

Multilateral constituent assemblies and independent institutions: origins of independent external control in Latin America

Felipe Simões da Mota Oriá

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Abstract:

In the last decades, Latin American countries have made an effort to include the strengthening of horizontal accountability agencies in their democratization agenda (O'DONNELL, 1998). Supreme Audit Institutions (Audit Courts, Contralorías) are one of the main representatives of these agencies acting as institutions of financial external control. By analyzing the political fragmentation of Latin American constituent assemblies from 1945 until 2002, this research tests the hypothesis that multilateral constituent assemblies are associated with the creation of independent control institutions, thus ensuring effective mechanisms of horizontal accountability.

Keywords: Horizontal Accountability; Superior Audit Institutions; Latin-America

Introduction

The diffusion of democracy as the hegemonic type of political regime across the globe makes increasingly urgent a more precise understanding of its mechanisms. While exhaustive research has been undertaken on the electoral component of democracy, the same cannot be said about institutional horizontal controls which make up its system of checks and balances, essential for effective democratic governance. Among the commonly overlooked aspects of democracy, special attention is required by those usually associated with distortions of the democratic principle. The allocation and execution of the public budget can be considered one of these aspects. If we accept the premise that the allocation of financial resources is the most accurate way available to credibly express the complete order of one's preferences and their intensity, we can consider the public budget as the best possible expression of the society's political preferences. With the proper limitations of the analogy, the public budget is where we should find, despite all its shortcomings, the closer approximation of the democratically manufactured expression of the "collective will" – or at least the closer to it any given political system can get. Consequently, the budget implementation's oversight corresponds to controlling the execution of the democratically established compromise on policy execution.

With the mentioned rise in the number of democracies across the globe, a new phenomena, named by Fareed Zakaria of *illiberal democracy*, has become increasingly common. The author attributes this qualification to some democratic regimes – mostly belonging to what Huntington called the "third wave of democratization" – which, despite promoting free and competitive elections, do not have effective horizontal control mechanisms that can guarantee rights and liberties¹. The widespread dissemination of democratic regimes in recent years, which focuses mainly on electoral mechanisms, produced several illiberal democracies, defined as:

"Democratically elected regimes, often ones that have been reelected or reaffirmed through referenda, are routinely ignoring constitutional limits on their power and depriving their citizens of basic rights and freedoms." Zakaria, 1991²

The emergence and wide dissemination of Supreme Audit Institutions (SAI), central players of a wide network of state control agencies, derives from two main assumptions made when considering the institutional design of contemporary democracies. The first is that, in the economic set up of contemporary societies, the budget is one of the main instruments of power detained by the state and should, therefore, be kept under constant scrutiny by the citizenry. The second assumption is a specific conception of citizenship³ and of the role of individuals in the public sphere⁴ – which argues that citizens do not have the time, energy or interest to meddle directly in the affairs of the State, but expect multiple organizations to represent them in their control prerogative.

In Latin America, the absence of effective horizontal accountability⁵ mechanisms leads to an urgent need for understanding the determinants of the institutional design of these agencies and the variables that affect their performance. This paper makes use of Supreme Audit Institutions (SAIs) to understand the origins and institutional determinants of a broader category of external control agencies in democracies. SAIs are considered here as only a part of a wide national network of agencies responsible for exercising control over the executive branch of government. As points O'Donnell: "Effective horizontal

accountability is not the product of isolated agencies, but of networks of agencies (up to and including high courts) committed to upholding the rule of law.”⁵

The importance of these institutions to guarantee horizontal accountability is virtually undisputed⁶. Additionally, the existing literature posits a clear relationship between SAIs performance and their level of independence⁷. Independent institutions have a greater capability to perform audits while inducing preventive effects. The independence of SAIs is also a good proxy for the functioning of the broader network of horizontal accountability agencies. For these reasons, a research aimed at the level of independence is a more adequate choice than trying to estimate performance indicators for SAIs. It is also worth to notice that, while independence guarantees are direct products of constituent assemblies, SAIs’ performance depends on a variety of secondary factors, which hinder our capacity to establish direct causation.

Additional concerns impede us from making inferences on performance. The first of these relates to the wide array of conceptions of what should be these institutions’ precise objectives and, consequently, of how should their performance be measured. Studying the performance of SAIs is limited by the inability to measure the preventive effects exerted by them, as well as by the difficulty to obtain objective data on administrative improvements and savings resulting from audits performed by these institutions. Moreover, most of the audit findings cannot be directly quantified since they consist of qualitative judgments about performance, allocation, efficiency, effectiveness, impact, quality of service and other similar criteria which incorporate high levels of subjectivity.

As several empirical studies have demonstrated, the triggers of SAIs creation, as well as for their inclusion in the constitutional text, tends to be of political and not of economic nature as the financial character of audits may suggest⁸. However, this conclusion, though well established in the literature, is not exhaustive to which are the determinants of the final format of the institutional design assumed by SAIs. The literature leaves room for many questions about the political determinants of several of the institutional variations of these agencies in Latin America. Among these, we chose to examine their degree independence from other branches of government, mainly to the executive branch. The independence of these institutions or, in other words, their consolidation as autonomous agencies (financial, organizational and functionally) is established as the best *proxy* for determining their performance.

We analyze the independence of SAIs, specifically their level of constitutionally guaranteed independence, as this is the best known proxy for its performance. Constitutionally guaranteed independence mechanisms are the ultimate expression of consolidation of an agency’s autonomy within the institutional framework of modern democracies. With this objective we analyzed 42 constituent assemblies, since that is the most flagrant opportunity to attribute constitutional guarantees to these institutions. The link between the political decision of constituents and the resulting degree of independence attributed to SAIs is provided by rational choice. As a proxy for the constituents expectations for the subsequent political scenario, the degree of political fragmentation of assemblies was used to explain the resulting independence of SAIs. Consequently, we aimed to determine if the political fragmentation of constituent assemblies can be considered the origin of independent control institutions in Latin America. More especially, we tried to answer the following question: *“Are multilateral constituent assemblies associated with higher level of SAIs’ independence in Latin America?”*

Empirical research has shown that judicial institutions are influenced by the level of political fragmentation of constituents⁹. This research aims to test if this same causal relation can be expected for SAIs. As these institutions are directly associated with the government's ability to implement its agenda, some propose that constituents might allow more discretionary government expenses in name of governability. This would work as a measure against the feared paralysis in the decision-making procedures, at least for the Latin-American case. Understanding the origins of effectively independent horizontal control institutions is the missing step on the consolidation track of Latin-American democracies and might contribute for the creation of effective horizontal accountability networks in the region.

This research aims, therefore, to empirically analyze the classic thesis of the neo-institutional theory which states that multilateral constituent assemblies are more likely to generate more independent control institutions. While constituent assemblies dominated by a single political party are believed to favor the creation of government-dependent institutions, consequently with a low capacity for promoting effective accountability.¹⁰

To address this question, our research was divided in two main efforts. First, we built an Index to assess the level of constitutional independence of Supreme Audit Institutions. The variables used to calculate our index were the variations of institutional design predicted by the literature to be determinants of the level of autonomy of this kind of agency. The method used to calculate the index stems from the work of Carlos Santiso, *Auditing for Accountability (2007)*⁷, which successfully makes the same effort of calculating, among other dimensions, the independence of Supreme Audit Institutions. Although modifying certain aspects, we sought to preserve the same rationale used by Santiso to judge the levels of independence associated with the institutional guarantees SAIs were granted.

The second part of our research effort, consists in comparing (cross-comparing?) our independence index with the typology developed by Pozas-Loyo and Ríos-Figueroa in their work *Enacting Constitutionalism: the origins of independent judicial Institutions in Latin America (2007)*. In this paper the authors divide the Latin-American constituent assemblies occurred between 1945 and 2002 in unilateral - dominated by a single political group - or multilateral - where there is a hegemonic political group. Statistical tests allowed us to identify the existence of a direct correlation between single party dominance on constitutional assemblies and the degree of independence granted to the national audit agencies.

The empirical research conducted in this study found a significant relationship between various measures of democracy and level of constitutionally guaranteed independence of SAIs in Latin American countries. The relationship between the level of political fragmentation of the constituent assemblies and the level of constitutionally guaranteed independence of SAIs proved especially significant. Several statistical models were used to test our work hypothesis, and the broader relation between democracy and the independence of control institutions. These results, as well as their theoretical discussion are in the last session of this paper.

Theoretical Background

Constitutionalism and its Latin American Variant

Modern constitutionalism's main objective, as already stated, is the establishment of an institutional architecture which prevents the abuse of power and the violation of individual rights and freedoms. This goal can also be understood as a concern to set the limits of the public sphere and delimit the means governmental action. Constitutionalism can be succinctly defined as "a method for organizing government that depends on, and adheres to, a set of fundamental guiding principles and laws."¹¹ Nevertheless, there are countless constitutions in history that were written in order to legitimize and authorize personalistic and autocratic governments.

Several Latin American constitutions, past and present, are examples of this⁵. The Latin American version of this phenomenon, helps us illustrate how their origin can distort classical aspects of constitutionalism. Particularly, the capacity to create long-lasting constitutions with effective enforcement mechanisms has proven to be a challenge to Latin American constituent assemblies.

Two sets of arguments have been used to explain this situation in Latin-America. Some argue that contextual variables such as the particularities of the Latin culture, the continent's colonial heritage or the low levels of economic development are responsible for the particular version of constitutionalism it developed¹². Others attribute these distortions to the way in which political incentives are set-up in the constituent assemblies¹¹. In an attempt to escape cultural determinism, this research investigates a particular version of this last theory.

The study of Latin-American SAIs allows us to test not only the validity of this theory of rational incentives to the case of SAIs but also to make broader generalizations to the more general statements made by this theory. Our work hypothesis is that constituent assemblies dominated by a single political group tend to produce more dependent control institutions than multilateral constituent assemblies – those not dominated by any single political group.

The importance of the degree of the independence rests on the assumption that independent institutions have a greater capacity to fulfill their oversight responsibilities, while dependent institutions have reduced capacity and incentives to control the government's acts and expenses. Two mechanisms support this relationship: the "veto constraint" and what Ginsburg has called the "insurance model". The *veto constraint* assumes that in a multilateral constituent assembly, minor political groups would act as veto points to propositions which would favor the larger political groups in power, such as dependent financial control institutions. The second mechanism, the "insurance model", defends the thesis that in multilateral constituent assemblies none of the participating political groups could be sure to be the next in power. In this scenario, the rational strategy for each individual group is to limit the powers of the next political group in government, although it could eventually mean tying their own hands.

However, it must be noted that, while a good proxy, the composition of the constituent is not a flawless indicator of the constituents' expectations. Such expectations are a cognitive state and not an objective situation. Nevertheless, as assumed by the model, it is hard to imagine that multilateral constituent assemblies would produce the same expectations

regarding the post constituent period as a unilateral political environment. This assumption supports our hypothesis that multilateral constituent assemblies would be more willing to create independent institutions than unilateral ones.

Horizontal Accountability

As stated O'Donnell¹³ "My interest in horizontal accountability stems from its absence" in Latin American democracies. Horizontal accountability agencies are key players in achieving modern constitutionalism's ambitions of limiting and controlling power. According to the same author, horizontal accountability can be defined as:

"the existence of state agencies that are legally empowered – and factually willing and able – to take actions ranging from routine oversight to criminal sanctions or impeachment in relation to possibly unlawful actions or omissions by other agents or agencies of the state." (O'Donnell, 1994)¹²

Additionally, as stated O'Donnell, horizontal accountability is not the product of a single agency, but rather of a network of agencies responsible for monitoring the performance and legality of the multiple facets of the state and its subsidiaries. In this sense, the author notes that:

"The effectiveness of horizontal accountability depends not only isolated from agencies dealing with specific issues but with a network of agencies including courts committed to supporting this kind of accountability." (O'Donnell 1998)¹⁶

Supreme Audit Institutions

Supreme audit institutions emerged in virtually all constitutional democracies, tasked mainly of budget oversight, usually with jurisdiction to audit any agency or government institution. Within this framework of control networks, SAIs stand out as one of the leading agencies of horizontal accountability. The definition of these institutions adopted by the World Bank¹⁴ is the following:

"Supreme audit institutions are national agencies responsible for auditing government revenue and spending. Their legal mandates, reporting relationships, and effectiveness vary, reflecting different governance systems and government policies. But their primary purpose is to oversee the management of public funds and the quality and credibility of governments' reported financial data."

As stated before, the budget is one of the state's main power resources. Supreme audit institutions' role in auditing the budget's allocation and execution makes them a central actor in the process of exercising accountability over public officials and thus ensuring the rule of law and compliance to the democratic order.

The existence of SAIs may therefore be regarded as an indicator of the maturity of democratic regimes. However, the mere presence of these institutions is not enough to ensure their ability to oversee the government's actions and accounts. For this to actually happen there are additional qualifications necessary to their existence, among which, their level of independence is of particular importance.

These institutions' level of independence – mainly from the executive branch, but also from the legislature – regarding their functional, organizational and financial autonomy, is fundamental to determine their ultimate capacity to audit and monitor the use of public resources. The vital role of these autonomy guarantees in ensuring the adequate performance of these institutions is what justifies our attempt to understand its determinants. Particularly, we aim at determining the influence of constituent assemblies' political fragmentation in the level of control institutions' independence.

Recent findings associate political uncertainty with higher levels of control agencies' institutional activism¹⁵. This supports our hypothesis that political competition and, consequently, uncertainty, in the moment of their creation will lead to more independent institutions as well as influence their performance capacity. However, before plunging into the role of political competition in determining SAIs independence, the impact of independence in their performance must be dealt with.

Supreme audit institutions and constitutional guarantees of independence

In democracies committed to popular sovereignty, the legislature, as representative of the multiplicity of interests in society, must decide the budget's allocation or, at least, legitimate it through its approval. Consequently, the focus of SAIs must be to guarantee its effective implementation by the government. However, the concentration of power in the executive branch, common of Latin-American democracies, puts SAIs under constant risk of having their activities influenced by government interests. In cases like this, "any government audit would deteriorate into an act of self-control or an "alibi" of the government for its actions. The SAI would become nothing more than a puppet of the government"¹⁶. For this reason guarantees of independence and autonomy are essential to these agencies.

To determine which independence guarantees are most important to ensure the quality of the control performed by SAIs, the Lima Declaration provides us with some valuable insight. More than one form of independence is considered essential to the effectiveness of SAIs. The Lima Declaration's recommendations can be summarized in three dimensions, which are correspondent to the variables analyzed in our empirical research. The first dimension, *declared autonomy*, concerns the position of SAIs within the state's institutional hierarchy and refers to their autonomy as declared in the constitutional text. The constitutional prescription of SAIs as budget control agencies, as well the regulation of its activities in the constitutional text are the primary and most important requirements for their independence. The second dimension relates to the independence of the members and heads of these institutions and is known as *organizational independence*. These guarantees should also be regulated constitutionally be designed to provide maximum independence of its members from the executive branch's discretion or that of any other agency under its jurisdiction.

Finally, the *functional and financial independence* of SAIs make up the third dimension of independence recommended by the Lima Declaration. SAIs must have sufficient financial resources to audit properly, freely deciding how to apply those resources, as well as freely determining the functioning of its activities. It is also important that all the channels of interaction between SAIs and the state agencies under its jurisdiction, whether pertaining to

the executive or legislative branch, are constitutionally defined, insulating the agency from attempts to influence its results.

Variations in SAIs institutional design reflect different ways to operationalize these recommendations of autonomy and independence made by the specialized literature. However, these variations can also be the product of arrangements made to accommodate nested interests along the budgetary process. This second claim is what we investigate here. Particularly, the way these interests penetrate the constituent process and how they are organized politically. A compilation of these variations made by Blume and Voigt (2007)²² and reproduced below illustrates objectively the main institutional mechanisms of SAIs independence:

- Authority to receive all information deemed necessary for a proper audit; if auditors cannot get the information they believe they need to audit a government body properly, this will decrease the quality of their report.
- Term length of auditors; possibility/necessity to renew their terms; the longer their term, the more independent auditors would, c.p., appear to be. If their terms need renewal, this would, on the other hand, make them more likely to cater to the interests of those who have the power to re-appoint them.
- Appointment procedure of auditors; if government members can choose auditors who are old buddies, effective auditing appears to be less likely.
- Provisions for removal of auditors; if government members who dislike the findings of SAIs can easily get rid off them, this would be inimical to their independence – and the effectiveness of their reports.
- Remuneration of auditors; this will determine the quality of staff the SAI is able to attract.
- Budget of SAI; this will determine the effectiveness as possibilities to receive training in more advanced methods, to keep up with recent literature etc. all depend on an adequate budget of the SAI.
- Mandate and terms of independence guaranteed constitutionally? The constitution is usually more difficult to change than ordinary law.
- Constitutional guarantees* should, hence, make the promised independence of auditors more credible.

The last item (*) of this list requires a more detailed explanation. The attribution of constitutional independence guarantees to SAIs encompasses all criteria mentioned above. Namely, each of the aforementioned variations can be ensured through constitutional guarantees so as to give the audit institution the higher level of independence and autonomy possible. The last item is, therefore, a transversal variable which cuts across all others. For this all-inclusive character, it can be taken as a measure of the overall SAI's independence.

It is a logical conclusion that, being part of the governmental structure, the independence of SAIs can never be absolute. However, mechanisms to protect the autonomy of these institutions can be enforced. For the effectiveness of these mechanisms, the Lima Declaration emphasizes the need to include them in the constitutional text, thus under the

protection of national constitutional courts. This implies the necessity for a broader institutional environment of rule of law, corroborating the aforementioned claim that horizontal accountability can only be guaranteed by networks of committed agencies.

"It has been found that the degree of an SAI's independence and the guarantees provided correlate positively with the advancement of the process of democratization in the state concerned."²⁵ However, the relationship between democracy and SAI's independence is more complex than reveals this correlation. The SAI's legally attributed independence should not be seen as isolated from the broader accountability system. The effectiveness of these independence guarantees depends on a network of strong institutions, particularly those of the judicial system, which can enforce SAI's recommendations through the proper legal measures. Additionally, this complementary network of accountability agencies must be able to enforce SAI's own legal guarantees in order to promote their effective performance.

The relationship between SAI's and the executive branch of government is also quite complex and deserves some elucidation. Despite the impression of rivalry which accompanies our research hypothesis as well as the variables of our institutional independence index, the relationship between the government and SAI's tends to occur in a cooperative environment and not as a direct confrontation. This relationship occurs around the audits' objectives, which can only be fully achieved through a frank cooperation between the two parts. These objectives can be divided in two: one oriented towards past actions, which aims at revealing the flaws and deficiencies in financial management; another aimed at future ones, which consists in recommending changes and improvements for the administration. However, this close relationship, while mutually beneficial, entails dangers. In countries with high levels of corruption, this proximity can provide opportunities for the development of illicit relationships. Moreover, the legal regulation of SAI's interaction with the government prevent the development of institutional dynamics of subordination of the former to the latter.

In conclusion, Santiso⁷ writes that his "research finds that securing the political independence of external audit agencies is a critical determinant of its credibility and effectiveness." while warning that "institutional independence is critical a guarantee impartiality and credibility, but should not be an end in itself." Far from underestimating the importance of these institutions' independence, this warning allows us to weigh down determinisms, emphasizing the complexity of the social reality and the fact that SAI's performance, as we have tirelessly stated, is part of a broader network of horizontal accountability in an effective democratic environment and not merely a consequence of their constitutional guarantees of independence.

Independence can, not only be considered a proxy for SAI's performance, but also presents advantages for our research purposes. First, it is worth quoting Santiso⁷, once more about the fact that "External audit agencies have great difficulty in defining meaningful indicators to measure their performance and ascertain their impact on public finances at the macro-level, even in developed countries." Adding to this is the fact that recommendations for improvements which result in economies of future expenditures, are also included as part of SAI's results along with other subjective gains that are difficult to quantify.

The measurement of independence brings additional advantages, besides avoiding the uncertainty associated with SAI's performance indicators and the incomparability between indicators of different institutions - which differ beyond their elaboration methodology,

including different goals, jurisdictions and working methods. SAIs' constitutional independence guarantees can be assumed as a thermometer for the overall level of autonomy of the national horizontal accountability network. Moreover, the measurement of constitutional guarantees can be much more accurately measured, since it deals with objective characteristics of institutions contained in the constitutional text and are subject to verification, unlike the largely different interpretations given to the concept of SAIs performance, adopted by each institutions.

Concluding, a final review of the theoretical pathway traced throughout this paper is necessary before presenting our specific research design and results. It was argued that citizen control constitutes the list of fundamental democratic rights and is represented by agencies of horizontal accountability, of which SAIs are representatives. It was also argued that this type of control is best done by independent agencies and that the best way to ensure their independence is through the inclusion of such independence guarantees in the constitutional text. Finally, these theoretical assumptions led us to test, in the Latin American context, a consolidated hypothesis in the literature, which states that competitive constituent assemblies are more likely to create independent oversight institutions than constituent assemblies dominated by a single political group, which would, consequently, tend to generate dependent institutions with smaller capacity to perform its duties.

Empirical Research

Two steps were taken to test the claim that multilateral constituent assemblies tend to produce independent external control institutions. First, an index was constructed to measure the level of SAIs' subordination to government (especially to the executive branch). Second, statistical models were built to test the hypothesis that the more independent audit institutions were normally associated with constituent assemblies not dominated by a single political group.

We analyzed SAIs' guarantees of independence secured by constitutional provisions to construct an institutional independence index. In a first attempt, seventeen aspects of institutional design were evaluated. Seven of these aspects presented little or no variance in Latin-America's constitutional history and four did not correspond directly to actual institutional design variations of these agencies. A final index was then composed of six variables – corresponding only to objective changes in SAIs' institutional framework – to form a comprehensive measure of these institutions' independence. TABLE 2 shows the variables used and the categories in which they were found to vary.

The selection of variables was based on one of the few attempts to measure the degree of independence of SAIs in Latin America made by Carlos Santiso. In the work “*Auditing for Accountability? Political Economy of Government Auditing and Budget Oversight in Emerging Economies*”, Santiso calculates, among other aspects, the degree of independence of Latin-American SAIs. The same rationale used in this work was maintained in the current research, despite some adaptations made to his typology for measuring SAIs independence.

SAIs' independence, as considered here, is based solely on formal prescriptions of institutional design and is limited to the constitutional text. It must also be noted that many of the SAIs analyzed were granted constitutional *status* in constitutional reforms and not in

the constitutional assemblies analyzed. Nonetheless, the fact that constitutional assemblies hold the prerogative of altering these institutions' constitutional *status* justifies this choice of research design. In defense of this choice is O'Donnell's assertive that "effective horizontal accountability is not the product of an isolated agency, but of networks of agencies" (O'Donnell, 1998)¹⁶ Given this fact, constitutional assemblies are much more propitious occasions to establish a comprehensive network of horizontal accountability agencies than punctual constitutional reforms.

In an effort to minimize the degree of arbitrariness when quantifying SAIs' independence, an attempt was made to maximize the number of binary variables. The aspects which considered (despite not having all been included in the final version of our independence index) when measuring SAIs' independence can be divided in ten variables distributed across three dimensions as shown in Table 2. These dimensions are the following:

Declared Autonomy

To define the location of the SAI within the institutional hierarchy of the state it is necessary to analyze its *status* or autonomy as formally declared by its respective constitutions. The variables used to measure the degree of independence declared in the constitutions responded the following questions:

- Is there an explicit constitutional prescription for a supreme audit institution?
- What is the degree of autonomy attributed to it?
- Are there explicit declarations for its Functional, Financial and/or Organizational autonomy?

Functional and Financial Independence

Another key aspect for the appropriate execution of SAIs' activities is its ability to define its own budget. Arrangements where those under SAIs' scrutiny have influence over its budget compromise the credibility of its audits. Audits tend to be costly; therefore, these institutions require budget security and predictability. It is also essential that the process of budgeting occurs independently of the audits' results so it cannot be conditioned by them. These concerns are expressed through the following questions:

- Is the SAIs budget constitutionally defined?
- How independent is the process of budget definition?
- Is the budget approved by the executive, legislative, or both branches of government?
- Is there a minimum percentage of the national budget that should be allocated to SAIs?

Organizational Independence

Finally, the safety and stability of SAI's auditors and ministers¹ is a crucial factor for the proper development of the audit process. It is important that the audits' results do not

Following the classic terminology adopted in Latin-American countries, the head of supreme audit institutions will be referred to as "ministers".

represent any risk for those responsible for them. It is also important to analyze how these ministers are appointed and removed from office, in order to assess the degree of political influence to which they are exposed.

- How are SAIs' ministers nominated?
- Do ministers hold a fixed mandate? If yes, how long is it?
- What is the process for removing SAIs' ministers from office?
- Do SAIs' ministers hold any judicial immunities?

These questions summarize the process of measuring the independence of SAIs undertaken in this research. These questions were translated in specific variables and allocated in specific categories to form the final version of our institutional independence index for SAIs as shown in Table 2.

TABLE 2: SAIs Independence Index		
Dimension	Variables	Options
<i>Declared Autonomy</i>	Declared autonomy	<ul style="list-style-type: none"> • Autonomous institution – 1 • Technical or Auxiliary institution – 0,5 • External audit office does not possess constitutional rank – 0
	Declared financial independence	<ul style="list-style-type: none"> • Yes/Mentioned – 1 • No/Not mentioned – 0
	Declared functional independence	<ul style="list-style-type: none"> • Yes/Mentioned – 1 • No/Not mentioned – 0
	Declared organizational independence	<ul style="list-style-type: none"> • Yes/Mentioned – 1 • No/Not mentioned – 0
<i>Organizational independence.</i>	Ministers' nomination procedure	<ul style="list-style-type: none"> • Executive nomination – 0 • Mixed nomination (executive and legislative) – 0,5 • Legislative nomination – 1
	Ministers' approval procedure	<ul style="list-style-type: none"> • Legislative's approval is not necessary – 0 • Legislative's high chamber approval necessary – 0,5 • Legislative's lower or both chambers approval necessary – 1
	Term of office provides stability	<ul style="list-style-type: none"> • Yes – 1 • No/Not mentioned – 0
	Term of office's time	<ul style="list-style-type: none"> • 5 years or less – 1 • Life tenure (with age limit) – 0,5 • More than 5 years – 0

	Dismissal procedures	<ul style="list-style-type: none"> • Dismissal by the executive – 0 • Dismissal by the legislative – 0,5 • Dismissal by the judiciary – 1
<i>Legal independence.</i>	Legal independence from executive	<ul style="list-style-type: none"> • Minister`s irremovability by the executive - 1 • Minister`s removable by the executive - 0
	Minister`s Judicial Immunities	<ul style="list-style-type: none"> • Immunities of supreme court judges – 1 • Immunities of ordinary judges – 0,5 • No immunities – 0

Source: Author **Codes:** 1 – Most independent arrangement/0 – Less independent arrangement

To test the robustness of our results different formulas were used to calculate three versions of our institutional independence index. The different formulas explore different theoretical approaches on the weight of each variable on the composition of the final index. Independently of specific formulas – and consequently of the different weights attribute to each variable – all the indexes show similar behavior patterns, supporting the robustness of our index.

Up to three steps were followed to calculate the each version of our institutional independence index. First, each variable was assigned a value ranging from 0 to 1, where 1 represents the institutional arrangements that provide greater independence for the SAIs and 0 the most dependent. Second, when dimensions were used, each dimension consisted of the average (arithmetic mean) of its variables' values, also ranging from 0 to 1. Finally, the index is composed of the average of all the dimensions. Such formulas are theoretically justified by the fact that while the variables do not possess the same weight in the composition of the final index, the dimensions do.

The final version of our index (F3) discarded the first four variables analyzed in the constitutions, consisting of only 6 variables. This was done in order to maintain our attention focused on objective institutional design variations of SAIs. The first four variables, while important as judicial guarantees of autonomy, hinder our comparative purpose due to the different connotations the written declarations of autonomy assume on the specific legal frameworks of different countries. Nonetheless, as all variables present very similar variation patterns, the six institutional design variables can be considered proxies of the legal declaration variables, and therefore, their exclusion does not damage the robustness of our measurements. The three versions of our independence index are normally distributed and varied in similar patterns, arguing for the coherence expected among variables.

The institutional independence index was then contrasted with the degree of political fragmentation of the constituent assemblies from which they originated or where they could have been modified. The classification of the constituent assemblies' degree of political fragmentation was extracted from the work of Pozas-Loyo and Ríos Figueroa¹⁰ "*The Origins of Independent Judicial Institutions in Latin America*". In this paper the authors classify Latin-American constituent assemblies as unilateral or multilateral.

Constituent assemblies were classified as unilateral, when dominated by a single party, and as multilateral, when no parties presented sufficient quorum to take decisions unilaterally. The constituencies where a party had more than two thirds of the seats were classified as

unilateral. Those where no party accounted for more than half of its composition, were classified Multilateral. Those assemblies where the largest party held between half and two thirds of the seats had their voting rules examined in order to determine whether it could make decisions unilaterally. The classification of the constituent assemblies analyzed by these authors can be found in Table 1.

TABLE1: Political fragmentation of constituent assemblies

TABLE1: Political fragmentation of constituent assemblies	
Unilateral	Multilateral
Argentina 1949	Argentina 1994
Bolivia 1947, 1967	Brazil 1947, 1988
Brazil 1967	Colombia 1991
Chile 1980	Ecuador 1945, 1978, 1998
Costa Rica 1949	El Salvador 1983
Dominican Republic 1966	Guatemala 1945, 1965, 1985
Ecuador 1946, 1967	Honduras 1982
El Salvador 1950, 1963	Peru 1979
Guatemala 1956	Uruguay 1952, 1967
Honduras 1957, 1965	Venezuela 1961
Nicaragua 1948, 1950, 1974, 1987	
Panama 1946, 1972	
Paraguay 1967, 1992	
Peru 1993	
Venezuela 1947, 1953, 1999	

Source: POZAS-LOYO; RÍOS-FIGUEROA 2010¹⁰

To test the relationship predicted – that multilateral constituents tend to produce more independent control institutions – a multiple regression was ran with our institutional independence index as the dependent variable and the binary classification of constituent assemblies as the independent variable. Several other control variables were also used as independent variables in order to account for variations between countries. Other control variables were also used in order to minimize external distortions to the relation under analysis.

The first control variable used served as a proxy for the national economy's openness to trade during the year of their respective constituent assemblies. This is explained by the fact that the guarantee of contracts, property rights and overall judicial security, as well as a commitment to a certain level of institutional stability are all requirements to attract foreign investment and foster economic growth. Governments therefore have strong incentives to convey signals that make commitments to respect investor's rights credible. The creation of effectively independent control institutions can be interpreted as one of those signs that ensure greater credibility to the commitments made by governments.

This variable, developed by Heston, Summers and Aten (2009) is calculated from total trade (exports plus imports) as a percentage of GDP in constant prices, with a reference year of 2005. GDP is obtained by adding up consumption, investment, government and exports, and subtracting imports in any given year.

The second control variable, Polity 2, is used here to account for the varying degrees of democratic consolidation in the years of the constituent assemblies analyzed. The measure of democracy Polity 2, developed by Marshall and Jaggers (2002) is a measure of democracy that ranges from +10 for highly democratic systems to -10 for strongly anti-democratic systems. The relationship predicted is that consolidated democracies have more independent horizontal accountability networks as has been thoroughly discussed. Consequently, it is important to use a measure of democracy to isolate the effect of the constituent assemblies' political fragmentation in the level of SAIs' independence.

As an alternative measure of democracy, the variable *contestation* was used (Coppedge et al. 2008). This variable is part of the dichotomy contestation and inclusiveness which make up the requirements of Dahl's polyarchy (Dahl, 1972)⁶. This variable measures the ability of citizens to formulate preferences, to “signify those preferences to their fellow citizens and the government by individual and collective action.” and “have the right to have their preferences weighed without discrimination by the government because of the content or source of the preference.”⁶ If we consider SAIs direct representatives of citizen control this variable allows us to control for the variations of overall citizen control capacity in different countries. This variable is of particular importance because it is concerned with measuring precisely the aspect of democracy that is associated with the work of the SAIs, *i.e.* the availability of institutional mechanisms of democratic contestation, translated in the capacity of democracies to exercise horizontal accountability.

Results

The results of our institutional independence index can be found in the table below:

TABLE 3: SAIs independence level and constituent assemblies' power distribution

Country	Year	Constituent Assembly (Unilateral – 0) (Multilateral - 1)	SAIs Independence Index(F3)	Country	Year	Constituent Assembly (Unilateral – 0) (Multilateral - 1)	SAIs Independence Index(F3)
Argentina	1949	0	0,00	Guatemala	1986	1	0,67
Argentina	1994	1	0,33	Honduras	1957	0	0,83
Bolivia	1947	0	0,25	Honduras	1965	0	0,83
Bolivia	1967	0	0,58	Honduras	1982	1	1,00
Brazil	1946	1	0,58	Nicaragua	1948	0	0,08
Brazil	1967	0	0,58	Nicaragua	1950	0	0,08
Brazil	1988	1	0,92	Nicaragua	1974	0	0,17
Chile	1980	0	0,50	Nicaragua	1987	0	0,25
Colombia	1991	1	0,58	Panamá	1946	0	0,83
Costa Rica	1949	0	0,92	Panamá	1972	0	0,83
El Salvador	1950	0	0,58	Paraguay	1967	0	0,00
El Salvador	1962	0	0,58	Paraguay	1992	0	0,92
El Salvador	1983	1	0,58	Peru	1979	1	0,58
Ecuador	1945	1	0,50	Peru	1993	0	0,58
Ecuador	1946	0	0,50	Dominican Rep.	1966	0	0,25

Ecuador	1967	0	0,42	Uruguay	1952	1	0,58
Ecuador	1978	1	0,50	Uruguay	1967	1	0,58
Ecuador	1998	1	0,17	Venezuela	1947	0	0,83
Guatemala	1945	1	1,00	Venezuela	1953	0	0,67
Guatemala	1956	0	0,50	Venezuela	1961	1	0,67
Guatemala	1965	1	0,75	Venezuela	1999	0	0,33

Source: author

The final index was composed of six objectives variables explained in the previous section and encompass the functional, financial and organizational autonomy of SAIs. The results varied normally from 0 for countries where the SAI did not hold a constitutional *status* to 1 where they held all prerogatives for their independence. The average (arithmetic mean) independence level of SAIs originated at multilateral constituent assemblies (0.61) proved to be higher than that of those originated at unilateral ones (0.49). However, contradicting our previous expectations, the level of SAIs independence did not present a clear increase pattern in time. The classification of the constituent assemblies analyzed by these authors POZAS LOYO AND RIOS-FIGUEROA is presented in table 1 and its typology can be compared with the level of SAIs independence in table 3 above.

Table 4 presents the level of correlation between the all variables used in our statistic models as reproduced below:

TABLE 4: Variable's Correlations

Variable	Independence Index(F3)	Constituent	Open. Econ.	Polity 2	Contestation
Independence Index (F3)	1.0000				
Constituent	0.1617	1.0000			
Open. Econ.	0.5339	-0.2067	1.0000		
Polity 2	0.2734	0.4118	-0.0962	1.0000	
Contestation	0.1699	0.2170	-0.1551	0.9080	1.0000

Source: author

First of all, we must note that the correlation between SAIs independence and the fragmentation of constituent assemblies presented a positive correlation, supporting our work hypothesis. Despite showing not very high levels of correlation, when controlled for secondary factors, as done in our statistical models, this association proved to be significant.

As expected, a fair level of correlation was also found to exist, between SAIs independence and the degree of economies' openness to trade, as shown in Table 4. This correlation supports our assumption that SAIs serve are both cause and effect of a larger dependence of national economy on foreign trade and of foreign investment. Our results show that these institutions independence can be associated with signals sent by governments to foreign trade partners and therefore, is included in our statistical models to isolate its effects on SAIs' independence from those of the constituent assembly's political fragmentation.

Both democracy measures also present a positive correlation with our SAIs independence index. The relationship predicted is that consolidated democracies have more independent

horizontal accountability networks as has been thoroughly discussed. Consequently, it is important to include a measure of democracy to isolate the effect of the constituent assemblies' political fragmentation in the level of SAIs' independence. The variable Polity 2, a measure of democracy presented a significant correlation with our independence index. This was also true for the alternative measure of democracy, *contestation*.

It is worth noting that no significant relationship was found between the second ingredient of Dahl's poliarchy's dichotomy, which corresponds to the inclusiveness of the democratic system. This lack of correlation corresponds to our theoretical expectations. While *contestation* correlates to horizontal accountability mechanisms, associated with SAIs and, consequently, correlated to their independence, *inclusiveness* corresponds to vertical accountability mechanisms, not directly related to SAIs independence. Despite not presenting very high levels of correlation, the opposite slope inclination presented by each variable is considered enough to advocate the different ways in which they are associated with SAIs independence. While the correlation between our index and the *contestation* variable was of 0.16 that with the *inclusiveness* measure of democracy was of -0.21.

Once established the correlation between variables and their consequent weight in our statistic models, table 5 presents our regressions' results:

TABLE5: Statistic models

Independent Variables	Model				
	(1)	(2)	(3)	(4)	(5)
Constant	.4957*** (.0525)	.2968*** (.0745)	5436*** (.0533)	.3186*** (.0737)	.2960*** (.0732)
Constituent	.1286 (.0850)	.1428* (.0761)	.0309 (.0888)	.0899 (.0809)	.1221 (.0762)
Polity 2		.0037*** (.0009)		.0037*** (.0009)	
Openness of the Economy			.0181** (.0072)	.0106 (.0065)	.0039*** (.0009)
Contestation					.0611 (.0431)
N	42	32	41	32	32
R²	.0540	.3624	.1835	.4172	.4050

Source: author

Constituent multilateral assemblies can be considered associated, albeit at borderline significance, to greater levels of constitutionally guaranteed independence to supreme audit institutions. As the table 5 shows, especially when the control variables are included in the statistical models, significant results were found for the relationship between the degree of fragmentation of the constituent assemblies and SAIs independence in Latin America.

The use of three alternative measures of democracy also allows us to establish the robustness of the relation between the independence of SAIs and the level of democratization of regimes beyond specific indexes. It is also important to note that although not statistically significant, Model 1 presented compelling results of the association of SAIs' independence and political uncertainty at constituent assemblies. At this point, it is worth noting that the correlations presented in table 4 allow us to rule out the idea of a false relationship caused by the control variables used. The high correlation between the constituent assemblies dichotomy and the measure of democracy Polity 2, as shown, also argues in favor of our proposed association between democracy and multilateral constituent assemblies. Strengthening this claim is the conclusion made in the mentioned work of Rios-Figueroa and Pozas-Loyo (2010)¹⁰ that, although not all unilateral constituent assemblies have occurred during periods of dictatorship, all constituent assemblies occurred during dictatorships were unilateral.

Conclusions

Our results allows for two main conclusions. First, multilateral constituent assemblies are in fact associated with higher levels of supreme audit institutions` constitutionally guaranteed independence. Second, higher levels of constitutionally guaranteed independence of audit institutions are related to democratic consolidation and can be considered both cause and effect of democratic regimes. A final conclusion which is permitted by our results is that independent audit institutions are positively correlated with countries` level of international trade. It is hard to determine a clear causal relation between these events, but it is safe to say that, at least theoretically, they are complementary and mutually reinforcing developments.

The data allows us to conclude for the existence of a relationship between the independence of SAIs and multilateral constituent assemblies. The present results confirm the literature`s expectations, however, some caveats to these results should be mentioned. First, it is important to note that independence is a necessary, but not sufficient requisite for SAIs performance and, therefore, should not be pursued as an end in itself. More detailed studies on the performance of these institutions are needed to deepen our understanding of the determinants of their effective control capacity.

Another observation that involves some controversy is the *de facto x de jure* dichotomy which predominates in Latin America. Authors are divided between those who believe that legal requirements are not sufficient to guarantee the fulfillment of certain behaviors in the region (O'Donnell, 2010). And those who argue that the practices that go against the spirit of constitutionalism are caused by deficient constitutional frameworks (Pozas-Loyo; RIOS-FIGUEROA, 2010). Having such a dilemma at the root of the institutional engineering efforts in the region should be sufficient stimulus for the development of a research agenda to study the relation between the levels of SAIs independence and their performance.

Through the use of three alternatives measures of democracy the relationship between independent control institutions and democratic constituent assemblies can be extrapolated to a broader relation between independent control institutions and the availability of institutional mechanisms of democratic contestation and overall democratic environment. That goes to say that SAIs independent are directly associated with the level of democratic consolidation of a given regime. It is hard to determine the causal direction of this

relationship. On the one hand, independent control institutions strengthen citizen control and, consequently the system of democratic guarantees as a whole. On the other hand, the level of democratization is often measured through the availability of institutional mechanism of contestation, of which SAIs can be considered a central element. Nonetheless, the results allow for the empirical verification of a theoretical assumption that is at the basis of the conceptual framework of democracy. Both the right of citizen control, inherited from the liberal tradition, as well as the oversight of the proper execution of the democratically established will are confirmed by the undisputable association between democracy and the independence of supreme audit institutions.

The use of three alternative measures of democracy also allows the extrapolation of the relationship between the level of independence of SAIs and the constituent assemblies that gave rise to a deeper relationship between democracy and independent institutions.

The final conclusion authorized by our research, should serve as an additional incentive for governments to promote independence guarantees for the national audit agencies. As previously mentioned, it is hard to determine the causal relation between international trade and SAIs` independence. Nevertheless, it is clear that independent SAIs institutions serve as clear signals of a stable institutional structure, which promotes the respect of contracts, private property and judicial security. Additionally, democratic institutions tend to be associated with institutional inertia, valuable asset of countries for attracting investments.

Concluding, while not unquestionable, the results achieved in this research are considered satisfactory, at least as an attempt to promote a research agenda on the subject, in the hope of contributing to the consolidation of knowledge that will be useful to promote effectively responsive democracies in Latin America.

References

- ¹ HUNTINGTON, Samuel. "Democracy's Third Wave" *Journal of Democracy* -Volume 2, Number 2, Spring, pp. 12-34, 1991.
- ² ZAKARIA, F. The rise of illiberal Democracy *Foreign Affairs* p. 22, Nov/Dec 1997.
- ³ SCHUMPETER, J. (1942) *Capitalism, socialism and democracy*. New York: HarperPerennial, 1975.
- ⁴ CONSTANT, B. *The Liberty of Ancients Compared with that of Moderns* (1819).
- ⁵ O'DONNELL, Guillermo. Horizontal accountability and new poliarchies. *Lua Nova*, 1998, vol., no.44, p.27-54. ISSN 0102-6445.
- ⁶ SANTISO, C. Legislatures and Budget Oversight in Latin America: Strengthening Public Finance Accountability in Emerging Economies, *OECD Journal on Budgeting* 4 (2); 47-77, 2004.
- ⁷ FIEDLER, F. The Independence of Supreme Audit Institutions. *INTOSAI: 50 Years (1953-2003) A Special Publication of the International Organization of Supreme Audit Institutions*. Vienna, Austria, 2004.
- ⁸ DRAKE, P. *The Money Doctor in the Andes: The Kemmerer Missions, 1923-1933*. Durham, North Carolina, Duke University Press, 1989.
- ⁹ POZAS-LOYO, A.; RÍOS-FIGUEROA, J. Enacting Constitutionalism: The Origins of independent judicial institutions in Latin America. *Comparative Politics*, April 2010.
- ¹⁰ ELSTER, J. *Ulysses Unbound: Studies in Rationality, Precommitment, and Constraints* Cambridge University Press, 2000
- ¹¹ HOLMES, Stephen. "Constitutionalism." in the *Encyclopedia of Democracy*, ed. Seymour M Lipset (Washington, DC: Congressional Quarterly Press, 1995). p. 299 Apud. POZAS-LOYO, A.; RÍOS-FIGUEROA, J. Enacting Constitutionalism: The Origins of independent judicial institutions in Latin America. *Comparative Politics*, April 2010.
- ¹² HAMBLOCH, Ernest. *His Majesty, the President of Brazil (1935) A Study of Constitutional Brazil*. Methuen & Company Limited
- ¹³ O'DONNELL, G.. Horizontal Accountability in New Democracies. *Journal of Democracy* 9.3 (1998) 112-126
- ¹⁴ World Bank, PREMnote n59
- ¹⁵ MELO, M. A.; PEREIRA, C.; FIGUEIREDO, C. M. Political and Institutional Checks on Corruption: Explaining the Performance of Brazilian Audit Institutions. *Comparative Political Studies*, v. 42, p. 1217-1244, 2009.
- ¹⁶ FIEDLER, F. The Independence of Supreme Audit Institutions. *INTOSAI: 50 Years (1953-2003) A Special Publication of the International Organization of Supreme Audit Institutions*. Vienna, Austria, 2004.