

# Upending Impunity: Explaining Post-Tenure Presidential Prosecutions in Latin America

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## Abstract

In contemporary Latin America roughly one-third of all democratically-elected leaders are prosecuted by their successors for corruption after leaving office. Drawing on a simple reciprocity game, we argue that upending impunity depends more on the predecessors' capacity for retaliation than on conventional rule of law considerations, or on the successors' desire to use the law opportunistically to weed out future political competitors. We then exploit an original dataset on extended post-tenure fates to show that presidential prosecutions in Latin America correlate with two types of political shocks: irregular presidential exits and the election of political outsiders. Such relationships remain robust whether the successor is from an opposition party, the courts enjoy independence, or previous leaders were especially corrupt. To explore whether the correlates of selective accountability that we uncover are causal, we instrument for domestic political shocks with an index of international commodity prices and U.S. interest rates.

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## Introduction

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

No one is above the law. This is one of the central tenets of liberal democracy. Yet, as the well-known quote above neatly captures, most Latin American citizens have long suspected that laws have been applied neither equally, nor fairly, particularly when it comes to politicians. In the wake of the Panama Papers, and the ever-widening Operação Lava Jato (Operation Car Wash) and Odebrecht scandals, the public’s anger about the impunity of political elites across the region has become palpable, driving mass protests and culminating in watershed elections.

Perhaps no group has felt the consequences of this hemispheric drive to “drain the swamp” more than former Latin American leaders. Over the last year alone, former presidents from Argentina, Brazil, Bolivia, Ecuador, Colombia, Guatemala, Panama, and Peru have been put under investigation, on trial, forced into exile, or imprisoned; in early 2019 one former Peruvian President, Alan García, put a gun to his head and committed suicide to avoid such a fate.

Yet, post-tenure prosecutions are hardly new to the region, nor limited to it. By our count over the last three decades nearly one-third of all democratically-elected leaders in Latin America have been put on trial for corruption and other misdeeds after leaving office. Whether we harken back to Cicero’s ancient Rome and the famous trial of Gaius Verres, or consider the array of elected ex-leaders who are currently facing prosecution in countries as different as France, South Africa, and Armenia, this sort of ex post accountability for corruption goes well beyond recent events in Latin America.

Whereas much attention within the discipline has focused on the logic of transitional justice and the prosecution of former dictators for human rights abuses in the region and elsewhere (Elster 2004; Nalepa 2010; Nino 1998), we know far less about why, when, and which democratically-elected leaders are put on trial by their successors after leaving power. In the absence of systematic analyses, two conflicting popular accounts vie with

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

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one another. On one side is the view that such trials necessarily represent a step toward the rule of law. According to this view, impunity has long been a scourge that must be overcome, even at the expense of ushering in anti-corruption demagogues and undermining political institutions. In his thoughtful reflection on recent anti-corruption campaigns in Latin America, Jorge Castañeda concludes:

There appears to be no choice but to place any attempt to deal legally, democratically, and effectively with the lack of punishment above other considerations: institution-building, national sovereignty, political stability, short-term economic performance.<sup>2</sup>

Yet, even assuming that punishing corruption is worth these trade-offs, understanding just why drives to end impunity seemingly enjoy more success in some countries—say present-day Peru, or even Guatemala, than in other countries where corruption appears equally endemic, such as Mexico, remains unanswered. If the emerging rule of law account were the complete story, then shouldn't the pattern of post-tenure prosecutions correlate positively with extant measures of corruption and/or judicial independence? That they do not—a finding that we repeatedly confirm below—raises important doubts about the extent to which such trials are being driven by purely legal, as opposed to political considerations.

Critics of such trials, of course, would hardly be surprised to learn that neither corruption nor judicial independence are driving factors determining which leaders end up being prosecuted. In this view (a view most often expressed by the presidential targets of investigation themselves and their supporters), ex post trials are tantamount to witch-hunts, deployed by successors to eliminate rivals.

Such fears are not without merit. Consider the recent conviction of Brazil's former president, Luiz Inácio Lula da Silva, which critics have alleged all but secured the victory of the far-right candidate Jair Bolsonaro in 2018. Newly released private text messages between the former federal judge (now Minister of Justice under Bolsonaro) who convicted

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<sup>2</sup>Castañeda, Jorge G. 2018. "Has Latin America's Crusade against Corruption Gone Too Far?" *The New York Times*, April 12, 2018

Lula, and Brazilian federal prosecutors strategizing how to best target the former leader and then front-runner for the 2018 presidential election have only fueled allegations about a “lawfare” conspiracy to weaken the PT in Brazil, and the Left more generally in Latin America.<sup>3</sup>

Yet, even if certain high-profile cases suggests that such concerns are warranted, we contend that overarching pattern of post-tenure prosecutions in Latin America is not fully consistent with the standard witch-hunt argument, any more than it is with the strict rule of law accounts. For although we, like the public, can never know with certainty the true innocence or guilt of any former leader —Lula or otherwise — there are good reasons to suspect that many of the charges of corruption faced by former leaders are not simply manufactured. Public polling and expert opinion alike consistently point to a deeply embedded culture of corruption that permeates all but a handful of Latin American countries and their governments.<sup>4</sup> Tellingly, defenders of former presidents often complain that even if some sort of corruption occurred, other leaders have gotten off scot-free for the same behavior. The sting of injustice then lies not in certain leaders being falsely accused, but in the unequal application of the law.

If this is correct, then our original question still remains: What drives some successors to end impunity for their predecessors, and others to sustain it? If accountability is, in a word, selective, on what basis is it meted out? Drawing on a standard infinitely repeated two-player reciprocity game (Calvert 1989; de Figueiredo 2002), we offer one set of answers to this question by treating 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 impunity will be sustained and trials prevented either if predecessors and their parties retain the ability to retaliate,

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<sup>3</sup>Among the voices questioning the motivations underlying the recent anti-corruption drives sweeping Latin America, Pope Francis warned that such prosecutions had “mined emerging political projects and enabled the systemic violation of social rights.” Londoño, Ernesto and Leticia Casado. 2019. “Leaked Messages Raise Fairness Questions in Brazil Corruption Inquiry.” *The New York Times*, June 10, 2019.

<sup>4</sup>Pring, Coralie. 2019. “People and corruption: Latin America and the Caribbean.” *Transparency International*;  
Gabriel, Julia. 2019. “Interested, Educated and Alienated: Who Says Corruption is the Most Serious Problem Facing their Country?” *Insights Series*.

and/or successors and their co-partisans are themselves vulnerable to immediate or longer run reprisals.

Having established the baseline conditions for post-tenure impunity to thrive, we then explore 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 correlated with the prosecution of former Latin America presidents: irregular exits and the election of political outsiders. Such correlations are robust across a range of alternative specifications and measures. By contrast, we find little to no consistent support for a host of competing plausible explanations, including whether the successor is from an opposition party, the courts enjoy independence, or predecessors were especially corrupt.

To explore whether the correlations we uncover between the successor’s exposure to retaliation and her decision to prosecute her predecessor are causal, we draw on the “good economic times” (GET) index on commodity prices and international interest rates developed by Campello and Zucco Jr. (2015), who find that among the subset of Latin American countries, which are heavily dependent on the world economy, international commodity prices and U.S. interest rates strongly affect presidential electoral fates. Because the fluctuation of such international economic variables is entirely exogenous, for our purposes, it is highly implausible that such factors shape post-tenure prosecutions except through the mechanism of the predecessor party’s political strength—and hence the party’s ability to return and retaliate. That said, we explore the exclusion restriction by performing a placebo test of our instrument on the subset of Latin American countries whose economies are less dependent on the vicissitudes of the world economy.

In developing a new theoretical framework for understanding impunity and legal accountability, our study speaks to several disparate literatures at once. First and foremost, our article contributes to a burgeoning research agenda 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 (Brinks 2007; Levitsky and Murillo 2005; Méndez, O’Donnell,

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and Pinheiro 1999), our article is most closely related to 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. Whereas 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 also 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.

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 elites, but because they have less to fear from them.

Third, we supply a novel set of micro-foundations for the empirical regularity that a leaders' exit and her fate are inextricably linked (Chiozza and Goemans 2011; Debs 2016; Debs and Goemans 2010; Epperly 2013; Huntington 1991). 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, and perhaps counterintuitively, 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.

The remainder of the paper unfolds as follows. Section 2 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

3 and 4 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 5 deploys an instrumental variable approach to re-examine our core hypotheses in a causal framework. Section 6 summarizes our contributions and lays out directions for future research.

## Impunity as a Reciprocity Game

*The Players.* Before describing 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 Ríos-Figueroa 2011](#)). The relative autonomy exhibited by federal prosecutors and judges in Curitiba, Brazil differs enormously from the reputedly more politically-attuned federal 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. Whether by creating a 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](#)

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and Rasmussen 1995), switching sensitive cases to less risky jurisdictions (Toharia 1974), bribing judicial officials (McMillan and Zoido 2004), removing non-compliant ones, and/or simply shutting down the courts altogether (Castagnola and Pérez-Linán 2011; Helmke 2017), governments in Latin America and elsewhere have found any number of ways to put their fingers on the scales of justice, particularly for cases that matter.

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>5</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 Flávio 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.

Latin America presidents, of course, can also do more than block proceedings against their foes. We have already mentioned contemporary Venezuela, where Maduro's teetering government routinely relies on the Supreme Court to hamstring his opponents, such as barring opposition leader Juan Guaidó from leaving the country. Bolivia provides another window into this practice. Within the first two months of Evo Morales taking office, all four former living presidents (Sánchez de Lozada, Quiroga, Rodríguez, Paz Zamora, and Mesa) faced criminal charges ranging from corruption, to treason, to genocide. In Rodríguez'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 side-lined, the government simply sat on the charges (Carey 2009).

The bottom line is that across Latin America, presidents can and do deploy any

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<sup>5</sup>Ahmed, Azam. 2018. "Mexico Could Press Bribery Charges. It Just Hasn't." *The New York Times*, June 11, 2018.



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.

*The Stakes.* Political trials are 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, at least initially, more straightforward. Answering public demands for accountability, we have seen that 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>6</sup>

Yet, mandates to end corruption may also admit responses other than prosecuting one's predecessors. 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

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<sup>6</sup>"Brazil presidential candidate Bolsonaro's most controversial quotes." *France 24*, September 30, 2018.

voters. Indeed, although corruption played a huge role in the presidential campaign, at least some voters seem too cynical or resigned to push for ex-post accountability. For instance, 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?”

Nor is it clear that the demand to punish corruption always outweighs other factors for voters. Even if elite corruption is widely scorned, 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.) Indeed, 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.<sup>7</sup>

Indeed, even if the public is consistently demanding retribution, prosecuting one’s predecessor may impose a range of other costs for the successor. First, ending impunity may make it harder for the successor party to govern. If corruption is the grease that makes the system go, sanctioning it potentially undermines one’s own prospects for effectively governing ([Geddes 1991](#), [Weitz-Shapiro 2012](#), [Weyland 1998](#), [Della Porta and Vannucci 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>8</sup> In the extreme, congressional allies of imprisoned leaders have threatened to bring successors down unless their leaders are pardoned. The ill-fated

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<sup>7</sup>Marshall, Euan. 2018. “Why has support for Operation Car Wash reached an all-time low?” *The Brazil Report*, September 5, 2018.

<sup>8</sup>Nolen, Stephanie. 2018. “Mexico’s new president moves to end his own immunity – but seems to shield his predecessor.” *The Globe and Mail*, December 4, 2018.

pact between Pedro Pablo Kuczynski and Kenji Fujimori in Peru to release the latter's father in exchange for blocking PPK's impeachment is a recent example of just this sort of deal-making.<sup>9</sup>

Finally, prosecuting the previous government also risks retaliation. 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. More generally, 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>10</sup> In the contemporary Latin America context, it means that incumbents who punish their predecessors 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.* To bring these considerations into a unified and parsimonious framework, 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.

Consider a baseline model ([de Figueiredo Jr. 2002](#); [Calvert 1989](#)) in which two parties are engaged in an infinitely repeated game and compete for control of the executive branch for periods  $t \in 0, 1, 2, \dots$ . In each period, party A wins the presidency with probability  $\gamma \in$

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<sup>9</sup>Zarate, Andrea and Marcelo Rochabrún. 2017. "Peru's Pardon of Fujimori Condemned by U.N. Rights Experts." *The New York Times*, December 28, 2017.

<sup>10</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 ([Parker, Ashley and Josh Dawsey. 2019.](#) "Trump and his allies plan to use Barr's summary of Mueller report as a cudgel against critics." *The Washington Post*, March 25, 2019).

(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  $\beta \in [0.5, 1)$ .

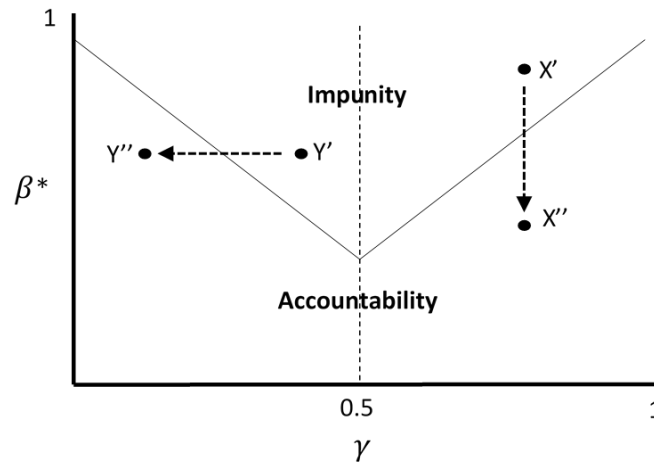
Consistent with the discussion in the previous section, the pay-offs to prosecuting one's predecessors may be conceptualized in any number of ways, ranging from the more strategic goals of weakening a political opponent, and/or earning popularity points with a public hungry for punishing corruption, 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 1: 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 general 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; Helmke 2010, 2017; Hochstetler and Edwards 2009;

Pérez-Liñán 2007; Valenzuela 2004). 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 vulnerable to prosecution than are their counterparts who step down normally.

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, thus paving the second pathway ex-post legal accountability.

Consider the impeachment and subsequent prosecution of former Venezuelan President Carlos Andres Pérez 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; Karl 1997).<sup>11</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  $\gamma$ . Pérez’s impeachment cemented the collapse of the Punto Fijo system (Coppedge 2005), with the share of the vote for the AD and the COPEI falling precipitously in the next elections until at the end of the decade, when Chavismo was born.

A related, but distinct, political shock comes from the election of political outsiders. 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 (Benton 2005; Carreras 2012; Linz and Valenzuela 1994; Samuels and Shugart 2010; Seligson 2002).

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<sup>11</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 Chávez’s political career. Fourteen months later, with Chávez in prison and voters seething over revelations of political corruption, Pérez 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.

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 because they have not been part of the political establishment, they have fewer political skeletons, at least initially. 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 in spite of the law; but, rather because they have little to fear from the law.

## The Correlates of Selective Accountability

Having developed a new theory of post-tenure prosecutions based on a logic of selective accountability, we now turn to empirical patterns and correlations. The *Latin American Leaders on Trial* (LALOT), which we constructed, is a cross-sectional time-series dataset that is built off of *Archigos* (Goemans, Gleditsch, and Chiozza 2009). The data cover all 119 democratically-elected leaders who served in office and stepped down across 18 Latin America between 1980 and 2018. Focusing exclusively on a leader’s post-tenure legal fates, 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>12</sup> Our main dependent variable, *Prosecuted*, is a dummy variable coded as 1 for the post-tenure year in which a leader is first prosecuted and 0 otherwise.

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<sup>12</sup>If a leader serves non-consecutive terms that ended between 1980 and the present, the leader will appear twice.

Table 1: Latin American Leaders on Trial, 1980-2018

No.	Country	Leader	Pros. Year	Presid. Term	Corruption
1	ARG	Fernandez de Kirchner	2015	2007-2015	Yes
2	ARG	Menem	2001	1989-1999	Yes
3	ARG	de la Rúa	2003	1999-2001	Yes
4	BOL	Mesa*	2006	2003-2005	No
5	BOL	Rodríguez*	2006	2005-2006	No
6	BOL	Quiroga	2010	2001-2002	No
7	BOL	Sanchez de Lozada	2004	1993-1997; 2002-2003	No
8	BRA	Lula da Silva*	2016	2003-2010	Yes
9	BRA	Mello	1992	1990-1992	Yes
10	BRA	Rousseff	2016	2011-2016	Yes
11	COL	Uribe	2018	2002-2010	No
12	CRI	Arias	2018	1986-1990; 2006-2010	No
13	CRI	Calderon	2004	1990-1994	Yes
14	CRI	Figueres	2000	1994-1998	No
15	CRI	Monge	1993	1982-1986	Yes
16	CRI	Rodríguez	2004	1998-2002	Yes
17	DOM	Blanco	1987	1982-1986	Yes
18	ECU	Alarcon	1999	1997-1998	Yes
19	ECU	Bucaram	1997	1996-1997	Yes
20	ECU	Febres Cordero	1990	1984-1988	Yes
21	ECU	Noboa	2003	2000-2003	Yes
22	ECU	Gutierrez	2005	2003-2005	Yes
23	ECU	Mahuad	2000	1998-2000	Yes
24	ECU	Rafael Correa*	2018	2007-2017	Yes
25	GTM	Portillo	2005	2000-2004	Yes
26	GTM	Colom	2018	2008-2012	Yes
27	GTM	Espina	1997	1993-1993	No
28	GTM	Pérez Molina	2015	2012-2015	Yes
29	GTM	Serrano	1993	1991-1993	Yes
30	HND	Callejas	2005	1990-1994	Yes
31	HND	Reina	1998	1994-1998	Yes
32	NIC	Aleman	2002	1997-2002	Yes
33	PAN	Balladares	2009	1994-1999	Yes
34	PAN	Martinelli*	2015	2009-2014	Yes
35	PAN	Moscoso	2004	1999-2004	Yes
36	PER	Toledo*	2016	2001-2006	Yes
37	PER	Fujimori	2001	1990-2000	Yes
38	PER	García*	1991	2006-2011	Yes
39	PER	Humala*	2016	2011-2016	Yes
40	PRY	Cubas Grau	1999	1998-1999	No
41	PRY	Gonzalez Macchi	2004	1999-2003	Yes
42	PRY	Wasmosy	2002	1993-1998	Yes
43	SAL	Flores	2014	1999-2004	Yes
44	SAL	Funes*	2016	2009-2014	Yes
45	SAL	Saca	2013	2004-2009	Yes
46	VEN	Pérez	1993	1989-1993	Yes
47	VEN	Lusinchi	1990	1984-1989	Yes



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Table 1 provides a list all 47 democratically-elected former presidents who were prosecuted after leaving power during this period. Several features of the data stand out. First, post-tenure prosecutions are spread quite broadly across the region. With the exceptions of Chile, Uruguay, and Mexico, over the last three and half decades all Latin American countries have put at least one elected former president on trial; indeed, most have put multiple former presidents on trial. Second, given the timing of the third wave transitions within the region, it is hardly surprising that most of the trials do not occur with any regularity until the later 1990s and early 2000s, once there is supply of former democratically elected leaders with which successors must contend.<sup>13</sup> Third, most of the “first” trials that we pick up—fully 34 of the 47—occur within the first three years of the leader leaving office. This is certainly consistent with, though hardly dispositive, of our hypothesis that in the main such trials are being driven by political factors surrounding the leaders’ exit. Fourth and finally, note that the vast majority of the trials (37 of 47, or almost 80%) involve at least one or more charges of corruption.

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<sup>13</sup>That said, the data clearly show that the recent Odebrecht scandal is not the main source of prosecution; indeed, many of the leaders who are currently under investigation as of 2019 (this are indicated with an asterisk above their names) had already been prosecuted prior to recent revelations, thus entering (and exiting) our dataset prior to the Odebrecht scandal.

Table 2: Descriptive Statistics for Logistic Regression

Main Correlates	Source	Mean	Std. Deviation	Min	Max	Expected Effects
Exit	Helmke	0.092	0.289	0	1	+
Vote Share Change	Murillo	-0.134	0.147	-0.68	0.187	-
Party Age	LALOT	45.617	43.302	0	168	-
Current Outsider	Carreras	1.151	0.602	1	4	+

Controls	Source	Mean	St. Dev.	Min	Max	Expected Effects
Predecessor Corruption	V-Dem	0.485	0.255	0.031	0.887	+
Judicial Independence	Linzer & Staton	0.506	0.176	0.182	0.926	+/-
Judicial Change	Linzer & Staton	-0.014	0.089	-0.311	-0.339	+/-
Opposition	LALOT	0.752	0.432	0	1	+
Inflation	World Bank	58.722	531.054	-26.3	12,338.66	+/-
Growth	World Bank	1.835	3.399	-14.195	16.226	+/-
GDP pc	World Bank	5,841.66	3,785.11	1,063.44	15,059.53	+/-

Table 2 provides descriptive statistics and their hypothesized effects on the likelihood of post-tenure prosecution for each of our independent variables and several controls. Although we can never capture directly successors’ assessments about the risks of trying their predecessors, certain observable features of the political environment —how the predecessor leaves power and whether she is replaced by a political outsider— can serve as useful proxies for gauging the risks and rewards of post-tenure prosecution. As we argued in the previous section, predecessors who are forced out of power early offer a “most likely” test of the idea that dramatic changes to both the parameters of competition and the public thirst for accountability should tip the scales away from impunity and toward prosecution. Drawing on an updated version of Helmke’s 2017 data on forced presidential exits, Table 2 shows that irregular exits occur for slightly less than 20% (21 out of 119) of Latin American presidents.

Of course, because irregular exits are themselves often driven by political calculations among the opposition (Helmke 2017; Pérez-Liñán 2007), which may be shaped by the very scandals for which former presidents are removed from office, it is important to make sure that we are evaluating our triggering mechanisms. Thus, as an alternative means to identify systematically those former presidents whose parties have the lowest chances of returning to power, we construct a second proxy measure, *Vote Share Change*. Based on data from Murillo and Visconti (2017), *Vote Share Change* takes the difference between the predecessor party’s vote share at  $t$  (the election in which the president stepped down)

minus  $t - 1$  (the predecessor's vote share in the last election that they won).<sup>14</sup> The data range from  $-0.68$   $-0.19$  with a mean of  $-0.14$ , indicating that, on average, the vote share of the predecessor's party tends to decline by about 14 percentage points. Consistent with the idea that politically uncompetitive ex-presidents will face a higher likelihood of post-tenure prosecution, we expect changes in the predecessor party's vote share to be negatively correlated with post-tenure prosecution.

Turning to measures of the successor's own potential for immediate legal exposure, we construct the following two alternative measures. The first, *Party Age* counts the number of years that the successor's party has existed. The basic logic is simply that if older parties have had more chances to engage in past corruption, they also run a greater risk of getting swept into the fray of any investigation and, therefore, should be less willing than successors from newer parties to prosecute their predecessors. *Current Outsider*, our second and more precise measure of this same idea, 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.<sup>15</sup> Following our theoretical story, we expect political outsiders to be more inclined to prosecute their predecessors than are other successors.

To account for alternative explanations related to the rule of law, we also include the following control variables. The first, *Predecessor Corruption*, is intended to address the hypothesis that prosecutions are driven simply by the predecessor's guilt. Although clearly we can never know the true guilt or innocence of any former president, extant measures of executive corruption gathered by V-Dem offer one plausible proxy.<sup>16</sup> If the rule of law hypothesis is correct and corruption either drives prosecutions, or drives both

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<sup>14</sup>We have filled in data where it is missing by using Wikipedia and in cases where a candidate was not fielded in the subsequent election, we code the difference as the negative value of the previous election incumbent party vote share.

<sup>15</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.

<sup>16</sup>With a mean of 0.48, the variable *Predecessor 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).

irregular exits and prosecutions, we would expect *Predecessor Corruption* coefficients to be positive and significant.<sup>17</sup>

To further plumb a rule of law account of post-tenure prosecutions, we also include two different judicial independence measures, both of which are derived from updated judicial independence scores constructed by [Linzer and Staton \(2015\)](#).<sup>18</sup> The first measure, *Judicial Independence*, simply takes the annual Linzer-Staton judicial independence score for each post-tenure year for each leader in a given country. Using just this score, however, it is hard to say whether the rule of law account would predict a negative or positive effect on post-tenure trials. On the one hand, if independent courts protect predecessors against proverbial witch-hunts, then we might expect that judicial independence under the successor would be negatively correlated with post-tenure prosecutions (cf. [Epperly 2013](#)). If, on the other hand, impunity is the larger problem, then we would anticipate that judicial independence might have a positive effect on the likelihood of post-tenure prosecution.

To begin to adjudicate this ambiguity, we created a second measure, *Judicial Change*, that takes the difference between the average levels of judicial independence under the predecessor and successor governments. The logic here harkens back to a basic deterrence story whereby if the courts were not strong enough to deter corruption at time  $t-1$  (under the predecessors' administration), then presumably increasing judicial independence in the interim should produce more prosecutions at time  $t$  under a successor government.

We include standard measures of *Inflation*, *Growth*, and *GDP per capita* taken from World Bank to account for the alternative possibility that economic factors independently drive successors' political calculus over whether or not to target their predecessors. For example, in their work on anti-corruption campaigns in China, scholars have argued that incumbents use trials to divert attention away from poor economic performance ([Jiang](#)

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<sup>17</sup>Notice that prior to 2014, the year that V-Dem measures began to be coded, levels of corruption for all earlier administrations would have been assessed after several of the prosecutions for corruption had already taken place. Thus, to the extent that the V-Dem data are biased because of this, they are biased in the favor of this rule of law explanation and thus against our strategic reciprocity model.

<sup>18</sup>Drawing on eight indicators of judicial independence, [Linzer and Staton \(2015\)](#) use a dynamic bounded graded response IRT model to measure latent judicial independence across countries and over time.

and Xu 2015). In terms of our model, this jibes roughly with our foregoing discussion of Pérez’s prosecution in Venezuela whereby economic hardship helped to drive down the value of  $\beta$ . Yet, cast 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.

Finally, to address the basic question suggested in the opening aphorism of whether prosecutions are simply a function of the former leader being a friend or foe of her successor, we include a dummy variable for whether the successor is from the same party as the predecessor.

## Logistic Results

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. Thus, 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>19</sup> Thus,  $\Pr(y_{it} = 1)$  is leader  $i$ ’s probability of being prosecuted at time  $t$  in our model.

The event history model takes the following form:

$$\text{logit}[h_{it}] = \log\left(\frac{h_{it}}{1 - h_{it}}\right) = \alpha D_{it} + \beta x_{it},$$

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<sup>19</sup>The stated condition  $y_{is} = 0$  means that the event (i.e., prosecution) has not occurred at time  $s$  (i.e., before  $t$ ).

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where  $D_{it}$  is a vector specifying the time dependency and  $x_{it}$  is a vector of independent and control variables. Following Carter and Signorino (2010), in Models 2 through 5, we deploy cubic polynomial time variables which best captures duration dependency in the binary model. In Model 3, we account for potential heteroscedasticity by clustering standard errors by administration.<sup>20</sup>

Models 4 and 5 examine whether our results are robust to controlling for country fixed effects and random effects, respectively. Because nearly three-quarters of the prosecutions occur within the first three years of the leader leaving office, Model 6 re-analyzes Model 5 on a 3-year window. Finally, Model 7 uses the same specification as Model 6 but employs the various alternative measures of our key variables described above. Specifically, we substitute *Vote Share Change* for *Exit*, *Current Outsider* for *Party Age*, and *Judicial Change* for *Judicial Independence*.

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<sup>20</sup>Our results are also robust to clustering standard errors at the country level.

Table 3: Exits, Outsiders, and Post-tenure Prosecutions

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Sample	Full	Cluster SE	F.E.	R.E.	3yr-RE	3yr-Proxies
Exit	1.680*** (0.415)	1.551*** (0.445)	1.550*** (0.474)	0.118*** (0.024)	0.094*** (0.021)	0.277*** (0.057)	
Vote Share Change							-4.333*** (1.669)
Party Age	-0.010* (0.005)	-0.009* (0.005)	-0.009* (0.005)	0.000 (0.000)	-0.000* (0.000)	-0.001* (0.000)	
Current Outsider							0.840*** (0.302)
Judicial Independence	0.954 (1.608)	-0.219 (1.724)	-0.219 (1.853)	-0.112 (0.112)	0.018 (0.048)	-0.048 (0.157)	
Judicial Change							-21.672*** (6.654)
Predecessor Corruption	1.364 (1.179)	0.832 (1.224)	0.832 (1.316)	0.276*** (0.075)	0.039 (0.040)	0.055 (0.120)	2.499 (1.578)
Opposition	-0.605 (0.414)	-0.361 (0.417)	-0.361 (0.402)	-0.012 (0.015)	-0.014 (0.014)	-0.019 (0.037)	-1.114* (0.659)
Inflation	-0.000 (0.001)	-0.001 (0.001)	-0.001 (0.000)	-0.000* (0.000)	-0.000* (0.000)	-0.000* (0.000)	-0.001** (0.000)
GDP	-0.147 (0.320)	-0.071 (0.337)	-0.071 (0.361)	0.058 (0.037)	-0.003 (0.011)	0.006 (0.033)	0.255 (0.519)
Growth	-0.038 (0.052)		-0.000 (0.054)	-0.001 (0.002)	-0.001 (0.002)	0.000 (0.005)	0.032 (0.074)
t		-1.146*** (0.436)	-1.145*** (0.437)	-0.040*** (0.010)	-0.041*** (0.010)		
t2		0.139* (0.074)	0.139* (0.073)	0.004*** (0.001)	0.004*** (0.001)		
t3		-0.006 (0.003)	-0.006* (0.003)	-0.000*** (0.000)	-0.000*** (0.000)		
Constant	-2.616 (3.367)	-0.163 (3.546)	-0.163 (3.990)	-0.450 (0.346)	0.167 (0.115)	0.062 (0.341)	-6.880 (5.044)
Observations	997	997	997	997	997	287	220
Fixed Effects				Yes			
Random Effects					Yes	Yes	Yes

Standard errors in parentheses

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

Starting with irregular exits, the results are wholly consistent with our expectation that impunity breaks down with the exiting presidential party's future prospects for returning to power. In each and every one of the first six models reported in Table 1 the coefficients for *Exit* are negative and significant at the .01 level, controlling for corruption and other observable confounding factors. In Model 2, holding all of the other independent variables at their means, we calculate that a leader who completes her term has about a 10% chance of being prosecuted after stepping down. If, however, the leader is removed from office early, the probability of prosecutions jumps to 55%. Other specifications reduce, but hardly eliminate, the marginal effects of irregular exits. In the random effects model estimated in column 6, for example, the likelihood of post-tenure prosecution shifts from around 3% after a normal exit to roughly 13% after a forced exit.

According to our theory, the predecessors' inability to return to office (not how they leave office, *per se*) drives post-tenure prosecutions. Consistent with this broader mechanism, in Model 7 the coefficient for the predecessor party's *Vote Share Change* is both negative and significant. Holding all other variables at their means, if we consider the effects of *Vote Share Change* one standard deviation above the mean (i.e., the predecessor's party is losing a higher proportion of votes) versus one standard deviation below the mean, the likelihood of prosecution moves from roughly 15 percent to 5 percent. In sum, both measures of the predecessor's political vulnerability (exits and vote share loss) support the logic of selective accountability.

The results also generally accord with our hypothesis that the successor administration's own potential exposure to the legal risk correlates negatively with their decision to prosecute her predecessors. In four of the six models, the coefficients for *Party Age* are in the expected direction, negative, and significant. Substantively, the effects are strongest when we limit the data to the first three years post-tenure as opposed to the full twenty-year window. In Model 6, for example, the probability of prosecution falls from roughly 12% among successors from the newest parties to just around 1% among successors coming from the oldest parties. The results are even stronger under the conceptually more refined measure of *Current Outsider*. Specifically, the probability of prosecution is



roughly 8% among party insiders and jumps to 33% among political outsiders.

Meanwhile, none of the other correlates that we include to control for observable alternative hypotheses fare particularly well. The coefficients for *Predecessor Corruption* are in the direction expected by standard rule of law accounts, but the variable only ever achieves significance in the fixed effects model. In all of the models, whether the successor is from a different party (*Opposition*) or their courts are independent (*Judicial Independence*) appear to make no difference. The coefficient for the alternative institutional rule of law measure used in Model 7, *Judicial Change*, is significant, but runs in exactly the opposite direction suggested by the more optimistic vision that such trials represent the rule of law taking hold. Rather, and more in line with [Epperly \(2013\)](#), in contemporary Latin America any gains to judicial independence under the successor seem to reduce, rather than enhance, the prospect of post-tenure prosecutions. Finally, among the three basic economic indicators for the successor government, only the coefficient for *Inflation* achieves significance. That higher inflation under the successor seems to lower the likelihood of post-tenure prosecution is roughly consistent with the second of the two mechanisms we posit: that is, economic crises may displace the demand for prosecution rather than accentuate it. Still, the fragility of the results prevent us from putting much stock in any particular interpretation about the effects of inflation.

## Instrumental Variable Estimates

Notwithstanding the robustness of the correlations that we uncover, observational analyses such as ours always run the risk of omitted variable bias. In this particular exercise, the concern that corruption or other unobservable characteristics of the leader, may be driving both irregular exits, vote share loss, and prosecutions is especially compelling. To address these concerns, in this section we thus re-estimate our core models using an instrumental variable approach.

Our instrument, the “*good economic times*” (GET) index is taken from [Campello and Zucco Jr. \(2015\)](#) and captures annual international commodity prices and U.S. interest rates for all eighteen Latin American countries in our dataset between 1982 and 2011.

As these authors demonstrate, both commodity prices and U.S. interest rates are wholly exogenous to any domestic variables, yet they strongly affect exposed Latin American economies. And, among those countries that are highly dependent on the world economy, (what they dub as “low-savings-commodity-exporting” or LSCE countries ) presidents are credited politically when commodity prices rise and interest rates fall and blamed when the situation is reversed.

Table 4: IV Analysis

	LSCE=1		LSCE=0 (Placebo)	
	Exit	Vote Share Change	Exit	Vote Share Change
Second Stage: Dependent Variable is Prosecuted				
Linear prediction	-0.447*	45.975*	0.025	-28.541
	(0.241)	(26.870)	(0.149)	(63.391)
R <sup>2</sup>		0.13		0.58
First Stage: Dependent Variable is Exit (Vote Share Change for Placebo)				
GET index	-1.538***	0.018*	1.686***	-0.005
	(0.334)	(0.009)	(0.335)	(0.004)
Corruption	1.182	-0.432***	41.771***	-0.043
	(1.537)	(0.062)	(9.313)	(0.063)
Judicial Independence	-2.406		1.189	
	(2.877)		(6.569)	
Party Age	-0.022**		-0.020*	
	(0.010)		(0.011)	
Judicial Change		0.185**		-1.097***
		(0.083)		(0.123)
Current Outsider		0.001		-0.194***
		(0.011)		(0.011)
Constant	-2.848	-0.018	-37.170***	0.149***
	(1.786)	(0.060)	(8.306)	(0.045)
Observations	620	424	386	299

Standard errors in parentheses

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

The *GET* index thus provides an ideal instrument for our purposes that is at once exogenously generated and strongly correlated with the predecessor’s political fortunes while in office, but has no plausible direct effect on a politicians’ legal fortunes after they leave office. Simply put, whether commodity prices and international interest rates rose or fell under the previous government should have no bearing on a leader’s likelihood of post-tenure prosecution, except through the mechanism of political support we articulate. Below, however, we follow [Campello and Zucco Jr. \(2015\)](#) and exploit the fact that not all Latin American countries in our dataset are equally vulnerable or dependent on international economic shocks to conduct a placebo test of our instrument.

The first two models in Table 3 report estimates among only the LSCE countries, that is among the ten countries within Latin America for which we expect the instrument to be operative. In the first stage for Model 1, we regress *Exit* on the GET index and a suite of our core independent variables, including measures of *Predecessor Corruption*, *Judicial Independence*, and *Party Age*. We repeat the same exercise in Model 2, regressing our alternative measure, vote share, on the *GET* index along with the other various proxy measures for our core independent variables, such as *Predecessor Corruption*, *Judicial Change*, and *Current Outsider*. In both models, we use the full 20-year window and control for random effects.

Consistent with our expectations, the first-stage estimates show that the *GET* index indeed has a significant effect on both of our treatment variables. Specifically, increasing the *GET* index significantly reduces the likelihood of an irregular exit and significantly increases the predecessor party's vote share. The second stage results are equally encouraging, indicating that the variation for each of the treatment variables, which was generated by the *GET* index, continues to exert the expected effects on post-tenure prosecution. In the first model, the estimated effect of exit on prosecution is substantively similar to the logistic results, with the likelihood of prosecution near zero under a scenario in which the president exits power normally and rising to 8 percent when the president is forced from power.

Reassuringly, among the non-LSCE countries, Models 3 and 4 show very different results from the first two models. The coefficients for the first stage are either in the wrong direction or insignificant and, as we would expect, we uncover no relationship between these measures and prosecution at the second stage. Put differently, in countries that are less exposed to the vagaries of international markets, leaders are less effected by exogenously generated economic shocks, and thus, provide a perfect placebo test of our theory (cf. [Campello and Zucco Jr. 2015](#)).

## Conclusions

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* (Rawls [1971] 2009), the ideal that punishment should be proportionate to crime runs deep in Western thought. Existing alongside of this ideal, however, is the worry that those with political power will either under or over-enforce laws to attack their opponents and reward their allies. In Latin America this sort of selective accountability is often neatly summarized in the aphorism with which we began: “For my friends everything, for my enemies, the law.”

Yet, when it comes to prosecuting former presidents in contemporary Latin America, the desire to target one’s opponents offers an incomplete picture of the successors’ calculus. Recognizing that incumbents also want to minimise their own legal exposure—both in the short and longer run—we model impunity as a cooperative equilibrium across democratically-elected governments. Using a simple reciprocity game, we then identify how shifts to key parameters involving electoral competition, and the successor party’s status can upend impunity and culminate in post-tenure prosecutions.

Drawing on a novel dataset on presidential legal fates for 119 Latin American leaders over the last three and a half decades, we then examine empirically our predictions. We show that post-tenure prosecutions are inversely correlated with several measures related to the predecessor party’s capacity for retaliation, regardless of whether the successor is from a opposition party, the courts are independent, or the predecessor was especially corrupt. To check whether our correlations are causal, we also report IV estimates that use an index based on international commodity prices and U.S. interest rates to instrument for both irregular presidential exits and the predecessor party’s vote share loss. Consistent with our theoretical story, we find that the IV estimates of these key variables (exit and vote change) significantly affect the likelihood of post-tenure prosecutions.

From a normative standpoint, the picture we present is mixed. On the one hand, the fact that we find little support for standard rule of law arguments that presidential prosecutions are simply a response to executive corruption, or that independent judiciaries

effectively deter such prosecutions, is hardly reassuring. Yet, neither do we find much systematic evidence that such trials are used to weed out returning competitors. Were this the case, our correlations with proxies for the predecessor party's competitiveness would run in precisely the opposite direction from what we find. Simply put, even if Lula's most ardent defenders are right, the overarching pattern of post-tenure presidential prosecutions in contemporary Latin America is inconsistent with a conspiracy to jail powerful opponents. Among this group of defendants, successors may instead be looking for easy marks that allow them to appease public demands for accountability and punish corruption, but also minimize the risks to themselves.

While we have made important strides in understanding both the general logic of inter-elite forbearance for corruption and what empirical factors trigger its collapse within contemporary Latin American democracies, several opportunities for further research on this sort of selective accountability remain. On the theoretical side, the formal model can 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. Reassuringly, our initial analysis of an  $n$ -player version of the reciprocity game (see appendix) 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.

On the empirical side, although 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 about those presidents who are prosecuted well

after they leave office, or put on trial multiple times? 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 cases are also connected to our theoretical story, albeit indirectly. For instance, recent cases in Brazil, Peru, and Bolivia suggest that breaking the impunity equilibrium for one's immediate predecessor may also end up breaking it for previous predecessors. Although more qualitative research is needed, prosecutions that initially appear as oddities from a temporal perspective may constitute spillovers that cluster around the "trigger" trials related to our original mechanism. If this is right, then once impunity collapses for one president, it may well collapse for others; and like dominos, former leaders begin to fall, one right after the other.

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## 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  $\delta, \gamma_1, \dots, \gamma_n$ , the 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.