2015*, September 1, 2016.

⁴⁹ *Judgment of Amparo 934-2007*, March 4, 2011.

⁵⁰ *Judgment of Habeas Corpus 119-2014 ac.*, May 27, 2016.

⁵¹ *Judgment of Unconstitutionality 44-2013/145-2013*, July 13, 2016.

⁵² *Judgment of Unconstitutionality 33-2015*, July 13, 2016.

⁵³ *Judgment of Amparo 166-2009*, September 21, 2011 and *Judgment of Amparo 701-2016*, July 2, 2018.

Legislative Assembly (for the period 2021-2024) took place on May 1st. In a session that lasted more than 6 hours, between the evening of May 1st and the early morning of the following day, a surprising proposal was made by some deputies of the majoritarian party: to remove the Justices of the Constitutional Chamber.⁵⁴

The arguments in which they based their proposal were, in summary, that the Constitutional Chamber issued a series of arbitrary judgments out of the range of its competence, that they violated the separation of powers, and that they put into risk the health of all Salvadorans by ruling against the measures taken by the Government to fight COVID-19.⁵⁵ No due process of law was followed for their removal. In the incredulous gaze of the entire population, who were following the session of the Legislative Assembly through various media outlets, in the blink of an eye, the new lawyers were already being sworn in to occupy (or usurp) the positions of Justices of the Constitutional Chamber.

Did the Legislative Assembly have the power to remove the Justices from the Constitutional Chamber? In a normative sense, the answer is yes. Article 186 of the Constitution grants the Legislative Assembly not only the authority to elect Justices of the Supreme Court (including those of the Constitutional Chamber), but also to remove them, with the vote of 56 deputies. The same Article 186 establishes that the causes for which the Justices can be removed must be previously established by law.⁵⁶ This is a case of what constitutional theory have called a constitutional mandate. Constitutional mandates are orders directed by the primary constituent power⁵⁷ to the constituted powers —predominantly to the

⁵⁴ Menjivar, "El Salvador," 119-120.

⁵⁵ Menjivar, "El Salvador."

⁵⁶ Menjivar, "El Salvador."

⁵⁷ Following Yaniv Roznai, I refer to "primary constituent power" instead of "original constituent power" and to "secondary constituent power" instead of "constitutional amendment power". The argument maintains that it is wrong to call constituent power "original" since it never arises from nothing, from the mere vacuum, there are always political institutions or institutional situations that already exist previously. Consequently, since the constitutional amendment power derives from the primary constituent power and is subordinate to it, it is viable to call it secondary constituent power. See Yaniv Roznai, *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers* (Oxford: Oxford University Press, 2019), 120-122.

Legislative— for the issuance of acts that make certain constitutional norms fully applicable and thus the rights or situations provided in them become effective in practice.⁵⁸

The law that should regulate the causes for which Justices could be removed from the Supreme Court did not exist at the time the Legislative Assembly decided to remove them, and still does not exist, at the time of writing this work (July, 2023). The argument used by the Legislative Assembly to apply Article 186 of the Constitution, even when there was no regulatory law, was the direct application of the Constitution. This argument does not apply to those cases in which the primary constituent power expressly decided to leave some matters for legislative development. Despite this, it was applied.⁵⁹

Later that same day, the Constitutional Chamber issued a judgment declaring their removal unconstitutional, but it was not carried out and the new “Justices” took office that same day. These acts carried out by the Legislative Assembly have been characterized as a typical case of Constitutional Authoritarian-Populism. In one way or another, constitutional democracy in El Salvador has been weakened, as one more case of the democratic erosion that has plagued Latin America since the mid-20th century.⁶⁰

5.2. The Reaction of the Removed Constitutional Chamber

At 8:20 p.m., on May 1st, the recently removed Justices of the Constitutional Chamber issued an unprecedented decision in the history of the country: an unconstitutionality judgment *ex officio*. The arguments given by the Constitutional Chamber can be summarized as follows. Article 174 of the Constitution grants the Constitutional Chamber the power to judge the cases described in Part II of this work. But this case was not referred to an Unconstitutionality process [*proceso de inconstitucionalidad*]

⁵⁸ José Alfonso da Silva, *Aplicabilidad de las normas constitucionales [Applicability of Constitutional Norms]* (México: UNAM, 2003), 153

⁵⁹ Menjivar, “El Salvador.”

⁶⁰ Menjivar, “El Salvador.”

in the strict sense, because no person filed a lawsuit to start it, it was issued *ex officio*, then the Constitutional Chamber called it *Mandamiento judicial de inconstitucionalidad* [Judicial order of Unconstitutionality].

The Constitutional Chamber argued that this practice was not their invention. And said that other constitutional courts have done it before in similar cases, when the form and system of government have been put at risk to favor the President of a Republic. In 1993, in Guatemala, President Jorge Serrano Elías issued certain provisions to suspend certain fundamental rights, dissolve Congress, and dissolve the Supreme Court of Justice and the Constitutional Court. The Constitutional Court issued an *ex officio* ruling declaring those provisions unconstitutional.⁶¹

In another argument, the Constitutional Chamber said that the Legislative Assembly's decision to remove them was greatly influenced by the President of the Republic, so there was an imbalance in the balance of power. Finally, the Constitutional Chamber argued that it would be useless to follow a regular Unconstitutionality process in which, surely, the Legislative Assembly would ignore the authority of the decision issued.⁶²

Once its competence to issue said judgment was justified, the Constitutional Chamber continued its arguments explaining the context in which its decision was being issued. Following Cass Sunstein, it considered that the President and his officials had been carrying out a series of nudges to turn public opinion against them and thus undermine their legitimacy. All these actions led the people to "validate" the decision of the Legislative Assembly to remove the Justices from the Constitutional Chamber.⁶³

The Constitutional Chamber considered that all this had the purpose of breaking the form and system of government and monopolizing power in the hands of the President as a "popular triumph", even knowing that,

⁶¹ Menjivar, "El Salvador."

⁶² Menjivar, "El Salvador."

⁶³ Menjivar, "El Salvador."

in reality, he was trying to obtain unlimited power, as has happened in recent Latin American history.⁶⁴

Also, the scenario presented was one in which a presidential system degenerated into a hyper-presidential one. The political party related to the President had a qualified majority in the Legislative Assembly, so it did not represent a real counterweight to his power. From the foregoing, the Constitutional Chamber concluded that the real purpose of the President was to suppress the only real counterweight that remained: The Constitutional Chamber. Thus, when electing new Justices related to the President, judicial review would formally continue to exist, but it would be inoperative in practice.⁶⁵ This would also imply that the guarantee of judicial independence for those judges would be basically non-existent.

The Constitutional Chamber considered that the decision made by the Legislative Assembly negatively affected the form of government and the political system established in Article 85 of the Constitution, which cannot be altered because it is one of the eternity clauses established in Article 148 of the Constitution. First of all, the government would no longer be, in practice, republican. The system of checks and balances would be non-existent in reality, since the three powers of the State would be in the hands of the Executive Branch, even though this is contrary to the Constitution.⁶⁶

On the other hand, the Chamber said that the democratic character of the government would be affected. Without an effective countermajoritarian organ that can override legislative or executive decisions, democracy will operate in practice without any insurance for its substantial element. In this sense, only its formal component, the majority, will remain effective, but not the substantial one.⁶⁷

⁶⁴ Menjivar, "El Salvador," 120-121.

⁶⁵ Menjivar, "El Salvador," 121.

⁶⁶ Menjivar, "El Salvador."

⁶⁷ Menjivar, "El Salvador."

The judgment also considered that fundamental rights, as one of the main elements of the Salvadoran political system (Article 85 of the Constitution), would be affected by not having an independent Constitutional Chamber, whose decisions in defense of the rights of the majority, but also of minorities, could be influenced by the Executive Branch. Finally, after making a much broader theorization than can be summarized here, the Constitutional Chamber declared that the Legislative Decree by which their removal was decided was unconstitutional. Consequently, the decision must be complied with immediately. Unlike Guatemala in 1993, in El Salvador that never happened.⁶⁸

5.3. History Repeats Itself: The New Constitutional Chamber Authorized Presidential Re-Election

Articles 174 and 182.7 of the Constitution confer on the Constitutional Chamber the competence to declare the loss of their political rights to persons who “*sign acts, proclamations or accession to promote or support the re-election or continuation of the President of the Republic, or use direct means to that purpose*”. The case 1-2021⁶⁹ began with a lawsuit filed by a citizen before the Constitutional Chamber in which he demanded the loss of political rights of a person who, being a pre-candidate for deputy for the ruling party of El Salvador, promoted the re-election of the current President of the Republic.⁷⁰

The Salvadoran Constitution considers as an eternity clause, that is, that it cannot be reformed by the secondary constituent power, everything related to the alternation in the exercise of the Presidency of the Republic. The protection of this clause by the Constitution reaches such a point that, as a unique case in Latin America, whoever intends to alter it may lose their political rights.⁷¹

⁶⁸ Menjivar, "El Salvador."

⁶⁹ *Judgment of Pérdida de los derechos de ciudadanía [Loss of Political Rights] 1-2021*, September 3, 2021.

⁷⁰ Menjivar, "El Salvador," 121.

⁷¹ Menjivar, "El Salvador."

The case 1-2021 was rejected. Nonetheless, the new Constitutional Chamber took the opportunity to establish a new interpretation about the presidential term limits in El Salvador. For the Salvadoran primary constituent power, the prohibition that the president could be reelected immediately and continuously was a fundamental decision. Another series of provisions confirm it. Article 152.1 of the Constitution maintains that a person who has held the presidency for more than six months, consecutive or not, during the immediately preceding period or within the last six months prior to the beginning of the presidential term, cannot be a candidate for President.⁷²

Article 88 of the Constitution maintains that the alternation in the exercise of the presidency of the Republic is essential for the maintenance of the form of government and the political system, and that the violation of said norm forces the insurrection of the people. On the other hand, article 75.4 of the Constitution contemplates that the fact of promoting or encouraging presidential re-election is a cause of loss of political rights.⁷³

Finally, the Constitutional Chamber had interpreted in its jurisprudence that the prohibition of immediate presidential re-election covered not only leaving a presidential term in between, but two, since the prohibition includes the nomination as a candidate in the period immediately following the one in which it was exercised the presidency.⁷⁴

Apparently, and from a strictly normative point of view, all the avenues of access to presidential re-election were constitutionally closed. Nonetheless, in case 1-2021, the new members of the Constitutional Chamber reinterpreted the previous criteria to change it completely. In their opinion, article 152.1 of the Constitution what actually prohibits is that whoever has already been president in a first period, and being in a second period, can run for a third period. Consequently, re-election is not

⁷² Menjivar, "El Salvador."

⁷³ Menjivar, "El Salvador."

⁷⁴ *Judgment of Unconstitutionality 163-2013*, June 25, 2014.

prohibited for those who, being in a first term of the presidency, decide to opt for a second term. If it seems confusing, that's because it is.⁷⁵

I will try to graph it as follows: P is president at time t_1 , therefore, when the Constitution speaks of the "immediately preceding period", it refers to time t_{-1} , that is, when P was not yet president. Hence, P can run for his re-election at time t_2 . Nevertheless, already being in t_2 , since P was president in t_1 , and that would be his "immediate previous term", he could no longer run for a third term at time t_3 .⁷⁶

The decision also appeals to the sovereignty of the people, who "will have among their range of options the person who at that time holds the presidency, and it is the people who decide whether to place their trust in him again or if they opt for a different option". The problem with the previous interpretation is that it contradicts what the primary constituent power shielded through an eternity clause and another series of constitutional norms, that is, the clear intention to prohibit consecutive presidential re-election.⁷⁷

This is one more case in Latin America of the modification of the presidential term limits through the interpretation of the constitutional courts (it is added to the cases of Bolivia, Costa Rica, Honduras and Nicaragua). A clear case of Abusive Constitutionalism.

VI. CONCLUSION

An independent Constitutional Court is often the greatest counterbalance to power in a constitutional democracy. That is why both domestic and international regulations ensure special guarantees for those holding the positions of judges, specifically for constitutional judges. Among these guarantees is stability and tenure in office, which means that they can only be removed for legally established reasons and through due process of law.

⁷⁵ Menjivar, "When Judges Unbound."

⁷⁶ Menjivar, "When Judges Unbound."

⁷⁷ Menjivar, "El Salvador," 122.

What happened on May 1, 2021 in El Salvador is a perfect example of how power, under the influence of authoritarian populism that simulates acting within constitutional rules, can undermine any remaining democratic elements that pose obstacles to complete concentration of power. But what role does judicial independence play in all of this? We have seen that judicial independence has at least two dimensions: An objective one, which functions as a functional principle of the legal system and as a guarantee of the separation of powers; and a subjective one, as a guarantee to individuals that their disputes will be adjudicated by judges who are not constrained by any external mandate or power.

Indeed, judicial independence is seen as a nuisance by those in power. In this paper, a descriptive and critical analysis was conducted on how populist narratives, combined with the concentration of power and its arbitrary use under the guise of certain constitutional rules, facilitate the consolidation of illiberal regimes, such as authoritarianism in any of its manifestations.

In El Salvador, this combination, which we refer to as Constitutional Authoritarian-Populism, has manifested itself in various forms in recent years, with the most serious, in our opinion, being the removal of the Justices of the Constitutional Chamber. The populist rhetoric began paving the way well in advance, aiming to turn the majority of the population against the Constitutional Chamber, portraying them as enemies who hindered the execution of actions in the people's best interest. Subsequently, a Legislative Assembly with a supermajority held by a single political party aligned with the Executive Branch relied on a constitutional provision that allows for the removal of Supreme Court Justices to make that decision regarding the Justices of the Constitutional Chamber. As we have seen before, the Constitution requires that the grounds for removal be clearly defined by law, a requirement that is currently not met, as well as the normative requirement to allow the accused to exercise their right to defense, which was also not fulfilled.

The elimination of the last check on the powers of the State is not just an act of Abusive Constitutionalism, as described by David Landau, but it goes beyond that to the rapid advancement of the consolidation of an authoritarian regime, where there is no genuine system of separation of powers, checks and balances, and respect for fundamental rights.

It might seem like too much of a coincidence that, once the new members of the Constitutional Chamber were installed, their first significant decision shortly thereafter was to authorize presidential re-election, despite the Salvadoran Constitution having several Articles, including eternity clauses, that sought to prohibit it at all costs. This is one of the purposes of appointing judges who are aligned with those in power. These judges do not appear to act independently from external agents because, on the one hand, on the day of the removal of the legitimate Justices of the Constitutional Chamber, they were already prepared to be sworn in (which leads us to infer prior communication and agreements), and on the other hand, they have not made a single decision (since May 2021) that puts any brakes on the exercise of Executive or Legislative power.

In the aforementioned judgment of Judicial order of Unconstitutionality 1-2021, the Constitutional Chamber concluded:

That the decision of the Legislative Assembly of El Salvador to remove the Justices of this Constitutional Chamber is unconstitutional because it violates Article 85 of the Constitution by aiming to suppress one of the effective controls on the actions of the Executive and Legislative branches, and subsequently, with the existing correlation, elect new officials aligned with the figure of the President. Consequently, this act is an abuse of right—a clear example of Abusive Constitutionalism—that seeks to allow the exercise of power without any effective control. This is incompatible with the republican, democratic, and representative character of the government and with the pluralistic political system.

In conclusion, the removal of the Justices of the Constitutional Chamber was a defeat not only for judicial independence but also for the democratic system in El Salvador and for the guarantee of the fundamental rights of its citizens.

BIBLIOGRAPHY

Asamblea Legislativa. “Asamblea Legislativa destituye al Fiscal General de la República por vinculación partidaria [Legislative Assembly Dismisses the Attorney General of the Republic Due to Party Affiliation].” *Asamblea Legislativa*, May 8, 2021. <https://www.asamblea.gob.sv/node/11225#:~:text=Con%2064%20votos%20a%20favor,de%201a%20Rep%C3%ABlica%2C%20Ra%C3%BAI%20Melara.&text=nueva%20Asamblea%20Legislativa,Con%2064%20votos%20a%20favor%2C%20los%20diputados%20de%201a%20Asamblea,de%201a%20Rep%C3%ABlica%2C%20Ra%C3%BAI%20Melara>.

Asamblea Legislativa. “Régimen de excepción se extenderá por otros 30 días [State of Exception Will Be Extended for Another 30 Days].” *Asamblea Legislativa*, June 14, 2023. <https://www.asamblea.gob.sv/node/12821>.

BBC News Mundo. “Coronavirus en El Salvador: a polémica por la negativa de Bukele a acatar la orden de la Corte Suprema que prohíbe ‘detenciones arbitrarias’ durante la cuarentena [Coronavirus in El Salvador: The Controversy Over Bukele’s Refusal to Comply with the Supreme Court’s Order Prohibiting ‘Arbitrary Detentions’ During Quarantine].” *BBC News Mundo*, April 16, 2020. <https://www.bbc.com/mundo/noticias-america-latina-52319351>.

Bernal Pulido, Carlos. “Constituciones sin constitucionalismo y la desproporción de la proporcionalidad. Dos aspectos de la encrucijada de los derechos fundamentales en el neoconstitucionalismo [Constitutions without Constitutionalism and the Disproportionality of Proportionality: Two Aspects of the Dilemma of Fundamental Rights in Neoconstitutionalism].” *Fundamentos: Cuadernos monográficos de teoría del estado, derecho público e historia constitucional*, no. 9 (2016): 39–70. https://www.unioviado.es/constitucional/fundamentos/noveno/pdfs/03_carlosbernal.pdf.

CNN Español. “Qué países tienen las tasas de homicidios más altas del mundo? El Salvador, entre los que encabezan la lista [Which Countries Have the Highest Homicide Rates in the World? El Salvador Is Among the Top].” *CNN*

Español, May 18, 2022. <https://cnnespanol.cnn.com/2022/05/18/paises-tasas-homicidios-altas-mundo-salvador-encabezan-la-lista-orix/>.

CNN Español. “Aprueban ley para jubilar a jueces y fiscales a los 60 años en El Salvador [Law Approved to Retire Judges and Prosecutors at the Age of 60 in El Salvador].” *CNN Español*, September 1, 2021. <https://cnnespanol.cnn.com/2021/09/01/aprueban-ley-para-jubilar-a-jueces-y-fiscales-a-los-60-anos-en-el-salvador/>.

Constitutional Chamber of the Supreme Court of El Salvador. *Judgment of Unconstitutionality 16-2011*. April 27, 2011.

Constitutional Chamber of the Supreme Court of El Salvador. *Judgment of Unconstitutionality 56-2016*. November 25, 2016.

Constitutional Chamber of the Supreme Court of El Salvador. *Judgment of Unconstitutionality 21-2020/23-2020/24-2020/25-2020*. June 8, 2020.

Constitutional Chamber of the Supreme Court of El Salvador. *Judgment of Habeas Corpus 148-2020*. March 26, 2020.

Constitutional Chamber of the Supreme Court of El Salvador. *Judgment of Unconstitutionality 61-2009*. July 29, 2010.

Constitutional Chamber of the Supreme Court of El Salvador. *Judgment of Unconstitutionality 7-2012*. December 16, 2013.

Constitutional Chamber of the Supreme Court of El Salvador. *Judgment of Unconstitutionality 33-2015*. November 24, 2017.

Constitutional Chamber of the Supreme Court of El Salvador. *Judgment of Unconstitutionality 1-2017/25-2017*. July 26, 2017.

Constitutional Chamber of the Supreme Court of El Salvador. *Judgment of Unconstitutionality 122-2014*. April 28, 2015.

Constitutional Chamber of the Supreme Court of El Salvador. *Judgment of Amparo 713-2015*. September 1, 2016.

Constitutional Chamber of the Supreme Court of El Salvador. *Judgment of Amparo 934-2007*. March 4, 2011.

Constitutional Chamber of the Supreme Court of El Salvador. *Judgment of Habeas Corpus 119-2014 ac.* May 27, 2016.

Constitutional Chamber of the Supreme Court of El Salvador. *Judgment of Unconstitutionality 44-2013/145-2013.* July 13, 2016.

Constitutional Chamber of the Supreme Court of El Salvador. *Judgment of Unconstitutionality 33-2015.* July 13, 2016.

Constitutional Chamber of the Supreme Court of El Salvador. *Judgment of Amparo 166-2009.* September 21, 2011.

Constitutional Chamber of the Supreme Court of El Salvador. *Judgment of Amparo 701-2016.* July 2, 2018.

Constitutional Chamber of the Supreme Court of El Salvador. *Judgment of Unconstitutionality 163-2013.* June 25, 2014.

Constitutional Chamber of the Supreme Court of El Salvador. *Judgment of Pérdida de los derechos de ciudadanía [Loss of Political Rights] 1-2021.* September 3, 2021.

Constitutional Chamber of the Supreme Court of El Salvador. *Judgment of Mandamiento Judicial de Inconstitucionalidad [Judicial Order of Unconstitutionality] 1-2021.* May 1, 2021.

da Silva, José Alfonso. *Aplicabilidad de las normas constitucionales [Applicability of Constitutional Norms]*. México: UNAM, 2003.

Europapress. “El Salvador cerrará 2015 como el año más violento de su historia, con más de 6.600 homicidios [El Salvador Will Close 2015 as the Most Violent Year in Its History, with Over 6,600 Homicides].” *Europapress*, December 30, 2015. <https://www.europapress.es/internacional/noticia-salvador-cerrara-2015-ano-mas-violento-historia-mas-6600-homicidios-20151230032319.html>.

Fiscalía General de la República. “Fiscalía salda deuda histórica al intervenir diferentes propiedades del expresidente Cristiani [Prosecution Settles Historic Debt by Intervening in Various Properties of Former President Cristiani].” *Fiscalía General de la República*, June 2, 2023.

<https://www.fiscalia.gob.sv/fiscal-general-salda-deuda-historica-al-intervenir-bienes-inmuebles-y-financieros-del-expresidente-cristiani/>.

Fiss, Owen M. "The Limits of Judicial Independence." *The University of Miami Inter-American Law Review* 25, no. 1 (1993): 57–76. <https://www.jstor.org/stable/40176330>.

Gargarella, Roberto, and Jorge Ernesto Roa Roa. "Diálogo democrático y emergencia en América Latina [Democratic Dialogue and Emergency in Latin America]." *MPIL Research Paper Series* No. 2020-21 (2020): 1–30. <http://dx.doi.org/10.2139/ssrn.3623812>.

González Bonilla, Rodolfo Ernesto. "Cualidades de la Constitución [Qualities of the Constitution]." In *Teoría de la Constitución. Estudios en Homenaje a José Albino Tinetti*, 109–132. San Salvador: Corte Suprema de Justicia, 2020.

Guzmán, Valeria, et al. "Bukele mete al Ejército en la Asamblea y amenaza con disolverla dentro de una semana [Bukele Sends the Army into the Legislative Assembly and Threatens to Dissolve It Within a Week]." *El Faro*, February 10, 2020. https://elfaro.net/es/202002/el_salvador/24008/Bukele-mete-al-Ej%C3%A9rcito-en-la-Asamblea-y-amenaza-con-disolverla-dentro-de-una-semana.htm.

Hamilton, Alexander. "The Federalist Papers: No. 78 and 79." United States: Library of Congress. Accessed June 21, 2023. <https://guides.loc.gov/federalist-papers/full-text>.

Hernández G., José Ignacio. "The Constitutional Chamber in El Salvador and Presidential Re-election: Another Case of Constitutional Authoritarian-Populism." *Int'l J. Const. L. Blog*, September 10, 2021. <http://www.icconnectblog.com/2021/09/the-constitutional-chamber-in-el-salvador-and-presidential-reelection-another-case-of-constitutional-authoritarian-populism/>.

Human Rights Watch. "El Salvador: Abusos Policiales en la Respuesta a la Covid-19 [El Salvador: Police Abuses in Response to COVID-19]." *Human Rights Watch*, April 15, 2020.

<https://www.hrw.org/es/news/2020/04/15/el-salvador-abusos-policiales-en-la-respuesta-la-covid-19>.

Inter-American Commission on Human Rights. “CIDH llama a El Salvador a restablecer los derechos y garantías suspendidos hace un año por el régimen de excepción [The IACHR Calls on El Salvador to Restore the Rights and Guarantees Suspended a Year Ago Under the State of Emergency].” April 6, 2023. <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2023/058.asp>

Inter-American Court on Human Rights. *Acosta y otros vs. Nicaragua*. March 25, 2017.

Inter-American Court on Human Rights. *Apitz Barbera y otros (“Corte Primera de lo Contencioso Administrativo”) vs. Venezuela*. August 5, 2008.

Inter-American Court on Human Rights. *Argüelles y otros vs. Argentina*. November 20, 2014.

Inter-American Court on Human Rights. *Chocrón Chocrón vs. Venezuela*. July 1, 2011.

Inter-American Court on Human Rights. *Colindres Schonenberg vs. El Salvador*. February 4, 2019.

Inter-American Court on Human Rights. *Cordero Bernal vs. Perú*. February 16, 2021.

Inter-American Court on Human Rights. *Corte Suprema de Justicia (Quintana Coello y otros) vs. Ecuador*. August 23, 2013.

Inter-American Court on Human Rights. *Cuya Lavy y otros vs. Perú*. September 28, 2021.

Inter-American Court on Human Rights. *López Lone y otros vs. Honduras*. October 5, 2015.

Inter-American Court on Human Rights. *Moya Solís vs. Perú*. June 3, 2021.

Inter-American Court on Human Rights. *Palamara Iribarne vs. Chile*. November 22, 2005.

- Inter-American Court on Human Rights. *Reverón Trujillo vs. Venezuela*. June 30, 2009.
- Inter-American Court on Human Rights. *Rico vs. Argentina*. September 2, 2019.
- Inter-American Court on Human Rights. *Ríos Avalos y otro vs. Paraguay*. August 19, 2021.
- Inter-American Court on Human Rights. *San Miguel Sosa y otras vs. Venezuela*. February 8, 2018.
- Inter-American Court on Human Rights. *Tribunal Constitucional (Camba Campos y otros) vs. Ecuador*. August 28, 2013.
- Inter-American Court on Human Rights. *Tribunal Constitucional vs. Perú*. January 31, 2001.
- Inter-American Court on Human Rights. *Villaseñor Velarde y otros vs. Guatemala*. February 5, 2019.
- Inter-American Court on Human Rights. *Opiniones Consultivas [Advisory Opinions] OC-8/87*, January 30, 1987, and *OC-28/21*, June 7, 2021.
- La Prensa Gráfica. “Los cuatro expresidentes salvadoreños señalados por la justicia [The Four Former Salvadoran Presidents Indicted by the Justice System].” *La Prensa Gráfica*, August 24, 2021. <https://www.laprensagrafica.com/elsalvador/Los-cuatro-expresidentes-salvadorenos-senalados-por-la-justicia-20210824-0051.html>.
- Landau, David. “Abusive Constitutionalism.” *Davis Law Review* 47, no. 1 (2013): 189–260.
- Loughlin, Martin. *Against Constitutionalism*. Cambridge: Harvard University Press, 2022.
- Macho Carro, Alberto. “De la dificultad contramayoritaria al diálogo interinstitucional: mecanismos de equilibrio en la relación justicia constitucional–poder legislativo [From the Counter-majoritarian Difficulty to Inter-Institutional Dialogue: Mechanisms of Balance in the Relationship

Between Constitutional Justice and the Legislative Power].” *Anuario Iberoamericano de Justicia Constitucional* 1, no. 23 (2019): 231–260.

Marmor, Andrei. “Constitutionalism, Liberalism and Democracy.” In *Constitutionalism: Old Dilemmas, New Insights*. Oxford: Oxford University Press, 2021.

Martínez, Carlos. “Pandillas admiten por primera vez que negociaron tregua con el Ejecutivo [Gangs Admit for the First Time That They Negotiated a Truce With the Executive].” *El Faro*, May 30, 2016. https://elfaro.net/es/206005/el_salvador/18665/Pandillas-admiten-por-primera-vez-que-negociaron-tregua-con-el-Ejecutivo.htm.

Martínez, Óscar, et al. “Gobierno negoció con pandillas reducción de homicidios [Government Negotiated a Reduction of Homicides With Gangs].” *El Faro*, March 14, 2012. <https://www.elfaro.net/es/201203/noticias/7985/Gobierno-negoci%097-con-pandillas-reducci%097n-de-homicidios.htm>.

Menjívar, Manuel Adrián Merino. “El control judicial de las reformas constitucionales en El Salvador: Un control a medias? [Judicial Review of Constitutional Amendments in El Salvador: A Halfway Review?].” *UDA Law Review* 4 (2022): 45–53. <https://prisma.uazuay.edu.ec/index.php/udalawreview/article/view/611>.

Menjívar, Manuel Adrián Merino. “El Salvador.” In *The 2021 Global Review of Constitutional Law*, November 2022. <https://ssrn.com/abstract=4285035>.

Menjívar, Manuel Adrián Merino. “When Judges Unbound Ulysses: The Case of Presidential Reelection in El Salvador.” *Int’l J. Const. L. Blog*, September 9, 2021. <http://www.icconnectblog.com/2021/09/when-judges-unbound-ulysses-the-case-of-presidential-reelection-in-el-salvador/>.

Moffitt, Benjamin. *Populismo. Guía para entender la palabra clave de la política contemporánea [Populism: A Guide to Understanding the Keyword of Contemporary Politics]*. Argentina: Siglo Veintiuno Editores, 2022.

- Montesquieu. *El espíritu de las leyes [The Spirit of the Laws]*. Tomo I. Madrid: Librería General de Victoriano Suárez, 1906.
- Mudde, Cas, and Cristóbal Rovira Kaltwasser. *Populism: A Very Short Introduction*. Oxford: Oxford University Press, 2017.
- Roa Roa, Jorge Ernesto. “No(s) representan los jueces constitucionales? [Do Constitutional Judges Represent Us?].” In *Democracia, representación y nuevas formas de participación: una mirada en prospectiva. XXI Jornadas de Derecho Constitucional. Constitucionalismo en transformación. Prospectiva 2030*, 274–305. Bogotá: Universidad Externado de Colombia, 2021.
- Romero, Fernando. “El nuevo fiscal...inconstitucional [The New Attorney... Unconstitutional].” *Factum*, December 26, 2018. <https://www.revistafactum.com/el-nuevo-fiscal-inconstitucional/>.
- Roznai, Yaniv. *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*. Oxford: Oxford University Press, 2019.
- Salmorán Villar, Guadalupe. *Populismo. Historia y geografía de un concepto [Populism: History and Geography of a Concept]*. México: UNAM, 2021.
- Sarmiento Erazo, Juan Pablo. “Populismo constitucional y reelecciones, vicisitudes institucionales en la experiencia suamericana [Constitutional Populism and Re-Elections, Institutional Vicissitudes in the South American Experience].” *Estudios Constitucionales* no. 1 (2013): 569–602. <http://www.estudiosconstitucionales.cl/index.php/econstitucionales/article/view/71>.
- Segura, Edwin. “Bukele arranca 2023 con 91% de aprobación [Bukele Starts 2023 with a 91% Approval Rating].” *LPG Datos*, March 15, 2023. <https://www.laprensagrafica.com/lpgdatos/LPG-Datos--Bukele-arranca-2023-con-91--de-aprobacion-20230314-0090.html>.
- Sermeño, H., and Eugenia Velásquez. “Bukele contra la Sala: Si fuera un dictador, los hubiera fusilado a todos. Salvas mil vidas a cambio de cinco [Bukele Against the Chamber: If I Were a Dictator, I Would Have Shot Them All. You

Save a Thousand Lives at the Cost of Five].” *elsalvador.com*, August 10, 2020. <https://historico.elsalvador.com/historico/740872/nayib-bukele-ataque-salade-lo-constitucional-dictador.html>.

The Commission on the Truth for El Salvador. *From Madness to Hope: The 12-Year War in El Salvador: Report of the Commission on the Truth for El Salvador*. United States Institute of Peace. Accessed June 14, 2023. <https://www.usip.org/sites/default/files/file/ElSalvador-Report.pdf>.

Urbinati, Nadia. *Yo, el pueblo. Cómo el populismo transforma la democracia [Me the People: How Populism Transforms Democracy]*. México: Instituto Nacional Electoral-Grano de Sal, 2020.

Valencia, Roberto. “El Salvador, el país más violento de América: un asesinato cada 2 horas [El Salvador, the Most Violent Country in America: One Murder Every 2 Hours].” *El Mundo.es*, January 3, 2010. <https://www.elmundo.es/america/2010/01/03/noticias/126253814.html>.

Vela Ávalos, Marcos Antonio. “Justicia dialógica en una ingeniería constitucional resistente al constitucionalismo dialógico: El caso de El Salvador [Dialogic Justice in a Constitutional Engineering Resistant to Dialogic Constitutionalism: The Case of El Salvador].” *Anuario Iberoamericano de Justicia Constitucional* 26, no. 1 (2022): 181–211. <https://doi.org/10.18042/cepc/aijc.26.07>.

Viciano Pastor, Roberto, and Gabriel Moreno González. “Cuando los jueces declaran inconstitucional la Constitución: la reelección presidencial en América Latina a la luz de las últimas decisiones de las Cortes Constitucionales [When Judges Declare the Constitution Unconstitutional: Presidential Re-Election in Latin America in Light of the Latest Decisions of the Constitutional Courts].” *Anuario Iberoamericano de Justicia Constitucional* no. 22 (2018): 165–198. <https://doi.org/10.18042/cepc/aijc.22.06>.