

SUPREME LEADERS OF THE NATION: HISTORY AND CHARACTERISTICS OF PRESIDENTIAL SUPREMACY IN LATIN AMERICA AND THE UNITED STATES

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Resumen: El presente artículo estudia la historia y las características del concepto legal de supremacía, que es utilizado en diversas constituciones de América Latina para definir los poderes del presidente y su carácter de líder de la Nación. Aunque un concepto de supremacía se ha utilizado en debates recientes sobre la presidencia de los Estados Unidos, el artículo muestra que los poderes constitucionales de los presidentes en América Latina son muy diferentes a los que corresponden al presidente de los Estados Unidos. Las diferencias se exponen en el artículo, en primer lugar, analizando el lenguaje constitucional, opiniones de juristas y sentencias judiciales. Luego se considera la historia del concepto de supremacía presidencial y, finalmente, se discuten los efectos de la supremacía presidencial sobre la estructura del Estado y sobre la consolidación de instituciones nacionales.

Palabras clave: Supremacía, Nación, Estado, Latinoamérica, Presidencia, Estados Unidos y Ley Constitucional.

Abstract: The present paper studies the history and characteristics of the legal concept of supremacy. The concept of supremacy is employed by several constitutions in Latin America to define the powers of the president, and to establish the role of the president as leader of the Nation. Although a concept of supremacy has been used in recent controversies about

the presidency of the United States, the paper shows that constitutional powers of presidents in Latin America are very different from the powers assigned to the president by the United States constitution. The differences are described in the paper. First of all, the paper analyses constitutional language, the opinions of legal scholars and judicial precedents. Secondly, the history of the concept of presidential supremacy is considered. Finally, the paper discusses the impact of presidential supremacy on the state structure and on the consolidation of national institutions.

Keywords: Supremacy, Nation, State, Latin America, Presidency, United States, and Constitutional Law

1. INTRODUCTION

The thesis that affirms the supremacy of the president regarding certain kind of executive decisions has been intensely debated among American constitutional law scholars in recent years. The issue became very controversial after 9/11, when the United States presidency began to claim more extensive and unified powers over the executive branch.

In contrast, the kind of presidential supremacy that is characteristic for Latin American constitutional systems has not received much atten-

tion recently, and this has created a certain degree of confusion. Among other factors, the confusion is caused by the circumstance that the same word or concept is being employed to refer to “presidential supremacy” either in the United States or in Latin American politics. But the legal powers involved in the concept of presidential supremacy, as we will see, are significantly different in both systems. In truth, the debate about presidential supremacy after 9/11, during the Bush and Obama administrations, has reinforced a previous trend, among some scholars, to declare a basic similarity in the powers of the executive branch in Latin America and in the United States¹. The present paper attempts to show that there is no such similarity. The constitutional powers of Latin American presidents are substantially different from the powers of United States presidents. First of all, they are defined using very different language in the diverse constitutions. Secondly, it can be shown that the historical sources for some key legal concepts defining the presidency, in the United States and in Latin America, are not the same at all. Third and finally, the impact of the presidency on the structure of the state reveals significant variations in both systems. We will discuss these points in the sections of the present contribution.

2. SUPREMACY AND CONSTITUTIONAL LANGUAGE

Latin American presidents have indeed analogous constitutional powers, but only compared to each other. This is a very interesting fact, which points to a common historical source for the legal configuration of the presidency in Latin America. However, this common historical source is not the constitution of the United States, as can be clearly shown with an analysis of constitutional formulations of presidential powers in both systems.

Presidential supremacy became established as a legal principle in Latin America already in the nineteenth century, soon after independence. In marked contrast to the United States, the

notion of presidential supremacy was explicitly stated as law by several constitutions in the region, and constitutional clauses assigning supremacy to the president remain very much in force across the region. As soon as we compare Latin American and the United States constitutions, it becomes obvious that the latter carefully avoids any explicit formulation of presidential supremacy, and that the specific powers assigned to the President of the United States are significantly different from presidential powers in Latin America. We will consider in the following the formulations of presidential supremacy in several Latin American constitutions, and we will compare those formulations with the constitutional powers assigned to the president of the United States.

The current Mexican constitution, originally passed in 1917, employs a formulation to define the powers of the presidency that was transcribed from the Mexican constitution of 1824. The formulation, in other words, was already traditional in Mexican legal culture at the moment of its incorporation into the constitution of 1917. In its art. 80, which remains in force today, the constitution of Mexico states that “The Supreme Executive Power of the Union is vested on a single individual, who will be designated as ‘President of the Mexican United States.’” In terms of legal faculties, and also in symbolic terms, the key concept in the constitutional language is clearly the concept of “supreme executive power”.

Another strong formulation employs the constitution of Colombia, passed in 1991. According to art. 115 of the Constitution, the “President of the Republic is the Chief of State, Head of Government and supreme administrative authority”. The concept acquires here a specific administrative orientation, which is very interesting in terms of the concrete, operational powers that are part of presidential supremacy in Latin American constitutional systems. We will come back to the idea of presidential supremacy as a specific administrative authority, which is how the legal concept was historically developed in the first place.

A similarly strong legal language employs the constitution of Argentina, originally passed in 1854, and still in force today with diverse amendments. Art. 86 of the original constitu-

¹ Morgenstern, Scott, John Polga-Hecimovich, and Sarah Shair-Rosenfield, “Tall, Grande, or Venti: Presidential Powers in the United States and Latin America” *Journal of Politics in Latin America* 5 (2), 2013: 37-70.

tion, with a formulation that remained in force until 1994, stated decisively that “The president of the Nation has the following powers: The president is the supreme chief of the Nation, and the president is in charge of the general administration of the country.” We see here again the administrative component of presidential supremacy, and the constitution of Argentina formulated this specific administrative dimension as “being in charge” (*tiene a su cargo*) of the general administration of the country. Therefore, in the constitutional language of art. 86, it appeared as a corollary of the character of the president as “supreme chief of the Nation” that the president had the power to give commands to all divisions or offices of the public administration. In other words, the public administration being “in charge” of the executive branch means that the president has superior authority over all administrative divisions or offices of the federal government. In practice, this means that the president can appoint a very extensive number of public employees at all levels of the federal administration, from higher management to subordinate positions, ensuring thus the president’s political control over the administrative apparatus. Moreover, by majoritarian opinion among Argentinean administrative law experts, and following judicial precedent, all decisions of federal administrative authorities, even in the case of “autarchic” administrative agencies, can be revoked by the president or by other subordinate officers, such as Ministers or Secretaries of State, under instructions from the president².

Of course, such a supreme power over the public administration is completely unknown in the text of the United States constitution, or in the informal constitutional and political practices of the country. As was definitively established by the United States Supreme Court in the decision “Humphrey’s Executor” of 1935, the president of the United States has no authority whatsoever over all departments or offices of the public administration that the Congress declares as independent³. The idea that the public admin-

istration of the United States is actually under the authority of Congress, and not the president’s, is suggested by the constitution itself, and has been stated by several authors, most forcefully by Rosenbloom, who simply considers that the federal public administration of the United States is an “extension” of the legislative power⁴.

The text of the “appointments clause” in the United States constitution (art. 2, § 2) makes indeed quite clear that Congress can establish limits to the presidential power to appoint federal officers. The clause refers first to principal officers of the United States, such as Ambassadors or Judges of the Supreme Court, who can only be appointed with advice and consent of the Senate, so that there is of course no presidential supremacy regarding those appointments. The clause refers afterwards to inferior officers, and here the Congress can establish limits too: “but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.” Among other legal arguments, this clause supports the development of the institutional design of “independent agencies of government”, already described above. Such agencies are not under the authority of the president, and the president has no appointment powers regarding any of their officers, since Congress has established their independent character by law. In sum, even regarding the appointment of inferior officers, or the power to give commands or instructions to them, the president has no supremacy in the United States constitutional system. This is a very strong contrast to presidential supremacy in Latin America.

Added to the administrative component of supremacy, both in Latin America and in the United States, there is a symbolic dimension that has its own impact on the political system. The constitution of Argentina underlines this symbolic dimension of the presidency, as mentioned above, supremacy referring here to the character of the president as leader or “chief”

² Gordillo, Agustín. *Tratado de derecho administrativo y obras selectas*. Tomo 4: El procedimiento administrativo (10ª edición). Buenos Aires: F.D.A., 2010, XI-3.

³ U.S. 1935. *Humphrey's Executor v. United States*, 295 U.S. 602, 627.

⁴ Rosenbloom, David. “Whose Bureaucracy Is This, Anyway? Congress’ 1946 Answer”. *Political Science & Politics* 34, 2001: 773-777. Rosenbloom, David. *Building a legislative-centered public administration*. Tuscaloosa: University of Alabama Press, 2000.

of the nation, a formulation that remained in force after the reform of 1994. This symbolic dimension is actually the only feature of presidential supremacy that allows to compare the president of the United States to presidents in Latin America. In concrete operational terms, as mentioned above, presidential supremacy is unknown in the United States, since the president most definitely does not enjoy the power to give commands to all departments of the public administration or to appoint their officers. Presidents in Latin America wield those powers (administrative supremacy) as a matter of course. In symbolic terms, however, both the president of the United States and the presidents in Latin America are expected to be not only heads of the government, but heads of State as well, leaders of the Nation. It belongs to the good tone of presidential inaugural addresses that the winning candidate declares to govern and to care for all the citizens, not just for those who voted in favor of the newly elected president. The president is supposed to be an “embodiment” of the Nation in some sense, this is the more “spiritual” or even “mystical” dimension of presidential power. Now, before being elected, presidents are of course political leaders that have reached positions of power or prestige inside a specific political party or electoral coalition. From a particular political organization, which supports a certain set of political ideas and public policy proposals, presidents are supposed to transition to spiritual leaders of the whole Nation as soon as they assume office. Notwithstanding all more or less honest protestations by office-holders, this claim has always something hollow about it. We will come back to the national question in the conclusions of this contribution.

Interestingly, the reform of 1994 in Argentina changed the wording of the article that assigns supreme administrative authority to the president, as if attempting to reduce this power. The public administration is now no longer “in charge” of the president, the new article 86 states that the president is the “supreme chief of the Nation, chief of the government, and politically responsible for the general administration of the country.” Instead of being “in charge”, therefore, the president is now “politically responsible” for the administration. This seems to be a curious attempt to introduce a British constitutional practice into the Argentinian

constitution. Ministers in the United Kingdom are not actually, operationally in charge of their departments, since career civil servants run in fact the public administration in the country. But Ministers are nonetheless responsible, they are expected to defend their departments in Parliament, and to take the fall in case of major errors⁵. Ministerial responsibility actually protects the civil servants’ impartiality and anonymity in the United Kingdom, making it impossible for civil servants to have to answer before Parliament for their decisions, since this would lead to the politicization of their role. So Ministers, notwithstanding the fact that they cannot actually give orders to career civil servants, have to take responsibility for their decisions.

But this curious change in the wording of art. 86 of the constitution of Argentina had no practical consequences. Of course presidents continue to be extremely jealous in asserting their authority over all departments and agencies of the public administration, as was made completely clear by former president Néstor Kirchner, in a book of interviews with political scientist Torcuato Di Tella. Asked about a possible reduction to the powers of the president following the reform of the constitution in 1994, Kirchner, who was presidential candidate at the time, declares that “being politically responsible for the public administration, the president supervises the public administration, and can directly take charge of all administrative decisions by presidential authority, additionally the president appoints the officers of the public administration, and collects federal taxes [...]”⁶. It is interesting to underline former president Kirchner’s statement about appointment of federal officers, where he does not mention any kind of limit to such power. In any case, presidential supremacy in administrative matter was not really controversial at the time in Argentina, and it has never been controversial thereafter. Since the reform of the constitution, the new formulation stating that the president is “politically respon-

⁵ Budge, Ian, David McKay, Kenneth Newton, and John Bartle. *The New British Politics* (4th edition). Abingdon and New York: Routledge, 2013, 84.

⁶ Di Tella, Torcuato and Néstor Kirchner. *Conversaciones después del derrumbe. Teoría y práctica política en la Argentina que viene*. Buenos Aires: Galerna, 2003, 112.

sible” for the public administration has been understood as assigning to the president administrative supremacy, as much as the old formulation stating that the public administration was “in charge” of the president did. As a matter of fact, the administrative supremacy of the presidents has never been the subject of controversy in Argentina or in any other Latin American country. As we will see in the next section, administrative supremacy represents a very traditional legal concept in the region.

Before analyzing the history of legal supremacy, however, we will consider one final Latin American constitution. The current constitution of Brazil, passed in 1988, does not refer to the administrative authority of the president as “supreme”, but the powers assigned to the president are not substantially different from the other Latin American cases discussed above. There is a historical reason for the constitution of Brazil avoiding the concept of supremacy, which is the fact that a previous constitution in the history of the country, the constitution of 1937, defined the president as “supreme authority of the State.” Now, that constitution was passed by the authoritarian regime of Getúlio Vargas, and so the concept of supremacy has been tainted by authoritarian associations in Brazil. The constitution of 1988 employs it nonetheless, but in a more limited sense.

First of all, the constitution of Brazil passed in 1988 states in its art. 84 that “the president has exclusive competence to [...] 2. Exert the superior direction of the federal public administration, with the assistance of the ministers of State.” Although this clause avoids the concept of supremacy, the power of “superior direction” assigned here to the president is understood to mean that all departments and agencies, even of course “decentralized” agencies, are under the authority of the president, that is to say, that the president can give orders or commands to any administrative authority, revoke their decisions, apply disciplinary measures on them, and exert any other power contained in the concept of “supervision”⁷. Simply put, the president of Brazil is the hierarchically superior au-

thority to any and all bodies of the federal public administration, without exceptions. As in other Latin American countries, we can describe certain agencies of government as “decentered” or “autarchic” or any other such denominations, but there cannot exist in Brazil real federal *independent* agencies as they exist in the United States. The “superior” administrative authority of the president has no limitations. It is the same phenomenon known as administrative supremacy in other Latin American countries, which the constitution of Brazil avoids designating as such. Nevertheless, the concept appears in art. 142, which declares that the armed forces of Brazil are under the “supreme authority” of the president. Given the history of military interventions in the politics of the country, the constitution has been clearly designed to employ the strongest formulation for this particular authority of the president. In substantial terms, however, the power of “superior direction” is the same as supreme administrative authority in Brazil.

3. LEGAL HISTORY OF SUPREMACY

The concept of supremacy, as a legal capacity of temporal authorities, appears for the first time more than five hundred years ago. The concept was introduced in 1439 by Juan of Segovia, a leading professor of theology at the University of Salamanca, during legal and political discussions on issues related to the government of the Catholic Church. Segovia was sent by the University of Salamanca, as a representative of the King of Castile, to the Council of Basel in 1432, which had to discuss and decide upon the very controversial subject of possible limits to papal authority. After taking part as an active member of the council for some years, Juan of Segovia became the leading advocate of *Councilarism*, the doctrinal position that states that the community of believers represented by church councils, and not the Pope, has the highest authority over the Catholic Church. Segovia’s contributions during the crucial year of 1439 are of particular interest. In a truly groundbreaking decision, the Council of Basel was to depose the pope in November. During a speech in August of that year in Mainz, John of Segovia introduces the idea of a temporal supreme authority as something necessary for every community, but he makes clear, at the same time, that such legal supremacy has to be

⁷ Gomes, Eugenio Maria and Almir Morgado. *Compendio de administração. Administração pública e privada de A a Z*. Rio de Janeiro: Elsevier, 2012, 131.

based on trust. And furthermore, he defines the highest authority for any given community, in surprisingly contemporary terms, as a “presidency” (*presidentia*)⁸. Previous to the contribution of Juan of Segovia, a specific concept of “supreme authority” had been applied only to divine law and, therefore, to the authority of the pope, as declared for example in the bull *Unam Sanctam* issued by Boniface VIII in 1302⁹. In contrast, the Roman emperors had never claimed supreme authority as such, since the fiction of sharing some part of their authority with the Senate was kept until the very end. Under the Carolingian emperors, for their part, the supremacy of temporal authorities was never declared in such terms, since the Gelasian doctrine of the two swords did not establish a hierarchy of temporal and spiritual authorities, both were supposedly equivalent.

After the introduction of the notion of supreme authority by Juan of Segovia, it was with Jean Bodin that the concept becomes one of the most well-known principles in Western political theory. In his definition of sovereignty, Bodin describes sovereign power as “majesté suprême”¹⁰. Following Bodin, the notion of supreme authority becomes part of the legal language of the French monarchy, the concept is employed by the *Ancient Régime* in France to

define top administrative hierarchies. The French legal language of the era of enlightened absolutism had a widespread influence on other continental European nations, and it became specifically associated with the centralization of public administration as a key component of programs for state modernization. This applies definitely to Spain, where since 1714 a branch of the French ruling dynasty of the Bourbons holds the crown, as a result of the French victory in the War of Spanish Succession.

The French concept of administrative supremacy certainly appears to be one of the most visible sources for this same notion in Latin American constitutions. The concept became probably well-known in Spanish America due to the influence of the French constitution of 1791 on the debates of the Spanish constitution of 1812, also known as the Cádiz constitution. The French constitution of 1791 had been the first constitution created after the revolution in France, and it represented an early attempt to establish a constitutional monarchy in that country. Following the legal language of enlightened monarchy, the constitution employs the idea of administrative supremacy to define the role of the King as chief executive. In chapter four, the French constitution of 1791 declares thus that “the supreme executive power” resides with the King, and further, that “the King is the supreme chief of the general administration.” (chapter 4, art. 1). As has been discussed in the previous section, the formulation “supreme chief of the administration” expresses a concept established as law by several Latin American constitutions, which remains in force up to this day with decisive consequences in terms of state organization.

More than 60 delegates from Spanish territories of the New World took part at the Cortes of Cadiz, the national—or rather international—assembly that passed the Spanish constitution of 1812. It can be assumed that many delegates from the New World were already acquainted with the French constitution of 1791, but the debates around the issue in Cadiz probably gave them a new perspective on the legal concept of a “supreme authority over the administration.” For the liberal delegates at the Cortes of Cadiz, the French constitution of 1791 was a very important blueprint for the organization of a constitutional system, and the majority

⁸ Et quemadmodum ad debitum regimen multitudinis hominum necessaria est *presidentia*, ita etiam ex parte subditorum necessaria est *subjectio ad illam potestatem* supremam (In the same manner that a presidency is necessary for the proper government of a multiplicity of men, on the part of the subjects it is necessary the subordination to that supreme power) RTA 1439 – *Deutsche Reichstagsakten unter König Albrecht II. Zweite Abteilung: 1439*. Hg. von Helmut Waigel. Stuttgart: Friedrich Andreas Perthes A.G., 1935, 375. Accessed August 21, 2014, <http://147.231.53.91/src/index.php?s=v&cat=27&bookid=347&page=0>

⁹ Wayne, John Hankey. “Dionysius dixit, Lex divinitatis est ultima per media reducere: Aquinas, Hierocracy and the ‘augustinisme politique.’” In *Tommaso D’Aquino: proposte nuove di letture*. Festschrift Antonio Tognolo, ed. Ilario Tolomio, 119-150. *Medioevo. Rivista di Storia della Filosofia Medievale* 18, 1992, Padova: Editrice Antenore. Grudin, Michaela Paasche and Robert Grudin. *Boccaccio’s Decameron and the Ciceronian Renaissance*. London and New York: Palgrave Macmillan, 2012, 13.

¹⁰ Bodin, Jean. *Les Six Livres de la République*, Livre III, Chapitre VI.

of Latin American delegates were naturally members of the liberal group or liberal party. The delegates from the New World certainly contributed to make known the concept of executive supremacy back in their Latin American territories, which soon began to declare independence from the Mother Country. Nevertheless, the Spanish constitution finally avoided employing the formulation of “supreme authority” to refer to the head of the executive power, but it positively assigned to this branch of the government the legal capacity of a supreme administrative authority in the sense described above for French centralization under the Bourbons. Moreover, there are written records of the use of the term “supreme governmental authority” during the debates of the constitution, thus for example in the report of the committee that created the regulations for the Council of State, read to the assembly on May 19th of 1812¹¹.

There is a second important source for the use of the concept of “supreme governmental authority” in Latin American constitutions. After the coming to power of the Bourbon dynasty in Spain as result of the War of Succession 1701-1714, the Spanish monarchy applied a wide program of centralizing administrative reforms. One of the institutional designs consolidated at this time corresponds to the office of intendant, which had been a very successful tool of bureaucratic centralization in France since the seventeenth century. The intendants were in charge of civil administration for a specific territory, as direct representatives of the Crown. They were in most cases career public servants, either civil administrators or former military officers. At the head of the system of intendancies, in specific territories, so-called superintendents were also appointed, as superior administrative authorities over the regular intendants. In the New World, the Viceroys assumed in some cases the office of superintendent as well, becoming thus heads of the intendancy system in their territories. In such cases, the legal language describing the powers of the office explicitly employed the well-known formula “su-

¹¹ *Cortes de Cadiz. Diario de las discusiones y actas de las Cortes*. Tomo XIII. Cadiz: Imprenta Real, 1812, 273. Accessed August 29, 2014: <http://books.google.es/books?id=1RZDAAAACAAJ&printsec=frontcover#v=onepage&q&f=false>

preme governmental authority.” Thus for example the Viceroy of Peru is described in such terms in 1752¹².

The legal scholar who wrote the project for the Argentinean constitution of 1853, Alberdi, refers literally to the “superior authority and all-embracing powers” of the former head of the intendancy system, in other words the superintendent under the colonial regime, who was the Viceroy in Buenos Aires¹³. In his classic book comparing constitutions of Latin American, American, and European countries, Alberdi exhorts Argentines not to follow the federal constitution of the United States as a model in this particular issue. In contrast to the American president, states Alberdi, the projected executive power in Argentina needs to have the same legal powers as a Viceroy and superintendent, that is to say, supreme administrative authority¹⁴. Alberdi’s writings provide a further clue regarding the fact that the legal faculties of the head of the executive power, in the Spanish-American constitutional tradition, are substantially more extensive as regards presidential authority over the public administration than the powers of the American president in the United States constitution.

As we have seen, the legal language of presidential supremacy has a long tradition, which goes back to Medieval debates on the authority of the papacy, and from where it evolves into a foundation for administrative terminology and institutional design under the Bourbon monarchies first in France and then in Spain. Now, what powers are exactly implied by the concept of “supreme administrative authority” in modern constitutional terms? We have already begun to examine such powers for the cases of Latin American constitutions discussed above,

¹² Gorla, Carlos María. *Los establecimientos españoles en la Patagonia: estudio institucional*. Sevilla: CSIC, 1984, 26.

¹³ Alberdi, Juan Bautista. *Bases y puntos de partida para la organización política de la República Argentina*. Buenos Aires: Imprenta Argentina, 1852, 89. Accessed August 29, 2014: http://books.google/books?id=N6dcAAAACAAJ&printsec=frontcover&vq=%22autoridad+superior%22&source=gbg_ge_summary_r&cad=0#v=onepage&q&f=false

¹⁴ *Ibid.*

but we will further explore this question in the next section.

4. SUPREMACY AND THE STATE STRUCTURE

There are two main legal powers that define the concept of the supreme administrative authority in the Spanish American constitutional tradition, and they are very characteristic for the heads of the executive branch in Latin America and Spain. This doesn't refer only to the Spanish constitution of 1812, the president or head of the government in the currently in force Spanish constitution, passed in 1978, has the same two basic legal powers that we will presently describe.

The first legal power of a supreme administrative authority is the regulatory power, the independent capacity to issue decrees with the purpose of implementing specific statutes passed by the legislative power. In the Spanish-American constitutional tradition, the executive power does not need any authorization or delegation from the legislative power to issue regulatory decrees, it can do this on its own authority, as granted by the constitution. Regulatory decrees cover all kinds of details related to the application of the law, and they become a very significant addition to the statutes. Of course, the executive power can wield a great deal of discretion in issuing decrees related to the application of statute law, it can push the application of the law in many different directions according to its own policy preferences.

The second legal power of a supreme administrative authority, in the Spanish-American constitutional tradition, consists of the capacity to give orders or instructions to all departments, divisions or agencies of the public administration. In other words, all offices of the public administration are in a direct relation of subordination to the supreme administrative authority. This second legal power, which has been discussed in the previous sections above, can be defined as supreme command power, bearing in mind that the commands in question are addressed to officials of the public administration. That is to say, in a separation of powers system the executive power evidently cannot give commands to the legislative or judiciary branches. Often, the executive's supreme command power is reinforced by ample powers

to appoint public officials, with the result that in some Latin American countries the president can appoint up to several thousands employees after assuming office. Such ample appointment powers are justified with the argument that the head of the executive needs to count with many loyal followers in key positions, in order to be able to take control of the whole public administration system.

Spain seems to be the only country in the Spanish-American constitutional tradition that was able to keep the figure of a supreme administrative authority as head of the government, while at the same time creating a career civil service for the central administration. Any given head of the executive power can appoint up to about 600 public officers in Spain's central administration¹⁵. Compared to other European countries with career civil services, 600 political appointees is certainly a huge number. But not so much compared to Latin American countries such as Brazil, Mexico or Argentina, where the number of political appointments at the control of any head of the executive power goes from 15.000 to 20.000¹⁶. Nevertheless, it is important

¹⁵ MINHAP – Ministerio de Hacienda y Administraciones Públicas. *Boletín estadístico del personal al servicio de las administraciones públicas*. Julio 2013. Accessed August 23, 2014: http://www.seap.minhap.gob.es/dms/es/publicaciones/centro_de_publicaciones_de_la_sgt/Periodicas/parrafo/Boletin_Estadis_Personal/BE_JUL2013.pdf

¹⁶ For the case of Brazil, see Pacheco, Regina, "Public Management as a Non-Policy Field in Lula's Administration". Paper presented at the conference on *Generation Reform in Brazil and Other Nations*, Rio de Janeiro: Fundação Getulio Vargas, 2004, 7. Accessed June 20, 2014 <http://www.ebape.fgv.br/novidades/pdf/Pacheco.pdf>; and Marconi, Nelson, "Diagnóstico do Sistema de Serviço Civil do Governo Federal no Brasil". Paper presented at the "III Meeting of the Management and Transparency Network", Washington, D.C.: BID, 2002, 15. Accessed June 20, 2014: http://www2.enap.gov.br/mesa_redonda/downloads/Marconi_CLAD_03_clad0047409.pdf. For the case of Mexico see Philip, George. *Democracy in Latin America: surviving conflict and crisis?* Cambridge: Polity press, 2003, 44; and Benton, Allyson. "Diagnóstico Institucional del Sistema de Servicio Civil de México". Paper presented at the "III Meeting of the Management and Transparency Network", Washington, D.C.: BID, 2002, 21-22. Accessed June 20,

to notice that, career civil servants or not, all public administration officers are under the command of the head of the government in the Spanish constitutional system.

The powers of the supreme administrative authority in the Spanish American constitutional tradition have historically conflicted with two significant trends in the development of public administration systems. First of all, the creation of career civil services is certainly hampered by extensive powers to appoint political followers to positions in the public administration. This has been a constant struggle for most Latin American nations, any attempt to consolidate career civil services by a particular government crashes against the expectation of the next government in power to appoint thousands or dozens of thousands of political followers. Secondly, for the past twenty years, a significant trend in institutional design has been the creation of independent or autonomous public agencies, charged with the formulation and implementation of public policies in specific areas. The supreme command power directly conflicts with the creation of independent agencies, of course, since all single organizational units of the public administration are assumed to be under the command of the head of the executive power. Brazil, Spain and other countries in the Spanish-American constitutional tradition, which have tried to introduce the model of independent agencies, have mostly failed at keeping them out of the political authority of the head of the executive. As a result, public policy decisions remain affected by the political considerations of the government of the day, a fact that defeats the purpose of creating independent agencies in the first place.

5. CONCLUSION: SUPREMACY AND THE NATION

The supreme authority of the presidents, in terms of their character as “leaders of the Nation”, has the paradoxical effect of weakening precisely those state institutions that are better

suited to embody national values and aspirations. In countries with long traditions of strong modern states, such as Germany, France, the United Kingdom, the Netherlands or the Nordic countries, the Nation has a concrete existence by its connection to specific public institutions. The first such national institution in those countries is the career civil service of the central state, usually designated precisely as the “national civil service.” The permanent career civil service is considered by the citizens of the mentioned countries as an institution that serves the common good, that acts in the public interest. Of course, the civil service of those countries is an autonomous, permanent institution, over which the government of the day has a very limited authority.

The supreme administrative authority of the presidents in Latin America results in the appointment of tens of thousands of politically loyal employees by each government. This has been very destructive for the possibility of consolidating a national career civil service in any Latin American country. As a result, public service has a very low reputation, it is mostly seen as a tool for politicians, at best as ineffective, at worst as subservient and corrupt. The fact that the civil service is under the direct command authority of the president only contributes to aggravate this problem, since the president is a political figure, the constitutional aspiration for the presidents to be above politics has never really succeeded.

Even in the United States, where the president also represents this national figure which is supposedly above politics, the design of independent agencies has succeeded in consolidating national institutions. Certain specific public agencies are seen as embodiment of the nation, precisely because they cannot be abused for political purposes by the president or the president’s political party. This goes from institutions like the Food and Drug Administration, an enormously prestigious agency of government in the United States and abroad, to the Federal Bureau of Investigations. If those agencies of government were under the political influence of the government of the day, they would be in all likelihood abused for electoral and partisan purposes, and their prestige as being in the service of the public interest would certainly be destroyed.

2014<http://www.iadb.org/int/DRP/esp/Red5/Documentos/BIDMexico11-02esp.pdf>. For the case of Argentina, see Ferraro, Agustín. “Una idea muy precaria: El nuevo servicio civil y los viejos designados políticos en Argentina”, *Latin American Research Review* 41 (2) 2006: 165-182.

In sum, the combination of a president who is supposed to be “leader of the Nation,” with the supreme administrative authority of the office, has been very destructive regarding the possible consolidation of strong modern states in Latin America. No country has succeeded in developing a wide-ranging national career civil service or in establishing independent agencies in government. Simply put, this kind of institutional designs directly conflict with supreme authority. In order to consolidate national state institutions in Latin America, the issue of supreme presidential authority will have to be discussed in deep and reformed one day.

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