

Influencing Government Behavior: How Institutions Affect Policy Towards Civil Society

By: Christopher Thureau
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Advisor: Elizabeth Cohn
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Abstract

Civil Society is a crucial component in democratic societies, performing a variety of important functions for both the state and its citizens. Governments can help promote operational space for civil society organizations by granting and protecting vast freedoms and individual liberties. On the other hand, they can restrict this space through harsh regulation laws and harassment. The central question of this study is: What explains government behavior towards civil society? This study looks at governmental institutions, and how they affect the relationship between the government and civil society by looking at Ecuador and Nicaragua. It also outlines how to measure the 'democratic-ness' of an institution using six principles derived from the concepts used to define democracy. 'Democratic-ness' means the extent that an institution is governed by democratic principles. Due to limitations in resources, the 'democratic-ness' of each individual institution could not be determined, and is left as a foundation for further research. Therefore, the analysis only seeks to shed light on how the nature of certain institutions can affect government policies and space for civil society. In Nicaragua, the analysis shows that highly politicized institutions throughout the government promote clientelism within civil society and government institutions tend to exclude the half of civil society that does not affiliate with the ruling party. In Ecuador, the heavy centralization of power in the executive branch has enabled President Correa to have near complete control over governmental policy towards civil society.

Civil Society: Why do we care and where is it in trouble?

Civil society organizations perform a variety of important functions for both the state and its citizens. Some organizations monitor the government, some promote human rights, and others provide an array of services for the common people. Scholarly writing on the phenomena has resurfaced in the last few decades as the number and strength of civil society organizations has increased all over the world with an emphasis on civil society as a vital component to furthering democratization.¹ Organizations promoting democracy, such as the National Endowment for

¹Gerard Clarke, "Non-Governmental Organizations (NGOs) and Politics in the Developing World," *Political Studies* 46(1998). p. 1-3; Peter Burnell and Peter Calvert, ed. *Civil Society in Democratization* (Portland, Oregon: Taylor & Francis Ltd, 2004).; Francis Adams, *Deepening Democracy: Global Governance and Political Reform in Latin America* (Westport, CT: Praeger Publishers, 2003).

Democracy, work to strengthen civil society organizations and help them protect themselves from government interference.² While many note the good that civil society organizations do for strong democratic governance, not every country enjoys a free and independent civil society.

While civil society consists of groups and organizations separate from the state, many governments have laws regulating or monitoring these entities. These laws and regulations may affect the operational "space" available for these organizations to perform their functions. Generally, governments can help promote this space by granting and protecting vast freedoms and individual liberties. On the other hand, they can restrict this space by making it more difficult to legally form organizations and limiting basic human rights such as free speech. Therefore, the central question of this study is: What explains government behavior towards civil society? Here I seek to add to the debate among scholars about how and why governments make certain decisions. The themes outlined also concern policy-makers (especially government reformers) and citizens who support a strong civil society. Knowing what ultimately affects government behavior is helpful when choosing what government reforms to make. Citizens in civil society organizations or those working for international organizations are often concerned with the workings of government and its relationship with civil society.

Three theories that attempt to explain government behavior are of particular relevance to this study. One says that the government is a rational actor that bases its decisions on which option will best serve its goal to get itself re-elected. A second theory contends that political leaders' beliefs and values determine the types of policies they will adopt. Finally, a third theory focuses on the role that institutions play in the policy making process. In this theory, the nature of individual institutions affects the type of policies that are adopted and the way the government

²National Endowment for Democracy, "Where We Work," <http://www.ned.org/where-we-work>.

relates to its citizens. This approach seems to be the most applicable, as different government institutions often regulate, monitor or coordinate with civil society organizations.

I attempt to show that governmental institutions are the primary factor in determining government behavior, by measuring how democratic an institution is and observing its effect on the level of space for civil society in a particular country. The research design outlines how to measure the 'democratic-ness' of an institution using six principles derived from concepts used to define democracy. Due to limitations on gathering data, the analysis is more modest in its goals, and only seeks to shed light on how the nature of certain institutions can affect government policies and space for civil society.

Backsliding democracies from liberal democracies to illiberal democracies or semi-authoritarian governments is a disconcerting issue in Latin America. In these countries, a strong independent civil society is increasingly at risk from government interference. Ecuador and Nicaragua over the past few years have undergone extensive institutional changes and there is a general trend of closing space for civil society. Therefore, Ecuador and Nicaragua serve as the case studies in the analysis.

An analysis of the two countries shows that government policy towards civil society can be influenced by different institutions in different ways. In Nicaragua, highly politicized institutions throughout the government promote clientelism within civil society and government institutions tend to exclude the half of civil society that does not affiliate with the ruling party. In Ecuador, policies regarding civil society fall under the full control of the executive branch through presidential decrees and regulating bodies. This structure allows the president to unilaterally determine policy towards civil society. The heavy centralization of power makes it

difficult to determine if its Ecuador's institutional structures or President Correa's personal beliefs that are the main factors in determining government behavior towards civil society.

Three Approaches to Explain Government Behavior Towards Civil Society

To understand government behavior towards civil society there are three particular schools of thought that shed light: Public Choice Theory, Ideology, and Institutionalism. Public Choice Theory contends that politicians act rationally in their own self-interest to retain political office. Therefore, when policy makers are faced with set of policy choices, they will always choose the one that is most likely to increase their chances of re-election. Ideology is a coherent set of ideas, beliefs, and values that determine the type of policies politicians seek to implement. In this school of thought, policy makers have particular visions for the ideal society and adopt policies to bring society closer to that vision. Institutionalism focuses on the role governmental institutions play in influencing policy decisions. In this approach, government policies towards civil society would be heavily influenced by the rules, structures or other specific characteristics of institutions within the governmental system.

Public Choice Theory derives from economic theories used to predict producer and consumer outcomes in a particular market of goods. Concepts such as autonomous and rational actors, uncertainty, and maximizing utility are retained and applied to the 'market' of politics. In this market, the participants (also referred to as actors) seek to produce the most beneficial political outcome. Politics is the process of policy development through the interaction between the state and its citizens.³ Public Choice Theory has been adapted since Anthony Downs first

³William H. Riker and Peter C. Ordeshook, *An Introduction to Positive Political Theory* (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1973). p. 6; Albert Breton, *The Economic Theory of Representative Government* (Chicago, Illinois: Aldine Publishing Company, 1974). p.17

proposed it in 1957.⁴ However, my discussion will focus on the fundamental assumptions regarding participant behavior and only include a couple of newer concepts such as bureaucracy and 'coercion,' as they are the most relevant to determining government behavior.

The fundamental assumption of Public Choice Theory is that each actor in the model behaves rationally in its own self-interest within the limits of its own capabilities and the constraints imposed by the other actors or political institutions. A rational person is logical and when confronted with a set of choices, he is able to determine which option will best serve his self-interest based on the information available. Each actor makes these choices with the purpose of furthering itself towards a specific goal. The theory also assumes that each actor is autonomous and acts as an individual. This means that the goal in pursuit is for that person's own benefit, and not one for the general public's benefit, nor is the actor influenced by social values or a collective body.⁵

The model is generally applied to situations where two or more participants are tasked to make choices in the political arena. For instance, the model can be applied to an election where the participants are individual citizens who need to choose a candidate. Citizens must decide which candidate will be most effective in producing policies that will be most beneficial to them if he were elected.⁶ The model can also be applied to representative governments and focus on the interaction between the state and the people, or expanded to include the bureaucracy. In all public choice models, the interaction between the participants or the "political exchange" affects

⁴Anthony Downs, *An Economic Theory of Democracy* (New York: Harper & Row, 1957).

⁵Ordeshook, *An Introduction to Positive Political Theory*. Ch. 2.; While Public Choice Theorists acknowledge that individuals' choices are certainly related to the social context they are in, individual behavior can be isolated for "the preferences and choices of society are derived from individuals' preferences and choices." The model stresses that individuals influence the collective, instead of the other way around. p. 34

⁶Ibid. Ch. 8

the ability of each participant to obtain "maximum utility" from the "political outcome."⁷ Since the actors follow logic to achieve known goals, using the Public Choice model, one is able to make an educated prediction on each participant's future choices based on the factors present.

How the model predicts government behavior is the part of the theory that is most relevant to this study. Elected officials' (also referred to as the government or more generally as politicians) goal in this model is to be re-elected.⁸ In other words, politicians seek to maximize votes by pleasing at least the minimum number of citizens necessary to win an election. Other goals driving behavior may include personal benefits such as "personal power, his own image in history, the pursuit of lofty personal ideals, his personal view of the common good, and others which are peculiar to each politician."⁹

The government faces many constraints and the best option in a set of choices may not always provide the maximum benefit. First, uncertainty is present throughout a representative governmental system. Governments do not know exactly what the effects of a particular policy will be or what the actual desired policies of the citizens are. To decrease uncertainty, governments use its resources to acquire information.¹⁰ The more resources at its disposal, the more information it can gather, and the less uncertainty there is in the market. The less uncertainty the more likely the government will be able to adopt policies of more utility. Therefore, it can also be said that resources are another limiting factor in maximizing utility. Also, with information and a supply of sufficient resources, the government is more capable of minimizing "coercion."

⁷Kenneth E. Boulding, *Ecodynamics* (Beverly Hills, California: Sage Publishers 1978). Ch. 8; Bruno S. Frey, *The New Political Economy* (New York: Wiley, 1978); Muzaffar A. Isani, "An Economic Approach to Political Choice in Developing Countries" (Georgetown University, 1982). p.18

⁸Downs, *An Economic Theory of Democracy*. p. 13

⁹Breton, *The Economic Theory of Representative Government*. p. 7, 123-124

¹⁰Downs, *An Economic Theory of Democracy*. p.13-14

Coercion, as used by Breton, is "the difference between the amount desired of public policies and that provided."¹¹ In other words, all citizens have a desired policy they want to see implemented and a certain level of discontent develops when the *actual* policy produced is different than the *desired* policy. Since the desired policy differs among citizens, to minimize coercion, governments need to apply policies in a discriminatory manner.¹² This includes applying the policy differently to groups of citizens depending on their desires or using the private sector for certain groups to make up for a lack of resources.¹³

Finally, the bureaucracy also constrains politicians from obtaining maximum utility from a policy. The bureaucracy is in charge of implementing policies developed by the government. As a rational actor in the model, the goal of individual bureaus is to increase their own budgets.¹⁴ Therefore, a bureau may decide on a policy implementation that is more beneficial to it than in the way that was intended by the government. Control of the bureaucracy will give the government more influence to minimize bureaucratic discretion in implementation. This should increase the utility received by the government.¹⁵ Similar to minimizing uncertainty and coercion, the ability of the government to control the bureaucracy is limited in most cases as it requires the re-allocation of the government's limited resources.

While Public Choice Theory provides insight as to the reason behind certain government decisions, it may not be the best approach to explain all government behavior towards civil society. Rational models such as public choice often fail to fairly capture the complex realities

¹¹Breton, *The Economic Theory of Representative Government*. p. 56-57

¹²Ibid. p. 143-144

¹³Ibid. p. 144-160

¹⁴William A. Niskanen, *Bureaucracy and Representative Government* (Chicago, Illinois: Aldine Atherton, Inc., 1971). p. 39

¹⁵Albert Breton and Ronald Wintrobe, "The Equilibrium Size of the Budget-Maximizing Bureau: A note on Niskanen's Theory of Bureaucracy," *Journal of Political Economy* 83(1975).

they try to describe.¹⁶ The model assumes that government is one actor, in which policy decisions come from one unified source. This may be true in consolidated democracies or dictatorships, but may not be in illiberal democracies or semi-autonomous states. In the latter two systems of government, it may be less clear who holds the real authority in the government and policies may not be implemented in one unified manner across all of the state institutions. As my study will focus on countries with the latter form of government, it requires an approach that takes a deeper look into either the ideas and values of leaders or governmental institutions.

The second school of thought is Ideology. Ideologies are "human and social products that bind together views of the world and enable collective action in furthering or impeding the goals of a society."¹⁷ In other words, an ideology is a set of ideas, beliefs, values or cultural interpretations that envision a particular kind of society.¹⁸ The status quo does not often reflect the societies envisioned by ideologies. Therefore, certain political strategies and tactics as well as models of political action accompany an ideology to create this envisioned society.¹⁹ Furthermore, "a political ideology aims at mobilizing support, building up a constituency for a set of ideas which aim at the realization of a certain vision of the good society."²⁰ By these descriptions, Ideology influences government behavior a great deal. It implies that governments will implement a unique set of policies to achieve their desired society according to which ideology they subscribe.

Neo-liberalism and populism are two competing ideologies in Latin America. Many dictatorships in the 1980s, and later newly found democracies, adopted neo-liberal economic

¹⁶B. Guy Peters, *Institutional Theory in Political Science: The 'New Institutionalism'* (New York: Pinter, 1999). p. 61

¹⁷Michael Freeden, "Ideology and Political Theory," *Journal of Political Ideologies* 11, no. 1 (2006). p. 14

¹⁸Paolo Pombeni, "Ideology and Government," *Journal of Political Ideologies* 11, no. 1 (2006). p. 61; John Schwarzmantel, *Ideology and Politics* (Los Angeles: Sage Publications Ltd., 2008). p.25;

¹⁹Schwarzmantel, *Ideology and Politics*. p. 26

²⁰Ibid. p.26-27

policies to further economically develop their countries. However, many societal problems, such as corruption, inequality, and political exclusion remained despite the liberal reforms.²¹ Populism became popular in a few countries to try to rectify the failures of the past economic and political systems.²² I ultimately reject this theory as a sufficient explanation of government behavior towards civil society. While there may be greater consensus that neo-liberalism leads to more space for civil society organizations, with the possible exception of indigenous movements, it is unclear how the populist ideology envisions civil society. On the one hand it seeks to mobilize the people and increase citizen political participation. On the other, populism leads to more statist policies and rejects pluralism in society.²³

Populism in Latin America is usually associated with an anti-American or anti-imperialist foreign policy stance, nationalist economic policies, a strong charismatic leader or caudillo, and redistribution of wealth.²⁴ In more general terms, populism is a political movement based on the government acting in the will of the majority, commonly referred to as "the people" or "the masses" rather than the privileged elite.²⁵ Due to populism's emphasis on citizen participation in government, civil society organizations theoretically should be empowered under populist regimes. In practice however, the 'will of the people' often becomes the 'will of the government.'

²¹Mala Htun, "Political Inclusion and Social Inequality: Women, Afro-descendants and Indigenous Peoples," in *Constructing Democratic Governance in Latin America*, ed. Jorge I. Domínguez and Michael Shifter (Baltimore: The Johns Hopkins University Press, 2008). p. 72-96; Michael Shifter, "Emerging Trends and Determining Factors in Democratic Governance," in *Constructing Democratic Governance in Latin America*, ed. Jorge I. Domínguez and Michael Shifter (Baltimore: The Johns Hopkins University Press, 2008). p.4

²²Javier Corrales, "The Backlash against Market Reforms in Latin America in the 2000s," in *Constructing Democratic Governance in Latin America*, ed. Jorge I. Domínguez and Michael Shifter (Baltimore: The Johns Hopkins University Press, 2008). p. 40-43; Patricio Navia and Ignacio Walker, "Political Institutions, Populism, and Democracy in Latin America," in *Democratic Governance in Latin America*, ed. Scott Mainwaring and Timothy R. Scully (Stanford, California: Stanford University Press, 2010). p. 254

²³Corrales, "The Backlash against Market Reforms in Latin America in the 2000s." p. 66-70

²⁴Hector E. Schamis, "Populism, Socialism, and Democratic Institutions," *Journal of Democracy* 17, no. 4 (2006). p. 21; Jon Beasley-Murray and Maxwell A. Cameron & Eric Hershberg, "Latin America's Left Turns: A Tour d'Horizon," in *Latin America's Left Turns: Politics, Policies, and Trajectories of Change*, ed. Maxwell A. Cameron and Eric Hershberg (Boulder, Colorado: Lynne Rienner Publishers, 2010). p. 10

²⁵Marc Plattner, "Populism, Pluralism, and Liberal Democracy," *Journal of Democracy* 21, no. 1 (2010). p. 88

Since populism's vision of society is more homogeneous and unified as the majority makes up 'the people', populist governments do not prioritize the protection of individual rights, especially those of the minority.²⁶ This does not bode well for independent civil society organizations wishing to express and promote alternative views from the government's. Civil society advances pluralism because it consists of many different associations and groups of people, working towards different, often conflicting ideas. Populism rejects pluralism because it challenges the government in exercising the will of the majority.²⁷ Populists may discriminate against organizations that do not espouse the same ideas as the majority because empowered civil society groups take political space from the state and by extension, "the people."

Neo-liberalism is defined by the belief in individual rights, a reduced role for the state, and the promotion of capitalism, commercialization and the free-market.²⁸ The focus on individual rights implies that a governing body, even if it is controlled by the majority, should not trample the rights of the minority. This is ensured by the adherence to the rule of law. Individual freedoms are protected by, in most cases, a constitution and strong democratic institutions to ensure the government cannot simply change the laws to benefit the majority at the expense of the minority. This promotes pluralism because the minority is protected and able to present their views and criticisms of the government without fear of reprisal. Neo-liberalism's focus on a reduced role of the state means that many public services will need to be handled by non-state organizations. This increases the need for and citizens' reliance on civil society organizations that are willing to provide these services.

²⁶Ibid. p.88, 91

²⁷Corrales, "The Backlash against Market Reforms in Latin America in the 2000s." p. 67

²⁸Bjorn Beckman, "The Liberation of Civil Society: Neo-Liberal Ideology and Political Theory," *Review of African Political Economy* 58(1993). p.22

On the other hand, it has been argued that neo-liberalists may just exercise state power in a certain way so that particular NGOs, grassroots organizations or social movements have a limited effect on societal development. The political and economic system, or more generally the society that neo-liberalists try to create, is one where organizations that promote the free-market gain influence and power.²⁹ Just like the free-market results in winners and losers, neo-liberal policies may result in winners and losers of civil society as well. For instance, there is some debate about how neo-liberalism affects indigenous movements. Some say they are the losers in a neo-liberal society, while others say they are beneficiaries along with the rest of society.³⁰

For the most part, neo-liberalism is associated with expanding individual rights and promotion of civil society space. However, neo-liberalism is inconsistent regarding indigenous movements. Many scholars see neo-liberalist policies as incompatible with what indigenous groups call cultural rights.³¹ In addition, some scholars point to indigenous movements that are flourishing due to anti-capitalist alternatives.³² On the other hand, liberalism is defined by the protection of individual and minority rights. By its own definition then, liberalism and neo-liberalism must guarantee a number of "substantive, if limited, version of indigenous cultural rights."³³ Also, neo-liberalism's focus on the reduction of the state's influence on the economic system, allows for "alternative cultural systems" to be developed.³⁴ Under economies controlled by the state, this would not be possible.

²⁹Ibid. p. 30

³⁰ Charles Hale, "Does Multiculturalism Menace? Governance, Cultural Rights and the Politics of Identity in Guatemala," *Journal of Latin American Studies* 34(2002). p. 487

³¹Ibid. p. 487

³²Kenneth P. Jameson, "The Indigenous Movement in Ecuador: The Struggle for a Plurinational State," *Latin American Perspectives* 38, no. 1 (2011). p. 63

³³Hale, "Does Multiculturalism Menace? Governance, Cultural Rights and the Politics of Identity in Guatemala." p. 487

³⁴Emily J. Hogue and Pilar Rau, "Troubled Water: Ethnodevelopment, Natural Resource Commodification, and Neoliberalism in Andean Peru," *Urban Anthropology and Studies of Cultural Systems and World Economic Development* 37, no. 3-4 (2008). p. 320

In theory, both neo-liberalism and populism should lead to policies that open space for civil society. Neo-liberalism stresses individual rights and freedoms and private organization. For the most part, neo-liberalism has found to be friendly to civil society. However, the theory of Ideology fails to explain government behavior towards civil society in populist regimes. Populism calls for political inclusion, rule by the will of the people, and increased citizen political participation. However, government behavior in populist regimes is often seen as hostile to many civil society groups. An interesting question becomes, given the ideals of populism, why do populist regimes tend to restrict space for civil society? The answer may be found by taking an institutional approach.

Institutionalists believe that institutions matter above all else in influencing the political process. Peters defines institutions as "a collection of values and rules, largely normative rather than cognitive in the way in which they impact institutional members, as well as the routines that are developed to implement and enforce those values."³⁵ Institutions can be represented by formal or informal structures such as a legislature or social class. As a political science theory it has made a revival in recent years in the form of 'new institutionalism'.³⁶ While there are different varieties of new institutional theory, I agree with Peters in saying that collectively, these varieties can be considered one broad approach towards how to determine the causes of political behavior.³⁷ We can say this because although there are some differences, the fundamental beliefs are the same: that institutions shape politics, and institutions are shaped by history. Putnam explains these fundamental beliefs as:

1. The rules and standard operating procedures that make up institutions leave their imprint on political outcomes by structuring

³⁵Peters, *Institutional Theory in Political Science: The 'New Institutionalism'*. p. 28

³⁶Ibid. p. 25

³⁷Ibid. p.149

political behavior...Institutions influence outcomes because they shape actors' identities, power and strategies.

2. Whatever other factors may affect their form, institutions have inertia and "robustness." They therefore embody historical trajectories and turning points...Individuals may "choose" their institutions, but they do not choose them under circumstances of their own making, and their choices in turn influence the rules within which their successors choose.³⁸

The first principle leads one to look at the characteristics of certain institutions and how they affect policy decisions and implementation regarding civil society. The second leads one to look at how institutions have changed, and if those changes have resulted in new and different policies. Putnam finds, that "changing formal institutions can change political practice," and that "institutional changes are gradually reflected in changing identities, changing values, changing power, and changing strategies."³⁹

Knowing the right institutions to study is important to analyze government behavior towards civil society organizations. A prominent institution present in almost all governments is a constitution. Functioning constitutions are the supreme law of the land and contain the rights of citizens and the powers of the government. Regardless of regime type, governments bound by constitutions granting freedom of the press and giving the government power to declare a state of emergency are less likely to politically repress its people.⁴⁰ This shows that a constitution has considerable influence on political behavior. However, in Latin America where constitutions are constantly changing and sometimes largely ignored, they may not be as successful in protecting civil society.

³⁸Robert D. Putnam, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton, New Jersey: Princeton University Press, 1993). p. 7-8

³⁹Ibid. p. 184

⁴⁰Christian Davenport, "'Constitutional Promises' and Repressive Reality: A Cross-National Time-Series Investigation of Why Political and Civil Liberties are Suppressed," *The Journal of Politics* 58, no. 3 (1996). p. 648

Formal institutions consisting of elected officials are of particular relevance. The roles and relative powers between the different branches of government differ in various countries. There are two important ways these relationships can affect policy. One, checks and balances can limit the ability of one branch to dominate and trample the rights of citizens. Two, each individual branch affects political discussion and political outcomes in certain ways. For instance, it has been argued that party politics and legislative practices result in better political inclusion and equality over a weak party system and a government dominated by the executive branch.⁴¹ Governments tend to be more moderate and protective of individual rights when legislatures with strong political parties rule by legislative bargaining. The parties are able to protect their parties from a tyranny of the majority, while rule by executive discretion offers no such protections.⁴²

Governmental systems often have multiple levels of governance such as the national level, state level and municipal level. Latin American governmental systems are often characterized with highly centralized federal governments. The level of centralization can affect the level of access individuals or civil society have to the government. However, in the early 2000s, constitutional changes in Ecuador led to a decentralization process granting more power to municipal governments. Decentralization leads to increasing political space for NGOs because of the increased opportunities to collaborate with local municipal governments.⁴³

One institution that has been studied for its abuses of individual rights are public security agencies. These agencies can either help protect the rights and freedoms of individuals and organizations or they can directly facilitate its repression. Elected leaders rely on the electorate

⁴¹Schamis, "Populism, Socialism, and Democratic Institutions." p. 33

⁴²Ibid. 33

⁴³James R. Keese and Marco Freire Argudo, "Decentralisation and NGO-Municipal Government Collaboration in Ecuador," *Development in Practice* 16, no. 2 (2006).p.114

for their power whereas authoritarians may rule by force and fear, thus it is often assumed that state repression is higher under authoritarian regimes than under democratic regimes. However, the opposite is found to be true for some Latin American democracies, which have higher levels of state repression.⁴⁴ In these cases, elected leaders do not have complete control of the actions of public security agencies, and thus state repression in these cases does not derive from the elected leaders' authority. Instead due to a number of institutional factors within public security agencies, security forces are more likely to engage in illegal behavior such as repressing citizens.⁴⁵ This concept is relevant when analyzing institutions run by appointed rather than elected officials who are charged with facilitating citizen participation in government or regulating civil society. In representative governments, these un-elected bodies should be accountable to a higher, elected authority who have effective authority. Corruption, a lack of accountability or other related factors may lead to these institutions repressing civil society rather than increasing citizen participation.

Finally, civil society development requires the rule of law that protects individual freedoms and civil rights and institutions that govern or regulate effective citizen participation.⁴⁶ Civil society is often governed and protected through a series of laws and/or regulated by formal institutions. Applying this concept to institutions, it may be that institutions that are bound to a set of rules or a constitution are more likely to increase space for civil society. The less governed by a clear set of rules, the more likely the institution will practice discretion in respecting individual rights, which may result in restricting space for civil society.

⁴⁴Mauricio Rivera, "Estudios sobre represión estatal en regímenes democráticos: Teorías, métodos, hallazgos y desafíos," *Política y Gobierno* 17, no. 1 (2010).p. 59

⁴⁵Ibid. p. 84

⁴⁶Velia Cecilia Bobes, "De la revolución a la movilización: Confluencias de la sociedad civil y la democracia en América Latina," *Nueva Sociedad* 1, no. 227 (2010).p. 50

Each school of thought provides a unique approach to answer my question but institutionalism offers the most reasonable one. Public Choice Theory focuses on the government acting on its self-interest to retain office and receive other personal benefits. The theory assumes that government is one unified rational actor looking to further itself towards one goal. However, within a government, different institutions interact with civil society in their own ways, for their own specific purposes. Ideology implies that governments have a specific vision of society and it adopts policies that bring society closer to that ideal. However, a quick analysis of populism (and to some extent neo-liberalism) and how its values do not match the policies being implemented towards civil society, shows that ideology fails to explain government behavior. Instead, there are many institutions that play a vital role in shaping and implementing the policies produced by governments. An analysis of individual institutions that may affect policy development and implementation will provide a greater understanding of government behavior towards civil society.

'Democratic-ness' of Institutions and Civil Society

In an institutional approach, the characteristics of an organization should influence government behavior. To determine if institutions affect government behavior towards civil society, the relationship between the 'democratic-ness' of governmental institutions and the level of space for civil society can be studied. The model can be understood as:

Democratic-ness of an Institution \longrightarrow Level of Space for Civil Society

'Democratic-ness' means the extent that an institution is governed by democratic principles. I choose to use the term 'democratic-ness' instead of 'level of democracy' to avoid any confusion created by the constant use of the word democracy, which is often associated with a system of government. The focus of the study is on individual governmental institutions and not

on the classification of the governmental system. Individual institutions within a government may vary in their 'democratic-ness' regardless of that government's classification (whether it is a liberal or illiberal democracy). These individual institutions have their own unique characteristics and may affect government behavior towards civil society. If these institutions are exclusive, corrupt, extremely partisan, have no checks on its power, are centralized, or non-transparent, then the government is likely to trample the rights and curb the political influence of its citizens. If these institutions are more democratic, then the government is more likely to protect citizen rights and allow for political participation. In other words, the more democratic an institution is, the more space it will allow for civil society. However, if these institutions are un-democratic, they will tend to restrict space for civil society. How to measure the 'democratic-ness' of an institution is addressed in the next section.

How to Study Government Behavior towards Civil Society in Latin America

By some loose standards, all countries in the western hemisphere (except for Cuba) can be considered democracies.⁴⁷ However this classification masks the significant trend of liberal democracies becoming illiberal democracies. Illiberal democracies are considered "democracies" because they meet the criteria of elections and majority rule; however they fail to protect civil liberties and individual freedoms.⁴⁸ This includes the freedom of association and assembly, which is essential for civil society organizations to operate effectively. Not surprisingly, the general trend is that illiberal democracies are restricting space for civil society. Radical institutional changes occurring within the government may be one of the causes for this trend.

⁴⁷Lawrence Whitehead, "The Fading Regional Consensus on Democratic Convergence," in *Constructing Democratic Governance in Latin America*, ed. Jorge I. Domínguez and Michael Shifter (Baltimore, Maryland: The Johns Hopkins University Press, 2008). p. 20

⁴⁸Peter H. Smith and Melissa R. Ziegler, "Liberal and Illiberal Democracy in Latin America," *Latin American Politics and Society* 50, no. 1 (2008). p. 31

Due to the trend mentioned above and the findings from the literature, this study will take an institutional approach. I will do a qualitative analysis, looking at individual institutions of government that may influence government behavior towards civil society. I am assuming that the individual institutions within a democracy vary in their 'democratic-ness.' I am also assuming that not all institutions in illiberal democracies are undemocratic.

As identified in the literature, populism is a prominent ideology in Latin America that may affect policy decisions. Populist leaders in Latin America in recent years have taken significant measures towards reforming government institutions. To ensure that ideology is isolated, the cases studied should be governments whose elected officials espouse similar ideologies.

From the literature I have identified that institutional change should result in policy changes. Therefore, my cases should cover a time period when significant institutional changes have taken place in order to see if those institutional changes caused a change in government behavior. In sum, the cases should be illiberal democracies, controlled by elected populist leaders, during a time period when significant institutional changes have taken place.

Two cases were chosen in order to provide a comparative analysis. A comparative analysis will help determine which independent variables are the most relevant in causing the dependent variable. Ecuador and Nicaragua, under their current administrations, serve as good cases. First, the prevailing view is that both of these countries' government systems are illiberal democracies. Freedom House, an organization that rates how free societies are around the world, gave Ecuador and Nicaragua a 3 and a 4 respectively, in each category measuring political rights and civil liberties. Both countries are classified as 'partly free.'⁴⁹ Second, President Rafael Correa

⁴⁹ Freedom House scale ranges from 1-7. 1 is the highest level of freedom while 7 represents the lowest. This rating is based on a series of questions. For more about Freedom House's methodology, go to:

of Ecuador and President Daniel Ortega of Nicaragua are considered populists.⁵⁰ Both have been trying to increase political participation of the people, and increase government control of the economy. I chose two populist governments in order to see if results vary across populist regimes. If the results vary, I can rule out ideology as a cause and further make the case for institutions as the primary cause for influencing government behavior. Third, both governments have undergone significant institutional changes under the current administrations. As each president sets out to change the way the government relates to its citizens, the governments are creating new institutions, reforming existing institutions and in the case of Ecuador, wrote a new constitution. These rapid changes in institutions, occurring in both countries in unique ways, will help to analyze the relationship between institutions and government behavior towards civil society. Finally, in each of these cases space for civil society is generally closing. This allows me to determine which institutions and/or characteristics are the most relevant in affecting government behavior towards civil society, as the dependent variable is trending in the same direction.

A complete understanding of a few key terms is necessary. First, for the dependent variable, I must define what I mean by civil society, space for civil society, and in what ways space is restricted by the government. While there may be different ways to view civil society and assign different criteria for inclusion and exclusion, I will only discuss one definition, which I will use for the purposes of this paper.

Scholars who define civil society, seek to create one that is simultaneously inclusive and has clear parameters on which groups are excluded. The most frequent definition used, outlines

http://freedomhouse.org/template.cfm?page=351&ana_page=363&year=2010 Arch Puddington, "Freedom in the World 2011: The Authoritarian Challenge to Democracy," in *Freedom in the World* (Freedom House, 2011).

⁵⁰Walker, "Political Institutions, Populism, and Democracy in Latin America." p. 254; Edmundo Jarquín and Alejandro Bendaña Carlos F. Chamorro, "Understanding Populism and Political Participation: The Case of Nicaragua," *Woodrow Wilson Center Update on the Americas*, no. 4 (2009).

civil society as: consisting of any organizations, associations, or institution independent of the state, not including families and for-profit entities (also referred to as the market, firms or business). These organizations seek to promote, pursue, or advance the common interest that brought these particular individuals together in a collective.⁵¹ These organizations are meant to have voluntary membership and have minimal coercion in their actions and recruitment of members. Also, they are *autonomous* from the state.⁵² In this paper civil society means an independent and autonomous civil society. Therefore, quasi-non-governmental organizations, government controlled organizations and any organizations including media outlets that have been co-opted by the government, are not considered 'civil society.'

Organizations included in the definition are all voluntary, autonomous associations, which generally fall under these categories: community-based organizations, social movements and non-governmental organizations.⁵³ Also, I will include independent media, churches, and anything else that meets the criteria of the general definition above and is not the following: political society (government institutions and political parties); for profit business; families and family groups; and armed groups.⁵⁴

The capacity for civil society organizations to achieve its goals or purposes constitutes as 'space' for civil society. Anything that the government does (directly or indirectly) to hinder the development or operations of civil society organizations constitutes a restriction of space for civil society. The civil society organizations defined above seek to promote, pursue or advance a

⁵¹ Helmut K. Anheier, *Civil Society: Measurement, Evaluation, Policy* (Sterling, Virginia: Earthscan, 2004). p. 22; Gordon White, "Civil Society, Democratization and Development: Clearing the Analytical Ground," in *Civil Society in Democratization*, ed. Peter Burnell and Peter Calvert (London: Frank Cass and Company Limited, 2004). p. 8; Bhikhu Parekh, "Putting Civil Society in its Place," in *Exploring Civil Society: Political and Cultural Contexts*, ed. David Lewis and Hakan Seckinelgin Marlies Glasius (New York: Routledge, 2004). p. 19-20

⁵² Parekh, "Putting Civil Society in its Place." p. 19; Anheier, *Civil Society: Measurement, Evaluation, Policy*. p. 23

⁵³ Arthur Domike, "Building Sustainable Democracies in Latin America," in *Civil Society and Social Movements: Building Sustainable Democracies in Latin America*, ed. Esquel Group Foundation and Fundacao Grupo Esquel Brasil Arthur Domike, *Special Publications on Development* (Inter-American Development Bank, 2008). p. 5-6

⁵⁴ Ibid. p. 4

common interest. This can range anywhere from providing social services, monitoring the government, and defending or promoting civil liberties. Indirectly civil society organizations collectively serve a greater purpose. For instance, civil society as a whole keeps the state and the business entities from getting too powerful and dominating society.⁵⁵

Government laws and practices can "undermine and constrain" civil society in a few different ways. They can make it difficult for individuals to create new organizations, disrupt the activities of civil society organizations, limit the rights of speech, assembly and association, limit the ability of civil society organizations to communicate with its networks or international donors and restrict access to strategic resources.⁵⁶ More specific ways in which governments can restrict space for civil society will be included in the following section, as the analyses will inevitably document some of the ways in which civil society space in Ecuador and Nicaragua are being restricted. In addition to legal restraints and extra-legal activity conducted by the government, actively creating a hostile environment for independent civil society organizations is taken as indirectly but purposefully restricting space for civil society.

An institution's 'democratic-ness' is determined based on its incorporation of six democratic principles. The more principles incorporated, the more democratic that institution is considered to be. The first principle is: The institution is composed of or was created by government officials who were chosen by informed citizens in a free and fair election which was competitive.⁵⁷ The second principle is: The institution has not been co-opted by a separate

⁵⁵Anheier, *Civil Society: Measurement, Evaluation, Policy*. p. 20

⁵⁶International Center for Not-for-Profit Law and World Movement for Democracy Secretariat at the National Endowment for Democracy, "Defending Civil Society: A Report of the World Movement for Democracy," (World Movement for Democracy, 2008). p. 8, 10

⁵⁷ For a complete definition of "free and fair," reference: Samuel P. Huntington, "The Modest Meaning of Democracy," in *Democracy in the Americas: Stopping the Pendulum*, ed. Robert A. Pastor (New York: Holmes & Meier Publishers, Inc., 1989). p. 15; Walker, "Political Institutions, Populism, and Democracy in Latin America." p. 248; Guillermo O'Donnell, *Democracy, Agency, and the State*, ed. Laurence Whitehead, Oxford Studies in

institution. This is based on the democratic principle that the officials elected by the people have effective authority and are not subordinate to an institution that is not accountable to the electorate (such as the Military).⁵⁸ An example in this case would be that justices should be in control of the judiciary branch, and should not be under the influence of the President or any other institution. The third principle is: The institution is governed by a series of checks and balances. Every institution should be assigned a specific set of powers. To ensure that one institution does not exceed its powers or dominate and control other institutions, powers are divided in a manner to limit and constrain institutions.⁵⁹ The fourth principle is: The institution is transparent and accountable to the people. A democratic institution is obligated to report to its citizens what it is doing and how it is doing it. Elected officials are usually held accountable by the electorate through the ballot box in free and fair elections when citizens may choose to not re-elect them. For unelected officials, citizens should have the ability to pressure their representatives to remove those in appointed positions who are not doing their jobs effectively.⁶⁰ Transparency is essential for the citizens to make informed decisions about officials and governing institutions, and ultimately hold them accountable for their actions. The fifth principle is: The institution is inclusive and pluralistic. Democratic principle stresses inclusiveness in participation as well as protection of individual (especially minority) rights.⁶¹ Therefore, those that constitute the majority should not dominate the governmental institutions. Those that make up the minority should be involved in the process, and should have their views heard. The sixth principle is: The institution is governed by rules, which are followed. Democracy stresses that no

Democratization (New York: Oxford University Press, 2010). p.15-17; Whitehead, "The Fading Regional Consensus on Democratic Convergence." p. 36

⁵⁸O'Donnell, *Democracy, Agency, and the State*. p. 17

⁵⁹Whitehead, "The Fading Regional Consensus on Democratic Convergence." p. 36

⁶⁰O'Donnell, *Democracy, Agency, and the State*. p. 17

⁶¹Ibid. p. 16-17; Whitehead, "The Fading Regional Consensus on Democratic Convergence." p. 36

one is above the law, and if the law needs to be changed, there are rules governing how to change the rules.⁶² This limits the use of discretion in an institution, and ensures that everyone is treated equally.

A thorough and complete analysis of the 'democratic-ness' of institutions within the government would be necessary to accurately test this hypothesis. One would need to know the specific nature of the institutions, its legal workings and how it functions in practice, in order to determine its 'democratic-ness' and their effect on governmental behavior relative to other institutions. Given the resources available, this study will only be a qualitative analysis of the known characteristics of the most relevant governmental institutions and how the institutions may be affecting government behavior towards civil society. The level of 'democratic-ness' of each institution and the level of effect it has on civil society policy cannot be determined. However, the analysis will attempt to shed light on how the nature of government institutions may affect government behavior, by looking at how certain institutions may be affecting space for civil society. The democratic or non-democratic aspects of these institutions will also be discussed where information is available. Due to the availability of information on government institutions, the Nicaragua case will be more comprehensive, while a shorter discussion on Ecuador will follow to provide some comparative analysis.

Data primarily comes from reports assembled by major organizations such as Freedom House, Human Rights Watch, the World Movement for Democracy, International Center for not-for-profit Law (ICNL), and also the United States Department of State reports on Human Rights. In addition, I will use as many primary sources as are available, such as newspaper or magazine articles, or viewpoints from civil society leaders inside the countries.

⁶²Walker, "Political Institutions, Populism, and Democracy in Latin America." p. 246

The Influence of Institutions in Ecuador and Nicaragua

Nicaragua

Nicaraguan governmental institutions have undergone some changes during the Ortega administration at the same time that space for autonomous civil society has come under increasing threat. The executive has become even more powerful with the creation of new institutions that circumvent the authority of more democratic institutions such as the National Assembly. Various institutions run by non-elected officials have become increasingly politicized, carrying out government policies in a politicized manner. There is evidence that the Judiciary's independence has been compromised and is effectively being controlled by the executive branch.

One major institutional development that seems to have had a significant effect on government behavior towards civil society are Councils of Citizens' Power (CPC), which were created by President Ortega in 2007 through decree 112-2007. It falls under the direction of the National Council for Communication and Citizenship in the executive branch. Theoretically, these councils create a direct link between the State and citizens to increase civil engagement and citizen participation in the government, as a way for civil society and individuals to increase influence in public decision making and distribution of resources.⁶³ According to Ortega they were intended to be pluralistic, allowing for people to express different viewpoints about local situations and then make decisions based on the citizens' input and its decisions were to be obeyed by the State.⁶⁴

The creation of CPCs caused some controversy between the executive and the legislative branches. Ultimately, President Ortega was able to use his executive powers to work around the

⁶³David R. Dye, "Nicaragua," in *Countries at the Crossroads* (Freedom House, 2010).; "Nicaragua Country Report," in *Freedom in the World* (Freedom House, 2011).

⁶⁴William Grigsby, "You Can't Organize People and Raise Consciousness by Decree," *Revista Envío*, no. 314 (2007), <http://www.envio.org.ni/articulo/3646>.

legislature. In response to the creation of CPCs, the National Assembly passed law 603 and subsequently over-rode Ortega's veto to it, which severely limited the power of the councils. However, Ortega successfully prevented Law 603 from having any effect by making the CPCs constitutional by decree, creating the Cabinet of Citizen Power and putting it under the National Council of Social and Economic Planning and controlling it through his party.⁶⁵

The majority of CPCs tend to display many un-democratic characteristics. First, the legality of Ortega's wife Rosario Murillo as the appointed head of the National Council for Communication and Citizenry is questionable. Under the constitution, no immediate relatives by blood or by marriage are permitted to be appointed state officials. Technically Murillo was 'delegated' but it can be strongly argued that she has the vast authority associated with an 'appointed' position and therefore this delegation may still be unconstitutional.⁶⁶ Second, the majority of CPCs fail to be pluralistic. Ortega's party, the Sandinista National Liberation Front (FSLN) has taken complete control of the CPCs, and FSLN secretaries, who are un-elected appointed officials, run and control the CPC meetings. Non-FSLN members find themselves excluded from participating in the CPC as well as FSLN members who are not part of the political secretaries.⁶⁷ Third, this institution is serving to take away effective authority from elected officials. As mentioned above, CPC decisions are binding to other State structures. In theory this increases citizen influence on the government because CPC decisions would be made from citizen input through pluralistic debate. However, in a secretive and non-transparent manner, party secretaries rather than the citizens are deciding how to distribute resources and

⁶⁵Carlos F. Chamorro, "Understanding Populism and Political Participation: The Case of Nicaragua." p. 4

⁶⁶Silvio Prado, "The Mettle of Our Civil Society Is Going to Be Put To the Test," *Revista Envío*, no. 307 (2007), <http://www.envio.org.ni/articulo/3461>.

⁶⁷Grigsby, "You Can't Organize People and Raise Consciousness by Decree".

which projects to work on. There is no mechanism in place for the citizens to hold these secretaries accountable.⁶⁸

CPCs in Nicaragua seem to be the main catalyst for a growing culture of "clientelism" in state-civil society relations. Clientelism is when civil society organizations receive resources or services from the government in exchange for its loyalty or support.⁶⁹ Due to FSLN control of this institution, citizen participation and access to resources have become in many cases dependent upon political affiliation. For instance, the CPC is the primary institution that is tasked with getting the grassroots involved with government programs such as Zero Hunger by distributing state resources to different civic organizations. However, the majority of councils have been excluding non-FSLN groups from receiving these resources and participating in these programs.⁷⁰ This clientelism hurts the autonomy of civil society organizations. Either they give up their independence and become organizations that follow the direction of the state, or they don't receive any funds or resources and may be unable to continue working towards their goals.

Not only are CPCs politically exclusive, but Ortega's new citizen participation model has served to circumvent existing structures that did appear to have some pluralistic qualities where civil society had space to operate. The National Economic and Social Planning Council (CONPES) was an institution that included members of civil society that advised the government on budgetary matters among other things. It has since been eliminated and civil society has lost a great amount of influence in participation of the budget process.⁷¹ CPCs have also overshadowed the Municipal Development Committees (MDC). These served very similar functions to the

⁶⁸Damaris Ruiz, "What's Going on in the Municipalities? And What's with the CPCs?," *Revista Envío*, no. 339 (2009), <http://www.envio.org.ni/articulo/4077>; Silvio Prado, "Municipal Autonomy Is More Threatened than Ever," *Revista Envío*, no. 349 (2010), <http://www.envio.org.ni/articulo/4226>; Carlos F. Chamorro, "Understanding Populism and Political Participation: The Case of Nicaragua," p. 1

⁶⁹Katherine Isbester, "Democracy in Latin America: A Political History," in *The Paradox of Democracy in Latin America*, ed. Katherine Isbester (North York, Ontario: University of Toronto Press, 2011), p. 37

⁷⁰Dye, "Nicaragua," p. 5

⁷¹Ibid. p. 5-6, 17

CPCs, except they were under control of the municipalities instead of the executive branch in the central government, and tended to be more pluralistic and inclusive.⁷² Now, the partisan CPC excludes more than half of the population from civic participation and state resources. It is becoming apparent in Nicaragua that to participate in government programs and decision making, a civil society organization must align itself with the FLSN.

Through presidential decrees, the Ortega administration has been able to circumvent democratic institutions by setting up parallel structures controlled by party supporters like the CPC, and organizing them based on the rules created by political pacts with an opposition party, the Constitutionalist Liberal Party (PLC) in 2000 and 2004. These pacts between Ortega and Alemán, leaders of the FSLN and the PLC respectively, served to politicize many governmental institutions. It evenly divided appointments among the two parties with the most seats in the National Assembly. For example, the Supreme Electoral Council (CSE), the Supreme Court and the Comptroller General's office have all been politicized.⁷³ These institutions carry out their work in a manner that best serves the interest of the FSLN and PLC, ensuring that these parties remain the top two in the government. For instance, in 2008 before the municipal elections, the CSE revoked the Conservative and MRS parties of their legal status and refused accreditations to local and international electoral observers.⁷⁴ In the elections, the FSLN won the majority of the races and the PLC won the rest.

This politicization of these institutions further promotes clientelism, which has been harmful for many civil society organizations. Election-monitoring organizations must receive accreditation from the CSE, which denies election monitoring NGOs solely for political

⁷²Prado, "The Mettle of Our Civil Society Is Going to Be Put To the Test".

⁷³Sharon F. Lean, "The Presidential and Parliamentary Elections in Nicaragua, November 2006," *Electoral Studies* 26(2007). p. 829

⁷⁴Freedom House. "Nicaragua Country Report."

purposes.⁷⁵ Politicized accreditation severely limits independent and objective election-monitoring civil society organizations from operating in Nicaragua. For example, the CSE required that Roberto Courtney and Mauricio Zuniga resign, in order for their organizations; Ethics and Transparency and the Institute for Democracy and Development to receive accreditation.⁷⁶

The independence of the judiciary has been compromised as it is increasingly coming under the influence of the executive. The Supreme Judicial Council is susceptible to outside pressure, and approves appointments based on political affiliation. The Supreme Court makes rulings for political reasons rather than upholding the rule of law. For instance when President Ortega issued a presidential decree to remove eight judges allied with the Constitutional Liberal Party, it ruled that the decree was legal. Another political ruling was that presidents could run for more than two terms in office and that terms can be consecutive.⁷⁷ These Supreme Court decisions upheld decrees that were clearly against the rules in the constitution, and allowed President Ortega to run for an illegal third term.

The lack of judicial independence has hurt civil society, particularly independent media, because they can no longer rely on the protection of their basic rights and freedoms granted in the constitution, are frequently harassed by government supporters who receive impunity and subject to libel, slander and censorship laws that are selectively applied to those who don't support the government. For instance, in April 2008, the editor in chief and one of the owners of *La Prensa* were convicted of slander, a charge that was brought to the courts by the partisan

⁷⁵"Nicaragua," in *Country Reports on Human Rights Practices* (United States Department of State, 2011). p. 15

⁷⁶Ibid. 21

⁷⁷"Nicaragua," in *Annual Report: The State of the World's Human Rights* (Amnesty International, 2011).

CPC. Reports call the charges "spurious" and a clear partisan ruling attacking independent media.⁷⁸

The nature of Nicaraguan institutions shed some light on how institutions can affect government behavior towards civil society. The partisanship that characterizes many of these institutions has led to many civil society organizations being excluded from participation or receiving accreditation. However, it is unclear how the 'democratic-ness' of these institutions is affecting government behavior. The CPCs lack many of the democratic principles, but further research is required to determine if more democratic CPCs would result in less partisanship and more space for civil society.

Ecuador

Similar to Nicaragua, Ecuador is characterized by a strong executive branch that continues to increase in strength relative to the other branches. However, instead of setting up parallel institutions in the executive branch like Ortega, Correa has increased the power of the executive by appealing directly to the people through a series of plebiscites and referendums.⁷⁹ The most notable were a series of referendums to first approve the creation of a constitutional assembly, and second to ratify the new constitution. The process was completed through fairly democratic means as the referendum votes were considered to be free and fair according to international electoral observers.⁸⁰ While the constitutional assembly consisted of a majority of the President's party, the minority was not overshadowed and the process proved to be quite

⁷⁸Dye, "Nicaragua."

⁷⁹Jorge I. Domínguez, "Three Decades Since the Start of the Democratic Transitions," in *Constructing Democratic Governance in Latin America*, ed. Jorge I. Domínguez and Michael Shifter (Baltimore, Maryland: The Johns Hopkins University Press, 2008).

⁸⁰James D. Bowen, "Ecuador's 2009 Presidential and Legislative Elections," *Electoral Studies* 29, no. 1 (2010).; "Final Report on Ecuador's September 30, 2007 Constituent Assembly Elections," (The Carter Center, 2007).

pluralistic. Constitutional assembly leader Alberto Acosta "emphasized democratic deliberation and was careful to give space to the opposition voices and debate."⁸¹ Correa was re-elected again in 2009 along with a new assembly in which his supporters made up the majority, through free and fair elections.⁸²

The new constitution increased executive control of the government by granting the executive a great amount of political and economic power.⁸³ The president has two major political tools at his disposal that greatly increase his power and control. One, the president can dissolve the legislature and rule by decree until new elections are held. Two, he has line-item veto power, which means he can strike down individual pieces of legislation at his discretion. He has threatened to use his dissolution powers and has used his veto power multiple times.⁸⁴ It is important to note that the legislature can impeach the president, although there are tougher restrictions on this power.⁸⁵

In contrast to Nicaragua where politics within the government is dominated by two strong parties, Ecuador has weak political parties. Ecuadorian political parties are not cohesive and their members are prone to switching parties and alliances (which some in Correa's party did last year).⁸⁶ Generally, this makes it easier for the executive to create coalitions to pass laws or implement policies because lawmakers are willing to give their support to the president in exchange for other political benefits that the president has to offer.⁸⁷ This factor may allow Correa and the executive to impose his will on other governmental institutions, in a punishment

⁸¹Jennifer N. Collins, "Rafael Correa and the Struggle for a New Ecuador," *Global Dialogue* 10(2008). p. 38

⁸²Bowen, "Ecuador's 2009 Presidential and Legislative Elections."

⁸³Susan Appe, "Interview: Civil Society Organizations Respond to Government Regulations in Ecuador," (International Center for Not-for-Profit Law, 2010).http://www.icnl.org/knowledge/ijnl/vol13iss3/special_4.htm

⁸⁴Ibid.

⁸⁵Freedom House "Ecuador Country Report," in *Freedom in the World* (Freedom House, 2011).

⁸⁶Catherine M. Conaghan, "The 2006 Presidential and Congressional Elections in Ecuador," *Electoral Studies* 26(2007). p. 827; Domínguez, "Three Decades Since the Start of the Democratic Transitions." p. 348

⁸⁷Domínguez, "Three Decades Since the Start of the Democratic Transitions." p. 345-6

and reward system. Those that ally themselves with the president are rewarded, while his opposition is silenced. The executive used this tactic when Correa was seeking a referendum for the establishment of a constitutional assembly. The electoral tribunal removed 57 legislators who were in opposition of the referendum. Following the referendum, the Constitutional Tribunal (TC) reinstated 51 of the legislators, however the members of the Assembly who had supported the referendum, voted to fire the TC justices before the other legislators could be returned to their seats.⁸⁸

With weak political party systems, Correa relies more on a 'personalistic' democratic structure.⁸⁹ He imposes himself as representing the will of the people, and uses the bully-pulpit to directly address the people, and call out his "enemies." President Correa has become known for his distaste for the media and civil society. He continuously verbally attacks the media and civil society in general. Correa does this weekly in his radio and television addresses, creating "a hostile environment for journalists," which some cite as the reason for their self-censorship.⁹⁰ Correa uses words like "my greatest political enemy," "ignorant," "mediocre," "primitive," "corrupt," "bloodthirsty," and "deceitful" to describe the media and journalists.⁹¹

Among the executive's many powers, governing civil society also falls under its jurisdiction, which is done through presidential decrees. This is not a new development, for this authority derives from the Civil Code which dates back to 1861.⁹² Presidential decrees to govern civil society is not an institutional change and cannot be directly linked as the cause for the new restrictions of space for civil society. On the other hand, it is apparent that the executive branch

⁸⁸J.D Bowen, "Countries at the Crossroads 2011: Ecuador," in *Countries at the Crossroads* (Freedom House, 2011).

⁸⁹Walker, "Political Institutions, Populism, and Democracy in Latin America." p. 258

⁹⁰"Ecuador," in *Country Reports on Human Rights Practices* (United States Department of State, 2011). p. 12

⁹¹"Ecuador Country Report," in *Freedom of the Press* (Freedom House, 2011).

⁹² International Center for Not-For-Profit International Center for Not-for-Profit Law, "NGO Law Monitor: Ecuador," in *NGO Law Monitor* (International Center for Not-for-Profit Law, 2011).

has increased its power tremendously, and is becoming less accountable as checks from other branches are weakening. Government bodies that fall under the jurisdiction of the executive have the ability to implement the decrees with great discretion, and to single out those organizations that may be critical of the president and his allies. Phrases such as "against the interests of the state" as a cause for state dissolution of an NGO is not defined, and therefore can be interpreted loosely by the implementing institutions. These bodies that regulate civil society organizations have no mechanisms for transparency and are only accountable to the executive branch, which makes it easier for them to interpret the rules as they see fit.⁹³

The level of space for civil society in Ecuador has been decreasing due to a number of recent decrees and laws. Decree 982 was signed on March 25, 2008, which reformed "the Regulation" - Regulation for Approval of the Statutes, Reforms and Codifications, Liquidation and Dissolution, and Registration of Members and Directives, of the Organizations under the Civil Code and Special Laws - increasing the requirements to register, providing new reasons to allow the government to dissolve an organization, and new abilities for the government to track and monitor NGOs.⁹⁴ Decree law 812 that was signed on July 5, 2011 deals with the relationship between domestic NGOs and international organizations or foreign NGOs. The decree prohibits International NGOs (NGOs based in foreign countries but operating in Ecuador) from using funds from bilateral or multilateral institutions to "intermediate, implement, or execute plans, programs or projects" in Ecuador.⁹⁵ The National Assembly passed a Communications Bill which introduces "prior censorship by the state, stricter mandatory licensing of journalists and obligatory registration for media outlets with a communication and Information Board that

⁹³ Ibid.

⁹⁴ United States Department of State "Ecuador." p. 16; Law, "NGO Law Monitor: Ecuador."; World Movement for Democracy Secretariat, "Ecuador Country Report Summary," in *Defending Civil Society* (World Movement for Democracy, 2008).

⁹⁵ International Center for Not-for-Profit Law, "NGO Law Monitor: Ecuador."

would control editorial content. The bill would also weaken safeguards that guarantee the anonymity of sources."⁹⁶ This bill severely restricts the media's right to free speech and expression, which are guaranteed in the constitution.

The independent media has also been under legal harassment from the government. The Ecuadorian criminal code includes harsh laws against defamation and libel, and President Correa often uses these laws to prosecute his critics. In March 2011, Correa filed a criminal libel suit against journalists and board of directors of the newspaper *El Universo*, for insulting him.⁹⁷ Regulatory and oversight institutions have used their powers to silence government critics as well. The National Telecommunications Council refused to renew *La Voz de la Esmeralda Oriental Canela's* license for what the Committee to protect journalists called "bogus administrative violations."⁹⁸ Finally, the government is using terrorism and national security laws to charge human rights defenders and indigenous leaders with crimes.⁹⁹ As of July 2011, "189 indigenous people were facing terrorism and sabotage charges."¹⁰⁰

The situation in Ecuador provides a less clear argument for individual government institutions having a great effect on government behavior towards civil society. On the one hand, the constitution provides the executive branch with extensive powers. Weak political parties make it easier for the president to impose his will on other governmental institutions. On the other hand, since the governing of civil society is heavily concentrated in the executive branch and its institutions, it is difficult to rule out Correa's personal distaste for independent civil society as an overwhelming factor in government policies towards civil society.

⁹⁶ Freedom House "Ecuador Country Report." in *Freedom of the Press*; Freedom House "Ecuador Country Report." in *Freedom in the World*

⁹⁷ Human Rights Watch, "Ecuador: Don't Prosecute President's Critics," (2011), <http://www.hrw.org/en/news/2011/03/31/ecuador-don-t-prosecute-president-s-critics>.

⁹⁸ Freedom House "Ecuador Country Report." in *Freedom of the Press*

⁹⁹ "Ecuador," in *Annual Report: The State of the World's Human Rights* (Amnesty International, 2011).

¹⁰⁰ Human Rights Watch, "Ecuador: Don't Prosecute President's Critics".

Do institutions and 'democratic-ness' matter?: Final Thoughts

In the late 1980s and 1990s, the world witnessed a mass proliferation of civil society organizations, especially in Latin America.¹⁰¹ Around the same time, Latin America experienced a wave of democratization, and throughout the hemisphere dictatorships fell and democratic governments were established. The issue of democracy in Latin America in the 21st century has largely shifted to consolidating liberal democracies or defending democracies from sliding back to illiberal or authoritarian regimes. Another theme that may be linked is a focus on defending civil society, which have come under attack in some countries.

What explains government behavior towards civil society? In an attempt to answer this question, I explored three theories that attempt to explain government behavior: Public Choice Theory, Ideology, and Institutionalism. Public Choice Theory would have been difficult to apply to my theory, as the governments of my cases are undergoing major institutional changes. Political struggles within government and power shifts between people, parties, and institutions would make it difficult to identify the government as one unified rational actor. Populism's disconnect between its values and populist leaders attitudes towards civil society discredited ideology as the best explanation for government behavior. I decided that Institutionalism proved to be the best approach and focused on the nature of institutions and how they impact policy development and implementation towards civil society.

The analysis ultimately fails to establish a link between an institution's 'democratic-ness' and the level of space for civil society because of limited information available in Washington D.C. However, it does shed light on government institutions and how they influence government decisions, particularly towards civil society. In the case of Nicaragua, much of the analysis

¹⁰¹Clarke, "Non-Governmental Organizations (NGOs) and Politics in the Developing World." p. 36

focused on the Councils of Citizens' Power (CPC), and the effect it is having on independent civil society. Nicaragua's administration argues that these councils are a means to increase citizen participation in government and help civil society organizations participate in development programs. Thus, this would give organizations more space to operate because it would increase influence in the government's decision making process, access to resources, and more opportunities to provide services to citizens. However, the CPCs developed into extremely partisan institutions, controlled by Sandinista National Liberation Front (FSLN) political secretaries that would consistently exclude groups not aligned with the political party. Thus, the CPCs are effectively closing operational space for more than half of the civil society organizations that want to have a say in government policies or want to participate in local development programs. Previously, through the National Economic and Social Planning Council (CONPES) in the central government and through Municipal Development Committees (MDC) in the municipal governments, civil society had reasonable access to both levels of government. However, the recent change in the structure of citizen participation through the CPC model, clientelism among civil society organization has appeared to proliferate in Nicaragua.

Other institutions that were discussed were the Supreme Electoral Court (CSE) and the judiciary for which there is evidence that their actions are closing space for civil society. Again, these institutions are characterized by their partisan nature and being under the control of the president's party. These institutions should be independent, operating according to the rule of law. Instead its members make decisions based on political calculations, hurting civil society organizations that do not affiliate with the FSLN or the Constitutionalist Liberal Party(PLC).

Ecuador served as a serviceable comparison. Both governments are generally restricting space for civil society, but it is happening in different ways. The analysis on Ecuador primarily

focused on the executive branch as the institution most affecting government behavior towards civil society. The concentrated authority of the executive to govern civil society has allowed President Correa to issue two decrees restricting its space. His un-checked power in regulating civil society is alarming, and it is clear from his rhetoric that he does not approve of independent civil society. Given the executives branch's vast powers, a strong case could be made that President Correa's personal beliefs could be a greater factor over institutions in determining government behavior in Ecuador. On the other hand, the nature of Ecuadorian government institutions is what gives the president these vast powers in the first place. Both answers have a legitimate argument, although more study is needed.

This paper's main limitation was finding the data to conduct an analysis of the magnitude outlined in the research design. In the analysis, some of the un-democratic features of these institutions were discussed, but much more information would be needed to determine the actual 'democratic-ness' of the institution and how that is affecting the level of space for civil society. After developing the research design I realized that measuring the 'democratic-ness' of institutions in foreign governments may take months or years to collect the necessary data. The data retrieved for the analysis only touches the surface of each government institution and excludes institutions that are necessary to study such as the Secretary of People, Social Movements and Citizen Participation in Ecuador.

During the analysis, I realized a second limitation to my paper. In my research design I defined civil society, space for civil society and the ways in which space for civil society could be restricted. However, I failed to consider that to establish a link to 'democratic-ness' and firmly measure the extent of their relationship, I would also have to develop a way to quantify space for civil society. It is apparent from the literature that space is decreasing in both Ecuador and

Nicaragua, but by how much? In which country is space decreasing more? It was not enough in my model to simply say that space is decreasing or increasing if it was going to be tested against independent variables measured on a scale of 'democratic-ness' based on the six principles developed in this study.

For further research, if the data is available it would be most useful to develop scales to measure both the 'democratic-ness' of an institution using the principles outlined in the research design, and space for civil society. If one is able to quantify an institution's 'democratic-ness' and space for civil society, one may be able to show how both institutions and democratic principles matter in determining government behavior.

This research is important for both scholars and those working in the field of democracy promotion. This study and any future research on the topic adds to the debate about what best explains the way governments behave. In practice, knowing how governments behave will help those interested in influencing government decisions. As policy-makers, citizens, and civil society leaders around the world seek to improve relationships between government and their people, knowing the institutions that have the most influence on government behavior and how the nature of those institutions affect policy decisions is crucial.

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