

# Upending Impunity: Prosecuting Presidents in Contemporary Latin America

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## Abstract

In contemporary Latin America a third of all democratically-elected leaders are prosecuted for corruption after leaving office. This paper treats post-tenure presidential prosecutions as the flip side of a cooperative impunity equilibrium among political elites. Calling into question conventional wisdom that Latin American leaders simply use the law to punish opponents and reward friends, we draw on a standard infinitely repeated two-player reciprocity game (Calvert 1989; de Figueiredo 2002) to show that impunity obtains if parties remain sufficiently competitive and the benefits of impunity are sufficiently high. Having established the baseline conditions for post-tenure impunity to thrive, we then explore theoretically and empirically how sudden changes to these sustaining conditions can trigger political prosecutions. Drawing on a new original dataset, *Latin American Leaders on Trial* (LALOT), we show that two types of political shocks are robustly correlated with the prosecution of former Latin America presidents: irregular exits and the election of political outsiders. By contrast, we find no support for a host of competing plausible explanations, including whether the successor is from an opposition party, the courts enjoy independence, or previous leaders were especially corrupt.

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*“Para mis amigos: Todo. Para mis enemigos: La Ley”*  
(For my friends everything, for my enemies the law.)<sup>1</sup>

Uncovering spreadsheets replete with codenames like Dracula, Sauerkraut, and Viagra to hide the identities of politicians and other elites, in 2016 Brazilian investigators cracked open the vast network of illicit bribes paid, and carefully recorded, by the multinational construction firm Odebrecht.<sup>2</sup> What began as a local sting operation of money laundering in a Brazilian car wash has morphed into the largest corruption scandal in history involving a complex cartel of businesses, state-run entities, and politicians across Latin America. Political fall-out from the *Lava Jato* investigations has decimated Brazil’s political class, preventing the country’s now-jailed leading politician, Lula da Silva, from reclaiming the presidency in 2018, unseated Peru’s president Pablo Pedro Kuczynski earlier the same year, and resulted in scores of allegations against former leaders across the region, and around the globe.

Although unprecedented in scale, the Odebrecht scandal is hardly an anomaly. Discoveries of corruption reaching into the highest levels of government and demands to punish it are neither new, nor limited to Latin America. From ancient Athens, where public officials were routinely scrutinised by citizens for misdeeds both before and after leaving office (Elster 2004), to the corruption scandals that helped to bring down the Roman Republic (Watts 2018), to a multitude of modern “clean-hands” campaigns carried out in countries across Europe (Maravall 1999; Della Porta and Vannucci 2012) and Asia (Manion 2004; Jiang and Xu 2015), accounts of political corruption—and the drive to eradicate it—abound.

Within the political economy literature, important strands of formal and empirical scholarship have focused particularly on the relationship between political corruption and electoral accountability (e.g. Myerson 1993; Rose-Ackerman 1998; Ferraz and Finan 2008; Gingerich 2009; 2013; Winters and Weitz-Shapiro 2013; Eggers 2014).<sup>3</sup> Although lively debates persist about whether and why corruption is sanctioned at the ballot box, this paper takes a different—and less familiar—tack. Building on the observation that politicians’ fates do not simply end with the next election cycle, we shift our attention to pose questions about impunity and accountability for corruption once a leader has left office.

Given mounting concerns about the weaponization of law across democracies generally, such questions could not be more relevant. Indeed, in contemporary Latin America, which is the empirical focus of our research, we find that roughly a third of all democratically-elected leaders have been prosecuted for some type of corruption after stepping down from power. Are such prosecutions simply evidence of justice finally at work? Are they purely opportunistic ploys by

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<sup>1</sup> The quotation dates back to the 1930s but the exact source is debated. Some attributed to Peruvian president Oscar Benavides, others attributed to Brazilian president Getulio Vargas (Carey 2009).

<sup>2</sup> BBC. “The largest foreign bribery case in history.” April 22, 2018. <https://www.bbc.com/news/business-43825294>

<sup>3</sup> See Stephenson (2015) for an excellent overview.

political opponents? Or, is there a different strategic calculus by which successors decide to maintain impunity for some former leaders, while meting out selective accountability to others? And, if so, what drives this calculus?

To provide a theoretical framework for answering these questions, we draw on a standard infinitely repeated two-player reciprocity game (Calvert 1989; de Figueiredo 2002). In so doing, we treat post-tenure presidential prosecutions as the flip side of a cooperative impunity equilibrium among political elites. Despite a presidential successors' temptation—per the well-known Latin American aphorism cited above—to use the law to punish opponents and reward friends, we show that the level of political elites' cooperation required to sustain impunity and maintain complex corruption networks obtains as long as two sets of conditions are satisfied. First, both parties must be sufficiently competitive to credibly threaten the other with retaliation in the event of defection. Second, the benefits of cooperation must be sufficiently high to prevent the incumbent party from prosecuting its predecessor.

Having established the baseline conditions for post-tenure impunity to thrive, we then explore theoretically and empirically how sudden changes to these sustaining conditions can trigger political prosecutions. Drawing on a new original dataset, *Latin American Leaders on Trial* (LALOT), which we built off the backbone of *Archigos* (Chiozza and Goemans 2011), we show that two types of political shocks are robustly correlated with the prosecution of former Latin America presidents: irregular exits and election of political outsiders. By contrast, we find no support for a host of competing plausible explanations, including whether the successor is from an opposition party, the courts enjoy independence, or previous leaders were especially corrupt.

In developing a novel approach to impunity and accountability, our study contributes to several disparate literatures. First, and perhaps most obviously, we supply clear mechanisms for the empirical regularity that a leaders' exit and her fate are inextricably linked (Huntington 1991; Epperly 2013; Debs and Goemans 2010; Chiozza and Goemans 2011; Debs 2016). While our paper shares Debs' (2016) overall concern with the commitment problems that plague political turnover, our focus is on how differing conditions across democratically-elected administrations affect predecessors' post-tenure legal fates. Importantly, we posit that ongoing electoral competitiveness (i.e. predecessors have the capacity to return to power) can serve as one of the factors that permits impunity to flourish.

Second, our paper extends core insights from the transitional justice literature to a substantively new arena. Specifically, we build on Nalepa's (2010) seminal analysis of how the successor party's past history can influence decisions about lustrating predecessors. Applying the insight that leaders who have their own "skeletons in the closet" avoid prosecuting their predecessors, we propose that a similar dynamic is at play in bringing corruption charges against former presidents

in Latin America. Thus, political outsiders are uniquely positioned to end impunity for corruption not because they eschew the law, but because they have less to fear from it.

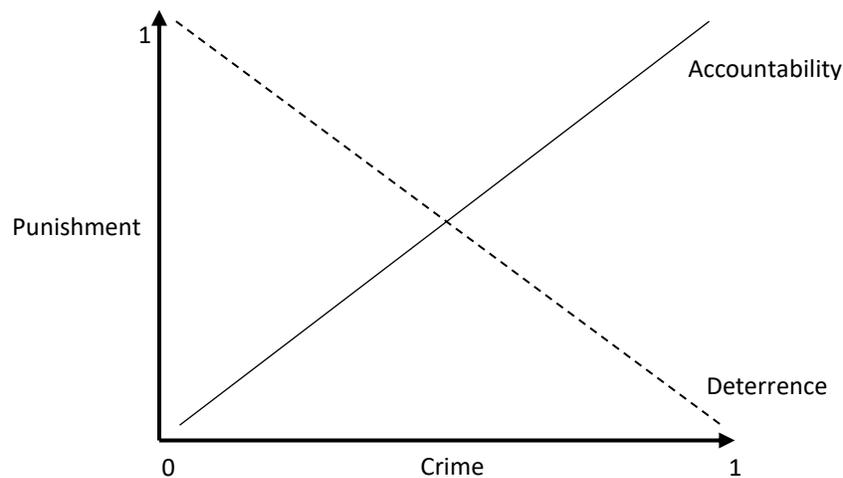
Finally, our article contributes to a burgeoning literature on forbearance and the rule of law. Whereas scholars of Latin America have long recognised the unevenness with which laws are applied in the region (Méndez, O'Donnell, and Pinheiro 1999; Brinks 2007; Levitsky and Murillo 2005), our article draws explicitly on Holland's (2016; 2017) foundational conceptual work on forbearance as a strategic choice made by incumbents to either enforce the law, or refrain from doing so. While Holland's substantive focus is on a specific type of forbearance involving redistribution to the urban poor, we instead examine incumbents' decision to grant impunity to other political elites. More generally, by treating impunity as a cooperative equilibrium that permits corruption to go unpunished across parties alternating in power, our paper illuminates the underside of inter-elite forbearance. Thus, we offer an important counterpoint to Levitsky and Ziblatt's (2018) sanguine approach to the role of elite forbearance in shoring up democracy and the rule of law.

The remainder of the paper unfolds as follows. Section 2 introduces the concepts of selective accountability and impunity, noting a fundamental mismatch between conventional wisdom about how such deviations from the rule of law purportedly operate in Latin America, and what the pattern of presidential prosecutions in the region actually looks like. To explain this gap, Section 3 sketches out a basic theoretical framework for illuminating how the logic of reciprocity operates, ensuring impunity across some administrations, and resulting in selective accountability in others. Sections 4 and 5 turn to the LALOT dataset, drawing on it to examine systematically the core hypotheses that emerge from the reciprocity game against several plausible alternatives. Section 6 summarizes our contributions and lays out directions for future research.

## **2. The Puzzle of Impunity**

From the *Lex Talionis* principle of “an eye for an eye” found in Exodus and early Roman law to Rawls' defence of criminal punishment in *The Theory of Justice*, the ideal that punishment should be proportionate to crime runs deep in Western thought. Building on basic insights from law and economics theory (Coase 1960; Becker 1968; Posner 2014), this section begins by conceptualizing impunity and witch-hunts as two deviations from standard proportional ideals of criminal justice. We then use the basic logic of deterrence to posit that, of the two deviations, impunity is likely to be a bigger problem in a context like Latin America. We conclude the section by identifying a core mismatch between how conventional wisdom about how selective legal accountability and impunity purportedly function in Latin America and the actual empirical patterns revealed by our data on presidential prosecutions.

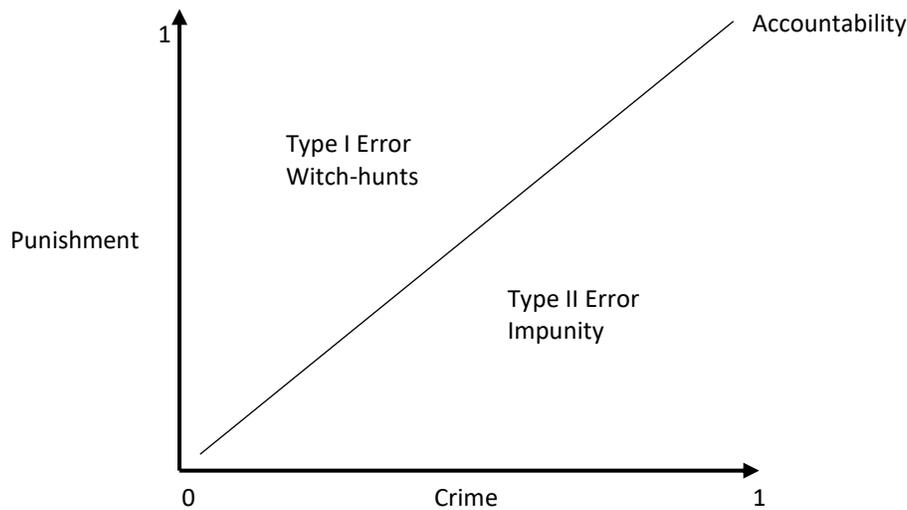
*Accountability, Deterrence, Impunity, and Witch-Hunts.* For most social scientists, proportionality between crime and punishment can be achieved in one of two ways: accountability or deterrence. Borrowing from Holland’s (2016) insightful discussion of sanctions and offenses as functions of each other, Figure 1 expresses these alternative arguments in basic terms of supply and demand theory. The solid line, which we label the accountability curve can be seen as the state’s response rate to different levels of compliance (i.e. less crime begets less punishment; more crime begets more punishment). The dashed line of the countervailing demand curve captures the alternative supposition that increasing the rate of enforcement (or threat thereof) effectively reduces criminal behaviors, such as corruption. We label this the deterrence curve.<sup>4</sup>



**Figure 1. Accountability and Deterrence**

Regardless of how proportionality between crime and punishment is achieved, threats to the ideal come from either over-enforcement or under-enforcement. Shown here in Figure 2 with respect to the accountability curve, the over-enforcement area above the line constitute Type 1 errors (cf. Gordon and Huber 2002), which we label “witch-hunts.” Type I errors are false positives. The basic supposition of “innocent until proven guilty,” which undergirds all modern criminal law systems in liberal democracies, is meant precisely to mitigate such errors. Modern examples of violations of this basic legal principle range from the Stalinist show trials and McCarthyism in the mid-20<sup>th</sup> century, to the recent jailing of journalists critical of the Erdogan government in Turkey, Putin’s abuse of Interpol to harass international human rights activists, or the weaponization of the law to persecute political opponents in Venezuela, as has occurred routinely under both Chavez’s and Maduro’s governments (Corrales 2015).

<sup>4</sup> From a social choice perspective, note that the uppermost right-hand point on the line (0,1) is not necessarily preferred. Following Becker’s seminal article (1968), optimality derives from setting punishments at a level that minimizes the social loss in income incurred from accurately detecting and convicting the crime, and the various costs to society of deploying punishments (Ibid 1968: 43).



**Figure 2. Witch-hunts and impunity**

Type II errors, by contrast, entail the failure to punish those who are guilty of committing crimes. Returning to Holland’s conceptual framework, such “mistakes” may be due to weak enforcement or to forbearance, which she defines as “intentional and revocable leniency toward violations of the law (2016: 233).” In the latter case, sanctions are contingent on the leaders’ whims or preferences, not on the level of offences. Accountability, in other words, becomes selective. This is precisely the meaning of the aphorism —“For my friends everything. For my enemies the law” —with which we began.

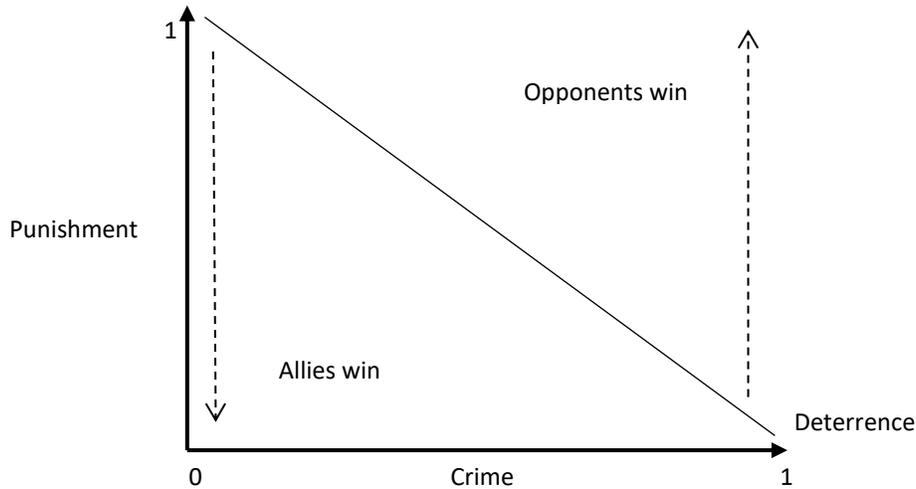
*Partial Observability.* Ultimately, of course, we can observe sanctions (i.e. prosecutions), but only imperfectly infer crimes. Because of this partial observability problem, we can clearly identify where an administration lands vertically within these figures, but not necessarily horizontally. Thus, for any given case, reasonable observers may disagree deeply about whether a lack of punishment is appropriate or constitutes impunity. Or, conversely, when prosecution does occur, whether it represents an attempt to ensure accountability, or amounts to a witch-hunt. Not surprisingly, politicians under investigation routinely seek to exploit precisely this sort of uncertainty. As the former Ecuadorian president Rafael Correa tweeted about Lula in the run-up to the 2018 Brazilian presidential election, “I learned today that you, too (...) are a victim of the judicialization of politics, where some judges want to disqualify us as political leaders.”<sup>5</sup>

Yet, even if the public, nor experts, can ever fully know the guilt or innocence of a particular administration, there are good logical reasons for drawing the inference that, within contemporary Latin American democracies, impunity is likely to be larger problem than witch-hunts. To see why,

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<sup>5</sup> Echoing a similar line of argument, president Trump repeatedly impugned the motives of the Mueller investigation, tweeting the words “witch-hunt” more than 175 times during his first two years in office.

consider more carefully the implications of the conventional wisdom that punishment hinges solely on one’s political relationship to the incumbent government. As Figure 3 illustrates, if this is true, then the deterrence line is flattened out; it is either perpendicular to the y axis collapsing to 0, if an ally is in power, or shifting up to 1, if an opponent is in power.



**Figure 3. Impunity and Selective Accountability**

In turn, once elites come to share the belief that sanctions and offenses are de-coupled, then it is easy to imagine that political friends and foes alike will be perversely incentivized to engage in corruption (Polinsky and Shavell 2000 cited in Gordon and Huber 2002). Obviously, for those who can expect sheer impunity from their allies, the cost of committing crimes while in office is negligible. And, for those who expect punishment from their enemies regardless of their actions, why take the sucker’s pay-off? Indeed, to the extent that “stealing for team” keeps one’s team in power (Gingerich 2013), then the incentives to commit corruption only mount. In the limit, if the system operates such they most politicians are indeed corrupt, then the underlying conceptual problem of partial observability narrows considerably. With both the rule of law and Type I errors greatly reduced, if not entirely eliminated, the key question thus simplifies to why incoming leaders punish corruption, or not.

*The Puzzle.* Here, however, the limits of conventional wisdom qua explanation also quickly become apparent. If prosecution rates merely reduce to the win-rate of opposition successors, as our popular saying implies, then prosecutions should be far more common than they already are. Since democracy returned to the region beginning in the mid-1980s elected leaders have been succeeded by their political opponents about 70% of the time. Yet, as we have already mentioned, prosecution rates of former presidents hover at a little more than 30%. Thus, although prosecuting a third of all former leaders may still seem quite high, clearly it is nowhere near the opposition win-rate. What, then, explains the gap between common understandings of impunity and accountability in contemporary Latin America, and the facts on the ground?

Below, we develop one set of answers based on the supposition that within democracies the decision to prosecute one's predecessor is rarely as simple as the "punish friends, reward allies" rule suggests. This is true in a static setting where an incoming government needs to assess the immediate costs and benefits of deploying selective accountability. But, it is arguably even more true in a dynamic setting, where today's successors are tomorrow's predecessors. The next section thus draws on a formal game theoretic model of reciprocity to illuminate why and when impunity will be sustained across administrations, as well as the conditions under which such perverse patterns of cooperation should shatter.

### 3. Impunity as a Reciprocity Game

*Players.* Before describing substantively the political calculus of impunity and selective accountability and deriving the formal equilibrium conditions for such outcomes, it is important to explain the core premise of our approach, which is that the decision to prosecute (or obstruct the prosecution of) former leaders rests, in fact, with the successor administration.

Although Latin America generally has a well-deserved reputation for weak, ineffective, and highly politicized courts, neither judicial nor prosecutorial dependence on the executive is spread evenly across the region, nor even within countries (e.g. see Domingo and Sieder 2001; Kapiszewski and Taylor 2008; Helmke and Rios-Figueroa 2011).<sup>6</sup> The relative autonomy exhibited by federal prosecutors and judges in Curitiba, Brazil differs enormously from the reputedly more politically-attuned electoral courts in Brazil, headed by the Supreme Electoral Tribunal (TSE), which narrowly voted to dismiss glaring charges of bribery against President Michel Temer during the final months of his interim president. And both Brazilian courts stand in sharp contrast to the current Venezuela Supreme Court, which, packed with Maduro's lackey judges, triggered a constitutional crisis in 2017 by seizing outright the powers of the opposition-led National Assembly.

Yet, because Latin America executives tend to enjoy so many levers of influence over the judiciary, variation across formal judicial institutions may do more to shape *how* presidents end up exerting influence over the prosecutorial process, not *whether* they can do so.<sup>7</sup> Whether by creating a

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<sup>6</sup> At the formal institutional level there is wide variation in the design of judicial systems across Latin America. Known as gatekeepers for all manner of corruption investigations, the first choke in the judicial system lies with the public prosecutor's office (PPO), which may officially reside outside of the executive branch (Rios-Figueroa 2012). Indeed, only two countries in the region (Mexico and Uruguay) follow the United States and locate the PPO directly within the executive branch. In all other countries, the PPO is located in the judiciary, or is formally autonomous. Likewise, there is considerable variation in the formal independence of judges both in terms of their insulation from the elected branches and within the judicial hierarchy.

<sup>7</sup> Evidence that such formal variation across criminal justice systems in the region neatly maps on to corruption is scant. As Rios Figueroa notes (2012), there is only suggestive evidence that either internal independence (i.e. the extent to which lower court judges are autonomous from peak courts) or the location of the PPO reduces corruption,

political climate that is broadly favorable or unfavorable to prosecuting certain types of crimes (Brinks 2007), ensuring that career promotions and transfers within the judicial hierarchy hinge on pro-governmental decisions (cf. Ramseyer and Rasmusen 1996), switching sensitive cases to less risky jurisdictions (Toharia 1974), outright bribing judicial officials (McMillan and Zoido 2004), removing non-compliant ones, and/or simply shutting down the courts altogether (Helmke 2017; Castagnola and Pérez-Liñan 2011), governments in Latin America and elsewhere have found any number of ways to put their fingers on the scales of justice for cases that matter.<sup>8</sup>

Consider Mexico, where impunity at the highest levels of power has long been rampant and presidents have been known to quash corruption investigations against allies. As of late 2017 not a single governmental official had been prosecuted in connection the Odebrecht scandal, despite considerable evidence of spectacular wrong-doing. Rather, in the months leading up to the 2018 elections the prosecutor investigating president Peña Nieto's inner circle was fired before charges could be brought against anyone in the administration<sup>9</sup> Even in Brazil, where President Bolsonaro won explicitly on an anti-corruption campaign platform and the judiciary is considered relatively autonomous, Bolsonaro's son, Senator Flavio Bolsonaro, was able to get a federal judge to suspend an investigation into suspicious cash deposits he had allegedly made into his aide's bank account just three weeks into the new presidential term.<sup>10</sup>

Latin America presidents, of course, can also do more than block proceedings against their foes. We have already mentioned contemporary Venezuela, where Maduros teetering government routinely relies on the Supreme Court to hamstring his opponents, such as barring opposition leader Juan Gaido from leaving the country. Bolivia provides another window into this practice. Within the first two months of taking office, all four former living presidents (Sanchez de Lozada, Quiroga, Rodriguez, Zamora, and Mesa) faced criminal charges ranging from corruption, to treason, to genocide. In Rodriguez's case, the Morales administration made political hay out of the charge that the former leader had conspired with the U.S. to undermine Bolivia's security by skirting the rules to de-commission missiles before Morales assumed the presidency. With Rodríguez sidelined, the government simply sat on the charges (Carey 2009).

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and no evidence that measures of formal external judicial independence (e.g. how the elected branches shape the courts through tenure and selections procedures) curbs corruption. Nor indeed, as we shall see below, is the prosecution of presidential corruption correlated systematically with extant measures of judicial independence.

<sup>8</sup> Even within American politics, scholars have shown that prosecutors' incentives are also heavily influenced by political considerations, such as partisanship (Gordon and Huber 2009) and appealing to the electorate by securing high conviction rates (Gordon and Huber 2009; also see Shotts and Wiseman 2009.) See Gordon and Huber (2009) for an excellent overview of the political economy literature on prosecution in American politics.

<sup>9</sup> The New York Times. June 11, 2018. "Mexico Could Press Bribery Charges. It Just Hasn't." <https://www.nytimes.com/2018/06/11/world/americas/mexico-odebrecht-investigation.html>

<sup>10</sup> The New York Times. January 24, 2019. "Bolsonaro Finds Anticorruption Vow Threatened by Cases Close to Home." <https://www.nytimes.com/2019/01/24/world/americas/jair-bolsonaro-davos.html>

The bottom line is that across Latin America presidents can and do deploy any number of tactics to start or stop judicial proceedings against their predecessors. Thus, at least as a starting point, it makes sense to model impunity and selective accountability as a strategic game within the executive branch.

*Stakes.* Political trials are always high stakes events. During the third wave of democratic transitions, incoming governments throughout Latin America and elsewhere had to make difficult, sometimes impossible, choices about whether to punish their predecessors for human rights abuses or grant military leaders amnesty (Huntington 1991; Nino 1998). To be sure, the question how incoming administrations should address human rights abuses is still highly relevant in certain countries (e.g. witness recent debates in Colombia over abuses committed under Uribe, or the 43 missing teachers college students in Mexico). But, increasingly, debates about prosecuting former leaders center around sanctioning corruption carried out by democratically-elected governments.

Without the threat of a coup deterring them, the political benefits of prosecuting one's political opponents appear straightforward. Accordingly, across the ideological spectrum politicians in Latin America have campaigned successfully on "draining the swamp." In 2015 the Guatemalan comedian Jimmy Morales' message during his run for the presidency was simple: "nor corrupt, nor a thief." In Mexico's 2018 presidential campaign, left-wing candidate López Obrador (AMLO) vowed that "the corrupt regime is coming to its end." That same year the Brazilian right-wing candidate, Jair Bolsonaro, menacingly quipped "During the dictatorship they should have shot 30,000 corrupt people, starting with the (then) President Henrique Fernando Cardoso, which would have been a great gain for the nation."<sup>11</sup> With the public's anger at political corruption erupting into mass protests across the region, prosecuting former leaders allows democratically elected successors to both curry public favor and potentially weaken political rivals.<sup>12</sup>

Yet, prosecuting one's predecessor may also carry a range of potential costs. First, ending impunity may make it harder for the successor party to govern. If corruption is the grease that makes the

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<sup>11</sup> France 24. September 30, 2018. "Brazil presidential candidate Bolsonaro's most controversial quotes."

<https://www.france24.com/en/20180930-brazil-presidential-candidate-bolsonaros-most-controversial-quotes>

<sup>12</sup> Of course, even if elite corruption is widely scorned (Winters and Weitz-Shapiro 2013), research has shown that it is often second to voters' concerns about basic security and the economy, or ideology (cf. Eggers 2014). As the popular Brazilian saying goes, "rouba mas faz" (he steals but he gets things done.) What is more, citizens can quickly tire of such probes and may even come to view efforts to reveal past corruption in a negative or cynical light. Initial revelations of corruption drew millions of Brazilians to the streets to protest elite impunity, but over the course of the Lavo Jato's sprawling investigations the percentage of the people viewing the effort as impartial has plummeted from 74% in June of 2017 down to 46% in August 2018. In Mexico recent revelations during the U.S. trial of the drug king pin, El Chapo, alleged that already scandal laden former president Peña Nieto had received over a million dollars in bribes. Yet, the reaction of most Mexican has been muted. As one woman put, "the names of politicians turn up in trial and nothing happens...why should I care?" AMLO's quick vow to pardon Peña Nieto after taking office may have raised a few eyebrows, but the new president's own frugality, as evidenced in everything from cutting the salaries of public employees, to selling the presidential jet, to refusing all but the barest presidential security, has earned him huge marks among average Mexican voters. Mandates to end corruption thus may admit responses other than prosecuting one's predecessors.

system go, sanctioning it potentially undermines it one's own prospects for effectively governing (Geddes 1991; Weitz-Shapiro 2012; Weyland 1998; Della Porta and Vanucci 2012; also see Stephenson (2015) for an overview). Worse still, allies of the former leader may make it hard for incoming governments to assume office, or even remain in power. Following AMLO's surprising promise to pardon Peña Nieto, rumors flew that the two had struck a pact. As one expert speculated, "probably Peña Nieto offered him a peaceful election, a peaceful transition of power. It seems very clear there was a negotiation between the two of them."<sup>13</sup> In the extreme, congressional allies of imprisoned leaders have threatened to bring successors down unless their leaders are pardoned. The ill-fated pact between PPK and Kenji Fujimori in Peru to release his father in exchange for blocking PPK's impeachment is a recent example of just this sort of deal-making.<sup>14</sup>

Prosecution also risks spill-over and tit-for-tat escalation. In Brazil, the PT's judicial reforms adopted the very plea bargaining measures that prosecutors ultimately deployed to bring down the entire political establishment, including the PT itself. Even if incumbents sometimes grossly miscalculate their own vulnerability, in general they should be reluctant to launch corruption investigations the more likely they are to get swept into the fray. More long term, Latin American presidents are no doubt aware that prosecuting one's opponents can ultimately help to seal their own post-tenure fates. If impunity establishes a normative framework that permits parties to "handover" illicit networks when one party replaces another (see Della Porta and Vannucci 2012), then prosecution threatens to instantiate an alternative norm of revenge, whereby parties seek to exact maximum damage against one another. This sort of tit-for-tat escalation has a long and sordid history in the region. As Carey (2009) recounts, in the 1870s the same generals who had Bolivian President Villarreal thrown out the window from the presidential palace and hung his body from a lamppost, were themselves shortly hung from nearby lampposts.

In sum, once forbearance is broken by one party, the other party faces incentives to retaliate if and when it has an opportunity. This is the essence of constitutional hardball (Fishkin and Pozen 2018), which is currently playing out in democracies around the world (Levitsky and Ziblatt 2018).<sup>15</sup> In the contemporary Latin America context, it means that incumbents who punish their predecessors

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<sup>13</sup> The Globe and Mail. December 4, 2018. "Mexico's new president moves to end his own immunity – but seems to shield his predecessor." <https://www.theglobeandmail.com/world/article-mexicos-new-president-moves-to-end-his-own-immunity-but-seems-to/>

<sup>14</sup> The New York Times. December 28, 2017. "Peru's Pardon of Fujimori Condemned by U.N. Rights Experts." <https://www.nytimes.com/2017/12/28/world/americas/peru-fujimori-pardon.html?login=email&auth=login-email>. Variants of this script have also played out in Ecuador under Guítez and Nicaragua under Bolaños (Helmke 2017).

<sup>15</sup> Trump's vow to open investigations into his accusers in the days following his self-proclaimed exoneration by the Mueller report offers a recent and vivid example of how this sort of revenge mentality takes hold (The Washington Post. "Trump and his allies plan to use Barr's summary of Mueller report as a cudgel against critics." March 25, 2019. [https://www.washingtonpost.com/politics/trump-and-his-allies-plan-to-use-barrs-summary-of-mueller-report-as-a-cudgel-against-critics/2019/03/25/a22a52f4-4f25-11e9-a3f7-78b7525a8d5f\\_story.html?utm\\_term=.5161a8450a88](https://www.washingtonpost.com/politics/trump-and-his-allies-plan-to-use-barrs-summary-of-mueller-report-as-a-cudgel-against-critics/2019/03/25/a22a52f4-4f25-11e9-a3f7-78b7525a8d5f_story.html?utm_term=.5161a8450a88)).

must not only factor in the short-run implications we have laid out above, but also weigh the longer term odds that their own actions will come back to haunt them.

*The Impunity Equilibrium.* This section draws on a standard reciprocity game to explore systematically the successors' calculus for impunity. By identifying the conditions that sustain this sort of perverse cooperation, we can then clarify the different pathways that lead to accountability and prosecution.

According to the baseline model (de Figueiredo Jr. 2002; Calvert 1989), two parties are engaged in an infinitely repeated game and compete for the control of the executive branch for periods  $t \in \{0, 1, 2, \dots\}$ . In each period, party A wins the presidency with probability  $\gamma \in (0, 1)$  and party B wins with probability  $1 - \gamma$ . In each period, the winning party  $i$  chooses from the action set  $A_{it} = \{P, NP\}$ , where P is prosecute the ex-president and NP is not prosecute.

If the party in power prosecutes its predecessor, then the payoff to the incumbent is  $u_{it} = 1$  and the payoff to the losing party is  $u_{jt} = 0$ . If, however, the party in power does not prosecute the former leader, then the payoffs for both are  $(u_{At}, u_{Bt}) = (\beta, \beta)$  where  $\beta \in [0.5, 1)$ .

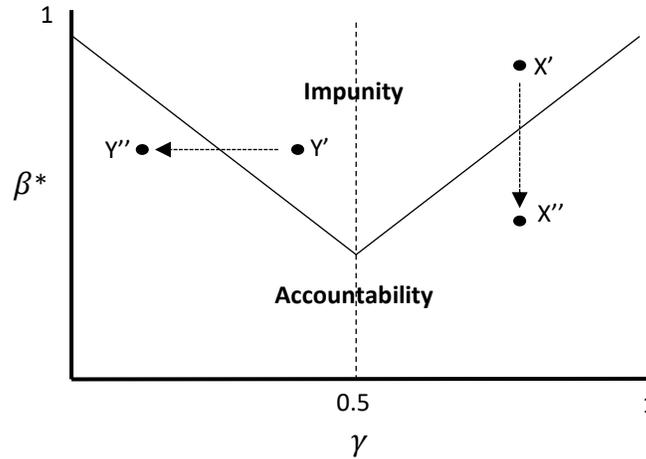
Consistent with the discussion in the previous section, the pay-offs to prosecuting one's predecessors may be conceptualized in any number of ways, ranging from the more strategic goals of weakening a political opponent, and/or earning popularity points with a public hungry for punishing corruption, to the sincere desire to root out corruption. Likewise, the relative value of impunity,  $\beta$ , for party leaders is substantively flexible and can be thought of in different ways, such as the stream of corruption benefits to both parties, and/or the ability to shield oneself or one's allies from scrutiny.

As in the standard analysis of the baseline model, we focus on the cooperative equilibrium, which we label here as the Impunity Equilibrium. We assume that players share a common discount factor,  $\delta \in (0, 1)$  and maximize their expected utility over the course of the game:  $EU_i = \sum_{t=0}^{\infty} \delta^t u_{it}$  where  $i = \{A, B\}$ . Restricting our attention to SPE in grim-trigger strategies, the model thus yields two well-known results:

1. For every  $\delta, \gamma$ , if  $\beta$  is sufficiently close to 1, impunity equilibrium exists.
2. For any given  $\delta$ , as  $\gamma \rightarrow 0.5$ , the range of  $\beta$  values for which equilibrium exist gets larger.

As in de Figueiredo's (2002) original model, these results can be depicted in Figure 4 below, in which the y axis represents  $\beta$  or the payoffs to impunity and the x axis represents  $\gamma$ , or the degree of competitiveness. The central implication is that as parties become more likely to alternate in power (i.e.  $\gamma$  approaches 0.5) the zone of impunity expands. Conversely, as  $\gamma$  moves towards 1,

the  $\beta$  payoff needs to rise sufficiently for party A to credibly commit to cooperation with party B (and vice versa).



**Figure 4. Impunity Equilibrium**

Thus, there are two pathways that effectively shift leaders out of one zone and into the other. The first is through shifts in  $\beta$ , as captured by  $X'$  and  $X''$ . In this particular case, party A is electorally dominant (e.g.  $\gamma$  is closer to 1), but the initial benefits of prosecution (or costs of impunity) represented by  $X'$  are negligible (i.e.  $\beta$  is close to 1). For example, the public may be focused on issues other than corruption, such as security, or an economic crisis. Or, the leader of party A may be concerned that she or her allies will likely be implicated in the event that a corruption investigation against her predecessor unfolds. However, in the event that  $\beta$  falls,  $X'$  shifts to  $X''$ , the conditions for impunity are no longer in place.

The second route out of the impunity zone is depicted by shifts from  $Y'$  to  $Y''$ . Here, the period payoffs to cooperating ( $\beta$ ) remain constant, but the electoral prospects shift to party B's advantage ( $\gamma$  moves toward 0). Thus, with party A unable to credibly threaten retaliation, party B will no longer be incentivized to cooperate.

*Exits and Outsiders.* With this basic theoretical framework in place, we are now poised to explore how two sorts of political “shocks” can serve to move successors away from exercising impunity toward their predecessors. The first involves irregular presidential exits. Although military coups have become largely irrelevant in Latin America, forced presidential removals at the hands of protesters or congress are now relatively common across the region, constituting what regional experts have dubbed the “new” form of political instability (Carey 2003; Valenzuela 2004; Pérez-Liñán 2007; Hochstetler and Edwards 2009; Helmke 2010; 2017). From the standpoint of our theory, this sort of instability should affect both  $\beta$  and  $\gamma$  in entirely straightforward ways, such that

leaders who are forced out of office early will be more likely than their counterparts to be subsequently prosecuted.

First, and perhaps most obviously, because such leaders tend to be hugely unpopular upon their exit and often find themselves connected to the very scandals over which they may subsequently be prosecuted, the option of forbearance for their successor becomes extremely costly (i.e.  $\beta$  falls). Thus, even if a successor government wanted to protect its predecessor — as surely some vice presidents do — the public's demand for accountability in such contexts may simply be too high to ignore. At the same time, irregular presidential exits can also trigger a permanent, or at least large negative shift in  $\gamma$  for the outgoing party. With the predecessor party's electoral prospects severely diminished, their ability to threaten retaliation declines, and the second pathway toward their successors imposing accountability is paved.

Consider the impeachment and subsequent prosecution of former Venezuelan President Carlos Andres Perez on corruption charges during the 1990s, which broke open the long-standing pattern of impunity that had sustained the partidocracia between the AD and COPEI since 1958 (Coppedge 2005 :291; Karl 1997).<sup>16</sup> From the standpoint of our theory, the Pérez saga highlights not only the costs that the parties would have had to bear in order to ignore the former leader's crimes, but also how his removal altered  $\gamma$ . Although at least critic of Pérez worried at the time that the relative leniency of the court sentence handed down would allow Pérez to re-enter politics<sup>17</sup>, his impeachment cemented the collapse of the Punto Fijo system (Coppedge 2005: 308). The share of the vote for the AD and the COPEI fell precipitously in the next elections and, by the end of the decade, Chavismo was born.

A related, but distinct, political shock comes from the election of political outsiders.<sup>18</sup> For more than a decade, Latin Americanists have sought to explain the causes and consequences of the rise of anti-establishment presidents throughout the region (Linz 1994; Seligson 2002; Benton 2005; Samuels and Shugart 2010; Carreras 2012). Because outsider leaders tend to eschew traditional parties and operate as personalistic—albeit often incompetent—leaders, they are quite rightly viewed as dangerous for liberal democracy and the rule of law.

From our perspective, however, outsiders also have an upside, at least in one sense. As in the transitional justice literature, politicians from new parties can be relatively confident that trials of their predecessors will not also end up revealing their own misdeeds (Nalepa 2010). Precisely

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<sup>16</sup> Despite the country's vast oil resources, several decades of sluggish growth followed by hugely unpopular neoliberal policies pursued by the Pérez administration triggered the 1992 coup attempt, which launched Hugo Chavez's political career. Fourteen months later, with Chavez in prison and voters seething over revelations of political corruption, Perez was impeached and removed from office. Expelled from his own party and put under house arrest for allegedly misusing a secret \$17 million dollar fund, Pérez was then convicted in 1996.

<sup>17</sup> The New York Times. May 31, 1996. "Ex-President of Venezuela Sentenced to 28 Months in Graft Case." <https://www.nytimes.com/1996/05/31/world/ex-president-of-venezuela-sentenced-to-28-months-in-graft-case.html>

<sup>18</sup> Note that the correlation between *Exit* and *Current Outsider* is negligible (0.0215).

because they have not been part of the political establishment, they have fewer political skeletons, at least initially.<sup>19</sup> In terms of our theory,  $\beta$  thus shifts downward under outsiders, moving parties out of the impunity zone. If this is right, outsiders are more prone to pursue accountability against their predecessors not solely in spite of the law; but, rather because they have little to fear from the law.

### 3. Research Design and Alternative Hypotheses

Having derived the two core hypotheses that exits and outsiders should increase the likelihood of prosecution, we now turn to empirics. The *Latin American Leaders on Trial* (LALOT), which we constructed, is a cross-sectional time series dataset that is built off of *Archigos* (Goemans et al. 2009). The data cover up to twenty post-tenure years for 119 leaders across 18 Latin America between 1980 and 2018.<sup>20</sup> Focusing exclusively on a leader's post-tenure legal fates,<sup>21</sup> we submitted each former leader to a combination of internet searches using words like "trial, investigation, prosecution, immunity, jail, and conviction" across an array of sources, including Google, Wikipedia, the Historical New York Times database, and Latin American Weekly Reports.<sup>22</sup> Our main dependent variable, *Prosecuted*, is a dummy variable coded as 1 for the post-tenure year in which a leader is prosecuted and 0 otherwise. *Conviction* is a subset of the *Prosecuted* variable which is coded as 1 for all cases in which a leader that is prosecuted is eventually convicted, and 0 otherwise.<sup>23</sup>

*Exit* is based on an updated version of Helmke's (2017) data on forced presidential exits, which include impeachments and forced resignations that shorten a president's term. During this time periods, irregular exits occur for slightly less than 20% (20 out of 119) of Latin American presidents. *Current Outsider*, is based on a fourfold coding taken from Carreras (2012), who codes presidents as outsiders if they meet two criteria 1) they have not had a previous career in politics or public administration when their campaign starts and/or 2) they participate in elections as independents or in association with new political parties (2012:1456).<sup>24</sup> The second measure *Party Age* is self-explanatory, and provides another means of capturing the same idea.

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<sup>19</sup> Scholars have found that outsiders, in fact, ultimately engage in more corruption (Carreras 2012).

<sup>20</sup> Our dataset does not include leaders that died in office, and stops with their death if it occurs within the twenty years post-tenure that we have coded. However, because political assassinations are a rarity in Latin America during this time period, it is unlikely that this is biasing our results in any way, with leaders dying rather than going on trial. Death due to natural causes is exogenous to the political and institutional processes discussed in this work.

<sup>21</sup> As we note below, roughly 20 percent of democratically-elected presidents were forced out of office early and replaced with non-elected leaders. Because these interim leaders serve according to the constitutional line of succession, we include them as well.

<sup>22</sup> If a leader serves non-consecutive terms that ended between 1980 and the present, the leader will appear twice.

<sup>23</sup> Of the 47 prosecutions contained in the data, there are 14 convictions. Part of this is due to right-censoring, which is especially important in a context where trials often take years to resolve. Another potential cause is that once leaders are under investigation they opt for exile.

<sup>24</sup> In addition, he also includes mavericks, which he defines as politicians who were members of existing parties, but who compete with a newly created party and amateurs, who are politicians that are new to politics but compete in traditional parties.

We also consider several alternative explanations. The first is that corruption alone explains prosecution. If this is right, then the political factors contributing to impunity that we have identified should not matter; corruption levels under the previous administration should explain for why leaders are being held accountable. To begin to address this alternative possibility, we draw on V-Dem's annual executive corruption scores to create an average corruption score for each past administration.<sup>25</sup> Although such measures are only proxies for a leader's guilt or innocence, they provide a tractable way of helping to rule out this rival explanation. Moreover, because prior to 2014 experts are coding the level of corruption for earlier administrations after ex post prosecutions for corruption have already taken place, the corruption data are biased against our story and favor this alternative explanation.

Next, we control for the alternative hypothesis associated with conventional understandings of impunity that prosecutions are solely a function of whether a leader is replaced by the opposition. On this account there is a political calculus, but it is driven entirely by the fact that a successor is from a different party than the predecessor. Thus, we include a dummy variable for whether the successor is from the same party as the predecessor.

We also include updated Staton-Linzer measures of judicial independence to take into account the aforementioned reality that not all Latin American governments are equally unconstrained in their ability to grant impunity to their predecessors.<sup>26</sup> Specifically, we exploit the time series nature of our data to examine the alternative hypothesis that positive changes in levels of judicial independence between administrations, *JI\_Difference*, should boost prosecutions. The logic here harkens back to the basic deterrence story. If courts are consistently independent, then, all else equal, prosecutions should be negatively correlated with judicial independence (Epperly 2013). But, if courts become increasingly independent under the successor, then judicial independence should serve to mute impunity and the relationship between measures of judicial change and prosecution should become positive.

Finally, we include standard measures of inflation, growth, and GDP per capita taken from World Bank to account for the possibility that economic factors may affect the successors' political calculus. For example, some scholars have argued that anti-corruption campaigns may be exploited

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<sup>25</sup> With a mean of 0.51, the variable Executive Corruption ranges from scores of 0.03, under Jorge Batlle's administration in Uruguay from 2000 to 2005, to 0.90, which has characterized the three governments of President Alejandro Maldonado in Guatemala (2015-2016), President Pedro Pablo Kuczynski in Peru (2016-2018), and President Andrés Rodríguez Pedotti in Paraguay (1989-1993).

<sup>26</sup> Drawing on eight indicators of judicial independence, Linzer and Staton use a dynamic bounded graded response IRT model to measure latent judicial independence across countries and over time. Here, we use their data to construct the following measures. Past Judicial Independence averages the annual Linzer-Staton score for each year that the post-tenure leader was in power. Thus, each former leader receives one score. Judicial Independence assigns the Linzer-Staton scores for each given post-tenure year, thus representing the level of judicial independence under successor governments. Note that there is considerable variation in the data, ranging from 0.23 to 0.91 for the former and 0.29 to 0.93 for the latter. Yet, 75% of the time, the judicial independence scores are less than 0.54.

by incumbents to divert attention away from poor economic performance (Jiang and Xu 2015). In terms of our model, this jibes roughly with our foregoing discussion of Perez’s prosecution in Venezuela whereby economic hardship helped to drive down the value of  $\beta$ . Yet, in terms of our model, we might equally imagine that economic crises could, at least temporarily, divert the public’s attention away from punishing corruption, thus lowering the costs to successors for permitting impunity. If the former mechanism predominates, then we expect growth to be negative and inflation to be positive; if the latter is right, then the opposite correlations should emerge.

## Empirical Model and Results

To examine the hypotheses that emerge from the former model and control for alternative explanations, we estimate a series of event history models. Because our data are structured such that post-tenure leaders drop out of the dataset once they are prosecuted, we employ standard discrete-time event history analysis using the logit function. In other words, we estimate the conditional probability that a post-tenure leader will be prosecuted given that the leader has not already been prosecuted. Formally, consider the discrete-time hazard which is generally defined as follows:

$$h_{it} = \Pr(y_{it} = 1 \mid y_{is} = 0, s < t),$$

where  $y$  denotes the dependent variable and  $y_{it} = 1$  means the occurrence of the event for individual  $i$  at time  $t$ .<sup>27</sup> Thus,  $\Pr(y_{it} = 1)$  is leader  $i$ ’s probability of being prosecuted at time  $t$  in our model.

Thus, our core models take the following form:

$$\text{logit}[h_{it}] = \log\left(\frac{h_{it}}{1-h_{it}}\right) = \alpha(t) + \beta'x_{it},$$

where  $\alpha(t)$  is a function of duration of time and  $x_{it}$  is a vector of independent and control variables.<sup>28</sup> Following Carter and Signorino (2010), we deploy cubic polynomial time variables which best captures duration dependency in the binary model. In order to account for potential heteroskedasticity, we cluster standard errors by administration.<sup>29</sup>

Our theoretical model suggests that a leader’s post tenure legal fate is shaped both by how they leave office and by whom they are replaced. Specifically, and broadly in line with both the regime transition and transitional justice literatures, we have hypothesised that a leader who suffers an irregular presidential removal and/or gets replaced by a political outsider is at greater risk for

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<sup>27</sup> The stated condition  $y_{is} = 0$  means that the event (i.e., prosecution) has not occurred at time  $s$  (i.e., before  $t$ ).

<sup>28</sup> Independent and control variables can be either time-variant or time-invariant.

<sup>29</sup> Our results are also robust to clustering standard errors at the country level.

prosecution. To assess these two hypotheses, we begin by estimating three multivariate models, with and without the cubic polynomial of time, and the interaction between timing and *Exit*. We then subsequently subject our results to four robustness checks involving changing the temporal window, restricting the dependent variable, fixed effects, and alternative measures.

	Model 1 (Base Model)	Model 2 (Timing)	Model 3 (Interaction)
Exit	2.138*** (0.564)	1.861*** (0.437)	3.195*** (0.760)
Current Outsider	0.555** (0.228)	0.477*** (0.181)	0.413** (0.178)
Past corruption	0.661 (1.305)	0.411 (1.065)	0.229 (1.079)
Opposition	-0.697 (0.447)	-0.698 (0.436)	-0.652 (0.448)
JI <sup>†</sup> difference	-5.562** (2.705)	-11.64*** (3.698)	-11.45*** (3.647)
Inflation	-0.000436 (0.000307)	-0.000867** (0.000349)	-0.000954** (0.000421)
GDPPC	-0.000128 (0.000112)	-0.0000772 (0.0000758)	-0.0000671 (0.0000732)
Growth	-0.0170 (0.0477)	0.0102 (0.0528)	0.0106 (0.0519)
$t \times \text{Exit}$			-0.537* (0.300)
$t$		-1.021** (0.471)	-0.273*** (0.0929)
$t^2$		0.107 (0.0817)	
$t^3$		-0.00420 (0.00349)	
Constant	-3.630*** (1.238)	-1.209 (1.181)	-2.188** (0.955)
N	849	849	849
Wald $\chi^2$	28.25	75.20	71.65

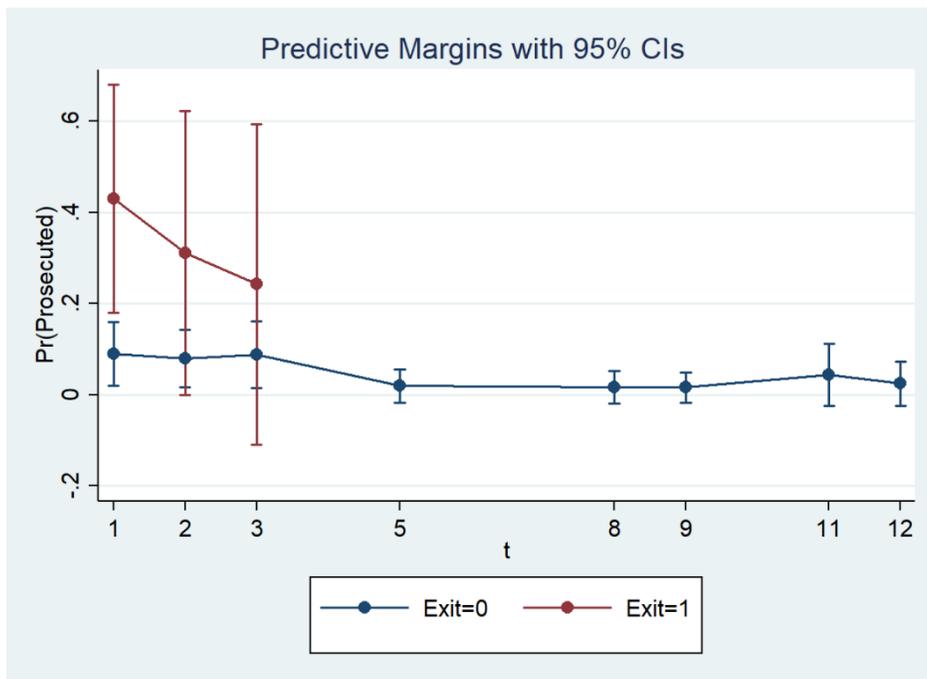
†JI: Judicial Independence. Standard errors clustered by administration in parentheses.

\*p<0.1, \*\*p<0.05, \*\*\*p<0.01

**Table 1. Exits, Outsiders, and Post-tenure Prosecutions**

The results across the first three models (Table 1) clearly bear out our core hypotheses. In the first model, the coefficients for *Exit* and *Current Outsider* are positive and significant. Substantively, the effects of both variables are sizable. Being replaced by an outsider increases the risk of prosecution from 2% to 11%. Being removed from power early raises the risk from 2% to 15%.

Models 2 and 3, which take into effect timing, return similar results. That the coefficient for *t* is negative and significant illustrates that most post-tenure prosecutions tend to happen sooner rather than later. In terms of our theory, this is precisely what we would expect if successors are responding to sudden shifts. Model 3 explores the interaction between *Exit* and timing. The preliminary graph below indicates that the main effects of timing are concentrated among leaders who exit irregularly. Although the confidence intervals are quite large, the figure clearly reveals that the likelihood of an ousted leader being prosecuted decreases sharply within the first three years.



**Figure 5. Interaction Effects of Exit and Timing**

Models 4-9 contained in Table 2 subject our core results to a series of robustness checks. The coefficient for *Exit* remains positive and significant across all specifications. And, with the sole exception of the fixed effects model, the coefficient for *Outsider* remains positive and significant. Also in line with our hypothesis, the alternative measure for whether a politician is an outsider, *Party Age*, is both negative and significant.

	Model 4 (3-year-window)	Model 5 (Linear Regression with FE)	Model 6 (DV = Conviction)	Model 7 (Alternative Measures)
Exit	2.215*** (0.481)	0.469*** (0.113)	2.158*** (0.774)	1.735*** (0.464)
Outsider	0.549** (0.232)	0.0385 (0.0381)	0.917** (0.362)	
Party Age				-0.00969* (0.00501)
Past corruption	0.859 (1.306)	0.0795 (0.299)	1.137 (2.030)	0.440 (1.234)
Opposition	-0.529 (0.522)	-0.0134 (0.0156)	-1.420* (0.729)	-0.374 (0.403)
Jl† difference	-19.57*** (5.064)	0.0148 (0.132)	-14.00* (7.157)	
Current JI				-0.0504 (1.794)
Inflation	-0.00117** (0.000518)	-0.0000124 (0.00000903)	-0.000444 (0.000336)	-0.000788* (0.000456)
GDPPC	-0.0000225 (0.0000860)	-0.00000285 (0.0000118)	-0.0000258 (0.000104)	-0.0000399 (0.0000733)
Growth	0.0102 (0.0739)	0.00110 (0.00179)	0.0359 (0.0672)	-0.00920 (0.0550)
$t$	-0.411 (1.986)		-1.453 (1.101)	-1.203*** (0.439)
$t^2$	0.0741 (0.500)		0.202 (0.192)	0.146** (0.0735)
$t^3$			-0.00907 (0.00853)	-0.00580* (0.00314)
Constant	-2.891 (2.414)	-0.0647 (0.181)	-3.177 (2.775)	-0.302 (1.698)
N	255	849	826	1036
Wald $\chi^2$	49.74		34.49	62.57
Adjusted $R^2$		0.5225		

†JI: Judicial Independence. Standard errors clustered by administration in parentheses.

\*p<0.1, \*\*p<0.05, \*\*\*p<0.01

**Table 2. Robustness Checks**

Meanwhile, none of the three rival hypotheses fares well. The coefficient for *Corruption* never comes close for attaining significance, indicating that, at least by this proxy measure, leader type

adds little to our explanation of prosecution. To the extent that the coefficients for *Opposition* and *JL\_Difference* have any effect on the likelihood of prosecution, both of the signs are in the opposite direction suggested by conventional impunity and rule of law understandings.

Finally, consider the economic variables, which we have suggested may serve as an additional way of capturing  $\beta$ . The fact that only the coefficient for *Inflation* achieves significance—and that the direction is positive—is roughly consistent with the second of the two mechanisms we posit. Still, the fragility of the results prevent us from putting much stock in any particular interpretation. For example, the null results in the other models could indicate that the countervailing effects we identify are cancelling each other out; or that the economy is simply unrelated to prosecutions.

## 6. Future Directions

To explain the vicissitudes of democratically-elected leaders' post-tenure legal fates, this paper has explored both theoretically and empirically the implications of a basic reciprocity game. Having established a baseline account of impunity and selective accountability, opportunities for further extensions abound.

On the empirical side, the electoral conditions that undermine reciprocity could and should be subjected to a more nuanced test. Precisely because irregular exits are such dramatic —albeit hardly rare —events, they represent a “most likely” test of our theory. In other words, if our logic is right and such spectacular shifts in electoral fortunes do not break the impunity equilibrium, then nothing will. But, what about presidents who manage to complete their terms, but leave office with little to no popularity, and no future political prospects for themselves or their party? In these cases, the impunity logic we have sketched out should also be compromised, thus increasing the likelihood of post-tenure prosecutions.

On the theoretical side, the formal model may also be modified or extended in any number of ways. Most obviously, relaxing the two-party assumption would provide a closer match to most Latin American party systems. Reassuring, our initial analysis of an n-player version of the reciprocity game (see appendix for proof) suggests that the core results remain essentially the same.

A more challenging next step would be to move from the infinitely repeated game presented here toward a dynamic game that models how  $\gamma$  and  $\beta$  change endogenously. Analyzing such a model is beyond the scope of this paper, but clearly taps in to important remaining questions about the dynamics of political prosecutions, such as how successors' strategies change if prosecution itself raises (or lowers) either the benefits of impunity; or, as Lula's prosecution clearly did during the 2018 Brazilian presidential race, endogenously shifts the electoral fortunes of the parties. Such a model would also be able to account for how the successor's calculus is affected as she faces

competing pressures to keep “weaker” opponents in the race in order to lower the entry of potentially stronger rivals.

Finally, while our theoretical framework is entirely consistent with the global fact that the vast majority of prosecutions (nearly 75%) occur within the first few years of a leader leaving office, what explains the remaining instances in which a leader is prosecuted well after they leave office? Rather than assume that such cases are simply anomalous, or that they hew to an entirely different logic, our hunch is that some portion of these “under-predicted” cases are also connected to our theoretical story, albeit indirectly. Although more qualitative research is needed, it seems that, at least in the Brazilian, Peruvian, and Bolivian experiences, breaking the impunity equilibrium for one’s immediate predecessor has also end up breaking it for previous predecessors. If this is right, then prosecutions that initially appear as oddities from a temporal perspective effectively constitute spillovers that cluster around the “trigger” trials related to our original mechanism. Simply put, if impunity collapses for one president, it may well then collapse for others. Like dominos, former leaders begin to fall, one right after the other.

## Appendix

Proof:

In any impunity equilibrium, the following must be satisfied:

$$(1) EU_A(NP) = \frac{\beta\delta}{(1-\delta)} \geq EU_A(P) = 1 + \frac{\delta\gamma}{(1-\delta)}$$
$$(2) EU_B(NP) = \frac{\beta\delta}{(1-\delta)} \geq EU_B(P) = 1 + \frac{(1-\gamma)\delta}{(1-\delta)}$$

(1) & (2) will hold  $\Leftrightarrow \beta \geq \beta^* = \max\{1 - \delta + \delta\gamma, 1 - \delta\gamma\}$  and  $\beta^*$  is minimized for  $\gamma = 0.5$

Our results remain essentially the same if we extend the results to multiparty case, which would more closely resemble the nature of political competition in Latin America. Again, an impunity equilibrium is more likely as there is a more even distribution of electoral power among competing political parties. This is given by Result 3 below.

Result 3 (Multiparty competition): Suppose instead, there are  $n$  parties competing for presidency in each period, with the probability of winning the election is exogenous and is denoted as  $\gamma_i \forall i \in \{1, \dots, n\}$  such that  $\sum_{i=1}^n \gamma_i = 1$ . For a given  $\delta, \gamma_1, \dots, \gamma_n$ , impunity equilibrium will exist if and only if  $\beta \geq 1 - \delta + \delta \max\{\gamma_1, \dots, \gamma_n\}$ .

The proof for this result is derived in the same way as for Result 2.

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