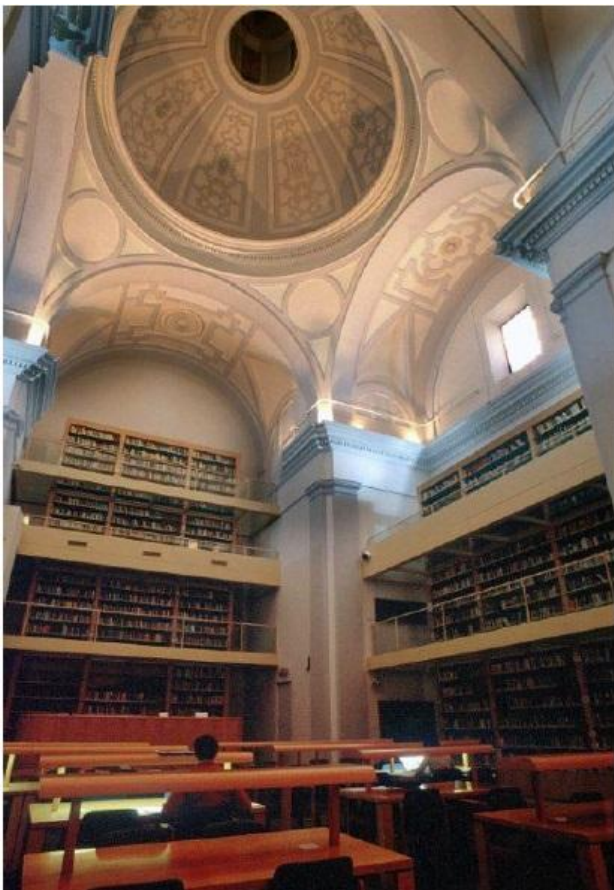


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Presidential Decrees of Exception in Bolivia, Ecuador, and Peru**



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Peru**

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**Universidad
de Alcalá**

INSTITUTO DE ESTUDIOS
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**Executives and Emergencies:
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Abstract:

The aim of this paper is to identify how Presidents in the Central Andean Region have used Regimes of Exception in the first decade of the twenty first century. According to the doctrine, Regimes of Exception equate to a concentration of powers in the executive branch and the suspension of human rights to overcome an 'exceptional threat'. In Bolivia, Ecuador, and Peru, these mechanisms were used by military governments at different times throughout the 20th century to deal with unrest but they have not been studied by political scientists. This paper offers an exploratory analysis of the use given to these mechanisms by Presidents in the period between 2000 and 2010.

Key words:

Emergency powers, Regimes of Exception, Presidents, Bolivia, Ecuador, PeruEcuador, Italia, migration and development, co-development, decentralized cooperation.

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1. Introduction

Regimes of Exception have become synonymous with military power and the repression of social unrest in Latin America, particularly during the twentieth century (Loveman, 1993). We use the term 'Regime of Exception' as an inclusive term of those legal mechanisms that offer previously contemplated, special powers for the executive branch in emergency situations. At the national level, these mechanisms appear under various names – including 'state of siege', 'state of emergency' 'state of exception', 'state of alarm' – something that can create some conceptual confusion over what is in essence the same type of institution.

It is important to remember that Regimes of Exception are not merely a historical phenomenon. Rather, they have survived the third wave of democracy and offer present-day Latin American Presidents an opportunity to restrict the enjoyment of certain civil rights and/or deploy the military for the sake of 'maintaining public order' (Delfino, 2000; García-Sayán, 1987). Whilst there has been particular concern over their historical use in the Southern Cone (Despouy 1999), there has also been some debate over their use in the Andean Region, particularly by the military governments of Bolivia, Ecuador and Peru (García-Sayán, 1987). Although the declaration of a 'Regime of Exception' in the region has on occasion caught the attention of both the domestic and international press, we seem to know very little about what they mean in practice.

Indeed, despite a – rather intermittent - concern over the use of these mechanisms from a legalist or human rights perspective (Despouy 1999, Zovatto 1990, and Fix-Zamudio 2004), political science has avoided their study. A major exception in this case is the excellent study carried out by Loveman in 1993, although his work is more a study of political history than political science as such. Since then, however, there have been no new macro or meso level studies on the issue from a political point of view. Rather, certain studies refer to the declaration of 'states of emergency' as a piece of data of secondary interest for country-level political analysis (Alenda, 2003; Jaskoski, 2011) rather than an object of study in itself.

We believe that the use of Regimes of Exception could be of interest to political science given that they have offered a means of concentrating executive power (Loveman, 1993) and are established in current Latin American constitutional frameworks (Delfino, 2000). Furthermore, by analysing in detail how these mechanisms are used in practice, it will be possible to discover their numerical relevance, what uses they have been given, whether different Presidents have used

them in distinct ways, and – ultimately - an understanding of what this mechanism corresponds to in practice. This study is a first attempt at charting how Presidents in the Central Andean region have used Regimes of Exception in real-life politics, using a systematic, empirical, and – as far as possible - objective approach, in accordance with the tenets of political science.

2. Theoretical Framework

This paper is concerned with the broader concept of emergency powers, which we understand as those powers that are invoked in the face of ‘exceptional’ circumstances. Whilst emergency powers are by no means limited to the executive branch (Wright 2012), in Latin America they are undoubtedly associated with Presidents as they offer a means of concentration of power (Loveman, 1993). It is important to note that while several models of emergency powers have been established from a procedural point of view, we know little about the content of such measures: when are they used and what for?

Concern over procedural aspects of emergency powers can be found in the works of Friedrich (1950), Ferejohn and Pasquino (2004), and Schmitt (1985). The approach of Gross and Ni Aoláin (2006), which establishes three major models of reaction from a procedural point of view, sums up a great deal of this literature. They suggest that there are three typical replies to an emergency situation: a) maintain normal procedures; b) resort to pre-established procedures; or c) to take whatever measures are necessary, yet in good faith. They call these models: the business as usual model, the accommodation model, and the extra-legal model.

In this article we focus on what Gross and Ni Aoláin (2006) call the ‘constitutional’ model, which is a sub-type of the ‘accommodation model’. The constitutional model of emergency powers are mechanisms that are *pre-established* in the constitution or law and which offer certain measures in order to deal with ‘exceptional’ situations, typically – but not exclusively – the restriction of certain civil rights and liberties. The constitutional model ties in with our definition of ‘Regimes of Exception’, according to the constitutionalist doctrine (Delfino 2000).

Emergency Powers in Latin America – The Importance of Regimes of Exception

Now that the broader concept of emergency powers has been discussed from a theoretical point of view, we need to translate the discussion to Latin American politics. There has been some debate on emergency powers in Latin America and there appears to be division over which is the predominant model. For their part, some political scientists have concentrated on Presidential powers to enact emergency legislation, claiming that this is the classic emergency power in the region and even that Regimes of Exception in essence constitute emergency powers to legislate (Cheibub, Elkins and Ginsburg, 2011).

On the other hand, other political scientists argue that emergency powers as such are constitutional mechanisms to restrict human rights and take control of the public administration, particularly in cases of public disorder; in other words they are 'Regimes of Exception' (Carey and Shugart 1998). Furthermore, they argue that executive law-making in itself does not necessarily constitute an extraordinary power or a usurpation of the Congress' function, as long as the legislative branch itself gives permission.

In order to gauge whether the constitutional or legislative model of emergency powers is currently more prevalent in Latin America, a sound indicator is looking at the region's constitutions that are currently in force. Considering seventeen contemporary Latin American constitutions, we found that in all cases a Regime of Exception or a clause permitting the suspension of rights or the deployment of military force in the face of public disorder is included together with some rather vague administrative measures. In only three of these cases, the Regime of Exception explicitly allows for extraordinary measures to legislate. In six Latin American constitutions we found the possibility of the President assuming emergency legislative powers. The results of this analysis can be found in the table below.

Table 1

Regimes of Exception versus Exceptional Legislative Powers
in 17 Latin American Constitutions

Country/ Constitution	Regime of Exception?	Does the Regime of Exception Explicitly Contemplate Powers to Legislate?	Exceptional or extraordinary legislative powers for the executive branch?
Argentina 1994	Yes. Art 23	No.	Yes. Art 99.
Bolivia 2009	Yes. Art 137	No.	No.
Chile 1980	Yes. Arts 140-150	No.	No.
Colombia 1991	Yes. Arts 212-215	Yes.	Yes. Art 115
Costa Rica 1949	Yes. Art 121	No.	No.
Ecuador 2008	Yes. Art 164	No.	No.
El Salvador 1982	Yes. Art 29	No.	No.
Guatemala 1985	Yes. Art 139	No.	No.
Honduras 1982	Yes. Art 187	No.	Yes. Art 245
Mexico 1917	Yes. Art 29	Yes.	Yes. Art 131
Nicaragua 1987	Yes. Art 185	Yes.	No.
Panama 2004	Yes. Art 55	No.	Yes. Art 159
Paraguay 1992	Yes. Art 288	No.	No.
Perú 1993	Yes. Art 137	No.	Yes. Art 118
República Dominicana 2010	Yes. Art 262	No.	No.
Uruguay 1967	Yes. Art 168	No.	No.
Venezuela 1999	Yes. Art 337	No.	No.

Source: own elaboration.

Therefore – at the constitutional level at least– the predominance of Regimes of Exception can be confirmed. Given their survival in the region’s constitutions as well as an evident gap in the literature, this study approaches the use of this particular mechanism by Presidents of three Latin American countries with historical experiences of the use of these mechanisms: Bolivia, Ecuador and Peru.

How do Presidents Use Regimes of Exception?

The traditional conceptualisation of Regimes of Exception in Latin America – and in constitutionalism generally - understands them as a means of repression at times of social unrest. This is given their constitutional form and historical traumas, particularly under military governments in the 20th century. Loveman (1993) superbly documents how they were gradually introduced in all Latin American constitutions during the 19th Century, abused by military governments in the 20th Century, and survived the third wave of democracy.

Nevertheless, it is worth remembering the historic model of a Regime of Exception - the Roman dictatorship – corresponded to two main uses: a) *dictatura rei gerundae causa* (in order to get things done) which was more administrative in nature and b) *dictatura seditionis sedandae* (to repress insurrections), which was evidently repressive in nature (Rossiter, 1946: 20). Consequently, it is worth taking into account these two faces of Regimes of Exception, something that tends to be lacking in the literature on the subject.

Despite a real concern over the use of these mechanisms at the time of the transitions (Despouy, 1999; García-Sayán, 1987) there have been very few studies on Regimes of Exception in recent years and, as already highlighted, the ones that have been carried out either offer (limited) data on one country (for example Iturralde 2003; Dávalos Muirragui, 2008; and Alenda, 2003) or approach them from a more legal or constitutionalist point of view (Delfino, 2000; Carbonell, 2008; Ríos Álvarez, 2009).

Consequently, in order to deepen our understanding of the use of a historically prevalent institution in current Latin American politics, we need to ask the question: how have Regimes of Exception been used by Presidents in recent years? The aim of this study is to offer a tentative reply to this question and an exploratory analysis of Regimes of Exception as they are used in practice, as a result of a rigorous analysis of empirical data.

As already emphasised, existing studies on Regimes of Exception tend to approach them from a legalist perspective. Our research questions are much more political in nature. Consequently, we agree with Friedrich (1950) in that political science should be interested in the law given its political function and that continuity in legal forms can often hide important change in real use. Our object of study is the Presidential decree and not the legal form of the Regime of Exception, given that there is room for Presidential innovation between the legal basis and the real action of executive power (Loveman, 1993).

For this reason, at this stage we redefine the object of this study as a *decree of exception*. A *decree of exception* can be defined as a *Presidential decree in which, referring explicitly or implicitly to a Regime of Exception established in the constitution or the law, a situation is defined as exceptional and exceptional measures are established in response to this situation*.

It is important to highlight that we include in our conceptualisation of *decrees of exception* those Presidential decrees that do not make an explicit reference to a Regime of Exception (i.e. by quoting the specific article or law) but nevertheless employ the same language used in the legal framework of the Regimes of Exception (by declaring a 'state of emergency', 'siege' etc) and follow the format of other decrees. These decrees may well be considered 'para-legal' yet we suspect that the lack of an explicit reference to the legal basis of a Regime of Exception may be due to technical oversight more than anything. In this sense, we follow rather than challenge the precedent established by Ferreira Rubio y Goretti (1998) in their analysis of the decrees of urgency and necessity in the case of Argentina.

Although the main theoretical framework with which we are working is theory on emergency powers, we believe that Regimes of Exception may be of interest to several fields of study on Latin American politics, including the quality of democracy, democratic governability, and Presidentialism.

3. Method

Basic methodological concerns

As outlined above, the object of this thesis are *decrees of exception*, which can be defined as a *Presidential decree in which, referring – explicitly or implicitly - to a Regime of Exception established in the constitution or the law, a situation is defined as exceptional and exceptional measures are established in response to this situation*.

Likewise, the main research question of this study is: what use has been given to Regimes of Exception by Presidents in recent years? Undoubtedly, it is a politically rather than legally orientated research question. We believe that a simple count of how many times these mechanisms have been declared according to a few press reports is insufficient; likewise we cannot extrapolate a general pattern from one or two cases. Therefore, we establish four primary research questions:

1. How often have *decrees of exception* been issued by Presidents from Central Andean countries in recent years? This is a fundamental question that considers if the mechanism is of political relevance and if its use is widespread among the different

Presidents. Consequently, answering this question will certify whether the topic is of real interest for studies on Presidentialism in the region.

2. What uses have *decrees of exception* been put to? The aim of this question is to discover the different pretexts for and purposes of declaring Regimes of Exception, in order to establish what their role in politics has been and – ultimately - whether it is necessary to redefine our conceptualisation or understanding of them.

3. Do different Presidents use *decrees of exception* in different ways? This question seeks to discover if there has been variation in Presidential use of Regimes of Exception.

4. How can we interpret the uses different Presidents put *decrees of exception* to? The aim of this question – rather than to find explanatory variables as such – is to discover some interpretative clues that may aid our understanding of the use of these mechanisms in real life politics in recent years.

The type of analysis that we carry out is the first stage of a comparative study, given that the unit of analysis are different Presidents. We selected the Presidents of Bolivia, Ecuador and Peru who were in office at some point during the period between 2000 and 2010 due to access to their decrees, the fact that all of them counted on a Regime of Exception established at the constitutional or legal level, and a considerable historic use of the mechanism throughout the twentieth century¹.

In terms of available Regimes of Exception, they are as follows: In Bolivia, these mechanisms are the ‘state of siege’ established in the Constitution of 1967; the Regimes of Exception invoked by the figure of ‘Disaster’ or ‘Emergency’ in the Law nº 2140 of 2000; and the ‘state of exception’ contemplated in the Constitution of 2009. In Ecuador, the mechanisms available are the ‘state of emergency’ established in the Constitution of 1998 and the ‘state of exception’ established in the Constitution of 2008. Finally, in Peru, the mechanisms available are the ‘state of emergency’ and the ‘state of siege’ established in the Constitution of 1993.

¹ The Presidents who were in office at some time between 2000 and 2010 are: in Bolivia Hugo Bánzer (until August 2001), Jorge Quiroga (August 2001-August 2002), Gonzalo Sánchez de Lozada (August 2002-October 2003), Carlos Mesa (October 2003-June 2005), Eduardo Rodríguez Veltzé (June 2005-January 2006), Evo Morales (January 2006 onwards); in Ecuador Jamil Mahuad Witt (until end of January 2001), Gustavo Noboa (January 2001-January 2003), Lucio Gutiérrez (January 2003-April 2005), Alfredo Palacio (April 2005-January 2007), Rafael Correa (January 2007 onwards); and in Peru: Alberto Fujimori (until November 2000), Valentín Paniagua (November 2000-July 2001), Alejandro Toledo (July 2001-July 2006) and Alan García (July 2006-onwards).

Given the exploratory nature of the study, it seemed logical to concentrate on Presidents from a handful of countries rather than limiting the study to the Presidents from just one country – which would run the risk of being too context-specific – or extending it to all Latin American Presidents – which undoubtedly would be too abstract. In terms of the time frame, we study from 2000 until 2010, for two main reasons: on one hand, again, due to the availability of data and secondly, so that the study can be both analytical and current, to paraphrase Peters (1998, 175).

The Frequency of the Decrees

The first question we aim to answer is: are *decrees of exception* relevant from a numerical point of view? As highlighted above, we felt that it was necessary to go beyond the cases highlighted in the press or human rights reports and search for them more systematically in order to ensure that *every single case* could be found. Therefore, the first step was to consult the respective constitutions and laws of the three countries to find out which Regimes of Exception are available for each President to use. Then, we turned to the Official State Bulletins of the three countries in order to find the *decrees of exception*, which constitute the primary source of information for this study.

Uses of the Decrees

In order to identify the uses given to *decrees of exception* – the second objective of this study - it is necessary to establish a system to classify the different units of observation. Clearly, there are several ways in which the classification could occur: it could be either inductive (via cluster analysis) or deductive (via a typology); and it could depend on which variables are considered to be most important. In this study we feel that a deductive approach is more important, given our interest in two particular variables that are relevant from a theoretical point of view: the presence of social unrest and the use of force.

Consequently, having gained access to the texts of the *decrees of exception* declared in the three countries, it was necessary to codify their contents. For the purposes of this study, we coded the decrees according to three variables that are relevant from a theoretical point of view: a) President (to link the unit of data collection to the unit of analysis); b) social disturbances (absent/present: indicators include episodes of protest, citizen insecurity, and latent conflict); and c) coercion (absent/present: Indicators include the suspension of human rights and/or guarantees, militarisation, and the use of other types of force). The last two variables are the basis of this study and can be easily crossed to form the following typology (following the tenets established by Collier, Laporte and Seawright, 2008).

Table 2. Typology of Decrees of Exception

	Social Unrest Present	Social Unrest Absent
Force Present	Repressive	Coercive
Force Absent	Mediative	Administrative

Source: own elaboration

We have named the different types according to the respective values on the component variables: ‘Repressive’ when there is social unrest and force is contemplated; ‘Mediative’ when there is social unrest but force is not contemplated; ‘Coercive’ when there is no social unrest but force is contemplated; and ‘Administrative’ when there is neither social unrest nor the contemplation of the use of force.

This is an ideal typology based on the absence or presence of the two variables social unrest and the use of force. For that reason, there is a possibility that we may not find cases of *all* the different types; nevertheless the matrix offers a degree of conceptual clarity that is important for this research.

Variation by President

Having classified the decrees according to the two key dimensions of the study it is necessary to link the different types to the different Presidents. At this stage, we calculate six-month averages of each type per President, which allows us to compare the number of decrees emitted by Presidents who were in office for very different periods of time between 2000 and 2010².

Offering an Interpretation

The final step in the analysis is to try to understand why certain Presidents may resort to the different decrees of exception and what they entail in practice. Hence, having identified the President who has shown the greatest tendency to employ each specific type during the previous phase of analysis, we offer a more qualitative analysis of both his decrees and the context in which they were emitted, in order to offer some

² The number of months each President was in power for in the period between 2000 and 2010 is as follows: in Bolivia Hugo Bánzer (20), Jorge Quiroga (12), Gonzalo Sánchez de Lozada (14), Carlos Mesa (21), Eduardo Rodríguez Veltzé (7), Evo Morales (60); in Ecuador Jamil Mahuad Witt (1 month, therefore is excluded as a case at this stage in the analysis), Gustavo Noboa (24), Lucio Gutiérrez (27), Alfredo Palacio (21), Rafael Correa (48); and in Peru: Alberto Fujimori (11), Valentín Paniagua (9), Alejandro Toledo (60) and Alan García (54).

interpretative clues and a better understanding of what the use of the different types of *decrees of exception* corresponds to.

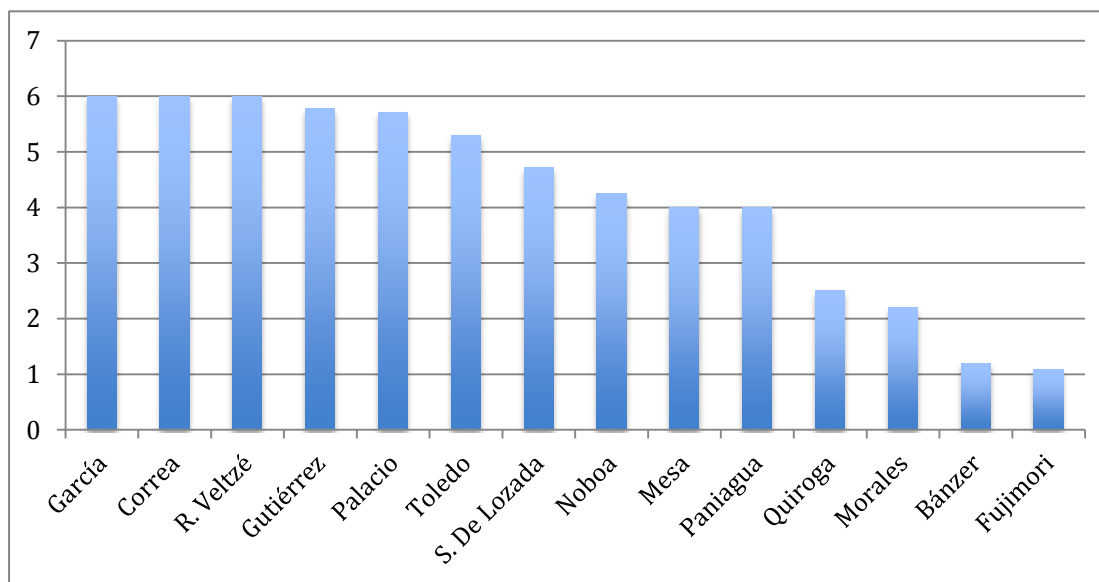
4. Analysis

a) Numerical Relevance

The first research question we aim to answer is: are decrees of exception relevant from a numerical point of view? Our reply is that they are: in the period under study a total of 292 decrees corresponding to our definition were identified³.

Clearly, the content of the declarations may well be very different but they have in common that they refer to emergency situation and employ emergency powers as a result, constituting – at the very least – an expression of Presidential desire to act, free from the constraints of the legislative or judicial branch in the name of ‘emergency’, whatever that may be. The graph below shows the results by President, calculated in terms of six-month averages, for the sake of clearer comparison:

Figure 1: Decrees of Exception Issued by the Presidents of Bolivia, Ecuador and Peru – 2000-2010 (Six-Month Averages)⁴



Source: own elaboration

³ It is possible that the actual number is higher, given the likelihood of decrees or Official Registers that were unavailable, particularly in the case of Ecuador.

⁴ For the same reason as highlighted above, it is possible that some data is missing and therefore these figures offer an exploratory analysis of the decrees per president, nevertheless based on a rigorous and thorough search of the Official Registers.

The results of the graph are quite striking: *all* Presidents in power at some point between 2000 and 2010 made use of this type of decrees, albeit it to a very different extent. At one end of the scale are Presidents García (Peru), Correa (Ecuador) and R. Veltzé, who have a six-month average of six *decrees of exception*. At the other end are Presidents Bánzer (Bolivia) and Fujimori (Peru) with an average of just over one *decree of exception* each per six-month period. Interestingly Morales (Bolivia) shows a much lesser tendency to use this mechanism than Correa (Ecuador), with whom he is often linked as part of the New Left in Latin America.

Consequently, two clear conclusions stand out at this abstract level of analysis of the use of Regimes of Exception by Central Andean Presidents in recent years: First, the use of regimes of exception is not restricted to Presidents with truly authoritarian pasts; on the contrary, these Presidents appear to shun them, possibly because they show a general disdain for democratic institutions, typified by Fujimori's *autogolpe* of 1992. Second, the use of these decrees in general terms does not respect the boundaries of country or ideology, as it constitutes a favourite tool of Presidents from the left (Correa); the centre (R. Veltzé); and the right (García).

b) Uses

Next, it is necessary to understand better the *content* of these decrees in order to classify them, albeit at an abstract level. In the table below we offer frequencies of the different types of *decrees of exception*, as a result of the codification and the ideal typology established around the two key variables: social unrest (present/absent) and force (present/absent).

Table 3: Frequencies of the Different Types of Decrees of Exception Issued by the Presidents of Bolivia, Ecuador and Peru 2000-2010

	Social Unrest Present	Social Unrest Absent
Force Present	Repressive N = 55	Coercitive N = 29
Force Absent	Mediative N = 18	Administrative N = 190

Source: own elaboration

The results are intriguing for several reasons. First, it is clear that the ideal typology can be maintained in practice and that all of the different types are of analytical interest. Second, the fact that the Administrative type is the most prevalent (with 190 of 292 cases corresponding to this type) suggests that the use of Regimes of Exception by Presidents from Bolivia, Ecuador and Peru in recent years – in numerical terms at least – is for something other than to repress social unrest. In any case, the Repressive type is still undoubtedly of numerical relevance, with a total of 55 declarations by Presidents from Bolivia, Ecuador and Peru between 2000 and 2010. We also find that the two more counter-intuitive types: Coercitive and Mediative do in fact exist in practice, albeit to a lesser degree, with 29 and 18 declarations respectively.

c) Variation by President

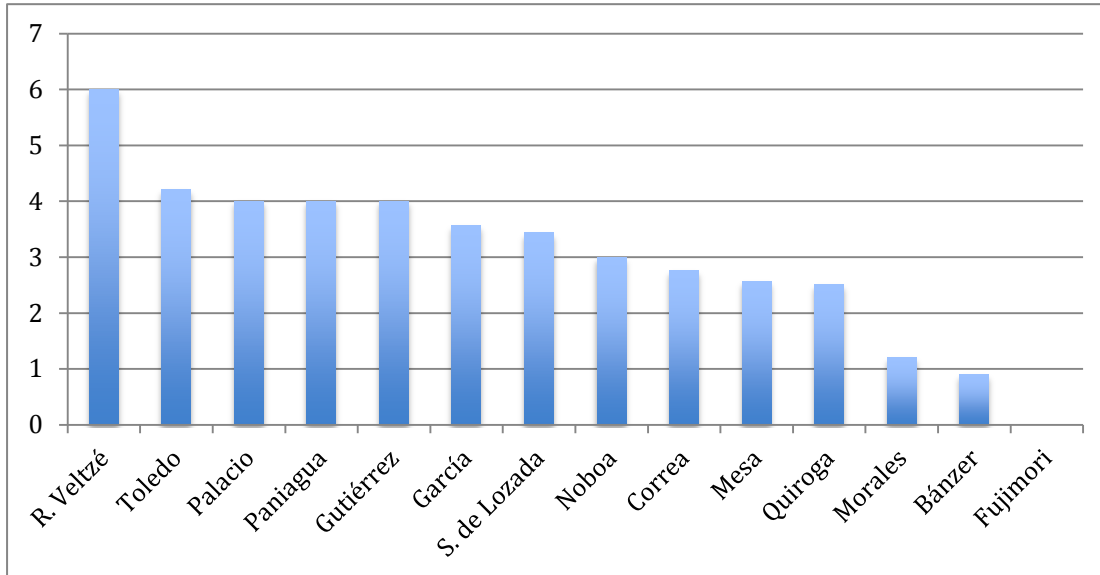
Next, we identify how often the different Presidents have used the different types of decrees of exception. In this section, we link the different types of decrees to different Presidents, in order to discover variation and identify which Presidents show a greater tendency to use each type.

The Administrative Type

Given its numerical importance, it seems logical to start with the Administrative type, which is characterised by a lack of social unrest and a lack of coercion contemplated in the decree. The table below shows the frequency (six-month averages) with which the different Presidents have resorted to this type of decree.

From the table it is clear that nearly all the Presidents of Bolivia, Ecuador and Peru in office at some point between 2000 and 2010 issued this type of decree: only one out of fourteen never did so (Fujimori). Nevertheless, we can observe a great deal of variation in terms of how often the different Presidents employ Administrative type *decrees of exception*: most importantly, according to the data found in this study, President Rodríguez Veltzé of Bolivia shows the greatest tendency towards the use of these decrees and therefore later we shall offer an in-depth analysis of them, in order to offer some interpretative clues.

Figure 2: Presidential Use of Administrative Decrees of Exception in Bolivia, Ecuador and Peru 2000-2010 (Six-Month Averages)⁵



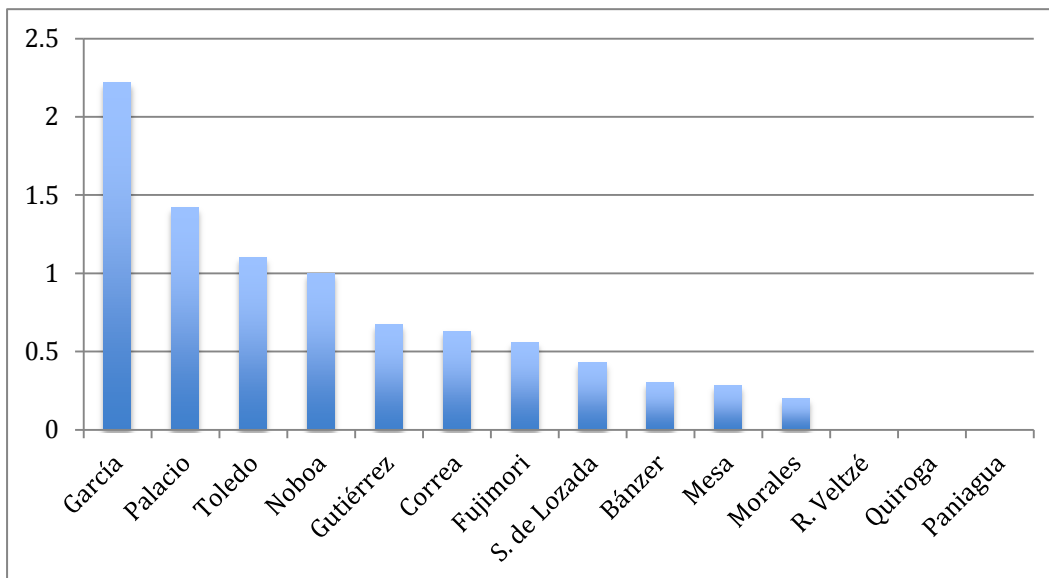
Source: own elaboration

The Repressive Type

The Repressive type is the second most frequently issued *decree of exception* and corresponds to the classic use of Regimes of Exception in Latin American history: to repress instances of social unrest. In general terms, these decrees have in common the presence of social unrest and the use of force, via the restriction of certain civil rights or the deployment of the military. The table below shows the frequency (six-month averages) with which the different Presidents have resorted to this type of decree.

⁵ For the same reasons highlighted in notes 4 and 3, it is possible that some data is missing and therefore these figures offer an exploratory analysis of the decrees per president, nevertheless based on a rigorous and thorough search of the Official Registers.

Figure 3: Presidential use of Repressive Decrees of Exception in Bolivia, Ecuador and Peru 2000-2010 (Six-Month Averages)⁶



Source: own elaboration

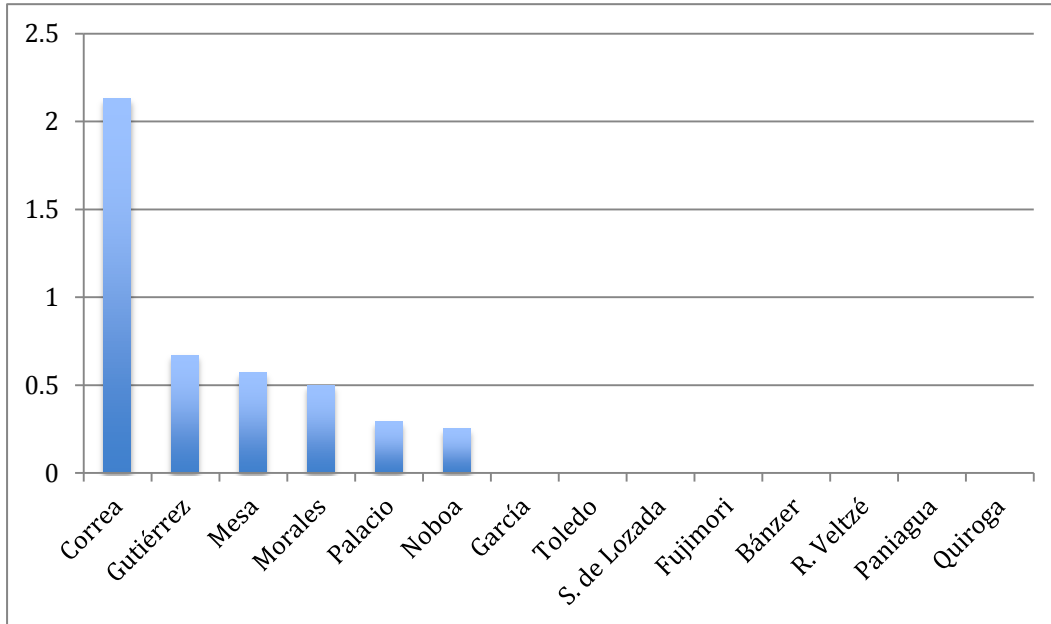
It is worth noting in this case that three Presidents – all of whom, tellingly, were interim Presidents - never dictated a Repressive type of *decree of exception*: Eduardo Rodríguez Veltzé, Jorge Quiroga and Valentín Paniagua. This is understandable, given that the rather precarious nature of being an interim rather than an elected President may create an aversion to repressive measures. In any case, according to the data collected in this study, the President who has shown the greatest tendency to employ this type of decree is Alan García with an average of over two decrees of this type per six months in government. Consequently, later on we analyse his use of the Repressive type *decrees of exception*.

The Coercive Type

The Coercive Type of *decree of exception* is rather counter-intuitive – if there are no social disturbances, why use force? Nevertheless, we found a total of 29 decrees of this type emitted by the Presidents of Bolivia, Ecuador and Peru in the period between 2000 and 2010, suggesting that they have some empirical relevance. The table below shows the frequency (expressed in six-month averages) with which the different Presidents have resorted to this type of decree.

⁶ For the same reasons highlighted in notes 4 and 3, it is possible that some data is missing and therefore these figures offer an exploratory analysis of the decrees per president, nevertheless based on a rigorous and thorough search of the Official Registers.

Figure 4: Presidential use of Coercive Decrees of Exception in Bolivia, Ecuador and Peru 2000-2010 (Six-Month Averages)⁷



Source: own elaboration

The results of this study suggest that the use of this type of *decree of exception* is not generalised among all Presidents; rather, less than half of them employed a Coercive *decree of exception* at some point in the period between 2000-2010. Indeed, none of the Peruvian Presidents declared this type of decree, suggesting that it has been somewhat of an innovation in the other two Central Andean countries⁸. President Rafael Correa is clearly the maximum exponent with an average of over two decrees of this type per six months in government. Hence, later we offer some interpretative clues on the use of this type of *decree of exception*, considering the decrees emitted by the President of Ecuador.

The Mediative Type

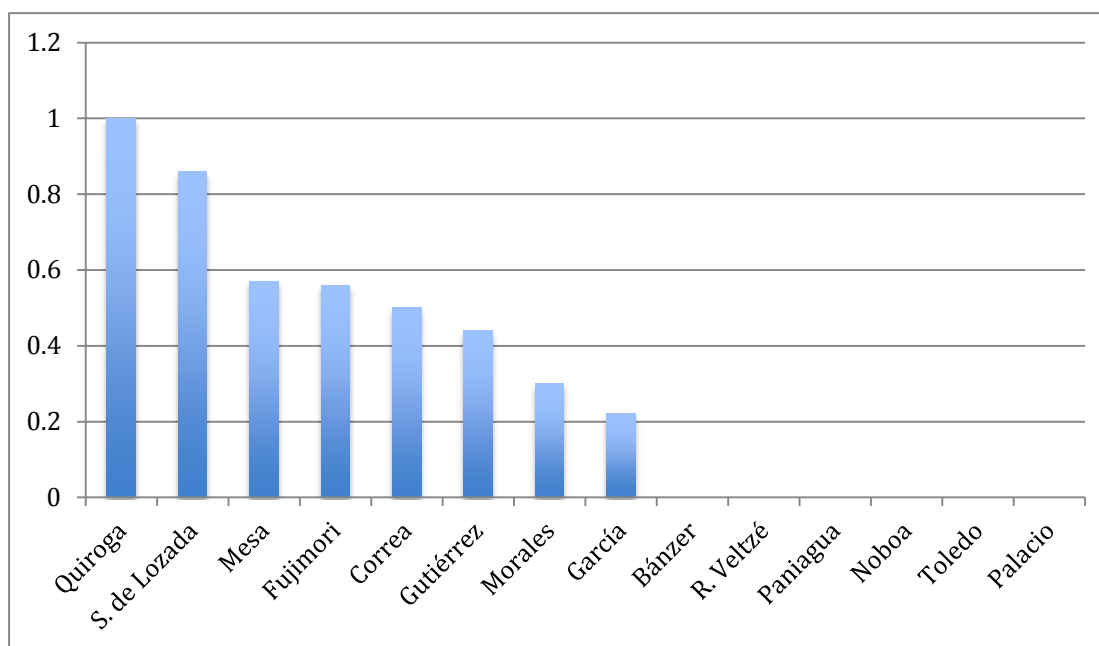
The Mediative type is the least important in numerical terms (with 18 cases) but is of interest as it challenges the classic conceptualisation of Regimes of Exception:

⁷ For the same reasons highlighted in notes 4 and 3, it is possible that some data is missing and therefore these figures offer an exploratory analysis of the decrees per president, nevertheless based on a rigorous and thorough search of the Official Registers.

⁸ It is worth highlighting that there is no evident institutional barrier to this type of decree in the Peruvian case.

there is social unrest, but no force is contemplated. The table below shows the frequency with which the different Presidents have resorted to this type of decree.

Figure 5: Presidential use of Mediative Decrees of Exception in Bolivia, Ecuador and Peru 2000-2010 (Six-Month Averages)⁹



Source: own elaboration

The results suggest that the use of *decrees of exception* for this purpose is not restricted to a couple of Presidents, rather over half declared this type of decree at some point between 2000 and 2010. According to the decrees discovered, Jorge Quiroga and Gonzalo Sánchez de Lozada are the Presidents with the greatest tendency to use the Mediative type *decree of exception*, with a six-month average of around one decree each. Hence, in order to offer some interpretative clues for this type of *decree of exception*, in the following section we shall offer an in-depth analysis of the Mediative decrees emitted by Presidents Quiroga and Sánchez de Lozada.

iv) Interpretative Clues

The next step in the analysis is to try to understand what the different types of *decree of exception* essentially correspond to. Hence, now that we have identified the

⁹ For the same reasons highlighted in notes 4 and 3, it is possible that some data is missing and therefore these figures offer an exploratory analysis of the decrees per president, nevertheless based on a rigorous and thorough search of the Official Registers.

Presidents who have shown the greatest tendency to employ each type, according to the data available, we look more closely at both their decrees and the context in which they were emitted in order to discover some interpretative clues and a better understanding of what the use of the different types of *decrees of exception* entails in practice. Consequently, in this section we offer a more qualitative analysis of the different types of *decrees of exception*.

The Administrative Type

In the case of the Administrative type, we analysed those decrees emitted by President Rodríguez Veltzé in order to look for a pattern or possible interpretative clues.

As a result of this more qualitative reading of his decrees, we discovered two major uses: firstly, to rescue certain industries or public sectors from inefficient managers or adverse climatic conditions; and secondly, to offer first aid for people affected by natural disasters or epidemics. In both cases, the ‘administrative’ key seems to be the exoneration from public contracting procedures to speed up the administrative process (established as an integral part of Regimes of Exception in Law Nº 2140, in articles 26 and 27), something that facilitates a lack of transparency in the distribution of public funds and licences.

In terms of the first type of use, the Decreto Supremo Nº 28447 signed on the 19th of November 2005, is a case in point. In it, President R. Veltzé refers to a situation of climatic phenomena that would stop the normal service of flights in the Department of Beni (threat of floods, landslides etc). Hence, as a result, the Prefect of the Department is authorized to contract the necessary services to maintain the airport functioning, without having to resort to standard public contracting procedures.

In terms of the second type of use, the Decreto Supremo Nº 28355 signed on the 21st September 2005 is a typical example. In this case, President R. Veltzé refers to forest fires occurring in the Department of Beni as a threat to “people, goods, services, and the environment”. As a result, the Minister of Public Finances is authorised to spend the money offered by international aid in order to offer a response to the emergency (without specifying what tasks should be carried out), with the possibility of exoneration from normal public contracting procedures. Nevertheless, there is a nod to transparency, given that CONARADE (the national emergency and disaster commission) is put in charge of controlling the use of resources.

It is worth noting that President R Veltzé was in power in a context of rapid adaptation to the threats posed by climate change, a factor that may well explain his clear tendency to resort to this type of decree. Furthermore, it is intriguing that three

of these *decrees of exception* apply to Beni, a Department that has historically been overlooked by the Bolivian State (Agencia Para el Desarrollo de las Macroregiones y Zonas Fronteras: <http://www.ademaf.gob.bo/>). This suggests that there may be a *geographical* element to the use of Administrative type *decrees of exception*, constituting a mechanism that can potentially strengthen governmental presence in vulnerable areas.

The Repressive Type

In the case of the Repressive type, Peru's President Alan García shows a clear tendency in this sense, with a six-month average of over two decrees, according to the data uncovered in the study. Consequently, we revised the twenty decrees of this type emitted by this President in order to look for a pattern or possible interpretative clues.

More specifically, we found three major uses of these decrees: first, to put a halt to episodes of non conventional protest that affect important sectors of the economy such as the transportation/extraction of gas or petrol or key transport links; second, to protect government institutions when under threat in episodes of public order; and third, to control remnants of the Sendero Luminoso terrorist group, currently linked to drug-trafficking activities in the Valle del Alto Huamaga and the VRAE.

In terms of the first use, the Decreto Supremo Nº 058-2008-PCM – signed by Alan García on the 18th August 2008 - is a case in point: in the context of wide protests over the extraction of gas in the Departments of Amazonas, Loreto, and Cusco, the access to petrol extraction installations were blocked by protesters. Consequently, a state of emergency was declared in order to protect the industry. Despite the fact that four civil rights were suspended – personal liberty/security; the inviolability of the home; freedom of movement; and freedom of reunion – the protests continued, leading to the bloody events of Bagua at the beginning of June the following year.

Next, the Decreto Supremo Nº-086-2006-PCM (signed on the 5th of December, 2006) is a key example of the second use of repressive type decrees of exception. In this decree, President García refers to a situation of acts of violence against the Regional Government of Apurímac, which has lasted nearly a week. In order to “restore order” to the region, the same four rights are suspended and the Prefect is given full power to control order, with the help of the Armed Forces. Undoubtedly this declaration is a demonstration of support for the local representative of the executive branch in the face of citizen protest.

Finally, the third use is reflected in the Decreto Supremo Nº 055-2010-PCM, signed on the 14th of May 2010. In this instance, the emergency identified is the need

to continue counter-terrorism and counter-drug-trafficking activities in several provinces in Huánuco, San Martín, and Ucayalí. Consequently, during the state of emergency (which would initially last for 60 days and then be extended) the same four rights are suspended and the Armed Forces are put in charge of maintain order in area.

In all of these cases, it is clear that the use of Repressive decrees are a means for a President to intimidate and impose order on groups that are problematic for the government, whether it be for political or security reasons. In the case of President García, it is worth remembering that during his term in power in the 1980s, the conflict with Sendero Luminoso was at its height (Jaskoski, 2011) and he continued the policy of declaring “states of emergency” established by President Belaúnde. Hence it is possible to talk of a “learning process” that he carried forward nearly twenty years later. Furthermore, it is worth pointing out that all of these decrees (except one) apply to the sub-national level, mainly rural areas far from Lima, where State presence is limited. This mirrors the findings on Beni in the case of R Veltzé.

The Coercive Type

In terms of the Coercive type of *decree of exception*, we revised the decrees of this type emitted by Ecuador’s President Rafael Correa between taking power in 2006 and December 2010, in order to look for a pattern or possible interpretative clues.

Essentially we discovered two uses for this type of decree: first and foremost, to protect or guarantee the implementation of administrative interventions by using the military, particularly in the case of Ecuador’s national Petrol company Petroecuador; and second - to a much lesser extent – the use of force in order to control certain epidemics.

A classic example of the first type is Decreto Ejecutivo N° 1544, signed by President Correa on the 20th January 2009. In this case, previous governments are blamed for the inefficient operation of the state petrol company and a need to protect non-renewable natural resources is invoked. Consequently, a state of exception of is declared for 60 days within the company itself, in order to improve management of areas including exploration, production, industrialization, commercialization, and transport of petrol. Most importantly, the Naval Force is to be put in charge of this emergency administration process, although no justification is given for this.

In terms of the second use, Decreto Ejecutivo N° 1693, signed on the 29th April 2009, is a prime example. In this case, the threat of swine flu is identified as a possible cause of “internal commotion” throughout the Republic. Hence, a state of exception is declared, permitting “military mobilization” and necessary requisitions, and the health sector is called upon to prevent and contain the virus. It is interesting to note that

declaring a regime of exception was Ecuador's immediate and rather unique reaction to a potentially global threat.

Undoubtedly, the use of the military to carry out administrative changes and their control of certain industries or sectors is still a reality in many Latin American democracies, constituting a threat to democratic consolidation (Martínez, 2006). Nevertheless, the discovery that *Regimes of Exception* can offer a means to facilitate the military's administrative-economic influence in a democratic context, stresses the importance of offering an empirical analysis of this mechanism. The fact that President Correa shows a clear tendency towards the use of these measures reflects a concentration of power in the executive and reliance on the military that are key characteristics of the *Revolución Ciudadana*.

The Mediative Type

Finally, according to the data created in this study, two Bolivian Presidents – Jorge Quiroga and Gonzalo Sánchez de Lozada – show the greatest tendency to employ Mediative type *decrees of exception* with six-month averages of around 1 decree. Consequently, we revised the two decrees of this type emitted respectively by both Presidents in order to look for a pattern or possible interpretative clues.

Again, two logics lie behind this type of decrees: first, the use of administrative measures and/or the transfer of resources in order to stop latent conflicts from becoming active ones; and second, to repair the damage caused by episodes of public disorder, again by emergency administrative measures and/or the transfer of resources. Indeed, Quiroga's use of this type of decree is more a question of conflict-avoidance; whereas Gonzalo Sánchez de Lozada appears to have issued this type of decrees either *after* the event to clear-up the mess or by preparing the police - via the administrative route - to deal with social unrest.

In the case of President Quiroga, the Decreto Supremo N° DS26317 – signed on the 15th September 2001 - is a key example. The emergency situation identified here is unemployment and low incomes for many Bolivian families, creating a threat to social stability. In virtue of the impending conflict, Quiroga declares a national emergency in order to create a "National Plan of Emergency Employment", of which the different Ministers would be in charge of creating.

On the other hand, in the case of President Sánchez de Lozada, the DS N° 26978 – signed on the 27th March 2003 - is characteristic of his use of this type of decree. Here, he refers to the "tragic events of the 12th and 13th of February" (namely, protests between police and the military in La Paz) which caused the loss of human life, damage to property, loss of cultural heritage, and information. Consequently, the

Ministry of Finance is offered extra resources and an exoneration from normal contracting procedures to reconstruct or rehabilitate public property. Moreover, photocopies will be asked of institutions and individuals to replace administrative documents that have been destroyed.

Despite the nuances according to the different presidents, these decrees reflect the social turmoil of Bolivia between 2001 and 2003 and offer a method of dealing with conflict via fast-track expressions of administrative power, rather than the direct use of force.

5. Conclusions

The aim of this study has been to discover how Regimes of Exception have been used in practice by Latin American Presidents in recent years. Our starting point is that they have been largely ignored by political science and recent studies on Latin America, despite an important historical legacy from authoritarian governments to repress social disturbances and a legal form that has remained in tact in the third wave of democratization. Our study is not designed to be a comprehensive approach of all emergency powers – both formal and informal – but rather chooses to focus on one mechanism, due to its historical importance and an apparent literature gap.

In order to offer an exploratory approach from a political point of view, we reconceptualized the object of study as a *decree of exception* and looked for the decrees of this type emitted by the Presidents of Bolivia, Ecuador, and Peru who were in power at some point between 2000 and 2010. We found a total of 292 cases, suggesting that these emergency powers are still of political relevance in the region.

Next, we created an ideal typology based on the presence/absence of social disturbances and presence/absence of coercion in order to form four ideal types: Repressive, Mediative, Coercive, and Administrative. Despite the fact that we found cases of all types, the most commonly declared decree was the Administrative type, suggesting that it is necessary to broaden our understanding of Regimes of Exception in present day politics.

Having linked the use of the different types to the different Presidents, we discovered a great deal of variation, something that could be explained more fully in future research. Next, we also offered a more qualitative and contextual reading of the use of the different types of decrees by those Presidents who showed the greatest tendency to employ each type. As a result of this analysis, we found that Presidents have put these decrees to different uses in challenging contexts, including: the exoneration from public contracting procedures in order to face natural disasters; the suspension of civil rights to put a stop to protest; the use of military administrators to

improve the management of certain industries; and the rehabilitation of public information lost by instances of social unrest.

Despite these nuances, the decrees all share the following key characteristic: they represent an attempt on the part of Presidents to protect certain industries, institutions, regions, sectors, or activities from potential threats via a knee-jerk, public, and fast-track expression of governmental power, with little oversight from the legislative or executive branch. Consequently, Regimes of Exception can be understood as an important tool in the Presidential box in three Latin American Republics that – despite fulfilling the basic conditions of democracy - continue to suffer from institutional and structural weaknesses.

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