

**BUILDING DEMOCRACY:
DE JURE AND DE FACTO AUTONOMY IN ELECTORAL MANAGEMENT BODIES
IN LATIN AMERICA AND AFRICA**

by

Luis Alejandro Trelles Yarza

B.A. in Political Science (with Honors), *Instituto Tecnológico Autónomo de México* (ITAM),

México City, 2007

M.A. in Political Science, University of Pittsburgh, 2013

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This dissertation was presented

by

Luis Alejandro Trelles Yarza

It was defended on

October 30, 2018

and approved by

Dissertation Chairperson: Scott Morgenstern, Professor, University of Pittsburgh

Barry Ames, Andrew W. Mellon Professor of Political Science, University of Pittsburgh

B. Guy Peters, Maurice Falk Professor of American Government, University of Pittsburgh

Louis Picard, Professor, Graduate School of Public and International Affairs, University of Pittsburgh

Staffan I. Lindberg, Professor of Political Science, Director of the V-Dem Institute, University of Gothenburg

Joshua M. Kivuva, Associate Professor, University of Nairobi

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Luis Alejandro Telles Yarza, PhD

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This work studies the autonomy in electoral management bodies (EMBs) in Latin America and Africa. Specifically, my research aims to answer the two following two questions: a) When are *de jure* independent electoral institutions able to aid in building democracy? And b) Under what circumstances are *de jure* autonomous EMBs able to develop and maintain *de facto* independence? Using a mixed methods approach, I examine the effect of EMBs' *de facto* independence on the quality of elections and the mechanisms that allow *de jure* autonomous EMBs to become *de facto* independent in third-wave countries. Based on fieldwork in Mexico, Venezuela, Ghana, Kenya, and Egypt, I find that formal independence is insufficient to guarantee *de facto* autonomy. My investigation confirms that EMBs' *de facto* independence is positively associated to the credibility of elections. I conclude that internal consultative mechanisms (ICMs) embedded within EMBs offer an alternative path –to institutional insulation– for these institutions to build a positive reputation over time.

My research contributes to the literature on electoral governance by showing that electoral bureaucracies that effectively channel external political pressures through internal consultative mechanisms are more likely to positively impact the quality of elections. Contrary to previous studies focusing solely on formal rules promoting EMBs' institutional insulation, I contend that EMBs in third-wave countries are more likely to achieve higher levels of *de facto*

autonomy by adopting mechanisms that allow the main stakeholders –political actors– to participate in key stages of electoral management. This theoretical refinement shows that ICMs are key for administrative procedures within EMBs to become more transparent, accessible, and accountable to political actors competing for power.

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LIST OF ABBREVIATIONS

- AAEA... Association of African Election Authorities
- ACP... Action Congress Party (Ghana)
- AD... Democratic Action (*Acción Democrática, Venezuela*)
- AFRC... Armed Forces Revolutionary Council (Ghana)
- ANC... African National Congress (South Africa)
- ANC... National Constituent Assembly (*Asamblea Nacional Constituyente, Venezuela*)
- ARENA... National Alliance Renewal Party (*Aliança Renovadora Nacional, Brazil*)
- ARPS... Aborigine's Rights Protection Society (Ghana)
- CD... Democratic Coordination (*Coordinación Democrática, Venezuela*)
- CDD... Center for Democratic Development (Ghana)
- CEE... Central Electoral Committee (North Korea)
- CEESP... Center for Economic Studies of the Private Sector (*Centro de Estudios Económicos del Sector Privado, Mexico*)
- CEC... Central Electoral Commission (Belarus)
- CENA... Autonomous National Electoral Commission (*Commission Electorale Nationale Autonome, Benin*)
- CFE... Federal Electoral Commission (*Comisión Federal Electoral, México*)
- CFVE... Federal Electoral Vigilance Commission (*Comisión Federal de Vigilancia Electoral, México*)
- CHS... Central Main-Polling-Station Office (Suriname)
- CIPEV... Commission Inquiry on Post-Election Violence (Kenya)

CKRC... Constitution of Kenya Review Commission (Kenya)

CLV... Local Surveillance Commission (*Comisión Local de Vigilancia, México*)

CNDH... National Human Rights Commission (*Comisión Nacional de Derechos Humanos, México*)

CNE... National Electoral Council (*Consejo Nacional Electoral, Venezuela*)

CNE... Consejo Nacional Electoral (Venezuela)

CNE... Consejo Nacional Electoral (Ecuador)

CNV... National Surveillance Commission (*Comisión Nacional de Vigilancia, México*)

COFIPE... Federal Code of Electoral Institutions and Processes (*Código Federal de Instituciones y Procedimiento Electorales, Mexico*)

COG... Commonwealth Observer Group (Ghana)

COPEI... Committee of Independent Electoral Political Organization (*Comité de Organización Política Electoral Independiente, Venezuela*)

CORD... Coalition for Reforms and Democracy (Kenya)

CPP... Convention People's Party (Ghana)

CRBV... Constitution of the Bolivarian Republic of Venezuela (*Constitución de la Republica Bolivariana de Venezuela, Venezuela*)

CRED... Civil Registration and Electoral Division (Ghana)

CSE... Supreme Electoral Council (*Consejo Supremo Electoral, Venezuela*)

CSES... Comparative Study of Electoral Systems

CSOs... Civil Society Organizations

DECO... Department of Electoral Cooperation and Observation

DERFE... Executive Direction of the Federal Register of Voters (*Dirección Ejecutiva del Registro Federal de Electores, Mexico*)

DF... Federal District (*Distrito Federal, Mexico*)

DIPAC... District Inter-Party Advisory Committee (Ghana)

DPI... Database of Political Institutions

DRRC... District Registration Review Committees (Ghana)

EA... Electoral Autonomy

EC... Electoral Commission (Ghana)

ECK... Electoral Commission of Kenya (Kenya)

EIM... Electoral Integrity Project

EIP... Electoral Integrity Project

EMB... Electoral Management Body

EOM... Election Observation Mission

EP... Eagle Party (Ghana)

ETRS... Electronic Transmission Results System

EU... European Union

EVID... Electronic Voter Identification Device

FORD... Forum for the Restoration of Democracy (Kenya)

GCP... Ghana Congress Party (Ghana)

ICM... Internal Consultative Mechanism

IDRC... International Development Research Center

IDS... Institute for Development Studies (Kenya)

IEBC... Independent Electoral and Boundary Commission (Kenya)

IEC... Independent Electoral Commission (Ghana)

IEM... Index of Electoral Malpractice

IESA... Institute of Higher Studies in Administration (*Instituto de Estudios Superiores de Administración, Venezuela*)

IFE... Federal Electoral Institute (*Instituto Federal Electoral, México*)

IIEC... Interim Independent Electoral Commission (Ghana)

IPPG... Intert-Parties Parliamentary Group (Kenya)

IREC... Independent Review Committee (Kenya)

KANU... Kenia African National Union (Kenya)

KNBS... Kenia National Bureau of Statistics (Kenya)

LDP... Liberal Democratic Party (Kenya)

LEF... Federal Electoral Law (*Ley Federal Electoral, México*)

LFOPE... Federal Law of Public Organizations and Electoral Processes (*Ley Federal de Organizaciones Políticas y Procesos Electorales, Mexico*)

LOPE... Organic Law of the Electoral Power (*Ley Orgánica del Poder Electoral, Venezuela*)

LOS... Organic Law of Suffrage (*Ley Orgánica del Sufragio, Venezuela*)

LOSPP... Organic Law of Suffrage and Political Participation (*Ley Orgánica del Sufragio y Participación Política, Venezuela*)

INAI... National Institute of Transparency, Access to Information and Data Protection (*Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales, México*)

INE... National Electoral Institute (*Instituto Nacional Electoral, México*)

INEC... Interim National Electoral Commission (Ghana)

INEGI... National Institute of Statistics, Geography and Informatics (*Instituto Nacional de Estadística, Geografía e Informática, Mexico*)

IPAC... Inter-Party Advisory Committee (Ghana)

IPCC... Inter-Party Coordinating Committee (Ghana)

JNE... National Electoral Tribunal (*Jurado Nacional de Elecciones, Perú*)

MAS... Movement to Socialism (*Movimiento al Socialismo, Venezuela*)

MES... Electoral Movement of the People (*Movimiento Electoral del Pueblo, Venezuela*)

MIR... Revolutionary Left Movement (*Movimiento de Izquierda Revolucionaria, Venezuela*)

MRN... People's Revolutionary Movement, (*Movimiento Revolucionario del Pueblo, Mexico*)

MUD... *Mesa de Unidad Democrática* (Venezuela)

MVR... Fifth Republic Movement (*Movimiento Quinta República, Venezuela*)

NARC... National Rainbow Coalition (Kenya)

NASA... National Super Alliance (Kenya)

NCD... National Commission for Democracy (Ghana)

NCEC... National Convention Executive Committee (Kenya)

NDC... National Democratic Congress (Ghana)

NEC... National Electoral Commission (Equatorial Guinea)

NELDA... National Elections across Democracy and Autocracy

NIP... National Independent Party (Ghana)

NLC... National Liberation Council (Ghana)

NPP... New Patriotic Party (Ghana)

NRC... National Redemption Council (Ghana)

OAS... Organization of American States

ODM... Orange Democratic Movement (Kenya)

OEP... Plurinational Electoral Organ (*Órgano Electoral Plurinacional, Bolivia*)

OKB... Independent Electoral Bureau (Suriname)

ONPE... *Oficina Nacional de Procesos Electorales* (Perú)

OPLE... Local Electoral Public Organisms (*Organismos Públicos Locales Electorales, Mexico*)

OSC... Organization for Security and Co-operation in Europe

PA... Progressive Alliance (Ghana)

PAN... National Action Party (*Partido Acción Nacional, México*)

PCM... Mexican Communist Party (*Partido Comunista Mexicano, Mexico*)

PEC... *Presidential Elections Committee* (Egypt)

PFP... Popular Front Party (Ghana)

PHP... Peoples Heritage Party (Ghana)

PLC... Party Liaison Committee (South Africa)

PMDB... *Brazilian Democratic Movement Party* (Brazil)

PMFJ... Peoples Movement for Freedom and Justice (Ghana)

PMS... Mexican Socialist Party (*Partido Mexicano Socialista, Mexico*)

PMT... Mexican Party of the Workers of Mexico, (*Partido Mexicano de los Trabajadores de México, Mexico*)

PNC... People's National Convention (Ghana)

PNDC... Provisional Nacional Defense Council (Ghana)

PNP... People's National Party (Ghana)

PNU... Party of National Unity (Kenya)

PP... Progress Party (Ghana)

PPLC... Political-Parties Liaison Committees (Kenya)

PPR... Patriotic Revolutionary Party (*Partido Patriótico Revolucionario, Mexico*)

PQL... Predictive Quasi-Likelihood

PRD... Party of the Democratic Revolution (*Partido de la Revolución Democrática, México*)

PRI... Institutional Revolutionary Party (*Partido Revolucionario Institucional, México*)

PRN... Party of National Reconstruction (*Partido da Reconstrução Nacional, Brazil*)

PSI... Party System Institutionalization

PST... Socialist Worker's Party (*Partido Socialista de los Trabajadores, Mexico*)

PSUM... Mexican Unified Socialist Party (*Partido Socialista Unificado de México, Mexico*)

PSUV... Single Socialist Party of Venezuela (*Partido Socialista Único de Venezuela, Venezuela*)

PT... Workers' Party (*Partido dos Trabalhadores, Brazil*)

PVEM... Green Ecologist Party of Mexico (*Partido Verde Ecologista de México, Mexico*)

QED... Quality of Elections Data

RENIEC... *Registro Nacional de Identificación y Estado Civil* (Perú)

RIGLS... Restricted Iterative Generalized Least Squares

RIPAC... District Inter-Party Advisory Committee (Ghana)

RNE... National Voter's Registry (*Registro Nacional de Electores, Mexico*)

SCJN... Supreme Court of Justice of the Nation (*Suprema Corte de Justicia de la Nación, Mexico*)

SDF... Social Democratic Front (Ghana)

SERVEL... Electoral Service (*Servicio Electoral, Chile*)

SMC... Supreme Military Council (Ghana)

TCE... *Tribunal Calificador de Elecciones* (Chile)

TCEF... *Tribunal de los Contencioso Electoral Federal* (Mexico)

TEC... Transitional Executive Council (South Africa)

TEPJF... Federal Electoral Tribunal of the Judicial Power of the Federation (*Tribunal Electoral del Poder Judicial de la Federación, México*)

TNA... National Alliance Party of Kenya (Kenya)

TRIFE... Federal Electoral Tribunal (*Tribunal Federal Electoral, Mexico*)

TSE... Supreme Electoral Tribunal (*Tribunal Superior Eleitoral, Brazil*)

TSJ... Supreme Justice Tribunal (*Tribunal Supremo de Justicia, Venezuela*)

UCAB... Andrés Bello Catholic University (*Universidad Católica Andrés Bello, Venezuela*)

UCR... Radical Civic Union (*Unión Civica Radical, Argentina*)

UCV... Central University of Venezuela (*Universidad Central de Venezuela, Venezuela*)

UGCC... United Gold Coast Convention (Ghana)

UIC... Communist Left Union (*Unión de la Izquierda Comunista, Mexico*)

UNC... United National Convention (Ghana)

UNDP... United Nations Development Program

UNEAD... Electoral Assistance Division of the United Nations

UNECA... United Nations Economic Commission for Africa

URD... Democratic Republican Union (*Unión Republicana Democrática, Venezuela*)

URP... United Republican Party (Kenya)

ZEC... Zimbabwe's Electoral Commission (Zimbabwe)

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1.0 INTRODUCTION

While I was participating as an international electoral expert in Egypt's 2014 presidential election, a highly ranked governmental official asked my group what role Mexico's electoral management body (EMB) played during the transition to democracy that culminated with a peaceful alternation in power in the year 2000. They also wanted to know our views on how the Federal Electoral Institute (IFE) –now the National Electoral Institute (INE)– had built such a positive reputation.

This was not the first time that international policy makers or country-level experts had been drawn to the success of Mexico's EMB. A decade before, in 2004, two former IFE commissioners were invited by the Electoral Assistance Division of the United Nations (UNEAD) to advise Iraq's Government Council on how to redesign its electoral system and create an autonomous bureaucratic institution to manage elections (Lujambio 2004). Both then and now, most members of the delegation agreed that having a formally independent institution –with administrative and financial autonomy– to manage Mexico's presidential election in 2000 was key to guaranteeing a successful transition. This conclusion, however, was missing something: many formally autonomous EMBs around the developing world, despite being formally independent on paper, failed to operate autonomously.

The Mexican experience in 2000 became an example of the importance of formal rules generally, and it showed that formally an EMB's administrative and financial independence can aid in smoothing a country's political transition in a newly constituted democracy. This story, however, failed to consider the many unsuccessful cases where EMBs have also adopted a similar

–*de jure* independent– administrative scheme. The problem with these conversations among practitioners is that they usually fail to recognize that adopting a set of formal rules is insufficient to create a *de facto* autonomous electoral commission. More importantly, is that they fail to acknowledge that under certain circumstances, some rules promoting EMBs’ *de jure* independence –i.e., insulation from political parties– might not only be ineffective but can end up undermining the capacity of these institutions to become *de facto* independent.

This lesson became clear to me while doing fieldwork in Venezuela and Kenya between 2014 and 2016. Major constitutional reforms in these countries created new electoral regulatory frameworks and formally independent EMBs in 1999 and 2010, respectively, but they clearly failed to guarantee the EMBs *de facto* independence or their capacity to build a positive reputation over time. Many other countries in Latin America and Sub-Saharan Africa, especially those under semi-competitive or electoral authoritarian regimes, have had a similar experience. On paper their EMBs are autonomous, but in practice they bend to political interests or do not manage to be recognized by all political actors as impartial arbiters of electoral processes. Most scholars interested in electoral governance have shown that EMBs formal independence is positively associated with key outcomes for democracy (Hartlyn et al. 2009; Rosas 2010; Norris 2015, 2016, and 2017). What has been missing from these studies, however, is a clarification of when do these institutions become key for democratic stability and when are they able to become *de facto* autonomous.

A closer look at the internal dynamics of these institutions reveals not only that there is a significant gap between *de jure* and *de facto* autonomy, but also that the capacity of EMBs to affect the quality of elections varies significantly across countries. That is, the role of EMBs for

democratic stability might not be as relevant in consolidated democracies –such as Canada, Chile, and Costa Rica– or for authoritarian regimes at the brink of a civil war –such as Zimbabwe, Somalia or the Democratic Republic of Congo. However, EMBs are more likely to play a decisive role in third-wave countries that are between these extremes. It is in third-wave countries such as Mexico, Bolivia, Ecuador, Venezuela, Nicaragua, Colombia, Ghana, South Africa, Benin, and Kenya, where *de facto* electoral autonomy has become key for ensuring the organization of clean elections and peaceful alternations in power.

This difference between the levels of *de jure* and *de facto* electoral autonomy in the developing world motivates this dissertation and leads to the following two questions: First, when are EMBs able to aid in building democracy? My answer is that formal rules play an important role for third-wave democracies, but that *de facto* autonomy is more strongly related to key outcomes for democracy such as the quality and credibility of elections. Second, under what circumstances *de jure* autonomous EMBs in third-wave countries are able to become *de facto* independent? The short answer is that formal rules matter, but so do informal ones. I find that differences in the internal dynamics of EMBs affect their capacity to maintain or develop their *de facto* independence. Specifically, once these institutions become formally independent, which is the most common administrative arrangement in third-wave democracies, what I denominate in this work as *internal consultative mechanisms* (ICMs) –rather than institutional insulation– is what allows technical and administrative procedures within EMBs to become more accessible and accountable to political actors competing for power.

That is, ICMs within EMBs, especially in countries holding elections in semi-competitive and politicized environments, allow political parties, candidates, and citizens to engage, monitor,

and audit the different administrative phases of an electoral process. In subsequent chapters, I describe the different ways in which some EMBs have been able to develop these mechanisms and how, in other cases, institutional insulation has prevented political actors to get involved in key stages of electoral administration generating an environment of opacity and mistrust.

In sum, I argue that both the formal and informal dynamics within electoral bureaucracies, as well as their capacity to effectively embed an internal check and balance system, are an alternative for these institutions to become *de facto* autonomous and, thereby, to positively affect the quality of elections. In the following paragraphs, I present the motivation and research puzzle. Subsequently, I discuss the research design and present an outline of the dissertation.

1.1 MOTIVATION AND RESEARCH PUZZLE

Elections have been held long before modern democracy, but a precondition for these processes to be recognized as democratic is that they need to be “free and fair” (Dahl 1972, 3). In contrast to what happened in most Western democracies (Teorell 2017), the formal independence of electoral management bodies in the third-wave countries has become key for democracy because it became a necessary condition for political stakeholders to recognize the outcome of elections, for citizens to have confidence in these processes, and for EMBs to build a positive reputation over time.

Most scholars and practitioners recognize that when EMBs lack formal independence, technical procedures are more likely to become politicized and, thus, a reason for political instability (Geddes 1996; Pastor 1999b; Boda 2005). For this reason, EMBs have become a crucial gatekeeping institution both for developing countries that transitioned to democracy during –or

after– the third-wave of democratization and for those that remain under authoritarian rule (Mozaffar and Schedler 2002; Schedler 2002; Schedler 2006). In some cases, these institutions have played a crucial role in helping some third-wave regimes strengthen their democracy; in others, they have severely undermined the countries’ capacity to have free and fair elections.

As the franchise of voting expanded during nineteenth and twentieth centuries in Europe and the Americas, the power of landlords, the clergy, and government officials over voters –and electoral organization in general– led many to question the legitimacy and credibility of elections (Posada-Carbó 1996, 2). The debates surrounding electoral management during the first and second waves of democratization focused on issues such as, *who could participate in elections* (who could vote or run for office); *what purpose would elections serve* (as vehicles to elect a representative, solve local disputes, or promote social mobilization); *how would voting take place* (the secrecy of the vote); *who would organize elections* (the landlords, the state, or the clergy); and *the type of rules that would be used to aggregate results* (translating votes into different forms of political representation) (Posada-Carbó 1996). It was not until the third-wave of democratization that the formal independence of EMBs became a proxy of impartiality in electoral management and an international standard to classify elections in the developing world.¹

¹ In the last two decades, EMBs have caught the attention of scholars and international organizations around the globe. There have been major collective efforts to gather, systematize, and analyse information regarding their legal and administrative characteristics. Most studies focusing on the formal aspects of electoral management in the developing world have significantly improved our understanding of EMBs by showing how they positively affect the quality of elections (Molina and Hernández 1998; Pastor 1999a and 1999b; López Pintor 2000; Mozaffar and Schedler 2002; Elklit and Reynolds 2005; Hartlyn et al. 2008; Birch 2008 and 2011; Rosas 2010; Yesilkagit and Christensen 2010, Kelly 2010; ACE Electoral Knowledge Network 2012; Hyde and Marinov 2012; Norris, Martinez i Coma and Frank 2013; Coppedge et al. 2014; and Norris 2014 and 2015).

By the end of the twentieth century, most Western democracies had professionalized their bureaucracies allowing them to establish a positive reputation (Teorell 2017). This made it possible for many Western European governments to manage elections via executive branch –or local government– bureaucracies while maintaining high levels of trust and credibility. In contrast, the story in most third-wave countries is different. With the exception of very small states, such as Caribbean countries that lack the financial capacity to have formally independent EMBs to manage elections, the authoritarian legacy, along with the high levels of corruption and low levels of bureaucratic professionalization, made it extremely difficult for most of these countries to consider adopting the governmental scheme without compromising the credibility of elections.

Furthermore, domestic and international pressures led most countries –regardless of their level of democracy– to adopt an independent scheme of electoral administration.² Domestic pressures from opposition parties raised the cost for authoritarian regimes, or what was left of them, to keep organizing elections during the transition. In many Latin American and African countries, for instance, the creation of formally independent agencies became key for transitions to take place. At the same time, international and non-governmental organizations promoting democracy made the independent model of electoral management one of the many prerequisites for elections to be classified as “free and fair.” In this context, most countries in the developing world, including those ruled by semi-competitive or authoritarian regimes, adopted an administrative model that had become an international standard of “good” electoral governance.

² Out of the approximately 200 hundred countries listed in IDEA’s Ace Electoral Knowledge Network (2016), 145 have adopted the independent scheme of electoral management.

When EMBs in third-wave countries became formally independent, most analysts and international practitioners assumed that “non-partisan” electoral institutions would be more likely to take impartial decisions, control their own administrative structures and financial resources, and exercise their budgets independently of external pressures. In a study of the credibility of elections in Latin America, for instance, Molina and Hernández (1998) contend that formal rules, such as appointing non-partisan electoral commissioners to the EMB’s executive board, positively affect the levels of credibility in elections. Hartlyn et al. (2008, 89) also contend: “the existence of an electoral agency that is demonstrably nonpartisan and professional clearly contributes to enhancing the likelihood of a more free and fair democratic process.” In a similar direction, Norris (2015) claims: “rules preventing political actors from manipulating electoral governance are needed to secure integrity, although at the same time officials also need sufficient resources and capacities to manage elections effectively.”

These studies represent the traditional position towards electoral administration in third-wave countries. In some cases, however, these perspectives are misleading because they leave aside how these institutions work internally or, in O’Donnell’s (1996) terms, they do not recognize “the actual rules that are being followed.” They assume that formal rules, administrative capacity, and bureaucratic professionalization can insulate EMBs from political pressures or prevent them –and their officials– from being affected by political interests.

Most studies of electoral governance, for instance, have not paid sufficient attention to the internal political dynamic that takes place within EMBs –e.g., how political actors manage to either manipulate the EMB’s decision-making process to favor a specific group or build an internal consensus among the key stakeholders to secure the impartiality of decisions throughout the

different stages of electoral management (O'Donnell 1994; Helmke and Levitsky 2006). That is, by focusing solely on the *de jure* attributes of formally independent EMBs across third-wave countries, previous studies fail to explain *why, in practice, some EMBs are more autonomous than others; under what conditions these institutions are able to build a positive reputation; and what mechanisms allow them to gain or retain de facto independence.* As such, they also fail to explain *when EMBs are able to support, or deter, the organization of clean elections in the developing world.*

Another issue that has not been considered thoroughly in these studies is the interplay between the varying levels of democracy and electoral management. In most third-wave countries elections are organized in a wide range of political environments and under different levels of politicization. In highly competitive and stable democratic contexts, most administrative configurations of formally independent EMBs –e.g., electoral administration in Chile, Costa Rica or Uruguay– are a sufficient for elections to be recognized as “free and fair.” On the other extreme, electoral institutions managing elections under authoritarian settings, regardless of their formal autonomy, administrative design, or bureaucratic capacity, are completely controlled by the ruling party –e.g., Equatorial Guinea’s National Electoral Commission (NEC) under Mbasogo, Belarus’ Central Electoral Commission (CEC) under Lukashenko, Egypt’s National Elections Commission (NEC) under al-Sisi, North Korea’s Central Electoral Committee (CEE) under Kim Jong-un, Zimbabwe’s Electoral Commission (ZEC) under Mugabe or Venezuela’s *Consejo Nacional Electoral (CNE)* under Maduro.

A wide number of third-wave countries, however, hold elections in environments between these two extremes. Some Middle Eastern and Northern African countries, for instance, are still in

a transitioning stage trying to reintroduce elections. Many countries in regions like Sub-Saharan Africa, Eastern Europe, and Latin America are still far from having fully consolidated democracies or at risk of experiencing democratic downturns. It is in this middle ground where EMBs *de facto* autonomy can become crucial for democratic stability and consolidation. It is here where having an EMB that is both *de jure* and *de facto* autonomous is key for a peaceful alternation in power, especially after a highly contested election such as Mexico's 2006 presidential race, which was determined by a margin of less than 1%. It is also here where an EMB's low level of credibility can contribute to turning a disputed election, especially in a context of high politicization and ethnic fragmentation, into a violent post electoral conflict, as happened in Kenya in 2007, or into a nullified process as happened in 2017.

Compared to other types of autonomous bureaucracies, like central banks and courts, EMBs' control over who gains power creates particularly strong incentives to manipulate these institutions. Even the most administratively and financially robust independent EMBs are susceptible to external manipulation by political parties, the executive branch, or interest groups. The appointment of purportedly "non-partisan electoral commissioners" to the EMBs executive boards, for instance, is usually a *de facto* politicized process where key political stakeholders endorse candidates with ideological trajectories that align with their own interests.³ Adopting a set of formal rules to "prevent political actors from manipulating electoral governance," as argued by

³ This politicization usually takes place regardless of the number and type of institutions involved in the appointment process (e.g., the legislature, the judiciary, a mixed scheme between branches, political parties or civil society). The work of Estévez, Magar and Rosas (2008) illustrates well the politicization process surrounding the appointment of purportedly "non-partisan" commissioners by the legislature to Mexico's EMB (INE, formerly known as IFE) and how political parties maintain strong ties with electoral commissioners during –and after– their tenure.

Norris (2015), has helped many EMBs to reduce the impact of external manipulation. This has been insufficient, however, to guarantee EMBs' *de facto* independence and it does not explain the varying levels of *de facto* electoral autonomy across countries in regions like Latin America and Sub-Saharan Africa.

In both Venezuela (after 1999) and Kenya (after 2010), for instance, electoral integrity has had little to do with the legal framework, institutional insulation from political parties, appointment mechanisms, financial resources, specialization, administrative capacity, or bureaucratic professionalization of the EMBs. In fact, compared to other EMBs in Latin America and Sub-Saharan, both of these countries have electoral laws and procedures –as well as the administrative capacity– that comply with the most demanding international standards. Through its *Consejo Nacional Electoral (CNE)*, for instance, Venezuela has been one of the few countries around the globe that has managed to successfully implement fully automated electoral processes.

In a similar fashion, Kenya's Independent Electoral and Boundary Commission (IEBC) has substantially more financial and administrative capacity than its counterparts in Ghana and Benin. Both Venezuela and Kenya, however, still rank low in the levels of trust, credibility, and electoral integrity. These two cases illustrate that major administrative electoral reforms granting formal independence to EMBs do not always guarantee that electoral institutions will gain more credibility or become *de facto* autonomous.

Electoral lobbying takes place behind the curtains and it is extremely hard to observe and measure. We do know from the academic literature, however, that political parties influence the decisions of judges in electoral tribunals and “non-partisan” electoral commissions (Rossiter, Johnston and Pattie 1998; Johnston 1998; Estévez et al., 2008). Even in countries with allegedly

autonomous EMBs, like Mexico, “non-partisan” electoral commissioners maintain strong ties with political parties over their tenure (Estévez, Magar and Rosas 2008). In other words, EMBs that are formally insulated from political parties are not exempt from being affected by political tensions, scandals, and manipulation.

In the 2016 presidential election in Peru, for instance, the *Jurado Nacional Electoral (JNE)*, one of the three key institutions –along with the *Oficina Nacional de Procesos Electorales (ONPE)* and the *Registro Nacional de Identificación y Esdtado Civil (RENIEC)*– in charge of electoral management, was severely criticized for compromising the quality of the 2016 presidential election. One month before the election took place, the JNE decided to disqualify two presidential candidates –one of them a front-runner– for administrative reasons but did not apply the same logic across the board with other candidates. This had a negative effect both for electoral management and perception of the quality of elections (Levitsky 2016, OAS 2016). A similar story took place during the 2017 presidential race in Ecuador. The opposition candidate accused the formally autonomous Ecuadorian EMB, the *Consejo Nacional Electoral (CNE)*, of being completely coopted by Correa’s regime and by *Alianza País*, the ruling party. The opposition candidate publicly accused the EMB’s chairman, Juan Pablo Pozo, who had previously worked for the speaker of the House and member of *Alianza País*, of being the “Tibisay Lucena –Venezuela’s EMB chairperson during most of the Chávez and Maduro regimes– of Ecuador.”⁴

⁴ Interview of Guillermo Lasso, opposition candidate of Movimiento CREO in Ecuador’s presidential election, by Fernando del Rincón. April 2, 2017. CNN. Availbale here: <http://edition.cnn.com/videos/spanish/2017/04/06/cnnee-conclusiones-intvw-guillermo-lasso-fraude-electoral-ecuador-2017-critica-presidente-cne.cnn>.

Also see:

<http://www.larepublica.ec/blog/politica/2017/04/03/cne-proclama-ganador-oposicion-denuncia-fraude/> and

All of these examples reveal that formal rules are insufficient for determining the level of EMBs' *de facto* autonomy. They show that, in spite of their formal independence, EMBs in third-wave countries have their own political dynamics and we know too little about how they operate internally. The overall theoretical questions, then, are why do some EMBs able to become more autonomous than others and, under what circumstances are EMBs able to gain, retain, or lose their *de facto* autonomy?

A comparative approach and a close look at the internal dynamics of EMBs in third-wave countries reveals that *de facto* autonomy is not driven –as often assumed in the academic literature– by the extent to which EMBs adopt formal rules that insulate them from external political pressures and interests. Instead, my research shows that EMBs *de facto* autonomy is a function of whether EMBs are able de build internal consultative mechanisms that allow them to channel external influences within the institutional dynamic.

In cases like Mexico, for instance, the use of both formal and informal ICMs has allowed political parties to audit and closely supervise key stages of the electoral process within the *Instituto Nacional Electoral (INE)*. In Ghana, the adoption of informal ICMs has allowed political parties to directly interact with the *Electoral Commission* and has empowered parties to become effective monitoring agents. In Benin, despite its poorly institutionalized party system, the inclusion of parties through formal ICMs has also been instrumental for the *Commission Electorale Nationale Autonome (CENA)* to organize credible elections and build a positive reputation in the long run.

<http://www.larepublica.ec/blog/portada/2017/04/05/guillermo-lasso-fundamentos-juridicos-fraude/>.

This theoretical refinement contributes to previous studies of electoral governance by showing that, along with formal rules, ICMs enable the main stakeholders –e.g., political parties and actors– to monitor, audit, and supervise themselves during the different phases of the electoral cycle.⁵ It is through these internal mechanisms, rather than through the institutional insulation from political parties, that EMBs are able to create internal accountability mechanisms, establish ties with the political elite, and effectively channel external political pressures.⁶

In sum, democracy requires the commitment of multiple actors and the alignment of key institutions. EMBs are within these institutions because their gatekeeping role directly affects a basic prerequisite of democracy (Dahl 1972): *the organization of free and fair elections*, which allows to have successful –and peaceful– alternations in power. Independent EMBs in third-wave countries have a reciprocal relationship with democracy. When elections take place in stable democratic environments, electoral administration can rely on an *de jure* independent EMB that

⁵ The pre-electoral period usually involves several stages of planning and bureaucratic training. In this stage, constituency boundary delimitation, public financing and party registration occurs, civic education strategies are designed, and authorities start defining the location of thousands of voting stations (many of them in the most remote and inaccessible areas of the country). During the electoral period the candidate registration process occurs, followed by the production and distribution of electoral materials, political campaigns begin, media access takes place, the campaign dispute resolution phase begins, voting day occurs, and then authorities need to start counting the votes, processing complaints and appeals, and officially announce the results. In the post-electoral period, audits and evaluations take place, legal reform proposals are discussed, voter registration is updated and there is a phase of bureaucratic professionalization. Finally, there are many transversal activities, such as the coordination between the armed forces (military) and local authorities in charge of public safety, that are essential to secure electoral materials and guarantee voters' safety before, during and after the electoral process takes place.

⁶ In this work, institutional insulation refers to the absence of external actors –i.e., political parties– within the internal dynamics of the EMB, while autonomy and independence refer to the degree to which these institutions are able to take impartial decisions (or being systematically affected by the interests of a single actor or group in power). Mexico's EMB, for instance, can be considered to be formally autonomous, but it is not insulated from political parties because they are embedded within different levels of the organization. By contrast, EMBs in Venezuela, Peru, Bolivia or Brazil are formally autonomous, but they are insulated from political parties since political organizations are not formally or informally embedded within these institutions.

has been *insulated* from political actors (like Costa Rica or Chile), a mixed administrative scheme, where a branch of power –e.g., judiciary or the executive– plays a predominant role (i.e., Brazil or Argentina), or a governmental arrangement, where electoral administration is an attribution of the executive branch (i.e., the model followed in many Western European countries). In countries where elections take place in semi-competitive environments, however, institutional *insulation* does not necessarily guarantee EMBs’ *de facto* autonomy.

Contrary to reinforcing their capacity to decide independently from political interests, insulation tends to promote the absence of internal accountability mechanisms and the informal cooptation of electoral bureaucrats by the ruling party. It is in these cases where ICMs play a key role to enforce transparency, impartiality, and accountability within EMBs. The presence of ICMs in Mexico was key during its transition years in the 1990s in order to allow political actors to closely monitor all stages of the electoral process and to eventually ensure multiple alternations in power in 2000, 2012, and 2018. In contrast, the absence of ICM, especially in environments characterized by high levels of mistrust and politicization (like Venezuela during Chávez, Nicaragua under Ortega, Ecuador during Correa, Kenya during Kenyatta, or Bolivia during Morales), have negatively affected citizens’ credibility in elections and political stability.

1.2 RESEARCH DESIGN

My work attempts to explain why some *de jure* autonomous EMBs in third-wave countries have been able to aid in building democracy by organizing clean elections and under what conditions these institutions have been able to become *de facto* autonomous. In order to answer these questions, I use a mixed-methods approach. First, I begin by explaining the difference

between *de jure* and *de facto* electoral autonomy, and then I analyze the effect of both *de jure* and *de facto* electoral autonomy on the quality of elections. Contrary to previous findings in literature focusing solely on EMBs' *de jure* independence, I contend that third-wave countries with *de jure* and *de facto* autonomous EMBs are more likely to effectively channel political unrest derived from highly contested elections and positively affect the quality of elections.

In order to analyze the effect of the varying levels of *de facto* electoral autonomy on the credibility in elections, I replicate Hartlyn et al. (2008) and Birch's (2008) large-N cross-sectional studies focusing on how electoral governance affects the quality of democracy. I consider the same contextual sociopolitical, institutional, and regional differences, and introduce a measure of *de facto* electoral autonomy. Although the concept of *de facto* independence is incredibly hard to observe and quantify, recent country-level expert surveys provide a reliable measure that allows systematic cross-national and time series comparisons.⁷ The Expert Survey of Perceptions of Electoral Integrity (Norris et al. 2013) offers a comprehensive evaluation of whether national EMBs meet internationally recognized principles and standards in 125 countries, and specifically asks experts about the impartiality, transparency, and performance of electoral authorities. However, I use the Varieties of Democracies Project (V-Dem) dataset because it includes a wider set of countries (176) and over one hundred years of country-level expert evaluations. Among

⁷ Compared to public opinion and elite surveys, country-level expert surveys offer more objective –and reliable– responses that capture the level of EMBs' *de facto* electoral autonomy because responses are less likely to be affected by factors such as partisan identification or electoral competitiveness (for the methodology used in V-Dem, see Coppedge et al., 2014a).

many other variables, this dataset offers measures of EMBs *de facto* autonomy and administrative capacity (Coppedge et al. 2014).⁸

In the second part of the dissertation (chapters 4 through 7), I use a qualitative approach – Mill’s (1843) comparative method of difference– to explain the different levels of *de facto* electoral autonomy, while considering the historical background and institutional configuration of each country. Based on four case studies of electoral administration in Latin America and Sub-Saharan Africa, I use process tracing narratives to identify the causal mechanisms that have allowed EMBs to gain, retain, or lose their *de facto* autonomy from political actors. In contrast to previous research that concentrates on studying the formal attributes of EMBs, my work innovates by analyzing the mechanisms that allow *de facto* autonomy to emerge or dissolve. While EMBs’ formal –*de jure*– independence has been key to promote impartiality, I contend that EMBs in third-wave countries are more likely to achieve higher levels of *de facto* autonomy when they are able to develop ICMs that allow the main stakeholders –political parties and actors– to monitor, audit, and supervise key stages of electoral management.

Through the case studies, I illustrate how some countries have been able to successfully develop EMBs with both *de jure* and *de facto* electoral autonomy, while others have only managed to create *de jure* autonomous electoral institutions that fail to fulfill their legitimizing –and adjudicatory– role when electoral results are either too close or extremely politicized. These cases also show that external factors such as the elites’ commitment to democracy or the

⁸ All datasets used in this work are available in public repositories from the Varieties of Democracy Project, the Electoral Integrity Project, the National Elections Across Democracy and Autocracy Project, the ACE Electoral Network, the Inter Consortium of Political Science Research, Afrobarometer and Latinobarometer.

institutionalization of the party system at the moment of transitioning to democracy –or experiencing a major constitutional reform– have also been key to determine EMBs’ capacity to adopt a consociational system of ICMs.

The cases of Mexico and Ghana, for instance, illustrate different ways in which formal and informal ICMs can be embedded within EMBs. The former shows how the presence of political parties within Mexico’s EMB (*La Comisión Federal Electoral*) during the Institutional Revolutionary Party’s (PRI) authoritarian regime, evolved years later into a formal and informal partisan check and balance system within the *Instituto Federal Electoral*. It reveals how ICMs became key for political parties to audit, monitor, and supervise key stages of the electoral process during the early and mid 1990s. The latter illustrates how informal consultation with political actors can be used to create an internal monitoring mechanism that has allowed Ghana’s *Electoral Commission* to ease political tensions and successfully manage highly contested and politicized elections. In both cases, ICMs were key to allow these institutions to gain credibility and positively affect democratic stability.

In contrast, the cases of Kenya and Venezuela illustrate how institutional insulation and the absence of ICMs have significantly impaired the capacity of EMBs to successfully navigate through highly politicized and contested elections. The former illustrates how Moi’s informal cooptation of the EMB during Kenya’s transition to holding multiparty elections in the early 1990s was one of the many factors that contributed to generate conditions of political unrest that culminated in the violent post-electoral conflict of 2007. This case reveals that although Kenya’s EMB suffered major administrative transformations over time, the institutional insulation and lack of ICMs limited the EMB’s ability to develop a positive reputation. The case of Venezuela

illustrates how the partisan-based *Consejo Supremo Electoral* (CSE) was able to develop a significantly better reputation than the insulated *Consejo Nacional Electoral* (CNE), which was created in the early years of the Chávez administration. This case illustrates how despite complying with the most demanding legal and administrative international standards of electoral administration, EMBs do not necessarily become *de facto* autonomous. It also shows how the informal cooptation of a purportedly independent EMB can significantly affect political stability and impair a country's capacity to hold free and fair elections.

1.3 PLAN OF THE DISSERTATION

The rest of the dissertation is structured in seven chapters. In Chapter 2 I offer a definition of both *de jure* and *de facto* electoral autonomy and explain the theoretical relevance of understanding the differences between these two concepts. I briefly explain why most Western democracies have remained with a governmental scheme of electoral management, while most third-wave countries have adopted formally *–de jure–* independent electoral institutions to organize and manage elections. Focusing on Latin America and Sub-Saharan Africa, I explain why most EMBs in these regions, despite becoming formally autonomous institutions, have achieved different levels of *de facto* autonomy. In Chapter 3 I explain how my work fits and contributes to previous literature related to institutional independence and electoral management. I discuss the gaps that remain unexplored and introduce a variable capturing the levels of *de facto* electoral autonomy to previous large-N studies explaining how formal independence affects the credibility and quality of elections.

In Chapter 4 I develop a medium-N discussion of seven cases in Latin America and Sub-Saharan Africa as a way of discussing the possibility of endogenous relationships between the underlying conditions for democracy and the development of *de facto* electoral autonomy. I explain the different paths that have been followed by EMBs in these two regions in order to develop higher levels of *de facto* independence. While it is harder to clarify if the institutional design of EMBs has had an independent effect on the levels of *de facto* independence in countries where there was a clear commitment of the elites towards democracy, cases that transitioned under challenging conditions for electoral competition are more useful to show if the adoption of ICMs positively affected the capacity of these institutions to organize credible elections. This chapter attempts to clarify under what circumstances are EMBs able to positively reinforce the quality of elections.

Chapter 5 is subdivided in two sections. First, I explain why delegation in electoral management became a self-constraining mechanism and, complementing what most scholars have argued in the academic literature, how institutional independence in third-wave countries relies on how EMBs' internal dynamics shapes –and constrains– formal rules. In the second subsection, I explain the main causal mechanism behind *de facto* autonomy and why this theoretical refinement is key for having a better understanding of the consequences of electoral management for the quality of elections. I explain why some EMBs have built a positive reputation, while others are perceived as institutions that are influenced –or coopted– by political actors. Particularly, I argue that formal rules –i.e., legal independence, administrative capacity, and bureaucratic professionalization– are crucial for building credibility and a positive reputation, but that in many third-wave countries it is ICMs what accounts for the varying levels of EMBs' *de facto*

independence. In the final section of the chapter I describe the qualitative approach I use in the case studies and offer some concluding remarks.

In chapters 6 and 7 I illustrate the argument with four case studies of the different paths that EMBs in third wave countries have followed to achieve higher levels of *de facto* independence, build positive reputations, and positively affect the quality of elections. These four cases illustrate the different contextual conditions –i.e., regime type, corruption, bureaucratic capacity, electoral competitiveness, or the institutionalization of the party system– under which EMBs operate in Latin America and Sub Saharan Africa. While Ghana and Mexico have EMBs with significantly different administrative and financial resources, both have been holding relatively free and competitive elections since they transitioned to democracy. On the other hand, EMBs in Venezuela and Kenya are characterized by a highly resourceful bureaucracy but have been operating in highly politicized and semi-competitive environments during the last decade.

In Chapter 6, I present the cases of Mexico and Ghana. These cases illustrate how, in a context where opposition parties were sufficiently strong and stable, the electoral management boards were able to develop effective ICMs with the main political actors, build a positive reputation, and affect positively democratic consolidation, especially during transitions characterized by high levels of electoral competition and politicization. In Chapter 7, I discuss the cases of Kenya and Venezuela. These cases illustrate how, in a context of partisan unrest and politicization, EMB's have become insulated from political parties and, thus, struggled to build a positive reputation in the long run. In both cases, formal rules have been insufficient to guarantee *de facto* independence. In particular, these cases show that formal electoral independence is insufficient to guarantee *de facto* autonomy. The negative perception of the EMBs in these

countries has contributed to the high levels of political unrest and negatively affected citizens' perception of the quality of elections.

In the last chapter of the dissertation, I summarize the theory and findings of this research, discuss future avenues of research, and present an agenda with extensions for this project.

2.0 COMPARING *DE JURE* AND *DE FACTO* ELECTORAL AUTONOMY

The organization of electoral administration is the third main institutional ‘leveling’ device that can be expected to be associated with public confidence in the electoral process. Among practitioners in the fields of electoral assistance and observation, independent central electoral commissions have come to be regarded as the hallmark of accountable electoral administration.

Sarah Birch (2008)

2.1 INTRODUCTION

In this chapter I discuss the difference between EMBs *de jure* and *de facto* autonomy and explain why considering the latter is key for studies examining the relationship between electoral governance and democracy. First, I offer a definition of *de jure* and *de facto* electoral autonomy and discuss briefly the differences between these two concepts. Then, I discuss how scholars have approached the concept of independence in electoral management and replicate two cross-national studies that analyze how EMBs’ formal independence affects the quality of democracy. In order to analyze the effect of cross-national variation of *de facto* autonomy on the quality of democracy, I introduce a new measure of *de facto* autonomy from the V-Dem country-level expert survey to previous models of electoral governance.

2.2 *DE JURE* AND *DE FACTO* ELECTORAL AUTONOMY

In this subsection, I define the concepts *de jure* and *de facto* electoral autonomy. Most classifications and studies of electoral management have focused on the former. I contend that formal rules are a necessary condition for EMBs to become autonomous, but they are insufficient to explain the variation in the levels of *de facto* electoral independence. Focusing solely on the formal attributes of EMBs across third-wave democracies –i.e., such as the legal

framework, internal regulations, and institutional capacity— is relevant to understanding how EMBs are structured but has important theoretical limitations. I argue that, along with formal rules, it is important to understand how these institutions work internally because, despite sharing similar formal institutional features, third-wave EMBs have gained different levels of *de facto* independence and reputation over time. Understanding these differences is key to comprehending when and how EMBs affect democratic stability and consolidation.

2.2.1 *De Jure* Autonomy in Electoral Management Bodies

Institutions are a set of rules and procedures that structure social interaction by constraining and enabling actors' behavior (North 1990; Knight 1992; Carey 2000). Formal *—de jure—* institutions are a set of rules and procedures that are created, communicated, and enforced through channels that are widely accepted as official (Helmke and Levitsky 2006, 5). In my work, *de jure electoral autonomy* refers to the specific set of official legal, institutional, and administrative rules and procedures, that allow an EMB to operate and take decisions independently of external actors, such as governmental organizations, other branches of power, political parties, individuals, or interest groups. In most third-wave countries, *de jure* electoral autonomy is a necessary condition for electoral organizations to be perceived as impartial or comply with international standards of best practices within electoral administration.

Pastor (1999a) and López-Pintor (2000) were among the first scholars to create a classification of the different formal administrative schemes of electoral management: a) cases where elections are run by the government; b) cases where local governmental authorities organize elections (decentralized systems); c) cases where elections are conducted by government, but

subject to the supervision of third party or an independent body; d) cases where elections are run by an independent electoral management body, and e) cases where two or more separate independent bodies organize elections. More recently, and in a similar direction, IDEA and the ACE Electoral Knowledge Network (2012) created a three-fold classification of EMBs based on the type of formal administrative design: 1) the governmental, 2) the mixed, and 3) the independent model.

According to this last classification, the *governmental model* of electoral management exists in those countries *where elections are organized and managed by the executive branch through a ministry (i.e., the ministry of the interior) and/or through state or local authorities*. They are usually led by a minister –or civil servant– and, with very few exceptions, have no multimember executive boards. Their budget falls within the government’s ministry or under local authorities. This model prevails mainly in Western democracies and, given that it allows external actors – mainly the executive branch– to influence directly administrative decisions through formal means –i.e., budget and financial planning–, it has not been adopted or promoted by international organizations in the developing world. Countries that fall into this model include: *Denmark, Seychelles, Singapore, Switzerland, Tunisia, United Kingdom, and the United States*. In *Sweden, Switzerland, the UK, and the United States*, local authorities implement elections.

In the *mixed model* EMBs have *dual structures: a) one in charge of supervising electoral administration, which is usually independent of the executive branch of government, and b) another in charge of electoral organization, which is usually an administrative department within the federal, state or local government (as for the governmental model)*. Under this model elections are organized by the government and supervised by an independent electoral board. This model is

used in *Japan, Suriname, Egypt, Spain, France*, many former French colonies –especially in *West Africa– such as Mali, Senegal, and Togo*, and in *English-speaking Caribbean countries such as Belize, and St. Kitts and Nevis*.

The *independent model* of electoral management refers to cases *where elections are organized and supervised by an EMB that is formally independent from external actors –mainly from the executive branch of government– and has control over its own decision-making process and budget*. EMBs under the independent model usually enjoy varying degrees of financial autonomy and accountability, as well as varying levels of bureaucratic and administrative capacity. They are usually composed of a multimember non-partisan executive board in charge of taking administrative decisions and an independent bureaucratic structure in charge of implementing and organizing elections in the field. In some countries, an independent judicial board or electoral tribunal is in charge of supervising the EMB’s decision-making process.

Most emerging democracies and regimes that hold elections across third-wave countries have adopted the independent model of electoral management. This work focuses on these cases, especially within Latin America and Africa. On one hand, this is explained because it has been the most feasible option for countries transitioning to democracy. On the other hand, international organizations and non-governmental organizations promoting democracy usually encourage countries to adopt this model after periods of social and political unrest –i.e., the case of the Arab Spring in 2012 or the case of *Iraq* in 2003 (Lujambio 2004). This administrative scheme has also been frequently adopted by countries holding elections under semi-democratic or electoral authoritarian environments, especially in those cases where regimes have a need of legitimizing themselves through elections. Some of the countries that have adopted this model are: *Indonesia*,

*Liberia, Mauritius, Nigeria, Poland, South Africa, Ghana, Kenya, Thailand, Timor-Leste, Uruguay, Armenia, Australia, Bosnia and Herzegovina, Burkina Faso, Canada, Costa Rica, Mexico, Venezuela, Estonia, Georgia, and India.*⁹

As shown in Table 2.1 the majority of Western democracies have maintained either the governmental or mixed administrative schemes, while most third-wave countries around the globe have adopted the independent model. According to the ACE Electoral Knowledge Network's (2012) classification, out of 209 countries, 136 (65%) have adopted the independent scheme of electoral administration and only 73 (35%) have either adopted a mixed (27) or governmental (46) scheme.¹⁰

⁹ In some cases, ACE's Electoral Knowledge Network (2012) three-fold classification is misleading because some legal frameworks have an "independent electoral commission," which is formally in charge of supervising elections, but electoral management depends fully on governmental agencies. This is the case of many Caribbean countries –i.e., Suriname, Belize, and St Kitts and Nevis– where the "independent electoral commissions" are temporary partisan bodies that have extremely limited administrative capacity and financial resources and rely on the governmental department –usually within the ministry of home affairs or the interior– in charge of organizing and implementing most stages of the election.

¹⁰ The United Nations has a total of 195-member states as of 2018. The number reflected in the ACE-EKN (2013) classification shown in Table 2.1 includes electoral commissions in countries that do not longer exist or that are not UN member states.

Table 2. 1 Formal Autonomy of EMB's by Region 2014

Region	Governmental	Mixed
Western Europe (+US and Canada)	18	8
Eastern Europe	1	2
Latin America	2	3
Caribbean	5	1
Middle East	7	1
Asia	4	3
Africa	4	5
Oceania	5	4
Total	46	27

Source: Elaborated by the author with data from the ACE Electoral Knowledge
<http://aceproject.org>

The different administrative schemes adopted by Western democracies and the rest of the world reveals that the political elites' logic of formally delegating electoral administration to an independent EMB has changed over time and varies across countries. Contrary to what would be expected in third-wave countries, most Western countries with the governmental model of electoral management have been able to maintain relatively high levels of trust and reputation. This phenomenon can be explained by the level of bureaucratic professionalization in consolidated democracies (Mozaffar and Schedler 2002, 15). During the first wave of democratization, governments were responsible for directly managing elections in most Western countries (Carbó 1996). The early adoption of civil service laws in these countries helped governments increase the levels of trust in administrative procedures, including electoral administration (Morgenstern and Manzetti 2003; Norris 2015; and Teorell 2017). The bureaucratic *ethos* established in Western democracies became key for shortening the gap between formal rules and their application.

Nowadays, in most of the Western countries that maintain the governmental electoral scheme, citizens believe that electoral technicalities and disputes will be solved according to the rule of law and that, if post-electoral conflicts arise between parties, the proper legal mechanisms will be enacted. On the other hand, the long-term commitment of the political elite to democracy has been also key for the governmental model to work in Western democracies (Przeworski 1991). If democracy is the “only game in town,” it is easier for the political elite to turn the page when electoral tensions emerge. The *Gore vs. Bush* 2000 presidential election in the United States illustrates well this point. Compared to Kenya’s 2007 post-electoral violent confrontation, once all disputes were settled, peaceful alternation in power occurred and subsequent elections took place under normal circumstances. As I discuss below, this logic can be explained by how informal institutions –i.e., the democratic culture– interact with formal rules and procedures. In the case of the governmental model of electoral administration adopted by most Western countries, the elites’ commitment to democracy –understood as a broadly accepted informal social norm– works as an enforcement mechanism, even when the main stakeholders have a formal institutional framework that lends itself to political manipulation.¹¹

¹¹ Although this work does not focus on electoral administration in consolidated democracies, it offers a theoretical baseline for understanding electoral management and informal institutions in the West. The governmental model, for instance, does not represent a threat for democratic stability in most Western democracies. However, this administrative model entails technical and political complications –i.e., gerrymandering in the United States– that significantly increase the levels of politicization. Exporting this administrative scheme to the rest of the world would have negative consequences for democratic stability and would be perceived as highly undemocratic (Pastor 1999; López-Pintor 2000; Birch 2007; Trelles 2012). Authors like Birch (2007), for instance, argue that electoral processes managed by governments create: a) problems of credibility and polarization; b) coordination complications between different agencies at the national and local level, including problems related to organizational logistics and information sharing; and c) agency complications given the timing, complexity, and cyclic component of elections. Contrary to the argument formulated by Greschenkron’s (1962) in his work entitled *Economic*

Third-wave democracies, by contrast, experienced transitions in a very different sociopolitical context (Weyland 2013). In Latin America and Africa, most countries were facing low levels of trust in government, low-capacity public institutions, non-professionalized bureaucracies, as well as frequent corruption and political scandals. In many cases, elections began taking place in semi-competitive –or authoritarian– political environments causing opposition parties to demand the creation of formally autonomous institutions to manage elections (Lindberg 2006 and 2009). Even those authoritarian regimes simulating their commitment towards democratic rule, adopted formally independent EMBs as a signaling mechanism for deflecting criticism, but not as a mean to reduce –or eliminate– political manipulation (Geddes 1996; Kerr 2013; Norris 2015). This context, along with the role of international organizations and donor institutions promoting democracy, made the creation of formally independent EMBs a necessary condition for elections to be classified as free and fair and the predominant model of electoral administration in the developing world (Donno 2013).

Despite the fact that most EMBs in third-wave countries adopted the independent administrative scheme, they operate under different organizational arrangements –i.e., administrative and financial capacity, centralization, and bureaucratic professionalization.¹² In Latin America and Africa, for instance, most EMBs have multimember non-partisan executive

Backwardness, where he stresses the potential ‘advantage’ of economic backwardness in that it might induce latecomers to take advantage of known paths in order to catch up with the West, in the realm of electoral management it is well established democracies that can take advantage of the institutions and procedures developed by new democracies. In that sense, consolidated democracies may still have something to learn from the organizational models that have been developed in countries that are still in the process of democratic consolidation (Lehoucq 2002; Trelles 2012).

¹² Mozaffar and Schedler’s (2002) offer a useful formal classification of the six dimensions of electoral governance: a) Centralization; b) Bureaucratization; c) Independence; d) Specialization; e) Delegation; and f) Regulation.

boards and their key administrative functions are centralized within a single institution –i.e., Brazil, Venezuela, Ghana, and Kenya. Mexico, Peru, Colombia, and Suriname, however, have created separate specialized administrative structures that subdivide administrative responsibilities –i.e., Suriname’s OKB and CHS; Peru’s RENIEC, ONPE, and JNE; or Mexico’s INE and TEPJF (López-Pintor 2000; Birch 2007a, Kerevel 2009). Additionally, the level of administrative resources and professionalized staff varies significantly across EMBs.

Visiting the headquarters of the CNE in Caracas, INE in Mexico City, or the IEBC in Nairobi, reveals the administrative and financial gap that exists between these countries and its counterparts in Ghana, Sierra Leone, Egypt, or in most Caribbean countries. To illustrate this gap, consider a key administrative responsibility shared by many EMBs around the globe: the delimitation of electoral boundaries (*redistricting*). In Mexico, Venezuela, Jamaica, and Kenya, boundary delimitation departments have highly trained full staff members with the capacity to program and manipulate mapping software to draw electoral districts while, in cases like Ghana, Sierra Leone or St. Kitts and Nevis, either they still draw their constituency boundaries by hand or rely on a governmental or international institution to do so.

So far, most studies of electoral governance have focused on these administrative differences. A first wave of scholarly literature focused on the general administrative characteristics of electoral institutions, and classified EMBs based on their institutional design and legal framework. Among the most relevant, the work of Molina and Hernández (1998), Pastor (1999a), López Pintor (2000), and Mozaffar and Schedler (2002) focuses on: *institutional independence* (i.e., if the EMB has a governmental, mixed or independent scheme); *legal independence* (i.e., if electoral management is described in the constitution and/or secondary

legislation); *the centralization of electoral management* (i.e., national or local responsibility to conduct elections); *partisan independence* (i.e., if political parties are part of EMBs executive boards); *appointment mechanisms for the electoral commission* (i.e., who appoints the EMB's executive boards); *tenure of electoral commissioners*; *bureaucratic professionalization* (i.e., civil service); and *financial independence* (i.e., if the EMB has control over a yearly budget).

A second wave of literature refining previous studies expanded the list by analyzing how EMBs formal administrative, organizational, financial, bureaucratic arrangements are related to democracy. The work of Elklit and Reynolds (2005), Birch (2008 and 2011), Hartlyn et al. (2008), Rosas (2010), Yesilkagit and Christensen (2010), Kelly (2010), Hyde and Marinov (2012), Donno (2013), and Norris (2015, 2016, and 2017), for instance, focuses on characteristics such as: *the professionalization of electoral commissioners*; *the permanence of administrative and financial resources*; *the administrative capacity of EMBs to manage the voter's registry*; *the administrative capacity of an EMB to manage its own operation and procedures*; *the ruling capacity of an EMB*; *the capacity of an EMB to impose sanctions*; *the capacity of EMBs to audit financial resources used by political parties*; *the administrative responsibility for implementing boundary delimitation processes*; *the capacity to educate voters*; *the responsibility of monitoring media and political campaigns*; and *the different stages and institutions involved on the electoral dispute resolution*.

Most of these studies have significantly improved our understanding of how administrative differences among EMBs affect democracy; they show that certain formal attributes matter more than others and, overall, that *de jure* independence positively affects the credibility and quality of elections. However, they reveal only one part of the story and, as recognized by Helmke and Levitsky (2006), focusing exclusively on formal rules impairs our ability to recognize what

“shapes and constrains” political behavior and can yield in an incomplete –or inaccurate– picture of how things really work. Key questions for understanding how EMBs really work, or how informal rules and procedures interact with formal ones, remain unanswered. For instance, we know very little about *how EMBs operate internally; how external political pressures affect the behavior of key actors within an EMB; how informal rules shape –or constrain– formal procedures; to what extent informal dynamics within EMBs affect de facto independence; why some de jure independent EMBs have managed to become de facto autonomous while others have failed to do so; or how does de facto electoral independence affects democracy*. Overall, most studies focusing on electoral management have left aside how political elites ignore formal constraints when they become inconvenient or how EMBs manage to build a positive reputation despite being exposed to external political pressures.

Going back to the electoral boundary delimitation example, focusing solely on formal organizational characteristics to explain the impartiality of an administrative process can be misleading because having a highly trained staff or access to automated computer-based algorithms for drawing boundaries, like the case of the CNE in Venezuela, does not necessarily mean that the EMB will take impartial decisions or that the output (electoral maps) will be free of political manipulation. In the same way, drawing boundaries by hand does not necessarily imply that electoral maps will be politically biased. A balance between formal attributes and the informal interaction that takes place within an EMB is necessary in order to minimize the risk of political manipulation. In this specific example, impartiality is not necessarily guaranteed by delegating the responsibility of redistricting to an executive board that is assumed to be formally insulated from

external political pressures and that will carry out the process in an insulated – “closed-door” – environment.

Rather, impartiality requires the EMB to acknowledge the existence of these external political pressures and develop the proper mechanisms to channel them within the institution. For instance, this would require the EMB to adopt transparent procedures, a clear legal framework that is consistently applied throughout the process, the administrative capacity to make use of the adequate information and mapping technology, that all information is made available to in usable formats, the interaction of party representatives in such a way where they can participate and monitor themselves, and a public space for citizens to participate and communicate their interest to the administrative authority during the different phases of the process (Trelles et al. 2016; Magar et al. 2017).

In the following, I offer a definition of *de facto* electoral autonomy, explain how informal interaction shapes and constrains formal rules, and discuss why this interaction is key for explaining *de facto* independence in electoral management.

2.2.2 De Facto Autonomy in Electoral Management Bodies

Most EMBs in third wave countries share the independent administrative scheme. These institutions, despite their formal autonomy, are constantly subject to external partisan influence. Recognizing the existence of these external political pressures is key to understand the gap between an EMB’s *de jure* and *de facto* autonomy. In this work, I define *de facto electoral autonomy* as the capacity of an EMB to operate and take decisions, in practice, without deliberately using formal or informal means to systematically favor a specific external actor, such

as governmental organizations, other branches of power, political parties, individuals, or interest groups during the different phases of the electoral cycle.

Contrary to the notion of formal *–de jure–* electoral independence, the ability of EMBs to take impartial decisions is not necessarily linked to the degree of institutional insulation from political actors. Rather, it is based on how both formal and informal rules and procedures – enforced within or outside officially sanctioned channels– are used to convey external political pressures within an EMB. As recognized by Helmke and Levitsky (2006, 3), informal institutions reinforce, subvert, and sometimes even supersede formal rules. They can negatively affect institutional outcomes –in detriment of the spirit behind formal rules– or they can “*shape formal institutional outcomes in a less visible, but equally important, way: by creating or strengthening incentives to comply with formal rules. In other words, they may do the enabling and constraining that we usually attribute to the formal rules.*”

Compared to the concept of *de jure electoral autonomy*, this definition includes two key attributes. On one hand, it recognizes the role of informal rules and procedures within EMBs, and, on the other, the ability of electoral institutions to internally channel external political pressures. These two attributes are what allow *de jure* independent EMBs, in practice, to take decisions without deliberately favoring any specific political actor or external institution during the different phases of the electoral cycle. In other words, *de facto electoral autonomy* is the ability of an EMB, given a set of written or unwritten rules and procedures, to channel external pressures internally and, still, take impartial administrative decisions. .

Informal rules and procedures serve as an unwritten framework used by stakeholders to communicate and interact within the bureaucracy. In the case of EMBs, electoral commissioners

develop different informal channels to interact either among themselves –e.g., with other commissioners or bureaucratic officials– or with actors representing external interests –i.e., government officials or party representatives outside or within the EMB. The first type of interaction –*the informal dynamic among electoral commissioners*– takes place within most EMBs headed by multimember executive boards.¹³ It is through these informal channels that electoral commissioners socialize information, signal positions within the board, develop ties and coordinate among themselves to take decisions, communicate with the chairman, and build short and long-term agreements.

Organizational design research focusing on strategic decision-making, for instance, shows that collective decision-making procedures within organizations are affected by the communication flow among its members. These studies reveal that consultation among members of the organization facilitates positive attitudes for cooperative teams. They show that the organization’s leader consideration of members input and influence on decisions positively affects members’ perception of procedural fairness and, thus, their commitment to the decision, attachment to a group or institution, and trust in its leader (Vroom and Yetton 1973; Korsgaard et al. 1995; Selart 2005). In the case of EMBs, this same logic applies. Informal channels of communication among electoral commissioners are key for the institutions’ operation, to develop

¹³ Although most EMBs in third-wave countries have multimember executive boards, Peru has different specialized administrative structures to manage elections (RENIEC, ONPE and JNE) that are headed by a single person (RENIEC and ONPE). However, the logic of informal interaction described in the following lines can be applied to multimember boards like the JNE or to the interaction between the chairman (in the case of RENIEC and ONPE) and its respective executive electoral officials.

ties between different groups, for chairmen to relate with other commissioners, or for executive boards to become cohesive or divided.

The cases of Ghana and Mexico illustrate well this first type of informal interaction. The first case shows how Ghana's Electoral Commission (EC) former chairman, Kwadwo Afari-Gyan (1993-2015), met informally with the rest of the commissioners to discuss key administrative issues and build an internal consensus in order to guarantee that the EMB would be perceived as a cohesive institution. Given that the executive branch directly appoints all commissioners and that they have "permanent" tenure, Ghana's executive board has no significant internal partisan divide. Its commissioners, for instance, rarely vote in opposite directions. Since the early years of the EC, Afari-Gyan became the leading voice of the institution and, soon after, a reference for electoral management not only in Ghana, but also in West and Sub-Saharan Africa. According to several institutional and political actors, the EC's chairman was able to build an outstanding prestige during his tenure. His leadership and ability to build a cohesive executive board, especially during highly contested and politicized elections where alternation took place in 2001 and 2009, was key for building the institution's positive reputation over the years.¹⁴

The case of Mexico illustrates how José Woldenberg's (1996-2003) leadership as head of the *Instituto Federal Electoral* (IFE) helped the EMB build a positive reputation in its early years. Woldenberg's informal interaction with other commissioners was key for this purpose. During his tenure, he created "*El grupo de los 10*" –known later as "*La mesa de consejeros*"–, an informal closed-door gathering of the nine electoral commissioners and the EMB's executive secretary. In

¹⁴ Interviews performed by the author with commissioners Afari-Gyan and Sulley during fieldwork in Accra, Ghana (Summer 2014).

these informal gatherings, commissioners met privately to socialize information about their standing regarding key administrative issues, discuss appointments to strategic positions within the EMB (i.e., endorsing a candidate for a key executive bureaucratic position or bargaining a position for themselves within the EMB's committee system), determine the sanctions to be imposed to political parties, build voting coalitions, or informally reach agreements before formally voting issues during the public sessions of the *Consejo General*.¹⁵

Despite the ideological divide among electoral commissioners, this informal tradition has prevailed until today and taken place during the tenures of Luis Carlos Ugalde (2003-2007), Leonardo Valdés (2008-2013), and Lorenzo Córdoba (2014- present) as chairmen of the EMB. Most electoral commissioners interviewed within Mexico's EMB recognize this informal mechanism as a useful tool to build consensus among members of the board and as an effective mean of internal coordination and communication.¹⁶ Furthermore, and as described by Estévez et al. (2008), the divided configuration of IFE's executive board –i.e., having electoral commissioners that informally maintain ties with different parties– forced the institution's chairman to build different “party-based” coalitions with commissioners that were ideologically aligned with the PAN (*right wing*) or the PRI and PRD (*center-left*). Woldenberg's success as head of the institution can be explained, in part, because during his first years he was able to build

¹⁵ Interviews performed by the author with commissioners Woldenberg, Ugalde, Valdés, and Sánchez during fieldwork in Mexico City (Summer 2015).

¹⁶ Occasionally, some commissioners decided not to participate in these informal meetings –Jamie Cárdenas under Woldenberg or Rodrigo Morales and Marco Gómez under Ugalde's tenure– arguing they were not prescribed by law (Interview of the author with former commissioners Woldenberg, Ugalde, Valdés, and Sánchez, April 2015). For a detailed analysis of voting coalitions among electoral commissioners in Mexico's EMB, see Estévez, Magar and Rosas (2008).

“leftist” and “rightist” coalitions and then construct majorities from the “right” during the second phase of his administration, while Ugalde was only able to build unstable coalitions from the “left.”¹⁷

The second type of informal interaction –*the one that takes place between members of the EMB and actors representing external interests*– is also crucial for the internal workings of the institution. This interaction is intimately related with the EMB’s ability to develop ICMs –a check and balance system– and increase its levels of *de facto* independence. EMBs control over who has access to power makes these institutions vulnerable to external political interests. These pressures, which are hardly visible and, thus, difficult to measure, permeate EMBs internal dynamics and become the unwritten framework upon which bureaucratic stakeholders –i.e., electoral commissioners or electoral officials– interact with external political actors –i.e., political parties, the executive branch, interest groups or party representatives within the EMB.

Depending on the administrative configuration of each EMB, this informal interaction between bureaucratic and political stakeholders either becomes the ground for EMBs to reinforce its formal rules and build a positive reputation, or it generates an environment of mistrust and lack of credibility in electoral management. In cases where the link between institutional stakeholders and political actors is missing or falls apart, as happened in Kenya before 2007 (and after 2010) or in Venezuela after 1999, EMBs are more likely to become vulnerable to external pressures because they do not have a built-in –formal or informal– check and balance system. This is specially the case in semi-competitive and electoral authoritarian environments. In contrast, when

¹⁷ After the 2006 post-electoral conflict, Luis Carlos Ugalde resigned to the EMB in 2007 before his term had officially concluded.

plural and stable informal ties are developed between bureaucratic and political actors, as happened in Ghana and Mexico, EMBs are more likely to effectively channel external political pressures, develop an internal consociational system of ICMs, increase its *de facto* independence, and build a positive reputation over time.

The cases of Ghana and Mexico also illustrate *two different paths* under which informal ties between bureaucratic and political actors can be developed within an EMB. In the case of Ghana, for instance, these informal ties were developed shortly after the EMB's inception during the early 1990s.¹⁸ The EC adopted a series of informal ICMs to strengthen its ties with political parties. It created the Inter-Party Advisory Committee (IPAC), an informal –non-constitutional– partisan consultative body at the national level, and its regional (RIPACs) and district (DIPACs) level equivalents. These informal multilevel ICMs rapidly became decisive for the EMB to establish informal ties with the main political parties competing for power, the National Democratic Congress (NDC) and the New Patriotic Party (NPP).

¹⁸ Ghana's EC was designed to operate in insulation from political parties. Despite some of its institutional arrangements, such as the executive's unilateral capacity to appoint electoral commissioners, have been severely questioned by international and domestic organizations promoting formal independence in electoral management, the adoption of IPAC created an inclusive consociational space for the EC to interact with all parties and has been praised by most international and country-level experts as a highly effective consultative mechanism. See:

https://eeas.europa.eu/sites/eeas/files/eueom_ghana_2016_final_report.pdf;

<https://www.graphic.com.gh/news/politics/ipac-at-crossroads-for-reform.html>;

<https://www.graphic.com.gh/news/politics/ipac-has-no-legal-backing.html>.

The combination of the commissioners' appointment by the president, the permanent tenure, and the predominant leadership of its former chairman (Afari-Gyan), made it very hard for the Ghana's EC executive board to reflect the country's bipartisan divide. IPAC, however, informally allowed parties to interact with the EMB and allowed the commission to establish an effective two-way communication system with political actors to discuss key issues during the electoral process.

With the creation of the IPAC, the EMB adopted an informal means of internal communication with political actors, developed a mechanism to ventilate key administrative concerns with political parties and, above all, it created a monitoring mechanism that allowed parties to participate in key decisions and check themselves during the different phases of the electoral process. Although IPAC has never been formally recognized in the country's electoral legal framework, most institutional and political actors recognize the adoption of this informal ICM as a key component for explaining Ghana's EC *de facto* independence and its ability to build a positive reputation in the region.¹⁹

A second path for EMBs to develop informal ICMs between electoral bureaucrats and political actors, and perhaps the most common mechanism among electoral institutions, takes place through the informal ties established between electoral commissioners and political parties. As described by Estévez et al. (2008), the Mexican experience illustrates how purportedly “non-partisan” electoral commissioners behave as party “watchdogs” during most administrative stages of the electoral cycle. In most third-wave countries, electoral commissioners are supposed to be appointed through public processes, where candidates are required to be “non-partisan” –i.e., not having formal ties with a political party–, and their nomination requires, at least, the approval of

¹⁹ Since Afari-Gyan tenure as chair of Ghana's EC, many international and country-level experts, including a Special Reform Committee set up by the EC in 2012 in order to improve transparency, inclusiveness and credibility of elections, have suggested the need to institutionalize this informal system of ICMs. Some actors, however, have opposed to this idea arguing it would give parties control of key administrative decisions. See:

<https://www.ghanaweb.com/GhanaHomePage/politics/EC-rejects-legalization-of-IPAC-406363>;
<http://www.codeoghana.org/assets/downloadables/Electoral%20Reform%20Monitoring%20Advocay%20Group-%20Bulletin%20-%202016.pdf>;
<http://citifmonline.com/2016/08/23/ec-ready-to-roll-out-new-reforms-ahead-of-december-polls/>;
<http://www.ec.gov.gh/medias/news/89-ec-implements-27-reforms-for-better-elections.html>.

either the legislative or judicial branch.²⁰ These processes, however, tend to be highly politicized. During the appointment phase, candidates usually seek the endorsement of political parties, parties intensely bargain positions to be filled behind the curtains, veto candidates sponsored by opposition parties, and endorse profiles that are closely aligned with their own interests.²¹

Since IFE became formally independent in the early 1990s, the appointment of electoral commissioners has been –informally– determined by party quotas of major political forces. The formal procedure establishes, as in most third-wave countries, that the legislature is responsible for appointing the EMB’s executive board. Every nine years, *la Cámara de Diputados* makes a public announcement for renovating the electoral commission. In theory, any person meeting certain legal requirements, such as age, citizenship, education, residency, and being registered as a voter, has the right to apply. A multimember technical committee, composed of members representing the leadership of the Lower House, the Human Rights Commission (CNDH), and the Institute for Accessing Public Information (INAI), is in charge of pre-selecting candidates that meet the legal and professional requirements, such as having a “good” reputation, have not served as an elected official, do not have formal partisan ties, or hold certain governmental positions. According to the

²⁰ Authors like Hartlyn et al. (2008), following the work of Moreno, Crisp and Shugar (2003), try to estimate EMBs level of formal independence by quantifying the number and type of actors involved in the appointment of electoral commissioners (i.e., legislature, judiciary, civil society, political parties).

²¹ Estévez et al. (2008) offer evidence of the partisan ties of “non-partisan” electoral commissioners in Mexico.

legal framework, candidates should be selected based on their professional qualifications by the vote of at least two-thirds of the lower chamber.²²

In practice, what happens is that party leaders in Congress endorse their own contenders and decide which candidates from the “public list” will be short listed. In a closed-door environment, known as *La junta de Coordinación Política*, parties negotiate, propose, and veto candidates based on the ideological alignment of candidates with their own interests. In different occasions, legislative gridlock –due to the high levels of politicization– has impeded the lower chamber to meet the constitutional deadline for appointing commissioners. It is well known, within and outside of the EMB, that electoral commissioners maintain close ties with the parties that sponsored them and which party label has endorsed each contender (Estévez et al. 2008). It is through this sponsorship that parties build these informal ties with commissioners. Once appointed, parties have access to key information, communicate with commissioners, and influence their positions at the executive level. It is also through these ties that EMBs build a system of ICMs to monitor each other and ensure that administrative decisions do not deliberately or systematically favor a specific external actor, such as governmental organizations, political parties, individuals, or interest groups. In other words, it is through these informal connections that EMBs develop an internal check and balance system, enforce formal rules, and internally channel external political pressures.

²² The specifications of formal appointment procedures have changed repeatedly since IFE’s inception, but the appointment by the Lower Chamber and the two-thirds majority rule have not. For a detailed description of how these mechanisms have evolved see: Woldenberg and Barragán (2003), available: http://normateca.ife.org.mx/normanet/files_otros/COFIPE/cofipe_comentado.pdf

These informal connections between electoral officials and political parties are common among EMBs in third-wave countries. Recognizing the presence of these external pressures and the institutional ties that political parties build within EMBs is key for having a better understanding of the informal dynamics that shape electoral bureaucratic behavior. When a single external actor, such as the executive or the ruling party, informally dominates the electoral bureaucracy, regardless of its level of *de jure* independence, it negatively affects the institution's *de facto* independence. In contrast, when a consociational system of checks is set in place within the EMB, formal and informal ICMs become key for the institution's capacity to take impartial decisions and develop a positive reputation. After Mexico's 2000 presidential election, for instance, IFE sanctioned equally the ruling party that lost the presidency for the first time in 70 years, the PRI, and both of the opposition parties that formed the winning coalition, the PVEM and the PAN, for violating party financing regulations.²³ Despite the intense lobbying of these parties to avoid major monetary sanctions, the EMB was able to sanction the political parties that had violated the law.

2.3 CONCLUDING REMARKS

Previous research on electoral governance has been key to improving our understanding of the formal administrative differences among EMBs in third-wave countries, but our knowledge of the informal dynamics within EMBs is still limited. A close look at how EMBs work internally reveals three things. First, in countries where political elites are fully committed to democracy and

²³ The former had illegally deviated resources from Pemex's workers union (the scandal was known as Pemexgate) and the latter parties had used an illegal financing scheme involving resources coming from abroad (Amigos de Fox). See: <http://www.nexos.com.mx/?p=11863>

the public *ethos* allows formal rules to be followed, *de jure* independence can be sufficient to hold free and fair elections and EMBs to be recognized as *de facto* independent. In many third-wave countries, however, elections take place in highly politicized environments and external political pressures permeate bureaucracies that still lack the administrative capacity and levels of professionalization observed in Western democracies. These conditions significantly affect the capacity of *de jure* autonomous EMBs to become *de facto* independent.

Second, within the different administrative arrangements adopted by EMBs, ICMs favoring a consociational interaction among institutional and external political actors –instead of the rules promoting insulation– have aid many countries to acquire higher levels of *de facto* independence.²⁴ Third, the interaction between formal rules and the informal internal dynamics within EMBs has been the main driving force behind *de facto* autonomy in many third-wave countries. When formal and informal structures of mutual restraint are adequately embedded within an organization, the views of the main political stakeholders –or their representatives– are more likely to be taken into consideration and to positively reinforce the institution’s reputation. This theory helps explaining the internal interaction among electoral commissioners, how EMBs channel differently external political pressures, and the ability of these institutions to positively impact democracy.

²⁴ Formal rules favouring partisan inclusion in electoral management do not refer exclusively to the “partisan model” of electoral management or representation, where political parties formally become the main institutional stakeholders and are in charge of taking decisions regarding electoral organization and management at the executive level (Mozaffar and Schedler 2002). It includes administrative configurations, like Mexico’s “non-partisan” EMB, where political parties are able engage formally with institutional actors at different bureaucratic levels (e.g., the executive board and the national and local surveillance commissions) during the different stages of the electoral cycle, but it also includes mixed configurations where the EMBs’ executive boards are formed by mix of both institutional (non-partisan) commissioners and party representatives, as happens in many Caribbean countries, Uruguay, or in most states across the United States.

Contrary to the notion that EMBs *de facto* independence can be only achieved through institutional insulation, this theoretical refinement reveals that the presence of ICMs is an alternative path for explaining *de facto* electoral autonomy in third-wave countries. Mexico and Ghana are two success stories where *de jure* independent EMBs, with a different organizational configuration –e.g., executive board appointment process, administrative capacity, and bureaucratic professionalization–, were able to develop a positive reputation in highly politicized environments. Both of these cases show how ICMs aided EMBs to strategically communicate and share information with external political actors. While Ghana’s EMB unilateral appointment of commissioners by the executive facilitated the chairman to build consensus among its peers, the Mexican model –characterized by its ideologically divided executive board– forced its chairmen to build partisan coalitions among commissioners holding different ideological positions (Estévez et al. 2008).

These cases also illustrate how EMBs can channel external political pressures differently. Given the absence of formally –or informally– embedded mechanisms that allowed parties to interact within Ghana’s EC executive board in the early 1990s, the EMB adopted ICMs –the IPAC and its local level equivalents– with political actors two years after the 1992 presidential election and have endured over more than two decades. In the case of Mexico, the EMB developed a dual scheme of ICMs since its inception. On one hand, it adopted a formal “fire alarm” system by having party representatives –with the right to speak, but not to vote– at its *Consejo General* and at the National and Local Surveillance Commissions (*CNV* and *CLVs*). On the other, it developed an informal system of ICMs through the informal ties between commissioners and political parties. As I discuss further in the case studies (chapters 5 and 6), ICMs have helped Ghana’s EMBs to

build a positive reputation and increase its levels of *de facto* independence. However, the two-tier –formal and informal– check and balance systems embedded within Mexico’s EMB is more likely to endure over time.²⁵

In the following lines, I discuss the contributions and limitations of previous studies of electoral governance. In order to analyze the effect of *de facto* autonomy on the on the quality of elections, I replicate two studies focusing on the independence of electoral institutions and introduce a new measure of EMBs *de facto* autonomy from V-Dem’s country-level expert surveys.

²⁵ Ghana’s IPAC, RIPACs, and DIPACs, have been extremely effective informal consultative mechanisms within the EMB. However, they rely on the consent of an executive board that lacks a formally –or informally– embedded check and balance system, which represents a risk for the institution in the long term. Most partisan and institutional actors in Ghana, for instance, recognized that having the executive branch unilaterally appointing electoral commissioners was an important limitation to the EC’s formal autonomy and a possible threat to its *de facto* independence in the long run, especially after Afari-Gyan concluded his tenure. For most country-level experts, the institution relied too much on a single individual’s reputation and leaves the door open for the executive branch to influence the EMB through the appointment process of its executive board (fieldwork interviews mad by the author with members of the Ghana’s Center for Democratic Development. Summer 2014).

3.0 THE CONSEQUENCES OF ELECTORAL AUTONOMY

3.1 INTRODUCTION

In this chapter I explain how scholars have approached the concept of independence of electoral management in previous studies and discuss briefly their contributions and limitations. I begin by explaining why current measures focusing solely on *de jure* autonomy face problems of validity. Then, I replicate two large-N cross-national studies focusing on electoral governance, introduce a new measure capturing EMBs' *de facto* autonomy from the V-Dem project, and explain why considering both *de jure* and *de facto* independence is key to understand how these institutions affect different dimensions for democracy. I find that while *de jure* indicators of electoral autonomy have been found to have a positive and statistically significant effect on the quality of elections, the effect of these variables disappears or become weaker when introducing a *de facto* measure of electoral autonomy.

3.2 MEASUREING INDEPENDENCE IN ELECTORAL MANAGEMENT

In the last two decades scholars and practitioners interested in electoral governance and the quality of democracy have paid special attention to the role of EMBs in organizing successful elections.²⁶ The consensus is that the *de jure* independence of EMBs matters for the perception of

²⁶ Scholars, practitioners and international organizations interested in democracy have built aggregate indicators to measure the overall quality of elections around the globe, among the most important: Freedom House's projects on Electoral Processes and Liberal Democracy (Freedom House 2012); The Index of Electoral Malpractice (Birch 2008); The Quality of Elections Dataset (Kelly 2005); The National Elections across Democracy and Autocracy (Hyde, Nicolay and Marinov 2011); The Free and Fair Elections Project (Bishop and Hoeffler 2012); The Perception of Electoral Integrity Project (Norris, Frank and Martínez i

clean and fair elections and, thus, for democracy (Goodwin-Gill 1994 and 1998; Pastor 1999a and b; López-Pintor 2000; Mozaffar 2002; Mozaffar and Schedler, 2002; McCoy and Hartlyn 2006; Norris 2014, and 2015). In Birch's words (2008, 308):

Among practitioners in the fields of electoral assistance and observation, independent central electoral commissions have come to be regarded as the hallmark of accountable electoral administration... The extent of electoral commission independence from government can be hypothesized to be linked to confidence in the electoral process, for, in the words of Elklit and Reynolds (2001: 5), 'Perceptions about EMB independence are in any case almost as important as the actual, but indiscernible, level of independence, for perceptions might also be the basis for actions and counteractions of political actors at all levels'. Lehoucq (2002: 31) even goes so far as to say that 'there are good reasons to think [independent electoral commissions] are one of the central institutional developments that made democratization stick in some places, but not in others.

Looking at eight Latin American countries, for instance, Molina and Hernández (1998) claim that "non-partisan" EMBs positively affect the perception of clean elections, except in countries that are ruled by a hegemonic party system. In a similar direction, Hartlyn, McCoy, and Mustillo (2008) find in a study of nineteen Latin American countries that elections organized by formally "non-partisan" and independent EMBs, especially in those countries where rules tend to be respected, are more likely to be recognized as acceptable. Lastly, Rosas (2010) complements

Coma 2014); and The Varieties of Democracy Project (Coppedge et. al., 2015). Most of these efforts estimate multiple dimensions, including the impartiality of electoral authorities, which affect the overall fairness in the organization of elections using sources such as: a) the classification of formal rules and procedures by NGOs (i.e., Freedom House, IDEA's ACE Electoral Knowledge Network); b) observer mission reports from international organizations (i.e., OAS, UNDP-EA, EU, OSCE); c) reports created by governmental agencies (i.e., US State Department); d) news media and election guides; and, more recently, e) expert surveys (i.e., V-Dem, EIP).

previous findings by showing that Latin American citizens tend to trust elections more in countries that have formally independent EMBs and that political elites evaluate better elections when these institutions are insulated from politics.

Contrary to these findings, Norris (2015) and Birch (2008) find counterintuitive results when they broaden the sample to include Western democracies that have kept the governmental scheme of electoral management and countries from third-wave regions such as Eastern Europe and South-East Asia.²⁷ On one hand, Norris (2015) reports null findings and no evidence of a link between models of EMB *de jure* independence and electoral malpractice. On the other, Birch (2008) reports in a cross-regional study, where at least half of the sample are Western democracies, that the perception of elections being conducted fairly is lower in countries with *de jure* independent EMBs. Birch recognizes that this counterintuitive finding might be due to the fact that formally independent EMBs have been introduced in response to the perceived lack of impartiality in third-wave countries, while most Western democracies have kept the governmental model of electoral administration.²⁸ For Rosas (2010, 77), Birch's finding is explained either by the use of a limited indicator of formal electoral autonomy –a dummy variable based solely on López-Pintor's (2000) classification of administrative and legal independence– or by the possibility that the same

²⁷ For a detailed summary of the work and findings of Molina and Hernández (1998), Hartlyn et al., (2007), Birch (2008), Rosas (2010), and Norris (2015) see Appendix E.

²⁸ As explained in the previous chapter (section 2.1.1), most Western countries were able to keep the governmental model of electoral management because of their high levels of bureaucratic professionalization and administrative capacity. In contrast, most countries that transitioned during –or after– the third-wave of democratization adopted the independent model because of the levels of mistrust in governmental agencies and the necessity of legitimizing elections in semi-competitive and electoral authoritarian environments. Acknowledging these regional differences is key to understanding how electoral governance works. This study focuses on *de jure* independent EMBs across third-wave countries, on their different levels of *de facto* autonomy, and on the effect these institutions have on democracy.

institutional setup might have elicited “different reactions among citizens, elites, and experts” since these groups’ preferences and objectives are not necessarily identical.

Overall, comparative studies focusing on electoral management have used only formal indicators to measure electoral autonomy (e.g., legal and administrative independence from government, partisan configuration of the EMB’s executive board, or appointment mechanisms of electoral commissioners), but they have left behind measures seeking to capture *de facto* independence. Not surprisingly, Birch (2008) and Norris’ (2015) findings reveal that *de jure* indicators of electoral independence fall short in explaining key outcome variables for democracy.

As explained in previous lines, *de jure* and *de facto* electoral independence are different concepts. Omitting a measure of *de facto* autonomy in studies of electoral governance causes problems of inference because outcome variables do not only respond to *de jure* independence. This is especially problematic for studies focusing on countries where EMBs share similar administrative arrangements (e.g., most EMBs in Sub-Saharan Africa, Latin America and Eastern Europe are non-partisan and formally independent) and similar environments of electoral competition. If the real variation of EMBs’ independence is not being captured by formal indicators, results can be misleading and, therefore, it is harder to assess when are these institutions able to encourage or deter democratic consolidation.

Table 3.1 exemplifies the problem by showing the contrast between two rankings of nineteen Latin American and Caribbean countries based on measures of EMBs’ *de jure* and *de facto* autonomy. The first ranking shows two formal –*de jure*– indicators of autonomy used by Hartlyn

et al. (2008) to capture EMBs' *institutional* and *partisan* independence.²⁹ The second ranking orders countries based on a V-Dem's measure of *de facto* electoral autonomy, which captures EMBs' independence from government and their ability to make, in practice, impartial decisions (Coppedge et al., 2015).³⁰ In each group, countries are ranked in descending order according to the EMB's level of *de jure* and *de facto* autonomy for the same year.

Table 3. 1 Measurements of De Jure and De Facto EMB's Autonomy in Latin America

<i>De Jure</i> Autonomy			<i>De Facto</i> Autonomy	
Country	Hartlyn et al. ¹		Country	V-Dem ²
	Institutional (0-8)	Partisan (1-4)		EMB Autonomy (0-4)
Peru	8	4	Chile	3.71
Costa Rica	7	4	Brazil	3.35
Brazil	6	4	Uruguay	3.29
Chile	6	4	Costa Rica	3.06
Venezuela ³	5	4	Peru	2.36
Argentina	4	4	Mexico	2.20
Colombia	4	2	Panama	2.12
Honduras	4	2	Colombia	1.71
Panama	4	4	Ecuador	1.65
Paraguay	4	2	Argentina	1.58
Bolivia	2	4	Honduras	1.53
Nicaragua	2	2	Bolivia	1.51
Ecuador	1	2	Paraguay	1.22
El Salvador	1	2	Dominican Republic	1.14
Guatemala	1	4	Guatemala	1.11
Haiti	1	4	El Salvador	0.85
Mexico	1	4	Haiti	0.75
Uruguay	1	3	Venezuela	0.23
Dominican Republic	0	1	Nicaragua	0.02

Notes: 1. Based on Hartlyn et al. (2007) latest measure of "Appointment Score" (0-8, 8 being most independent) and "Partisan Score" (1-4, 4 being most independent). For Venezuela the year reported is 2000; 2. Based on Coppedge et al.'s (2015) measure of "EMBs autonomy" (0-4, where 4 is the most independent). Reported values come from the "relative scale measurement model output" for 2006; and 3. Venezuela is highlighted for illustrative purposes and pointing differences between *de jure* and *de facto* measurements of autonomy.

²⁹ In the case of the first ranking (*de jure* autonomy), countries were ordered using the "institutional" independence indicator. Hartlyn et al., (2007) use two different measures to capture *de jure* independence: a) An institutional indicator of formal independence using an "appointment/tenure score." This indicator is based on Moreno et al.'s (2003) methodology, which considers both the number of actors involved in the appointment process and the tenure length of electoral officials. It ranges from 0 to 8, where 0 is the least and 8 the most independent; and b) A "partisan score" that is based on the partisan configuration of the board. It ranges from 1 to 4, where 1 is "most partisan" and 4 is "independent." Rosas (2010) uses similar measures in his work.

³⁰ Based on the Varieties of Democracy (V-Dem) country-level expert survey. The variable used is "EMB autonomy."

The table reveals the difference between measurements of *de jure* and *de facto* independence for Venezuela, Ecuador, Mexico, and Uruguay. In the case of Venezuela (highlighted in gray), for instance, the *Consejo Nacional Electoral* (CNE) is placed among the top five countries in the ranking of *de jure* independent institutions. In the second ranking showing the level of *de facto* autonomy, however, Venezuela appears second to last.³¹

This same problem of *validity* persists for longitudinal measures of *de jure* electoral autonomy. Indicators capturing changes in *de jure* independence are not necessarily capturing shifts on the level of *de facto* autonomy. The case of Venezuela is also helpful to illustrate this point. Before Chávez won the presidency in 1998, political parties directly appointed party representatives as commissioners of the *Consejo Supremo Electoral* (CSE).³² After the 1999 constitutional reform, the newly created EMB –the *Consejo Nacional Electoral* (CNE)– was formally insulated from political parties. In Mozaffar and Schedler’s (2002) terms, the EMB transitioned from a partisan *power-sharing* mode to an institution whose executive board was now appointed through *abdication* and *delegation*.

³¹ In both cases, the measures of *de jure* and *de facto* autonomy refer to the Consejo Nacional Electoral (CNE) in the post Chávez era (after 1999).

³² After the 1999 Constitutional reform, the Consejo Supremo Electoral (CSE) transitioned from having a partisan executive board to formally autonomous institution –the Consejo Nacional Electoral (CNE)– with a board completely insulated from political parties. The former Consejo Supremo Electoral (CSE) had a partisan executive board until 1992. Five of its nine commissioners were party representatives and the other four were “independent” commissioners appointed by Congress. According to the secondary electoral law in Venezuela (Ley Orgánica del Sufragio 1992), the five political parties with the highest number of votes in the most recent elections would be able to appoint a party representative each to the CSE. In 1993, two additional “independent” commissioners were added to the executive board but, overall, the institutional configuration gave political parties the control of the EMB (Mora 1986, Guzmán 1994, Molina and Hernández 1998). Although the objective of articles 39 and 255 of the 1993 electoral reform (Reforma a la Ley Orgánica del Sufragio 1993) was to create an executive board with a majority of independent commissioners (six out of eleven), authors like Mora (1986), Guzmán (1994) and Molina and Hernández (1998) recognize that during this period it was known that most of the “independent” commissioners were ideologically aligned with parties and informally responded to their interests.

The CNE was given the highest constitutional level of *de jure* independence and became a “fourth” branch of power. That is, the EMB had the same constitutional hierarchy as the Judiciary, the Legislative, and the Executive Branch. Since 2002, its executive board was composed of “non-partisan” commissioners designated by a mixed appointment mechanism involving congress, another branch of power, national universities, and civil society.³³

A few years after its inception, the CNE was regarded by some as one of the electoral institutions with the highest degree of *de jure* autonomy. In terms of administrative capacity,, Venezuela’s EMB was one of the most salient institutions in the region. By the 2004, it was one of the few EMBs in the world which had successfully carried out a fully automated election at the national level.³⁴ Former US President Carter, for instance, referred publically to the electoral process in Venezuela as one of “the best in the world” while Hugo Chávez was in his third mandate (Carter 2012; Weisbrot 2012).

Following this logic, authors like Molina and Hernández (1999) classified the CSE as a partisan EMB (non-independent) and, according to their coding procedure, the CNE –a “non-partisan” EMB– would have been classified as a *de jure* independent institution. Similarly,

³³ According to the Ley Orgánica del Poder Electoral (LOPE) from November of 2002, and article 296 of the Constitution (CRBV), CNE’s executive board is composed of five electoral commissioners (rectores) who do not have ties to political organizations (political parties). They are appointed for a period of seven years, and the possibility of being reelected for two consecutive periods. The rectores will be appointed by the vote of at least two thirds of the Asamblea Nacional. Three out of the five commissioners should be nominated by civil society organizations, one by the law and political science faculties of national universities, and one by the Citizens’ Branch, which is the fifth branch of power established in the 1999 Constitution.

³⁴ In 2004 Venezuela was one of the few countries where machines were able to print an electronic receipt for every casted vote. In 2012, it implemented an automated biometric voter identification process to activate the ballot machine. See:

http://www.cne.gob.ve/web/sistema_electoral/tecnologia_electoral_descripcion.php

Hartlyn, McCoy and Mustillo (2007) give the Venezuelan EMB a *partisan score* of “2” (*partisan*), in most years before 1999, and a “4” (independent), once the CNE was established as a formally independent and non-partisan EMB in 2000.³⁵ In the case of the *institutional appointment/tenure score*, they code Venezuela with a “1” (least independent) in most years of the pre-Chávez era and with a “5” (independent) after 1998.³⁶

Despite the fact the “non-partisan” *Consejo Nacional Electoral (CNE)* had the formal legal and administrative mechanisms to guarantee its independence from government, most country-level experts recognize that the pre-Chávez EMB (1999) –the partisan configured *Consejo Supremo Electoral (CSE)*– had significantly higher levels of *de facto* independence than its predecessor.³⁷ Figure 3.1 illustrates well this point. Using data from V-Dem, the figure shows the disparity between Venezuela’s EMB administrative capacity and its *de facto* autonomy over time. While the green line illustrates how the EMB’s administrative capacity increased once Chávez arrived in power in 1998, the red line shows how the EMB’s *de facto* autonomy sharply dropped during the same period. The blue line shows that, despite becoming a more administratively robust and formally autonomous EMB, the perception of clean elections plunged in the following decade.³⁸

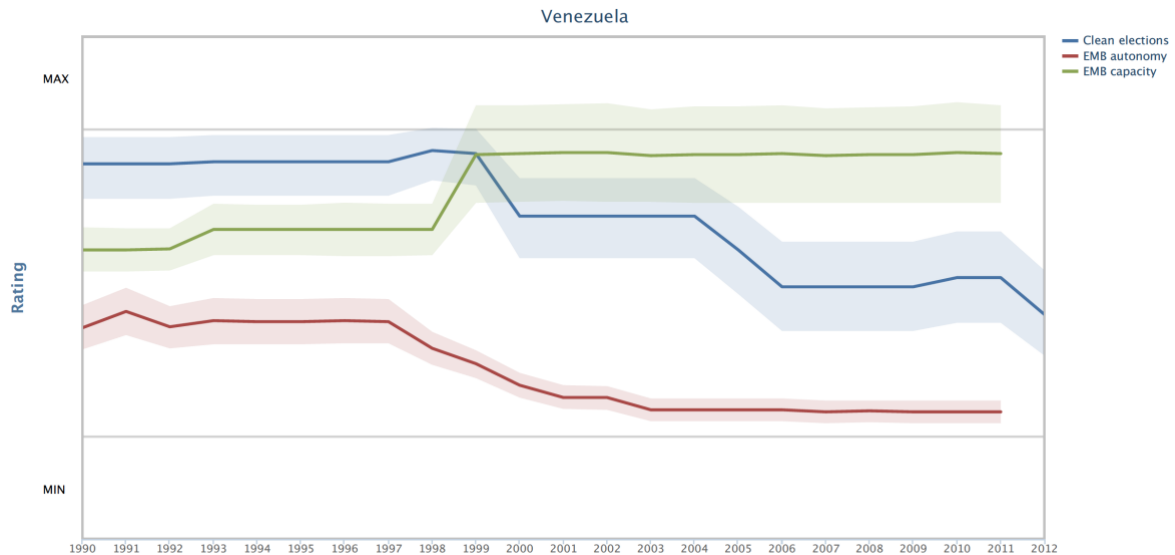
³⁵ The “partisan score” is based on the formal partisan configuration of the EMB’s board. It ranges from 1 to 4, where 1 is “most partisan” and 4 is “independent.”

³⁶ The institutional indicator of formal independence using an “appointment/tenure score” considers both the number of actors involved in the appointment process and the tenure length of electoral officials. It ranges from 0 to 8, where 0 is the least and 8 the most independent;

³⁷ Fieldwork interviews of the author with country-level experts: Luis Lander, Margarita López Maya, José Molina, Benigno Alarcón, Ángel Álvarez, and Michael Penfold. Caracas, Venezuela. Spring 2014.

³⁸ Figure 3.1 was elaborated by the author using the data and online country graphing tool from V-Dem (Coppedge et al. 2014). It shows the evolution of three different indicators in a relative scale for Venezuela

Figure 3. 1 Expert Perceptions on EMBs De facto Autonomy, Bureaucratic Capacity and Cleanness of Elections (1990-2012)



Source: Figure elaborated by the author using data from V-Dem (Coppedge et al. 2014). Confidence intervals are shown in the graph. Relative scale display showing minimum and maximum values ranging from 0-4.

This case shows that despite Venezuela’s EMB achieved a higher level of *de jure* independence after the 1999 electoral reform, this change was insufficient to guarantee the CNE’s *de facto* autonomy. It also reveals that the partisan configuration of an EMB, does not necessarily imply it will be less *de facto* autonomous than its “non-partisan” counterpart. Country-level experts like Álvarez (2014) and Kornblith (2014), for instance, recognize that the *Consejo Supremo Electoral* (CSE), which was formally controlled by party representatives, was in a better position to organize free and fair elections than the CNE.

a decade before and after Chávez arrived in power in 1999. It shows the EMB’s *de facto* autonomy in red, the EMBs administrative capacity in green, and the perception of clean elections.

The conceptual difference between EMBs' *de jure* and *de facto* autonomy is key to explain the opposing trends observed in the figure above. The 1999 reform created an EMB that was completely insulated from political parties and characterized by the absence of ICMs. This reform is explained, in part, because of the discredit of the party system during the 1990s.³⁹ At the time, citizens' confidence in parties was at its lowest and the political elite did not oppose to the idea of formally insulating the EMB from external political actors. Most opposition parties, represented today at the *Mesa de Unidad Democrática (MUD)*, endorsed that decision back then.⁴⁰ A few years later, the lack of formal –or informal– internal checks facilitated the informal cooptation of electoral commissioners –*los rectores electorales*– by the *chavista* regime.

The Venezuelan case, along with similar experiences of EMBs' institutional insulation in Correa's Ecuador, Ortega's Nicaragua, or Evo's Bolivia, reveals that reforms promoting insulation from political parties do not always translate into EMBs' higher levels of *de facto* autonomy. These examples also contradict Molina and Hernández's (1998) claim that appointing “non-partisan experts” as electoral commissioners is an effective mechanism to prevent political manipulation. They also show that Mozaffar and Schedler's (2002) formal dimensions of electoral governance –i.e., formal independence, bureaucratic professionalization, delegation, regulation– falls short for explaining the levels of *de facto* electoral autonomy in third-wave countries.

In the following lines, I introduce a new measure of *de facto* electoral autonomy to previous

³⁹ After El Caracazo in 1989, and during the 1990's, citizens' trust in the party system significantly eroded. During that decade, the Venezuelan party system transitioned from a stable bipartisan to a highly fragmented system. The term “political party,” along with previous rights recognized by the former legal framework, was banned from the 1999 constitution. They were recognized in the post-Chávez era as “organizaciones con fines políticos” (political organizations). Fieldwork interview with country-level experts Luis Lander and Margarita López Maya, Caracas 2014.

⁴⁰ Interview with Ángel Álvarez (UCAB) during fieldwork. Caracas, 2014.

models of electoral governance, discuss the effect this variable has for democracy, and offer some concluding remarks for a future research focusing on the relationship between EMBs' independence and key aspects for democracy.

3.3 INTRODUCING A NEW MEASURE OF *DE FACTO* AUTONOMY

In this subsection, I replicate the studies of Hartlyn et al., (2008) and Birch (2008) focusing on how EMBs independence affects different key aspects for democracy. In order to test the effect of *de facto* autonomy on democracy, I introduce a measure of *de facto* autonomy based on the Varieties of Democracy Project (Coppedge et al., 2015). I begin by describing the concept of *de facto* autonomy and how it is measured. Then, I briefly describe Hartlyn et al. and Birch's work, including their research questions, research design, and findings. I replicate both models adding a measure of *de facto* independence and discuss the results.

3.3.1 Measuring *de facto* autonomy

As I discussed earlier, including a measure of *de facto* independence in studies of electoral management allows clarifying the extent to which EMBs' *de jure* independence is affecting democracy. It also offers more traction for regional studies where electoral institutions share a similar administrative arrangement and have similar levels of democratic development. I define *de facto electoral autonomy* as the capacity of an EMB to operate and take decisions, in practice,

without deliberately using formal or informal means to systematically favor a specific external actor, such as governmental organizations, other branches of power, political parties, individuals, or interest groups during the different phases of the electoral cycle.

De facto autonomy is hard to observe and, thus, to measure. County-level experts, however, follow elections closely and have a reliable understanding of how electoral agencies work internally and the extent to which they are able to take, in practice, impartial decisions. Additionally, they have a better historical perspective of how *de facto* independence has evolved over time. Compared to citizen and elite surveys, the perception of experts is less likely to be influenced by the level of politicization or electoral outcomes, and it allows measuring complex concepts that require specific evaluative knowledge (Schedler 2012).⁴¹

Scholars like Norris et al. (2014) and Coppedge et al. (2015), for instance, have made important efforts to collect and systematize electoral information from country-level experts in a wide variety of countries. For replication purposes, however, I use the Varieties of Democracy's (V-Dem) dataset because it covers a wider timespan and subset of countries. The variable capturing EMB's *de facto* independence on the dataset is labeled as "*EMB autonomy*."

In order to measure this variable, country-level experts were asked: "*Does the EMB have autonomy from government to apply election laws and administrative rules impartially in national elections?*" The five possible answers, ordered in a scale from 0 to 4, were: "0. *No*. The EMB is

⁴¹ Expert surveys have increasingly been used in the social sciences and in the private sector for evaluative purposes, especially in cases where the available information is either scarce or is not specific enough (Meyer and Booker 1991). As recognized by scholars like Budge (2000), Mair (2001), and Steenbergen and Marks (2007), this data collection technique has important limitations. However, there have been important efforts to test and correct for issues of context and expert heterogeneity (King and Wand, 2007; Coppedge, 2014a; Martínez i Coma and Van Ham, 2015; and Pemstein et al., 2015).

controlled by the incumbent government, the military, or other *de facto* ruling body; 1. *Somewhat*. The EMB has some autonomy on some issues but on critical issues that influence the outcome of elections, the EMB is partial to the *de facto* ruling body; 2. *Ambiguous*. The EMB has some autonomy but it is also partial, and it is unclear to what extent this influences the outcome of the election; 3. *Almost*. The EMB has autonomy and acts impartially almost all the time. It may be influenced by the *de facto* ruling body in some minor ways that do not influence the outcome of elections; and 4. *Yes*. The EMB is autonomous and impartially applies election laws and administrative rules.”⁴²

3.3.2 Replicating Hartlyn et al., (2008)

Hartlyn et al. (2008) examine the impact of electoral management bodies on the quality of elections in Latin America. In their work, they ask whether EMBs have an independent effect on election quality and, if so, which kind of EMBs work best. They claim that answering these questions is theoretically relevant to determine the independent causal impact of institutions. In policy terms, they argue that their findings are key for governments in new democracies designing their electoral agencies and for donors giving advice and financial assistance to EMBs.

In order to test their theory, they use a partial proportional odds-ordered logit model to evaluate the extent to which *de jure* independence affects the quality of elections. To measure the dependent variable, *the quality of democracy*, they use an indicator based on domestic and international electoral observation reports with a threefold classification of elections as

⁴² The Varieties of Democracy Project methodology and codebook are available at V-Dem.net. Scale: Ordinal, converted to interval by the measurement model. Cross-coder aggregation: Bayesian item response theory measurement model. Data release: 1, 2, 3, 4, 5, and 6.

“acceptable,” “flawed,” or “unacceptable.” *De jure* independence, the explanatory variable, is measured using two separate indicators of partisan and institutional autonomy. In the case of the “*partisan score*,” they created a variable that captures the degree of formal representation of political parties within the EMBs’ executive boards. EMBs are classified in four categories: “Single-party dominated;” “Partisan-mixed;” “Independent/partisan-mixed;” and “Independent of parties.”⁴³

In the case of “*institutional independence*” score they developed an “appointment/tenure score” based on Moreno et al.’s (2003) methodology. They classify EMBs using an index of independence, ranging from 0 to 8, based on the “nature of their appointment process and on the tenures in office of both appointees and appointers.”⁴⁴ In addition to the main explanatory variables, they also include controls for political party factors (overall level of democracy), incumbents seeking reelection (party and president), corruption, electoral volatility, margin of victory, GDP per capita, and post 1989 period.

Hartlyn and coauthors analyze a total of 104 elections in nineteen Latin American and Caribbean countries, over a 23-year period (1980-2003), using two models. The first one uses the

⁴³ 1. Single-party dominated: One party, usually the incumbent, has enough seats to make most of the decisions alone (whether it actually does or not); 2. Partisan mixed: There is either balanced representation of political parties on the board or sufficiently mixed representation that no single party can make the decisions alone; 3. Independent/partisan- mixed: Some members are nominated on the basis of partisan representation and some as independents (e.g., Uruguay); and 4. Independent of parties. The EMB members may be appointed by Congress (or, more commonly, judges or civic groups), but they are consciously nonpartisan and professional, appointed on merit qualifications rather than on partisan sympathy.

⁴⁴ As described by Hartlyn et al. (2008), “the least autonomous agencies are appointed by one chamber of the legislature only (dominated by the executive or a single majority party), with autonomy increasing as agencies are named through processes involving multiple branches of government, to process dominated by the judiciary, to those dominated by civil society.” Similarly, they classify EMBs with greater independence when the tenure of EMBs’ members is longer than the tenure of the appointers. For coding details see Hartlyn et al. (2008a).

partisan score as the main explanatory variable and, the second one, uses the *institutional* score of independence. Both of their models –*partisan* and *institutional* EMB’s independence– have an overall good fit with pseudo R²s of .46 and .40, respectively. In their first model, they find that compared to the omitted category (single-party dominated EMBs), both *partisan mixed* and *independent* EMBs have a positive and significant effect on the quality of elections.

Table 3.2 shows two columns comparing Hartlyn et al.’s (2008) original model predicting the quality of elections with a *de jure* measure of *partisan* autonomy and the replication of the same model after adding a variable capturing EMBs’ *de facto* independence.⁴⁵ The results reveal that while EMBs’ *de jure* measure of *partisan independence* has a positive and statistically significant effect on the quality of elections, its effect disappears after introducing a measure of *de facto* electoral autonomy.⁴⁶ The rest of the coefficients that had statistical significance in the original model –i.e., to the margin of victory, incumbent party and president– remain the same. The overall model’s fit increases –from a pseudo R² of .46 to .52– when the new variable is introduced.

⁴⁵ The data and code for replication purposes were kindly provided upon request by Hartlyn et al. (2008). The paper and supplementary material is available here: <http://hartlyn.web.unc.edu/downloads/>. Replication made by the author with data (EMB autonomy) from the Varieties of Democracy Project v.6 (Coppedge et al., 2015) using Stata version 14. The correlation coefficient between the EMB’s *de facto* autonomy and Electoral Success (dependent variable), EMB partisanship (independent variable) and EMB *de jure* independence (independent variable) is 0.59, 0.57, and 0.41, respectively.

⁴⁶ Replacing the *de jure* measures of autonomy –formal *partisan* and *institutional* independence– for a *de facto* measure –EMB autonomy– in both of Hartlyn et al.’s (2008) models, produces a positive a significant relationship (at the $p < .01$ level) between *de facto* autonomy and the outcome variable. The rest of the variables remain with similar coefficients and significance, compared to the original model.

Table 3. 2 Replication of Hartlyn et al.'s (2008) and Introducing De Facto Autonomy to Model 1: Predicting the Quality of Elections with EMBs' Partisan Measure

Quality of Elections	Hartyn et al. (2008)	Coppedge et al. (2015)
	<i>De Jure</i> Autonomy	<i>De Facto</i> Autonomy
	<i>B</i>	<i>B</i>
EMB partisan		
Independent EMB	3.83** (1.45)	2.66 (1.40)
Intermediate EMB	-0.82 (2.04)	-1.11 (2.87)
Partisan Mixed	1.83* (0.94)	0.73 (0.98)
Single-party- dominated EMB	omitted category	
EMB <i>de facto</i> autonomy	--	1.73** (.70)
Corruption	-0.02 (0.56)	0.22 (0.50)
Electoral volatility	0.001 (0.02)	0.012 (0.02)
Margin	-0.06** (0.02)	-0.05** (0.02)
Polity, lagged	0.016 (0.08)	-0.11 (0.12)
GDP per capita		
(Acceptable, flawed) vs unacceptable	-0.92 (0.77)	-0.001 (0.001)
Acceptable vs (flawed, unacceptable)	0.89 (0.74)	0.000 (0.001)
Incumbent party		
(Acceptable, flawed) vs unacceptable	-16.20** (2.75)	-14.92** (2.19)
Acceptable vs (flawed, unacceptable)	0.91 (0.83)	1.62 (0.86)
Incumbent president		
(Acceptable, flawed) vs unacceptable	-19.38** (2.94)	-18.82** (2.14)
Acceptable vs (flawed, unacceptable)	-3.30 (2.13)	-2.11 (1.92)
Post-1989	0.80 (0.66)	0.73 (0.77)
Cut 1	20.86** (3.36)	18.72** (3.15)
Cut 2	-2.22 (3.44)	-3.17 (2.54)
Wald $X^2(df)$	828.30 (14)**	2636.07(15)**
Log pseudo-likelihood	-35.74	-31.85
Pseudo R ²	0.46	0.52
<i>N</i>	103	103

Note: Standard errors are in parentheses. * $p < .05$. ** $p < .01$ The first column presents Hartlyn et al.'s (2008) results of their first model and the second column shows the results of the same model with an additional variable capturing *de facto* independence (EMB autonomy) based on Coppedge et al. (2015). Table elaborated by the author.

Hartlyn et al. conclude from these results that non-partisan electoral agencies enhance “the likelihood of having more free and fair democratic processes” and that EMBs that are *partisan-independent* “are close to being a sufficient condition for successful elections.” They also

recognize, however, that EMBs with a *partisan-mixed* configuration may also be effective in providing the necessary confidence and trust for successful elections. They find that having a *partisan-mixed* EMB, for instance, increases the probability of a successful election by 37%, from .48 to .85, relative to when an EMB is *single-party dominant*.

This last finding –the positive effect of *partisan-mixed* EMBs on the quality of elections– is particularly relevant for this work. In their article, Hartlyn et al. leave this as a secondary finding and emphasize throughout their work the importance of “formally isolating EMBs from partisan pressures.” The *partisan-mixed* variable shows, however, that this type of formal check and balance system is significantly more effective compared to EMBs that are unilaterally controlled by a *single party*. It also reveals that, in certain contexts of political competition, the presence of political parties within an EMB’s executive board can aid in the organization of free and fair elections.

The logic behind the *partisan-mixed* administrative configuration is similar to having either a formally or informally embedded system of ICMs within an EMB. By definition, a *partisan-mixed* EMB’s executive board has either “a balanced representation of political parties on the board or a sufficiently mixed representation of parties where no single party can make the decisions alone.” That is, this type of administrative design allows electoral bureaucracies to formally have the main interested political actors –e.g., party representatives– monitoring themselves at the EMB’s executive level during key stages of the electoral process.⁴⁷ Although

⁴⁷ The partisan and the partisan-mixed configured administrative boards are common in both countries that have adopted either the governmental or the independent scheme of electoral management. In many de jure independent EMBs in the Commonwealth Caribbean, for instance, electoral commissions are appointed by both members of the opposition and the majority leader in parliament to ensure a formal system of checks

most EMBs in the third-wave countries have “non-partisan” executive boards, these results reveal that, in some cases, the *partisan-mixed* administrative design can be more effective for promoting *de facto* autonomy than insulating these institutions from partisan pressures.

As explained earlier, the “*non-partisan*” configuration of an EMB’s executive board does not imply excluding other type of ICMs. For example, Colombia’s *Consejo Nacional Electoral* (CNE) and Mexico’s *Instituto Nacional Electoral* (INE) are both *de jure* autonomous EMBs and share similar levels of *de facto* independence (see the second column of Table 3.1). The former, however, has a partisan configured executive board.⁴⁸ In contrast, INE has a formally “non-partisan” *Consejo General*, but it has both formal and informal ICMs. On one hand, political parties are formally represented at INE’s executive board –with the right to speak, but not to vote– via party representatives and legislative *liaisons*. Additionally, party representatives are also formally represented within the Mexican electoral bureaucracy via the National and Local Surveillance Commissions (CNV and CLVs). On the other hand, parties have managed to

at the commissions’ executive level. This model is also common in most states across the United States, which follow the governmental electoral administrative scheme. In many states, party representatives play a key role within electoral commissions supervising federal, state, and county level elections. In Texas, for instance, the Secretary of State serves as the chief election officer for the State of Texas and their Election Division ensures compliance of election requirements, coordinates election reporting, and interprets legislative changes for local officials. According to the Texas Election Code, the Elections Commission is made up of five members, of which two are party representatives, and it is charge of overseeing the office of the Elections Administrator. The EMB’s executive board is formed by the County Judge (chairman), the County Clerk (vice chairman), the County Tax Assessor-Collector (secretary), and the two local party chairs (Democrats and Republicans).

See: http://www.co.cameron.tx.us/administration/elections_voter_registration/index.php

⁴⁸ Although the CNE’s executive board has been characterized by its high levels of politicization in the last decade and there is an ongoing debate among scholars and practitioners regarding the possible transition of this EMB to adopt a “non-partisan” administrative scheme, electoral management in Colombia has been recognized as impartial due to its built-in system checks and balances. Interview with Juan Carlos Rodríguez, elections and country-level expert. Member of La Misión de Observación Electoral para la Reforma Electoral en Colombia. Universidad de Los Andes, Bogotá, 2017.

establish and maintain informal ties with electoral commissioners that allow them to have an informal presence at the *Consejo General* (Estévez et al., 2008).

In their second model, Hartlyn et al., use a *de jure* measure of EMBs' *institutional* independence to predict the quality of elections. Table 3.3 shows four different columns. The first two display the results of their original model, and the last two columns show the results for the same model after adding a measure of *de facto* electoral autonomy. Although their original indicator of *de jure independence* combines both appointment and tenure scores, Hartlyn and coauthors report results only based on the appointment score arguing it is the key component of the index.

Table 3. 3 Replication of Hartlyn et al.'s (2008) and Introducing De Facto Autonomy to Model 2: Predicting the Quality of Elections with EMBs' Institutional Independence

Quality of Elections	Hartlyn et al. (2008) <i>De Jure</i> Autonomy		Coppedge et al. (2015) <i>De Facto</i> Autonomy	
	Without Interaction B	With Interaction B	Without Interaction B	With Interaction B
EMB appointment subscore	0.20 (0.17)	1.28* (0.60)	0.35 (0.30)	0.80 (0.59)
Corruption	0.005 (0.513)	0.84 (0.65)	0.51 (0.43)	1.55* (0.67)
EMB appointment x Corruption	--	-0.33* (0.15)	--	-0.38* (0.17)
EMB <i>de facto</i> autonomy	--	--	2.97** (1.09)	3.28** (1.28)
Electoral volatility	0.010 (0.018)	0.01 (0.02)	0.038 (0.021)	0.040 (0.023)
Margin	-0.05** (0.02)	-0.06** (0.02)	-0.035* (0.16)	-0.041* (0.17)
Polity, lagged	0.011 (0.12)	0.12 (0.12)	-0.11 (0.21)	-0.11 (0.19)
GDP per capita (Acceptable, flawed) vs unacceptable	-0.018 (0.600)	-0.135 (0.562)	-0.12 (0.66)	-0.023 (0.057)
Acceptable vs (flawed, unacceptable)	0.948* (0.464)	0.879 (0.429)	0.38 (0.34)	0.24 (0.29)
Incumbent party (Acceptable, flawed) vs unacceptable	-14.89** (1.61)	-15.61** (1.43)	-13.52** (1.42)	-14.08** (1.65)
Acceptable vs (flawed, unacceptable)	0.55 (0.74)	0.52 (0.74)	1.93* (0.98)	2.29 (1.21)
Incumbent president (Acceptable, flawed) vs unacceptable	-18.15** (1.40)	-19.14** (1.57)	-16.86** (1.55)	-17.51** (2.03)
Acceptable vs (flawed, unacceptable)	-2.74 (1.41)	-3.03* (1.52)	-0.13 (1.46)	0.25 (1.53)
Post-1989	1.10 (0.67)	1.22 (0.72)	0.52 (0.77)	0.71 (0.84)
Cut 1	17.24** (2.78)	15.48** (2.81)	15.08** (2.77)	12.50** (4.42)
Cut 2	-2.15 (3.12)	-4.75 (3.60)	-4.69* (2.19)	-8.18* (3.36)
Wald $X^2(df)$	1113.08(12)**	1,043.41(13)**	462.11(13)**	416.86(14)**
Log pseudo-likelihood	-41.88	-40.02	-33.40	-31.60
Pseudo R ²	0.37	0.40	0.50	0.52
N	103	103	103	103

Note: Standard errors are in parentheses. * $p < .05$. ** $p < .01$ The first two columns present Hartlyn et al.'s (2008) results of their second model (with and without the interaction between *de jure* autonomy – EMB appointment – and corruption). The third and fourth columns shows the results of the same two models with an additional variable capturing *de facto* independence (EMB autonomy) based on Coppedge et al. (2015). Table elaborated by the author.

The first column shows the original model. Results reveal that the main explanatory variable – EMBs' *de jure institutional* independence – has no effect on the quality of elections. The second column shows the same model with an additional interaction between the *de jure* measure of *institutional* independence and an indicator of corruption. Hartlyn et al. find that an EMB's appointment process has a positive and significant effect on the likelihood that an election will go well when corruption is low. However, they also find that this effect becomes weaker and

insignificant at intermediate and high levels of corruption, which is the case for most countries across the developing world.

This last finding is particularly relevant because it reveals that formal mechanisms seeking to insulate EMBs from partisan influence are only effective for democracy in those countries with low levels of corruption. This reinforces the idea that *formal* rules might be reinforcing the quality of elections in those countries with higher levels of democratic development but that they are insufficient for guaranteeing free and fair at intermediate or low levels of democratic development, especially in weakly institutionalized countries in regions like Latin America and Africa.

The last two columns show the estimates after adding the variable of *de facto* autonomy. Results show that EMBs *de facto* autonomy has a positive and significant effect on the quality of elections both models (with and without the interaction term). Hartlyn et al.'s (2008) main explanatory variable, the *de jure* measure of *institutional* independence, remains insignificant in the model without the interaction (third column) and, when including the interaction (fourth column), it loses its statistical significance. Consistent with Hartlyn et al.'s finding, the interaction effect remains significant at the $p < .05$ level. The rest of the coefficients from the original model – i.e., to the margin of victory, incumbent party and president – remain practically the same. The overall model's fit increases – from a pseudo R^2 of .40 to .52 – when the new variable is introduced.

Overall, what these results reveal is that EMBs' *de facto* autonomy has a more consistent and stronger relationship with the quality of elections than *de jure* measures of *partisan* and *institutional* independence. In case of the model using *partisan* independence as the main explanatory variable, this is probably because this type of indicator is not capturing the extent to which formal and informal ICMs allow these institutions to set in place an internal system of

checks and balances in order to channel external political pressures more effectively than EMBs with higher levels of political insulation. In the case of the *institutional* model of independence, the null findings in the first model are probably explained because the formal rules for appointing electoral commissioners is far from capturing the politicization involved in the process and, more importantly, the informal ties that are usually established between “non-partisan” electoral commissioners and political parties in Latin American EMBs.

3.3.3 Replicating Birch (2008)

Birch (2008) examines the impact of electoral institutions on the levels of popular confidence in electoral processes. In her work, she asks what factors are shaping the perceptions of electoral conduct in a cross-national context. Specifically, she explores if electoral institutional structures promoting a “level playing field,” among them EMBs’ *de jure* independence, enhance the extent to which voters perceive their elections to be fair. Birch finds that while proportional electoral systems and public funding of parties have a positive impact on the levels of confidence in the conduct of elections, *EMBs formal independence* is negatively associated with this key variable for democracy.

In order to test her theory, she uses multilevel modeling to evaluate the extent to which *de jure* independent EMBs, which purportedly work as an institutional leveling device to guarantee the fairness of the electoral process, promote citizens confidence in elections.⁴⁹ In contrast to

⁴⁹ Birch (2008) used a multilevel modeling software package developed by the Center for Multilevel Modeling at the University of Bristol (MLwiN, version 2.02). The software was programed to use restricted iterative generalized least squares (RIGLS) estimation, ideal for restricted numbers of level-two cases (Rasbash et al., 2004; Steenbergen and Jones, 2002), and predictive quasi-likelihood (PQL) approximation

Hartlyn et al. (2008), Birch (2008) analyzes 28 elections in a cross-national study focusing mainly in Western and Eastern Europe between 1996 and 2002. To measure the dependent variable, she uses the Comparative Study of Electoral Systems (CSES) question asking respondents, in a scale from one to five, if the last national election was conducted fairly.

EMB's *de jure* independence, one of the three explanatory variables in the model, is measured using a dummy variable of EMBs' formal *institutional* autonomy based on a threefold classification of López-Pintor (2000).⁵⁰ In addition to this explanatory variable, she also includes two additional explanatory variables related to electoral institutions: *electoral system* (PR component to election) and *public funding of parties*. Birch presents three different models where she controls separately for corruption (corruption perception index), the economy (human development), and the level of democracy (freedom house political rights). She also controls for other election related variables such as competitiveness (margin of victory) and individual-level variables such as age, education, higher income, female gender, and party identification.

Birch finds a strong negative effect (at the $p < .001$ level) of EMBs' *de jure* independence on the perception of electoral fairness. That is, in those cases where EMBs are fully independent from government, it is more likely that citizens will perceive elections as unfair. Birch recognizes that this negative association might be due "to the fact that many such bodies have been introduced in

for the estimation of equation with discrete dependent variables. For replication purposes, the data was provided by Birch upon request (November 2015) and I used the MLwiN (version 2.36) 30-day free trial (available here: <http://www.bristol.ac.uk/cmm/software/mlwin/>) and the runmlwin package for Stata (version 14). I would like to thank Chris Charlton, at the University of Bristol, for his advice on how to program the MLwiN software and use the runmlwin package.

⁵⁰ López- Pintor's (2000) *de jure* classification of EMBs groups them as: i) fully independent electoral commissions, ii) electoral commissions that are part of government but are under the oversight of an independent (usually judicial) body, and iii) electoral administration that is solely under control of a governmental agency.

response to perceived problems with impartiality.” The author recognizes that “this variable may therefore be somewhat endogenous to the credibility of elections” or, in other words, that “the impact of EMB’s independence may be conditional on the overall quality of governance in the state.”⁵¹

This counterintuitive finding responds to the institutional gap that exists between consolidated Western democracies and developing countries that transitioned to democracy during or after the third-wave. As described in the second chapter, by the second half of the twentieth century the Western countries had significantly developed higher levels of administrative capacity and bureaucratic professionalization. Compared to their counterparts in regions like Latin America, Eastern Europe, and Africa, Western democracies were able to keep the governmental scheme of electoral administration without compromising citizens’ confidence in elections. This difference is what explains the apparently endogenous (*reverse causality*) between EMBs’ *de jure* independence and the levels of trust in democracy.

That is, besides the limitations associated with using a dummy variable for measuring *de jure* electoral independence, the type and number of cases included in the study is what explains Birch’s (2008) results. Out of the 28 countries included in the sample, more than half are consolidated Western democracies that have kept the governmental scheme of electoral management.⁵² Two questions that remain unanswered in Birch’s work, however, are the extent to

⁵¹ Birch (2008, footnote 15) reports that an additional model with an interaction between EMB’s independence and corruption was run, but the interaction term was not significant.

⁵² Out of the 28 countries in the sample, 15 are well-established democracies, where 13 have kept the governmental scheme of electoral administration. Canada and Iceland are the only two cases in this subset that have *de jure* independent EMBs. The rest of the sample includes 13 third-wave countries from Eastern Europe (9), Asia (3), and Latin America (1), where most of the EMBs are *de jure* independent.

which *de jure* independent EMBs have different levels *de facto* independence and, more importantly, how are the varying levels of *de facto* autonomy affecting the levels of trust in elections across third-wave democracies.

In order to analyze these questions using Birch's data and the same statistical model, I separated Birch's sample by selecting those cases sharing a *de jure* independent EMB and similar levels of democratic development. For this purpose, I created an interaction term (second column) and replicated the model in those cases holding elections under a semi-democratic or electoral-authoritarian context (third column).⁵³ Results are displayed in Table 3.4, which has three columns. The first column shows the original results obtained by Birch (2008). The other two columns display the results after adding a measure of EMB's *de facto* autonomy based on the V-Dem dataset (Coppedge et al., 2015). The second column shows the results after introducing the *de facto* measure of autonomy and an interaction term between both *de jure* and *de facto* measures of electoral autonomy. The third column shows the results after splitting the sample and running the model in countries where elections were considered either semi or non-democratic, mainly in Eastern Europe.⁵⁴

⁵³ Although I do not extend Birch's work beyond this discussion, and as data has become available for a wider set of countries in most regions of the globe, it would be desirable to compare the effect of *de facto* electoral autonomy on democratic development and consolidation among countries with *de jure* independent EMBs across the developing world, while considering regional differences. In the next chapter, I focus on third-wave countries and analyze *de facto* independence as an outcome variable taking into consideration regional differences across the globe.

⁵⁴ The results presented here are based on Birch's (2008) third model, which controls for the level of democracy. Similar results were reported in the models controlling for corruption and human development. When introducing the *de facto* measure of electoral autonomy, the variable was not statistically significant in the original models. However, when splitting the sample between countries with highly democratic elections and those with semi or non-democratic elections, the *de facto* measure of EMB autonomy became positive and significant.

Table 3. 4 Replication of Birch (2008) and Introducing De Facto Autonomy to Model 3: Predicting Citizens Trust in Elections

	Birch (2008) <i>De Jure Autonomy Without Interaction</i>	Coppedge et al. (2015) <i>De Facto Autonomy With Interaction</i>	Coppedge et al. (2015) <i>De Facto Autonomy Semi & Non-Democratic Countries</i>
Perception of Electoral Fairness	<i>B</i>	<i>B</i>	<i>B</i>
<i>Individual-level variables</i>			
Age	0.009**** (0.001)	0.009**** (0.001)	0.007** (0.003)
Education	0.099**** (0.023)	0.098**** (0.023)	0.038 (0.041)
Higher income	0.222**** (0.051)	0.222**** (0.051)	0.180* (0.099)
Female gender	-0.227**** (0.057)	-0.227**** (0.057)	-0.123 (0.097)
Identifies with loser	-0.489**** (0.144)	-0.490**** (0.144)	-0.166 (0.227)
No party identification	-0.514**** (0.078)	-0.514**** (0.078)	0.361** (0.160)
Left	-0.034 (0.094)	-0.034 (0.093)	0.126 (0.174)
Right	0.178* (0.101)	0.178* (0.101)	0.057 (0.1573)
<i>Election-level variables</i>			
PR component to election	0.305* (0.179)	0.636**** (0.186)	0.489** (0.235)
Public funding of parties	0.791**** (0.125)	0.641**** (0.177)	0.173 (0.125)
EMB <i>de jure</i> Independence	-0.848**** (0.189)	-3.686**** (0.996)	-0.924**** (0.160)
EMB <i>de facto</i> Autonomy	--	-0.287 (0.239)	0.664**** (0.075)
EMB <i>de jure</i> and <i>de facto</i> Autonomy	--	0.772*** (0.309)	--
Margin of victory	0.022 (0.022)	0.039* (0.021)	0.009* (0.004)
Freedom House Political Rights	0.334**** (0.059)	0.560* (0.290)	0.153*** (0.055)
Constant	-2.137**** (0.506)	-0.040 (0.836)	-1.38*** (0.500)
Intercept variance	0.285**** (0.085)	0.430**** (0.1010)	0.128**** (0.043)
Chi squared - fixed effects	1354.96 (14 <i>df</i>)	1584.48 (16 <i>df</i>)	3401.39 (10 <i>df</i>)
Chi squared - random effects	11.248 (1 <i>df</i>)	18.13 (1 <i>df</i>)	8.86 (1 <i>df</i>)
<i>N</i> : individuals	28,478	28,478	7,592
<i>N</i> : elections	24	24	8

Note: Standard errors are in parentheses. * $p < .10$; ** $p < .05$; *** $p < .01$; **** $p < .001$. The first column presents Birch (2008) results of the third model. The second column shows the same model with an additional variable capturing *de facto* independence (EMB autonomy) based on Coppedge et al. (2015) and an interaction term between EMB *de jure* and *de facto* autonomy. The third column shows the results of countries with semi or non-democratic elections after splitting the sample. Table elaborated by the author.

As shown in the second column of Table 3.4, the interaction term between EMBs' *de jure* and *de facto* autonomy, capturing the effect of EMBs' *de facto* autonomy on citizens' confidence in elections among those cases that have formally independent electoral institutions, is both positive and statistically significant. This indicates that, among those cases with *de jure* autonomous EMBs, *de facto* autonomy matters for increasing citizens' perception of fair elections. The third column shows the results of the model among those countries that have semi or non-democratic

electoral processes. In this case, EMBS' *de facto* autonomy remains positive and significant. As in the case of Hartlyn et al.'s replication, this result reveals that EMBS' *de facto* autonomy is a relevant variable for explaining citizens' trust in elections, especially in newly or weakly institutionalized democracies.

Overall, Birch's work reveals that EMBS' *de jure* independence might not be as relevant in consolidated Western democracies as it is for developing countries that are going through processes of democratic consolidation or that remain under authoritarian rule. The negative relationship Birch finds between EMBS' *de jure* independence and popular confidence in elections is endogenous and it is explained by the bureaucratic gap that exists between Western democracies and developing countries. Using a binary variable to measure EMBS' *de jure* independence is problematic for comparing electoral institutions –and the effect they have for democracy– because it does not capture any real variation in the levels of independence across countries. Introducing additional measures of *de facto* independence is key to understand how EMBS are affecting democracy in the developing world.

3.4 CONCLUDING REMARKS

This chapter emphasizes the relevance of considering both dimensions of autonomy in studies that are trying to explain key aspects for democracy, such as the quality and credibility of elections. By defining and introducing a new variable of EMBS' *de facto* autonomy to previous models explaining the quality and trust in electoral processes, I provide evidence that this is a relevant variable for explaining key aspects for democratic consolidation.

In the case of Hartlyn et al. (2008), results show that EMBs' *de facto* autonomy better explains the variation in the outcome variable than *de jure* –*partisan* and *institutional*– measures of autonomy. In the case of EMBs' *partisan autonomy*, Hartlyn and coauthors find evidence showing that although “*non-partisan*” EMBs positively affect the quality of elections, *mixed-partisan* electoral institutions are also associated positively with successful elections. This finding is especially relevant for this work because it shows that, in certain circumstances, *partisan* check and balance systems embedded within EMBs' executive boards are positively related to the quality of elections.

In the case of EMB's *institutional* independence, the most revealing finding is that EMBs' *de jure* independence matters less in countries that are affected by higher levels of corruption or, in Hartlyn and coauthors words, that “formal-institutional mechanisms intended to encourage independence and professionalism work only in a broader context where the rules of the game are respected.” That is, the interaction between *institutional* independence and corruption reveals that while EMBs *institutional* independence matters for more consolidated democracies, it might be insufficient to guarantee fair elections in regions affected by intermediate or high levels of corruption.

Lastly, Hartlyn et al. (2008) conclude that despite the finding that *electoral volatility* not having attained statistical significance in any of the models, there are strong reasons to believe that the quality of elections is associated with “party behavior, the willingness to commit fraud, and the capacity to detect it.” They suggest that more work is needed to develop an improved measure of how party behavior is affecting electoral quality. This idea is closely tied to the efficiency of ICMs discussed in the next chapter. Although partisan institutionalization is not a necessary condition for

ICMs to work, this type of internal check and balance system is more likely to be reinforced when parties are able to establish stronger and more stable ties within an EMB to monitor key phases of the electoral process.

Birch's (2008) work is a relevant contribution because, compared to previous studies, it analyzes EMBs' independence in a multi-regional context. The number and type of countries that conform the sample, however, lead to what she describes as counterintuitive findings. Given that more than half of the EMBs are in consolidated Western democracies with highly professionalized bureaucracies, Birch finds that citizens in countries with *governmental* (non-formally independent) EMBs are more likely to trust elections. Birch (2008) recognizes this result as the "most puzzling finding" and acknowledges that this may well be due to the fact that EMBs' formal *institutional* independence might not accord, in many cases, with their actual (and perceived) status. For Birch, it would be desirable for future scholars to develop a measure of EMBs' *de facto* independence.⁵⁵ My work contributes by incorporating a measure of *de facto* independence and by explaining what mechanisms have allowed EMBs in developing democracies to become *de facto* autonomous.

In sum, electoral bureaucracies are not the only key institution for democratic stability, but EMBs that are able to become *de facto* independent are especially important in fragile and newly institutionalized democracies. In Carpenter's (2001) terms, bureaucracies are more likely to build a positive reputation over time as long as they are able develop their own character. In the case of EMBs, this character is not solely built through the adoption of formal norms and regulations. Rather, the internal dynamics within these institutions is key for developing a positive reputation. In many

⁵⁵ The author suggests as an example the work of La Porta et al. (2004) on judicial independence.

developing countries, EMBs have achieved higher levels of *de facto* independence through ICMs that aid them to channel effectively external political pressures and minimize the risk of unilateral political manipulation. The results obtained after replicating Hartlyn et al. (2008) and Birch's (2008) models confirm the importance of including a measure of *de facto* autonomy to future studies explaining how EMBs are affecting democracy in the developing world.

In the next sections of the dissertation, I explain the different paths that have been followed by third-wave countries with *de jure* independent EMBs to gain or lose their *de facto* autonomy. I first discuss how internal mechanisms work and their relevance for explaining EMBs' *de facto* independence. Then, I use four case studies in Latin America and Africa to illustrate how the presence or absence of ICMs have aided EMBs in these regions to either build or deter a positive reputation. Focusing on multiple regions provides a better understanding of the different circumstances under which *de jure* autonomous EMBs have been able to become *de facto* independent.

4.0 *DE FACTO* AUTONOMY AND THE QUALITY OF ELECTIONS IN LATIN AMERICA AND AFRICA

4.1 INTRODUCTION

In this chapter, I develop a medium-N discussion of seven cases in Latin America and Africa as a way of discussing the possibility of endogenous relationships between the underlying conditions for democracy and the development of *de facto* electoral autonomy. I explain the different paths that have been followed by EMBs in these two regions in order to develop higher levels of *de facto* independence. While it is harder to clarify if the institutional design of EMBs has had an independent effect on the levels of *de facto* independence in countries where there was a clear commitment of the elites towards democracy, cases that transitioned under challenging conditions for electoral competition are more useful to show if the adoption of ICMs positively affected the capacity of these institutions to organize credible elections. Although there is a generalized agreement among practitioners and electoral governance experts that the formal *–de jure–* independence of EMBs has become key for holding credible elections in third-wave countries, it is unclear how and when *de jure* independent EMBs are able to become *de facto* autonomous institutions. This chapter attempts to clarify under what circumstances are EMBs able to positively reinforce the quality of elections.

These short-discussions complement previous large N-studies and the four in-depth case studies of electoral management I present in subsequent chapters (Mexico, Ghana, Venezuela, and Kenya). The main objective of this chapter is to review a small number of cases showing the

different internal institutional arrangements that have been used to build up credibility in elections in third-wave countries. While in countries such as Chile, Argentina, and Brazil, the EMBs have managed to increase their levels of *de facto* independence by becoming insulated from political actors, many others, such as Benin, Colombia, South Africa, and Uruguay, have built up a positive reputation by adopting certain consociational arrangements –ICMs– with the main actors competing for power.

The cases I discuss here serve to have a better understanding of the possibly endogenous relationship between *de facto* autonomy and the quality of elections. First, I use the cases of Argentina, Chile and Brazil to exemplify how *insulated de jure* independent EMBs have been able to build a positive reputation over time. Then I use the cases of Benin, South Africa, and Colombia, for showing how the adoption of ICMs, under different conditions of sociopolitical stability, has positively affected the quality of elections at the moment these countries transitioned to democracy. These three cases had significantly harsher sociopolitical conditions at the moment of transition because they were affected by violence, a long-standing military tradition, or a strong ethnic divide. They illustrate that the adoption of ICMs during the democratization phase allowed these institutions to develop a positive reputation. In other words, these three cases show that the elites' commitment to democracy, by itself, is not the only variable explaining how EMBs have managed to become *de facto* autonomous. They show that while a minimum commitment of the elite was required for transitions to take place, the adoption of ICMs was key for competing actors to recognize the outcome of elections and for EMBs to develop a reputation as *de facto* autonomous institutions in the long run.

Lastly, I discuss the case of Uruguay. Although the sociopolitical conditions during the reestablishment of electoral democracy in this country are closer to those experienced in Argentina, Chile, and Brazil (e.g., the military withdrawing from the political arena and allowing the democratic elections to take place), I included this case because the Uruguayan elites, despite having the opportunity to create a completely *insulated* EMB from political parties, they opted to adopt a consociational model of electoral management that has allowed the EMB to build a reputation as a highly *de facto* autonomous institution.⁵⁶

I conclude that while in some countries with favorable conditions for democracy –e.g., where there is a clear and strong commitment of the political elite towards democracy– the *insulation* of EMBs has been sufficient for creating strong and *de facto* autonomous EMBs. The adoption of ICMs, however, has been an important contributing factor for increasing EMBs’ *de facto* autonomy in countries facing a politicized environment at the moment of transition or unfavorable conditions –i.e., the presence ethnic divides or the presence of the military in politics– for democratic development. Once EMBs in these countries manage to build a positive reputation, they become key institutions to create a mutually reinforcing relationship with the quality of elections.

In other words, these short discussions illustrate that the elites’ commitment towards democracy in some countries has made the EMBs’ institutional configuration apparently irrelevant

⁵⁶ The underlying conditions for democracy in Uruguay are more similar to Western European democracies than to its regional counterparts, which makes it difficult to rule out the endogeneity and assess the independent impact that the inclusion of ICMs has had for the credibility of elections. The adoption of a consociational scheme of electoral management in this country, however, shows how this type of mechanism has helped reinforce the capacity of the EMB to retain and increase its *de facto* autonomy over the years.

–endogenous– for the quality of elections. These cases also suggest, however, that there is evidence showing that the adoption of certain institutional arrangements within *de jure* autonomous EMBs, especially in those cases with unfavorable conditions for democracy, has been key for these institutions to successfully organize credible elections.

This chapter is structured as follows. In the second section I describe the two different pathways –*insulation versus the adoption of ICMs*– that *de jure* EMBs in Latin America and Sub-Saharan Africa have followed to become, retain or increase their levels of *de facto* autonomy. In the third section I discuss the contrast between *insulated* EMBs and those electoral bureaucracies that have adopted ICMs as an alternative way to close the existing gap between *de jure* and *de facto* autonomy. First, I use Argentina, Chile, and Brazil, for illustrating how the elites’ commitment towards democracy, along with other variables such as administrative capacity and bureaucratic professionalization, has had a reinforcing effect enabling *insulated* EMBs to become *de facto* autonomous. Then I use the cases of South Africa, Benin, Colombia, and Uruguay, to explain how the adoption of ICMs has aided *de jure* independent EMBs to become *de facto* autonomous and positively affect the quality of elections. Although the favorable conditions for democracy in the case of Uruguay show that while the EMB would have developed high levels of *de facto* autonomy, regardless of its institutional design, the adoption of ICMs in Benin, South Africa, and Colombia, was fundamental during the transition phase and for elites to recognize the outcome of elections in the long run.

In the fourth section, I discuss the endogenous relationship between EMBs’ *de facto* electoral autonomy and democratic consolidation. I argue that despite the institutionalization of the party system and bureaucratic professionalization are contributing factors enforcing the

effectiveness of both ICMs, they are not necessary conditions for *de facto* autonomy. Finally, I offer some concluding remarks about the interplay between *de facto* autonomy and the quality of elections.

4.2 DIFFERENT PATHWAYS FOR ACHIEVING *DE FACTO* ELECTORAL AUTONOMY

Contrary to well-established Western democracies that have kept the *governmental* scheme of electoral management, most third-wave countries have adopted *de jure* autonomous EMBs to organize elections.⁵⁷ As I discussed earlier, however, the gap between *de jure* and *de facto* autonomy is significant among third-wave EMBs.⁵⁸ Within those electoral bureaucracies that have managed to become *de facto* autonomous, there are two different pathways that have allowed these institutions to build a positive reputation. While some EMBs have become *insulated from external actors*, others have *adopted ICMs* at different administrative levels in order to create an internal consociational dynamic of checks and balances.⁵⁹

⁵⁷ The governmental model of electoral management kept by so many Western democracies, where electoral organization relies on a governmental office within the Executive Branch, exemplifies how *de jure* institutions are sufficient to guarantee the compliance of formal rules and procedures. In other words, despite electoral organization is a responsibility of an office controlled by the executive, the credibility of elections and the trust of the authorities in charge of organizing elections is higher than in other regions with *de jure* autonomous EMBs.

⁵⁸ See Table 3.1 in Chapter 3.

⁵⁹ This twofold classification of EMBs is different from Mozaffar and Schedler's (2002) classification of partisan, mixed-partisan and independent EMBs. Having party representatives functioning as electoral commissioners, for instance, is only one way in which ICMs can be adopted within an EMB at the executive-level. There is a wide variety of institutional arrangements allowing parties to be formally and informally embedded within an EMB. Mexico, for instance, is a *de jure* "non-partisan" independent EMB, where parties play a primary monitoring role by participating at different administrative levels.

Both of these pathways have aided *de jure* independent EMBs in becoming *de facto* autonomous, but they reflect different ways in which the political elite has decided to adopt a specific institutional arrangement allowing these institutions to organize credible elections. The first pathway for an EMB to become *de facto* autonomous is through *institutional insulation*. This institutional arrangement is characterized by the exclusion of political parties from key administrative and organizational procedures. As described by Fernando Tuesta, former chairman of Peru's *Oficina Nacional de Procesos Electorales* (ONPE), in the case of *insulated* EMBs parties have an extremely limited interaction with the electoral bureaucracy and the executive board because "the EMB is conceived as an independent institution that cannot be contaminated by political interests."⁶⁰

This administrative configuration –*institutional insulation*– assumes that "non-partisan" electoral commissioners or justices do not keep formal or informal ties with political parties endorsing their appointment and that statutes regulating electoral organization will be enacted according to the legal framework. It assumes that that administrative capacity, bureaucratic professionalization and *ethos*, as well as normative protocols, are sufficient to guarantee the impartiality of the EMB and, thus, to ensure the quality of elections. That is, this way of thinking

⁶⁰ Interview conducted by the author with Fernando Tuesta, Professor of Political Science at the Pontificia Universidad Católica del Perú and former chairman (2000-2004) of the Oficina Nacional de Procesos Electorales (ONPE) in Peru. Summer of 2017. When asked about the monitoring role parties play within EMBs, Tuesta's perception was "parties defile anything and everyone." This vision, however, opposes José Woldenberg's perspective of the role parties within the an EMB. For Woldenberg, former chairman of Mexico's IFE (1996-2003), "Mexico's transition to democracy could not have taken place without the inception of a *de jure* and *de facto* autonomous EMB. IFE's reputation is a consequence of the thousands of citizens that participated in the organization of the election, but also of the monitoring and enforcement role played by political parties during the different phases of the electoral process." Interview conducted by the author with José Woldenberg, Professor of Political Science at UNAM, and former chairman of Mexico's Instituto Federal Electoral (1996-2003). Fall of 2015.

of electoral management is completely endogenous to democratization. It implies that, regardless of the institutional configuration of the EMB, the underlying conditions for democracy guarantee the successful organization of elections.

In Latin America, for instance, this type of institutional arrangement has been successfully adopted in Argentina, Chile, Brazil, and Costa Rica, where EMBs have either adopted a mixed administrative scheme with the executive branch or are closely inter-related to the judicial branch. The model of institutional *insulation* has also been adopted in those countries that have created *de jure* independent EMBs by granting them the same constitutional hierarchy as the legislative, executive and judicial branches of power. The *Consejo Nacional Electoral* (CNE) in Venezuela, which became a fourth branch of power in 1999, the *Consejo Nacional Electoral* (CNE) in Ecuador, the *Consejo Supremo Electoral* (CSE) in Nicaragua, the *Tribunal Supremo Electoral* (TSE) in Honduras, and the *Órgano Electoral Plurinacional* (OEP) in Bolivia, for instance, also fall within this category of *de jure* independent *insulated* EMBs.

The latter set of cases, however, reveals not only that *insulation* has been insufficient to prevent electoral manipulation in third-wave democracies. It also shows that strong executives have endorsed electoral reforms promoting institutional *insulation* to eliminate pre-existing consultative arrangements allowing parties to check each other. In all of these countries, regardless of their level of administrative capacity and professionalization, EMBs have been systematically accused by opposition parties of being informally influenced by a strong executive or coopted by the ruling party. That is, institutional *insulation* might imply that the EMB can achieve higher levels of *de jure* independence but does not necessarily guarantee *de facto* electoral autonomy. As described by Marchetti (2012), institutional insulation can contribute to eliminate

checks and balances within an EMB and, under certain circumstances, can be counterproductive for transparency and accountability.⁶¹

A second pathway for *de jure* independent EMBs to become *de facto* autonomous has been through the adoption of consociational institutional arrangements enabling electoral bureaucracies to create internal systems of checks and balances at different administrative levels. This is what I define as *internal consultative mechanisms* or ICMs. The adoption of these mechanisms

⁶¹ The work of Marchetti (2012) recognizes how institutionally insulated EMBs have played a decisive role for the democratic consolidation in the region. Marchetti recognizes, however, that Brazil's Tribunal Superior Eleitoral (TSE) insulation from political actors has negatively affected the levels of transparency and accountability of the institution. On one hand, the institution is not accountable to either candidates or political parties competing for power and, on the other, its rulemaking capacity –and the effect that this has for electoral outcomes– can easily politicize electoral administration. In Marchetti's words (2012, 116):

Analyses of the Brazilian case reflect the findings of comparative studies. In writing the history of the Electoral Justice System in Brazil, Fleisher and Barreto (2009) and Sadek (1995) showed that EMB independence from the holders of political power allows the Electoral Justice System to act independently from majority interests. Actually, the neutrality acquired by the Brazilian model of electoral governance in relation to political interests was decisive for the paths taken in the transition. Nonetheless, here we argue that the persistence of the model throughout the democratic consolidation has yielded two other outcomes.

The first one is the insulation of the Electoral Management Body (EMB). This is not merely a model that protects governance from more immediate partisan interests but, rather and more importantly, a model that may have weakened the EMB's accountability. The second effect is that it created favorable institutional conditions for the EMB – especially for its highest body, the Higher Electoral Court (Tribunal Superior Eleitoral (TSE))– to advance over rulemaking as well. Given the characteristics of Brazil's governance, there have been recent TSE decisions that have deeply altered the electoral rules, including creative interpretations of the constitutional text.

That is, the high degree of institutional insulation has prevented the institution from incorporating an internal system of checks and balances allowing political actors to monitor and audit key administrative decisions during the different phases of the electoral process. Given the gatekeeping role played by EMBs, the interdependence of the TSE on the STF has created a risk of judicializing elections at the adjudication, application, and rule-making level. In other words, institutional insulation has become “a double-edge sword” that can negatively impact TSE's reputation in the long run (Interview conducted by the author with Vitor Marchetti, *Professor adjunto do Bacharelado de Políticas Públicas, Universidade Federal do ABC*, Fall 2017).

recognizes political parties not only as key players for electoral competition, but also as the main interested –and most capable– actors in supervising all stages of electoral administration in order to guarantee the impartiality of the EMB. By adopting ICMs, political elites in many third-wave countries have an alternative path to legitimize administrative and organizational decisions affecting the electoral process.

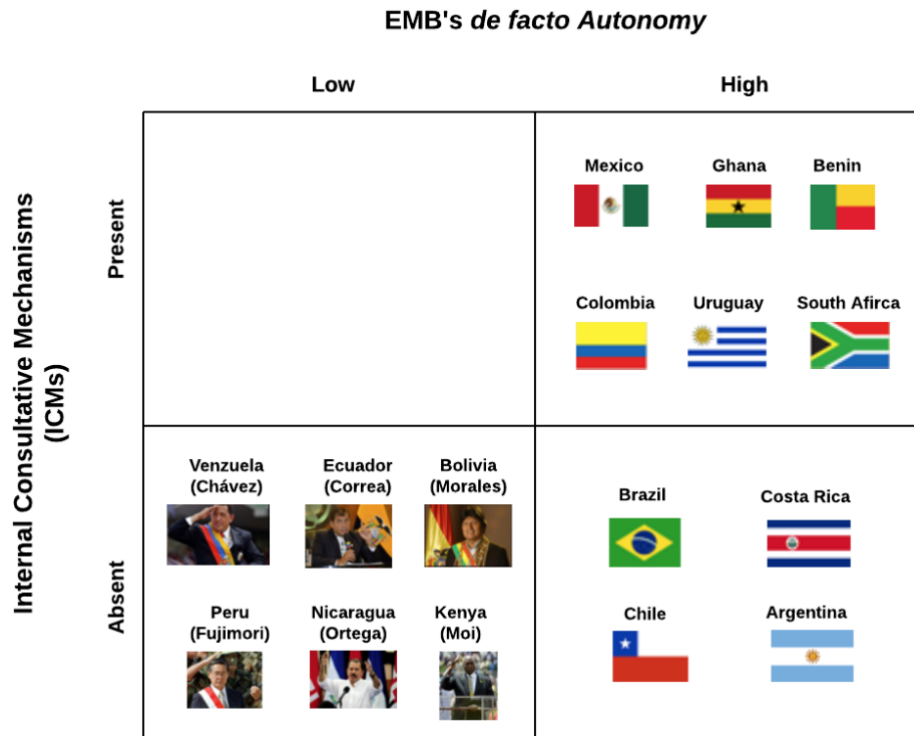
This consociational design recognizes that formal rules granting an EMB independence by insulating the institution from external pressures, or that the purported “non-partisanship” of electoral commissioners or justices, is insufficient to guarantee the *de facto* independence of the electoral bureaucracy. This is especially the case for third-wave countries where there are high levels of mistrust among political elites that have experienced political transitions under unfavorable conditions for democracy, that still have strong authoritarian legacies, or are holding elections under semi-competitive environments.⁶²

Figure 4.1 places several Latin American and Sub-Saharan African countries across two dimensions: the degree of institutional *insulation* from external actors –i.e., the presence or absence of ICMs with political parties– and the degree of the EMBs’ *de facto* autonomy. The columns representing cases by their level of *de facto* independence and the rows representing cases by the presence or absence of ICMs.⁶³

⁶² The case of the EMB in Uruguay, which has adopted a consociational administrative scheme including political parties at the executive level, shows that the adoption of ICMs can also work for countries with relatively favorable conditions for democracy.

⁶³ The cases in the bottom left quadrant have the name of the country and include a picture of strong executive under which the EMBs, despite its high levels of *de jure* independence and formal insulation from external actors, were perceived as electoral bureaucracies with low levels of *de facto* autonomy.

Figure 4. 1 Internal Consultative Mechanisms (ICMs) and De Facto Electoral Autonomy



Note: Figure elaborated by the author.

The cases presented below the horizontal axis are countries where EMBs have been *insulated* from political parties –i.e., characterized by the absence of either formal and informal ICMs. The countries on the bottom right quadrant have adopted models of electoral administration that have a close interplay with the judiciary, like the case of Brazil’s *Tribunal Superior Eleitoral*, Argentina’s *Cámara Nacional Electoral* or Costa Rica’s *Tribunal Supremo de Elecciones*. In these cases, the *insulation* of the electoral bureaucracy from external political actors, along with the EMBs’ administrative capacity and bureaucratic professionalization, has been sufficient for these institutions to organize credible elections and build a reputation as *de facto* autonomous EMBs.

Chile and Costa Rica, for instance, had stronger democratic legacies of institutional development during the first half of the twentieth century (Pérez-Liñán and Mainwaring 2013). Favorable pre-existing conditions for democracy in these countries, such as the institutionalization of the party system or the establishment of robust judicial institutions, positively affected the capacity of EMBs' to become recognized as *de facto* independent. Electoral bureaucracies in these cases, regardless of their administrative configuration and levels of *de jure* autonomy (e.g., dependence on the executive or judicial branches), were able to develop a positive reputation.

The lower left quadrant also groups countries where the political elite decided to *insulate* their respective EMB from external political actors. In this subset of countries, however, the long-term commitment of elites toward democracy tends to be weaker. In these cases institutional *insulation* has been counterproductive for *de facto* independence because it has increased the opacity surrounding administrative and bureaucratic procedures. The absence of internal checks has facilitated the unilateral manipulation of EMBs by strong executives. *Insulation*, under harsher conditions for democracy, has eased the capacity of the ruling party to commit fraud or to systematically favor a specific group in a wide variety of areas of electoral management, such as electoral boundary delimitation, the registration of voters, or the imposition of discretionary administrative sanctions. That is, in those cases where electoral bureaucracies have been formally *insulated* from political actors, strong executives are more likely to informally influence the majority of purportedly “non-partisan” electoral commissioners within the EMB’s executive board

and find ways to manipulate the electoral bureaucratic decision-making process to their advantage.⁶⁴

The insulation of Venezuela's *Consejo Nacional Electoral (CNE)*, the *Electoral Commission* of Kenya (ECK), or the *Consejo Supremo Electoral (CSE)* in Nicaragua, for instance, contributed to increasing the levels of opacity and discretion in electoral management. When EMBs in these countries were *insulated* from external political actors, despite their high levels of *de jure* independence, their reputation as *de facto* autonomous institutions sharply declined. In the case of Kenya's Independent Elections and Boundary Commission (IEBC), for instance, institutional *insulation* has negatively affected the capacity of the EMB to create consensus among the political elite, legitimize administrative decisions and, in Pastor's (1999) words, "prevent that technicalities –or bad administrative decisions– rapidly become politicized under highly contested and politicized electoral environments" (i.e., the Kenyan 2007, 2013, and 2017 presidential races).

The upper right quadrant of Figure 4.1 groups those cases that have incorporated –formally or informally– a certain type of consociational institutional arrangement allowing parties to interact within the EMB at different administrative levels. In these cases, ICMs have played an important role by allowing EMBs to enable communication channels with different parties, create spaces for opposing competing factions to participate and supervise key administrative procedures, and increase the levels of transparency and accountability within electoral bureaucracies. Mexico

⁶⁴ Institutional insulation has been counterproductive for many third-wave countries where opposition parties do not have the institutional means to directly supervise administrative decisions or bureaucratic procedures and rely exclusively on the information that the EMB is willing to provide. The lack of formal and informal communication channels with the EMB's executive board, or bureaucratic officials, for instance, has contributed to increasing the levels of mistrust, especially in highly politicized and contested elections.

South Africa, Ghana and Benin, for instance, experienced transitions under high levels of politicization. In the case of South Africa and Benin there was an important ethnic divide and Ghana had a long-standing military tradition before it began holding democratic elections.

As I describe in this and subsequent chapters, ICMs have contributed to the capacity of EMBs in many third-wave countries to legitimize their administrative decisions and to increase their levels of *de facto* autonomy. Regardless of their level of party system institutionalization, administrative capacity and bureaucratic professionalization, the adoption of ICMs has aided the political elite in highly politicized countries to enforce formal rules and procedures within the EMB during the different phases of electoral administration.⁶⁵ This group of cases is important for clarifying the apparent endogenous relationship between the pre-existing conditions for democracy and *de facto* independence because it shows that the adoption of certain formal and informal institutional arrangements –i.e., ICMs– precedes the organization of competitive elections and has contributed to the capacity of EMBs to build a reputation as *de facto* autonomous institutions. This in turn, has allowed *de facto* autonomous EMBs to create a virtuous reinforcing cycle affecting positively the credibility in elections.

Lastly, the upper left –empty– quadrant reveals that while the presence of ICMs within an electoral bureaucracy might not be a *necessary condition* for an EMB to become *de facto* autonomous (this is confirmed by the presence of insulated and *de facto* autonomous cases on the bottom right corner), it is a sufficient mechanism to prevent the unilateral cooptation of the EMB.

⁶⁵ Cases like Mexico, Ghana, Uruguay, and South Africa, for instance, are characterized by having a relatively institutionalized party systems, while others, like Benin and Colombia, have significantly more volatile and fragmented party systems. The same variation among cases applies to other dimensions that are equally relevant for *de facto* autonomy, such as administrative capacity and bureaucratic professionalization.

That is, along with other contributing factors to the capacity of EMBs to organize credible elections –i.e., administrative capacity, financial independence, and professionalized bureaucracies–, ICMs aided third-wave EMBs to achieve higher levels of *de facto* electoral autonomy.

The adoption of ICMs does not imply having political parties formally controlling an EMB's executive board –i.e., the *partisan* administrative scheme described by Mozaffar and Schedler's (2002). It means that political parties are embedded within different administrative levels of the EMB, have the capacity to participate, access, and share all relevant information during the different stages of the electoral process; that they can audit administrative decisions and technical procedures; that they have direct –formal and informal– communication channels with members of the executive board; as well as the capacity to raise a red flag when rules and procedures have been infringed. That is, the presence of ICMs and the internal interaction of partisan actors within EMBs contribute for making the decision-making process more transparent and accountable.

In sum, electoral management in third-wave Latin American and Sub-Saharan countries reveals that bureaucracies in charge of organizing elections have followed different paths to become *de facto* autonomous. While institutional *insulation*, along with other key factors such as administrative capacity and bureaucratic professionalization, has helped some countries organizing credible elections, *insulation* of EMBs has also been advantageously used by strong presidents to informally influence administrative decisions. Other countries, however, show that an alternative path to institutional *insulation* can also aid electoral bureaucracies to build trust and become recognized as *de facto* independent institutions. The adoption of consociational mechanisms has

been useful in countries organizing elections under highly politicized elections (i.e., Mexico's 1988 post-electoral crisis, South Africa after the Apartheid, or Ghana's transition after a long-standing tradition of military rule) to ease tensions and develop communication channels between competing actors and the electoral bureaucracy.

4.3 INSULATION, ICMS AND DE FACTO AUTONOMY

In this section I discuss the different underlying conditions under which elites in third-wave countries have delegated the responsibility to manage elections to *de jure* independent EMBs. I explain the different paths these institutions have followed to become *de facto* autonomous. I use the cases of Argentina, Chile and Brazil to illustrate how institutional *insulation* can be sufficient to guarantee credible elections when there is a clear commitment of political elites to democracy. These three cases also illustrate the reinforcing relationship between the institutional development and *de facto* electoral independence.

In contrast, the cases of Benin, South Africa, and Colombia, illustrate how the adoption of consociational mechanisms –i.e., ICMS– is an alternative path for EMBs to become *de facto* autonomous and positively impact the quality of elections. While *insulation* was a byproduct of the military's decision to withdraw from the political scene in Argentina, Chile, and Brazil, the transition phase in Benin and South Africa was characterized by harsher conditions for democratization (i.e., politicization, a strong military legacy, or ethnic divides). Once in place, ICMS became key for these institutions to develop higher levels of *de facto* autonomy. Although Uruguay and Colombia had democratic legacies favorable for organizing free and fair elections,

the adoption of internal consociational arrangements has contributed to secure the impartiality of elections in the long run.

4.3.1 Chile, Argentina, and Brazil

The cases of Chile, Argentina, and Brazil illustrate how the balance of power during the transition period can affect the administrative configuration of electoral bureaucracies. These three cases show that, under certain circumstances, the elites' commitment towards democracy can have a reinforcing effect on the capacity of *insulated* electoral bureaucracies to successfully organize credible elections. Democracy in these three countries was interrupted by military governments during the second half of the twentieth century. After a series of internal and international pressures, the military decided to step down. In contrast to other third-wave countries, where military regimes transformed themselves to compete in multiparty elections (e.g., Rawlings's NDC in Ghana), the autocratic ruling elites in these countries withdrew from the political arena in the preamble to the transition. This decision was a key factor shaping the type of institutional arrangement adopted by these countries to manage elections.

In two of these cases, Argentina and Chile, the political elite decided to adopt a *mixed model* of electoral administration where the executive branch played a primary role in the organization of elections. In the case of Brazil, the elite decided to *delegate* the responsibility to manage elections to a *de jure* independent EMB with close ties to the judiciary. In all three cases, political parties were marginalized from participating, directly or indirectly, in most phases and key decisions of electoral administration. That is, newly created EMBs in these countries were *insulated* from external political actors competing for power and were closely interrelated to either the executive

or judicial branches. In all three, however, the EMBs were able to successfully develop a positive reputation and become recognized as *de facto* autonomous institutions. Insulated EMBs in these three countries were able to gradually build a positive reputation due to the willingness of the autocratic elite to step back, the commitment of the newcomers to respect formal rules, as well as to the increasing levels of administrative capacity and bureaucratic professionalization within these institutions.

In the case of **Chile**, for instance, Pinochet imposed a constitutional system where the conservative elite would remain as a gatekeeper through a highly professionalized judicial bureaucratic elite. This elite would eventually play a key role in electoral administration (Garretón 1989, Drake and Jaksić 1995, Valenzuela 1999). In the preamble to the 1980 constitutional reform, Pinochet announced that his administration would organize a referendum in 1988 to determine if he would remain in power for an additional period of ten years. In a highly contested election organized by the Ministry of the Interior, and ruled by the *Tribunal Calificador de Elecciones (TCE)*, which had been reinstated only one year before the election (in 1987), Pinochet was defeated by approximately 800,000 votes.⁶⁶

The acceptance of the electoral result by Pinochet's administration allowed Chile to transition to democracy and to organize its first democratic election since Allende had been elected president in 1970. In the 1989 election, Patricio Aylwin, representing the *Concertación*, became the first elected president. According to most country-level experts, Pinochet's constitutional legacy became a key variable influencing the elites' decision to keep a *de jure* independent *mixed*

⁶⁶ In this referendum 7.2 million (97.53%) people voted. Pinochet was defeated by approximately a 12% difference.

scheme of electoral management after the transition (Valenzuela 1999).⁶⁷ That is, after the transition took place, the *Servicio Electoral de Chile (SERVEL)* became part of the Ministry of the Interior and its Executive Director was unilaterally appointed by the President and ratified by the Senate.⁶⁸

In many other third-wave countries, such as Mexico, Ghana, Benin, South Africa, or Colombia, delegating the responsibility of managing elections during –or after– the transition phase to a department within the executive branch would have been both unlikely and politically unfeasible.⁶⁹ The decision of the military to step down, the elites’ commitment towards democracy, the involvement of the judiciary as a ruling authority, the administrative capacity, and the level of bureaucratic professionalization in Chile were sufficient to create a semi-independent electoral bureaucracy that would gradually build a positive reputation among citizens and political actors competing for power.

These conditions were key for Chile’s *SERVEL* to develop a positive reputation as one of the electoral institutions with higher levels of *de facto* autonomy in the region. The elites’ commitment towards democracy had a clear effect on the quality of elections, making it very difficult to assess the degree to which the institutional configuration of the EMB affected the

⁶⁷ The independent mixed scheme of electoral management implies that the responsibility of electoral administration relies in a *de jure* independent bureaucratic apparatus that is embedded within one of the three branches of power, which are usually the executive or judicial branches.

⁶⁸ Articles 87 and 91 of the Ley Orgánica Constitucional sobre el Sistema de Inscripciones Electorales y Servicio Electoral. 1986. Ley [18556]. Ministerio del Interior de Chile. Available: <https://www.leychile.cl/Navegar?idNorma=29951&idVersion=1986-10-01>. The EMB would become completely independent from other branches of power until 2015.

⁶⁹ In many countries, such as Mexico and Ghana, the high levels of politicization during the transition, the permanence of the ruling party as a competing force in multiparty elections, as well as the mistrust that opposition parties had in government, made it extremely unlikely for delegating the responsibility to manage elections an electoral bureaucracy embedded within the executive branch.

organization of credible elections. In third-wave countries with a similar sociopolitical and administrative context, it is likely that any other type of institutional arrangement would have worked for successfully organizing elections.

In the cases of Argentina and Brazil, the military also withdrew from the political arena. Although the ruling elite in these countries did not impose a constitutional legacy as they did in Chile, the political elites in Argentina and Brazil adopted institutional arrangements that were also closely intertwined with other branches of power at the moment they transitioned to democracy.

In the case of Argentina, for instance, the political elite was influenced by the administrative scheme that had been established in the 1857 *Ley de la Confederación (No 140)*.⁷⁰ The elite adopted a highly decentralized *mixed model* of electoral management relying both on the executive and judicial branches. On one hand, electoral administration would rely on the Ministry of the Interior (the *Dirección Nacional Electoral*, also known as *DINE*, within the *Subsecretaría de Asuntos Políticos y Electorales*) and judicial review would rely on the *National Electoral Regime* (Carriña 2011; *Cámara Nacional Electoral* 2013).

Although the judiciary in Argentina, compared to its Chilean counterpart, was not a legacy of the autocratic regime and had been a *de jure* independent institution since the 1930s, Supreme Court justices –based on their ideological position with respect to the regime– were arbitrarily

⁷⁰ After a severe economic crisis in the 1980s, and the military defeat in the Falkland Islands, the military regime was forced to retreat and organize democratic elections. Approximately 15 million (85% of the registered voters) Argentineans participated in the 1983 presidential election. The candidate of the Unión Cívica Radical (UCR), Raúl Alfonsín, won the presidency after obtaining 52% of the vote against the candidate of the Partido Justicialista (Ítalo Luder), who obtained 40%.

removed from office during most part of the twentieth century (1930-1980s).⁷¹ Despite the politicization of the Judiciary and the fact that the elite under the administration of President Alfonsín could have delegated the responsibility of managing elections to a *de jure* independent EMB, they decided to adopt a *mixed* institutional design where both the executive and the judiciary played a central role.

As argued by Geddes (1996), a possible explanation for this institutional arrangement in the case of Argentina is that the level of uncertainty that came along with the transition made the political elite maintain the same institutional arrangement it had in place. The elites' commitment to respect formal rules and procedures surrounding electoral competition, however, has been present since the transition took place. As in Chile, this commitment has created an endogenous virtuous cycle reinforcing the capacity of the EMB to build and retain a positive reputation among citizens and political actors as a *de facto* autonomous institution over the years.

In the case of Brazil, compared to Chile and Argentina, the country experienced a gradual transition that began with regional level elections organized by governmental authorities.⁷²

⁷¹ As described by Helmke (2002), the Court was replaced completely by the military in 1976, and again by the incoming democratic government of Raul Alfonsín in 1983. This institutional instability continued when Carlos Menem was elected in 1990 and gained control over the Court through a court-packing scheme that allowed him to appoint six of the nine justices (Helmke 2002).

⁷² General Ernesto Geisel's accession to power in 1974 signaled a move toward a less oppressive rule since the military rule began in 1964. He labeled his political program *distensão*, a gradual relaxation of authoritarian rule where the objective was to achieve the maximum development while having the indispensable security. By the end of his term, he decided to create an electoral college (formed by both legislative chambers controlled by supporters of the military establishment) to approve his selected replacement in 1977 and imposed General João Figueiredo (1979–85) as his successor in March 1979. As president, Figueiredo continued the gradual democratization process instituted by his predecessor in 1974. His administration dissolved the government-controlled National Renewal Alliance Party (ARENA) and allowed new parties to be formed. In 1981 the Congress enacted a law on restoration of direct elections of state governors. In the legislative general election of 1982 organized by the Electoral Tribunal, which was

Electoral administration in Brazil went through several stages before the elite decided to formally delegate the responsibility to manage elections to a *de jure* autonomous EMB. The first stage began in 1932 with the creation of the Electoral Code and the Electoral Court. The second stage took place between 1945 and 1964, when the Electoral Court was redesigned. The third and final stage began with the Military Regime (1964-1984), where the *Tribunal Superior Eleitoral* was created but was informally controlled by the military regime in power.⁷³

It was during this last stage that the TSE began organizing elections for city councilors (i.e., "*vereadores*"), mayors (except in strategic cities, those that had natural resources or military bases and state capitals), as well as state and federal deputies.⁷⁴ It was not until the 1988 constitutional reform, however, that political elites granted *de jure* autonomy to the EMB (*Tribunal Superior Eleitoral*).⁷⁵ The judiciary, however, would remain closely interrelated to electoral administration

controlled by the Ministry of the Interior, the pro-government party PDS (Democratic Social Party) defeated the opposition party PMDB (Brazilian Democratic Movement Party) by receiving 43.22% of the vote versus 42.96%.

The opposition party (PMDB), however, won the governorship of three major states in that election (São Paulo, Rio de Janeiro and Minas Gerais). There were serious attempts by congressional opposition to pass a constitutional amendment to allow direct popular presidential elections in November 1984, but the proposal failed. It was not until the 1988 democratic constitution was promulgated that the first direct presidential election was held in Brazil. It was in this constitutional reform where the *de jure* autonomous Tribunal Superior Eleitoral (TSE) was created. During this same period, Regional Electoral Courts (Tribunal Regional Eleitoral) were created and Electoral Registry offices were spread throughout the country (Filho and Soarez 2000).

⁷³ Despite the EMB's name refers to a "Tribunal" –also known as *Justiça Eleitoral* ("Electoral Justice")– TSE operates as the electoral bureaucracy (equivalent to an EMB) responsible for managing the different administrative phases of the electoral process in Brazil (Tribunal Superior Eleitoral 2013).

⁷⁴ From 1966 to 1978, elections for governors were indirect (i.e., they were elected by electoral colleges at the state level), but after the 1978 legal framework enacted by the military was revoked, direct elections for governors and the president were reinstated.

⁷⁵ At the moment of the EMBs inception, the elite was facing high levels of social unrest, an unsatisfied opposition with the electoral arena, a generalized distrust in government, high levels of corruption and public scandals, the cooptation of most institutions by the military, and the uncertainty regarding who would be elected in the near future (Geddes 1996).

(Marchetti 2012). The sociopolitical context during the political transition in Brazil illustrates these tensions (*Tribunal Superior Eleitoral* 2013):

O processo da transição democrática no fim do Regime Militar envolveu a abertura gradual idealizada pelas elites políticas autoritárias. A transição se tornava inevitável á medida que engrossava o número daqueles que pressionavam e ansiavam pela mudança. Três forças atuavam nesse momento: a crise no reconhecimento da legitimidade do regime (em decorrência da crise econômica); a eleição de governadores oposicionistas em 1982; e a maior manifestação de massas no Brasil: as campanhas pelas Diretas, um movimento em favor de eleição direta para o cargo de presidente. Foram feitas manifestações públicas (comícios e passeatas) em várias cidades brasileiras ao longo do ano de 1983 e 1984, que mobilizaram mais de 5 milhões de pessoas.

The 1989 election was the first time that citizens were able to vote for president after almost three decades. Many political parties were recently created –they were able to mobilize the population to demand direct elections during the military regime– and twenty-two presidential candidates were registered. In the first round no one obtained the majority and, as mandated by the new electoral law, a second round was held and disputed between Fernando Collor de Mello of the *Partido da Reconstrução Nacional* (PRN), who was elected president, and Luiz Inácio Lula da Silva of the Workers' Party (PT). The decision to *delegate* electoral administration to a *de jure* autonomous body is explained by the historic level of influence that the military regime had on the *TSE*, and the uncertainty that political actors faced regarding who would win the following election or have congressional majority.

The close interaction between the TSE and a highly professionalized judicial bureaucracy has generated a “*veil of impartiality*” and has allowed Brazil’s EMB to build a positive reputation over time. Authors like Marchetti (2012), for instance, argue that Brazil’s *Tribunal Superior Eleitoral* (TSE) is both formally and informally related to the Supreme Court

(*Supremo Tribunal Federal*) and the institution is characterized by its high levels of bureaucratic professionalization and interdependence within the Judicial Branch. The institution, however, is also characterized by its *insulation* from political actors. As in the cases of Chile and Argentina, the elites' predisposition to respect formal rules and procedures, along with the bureaucratic professionalization of these institutions, has affected the EMB's reputation as a *de facto* autonomous institution.

In sum, these three cases serve to illustrate how this first pathway for *de facto* electoral autonomy is clearly endogenous to the elites' commitment towards democracy. Although they show how the willingness of the military to withdraw from the political sphere, the commitment of the new elite to respect results, as well as the administrative capacity and professionalization of the electoral bureaucracies at the moment of transition, allowed these *de jure* autonomous and semi-independent EMBs to achieve and sustain high levels of *de facto* autonomy, they also reveal that the variation in the administrative configuration among these cases has had a marginal effect on the quality of elections. Other electoral bureaucracies in the region, such as Costa Rica, have followed a similar path of institutional *insulation* from political parties and, given the elites' commitment towards democracy, have been also able to build both *de jure* and *de facto* autonomous EMBs.

In the following lines, I briefly discuss the cases of South Africa, Benin, Colombia, and Uruguay to illustrate how other countries in Latin America and Sub-Saharan Africa have found alternative institutional arrangements to organize credible elections.

4.3.2 Benin, South Africa, Colombia, and Uruguay

This subsection emphasizes the alternative path to institutional *insulation* that many EMBs' across third-wave countries have followed by adopting a series of ICMs at different administrative levels. It considers the sociopolitical context at the moment of transition, the elites' willingness to hold relatively free and fair elections, as well as the endogenous reinforcing effect that ICMs have had on the capacity of these institutions to acquire, retain, and increase their levels of *de facto* independence. As in the case of Chile, Argentina, and Brazil, these four countries have EMBs that, compared to other cases in their respective region, are ranked above the average in terms of their level of *de facto* autonomy.⁷⁶

4.3.2.1 Benin

Benin's *Commission Electorale Nationale Autonome* (Autonomous National Electoral Commission, also known as CENA), has played a key role for the country's democratization after the collapse of single party autocratic regime. The EMB was created by initiative of opposition parties in 1994, who feared that the executive branch could not guarantee the organization of free and fair elections. Since then, the CENA has successfully organized elections and has created a solid reputation as one the region's most *de facto* autonomous EMBs.

Parliament is responsible of formally nominating and appointing the members of the commission based on the balance of power within the legislature. After transitioning from

⁷⁶ Based on the V-Dem (2016) measure of Electoral Autonomy (EMB Autonomy). See: Coppedge et al., 2014.

autocracy, the elite adopted this type of pluralistic appointment procedure to ensure that the EMB would have an *executive level* ICM. This mechanism has facilitated political parties to participate within the institution at different *administrative* and *bureaucratic* levels. In 2013, a legal reform granted the EMB a permanent status. This reform allowed the institution to have continuity and political parties to have a permanent oversight capacity over administrative procedures.⁷⁷

Benin's modern history as a multi-party democracy began in 1990 after the two decade administration of Mathieu Kérékou (1972-1991) came to an end.⁷⁸ Benin's first electoral system was set in place between its first two elections between 1990 and 1994. During this four-year period, the administration of elections was controlled by the Ministry of the Interior and government representatives at the local level (Fall 2011: 20). As in other countries in the region, the high levels of politicization and international pressures made feasible the creation of a *de jure* independent EMB.

Instead of creating an *insulated* electoral bureaucracy, the high levels of mistrust in the *governmental* scheme to manage elections, along with the low levels of administrative capacity and bureaucratic professionalization, created the conditions for parties to demand the inclusion of a consociational arrangement that would allow all parties to verify the neutrality of electoral

⁷⁷ Before 2013, CENA had a temporary nature, and it was constituted and dissolved each election cycle. Previous legislation established that the members of the CENA would only last at least "90 days before election day, and up to at most 45 days after the announcement of final results" (Fall 2011: 34). This resulted in a lack of institutional performance and incomplete professionalization of its members.

⁷⁸ In the 1991 parliamentary elections, 12 parties and alliances won seats in the National Assembly. The Union for the Triumph of Democratic Renewal (UTRD) became the largest group with just 12 of the 64 seats. Months later, the UTRD candidate Nicéphore Soglo won the presidential election, beating Mathieu Kérékou in the second round.

administration. After four years of intense debate, and with the support of most parties represented in parliament, the Autonomous National Electoral Commission (CENA) was created in 1994. At the moment of the EMB's inception, President Nicéphore Soglo (1991-1996), vetoed the creation of the *de jure* autonomous EMB, arguing that electoral management belonged to the Executive Branch. The Constitutional Court, however, ruled in favor of parliament's decision, reaffirming its authority to legislate on the matter and its capacity of delegating the responsibility to manage elections to a *de jure* independent EMB.

The struggle within the different branches of power in Benin reveals that, under certain circumstances, the adoption of consociational institutional arrangements is not only caused by a partial –or full– commitment of the elite towards democracy. Rather it shows that a relatively independent court that had interest in moving the country towards democracy, can also serve as an effective mechanism to overcome the executive's incursion and back the adoption of a more transparent, accountable, and inclusive model of electoral administration.

Similarly, countries with high levels of mistrust among competing factions have benefited from adopting ICMs during the transition phase as a way to guarantee the impartiality in electoral management. Despite elites in countries like South Africa, Mexico, Ghana, or Colombia, could have decided to completely *insulate* their respective EMB, they decided to adopt a consociational scheme to increase the credibility in electoral management and electoral outcomes.

Since 1994, elections in Benin have been managed by this *de jure* independent EMB. Although the CENA's executive board has changed the number of its members over the years, in

2013 the Electoral Code established a new configuration of the EMB's executive board.⁷⁹

According to Article 19 the EMB's executive board would be formed by five members. Two of them are designated on the recommendation of the parliamentary majority, two by the parliamentary minority, and one member who is accepted by both the majority and the minority groups in parliament.

This type of consociational *executive-level* ICM has been also adopted by many Commonwealth Caribbean countries. Although members are required to be independent from the national and municipal government at the time of their appointment, they are informally nominated by parliamentary groups based on their ideological –partisan– position.⁸⁰ In contrast to the case of Uruguay, where party representatives are formally represented within the EMB, the formal institutional arrangement of CENA is an alternative path to have a *de jure* autonomous EMB, while guaranteeing that the main political groups will still be able to endorse the appointment of commissioners that are formally independent, but still are ideologically aligned to the main actors competing for power.

By adopting this pluralistic appointment mechanism, the political elite has also found a way to create a consociational agreement between parliamentary groups. In contrast to Ghana,

⁷⁹ Initially, CENA's board was formed by 11 members. One was nominated by the President of the Republic, nine were nominated by the National Assembly, taking into consideration the political configuration of Parliament, and one was nominated by civil society organizations (CSOs). Members were required to have at least five years of experience in the field of governance and democracy (Fall 2011: 22).

⁸⁰ According to Article 19 of Benin's Electoral Code, the five members of CENA are chosen among the personalities recognized for their competence, their probity, their impartiality, their morality, and their patriotic sense. Their functions should be incompatible with that of a member of the Government, a member of the other institutions provided for by the Constitution, a member of the Municipal or Municipal Council or a member of the Village or District Councils.

characterized by its stable bipartisan system, the case of Benin reveals that a highly institutionalized party system is not a necessary condition for an EMB to become *de facto* autonomous. As in the case of Peru and Brazil, Benin's party system is more fragmented and volatile than many of its regional counterparts. The representation of different political forces in the legislature has forced different parties to build coalitions and coordinate in order to make key decisions and *delegate* the responsibility to manage elections to commissioners representing two opposing blocks. This balanced nomination of electoral commissioners by the majority and opposition groups has allowed the elite to prevent the unilateral –informal– cooption of the institution by the majoritarian party in the legislature.

Through its branch offices at the departmental, municipal and district levels, the CENA is able to conduct many of its administrative and bureaucratic procedures. Since 2002, the members of the departmental *Electoral Commissions* are also appointed on a consociational basis. Municipal and district *Electoral Commissions* are appointed both by parliament and civil society only (Fall 2011: 24). This has allowed the main political actors to create regional *administrative and bureaucratic level* ICMs for parties to have an “indirect” presence to participate, monitor and enforce formal rules and procedures across the country. As recognized by the Open Society Foundation (OSF) in its report of EMBs in West Africa (Fall 2011: 26):

Benin's Electoral Commission is highly politicized, from the national level down to the polling stations. Political parties and candidates, already strongly represented in the electoral management apparatus, may therefore not feel the need to establish other channels of communication with the electoral management body. Political parties as entities maintain no direct relationship with the CENA, although some of them (generally the largest ones) are represented in the Commission and can therefore be considered as participants in its decision making.

Despite the indirect influence of the parties in electoral administration, all electoral disputes are heard only by Benin's system of courts. The Constitutional Court takes up cases involving legislative and presidential elections, while the Supreme Court decides on disputes regarding district and municipal elections (Fall 2011: 34). Although the EMB is a *de jure* autonomous institution, it is recognized by most country-level experts that parties have been able to establish a series of ICMs that have allowed the electoral bureaucracy to build a positive reputation and organize credible elections during the last two decades.

The creation of CENA responds to high levels of mistrust of the political elite during the transition years. Despite its unstable and fragmented party system, the political elite in Benin has been able to adopt a consociational arrangement where the main political actors were able to prevent a single party to capture the electoral bureaucracy. Without compromising the electoral integrity of the EMB, political parties have found a virtuous way to reinforce the enactment of formal rules and procedures and, at the same time, they have been able to adopt an institutional configuration that has allowed the commission to increase its levels of *de facto* independence over time.

4.3.2.2 South Africa

After experiencing a five decade-long system of institutionalized racial segregation in South Africa, the country's levels of politicization and ethnic divide were at their peak in the preamble to the 1994 election. In order to organize this first "non-racial election," a temporary Independent Electoral Commission was constituted. The EMB was initially criticized by international

organizations, such as the European Union, for their lack of preparedness, the shortages of voting materials at many voting stations, and the absence of effective safeguards against fraud during the counting phase of process (Anthea 2014). The outcome, however, was respected and the election was generally perceived as free and fair by most country-level experts and international observers (Deegan 2001).

In this context of politicization and ethnic divide, the configuration of a new *de jure* independent EMB required the inclusion of a mechanism that would allow the main competing actors competing for power to be embedded within the institution. Institutional *insulation*, or the adoption of a *mixed* independent scheme of electoral administration as the one adopted in Argentina or Chile, were unviable options given the long dominance of the National Party (NP) that was still competing for power. The new balance of power after Mandela was elected president in 1994 created the need to include a consociational mechanism in electoral administration.

South Africa's Independent Electoral Commission (IEC) became a key institution after the country's transition towards democracy. The EMB was designed in such a way that the inclusion of multiple actors had reinforcing effect on both citizens and the elites' trust in elections. Shortly after its inception, the IEC was able to develop a reputation as a *de facto* autonomous EMB. As in the case of Ghana, South Africa had a relatively developed party system at the end of the segregation era. During the transitional talks, the political elite was able to agree on a series of mechanisms that would ensure the compliance of formal rules and the neutrality of electoral management.

Compared to the case of Uruguay, where parties are formally represented within the EMB's executive board, the elite created a formal mechanism to hold discussions and cooperation

forums between political parties and the EMB. Along with the EMB's inception, the elite decided to create the Party Liaison Committees (PLCs). These ICMs were adopted at different administrative and regional levels, creating a dynamic channel of communication, cooperation, and involvement of political parties at all jurisdictional levels.

South Africa's current electoral framework is based on the country's Constitution of 1996, established by the Convention for a Democratic South Africa (CODESA). The Convention was created in order to ensure a transition towards a fully democratic regime, putting an end to the political system of Apartheid. The legal framework in place previous to CODESA was the Constitution of 1983, whose major feature was the Tricameral Parliament separating white, black and indigenous citizens. Under this system, most elections were based upon racially based parties and all local and national elections were supervised by the Department of Home Affairs (a *governmental* management scheme). Relations with parties were carried out under *ad hoc* meetings with party officials and candidates (Napier 2015: 160).

During the post-apartheid transition phase, the first attempt to create an independent electoral authority was in the 1993 *Commission Act*, which was enacted alongside the 1993 *Interim Constitution*. The Act of 1993 created an *Independent Electoral Commission* that would be constituted by seven to eleven members appointed by the State President upon the advice of the Transitional Executive Council (TEC). The law established that electoral commissioners had to be "impartial, respected and suitably qualified men and women, who do not have a high political party profile, are themselves voters, and represent a broad cross-section of the population." That is, the need to appoint a plural executive board representing different interests was recognized in this transitory framework.

The TEC was created to 'promote the preparation for the transition to a democratic order in South Africa.' It was formed by one member of each of the parties that participated in the multi-party negotiations. Although some political parties –i.e., members of the Freedom Alliance– had withdrawn from the initial talks and did not participate in the TEC, nineteen out of the original twenty-six negotiating parties were represented within the council. Additionally, the State President nominated five non-voting members from the international community (non-citizens of South Africa), on the advice of the Transitional Council. The IEC would be expressly designated to be formally independent from the TEC, political parties, government or any other administrative bodies.

Among one of the main responsibilities of the TEC was the establishment of an *interim Party Liason Committee* (PLC), which consisted of partisan agents representing all parties at the national level. Although it did not have any decision-making powers, the *interim* PLC established for the first time a formal communication channel to work with electoral authorities “on matters such as the administration of electoral agreements, staffing, location of voting and counting stations, the demarcation of voting districts, and the number and location of foreign voting districts.” (Napier 2015: 160). According to country-level experts, the adoption of this type of ICM was fundamental in the development of the IEC because it established a formal framework for cooperation and discussion between the main political actors competing for power and involved in the transition to democracy.

This type of ICM, initially adopted in the transition phase to establish a communication channel with the main political actors competing for power, would eventually become a key consociational mechanism to include parties within the EMB. With the enactment of the 1996

Constitution, the electoral system and authorities were kept in place, but the EMB increased its responsibilities. Article 190 of the South African Constitution established the functions of IEC, which included managing elections of national, provincial and municipal legislative bodies, ensuring that those elections were free and fair, and reporting electoral results. Article 191 established that the IEC should be composed of at least three persons, leaving most of the EMB's functions to ordinary law.

The IEC was regulated by the Electoral Commission Act (ECA) of 1996. The ECA established that the IEC's executive board should consist of five members, one of whom shall be a judge, appointed by the President. According to the ECA, the executive board of the IEC would be formed exclusively of South African citizens and its members, formally, could not have a "high party-political profile." In order to appoint the members of the EMB, a panel was created to elaborate a list of no fewer than eight candidates to propose to an *Inter-Party Committee* (IPC) at the National Assembly. This panel was formed by the President of the Constitutional Court, as chairperson, a representative of the Human Rights Commission, a representative of the Commission on Gender Equality and the Public Protector (The Protector is the figure in charge of investigating and prosecuting misconduct of government officials). The IPC, which was composed of members of all parties represented in that Assembly, nominated the candidates from the list to the National Assembly.

In order to become a member of the IEC, each candidate had to receive the majority of the votes from the Assembly. Although Mandela's party, the African National Congress (ANC), had won the majority of seats in parliament and could have unilaterally appointed the members of the IEC, the new elected government respected the consociational spirit that was recognized by the

Transitional Council. This reconciliation spirit had two important implications. On one hand, it made clear that there was a minimum commitment of the dominant party to democracy as a long-term process. On the other, it shows that the consociational institutional arrangements were key in order to maintain peace during the transition phase and to prevent the tyranny of the new ruling majority in the long run. These arrangements included respecting the formal and informal inclusion of all major parties in the appointment of the EMB's executive board and adopting ICMs that would aid the institution to guarantee the neutrality of the decision-making process.⁸¹

In fact, a major feature of the 1996 Act was the formal obligation of the IEC to establish a series of cooperation mechanisms –ICMs– with political parties. The IEC created a PLC at the national level, nine at the provincial level and 258 at the local level. The *Regulations on Party Liaison Committees* in the Act established the following: “PLCs will serve as vehicles for consultation and cooperation between the IEC and the registered political parties concerned on all electoral matters aimed at the delivery of a free and fair election.” According to the Electoral Commission Act of 1996, parties were entitled to challenge administrative decisions of the EMB in the Electoral Court.⁸²

⁸¹ In order for democracy to work, a minimum commitment of the elite is required. In this case, the inclusion of different political process and the adoption of consociational institutional arrangements within the EMB helped to reinforce and maintain this commitment in the long term, as well as to allow the new institution to become de facto autonomous. Although this initial commitment seems to entail an endogenous relationship with good quality of elections, the type of consociational arrangements adopted by the elite were key to make democracy work. That is, insulating the EMB or adopting an arrangement that did not include an internal system of checks would have implied incurring on a higher risk of politicization and confrontation.

⁸² The law also established that the EMB could decide the degree of involvement of parties at different administrative levels in order to ensure the levels of credibility and legitimacy of elections (Napier 2015: 163).

PLCs rapidly became the IEC's most important ICM and historically have allowed parties to participate, monitor, build consensus, resolve conflicts, and enforce formal rules at the *administrative, bureaucratic and street-levels*. According to Napier (2015: 159), these committees have become essential in political deliberation between the parties, government, and the EMB. For Blyth (2002):⁸³

The establishment of the PLC became part of the pact; that is, the deal negotiated between the political adversaries, the government and the opposition parties. The PLC became a 'chosen structure' –very much in line with the rational choice theory– to produce stability and credible election outcomes.

These types of ICMs have served different purposes. The PLCs, for instance, have functioned as a formal and informal dispute resolution mechanisms aiding in building consensus around key administrative issues. They also have helped parties represented within the EMB to communicate with party leaders at lower and regional levels. In case it is necessary, party delegates can communicate to their respective legislative representatives if a further parliamentary debate or action are required Napier (2015: 165):⁸⁴

In all three spheres of government the PLC structures meet once a week after the proclamation of an election, twice a day on an election day, and every second month during inter-election periods to discuss issues that need attention or resolution (Tlakula 2007:109, 115). In addition, at the provincial level, conflict resolution bodies are established with representatives from the respective parties in the province to liaise on issues of dispute. The aim is for individual representatives from

⁸³ Cited in Marsh and Stoker (2002:300) and Napier (2015:159).

⁸⁴ In Mexico, for instance, the EMB's executive board is formed by eleven "non-partisan" electoral commissioners who have the right to vote, and by representatives from each national political party and representatives from the legislative branch. The latter two have the right to speak, but not to vote. The representatives of the legislative branch, however, serve exactly the same purpose than the one described here (i.e., creating a communication channel between the EMB and the parties represented in the legislature).

the parties concerned to build personal contacts and relationships, so as to be able to tackle issues in dispute through informal channels (Moriarty 2012).

According to Napier (2015: 164), PLCs have been used in South Africa to formulate more informed recommendations regarding legislative amendments to the electoral laws or statutes regulating the internal operation of parties or the EMB. This function has helped parties and the EMB in creating an effective communication channel with the legislature in order to solve –or improve– administrative procedures or issues surrounding the different phases of the electoral cycle:

Once a decision is arrived within the PLC, the content of that decision is fed back to the participating parties, either to act on in parliament when it involves legislative changes, or to party structures for implementation. The PLC has, in many instances, a recommendation function with respect to rules and legislative amendments that could be considered, such as to the content of the Electoral Act of 1998. The content of the discussions in the PLC, whether at the national, provincial or local levels, generally coincides with the election cycle, as referred to above.

Furthermore, since these types of ICMs were embedded within South Africa's different electoral and jurisdictional divisions, parties have been able to engage and participate in administrative, technical, and bureaucratic debates within the EMB at those levels (Chappell 2012:12):

PLC deliberations have taken place at the micro deliberative level. By contrast, macro deliberations have taken place in the public sphere and include public debate, statements by politicians, and the voice of civil society. An election campaign and an election are undertaken at the macro deliberative level.

An additional advantage of introducing PLCs has been that they also have served as permanent monitoring mechanisms throughout the different phases of the election cycle and have

helped the main actors competing for power to reach consensus around key administrative decisions. As described by Napier (2015: 164):

The functions of the PLC coincide with the five-yearly election cycle, which generally involves the registration of voters and the compilation of a voters' roll; ward delimitation at the local government level; the setting of an election timetable; selection of candidates; the establishment of polling stations; party rallies and election day arrangements; the counting of ballots; the evaluation and debriefing of the entire process; and planning for the next election and by-elections. Many of the issues discussed are of a technical nature, but it is, nevertheless, very important that it is dealt with in order to avert possible conflict between political parties on the one hand, and the IEC on the other.

...

The representatives of political parties attend PLC meetings with very definite views as to what is in the interests of their respective political parties, either in a by-election, or a local, or national general election (Napier 2009). With the skillful chairing of the PLC meeting, consensus is reached between the parties with regard to various technical issues. In this case, lengthy discussions will take place on the issues of concern until consensus is reached. A similar approach is followed in other PLC formations; that is, the decisions made are generally reached through consensus.

As acknowledged by Napier (2015), the presence of parties within different administrative-level ICMs has allowed the EMB to communicate more effectively with parties at the *policy level*.

This has increased the levels of transparency and accountability, reinforcing the electoral bureaucracy's *de facto* autonomy (Napier 2015: 165):

Besides its role in averting conflict, the South African PLC is used as a channel for informing political parties, through their PLC representatives and in a transparent manner, about current electoral issues. For example, the IEC held an extended PLC workshop in July 2007 to inform members about the impending floor-crossing window period from 1 to 15 September 2007 (a period prescribed in law when members could cross to another party without incurring penalties) and its implications for political parties at the three spheres of government (Independent Electoral Commission, Gauteng 2007). Likewise, a workshop was held with PLC members and IEC

representatives setting out the legal requirements and management of the 2009 South African general election.

In his study of political party liaison committees as conflict resolution mechanisms in South Africa, Napier (2015: 166) offers different *administrative*, *bureaucratic* and *policy level* examples of the type of issues that are discussed within the National Party Liaison Committee (NPLC). At the *administrative* and *bureaucratic levels*, these issues include: voter registration activity; the status of the voters' roll; generation and delivery of identity documents; draft timetable for local government elections; procedures for submitting candidate nomination documents; changes in party logos; the submission of candidates' lists and payments, as well as details of procedures to be followed, and the cut-off dates for this purpose; distribution of ballot paper samples; security arrangements; the modification of laws and regulations; special consideration for cross-border municipalities; and the adoption of electronic devices or scanners used to check voter registration details (also known as zip-zip machines).

At the *policy level*, PLC members are also invited to participate in activities such as a ballot paper draw to determine the party sequence listing on the proportional representation ballot paper list for the local government elections. Additionally, members of the PLC have been able to participate in more complex technical procedures, such as the re-demarcation of municipal boundaries, defining the parameters to increase in the number of large metropolitan municipalities, the incorporation of other areas into the larger municipalities, and the disestablishment of District Management Areas.

The presence of parties within the national and regional-level PLCs has also served parties to act as "watchdogs" enforcing the compliance of formal rules and procedures. Within the NPLC,

parties have also “performed a limited legislative and rule-making role.” Parties, for instance, have contributed to set the ground rules for the conduct of voter registration and elections; they have reported and discussed incidents of political intolerance displayed by some political parties; discussed the violations to the ground rules during the voter registration process, as well as cases of targeted voter registration. As examples of how the PLC has served as an effective conflict resolution mechanism, Napier (2015) argues that if parties had not reached agreements over highly politicized issues, especially in highly volatile provinces such as KwaZulu-Natal where there is a history of conflict between the ANC and the IFP, violent outbursts and post electoral conflict would not have been prevented (Napier 2015: 168):

If it was established after voting that there were irregularities, it could have resulted in accusations and even violent conflict between parties and candidates. It could also have resulted in the election results not being declared within 72 hours of the polling stations’ closing, as required by the Electoral Act, and even in by-elections in each ward, which would have been a costly exercise. The intervention of the PLC may also have averted a later Electoral Court challenge. These possible outcomes would have contributed to voters losing confidence in the electoral system and in the IEC as a supervisory body. By having political party representatives present in one locality who could deliberate on the problem and agree on a solution, serious conflict was avoided (Party Liaison Committee member 2010).

In sum, compared to many other third-wave countries in Latin America and Sub-Saharan Africa that decided to create *insulated* electoral bureaucracies to manage elections, the South African political elite adopted an intermediate solution. Although the elite’s commitment towards democracy in the long run was required to adopt this consociational arrangement, especially of the new majoritarian ruling party, a close look at the EMB’s internal workings shows the effect that ICMs had on the electoral commission’s capacity to become recognized as *de facto* autonomous.

Over the years, the development of the EMB's *de facto* autonomy has created a positive reinforcing effect on the quality of elections.

Although political parties are not formally represented within the EMB's executive board, as they are in countries such as Mexico, Uruguay, or Colombia, the South African elite recognized the value of having an institutional communication channel between the EMB and the main actors competing for power. The adoption of these types of ICMs –the national and regional level PLCs– has been key for the EMB's capacity to build consensus around key administrative and bureaucratic procedures and reinforcing the credibility in elections over the years. The success of PLCs in South Africa has incentivized the adoption of similar mechanisms in the region. After the 2007 post-electoral conflict in Kenya, for instance, a special commission headed by a former South African judge recommended the inclusion of a consultative mechanism within the EMB, which gave birth to Kenya's Political-Parties Liaison Committee (PPLC) in 2010.

4.3.2.3 Colombia

Colombia's EMB, the National Electoral Council (NEC), was created in 1991 as consequence of the country's historical political struggle between the *Liberal* and *Conservative* parties.⁸⁵ Although the Colombian political elite could have adopted an *insulated* institutional arrangement to manage elections in the early 1990s, they decided to create an electoral institution

⁸⁵ The Council's current institutional configuration responds to Colombia's traditional bipartisan political system. Historically, the Liberal and Conservative parties reached a consensus on designing an electoral regime where political parties would be embedded within the EMB to establish an internal system of checks and balances. Before 1991, elections were organized by the Corte Electoral, which was created in 1948. The first EMB in Colombia, however, was the Gran Consejo Electoral, which was created in 1888. See: <https://www.senalmemoria.co/articulos/200-a%C3%B1os-de-historia-electoral-en-colombia>.

with a multi-level system of checks and balances, where the traditional parties play a primary role. Since the EMB's inception, Colombia's party system has become significantly more plural and fragmented without significantly affecting the capacity of the electoral bureaucracy to organize free and fair elections.⁸⁶ After almost three decades since the EMB's inception, both the elites' commitment towards democracy and the partisan configuration of the NEC have been reinforcing one another, increasing the EMB's capacity of organizing credible elections.

The presence of political parties within the organism has allowed the political elite to enforce a multi-level system of ICMs throughout its *bureaucratic* and *administrative* structures. Although the influence of the traditional parties within the NEC have been questioned by country-level experts for creating a negative image of electoral management for "having parties policing and regulating themselves," the internal partisan system of checks has ensured that no political group, especially the party controlling government, has been able to unilaterally influence electoral administration. It has also prevented major political actors from not recognizing electoral results.

According to the Constitution, the NEC holds a supreme authority over all electoral matters in Colombia.⁸⁷ It is directly influenced by three main groups: i) Political parties, which nominate

⁸⁶ In the last three decades, the country transitioned from a stable bipartisan system to multiparty system with more than 20 parties registered at the national level (Bleier and Arévalo 2004; Wills-Otero 2009).

⁸⁷ The Consejo Nacional Electoral (National Electoral Council) was constituted as the supreme body in charge of managing and overseeing electoral processes in the country. Its authority and its configuration are based on Articles 264 and 265 of the Colombian Constitution. The body was established after the political reform of 1991, replacing the country's Electoral Court.

The NEC formally possesses both administrative and budgetary autonomy as established by the Constitution. Its electoral responsibilities include the recognition of political parties as legal persons, assigning them financial resources and regulating and overseeing their activities. One of its main responsibilities also includes being the last instance of appeals over electoral disputes. The Council also has consultative and legislative attributions over electoral matters; the Government may request the Council's opinion on certain issues and it can make recommendations and propose bills to the Colombian Congress.

the nine members of the Council to Congress; ii) Congress, who appoints the candidates to the Council; and iii) Colombia's courts system (The Presidents of the Constitutional Court, the Supreme Court of Justice and the Council of State), who implement the merit-based contest to appoint the National Civil Registrar and holds the Council accountable on its decisions.

The current EMB's institutional arrangement defined in the legislation creates a mutually reinforcing relationship between political parties and the *Consejo Nacional Electoral*. The NEC, for instance, has the ability to regulate political parties and, at the same time, enforces the legislation passed by Congress affecting their activities. Political parties, on their side, nominate the candidates to the EMB's executive board, which has created tensions given the partisan affiliation of its members. The close relationship between the Council's members and political parties, however, reveals the control exercised by the partisan elite, even if indirectly, over the organization of elections and the activities of the EMB.

That is, the *executive-level* system of ICMs was established through the ties kept between the political elite and members within the NEC. The influence parties have over the NEC's processes and designations became an important counterweight to the State and the EMB's bureaucracy involvement in electoral matters. A key feature of Colombia's electoral system is that it possesses a similar structure to the State's tripartite division of power. The members of the

The Constitution states that the body will be composed of nine council members elected by the Colombian Congress for a period of four years via the Electoral Quotient System. The candidates are proposed by the political parties or coalitions and voted by Congress. The Electoral Quotient ensures a higher level of representation of minority parties. Furthermore, the Electoral Code includes a provision in which two positions are reserved for the minority party or coalition (i.e., that does not have representation in the Government) that emitted the largest number of votes but did not reach the limit to obtain a position on the Council by itself.

National Electoral Council serves as a legislative power, the *National Civil Registry (Registrador Nacional del Estado Civil)*, as an executive power and the *Electoral Tribunals (Tribunal Nacional de Garantías Electorales* and the *Tribunales Seccionales de Garantías Electorales)* as the judicial power.⁸⁸ Although each of these institutions has its own specific function, the Council retains superiority over the other two bodies by dictating policy, holding accountable the National Civil Registry, appointing the members of the *Tribunales Seccionales*³³ and being the very last place for appeals on electoral matters. This is why it has been so important for parties to keep an *executive level ICM* in the case of Colombia's EMB.

At the national level, *bureaucratic* and *administrative* affairs are carried out mostly by the *National Civil Registry (NCR)* under the authority of the Registrar.⁸⁹ At the local level,

⁸⁸ The National Electoral Council appoints the members of the National Electoral Rights Tribunal (Tribunal Nacional de Garantías Electorales) and of the Sectional Electoral Rights Tribunals (Tribunales Seccionales de Garantías Electorales). These courts responsibilities include: a) Receiving and processing complaints presented by officials, citizens, political parties and political groups or movements about irregularities that arise during the electoral process; b) Making recommendations to the administrative and police authorities in charge of ensuring the normality of the electoral process; c) Ordering and forming investigative commissions; and d) Inform judicial authorities of the conducts that may constitute a statutory offense described in the Penal Code. Both the National Civil Registrar and the Electoral Rights Tribunals are accountable to the National Electoral Council. The Council itself is accountable to the Supreme Court of Colombia, where its decisions and the election of its members can be disputed.

⁸⁹ The National Civil Registrar (Registrador Nacional del Estado Civil), whose role is established in Article 266 of the Constitution, is a key institution within the National Electoral Council. The Registrar is chosen by the presidents of the Constitutional Court, the Supreme Court of Justice, and the Council of State through a merit-based contest. The National Civil Registrar appoints various positions with the consent of the National Electoral Council, including the Secretary General of the Council, the National Visitors, the Delegates of the National Civil Registry and the District Registrars of Bogotá. The Registrar has the bulk of administrative and organizational responsibilities within the NEC, which include the organization and overseeing of the electoral process, the appointment of bureaucrats within the Registry, the administration of the voter's registry and the issuing of citizenship cards.

The second most senior official within the National Civil Registry, after the Registrar himself, are the Delegates of the National Civil Registry. In addition to the responsibilities described above, the local Civil Registrars serve as managers of their Registry which involves the administration of personnel and

administrative and bureaucratic level ICMs are also enforced through the delegates of the *National Civil Registry*, who are members designated by political parties. Each Electoral Circumscription must hold two delegates of different political affiliations, each one appointed by the National Registrar and ratified by the Council. These *delegates* have the responsibility of organizing elections within their circumscription, as well as to approve their circumscription's Civil Registrar and voting juries.

In sum, partisan influence over the National Electoral Council is strong and, according to most country-level experts, electoral administration is completely controlled by parties. This *executive-level* ICM is based on the formal influence parties exert over their appointees.⁹⁰ Council members have strong incentives to retain close ties with the political elite since their tenure is relatively short (e.g., members of the Council last only four years and can be nominated again by the parties for an additional term). Members from civil society often refer to the National Electoral Council as the “stronghold of parties” and have emphasized that the NEC’s regulating and sanctioning role is highly skewed in favor of the traditional parties.⁹¹ Despite its partisan

financial and physical resources. These Registrars are also responsible for appointing the local Auxiliary Registrars, voting juries and poll observers.

⁹⁰ As recognized by IDEA’s ACE Electoral Knowledge Network (2012a), many countries adopting multiparty-based or partisan EMBs (Uruguay or Colombia) have created dissatisfaction among minority parties which have been excluded from the EMB’s executive board, either because they are not represented in parliament or they did not participate in the negotiation leading to the initial appointments of the members of the EMB. The pluralistic presence of parties within EMBs, however, has increased the levels of transparency and the conflict resolution capacity of the electoral bureaucracy.

⁹¹ Interview of the author with Juan Carlos Rodríguez Raga, Professor of Political Science at the Universidad de los Andes, and member of the Misión Especial Electoral (MEE) within the Misión de Observación Electoral (MOE) Colombia. Fall 2017. For more on the Misión de Observación Electoral (MOE) Colombia, see: <https://moe.org.co/tag/mision-electoral-especial/>.

configuration, however, Colombia's EMB has been able to build a positive reputation and, overall, elections are perceived to be mostly fair.

According to Juan Carlos Rodríguez Raga, Professor of Political Science at the *Universidad de los Andes*, the National Electoral Council and the National Civil Registrar have had confrontations among themselves.⁹² The Registrar, for instance, has criticized some normative decisions taken by the NEC, while the Council has blamed the Registrar for poorly implementing an administrative procedure during the electoral process. According to Rodríguez Raga, these two institutions are perceived by the public as two separate entities and enjoy different levels of popularity. Although results have been traditionally recognized by the elite and most citizens perceive elections to be fairly organized, there is a generalized discontent with the partisan influence within the NEC, which has been perceived as a “stronghold of parties” since the EMB was established in the early 1990s.

Until the most recent 2018 presidential election, however, the EMB has proven to be effective in organizing credible elections and, most importantly, the elite has recognized electoral

⁹² Ibid. In 2017 the Special Electoral Mission (Misión Especial Electoral), a Colombian civil society organization formed by numerous Colombian academics, politicians and civil society figures, elaborated a report on the institutional reform of the Colombian electoral system. According to Rodríguez Raga, there were two positions within the international and national country-level experts of the MEE when formulating recommendations regarding the EMB's independence. On one hand, there was a group promoting institutional insulation as a preferred design. Among their various recommendations, they proposed the “depoliticization” of the NEC by cutting off political parties from the decision-making process and suggested granting the EMB a higher degree of institutional insulation. This would allow to have a de jure independent bureaucracy capable of effectively sanctioning the misconduct of parties and their candidates. On the other, there was a group of experts that acknowledged the sociopolitical environment in the country, as well as the historical role played by parties within electoral administration, and proposed considering either a mixed-partisan design or delegating the responsibility to fully autonomous EMB with a similar configuration to the one that had been adopted in Mexico (i.e., a de jure independent EMB, where parties are formally represented within the EMB at different administrative levels). The former view – promoting insulation– prevailed among the members of the mission in their final report (Barrios 2018: 16-17), but it was not adopted.

outcomes. In 2004, after a national referendum allowing presidential reelection, Álvaro Uribe became first president to be consecutively re-elected in Colombia in over a century. Although this constitutional reform allowing reelection could have affected negatively Colombia's EMB reputation (e.g., question the capacity of the institution to remain independent, despite the presence of a strong president), Uribe was reelected with 62% of the vote and both opposition parties and international organization such as the OAS, recognized that the election "took place in an atmosphere of freedom, transparency and normalcy, which allowed citizens to renew their commitment to democracy."⁹³

The main weakness of the EMB's institutional design is that the full formal and informal control of parties over administrative decisions has been counterproductive for parties' ability to self-impose sanctions for violating formal rules and procedures.⁹⁴ This arrangement has motivated important normative changes. In 2003 for instance, the elite decided that the Registrar should be appointed through a contest organized by Colombia's courts, instead of being directly appointed by the National Electoral Council. According to Barrios (2018: 19), this change was implemented in order to reduce the parties' influence over the EMB's *bureaucracy* and *administrative*

⁹³ Organization of American States Preliminary Report. Colombian Elections Transparent and Normal. Available: http://www.oas.org/en/media_center/press_release.asp?sCodigo=EOM-CO-03

⁹⁴ Similar to delegating the responsibility of boundary delimitation to partisan actors in the United States, delegating full control of electoral management of political parties can have a negative effect for the reputation of the EMB, especially in countries with high levels of politicization, low levels of administrative and bureaucratic capacity, as well in those countries where there is a general disenchantment with political parties or democracy. It is in these cases, where a mixed-independent administrative scheme can be useful to have the best of both worlds: a *de jure* independent EMB with a strong system of internal checks and balances.

procedures.⁹⁵ Most country-level experts, however, agree that the current levels of politicization around the EMB does not come exclusively from the political parties' influence within the NEC, but rather from the ways in which the institutional configuration benefits the largest parties and coalitions of Colombia's historical bipartisan system.

The case of Colombia shows the underlying tensions caused by having political parties formally controlling the electoral apparatus. While the EMB's consociational institutional arrangement has prevented the unilateral cooptation of the electoral bureaucracy by a single political force, the bipartisan control of the institution has been questioned by civil society, country-level experts, and political actors that have been excluded from the EMB.

Colombia has moved away from being one of the most stable bipartisan systems in the region during the second half of the twentieth century. The country has moved towards a multiparty electoral democracy where over twenty political parties registered for the 2018 presidential race.⁹⁶ Since the 1980s, the country has been affected by high levels of violence, corruption, and political scandals, all negative dimensions for democratic development (Wills-Otero 2009). Since its inception in the early 1990s, Colombia's EMB has been regarded generally as a *de facto* autonomous EMB and electoral results have been accepted by competing factions. Its consociational arrangement is what initially allowed the EMB to build a positive reputation.

⁹⁵ Further reforms to depoliticize the EMB, instead of insulating the institution, would be to formally include political parties through ICMs at different administrative levels, without granting them any decision-making power (e.g., the Mexican model). The sanctioning role of the EMB, for instance, could be delegated to the tribunals in charge of overseeing and validating the electoral process. This would allow the political elite to maintain in place an institutional arrangement that includes ICMs, while reducing tensions and maintaining the institution's capacity to build consensus among the elite and organize credible elections.

⁹⁶ For the 2018 presidential election, these twenty parties grouped around six different presidential candidates.

Today, however, the exclusion of smaller factions from the EMB and the formal partisan control of the EMB by the two historically dominant parties, has politicized the institution.⁹⁷ An alternative to insulate the EMB from political parties in the near future, would be to delegate to non-partisan members *executive level* positions, while still allowing all political parties to interact at different administrative levels within the EMB to supervise the different phases of electoral administration.

4.3.2.4 Uruguay

Within the four Latin American and Sub-Saharan cases discussed in this subsection Uruguay is, undoubtedly, the country with the most favorable conditions –i.e., sociopolitical, demographic, and economic– for democratic development. Within Latin America, for instance, Uruguay is the most egalitarian and demographically homogenous country in the region. It has approximately 3.4 million habitants and, since the early twentieth century, it established a wide network of social programs guaranteeing access to public education and health. Its levels of social welfare tend to be closer to those in Western European countries, than to its regional counterparts (Chasquetti and Buquet 2004; Paredes 2007).

For these reasons, this is the least useful case to illustrate the independent effect of ICMs on the quality of elections. That is, given the favorable conditions for democracy in Uruguay, it is

⁹⁷ This is one of the risks of having political parties formally controlling the EMB. The partisan model of electoral administration, however, is not the only way in which ICMs can be imbedded at an EMB's executive level. As I discuss in the following chapter, parties can be formally represented within different administrative levels of the EMB, without having decision-making power over key administrative procedures.

likely that any type of institutional design for managing elections –including a fully *governmental* arrangement– would have worked in this country. What makes this case interesting, however, is the elites’ decision to adopt a consociation arrangement of electoral management, even when it was not necessary to do so, has contributed to improve the quality of elections over time. Once the military regime stepped back, the adoption of ICMs at different administrative levels has helped Uruguay’s EMB to create a mutually reinforcing endogenous relationship between the EMB’s *de facto* autonomy and the quality of elections.

Uruguayan democracy was interrupted between 1973 and 1985. Affected by an internal political struggle and influenced by the wave of military dictatorships in the Southern Cone –i.e., Brazil, Chile, and Argentina, the country’s long-lasting democracy came to an end in June of 1973.⁹⁸ This authoritarian period suspended elections and the institutional framework that had originally been adopted by the two main political factions in the legal framework between 1918 and 1934.⁹⁹ Compared to other countries that went through a major constitutional transformation once the military regime withdrew from the public scene, the political elite in Uruguay readopted the same institutional framework that was established during the early twentieth century.

⁹⁸ During this period, the country had a civic-military dictatorship headed by four different civilian-presidents appointed by military rule of the Consejo de Estado (Demasi et al., 2009). Juan María Bordaberry (1973-1975), who was democratically elected and later removed by the military; Alberto Demicheli (1976), was appointed and removed that same year by the military; Aparicio Méndez (1976-1981), and Gregorio Álvarez (1981-1985), were both appointed by the military Consejo de Estado.

⁹⁹ During the dictatorship, the military intervened in the Electoral Court in 1977 and established a three-member executive board headed by the former Minister of the Interior, Nicolas Storace Arrosa. Although the Electoral Court was informally controlled by the military regime, the EMB was able to successfully organize a constitutional plebiscite in 1980, the internal elections of parties in 1982, and the national elections of 1984, which eventually would lead to the restoration of democracy in 1985. The election of the members of the Court and its functions returned to normality after 1985 and, after the restoration of democratic rule without any major legislative changes, the EMB rapidly regained its positive reputation and its levels of *de facto* autonomy.

Most of the country's institutional arrangements adopted during the early 1900s were influenced by the long-lasting armed conflict of the *Guerra Grande* (1839-1951) between the *Blancos* and the *Colorados*.¹⁰⁰ According to Walter Galmarini, former Member of the Montevideo's *Junta Electoral*, the electoral framework adopted in 1924, is also a consequence of the agreement between the country's two main competing forces. Similar to Venezuela's *Punto Fijo Agreement*, the consociational arrangement –i.e., *executive, administrative and bureaucratic level ICMs*– within the *Corte Electoral* responds to the high levels of mistrust and historic conflict between the two main political forces.¹⁰¹ Instead of *delegating* the responsibility to manage elections to an *insulated* institution from political actors, the political elite found that including partisan representatives within the EMBs' executive board would enforce cooperation among parties and guarantee the neutrality of electoral administration. According to Chasqueti and Buquet (2004: 231):¹⁰²

Mucho más interesantes y adecuados a la problemática que se plantea en este trabajo son las siguientes dos características de las *consociational democracies*: “a) el veto mutuo o mando de la ‘mayoría concurrente’, que sirve como una protección

¹⁰⁰ The main political parties, the National Party (Los Blancos) and the Colorados, have its origin in this conflict and were established in 1836. Since then, the Uruguay's party politics have revolved around these two factions and it remains as one of the most stable party systems in the region. The legal transformations adopted by these two forces between 1913 and 1934, were key for establishing the ground for major socioeconomic transformations, including the state intervention promoting social and economic mobility, major welfare policies (education and public health), as well as the involvement of the state in strategic areas such as banking, commerce, and industry (communications and energetic sectors).

¹⁰¹ Interview conducted by the author with Walter Galmarini, electoral expert, external advisor to the Organization of American States, and former Member of Montevideo's Electoral Board (*Junta Electoral*) and Substitute Vice-president of Uruguay's Electoral Court. Interviews conducted in Managua, Nicaragua in November of 2011, over the phone in September of 2013, and July of 2018.

¹⁰² In their work, Chasqueti and Buquet (2004) acknowledge the consociational dynamic within Uruguay's institutional arrangement across different bureaucratic institutions. They describe democracy as a “partidocracia de consenso” (a consensus-based “partycratic” system), given the role played by the political parties and the particular co-participation in the institutions they designed through history.

adicional a los intereses vitales de la minoría”; y “b) la proporcionalidad como norma principal de la representación política” (Lijphart, 1989:39). La necesidad de cumplir con estos dos requisitos es lo que sugiere que Uruguay se estructuró jurídicamente en la forma de una democracia de consenso

The early inclusion of ICMs within the *Corte Electoral* has allowed parties to interact in a consociational dynamic where they can monitor each other and enforce the compliance of formal rules, as well as a way to guarantee the presence of the main actors competing for power at different administrative levels. It is this consociational arrangement that has allowed the court to acquire and maintain over the years the highest level of *de facto* independence across the region. In the long run, the EMB’s *de facto* independence has had a cyclical reinforcing relationship with the quality of elections.

The EMB was initially regulated by ordinary law and, although parties have always had a direct presence within the EMB, the electoral institution has adopted different configurations. Between 1924 and 1942, for instance, the composition of the Court’s executive board went from having only purportedly “non-partisan” ministers to a purely partisan configuration. This arrangement was later replaced by a mixed configuration of both partisan and “non-partisan” members. The Electoral Court was initially bounded to the legislature, but it gradually increased its level of *de jure* independence until it became a Fourth Branch of Power with the 1952 constitutional.¹⁰³

¹⁰³ Uruguay’s Electoral Court gradually increased its *de jure* autonomy during the XX century. Although it was founded in 1924, the EMB was recognized at the constitutional level until 1934. The court was regulated by ordinary law until 1952, when the EMB increased its *de jure* independence by becoming a fourth branch of power. Furthermore, in 1972 it was established that members of the Court could not be recalled, only by serious crimes or breach of the Constitution. This was a major step towards granting the

The EMB is currently composed of nine members and twice as many substitutes. Five “non-partisan” members are elected by a two thirds majority during a joint session of the General Assembly. Although “non-partisan” members are purportedly citizens who shall guarantee the impartiality of the EMB, they have always kept an ideological tie to the political faction that endorses their appointment.¹⁰⁴ The remaining four partisan members are elected by a system of simultaneous double voting and proportional representation.¹⁰⁵ As recognized by Chasquetti and Buquet (2004: 245):

La actual integración de la Corte Electoral data de 1995. En teoría, el organismo tendría cuatro ministros partidarios y cinco neutrales, en los hechos, todos sus integrantes responden a los partidos políticos. En la actualidad, el Partido Colorado cuenta con 4 representantes, el Partido Nacional con 3 y el Frente Amplio solo con 2. En las elecciones de 1999

members of the Court more autonomy. With the 1996 amendment, the mixed-partisan composition of the EMB’s executive board and court’s de jure independence was ratified by the legislature (Urruty 2007: 3).

¹⁰⁴ Galmarini op. cit., fn. 106. Also see: <https://www.todologista.com/index.php/uruguay/574-confirmados-los-nueve-ministros-de-la-corte-electoral>

¹⁰⁵ The Constitution does not set a term-limit for the ministers of the Corte Electoral in order to avoid coinciding with the term-limit of President, the Senators and Deputies. Ministers of the Electoral Court can serve for terms of less than five years, which is the duration of government, or it can be prolonged if the legislature fails to gather two thirds of the votes that are constitutionally required to renew the Court. Ministers of the Court can only be removed as a result of a political trial for violating the Constitution or the commitment of serious crimes. They can also be re-designated, and they are bounded by the prohibition of being part of other commissions or political clubs, of acting in the governing bodies of the parties and of intervening in propaganda of an electoral nature. According to Chasquetti (2007) and Chasquetti and Buquet (2004), the two-thirds constitutional requirement to renew the Electoral Court’s executive board has occasionally generated a legislative gridlock impeding the elite to renovate the EMB’s directive organ for a long period of time. This caused a 10-year sub-representation of the Frente Amplio within the EMB’s executive board when it became the majority party in 1999 (e.g., the members of the EC were appointed in 1995, and subsequently replaces in 2010 and 2017).

el Frente Amplio consiguió casi el 40% de los votos (y por ende de las bancas), el Partido Colorado el 32% y el Partido Nacional el 23%.¹⁰⁶

The electoral responsibilities are vested upon three main bodies. All of them include ICMs that allow parties to monitor and participate at different administrative levels. The supreme executive body is the Electoral Court (EC) whose authority is based upon the Constitution and its decisions are irrevocable. Although the court was included in the Constitution in 1934, its complete competence over electoral affairs was extended until the constitutional reform of 1952. That year, the court became the last resort for all appeals and claims proceeding from all elections, plebiscites and referendums (Urruty, 2007: 5). This *executive level* ICM is enforced by the appointment of four partisan members, out of the nine ministers, to the EMB's executive board. The other five are purportedly "non-politically citizens" chosen by a qualified majority of both chambers of the General Assembly.

The *mixed-partisan* composition of the *Corte Electoral* has allowed the formal and informal inclusion of party representatives in the highest decision-making instance of the EMB. This presence has also allowed the parties to influence the conformation of the EMB's bureaucratic structure through the appointment of public officials based on partisan ties. Furthermore, it has granted parties the possibility to set in place *administrative* and *bureaucratic*

¹⁰⁶ In 2017, the three major parties reached an agreement to renew the EMB's executive board. They appointed as chairman Ronald Hebert, who was perceived as a "non-partisan" member, and appointed 4 ministers representing the Frente Amplio, two the Colorado Party, and two the Partido Nacional. See: <https://www.todologista.com/index.php/uruguay/574-confirmados-los-nueve-ministros-de-la-corte-electoral>. According to Chasqueti and Buquet (2004), in 1995 the Colorado party had 4 representatives, the Partido Nacional 3, and the Frente Amplio 2.

level ICMs by allowing them to participate in the conformation and surveillance of the procedures related to key administrative procedures, such as the registration of voters.

A second type of administrative organ that is subordinated to authority of the Electoral Court are the Departmental Electoral Boards (*Juntas Electorales*). These are legal bodies of a permanent nature operating in the capital of each department. Their scope of competence extends only to their territories. They are composed of five members and twice that number of alternates, and its members are nominated by parties and directly elected by popular vote every four years in the same ballot (*hoja de votación*) for electing the president, the senators and deputies. Their decisions can be challenged in the Electoral Court. Since 1924, the law established the non-appealability of its decisions when they were adopted unanimously. However, this provision was repealed by the 1952 constitutional reform, as mentioned earlier, that expressly stipulate that the Electoral Court is the last instance of appeals and claims (Gros Epiell 1990).

The third organ is composed by the Vote Receiving Commissions. These are non-permanent bodies that act only on election season or in the cases of plebiscite or referendum. They exercise exclusively a bureaucratic function. They are made up of public notaries and public officials who are appointed by the Electoral Boards. Their procedures and resolutions may be observed by party delegates during the course of the voting processes and appealed until the day following the election before the Electoral Boards (Urruty, 2007: 4). These *street level* ICMs allow party representatives oversee the commissions' decisions and procedures before and after the day of the election. If the delegates disagree with the commissions, they may appeal its decisions and resolutions to a third organ, the *Departmental Electoral Boards* (Urruty, 2007: 12).

Although it is hard to demonstrate that the institutional *insulation* of the Uruguayan EMB would have been counterproductive, the historical presence of parties within the *Corte Electoral* show that the adoption of ICMs has been an effective conflict-resolution mechanism to peacefully resolve electoral disputes, an extremely effective internal monitoring mechanism, as well as a key ingredient for reinforcing the levels of credibility in electoral management. According to Chasquetti and Buquet (2004), when the country transitioned back to democracy in 1985, it was almost natural step for the elite to readopt the institutions that had been originally created at the beginning of the twentieth century.

The partisan configuration of the *Juntas Electorales*, for instance, allows the main interested actors competing for power to directly be involved in both administrative and bureaucratic procedures affecting key procedures, such as voter registration. Their presence of parties at this level, for instance, allows parties to supervise that the *hojas de votación* (ballots) are approved in time, so they can guarantee that ballots are distributed among every polling station across the region. Once the voting process has concluded, party delegates within the EMB also play a key monitoring role defending the votes each party has received in the official recount that takes place two days after the election day.

According to country-level experts like Galmarini, “the consociational arrangement within the electoral bureaucracy allowing parties to be ‘the front-benchers’ of the electoral process has facilitated the reinforcement of formal rules, regardless of the level of electoral competitiveness. Elections that have been defined by a margin of less than 5,000 votes are not contested because numbers from the polling station usually match with final results. When I presided the *Junta*

Electoral in Montevideo, for example, I witnessed candidates losing an election by 12 votes and acknowledging the results.”¹⁰⁷

According to Galmarini, “the system of partisan checks and balances is profoundly entrenched within the EMB in Uruguay. It is a ‘bullet-proof system’ that not even the military could rig when they were in power. They lost the 1980 plebiscite while fully controlling the political and electoral apparatus. A system of checks has been set within the *Electoral Court’s* executive board, but also at the mid-bureaucratic and polling station level during the day of the election. Most people participating at different stages of the electoral process are profoundly involved in the political arena and have a good knowledge of the norm and of formal procedures.”¹⁰⁸

In the interview, Galmarini also argues that “Party delegates are not randomly selected by parties to serve in a single election. They are lawyers or respected professionals with an established reputation in the communities and with a profound knowledge of electoral rules and procedures that have been serving as delegates for a long period of time. They have experience and can rapidly identify –and raise a red flag– when a norm has been infringed. The reason there are no international electoral observation monitoring agencies in Uruguay is not because nothing happens in this country. It is because the system of checks and balances is sufficiently robust to guarantee credible results.”¹⁰⁹

When Argentina lost the Falklands War, and Alfonsín was elected after the collapse of the military regime, the autocratic regime in Uruguay was intensely pressured to withdraw from the

¹⁰⁷ Galmarini op. cit., fn. 106.

¹⁰⁸ Ibidem.

¹⁰⁹ Ibidem.

political arena. Like in Chile, the military not only decided to step back, but also used the *Electoral Court* to organize the elections under which José María Sanguinetti, of the *Colorado* party, was democratically elected. Once multiparty elections and democratic rule had returned to Uruguay, the political elite, as in Chile, could have adopted a different institutional arrangement to manage elections. They could have adopted an *insulated de jure* independent mixed-model where electoral administration relied on either the executive and judicial branches –as happened in Chile and Argentina– or in an *insulated de jure* independent model, like the one adopted in Costa Rica and Brazil.

The Uruguayan political elite, however, decided to keep a mixed-partisan consociational scheme of electoral administration that kept the EMB as fourth branch of power, as well as a multi-level system of ICMs at different administrative levels that allowed parties to directly participate and monitor the enforcement of formal rules. According to Galmarini, “electoral management in Uruguay, as everything else, was unthinkable without the presence of parties. The party system in this country is extremely robust and present in all social, economic and political activities, including electoral management. If there is a legacy we have from the *Gorilas* (the military), it is precisely that they created a sense of unity within the political elite that made us understand democracy as a long-term commitment. It created a disposition to dialogue and cooperation and this is also reflected in how we organize elections. Parties did not delegate the responsibility to manage elections to a third party, they wanted to be involved in the process and solve political and technical issues from within the EMB.”¹¹⁰

¹¹⁰ Ibidem.

In contrast to what happened to Chile with the judicial and bureaucratic legacy that was imposed after Pinochet left power, the military regime in Uruguay left almost intact all of the electoral institutional arrangements that had been built by the elite in the early twentieth century (1924). Once the regime fell apart, the elite in Uruguay decided to return back to the same consociational scheme of electoral management that the country had originally adopted in 1924.

In sum, Uruguay's *Electoral Court* is one of the oldest EMBs in Latin America and its internal consociational arrangement has been a key to ensure the high level of credibility in elections. It is among the region's electoral institutions with the highest levels of *de facto* autonomy. It became a fourth branch of power in 1934 but, compared to other EMBs that have become *insulated* from political actors after acquiring the same constitutional hierarchy (e.g., Venezuela's *Consejo Nacional Electoral*, Nicaragua's *Consejo Supremo Electoral*), the *Corte Electoral* has kept parties represented within the institution—at different administrative levels—during most of its existence.

Although a majority of the court's members are “non-partisan”, all of the ministers within the EMB's executive board keep a close ideological affinity with the parties that endorse their appointment. This has allowed the EMB to create a formal and informal system of checks and balances—ICMs—at the *executive level*.¹¹¹ Political organizations also appoint delegates to the EMBs' mid-level and regional offices allowing parties to enforce formal rules at the *administrative* and *bureaucratic* levels. Compared to its counterparts in Chile, Argentina, and Brazil, the adoption of ICMs has allowed parties to participate in the *Electoral Court*'s decisions

¹¹¹ Galmarini op. cit.

and facilitated a consensus-building dynamic at the national and regional levels, taking into consideration the main concerns of the political elite and making the institution more transparent and accountable to the main political actors competing for power.

4.4 A NOTE ON ENDOGENEITY

Effective electoral governance alone does not guarantee good elections, of course, because a complex variety of social, economic and political variables affect the process, integrity, and outcome of democratic elections. But good elections are impossible without effective electoral governance (Mozaffar and Schedler 2002: 6).

The organization of elections is affected by a wide variety of social, economic, and political conditions. Within these dimensions, the reputation of an EMB as a *de facto* autonomous institution is key for elections to be recognized as free and fair (Pastor 1999b). In this section, I briefly discuss the possibility of an endogenous relationship between *three dimensions* that have a close interplay with the capacity of third-wave EMBs to become *de facto* autonomous: the underlying conditions for democracy at the moment of the EMB's inception, the degree to which the party system is institutionalized (PSI), and the level of bureaucratic professionalization.

4.4.1 The Underlying Conditions for Democracy

In the case of the underlying conditions for democracy, the problem is that it is unclear if an EMB's *de facto* autonomy is a cause or consequence of the pre-existing conditions favoring democracy, such as the elites' commitment towards democratic rule. In other words, democratization in third-wave countries requires that elites set up credible –i.e., *de jure* and *de*

facto autonomous– electoral bureaucracies to manage elections. Thus, the reasons for setting up democracy generally and creating a *de jure* autonomous EMB are both rooted in the same elite commitment to a fair political process.

This type of endogenous relationship implies that in the presence of the elites’ commitment towards democratic rule, the capacity of EMBs to positively impact the quality of elections is marginal. It also implies that it is difficult to separate the independent impact of ICMs on creating *de facto* institutions. In other words, this reasoning implies that credible elections will be held in countries with highly institutionalized party systems, professionalized bureaucracies, and where elites are fully committed to democracy, regardless of the type and level of autonomy of the EMBs. In most well-established Western democracies, for instance, electoral institutions are recognized as *de facto* autonomous regardless of the EMBs’ administrative configuration and level of *de jure* independence.¹¹²

This endogenous relationship, however, becomes less evident when recognizing that there is a wide variety of democracies across regions such as Latin America or Sub-Saharan Africa, and that democratization is a gradual dynamic process involving a cyclic –and reinforcing– *interplay* between the political elite and certain institutional settings.¹¹³ A large number of third wave-

¹¹² As shown in Table 2.1, Western democracies have adopted mostly governmentally managed EMBs.

¹¹³ Electoral bureaucracies are human-crafted organizations that respond to the necessity of organizing complex administrative processes where most stages are technical, but also highly political in nature. When voting privileges spread during the twentieth century, electoral management became a more complex administrative process and political elites had to institutionalize their own rules and procedures through legislation (Huntington 1968, 1991; Carbó 1996; Weyland 2013). In doing so, elites had to decide if electoral administration would remain a duty performed by government or if an autonomous bureaucracy would become responsible for this administrative task. As I pointed out earlier, most Western countries with professionalized bureaucracies were able to keep the governmental scheme of electoral administration without significantly affecting citizens’ perception of having free and fair elections.

countries in these regions, for instance, began holding elections or transitioning to democracy under semi-competitive environments characterized by a partial –or minimal– commitment of elites towards democracy. It is in this middle array of countries –neither fully consolidated democracies, nor dominant authoritarian regimes– where certain institutional arrangements within the EMBs have had the greatest ability to either reinforce or hinder the quality of elections over time.¹¹⁴

A closer look at the underlying circumstances during the moment many of these third-wave countries transitioned to democracy reveals that while the creation of *de jure* autonomous EMBs in third-wave countries is endogenous to the democratization process, the capacity of these institutions to become *de facto* autonomous is not necessarily so. That is, the elites' commitment to

Most third-wave countries, however, faced a drastically different context. As these countries transitioned to democracy during –and after– the third-wave and began holding elections under authoritarian or semi-competitive conditions, elites were forced to delegate electoral management to *de jure* independent bureaucracies in order for elections to gain credibility. As I discussed earlier, this delegation process has taken place under different sociopolitical circumstances, under a wide array of conditions for electoral competition, and under quite different degree of the elites' long-term commitment towards democracy. These varying circumstances, of course, explain why not all *de jure* independent EMBs have been able to achieve the same levels of *de facto* independence in regions like Latin American and Africa. That is, while a *de jure* electoral autonomy is endogenous to democratization, *de facto* electoral autonomy is not necessarily so.

¹¹⁴ This middle array of countries, by definition, are cases with some but not full commitment to democracy (Przeworski 1992). In a sense, their indecision allows *de jure* independent EMBs to adopt ICMs and bring about democracy. That is, the elites' commitment to democracy in third-wave countries is not static. While this commitment has increased in some countries, it has either vanished or it is hardly distinguishable in others. The type of institutional settings adopted by the elite at the moment of transition, however, is key to either reinforce or deter this commitment in the long run. The elites' commitment towards democracy in Venezuela in 1999, for instance, was quite different from the one observed during Chávez's third mandate (it significantly decreased during that decade). The institutional setting surrounding electoral management, changed significantly once the Chávez era begun (i.e., changing from a consociational administrative scheme to a completely insulated EMB from political parties). The same can be said about countries, such as Peru after Fujimori's administration or the Rawlings' second term after the transition in Ghana. Although both of these cases had unfavorable conditions for democracy at the moment of alternation in power took place, the mutually reinforcing effect between the institutional setting and *de facto* autonomy has contributed significantly to increasing the quality of elections over time.

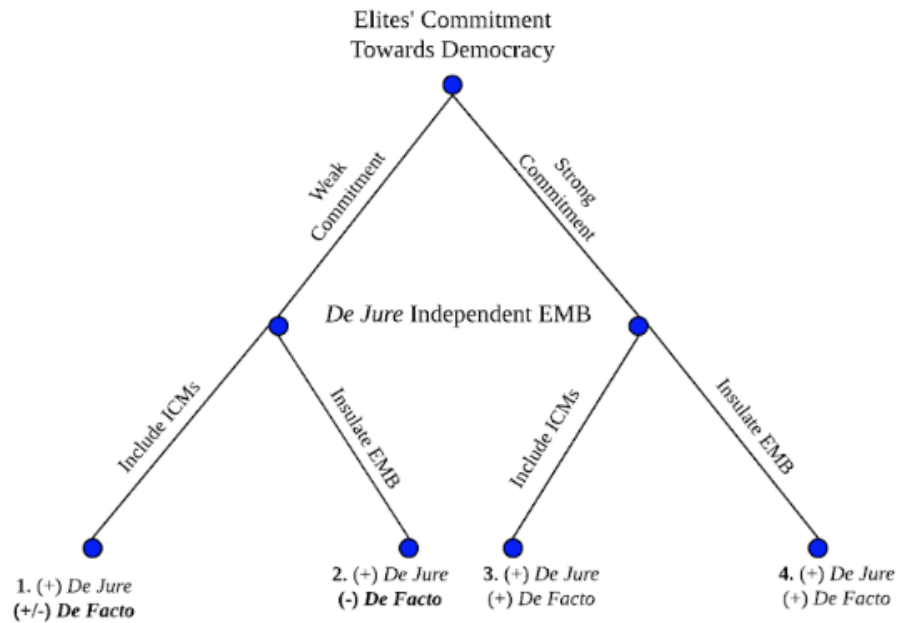
democratic rule in third-wave countries has served to create *de jure* autonomous electoral bureaucracies to manage elections, but this has been clearly insufficient to guarantee their *de facto* independence.

While *de facto* electoral autonomy requires a minimum commitment of the political elite towards democracy, elites can follow different pathways to set up the internal configuration of EMBs. Figure 4.2 illustrates that countries face different underlying circumstances for democracy at the moment elites delegate the responsibility to manage elections to a *de jure* autonomous electoral bureaucracy. This first level is circumstantial and reflects the elites' commitment towards democracy.¹¹⁵ Countries can face a scenario where there is a minimum, and fragile, commitment towards democratic rule or one where elites are clearly committed towards democracy. Depending on each circumstance, elites can either opt to *insulate* the EMB from external political actors or they can decide to include political parties within the EMB by adopting ICMs at different administrative levels.¹¹⁶

¹¹⁵ This model assumes that there is a minimum elites' commitment towards democracy and that this commitment can either dissolve or increase over time. If the elites' commitment is completely absent, it is unlikely for a *de jure* independent EMB to become *de facto* autonomous over time.

¹¹⁶ Adopting a consociational administrative scheme –i.e., ICMs– including political parties at different administrative levels to ensure the neutrality of the EMB is different from insulating the electoral bureaucracy from external political actors. For theoretical purposes, these two administrative configurations can be thought as mutually exclusive. The institutional configuration of Mexico's EMB, for instance, includes parties at different administrative levels (i.e., at the executive, administrative, and bureaucratic level). Similarly, the Corte Electoral in Uruguay includes parties at these same levels, but partisan representatives within the EMB's executive board do have a right to vote, while in Mexico they only have the right to speak, but not to vote. Both the Corte Electoral in Uruguay and the INE in Mexico are *de jure* independent EMBs that would fall in the classification of EMBs that have adopted ICMs. In contrast, Venezuela's CNE, Brazil's TSJ, or Peru's ONPE, are also *de jure* independent EMBs. These three cases, however, have opted to adopt an institutional configuration that completely insulates the EMB from political parties. That is, party representatives are not formally or informally embedded within any of the key executive, administrative or bureaucratic levels of the institution. These cases would classify as

Figure 4.2 Two Pathways for De Facto Electoral Autonomy



Note: Figure elaborated by the author.

As shown in Figure 4.2, the decision of *insulating* an EMB from political parties is key for electoral management because the adoption of certain institutional arrangements –i.e., ICMs– can have a reinforcing effect over the capacity of *de jure* independent electoral bureaucracies to move –or remain– into the *de facto* autonomous category, even when there is weak –or very recent– elites’ commitment towards democracy (this is the case of the first scenario in the bottom left of

insulated EMBs. It is important to note that while the EMBs in all three countries are *de jure* independent, only in Brazil and Peru the EMBs have managed to be recognized as *de facto* autonomous institutions. Furthermore, the adoption of ICMs does not imply adopting a partisan or a partisan mixed administrative scheme to control the EMB’s executive board. As in the case of Mexico, an EMB can be *de jure* independent, while including parties formally and informally at different administrative levels. The adoption of ICMs allows parties to build consensus, create effective communication channels between the EMB and the multiple actors competing for power, as well as to reach internal agreements contributing to guarantee the neutrality of the process.

Figure 4.2). This figure also shows that while the *insulation* or inclusion of ICMs is irrelevant in cases where there is a strong commitment towards democratic rule because EMBs can achieve *de facto* autonomy, regardless of their internal configuration (this is the case of the third and fourth scenarios of Figure 4.2). Lastly, in cases where elites are not fully committed to democratic rule institutional *insulation* negatively affects the capacity of EMBs to become *de facto* autonomous because the institution is more vulnerable of being informally coopted by external actors (this is the case of the second scenario in the bottom of Figure 4.2).¹¹⁷

The four outcomes in the bottom of Figure 4.2 show that there is a possible endogeneity problem in two cases. On one hand, cases where the elites' commitment is strong, and elites decide to adopt ICMs, do not allow to differentiate which of these two factors is causing *de facto* autonomy (the third scenario). On the other hand, cases where the elites' commitment is weak are problematic because despite a *de facto* autonomous EMB with ICMs may be useful, the electoral bureaucracy may still not get the country to free and fair elections. Ghana, in recent months has moved in that direction. The unilateral removal of the EMB's chairperson, Charlotte Osei, by President Akuffo-Ado in 2018 illustrates how an effective consociational arrangement, such as the IPAC, depend on the elites' willingness to cooperate.

The collapse of authoritarian regimes –along with the elites' willingness to respect electoral results in the long-run– in countries like Chile, Argentina, Brazil, for instance, exemplify the fourth scenario of Figure 4.2. The strong commitment towards democratic rule once the military

¹¹⁷ Within the cases I discuss in this chapter, Argentina, Chile, and Brazil, fall in the fourth scenario; South Africa, Benin and Colombia fall within the first scenario; and Uruguay falls within the third scenario. In the chapters six and seven, the cases of Ghana and Mexico would also fall within the first scenario, while the cases of Kenya and Venezuela would fall within the second scenario.

decided to withdraw from the public sphere facilitated the delegation to *insulated* (*de jure* independent) electoral bureaucracies that had a close interplay with either the executive or judicial branches. By increasing their levels of administrative capacity and bureaucratic professionalization, EMBs in these three countries created a virtuous cycle where the elites' predisposition to respect electoral rules allowed the *de jure* autonomous EMBs to build a positive reputation as *de facto* autonomous institutions in the long run.¹¹⁸

Although EMBs' *de facto* independence can be achieved through institutional *insulation*, this pathway has also facilitated the cooptation of EMBs by constraining the capacity of these institutions to become more transparent and accountable to the different political actors competing for power. This is especially the case for countries with strong executives, or where elites have a weak –or vanishing– commitment towards democracy, as happened in Venezuela once Chávez was democratically elected or in Kenya during the early years of the transition under the Moi and Kibaki administrations. Venezuela and Kenya exemplify the second scenario of Figure 4.2 (*de jure* autonomous EMBs that are insulated from parties and have not been able to become *de facto* independent). Both of these countries began holding elections under challenging conditions for electoral competition and, in both cases, *insulating* the EMB was clearly insufficient to guarantee the organization of credible elections. To the contrary, it had a counterproductive effect by

¹¹⁸ Cases like Argentina, Chile, and Brazil are examples of success stories of institutional insulation. In Chile, for instance, Pinochet's administration not only organized the 1988 national referendum but, more importantly, respected results that were unfavorable for the regime. This attitude facilitated the delegation process to a *de jure* independent –and insulated– EMB that, by increasing its administrative capacity and professionalizing its bureaucracy, would eventually become recognized as a *de facto* autonomous institution. Given the favorable conditions for democracy in these countries, any type of institutional configuration would have probably worked (perhaps even a governmental scheme of electoral administration) and, eventually, allowed the EMB to be recognized as a *de facto* electoral institution.

impeding the electoral bureaucracies to establish a robust internal system of checks and balances with the political elite in order to legitimize its administrative decisions.

In contrast, cases such as Benin, South Africa, Colombia, Mexico, or Ghana have followed a slightly different path. In these countries the political elite also created *de jure* independent EMBs as an attempt to legitimize elections during the transition phase by keeping competing parties represented within the EMB. The success of these electoral bureaucracies in achieving *de facto* independence over time, however, did not rely exclusively in the elites' commitment towards democracy. Rather, it came from the adoption of certain institutional arrangements, such as ICMs, that allowed EMBs to create an internal system of checks and balances under semi-competitive environments. Looking at the different circumstances under which these mechanisms were adopted in each country, the cases I present in this work show that the adoption of ICMs has contributed to increase the capacity of opposition parties to enforce formal rules and procedures.¹¹⁹

The cases of Benin, South Africa, Colombia, Mexico, or Ghana are examples of the first scenario of Figure 4.2 Under challenging conditions for democracy, elites in these countries decided to adopt ICMs that gradually allowed EMBs to build a positive reputation and affect the

¹¹⁹ ICMs, by themselves, generate spaces of transparency and accountability with political actors and civil society. In Benin or Colombia, for instance, the party system is more fragmented and unstable when compared to its regional counterparts but, through the adoption of formal ICMs based on the appointment of electoral commissioners in accordance to party quotas in the legislature, their EMBs have managed to organize credible elections. In the case of Benin, for instance, the Commission Electorale Nationale Autonome (CENA), along with Ghana's Electoral Commission, is recognized as one of the most *de facto* autonomous EMBs in Sub-Saharan Africa. When ICMs are set in place, however, the institutionalization of the party system aids in reinforcing the effectiveness of the check and balance system because parties have more administrative resources and organizational capacity to monitor each other during the different stages of the electoral process.

quality of elections.¹²⁰ In cases such as Mexico, for instance, the adoption of these internal consociational arrangements in the 1940s –significantly before the EMB became *de jure* independent, contributed in an unanticipated way to enforce an internal system of checks and balances once IFE became formally autonomous in the mid 1990s.

This type of institutional design has aided EMBs in third-wave countries to prevent being unilaterally influenced by strong presidents or the ruling party, facilitated the dialogue among parties, helped build consensus between the institution and the main actors competing for power, as well as aided EMBs to increase the levels of confidence in electoral management. A close look at many of these cases also reveals that the adoption of consociational institutional arrangements can be made at different moments of the democratization process (e.g., before, during, or after a transition has taken place). In some cases, it is harder to insulate the independent effect of ICMs on *de facto* autonomy because, on one hand, the adoption of these mechanisms requires a minimum commitment from the elite. On the other hand, the adoption of ICMs usually has a reinforcing effect on the capacity of EMBs to positively affect the quality of elections.

In those cases where ICMs have been adopted before the transition phase, and when there was little or no commitment of the elites towards democracy, it is easier to clarify how the adoption of these mechanisms has contributed to push democracy forward. The early adoption of ICMs within Mexico's *Comisión Federal Electoral* (CFE) in the 1940s, for instance, allowed

¹²⁰ The conditions under which the transition took place in countries such as South Africa, Benin, and Colombia, for instance, was characterized by a salient ethnic divide, the strong presence of the military in politics, or high levels of politicization. The early adoption of a consociational administrative scheme of electoral management (ICMs), instead of becoming insulated from external actors, gradually helped these countries to successfully organize elections by increasing of both citizens and the elites' trust in electoral management.

small opposition parties to become part of the EMB's executive board and would eventually influence the multi-level system of ICMs that was adopted years later by IFE. This internal "watchdog" administrative design was key for Mexico's EMB to build a positive reputation after the 1988 allegedly fraudulent presidential race.¹²¹

In other cases, however, the elites' commitment towards democracy is reflected in the formal inclusion of administrative arrangements promoting the adoption of ICMs during the transition phase. In these cases, the endogeneity problem is more evident because it is harder to separate the independent effect that ICMs have on the EMBs' *de facto* autonomy. That is, it is not clear if it was the elites' commitment towards democracy, or the adoption of ICMs, what allowed EMBs to develop a positive reputation. The elites' predisposition to adopt ICMs has created a virtuous reinforcing cycle contributing to the capacity of EMBs to organize credible elections in countries with challenging conditions for democracy. This has been the case of South Africa and Colombia. Although elites' in these countries could have opted to *insulate* the EMB, their decision to adopt ICMs reveals that there was a preference of adopting a consociational arrangement over insulation. In both of these countries, the elites' commitment towards democratic rule and the adoption of a robust system of checks and balances within the EMB contributed to guarantee the organization of free and fair elections.

The case of Uruguay is similar to South Africa and Colombia because it also shows how the adoption of a consociational arrangement during the transition phase has contributed to reinforce

¹²¹ As recognized by Estevez et. al., (2008), the capacity of Mexico's IFE to become *de facto* independent is related more to the adoption of an internal system of partisan checks, than to the degree to which the EMB is insulated from external political actors.

democracy.¹²² It is different because Uruguay is one of the most egalitarian and stable countries in the region. It exemplifies the third scenario in Figure 4.2 and, since the underlying conditions for democracy in this country are more similar to those observed in Western European democracies, it is the less useful case to rule out the endogeneity problem. This case is interesting, however, because despite the political elite could have adopted an *insulated* EMB, they opted for adopting a consociational electoral management scheme where political parties would be embedded at different administrative levels. The leading role played by political parties in this case shows how ICMs can have a reinforcing effect for the EMB's *de facto* autonomy and for the quality of elections.

Finally, there are other cases, such as Benin and Ghana, where ICMs have been adopted during the transition or democratic periods, but they are not simply a result of the elites' commitment towards supporting a more leveled electoral playing field. In these cases, the adoption of ICMs has also been affected by the internal leadership within EMBs, the external pressures coming from opposition parties, or the intervention of the judiciary to create mechanisms for reinforcing transparency, participation, and accountability, rather than a direct mandate coming from the executive or legislative branch. This was the case of Ghana, where the adoption of an informal ICM –the Inter-Party Advisory Committee (IPAC)– took place after an *insulated de jure* independent EMB had been created in the preamble to the country's transition to democracy. In

¹²² The favorable conditions for democracy in Uruguay would have made it possible to successfully adopt an insulated EMB from political parties as it happened in Chile or Argentina. Although the endogenous relationship between the *de facto* electoral independence and the quality of elections in this country is evident, the adoption of ICMs at different administrative levels has reinforced the capacity of the Corte Electoral to organize credible elections. In this particular case, the decision of the elite to adopt a partisan-mixed electoral bureaucracy responds to the country's longstanding tradition of consociational institutional arrangements that can be traced back to the Guerra Grande (Chasqueti and Buquet 2004).

the case of Benin, it was a ruling of the Supreme Court that confirmed the delegation to a *de jure* independent electoral bureaucracy the responsibility to manage elections and the legislature's decision to adopt a consociation scheme of electoral management.

In order to clarify if EMBs –and their internal institutional configuration– matter for the quality of elections in third-wave countries, above and beyond the influence of the elites' commitment to democracy, some of these cases are more useful than others. While the adoption of ICMs in some countries illustrates that electoral bureaucracies have been able to become *de facto* independent in spite of the elites' resistance for democratizing, others show that the adoption of consociational mechanisms is closely related to the elites' commitment towards democracy and that both of them play a reinforcing role for the organization of free and fair elections.

4.4.2 Party System Institutionalization (PSI)

In the case of party system institutionalization (PSI), the endogeneity problem is related to having a cofounding variable simultaneously explaining both EMBs' *de facto* autonomy and the quality of elections. That is, only those cases where the party system is highly institutionalized, elections will be free and fair, and *de jure* autonomous EMBs –regardless of their administrative design or level of institutional *insulation*– will more likely to be perceived as *de facto* autonomous institutions.¹²³ As in the case of the underlying conditions for democracy, this notion not only marginalizes the role that EMBs play for the quality of elections, but it also predetermines that

¹²³ While *de facto* independent EMBs are more likely to aid political parties interact in a more levelled playing field for party competition –helping parties by ensuring the compliance of formal rules– it is key to identify the different contexts in which EMBs operate. Especially, to identify what particular aspects of PSI can help ICMs work more effectively in order for EMBs to become *de facto* independent.

electoral bureaucracies in those countries with volatile or weakly institutionalized party systems will be unable to successfully organize credible elections.¹²⁴

Contrary to this logic, the *delegation* process in many third-wave countries shows that the institutionalization of political parties is not a necessary condition for *de jure* independent EMBs to become *de facto* autonomous. There are many examples illustrating how *de jure* independent EMBs in third-wave countries with highly fragmented and volatile party systems have managed to positively affect the quality of elections. Such is the case of Colombia's *Consejo Nacional Electoral* (CNE), Brazil's *Tribunal Superior Eleitoral* (TSE), Benin's *Commission Electorale Nationale Autonome* (CENA), or Peru's *Oficina Nacional de Procesos Electorales* (ONPE). As recognized by Coppedge (1998), these cases show that countries with changing or low levels of PSI have found a path to create *de facto* autonomous EMBs capable of organizing credible elections.¹²⁵

¹²⁴ Non-institutionalized party systems in third-wave countries are characterized by their high degree of fragmentation, by not having a national presence, and by their volatility between elections (e.g., their permanence is not guaranteed from one election to another). Parties are centered around the personalistic leadership of local elites that shift or realign into different electoral coalitions from one election to another. This type of partisan dynamic took place in Kenya after multi-party elections were introduced during the Moi era, and it also happened in Venezuela after the collapse of one of the most stable bipartisan systems in the region in 1989. In both of these cases, the absence of strong and stable parties demanding to be included within the electoral bureaucracy at the moment of transition, or during the EMBs' inception period, contributed to the configuration of insulated electoral institutions where the presence of parties –or their capacity to communicate or interact from within the electoral bureaucracy– was marginal. In both of these cases, despite creating *de jure* autonomous and formally insulated EMBs, electoral bureaucracies were not able to build a reputation as *de facto* autonomous institutions.

¹²⁵ In the case of Brazil's *Tribunal Superior Eleitoral* (TSE) and Peru's *Oficina Nacional de Procesos Electorales* (ONPE), the EMBs have adopted an insulated administrative scheme and have been able to build a positive reputation. Colombia's *Consejo Nacional Electoral* (CNE) and Benin's *Commission Electorale Nationale Autonome* (CENA) have also managed to become recognized as *de facto* autonomous EMBs, but they have adopted a consociational administrative scheme including ICMs at different administrative levels.

Although PSI is not a necessary condition for guaranteeing *de facto* independence, there is an endogenous reinforcing effect between PSI and ICMs. The adoption of these internal consociational mechanisms tend to be more effective when the party system is relatively institutionalized. On one hand, PSI allows the political elite to establish stable and stronger ties within the EMB and, on the other, it implies that political parties have more institutional resources to oversee key stages of the electoral process in the long run.¹²⁶

As recognized by Randall and Svåsand (2002), while there is considerable convergence on the need of *party institutionalization* for democracy, there is less clarity –and consistency– as to what institutionalization involves. In order for ICMs to work more effectively, two aspects of PSI are key: *pluralism* and *stability*.¹²⁷ These two attributes are relevant because in order to develop an

¹²⁶ Having ICMs within an EMB does not imply having political parties controlling administrative decisions or technical procedures, as described Mozaffar and Schedler's (2002, 16) power sharing mode. In the power-sharing model of electoral administration, opposition parties act as veto players alongside representatives from the ruling party. In this scheme, political parties appoint their own representatives and are in charge of making administrative and procedural decisions –as in Honduras or most of the Commonwealth Caribbean countries– or the legislature appoints representatives using a quota system –i.e., Venezuela before 1998 or El Salvador until 1993.

The partisan sharing mode has been discredited as a viable administrative scheme in most third-wave countries because granting the same actors competing for power the administrative control of these gatekeeping institutions (EMBs) tends to increase the levels of politicization, as it has happened in countries such as Colombia or the United States. Authors like Lehoucq (2002) and Eggers and Spirling (2014), for instance, argue that electoral corruption and misconduct are less likely to occur when elections are managed by formally independent electoral commissions or courts, instead of by party representatives or political parties represented in the legislature, because parties “cannot police themselves.” Although this logic prevails among practitioners and scholars interested in the electoral governance, it is important to distinguish between having political parties in charge taking administrative decisions within an EMB and “policing themselves” –e.g., having political parties in the legislative branch redrawing their own electoral districts, as happens in most U.S. states–, and having them embedded within the EMB so that they can participate, audit, and monitor each other at different administrative stages through both formal and informal ICMs.

¹²⁷ PSI is not a necessary condition for ICMs to be embedded within an EMB. ICMs, by themselves, generate the incentives for administrative processes to become more transparent and accountable not only to the political parties, but to citizens as well (Trelles et al., 2016). When the party system is both plural and

effective check and balance system –e.g., a formal or informal system of ICMs–, at least two actors are needed to establish ties with the EMB’s institutional stakeholders. Furthermore, there needs to be stable and foreseeable future in order for parties to be able to maintain these ties and their “watchdog” capacity over time.

The first aspect of PSI allowing ICMs to become more effective is *a plural party system*. Plurality implies that at least two parties will be able to compete for power in the electoral realm. As long as parties are not –in Satrori’s (1976) terms– extremely *atomized* and *disperse*, opposition parties will be able to enforce the check and balance system. Even in countries with extremely fragmented party systems, if opposition parties are able to coordinate under a unified leadership, even if it is temporary coalition, like the case of *La Mesa de Unidad Democrática* (MUD) in Venezuela or *National Super Alliance* (NASA) in Kenya, opposition can participate and play an enforcing role through ICMs if they are available. When the party system is extremely fragmented, and parties are not able to solve the collective action problem, it is less likely that they will be able to effectively enforce a “watchdog” system within the EMB. It is in these cases, following Hartlyn et al.’s logic, where the government or ruling party become more capable of coopting or manipulating the EMB.

The second aspect of PSI that allows ICMs to work more effectively is the *stability of the party system*. This allows parties to establish long-term ties with key institutional stakeholders within the EMB. With stability, organizations and procedures acquire value because political actors have clear and stable expectations about the behavior of other actors (Huntington 1968;

stable, however, ICMs can give the possibility to political actors competing for power to monitor each other and to verify that formal rules within the EMB are being respected.

Mainwaring 2014). According to the Mainwaring (2014, 336), an *institutionalized party system* is one in which “politicians, citizens, and organized groups develop expectation and behavior based in the premise that the fundamental contours and rules of party competition and behavior will *prevail into the foreseeable future*. In an institutionalized system, there is stability in who the main parties are and how they behave.” This is especially relevant for ICMs not only because elections are cyclic events, but also because electoral management involves multiple-phases that go beyond the day of the election. Stable parties ensure that ICMs will be enforced through the different stages and, once an election takes place, there will be continuity between parties and their formal – and informal– representatives within the EMB.¹²⁸

¹²⁸ For Mainwaring and Scully (1995), the institutionalization of the party system requires parties with an independent status of their own, parties that do not rely on a single personality or are subordinated to the ambitions of a few leaders. When electorally successful parties are only personalistic vehicles, which is the case in many third-wave countries, they become temporary structures that are likely to disappear between elections. To the contrary, parties with solid and stable organizations have a strong and permanent penetration in society. When parties become institutionalized, they have access to a stable source of financial resources (private, public or mixed); professionalized party bureaucracies; routinized procedures for selecting candidates; and, most importantly, an organizational presence and penetration that goes beyond a few capital cities. These aspects of the PSI are key for strengthening ICMs within EMBs because it allows parties not only to develop stronger partisan ties within EMBs, but also because it enables them to effectively enforce a “watchdog system” both nationally and regionally, as well as at different administrative levels within EMBs.

Electoral management takes place in a context of varying levels of electoral competition and party system institutionalization. Most countries that transitioned during the third –and fourth– wave of democratization have been holding elections uninterruptedly, but many are still far from becoming democratic (Schedler 2006; Levitsky and Way 2010). EMBs in regions like Latin America and Africa organize elections in competitive environments with stable and strong parties, but they also organize them in semi-competitive –or authoritarian– environments surrounded by unstable party systems (Lindberg 2009; Hicken and Kuhonata 2014; Mainwaring 2014). Compared to well-established Western democracies, the PSI in third-wave countries is usually lower, but it varies significantly within and across regions (Tucker and Brader 2001; Lupu and Stokes 2010; Dominguez et al. 2016). In Latin America, for example, Mexico, Costa Rica, and Uruguay have been able to maintain a relatively stable party system since they transitioned to democracy, but others that were considered highly “institutionalized” have collapsed –i.e., Venezuela– or have become quite unstable –i.e., Bolivia, Peru and Ecuador. Similarly, some Sub-Saharan African countries have managed to develop highly stable and nationally organized party

Cases such as Mexico and Ghana, which had relatively institutionalized parties at the moment of transition and when the EMB was created, were able to develop highly effective ICMs. Countries with less stable and more fragmented party systems, such as Colombia and Benin, show that PSI is not a necessary condition for ICMs to work or exist.¹²⁹ In contrast, the cases of Kenya, Venezuela, and Egypt, where there is a single dominant ruling party, but other parties within the system are highly fragmented and volatile, show that ICMs tend to be weaker. That is, in terms of ICMs' effectiveness, the level of institutional *insulation* in the latter set of countries has made it extremely difficult for their EMBs to include political parties as effective monitoring agents enforcing an internal system of checks and balances.¹³⁰

The plurality and stability of the party system, especially in semi-competitive environments, aids EMBs to channel external pressures and reinforce formal rules through ICMs because parties, compared to individuals, are more likely to engage and influence decisions within an EMB in order to guarantee the impartiality in the decision-making process. Parties also have a better organizational capacity to monitor institutional and administrative decisions, they are better positioned to receive information, especially the one that is technically complex, and communicate their concerns during the different phases of the electoral process. More importantly,

systems –i.e., Ghana, Botswana, or South Africa–, while many others have incredibly volatile, personalistic, and weakly institutionalized parties –i.e., Benin, Zambia, or Kenya (Riedl 2014).

¹²⁹ Recognizing that ICMs can also work in cases with more fragmented and volatile party systems does not imply that the plurality and stability of the party system do not reinforce the efficiency of ICMs. Following Carey and Hix (2001) terminology, there is “sweet spot” between plurality and stability, where ICMs can become more effective for EMBs to achieve, gain or retain their de facto autonomy.

¹³⁰ Similarly, in some countries with more stable party systems, such as Nicaragua or EL Salvador, where EMBs have also been insulated from external political forces, electoral bureaucracies have been accused of being unduly influenced by the dominant or ruling party.

institutionalized political parties are more capable of detecting fraud or raising a red flag whenever formal rules or procedures have been infringed.

In contrast, EMBs in countries where the party system is highly fragmented and unstable have more difficulties in adopting ICMs because there are no external political actors with whom to establish stable ties. When opposition parties are able to coordinate under a single leadership, like the *Mesa de Unidad Democrática* (MUD) in Venezuela or *National Super Alliance* (NASA) in Kenya, ICMs could still operate.¹³¹ Their effectiveness in terms of the attributes described above (plurality and stability), however, rely on the ability of these coalitions to solve collective action problems and survive in the long run. In the case of Venezuela, for instance, the MUD's leadership has constantly struggled to coordinate and retain the unity of the coalition in critical moments.¹³²

¹³¹ The Mesa de Unidad Democrática (MUD) in Venezuela was informally created in 2006. In 2008, it was formally registered and, historically, it has included up to 34 political parties. See: <http://elestimulo.com/blog/maduro-sera-reelecto-en-un-2018-miserable-el-escenario-mas-claro-hoy-en-venezuela/>; and https://es.wikipedia.org/wiki/Mesa_de_la_Unidad_Democr%C3%A1tica.

¹³² As I discuss in the following chapters, the case Venezuela illustrates how pre-Chávez EMB, the Consejo Supremo Electoral, despite its partisan composition, was able to organize credible elections under the Pacto de Puntofijo. After the collapse of the bipartisan system during the 1990s, along with the rise of a political outsider, it was very hard for opposition parties to coordinate and function, either formally or informally, as an effective check and balance system within the EMB. The newly created EMB, the Consejo Nacional Electoral (CNE), not only became completely insulated from external actors, but political parties were discredited in the eyes of both the elite and citizens. This partly explains why despite having one of the most de jure independent EMBs in the region, the CNE was never able to build a positive reputation. In a similar direction, the extreme fractionalization and volatility of the party system in Kenya and Egypt have made it difficult for the political elite to create an effective check and balance system within their respective electoral institutions.

In contrast to these cases, Ghana's Electoral Commission (EC) was created under a relatively stable two-party system –e.g., both NDC and NPP have their origins in the mid twentieth century. Although the EC ranks considerably lower in terms of bureaucratic professionalization and administrative capacity than its counterparts in Venezuela (CNE) or Kenya (IEBC), the stability of the party system, along with the elites' commitment to democracy in the long-run, allowed the institution to develop an effective informal system of ICMs –i.e., the IPAC, and its regional and local equivalents (RIPAC and DIPAC). This allowed the EMB, even during highly contested presidential elections, to effectively process external political pressures, reinforce its formal rules and procedures, communicate with all parties during critical moments of the

In their study of *–de jure–* electoral independence, Hartlyn and coauthors (2008) conclude that despite *electoral volatility* not having attained statistical significance in any of their models; there are strong reasons to believe that the quality of elections is associated with “party behavior, the willingness to commit fraud, and the capacity to detect it.” They also conclude that more work is needed to develop an improved measure of this key factor of party behavior affecting electoral quality. The discussion I present in the cases of this and subsequent chapters complements and extends previous research on electoral independence by showing that the capacity of competing parties to detect, report and prevent fraud, has positively reinforced the effectiveness of ICMs and created an endogenous cyclic effect on the quality of elections.

4.4.3 The Level of Bureaucratic Professionalization

As in the two previous cases, there is also an apparent endogenous relationship between the level of bureaucratic professionalization and *de facto* electoral autonomy. This relationship is problematic because if bureaucratic professionalization is a pre-existing condition for an EMB to be recognized as *de facto* autonomous, most third-wave countries would not be able to hold free and fair elections, especially when compared to the levels of professionalization observed in consolidated Western democracies. This notion also marginalizes the role that EMBs play for the

electoral process, and develop a solid reputation in the long run. Similarly, the relative stability of the party system in Mexico, along with the formal and informal check and balance systems developed within the EMB, has made it possible for IFE –now INE– to build a positive reputation as a *de facto* independent electoral institution shortly after its inception and to be recognized internationally as a role model.

quality of elections and it also conditions the organizations of successful elections to highly professionalized bureaucracies.

The role of bureaucratic professionalization, and the notion of “bureaucratic ethos” described in the work of authors such as Norris (2016) and Teorell (2017), is key for *de facto* independence. The more professionalized bureaucracies are, the more likely it is for formal rules and procedures to be respected, regardless of the institutional configuration of the EMB. A close look at the levels of bureaucratic professionalization across EMBs in Latin America and Africa, however, reveals that the level of bureaucratic development is not a necessary condition for electoral institutions to increase their levels of *de facto* autonomy. Many cases with limited administrative resources and relatively newly created bureaucracies, such as Ghana’s *Electoral Commission*, have been able to successfully organize credible elections. On the contrary, highly professionalized bureaucracies, such as Venezuela’s *Consejo Nacional Electoral* (CNE) have been insufficient to prevent the informal cooptation of electoral institutions.

Although Teorell (2017), in line with most of the studies of electoral governance in third-wave democracies, emphasizes the role of the “bureaucratic ethos” as a key element for electoral integrity, his argument of how multiparty elections –rather than candidate-centered elections– incentivizes fraudulent elections is insufficient to explain the patterns of electoral integrity among third-wave countries.¹³³ On one hand, most third-wave countries are still

¹³³ In his work, Teorell (2017) shows that the lack of professionalization of the Swedish bureaucracy in the Age of Liberty, along with the presence of partisan competition, led to higher levels of electoral fraud –e.g., a substantial increase in the number of electoral petitions filed– during the late eighteenth century. He claims that his findings could explain the rise and fall of election fraud in other established Western democracies, such as Britain and the United States.

struggling with bureaucratic professionalization. Compared to the levels of professionalization in well-established Western democracies, most countries in regions like Latin America and Sub-Saharan Africa (including the large economies), fall far behind. They still have managed, however, to successfully organize credible elections (Polga-Hecimovich and Trelles 2016). On the other hand, there is a significant variation in terms of party system institutionalization and electoral competitiveness across these regions. In many cases with candidate-centered elections and highly volatile and fragmented party systems, like Brazil, Benin, or Peru, elections have been successfully organized since these countries transitioned to democracy.

The cases of Ghana and Kenya, for instance, illustrate how countries with different levels of electoral bureaucratic and administrative capacity, as well as with substantially different levels of PSI, have had different outcomes –in terms of the quality of elections– than those that would be predicted by Teorell’s (2017) model. The case of Ghana has been traditionally a stable bipartisan system since the country transitioned to democracy in the early 1990s, where the two traditional political parties, the NDP and the NPP, have played predominant roles in national and local elections. In terms of the EMB’s bureaucratic and financial capacity, Ghana’s *Electoral Commission* (EC) falls behind Kenya’s *Independent Electoral and Boundaries Commission* (IEBC). In the case of Kenya, the party system is highly fragmented and both national and regional elections tend to be centered in candidates instead of traditional political parties.

In the former, the EMB was able to build a reputation as a *de facto* autonomous EMB and became a reference of electoral administration in the region. Once Ghana's *Electoral Commission* adopted an ICM, it began developing the bureaucratic ethos that had been missing. In contrast, the quality of elections in Kenya has recurrently been questioned by both national and international actors (in 2007, 2013, and 2017). The case of Venezuela's *Consejo Nacional Electoral* is another example where a highly capable and professionalized bureaucracy organized elections in a context where the party system was characterized by its volatility and fragmentation. The *de jure* autonomous and *insulated Consejo Nacional Electoral*, however, rapidly lost its *de facto* autonomy during the first Chávez administration and this has had a negative impact in the quality of elections.

Contrary to the findings of Teorell (2017) in Sweden, bureaucratic professionalization is an important component for *de facto* autonomy because it complements the enactment of formal rules and procedures. Political parties in third-wave countries, however, have played a key role in aiding EMBs that have adopted ICMs to increase their levels of *de facto* autonomy overtime. Their oversight and internal monitoring capacity have been crucial for these institutions to gain –or retain– their *de facto* independence over time. They have enabled the political elite to develop and maintain informal ties with EMB's "non-partisan" electoral commissioners and allow the creation of –formal and informal– self-enforced internal monitoring schemes (ICMs) within these institutions.¹³⁴

¹³⁴ In many cases, the monitoring role of opposition parties has become key for securing the impartiality of the different administrative stages of the electoral process. Parties are the main actors interested in guaranteeing that votes are counted correctly (alignment of incentives); they enforce accountability

4.5 CONCLUDING REMARKS

The Medium-N discussion presented in this chapter shows that EMBs in third-wave countries facing unfavorable conditions for democracy, lacking a “bureaucratic ethos,” or with weakly institutionalized party systems, have an alternative path –to institutional *insulation*– for building a positive reputation. That is, the internal organizational dynamics of EMBs, even when they lack highly professionalized bureaucracies, can still help electoral institutions acquiring higher levels of *de facto* autonomy.

The gatekeeping nature of EMBs make these institutions different from most bureaucratic agencies. Formal –*de jure*– electoral independence requires the abdication of the principal –i.e., the ruling elite in power– to secure its own interest and to concede to a third party the capacity to rule over a key administrative procedure to access power. This first difference refers to the

mechanisms within the EMB (capacity to oversight); and they are also able to enforce the impartiality of policy implementation process (specialized policy-oriented organizations).

The role that political parties play during Election Day, for instance, illustrates how party representatives – or “poll watchers”– assigned to every polling station help ensure that formal rules and procedures are followed in most third-wave countries. In order for this monitoring scheme to work, major political parties need to have the right to witness all administrative stages of the voting process, but they also need to have the sufficient administrative capacity and resources to deploy party watchdogs across all polling stations across the country. That is, in those countries where political parties are more institutionalized, oversight mechanisms tend to be more effective because parties have access to financial resources (administrative capacity); they have a wider territorial presence across the country (coverage); and accumulate experience over time (professionalization).

The same logic applies to the role political parties within EMBs. In highly complex administrative processes like voter registration or electoral boundary delimitation (redistricting), party representatives are more likely to become more effective watchdogs when they are able to accumulate experience or have access to training and administrative resources (Trelles et al., 2015 and 2016). Compared to Mozaffar and Schedler’s (2002) power sharing model of electoral administration, this perspective is different because it does not assume that political parties should become institutional decision-makers, implying a lesser degree of formal independence; rather, it assumes that when parties are more institutionalized, ICMs become more effective mechanisms because parties are better positioned to enforce formal rules within the EMB. When this happens, *de jure* autonomous electoral institutions are more likely to gain –or retain– higher levels of *de facto* autonomy over time.

capacity of EMBs to control access to power. These institutions are not only policy-oriented bureaucracies in charge of managing and organizing elections, they are also gatekeeping institutions regulating the same actors that originally *delegated* control to them and legitimizing access to power.¹³⁵

That is, unlike other independent or governmental policy-oriented agencies, the *principal* – the ruling party or the legislature – does not *delegate* authority to an EMB in order to control policy outcomes, such as electoral results, or the bureaucracy itself (the internal decision-making process within an EMB). Rather, *delegation* takes place to create a self-constraining mechanism that ensures impartiality in electoral management. In principle, *delegation* takes place as a consequence of the political elites' commitment to guarantee peaceful political alternations in the long run.¹³⁶

Compared to other independent bureaucratic agencies, such as the judiciary or central banks, electoral bureaucracies play an endogenous –virtuous reinforcing– role allowing the political elite to access or endure in power. In electoral management, the main motivation of the *principal* is to set up a framework that constrains and oversees its own actions, not to ensure its own interest –e.g., getting reelected or shifting a policy's *status quo*. That is, *delegation* in electoral management becomes a self-constraining mechanism allowing political actors to signal their long-term commitment to democracy. Through the creation of a *de jure* independent

¹³⁵ The absence of *de jure* independence in Western democracies reveals that in countries where formal rules are respected, elites are not forced to delegate this responsibility to a *de jure* independent bureaucracy in order to build confidence in the political process or legitimize themselves through elections. This has certainly not been the case in many third-wave countries, where domestic politicization, along with the high levels of corruption and low levels of trust in public institutions, forced elites to delegate electoral management to *de jure* autonomous electoral bureaucracies.

¹³⁶ As I discussed in the previous chapter, the creation of a *de jure* independent EMBs –especially in semi-competitive or electoral authoritarian environments– is insufficient to guarantee the organization of credible elections.

bureaucracies, elites reveal to each other their willingness to share power by allowing a third party –the independent bureaucracy– to manage the different stages of the electoral process.

While the creation of *de jure* independent EMBs in regions like Latin America and Africa has been endogenous to the process of democratization, the development of *de facto* electoral autonomy has not been necessarily so. The adoption of *de jure* autonomous EMBs has been insufficient to guarantee the organization of credible elections. In order for the *delegation* process to become an effective self-constraining mechanism ensuring the impartiality in electoral management, electoral bureaucracies must become both *de jure* and *de facto* autonomous.¹³⁷

While in countries like Chile, Argentina, Brazil, and Uruguay the elites' commitment towards democracy is clearly endogenous with the levels of *de facto* autonomy, in many other cases with harsher conditions the adoption of certain institutional arrangements –i.e., ICMs– has aided electoral bureaucracies to become *de facto* autonomous. The cases of South Africa, Benin, and Colombia exemplify how the adoption of ICMs is not always an endogenous route to develop higher levels of *de facto* autonomy. The EMBs in these countries, despite the unfavorable conditions for democracy at the moment transition took place, were able to build a positive reputation through the adoption of these consociational institutional arrangements. Once in place, these internal mechanisms do create a virtuous reinforcing cycle with the quality of elections over

¹³⁷ As recognized by authors like Norris (2015 and 2016), the willingness of the political elite to compromise to democracy at the moment of an EMB's inception, the varying power-sharing conditions in executive-legislative relations, the bargaining capacity of opposition parties, as well as the level of bureaucratic professionalization at the moment of the EMB's creation, are all key factors affecting the delegation process and EMBs' administrative configuration. Contrary to the preconception of *de jure* independence that prevails among most practitioners and scholars of electoral governance, however, I contend that EMBs' institutional insulation from external political actors across third-wave countries can result counterproductive for the capacity of these institutions to become *de facto* independent.

time, allowing the main stakeholders competing for power –i.e., the political elite– to check themselves during the complex decision-making process surrounding key administrative stages of electoral organization.

In the next chapter, I offer a definition and classification of *internal consultative mechanisms* and briefly describe the different types of administrative arrangements that EMBs have adopted to include these mechanisms, as well as the different effect ICMs have for *de facto* electoral autonomy.

5.0 INTERNAL CONSULTATIVE MECHANISMS (ICMS) AND *DE FACTO* INDEPENDENCE

5.1 INTRODUCTION

In this chapter I explain the varying levels of *de facto* electoral autonomy in third-wave countries. First, I offer a definition of internal consultative mechanisms (ICMs) and describe the different types of ICMs that can be embedded within EMBs. I explain how ICMs have been used to shape and constrain formal rules, as well as their causal relationship with higher levels of *de facto* electoral autonomy. Second, I discuss some of the most relevant variables –i.e., legal independence, appointment mechanisms, administrative capacity and bureaucratic independence– that have been used in the electoral governance literature to explain EMBs’ autonomy in third-wave countries. Although most of these dimensions have been necessary for increasing electoral institution’s level of autonomy, they have been insufficient to guarantee EMBs’ *de facto* independence.

In the third subsection, I explain why I selected four different cases in Latin America and Africa and, in the following subsection, I use Mill’s (1843) *comparative method of difference* to contrast alternative explanations that have been used in the electoral governance literature to explain the EMBs’ level of autonomy with ICMs. Lastly, I explain how *process tracing* can be used to analyze the different historical circumstances under which EMBs were created and

evolved over time, as well as the causal relationship between ICMs and *de facto* electoral autonomy.

Overall, in this chapter I argue that conceptualizing and including ICMs in the electoral governance literature is an important theoretical refinement because it allows having a better understanding of how these internal mechanisms work and are causally linked to *de facto* electoral autonomy. It also shows that the adoption of ICMs are an alternative path to institutional insulation in order to increase the levels of EMBs' *de facto* independence in third-wave countries holding elections in transition periods or under semi-competitive environments.

It is through ICMs that the political elite is able to establish stable ties with key institutional stakeholders –i.e., electoral commissioners– affecting the decision-making process; create a dynamic of vetoes within an EMB's executive board; build both formal –and informal– communication channels with key institutional actors; reach consensus for changing the *status quo*; increase the levels of transparency and accountability; and create spaces allowing parties to participate, monitor, and validate decisions and procedures within the EMB.

On the contrary, the absence of ICMs explains why so many EMBs in third-wave countries, despite having a robust set of formal rules guaranteeing their *de jure* independence, have not been able to build a positive reputation. Particularly, I recognize that formal rules –i.e., legal independence, appointment mechanisms, administrative capacity and bureaucratic professionalization– are crucial dimensions for building credibility around elections in third-wave democracies. In many cases, however, institutional insulation has become counterproductive for guaranteeing EMBs' *de facto* independence.

That is, under certain circumstances, institutional insulation negatively affects the capacity of electoral institutions to become more transparent and accountable to political actors. As a consequence, insulation has made these institutions more vulnerable to external political manipulation, especially in transitioning countries or in those holding elections under semi-competitive environments. The role of party representatives –or poll watchers– during election day, for instance, illustrates this logic. In most consolidated democracies, governmental polling clerks can manage elections within polling stations without risking the credibility of the process. In most third-wave countries, however, the presence of party agents within each polling station during the election day has become essential for holding free and fair elections.

In the following subsections I explain why the inclusion of ICMs facilitates political actors to monitor each other, promotes more transparency, and incentivizes impartiality of the EMBs' administrative decision-making process. I argue that the adoption of ICMs can be an effective mechanism for increasing EMBs' *de facto* independence in third-wave countries. This chapter builds on previous theories of delegation, institutional independence, informal institutions, and contributes to previous work on electoral governance by offering an alternative way to think of how these mechanisms aid EMBs to increase their levels of *de facto* electoral independence.

5.2 EXPLAINING *DE FACTO* AUTONOMY IN THE THIRD-WAVE COUNTRIES

5.2.1 Internal Consultative Mechanisms (ICMs)

Internal consultative mechanisms (ICMs) are structures of mutual restraint –check and balance systems– that channel external pressures through the interaction between political actors and key institutional players –i.e., electoral commissioners– in such a way that no single actor (or

group of actors) representing a specific set of interests is able to unilaterally override others. Along with formal rules granting *de jure* autonomy to EMBs, ICMs are key for explaining the varying degrees of *de facto* electoral autonomy across third-wave countries. It is through these mechanisms that the main political stakeholders –i.e., political parties– ventilate their concerns, reach agreements, obtain information, audit the EMB’s decision-making process, incentivize transparency and accountability within the EMB, and monitor each other during the different administrative stages of the election.¹³⁸

This type of mechanisms can be embedded in a wide variety of organizational designs. Depending on the context of each institution, ICMs allow actors within the EMB to develop ties with external political actors and internally channel political pressures. When they are set in place, all parties within the EMB have the capacity to access and share key information during the different stages of the electoral process, have direct –formal or informal– communication channels with the EMB’s executive board, as well as the capacity to raise a red flag when formal rules have been infringed. ICMs embedded within EMBs have allowed these institutions in countries transitioning to democracy to build a positive reputation over time. Its absence, on the contrary,

¹³⁸ Although the notion of checks and balances to gain institutional independence has been extensively discussed in the economics and political science literature (see Miller 2005), in the case of electoral management authors like Schedler (2000) and Hartlyn et al. (2008) focus on the differences between the models of professional autonomy and balanced partisan representation. They assume, however, that “non-partisan” electoral commissioners conduct themselves with “autonomy and impartiality” or that “non-partisan” EMBs are more likely to become more autonomous institutions. Estévez et al. (2008) revise this assumption and provide evidence showing that electoral commissioners in EMBs with “non-partisan” executive boards, maintain strong ties during their tenure with those parties that originally endorsed them through the appointment process. This work extends and refines this theoretical contribution by adding a cross-national and cross-regional perspective.

has hindered EMBs' capacity to endorse formal rules –despite being *de jure* autonomous– and facilitated the informal cooptation of these institutions by strong executives.

ICMs require the permanent presence of external political actors –i.e., political party representatives– within the EMB's different administrative levels. Since EMBs are in charge of implementing a wide variety of administrative, bureaucratic and policy-oriented processes before voters' head out to the polls, party representative need to have stable communication channels with the EMB. The effectiveness of ICMs relies on the extent to which external political actors are able to participate in these monitoring systems, as well as in their capacity to reinforce these surveillance mechanisms within the institution (i.e., party agents having the sufficient training, resources and expertise to perform their role as party watchdogs).

In a similar way, ICMs can be either *formally* or *informally* embedded within EMBs. They are not mutually exclusive and when both types –*formal* and *informal*– of mechanisms are present within an EMB, they reinforce each other and have a stronger effect on *de facto* independence. Some EMBs, for instance, have adopted a dual system of both formal and informal consultative mechanisms, where political parties are formally represented –with the right to speak, but not to vote– within the EMB's executive board, and formally entrenched within the different administrative levels of the organization.

Formal ICMs allow political parties to formally –and publicly– ventilate their concerns within the EMB's executive board at the national and regional levels. They allow political actors to directly oversee key administrative decisions –e.g., through the EMB's committee system– during the different stages of the electoral cycle. Additionally, ICMs allow political parties to monitor and participate in key policy implementation processes –i.e., voters' registration, electoral

boundary delimitation (redistricting), access to media, or party financing— that require bureaucratic expertise and, in most cases, their permanent involvement.

In the absence of *formal* structures of mutual restraint, EMBs can alternatively adopt *informal* ICMs to establish channels of communication with external political actors. As recognized in the institutional literature, informal institutions operate under a parallel set of rules and procedures enforced within or outside officially sanctioned channels allowing political actors to interact at different levels (Helmke and Levitsky 2010). One way to establish an *informal* system of checks and balances is through the appointment of key decision-making agents —i.e., electoral commissioners— that are ideologically aligned with the main political factions represented in the legislature (Segal, Cameron, and Cover 1992; Allison 1996; Barrow, Zuk, and Gryski 1996; Goldman 1997; Moraski and Shipan 1999). Another way in which EMBs have adopted *informal* ICMs, especially in those cases where the electoral bureaucracy has been insulated from external actors, has been through the creation of informal spaces of dialogue and interaction between the main political and electoral officials.

Table 5.1 classifies the eight different types of Internal Consultative Mechanisms (ICMs) and groups them in two different categories: *formal* and *informal*. These ICMs are not mutually exclusive and its simultaneous presence reinforces the impact they have on an EMBs *de facto* autonomy. In the third column, I briefly describe how each one of these ICMs is causally related with EMBs' level of *de facto* autonomy. Although there is a wide variation in the ways in which

these ICMs are embedded within EMBs, their efficiency depends on the extent to which political actors are able to interact within the electoral bureaucracy.¹³⁹

Table 5. 1 Internal Consultative Mechanisms (ICMs) and De Facto Autonomy

Formal vs. Informal ICMs	Type of ICM	Causal Effect of ICMs on De Facto Autonomy
Formal	Executive Level	Allows the presence and inclusion of external actors in executive-level deliberations (e.g., formal representation of parties within the EMB's executive board).*
	Administrative Level	Guarantees external actors access to information / inclusion in administrative decision making (e.g., representation of parties within the EMB's committee system).
	Bureaucratic Level	Enables external actors to audit and verify the compliance of formal rules and bureaucratic procedures (e.g., parties directly monitoring the voter registration process).
	Policy Level	Allows external actors to supervise and participate during policy implementation procedures (e.g., partisan interaction during electoral boundary delimitation exercises).
	Street Level	Enables external actors to monitor the compliance of formal procedures during election day (e.g., presence of party agents within polling stations).**
	External Consultation Committee	Promotes consensus building, creates communication channels and increases transparency (e.g., formal agreement to inform and include parties in key administrative deliberations).***
Informal	Plurality of partisan ties within the EMB's Executive Board	Prevents unilateral decision making and creates incentives to build consensus among commissioners with different ideological alignments (e.g., informal partisan ties of "non-partisan" members of the EMB's executive board).
	External Consultation Committee	Promotes consensus building, creates communication channels and increases transparency (e.g., informal agreement to inform and include parties in key administrative deliberations).****

Note: Table elaborated by the author.

*Executive-level ICMs include mixed-partisan configured EMBs' executive boards, as well as "non-partisan" boards where parties are formally represented with the right to speak, but not to vote.

** Street-level ICMs allow parties to formally register representatives (agents) to be present within polling stations supervising the voting process during the day of the election. This mechanism, however, becomes more effective when parties are sufficiently institutionalized in order to have the organizational means, as well as the territorial presence, to monitor the different phases of the voting procedures across all regions. Out of the five formal ICMs enlisted here, *street-level* ICMs are more related to the capacity of parties to monitor the compliance of procedures during the election day, than to the internal workings of the EMB. The effectiveness of this ICM also requires that party agents are formally represented within the polling station for monitoring, but not for administrative purposes (e.g., working as polling officials). In the pre-1999 Venezuela, for instance, the appointment of partisan polling officials negatively affected the EMB's perception as a *de facto* autonomous EMB.

*** This formal type of ICM allows parties to establish a two-way interaction with the EMB. Depending on each country, it might be used differently to serve either a single or the multiple causal links described here.

**** This informal type of ICM allows parties to establish a two-way interaction with the EMB. Depending on each country, it might be used differently to serve either a single or the multiple causal links described here.

¹³⁹ ICMs, even if they are only formally established within the EMB, become more effective when the main political actors have the institutional capacity to function and interact within the institution. That is, although ICMs do not necessarily require an institutionalized party system to work (as in the case of Benin), an internal system of checks and balances is more likely to work effectively when parties are in a better position to internally enforce formal rules and procedures that guarantee impartiality.

The first six *formal* ICMs are recognized either in the constitutional framework or secondary statutes regulating elections. Except for the *external consultation committees*, which have been adopted in EMBs that have been insulated from external political actors (e.g., Kenya, post-2010; or South Africa), most formal ICMs are usually present in those EMBs with institutional designs favorable to the presence of parties within the electoral bureaucracies (Mexico, post-1990; Uruguay; Venezuela, pre-1999; Benin; or Colombia).¹⁴⁰ The other two types of *informal* ICMs are not part of the legal framework, but are equally relevant for *de facto* autonomy. They are usually adopted by EMBs that are formally independent, but where the EMB and the political elite have reached an agreement to find alternative ways to communicate. The first one refers to the informal ties that “non-partisan” electoral commissioners keep with the political parties that endorsed their appointment and, the second one, refers to the informal space of interaction that is created by an EMB to internally channel political pressures and communicate with political parties in the absence of formal mechanisms.

¹⁴⁰ It is important to differentiate the presence of formal and informal ICMs within an EMB from the partisan configuration of an EMB. The latter is a representation of the former, but not the other way around. Mexico, for instance, has a *de jure* independent –“non-partisan”– EMB, but still has adopted both formal and informal ICMs and parties play a key role within different administrative levels of the EMB. According to the partisan classification of EMBs adopted by IDEA’s Ace Electoral Knowledge Network, “Electoral Management Bodies (EMBs) can legitimately be constituted as “non-partisan”, multi-partisan, or as a mixture of both.”

According to this threefold classification of *de jure* independent EMBs, the type of institutional design determines the extent to which political parties and candidates are involved. In “non-partisan EMBs,” for instance, political parties and candidates have no representation. The persons on the board are there in their capacity as election administrators, trusted public figures, election experts, or other professionals seen as impartial and independent of political powers. “Multi-partisan EMBs,” in contrast, are usually formed exclusively of political party representatives. “Partisan-mixed EMBs” has electoral commissioners that are partly drawn from independent experts (i.e., technocrats, judges, academics, or career public servants) and partly from appointments by political parties. This may merge advantages from both models, producing even-handed bodies that have both political parties buy-in and transparency in operations.

The first type of formal ICM, the one embedded at the *executive level* of the EMB, allows the political elite to be formally represented at the highest administrative instance where decisions are made. This type of ICM serves as a two-way formal *communication* channel. Party representatives are able to discuss, question, and communicate their position regarding issues presented by the EMB and they can also bring to the executive board's attention issues that parties consider important discussing.¹⁴¹ Through this type of ICM political parties are also formally *informed* about every issue that is discussed within an EMB's *executive board* before they are voted. Similarly, local and district level *executive* ICMs allow political parties to directly *monitor* most preparatory activities affecting the organization of elections and deal with operational and logistical aspects of the election at the local level.¹⁴² Overall, *Executive level* ICMs have positively affected the EMB's *de facto* autonomy because all executive level decisions are closely monitored by political parties. Compared to EMBs that are insulated from political parties, such as Venezuela's *Consejo Nacional Electoral*, this type of ICM guarantees political parties' direct interaction with electoral commissioners through formal channels, promoting *transparency*, *accountability* and *consensus building* at the EMB's executive level.

¹⁴¹ For instance, if a party representative has detected an irregularity in an administrative or bureaucratic procedure or wants to point out an undue advantage of an adversary during any phase of the electoral process, this formal ICM allows them to bring this issue to the attention of the board. This ICM becomes even more effective in those cases where the EMB's sessions are public.

¹⁴² The main responsibilities of regional (e.g., local and district level) councils may include: the resolution of disputes that have been presented within the respective executive decision-making administrative body; register national electoral observers; register party representatives at the polling stations; establish the total number and location of polling stations across the country; implement the randomly selection process of the polling station officials; oversee the activities of officials representing the main bureaucratic areas of the EMB during the electoral process; or oversee the enactment of procedures of the respective local and district level bureaucracy.

A second type of ICM is the one embedded at the *administrative level* of the EMB (e.g., the *committee system*). This mechanism can be conceived as a subtype of the *executive level* ICM because it is the institutional mechanism where the vast majority of administrative decisions are made before they are voted by an EMB's executive board. The EMB's committee system is the administrative instance through which the *executive board* is informed about specific issues or receives resolution projects that have been previously validated by a technical area and have been ventilated with party representatives.¹⁴³ The presence and participation of political parties in this instance is key because it gives them access to decisions and agreements that are being made in the backstage of the EMB's executive board. The presence of parties in *administrative level* ICMs impacts positively *de facto* autonomy because it serves as mechanism to *legitimize* and *build consensus* surrounding an administrative decision (at a more detailed –micro– administrative level).¹⁴⁴ In most cases, concerns and suggestions formulated by political parties are closely considered and evaluated by the committee, having a positive impact on improving reports and resolutions voted in the EMB's executive board.

¹⁴³ The number and size of committees varies significantly among EMBs. Most EMBs, however, has two types of committees, those that are permanent and the temporary ones. The former usually include the main administrative of the institution, such as electoral training and civic education, electoral organization, party financing and political parties, electoral civil service, federal registry of voters, and complaints. The latter are temporary commissions that are created for a specific purpose, such as a committee formed to establish the internal statutes of EMB or to implement a specific process, such as boundary delimitation. As in the executive level, political parties are formally represented within the committee system. The right to vote is usually reserved for those electoral commissioners that are part of the committee (which varies between 3 to 5 commissioners) and is presided over by one of them. The executive director of one of the main administrative areas usually works as the technical secretary of the committee. Party representatives have the right to speak, but not to vote.

¹⁴⁴ In order for parties to be able to participate at this level, they require fully staffed offices within the EMB where advisors can build-up experience and advice each party representative on administrative issues.

The third type of ICMs are embedded at the *bureaucratic level* of the EMB. These ICMs are different from the *executive* and *administrative* level ones because they allow political parties to be embedded within operational bureaucratic activities within the EMB. This type of ICM positively affect *de facto* autonomy because it serves mainly as a *monitoring/verification* mechanism set in place for ensuring the compliance of formal rules and procedures. The presence of parties at this level serves to *validate* and promote *transparency* around key bureaucratic procedures, such as updating, auditing and verifying the national registry of voters, that have become a common – standardized– practice within the EMB.¹⁴⁵ Through this type of *bureaucratic* ICM, political parties are able to *collaborate* with the EMB by *formulating observations* and detecting irregularities – improving the consistency– in the registry of voters.

The fourth type of ICMs are those embedded at the *policy level* (e.g., technical committees). Similar to *bureaucratic* level ICMs, these consultative mechanisms serve for monitoring highly complex technical policy procedures that require the advice of external experts.

¹⁴⁵ In Mexico, for instance, the National Surveillance Commission (Comisión Nacional de Vigilancia, CNV) and its local level equivalents, the Local and District Level Commissions (Comisiones Locales de Vigilancia) for instance, were formed to monitor and validate the methodologies and procedures used by the EMB to enroll, change of addresses, and update the national registry of voters (el padrón electoral) and the voters' list (el listado nominal), as well as the procedures for issuing voting cards in Mexico and abroad. The CNV is presided over by the Executive Director of the Federal Registry of Voters a representative from each political party registered at the national level (and a substitute), a member of the electoral civil service specialized in the registration of voters, a representative from the census bureau (Instituto Nacional de Estadística, Geografía e Informática), See: Article 165 of Código Federal de Instituciones y Procedimientos Electorales and Reglamento Interior del Instituto Federal Electoral. México. 2006. Also see: <https://www.ine.mx/atribuciones-comision-nacional-vigilancia/>. Having parties participate at this level have helped the EMB creating an extremely reliable tool and one of the most updated and complete registers around the globe (Rosenberg and Chen 2009; Sonnlentier et al., 2012; Woldenberg 2012). Mexico is one of the few countries in the world that despite having an individual incentivized registration, it has one of the highest registration rates. All of the countries in which the government takes an active role in registering voters have much higher voter registration rates. For example, Canada's federal voter roll includes 93% of eligible voters. France and British Columbia have voter rolls that include 90% of eligible voters. Australia, Great Britain, and Mexico have registration rates between 92 and 96% (Rosenberg and Chen 2009).

Among the most common technical advisory boards are those created *to audit and validate* the national registry of voters, those created *to design* the methodologies and procedures for displaying electoral results during the election day, such as the quick count and the preliminary electoral results program, and those created to *carry out* a technically complex process, such as renewing the electoral geography.¹⁴⁶ Although these advisory boards are usually formed exclusively of external experts with an academic background specializing in specific fields (i.e., geography, statistics, mathematics, demography, anthropology), party representatives can *interact* with these advisory boards by formulating observations at different stages of the policy implementation process. This type of ICM positively affects *de facto* autonomy because it allows political parties to *supervise* and *validate* that the work of external experts is following formal procedures and it *guarantees neutrality*.

The fifth type of ICM, and perhaps the most common across EMBs around the globe, is the one embedded at the *street level* (e.g., *party agents at the polling station level*). That is, this is where political parties are able to directly monitor the electoral process during the day of the election. Through this type of ICM, parties are able to enforce procedures related to electoral organization (the proper installation of each polling station, as well as their opening and their closing) and directly observe the voting and counting processes. This ICM is widely accepted and it has become a best practice recognized by international organizations performing electoral observation, such as the Organization of American States (OAS) and the European Union (EU), in

¹⁴⁶ The nature, size and duration of these technical advisory boards vary significantly across countries. While most technical committees are created on a temporary basis, many of them are created six to twenty-four months prior to the day of the election (e.g., technical committees for auditing the voters' registry or renewing the electoral geography).

third-wave countries (Munck 2007). This type of ICM has a positive effect on the EMB's *de facto* electoral autonomy because it allows party representatives (also known as *poll watchers* or *designated party agents*) to *supervise, monitor, and validate* that all formal procedures have been followed at the polling station level (from the installment to the closing of the polling station).¹⁴⁷

The sixth type of formal ICM, the *external consultation committees*, has been adopted usually by EMBs that have been insulated from external political actors. This type of formal ICM

¹⁴⁷ In many countries, party representatives sign a voting record sheet (*acta de escrutinio y cómputo*) in each polling station and they are given a copy that helps them verify that results are not altered during the transmission of results or before the final counting takes place. In some countries, parties have the right to formulate observations. These agents are key for supervising that all formal rules and procedures are respected during the election. In most countries, party agents supervise that polling stations across the country are properly installed; that electoral material is distributed on time and that voting centers open and close on time; they help guaranteeing that voting procedures are conducted appropriately and, perhaps most importantly, ensuring that votes are counted correctly, results are properly transmitted, and that all electoral material is properly stored and secured.

According to Francisco Guerrero, Secretary for Strengthening Democracy of the Organization of American States, this mechanism varies from country to country, but in most Latin American and Caribbean countries, party agents play a key monitoring role and significantly contribute to the credibility of the process. From his perspective, “if parties do not watch each other, no else can. They are not only the main interested actors in supervising that votes are counted, but also the only capable organizations of coordinating such a massive oversight exercise during the day of the election. In most cases, party representatives from diverse political factions are present before the opening of every polling station, during the counting process, as well as during the closing of the polling station or voting centre. Interview conducted by the author with Francisco Guerrero, Secretary for Strengthening Democracy of the Organization of American States (OAS). Washington D.C., Spring 2016.

According to Gerardo de Icaza, Director of the Department of Electoral Cooperation and Observation (DECO) of the OAS, in addition to the formal role of party representatives during the election, they also play an equally important informal role within polling stations. Party agents are key, especially in contested elections, because they are able to keep track of who voted. In many cases, party agents are aware of which members of their community came out to vote or if unfamiliar voters are showing up. Party agents also are able to verify that voters appear on the list of registered voters, inform their regional coordinators about any irregularity, verify that no suspicious behavior takes place within the polling station or the voting center, and communicate results as soon as they become available in order for parties to supervise the transmission process and the validity of results. In many Caribbean countries, for instance, the information provided by party agents is used by political parties to informally keep track of results and establish a parallel counting system to the one that has been formally adopted by the EMB. That is, party agents do not only monitor each other during the election day but they also become a check that audits and monitors the performance and impartiality of the electoral authorities. Interview conducted by the author with Gerardo de Icaza, Director of the DECO of the OAS. Washington D.C., Spring 2016.

has been adopted to create an alternative channel of communication between political parties and the EMB.¹⁴⁸ In many cases, this type of formal ICM has been used as a conflict resolution mechanism, for parties to interact with electoral officials, and as monitoring mechanism allowing parties to participate in administrative decisions. This type of ICM is positively associated to *de facto* autonomy because it increases the levels of communication and transparency, and because it facilitates parties to build consensus over key administrative decisions. In South Africa, for instance, this ICM is represented through the *Party Liaison Committee* (PLC) and, in Kenya, it is the Political-Parties Liaison Committee (PPLC). Depending on the legal framework and political environment in each country, EMBs allows parties to interact at different levels and with different responsibilities. In contrast to the South African PLC, which has been proven to be a highly effective ICM, the role of its Kenyan counterpart –the PPLC– has been extremely limited. More than an accountability of conflict resolution mechanism, it has served more as a top-down information mechanism for the EMB to communicate with parties.

Finally, a different type of ICMs embedded within EMBs are those that have been *informally* established as a mean to set an alternative system of checks and balances. There are two types of informal ICMs, those that are set through the informal ties that “non-partisan” electoral commissioners keep with the political parties that endorsed their appointment and those that are created through an informal space of interaction to improve the communication between political parties and the EMB. The first type of informal ICM allows the political elite indirectly set a

¹⁴⁸ According to Clide (2015), “these committees were formed in countries such as the Democratic Republic of the Congo, Ghana, Tanzania, Lesotho, Namibia, Zambia, Zimbabwe, Kenya and Mali with the aim of forming communication channels with their respective electoral management bodies and Political parties before, during and after the elections which they may contest.”

system of checks within an EMB's executive board. Following the logic of authors like Tsebelis (2002), this informal structure of mutual restraint allows parties to create a dynamic of vetoes within the EMB; build informal information channels with key institutional actors; establish a mechanism where the agreement of the majority is required for changing the *status quo*; and understand how the number and location of key institutional stakeholders –i.e., electoral commissioners– affects the impartiality of the decision making process and policy outcomes.

In Latin America, for instance, it is not uncommon for the political elite to establish an *informal* connection with the EMBs' main institutional stakeholders –i.e., electoral commissioners, also known in some countries as *consejeros* or *rectores electorales*. This is how the political elite guarantees that no faction will be able to unilaterally override others. The work of Estévez et al. (2008), for instance, reveals how parties have developed an *informal* ICM through the appointment of ideologically aligned “non-partisan” electoral commissioners that end up acting as monitoring agents –“watchdogs”– within the EMB.¹⁴⁹ This type of ICM forces parties within the legislature to appoint electoral commissioners on a consociational basis to guarantee that no single

¹⁴⁹ Following Mayhew's (1974) notion of self-interest, political parties have been able to secure the loyalty of electoral commissioners by endorsing candidates that are ideologically aligned to them and by offering them future opportunities and career paths in the political realm or in the private sector. It is not uncommon for former electoral commissioners in regions like Latin American and African, for instance, to begin political careers once their tenure in the EMB has concluded. Venezuela's former EMB Chairman (2005-2006), Jorge Rodríguez, was appointed Vice President of Venezuela by Hugo Chávez in 2007 and, one year later, became one of the cofounders of the government's party (PSUV). In Ecuador, Domingo Paredes, who headed the de jure independent EMB created under Correa from 2011 to 2014 –the Consejo Nacional Electoral– openly recognized his support for the government's party (Alianza País) and formally became a member shortly after leaving the EMB. In Mexico, many electoral commissioners became affiliated to political parties (e.g., Jaime Cárdenas with the PT or Emilio Zebadúa with the PRD), ran for office (e.g., Gastón Luken or Juan Molinar with the PAN), or became members of the cabinet once their tenure concluded (e.g., Santiago Creel during the Fox administration, Alonso Lujambio during the Calderón administration or Virgilio Andrade during the Peña Nieto administration). For more detail on former Mexico's EMB electoral commissioners career paths see Estévez et al (2008).

political force will be able to unilaterally override others. This ICM is positively associated *de facto* electoral autonomy because it allows political parties to create an *informal check and balance system* within the EMB's executive board and gives them the capacity to informally maintain their influence within the EMB at the *executive level*.¹⁵⁰

The second type informal ICM, which has been adopted in countries where the EMB has been insulated from external actors, an alternative way in which *informal ICMs* have been adopted to build spaces of dialogue and interaction between the main political and electoral officials have been through the use of *external committees*. These informal *external ICMs* have positively affected the *de facto* autonomy of EMBs –i.e., Ghana– by promoting an inter-party dialogue for parties to ventilate their concerns at different bureaucratic levels; by allowing the EMB to communicate with parties, especially during turbulent times; as well as by enforcing a partisan-based monitoring system during the different stages of the electoral process.

¹⁵⁰ In Mexico, political parties adopted this informal ICM in order to create an internal system of checks and balances within the EMB's executive board since it became fully *de jure* autonomous from the Executive Branch in 1996. The levels of mistrust, and the existing gap between *de jure* and *de facto* institutions at the moment of the EMB's inception, led parties to adopt a consociational (power-sharing) scheme for appointing "non-partisan" electoral commissioners. As recognized by the EMB's former chair Ugalde (2008) and authors like Estévez et al., (2008), the informal appointment of "non-partisan" electoral commissioners –which kept close ideological ties with parties– has been a common practice since 1996. Ugalde (2008), for instance, recognizes the risks involved in this mechanism. In 2003, two of the three major parties (PAN and PRI in alliance with the PVEM) decided to exclude the left-wing party (PRD) from the appointment process in the legislature generating adverse conditions for the elites' trust in the EMB and the recognition of electoral results in the 2006 presidential election. The post electoral conflict, however, had more to do with a highly politicized and contested election (defined by 0.5% difference), than with the informal connection between parties and purportedly "non-partisan" electoral commissioners. The "non-partisan" electoral commissioners during the 1996-2003 period, for instance, were also appointed by major political forces in the legislature, had close ideological ties with their sponsors (some had been sympathizers of political parties before their appointment while others pursued political careers once their tenure in the EMB had concluded), and were able to successfully manage the 1997, 2000, and 2003 federal elections. In fact, it was during this period when the 8 out of every 10 citizens perceived IFE as one of the most reliable institutions of the country (Sonnleitner et al., 2012).

In sum, the adoption of formal and informal rules promoting internal consultation with political parties at different administrative levels allows political actors to create a system of checks and balances within the EMB, ventilate their concerns, communicate with the electoral institution and monitor the decision-making process during the different stages of an election. The adoption of ICMs are positively related to *de facto* autonomy because they increase the levels of transparency, accountability, as well as facilitate communication among parties and with the institution, allow the main actors competing for power to build consensus, and creates a monitoring platform for parties to participate within the EMB. That is ICMs are key to have a better understanding of the existing gap between *de jure* and *de facto* autonomy.

5.2.2 Alternative Explanations

In this subsection, I discuss some of the most relevant factors that have been used in the electoral governance literature to explain EMBs' autonomy in third-wave countries. These are dimensions affecting the internal administrative configuration EMBs. Among them, *the degree of formal (legal) independence, the mechanism used to appoint electoral commissioners, the partisan configuration of the EMBs' executive board*, as well as three other attributes that are usually inter-related, *the EMBs' level administrative capacity, financial independence and bureaucratic professionalization*.

The first dimension, *the degree of formal (legal) independence*, refers to the *de jure* autonomy granted to EMBs in the legal framework. As shown in Table 2.1, most third-wave countries in regions like Latin America and Africa have adopted the *independent* scheme of electoral administration. There is an important variation in terms of how EMBs in third-wave

countries operate and in how they are administratively configured.¹⁵¹ What characterizes most of these electoral bureaucracies, however, is the statutory recognition of their administrative independence. That is, the explicit recognition of the *formal independence* of the bureaucracy responsible for managing elections in the legal framework. This formal attribute is the most basic characteristic allowing to separate this group of institutions from the two other categories of EMBs that have adopted either a *mixed* or *governmental* scheme of electoral administration (López-Pintor 2000).

As I explain in the second chapter, the logic behind EMBs' *de jure* independence is that the quality of elections will be positively affected by delegating to an autonomous bureaucracy the responsibility of managing elections. In other words, this logic assumes that EMBs' formal autonomy will allow these institutions to operate independently of external political or institutional organizations, such as government or the ruling party. That is, it is assumed that the integrity of the electoral process is more likely to be compromised when elections are organized directly by government officials or a bureaucratic body that is directly –or indirectly– ascribed to the

¹⁵¹ In Peru, for instance, there are three different bureaucratic organizations related to electoral administration at the national level: the Jurado Nacional Electoral (JNE), the Registro Nacional de Identificación y Estado Civil (RENIEC), and the Oficina Nacional de Procesos Electorales (ONPE). While the JNE focuses on solving electoral disputes, and RENIEC supervises the voters' registry, the ONPE is the administrative body in charge of making most administrative decisions related to the different stages of the electoral process. In the case of Mexico, the Instituto Nacional Electoral (INE) is in charge of electoral organization and administration, while the Tribunal Electoral del Poder Judicial de la Federación (TEPJF) is the judicial organ in charge of solving electoral disputes. The case of Venezuela illustrates a third type of legal/administrative configuration. The Consejo Nacional Electoral (CNE) was constituted as a fourth branch of power in Venezuela and it has the same constitutional hierarchy as the executive, legislative and judicial branches. This gives the EMB not only administrative, but also conflict-resolution attributes. A second administrative difference across EMBs, among many others, is in the size of the executive boards. Although in most cases EMBs' executive boards are formed by commissions ranging from 5 to 15 “non-partisan” members, like the cases of Mexico, Venezuela, Ghana, Kenya, Brazil, Benin, or Costa Rica, there are some cases, like the ONPE in Peru, where the EMB is headed by single person.

executive branch. The adoption of formally autonomous EMBs became an international standard during the third- wave of democratization. For most third-wave countries, regardless of their level of democratization, delegating authority to formally autonomous EMB became a prerequisite for organizing credible elections.

As I discuss in the third chapter, this dimension is problematic because it does not allow identification of the variation within countries that have adopted *de jure* autonomous EMBs. From a comparative perspective, classifying EMBs solely on this dimension allows to analyze how this particular administrative configuration compares with the *governmental* or *mixed* schemes of electoral administration (Birch 2008). It is very hard, however, to evaluate the extent to which *de jure* autonomous EMBs are able to become *de facto* independent and the circumstances that allow them to do so. For this reason, scholars interested in electoral governance have analyzed other formal attributes allowing to classify EMBs based on different administrative arrangements.

Within the formal attributes that allow to capture a varying degree of formal autonomy among *de jure* independent EMBs across third-wave countries are *the mechanism used to appoint electoral commissioners* and *the partisan configuration of the EMBs' executive board*. The work of Hartlyn and coauthors (2008) and Rosas (2010), for instance, uses both of these dimensions to estimate the varying degree of autonomy across Latin American EMBs.

In the case of the former, *institutional independence based on the appointment mechanism*, the inspiration comes from Moreno et al.'s (2003) work. Hartlyn et al., (2008) classify EMBs using an “appointment score,” ranging from 0 to 8, based on the “nature of their appointment

process and on the tenures in office of both appointees and appointers.”¹⁵² The logic behind this dimension of electoral independence is that it assumes that multi-member executive boards will become more independent in the extent to which multiple institutional, political, and social actors intervene in the appointment of justices or electoral commissioners. That is, electoral commissioners of *de jure* autonomous agencies appointed directly by the executive branch, or by a legislature dominated by a single party, are more likely to be influenced by external political actors. On the contrary, those institutions where commissioners are appointed by multiple institutional organs, such as different branches of government, the judiciary or by civil society, will be more autonomous.

The main limitation of using this dimension to classify EMBs’ degree of autonomy is that this conceptualization of *institutional independence* relies on an external system of checks and balances, and not in an internal one. The problem with this logic is that it assumes that electoral commissioners directly appointed by the executive branch, or a legislature dominated by a single force, are more likely to be aligned with a single sponsor and, thus, the EMB is less likely to become autonomous. Furthermore, it assumes that if multiple institutional actors intervene in the appointment process, they will work as an external system of checks that will increase the

¹⁵² For Hartlyn et al. (2008), “the least autonomous agencies are appointed by one chamber of the legislature only (dominated by the executive or a single majority party), with autonomy increasing as agencies are named through processes involving multiple branches of government, to process dominated by the judiciary, to those dominated by civil society.” These authors also use a “tenure length score” to classify EMBs. When the tenure of EMBs’ members is longer than the tenure of the appointers, EMBs are supposed to be more autonomous. Although they use both measures in their analysis, they find that the tenure length of commissioners, compared to the appointment score, has no effect on the quality of elections. For coding details see Hartlyn et al. (2008a).

likelihood of selecting independent –“non-partisan”– commissioners and, thus, the EMB is more likely to become independent.

This dimension of independence assumes that “partisan ties” only exist when commissioners are appointed directly by the executive branch or the ruling party, but that they tend to disappear when commissioners or justices are appointed by multiple institutions, including the judiciary or civil society. Although this dimension of independence allows a more detailed classification of EMBs based on statutes, it leaves behind the informal dynamics that take place between external political actors and electoral officials in many third-wave countries. In other words, it does not allow to capture the real politics, lobbying, and ideological alignment that exists between those that have been appointed and those who endorse them, even in a context of check and balances involving multiple external institutional and social actors.

The third dimension that has been used in the literature to explain the independence of EMBs is *the partisan configuration of the EMBs’ executive board*. In the work of Hartlyn et al., (2008), for instance, the “*partisan score*” captures the degree of formal representation of political parties within the EMBs’ executive boards. They use four different categories ranging from EMBs that are formally dominated by a single political party or group of parties, to EMBs that are formally independent of them.¹⁵³ This dimension also allows to classify EMBs based on their formal partisan configuration and most studies focusing on this dimension, suggest that formally

¹⁵³ Single-party dominated EMBs. One party, usually the incumbent, has enough seats to make most of the decisions alone (whether it actually does or not); Partisan mixed: There is either balanced representation of political parties on the board or sufficiently mixed representation that no single party can make the decisions alone; Independent/partisan-mixed: Some members are nominated on the basis of partisan representation and some as independents (e.g., Uruguay); and Independent of parties. The EMB members may be appointed by Congress (or, more commonly, judges or civic groups), but they are consciously nonpartisan and professional, appointed on merit qualifications rather than on partisan sympathy.

“non-partisan” EMBs are more likely to become independent. For authors like Molina and Hernández (1998) and Hartlyn and coauthors (2008), “non-partisan” configured EMBs are more likely to be independent because it is a way to insulate these institutions from external political pressures and, thus, positively affect the quality of elections. In a similar direction, authors like Lehoucq (2002) and Eggers and Spirling (2014), argue that electoral corruption is less likely to occur when elections are managed by formally independent –i.e., “non-partisan”– electoral commissions or courts, instead of by party representatives or political parties represented in the legislature, because parties “cannot police themselves.”

Two major assumptions are behind this logic. On one hand, it implies that political parties are incapable of policing themselves, especially in circumstances where the EMB’s executive board is dominated by a single party or where the legislature, like in many U.S. states, is responsible for carrying out key electoral procedures such as cyclically renewing electoral boundaries (*redistricting*). Having a single party controlling the EMB is substantially different, however, from having a *partisan mixed* or an *Independent-partisan mixed* EMB. The two latter types, follow what Mozaffar and Schedler (2002) describe as the *power sharing* model of electoral administration, where the ruling and opposition parties are able to check each other in the administrative decision-making process within a *de jure* autonomous EMB. As revealed in Hartlyn et al.’s work (2008), EMBs with a *partisan mixed* configuration were found to be capable of successfully organizing credible elections and positively affecting the quality of democracy. As recognized by Hartlyn in coauthors, this finding reveals the capacity of political parties to check themselves within the EMB, especially in those cases where the party system is sufficiently plural to prevent a single party to unilaterally control the institution’s executive board and where

different parties have the institutional means to detect fraud or any violation of formal rules and procedures. .¹⁵⁴ Furthermore, this dimension of autonomy does not capture the different ways in which political parties can be embedded within EMBs, even when the institution’s executive board is formally “non-partisan.” This latter characteristic is key because most *de jure* autonomous EMBs in third-wave countries have multimember “non-partisan” executive boards, but political parties have different ways to participate and interact within an EMB at different administrative levels.

On the other hand, this dimension affecting electoral autonomy implies that purportedly “non-partisan” commissioners appointed by the legislature, judges or civic organizations, will be “consciously non-partisan and professional, appointed on merit qualifications rather than on partisan sympathy” (Hartlyn 2008). As I discuss in subsection 4.2.1, this idea relies on Moe’s (1987) logic of predictability where the behavior of professionals –or experts– under insulated environments is fairly easy to predict.¹⁵⁵ It assumes that if the legal framework establishes clearly that electoral commissioners will be “non-partisan, professional, and appointed on merit qualifications”, and appointed by multiple institutional and social actors, they will behave impartially and will keep no partisan ties.

¹⁵⁴ Hartlyn and coauthors (2008) recognize the need to go beyond the analysis of the partisan configuration EMBs at the executive level. For these authors, it is necessary to gain a better understanding of the role played by political parties within electoral administration because there are strong reasons to believe that the quality of elections is associated with “party behaviour, the willingness to commit fraud, and the capacity to detect it.”

¹⁵⁵ In Moe’s words, “A professional, if given total autonomy and insulated from external pressures, can be counted on to behave in a manner characteristic of his type. This is what true professionalism is all about. This very predictability ensures business and labor that their mutual interests in stability, clarity, and expertise will be protected” (Moe 1987, 261).

The problem with this dimension is that legal frameworks in most third-wave countries establish that EMBs' executive boards will be formed by multimember "non-partisan" commissions. On one hand, classifying EMBs by the formal presence of parties within their boards does not allow to capture a significant variation among EMBs and, on the other, it does not allow to capture the extent to which purportedly "non-partisan" electoral commissioners or justices do, in fact, break ties with the political group that endorsed their appointment. The work of Estévez et al., (2008), for instance, reveals how supposedly "non-partisan" electoral commissioners, maintain close ideological ties with the parties that sponsored their candidacy and informally behave as "party watchdogs" within the EMB.

Lastly, the fourth dimension affecting electoral autonomy that is present in the electoral governance literature is the *bureaucratic capacity* of EMBs. Among the most relevant cited attributes of this dimension are the *EMBs' level administrative capacity*, *their financial independence*; and their level of *bureaucratic professionalization*. These three categories are closely interrelated. The first one, the level of *administrative capacity*, refers to the ability of an agency to deliver policy programs in the different realms of electoral administration. That is, the capacity of an electoral bureaucracy to have its own personnel, technical and administrative resources, and implement its own procedures will positively affect an EMBs level of autonomy. This attribute is considered relevant for independence because it determines the capacity of an EMB to be self-sufficient and do not rely administratively on other governmental –i.e., the executive branch– offices. This is the case of many Central American, Caribbean, and Sub-Saharan countries that do not have the administrative capacity to maintain its own permanent staff,

buildings, systems of information technology, archives, official records, or up to date information systems.

The second category affecting independence is the EMB's *financial independence*. This attribute is related to the ability of an institution to have its own financial resources, to have them guaranteed in the long-term, and to be able to use them for institutional purpose without any external restriction. This characteristic matter for EMBs' autonomy not only because it is closely related to the other two bureaucratic attributes, *administrative capacity* and *bureaucratic professionalization*, but also because it is a possible mean by which external actors of institutions could coerce or manipulate an EMB. For this reason, it would be expected that having guaranteed an independent and sufficient amount of financial resources in the long-run will positively affect electoral autonomy. The problem with this attribute is that although in some cases regimes have affected the EMB's capacity of efficiently organize elections by limiting the access to financial resources, there are many cases where financially robust EMBs aligned with the regime have been used to organize elections favoring the ruling party.

Lastly, the third attribute within the dimension of *bureaucratic capacity* affecting electoral autonomy is *bureaucratic professionalization*. This is defined as the capacity of an EMB to have a permanent trained staff that is able to accumulate knowledge based on experience and with the necessary technical skills to manage and implement different legal and administrative procedures. For authors like Silberman (1993) *bureaucratic professionalization* is what allows the non-politicized, meritocratic recruitment and promotion of personnel within a bureaucratic organization. As recognized by Teorell (2017), there are two reasons to suspect why *bureaucratic professionalization* can be an effective mechanism to deter fraud. On one hand, a professionalized

bureaucracy is more likely to limit patronage used by political elites to fund illicit electoral tactics (Epstein 1967; Shefter 1994) and, on the other, professionalized electoral officials are less likely to be influenced or manipulated by external political agents. Similarly, for authors like Norris (2016) bureaucratic professionalization is related to the personnel's "bureaucratic ethos" and their self-enforcing capacity to respect formal rules and procedures. That is, in those cases where EMBs' decision-making is guided by the "bureaucratic ethos of professionalization and self-governance," formal rules are more likely to be respected (Norris 2015, 133).

The main limitation of this dimension, however, is that bureaucratic capacity does not always translate into bureaucratic integrity. These three attributes –*administrative capacity*, *financial independence*, and *bureaucratic professionalization*– are key to promote electoral autonomy but, as I pointed out in the second chapter, they are insufficient to guarantee the autonomy of electoral bureaucracies. This is especially the case in third-wave countries where, regardless of the EMBs' *bureaucratic capacity*, electoral institutions have been informally coopted by government or the ruling party. That is, while administratively capable and professionalized bureaucracies might be effective institutional mechanisms to deter certain types of fraudulent procedures, they have been insufficient to prevent the informal influence of external actors in many third-wave countries.

In the following subsection, I explain why I selected four different cases in Latin America and Sub-Saharan Africa and then, I use the Mill's (1843) comparative method of difference to contrast alternative explanations. In the final subsection, I explain how *process tracing* complements the comparative analysis by explain the different paths that electoral management

has followed in these countries and unveiling the casual mechanism between ICMs and *de facto* electoral autonomy.

5.2.3 Case Selection

The cases presented here illustrate four different circumstances under which *de jure* autonomous EMBs in Latin America and Sub-Saharan Africa were conceived. Except for the case of Venezuela, which became a democracy in the late 1950s and has been ruled by an electoral authoritarian regime since 2013, the rest of the cases transitioned to democracy during the third-wave of democratization. Through these cases I compare the different institutional arrangements that have allowed EMBs to gain, to retain, or to lose their autonomy from political actors. I discuss why in some cases the levels of *de facto* electoral autonomy have increased over time, while in others the reputation of these institutions has dramatically declined.

The regional contrast between Latin America and Sub-Saharan Africa throws light into how electoral administration has evolved in regions that have democratized at different paces. Most Latin American countries, for instance, began their transitions to democracy during the 1980s and 1990s, while democratization in Sub-Saharan Africa took place one or two decades after, where the party systems tend to be less institutionalized and where countries have had a considerably shorter period of post-colonial bureaucratic institutionalization.¹⁵⁶ In both regions, however, there is a wide variation in the levels EMBs' *de facto* autonomy that cannot be explained with the traditional variables that have been in the electoral governance literature.

¹⁵⁶ Ghana was the first Sub-Saharan African country to become independent from European colonization in 1957 and Zimbabwe became independent in 1980. In contrast, most of the Spanish colonies of North, Central and South America became independent in the early 1800s.

Comparing electoral bureaucracies in these two regions allows to study the trajectory of the same type of bureaucratic institution –*de jure* independent EMBs– under a broader set of socio-political environments. The vast majority of countries in these regions, for instance, have been holding elections organized by *de jure* autonomous EMBs. In many cases, however, elections are still being held under semi-competitive or electoral authoritarian environments.¹⁵⁷ It is especially in these circumstances where the EMBs’ *de facto* autonomy becomes crucial for the credibility of elections and for preventing post-electoral conflict. A multiregional approach allows to compare a wider set of countries that have been holding elections uninterruptedly since the third-wave of democratization. Compared to Latin America, African countries have less developed bureaucracies but are equally affected by the high levels of corruption and how informal rules usually prevail over formal ones.¹⁵⁸

Within Sub-Saharan Africa I selected Ghana and Kenya because these two countries are a reference within Western and Eastern Africa. The former illustrates how ICMs have been successfully embedded within the EMB positively affecting the institution’s *de facto* autonomy. The latter shows how *de jure* independence has been insufficient to guarantee credible elections

¹⁵⁷ Recent elections in Honduras (2017), Ecuador (2017), Nicaragua (2016), Bolivia (2014), and Venezuela (2013-2018) have been questioned by the opposition and international organizations have manifested their concerns regarding electoral integrity (See: OAS Electoral Observation Mission Reports).

¹⁵⁸ Most Latin American countries, for instance, began their transitions to democracy during the 1980s and 1990s. In contrast, democratization in many Northern and Sub-Saharan countries took place one or two decades after it occurred in its Latin American counterparts. Compared to Latin America, party systems in Sub-Saharan Africa tend to be less institutionalized and, in general, countries have had a considerably shorter period of post-colonial bureaucratic institutionalization. While most of the Spanish colonies of North, Central and South America became independent in the early 1800s, Ghana was the first Sub-Saharan African country to become independent from European colonization in 1957 and Zimbabwe became independent in 1980.

and how the lack of the EMB's *de facto* autonomy has negatively affected political stability (post electoral conflict and violence).

For Latin America, I selected Mexico and Venezuela because they allow to contrast two *de jure* independent bureaucracies that have developed an institutional reputation in opposite directions. The former managed to consolidate a positive reputation as a *de facto* autonomous institution shortly after its transition. The latter shows how despite the technical robustness and formal independence of EMBs, these institutions can be informally influenced by external political pressures and how institutional insulation can be counterproductive for *de facto* autonomy.

In sum, I selected four contrasting cases illustrating how administrative differences have affected the dynamics within EMBs, as well as their capacity to gain, maintain, or lose their *de facto* autonomy. Although all four cases have *de jure* autonomous electoral institutions, they have developed different levels of *de facto* autonomy. Mexico and Ghana are cases where EMBs managed to consolidate a positive reputation early after their inception, while the EMBs in Venezuela and Kenya have moved in the opposite direction. The cases of Mexico and Ghana confirm that *internal consultative mechanisms (ICMs) have positively affected the capacity of EMBs in these countries to become de facto autonomous*. In contrast, the cases of Venezuela and Kenya are deviant cases revealing that, despite having formal attributes that should have secured the EMBs' *de facto* autonomy, the absence of ICMs has affected the capacity of EMBs to build a positive reputation over time. Consistent with the theory presented in this work, each of the cases illustrates how the presence or absence of ICMs is a key variable affection EMBs' *de facto* autonomy.

5.2.4 Comparative Case Study Analysis

In this subsection, and in the following two chapters, I use the *comparative method* to analyze the causal relationship between different institutional arrangements within electoral bureaucracies and EMBs' *de facto* autonomy in four different Latin American and African countries. Specifically, I use four cases to test the extent to which the adoption of *internal consultative mechanisms* (ICMs) has allowed these institutions to develop higher levels of *de facto* autonomy.

For authors like Lijphart's (1971), the *comparative method* is a highly useful instrument for discovering empirical relationships among different variables when there is a limited number of cases. This method shares the logic of the experimental method, which allows to reveal the effect of a variable by comparing two equivalent groups after one of them has received a stimulus (treatment). This method also resembles the logic behind the statistical method, except that given the small number of cases, it does not allow a systematic control by means of partial correlations.¹⁵⁹

According to Mill (1843), the *comparative method of difference*, also denominated by Teune and Przeworsky (1970) as the *most similar system design*, consists of comparing cases in which a phenomenon does occur, with other similar cases in which the phenomenon does not take place. That is, "if an instance in which the phenomenon under investigation occurs, and an

¹⁵⁹ Lijphart (1971) recognizes that ideally, if there is an intermediate or large number of cases, a combination of the statistical and comparative method would be more effective to test theories and uncover causal relationships. While more generalizable conclusions can be drawn from the statistical and experimental methods, the conclusions derived from a detailed longitudinal comparative analysis of a few cases can be more promising than a superficial statistical analysis.

instance in which it does not occur, have every circumstance save one in common, that one occurring only in the former; the circumstance in which alone the two instances differ, is the effect, or cause, or a necessary part of the cause, of the phenomenon.”

Table 5.2 uses Mill’s (1843) *comparative method of difference* to contrast four different cases of electoral management in Latin America and Sub-Saharan Africa. The first column lists the names of the four countries where EMBs are being compared; the second column shows the outcome variable, the presence or absence of the EMBs’ *de facto* autonomy; and the third column shows the main explanatory variable, the presence or absence of internal consultative mechanisms in the EMB. The rest of the columns (4th to 7th column) group *alternative explanations* that have been used in the electoral governance literature to explain the autonomy of EMBs.

The fourth column shows the formal degree of the EMBs’ legal independence; the fifth column shows the degree of independence based on the number of institutional and social actors involved in the appointment of electoral commissioners (i.e., the system of external checks referred in Hartlyn et al.’s (2008) work as *institutional independence*); the sixth column shows the formal partisan configuration of the EMBs’ executive board, also as defined in Hartlyn et al.’s (2008) work; the last column, *bureaucratic capacity*, groups the three attributes described in previous lines and that are usually interrelated, *administrative capacity*, *financial independence*, and *bureaucratic professionalization*.

Table 5. 2 Mill’s (1843) Comparative Method of Difference

Country	<i>De Facto</i> Electoral Autonomy	Internal Consultative Mechanisms	Formal (Legal) Independence	Independence by Appointment Mechanisms	EMB's Partisan Composition	EMB's Bureaucratic Capacity
Mexico	High	Present	High	High	Low	High
Ghana	High	Present	High	Low	Low	High
Venezuela	Low	Absent	High	High	Low	High
Kenya	Low	Absent	High	Low	Low	Low

Notes : *De Facto Electoral Autonomy* is the outcome variable. *Internal Consultative Mechanisms (ICMs)*: is the main explanatory variable. Table made by the author. The presence or absence of an attribute is based on the mean value of each variable across countries in their respective region (Latin America, West and East Africa). The outcome variable and all attributes shown in this table refer to the EMB at the moment of the analysis (Mexico's *Instituto Nacional Electoral (INE)*; Ghana's *Electoral Commission (EC)*; Venezuela's *Consejo Nacional Electoral (CNE)*; and Kenya's *Independent Electoral and Boundary Commission (IEBC)*.

In the table above, EMBs in Mexico and Ghana, compared to other electoral bureaucracies in their respective regions, are classified as cases with high levels of *de facto* autonomy. On the contrary, EMBs in Venezuela and Kenya, which rank lower in terms of their institutional impartiality among most country-level experts, are classified with low levels of *de facto* autonomy. The third column, with the dimension capturing the presence of *internal consultative mechanisms* (ICMs), shows this attribute is present in the first two cases, while absent in the EMBs of Kenya in Venezuela.¹⁶⁰ This is the only case where the outcome occurs while an attribute is present, and where the outcome is not observed when the attribute is absent. Comparing these four cases with the method of difference allows to rule out other alternative explanations.

¹⁶⁰ As explained in chapters five and six, EMBs in Mexico and Ghana were able to incorporate both formal and informal internal consultative mechanisms since their inception or shortly after their creation. In the case of the former, political parties are formally represented at different administrative levels, while electoral commissioners, in Estévez et al.'s (2008) words, informally work as partisan watchdogs. In the case of the latter, the Electoral Commission incorporated shortly after its inception an informal series of ICMs, the Inter-Party Advisory Committee (IPAC) and its regional and district level equivalents (RIPACs and DIPACs). In contrast, both the EMBs in Kenya and Venezuela have followed an alternative path. In both of these countries, the Consejo Nacional Electoral (CNE) and the Independent Electoral and Boundaries Commission (IEBC) have been formally insulated from political and external political pressures, preventing political parties to participate, monitor each other or audit the EMBs' technical and administrative decision-making process during the different phases involved in electoral administration.

Furthermore, compared to the rest of the dimensions, this analysis also confirms the theorized causal relationship between ICMs and EMBs' *de facto* independence.

The comparative analysis in Table 5.1 allows to rule out the rest of the alternative explanations (columns 4th to 7th) because none of them are consistent with the presence and absence of the outcome variable (*EMBs' de facto independence*). In the case of *EMBs' formal (legal) independence*, for instance, all of the cases reveal the presence of the attribute. That is, in the four cases that are being compared, their respective legal framework establishes that these electoral bureaucracies are formally independent organizations.¹⁶¹ In the case of Mexico and Ghana, the EMBs –the *Instituto Federal Electoral* and the *Electoral Commission*– were both created and granted formal autonomy in the early 1990s as part of a series of reforms that allowed these countries to have successful transitions to democracy. In the case of Venezuela and Kenya, the formally autonomous EMBs were created in 1999 and 2010, respectively, as a consequence of constitutional reforms. The problem with this attribute, given that the vast majority of electoral bureaucracies in third-wave countries are characterized by the statutory recognition of their legal independence, is that it does not allow identification of the variation among countries that have adopted *de jure* autonomous EMBs and, thus, it cannot be used as a predictor for the levels of *de facto* autonomy.

Columns five and six show two other formal attributes that allow to capture different administrative arrangements that purportedly affect electoral autonomy. The fifth column shows EMBs' level of independence based on *the mechanism used to appoint electoral commissioners*

¹⁶¹ The attributes shown in Table 5.2 refer to the current EMB at the moment of the analysis (Mexico's Instituto Nacional Electoral (INE); Ghana's Electoral Commission (EC); Venezuela's Consejo Nacional Electoral (CNE); and Kenya's Independent Electoral and Boundary Commission (IEBC).

and, the sixth column, shows *the partisan configuration of the EMBs' executive board*.¹⁶² In the case of the former, *institutional independence based on the appointment mechanism*, the cases of Mexico and Venezuela, are classified as cases with high institutional independence.¹⁶³ In these countries, the executive branch does not have a formal role in nominating electoral commissioners and the legislature, by at least two thirds of the vote, with the participation of actors from civil society, are responsible for appointing “non-partisan” electoral commissioners for a fixed term.

In the case of Mexico, for instance, Article 41 of the Mexican Constitution describes the procedure to appoint the EMBs' executive board.¹⁶⁴ This process involves, a public announcement inviting any citizen interested to participate in the process, the creation of a *technical selection committee* formed by seven “non-partisan” members (three members appointed by the legislature, two by the National Human Rights Commission, and two other members by the National Institute of Transparency and Public Access to Information), the formulation of a final list with those candidates recommended by the technical committee to the legislature based on legal compliance and a meritocratic basis, and the vote of at least two thirds of the legislature.

In the case of Venezuela, a similarly complex system of formal external checks, seeking to guarantee the autonomy and impartiality of the EMB, was also established in the legal

¹⁶² Inspired by the work of Moreno et al., (2003), authors like Hartlyn et al., (2008) and Rosas (2008) classify EMBs using both of these dimensions to estimate the varying degree of autonomy across Latin American countries.

¹⁶³ This classification refers exclusively to the formal level of independence based on the formal procedures for appointing EMBs' executive board. As I discussed in chapter two, and explain in chapters five and six, there is a significant gap between these formal attributes and de facto electoral autonomy.

¹⁶⁴ See Article 41. Constitución Política de los Estados Unidos Mexicanos. Diario Oficial de la Federación. 15-09-17. Available: http://www.diputados.gob.mx/LeyesBiblio/pdf/1_150917.pdf

framework.¹⁶⁵ The electoral law establishes that the executive board of the *Consejo Nacional Electoral (CNE)* will be formed by 5 “non-partisan” members. Three of them should be nominated by civil society organizations, one by the law and political science faculties of the country’s national universities, and one by the *Citizens Branch of Power*. As in Mexico, electoral commissioners in Venezuela need to be appointed by at least two thirds of the votes in the National Assembly.

In contrast to these two cases, the legal framework in both Ghana and Kenya gives the executive branch the faculty to directly intervene in the appointment process of the EMBs’ executive board. In the former, the executive branch is in charge of appointing electoral commissioners in “consultation” with Ghana’s Council of State.¹⁶⁶ That is, the president is able to appoint electoral commissioners with the non-binding advice of a Council, which is formed by members that are appointed by the executive himself.¹⁶⁷ In the latter, the president is also in charge of appointing electoral commissioners with the confirmation of parliament. According to the First Schedule of Kenya’s IEBC Act, the president is in charge of appointing a *selection panel* in charge of elaborating a list based on legal and technical merit. The panel is formed by members nominated from the Parliamentary Service Commission, Kenya’s Conference of Catholic Bishops, the National Council of Churches of Kenya, the Supreme Council of Kenya Muslims, the

¹⁶⁵ See: Article 296. Constitución de la República Bolivariana de Venezuela. 2002, and Ley Orgánica del Poder Electoral. 2002.

¹⁶⁶ See: Ghana’s Electoral Commission Act. Act 451. 1993.

¹⁶⁷ According to Ghana’s Constitution (1992), the Council of State shall be formed by a former Chief Justice of Ghana, a former Chief of Defense, a former Inspector General of Police, by the President of the National House of Chiefs as well as by an elected representative of each region. Members stay in office until the end of the president’s administration. The Constitution of the Republic of Ghana. Chapter 9. 1992 Judicial Service of Ghana.

Evangelical Alliance of Kenya, and the Hindu Council of Kenya.¹⁶⁸ After elaborating a preliminary list, the panel is responsible for submitting it to the Parliamentary Service Commission, which in turn submits the list to the president for appointment.

The logic behind this dimension of electoral independence is that executive boards appointed by multiple institutional, political, and social actors are more likely to be regarded as more independent electoral institutions. That is, electoral commissioners appointed directly by the executive branch, or by a legislature dominated by a single party, are more likely to be exposed to manipulation by external political actors. Table 4.1 shows that the cases of Ghana and Venezuela contradict this logic. In the former, despite electoral commissioners have been directly appointed by the president, Ghana's EMB has been able to build a positive reputation and has been recognized as one of the EMB's with higher levels of *de facto* autonomy in the region. In contrast, Venezuela's EMB, despite having a highly complex system of external formal checks in the appointment process of "non-partisan" electoral commissioners, has been informally influenced by the regime early since its inception.

The overall problem with this logic is that it assumes that if multiple institutional actors intervene in the appointment process, the external system of checks will increase the likelihood of selecting independent –"non-partisan"– commissioners and, thus, EMBs are more likely to become independent. As described in the following chapter, the case of Mexico illustrates how since IFE's inception in the early 1990s, and despite formal procedures in the legal framework try to guarantee the selection of "non-partisan" electoral commissioners, the appointment of electoral

¹⁶⁸ See: Independent Electoral and Boundary Commission Act. 2011. Article 5, First Schedule.

commissioners, in practice, has been a highly politicized process where parties end up negotiating quotas and endorsing those profiles that are ideologically aligned to their own interests (Estévez et al., 2008; De la Cruz 2010). These counterintuitive results rule out this dimension as an alternative explanation for *de facto* electoral autonomy.

The sixth column shows *the partisan configuration of the EMBs' executive boards* among the four cases being compared. As in the case of *formal (legal) independence*, all EMBs' are ranked equally. In this dimension, all four cases are classified as low because none of them have EMBs where the executive boards have a *partisan*, *partisan-mixed* or an *independent/partisan-mixed* composition. In these four cases, the law explicitly states that commissioners must not have partisan affiliations and the EMBs' executive boards should be *independent from political parties*. In some cases, like Mexico, citizens that aspire to become commissioners cannot have competed for office or have been previously elected, and they cannot have held high level positions within political parties or the public administration in the previous four years. The lack of variation in this dimension allows to discard this variable as a viable explanation for *de facto* autonomy.

Although there is a consensus in the electoral governance literature establishing that “non-partisan” configured EMBs are more likely to be independent because it insulates these institutions from external political pressures, this dimension of autonomy is problematic because it does not capture the different ways in which political parties can be embedded within EMBs, even when the institution's executive board is formally “non-partisan.” As I discuss in the following chapter, in Mexico political parties are formally embedded within the institutional design, without having the formal control of the decision-making process of the executive board. Similarly, the IPAC in Ghana illustrates how parties can be informally embedded within the EMB, without giving them

decision-making capacity. Noticing these administrative differences is key because many *de jure* autonomous EMBs in third-wave countries have multimember “non-partisan” executive boards, but political parties have different ways to participate and interact within an EMB at different administrative levels.

Another problem with this dimension is the purportedly “non-partisanship” of electoral commissioners. This dimension does not allow to capture the extent to which purportedly “non-partisan” electoral commissioners or justices are, in fact, free from having political ties with the political group that endorsed their appointment. The work of Estévez et al., (2008), for instance, reveals how supposedly “non-partisan” electoral commissioners in Mexico not only maintain close ideological ties with the parties that sponsored their candidacy, but how they informally behave as “party watchdogs” within the EMB.

Lastly, the seventh column classifies these four cases by the EMBs’ level of *bureaucratic capacity*. This dimension includes three different attributes, the *EMBs’ administrative capacity*, *their financial independence*; and their level of *bureaucratic professionalization*. For simplification purposes in the comparative analysis, and since these three categories are closely interrelated, I treat them as a single dimension in this subsection.¹⁶⁹ In this dimension, the cases of

¹⁶⁹ In the two following chapters I focus on some of these three attributes separately. The V-Dem indicator for EMBs’ bureaucratic capacity (EMB Capacity), however, groups these aspects into a single dimension by asking: “Does the Election Management Body (EMB) have sufficient staff and resources to administer a well-run national election? Answers include, 0: No. There are glaring deficits in staff, financial, or other resources affecting the organization across the territory. 1: Not really. Deficits are not glaring but they nonetheless seriously compromised the organization of administratively well-run elections in many parts of the country. 2: Ambiguous. There might be serious deficiencies compromising the organization of the election, but it could also be a product of human errors and coincidence or other factors outside the control of the EMB. 3: Mostly. There are partial deficits in resources, but these are neither serious nor widespread. 4: Yes. The EMB has adequate staff and other resources to administer a well-run election.”

Mexico, Venezuela and Ghana are classified as having high levels of *bureaucratic capacity*, while Kenya is classified as ranking low on this same dimension.¹⁷⁰ In theory, bureaucracies with higher administrative capacity, financial autonomy, and bureaucratic professionalization should rank higher in the levels of *de facto* autonomy. The presence of a highly capable and professionalized electoral bureaucracy in Venezuela, compared to less developed electoral bureaucracies in both Latin America and Sub-Saharan Africa, is a counterintuitive finding and allows to rule out this dimension as an alternative explanation for *de facto* electoral autonomy.

In terms of *bureaucratic capacity*, Venezuela's CNE has been one of the most salient EMBs in the region. Comparable to other highly capable electoral bureaucracies, such as Mexico's INE or Brazil's TSE, the CNE was regarded before –and during– the Chávez regime as one of the most proficient electoral bureaucracies in the region. Its annual estimated budget per registered voter is approximately 26.19 US dollars, which more than doubles its counterparts in Mexico, Kenya, and Ghana.¹⁷¹ It was one of the few EMBs with the technical capability to successfully implement a fully automated electoral process. In 2012, for instance, former President Carter stated that, "as a

¹⁷⁰ This classification is based on the overall level of bureaucratic capacity reported in the V-Dem Dataset.

¹⁷¹ The annual EMB operational budget for national level elections in Mexico is approximately 1 billion dollars (2018) or 11.62 dollars per registered voter (Mexico had 87317602 registered voters by 2017); in Venezuela 511 million dollars (2012) or 26.19 dollars per registered voter (Venezuela had 19,504,106 registered voters by 2016); in Kenya 262 million dollars (2017) or 13.35 dollars per registered voter (Kenya had 19,611,423 registered voters by 2017); and in Ghana 183 million dollars (2016) or 11.58 dollars per registered voter (Ghana had 15,800,000 registered voters by 2016).

See: <http://www.excelsior.com.mx/nacional/2017/08/25/1183764> (for Mexico); <http://www.eleccionesvenezuela.com/noticia-costos-elecciones-2012-venezuela-89.html> (for Venezuela); <https://www.standardmedia.co.ke/article/2000202410/mps-give-iebc-sh19-billion-for-2017-elections> (for Kenya); and <https://www.myjoyonline.com/politics/2015/December-21st/electoral-commissions-elections-2016-budget-hit-by-400m-cut.php> (for Ghana).

matter of fact, of the 92 elections that we've [the Carter Center] monitored, I would say the election process in Venezuela is the best in the world."¹⁷²

The rest of the three cases are aligned with the intuition behind the theory. Mexico has one of the most proficient bureaucracies in the region. The professionalization of its bureaucracy, along with its technical capacity to independently carry out the vast majority of administrative procedures have been crucial for the credibility of elections, especially during races characterized by the high levels politicization and close results. Similarly, bureaucratic proficiency in the case of Ghana's Electoral Commission has also been key factor allowing peaceful alternations in power, even under highly contested elections. In contrast, the lag in Kenya's *bureaucratic capacity* and the recurrent incapacity to efficiently solve administrative and technical problems during the electoral process since the country's transition to democracy, has significantly contributed to the mistrust and lack of credibility in electoral management (Kriegler 2009).¹⁷³

While conducting fieldwork in these countries, one can notice the gap of bureaucratic development that exists among EMBs across different regions. While the availability of financial and administrative resources for Kenya's EMB, as well as its efforts to professionalize its bureaucracy, have increased significantly after the 2007, there is still an important lag with respect to its Latin American counterparts, INE and CNE. In a technically complex policy area, such as electoral boundary delimitation, for instance, Mexico and Venezuela have significantly more qualified personnel, equipment, and installed capacity to systematize and process information, than

¹⁷²See: <https://www.theguardian.com/commentisfree/2012/oct/03/why-us-demonises-venezuelas-democracy>

¹⁷³ See: http://www.kas.de/wf/doc/kas_16094-1522-2-30.pdf

Kenya's IEBC or Ghana's Electoral Commission. In the latter, for instance, electoral maps, until very recent, were still being drawn by hand.¹⁷⁴

The case of Venezuela and Ghana reveal that higher levels of bureaucratic capacity do not necessarily translate into higher *de facto* electoral autonomy. The former shows that *bureaucratic capacity* by itself is insufficient to guarantee *de facto* autonomy, while the case of Ghana, a case with significantly less administrative resources, shows that other dimensions in electoral management –such as the capacity to build internal consensus through the adoption of ICMs– are equally important for EMBs to build a positive reputation.

5.2.5 Process Tracing and Qualitative Analysis

In order to maximize comparability and contrast intra-unit differences, I use *process tracing* in the next two chapters to analyze cases diachronically. For authors like Lijphart (1971: 689), historical analysis of a single case can be a more effective solution to the control problem than comparing two –or more– different units at the same time. The advantage of intra-unit comparison is that the inter-unit differences can be held constant. In other words, once the causal mechanism has been identified in the intra-unit comparisons, it is possible to transition to the inter-unit comparisons to see if the same differences hold at large. Following authors like Linz and de Miguel (1966), Lijphart (1971) recognizes that combining both intra-nation and inter-nation

¹⁷⁴ Fieldwork interviews were carried out by the author in the cartography departments of all four EMBs during 2014 and 2017. The installed capacity in Ghana's Electoral Commission to carry out electoral boundary delimitation, is more similar to small Commonwealth Caribbean countries, such as Belize or St. Kitts or Nevis, than to its Latin American counterparts.

comparisons can be particularly a more promising approach than overall cross-national comparisons.

In the fifth and sixth chapters, I use *process tracing* as a qualitative instrument to test my theory and verify whether the evidence shows that each part of the hypothesized causal mechanism is present in these cases. This allows to make inferences about whether the hypothesized causal mechanism is working as expected or if the mechanism as a whole was present in each case (George and Bennet 2005; Bennett 2008; Checkel 2008; Brady and Collier 2010; Beach and Pedersen 2013; and Goertz 2017). As recognized by Beach and Pedersen (2013), this method allows the researcher to identify the intervening causal process –the causal chain and causal mechanism– between an independent variable and the outcome variable, as well as to increase the degree of confidence we have in the validity of the theorized mechanism. In Gerring’s (2006) words, studying causal relationships allows to “peer into the box of causality to locate the intermediate factors lying between some structural cause and its purported effect.”

In this work I hypothesize that the inclusion of internal causal mechanisms (ICMs) has affected positively the capacity of third-wave EMBs to become *de facto* autonomous. I selected two cases that illustrate how the adoption of ICMs has been instrumental for some EMBs to build a positive reputation. In contrast, I selected two other cases where EMBs are characterized by the absence of ICMs and where institutional insulation, rather than aided electoral bureaucracies to become *de facto* independent, has negatively affected the capacity of these EMBs to organize credible elections.

The historical analysis of four different countries allows to contrast the different circumstances under which EMBs were created –or reformed– since the early 1990s, trace the

moment in which ICMs were included or transformed, as well as to illustrate if the presence of ICMs has functioned as theorized. More importantly, however, *process tracing* analysis allows to go beyond theoretical associations between two variables. In Beach and Pedersen's (2013) terms, it allows opening up the black box of causality by revealing how ICMs have directly affected the capacity of EMBs to become *de facto* autonomous. In this and the next (sixth) chapter, I discuss in detail how the presence –or absence– of ICMs in four different countries in Latin America and Africa have affected the capacity of EMBs to become *de facto* autonomous.

The case of Mexico reveals how the creation of a *de jure* autonomous EMB was influenced by the country's first and second generation of electoral reforms, as well as by the previous institutional configuration of the *governmental Comisión Federal Electoral* (CFE). It shows how ICMs were both formally embedded since IFE's creation, and informally enforced by the partisan ties kept between “non-partisan” electoral commissioners and the political elite. In the case of Ghana, as in many other third-wave countries, the creation of a *de jure* autonomous EMB was one of the many key pieces for the institution's capacity to organize credible elections after the democratic transition took place in the early 1990s. The institutional design of the *Electoral Commission*, where the executive branch directly appoints electoral commissioners, severely undermined the EMB's legitimacy as well as its capacity to organize credible elections. Shortly after the EMB's inception, however, a series of informal ICMs –i.e., the IPAC, and its regional and local equivalents, the RIPAC AND DIPACs– were adopted by the commission. These ICMs played, along with the leadership of its chairman, played a key role for the institution's capacity for building a reputation as a *de facto* autonomous institution and becoming a reference of electoral administration in West Africa.

The other two cases, Venezuela and Kenya, illustrate how institutional insulation characterized by the absence of ICMs has negatively affected the reputation of these institutions making it harder for them to organize credible elections. The case of Venezuela shows how the transition from a *partisan-mixed Consejo Supremo Electoral* to an “non-partisan” *de jure* autonomous *Consejo Nacional Electoral*, contrary to what theories of institutional independence would have predicted, facilitated the informal cooptation of the institution by the regime and eliminated institutional spaces promoting transparency and accountability within the EMB. The case of Kenya illustrates how the informal influence of the executive over a purportedly *de jure* independent electoral commission had a negative impact on the country’s social and political stability, how the EMB was transformed after the 2007 post-electoral conflict, and how the institutional insulation of the newly configured Independent Electoral and Boundaries Commission (IEBC) negatively affected the EMB’s capacity to build a positive reputation.

The information presented in the following two chapter is based on an extensive analysis of legal frameworks, primary and secondary sources, as well as on the semi-structured elite interviews I conducted in five countries between January of 2014 and March of 2017.¹⁷⁵ In every country, I interviewed political actors that played a key role during the years EMBs were created or reformed, current and former electoral officials holding executive and technical-level positions,

¹⁷⁵ Most interviews conducted during fieldwork were based on open-ended questions covering similar topics, such as the institutional and sociopolitical context during the EMBs inception, the administrative configuration of the EMB, the presence or absence of ICMs, the informal dynamics within the EMB, the institutionalization of the party system, and the evolution of the EMBs *de facto* autonomy (see appendix for the questionnaire). Answers included a wide variety of insights explaining different aspects surrounding the inclusion of ICMs, the informal dynamics within each EMB, and the evolution of *de facto* autonomy. The narrative presented in these four cases capture the answers and explanations that were provided during these interviews.

leaders of the main political parties, party representatives within the EMBs, legislators, members of national and international non-governmental organizations, scholars whose work is related to elections and electoral institutions, as well as journalists, scholars and experts that have worked on electoral management, elections and political parties.

These interviews are a basic method for collecting information that elites harbor and, perhaps, the only way to have access to insider information revealing the informal dynamics within EMBs. The most important challenge for this data collection procedure, of course, is confirming the veracity of the information. In order to minimize the bias derived from face to face interviews, I also analyze the historical and legal framework in each country, as well as data coming from quantitative sources, such as indicators based on country-level expert surveys.

In each of the five countries where I conducted fieldwork interviews, I became affiliated to academic, non-profit, and international organizations during my stay. In the case of Ghana, I was hosted by the Center for Democratic Development in Accra; In Kenya, I affiliated to the Institute for Development Studies (IDS) and the Department of Political Science at the University of Nairobi; In Venezuela, I was hosted by the Electoral Integrity Project at the *Universidad Católica Andrés Bello* (UCAB); In Egypt I was hosted by the Mexican Embassy in Cairo; and in Mexico I was hosted by the Center of Economic Studies of the Private Sector (CEESP). In all cases, I conducted fieldwork primarily in the capital of each country, which are where the main EMBs' headquarters were located, and also where the national headquarters of political parties and the main national universities are located.

5.3 CONCLUDING REMARKS

In a vast majority of third-wave countries, political elites have *delegated* the responsibility to manage elections to *de jure* independent institutions as a self-constraining mechanism to guarantee the credibility of the electoral process. In regions like Latin America and Africa, however, the degree of *de facto* electoral autonomy varies significantly. Compared to well-established Western democracies, elites in many of these countries created formally autonomous electoral bureaucracies as a consequence of their long-term commitment to democracy. In some cases, however, elites have *delegated* autonomy to these institutions as a mean to legitimize a specific regime through elections, while still being able to informally influence them. In those cases where elites were committed to democracy, and bureaucracies were technically capable of managing elections, most administrative configurations have been sufficient to hold free and fair elections. In those holding elections under semi-competitive environments, however, EMBs insulated from political actors, contrary to helping these institutions secure their autonomy, have been counterproductive for these organizations to become *de facto* independent.

It is in this context where the internal administrative configuration and the informal institutional dynamics within EMBs matter the most. I argue that, in certain circumstances, *de facto* autonomy relies more on how external pressures are channeled within EMBs, rather than on the degree to which these institutions become insulated from them. Rules seeking to guarantee EMBs independence from external political pressures are not the only –or most important– variable affecting the quality of elections. To the contrary, in some cases, they facilitate external political actors or the regime in power to informally influence these institutions. EMBs that have

adopted internal consultative mechanisms are more likely to effectively channel external political pressures and, thus, to build a positive reputation in the long run.

In the next two chapters, I use *process tracing* analysis in four case studies to reveal the role that the presence or absence of ICMs has played to either strengthen or weaken EMBs' capacity of becoming *de facto* autonomous in Latin America and Africa.

6.0 INTERNAL CONSULTATIVE MECHANISMS AND DEMOCRATIC CONSOLIDATION

6.1 INTRODUCTION

This chapter focuses on two different cases that show how the presence of internal consultative mechanisms (ICMs) have aided third-wave EMBs in Latin America and Sub-Saharan Africa to become *de facto* autonomous and positively affect the quality of elections. Both of these cases show different institutional arrangements under which ICMs were incorporated to the EMBs after they were created in the early 1990s. In the first subsection I present the case of Mexico and, in the following one, I present the case Ghana.¹⁷⁶

The case of Mexico illustrates how ICMs can be incorporated both formally and informally embedded within EMBs. The *Instituto Federal Electoral* (IFE) was able to build a positive reputation as a highly, *de jure* and *de facto*, autonomous EMB shortly after its inception and as a consequence of a gradual series of electoral reforms that began in the late 70s allowing to create formal system of ICMs within the IFE's predecessor, the *Comisión Federal Electoral* (CFE). The story of electoral management in Mexico reflects, on one hand, the process of political inclusion under an electoral authoritarian government during the second half of the twentieth century and, on the other, an institutional bureaucracy that was designed as a consequence of demands to build

¹⁷⁶ This and the subsequent case studies presented here, by no means, intend to be exhaustive. Electoral administration is a complex multidimensional process that includes a wide diversity of rules, actors, and administrative and normative procedures. Each chapter focuses on the main argument presented in this work (how the presence or absence of ICMs has aided or constrained third-wave EMBs to become *de facto* autonomous) and how EMBs have affected the quality of elections since these countries transitioned to democracy.

spaces for transparency and accountability within the EMB. As part of these two processes, political parties were both formally and informally embedded within the IFE at the executive and mid-bureaucratic level when it was created in the 1990s (Méndez 2010, Trelles et al 2015). Since IFE's inception, ICMs have been key for preventing a single political group to unilaterally control the EMB (Estévez, Magar and Rosas 2008).

In contrast, the case of Ghana illustrates how, in the absence of a formally embedded system of checks and balances at the moment of the EMB's inception, electoral bureaucracies have alternative paths to informally adopt ICMs and positively affect their capacity to build reputation. Ghana's *Electoral Commission* is regarded as a reference of electoral administration in West Africa. As recognized by most country-level experts, the role of the EMB, along with the personalistic leadership of the EMBs' head for more than two decades, significantly contributed for the successful and peaceful political alternations in the presidency during the last two decades.

¹⁷⁷ The adoption of an informal ICM, such as the *Inter Party Advisory Commission* (IPAC), shortly after the EMB's inception in the early 1990s, became key for the EMB's capacity to build a positive reputation and organize credible elections. While the IPAC is not an institution recognized in the constitution or electoral law, it has served as a major pressure valve mechanism to alleviate tensions, and as a transparency mechanism that has allowed both parties to ventilate technical and administrative decisions related to different stages of the electoral process.

¹⁷⁷ Dr. Kwadwo Afari-Gyan was Chair Commissioner of Ghana's Electoral Commission from 1992 to 2015. During his tenure, his leadership was positively recognized by the main political forces in the country. He also served as the Executive Secretary of the Association of African Election Authorities (AAEA).

In this and the subsequent chapter, I use *process tracing* to analyze the context under which these *de jure* autonomous EMBs had to operate and, more importantly, on how ICMs have helped these institutions to develop higher levels of *de facto* autonomy. Both Mexico and Ghana transitioned to democracy during the third-wave of democratization and have been uninterruptedly holding elections that have led to subsequent peaceful alternations in power. These two countries, however, illustrate different paths under which political elites delegated the responsibility to manage elections to *de jure* autonomous bureaucracies and how different institutional configurations affected the internal dynamics of these institutions. Consistent with the theory that will be presented in this work, both of these cases illustrate how the adoption of ICMs became key for these EMBs to become *de facto* autonomous.

6.2 MEXICO: THE INTERNAL PARTISAN CHECK AND BALANCE SYSTEM

This section is subdivided into three subsections. In the first subsection I explain how electoral administration has evolved in Mexico, what were the main factors that allowed the EMB to be recognized as a *de facto* autonomous institution, and how ICM's would eventually become key to guarantee the organization of clean and fair elections. In the second subsection I describe the administrative configuration of the IFE's predecessor, the *Comisión Federal Electoral*, and how the early adoption of ICMs within the *governmental* EMB, became the preamble to the check and balance system that would be embedded years later within the *Instituto Federal Electoral*. Finally, in the third subsection I illustrate with different examples how ICMs have contributed to the credibility of elections and helped the EMB build and maintain a reputation as a *de facto* autonomous institution.

6.2.1 Emergence and Development of Electoral Management in Mexico

Electoral administration in Mexico cannot be understood without considering the authoritarian legacy of the *Partido Revolucionario Institucional* (PRI), the institutional configuration that the regime had in place in order to manage elections during the second half of the twentieth century, and the emergence and institutionalization of opposition parties at two different historical moments, in 1939 and 1989. These three contextual events became key for the adoption of a formal –and informal– system of ICMs allowing Mexico’s *de jure* autonomous *Instituto Federal Electoral (IFE)* to develop a reputation as a *de facto* autonomous EMB and positively affect the quality of elections in Mexico.¹⁷⁸

The first event, *the authoritarian legacy of the PRI*, is relevant for electoral administration because the foundation of the official party (PRI) was a consequence of a post-revolutionary pact trying to establish a peaceful and cyclical system of alternation in power through elections (González Compeán and Lomelí 2000; Becerra et al., 2000; Woldenberg 2012). This is what sets the PRI’s administrations apart from other authoritarian regimes, like Chile under Pinochet or Brazil and Argentina under their respective military dictatorship. In many of these cases, it was not unusual for authoritarian regimes to suspended elections. The PRI, however, was able to endure in power for over seventy years while holding elections uninterruptedly.¹⁷⁹

¹⁷⁸ In Merino’s terms, Mexico’s transition to democracy was a “voted transition” because the debates about access to power centered around the rules of the game that would allow both pluralism and alternance in power (Merino 2003). This debate would later transition to rules promoting the compliance of formal rules and the equality of conditions to compete for power.

¹⁷⁹ Although electoral politics in Mexico were formally and informally controlled by the authoritarian regime during most of the twentieth century, the ruling party had the necessity of legitimizing its endurance in power by competing in elections. In Vargas Llosa’s terms, Mexico became the “perfect dictatorship,”

The second event, *the legal framework to manage elections during the second half of the twentieth century*, is relevant for electoral administration because in order to hold elections uninterrupted, a permanent electoral management bureaucracy needed to be set in place. When the first centralized and governmental EMB was created in 1946, the regime opted for an administrative model that would include political parties within the *Comisión Federal de Vigilancia Electoral* (CFVE). That is, instead of insulating electoral administration from external actors, as happened in other third-wave countries, the regime opted for an institutional configuration that allowed political parties to be represented within the EMB's executive board and become involved in key administrative procedures during the different phases of electoral administration.¹⁸⁰ From the regime's perspective, the early inclusion of parties within the EMB was an important element of legitimization, without risking its formal and informal control over the electoral bureaucracy (Valdés and Piekarewicz 1990). This decision had an unanticipated consequence for the regime because, years later, the presence of parties within the EMB would become key for the institution's capacity to organize credible elections and for the EMB to become *de facto* autonomous.

The third set of events, *the emergence of opposition parties in 1939 and 1989*, became key for electoral administration because opposition parties pressured the regime to open political representation in the legislative branch and demanded, within the EMB, the enforcement of normative procedures that would eventually lead to the creation of a *de jure* autonomous electoral

and a role model for most authoritarian regimes, because of its capacity of legitimizing itself through elections (El País 1990).

¹⁸⁰ In the case of Chile, Brazil and Argentina, for instance, electoral administration relied on governmental institutions within the executive or judicial branches, which were insulated from external actors (i.e., political parties) after they transitioned to democracy.

bureaucracy (Valdés and Piekarewicz 1990). On one hand, the presence of parties within the EMB, such as the *Partido Acción Nacional* (PAN), gradually allowed the opposition to identify critical administrative decisions that needed to become more transparent and technical procedures where information needed to become available to all parties in order to guarantee the impartiality of the electoral process (Valdés and Piekarewicz 1990).¹⁸¹ On the other, the post-electoral crisis of the 1988 presidential election, and emergence of the PRD in 1989, forced the regime to fully delegate the responsibility to organize elections to a *de jure* autonomous EMB in 1990 (Lujambio 1994 and 2000; Woldenberg 2012).

As recognized by most country-level experts, *de facto* electoral autonomy in Mexico is the consequence of multiple events, institutional changes, and political battles that were fought during decades by a wide variety of social, partisan, academic, civic, and intellectual actors (Becerra et al., 2000; Merino 2003; De Andrea 2008; Woldenberg 2012). This process was materialized in a series of constitutional and legal reforms that began with the 1977 political reform and culminated, first, with the loss of the PRI's majoritarian status in the lower chamber after the 1997 mid-term elections, and, second, with the 2000 presidential alternation in power (Woldenberg 2012). Since 2000, Mexico's EMB has been recognized by former electoral officials, scholars interested in electoral governance, international organizations and practitioners as a *de facto* autonomous EMB.

¹⁸¹ Over the years, the presence of political parties within the EMB allowed them to gradually acquire technical experience and professionalize their own bureaucracies in order to become more efficient monitoring agents (See: Trelles et al., 2015).

During this period, IFE also became a reference of best practices in electoral administration around the globe (Ugalde 2008; Sonnleitner et al., 2012; Woldenberg 2012).¹⁸²

Among the key dimensions aiding Mexico's EMB to build a reputation as a *de facto* autonomous institution during this period are: a) The statutory reforms granting formal autonomy

¹⁸² The levels of trust in elections historically reached its peak after the 2000 transition to democracy. During this period, until the 2006 presidential election, IFE was among the public institutions with the highest level of recognition (Ugalde 2008). In 2000, for instance, 8 out of every 10 citizens in Mexico perceived elections as clean (Sonnleitner et al., 2012). As recognized by authors like Ortega and Somuano (2015) and Sonnleitner (2015 and 2016), however, the levels of citizens' trust in elections in Mexico have decreased significantly since the 2006. According to these authors, the increasing levels of mistrust are not related to either the (high) levels of technical solvency or the levels of *de jure* and *de facto* autonomy of the EMB.

Paradoxically, they show that while the EMB is still recognized by citizens and international organizations as an independent and technically robust institution, the increasing levels of mistrust among citizens are explained by variables such as the 2006 post-electoral conflict (the left wing candidate challenging electoral results), corruption scandals involving the political elite (e.g., mayors, governors, union leaders, party leaders, the president and members of the cabinet), incapacity of most citizens to differentiate between state and federal level races (in the 2000-2014 period), the increasing levels of violence, and the generalized disenchantment of younger voters with democracy and political parties (Ortega and Somuano 2015; Sonnleitner et al., 2012).

For Ugalde (2008), the mistrust of the left-wing faction of Mexico's political elite (the PRD) in the EMB was originated by the lack of consensus among the three major parties represented in the legislature (PAN, PRI and PRD) in the appointment of the "non-partisan" electoral commissioners for the period 2003-2007. He calls this the "original sin" (Ugalde 2008: 35). After several days of negotiating which commissioners would be endorsed by each party, two of the major parties (the PAN and the PRI) decided to leave out the PRD. In contrast to the previous informal consociational arrangement that had taken place among the three major parties to appoint the previous councils (from 1993 to 1996 and from 1996-2003), the PAN, the PRI and the PVEM had two thirds of the votes required in the lower chamber to appoint IFE's electoral commissioners and decided to leave out the candidates (electoral commissioners) that were being endorsed by the left-wing party in the legislature. The PRD, however, decided to maintain its formal representation within the EMB and actively participated at the different bureaucratic levels (i.e., executive, administrative, bureaucratic and policy levels) and during all key administrative stages preceding the 2006 election (i.e., electoral boundary delimitation, audits to the voters' registry, or monitoring activities to the quick count and preliminary electoral results programs).

After the 2018 election, where the left-wing candidate, Andrés Manuel López Obrador, won the presidency by the largest margin of votes since Mexico transitioned to democracy and his party (MORENA) obtained the majority of seats in both chambers and in most state-level races, the public levels of confidence in elections –and the elites' trust in the EMB– significantly increased. See: Córdoba, Lorenzo. 2018. Fallaron los Teóricos del Fraude. Interview with El Universal. 07/10/2018. Available:

<http://www.eluniversal.com.mx/nacion/politica/fallaron-los-teoricos-del-fraude-cordova>;

<http://www.excelsior.com.mx/opinion/opinion-del-experto-nacional/despues-de-las-elecciones/1250073>

to the EMB (in three different moments: 1990, 1994, and 1996); b) The professionalization of the bureaucratic structure (the EMB's electoral civil service was created in 1992);¹⁸³ c) The increasing administrative capacity and financial resources to organize elections since the EMB's inception in 1990 (Sánchez and Vives 2017); d) The adoption of rules promoting a more leveled electoral playing field (specifically, the 1993 and 1996 reforms establishing a financial cap for financial resources spent during campaigns, and the adoption of rules guaranteeing a more balanced access to financial resources and presence in media among parties); d) the creation of a judicial body supervising and validating the legality of decisions made by the EMB in 1990;¹⁸⁴ and e) The gradual involvement of both national and international non-governmental institutions monitoring elections that began in 1994.¹⁸⁵

Most of these dimensions, however, either focus on formal rules granting *de jure* independence to the EMB, an increasing administrative and bureaucratic capacity, on a sequence of electoral reforms promoting more equal conditions of electoral competition among political actors, or the monitoring role of external international agencies. The internal dynamics and the formal and informal mechanisms allowing political actors to interact within the EMB have been usually omitted –or marginalized– as a key dimension contributing to the EMB's *de facto*

¹⁸³ See: Méndez and Protman (2000) and Sánchez (2013).

¹⁸⁴ The first judiciary electoral court, the Tribunal de lo Contencioso Electoral Federal (TCEF), was created in 1987. This institution would eventually be transformed into the Tribunal Electoral Federal (TRIFE) in 1990 and subsequently, in 1996, into the Tribunal Electoral del Poder Judicial de la Federación (TEPJF), which became a permanent institution in 2007.

¹⁸⁵ The 1994 presidential election was the first time where international observers were allowed to monitor the electoral process in Mexico. That year, 934 international observers were registered by IFE (Woldenberg 2012, 96). In 2006, for instance, both United Nations (UNDP) and the European Union sent delegations to participate in auditing the EMB's operational activities, as well as to observe the election (Ugalde 2008). For a detailed list of reforms affecting different administrative dimensions of the EMB see Sánchez and Vives (2017).

autonomy.¹⁸⁶ Authors like Becerra et al., (2000), Merino (2003), Woldenberg (2012), and Ugalde (2017), for instance, identify in their narrative of Mexico's transition to democracy how opposition parties played an active role in supervising the compliance of formal rules and auditing key procedures such as the registry of voters but, overall, the presence and role of political parties within the EMB has not received sufficient attention.¹⁸⁷

That is, most of these authors fall short in differentiating (and conceptualizing) how the presence and interaction of political parties within the different levels of the electoral bureaucracy has affected the quality of elections in Mexico and gradually allowed the EMB to become *de facto*

¹⁸⁶ Although the inclusion of political parties within electoral administration has been previously conceptualized in the work of authors like Schedler (2000), Mozaffar and Schedler (2002), and Hartlyn et al., (2008), these classifications refer exclusively to the degree to which parties participate in the EMB's executive board. For instance, Hartlyn and coauthors classify EMBs, based exclusively on the composition of its executive board, as a) Single-party dominated, b) Partisan mixed, c) Independent/partisan-mixed, and d) Independent of parties. In this classification, "non-partisan" EMBs (those that are independent of parties) are usually seen as having a higher degree of independence than those dominated by a single party or those where parties are present within the EMB's executive board (partisan mixed). That is, this argument emphasizes that EMBs that are insulated from political parties are more likely to be independent because they will be free from external political pressures. This, along with the focus on formal rules affecting *de jure* independence, partly explains the omission of looking at how the internal dynamics within electoral bureaucracies, the embedded systems of checks and balances, as well the formal and informal interaction of external political actors within the EMB affects the ability of these institutions to become *de facto* autonomous.

¹⁸⁷ The analysis of the relationship between the presence of parties within the EMB and *de facto* electoral autonomy has been absent or, at most, extremely vague in most studies focusing on electoral management in Mexico or in other countries around the globe. In their study of IFE's legal attributes, for instance, Sánchez and Vives (2017, 30) argue that including political parties within the EMB was a decision in the "opposite direction of the vast majority of measures prompting the EMB's independence." As is recognized by most country-level experts, it was not until the 1996 reform, when the right to vote was reserved only to "non-partisan" commissioners, that the EMB became a fully *de jure* independent institution. None of these country-level experts, or none of the major studies focusing on electoral management in Mexico, has negatively approached the historical presence of political parties within the EMB at different administrative levels (See: Becerra et al., 2000; Merino 2003; Woldenberg 2012; Ortega and Somuano 2015; and Ugalde 2017). That is, none of these authors conclude, suggest, or recommend in their studies that Mexico's EMB would have been able to achieve higher levels of *de facto* autonomy by becoming insulated from political parties, either before (under the CFE) or after the creation of the *de jure* autonomous Instituto Federal Electoral in 1990.

autonomous. This presence and interaction is what I define in this work as internal consultative mechanisms (ICMs). These mechanisms are *formal* and *informal* structures of mutual restraint promoting transparency and accountability by allowing external political actors (i.e., political parties) to interact at different administrative levels within a *de jure* autonomous EMB.

As shown in Table 6.1, before the inception of IFE in 1990, Mexico's EMB only had formal *executive-level* ICM. Registered political parties at the national level were formally represented within the *Comisión Federal Electoral*. Although parties were entitled to vote within the CFE's executive board, the institution was formally and informally controlled by the ruling party. Eventually, this institutional configuration changed to include a series of both formal and informal ICMs at different administrative levels. After the 1988 post-electoral conflict, the opposition demanded the creation of a *de jure* autonomous EMB. The new electoral institution, however, would need to include political parties in its institutional configuration.

Table 6. 1 Internal Consultative Mechanisms (ICMs) and EMB's De Facto Electoral Autonomy in Mexico (Pre and Post 1990)

Formal vs. Informal ICMs	Type of ICM	Mexico (Pre-1990)	Mexico (Post-1990)	Causal Effect of ICMs on De Facto Autonomy
Formal	Executive Level	Present	(=) Present	Allows the presence and inclusion of external actors in executive-level deliberations (e.g., formal representation of parties within the EMB's executive board).*
	Administrative Level	Absent	(+) Present	Guarantees external actors access to information / inclusion in administrative decision making (e.g., representation of parties within the EMB's committee system).
	Bureaucratic Level	Absent	(+) Present	Enables external actors to audit and verify the compliance of formal rules and bureaucratic procedures (e.g., parties directly monitoring the voter registration process).
	Policy Level	Absent	(+) Present	Allows external actors to supervise and participate during policy implementation procedures (e.g., partisan interaction during electoral boundary delimitation exercises).
	Street Level	Absent	(+) Present	Enables external actors to monitor the compliance of formal procedures during election day (e.g., presence of party agents within polling stations).**
	External Consultation Committee	Absent	(=) Absent	Promotes consensus building, creates communication channels and increases transparency (e.g., formal agreement to inform and include parties in key administrative deliberations).***
Informal	Plurality of partisan ties within the EMB's Executive Board	Absent	(+) Present	Prevents unilateral decision making and creates incentives to build consensus among commissioners with different ideological alignments (e.g., informal partisan ties of "non-partisan" members of the EMB's executive board).
	External Consultation Committee	Absent	(=) Absent	Promotes consensus building, creates communication channels and increases transparency (e.g., informal agreement to inform and include parties in key administrative deliberations).****
EMB's De Jure vs. De Facto Autonomy		Mexico (Pre-1990)	Mexico (Post-1990)	
De Facto Autonomy*****	~	Low	(↓) High	~
De Jure Autonomy*****	~	Low	(↓) High	~

Note: Table elaborated by the author. The year in each of the four cases was determined by the moment the current EMB was formally established and became formally (de jure) independent. The IFE in the case of Mexico, the Electoral Commission in Ghana, the Consejo Nacional Electoral in Venezuela, and the Independent Electoral and Boundary Commission of Kenya.

*Executive-level ICMs include mixed-partisan configured EMBs' executive boards, as well as "non-partisan" boards where parties are formally represented with the right to speak, but not to vote. The (+), (-), and (=) symbols denote the adoption or elimination of either a formal or informal ICM from one period to another. The (=) symbol denotes the status quo prevailed. In Mexico, for instance, parties have been formally embedded within the EMB since 1946.

** Street-level ICMs allow parties to formally register representatives (agents) to be present within polling stations supervising the voting process during the day of the election. This mechanism, however, becomes more effective when parties are sufficiently institutionalized in order to have the organizational means, as well as the territorial presence, to monitor the different phases of the voting procedures across all regions. Out of the five formal ICMs enlisted here, street-level ICMs are more related to the capacity of parties to monitor the compliance of procedures during the election day, than to the internal workings of the EMB. The effectiveness of this ICM also requires that party agents are formally represented within the polling station for monitoring, but not for administrative purposes (e.g., working as polling officials). In the pre-1999 Venezuela, for instance, the appointment of partisan polling officials negatively affected the EMB's perception as a de facto autonomous EMB.

*** This formal type of ICM allows parties to establish a two-way interaction with the EMB. Depending on each country, it might be used differently to serve either a single or the multiple causal links described here.

**** This informal type of ICM allows parties to establish a two-way interaction with the EMB. Depending on each country, it might be used differently to serve either a single or the multiple causal links described here.

***** Cases were classified according to the author's fieldwork interviews with country-level experts and the V-Dem's measure of EMBs' de facto Autonomy (EMB Autonomy) with respect to other EMBs in the country's respective region. The (↑), (↓), and (=) symbols represent an increase, decrease or no change in the levels of de facto autonomy from one period to the other.

***** Following Hartlyn's et al., (2008) classification, EMBs were classified based on the institutions' legal (de jure) independence from other branches of power, on the appointment mechanism used to designate the EMB's executive board, as well as the formal partisan configuration of the board. In Ghana and Kenya, for instance, both the EC and the IEBC became formally independent EMBs when they were established, but the Executive Branch still plays a dominant role in the appointment of the members of the executive board. In Venezuela, the EMB transitioned from having a mixed-partisan executive board to a fully "non-partisan" –formally independent– executive board.

At the *executive level* it would include the formal representation of political parties within the EMB's executive board (i.e., *The Consejo General*); at the *administrative level*, political parties would be embedded within IFE's committee system; at the *bureaucratic level* political

parties would become a key part of a robust monitoring mechanism known as the *National and Local Surveillance Commissions* (CNV and CLsV, respectively); at the *policy level* parties were involved in technical implementation processes to formulate observations to the authority; at the *street-level* party representatives (poll-watchers) would become key for ensuring that formal procedures were enacted, that votes would be counted correctly, and results at the polling station level were correctly transmitted. Finally, and perhaps more importantly, parties maintained informal ties with the EMB by maintaining informal ties with ideologically aligned electoral commissioners creating a consociational dynamic and preventing the unilateral cooptation of the EMB's executive board by a single political faction, group or party.¹⁸⁸

¹⁸⁸ The first three types of ICMs (executive, administrative, and bureaucratic) are embedded within the EMB at the national level and replicated at the state level through the EMB's local and district level offices. IFE's executive level bureaucratic structure is concentrated in the main headquarters in Mexico City. The EMB, however, has representation in every state through 32 local offices (Juntas Locales), and in each one of the 300 districts through regional offices (Juntas Distritales). The executive level ICM is also replicated at the state and district level through the 32 Consejos Locales and the 300 Consejos Distritales. The 32 Consejos Locales are formed by a presiding officer (Vocal Ejecutivo) and six "non-partisan" electoral commissioners appointed by the Consejo General, which have the right to vote, appointed by the EMB's executive board. They are also formed by the representatives from political parties and three officials representing executive bureaucratic areas of electoral organization, the federal registry of voters, and office for training and civic education (also known as Vocales). The latter two, are represented within these administrative organs with the right to speak, but not to vote. The 300 Consejos Distritales have a similar administrative configuration, but the six "non-partisan" electoral commissioners of the council are appointed by the Consejos Locales, instead of being appointed by the EMB's executive board. See: Articles 102 and 113 of the Código Federal de Instituciones y Procedimientos Electorales. México: Instituto Federal Electoral. 1996.

When the Instituto Federal Electoral was created in 1990, the EMB was responsible for organizing federal level elections for president, and representatives in the Cámara de Diputados (lower chamber) and the Senate. Each state had its own de jure autonomous EMB, which replicated IFE's administrative configuration, responsible for organizing local level elections for Governor, local legislatures and municipalities. Once the Instituto Nacional Electoral (INE) was established in 2014, Mexico's EMB became a national level bureaucracy responsible for organizing both federal and local level elections. Although each state kept its own executive board (also known as Organismos Públicos Locales Electorales, OPLEs), they now fall within the jurisdiction of INE's Consejo General and have the same administrative configuration. The Organismos Públicos Locales Electorales (OPLEs) are formed in each state by "non-

The historical perspective of electoral administration in Mexico is relevant for illustrating the casual relationship between ICMs and the EMB's *de facto* autonomy for four reasons. First, it shows that in some third-wave democracies the adoption of consociational institutional arrangements (i.e., ICMs) within electoral bureaucracies, instead of becoming insulated from political actors, have been effective in promoting *de facto* electoral autonomy. Second, it illustrates that in addition to previous dimensions promoting EMBs' independence, such as formal (legal) autonomy, administrative capacity and bureaucratic professionalization, the involvement of political parties within the electoral bureaucracy has been key for building trust among political actors by ensuring the integrity of different aspects of electoral administration. Third, it allows differentiation between *formal* and *informal* ICMs, as well as a way to identify different ways in which formal ICMs can be embedded within an EMB. Finally, the historical perspective of electoral administration in Mexico reveals that the adoption of ICMs antecedes the regime's decision to delegate the responsibility to manage elections to a formally autonomous EMB. That is, the early adoption of ICMs within the EMB had an unanticipated consequence for the regime by creating an internal system of checks and balances within the electoral bureaucracy that would eventually lead to the enforcement of formal rules, as well as to more transparent, accountable and proficient practices.

In the following subsection I explain how both formal ICM's were embedded within the EMB before and after the inception of the *Instituto Federal Electoral* in 1990. I then explain how the electoral bureaucracy is structured, where formal and informal ICM's are embedded, and how

partisan" electoral commissioners, including the chairman, and representatives from political parties registered at the state level, as well as by representatives of the local legislature. The latter two only have the right to speak, but not to vote.

this consociational system of checks and balances has affected the capacity of the institution to become *de facto* autonomous.

6.2.2 Formal and Informal Internal Consultative Mechanisms Under CFE

In 1946 President Manuel Ávila Camacho established by decree the *Ley Electoral Federal* (LEF). This legal framework centralized the *governmental* model of electoral administration by creating the *Comisión Federal de Vigilancia Electoral* (CFVE). The CFVE was in charge of overseeing and organizing elections for the legislative and executive branches. This EMB was presided over by the minister of the interior, and its executive board was formed by a member appointed by the executive branch (in addition to the minister of the interior), two appointees of the legislative branch, coming from the lower and upper chambers, and *two members of political parties with national representation* (Carmona 2018). All members had the right to speak and vote with the CFVE's executive board.

From the inception of the *governmentally* managed CFVE in 1946 to the creation of the *de jure* autonomous IFE in 1990, parties have always been embedded within the EMB.¹⁸⁹ Over the years, the presence of parties within the electoral commission would become key for the institution's reputation because the gradual delegation of key administrative management responsibilities –from the Ministry of the Interior to an EMB that gradually would become *de jure* autonomous– made administrative procedures more transparent, accessible and accountable to opposition parties. That is, although the EMB was formally and informally controlled by the

¹⁸⁹ Even after parties abdicated to their right to vote within the EMB in 1996, they maintained their formal representation within the Consejo General by keeping a seat with the right to speak.

regime during this period (1946 to 1990), opposition parties were able to use their representation within the EMB to manifest their concerns through institutional channels and, gradually, gained access to an institutional platform that allowed them to monitor and audit different technical procedures (Valdés and Piekarewicz 1990).¹⁹⁰

The 1977 *Ley Federal de Organizaciones Políticas y Procesos Electorales* (LFOPPE), for instance, explicitly recognized the role of political parties in electoral administration. Along with the State and citizens, political parties were co-responsible for organizing and overseeing the electoral process at the national, local, district, and polling station level (LFOPPE 1977):¹⁹¹

¹⁹⁰ Although opposition parties had a marginal political presence and did not represent a threat for the regime's formal and informal control of the EMB, during the early years of the electoral commission (1946-1977) they were always represented –with a different weight relative to its number of votes– within the institution. In 1946, for instance, only two parties were represented within the CFVE. In 1951 the CFVE was replaced by the Comisión Federal Electoral (CFE) and the number of party representatives increased from two to three. In 1973, all registered political parties at the national level became part of the CFE's executive board. This change increased the size of the commission from six to seven members, and after the 1977 political reform, from seven to ten.

As recognized by Valdés and Piekarewicz (1990, 62-63), the increasing number of opposition parties represented within the CFE after the 1977 political reform, forced the regime to reach agreements and build an informal coalition with smaller “satellite” parties that were ideologically aligned with the PRI. In order to gain full control of the EMB, the ruling party modified the institutional arrangement of the commission in 1987 by having parties represented within the CFE based on their congressional representation. With this new arrangement, each party that had received at least 1.5% of the national vote share in the congressional race, would obtain one representative. For every additional 3% increase in such vote share, parties would receive one additional representative, but no more than 16 in total (Rodríguez and Sirvent 2005).

Based on the 1985 legislative results, the PRI controlled 19 (61%) out of the 31 votes of the commission. The PRI vote share within the CFE came from the presiding member (the Minister of the Interior), from the two members of Congress (both chamber dominated by the ruling party) and 16 party representatives given that it obtained 289 (72%) out of the 400 seats in the lower chamber. The opposition party with the largest share of seats in the 1985 legislature was the PAN, which had 41 (10.25%) out of the 400 seats. This meant that the PAN controlled only 3 out of the 31 members of the commission. According to Valdés and Piekarewicz (1990, 63-65), the majoritarian status and unilateral capacity of the PRI to take decisions within the commission –the absence of internal checks and balances– was one of the main reasons that undermined the credibility of the 1988 electoral process.

See: <http://www.memoriapoliticademexico.org/Efemerides/2/12021987.html>.

¹⁹¹ Ley de Organizaciones Políticas y Procedimientos Electorales. 1977. Article. 76. See: <http://ahgs.gob.mx/ley-federal-de-organizaciones-politicas-y-procesos-electorales/>

El Estado, los ciudadanos y los partidos políticos son corresponsables de la preparación, desarrollo y vigilancia del proceso electoral, integrando los organismos político-electorales siguientes: I. La Comisión Federal Electoral; II. Las comisiones locales electorales; III. Los comités distritales electorales, y IV. Las mesas directivas de casillas.

Compared to its predecessor (the LEF), the LFOPPE delegated to the EMB new administrative responsibilities, such as the duty to register new political parties and national political organizations, which used previously an exclusive responsibility of the Ministry of the Interior. It also recognized the *CFE* as the institution in charge of overseeing the process for electing legislators via *proportional representation*. With the LFOPPE, political parties represented within the EMB were now entitled to be part of the *Technical Committee in Charge of Supervising the National Registry of Voters*. This technical committee was formed by governmental agencies related to areas such as information technology, statistics and geography and, among its main tasks, included the random selection of the members of local and district level electoral commissions.¹⁹²

This type of concession not only allowed party representatives to remain within the EMB's executive board, but it also granted them formal access to the EMB's bureaucratic structure at the mid and lower administrative level by supervising the appointment process of electoral officials at the regional level. Additionally, party representatives were now included in specific policy

¹⁹² See: <http://www.memoriapoliticademexico.org/Textos/6Revolucion/1977-JLP-EM.html>

procedures, such as the technical committee formed to supervise the activities to audit and update the national registry of voters (*el registro federal de electores*). This decision reveals the intention of the ruling party to create a pressure valve mechanism within the EMB to ventilate external pressures and, at the same time, the attempt to legitimize electoral organization –at least on paper– by allowing opposition parties to formally be embedded within the electoral bureaucracy. While the 1977 electoral reform introduced a *proportional representation* mechanism in the legislature to legitimize the legislative decision-making process, the formal inclusion of party representatives within different administrative levels of the EMB would allow the ruling party to legitimize electoral procedures and results.¹⁹³

The work of Valdés and Piekarewicz (1990) shows how the CFE, despite being formally and informally controlled by the regime, gradually became a space of deliberation. Opposition parties within the EMB could manifest their concerns and, when it came to technically complex processes, the regime repeatedly tried to build consensus among its members. As a response to a demand formulated by opposition parties within the EMB, for instance, the 1987 electoral reform established the annual auditing of the registry of voters. According to Valdés and Piekarewicz (1990), the inclusion of political parties within the commission also gave political parties a formal platform to unify their demands as a single opposition block to keep debating and ventilating

¹⁹³ During this period (1977 to 1988), the ruling party took advantage of its majoritarian status within the commission to take strategic decisions, such as voting against the possibility of extending the voting registration deadline for the 1988 election or allowing of the Partido Mexicano Socialista's (PMS) petition to take them out of the ballot after withdrawing from the presidential race in order to support Cuauhtémoc Cárdenas (Valdés and Piekarewicz 1990). Both of these decisions were challenged by opposition parties in the Tribunal de lo Contencioso Electoral Federal (TCEF), but the ruling of the court favored the EMB's decision based on technical and normative reasons.

technical and administrative concerns within the EMB that would become key for the electoral process.

These demands and debates included the audits performed to the registry of voters; the adoption of an information system to display electoral results on the election day; and the creation of a permanent subcommittee to investigate and evaluate complaints presented by political parties (i.e., complaints denouncing the destruction of the opposition's political propaganda by sympathizers of the ruling party, the use of public resources to benefit the PRI, or the improper framing of opposition parties on television by *Televisa*, the country's main broadcasting company which had close ties with the regime).

These examples show how the early inclusion of parties within the EMB, even under an electoral authoritarian context, became a key space where opposition parties could directly communicate and denounce irregularities within the CFE. The presence of political parties within the EMB would also become key for the institutional arrangement that would be later adopted by the *de jure* autonomous *Instituto Federal Electoral*. For instance, the creation of a committee system within IFE, where parties are able to monitor and supervise most administrative decisions affecting electoral organization, can be traced back to the demand of opposition parties within the CFE to create a special subcommittee to investigate and evaluate complaints filed by all parties within the EMB. Similarly, the internal debates with opposition parties within the CFE to regulate the use of public resources during the campaigns, became the preamble to what would later become –under IFE– a complex legal framework regulating the use of public funds.

One of the most extensive debates that opposition parties had within the CFE during the late 1980s, was the state of the registry of voters. For opposition parties, having an updated registry of

voters was key prerequisite for holding fair elections. The presence of political parties within the EMB, and their role as monitoring agents of the voters' registry, would eventually become the precedent of the adoption of a national and local level surveillance commissions (*Comisión Nacional y Comisiones Locales de Vigilancia*) under IFE. Through their representatives within the CFE, for instance, opposition parties had direct access to reports generated by the head of the National Registry of Voters (*Registro Nacional de Electores, RNE*) and were able to detect irregularities and suggest amendments. According to Valdés and Piekarewicz (1990:70-72), the PAN detected a large number of irregularities in the voters' lists in Guanajuato and Mexico City (DF), while the *Partido Mexicano Socialista* (PMS) suggested the adoption of a new methodology to detect irregularities, as well as the administrative reconfiguration of the *Registro Federal de Electores*.¹⁹⁴

Another example of what would later become a common practice within IFE's committee system, was the "fast-track agreements (*acuerdos en lo económico*)" between CFE's technical secretary (*Secretaría Técnica*) and political parties. Through this informal internal consultative mechanism, the chair of the EMB would informally reach agreements with each party separately regarding key administrative decisions, such as the design of the voting record sheets to be distributed across polling stations (*actas de escrutinio y cómputo*), the design of the voting ballot, and the materials that would be used during the election day (Valdés and Piekarewicz 1990:

¹⁹⁴ In order for parties to verify the registry of voters at the district level, the legal framework established that party representatives within the 300 districts surveillance commissions would receive a copy of the registry in order to evaluate and update it. The unequal presence of opposition parties across districts, however, made this a daunting task for most opposition parties that could not compete with the national presence of the ruling party (Valdés and Piekarewicz 1990: 72). This is one of the many reasons why the institutionalization of parties is relevant for the ability to create an effective system of ICMs.

68).¹⁹⁵ The adoption of this ICM by the CFE reveals the necessity of the ruling party to build consensus with political parties around key administrative decisions affecting different organizational aspects of the election.

The regime's decision to keep political parties represented within the EMB during the 1970s and 1980s created an important system of ICMs that would later become embedded within the institutional design of the *de jure* autonomous IFE created in 1990. Back then, however, these internal consultative mechanisms were clearly insufficient to guarantee the *de facto* autonomy of the EMB. The formal and informal control of the EMB by the ruling party and the 1988 post electoral conflict caused the most important legitimacy crisis that the PRI regime had experienced since its inception in 1929. In May of 1989, the PRD was founded after unifying left-wing parties into a single force generating a major realignment of the party system in Mexico (González Casanova 1993; Molinar and Weldon 1990).¹⁹⁶ The PRD became the third largest political force in the country and, along with the PAN, opposition parties demanded the creation of a *de jure* autonomous institution to manage election (Becerra et al., 2000; Woldenberg 1999 and 2012).

As a reaction to this legitimacy crisis, the formally autonomous *Instituto Federal Electoral* was created in 1990 under the administration of President Carlos Salinas. According to the *Código Federal de Instituciones y Procedimiento Electorales* (COFIPE), the EMB was constituted as a

¹⁹⁵ This consultative mechanism with political parties would eventually change with IFE's committee system, where all political parties were informed about administrative decisions, they could participate and share their position, and all parties would simultaneously be informed about the position of the rest of the committee members.

¹⁹⁶ Among them, the Partido Socialista Mexicano (PMS), the Partido Comunista Mexicano (PCM), the Partido Socialista Unificado de México (PSUM), the Partido Mexicano de los Trabajadores de México (PMT), the Partido Patriótico Revolucionario (PPR), the Movimiento Revolucionario del Pueblo (MRP), the Unión de la Izquierda Comunista (UIC), the Partido Socialista de los Trabajadores (PST).

formally independent and permanent institution with its own budget and personnel, created in order to guarantee the certainty, transparency and legality of federal elections in Mexico. Although it was conceived as a formally autonomous institution, IFE's executive board was still presided over by the Minister of the Interior.¹⁹⁷ It was also formed by four representatives of the legislative branch (two representatives from each chamber, one appointed by the majority party and the other appointed by the second largest party); six "non-partisan" magistrates nominated by the executive branch, subject to the approval of at least two-thirds of the vote in the lower chamber; and representatives from political parties based on the national vote share in the last legislative election.

In 1994, the composition of the EMB's executive board changed. IFE's *Consejo General* would still be presided over by the Minister of the Interior, but it would be formed by six "non-partisan *consejeros ciudadanos* (citizen commissioners)," four representatives of the legislative branch (two from the upper and two from the lower chamber), and one representative from each political party registered at the national level. Party representatives, however, kept their right to speak within the *Consejo General*, but not to vote. On one hand, the six magistrates were replaced by six "non-partisan citizen commissioners" (*consejeros ciudadanos*) that would be nominated by parliamentary groups and approved by at least two-thirds of the lower chamber.¹⁹⁸ With this change, the political elite took away from the executive branch the faculty to nominate the six magistrates and delegated to the lower chamber the responsibility to nominate and appoint the six

¹⁹⁷ Article 74. Código Federal de Instituciones y Procedimiento Electorales. México: Diario Oficial de la Federación. 1990. See: <http://www.memoriapoliticademexico.org/Textos/7CRumbo/DO-1990-ago-15-COFIPE.pdf>

¹⁹⁸ The change from "magistrate" to "citizen" commissioners implied that the new members of the EMB's executive board were not required to have a law degree or have a previous career in the judicial branch.

“non-partisan citizen commissioners.” On the other hand, political parties registered nationally would maintain their representation within IFE’s executive board but abdicated to their right to vote in order to have a more autonomous EMB. This reform gave, for the first time, the majority of votes within the EMB’s executive board to “non-partisan citizen commissioners.”

The delegation process to a fully *de jure* independent bureaucracy was not completed until 1996. That year, the executive’s faculty to appoint the *IFE*’s chair was removed and vote was reserved exclusively for “non-partisan” commissioners. The EMB’s executive board would be now be formed by 9 “non-partisan” commissioners (including the EMB’s chairman) nominated by parliamentary groups and approved by at least two-thirds of the lower chamber, representatives from the legislative branch, and party representatives for each political party registered at the national level. Both the legislative and party representatives had the right to be formally represented at the EMB’s executive board but could not vote.¹⁹⁹

In sum, the historical perspective of electoral administration in Mexico shows the gradual transition of a governmentally managed electoral bureaucracy, which was formally and informally controlled by the ruling party, to a *de jure* and *de facto* autonomous EMB headed by an executive

¹⁹⁹ In subsequent years, there have been subsequent electoral reforms complementing and expanding the formal responsibilities of the EMB. The institutional configuration of the Consejo General, however, has remained the same. In 2007, for instance, the IFE became responsible for controlling access of political parties to media, create an internal controllership within the EMB, create an independent unit within the EMB in charge of overseeing partisan spending and quantifying monetary sanctions to be imposed to parties when finance laws had been violated. In 2014, the EMB transitioned from a federal to a national level bureaucracy in charge of organizing both federal and state level elections. Although this significantly increase the EMB’s (now Instituto Nacional Electoral) administrative responsibilities, especially those related to coordinating the 32 local electoral commissions, the configuration of the EMB’s executive board would remain almost the same. The number of “non-partisan” commissioners increased from nine to eleven, including the EMB’s chairman, and they would still be nominated by parliamentary groups and approved by at least two-thirds of the lower chamber. Party and legislative representatives kept their seat within the EMB’s executive board with the right to speak, but not to vote.

board formed by purportedly “non-partisan” citizen electoral commissioners. A close look at the internal workings of the EMB, however, reveals that the institution was able to build a positive reputation not only through its formal independence from the executive branch and the ruling party, but also through the formal and informal system of ICMs that was built within the EMB at different administrative levels. These ICMs were inherited from the institutional configuration of the CFE and became key for the institution’s capacity to build trust among political actors and citizens.

Although the political elite could have decided to completely insulate the EMB from the presence of external political actors (e.g., political parties), the institution inherited an internal configuration that included the presence of political parties within the EMB at different administrative levels when it became *de jure* autonomous. Over the years, this presence created an internal consociational dynamic where the main interested actors competing for power were responsible for supervising and enforcing the compliance of formal rules during the different stages of the electoral process. In the next subsections, I describe the different types of ICMs embedded within the *de jure* autonomous IFE and how these mechanisms have helped the EMB to become *de facto* autonomous.

6.2.3 Formal and Informal Internal Consultative Mechanisms After IFE

It is hard to insulate the effect of ICMs on *de facto* electoral autonomy from other contributing variables to the EMB’s positive reputation. As recognized by most country-level experts, since IFE was created in the 1990s, rules promoting the EMB’s *de jure* independence and a more leveled electoral playing field, as well as a more professionalized bureaucracy have

positively affected the institution's *de facto* autonomy. Although most of these factors took place simultaneously, the successful role of electoral administration during Mexico's transition to democracy would not have been possible without the presence of ICMs. In the following paragraphs I offer different examples (at the *executive, administrative, bureaucratic, street* and *policy level*) showing how ICMs at different levels promoted transparency, accountability and credibility positively affecting IFE's *de facto* autonomy.

The most emblematic ICMs are the ones *formally* and *informally* embedded at the EMB's *executive level* because all administrative decisions have to be formally validated by the EMB's executive board. It is here where the political elite, through its party representatives, is able to communicate concerns or receive information before an agreement, resolution or report is formally approved by the EMB's executive board. In the preamble to the 2006 election, for instance, IFE's *Consejo General* deliberated and voted approximately 165 agreements and resolutions related to key administrative decisions that were adopted and implemented one year before the election (Ugalde 2008: 149).

Among the most relevant, the auditing and approval of the voters' registry, the renewal of electoral boundaries, the random selection of polling officials, the training protocols for electoral officials and citizens participating as polling officials during the day of the election, the security mechanisms embedded in electoral materials, the procedures of electoral organization and distribution of materials prior to the election, the protocols for announcing results the day of the election, and the auditing and sanctioning of political parties. All of these administrative decisions were discussed and approved in the presence of party representatives at the *Consejo General*.

Through the EMB's committee system (an ICM at the *administrative level*), parties were able to formulate detailed observations and recommendations on every procedure, protocol or regulation that would be later discussed and voted by the EMB's executive board. Suggestions or petitions formulated by parties within the committees were made available to the rest of the members of the executive board prior to the sessions of the *Consejo General*. That is, all parties had full access to information before agreements were voted in the committee system and board members had complete information before decisions were voted by the EMB's executive board. Out of the 165 agreements and resolutions voted by the EMB's executive board, only 17 were challenged in the electoral court (TEPJF). Of those 17 cases, 8 were rejected (ratified in favor of the EMB's executive board) and only in 9 cases the TEPJF ordered the EMB to modify their agreements and resolutions (Ugalde 2008).²⁰⁰

The informal connection between EMB's electoral commissioners and political parties has also been crucial for the EMB's ability to develop an internal system of *checks and balances* at the *executive level* because the *Consejo General* is not only responsible for taking administrative decisions affecting electoral organization, but also because it is the administrative organ in charge of formally resolving disputes among parties and of sanctioning them when an irregularity has been detected. In Estévez, Magar and Rosas' (2008: 269-270) terms:

²⁰⁰ Although the vast majority of administrative procedures were validated by all political parties represented within the EMB, this did not –and cannot– guarantee that a political actor will recognize electoral results, as happened with the left-wing (PRD) candidate in the 2006 presidential race. Having political actors participating and validating most administrative decisions, however, promotes transparency, accountability and impartiality. It also incentivizes electoral officials to follow formal rules and procedures and this, in a highly politicized environment, allows all political and institutional actors –including the EMB and the electoral court acting as a judicial authority in charge of solving disputes– to clearly identify irregularities and to verify if such claims are sustained (Pastor 1999).

We believe the evidence supports our contention that though the bulk of IFE decisions have been above the political fray and free of partisan bickering, this is not because its members are embodiments of technocratic efficiency and impartiality. Instead, the voting record is consistent with the view that *councilors behave as party watchdogs, able to check each other's moves and assure compromises that protect their sponsors' interests in the electoral arena... Parties have not given away all control over electoral regulation and yet benefit from the reputation that elections are clean.*

This informal interaction between bureaucratic and political stakeholders has allowed the EMB to reinforce formal rules ensuring the impartiality of administrative decisions and promoting trust in electoral management among the main political stakeholders competing for power. Since IFE became *de jure* independent in 1996, party leaders built a system of ICMs to establish communication channels with the electoral bureaucracy and to monitor each other at the *executive level* ensuring that administrative decisions would not deliberately –or systematically– favor a specific external actor.²⁰¹

²⁰¹ For Woldenberg (2012: 110), the 1988 post-electoral conflict, along with the raise of political violence in the early 1990s (e.g., the formation of the Zapatista Army and the assassination of the PRI's candidate), forced the political elite to establish an agenda that would guarantee the impartiality of the EMB and that would eventually level the conditions of electoral competition. Among the most important political agreements reached in 1994 and 1995 was the creation of an exclusively “non-partisan” executive board where electoral commissioners would be nominated and appointed on a consociational basis by at least two-thirds of the vote in the Cámara de Diputados. On one hand, the executive branch would no longer play a formal role within the EMB and, on the other, the selection and appointment mechanism of “non-partisan” electoral commissioners would force parties in the legislature to build consensus and nominate commissioners that could be trusted by them and would guarantee that no single group would have the unilateral capacity to take executive-level decisions within the EMB.

Having political parties formally represented within the EMB and “non-partisan” commissioners with ideological ties to the political elite in a collegial executive board has incentivized deliberation over most administrative decisions. These debates allow opposing views to be publicly presented within the *Consejo General*. In some cases, deliberation has generated consensus, while in others, disagreements have allowed members of the EMB’s executive board to become fully aware of the standing of political actors and electoral commissioners. For Woldenberg (2012), this dynamic has allowed the EMB to become more transparent and to directly receive feedback from political actors that are embedded within the institution.

The economic sanctions imposed to the two largest parties competing for power during the aftermath of the 2000 presidential election was one of the most emblematic rulings of IFE’s *Consejo General* showing how the embedded system of *executive level* ICMs reinforced the capacity of the EMB to enact formal procedures increasing the EMB’s *de facto* autonomy. On one hand, IFE sanctioned the former ruling party, the PRI, for illegally deviating financial resources from Pemex’s Workers Union (the scandal was known as *Pemexgate*). On the other, the EMB sanctioned opposition parties forming the winning coalition, the PAN and PVEM, for violating party financing regulations after illegally triangulating resources coming from abroad for the presidential campaign of Vicente Fox (the case was known as *Los Amigos de Fox*).²⁰²

In formal terms, the rules for nominating and appointing electoral commissioners in Mexico since 1996, ranks above average (in terms of independence) from a sample of 34 countries around the globe (Rivera 2014). As recognized by Estevez et al. (2008), however, formal appointment procedures do not prevent the political elite from designating ideologically aligned “non-partisan” commissioners.

²⁰² Both parties were sanctioned with approximately the equivalent to the total amount of public funds received by them during an electoral year. The PRI was sanctioned with 100 million dollars, and the PAN

Despite the intense lobbying of these parties within the EMB to avoid major monetary sanctions, the EMB's executive board ruled against the PRI, the PAN and PVEM. According to Ortega and Somuano (2015), these sanctions positively affected citizens' trust on the EMB because they positioned IFE as a *de facto* independent electoral bureaucracy capable of identifying violations to the electoral law and equally sanctioning major political parties. According to these authors, this was a key contributing factor allowing the EMB to build a reputation as an impartial and effective referee in the electoral playing field.

The economic sanctions imposed by IFE to these three parties reveal how neither the formal presence of political parties within the EMB's executive board, or the informal partisan ties of the purportedly "non-electoral" commissioners, prevented the EMB from taking an administrative decision against the major parties competing for power.²⁰³ To the contrary, having parties embedded within the EMB incentivized the electoral authority to establish clear rules to determine how sanctions would be applied and to follow an institutional path to define the EMB's auditing capacity and limitations.²⁰⁴ Once a party had been sanctioned, other parties became additional

and PVEM with approximately 50 million dollars. These were not only the most severe historical monetary sanctions imposed to political parties in Mexico, but also across the region.

See: <http://www.nexos.com.mx/?p=11863>; Merino (2003: 134); Ugalde (2008); and Ortega and Somuano (2015: 74).

²⁰³ The EMB's Auditing Committee formed in 1996 (La Comisión de Fiscalización) was presided over by Alonso Lujambio and the Executive Direction of Political Parties and Party Financing (Dirección Ejecutiva de Partidos Políticos) was presided over by Arturo Sánchez. Both commissioners had strong ideological ties with the right-wing party, the PAN (Estévez et al., 2008).

²⁰⁴ Interview with Arturo Sánchez, former Executive Director of Political Parties and Party Financing (1996-2003) and Electoral Commissioner (2003-2010). Interview conducted in May 2016, Mexico City. According to former electoral commissioner Sánchez, the sanctions imposed to the two major parties would have been unlikely if the Pemexgate and Amigos de Fox had taken place under the governmentally managed Comisión Federal Electoral, which was formally and informally controlled by the ruling party, the PRI.

monitoring agents ensuring that sanctions would be applied using the same criteria. It also gave the legislature a precedent to consider delegating additional normative attributes to the EMB that would eventually allow auditing tasks to become more effective.²⁰⁵

Furthermore, the presence of political parties within the EMB's executive board complemented the auditing responsibility and capacity of the electoral bureaucracy to monitor the reception and use of both public and private funds by political parties.²⁰⁶ On one hand, once a corruption scandal or a violation had become public, political parties were entitled –and had the incentives– to formally present a complaint against another party within the EMB. On the other hand, having formal representation within the EMB allowed parties to gain complete access to information regarding a complaint placed against them, as well as to the EMB's reasoning and considerations in case a sanction was imposed (Merino 2003: 133).

Two other key ICMs have been key for promoting the EMB's *de facto* autonomy by allowing the institution to build consensus and legitimize its bureaucratic level decisions.

Bureaucratic, street and policy level ICMs have allowed political parties to monitor, validate and

²⁰⁵ In the case of Amigos de Fox, for instance, one of the main challenges faced by IFE's Auditing Committee during the investigation was that it was not clear if the EMB had the legal attributes to access banking records (el secreto bancario). The Electoral Tribunal ruled in favor of the EMB allowing it access such records and, eventually, the law was reformed granting the EMB such capacity (Merino 2003; Ugalde 2008; Woldenberg 2012).

²⁰⁶ According to Article 49-A of the COFIPE, parties were responsible for informing annually IFE's Auditing Committee of all public and private monetary funds and resources received, as well as how they used them during the campaign. The EMB's Auditing Committee was responsible for establishing the guidelines and technical procedures for auditing, monitoring, validating the monetary funds received by parties and, in case of irregularities, prepare a resolution to sanction them. These guidelines were approved by IFE's Consejo General for the first time in 1993, and they were subsequently reformed in 1996 and 1997. In 1999, the Electoral Tribunal recognized the right of political parties to formally present a complaint against any violation committed by a third party (Merino 2003: 133). In 2009, IFE's Auditing Unit (la Unidad de Fiscalización) replaced the Auditing Committee and was established as an autonomous department within the EMB.

participate in highly complex bureaucratic and policy implementation processes. The main difference between *bureaucratic and policy level* ICMs has to do with the permanence of the organizational structure and the degree of involvement of political parties. In case of the former, a permanent *bureaucratic* structure is set in place while, in the latter, parties have played a temporary and indirect role.

The most emblematic example of a *bureaucratic level* ICM is the National Surveillance Commission (known in Spanish as the *Comisión Nacional de Vigilancia* or *CNV*).²⁰⁷ This *bureaucratic* ICM had its origin in 1977 electoral framework (LFOPPE), which recognized the right of political parties represented within the CFE to be part of the *Technical Committee in Charge of Supervising the National Registry of Voters*. After the 1988 post-electoral conflict, one of the main concerns of opposition parties was the partiality and opacity surrounding the management of voter registration procedures (Becerra et al., 2000; Merino 2003; and Woldenberg 2012). As recognized by Valdés and Piekarewicz (1990), the control of the voters' registry was one of the main administrative loopholes the ruling party had historically used to manipulate elections. Verifying the validity and consistency of the registry was a daunting task for opposition parties due to the lack of organizational resources and because none of them had the capacity to have party representatives across the 300 electoral districts.²⁰⁸

²⁰⁷ The same organizational structure is replicated at the state level (through 32 Local Surveillance Commissions, also known as *Comisiones Locales de Vigilancia*) and the district level (through 300 District Surveillance Commissions, also known as *Comisiones Distritales de Vigilancia*).

²⁰⁸ The PRI was only party with sufficient organizational resources to have party representatives across the 300 electoral districts in the 32 states (Valdés and Piekarewicz 1990).

In order to solve this problem, opposition parties (especially the PAN and PRD) pressured the regime to create a formal and permanent monitoring multi-level partisan structure embedded within the EMB allowing parties to verify key administrative procedures related to the registry of voters (García 2017). When IFE was created in 1990, *one* national, *thirty-two* local and *three-hundred* district level *surveillance commissions* were established in order to build trust among opposition parties around this key bureaucratic procedure. According to article 166 of COFIPE, the *surveillance commissions* would be responsible for i) *supervising* the enrollment of citizens in the voters registry (*el padrón electoral*) and the voters' list (*la lista nominal*), as well as the procedures for updating such registries, ensuring that they would follow the rules established in the legal framework;²⁰⁹ ii) *monitoring* that voting identification cards are distributed to citizens in time and according to the procedures established in the law; iii) *formulating* observations and recommendations to the voters' list; and iv) *auditing* all tasks related to the registration of voters.²¹⁰

The CNV would be presided over by the Executive Director of the Registry of Voters and formed by party representatives of all political parties registered at the national level, a member of the electoral civil service specializing in voter registration, as well as a member from the census bureau (INEGI). *Surveillance commissions* became the only bureaucratic bodies within the EMB where political parties had a majoritarian status and where its members (party representatives) had

²⁰⁹ The voter registry (*el padrón electoral*) is a record of all citizens that fulfill the legal requirements and have personally requested the EMB to be registered as voters. The voters' list (*la lista nominal*) is a subset of the latter and a record of all those citizens that have registered to vote and that currently hold a voter identification card.

²¹⁰ See Diario Oficial de la Federación, edición matutina del 15 de agosto de 1990. Available: http://dof.gob.mx/nota_detalle.php?codigo=4671699&fecha=15/08/1990.

the right to vote.²¹¹ These *bureaucratic* ICMs created a space for parties to be formally represented within a key bureaucratic area and enabled them to participate in permanent and temporary task forces (also known as *grupos de trabajo*) specializing in technical procedures and field operations. This type of ICMs gave parties the capacity –institutional resources– to directly supervise every stage of one of the most basic, and most relevant, procedures of electoral management: determine who could be registered, obtain a voter identification card and, thus, be able to exercise their right to vote in an election.

These ICMs positively affected the EMB’s *de facto* autonomy because they gave parties the possibility to directly *participate, monitor, and validate* all mid-level administrative decisions affecting key bureaucratic procedures, such as voter registration or the distribution of voting identification cards.²¹² According to Woldenberg (2012), political parties agreed to completely renovate the registry of voters in 1990. The CNV, as well as its local and district level equivalents, became a key administrative resource for the EMB to build trust among the political elite. Without

²¹¹ According to the EMB’s legal framework (the COFIPE) decisions approved by the CNV had only a “recommendation status” within the EMB.

²¹² As described by García (2017: 52-57) the legal attributes of the CNV are extensive and range from asking the Executive Direction of the Federal Registry of Voters (known as DERFE in Spanish) to perform a partial census in a census tract (*sección electoral*) or electoral district to verify the number of citizens living in a specific geographical areas to performing field operations to supervise the enrollment of citizens in the registry of voters, in the voters’ list, as well as procedures, guidelines and activities affecting street level procedures in the EMB’s voting card issuing offices across the country (*Módulos de Atención Ciudadana*). See: Articles 69 and 71 of the Reglamento Interior del Instituto Federal Electoral 1999. García (2017: 55-57) groups the responsibilities and legal attributes of the CNV in five categories: i) Decision attributes related to the requirements to obtain a voting identification card; ii) Information rights guaranteeing that all members of the CNV will have permanent access to the voters registry and voting list; iii) Verification attributes to supervise the registration of voters in Mexico and abroad; iv) Capacity to request to the DERFE to take action in order to verify the number of people living in a specific geographical area; and v) Formulating observations or recommendations regarding all activities of DERFE related to voter registration and electoral boundary delimitation.

these *bureaucratic level* ICMs, it would have been very difficult for parties to recognize elections as clean and, eventually, for the EMB to be recognized as a *de facto* autonomous institution.

In the preamble to the 1994 presidential election, the political elite reached a series of agreements to guarantee the organization of free and fair elections. These measures included having expert commissions formed to audit the registry of voters to guarantee its reliability and ensuring that each party representative within the EMB would have permanent access to both electronic and printed versions of the voter's registry and list.²¹³ Between 1991 and 1993, for instance, 36 different inspections were performed to the registry by a *technical committee* formed by experts and directly supervised by political parties represented at the CNV. According to the expert committee, IFE's voting registry had a reliability of 97%, which was an historical record and rapidly became a reference for other EMBs in the region (Woldenberg 2012, 93-99).

After the PRI won the 1994 presidential election, most political actors embedded within the EMB recognized the validity of electoral results and the solvency of the EMB's administrative and bureaucratic procedures, which would have been unlikely to take place if parties would have not been internally monitoring most administrative decisions. The administration of Zedillo, however, recognized shortly after the election that subsequent reforms were needed to guarantee a more leveled playing field. In a national agreement that took place in 1995, the ruling party and opposition parties agreed to adopt a series of reforms that would, on one hand, establish an executive board where only "non-partisan" citizen commissioners appointed by two-thirds of the

²¹³ It was agreed that through CNV, party representatives would receive monthly reports to supervise changes, tendencies and irregularities of the voter's registry and list.

lower chamber could vote, and a more balanced access to financial resources and access to media among parties.²¹⁴

According to Woldenberg (2012: 116), by the 1997 mid-term election IFE was recognized by citizens, political actors and international organizations as a *de facto* autonomous EMB. That year, Mexico's ruling party lost its majoritarian status in Congress and the transition that began with the 1977 electoral reform had been completed. On one hand, the PRI was willing to guarantee more balanced conditions for electoral competition and, on the other, *bureaucratic level* ICMs had become instrumental for building trust among political actors around key administrative procedures, such as voter registration.

These *bureaucratic level* ICMs were complemented by the parallel adoption of *street level* ICMs. With the 1990 electoral reform, for instance, political parties were entitled to formally appoint two representatives in each polling station to supervise the voting procedure. The main competing actors were now able to monitor all phases of the electoral organization during the election day. In 1993, two additional transparency mechanisms were adopted allowing parties to supervise the identity of voters. On one hand, voters' lists (*listas nominales*) were publicly exhibited at the EMB's three-hundred district level offices so that citizens could verify if they had been correctly included in the registry. This also allowed party representatives at the district level to inspect the lists and look for any irregularities (i.e., duplicates). On the other hand, a photograph was included in the voting identification card. This security mechanism allowed both party

²¹⁴ From the 1988 to 1996, access to media and financial resources changed significantly. In 1996, for instance, the legal framework was reformed in order to guarantee that 30% of the public funding would be distributed equally among registered political parties and 70% would be proportionally distributed based on the last legislative election.

representatives and electoral officials to verify voters' identities at the local *surveillance commissions* during and after the registration process, as well as during the election day at the polling station level (Woldenberg 2012: 85).

By 1997, party representatives of at least two of the major political forces (PRI, PAN and PRD) were present in the approximately 104,000 polling stations across the 32 states. This *street level* ICM gave parties the opportunity not only to supervise the voting procedure during the day of the election (from the installment to the closing of each polling station), but also to formulate observations in case an irregularity had taken place and, more importantly, to obtain a copy of the voting record (*acta de escrutinio y cómputo*) for validating results during the transmission and final counting phases three days after the election. To ensure impartiality in the selection of citizens serving as polling officials on the day of the election, the PRD had requested the creation of a policy which used a double randomized process to invite and train citizens based on the month they were born and the first letter of their last name.

Once the election had concluded, party representatives supervised the concentration of ballot boxes in each one of the three-hundred EMB's district-level offices (*Consejos Distritales*). Each *district council* was in charge of the final count three days after the day of the election.²¹⁵ The *Consejos Distritales* were formed by an executive board of six "non-partisan" citizens

²¹⁵ This two-step counting process was an additional security mechanism contemplated in the 1990 electoral reform. In the first stage, votes would be counted at each polling station the day of the election and a voting record would be filled out by citizens acting as polling officials (who were randomly selected and trained by the EMB) in the presence of party representatives. Each party representative would be entitled to witness the voting and counting process, could make observations at the end of the day, sign the voting record and keep a copy. All results reported until this point, would be considered preliminary results. The second phase, known as the "final vote counting" took place three days after the day of the election in each of the 300 district councils.

appointed by the 32 *local councils (Consejos Locales)*, which in turn had been appointed by the EMB's *Consejo General*, and a representative from each political party registered at the national level. As in the case of the EMB's *executive board*, party representatives were only entitled to speak, not to vote. The presence of parties at the *district level*, however, became a key *street level* ICM allowing them to directly supervise the "final count." In cases where parties had detected an irregularity during the voting process, or if votes reported by the EMB did not coincide with the ones in the voting records, parties could request to open specific ballot boxes and recount the votes.

Three years later, in 2000, political alternation in the presidency was possible because the conditions for a more balanced competition had been set in place (e.g., parties had a more balanced access to financial resources and access to media).²¹⁶ IFE had also established a solid national and international reputation as a *de facto* autonomous EMB because of the multi-level system of ICMs guaranteeing the organization of clean elections. *Bureaucratic level* ICMs allowed parties to directly monitor all process affecting the voter registration process. The voter registry, for instance, was updated and audited by a *technical committee* of experts in the presence of all political parties represented at the CNV and its 332 local level bodies. It had a 98.69% coverage of potential voters in the country. Out of the 59,584,542 registered voters, 58,782,737 had a voting identification cards appearing on the voters' list (*lista nominal*). Political parties were able to audit,

²¹⁶ Compared to 1994, where PRI, PAN and PRD received 71.4%, 17.88% and 6.05% of the public funds, these parties received 30.33%, 30.17%, and 34.78% for the 2000 presidential race, respectively. In terms of access to media, these same parties received an average coverage of 30%, 19.5% and 16.3% in 1994, while in 2000 they received an average coverage of 37.8%, 27.4%, and 20.1% (Woldenberg 2012: 127).

formulate observations, and receive electronic and printed versions of the voters' list on a monthly basis, allowing them to verify the identity of voters at the polling station level.

Thirty-Two *Consejos Locales* and three hundred *Consejos Distritales* were formed by “non-partisan” commissioners and party representatives. Major political parties reinforced *street level* ICMs by formally registering over 300,000 representatives in more than 113,000 polling stations across the country. Through *executive* and *administrative* ICMs, political parties had closely monitored the approval of all security checks related to electoral organization, including the design, production, and distribution of electoral materials, as well as in the definition of the protocols to train over 2 million citizens that would participate as polling officials during the day of the election. Additionally, parties had closely supervised the design of the methodologies and protocols that would be followed to announce electoral results the day of the election.

A different subtype of ICMs are those embedded at the *policy level*. This type of consultation mechanism is usually adopted for technical and temporary projects that require the indirect involvement of political parties. Historically, *policy level* ICMs have been used when expert committees are formed to elaborate, recommend or implement a methodology to solve a specific task ensuring neutrality. These *committees* have been usually established by the EMB's executive board to solve problems in areas related to the voting registry (e.g., performing external audits to the registry), protocols for announcing results (e.g., the quick count or the preliminary electoral results program), and administrative procedures for updating the electoral cartography (e.g., electoral boundary delimitation or *redistricting*).

In the case of the protocols for announcing electoral results, both the *quick count* (known in Spanish as the *conteo rápido*) and the *preliminary electoral results program* (known as the *Programa de Resultados Electorales Preliminares* or *PREP*) were programs established by the EMB in 1994 to offer preliminary results the same night of the election.²¹⁷ These programs were adopted by IFE as a way to prevent a system “shutdown” –“*la caída del sistema*”– like it had happened during the 1988 presidential election.²¹⁸ The three-day lapse between the preliminary counting taking place the day of the election (at the polling station level) and the “final count” taking place three days after at the *district councils*, generated a significant gap that could create uncertainty. Given the incentives candidates –and the media– have to self-proclaim themselves as winners on the day of the election, the EMB has historically relied on these preliminary programs to elaborate a methodology to announce tendencies on the same day of the election.

Compared to *bureaucratic level* ICMs like the CNV, where party representatives have a majority status and can vote over issues formulating recommendations to the EMB, the role of political parties in *policy level* ICMs is usually reduced to monitoring the different stages of the process. At this level, political parties can interact with *technical committees* through their party representatives within the executive board or its representatives within the CNV. The experts forming these *technical committees* are only able to formulate recommendations based on what has been previously agreed by the EMB’s executive board. Party representatives, however, are

²¹⁷ The difference between these two preliminary result programs is that the *Conteo Rápido* is a methodology used to estimate voting tendencies based on a random national sampling of results at the polling station level. The *PREP*, however, consists on the gradual transmission of electoral results, at the polling station level, as they are transmitted from each one of the three-hundred district councils

²¹⁸ Back then, the incapacity of the EMB to offer electoral results the same day of the election generated political tensions, suspicions, and claims of electoral fraud (González Casanova 1993).

usually informed from the constitution of the committee until the policy implementation process has concluded, including all intermediate phases.

In the preamble to the 2006 presidential election, for instance, political parties intervened during the different stages of the design of the *quick count* program. In order to preserve the confidentiality of the randomly selected sample of 7,636 polling stations, party representatives participated in the establishment of a security protocol to safeguard the secrecy of sample. This was the first time the *quick count technical committee* had designed a sampling and estimation methodology that would allow to substantially reduce the margin allowed in previous elections to announce results. In 2000, this margin was 3% and in 2006 it was reduced to 0.6%. That is, as long as the difference between the first and second place was larger than 0.6%, the EMB would be able to announce a preliminary tendency the day of the election (Eslava 2006; Ugalde 2008: 157).

Through this *policy level* ICM, party representatives within the EMB were informed about the stages, methodology, estimation techniques, and the protocol that would be followed by the EMB the day of the election to announce preliminary results. It was in this last matter (the announcement of preliminary results) where parties intervened most. The PRI manifested their concern of carrying out a probabilistic exercise that could hypothetically contradict the results of the “final count.”²¹⁹ In order to minimize this possibility, two of the three major parties competing for power, the PRI and the PRD (with the *consensus of the rest of parties*), agreed on narrowing down the circumstances –and the exact wording to be used– under which the EMB’s chairman would communicate the results of the *quick count* the same night of the election.

²¹⁹ As recognized by Ugalde (2008:157), the PRI argued that if the results of the quick count were incorrect, it would be devastating for the EMB’s reputation and for the country’s political stability.

Four different scenarios were established. In the first one, a tendency favoring a candidate would be announced based on the scientific method used to estimate results. In the second scenario, the distance between the first and second place is less than 0.6% and, thus, based on the scientific method used to estimate results, the EMB cannot offer information. In other words, the election is so contested that it is “too close to call.” The third scenario was a case where the *technical committee* had not received sufficient responses from the sample for estimating a tendency, but it was expected to be in such position in less than two hours. The fourth scenario, although unlikely, was a case where something could have gone wrong, and the *technical committee* would not be able to estimate a tendency (Ugalde 2008:157).²²⁰

In technical, operational and administrative terms, the 2006 election had been flawless. Only 11 polling stations, out of 130,488, could not be installed and no major incidents had taken place during the election day. Compared to previous elections organized by IFE, it was the most efficiently organized election in the country’s history. The presidential race, however, was so close that the results fell in the second scenario. According to the three different methodologies used to calculate the estimates, the difference between the intervals of votes received by the first and second place was less than 0.6%.²²¹ It was too close to call. Immediately after the EMB’s chairman went on national television, following the agreement that all political parties had

²²⁰ See: Acuerdo del Consejo General del Instituto Federal Electoral, por el que se aprueban diversas disposiciones relativas a la realización y difusión del ejercicio de Conteo Rápido, el día de la jornada electoral del 2 de julio de 2006. CG144/2006. IFE.

Available:

<https://repositoriodocumental.ine.mx/xmlui/bitstream/handle/123456789/86316/CGo220606ap15.pdf?sequence=1&isAllowed=y>

²²¹ The final results, validated by the TEPJF, show that the margin was indeed smaller than 0.6%. Felipe Calderón won the presidency by 0.56% (Eslava 2006).

endorsed, announcing that the presidential race was too close and that the EMB would need more time to announce tendencies, the left-wing candidate, Andrés Manuel López Obrador, announced that he had his own quick count and that he had won the election. This was the beginning of the 2006 post-electoral conflict that paralyzed the country for six months.

As recognized by Pastor (1999), in highly contested elections technical mistakes or omissions made by an EMB can rapidly become politicized. Even when electoral management has been impeccable, candidates might have the incentives to claim a fraud has been committed. In 2006, most of the normative discussion that took place in the electoral court (TEPJF) were related to the excessive intervention of the Executive Branch and the intervention of the entrepreneurial sector against the campaign of López Obrador. In administrative terms, and especially regarding the proceeding of the EMB's chair of deciding not to announce a tendency the night of the election, the *policy level* ICM played a role key before and after the election took place in order to guarantee the neutrality of the EMB.²²²

Despite the fact that the 2006 post-electoral conflict negatively affected the EMB's reputation, this *policy level* ICM had a positive parallel impact on the EMB's *de facto* autonomy. On one hand, the EMB was able to use the presence and recommendations of political parties to build *consensus* over an administrative decision with significant political implications. On the

²²² As recognized by Ugalde (2008), different political actors, including the President Vicente Fox and PRI's former leader Elba Esther Gordillo, called him the night of the election to pressure him to announce a tendency, even when the quick count results showed the margin between the first and the second place was too narrow. More importantly, perhaps, different political actors were asking the EMB's chair to disobey an agreement that have been promoted by major political parties (PRI and PRD) and that had been formally approved by the Consejo General (See: Acuerdo del Consejo General del Instituto Federal Electoral, por el que se aprueban diversas disposiciones relativas a la realización y difusión del ejercicio de Conteo Rápido, el día de la jornada electoral del 2 de julio de 2006. CG144/2006. IFE).

other, it helped clarifying the specific conditions under which the EMB –through its chairperson– would announce the results of the presidential race.²²³ Establishing this protocol through a *policy level* ICM also allowed the EMB to justify its actions in court once a party decided to challenge the election. Finally, and perhaps more importantly, it also allowed third party actors involved in the process to endorse a procedural decision that was publicly enacted by the EMB’s executive board. During the night of the election, the PRI acknowledged that the decision of not announcing a tendency that night was justified in an agreement that had been endorsed by all parties and that had been approved by the *Consejo General* (Ugalde 2008).²²⁴

A second example illustrating a *policy level* ICM affecting the EMB’s *de facto* autonomy is electoral boundary delimitation. As the *quick count*, this is also a highly complex process that has required the formation of a *technical committee* of experts to recommend a solution to the EMB’s executive board. Since IFE’s inception in the 1990s, electoral boundaries have been renewed in

²²³ Compared to the 2012 and the 2018 presidential elections, the announcement of results became a highly politicized issue in 2006 because the presidential race was extremely competitive (i.e., a 0.6% difference). In 2018, for example, the left-wing candidate, Andrés Manuel López Obrador, won by more than 30% of the vote.

²²⁴ After the tensions generated in 2006, political parties decided for the subsequent 2012 and 2018 presidential elections, that the EMB should reveal the quick count results (i.e., the tendency between the first and second place) the same night of the election, regardless of the margin of error and the possible overlap between different candidates. See: Acuerdo del Consejo General del IFE para el Conteo Rápido. 2012. Available online: <http://portalanterior.ine.mx/archivos3/portal/historico/recursos/IFE-v2/DS/DS-CG/DS-SesionesCG/CG-acuerdos/2012/Mayo/CGext201205-16/CGe160512ap4.pdf>; and Acuerdo del Consejo General del INE para el Conteo Rápido. 2018. Available online: <http://repositoriodocumental.ine.mx/xmlui/bitstream/handle/123456789/95171/CGor201802-28-ap-12.pdf?sequence=1&isAllowed=y>; and Article 388 of the Reglamento de Elecciones del INE. 2018. Available online: <https://www.ine.mx/wp-content/uploads/2018/03/Reglamento-de-Elecciones-01-03-18.pdf>.

three occasions: 1996, 2005, 2016 (Trelles 2017).²²⁵ In all of these cases parties have played a key role by actively participating in the process. Although parties are not able to determine which scenario will prevail, they are able to formulate observations and counterproposals at different stages of the process (Trelles et al., 2016).

In order to renovate the electoral cartography of the three-hundred single majority districts, the technical committee, based on an agreement that has been approved by the EMB's executive board, defines the methodology and procedure to determine how many of the 300 districts will be assigned to each one of the 32 states, and then how district lines will be drawn. For the former, the *technical committee* uses a mathematical formula to assign districts based on the number of people living in each state. For the latter, it uses a combinatorial optimization algorithm to generate a first automated scenario in each state, followed by a public consultation to indigenous communities, and two subsequent rounds of observations formulated by political parties.²²⁶ Partisan counterproposals were evaluated by the *technical committee* primarily based on cost-optimization criteria. Once the *technical committee* had identified an optimized map –or one that had generated consensus among parties–, plans were submitted to the *Consejo General* for its approval.

In order to formulate observations, political parties have historically used their representatives within the *National Surveillance Commission (CNV)* and the thirty-two *Local Surveillance Commissions (CLV)*. Table 6.2 shows the counter-proposals formulated by each

²²⁵ In 2013 the EMB completed a redistricting process, but it was rejected by a majority of votes in the executive board, primarily because of the 2014 electoral reform.

²²⁶ The 2016 boundary delimitation process was the first one to include a public consultation of indigenous communities after a ruling of the TEPJF (Trelles 2017). For a detailed description of the process see Trelles et al., 2016.

political party in the 2013 redistricting process. During this exercise, political parties formulated a total of 544 counter-proposals. In the first round, parties formulated 236 counter-proposals, while in the second round they formulated 308. While partisan counter-proposals formulated by parties through their representative within the CNV were more effective (22 out of 79 in the first round, and 50 out of 169 in the second round were accepted), a large number of counter-proposals were also formulated by parties through the 32 CLVs (157 out of 236 in the first round, and 139 of 308 in the second round). The table also reveals that while some political parties were more effective than others, all of them formulated counter-proposals to the authority (Trelles et al., 2015).

Table 6 2 Counter-proposals Formulated by Parties in the 2013 Redistricting Process

Party	national	state	total 1st	national	state	total 2nd	Total
PAN	17/22	2/20	19/42	17/24	4/16	21/40	40/82
PRI	0/0	2/28	2/28	8/30	6/26	14/56	16/84
PRD	3/27	2/21	5/48	5/29	5/18	10/47	15/95
PT	1/12	1/20	2/32	3/15	1/16	4/31	6/63
PVEM	0/0	1/20	1/20	7/28	3/17	10/45	11/65
MC	1/17	0/21	1/38	6/32	2/16	8/48	9/86
PNA	0/1	1/18	1/19	4/11	3/17	7/28	8/47
IFE	0/0	1/9	1/9	0/0	5/13	5/13	6/22
Total	22/79	10/157	32/236	50/169	29/139	43/308	111/544

Note: Counter-proposals to the first and second scenarios at the National and Local Surveillance Committees. Denominator reports the number of counter-proposals made, numerator how many were adopted. Prepared by authors with information from the Federal Electoral Institute (Table presented in Trelles et al., (2015)).

Electoral boundary delimitation is a highly technical and complex procedure that in many countries is manipulated to promote the interests of parties, incumbents or racial groups. In the case of Mexico, it has been found that parties tend to formulate counter-proposals protecting

electoral strongholds (Magar et al., 2016). The process, however, has not been politicized as has happened in other countries (e.g., the United States or Venezuela) or like other areas of electoral management in Mexico, such as the role of the EMB in auditing the resources used by parties and candidates during campaign, receiving complaints, sanctioning parties after a violation has been committed, or regulating parties' access to media and determining what constitutes negative campaigning. As recognized by Trelles et al., (2016), the low levels of politicization surrounding boundary delimitation respond, in part, to the absence of a strong electoral connection between legislators and their constituency at the district level due to the ban on legislative reelection during most part of the twentieth century.

This *policy level* ICM, however, has contributed to the low levels of politicization around *redistricting*. It has introduced a consociational dynamic in a highly technical and complex environment. Compared to the United States, where partisan majorities in many state legislatures adopt electoral maps based on political returns (partisan *gerrymandering*), Mexico has adopted a mixed scheme in *redistricting* producing relatively balanced maps that have been historically accepted by major parties.²²⁷ Although IFE's executive board is the final authority responsible for approving any change to the electoral cartography, the EMB delegates to a committee formed by experts the responsibility to draw a maps based on technical criteria and taking into consideration the input from external agents, such as indigenous communities and political parties.

²²⁷ Similarly, the de jure independent EMB in Venezuela – which is insulated from political parties, but informally dominated by the ruling party– has been systematically accused of drawing maps favoring the regime. For more on partisan bias in electoral redistricting in Mexico see Magar et al., (2016).

By allowing parties to indirectly participate in the process, the EMB has been forced to share with them all information related to the different stages of the process. The monitoring role played by parties has promoted transparency positively affecting *de facto* autonomy.²²⁸ On one hand, parties are capable of supervising the methodology used by the EMB and minimize the possibility of political bias. Their involvement during the process is key for guaranteeing that bias is not being introduced through the selection of certain variables, their weighting, the definition of the cost function, the type of algorithms employed, or the selection of a specific seed favoring a specific outcome. On the other, they are able to supervise what other parties are suggesting and how their counter-proposals compare to their own, as well as how they are being evaluated by the committee. Finally, all party representatives have the same information and resources to participate in the process. They have been able to formulate suggestions that improve the original scenario. In the 2016 *redistricting* round, a *consensus rule* was adopted allowing a scenario to prevail when all parties endorsed it over an alternative map with a better (more optimal) value associated to the cost function (Trelles 2017).

6.2.4 Concluding Remarks

The historical recount of electoral administration in Mexico reveals that ICMs were adopted by the EMB, the *Comisión Federal Electoral*, during the hegemonic rule of the PRI (1946). The adoption of ICMs long preceded the country's transition to democracy during the mid 1990s. Back then, the inclusion of ICMs within the EMB were a means of legitimizing the permanence of the

²²⁸ In their work, Trelles et al., (2016) recognize that the process so far has been exclusively reserved for political parties and that optimization, and the process itself, can be improved by opening it to the public through crowdsourcing. Also see Trelles 2017).

ruling party in power through elections. The CFE was formally and informally controlled by the regime. Although ICMs gave opposition parties the possibility to identify irregularities and potential spaces of improvement, they had a marginal effect on the EMB's *de facto* independence. The early inclusion of ICMs within the governmentally managed EMB, however, had an unanticipated consequence for the authoritarian regime at the moment the EMB became formally autonomous in 1990.

On one hand, it was unlikely that at the moment of IFE's inception the political elite would have created an electoral bureaucracy insulated from political parties. The 1988 post-electoral conflict, along with the long history of abuses and fraudulent elections, created an environment of mistrust among the political elite. On the other, the historical institutional arrangement that allowed parties to be formally represented within the EMB was key for IFE's institutional design. The high levels of suspicion during the early 1990s shaped the institutional design in such a way that all parties had to remain represented within the EMB, at different levels, in order to guarantee the neutrality of administrative decisions and organizational procedures.

The series of internal consultative mechanisms adopted by IFE at the *executive, administrative, bureaucratic, policy and street level*, gradually became instrumental for the EMB's *de facto* independence by increasing the levels of *transparency* and *accountability*. On one hand, the monitoring role of political parties within the EMB became key for generating trust among the main actors competing for power. ICMs served a dual role of *legitimizing* administrative decisions and, at the same time, guaranteeing the *neutrality* and *transparency* of electoral procedures. On the other, the presence of parties within different levels of the EMB has facilitated the capacity of institution to internally build *consensus* among different actors competing for power.

Since IFE became fully *de jure* autonomous in 1996, no political party has questioned the internal administrative and monitoring role that parties have historically played within the EMB. In the multiple electoral reforms that have taken place since the EMB's inception, political parties, country-level experts or international monitoring agencies, have not questioned the adoption of formal rules granting parties the right to have a presence at the different administrative levels within the EMB (i.e., *bureaucratic level ICMs* like the *National or Local Level Surveillance Commissions, CNV* and *CLVs*). The appointment mechanism of electoral commissioners by two-thirds of the lower chamber, however, has been the most questioned procedure since 2003 by some country-level experts arguing the EMB lost its *de facto* autonomy since the institution was not fully insulated by political parties and that the political elite informally controlled electoral commissioners.²²⁹

²²⁹ This argument has been recurrently used by political analysts like Denisse Dresser, former electoral commissioners like Alfredo Figueroa and human rights activist Emilio Álvarez Icaza. They have accused the EMB, of responding to partisan interests. In the 2017 local elections, for instance, they accused INE of not nullifying two gubernatorial elections (in Coahuila and Estado de México) sanctioning the ruling party after the excessive Federal Executive's intervention in local elections during 2017 (See: <https://www.proceso.com.mx/495386/ahora-exige-la-renuncia-del-consejo-general-del-ine-nuevas-elecciones-en-coahuila-edomex>). The logic underlying this type of accusation is that the appointment mechanism used to nominate electoral commissioners –two thirds of the lower chamber– allows political parties to nominate “non-partisan” officials that are ideologically aligned to their interests. This rule, however, was conceived in the early 1990s as a mechanism that took away from the Executive Branch the nomination and appointment faculties to define the configuration of the EMB's executive board, and that would force the political elite, through the two-thirds majority clause, to appoint commissioners based on consensus among the main political forces represented in the lower chamber (the *Cámara de Diputados*). As shown by Loret de Mola (2014) in a multiregional comparative study including 35 countries, the appointment mechanism used in Mexico to designate the EMB's executive board, based on the number of checks and balances (where a direct appointment by the executive branch is low and an appointment process involving a multi-branch mechanism is high in terms of formal independence), shows that Mexico ranks above the average (more independent) of countries included in the study. The same type of argument has been used for the Electoral Tribunal (TEPJF), where country-level experts have argued that the institution responds to political interests given the ideological ties justices have with parties who endorsed them during the nomination and appointment process, or that promote their careers

once they have concluded their tenure. In case of the Electoral Tribunal, when compared to the appointment of electoral commissioners who are appointed by two-thirds of the lower chamber, the process is more complex (or formally independent) because it involves a multi-branch process between the Supreme Court (SCJN) and the Senate. The Supreme Court registers and evaluates candidates on a legal and meritocratic basis and suggests to the Senate three names for each one of the seven seats to be filled. The Senate has to approve the nominees suggested by the Supreme Court by a two-thirds majority vote. Informally, however, formal rules have been insufficient to prevent the political elite from establishing and maintaining close ideological ties with purportedly “non-partisan” electoral commissioners or justices.

In a recent ruling over registering an independent candidate and allowing him to compete in the 2018 presidential race (Jaime Rodríguez, also known as El Bronco), despite not fulfilling the constitutional requirement of presenting the sufficient number of valid support signatures, for instance, Justices of the Electoral Tribunal were accused of responding to the interests of the ruling party that informally sponsored them during the nomination and appointment processes. There was a generalized perception in Mexico among political analysts, that the Tribunal’s decision was made based on political, instead of normative, grounds. For an example of this type of accusation, see:

<https://www.reforma.com/aplicaciones/editoriales/editorial.aspx?id=132564>);

https://elpais.com/internacional/2018/04/10/mexico/1523376919_902482.html?id_externo_rsoc=FB_CM;

<https://www.reforma.com/aplicaciones/articulo/default.aspx?id=1366725&v=6>;

<https://www.reforma.com/aplicaciones/articulo/default.aspx?id=1367166&v=2>;

<https://www.reforma.com/aplicaciones/editoriales/editorial.aspx?id=132616>;

<https://www.reforma.com/aplicaciones/articulo/default.aspx?id=1367501&v=4>;

<https://www.reforma.com/aplicaciones/editoriales/editorial.aspx?id=132708>;

<https://www.reforma.com/aplicacioneslibre/articulo/default.aspx?id=1369210&md5=14bb213010a5d14647a58882301cb78e&ta=0dfdbac11765226904c16cb9ad1b2efe>; and

<http://www.eluniversal.com.mx/columna/ricardo-raphael/nacion/la-bronca-del-bronco>.

For a description of the Supreme Court process for suggesting to the Senate a list of candidates for the appointment of Justices of the Electoral Court (TEPJF), see: Acuerdo 6/2016 de la SCJN en el que se determina el procedimiento para integrar la ternas propuestas al Senado para la designación de Magistrados al TEPJF. Available:

[https://www.scjn.gob.mx/sites/default/files/acuerdos_generales/documento/2016-11/6-](https://www.scjn.gob.mx/sites/default/files/acuerdos_generales/documento/2016-11/6-2016%20MAGISTRADOS%20SALA%20SUPERIOR%20TEPJF%20%282016%29%20FIRMA_0.pdf)

[2016%20MAGISTRADOS%20SALA%20SUPERIOR%20TEPJF%20%282016%29%20FIRMA_0.pdf](https://www.scjn.gob.mx/sites/default/files/acuerdos_generales/documento/2016-11/6-2016%20MAGISTRADOS%20SALA%20SUPERIOR%20TEPJF%20%282016%29%20FIRMA_0.pdf);

and [http://www.eluniversal.com.mx/entrada-de-opinion/articulo/margarita-luna-](http://www.eluniversal.com.mx/entrada-de-opinion/articulo/margarita-luna-ramos/nacion/2016/07/26/como-se-designa-los-magistrados)

[ramos/nacion/2016/07/26/como-se-designa-los-magistrados](http://www.eluniversal.com.mx/entrada-de-opinion/articulo/margarita-luna-ramos/nacion/2016/07/26/como-se-designa-los-magistrados)

Contrary to the logic supporting the idea that de facto autonomy can be promoted by the adoption of formal rules insulating electoral institutions from external partisan influence, the argument presented here is that, in certain contexts, formal rules granting independence to electoral institutions, such as appointment mechanisms, do not necessarily guarantee the EMB’s de facto autonomy. Furthermore, I contend that, in cases like Mexico, the high levels of de facto autonomy achieved by IFE during the 1996-2003 and 2003-2006 periods respond primarily to the formal and informal system of ICMs embedded within the EMB. By contrast, in cases like Venezuela, where the de jure autonomous EMB was formally insulated from political parties in 1999, and where the formal appointment mechanism of electoral commissioners adopted in 1999 should have guaranteed the de facto independence of the institution (i.e., a combined mechanism involving civil society and two different branches of power), formal rules were clearly insufficient to prevent the informal cooptation of the EMB by the ruling party. Based on the Venezuelan experience, I claim that, in semi-competitive environments, an EMB’s institutional insulation can be used by dominant political

As recognized by Estévez et al., (2008) IFE's neutrality and reputation as a *de facto* autonomous EMB since it became a fully *de jure* independent in 1996 responds primarily to the institutional arrangement promoting an internal system of checks and balances, not to the purportedly "non-partisanship" of its members. In this internal monitoring and consultation system, parties have played, formally and informally, a key role promoting the EMB's *de facto* autonomy by making its procedures more *transparent* and *accountable* to the actors competing for power.

One of the many challenges Mexico's EMB will be facing in the near future, however, is its capacity to retain its reputation as a *de facto* autonomous institution after the significant increase in its administrative faculties and the number of elections the EMB became responsible for organizing (Ugalde and Hernández 2017). After the 2014 electoral reform, for instance, Mexico's EMB transitioned from being responsible for only organizing three federal-level races, to organizing both federal and local-level elections across 32 states.²³⁰ Any local level post-electoral conflict, at least regionally, is likely to keep undermining the trust the political elite and citizens have on the EMB, as happened after the highly politicized 2017 gubernatorial elections in *Coahuila* and *Estado de México*, which were challenged after the incumbent party was accused by opposition parties of violating campaign financial laws and illegally receiving support from both the local the federal executive branches.

actors to informally manipulate electoral institutions through the eradication of an internal system of checks and balances.

²³⁰ Also see: Advierten fallas en la elección. Reforma. 04/11/18. Available: <https://www.reforma.com/aplicaciones/articulo/default.aspx?id=1367940&v=2>

Another major challenge for Mexico's EMB –as well as for the *Electoral Court* (TEPJF)– will be to retain its levels of recognition as a *de facto* autonomous institution, while the popularity of the party system has significantly decreased in recent years. Since its inception, IFE has had parties formally represented within the EMB at different administrative levels to guarantee the neutrality of organizational procedures and administrative decisions.

As noted by Ortega and Somuano (2015), however, there has been a generalized disenchantment with democracy, government and political parties since 2000's alternation in power.²³¹ The risk derived from this dissatisfaction in Mexico's new –and still fragile– democracy is that policies promoting the EMB's institutional insulation from political parties can become attractive to an electorate with high levels of mistrust in public institutions and that cannot perceive anymore the added value of having an internal system of checks and balances –i.e., different types of ICMs– within the electoral bureaucracy. As a consequence, and perhaps more importantly, eliminating the internal system of checks and balances embedded within INE in the near future might have the opposite effect by making the institution more vulnerable to the informal cooptation of a single external actor, such as a powerful ruling party or a dominant Executive Branch.

6.3 GHANA: TRUST BUILDING AND INFORMAL CONSULTATIVE MECHANISMS

Ghana became the first Western African country to gain independence from the British Government in 1957. Embedded in a global context of the Cold War's uprising political and

²³¹ Also see: <https://www.proceso.com.mx/529160/se-desploma-confianza-en-instituciones-de-mexico-alerta-la-ocde>

economic instability, political debates during the first republic centered around alternative paths of economic development (Bratton and Van de Walle 1997, Agyeman-Duah 2008). Between 1957 and 1992, Ghana had three short-lived republics and was ruled by six different military governments. The Fourth Republic was finally established in 1992. The two decade ruling of John Jerry Rawlings, however, did not come to an end until 2000. Since then, Ghana has been holding democratic elections that have led to peaceful alternations in power in 2000, 2008 and 2016.²³²

Despite the political turbulence during the second half of the twentieth century, the Ghanaian political elite was able to create a *de jure* independent electoral bureaucracy in 1992 that would eventually become recognized as a *de facto* autonomous institution and as a role model within West and Sub-Saharan Africa (Frempong 2014). The EMB was created as a *formally* autonomous bureaucracy under Rawlings's authoritarian administration. Despite the fact that the *Electoral Commission* was insulated from government intervention and political parties, the Executive Branch was still responsible for directly appointing electoral commissioners to the EMB's executive board.²³³ After decades of military rule, and the EMB's inception under semi-competitive conditions, the executive interference on the configuration of the EMB's executive board rapidly generated mistrust among opposition parties.

²³² Since the Fourth Republic was established under the Rawlings regime in 1992, the country has hold national-level elections in 1996, 2000, 2004, 2008, 2012 and 2016. In most cases, electoral results have been recognized by the opposition and endorsed by international organizations.

²³³ For most country-level experts, the role of the president in appointing electoral commissioners has put at risk the EMB's levels of informal autonomy, especially during the transition years in the early 1990s (Ayee 1998, Gyimah-Boadi 1999). In 1992, the incumbent Provisional National Defence Council (PNDC) government unilaterally appointed the members of Interim National Electoral Commission (INEC) and, one year later, the current chairman (Dr. Kwadwo Afari Gyan) was appointed by the Rawlings administration.

As a way to build trust among political actors competing for power, the EMB adopted an informal consociational consultation mechanism with political parties. The creation of the *Inter-Party Advisory Committee*, an informal ICM, was used to promote *transparency*, enforce *communication* channels and create *consensus* among the political elite around key administrative decisions. In a highly politicized environment, the adoption of *informal external* ICMs gradually became key for aiding the EMB to build *consensus* among the political elite and a positive reputation as a *de facto* autonomous institution.

As shown in Table 6.3, Ghana has lacked ICMs of most types before and after *Ghana's* Electoral Commission was created in 1993. The legal framework regulating electoral management in this country promotes institutional insulation and, at the same time, grants the Executive Branch the unilateral capacity to appoint the EMB's executive board. In spite of adopting an institutional arrangement that prevents the inclusion of parties within electoral decision-making, the Electoral Commission adopted an *informal external* ICM that has served as a pressure valve to alleviate political tensions and the institution to internally channel political pressures. Through the adoption of this *informal external* ICM –i.e., the Inter-Parties Advisory Committee– the EMB has created a two-way communication channel with the political elite, created a monitoring space for parties to interact with the institutional, and adopted a conflict resolution space between parties and the commission. As confirmed by most country-level experts, this mechanism became key for the EMB to build a reputation as a *de facto* autonomous EMB.

Table 6 3 Internal Consultative Mechanisms (ICMs) and EMB's De Facto Electoral Autonomy in Ghana (Pre and Post 1993)

Formal vs. Informal ICMs	Type of ICM	Ghana (Pre-1993)	Ghana (Post-1993)	Causal Effect of ICMs on <i>De Facto</i> Autonomy
Formal	Executive Level	Absent	(=) Absent	Allows the presence and inclusion of external actors in executive-level deliberations (e.g., formal representation of parties within the EMB's executive board).*
	Administrative Level	Absent	(=) Absent	Guarantees external actors access to information / inclusion in administrative decision making (e.g., representation of parties within the EMB's committee system).
	Bureaucratic Level	Absent	(=) Absent	Enables external actors to audit and verify the compliance of formal rules and bureaucratic procedures (e.g., parties directly monitoring the voter registration process).
	Policy Level	Absent	(=) Absent	Allows external actors to supervise and participate during policy implementation procedures (e.g., partisan interaction during electoral boundary delimitation exercises).
	Street Level	Absent	(+) Present	Enables external actors to monitor the compliance of formal procedures during election day (e.g., presence of party agents within polling stations).**
	External Consultation Committee	Absent	(=) Absent	Promotes consensus building, creates communication channels and increases transparency (e.g., formal agreement to inform and include parties in key administrative deliberations).***
Informal	Plurality of partisan ties within the EMB's Executive Board	Absent	(=) Absent	Prevents unilateral decision making and creates incentives to build consensus among commissioners with different ideological alignments (e.g., informal partisan ties of "non-partisan" members of the EMB's executive board).
	External Consultation Committee	Absent	(+) Present	Promotes consensus building, creates communication channels and increases transparency (e.g., informal agreement to inform and include parties in key administrative deliberations).****
EMB's De Jure vs. De Facto Autonomy		Ghana (Pre-1993)	Ghana (Post-1993)	
De Facto Autonomy*****	~	Low	(↓) High	~
De Jure Autonomy*****	~	Low	(↑) Med-High	~

Note: Table elaborated by the author. The year in each of the four cases was determined by the moment the current EMB was formally established and became formally (de jure) independent. The IFE in the case of Mexico, the Electoral Commission in Ghana, the Consejo Nacional Electoral in Venezuela, and the Independent Electoral and Boundary Commission of Kenya.

*Executive-level ICMs include mixed-partisan configured EMBs' executive boards, as well as "non-partisan" boards where parties are formally represented with the right to speak, but not to vote. The (+), (-), and (=) symbols denote the adoption or elimination of either a formal or informal ICM from one period to another. The (=) symbol denotes the status quo prevailed. In Mexico, for instance, parties have been formally embedded within the EMB since 1946.

** Street-level ICMs allow parties to formally register representatives (agents) to be present within polling stations supervising the voting process during the day of the election. This mechanism, however, becomes more effective when parties are sufficiently institutionalized in order to have the organizational means, as well as the territorial presence, to monitor the different phases of the voting procedures across all regions. Out of the five formal ICMs enlisted here, street-level ICMs are more related to the capacity of parties to monitor the compliance of procedures during the election day, than to the internal workings of the EMB. The effectiveness of this ICM also requires that party agents are formally represented within the polling station for monitoring, but not for administrative purposes (e.g., working as polling officials). In the pre-1999 Venezuela, for instance, the appointment of partisan polling officials negatively affected the EMB's perception as a de facto autonomous EMB.

*** This formal type of ICM allows parties to establish a two-way interaction with the EMB. Depending on each country, it might be used differently to serve either a single or the multiple causal links described here.

**** This informal type of ICM allows parties to establish a two-way interaction with the EMB. Depending on each country, it might be used differently to serve either a single or the multiple causal links described here.

***** Cases were classified according to the author's fieldwork interviews with country-level experts and the V-Dem's measure of EMBs' de facto Autonomy (EMB Autonomy) with respect to other EMBs in the country's respective region. The (↑), (↓), and (=) symbols represent an increase, decrease or no change in the levels of de facto autonomy from one period to the other.

***** Following Hartlyn's et al., (2008) classification, EMBs were classified based on the institutions' legal (de jure) independence from other branches of power, on the appointment mechanism used to designate the EMB's executive board, as well as the formal partisan configuration of the board. In Ghana and Kenya, for instance, both the EC and the IEBC became formally independent EMBs when they were established, but the Executive Branch still plays a dominant role in the appointment of the members of the executive board. In Venezuela, the EMB transitioned from having a mixed-partisan executive board to a fully "non-partisan" -formally independent- executive board.

In the almost three decades since the EMB's inception, the country has recurrently experienced peaceful alternations in power. In contrast to other third-wave democracies

experiencing post-electoral conflict after holding extremely politicized elections, Ghana's *EC* was a key contributing institution in order for the country to successfully navigate through highly contested elections in 2000 and 2008. In 2008, for instance, the presidential race was defined in the second round by a difference of less than 1% of the total vote. The EMB was able to aid in soothing tensions between competing factions and has managed to keep building a positive reputation among the country's political elite and, perhaps more importantly, among the population (Agyeman-Dua 2005, 2014).

This section is subdivided into three subsections. In the first one I explain the political context in Ghana before the EMB's inception, the circumstances under which the EMB was created, and its effect on the country's democratic transition during the Fourth Republic. In the second subsection, I focus on the EMB's formal administrative configuration and on the adoption of an informal system of ICM's. I argue that despite having an administrative configuration where the executive's capacity to nominate the EMB's executive board significantly constrains its *de jure* independence, informal ICMs have aided Ghana's *Electoral Commission* to build a positive reputation. In the third subsection, I explain how these informal ICMs have created an instance of *communication* and *transparency*, contributing to build a *de facto* autonomous *Electoral Commission* capable of organizing credible elections.

6.3.1 Emergence and Development of Electoral Autonomy in Ghana

Shortly after the Gold Coast gained its independence from the British rule in 1957, the country began a period of political instability and unrest. For almost four decades, Ghana was governed by six different military governments. During this period, electoral competition was

either interrupted or forbidden. The political struggles and formation of the party system during the first three republics (1957-1992), however, would eventually become key for defining the rules of electoral competition once the country transitioned to democracy in 2000. This historical context is relevant to have a better understanding of how the EMB was formally configured in 1992 and its contributing role for democratic stability during the Fourth Republic (1992-2018).

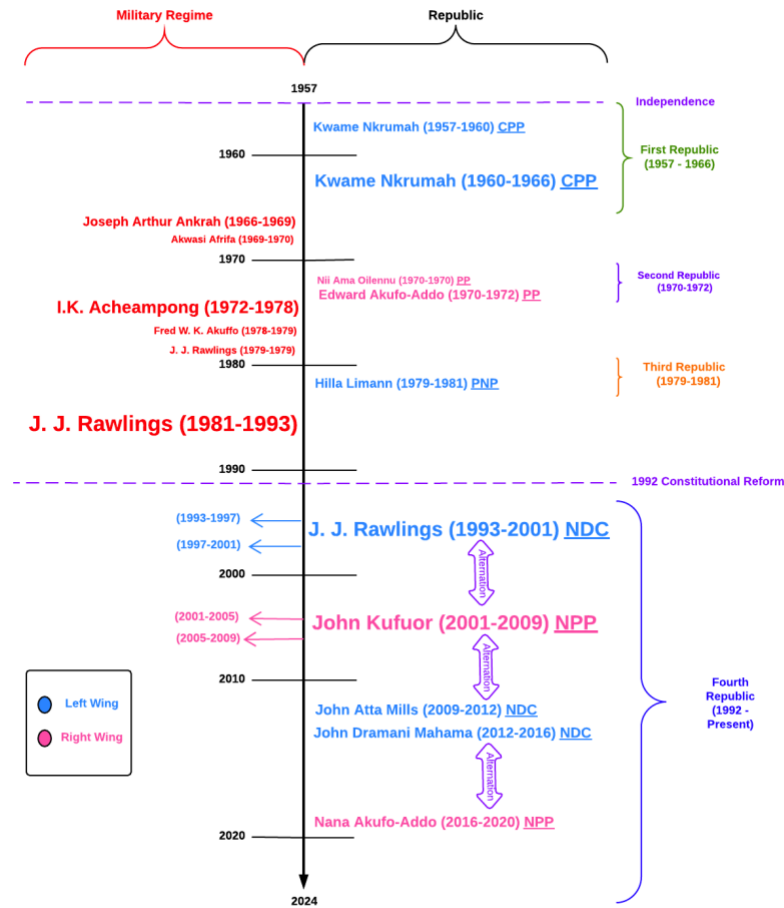
After independence, Kwame Nkrumah's inherited from the colonial administration the *governmental* scheme to manage elections. His election as Ghana's first Prime Minister in 1957, and his election as the country's first President for the period 1960-1966, were both organized by a *governmental* electoral department within the Ministry of Local Government.²³⁴ As many other Sub-Saharan countries that became independent during the Cold War period, Nkrumah's administration struggled against the legacy of the colonial trade system and faced serious governability challenges during his first years as president (Agyeman-Duah 2008).

By 1964, the economic and political conditions became so critical that Nkrumah banned opposition parties and proclaimed himself president for life. The party he had founded, the Convention People's Party (CPP), became the only party in the country with legal status. As a reaction to the economic crises and the political ban, General Joseph Arthur Ankrah, of the National Liberation Council (NLC), overthrew Nkrumah in 1966. The newly independent country began an era of alternating military governments from 1966 to 1992 (Fordwor 2010).

²³⁴ Gold Coast Electoral Ordinance of 1953. During the colony, elections had been organized by the Elections Department within the Ministry of Local Government. Nkrumah declared full independence from the British Crown to become Ghana's first Prime Minister. Three years later, in March of 1960, a constitutional referendum took place and Ghana transitioned from a constitutional monarchy to a presidential republic. That same year, in April, Nkrumah won the presidential election with 89 percent of the vote against J.B. Danquah of the right wing United Party (Sulley 1995).

On one hand, the centralization of electoral management by Nkrumah's administration and its gradual transformation into an authoritarian regime, made the political elite realize that creating a *de jure* autonomous electoral institution would become a necessary condition for organizing credible elections. On the other hand, the abolishment of the First Republic and the subsequent military interventions suspending elections during the second half of the twentieth century, would gradually reinforce this view. Figure 6.1 summarizes Ghana's military and republican (*democratically elected*) governments between 1957 and 2018. The left column shows that the six military administrations took place between the first and third republics. By contrast, the right column shows that democratic elections have been uninterruptedly held since the Fourth Republic was established in 1992. During this period, the two main political parties (NDC and NPP) with national representation have alternated in power in 2000, 2008, and 2016.

Figure 6. 1 Timeline of Presidential Terms in Ghana (1957-2018)



Note: Figure elaborated by the author.

Shortly after Ankrah’s military government began in 1966, for instance, former leaders of the opposition pressured his administration to delegate to a *formally* autonomous EMB the responsibility of organizing elections. This was the first-time such a petition was made. The NLC appointed a Commission of Enquiry to draft a new constitution in order to elect a civilian government, reestablish political rights and basic civil liberties, as well as to establish an

independent electoral bureaucracy to manage elections in the country.²³⁵ This commission, also known as the *Siriboe Commission*, recommended to the NLC creating a permanent and formal independent EMB capable of managing the different administrative phases of the election.²³⁶

In 1968, the *Interim Independent Electoral Commission* (IIEC) was established, replacing the Electoral Department of the Ministry of Local Government. The IIEC was presided over by V.C.R.A.C Crabbe, a Justice from the Appeal Court, and served as a sole commissioner. The IIEC was responsible for organizing the 1969 legislative election and, once the 1969 constitution was enacted, it was substituted by the *Independent Electoral Commission* (IEC). The newly created EMB was overseen by Mr. Godfrey Kofi Agyekum Bonsu, former Secretary of the extinct Electoral Department of the Ministry of Local Government (Fordwor 2010).²³⁷

The newly constituted Second Republic, along with the newly created IEC, lasted only three years.²³⁸ By the time the right-wing government of Kofi A. Busia began his mandate in 1969,

²³⁵ The Commission of Enquiry was chaired by J. B. Siriboe and formed by other fifteen members (Fordwor 2010).

²³⁶ The chairman of the EMB would serve under the same conditions of a Supreme Court Justice and, the electoral commission would be responsible for: i) organizing elections, referendums and plebiscites; ii) establishing a new voter registry; iii) redefining electoral boundaries; iv) hiring and training permanent staff; v) issuing the necessary regulations to conduct elections; vi) coordinating the storage and use of electoral materials; vii) registering political parties; and viii) subdividing electoral districts into administrative wards (Commission of Enquiry 1967).

²³⁷ During the first three republics, all EMBs were headed by a single commissioner directly appointed by the Executive Branch (Ayee 1998).

²³⁸ As soon as the ban to create political associations came to an end, Kofi A. Busia created the Progress Party (PP) in 1969. Busia was a prominent politician from the Ashanti region, and a former leader of the conservative Ghana Congress Party (GCP), opposing Nkrumah's CPP in the early 1950s. He had returned from exile in 1966 and became the Chairman of the NLC Advisory Committee. In the 1969 legislative elections his party, the PP, won 105 of the 140 contested seats of parliament. Busia became the Prime Minister of Ghana's Second Republic and an Electoral College elected Edward Akufo-Ado, one of the UGCC "Big Six" members, as the second president of Ghana. As a response to Nkrumah's authoritarian regime, the new constitutional framework took away most of the presidential powers, transforming it into a ceremonial institution. The real power now resided in the Prime Minister (Fordwor 2010).

economic conditions were also unfavorable to the newly elected administration. The country had a huge deficit and rapidly became reliant on the international price of raw materials, especially cocoa. The government decided to devalue its currency by 44% in December of 1971. One month later, in January of 1972, Colonel Ignatius K. Acheampong, leader of the National Redemption Council (NRC), overthrew Busia's administration.

Shortly after the NRC took control, oil prices increased affecting the country's industry and cost of transportation. As a consequence of unfavorable economic conditions, citizens' confidence in the new military administration rapidly declined (Fordwor 2010). In order to retain control of the political apparatus, Acheampong's regime replaced the Independent Electoral Commission with the Civil Registration and Electoral Division (CRED) in 1974. Once again, political parties and organizations were banned, and electoral administration returned to the Ministry of Local Government.²³⁹ In 1975, Acheampong transformed the NRC into the Supreme Military Council (SMC), extending the duration of his administration.

Social protests and demonstrations against the Acheampong's military administration took place across the country causing a rupture within the SMC. Former political opposition leaders formed the Peoples Movement for Freedom and Justice (PMFJ), demanding the reestablishment of free elections in the country. As a response to these pressures, the Electoral Commission resumed its activities in August of 1977.²⁴⁰ Shortly after, Colonel Acheampong was replaced by General F. Akuffo as head of the second Supreme Military Council (SMC II). The new military

²³⁹ Seth Owusu, who served as Executive Secretary to the IEC, was appointed the director of the CRED.

²⁴⁰ According to Fordwor (2010), commissioners were successively and arbitrarily replaced by the regime. The first two commissioners were Justice Isaac Kobina Abban, who was appointed Chair Commissioner of the EC, and Addoquaye McGranky Quaye was appointed Deputy Commissioner.

administration lifted the ban on political organizations, publicly endorsed the drafting of a new constitution and organizing elections in 1979 to return to a civilian elected government (Fordwor 2010).

Before the 1979 election took place, Flight Lieutenant John Jerry Rawlings, leading the Armed Forces Revolutionary Council (AFRC), overthrew the SMC II administration on June 4th.²⁴¹ Rawlings supported the Constitutional Assembly, and, in July of 1979, Ghana's Third Republic was established. That same year, the first parliamentary elections were held. Although six political parties were registered, only two (the leftist PNP and the right wing PFP) won 80 percent of the seats in parliament.²⁴² In the presidential race, no candidate received the required number of votes to win the first round, but the leftist candidate of the leftist PNP, Hilla Limann,

²⁴¹ The AFRC promised returning the government to civilian rule by the end of the year. Headed by Rawlings, however, the AFRC conducted a "cleaning exercise" and executed the former heads of military governments, including the Supreme Military Council (SMC) with no previous judicial process.

²⁴² Chapter Seven (Representation of the People), Article 42, Numeral 5, Letters a) through d) of the 1979 Constitution restricted the formation of parties to political organization with a national scope:

...(5) Notwithstanding the generality of clause (2) of this article, no political party shall be registered, or be permitted to operate as such if: a) the membership or leadership of that party is restricted to members of any particular tribal or ethnic group or religious faith; or b) the name, symbol, color, or motto of that party has any exclusive or particular significance or connotation to the members of any particular tribal or ethnic group or religious faith; c) that party is formed, for the sole purpose of securing, whether directly or indirectly the welfare, advancement or interests of the members of any particular tribal or ethnic group, religious faith or community; or the internal organization of that party does not conform to the principles of openness, fairness and impartiality... (6) Subject to the provisions of this Constitution, and in furtherance of the preceding provisions of this article, Parliament shall, by law, regulate the functioning of political parties. (Constitution of the Republic of Ghana 1979)

In 1979 nineteen political parties registered, but only six fulfilled this legal requirement. In the 1979 parliamentary election, the PNP and PFP together won 113 out of the 140 seats. On one hand, the People National Party (PNP) –from Nkrumah's left-wing tradition– won 71 of the 140 seats. On the other, the Popular Front Party (PFP), successor of the extinct PP and associated to the rightist Danquah/Busia tradition, won 42 seats, followed by the United National Convention (UNC) with 13 seats, the Action Congress Party (ACP) with 10 seats, and the Social Democratic Front (SDF) with only 3 seats.

was able to secure the alliance of the UNC, and won the second round with a wide margin to become president of the Third Republic. After only two years in power, however, a series of corruption scandals and a decreasing popularity of his administration led to another coup. J. J. Rawlings overthrew Limann's government, suspended the 1979 constitution, abolished the Electoral Commission, and prohibited partisan activities. In 1981, Rawlings installed the Provisional National Defense Council (PNDC), where he served as the Council's Chairman and suspended political rights until the foundation of the Fourth Republic in 1992. Rawlings stayed in power until 2001.

A second circumstance characterizing elections before the Fourth Republic, is the development of a relatively stable bipartisan system that can be traced back to the pre-independence period. Figure 6.2 shows a genealogy of political parties in Ghana since the foundation of the first political party with a national scope in 1947, the United Gold Coast Convention (UGCC).²⁴³ It also shows that despite the recurrent military interventions and bans

²⁴³ Ghana's history of national movements can be traced back to the nineteenth century. In 1897 the Aborigines' Rights Protection Society (ARPS), for instance, grouped the chiefs across regions in order to dispute a Crown Land Ordinance proposed by the British Colonial Administration and to develop a communication mechanism between British authorities and the native population (Furdwor 2010). In 1925, the British established for the first time an Electoral College System in the rural areas of the Gold Coast to elect the Legislative Council. The vote was restricted to the male landowners over twenty-one years and senior public officials of the colonial administration. No parties were allowed, and candidates were required to own property and hold an academic degree (Sulley 1995). In those days electoral management was centralized and controlled exclusively by colonial government. The registry of voters, for instance, was carried out by a district commissioner and coordinated by an election officer in Accra. In 1947, Joseph B. Danquah founded the first national party. Along with five other regional chiefs, scholars and lawyers, he created the United Gold Coast Convention (UGCC) party to protect the commercial interests of local merchants, secure regional unity (especially among the chiefs of the Ashanti people and the rest of the country), challenge unfair economic colonial practices, and pursue the independence from the British rule. This was the first time the Ghanaian political elite had formally organized itself to formulate political demands. Kwame Nkrumah, one of the "Big Six" leaders of the movement, was invited to serve as the General Secretary of the party in December of 1947 (Fordwor 2010). Shortly after he became

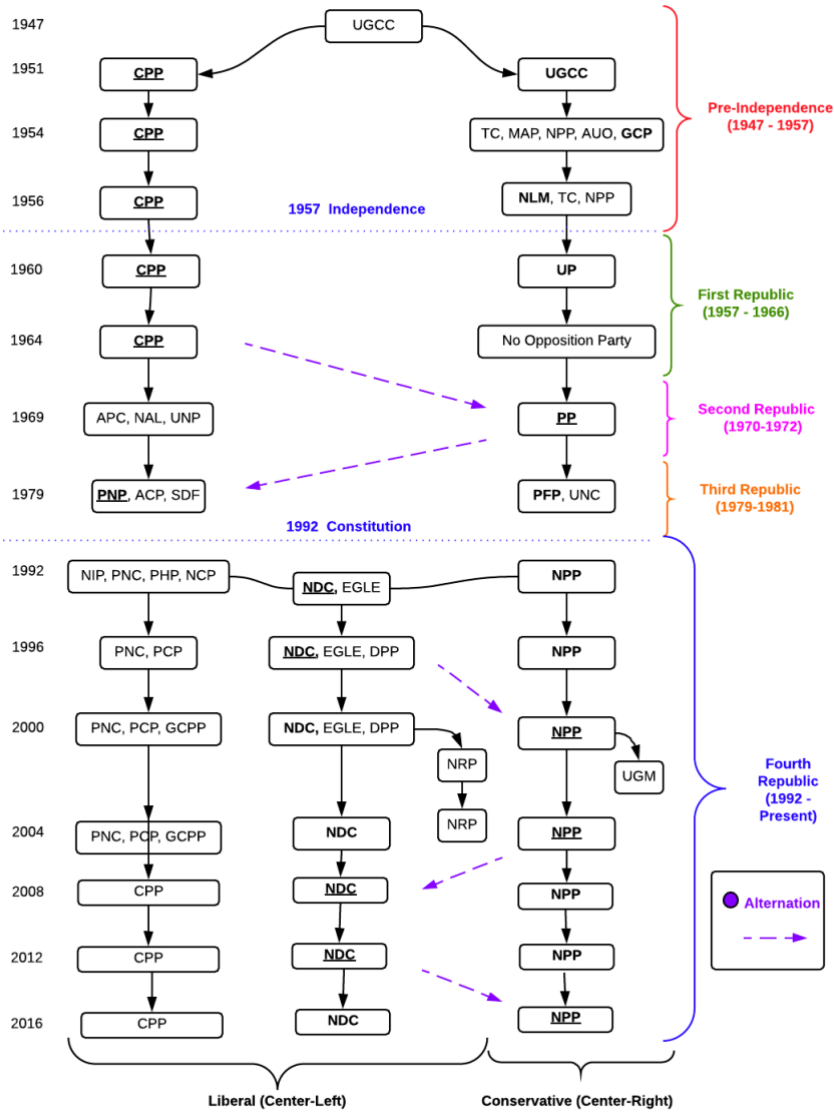
imposed to political competition between 1966 and 1992, Ghana's politics during the first three republics centered around two main ideological factions (left *versus* right wing movements) with a national presence. While the First Republic was governed by Nkrumah's leftist Convention People's Party (CPP) from 1957 to 1966, Busia's right wing Progress Party (PP) ruled during Second Republic (1969-1971), and it was replaced again by the leftist People National Party (PNP) in 1979.

UGCC's General Secretary, in February of 1948, a series of riots and protests took place in Accra. People were demanding, a decrease in the prices of primary goods and control over inflated prices. In order to investigate the riots, the colonial administration created the Watson Commission and arrested the leaders of the UGCC. Shortly after, in June of 1949, Kwame Nkrumah abandoned the UGCC and founded the second largest political movement in the country. A more socially oriented party known as the Convention People's Party (CPP).

Nkrumah's CPP grouped a large social base that included cocoa farmers, miners, students and workers affiliated to trade unions across the country. The CPP was the first political party in the region to promote women's open participation in politics and, more importantly, it was a party created to accelerate Ghana's "self-governance." In contrast to the conservative position adopted by the political elite of the UGCC, which wanted to keep a good relationship with the colonial administration and was pursuing a more diplomatic transition towards independence, Nkrumah radicalized and fought for the immediate independence of the country. It is during this period of time where the current two-party system has its roots. On one hand, the UGCC became a conservative party that grouped the landed and industrial elite, as well as the more conservative factions across the country (especially in the Ashanti region known for its gold and cocoa production). On the other hand, Nkrumah's CPP was a socialist party, with a progressive ideological position, a popular base of support formed primarily by workers (backed by the Trade Union Movement), women, and students (from the Committee of Youth Organization) and based on the doctrine of egalitarianism and scientific socialism (Fordwor 2010).

Nkrumah's social movement extended rapidly across the country and in March of 1952, he became Prime Minister of the Gold Coast. The negotiations for independence took five more years and, in March of 1957, Nkrumah declared full independence from the British Crown to become Ghana's first Prime Minister. Three years later, in March of 1960, a constitutional referendum took place and Ghana transitioned from a constitutional monarchy to a presidential republic. That same year, in April, Nkrumah won the presidential election with 89 percent of the vote against J.B. Danquah of the right wing United Party (Sulley 1995).

Figure 6. 2 Genealogy of Political Parties in Ghana 1947-2018



Note: Figure elaborated by the author. This figure is a modified and updated version of the one made by Agyeman-Duah (2008), Chapter 6, page 142.

The endurance of Ghana's bipartisan system through the second half of the twentieth century, responds primarily to the elites' commitment to create a party system with a national scope. As many other Sub-Saharan countries, Ghana has a wide variety of ethnic groups who speak many indigenous languages.²⁴⁴ Since the foundation of the UGCC, however, party politics have not revolved around ethnicity or regional divides. Regions have always played an important role because parties have historically built regional strongholds, but parties were able to develop their own national identity and campaign on issues primarily revolving around an economic ideological cleavage (*social* versus *conservative*).

This nationalistic view of politics can be clearly identified in the elites' political discourse and legal framework during the first three republics. Since the country's independence, for instance, Ghana adopted a majoritarian electoral system that has prevented the extreme fractionalization of the party system, as happened in other Sub-Saharan countries such as Kenya. Following the spirit of the 1979 Constitution from the Third Republic, the 1992 Constitution kept restricting the formation of parties to organizations with a national character and prohibits the creation of regional, ethnic or religious-based political organizations. Chapter Seven, Article 55, states that (Constitution of the Republic of Ghana 1992):

... (4) Every political party shall *have a national character, and membership shall not be based on ethnic, religious, regional or other sectional divisions*; (5) The internal organization of a political party shall conform to democratic principles and its actions and

²⁴⁴ Ghana has over 75 ethnic groups and approximately 80 indigenous languages spread across ten regions. According to the 2010 census conducted in Ghana the main ethnic groups are the Akan, which accounts for 47.5% of the population, the Dogbani/Mole that represent 16.6%, followed by the Ewe (13.9%), the Ga-Adangbe (7.4%), Gurma (5.7%), Guan/Gonja (3.7%), Gurunsi (2.5%), Bissa/Mande (1.1%), and other groups (1.6%). Source: <http://www.statsghana.gov.gh/>

purposes shall not contravene or be inconsistent with this constitution or any other law...

(7) For purposes of registration, a prospective political party shall furnish the electoral commission with a copy of its *constitution and the names and addresses of its national officers*: and shall satisfy the commission that -(a) there is ordinarily residence, or *registered as a voter in each district of Ghana, at least one founding member of the party*; (b) the party has *branches in all the regions of Ghana* and is, in addition, *organized in not less than two thirds of the districts of each region*; and (c) the parties name, emblem, color, motto or any other symbol *has no ethnic, regional, religious or other sectional connotations or gives the appearance that its activities are confined only to a part of Ghana*.

This historical effort to ensure parties would maintain a national scope, as well as a regional presence, was endorsed both by left and right-wing coalitions. For instance, despite Busia's right wing Progress Party (PP) having most of his political support in the Ashanti region, his discourse and campaign centered around promoting the unity of the political elite and remarked the challenges of consolidating democracy before the establishment of the Second Republic:²⁴⁵

Everyone knows the dangers and challenges over time: the dangers of once again being enslaved by greedy, faithless, unprincipled men, who see politics only as a mean of amassing wealth dishonesty and abusing power. *Everyone can see the dangers of sectorial and narrow tribalism*. Everyone has felt the blight of corruption, the sting of unemployment, the reckless dissipation of our money and resources, and the painful

²⁴⁵ K.A Busia, Selected Speeches on Ghana, 1957-1969. Cited on Fordwor (2010).

humiliation of our nation. It is to the challenges that this situation poses that we of the Progress Party address ourselves and *invite all of our fellow citizens*, young and old. *We must join to achieve the goals and aspirations of the revolution.*

As a result, the formation of political parties before the foundation of the Fourth Republic was characterized by its national discourse and their strong regional presence. In the preamble to the 1979 election, for instance, nineteen parties registered but only six of them complied with the requirements of having a national presence. Both the left-wing People National Party (PNP) and the right-wing Popular Front Party (PFP) obtained 80 percent of the seats in parliament and had an important regional presence across the country. While the PNP obtained seats in all of the 10 regions, the PFP, which had its strongholds in the Ashanti and Brong-Ahafo regions, won seats in eight regions (except in the Central and Volta Region). Smaller parties, like the United National Convention (UNC), which had its stronghold in the Eastern region, won seats in four out of the ten regions (Fordwor 2010).

In sum, the emergence of a relatively stable bipartisan system in the Fourth Republic cannot be understood without the ideological ties of the New Patriotic Party (NPP) and the National Democratic Congress (NDC) with the political movements that emerged from the partisan divide within the UGCC in the late 1940s. Right and left-wing parties with a national presence alternated –although interruptedly– during the first three republics setting the conditions for the elite to eventually accept electoral competition between two main factions and political alternation as a long-term commitment once the Fourth Republic was established.

Once political activity was reestablished with the 1992 Constitution, a new formally autonomous EMB was created. The political context under which the Fourth Republic was established, however, was complex and highly politicized. Rawlings had led two military administrations and was responsible for the suspension of electoral competition after the Third Republic. The administrative configuration of a new EMB during his administration, even under a new constitutional order, was questioned by the opposition because Rawlings had been the founder of the leftist National Democratic Congress (NDC) and became its presidential candidate for the first election organized in the Fourth Republic.

It is in this context where the formation of a relatively unified opposition party, the NPP, became key to pressuring the regime for democratization and to demand the creation of a *de jure* independent electoral bureaucracy to manage elections. Once the 1992 Constitution was approved, and the first presidential and parliamentary elections took place, the national presence of the NPP also became instrumental for the EMB to adopt a series of informal ICMs. With the creation of the *Inter-Party Advisory Committee* (IPAC) in 1994, and its local level equivalents (RIPACs and DIPACs) six years later, the opposition party was able to monitor, communicate and participate within an EMB that was formally insulated from parties and controlled by commissioners that had been directly appointed by the Executive Branch. The national presence of the NPP, not only gave opposition parties the capacity to interact within the EMB at the executive (*political*) level, but also gave them the possibility to monitor the enforcement of administrative decisions at the regional and district levels.

In the following subsections, I describe the sociopolitical context under which the Fourth Republic was founded. I explain the administrative configuration of the newly *de jure* autonomous

EMB, as well as its early adoption of an informal internal consultative mechanism as a way to build credibility among the political elite. I illustrate the different circumstances under which ICMs have served to increase the levels of transparency, communication and accountability within the EMB, positively affecting the *de facto* autonomy.

6.3.2 Formal Independence and the Adoption of Informal ICMs

Contrary to Mexico's transition to democracy, where opposition parties gradually gained access to political representation and were able to slowly modify formal rules guaranteeing free and fair elections, Ghana's transition to democracy was a top-down movement where the military regime completely controlled the institutional design that would prevail during the Fourth Republic. That is, the institutional architecture in Ghana was undermined by the lack of credibility in the newly created *de jure* autonomous EMB to organize free and fair elections. While opposition parties in Mexico were formally embedded within the EMBs administrative structure before its inception as a *de jure* autonomous institution and electoral commissioners were appointed by at least two thirds of the legislature, Ghana's *Electoral Commission* was insulated from political parties and its executive board was directly appointed by the head of government.

After Rawlings overthrew Limann's administration in 1982, the Provisional National Defense Council (PNDC) replaced the Third Republic's *Electoral Commission* with the National Commission for Democracy (NCD). In contrast to former EMBs led by single commissioners during the first three republics, Rawlings NCD became the first EMB with a multi-member

executive board. As in the past, electoral commissioners were directly appointed by the PNDC.²⁴⁶ Although elections and party politics were prohibited at the national-level by the military regime, Rawlings began a decentralized dissemination policy introducing participatory democracy – community decision-making– at the regional level (Sulley 1995). Among its main administrative responsibilities, the NCD was also in charge of updating electoral boundaries, consolidating the registry of voters, and organizing elections for the District Assemblies, as well as for the national and regional Houses of Chiefs (National Commission for Democracy 1992).

In the late 1980s, Rawlings’s administration received both internal and international pressures to return to multi-party elections, especially after the third-wave of democratization began spreading in regions like Latin America, Eastern Europe and South East Asia. As a response, the NCD held a series of regional debates. In their final report entitled *Evolving a True Democracy* (National Commission for Democracy 1991), the NCD recommended restoring multi-party competition and holding democratic elections for the executive and legislative branches.

In August of 1991, the PNDC appointed a committee of experts to draft a new constitution. Six months later, the *Consultative Assembly* submitted a draft to the PNDC government and, as part of the steps to return Ghana to a multi-party democracy, the NCD was replaced by the *Interim National Electoral Commission* (INEC). The INEC’s eleven-member executive board was directly appointed by Rawlings’s PNDC. One of the eleven commissioners served as an *executive chairman* and the two others served as deputy chairmen (one of finance and administration and the

²⁴⁶ After independence, EMBs during Ghana’s first three republics were headed by a single commissioner appointed by the president (Ayee 1998).

other of operations).²⁴⁷ Compared to its predecessor, INEC was a purportedly *de jure* autonomous institution responsible for i) conducting and supervising national level elections; ii) scheduling the referendum to approve the new Constitution and the timeline for the presidential and parliamentary elections; iii) updating constituency boundaries; iv) supervising the storage, use, and distribution of electoral materials; and v) formulating any regulations for the conduct of and supervision of elections.

In April of 1992 the Constitution was approved by a wide majority –92 percent of the vote– of the those who participated in the referendum organized by INEC (African Elections Database 2015). The ban on political parties was lifted. Political parties, however, were not allowed to use the names, symbols or colors that had been previously used by former parties during the first three republics. The main political factions in the country rapidly realigned in two the blocks that had historically competed for power. On one hand, opposition leaders of the conservative Danquah-Busia tradition formed the New Patriotic Party (NPP). On the other, Rawlings created the National Democratic Congress (NDC), which was ideologically aligned with Nkrumah’s socialist tradition. Rawlings’s new party served to host the PNDC’s bureaucratic elite that had ruled the country for over a decade.

Despite Rawlings having publicly acknowledged his willingness to compete for power in multi-party elections, the EMB’s *de facto* autonomy was severely questioned by citizens and opposition members of the political elite before the election took place (Gyimah-Boadi 2014). Not only had *INEC*’s commissioners been unilaterally appointed by the PNDC, but the head of

²⁴⁷ Justice Ofori-Boateng, an Appeal Court Judge, served as the Executive Chairman, while Nana Oduro Numapua II was appointed Deputy Chairman Finance and Administration, and Kwadwo Afari Gyan was appointed Chairman of Operations.

government was participating as a presidential candidate in the election. The purportedly autonomous EMB had no financial independence and had to settle major administrative responsibilities –i.e., redefining electoral boundaries and updating the registry of voters– in an extremely short period of time. According to Gyimah-Boadi (2014), the insulation of INEC prevented opposition parties from supervising or participating in any of the key administrative decisions in preparation of the election. These conditions, in addition to the unlevelled electoral playing-field favoring the Rawlings’s establishment (e.g., the unequal access to media and financial resources favoring the regime), led the opposition to question the credibility of the INEC and the results of the 1992 presidential race (Gyimah-Boadi 2014).

In December of 1992, the presidential race took place. As in many other Sub-Saharan countries transitioning to democracy during this same period, the incumbent candidate –usually with a military background– became the first elected president of newly constituted multi-party democracies (Bratton and Van de Walle 1997). Rawlings, who formed an electoral coalition with two smaller parties, won the election obtaining 58 percent of the vote.²⁴⁸ Albert Adu Boahen, of the New Patriotic Party (NPP), received 30 percent of the vote. Former president Hilla Limann, candidate of the Peoples National Convention (PNC), received 6.7 percent. Emmanuel Erskine, of the Peoples Heritage Party (PHP) received 2.9 percent, and Kwabena Darko, of the National Independent Party (NIP), received only 1.8 percent (Ayee 1998).

Shortly after electoral results were announced, opposition parties questioned the EMB’s legitimacy arguing it was informally controlled by Rawlings. The direct appointment of INEC

²⁴⁸ The Progressive Alliance (PA) was formed by the National Democratic Congress (NDC), the National Convention Party (NCP) and Eagle Party (EP).

commissioners by the PNDC administration became one of the main reasons for the opposition's lack of trust on the EMB. Rawlings had personally supervised and approved the appointment of commissioners before becoming the government's candidate. As had happened during the second and third republics, the appointment of electoral commissioners by the Executive Branch became – and still is – one of the main formal procedures affecting the EMB's legitimacy and *de facto* autonomy (Gyimah-Boadi 1994).

Other factors negatively affecting the EMB's reputation were the lack of transparency and bureaucratic professionalization within INEC. Since INEC was a newly constituted EMB, it had to organize a national level election in a very short period of time and, perhaps more importantly, with a *governmental* bureaucratic apparatus that maintained its loyalty to the regime and had not been used in decades. The voting registry, for instance, had been updated by Rawlings's EMB –the NCD– in the mid 1980s, but it had not been properly reorganized. Demographic and cartographic information that was recollected during the PNDC administration, for instance, was unreliable and unavailable for opposition parties (Gyimah-Boadi 1994). Additionally, opposition parties had to organize in an extremely short period of time and had scarce financial resources for the campaign. While they had limited access to administrative decisions taken within the EMB, Rawlings's party (NDC) had privileged access to information within INEC, to major media outlets across the country, and to government's administrative resources.

As a mean of pressuring the newly elected administration, opposition parties boycotted the parliamentary elections and drafted a report –*The Stolen Verdict* (New Patriotic Party 1993)– documenting the irregularities of the presidential electoral process (Agyeman-Duah 2005, Fordwor

2010, Frempong 2012).²⁴⁹ The NPP accused the regime of using government resources discretionally during the election, denounced the inequality of conditions to compete and detected irregularities in more than half of the 200 constituencies. Opposition parties also denounced the absence of party representatives at polling stations, the illegal stuffing of ballot boxes, and the opaque procedures for safeguarding electoral materials and ballot boxes before and after voting took place. The NDC took advantage of the absence of contenders and won 189 of the 200 seats in the parliamentary election, while the *National Convention Party* and independent candidates obtained 8 and 3 seats, respectively (Nohlen et al., 1999).

The opposition's decision to boycott the parliamentary elections pressured Rawlings's administration. Most international observers had welcomed the 1992 constitutional framework, the reintroduction of multi-party elections, and validated the results of the 1992 presidential election. They also emphasized, however, the major administrative deficiencies of the interim EMB (Frempong 2012, 2014). Bratton and Van de Walle (1996), for instance, classify transitions to democracy in forty-two Sub-Saharan African countries. They group Ghana's 1992 transition, along with 12 other countries, as a "flawed transition."²⁵⁰

The early years during the first Rawlings's administration in the Fourth Republic were key for the consolidation of electoral administration in Ghana. On one hand, the EMB was granted formal autonomy with the 1992 Constitutional reform. The *de jure* autonomous *Electoral Commission* was established in August of 1993 (Electoral Commission Act 451). The key

²⁴⁹ Only the parties that formed the Progressive Alliance participated in the parliamentary election.

²⁵⁰ They compare Ghana's 1992 flawed transition to the ones experienced in other Western African neighbors like Burkina Faso, Cote d' Ivoire, and Togo, and others like Cameroon, Kenya and Gabon. Cited in Frempong (2012).

attributes in the constitution securing the EMB's formal autonomy were: i) the explicit constitutional recognition of the EMB's independence (Article 46 of the Constitution recognized that "in the performance of its functions, the *Electoral Commission* shall not be subject to the direction or control of any person or authority"); ii) the functions and responsibilities of the Electoral Commission were explicitly described in Article 45 of the Constitution; iii) the EMB's electoral commissioners had security of tenure and could not be arbitrarily removed (according to Article 44 of the Constitution, its chairman and the two deputy-commissioners had the same terms of service –i.e., permanent tenure– as justices of the Court of Appeal and of the Supreme Court); iv) the *Electoral Commission* had the power to hire, train, promote, discipline and fire its own personnel; v) the commission had the capacity to create secondary legislation to guarantee its operations; and vi) the commission would have financial independence.²⁵¹

On the other hand, the *Electoral Commission* had a permanent administrative structure and presence in all the regions and administrative districts across the country. Its executive board was formed by seven members, including a chairman commissioner, a deputy chairman of operations, a deputy chairman of finance and administration, and four electoral commissioners. All decisions made by the EMB's executive board required a majority of votes and its primary functions were clearly established in Article 45 of the constitution.²⁵² The EC was granted the capacity to formulate its own regulations to ensure its adequate performance.

²⁵¹ 1992 Constitution of the Republic of Ghana. See also Agyeman-Dua (2005) and Afari-Gyan (2009).

²⁵² These functions were: a) compile the register of voters and revise it at such periods as may be determined by law; b) demarcate the electoral boundaries for both national and local government elections; c) conduct and supervise all public elections and referenda; d) educate the people on the electoral process and its purpose; e) undertake programs for the expansion of the registration of voters; f) and perform such other functions as may be prescribed by law.

The Constitution provided a legal framework to guarantee the EMB's formal autonomy. The main problem in its formal design, however, was the unilateral capacity of the Executive Branch to directly appoint the seven commissioners.²⁵³ This faculty has been recognized in the constitution since Nkrumah's administration in the 1960s. During the first three republics, the priority had been the reestablishment of a democratic constitutional order. Once the 1992 constitution was approved, and the first presidential election took place under the Fourth Republic, the faculty of the president to appoint the EMB's executive board began to be disputed.

While the PNDC administration had been criticized for directly appointing INEC's electoral commissioners, Rawlings supported keeping the appointment mechanism within the president's prerogatives in the 1992 Constitution. As previously described, this issue rapidly became –and still is– one of the main concerns for opposition parties. Country-level experts and international observers have historically referred to this mechanism as one of the main constraining factors to the EMB's formal autonomy (Frempong 2012).²⁵⁴ In comparative perspective, for instance, most third-wave countries with *de jure* independent EMB's involve either the legislative or judicial

²⁵³ Article 70 of the Constitution states that the president, on the advice of the Council of State, shall appoint the members of the EMB's executive board. The Council of State is a collective body of prominent citizens formed to advise the Ghana's President on national issues. It is equivalent to the Council of Elders in the traditional political system. It is formed by 25 members and it has traditionally endorsed the Executive Branch. The council is formed by one person who has previously held the office of Chief Justice; one person who has previously held the office of Chief of Defence Staff of the Armed Forces of Ghana; one person who has previously held the office of Inspector-General of Police; the President of the National House of Chiefs; one representative from each region of Ghana elected, in accordance with regulations made by the Electoral Commission; and eleven other members appointed by the President. According to Boafo-Arthur (2014), the Council of State has never been an effective check to the president. By the time the EC was established in 1993, for instance, the majority of the members of the Council of State had close ties to the PNDC's administration. Furthermore, the word "advise" is subject to interpretation because it does not imply that the appointment process is subject to the approval of the council.

²⁵⁴ Former INEC's deputy chairman, Kwadwo Afari-Gyan, and commissioner David Kanga, who had been unilaterally appointed by Rawlings's PNDC, were appointed as chairman and deputy chairman, respectively, of the Electoral Commission.

branches for nominating and appointing commissioners. Ghana's appointment mechanism ranks below most other countries in regions like Latin America and Africa, where electoral commissioners are nominated by the consensus of parliamentary groups (Loret de Mola 2014: 201-204).

The history of electoral administration in Ghana is paradoxical because, at the moment of the EMB's inception in 1993, the *Electoral Commission* had limited financial resources and extremely low levels of administrative capacity and bureaucratic professionalization. Perhaps more importantly, the main limitation of the institution was that its institutional design –the direct appointment of electoral commissioners by the executive– generated mistrust among the opposition, especially during a transition where the former authoritarian regime created a party to contend in elections. Despite all of these elements that could have constrained the EMB's capacity to build a positive reputation, the *Electoral Commission* managed to develop over the years high levels of trust among citizens and political elite build, as well as a reputation as one of the most *de facto* autonomous electoral institutions in the region.²⁵⁵

As a response to the opposition's demand to guarantee the neutrality of the *Electoral Commission*, the EMB made a major effort shortly after its inception to build a positive reputation among parties, gain the trust the public, and improve its administrative procedures (Gyimah-Boadi 2014). Among the key decisions towards building a positive reputation was the adoption of an informal internal consultation mechanism (ICMs) in March of 1994. Instead of remaining

²⁵⁵ According to V-Dem data measuring the country-level experts' perception of the EMB's *de facto* autonomy (EMB Autonomy), Ghana's Electoral Commission is ranked among the most independent EMB's in the region and its autonomy has systematically increased since its inception in 1993 (Coppedge et al., 2014).

insulated from political parties, the EMB created an informal mechanism to include parties to participate and discuss major administrative decisions within the *Electoral Commission*.

According to Frempong (2012: 62):

The *Electoral Commission* saw a clear need for electoral reforms with a view to achieving greater transparency in all aspects of the election process, to create popular faith in the ballot, and to build confidence in the EC itself. This, as earlier indicated, coincided with the need for both the government and the opposition to achieve some measure of consensus if the Fourth Republic was not to be derailed. *The most important mechanism the Electoral Commission adopted for managing distrust on the EC and to endorse its electoral reforms was the innovative Inter-Party Advisory Committee...* The EC through the IPAC then co-opted the parties into the process of election management in March of 1994 (Ayee 1997:10).

According to Afari-Gyan, the *Inter-Party Advisory Committee* (IPAC), and later its local level equivalents, the *Regional Inter-Party Advisory Committees* (RIPACs) and the *District Inter-Party Advisory Committees* (DIPACs), were created as a two-way communication mechanism between the electoral commission and political parties.²⁵⁶ The main objective was to include parties in discussions of key administrative decisions to generate consensus and legitimize the electoral process. The adoption of these ICMs is revealing because it shows three things. First,

²⁵⁶ Fieldwork interview of the author with D. Kwadwo Afari-Gyan, Former Chairman of Ghana's Electoral Commission. Accra, Ghana. Spring 2014. As noted by Frempong (2012), the adoption of the IPAC was originally suggested by the Commonwealth Observer Group (COG) after monitoring the 1992 elections. The COG emphasized dialogue and consultation with political parties as a building block towards democratic consolidation. They recommended Ghana's Electoral Commission to institutionalize, even informally, the dialogue with political parties as a forum at which parties could air their grievances (COG 1992: 62-63, cited in Ayee 1998: 1961).

that *de jure* independence, in certain contexts, is insufficient to guarantee *de facto* autonomy. Second, it shows that EMB's can adopt consociational mechanisms to include external actors within the electoral bureaucracy to improve communication channels with the main actors competing for power, as well as to promote consensus, transparency, accountability and trust in key administrative procedures and decisions made by the institution. Third, it also shows that in cases where the formal framework does not contemplate ICMs, this type of mechanisms can be adopted informally to enforce formal rules and promote the EMB's *de facto* autonomy.

The administrative weaknesses exhibited during the 1992 presidential election and the opposition's boycott to the 1993 parliamentary elections created an extremely politicized context for the newly configured *Electoral Commission*. At the moment of its inception, the EMB needed to professionalize its bureaucratic structure, solve technical problems to improve its procedures (i.e., updating the registry of voters), and increase the levels of trust citizens and the political elite had on the EMB. The most important challenge of Ghana's *Electoral Commission* was to legitimize its decisions in environment of mistrust and under an institutional arrangement that formally insulated the EMB from political parties and where its executive board had been directly appointed by the incumbent's party.

By adopting an informal series of ICMs, the *Electoral Commission* was seeking to solve these problems and to begin building trust among the political elite. Since the IPAC, and its local level equivalents, was conceived as a non-statutory instance of inter party dialogue within the EMB, there were no formal statutes regulating the interaction among parties and the EMB. This informal ICM, however, has been recurrently used by the *Electoral Commission* over two decades and its informal configuration and procedures have now become a tradition. The IPAC is presided

over by the chairman of the *Electoral Commission* and by representatives of all registered political parties. Other electoral commissioners and officials can also be present and, historically, representatives of international organizations and the donor community have also been invited to the sessions of the committee.²⁵⁷

The IPAC usually meets on a monthly basis, but during an election year the committee gathers with more frequency. The sessions are usually organized by the *Electoral Commission*, but political parties can also ask for extraordinary sessions to take place. Although each registered political party has the right to speak, decisions and agreements reached at the committee sessions are not binding to the EMB. According to electoral commissioners, IPAC has served as a mechanism for reaching consensus among political actors, communicating with parties, and learning their positions regarding specific administrative procedures.²⁵⁸ The committee has also allowed the EMB's executive board to take more cost-effective administrative decisions in the different phases preceding the electoral process (Ameyibor 2013).

Traditionally, parties and the EMB jointly define the agenda. When parties advocate to include specific concerns on the agenda, the *Electoral Commission* considers them and seeks consensus. The EMB has used IPAC's sessions to inform parties about decisions where the commission is looking for parties' input and validation. All parties are allowed to intervene during

²⁵⁷ The IPAC meetings have traditionally been held in a close-door environment reserved for electoral officials and political parties. According to the EMB's commissioners and party leaders, the close-door environment allows both electoral bureaucrats and parties to reach agreements without having pressure from media during the negotiation. In some cases, press conferences are offered by the EMB once an agreement has been reached. In case of absence of the EMB's chairman, IPAC sessions are usually presided over by one of the two deputy chairmen or an electoral commissioner.

²⁵⁸ Fieldwork interviews with commissioners Kwadwo Afari-Gyan, Amadu Sulley and Sa-Adatu Maida. Spring 2014. Accra, Ghana.

the committee's sessions and, depending on the type of issue being discussed –and the level of consensus among parties– the *Electoral Commission* either endorses a petition at IPAC or the executive board has an internal discussion separately.

Three main contextual factors facilitated the adoption and success of this type of informal ICM (IPAC). On one hand the early configuration of a stable bipartisan system in Ghana's Fourth Republic and, on the other, the willingness of political opposition to establish a dialogue and communication channel with both the ruling party and the electoral commission.²⁵⁹ Lastly, the role and disposition of the EMB's executive board –especially of its chairman– to consider the inclusion of an informal consultation mechanism in order to create a communication channel with external actors, such as political parties, and build consensus over key administrative decisions related to different phases of the electoral process.

The first contextual factor, the conformation of a relatively stable party system, has become relevant for the interaction of parties within the EMB because it has allowed the *Electoral Commission* to enforce communication channels and build consensus more effectively among the main political actors competing for power. Ghana's political elite, even during the three first short-lived republics, has historically promoted the formation of a party system where parties had a national scope, preventing ethnic and regional fragmentation.²⁶⁰ The 1992 Constitution, for

²⁵⁹ In Mainwaring and Pérez-Liñán's (2013) terms, the Ghanaian political elite represented both in government and opposition was not radicalized and became supportive of democratic rule during the Fourth Republic.

²⁶⁰ Compared to other countries in the region, the Ghanaian political elite was able to rapidly institutionalize a stable two-party system shortly after the country became a multi-party democracy (Fordwor 2010; Frempong 2012; Elischer 2013; and Riedl 2014). This can be partly explained by the political elites' idea of parties as “institutions that can group diverse interests, represent ideologies, serve as legitimate vehicles to

instance, reaffirmed this spirit and provided the normative ground for facilitating the institutionalization of the party system (Elischer 2013). On one hand, the Constitution preserved the majoritarian single member electoral system, which generated the conditions to preserve a relatively stable bipartisan system. On the other, the Constitution explicitly prohibited regional, ethnic, tribal and religious leaders from creating their own parties. In order to register a political party, its statutes, emblem, or colors, for instance, could not relate to an ethnic or regional cleavage and could not resemble any political party from previous republics. Additionally, party leaders were asked to have presence both at the regional and district level.²⁶¹

Although the institutionalization of the party system is not a prerequisite for the adoption of ICMs, having a relatively stable party system, where parties have a national presence, facilitates the partisan interaction within the EMB in terms of communication, transparency, accountability, and consensus building for different reasons. First, a unified opposition allows the EMB to interact directly with two main groups, the ruling party and opposition, instead of having to deal with multiple actors in case the party system is extremely fragmented. Second, if the party system is relatively stable, the interaction within the EMB facilitates long-term arrangements. Compared to highly volatile party systems, many of the agreements –and procedures followed– made within an informal ICM, such as IPAC, prevail over time thanks to the permanence of the main political

build and maintain coalitions, and operate as effective machineries to contend for power” (Gyimah-Boadi 2014).

It is this conception of parties, as well as the elites’ understanding of democracy during the Fourth Republic as a system that cannot be “shaken too much” and that needs “to be carefully preserved,” that allowed Ghana to experience subsequently peaceful alternations in power and maintaining its political stability in recent years (Gyimah-Boadi 2014). In a country that is not exempt from strong ethnic and regional divides, the inclusiveness and national character adopted by the two major parties has been crucial for the Fourth Republic’s political stability (Elischer 2013, Gyimah-Boadi 2014).

²⁶¹ Chapter 7, Article 55 of the Constitution of the Republic of Ghana, 1992.

forces within the EMB. Third, having parties with national presence also facilitates addressing problems concerning challenges from a national-level perspective. In case of adopting regional and local level ICMs (i.e., RIPACs and DIPACs), as happened in 2000, parties can coordinate more efficiently with their local-level representatives and separate national from local-level issues being addressed within the EMB. This also allows parties to become more efficient monitoring agents, identify irregularities at the national and local level and, thus, improving their capacity to interact with the EMB.²⁶² As recognized by Afari-Gyan (2014):²⁶³

With the 1992 Constitutional reform the *Electoral Commission* became formally independent, but there was a generalized mistrust in electoral management. There was a demand for a truly independent *Electoral Commission* and it was the presence of a strong opposition, and the disposition of the regime to dialogue with opposition parties, what facilitated the creation of the necessary mechanisms to build consensus among political actors and make things work.

The second contextual factor, the elites' commitment to democracy during the Fourth Republic, was key for electoral management because it reveals that regardless of an institutional arrangement constraining the commission's formal autonomy (e.g., having the EMB's executive board directly appointed by the incumbent's party, and later by the same incumbent that was elected president after a decade of authoritarian rule), political and institutional actors (i.e.,

²⁶² Fieldwork interview with Professor E. Gyimah-Boadi, Executive Director of Ghana's Center for Democratic Development (CDD). Accra, Ghana. Spring 2014.

²⁶³ Fieldwork interview with Dr. Kwadwo Afari-Gyan at Ghana's Electoral Commission. Accra, Ghana. Spring 2014.

political parties and electoral officials) still have an opportunity to organize credible elections. In this case, the successful adoption of an informal ICM facilitating dialogue and consensus among political parties reveals the elites' commitment to democracy, especially of the opposition. As noted by Agyeman-Duah (2005: 11), after the opposition's rejection of the 1992 presidential outcome and its decision to boycott the parliamentary elections, the NPP elite decided to follow a peaceful path of resistance.²⁶⁴ First, by participating in the creation of an Inter-Party Coordinating Committee (IPCC), where opposition parties attempted becoming a "shadow cabinet" to monitor government's activity and, second, by establishing a communication channel with the ruling party (NDC) and the *Electoral Commission* within an informal ICM known as the IPAC.

The third contextual factor, the leadership within the EMB, facilitated the adoption of IPAC not only because the EMB accepted the risk of adopting a non-statutory institutional framework in a highly politicized environment. The leadership of the *Electoral Commission's* chairman, Dr. Kwadwo Afari-Gyan, was also relevant for the EMB's reputation as a *de facto* autonomous institution. According to Frempong (2012), as an informal mechanism of consultation, the role of the EC's chairman within IPAC was to mediate the inter-party dialogue. Compared to the previous attempt of parties to establish an inter-party dialogue after the 1992 presidential election (the short-lived IPCC), it was the EMB's mediation role through IPAC what guaranteed the successful communication between parties.

²⁶⁴ In Agyeman-Duah (2005: 11) words, "Beyond the loud protestations and the insulated incidents of violence [after the 1992 presidential election], the opposition chose the path of least resistance and demonstrated amounts of tolerance in circumstances which, elsewhere in Africa, could easily have deepened national cleavages and even led to war. Cited in Frempong (2012: 57).

Historically, Ghana's different EMBs had a unipersonal leadership in charge of making most administrative decisions during the first three republics. Only after Rawlings created the National Commission for Democracy (NCD) in the 1980s, and later the Interim National Electoral Commission (INEC), did electoral bureaucracies adopt multi-member executive boards. Even under this new configuration, the chairman of the *Electoral Commission* has traditionally played a primary role, including presiding IPAC meetings. Compared to other EMB's executive boards where it is not uncommon for commissioners to vote differently, Ghana's *Electoral Commission* decisions have been systematically approved by unanimity. This is explained by both the unilateral appointment of commissioners by a single actor –the Executive Branch– and the EMB executive board's perception that unanimous decisions strengthen the perception of the EMB as an internally coordinated, cohesive and consistent institution.²⁶⁵

In a fieldwork interview with Dr. Kwadwo Afari-Gyan, former chairman of the *Electoral Commission*, he described his predominant role as one of the main institutional weaknesses when asked about the challenges faced by the EC.²⁶⁶

Even I am concerned with the future of the *Electoral Commission* once I retire. The institution relies too much on a single person and has managed to survive turbulent times. Something that still surprises me is that in the history of the *Electoral Commission*, there has never been a lack of consensus –no divided voting– among its commissioners. Every once in a while, I ask my colleagues to disagree with me. The EC will have an important credibility challenge when the next

²⁶⁵ Fieldwork interview with Dr. Kwadwo Afari-Gyan at Ghana's Electoral Commission. Accra, Ghana. Spring 2014.

²⁶⁶ Fieldwork interview with Dr. Kwadwo Afari-Gyan at Ghana's Electoral Commission. Accra, Ghana. Spring 2014.

appointment takes place. Especially, because there is no guarantee that alternation will occur every one or two cycles.

His appointment as chairman of the *Electoral Commission* was originally questioned by opposition parties. Afari-Gyan had served as INEC's deputy chairman of operations and had been unilaterally designated by Rawlings's PNDC and as one of the expert advisors for the constitutional advisory committee.²⁶⁷ Shortly after the opposition boycotted the 1993 parliamentary elections, he played a central role as the EMB's chairman by following the Commonwealth Observer Group's (COG) recommendation of institutionalizing dialogue with political parties –through the adoption of an informal ICM– as a way to ventilate their concerns (Ayee 1998; Frempong 2012). After, the Electoral Commission created the IPAC in March of 1994, his role as a mediator also became key for the inter-party dialogue and for building consensus among parties.

Afari-Gyan headed the institution for over two decades (1993-2015) and has been recognized by most political actors and country-level experts in the country as a key player aiding the Electoral Commission's reputation as a *de facto* autonomous institution (Agyeman-Duah 2014). Especially during highly contested and politicized 2000 and 2008 presidential elections, which were disputed but where the main political forces peacefully alternated in power. During his tenure, Ghana's *Electoral Commissioner* acquired an international reputation as one of the most *de facto* autonomous EMB's in Western and Sub-Saharan Africa and a reference of electoral

²⁶⁷ Afari-Gyan had primarily an academic background and was the former Chair of the Department of Political Science the University of Ghana.

administration in the region. Afari-Gyan currently serves as the Executive Secretary of the Association of African Election Authorities (AAEA).

6.3.3 ICMs and *De Facto* Electoral Autonomy

“The condition upon which God has given liberty to man is eternal vigilance”
John Philpot Curran, Right of Election, 1790.

Overall, there is a generalized consensus in Ghana that the adoption of the Inter-Party Advisory Committee was a key informal internal consultative mechanism for creating an extremely effective two-way communication channel between political parties and the *Electoral Commission*.²⁶⁸ There is also a generalized agreement that this ICM has tremendously aided the EMB’s capacity to build a reputation as a *de facto* autonomous EMB and that, over the years, it has also served to positively impact the credibility in elections (Gyimah-Boadi 1997, 1999, and 2014; Frempong 2012; Jonah 2005; and Ameyibor 2013). As noted by Frempong (2012: 63), “The IPAC, then, has become a framework for building trust and confidence among the political class regarding the conduct of elections and provided a platform for deepening trust with the *Electoral Commission*.”²⁶⁹

In the case of Ghana’s *Electoral Commission*, the levels of mistrust at the moment of the EMB’s inception in 1993 –due to the irregularities of the 1992 presidential election, as well as of the unilateral appointment of electoral commissioners by the Executive Branch– created a

²⁶⁸ Before the adoption of the IPAC in 1994, communication between political parties and the Electoral Commission (and the INEC) was extremely limited. Political parties had to write formally to the EMB and had to wait for several days before getting a formal response from the EMB.

²⁶⁹ Also see: Gyimah-Boadi (1997); Ayee (1997 and 1998); Ninsin (2006:64); and Frempong (2008a: 197).

complicated starting point for the EMB's reputation. One of the most revealing aspects of electoral management in Ghana was the capacity of the electoral bureaucracy to build a positive reputation, despite the adverse conditions, in an incredibly short period of time. By 1996, the *Electoral Commission* had already established an informal ICM –i.e., the inception of IPAC in 1994– that gradually allowed the EMB to gain the opposition's recognition. Four years later, in the year 2000, the country had its first democratic alternation in power, and the EMB consolidated its reputation as a *de facto* autonomous institution (Gyimah-Boadi 2014).

Compared to Mexico's EMB, where the formal system of ICMs was originally introduced long before the country transitioned to democracy, the adoption of the IPAC by Ghana's *Electoral Commission* was a response to the legitimacy crises of the 1992 presidential election and to an institutional framework constraining the EMB's formal independence. This case, however, shows how an informal ICM was effectively used by the EMB to solve a legitimacy problem, build credibility around electoral management and promote the EC's reputation as a *de facto* autonomous bureaucracy. Its non-statutory character not also reveals that informal institutions can be as effective as formal ones but also that, in certain contexts, the adoption of an informal ICMs such as the IPAC can be determinant for dialogue to take place among parties in highly politicized environments. As recognized by Frempong (2012: 59), having an institutional actor –i.e., the *Electoral Commission*– mediating the communication between parties within the electoral bureaucracy though IPAC was key for building *consensus* among parties and organizing credible elections in the preamble to the 1996 election (Boafo-Arthur 1995: 220-225; Frempong 2007: 139-140).

Another difference from Mexico's formal and informal system of ICMs, is that Ghana's IPAC serves as a hybrid mechanism combining different aspects of the *executive, administrative* and *bureaucratic level* ICMs. Although its decisions have a non-binding character for the *Electoral Commission*, for instance, more than half of the suggestions formulated by political parties through this informal ICM were adopted by the EMB (Gyimah-Boadi, 1997). That is, decisions derived from IPAC's agreements –between parties and the head of the commission– had almost an *executive-level* character because they were unlikely to be questioned by the rest of electoral commissioners. This was possible due to EC chairman's leading role within the EMB's executive board and the institution's tradition of taking unanimous decisions.

Since its inception, IPAC was conceived as a two-way communication channel between the *Electoral Commission* and political parties. This allowed the EMB to inform parties simultaneously about key organizational procedures, as well of important administrative decisions, forcing the EMB to become more *transparent*. It would also allow parties to identify irregularities, report them and directly manifest their concerns to electoral officials, making the EMB more *accountable* to the main actors competing for power. The non-binding character of issues treated within IPAC, as well as their diverse nature, formed this informal consultation mechanism in a way that it shared different features of both *administrative* and *bureaucratic level* ICMs.²⁷⁰ Formal

²⁷⁰ For instance, in emergency meetings, IPAC can validate administrative decisions such as: “At its emergency meeting held on Wednesday August 03, 2016, the Inter-Party Advisory Committee (IPAC) has unanimously endorsed the following decisions by the Electoral Commission: 1) To give the deleted NHIS registrants a second opportunity from 5th to 12th August 2016 to get re-registered at all the district offices of the Commission; 2) Having finalized the modalities for Continuous Voter Registration, the Commission has decided to permit persons above the age of 18 and of sound mind to get registered from 19th and 26th August, 2016 at the Commission's district offices across the country; 3) Political parties are permitted to designate their agents to observe both registration processes.” (See: <http://www.ec.gov.gh/medias/press->

administrative-level ICM's, such as Mexico EMB's internal committee system, for instance, serve as spaces to have preliminary discussions over specific procedures. This creates a space for different institutional and partisan actors to exchange points of view and suggesting modifications before they are formally validated by the EMB's executive board or to directly affect a decision made by IPAC. Since its inception, IPAC served that purpose.

Additionally, IPAC has been used to discuss general administrative procedures, such as defining a timeline for candidate's registration deadlines, but it has also been used for more specific *bureaucratic level* procedures, such as updating protocols for the registry of voters, as well as the systematic renewal of electoral boundaries. Although regional, district, and constituency-level IPACs were not adopted by the EMB until 2000, the adoption of these local-

[release/108-decisions-taken-at-ipac.html](#)) or "At its meeting held on Thursday July 12, 2016, at the premises of the Electoral Commission, the Inter-Party Advisory Committee (IPAC) discussed the issues below and agreed as follows: 1) The Commission informed the parties that the names of the 56,772 NHIS card registrants submitted to the Supreme Court have been deleted from the Voters Register in compliance with the orders of the Supreme Court. All parties unanimously endorsed the Commission's modalities for re-registration of the NHIS card registrants in compliance with the Court's order; 2) IPAC endorsed the Commission's modalities for carrying out a smooth exhibition of the Provisional Voters register; 3) The Commission informed IPAC that the Public Elections Regulation (C.I.94) was laid before Parliament on July 8, 2016 and is expected to mature after 21 sitting days; 4) IPAC has asked the Reform Committee to complete its work as a matter of urgency on the modalities for Continuous Registration. The Reform Committee has agreed to meet on Thursday 14th July, 2016; 5) All political parties restated their commitment towards holding the elections on November 7, 2016 subject to the final decision to be taken by Parliament on the law; 6) It was agreed that issues to be discussed at DIPAC meetings should either be in connection with security at the district level or should be made known to political parties at national level prior to the meetings; 7) IPAC unanimously condemned the attacks on the person of the EC Chairperson, the increasing level of hate speech and incitement to violence by some political party leaders and followers. The parties also agreed that the unwarranted attacks and condemnation of the EC without any proper basis was not in the national interest and would not inure to benefit of Ghana's democracy, growth and stability." (See: <http://www.ec.gov.gh/medias/news/105-decisions-taken-at-ipac.html>). Parties can also call emergency meetings: "Samuel Ofose Ampofo, Minister for Local Government and Rural Development on Monday called on the Electoral Commission to convene an Inter-Party Advisory Committee meeting to iron out issues that have surfaced in the on-going biometric registration." (See: <http://ghanasocernet.com/ofosu-ampofo-calls-for-an-emergency-ipac-meeting>).

level ICMs responded primarily to the EMB's need to decentralize mechanisms of communication and deliberation with political parties at the local level. As in the case of Mexico's state and district level *surveillance commissions* (the *Comisiones Locales de Vigilancia*, described above as *bureaucratic level ICMs*), many procedures and administrative decisions have a local character and, administratively, it is easier and more effective to agree on specific solutions at the local level. For this purpose, the national character and the multi-regional presence of parties in Ghana facilitated the adoption of local level ICMs and gave parties the opportunity of having more organizational means to perform better as monitoring agents.

The series of *executive, administrative and bureaucratic level* decisions that were discussed and agreed within IPAC, between 1994 and 1996, were instrumental for the EMB's capacity to build a reputation as a *de facto* autonomous EMB. After the 1992 presidential election, one of the main procedures questioned by the opposition was the reliability of an outdated voter's registry compiled by the *National Commission for Democracy* under the PNDC's administration.²⁷¹ As happened in Mexico after IFE's inception during the early 1990s, the compilation of a new registry of voters in 1995 with the participation and supervision of all political forces became a cornerstone for the EMB to start building a positive reputation. Through the IPAC, political parties were actively involved in the planning and supervision of the creation of a new registry of voters in order to guarantee its neutrality and reliability.

Political parties, for instance, agreed with the EMB to have four registered representatives to observe this *bureaucratic* process at the approximately 20,000 registration centers to supervise

²⁷¹ As reported by the New Patriotic Party in its *The Stolen Verdict* (NPP 1993), multiple irregularities were detected in the voter's registry that had been created in 1987 by the PNDC's National Commission for Democracy.

the implementation of registration procedures. In order to register, citizens had to provide documentation for the *Electoral Commission* to verify their name, age, gender and residential address. For the first time, a photograph was included in voting cards for identification purposes in selected urban and rural areas surrounding the capital across Ghana's ten regions.²⁷² This supervising role of parties served to create a more transparent and verifiable voter registry.

Additionally, parties used the IPAC to build consensus over procedural decisions. Although initially the *Electoral Commission* had restricted the proof of nationality to birth certificates, some parties demanded that the EMB accept other forms of official identification documents with a photograph that would allow people to identify themselves as citizens in order to vote. The commission decided to accept different forms of official identifications, such as passports, driving licenses, national identification cards, and the national health insurance cards (Kissi 2012).²⁷³

Both party representatives and electoral officials were trained by the *Electoral Commission* in order to monitor the process. Parties also agreed with the EMB, through the IPAC, to establish institutional mechanisms to solve procedural disputes. In cases where parties identified eligibility or administrative irregularities during the registration process, they would report it through District

²⁷² In this first registration exercise implemented in 1995, the Electoral Commission did not have the financial resources and administrative capacity to issue photo identification voting cards in all constituencies. In those areas where photo voting cards could not be issued, the EMB decided to issue thumb-printed identification cards instead (Ayee 1997). It was not until 1999, when a voter identification program was implemented for replacing all voter cards that did not have a photo for identification purposes.

²⁷³ Initially, parties had manifested within IPAC their concern about the reliability of using birth certificates as an identification form because of their authenticity and the lack of a photograph in such document. In order to maximize the right of people to vote, the EMB decided to accept not only birth certificates, but also different types of official identification documents.

Registration Review Committees (DRRCs). In case of disagreement, decisions of the RRCs were to be challenged by parties in the High Court of Appeals (Gyimah-Boadi 1997).

As in the case of the voters' registry, IPAC also served as a mechanism where parties could demand that the *Electoral Commission* to modify existing *administrative* and *organizational* procedures –or adopt new ones– that had caused mistrust and politicization in the 1992 presidential election. As noted by Kissi (2012), holding presidential and parliamentary elections in different dates had not only caused logistical and financial problems, but as a consequence of a questioned presidential race, the opposition decided not to participate in the parliamentary election. Parties used the IPAC to reach an agreement and decided to hold both elections on the same day.

Parties also demanded that the *EC* to find alternative means to communicate electoral results via cellular phones during the election day. Using cellular phones was challenging not only for coverage problems in rural areas, but also because if information was transmitted incorrectly parties had no way of verifying the information received at the EMB's regional headquarters. In response, the *Electoral Commission* decided to install fax machines in every constituency in order to have certified results by party agents transmitted to the EMB's regional and national headquarters (Ameyibor 2103).

Another *procedural* demand presented by opposition parties and discussed within the IPAC was the adoption of transparent ballot boxes. This measure would allow party agents to verify during the day of the election that the ballot box was empty before opening the polling stations to the public (Kissi 2012). According to Ayee (1997), either wooden or metal boxes had traditionally been used during elections in Ghana and opposition parties had recurrently complained about

ballot stuffing. Additional security measures for the polling stations were also demanded within the IPAC, such as measures to protect the secrecy of voting, as well as protocols to prevent vote buying and for avoiding additional ballots being introduced by voters to the polling station (Ayee1997; and Gyimah-Boadi).

A key *organizational* decision that was discussed within IPAC, were the training protocols for both polling and party officials. This would be the first time that parties had sufficient time to coordinate a strategy for enforcing this *street-level* ICM within polling stations across the country. In agreement with the international donor community, party representatives (also known as party agents or poll watchers) would receive training so that they could be familiarized with the formal protocols to be followed during the different stages of the election day (e.g., the opening, voting, closing, counting and reporting activities within the polling station). More than *sixty-thousand party representatives* participated in the election day. They were entitled to sign and receive a copy of the voting record, so they could implement a parallel count system that enabled them to verify the results reported by the EMB. According to Gyimah-Boadi (1997), the presence of well-trained party agents during these different phases was key to start building credibility in elections.

Compared to the previous election organized by INEC, for the following elections parties demanded the *Electoral Commission* the implementation of an aggressive campaign to educate voters. The idea was to provide voters with sufficient information to understand the process, but also to identify irregularities or any illegal misconduct during the day of the election. For Ayee (1997), this program was crucial for citizens to become aware of basic procedures and also had an important effect on voter turnout and helped reduced significantly the number of rejected

ballots.²⁷⁴ Parties within IPAC also agreed for the *Electoral Commission* to coordinate with religious and non-governmental organizations in order for them to collaborate in this voter education program. Additionally, and along with some international organizations, civic organizations were invited to participate as observers during the election day.

Although IPAC rapidly became a key institution for the EMB to develop a reputation as a *de facto* autonomous institution and, since the adoption of this informal ICM in 1994, it has been continually used both by political parties and the *Electoral Commission*. Its adoption, however, had the largest effect on the levels of the EC's *de facto* independence in the preamble to the 1996 election. The IPAC was not only key for improving basic administrative and bureaucratic procedures, but it also set the ground for future inter-party dialogue and adjustments that would eventually take place in subsequent elections.²⁷⁵ Since its adoption, IPAC improved radically the communication among parties, and between parties and the EMB, serving as a pressure valve producing greater levels of transparency and accountability for the main actors competing for power. Especially in a political environment characterized by mistrust. As noted by Gymah-Boadi (2014), before IPAC was adopted by the *Electoral Commission*, the communication between parties and the EMB was either remote or inexistent.

²⁷⁴ Compared to the 1992 presidential election, turnout increased by almost 30 percent in 1996. According to Ghana's Electoral Commission, turnout in the former was of 50.2 percent and of 78.3 in the latter.

²⁷⁵ As recognized by Frempong (2012: 63), although EC had its own limitations, "it has improved with each succeeding election as a result of accumulated experience from lessons learned (past mistakes and good practices), institutional memory and in-built institutional credibility, acclaimed domestically and internationally. For example, in 2002, 82% of a United Nations Economic Commission for Africa (UNECA) expert panel assessed the Electoral Commission as 'always or largely' impartial in its activities (Agyeman-Duah 2005: 34-35). In the process, Ghana's EC has confirmed the fact that while the success of electoral politics depends on each stakeholder playing its assigned role, the role of the electoral commission in the process is the most crucial (Frempong 2008).

The electoral playground in 1996 was substantially different from 1992. According to Frempong (2012:67), with the adoption of IPAC parties were able to reach agreements and build consensus over electoral rules that had been previously disputed. Many administrative and bureaucratic procedures, such as voter registration, had improved substantially. Perhaps, more importantly, the *Electoral Commission* had managed to become recognized as a *de facto* autonomous EMB by both the political elite and civil society (Agyeman-Duah 2015).

Although Rawlings was reelected in 1996 by almost by the same percentage of votes he had won four years earlier (59.4 instead of 54.4 percent), the key difference was that the incumbent's party (NDC) lost an important number of seats in Congress (from controlling 189 to 133). The NPP became the second largest opposition parties obtaining 61 seats, followed by the 5 seats obtained by the PCP, and 1 by the PNC. These results confirmed the bipartisan nature of Ghana's party system. The two main parties controlled approximately 97 percent of the presidential vote and parliamentary seats (Frempong 2012:72). Although political tensions had emerged during the campaign, the outcome of elections was recognized by the main political forces. The NPP candidate, John Kufuor, recognized the result and the Rawlings party as a third historical most relevant movement in Ghanaian politics.

The trust in the EMB had significantly increased primarily because of the improvements in management, transparency and fairness of the electoral process (Frempong 2012:73). Compared to the 1992 elections, the number of complaints had significantly dropped and, although the opposition still denounced irregularities in some procedures, such as inconsistencies in the voters' registry, results were recognized by the main competing parties. By adopting an informal ICM, the EMB had managed to increase the levels of trust citizens and the elite had in electoral

management, which would eventually reinforce the perception of the EC as a *de facto* autonomous EMB. This was key for the alternation in power that would take place four years later.

In the preamble to the 2000 election, the *Electoral Commission*, with the consensus of parties, decided to replicate the IPAC model to the regions and districts to facilitate the inter-party dialogue and channeling electoral disputes at the local level. Through the local level ICMs (RIPACs and DIPACs), parties supervised the recruitment of election officials and provided information for background verifications (Frempong 2012:83; Debrah 2001). The EMB also used the IPAC to form a multi-party committee to agree on a code of conduct that would bound parties to a peaceful and clean election.

The December election was won by NPP's opposition candidate, John Kufuor, who obtained 48 percent of the vote, followed by NDC's candidate, John Atta Mills, who obtained 44 percent. The NDC also lost 41 seats, obtaining only 92 seats, while the main opposition party obtained 100 seats. Since none of the candidates obtained more than 50 percent of the vote, a runoff election was conducted one month later where the victory of NPP's candidate was ratified by obtaining 56 percent of the vote, while Mills obtained 43 percent. This transition became key for other countries in the region because Rawlings two decade rules had culminated with a peaceful alternation in power. It revealed that a "pacted" transition was viable and that incumbent autocrats could be gradually removed through constitutional means. Ghana's peaceful transition was an alternative to the violent outcomes that had characterized elections in many other African countries (Gyimah-Boadi 2001).

After experiencing its first successful alternation in power, the EMB had consolidated its reputation as a *de facto* autonomous EMB. In the preamble to the 2004 election, the *Electoral*

Commission kept using IPAC to informally socialize administrative decisions with parties. The EC, for instance, decided to introduce photographs to the voter registry aiming to reduce the problems surrounding voter identity. In order to guarantee the neutrality of announcing election results, protocols for transmitting results were modified. In order to increase the levels of transparency and accountability, it was agreed that party representatives would be allowed to receive and validate regional results before the EMB's chairman made any announcement.

Over the years, both parties in power (NDC and NPP) have tried to pressure the *Electoral Commission* to take measures that have been perceived as partial or that could have vulnerated the EMB's autonomy. The reputation of the EMB as a *de facto* autonomous institution, however, has served the EC to take decisions that have reinforced such reputation. In 2004, for instance, the NPP government announced that a national procurement committee would undertake the purchases needed for the 2004 election. This was denounced by the NDC within IPAC and the *Electoral Commission* publicly stated that this action would undermine its independence. After the EC announced its standing publicly, the NPP administration withdrew its initiative.²⁷⁶ As described by Carpenter (2001), the reputation building process of bureaucratic institutions develops over time, has an endogenous relationship with the public's perception, and becomes crucial for the interaction between political actors. In the case of Ghana's *Electoral Commission*, IPAC tremendously facilitated this process.

Another decision revealing the importance of having parties interacting within IPAC is the 2003 boundary delimitation exercise. The *Electoral Commission* decided to renew the electoral boundaries for the 2004 election and increase the number of constituencies from 200 to 230. The NDC, initially, challenged the decision accusing the EMB of trying to favor the ruling party and

²⁷⁶ Cited in Frempong (2012:63).

argued that any change should not had taken effect until 2008. The Supreme Court, however, vindicated the EMB's decision (Frempong 2012: 104).

What this example reveals is how IPAC can be used as a consensus building mechanism (in the case of the procurement initiative), but it also was can be used by the EMB to inform parties about administrative decisions. Parties sometimes agreed and, in cases as the boundary delimitation exercise, they might challenge the EMB's decision. The key aspect of this informal ICM, however, is the space offered for parties to become aware of the process and supervise its implementation. Although the EC's administrative resources to carry out this technically complex process were limited, when compared to those in Mexico or Venezuela, all political parties participating in the IPAC where informed about the different stages of the process. If Ghana's *Electoral Commission* had not included any type of ICM, parties would have not been able to actively participate and supervise the implementation of administrative decisions.

John Kufuor was reelected for a second term in the 2004 presidential election and left office in 2008. That year, Ghana experienced its second democratic alternation when John Atta Mills, candidate of the NDC, won in a dramatically contested election against the NPP candidate, Nana Akufo-Addo, by less than 0.5% of the vote. The election was extremely politicized and accusation where made by the two main competing forces. The political elite from both parties, however, was strongly committed to respect the EMB, and there was also social pressure to do so. Citizens respected Afari-Gyan's leadership, and there was a generalized perception of the *Electoral Commission* as a highly *de facto* autonomous institution.

In the last decade, the *EC* has continued to play an important role for the country's democratic stability and it is recognized as one of the most *de facto* autonomous EMBs in the

Western and Sub-Saharan Africa. After president Mahama's unexpected death in 2012, he was succeeded by the Vice President John Dramani Mahama, who won the election that same year by a margin of only 3 percent, after obtaining 50.70 percent of the vote, versus NPP's candidate, Nana Akufo-Addo, who obtained 47.7 percent of the vote. Afari-Gyan retired in 2015, after serving as the *Electoral Commission's* chairman for over two decades. In 2015, President Mahama appointed Charlotte Osei as chairperson of the EMB. Although Mahama ran for reelection in 2016, he lost the election and NPP's candidate, Nana Akufo-Addo, was elected president, by a margin of approximately 1 million votes (53 versus 44 percent).

The 2016 presidential election was the third peaceful alternation in power since the foundation of the Fourth Republic in 1992. It has confirmed Ghana's status as one of the most stable democracies in the region. Despite the limitation of its institutional arrangement, the *Electoral Commission* was able to build a solid reputation and has been able to successfully manage the tensions derived from extremely contested and politicized elections. The elites' conception of democracy as a long-term process has been key to make things work. The role of the *Electoral Commission*, as well as the adoption of informal an informal system of ICMs, were instrumental for aiding the country's process of democratic consolidation.

6.3.3 Concluding Remarks

The case of Ghana is considered one of the most successful cases of democratization in Africa and where the elite has been able to maintain its commitment with democratic rule since the foundation of the Fourth Republic. The *Electoral Commission* has played a key role for this purpose. The *EC's* institutional arrangement provided the EMB with formal autonomy. The direct

appointment of the institution's executive board by the president, however, generated an environment of mistrust especially during the early years after the establishment of the 1992 Constitution.²⁷⁷

The early adoption of an informal ICM was a key mechanism for aiding the EMB to build *consensus* among the political elite. The IPAC not only created an effective two-way communication mechanism among parties in a highly politicized environment, but it also forced the EMB to make *administrative* and *bureaucratic* decisions taking into consideration the standing of political parties. This way of interacting with parties has made the EMB more *transparent* and *accountable* to the main actors competing for power. This mechanism has also served as an effective dispute resolution mechanism during the preparation phases of the subsequent elections. It allowed the EMB to identify key administrative problems that needed attention (e.g., updating the voters' registry), to inform parties about decisions that would impact electoral competition (e.g., the renewal of electoral boundaries), and to allow them to supervise such procedures.

²⁷⁷ Ghana's EC was designed to operate in insulation from political parties. Despite some of its institutional arrangements, such as the executive's unilateral capacity to appoint electoral commissioners, have been severely questioned by international and domestic organizations promoting formal independence in electoral management, the adoption of the IPAC created an inclusive consociational space for the EC to interact with all parties and has been praised by most international and country-level experts as a highly effective consultative mechanism. See:

https://eeas.europa.eu/sites/eeas/files/eueom_ghana_2016_final_report.pdf;

<https://www.graphic.com.gh/news/politics/ipac-at-crossroads-for-reform.html>;

<https://www.graphic.com.gh/news/politics/ipac-has-no-legal-backing.html>.

The combination of the commissioners' appointment by the president, the permanent tenure, and the predominant leadership of its former chairman (Afare-Gyan), made it very hard for the Ghana's EC executive board to reflect the country's bipartisan divide. IPAC, however, informally allowed parties to interact with the EMB and allowed the commission to establish an effective two-way communication system with political actors to discuss key issues during the electoral process.

In the last two decades, important debates have been held around Ghana's electoral institutional arrangement. On one hand, country-level experts and international organizations have recommended the EMB adopting an appointment mechanism that prevents the Executive Branch to directly intervene in the conformation of the EMB's executive board. On the other hand, some country-level experts have also suggested institutionalizing the IPAC granting parties the right to be part of the EMB and establishing clear guidelines for the internal procedures followed within this informal ICM.

Although more than twenty years have passed since the inception of the Fourth Republic, the Ghanaian political elite has not altered in a major way its electoral laws. At least not those affecting the institutional configuration of the EMB. According to country-level experts, like Gyimah-Boadi (2014), the elites' understanding of democracy as a system that cannot be "shaken too much" and needs "to be carefully preserved," has prevented both parties in power, the NDC and NPP, to endorse major reforms affecting the legal framework of the *Electoral Commission*. Despite the Executive Branch's capacity to undermine the independence of the commission by directly appointing its members, the institution has built a reputation as a *de facto* autonomous EMB through the cohesiveness within the EMB's executive board, the leadership of its chairman and, perhaps more importantly, on its capacity to build consensus among parties through the adoption of informal ICMs.

Although parties have informally accompanied the *Electoral Commission's* decision-making process since the IPAC was adopted in 1994, the EMB has preferred to maintain this as an informal mechanism for interacting with parties to preserve the institution's autonomy. When

asked about the possibility of legalizing IPAC, the Electoral Commission's chairperson, Charlotte Osei, responded:

Consensus doesn't mean sitting on top and taking decisions. EMBs should never be controlled by political parties because political parties have their own agenda; legitimately so and that is why they are organized. EMBs have their constitutional duties to the people. So we should never have a situation where the authority of the EMB or the decision making powers of the EMB can be overruled by political parties.²⁷⁸

That is, the informal status of IPAC initially allowed the EMB to solve the evident constraining effect of formal rules –established in the 1992 Constitution– on the institution's independence from the Executive Branch. Political parties were informally included within the *Electoral Commission* as a way of building *consensus* among parties and legitimizing the EMB's decisions by making decisions more *transparent* and *accountable* to parties. That same informality has allowed the EMB to maintain a distance from political actors when its rulings have been questioned or challenged by parties (the EMB's decision to renew the electoral boundaries in 2003 or its public standing regarding its EMB's procurement independence).²⁷⁹ Twenty-four years after

²⁷⁸ EC rejects legalization of IPAC. 01/09/16. Ghana Web. Available: <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/EC-rejects-legalization-of-IPAC-406363>.

²⁷⁹ Since Afari-Gyan's tenure as chair of Ghana's EC, many international and country-level experts, including a Special Reform Committee set up by the EC in 2012 in order to improve transparency, inclusiveness and credibility of elections, have suggested the need to institutionalize this informal system of ICMs. Some actors, however, have opposed to this idea arguing it would give parties control of key administrative decisions. See: <https://www.ghanaweb.com/GhanaHomePage/politics/EC-rejects-legalization-of-IPAC-406363>; http://www.codeoghana.org/assets/downloadables/Electoral%20Reform%20Monitoring%20Advocay%20Group-%20Bulletin%20_%202016.pdf; <http://citifmonline.com/2016/08/23/ec-ready-to-roll-out-new-reforms-ahead-of-december-polls/>;

the creation of the IPAC, this informal ICM has become as important as any other formal rule. It has been key for the EMB's capacity to soothe tensions derived from highly contested and politicized elections, as well as to prevent violent post-electoral conflict and build a positive reputation over time.

The most important lesson from this case is that the elites' commitment to democracy, so far, has been key for Ghana's electoral success during the Fourth Republic. It also reveals that this commitment is, in some circumstances, more important than formal rules intending to guarantee the EMB's independence. Ghana's legal framework and the EMB's administrative capacity shortly after its inception in 1992, for instance, would have been insufficient to prevent the informal cooptation of a strong Executive Branch, such as Rawlings's administration, if he would have attempted to informally influence the EC or to reelect himself for a third period in 2000. Although the adoption of an informal system of ICMs would have been insufficient to prevent the informal cooptation of an external actor, the IPAC was a key mechanism for the institution to build credibility in elections, consensus among parties, and a reputation as a *de facto* autonomous EMB. These outcomes could have hardly been accomplished if the EMB had remained insulated from political parties. That is, the elites' commitment to democracy, given the circumstances of the transition and the legal framework established in the 1992 Constitution, required the adoption of

<http://www.ec.gov.gh/medias/news/89-ec-implements-27-reforms-for-better-elections.html>.

The position of institutional actors like Osei, however, does not recognize that formalizing IPAC would not necessarily entail granting parties the control of the institution. As shown in the first part of this chapter, there are institutional arrangements allowing parties to be formally included within an EMB, without granting them authority to take decisions, such as the bureaucratic and administrative-level ICMs adopted by Mexico's Instituto Federal Electoral.

additional channels that would allow the elite to reach agreements, build consensus, and set in place an informal framework to interact in the long run.

6.4 FINAL THOUGHTS

The cases of Ghana and Mexico illustrate *two different paths* under which, both *formal* and *informal*, ICMs can be adopted within an EMB. They also reveal the different types of channels that can be used to establish these internal ties between electoral bureaucracies and political actors. More importantly, perhaps, the different ways in which these ICMs have aided the institutions to build a reputation as *de facto* autonomous EMBs. Lastly, a comparison between these two cases allows identification of the different circumstances under which EMBs have adopted ICMs that have helped these institutions build consensus, prevent or minimize conflict, as well as to become more transparent and accountable to those actors competing for power.

In the case of Mexico, ICMs were adopted long before the country's transition to democracy. The inclusion of political parties within the EMB in the 1940s was allowed by the authoritarian regime, which formally and informally controlled Mexico's institutional setting, as a mean to legitimize elections. The early adoption of this type of mechanism, however, eventually had an unanticipated consequence for the autocratic regime during the transition period. Due to the levels of mistrust in electoral management generated after the 1988 post-electoral conflict and an institutional arrangement where parties had been historically included within the EMB, it would have been unlikely for Mexico to adopt an insulated electoral bureaucracy to manage elections once a *de jure* autonomous EMB was created in 1990. The long history of fraudulent elections created the necessity of including a multi-level internal monitoring system that would eventually

allow the EMB to improve its procedures, as well as to become more transparent and accountable to actors competing for power. The historical presence of opposition political parties within the EMB during the second half of the twentieth century, became a reference for reinforcing the check and balance system embedded within the *Instituto Federal Electoral*.

In contrast, the case of Ghana shows an alternative path in which EMBs can adopt ICMs. On one hand, the informal nature of the ICM adopted by Ghana's *Electoral Commission* confirms Helmke and Levitsky's premise that informal institutions in third-wave settings sometimes are as effective as formal ones. This informal –non-statutory– ICM rapidly became decisive for aiding political parties in building consensus and created an effective communication channel between the EMB and political actors. Perhaps more importantly, IPAC became a mechanism for political actors to ventilate key administrative concerns and, above all, a monitoring mechanism that allowed parties to participate and supervise different phases of the electoral process. Although IPAC has never been formally recognized in the country's legal framework, most institutional and political actors recognize the adoption of this informal ICM as a key component for explaining Ghana's EC *de facto* independence and its ability to build a positive reputation over time.

On the other hand, and in contrast to the case of Mexico, the adoption of the ICM did not respond to an administrative structure that had been previously in place during former republics or the colonial administration. It emerged as a necessity of adopting a mechanism that would allow the EMB to manage an extremely politicized environment, after the questioned 1992 presidential election, and for the *Electoral Commission* to undertake the enormous challenge of building credibility around elections in the newly constituted republic. The legal framework established in

the Constitution recognized the EMB's *de jure* independence. However, the direct appointment of electoral commissioners by the Executive Board became an additional element to generate mistrust during the first decade of the Fourth Republic. The adoption of an informal ICM was, perhaps, the most important mechanism that allowed the EMB to build a positive reputation in an extremely short period of time.

7.0 INSULATION, POLITICAL UNREST AND DEMOCRATIC INSTABILITY

7.1 INTRODUCTION

This chapter focuses on two different cases showing how the absence of internal consultative mechanisms (ICMs) has negatively affected the capacity of some EMBs in Latin America and Sub-Saharan Africa to become *de facto* autonomous. Both of these cases show the different moments under which the political elite decided not to include –or eliminate– ICMs within the EMB’s institutional design. In both of these cases, insulation has made electoral bureaucracies more vulnerable to external manipulation, rather than promoting their *de facto* autonomy.

Venezuela and Kenya, as the vast majority of countries in these two regions, adopted *de jure* independent EMBs to organize elections after they transitioned to democracy. In contrast to cases like Mexico and Ghana, however, EMBs in these countries have not been able to achieve a reputation as *de facto* autonomous institutions. In both of these cases, political parties were excluded from electoral management after experiencing groundbreaking events, such as the adoption of a new constitutional framework in Venezuela or transitioning to democracy in the case of Kenya. The EMB’s insulation from external actors, along with the fragmentation of the party system, created an institutional dynamic characterized by opacity and discretion within the EMB. Institutional insulation not only complicated –or made it practically impossible– for opposition parties to establish –formal or informal– ties within the EMB but created an environment of mistrust and facilitated the conditions for external manipulation.

The case of Venezuela serves as a paradoxical case because despite its long history of organizing credible elections during most of the second half of the twentieth century and creating an exceptionally robust *de jure* autonomous EMB in the late 1990s, its *de facto* independence kept decreasing over the years. The insulated CNE was recognized internationally as a *de jure* autonomous institution and was characterized by its technical capacity for organizing free and fair elections. Its *de facto* autonomy, however, was questioned by national and international country-level experts shortly after its inception. Although the country held competitive multi-party elections regularly since the 1950's, political parties were marginalized from the political arena after the adoption of the 1999 constitutional reform. They lost access to public funding and, compared to the partisan presence within the former *Consejo Supremo Electoral* (CSE), parties were banned from having any formal representation within the EMB. Under CNE's new institutional arrangement, opposition parties lost their capacity to become effective monitoring agents within the EMB. Shortly after CNE's inception, the EMB was accused by opposition of informally favoring the *chavista* regime through institutional means, undermining the credibility of the institution to organize free and fair elections.

The case of Kenya illustrates that formal rules promoting an EMB's *de jure* independence by insulation are insufficient to guarantee the organization of credible elections. As its counterparts in Mexico, Ghana, and Venezuela, Kenya's EMB was also constituted as a *de jure* autonomous institution at the moment it transitioned to democracy. After Moi's two decade rule, however, the political environment was highly politicized and the EMB suffered from low levels

of credibility.²⁸⁰ In contrast to Ghana, Kenya's EMB was not able to organize credible elections in subsequent years. In 2007 the country experienced a phase of democratic instability due to a prolonged post-electoral conflict culminating in more than 1,300 deaths and 600,000 people displaced. As a consequence, a new *de jure* autonomous EMB was created with the 2010 constitutional reform, but the lack of ICMs within the EMB, along with the fragmentation and instability of the party system, made it extremely difficult for the *Independent Electoral and Boundary Commission* (IEBC) to become recognized by opposition leaders as a *de facto* autonomous institution.²⁸¹

These two countries illustrate different paths under which political elites have delegated the responsibility to manage elections to *de jure* autonomous bureaucracies. In the case of Venezuela, the emergence of the *Consejo Nacional Electoral* (CNE) was created in a context of competitive multi-party elections in a country with a long-standing history of organizing elections. The creation of a new EMB replacing the *de jure* independent –with a partisan configuration– *Consejo Supremo Electoral* (CSE), responded to the necessity of the newly elected regime to design an electoral bureaucracy that would be insulated from parties and that it would become a fourth branch of power.

In the case of Kenya, the EMB's formally autonomous institutional arrangement during the country's transition was insufficient to guarantee credible elections. The inception of the IEBC in 2010, in contrast to EMBs in Mexico, Ghana, and Venezuela, was a consequence of a violent post-

²⁸⁰ As in the case of Ghana, authors like Bratton and Van de Walle (1996) also classify Kenya as a flawed transition to democracy.

²⁸¹ During massive rallies held across the country in 2014, Raila Odinga and leaders of the Coalition for Reforms and Democracy (CORD) have insisted on the dissolution of the IEBC executive board because it has been corrupted and lacks informal autonomy (Odinga 2014).

electoral conflict. One decade after the political crises of 2007, Kenya's EMB was still incapable of organizing credible elections or of being recognized as a *de facto* autonomous institution by the opposition. Consistent with the theory presented in this work, both of these cases illustrate how the absence –or elimination– of ICMs became detrimental for the capacity of electoral bureaucracies to build a positive reputation.

7.2 VENEZUELA: THE GAP BETWEEN *DE JURE* AND *DE FACTO* ELECTORAL AUTONOMY

This section is subdivided into three subsections. In the first subsection I briefly explain the context of electoral management in Venezuela before Chávez won the 1998 presidential election and the type of ICMs that were embedded within the former *Consejo Supremo Electoral* (CSE). In the second subsection, I explain the emergence of the *Consejo Nacional Electoral* (CNE), its institutional configuration and the main differences with its predecessor in terms of ICMs. In the third subsection, I illustrate with different examples how the absence of ICMs within the EMB generated mistrust during the Chávez administration, negatively affecting CNE's reputation and its capacity to build consensus with the opposition parties in the long run. Finally, I conclude with some thoughts about the role that the EMB has played for Venezuela's democratic breakdown (post-2013) and some of the key institutional arrangements that will be necessary for electoral democracy in foreseeable future.

7.2.1 Electoral Administration and ICMs Before Chávez

The institutional setting of the *Consejo Supremo Electoral* (CSE) allows comparing the administrative differences between Venezuelan EMBs before and after the Chávez regime (pre and post 1999). These differences are useful to have a better understanding of why despite the *Consejo Nacional Electoral* (CNE's) became insulated from parties and increased its level of *de jure* independence, it has been incapable of being recognized as a *de facto* autonomous EMB. Both the CSE and the CNE were conceived as *de jure* autonomous institutions. The main difference, however, is that while the CSE's executive board had a mixed-partisan configuration, the CNE became insulated from political parties in 1997. Another difference was the constitutional status of the EMB. While the CSE was constituted as a formally autonomous institution, the CNE became a fourth branch of power in 1999, under the *Constitución de la República Bolivariana de Venezuela* (CRBV).

The *Consejo Supremo Electoral* (CSE) was created in 1946, during the administration of Rómulo Betancourt, to supervise the organization of elections. In order to legitimize the electoral institution, the political elites created an EMB with an executive board formed exclusively of a representative of each party. This was the first election where citizens could directly elect the president and where universal suffrage was adopted in the country (Otamendi 2011).²⁸² The EMB

²⁸² In 1946 voting rights were extended to citizens over 18 years. Women and illiterates could not vote in previous elections. This year, the registry triplicated its size from having roughly 350 thousand voters to 1.5 million voters (Caballero 2003).

served a supervisory role and functioned as an electoral appeal court solving local disputes from regional electoral councils (*Juntas Estadales*).²⁸³

After the 1948 military coup against Rómulo Gallegos, led by Marcos Pérez Jiménez, electoral administration was suspended for a decade. In 1958, the CSE resumed its activities and began organizing elections until the 1997 electoral reform, when the EMB was transformed into the “non-partisan” and formally autonomous *Consejo Nacional Electoral* (CNE). This forty-year period in Venezuela was characterized by political stability and democratic consolidation.

While most Latin American countries were ruled by military or authoritarian regimes during the second half of the twentieth century, Venezuela –along with a few other countries, such as Costa Rica–, experienced peaceful and subsequent alternations in power. After the administration of Pérez Jiménez (1952-1958), the three main political factions, *Acción Democrática* (AD), *Comité de Organización Política Electoral Independiente* (the Social Christian Party, also known as *COPEI*), and *Unión Republicana Democrática* (URD), signed the *Punto Fijo* agreement to accept the 1958 electoral results and establish a new democratic rule with multi-party competitive elections (Rey 1976 and 2009; López-Maya, Gómez y Maingón 1989). As noted by Briceño (2013):

Este período [1958-1988] representa el de mayor estabilidad en cuanto al funcionamiento del sistema electoral, pues los cambios en la normativa se mantuvieron dentro del mismo modelo de representación y de democracia, es decir, fueron concebidos como intentos por perfeccionar el modelo planteado en 1958. El sistema electoral entre 1958-1988 se caracterizó por incentivar una mayor participación a través de los partidos políticos, promover una cultura democrática, privilegiar los partidos nacionales en detrimento de

²⁸³ See: Antecedentes de la Institución. Consejo Nacional Electoral. Available: http://www.cne.gob.ve/web/la_institucion/antecedentes.php

los partidos regionales, incentivar la participación de partidos minoritarios y generar la mayor proporcionalidad posible. Igualmente se promovió la consolidación de los partidos políticos por encima de las personalidades. La reforma de 1988 representó el punto más alto de la promoción de todos estos principios, a pesar de que en tan solo un año el cuestionamiento a la democracia y en especial la deslegitimación de los partidos políticos generarían una transformación significativa en el sistema electoral y en general del sistema político.

Among the agreements derived from *Punto Fijo* was the elites' commitment to keep electoral management under the control of a *de jure* independent EMB with a mixed-partisan executive board (Morales 1994). The *Consejo Supremo Electoral* (CSE) faced many challenges during its early years, especially those related to updating a voters' registry that kept increasing its size between elections. In 1958, for instance, there were 2.9 million registered voters in 1958. This number increased to 4.1 million in 1968, and subsequently to 8 million voters in the early 1980s (Chang Mota 1985). That is, in only two decades the registry almost triplicated its size.²⁸⁴ Another major challenge for the EMB was fully renewing the registry of voters in the preamble to every election (González Lobato 2012). The month before the 1983 presidential election, the EMB processed approximately 1.7 million applications of potential voters.²⁸⁵

Although these administrative challenges, the CSE was able to successfully organize nine presidential elections in a four decade period (1958-1997). In five of them, peaceful alternation in

²⁸⁴ During the 1970s and 1980s, Venezuela had the highest levels of voter turnout in the region and among the highest in the world. Between 1958 and 1993, voter turnout in national elections ranged from 87.57% and 96.52%. Turnout rate is based on the total number of registered voters (Chang Mota 1985).

²⁸⁵ This was the number of new voter registration applications received by the CSE in 1983 (Chang Mota 1985: 25). It not until 1970, when the registry of voters acquired a permanent status.

power took place between AD and COPEI (1968, 1973, 1978, 1983, and 1993).²⁸⁶ During this same period, elected presidents had to face divided government in three different occasions (1968, 1978, 1993). In sum, from an historical and comparative perspective, the CSE was able to consolidate a reputation as a *de facto* autonomous institution able of organizing credible elections during most of this forty-year period (1958-1997).

Table 7.1 shows the presence of internal consultative mechanisms within the Venezuela's *Consejo Supremo Electoral* (pre-1999) and the *Consejo Nacional Electoral* (post-1999). The first column separates formal and informal ICMs, while the last two rows classify the EMB by its levels of *de jure* and *de facto* autonomy. The second column describes the type of ICM embedded within the EMB and the third and fourth columns show the presence or absence of that ICM. Lastly, the fourth column shows a brief description of the expected effect each one of these mechanisms had on the EMB's *de facto* autonomy.

²⁸⁶ Except for the 1993 presidential election, which was won by Caldera's *Convergencia Nacional* (National Convergence), alternation in the presidency took place between AD and COPEI.

Table 7. 1 Internal Consultative Mechanisms (ICMs) and EMB’s De Facto Electoral

Autonomy in Venezuela (Pre and Post 1999)

Formal vs. Informal ICMs	Type of ICM	Venezuela (Pre-1999)	Venezuela (Post-1999)	Causal Effect of ICMs on <i>De Facto</i> Autonomy
Formal	Executive Level	Present (-)	Absent	Allows the presence and inclusion of external actors in executive-level deliberations (e.g., formal representation of parties within the EMB's executive board).*
	Administrative Level	Present (-)	Absent	Guarantees external actors access to information / inclusion in administrative decision making (e.g., representation of parties within the EMB's committee system).
	Bureaucratic Level	Present (-)	Absent	Enables external actors to audit and verify the compliance of formal rules and bureaucratic procedures (e.g., parties directly monitoring the voter registration process).
	Policy Level	Present (-)	Absent	Allows external actors to supervise and participate during policy implementation procedures (e.g., partisan interaction during electoral boundary delimitation exercises).
	Street Level	Present (=)	Present	Enables external actors to monitor the compliance of formal procedures during election day (e.g., presence of party agents within polling stations).**
Informal	Plurality of partisan ties within the EMB's Executive Board	Present (-)	Absent	Prevents unilateral decision making and creates incentives to build consensus among commissioners with different ideological alignments (e.g., informal partisan ties of "non-partisan" members of the EMB's executive board).
	External Consultation Mechanism	Absent (=)	Absent	Promotes consensus building, creates communication channels and increases transparency (e.g., informal agreement to inform and include parties in key administrative deliberations).***
EMB's De Jure vs. De Facto Autonomy		Venezuela (Pre-1999)	Venezuela (Post-1999)	
De Facto Autonomy****	~	High (↓)	Low	~
De Jure Autonomy*****	~	Med-High (↑)	High	~

Note: Table elaborated by the author. The year selected reflects the moment Venezuela's CNE was formally established and became formally (*de jure*) independent.

*Executive-level ICMs include mixed-partisan configured EMBs' executive boards, as well as "non-partisan" boards where parties are formally represented with the right to speak, but not to vote. The (+), (-), and (=) symbols denote the adoption or elimination of either a formal or informal ICM from one period to another. The (=) symbol denotes the status quo prevailed. In Mexico, for instance, parties have been formally embedded within the EMB since 1946.

** Street-level ICMs allow parties to formally register representatives (agents) to be present within polling stations supervising the voting process during the day of the election. This mechanism, however, becomes more effective when parties are sufficiently institutionalized in order to have the organizational means, as well as the territorial presence, to monitor the different phases of the voting procedures across all regions. Out of the five formal ICMs enlisted here, *street-level* ICMs are more related to the capacity of parties to monitor the compliance of procedures during the election day, than to the internal workings of the EMB. The effectiveness of this ICM also requires that party agents are formally represented within the polling station for monitoring, but not for administrative purposes (e.g., working as polling officials). In the pre-1999 Venezuela, for instance, the appointment of partisan polling officials negatively affected the EMB's perception as a *de facto* autonomous EMB.

*** This informal type of ICM allows parties to establish a two-way interaction with the EMB. Depending on each country, it might be used differently to serve either a single or the multiple causal links described here.

**** Cases were classified according to the author's fieldwork interviews with country-level experts and the V-Dem's measure of EMBs' *de facto* Autonomy (EMB Autonomy) with respect to other EMBs in the country's respective region. The (↑), (↓), and (=) symbols represent an increase, decrease or no change in the levels of *de facto* autonomy from one period to the other.

***** Following Hartlyn's et al., (2008) classification, EMBs were classified based on the institutions' legal (*de jure*) independence from other branches of power, on the appointment mechanism used to designate the EMB's executive board, as well as the formal partisan configuration of the board. In Ghana and Kenya, for instance, both the EC and the IEBC became formally independent EMBs when they were established, but the Executive Branch still plays a dominant role in the appointment of the members of the executive board. In Venezuela, the EMB transitioned from having a mixed-partisan executive board to a fully "non-partisan" –formally independent– executive board.

The most salient administrative feature of the *Consejo Supremo Electoral* was its partisan configuration. Although the EMB had a “mixed-partisan” executive board formed by both “partisan” and “non-partisan independent” electoral commissioners, the number of “partisan” members usually out-weighted the presence of its “non-partisan independent” counterparts. Until 1992, five of its nine electoral commissioners were party representatives, while only four were “non-partisan independent” commissioners appointed by two-thirds congressional majority. According to the *Ley Orgánica del Sufragio 1992*, Article 42, the five political parties with the highest number of votes in the most recent elections would be able to appoint a party representative each to the CSE (Molina and Hernández 1998).

This *executive level* ICM guaranteed political parties that they would have direct access over the EMB’s executive-level deliberations and decision-making process. This mechanism was originally adopted to ensure a *consensus building* dynamic to take administrative decisions, as well as to formally grant political parties representation within the commission. In 1993, two additional “non-partisan independent” commissioners were added to the CSE ‘s executive board.²⁸⁷

Formally, the presence of “non-partisan independent” electoral commissioners would ensure the institution’s autonomous character by having a majority of “independent” members nominated and appointed by a two-third congressional vote.²⁸⁸ Informally, however, most country-

²⁸⁷ According to Mora (1986) and Guzmán (1994), the main objective of reforming articles 39 and 255 of the *Ley Orgánica del Sufragio* in 1993, was to create an executive board with a majority of “non-partisan independent” commissioners, where six, out of the eleven members, would have no formal ties with political parties.

²⁸⁸ According to Article 45 of the *Ley Orgánica del Sufragio*, members of the EMB’s executive board were in charge of electing the president and two vice-presidents. Occasionally, “non-partisan” commissioners were in charge of presiding the EMB. Isidro Morales Paúl, for instance, was appointed as

level experts describe CSE as a predominantly partisan-controlled EMB. That is, the purportedly “non-partisan” electoral commissioners had a clear ideological alignment with the main political forces competing for power that had originally endorsed their nomination and appointment (Mora 1986, Guzmán 1994, Molina and Hernández 1998).

Despite the informal control parties had over the EMB through the ties the political elite maintained with both “partisan” and “non-partisan” commissioners, the informal plurality within its executive board was key to prevent the EMB’s co-optation by a single political force. The representation of the five largest parties within the CSE’s executive board was fundamental for assuring that political parties would have the same access to information, that they would be included during all administrative phases of the process, and that no political force would have the unilateral capacity to override others. With this internal institutional arrangement, reflecting the elites’ commitment to democratic rule after *Punto Fijo*, the EMB was able to successfully organize nine presidential elections and repeatedly—in five occasions— have peaceful alternation in power.

Compared to the institutional design of EMBs in Mexico and Ghana, this type of institutional configuration reflects an alternative path in which a *de jure* independent EMB can organize credible elections and can develop a reputation as a *de facto* autonomous institution. In contrast to Mexico’s IFE, where parties are formally represented within the EMB’s executive board but cannot vote, or Ghana’s EC, where its executive board is unilaterally appointed by the Executive Branch, the CSE’s institutional arrangement granted parties direct access to *executive-level* decision-making capacity, as well as to different administrative levels within the EMB.

an “independent” electoral commissioner and presided the CSE between 1991 and 1995 (Morales 1994: 12).

Through their formal representation within CSE's executive board, parties were able to supervise and have a final word on most administrative decisions, as well as to replicate a system of ICMs at the *administrative, bureaucratic, policy* and *street-level*.

Article 46 of the *Ley Orgánica del Sufragio*, for instance, conferred to the EMB's executive board a wide range of administrative attributes that allowed parties to be directly and indirectly involved at different levels. Among the most relevant, the CSE's executive board had the capacity to elaborate internal rules and procedures, appoint and remove members of the local electoral boards (*Juntas Electorales*), supervise all activities of the voter registry (e.g., administrative procedures in order to update the registry), appoint the electoral officials responsible for auditing the registry of voters and determining the time frame in which these activities will take place, design and approve training protocols to promote civic duties and encourage citizens to vote, coordinate with other authorities to ensure that citizens would be able to comply their duty to register to vote, supervise all stages related to the organization of elections (e.g., issuing identity cards and preparing electoral material), create a committee system, as well as define the role and attribution of each committee, oversee administrative complaints against decisions made by the *Juntas Electorales*, solve disputes, issue identification cards to electoral observers, validate the registration of presidential candidates, as well as count, inform and validate the electoral results for the presidential election.

As in the case Mexico, the former CSE had also a series of formal *administrative, bureaucratic* and *policy level* ICMs. In the case of *administrative-level* ICMs, the CSE had a committee system of nine committees formed by three to five members of the executive board and executive directors of the EMB. The committees were presided over by either "partisan" and

“independent” electoral commissioners on a rotational basis. During the 1991-1994 period, for instance, the CSE had nine different committees in charge of overseeing administrative decisions in areas such as, voter registration, electoral boundary delimitation (temporary character), electoral legislation (rules and procedures), electoral organization, electoral administration (EMB’s financial operations), referendum (temporary character), complaints, information and civic engagement, and automated procedures (Morales 1994: 18-25).

This type of *administrative* ICM allowed parties to indirectly access, supervise, and participate in key *administrative, bureaucratic* and *policy level* decisions before they were formally validated by the CSE’s executive board. The CSE’s *Electoral Legislation (rules and procedures) Committee*, for instance, was responsible for analyzing, evaluating, and interpreting all documents submitted by the EMB’s executive board and its president, including all interpretations of the *Ley Orgánica del Sufragio* (electoral statutes), *Ley de Partidos Políticos* (statutes regulating political parties), *Ley de Reuniones Públicas y Manifestaciones* (public gatherings and protests), and the *Reglamento Interno del Consejo Supremo Electoral* (statutes regulating the EMB’s internal rules and procedures). This committee was also responsible for elaborating statutes for regulating campaigns, creating the general legal framework for the workings of the EMB’s executive board, and validating the registration of political parties with the EMB (e.g., approving the creation of new political parties and renewing their registration with the EMB) (Morales 1994: 18).

Another type of *administrative* ICM was the CSE’s *Complaints Committee*, which was responsible for receiving, processing, and documenting complaints regarding any violation to the *Ley Orgánica del Sufragio*, to the statutes regulating political propaganda, or any action that might

initiate a formal procedure for the EMB to nullify an electoral process. Additionally, this committee was also responsible for receiving, processing, and documenting complaints regarding violations to the *Ley de Partidos Políticos*, *Ley de Reuniones Públicas y Manifestaciones*, and the *Ley Orgánica de Identificación* (the legal framework regulating voter identification protocols) (Morales 1994: 23). Any member of the CSE was enabled to present a complaint, as well as all party directives at the national and local level.

As documented by Morales (1994: 264-267), the CSE *Complaints Committee* received a total of 83 complaints during the 1993 national election. The vast majority of claims were related to irregularities for the election of deliberation bodies (i.e., congress or local councils). Only one complaint was presented by *La Causa R* against the presidential election and was presented to an administrative court.²⁸⁹ The CSE decided to process 26 complaints and rejected 57. All parties presented claims and all cases were voted within the EMB's executive board. According to Morales (1994: 266) in the vast majority of cases, the investigations leading to the recount of votes did not change the final result and served as evidence to discard the argument that a massive fraud had been committed.

In the case of *bureaucratic level ICMs*, the CSE's *Voter Registration Committee* was responsible for evaluating all policies and procedures affecting voters' registration formulated by executive-level bureaucratic units, supervising activities related to updating the Permanent Electoral Registry (*Registro Electoral Permanente*), including the creation of datasets and statistics,

²⁸⁹ As described by Molina (1997), *La Causa R* claimed that their presidential candidate, Andrés Velázquez had won the election. This claim did not find any legal or moral support and the party was not able to provide evidence that their candidate had defeated Rafael Caldera, who received 10% more of the total vote.

as well as overseeing the activities affecting the EMB's centers for enrolling voters, informing citizens, and voting. This same committee was in charge of supervising the procedures for counting the votes received by each political party and for the presidential election. Article 71 of the *Ley Orgánica del Sufragio* established an additional *bureaucratic level* ICM. Political parties represented within the EMB would be able to appoint party representatives for supervising all administrative procedures related to updating the permanent registry of voters (*Registro Electoral Permanente*) at the district level (*circunscripciones*) across the country.

In the preamble to the 1983 election, for instance, the General Secretaries (*Secretarios Generales*) of all parties represented within the CSE publicly acknowledged (Chang Mota 1985: 29):²⁹⁰

1. In the process of updating and depurating the *Registro Electoral Permanente* (Permanent Electoral Registry), the CSE has used all resources available allowing the plural participation of all political forces and allowing parties to participate in all activities and compiling at all moment with the legal mandate of making the Registry public.
2. The political parties that we represent have had all information and have been provided with the adequate institutional resources to evaluate every phase and procedure adopted to update the registry of voters.
3. We are convinced that the CSE has created a reliable registry of voters that will serve to elaborate the voters' lists that will be used in the December 4TH, election (1984).
4. We manifest our conformity with the Permanent Electoral Registry.

Similarly, the National Secretaries (*Secretarios Nacionales*) of all parties represented within the CSE publicly acknowledged the internal proceedings of the CSE on this same matter (Chang Mota 1985: 31):²⁹¹

²⁹⁰ Among the General Secretaries that participated in this public acknowledgement were Eduardo Fernández of COPEI, Manuel Peñalver of Acción Democrática (AD), Pompeyo Márquez of Movimiento Socialismo (MAS), Mosiés Moleiro of Movimiento de Izquierda Revolucionaria (MIR), and Adolfo González Urdaneta of Movimiento Electoral del Pueblo (MEP).

First. Since May of 1981, the CSE granted access and shared with political parties represented within this EMB all information related to the Permanent Electoral Registry. The first set of shared files were the original voter lists used for the 1979 election. Since then, the CSE has designed, developed and implemented different procedures to update and deplete the permanent registry and has included political parties in all activities. Among them:

1. Political parties were informed about all phases and activities related to updating the Permanent Electoral Registry.
2. Parties were aware of procedures followed for citizens' registration, for depleting the registry, for appointing agents in the enrollment centers, as well as for the procedures that would be followed within each polling station (*centros de votación*).
3. ...
4. ...
5. Parties were able to formulate recommendations to the CSE. Among the most relevant was the acceptance of having political parties appointing agents in the enrollment centers in the following way: 39% of them by *Acción Democrática*, 39% of them by *COPEI*, 14% by *MAS*, 4% by *MIR*, and 4% by *MEP*.

Second. By the initiative of political organizations, the design, development and implementation of the Permanent Electoral Registry system, was carried out with the involvement of party representatives within CSE's technical areas.

Third. Once the auditing phase of the registry begun, political organizations were provided the following information:

1. Thirty statistical reports at the state level with the total number of registered voters, those that had recently enrolled, those that had been relocated to a new polling station, and those requests that were still being processed.
2. Six preliminary lists of voters' requests that had been accepted.
3. Three preliminary lists of voters' requests that were still being processed.
4. Three preliminary lists of voters' requests that had been challenged for having problems with the national identification bureau (*archivo de Venezolanos Cedulados*).
5. The list of the national identification bureau (*archivo de Venezolanos Cedulados*).
6. In June 30 of 1983 the Permanent Electoral Registry was finalized. Party representatives were able to witness closely this final phase in order to prevent any manipulation or alteration of the voters' lists (*Cuadernos de Inscripción Electoral*) that would be used during the election.

²⁹¹ Among the National Secretaries that participated in this public acknowledgement were Luis Corona of COPEI, Luis Alfaro Ucero of Acción Democrática (AD), Victor Hugo D'Paola of Movimiento Socialismo (MAS), Segundo Meléndez of Movimiento de Izquierda Revolucionaria (MIR), and Evencio Gallardo of Movimiento Electoral del Pueblo (MEP).

The CSE paid special attention to comply with Article 76 of the *Ley Orgánica del Sufragio* in order to guarantee that party representatives could audit and supervise the registration process at the enrollment centers (*Centros de Inscipción Electoral*) at all time.

Fourth. Once the updating of the registry had concluded, the CSE gave political parties a printed and magnetic copies of the voter registry, a list of the number of citizens registered in the national identification bureau (*archivo de Venezolanos Cedulados*), voters' lists assigned to every polling station, as well as a list of voters that were relocated, statistics at the state, municipal and district level, as well as copies of the telegrams that were sent to those voters whose applications were being verified.

Fifth. The CSE gave political parties the opportunity to revise all documents related to the registry of voters and received from political organizations all the recommendations and observations. Parties identified different errors and reported them to the EMB, which in turn verified and made the necessary corrections. Among the most relevant, errors detected were related to registration applications where the citizen identification number (*cédulas de identidad*) had been incorrectly captured, voters with multiple citizen identification numbers, and cases where a citizen identification number had been assigned to more than one citizen, errors in the depuration forms by incorrectly identifying registered voters that had passed away. In this last case, parties recognize that the number of cases falling in this category were minimal and did not affect the reliability of the Permanent Electoral Registry.

...

Eight. The CSE gave all political organizations the material resources for them to be able to participate, supervise, and audit all phases related to the Permanent Electoral Registry.

Nine. We publicly acknowledge all the efforts made by the CFE to allow a plural participation of political parties and the technical efficiency to build the best Permanent Electoral Registry within its possibilities.

Tenth. For all of the reasons stated above, we accept and validate the Permanent Electoral Registry for the national elections that will take place on December 4th, 1983.

Having parties embedded at the CSE's *executive* and *administrative*-level, gave them indirect access to key bureaucratic processes such as the registration of voters. Having party representatives directly involved at this *bureaucratic level*, allowed them to participate, recommend, audit, verify, and validate this key instrument of electoral organization from different administrative levels (e.g., from the decision made at the CSE's executive board to verifying voter registration procedures at the registration centers). As acknowledged by the partisan elite, these *bureaucratic* ICMs generated more transparency around the bureaucratic and administrative phases involved in this procedure, generated trust among the political elite, and created the conditions for parties to validate this process prior to the election.

In the case of *policy level* ICMs, the *Electoral Boundary Delimitation Committee* was in charge of overseeing the works of technical areas and external experts participating in the process. This committee elaborated a work plan and was validated by all members of the committee. The workplan included the rules and procedures that would be followed for renewing the electoral cartography. Political parties, by having a presence both at CSE's executive level and within the committee, were able to have access to all information regarding this activity, as well as to formulating suggestions to the different implementation stages in the boundary delimitation process. The electoral geography for local elections (*circuitos electorales uninominales para*

concejales), as well as for the national congressional election (*circuitos electorales para el Congreso Nacional*), was unanimously approved by the CSE's executive board. None of the political parties required additional changes and the decision of the EMB was not challenged in court (Morales 1994: 57).

Lastly, *street-level* ICMs gave parties direct access and control of the polling station (*mesas electorales*). Article 17 of the *Ley Electoral* (1958), for instance, established that the organization, surveillance and implementation of the election would be responsibility of three collective bodies: the CNE (*executive-level*), the *Juntas Electorales* (multi-member boards at the State, Municipal and District level) and the *Mesas Electorales* (polling stations). The latter two would be formed by party representatives based on a partisan quota calculated on the latest congressional results.²⁹² The logic of allowing parties to directly manage the different procedures and phases related to the voting process at the polling station level derived from the *Punto Fijo* agreement (Morales 1994).

The idea was that by having party representatives functioning as polling officials would enforce the compliance of formal rules and that by having a proportional representation within each polling station, parties would be able to monitor each other. This mechanism was recognized in Article 28 of the *Ley Electoral* of 1958, which established that all collective bodies within the EMB, including the CSE's executive board, the *Juntas Estatales, Municipales* and *Distritales*, as well as the members of the *Mesas Electorales* (polling stations), should be formed in such a way that no political party or political organization has a predominant presence. According to Article

²⁹² Ley Electoral de Venezuela, 1958.

Available: http://www.cne.gob.ve/web/documentos/la_institucion/antecedentes/1958.pdf. This was maintained in the the Ley Organica del Sufragio (1992, Article 22) and until the Ley Orgánica del Sufragio y Participación Política of 1997 (see: http://www.cne.gob.ve/web/la_institucion/antecedentes2.php).

43 of the same law, the *Mesas Electorales* would be formed by three members (a presiding officer, a secretary and an assistant). This conformation later evolve to 5 members in each polling station, where three of them (i.e., the president, the secretary, and an assistant) would be directly appointed by those parties with the largest share in Congress and the other 2 would be appointed local organizations (Morales 1994:6). In practice, a vast majority of the *Mesas Electorales* were controlled by the two largest parties, *AD* and *COPEI*, excluding smaller parties.

According to most country-level experts, the impartiality of electoral management in Venezuela during most part of the second half of the twentieth century derived from having parties directly involved at different administrative levels.²⁹³ The electoral legislation between 1958 and 1997 reflected Venezuela's bipartisan monopolization of power derived from the *Punto Fijo* agreement. As recognized by Molina (1997), the disenchantment with political parties and elections during the late 1980s and early 1990s by no means can be interpreted as a lack of confidence in electoral results at the national level. Similarly, Molina (1994) argues that the partisan configuration of the EMB and their involvement at different administrative levels was precisely what allowed this institution to organize credible elections. During this forty-year period, the CSE successfully organized nine presidential elections, and political alternation took place between *AD* and *COPEI* in five different occasions (1968, 1973, 1978, 1983, and 1993).

²⁹³ Fieldwork interview with country-level experts Luis E. Lander, Ángel Álvarez, Benigno Alarcón, and Héctor Briceño. Caracas, Spring 2014.

7.2.2 Transitioning From a “partisan” to a “non-partisan” EMB

By the late 1980s Venezuela began experiencing high levels of socio-political unrest. There was a generalized disenchantment with the administration of Carlos Andrés Pérez and, more specifically, with the partisan elite that had monopolized power since the *Punto Fijo* agreement. According to Carrasquero et al., (2001) this generalized disenchantment with democracy –and with the traditional political establishment– in Venezuela, can be explained by multiple factors. On one hand, a deepened economic crisis and series of corruption scandals significantly increased the levels of socio-political unrest causing a wave of protests, known as “*El Caracazo*,” in 1989.²⁹⁴ On the other, the historically stable Venezuelan bi-partisan system began transitioning to a multi-party setting during this period due to changes in the electoral rules and patterns of competition in local elections (Penfold 2001).

The raising number of political corruption scandals, along with an increasing number of allegations accusing party officials at the polling station-level of fraudulent behaviour, were perhaps the two most important factors that had a negative collateral effect on the CSE’s reputation during the early 1990 (Kornblith 2001). As noted by Molina (1997) and Kornblith

²⁹⁴ Major protests in Caracas, and other major cities, took place as a reaction to the increase in transportation prices due to the sharp drop on the government’s revenue derived from the oil sector. As a reaction, the administration of Carlos Andrés Pérez declared a state of emergency and imposed a martial law. Two years later, coups against the Pérez administration took place in February and November of 1992. The president was accused of corruption, removed from office, and replaced by Rafael Caldera, who later pardoned his predecessor (Hellinger 2014).

(2001), 72% of respondents of the 1995 Latinobarometer survey manifested that they believed elections were fraudulent in the country.²⁹⁵

As a consequence of the *Punto Fijo* agreement, the partisan elite had decided to directly involve political parties at different administrative levels of the CSE. As described in Table 7.1, parties were formally represented at the EMB's *executive-level* and they had also direct access to most *administrative, bureaucratic and policy level* decisions through the committee system. Additionally, parties also had direct access to the *street-level* by controlling procedures within the polling station. Historically, the main political parties, *Acción Democrática* and *COPEI*, monopolized key administrative positions within the polling stations (*Mesas Electorales*) and leaving a marginal presence for smaller parties that had historically obtained a smaller share of seats in Congress.

As recognized by Morales (1994) polling stations, after the registry of voters, was the second most important space where the EMB could guarantee the impartiality of electoral administration. Although presidential electoral results had never been disputed, during the late 1980s and early 1990s an increasing number of irregularities involving partisan polling officials contributed to the generalized mistrust of electoral management in the country. For Morales (1994), having parties as self-regulators at the polling station-level was one of the weakest institutional arrangements that made the EMB more vulnerable.

²⁹⁵ People were asked: “¿Usted cree, en términos generales, que las elecciones en este país son limpias o fraudulentas?” [Do you think that elections in this country are clean or fraudulent?] 72% responded they considered the fraudulent, 18% clean, and 10% either did not answer or did not know (Latinobarometer Survey, Venezuela 1995).

In theory, parties were supposed to monitor each other. In practice, however, party activists coordinated to cheat within the polling station in many regions. As recognized by Isidro Morales, former chairman of the CSE (1990-1995), the partisan conformation of the polling station was the most vulnerable part of the electoral system (Morales 1994:272):

Ahora bien, el punto realmente medular sigue siendo la mesa de votación. Nadie puede negar que la mesa de votación constituye el punto realmente vulnerable del sistema. No se trata de que en cada mesa puede alterarse fácilmente el resultado electoral, ya que el primer deber de un representante de mesa es defender sus votos, pero es igualmente cierto, que no todas las organizaciones políticas están representadas y que sólo pocas lo están a nivel nacional. En algunos países, como España, los integrantes de cada mesa se sortean del listado de electores y de la misma, procedimiento que si bien, tampoco es perfecto, ha dado excelentes resultados.²⁹⁶

...

No es posible ignorar, no obstante, que hubo irregularidades electorales de diversa índole y efectos. Esas ‘pillerías electorales’, que no son precisamente ‘debutantes’, en nuestro proceso, adquieren mayor significación y relevancia cuando los resultados electorales reflejan pequeñas diferencias de votos entre los contrincantes.

Ahora, bien, nuestro sistema electoral puede y debe reformarse esencialmente en tres puntos fundamentales como son: a) la inscripción electoral, b) la mesa de votación (*the conformation of the polling stations*), y c) el escrutinio y totalización.

No es necesaria una gran reforma legislativa. También sería utópico pensar que basta modificar varios artículos para lograr una elección confiable y transparente. Algunas reformas

²⁹⁶ Available in: Morales Paúl, Isidro. 1994. “El necesario ajuste de la normativa electoral.” El Universal. Octubre 4, 1994.

requieren de acciones simplemente administrativas destinadas a producir el mismo efecto: **despolitizar el proceso.**

Es necesario aclarar que no estamos proponiendo un mecanismo anti-partido, instituciones que ejercen una función pública de evidente interés colectivo. **Las agrupaciones políticas pueden jugar una importante misión de inspección y control sobre todo el desarrollo del proceso en defensa de sus intereses legítimos.** Lo que no es posible admitir es que se pretenda **ser juez y parte, concurrir a un proceso y dar resultados.**

Esa integración de los organismos electorales [las mesas de votación] viola la propia Constitución cuyos artículos 205 y 207 establecen la autonomía e independencia de los jueces y organismos encargados de la administración de la justicia.

... Las **mesas electorales** y organismos similares pueden integrarse mediante la cooperación de estudiantes universitarios cursantes de los últimos años o bien mediante sorteo de los ciudadanos inscritos en el Registro Electoral Permanente [en sustitución de los representantes partidistas como funcionarios en las mesas], etc.²⁹⁷

The absence of professional bureaucrats, or randomly selected citizens to preside the polling stations, was recurrently used by the largest parties (*Acción Democrática* and COPEI) to commit illegal acts, such as stuffing ballots or altering electoral results in the vote-counting records (*actas de escrutinio*). According to Luis E. Lander, director of a local NGO specialized in electoral monitoring (*Observatorio Electoral Venezolano*), it was not uncommon to hear in those days phrases such as “*acta mata voto*” (the voting tally kills the vote), referring to the fact that what really mattered was not the total number of votes, but who had the capacity to write down

²⁹⁷ Available in: Morales Paúl, Isidro. 1993. “La autonomía del Consejo Supremo Electoral.” *El Universal*. Enero 27, 1993.

how many votes each candidate had received.²⁹⁸ This type of allegation, along with the generalized disenchantment with the partisan political elite, were devastating for the EMB's reputation.²⁹⁹

As a reaction to the generalized mistrust in political institutions and the low levels of confidence in elections, the political elite decided to reform the electoral framework in 1997.³⁰⁰ This reform transformed the *Consejo Supremo Electoral* (CSE) into the *Consejo Nacional Electoral* (CNE), and introduced three major changes: i) the depoliticization of the EMB by removing party representatives from all bodies of collective deliberation, which included the CNE's executive board, the *Juntas Estatales, Municipales* and *Distritales*, as well as the members of the *Mesas Electorales* (polling stations); ii) the adoption of a fully automated system to vote, count and aggregate electoral results; and iii) the inclusion of a national referendum mechanism.

According to the *LOSPP*, the EMB's executive board would be formed by purportedly "non-partisan independent" electoral commissioners. In this newly configured CNE, political parties lost their formal representation within the EMB and its executive board was reduced from

²⁹⁸ Fieldwork interview conducted in Caracas, Spring 2014.

²⁹⁹ There are two things that are important to recognize regarding the generalized mistrust on the EMB. First, as happened in Mexico between 2006 and 2012, the confidence in electoral management in Venezuela was not only affected by the scandals at the polling station level, but also by the generalized disenchantment with public institutions and political parties in the country (Ortega and Somuano 2015). Despite its partisan configuration, the CSE was able to successfully organize nine presidential elections and the country was able to experience a peaceful alternation in power in five occasions. Second, it is important to differentiate a fully partisan controlled EMB, from a mixed-partisan model and an independent administrative arrangement that allows parties to interact through ICMs at different levels. Having parties in charge of presiding polling stations in Venezuela might be equivalent to delegating to parties the responsibility to define their own geopolitical spaces of political representation. This scheme is different from delegating such responsibility to a formally independent body an administrative responsibility, where parties are able to play a monitoring role by having access to the deliberation bodies embedded within the EMB or to policy implementation processes.

³⁰⁰ See: Ley Orgánica del Sufragio y Participación Política, also known as LOSPP (1997).

nine to seven “non-partisan” members appointed by a two-third congressional majority.³⁰¹ For the 1998 presidential election, more than 300,000 polling officials were selected randomly from the voter registry and from a registry of teachers and students to serve as polling officials across the country.³⁰² Chávez won the presidency after receiving 3.7 million votes (56.2%) against Henrique Sales who received 39.9% of the vote. The EMB had successfully implemented the world’s first fully automated process and results were recognized both by national and international organizations.³⁰³ Two and a half hours after the polling stations were closed, the CNE was able to

³⁰¹ Many of them came from the academic sector and were recognized as electoral experts. Institutional insulation was promoted by many country-level experts, politicians and academics at that time (See: Molina 1997). Contrary to what authors like Molina (1997) and Molina and Hernández (1999) suggest (that non-partisan commissions tend to be more autonomous), I argue that de facto autonomy is more likely to be observed when political parties –the main interested actors in all phases of the electoral process– are able to enforce a “check and balance” system within the EMB so that they can have: a) a voice within the institution, b) oversight capacity, c) the institutional mechanisms to communicate their concerns in all phases of the electoral process and, most importantly, d) are able to raise their hand whenever a rule has been broken. Furthermore, I contend that when political parties have stable structures, access to financial resources, national presence, and representation in Congress, it is easier for them to develop a check and balance system that really works and allow the EMB to gain higher levels of de facto autonomy over time. In Venezuela, what explains the lack of de facto electoral autonomy is the absence of an effective checking system within the EMB, which eventually facilitated the informal cooptation of the institution by regime. The absence of formal or informal ICMs within the EMB has made it very difficult –if not impossible– for the institution to develop an internal dynamic of mutual restraint.

³⁰² Article 38 of the Ley General del Sufragio y Participación Política (1997) stated “Con seis (6) meses de anticipación por lo menos a la realización de un proceso electoral o dentro de los treinta (30) días posteriores a su convocatoria en el caso de los referendos, la Oficina del Registro Electoral, con la colaboración de las autoridades educativas involucradas, elaborará y publicará los listados preliminares de docentes y estudiantes elegibles como miembros de Mesas Electorales, distribuyéndose por Centro de Votación. Los docentes serán distribuidos de acuerdo al lugar en el cual laboren. Los estudiantes serán distribuidos atendiendo a su vecindad electoral o al lugar en el cual estudien, y según sea necesario para reunir un grupo de al menos quince (15) estudiantes elegibles como miembros por cada Mesa Electoral.”

³⁰³ It is important to acknowledge that the full automation of the electoral process in Venezuela was possible by the high technical solvency and bureaucratic professionalization of personnel at the Consejo Supremo Electoral. In contrast to the inception of Ghana’s Electoral Commission or Mexico’s IFE, when the CNE was created in 1997, the institution was able to inherit the bureaucratic and administrative experience of its predecessor.

announce results and, as described by McCoy (1999), a few hours after polling stations had closed, the main contender recognized that Chávez had won the election.³⁰⁴

Between November of 1998 and December of 2000, the CNE organized seven national elections and referendums. First, to elect congressional representatives, governors, and local legislatures in 1998. The second election was to elect president in December of that same year. Once Chávez was elected president, the CNE organized its first referendum in April of 1999 to determine the viability of forming a Constitutional Assembly and, three months later, an election was organized to elect the members of the *Asamblea Nacional Constituyente* (ANC). In December of that same year, a new referendum was organized to approve the new constitution that had been designed by the ANC. As soon as the new constitution was enacted, the members of the CNE's executive board were replaced in December of 1999.

In July of 2000, the CNE had to organize again a national election for electing the president, members of the National Assembly, governors, local legislatures, and mayors. In December of that year, another election took place to elect the representatives of local councils (*concejos municipales* and *juntas parroquiales*). Lastly, that same month a third referendum took place asking if Venezuelans would support the renewal of workers' union leaderships.

After the 1998 presidential election took place, the public perception of elections and electoral management had radically changed. Ninety percent of respondents declared perceiving elections either as completely or somewhat clean.³⁰⁵ According to Kornblith (2001), however, the level of trust in elections

³⁰⁴ According to McCoy (1999), the uncertainty of implementing a fully automated system for the first time, and the possibility of having a non-traditional candidate winning the presidential election attracted major international monitoring organizations such as, the Organization of American States, the European Union, the International Republican Institute, and the Carter Center. All of them, validated the election.

³⁰⁵ As reported by Kornblith (2001), when people were asked if they thought if elections had been clean or fraudulent, only 7.5% of respondents perceived elections were somewhat fraudulent, and only 1.3% of respondents perceived them as completely fraudulent. In contrast, 50.8% and 40.4% replied that they perceived elections as completely clean or somewhat clean, respectively. People were asked “¿Usted piensa que las elecciones son totalmente limpias, que en general son limpias pero hay algunos casos de fraude, que

and electoral management rapidly entered a turbulent phase –between 1999 and 2000– that hindered the EMB to build a positive reputation among the population.

Although the CNE was perceived as more autonomous than its predecessor (CSE), the EMB had a series of public confrontations with the Executive Branch because of the proactive role that the president and many other elected public officials within the Chávez administration played during the 1999 election to form the *National Constitutional Assembly* (ANC).³⁰⁶ Another impediment for the CNE to build a positive reputation was that a significant number of machines were reported to work incorrectly during that election. A third impediment were the administrative problems derived from renewing the members of the EMB's executive board, and the short period of time and lack of bureaucratic resources to organize subsequent elections, once the new *Constitución de la República Bolivariana de Venezuela* (CRBV) had been approved in December of 1999.

In a two-year period, between December of 1998 and the December of 2000, the CNE's executive board had six different chairmen.³⁰⁷ Shortly after the constitution had been approved in a national referendum, for instance, the ANC appointed the EMB's members of the executive board on a temporary basis and made a call for organizing national elections to renew all public powers derived from the new constitution on May 28th, of 2000. On May 25th, the *Tribunal Supremo de Justicia* (TSJ) suspended the election because it determined it was technically unviable and established a new time frame to allow the members of the CNE's executive board to coordinate better and prepare the logistics for organizing the

a veces son limpias pero hay mucho fraude, o que las elecciones son totalmente fraudulentas?" (RedPol 1999).

³⁰⁶ Although sympathizers of the Chávez administration won 65.8% of the vote, they were able to obtain 125 (95%) of the seats in the ANC, including the seats reserved for indigenous representatives. Opposition parties were only given 6 seats (Marcano and Tyszka 2007).

³⁰⁷ Rafael Parra Pérez (December, 1998 – February, 1999), Andrés Caleca (March, 1999 – December 1999), Omar Rodríguez Agüero (December 1999 – February 2000), Etanislao González (March 2000 – June 2000), César Peña Vidas (June 2000 – September 2000), and Roberto Ruiz (September 2000 – September 2002). See: http://www.cne.gob.ve/web/la_institucion/antecedentes3.php

“*mega-elecciones*,” which included electing the president, members of the National Assembly, governors, and mayors on July 30, of 2000.³⁰⁸

This two-year period was a *first moment* when the Chávez administration made an attempt to endorse electoral officials that were ideologically aligned and when formal procedures were set to favor the regime. As soon as the new constitution had been ratified in the 1999 referendum, the ANC renewed the purportedly “non-partisan” members of the CNE’s executive board. According to Kornblith (2001:136), a majority of them had either formal ties with the *Movimiento Quinta República* (MVR), the left-wing party Chávez had founded in 1997, or with parties forming the left-wing coalition (Pro-Chávez) known as *Polo Patriótico*:³⁰⁹

Es así como las dudas acerca de la transparencia, pulcritud y confiabilidad del proceso electoral del 30 de julio surgieron con anterioridad a la jornada comicial, y fueron una consecuencia directa de decisiones relativas al nombramiento de las autoridades electorales, a la definición de las reglas del juego electoral, a la parcialización del organismo comicial, al uso de recursos públicos con fines electorales por parte del gobierno y sus candidatos y al fracaso del primer intento. Todo ello configuró una situación de ventajismo jurídico, institucional y organizativo a favor de los candidatos oficiales, y de inseguridad para el resto de los participantes.

...

La intromisión política en la organización del proceso electoral fue tal que llevó a su colapso. Afectó la conformación de la base de datos de los candidatos postulados, al administrarse

³⁰⁸ As a consequence of postponing elections and the rulling of the TSE, CNE’s electoral commissioners resigned. In May 5 of 2000, the Comisión Nacional Legislativa, appointed the new commissioners and determined the national election would take place on July 30 and local elections to elect community councils (concejales and juntas parroquiales) would take place in October (See: Final Report of the 2000 Venezuelan National Election. Organization of American States. Available: <http://www.oas.org/eomdatabase/MoeReport.aspx?Lang=es&Id=200&MissionId=254>

³⁰⁹ Hugo Chávez led the Polo Patriótico coalition, which was composed of his civic-military party MVR and the main leftist parties Movimiento al Socialismo, Communist Party of Venezuela, Movimiento Electoral del Pueblo, and Patria Para Todos (Kornblith 2001).

cambios y sustituciones fuera del lapso legal hasta pocos días antes de las elecciones, fundamentalmente para atender los requerimientos de las candidaturas del Polo Patriótico. Esa base de datos constituye el insumo crucial para la elaboración de las boletas y las actas de escrutinio, para la programación de las *flash cards* de cada máquina de votación y de los programas de totalización, así como para informar al elector quiénes son los candidatos de cada circunscripción. Al no haber una base de datos única y firme, pocos días antes de las elecciones no coinciden las boletas, las *flash cards*, las actas, los programas de totalización y la información al elector, con lo cual la elección se tornó inviable.

After the new CNE's executive board was renewed in December of 1999, the EMB's executive board –despite being a “non-partisan” multimember body– had been informally coopted by the regime. Additionally, the ANC took a series of legal decisions that violated the new constitutional order. The Chávez administration became extremely proactive channeling public resources to the electoral battleground.³¹⁰ According to country-level experts like Kornblith (2001), neither the CNE's administrative impartiality was met, nor political actors were able to compete in a leveled electoral playing field in the preamble to renovating Chávez's mandate in the new constitutional order.

Chávez won his second presidential election in July of 2000 by an ample margin (22%) to Francisco Arias (*La Causa R*). The former obtained 59.76%, while the second place obtained 37.52%. Although many complaints accusing of irregularities during the voting process (i.e.,

³¹⁰ As documented by Kornblith (2001:136) the ANC promulgated an electoral statute (Estatuto Electoral) in February of 2000, violating Article 293 of the CRBV which established that electoral legislation could not be modified within a six-month period before the election. This eliminated the formal involvement of parties at the administrative, bureaucratic and policy level within the EMB, and the key technical and strategic bureaucratic positions within the CSE were given to sympathizers of the MVR and Polo Patriótico.

having previously marked ballots favoring the “*oficialismo*” in a systematic way), as well as of the malfunctioning of the voting machines across the country, were formally presented, the margin between the first and second place was wide enough for legitimizing Chávez’s victory (Kornblith 2001).

Under the new CRBV, Chávez was elected for a six-year term (2001-2007) and his party (MVR) obtained the largest share of seats in the National Assembly (92 out of the 165 seats), while the second largest share of seats was obtained by *Acción Democrática* (33 seats). The party system had become highly fragmented. More than 11 parties were represented in Congress having not more than six seats. Once the newly elected Chávez administration began its mandate under the new constitutional order, it was not until November of 2002 when the new *Ley Orgánica del Poder Electoral* (LOPE) was established, replacing the LOSPP (1998).

The second Chávez’s administration (2001-2007) was characterized by a permanent confrontation with political opposition since its early years. In April of 2002, for instance, opposition factions related to the entrepreneurial sector carried out a failed *coup* against the Chávez administration. Later, in November of 2002, the opposition made a petition to the CNE to organize a consultative referendum asking if Chávez should stay in power.³¹¹ A few months later, in early 2003, the opposition organized an oil strike trying to force a new presidential election. In 2004, a recall referendum took place in order to determine if Chávez should be recalled from office. In 2005, the main opposition parties decided to withdraw from the mid-term legislative election, leaving the ruling party (MVR) with the unilateral control of the legislature. In 2006,

³¹¹ In the preamble to this decision, the chairman of the CNE, Roberto Ruiz, resigned to his position within the EMB. See: http://news.bbc.co.uk/hi/spanish/latin_america/newsid_2410000/2410525.stm, and http://news.bbc.co.uk/hi/spanish/latin_america/newsid_2411000/2411587.stm.

Chávez founded the *Partido Socialista Único de Venezuela* (PSUV) in the preamble to facing his third presidential election.

The third Chávez administration (2007-2013) was also characterized by the confrontation with the opposition. The main dilemma faced by the regime during this term, however, was the concentration of power within the Executive Branch and the possibility of extending the president's mandate. Early in 2007, Chávez suggested to include measures in the constitution such as, centralizing power in the executive, extending the presidential term limit to seven years, and allowing the president to indefinitely run for reelection. The government organized a first referendum in December of 2007, but changes were rejected by 51% of the vote and with a relatively low turnout 44%. One year later, in February of 2009, Chávez called again on a referendum to abolish the term-limit for all public offices, including the presidency, as an incentive for local and national-level representatives to campaign in favor of including an indefinite reelection clause in the constitution. In the second attempt to eliminate term-limits, the turnout was significantly higher (up to 70%) and 54% voted in favor of modifying the constitution to adopt a constitutional clause allowing indefinite reelection.

During these two periods, Chávez's second (2001-2007) and third terms (2007-2013), the CNE's executive board had five different chairpersons.³¹² All of them headed the EMB during the second period, but only Tibisay Lucena remained as the EMB's chairperson during the whole third term (2007-2013), Chávez's fourth presidential term (January 2013 – March 2013), and during

³¹² Roberto Ruiz (September 2000 – September 2002), Alfredo Avella Guevara (November 2002 – August 2003), Francisco Carrasquero (August 2003 – January 2005), Jorge Rodríguez (January 2005 – April 2006), Tibisay Lucena (2006-2009, 2009 -2013, 2013- present).

Maduro's first term (2013 - 2018). In most of these events the CNE, directly or indirectly, has played a key and proactive role. In the following lines I briefly describe its institutional configuration, how it compares with its predecessor, and how the absence of ICMs facilitated the cooptation of the institution by the regime in power.

7.2.3 Cooptation Through Institutional Insulation

The organization of credible elections requires a minimum commitment of the political elite to democracy (i.e., the long-term respect of the rules of electoral competition). It also requires the neutrality of the institution in charge of organizing and sanctioning the multiple phases of the electoral cycle. Lastly, it requires an equitable electoral arena –i.e., access to media and financial resources– allowing political actors to compete under similar circumstances. These three dimensions usually reinforce each other and are key for electoral integrity (Norris 2017).

EMBs are related to each of these dimensions in different ways. In case of the first dimension, the elites' commitment to democracy, the interaction of bureaucratic actors –i.e., electoral commissioners or justices– within electoral institutions, formally or informally, reflects this commitment. In case of the second dimension, the neutrality of the EMB, the administrative configuration –e.g., insulation vs. the inclusion of external actors through ICMs– of the institution can also play a fundamental role for reinforcing formal rules and procedures and securing the EMB's *de facto* independence (especially in those countries holding elections in semi-competitive environments). Finally, equitable conditions in the electoral playing field can be formally regulated, but they also require the prudence of public and elected officials, as well as of institutional and political actors. Although EMBs are usually constrained by formal rules, its

decisions and deliberations result key for guaranteeing the neutrality of the conditions for competing for power.

The case of electoral management in Venezuela is paradoxical because despite experiencing a major transformation –between 1997 and 2000– to increase its *de jure* autonomy, the formally autonomous EMB was never able to consolidate a reputation as a *de facto* independent institution. To the contrary, and early since its inception, the CNE was constantly questioned by the opposition and accused of favoring the Chávez regime. Two decades after the formal representation of political parties within the CNE was eliminated, and after becoming a fully –insulated– *de jure* autonomous institution in 1999, there is a generalized consensus among country-level experts that the EMB was gradually coopted by the regime.

For Ángel Álvarez, Professor Emeritus at the Universidad Central de Venezuela, the idea of creating a *de facto* autonomous EMB by insulating it from political parties and appointing purportedly “non-partisan independent” electoral commissioners never worked. During a fieldwork interview he acknowledged that “in electoral management there is no such thing as ‘impartial angels’ in charge of organizing elections, there are only ‘devils’ monitoring each other.” Isidro Morales, former chairman of the CSE (1990-1995), also acknowledges that while many countries have delegated to the judiciary the appointment of justices to organize elections, many others have preferred a system where “devils are watching devils” (Morales 1994: 272).³¹³

³¹³ On this last issue (“devils are watching devils”), Morales refers to a conversation he had with a high-rank official from the U.S. Federal Electoral Commission. On the purportedly “non-partisanship” of justices and electoral commissioners Morales also argues: “Some political analysts, guided by their own ideological position or with a very specific agenda, have argued that the CSE needs to be legitimized by appointing ‘pure independent commissioners.’ To those that believe them, I wish them luck, especially if these purportedly ‘independent’ commissioners are chose are human beings.” (Morales 1994: 264).

According to Álvarez, electoral commissioners responsible for organizing the 1998 presidential election were the CNE's first "non-partisan" executive board. Most of them were recognized for their professionalism and academic background, but all of them were ideologically aligned with different political factions. The problem electoral management in Venezuela was that even a "non-partisan" CNE was established with the 1999 constitution, most of the allegedly "independent" electoral commissioners (*rectores electorales*) informally maintained close ties with the Chávez administration.³¹⁴

The 1997 "depoliticization" of the EMB began as a response of the political elite to legitimize elections in the country. This included eliminating the formal representation of political parties from the EMB's main decision-making bodies of deliberation, such as the EMB's executive board, the *Juntas Electorales* (the EMB's local and regional boards) and the *Mesas Electorales* (polling stations). Under the *Ley Orgánica del Sufragio y Participación Política* (LOSPP), the EMB's executive board would be appointed by a two-third congressional majority and formed by citizens with a "good moral reputation" and with "no ties to any political party or group of voters." According to Article 50 of the LOSPP, the members of the EMB's executive board could not be nominated for competing in any election while they were holding their appointment. Article 51 established that in order to select the members of the EMB's executive board, a public announcement would be made in the main national newspapers for any private citizen or organization to nominate candidates. After a public deliberation in a joint (bicameral)

³¹⁴ Fieldwork interview conducted in Caracas, Spring of 2014.

session of Congress, the seven “non-partisan” members should be appointed by no less than two-thirds of the vote.³¹⁵

With the establishment of the 1999 *Constitución de la República Bolivariana de Venezuela* (CRBV), the CNE became a Fourth Branch of Power. In formal terms, the EMB not only retained its legal status as a *de jure* autonomous institution but it acquired the same constitutional hierarchy as the *executive, legislative and judicial* branches.³¹⁶ Furthermore, article 296 of the CRBV, and Article 8 of the 2002 *Ley Orgánica del Poder Electoral*, regulated the conformation of the EMB’s executive board. According to the 1999 constitution, the EMB’s executive board would be formed by five persons with no ties with organizations with political means (*politia*). Commissioners could be reelected for up to two consecutive periods. Three, out of the five members, should be nominated by civil society organizations, one of them should be nominated jointly by the law and political science faculties of national universities, and one of them by the Citizens Branch of Power. As in the case of its predecessors, the appointment of electoral commissioners should be approved by at least two-thirds of the vote of the National Assembly. The chairperson of the CNE would be selected by the members of the EMB’s executive board.

From a comparative perspective, the nomination and appointment mechanisms that were adopted after the 1999 constitution placed Venezuela’s CNE as one of the most *de jure* autonomous EMB’s in the region and, perhaps, in the whole world (Loret de Mola 2014). The nomination process to select electoral commissioners involved multiple civil society organizations,

³¹⁵ As noted by Loret de Mola (2014) in his comparative study of appointment mechanisms of EMBs’ executive boards, Venezuela would fall above the mean given that electoral commissioners can be nominated by any citizen or organization and their appointment required a qualified (two-third) majority of a multi-chamber session of Congress.

³¹⁶ Article 292 of the *Constitución de la República Bolivariana de Venezuela*.

as well as a purportedly “non-partisan” branch of power. The appointment mechanism also required a two-third congressional majority. As shown in Hartlyn et al.’s classification (Table 3.1), Venezuela’s EMB ranks as one of the most formally autonomous institutions in Latin America when focusing on these mechanisms. In practice, however, the perception of CNE as a *de facto* autonomous institution kept decreasing after became a fourth branch of power (Figure 3.1).

What results troubling from this case is that CNE had not only become a formally “non-partisan” institution, with a multi-level institutional mechanism to nominate and appoint the members of its executive board, but CNE’s administrative and bureaucratic capacity also surpassed most of its counterparts in regions like Latin America and Africa. Its technical solvency during Chávez’s second (2001-2007) and third terms (2007-2013) was validated by international monitoring organizations such as the Organization of American States and the Carter Center.³¹⁷ On one hand, the Venezuelan political elite had able to “decontaminate” the institution from political parties and, on the other, the EMB had proved itself as a technically capable institution of implementing semi and fully automated electoral processes since the late 1990s. The institutional insulation, however, was used in advantage of the ruling party and, according to country-level experts like Kornblith, the informal cooptation of the EMB’s executive board by the regime became key for Chávez during different moments of his 13-year administration.³¹⁸

By eliminating their presence within the EMB, arguing the institution should become “decontaminated” from parties in order for it to become “really” autonomous, the CNE was

³¹⁷ In 2012, for instance, former President Carter stated that, "as a matter of fact, of the 92 elections that we've [the Carter Center] monitored, I would say the election process in Venezuela is the best in the world." See: <https://www.theguardian.com/commentisfree/2012/oct/03/why-us-demonises-venezuelas-democracy>

³¹⁸ Fieldwork interview conducted by the author with Dr. Miriam Kornblith, former electoral commissioner of CNE. Washington, D.C., Fall of 2015.

constituted as a Fourth Branch of Power under the *Constitución de la República Bolivariana de Venezuela* (CRBV). As noted in Table 7.1, most of the formal and informal ICMs were eliminated from the institution. While the CNE had increased its *de jure* independence (based on the institution's formal –legal– independence and the formal mechanisms used to nominate and appoint electoral commissioners), the institution, compared to its predecessor (the CSE), became less *de facto* autonomous.

In terms of the formal ICMs, both the 1997 and 1999 electoral reforms eliminated the formal representation of political parties from the different administrative levels. During the drafting of the new constitution (CRBV), the National Constitutional Assembly (ANC) took advantage of the generalized disenchantment with the traditional political parties and eliminated the term “political parties” from the CRBV, replacing it with “*organizaciones con fines políticos*” (organizations with a political purpose). According to Luis Salamanca, Professor at the *Universidad Central de Venezuela* (UCV), the new terminology was used by the ANC to refer to political parties was part of redefining its legal status –and rights– in the new constitutional order. Additionally, the ANC decided to completely eliminate the any source of public funding for *political organizations* and granted to the CNE the faculty to control, regulate, audit and investigate any type of financial funds used by *political organizations*.³¹⁹

As acknowledged by Michael Penfold, country-level expert and professor at *Instituto de Estudios Superiores de Administración* (IESA), the fragmentation of the party system in Venezuela was extremely fast. In a ten-year span, the country transitioned from a relatively stable

³¹⁹ Fieldwork interview conducted by the author in Caracas. Spring of 2014.

bipartisan system to a party system with one predominant ruling party and over fifty smaller parties registered at the national-level with a very limited political representation.³²⁰ The atomization of the party system, along with other reforms affecting their organizational capacity (i.e., the loss of access to financial resources), played against their monitoring and coordination capacities.³²¹

Lastly, and perhaps more importantly for the CNE's *de facto* autonomy, the 1997 and 1999 reforms eliminated the right of parties to have any formal representation within the EMB. The only exception was their right to be present within polling stations (*testigos electorales*) to verify that formal procedures would be followed –a *street-level* ICM. Their presence within the different *executive, administrative, bureaucratic and policy* levels, however, was eliminated. *Political organizations* lost their formal representation at the EMB's executive board and, thus, they were not able to formally participate, intervene, or receive information from the institution's highest deliberation body. Contrary to Mexico's institutional design, where political parties are formally

³²⁰ Fieldwork interview conducted by the author at the Development Bank of Latin America (CAF), Caracas, Spring of 2014. Also see Penfold (2001). According to the CNE, in February of 2007 103 political parties were registered at the national-level (Aviso de Renovación Nacional. Consejo Nacional Electoral, Febrero de 2007).

³²¹ Since Chávez's arrival to power in 1998, opposition parties in Venezuela have struggled to form a unified coalition to check –and compete against– government. In 2002, opposition parties formed the Coordinadora Democrática (CD), which participated in the 2002-2003 oil strike and organized the 2004 referendum. In the preamble to the 2005 parliamentary election, for instance, the main dilemma faced by opposition parties (i.e., Acción Democrática, COPEI and Primero Justicia) was to decide if they would compete in the parliamentary election under clearly inequitable conditions. As a mean of protest against the partiality of the EMB, most opposition parties withdrew from the election. One year later, in 2006, opposition parties began forming a coalition that was formalized in 2008, known as the Mesa de Unidad Democrática (Democratic Unity Roundtable, also known as MUD in Spanish). In 2012 the MUD was registered as a National Political Organization and in 2015 they competed, and won, the majority of seats in the 2015 legislative election (112 out of the 167 seats). The results, however, were challenged by the official party and the TSJ ruled against the opposition. Shortly after, in 2017, a Constituent Assembly was formed by the regime to regain the political control of all institutions in the country.

represented at different administrative levels (with the right to speak but not to vote), such as the EMB's committee system or the national and local level surveillance commissions (CNV and CLsV), *political organizations* in Venezuela lost access both the decision-making and monitoring capacity within the different *administrative, bureaucratic* and *policy* levels after losing their formal representation at the CSE's executive board.³²²

The insulation of the CNE not only eliminated the formal spaces where parties could directly participate to ensure the neutrality of the administrative and bureaucratic procedures. By eliminating the formal representation of parties at different administrative levels, restricting the communication channels only to the *Consejo de Participación Política*, the EMB's executive board could discretionally decide the timing and extent to which *political organizations* would receive information or participate within the institution. The CNE's institutional arrangement

³²² Consultation between political organizations and the EMB was reduced to very few spaces like the Consejo de Participación Política (Council for Political Participation). According to Articles 34 and 35 of the Ley del Poder Electoral, this council would serve as a consultation and advisory board upon the request of the CNE's executive board. It would be formed by four representatives of the political organizations that received the highest number of votes during the last legislative election and one member representing smaller political organizations within the National Assembly. According to Vicente Díaz, who served as one of the five electoral commissioners within the CNE's executive board between 2006 and 2013, the Consejo de Participación Política granted political parties the right to be represented within the EMB but it was constrained by the will of the EMB's executive board. In practice, this formal executive level ICM was rarely used by the CNE's executive board to build consensus with political parties and less to inform or involve political organizations in key executive, administrative, bureaucratic or policy level decisions. Another example of the type of formal consultation channel between the EMB and political organizations, were the few justifications under which parties could request information –or an administrative decision– from the EMB. Article 33, for instance, established that political organizations, along with indigenous communities and organized groups, could ask the CNE to increase the number of registration centers. The surveillance and auditing role played by parties within the CSE's different administrative, bureaucratic and policy levels related to the voter registration procedure, however, were eliminated from the legal framework.

Fieldwork interview conducted by the author at the Consejo Nacional Electoral, Caracas, Spring 2014. Vicente Díaz was the only electoral commissioner that was not ideologically aligned with the regime and that served as informal channel of dialogue with opposition parties during his term.

successfully insulated the institution from political parties but, at the same time, created the conditions for opacity and discretionary decisions.³²³

The first, and perhaps most important check that was eliminated with the creation of the CNE was the ICM at the *executive-level*. The consequence of eliminating, formally or informally, the plural conformation of an EMB's executive board is that it makes the institution more vulnerable to unilateral manipulation in case the political elite is not fully committed to democracy or in case a regime becomes too powerful. It is true that under certain conditions not even a *de jure* and *de facto* EMB can prevent a democratic backlash. Eliminating formal and informal *executive-level* ICMs from an executive door, however, facilitates the conditions for cooptation and manipulation by a strong Executive Branch.

In order for an insulated *de jure* autonomous EMB to become *de facto* independent it is necessary that either its executive board is either formed by truly impartial and ideologically neutral commissioners or that, even when the board's members are purportedly "non-partisan and independent," there is a minimum plurality among its members that guarantees that no faction will be capable of taking unilateral decisions to systematically favor a specific party or group in power.³²⁴ The latter, is exactly what happened in Venezuela. Despite the rules for nominating and appointing CNE's electoral commissioners fall within the region's stricter regulations, the EMB's

³²³ As described by Marchetti (2012) in the case of Brazil's TSE, two of the negative aspects of institutional insulation in the case of EMBs can be the lack of transparency and the risk of unilateral decision-making. This is especially the case when there are adverse conditions for holding fair and free elections.

³²⁴ This is assuming other institutional requirements, such as administrative capacity, financial sufficiency and bureaucratic professionalization, are satisfied.

executive board was politicized early since its inception.³²⁵ Although commissioners were supposed to be “non-partisan,” they were ideologically aligned to a specific political group that had endorsed them.³²⁶

This hypothesis was confirmed by most country-level experts interviewed while conducting fieldwork in Venezuela. There was a generalized perception among experts that, early since its inception in 1999, the members of the CNE’s executive board had clear ideological ties with either government or a political force from the opposition.³²⁷ There was also a generalized consensus among these experts that, during Chávez’s second (2001-2007) and third (2007-2013) administrations, the majority of the members of the executive board were ideologically aligned –or maintained either formal or informal ties– with the ruling party. Although the 1999 constitution clearly established a “non-partisan” eligibility requirement for the members of the EMB, many of the electoral commissioners had been either sympathizers of a political party, kept informal ties

³²⁵ For a detailed description of the nomination and appointment of electoral commissioners see: Selección de nuevos Rectores del Consejo Nacional Electoral. Electoral Integrity Project Venezuela. Available: <https://politikaucab.files.wordpress.com/2014/10/reporte-especial-nro-01-agosto-2014-2-1.pdf>.

³²⁶ As acknowledged by Estévez et al., (2008) in their work about the partisan dynamic within “non-partisan” institutions, it is hard to provide evidence of the partisanship of “independent” commissioners. During the last decade in Venezuela, however, there are multiple examples illustrating how the informal cooptation of the EMB’s purportedly “non-partisan” board has systematically favored the ruling party and facilitated its endurance in power.

³²⁷ Most country-level experts interviewed during fieldwork had a in depth knowledge of electoral politics and elections in Venezuela. Some of them, had been former members of with the CSE or CNE and had a profound knowledge of the formal and informal dynamic within the EMB. Among those interviewed experts supporting the view that a majority of CNE’s electoral commissioners had close ideological ties with the Chávez administration during the period 2000-2013 were: Magdalena López Maya, Luis E. Lander, Luis Salamanca, Benigno Alarcón, Héctor Briceño, Luis Vicente León, Javier Corrales, Francisco Monaldi, Michael Penfold, Héctor Vanolli, Miriam Kornblith, José Molina, and Ángel Álvarez. Also see: Reporte Especial No. 5: CNE Unilateral. Electoral Integrity Project Venezuela. Available: <https://politikaucab.files.wordpress.com/2015/01/piev-reporte-especial-05.pdf>

with the regime, or became proactive members of the Chávez administration immediately after resigning to their position.

Two of the most emblematic –and polemic– cases showing the partisan ties of purportedly “non-partisan” commissioners, have been the presidencies of Jorge Rodríguez and Tibisay Lucena. The former was the CNE’s chairman during between 2005 and 2006. After resigning to the CNE, he became Vice President of Venezuela in 2007. He was one of the most polemic and closest figures to Hugo Chávez during his administration. That same year, in 2007, Rodríguez proactively promoted Chávez’s agenda to reform the Constitution in order to centralize power in the Executive Branch, extend the presidential term limit to seven years, and allowing the president to indefinitely run for reelection. After Chávez lost the 2007 referendum, Jorge Rodríguez was appointed as one of the main leaders of the *Partido Socialista Único de Venezuela* (PSUV), the state party created by the regime to unify the left-wing parties into a single political force and which would be recurrently accused by opposition parties of illegally using state resources during political campaigns to endure in power. In November of 2008, he was elected Mayor of the Libertador District in Caracas and has actively participated to support Maduro’s regime.

The latter, Tibisay Lucena, has presided Venezuela’s CNE since 2006 until today. Shortly after her replacing Jorge Rodríguez as the head of the EMB, she has recurrently been accused by opposition parties of keeping close ties with the Chávez and Maduro administrations.³²⁸ Although her term concluded in December of 2013, she was ratified as an electoral commissioner by the

³²⁸ See:

https://elpais.com/internacional/2013/03/20/actualidad/1363804600_505590.html; and <https://www.elespectador.com/noticias/el-mundo/presidenta-del-consejo-nacional-electoral-venezolano-la-eterna-madrina-del-chavismo-articulo-737985>.

Tribunal Supremo de Justicia in December of 2014.³²⁹ While conducting a fieldwork interview with Mrs. Lucena in the CNE's headquarters in Caracas, she fiercely defended the impartiality of the institution and the independence of its members. A picture of late president Chávez, however, was placed in one of the side tables of her office.³³⁰ Most country-level experts also confirmed that the CNE's decisions under Lucena's tenure had systematically favored the ruling party. Along with other three electoral commissioners that have been accused of having ties with the official party, she was able to form a pro-government coalition within the CNE's executive board since 2006.³³¹

Both, Vicente Díaz (2006-2013) and Luis Emilio Rendón (2014-2021), who have served respectively as the only commissioners within the CNE's executive board that are informally aligned with the opposition, have accused their colleagues of unilaterally taking administrative decisions without previously deliberating them with the board or of voting administrative decisions in their absence. During the 2015 legislative election, for instance, the four *rectoras* chavistas decided to extend an additional hour the closing of the polling stations. This measure was not only accused by opposition parties as a measure favoring the regime in order to help them

³²⁹ After a legislative gridlock over the renewal of electoral commissioners, the National Assembly was not able to appoint new commissioners with a two-third majority vote. Diosado Cabello, chairman of the legislature and one of the closest allies of President Maduro, requested the intervention of the TSJ, an institution that had also been informally coopted by chavismo. The Tribunal ratified Mrs. Lucena as an electoral commissioner for an additional term.

³³⁰ While it is not common in most countries that a picture of the president or prime minister is placed in most public offices within that branch of power, it is not usual for the head of a purportedly neutral and independent branch of power to have a picture of a former president, especially of such an emblematic leader and in a highly politicized environment, in their office. Also see:

http://www.bbc.com/mundo/noticias/2015/12/151203_venezuela_elecciones_cne_tibisay_lucena_ab

³³¹ See: <http://www.analitica.com/actualidad/actualidad-nacional/conozca-los-rectores-del-cne-su-procedencia-y-trayectoria/>

to keep mobilizing voters, but it was also criticized by international organizations such as the Organization of American States (OAS) and the delegation of former presidents of Colombia, Bolivia, Panamá, Uruguay and Costa Rica that had been invited by the opposition (MUD) to witness the election.³³²

On this matter, the OAS General Secretary, Luis Almagro, publicly condemned the CNE, and Tibisay Lucena, of being responsible for the current political and humanitarian crisis in Venezuela (Almagro 2017).³³³

The collapse of institutional function in Venezuela is the direct responsibility of its authorities. Over the last months, the regime in Venezuela has buried democracy, the separation of powers, justice, civil guarantees, political, economic, and social rights as well as all the principles that constitute a legitimate government. All the members of the current illegitimate government are responsible, and **the role of the President of the National Electoral Council, Tibisay Lucena, has been crucial in the institutional collapse.**

An independent, impartial, healthy electoral body with adequate technical capabilities is fundamental to guarantee the political rights of citizens. Its responsibility is nothing less than the protection of the strict respect for the right to political expression of the people, the only sovereign in all nations, through the exercise of universal suffrage in free and fair elections. As a consequence, it is unthinkable in any democratic government that **the person who directs the National Electoral Council allows it to become the instrument of the end of democracy.**

Her direct action **was decisive in depriving the Venezuelan people of its constitutional right to a recall referendum in 2016.** From the CNE, she deployed an arbitrary strategy, **delaying indefinitely the collection of signatures, forcing calendars, imposing unprecedented**

³³² For considering that this delegation of former presidents was intervening in the election, the CNE decided to withdraw their credentials as international observers. See: “Rector Rendón rechaza prórroga para el cierre de mesas.” Versión Final. Caracas. 12/06/15. Available: <http://versionfinal.com.ve/politica-dinero/rector-rendon-rechaza-prorroga-para-el-cierre-de-mesas/>; <http://www.elcomercio.com/actualidad/cne-votacion-cierre-elecciones-venezuela.html>, <https://elpitazo.com/politica/cne-extiende-una-hora-mas-cierre-mesas-la-constituyente/>, http://www.el-nacional.com/noticias/politica/vicente-diaz-adelanto-las-elecciones-una-decision-apresurada_222498.

³³³ Message from OAS Secretary General on Venezuela. June 3, 2017. Reference: E-047/17. Bold words by the author.

Available: http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-047/17

recounts, redesigning districts and regions at her convenience to definitively avoid the convening of the referendum, and the expression of the popular will.

In addition, on May 25 **Ms. Lucena -the same person who also has denied the constitutional rights of the people to elect its governors- announced her support for the illegitimate, unconstitutional, and fraudulent National Constituent Assembly promoted by the regime.** Tibisay Lucena has thus become the President of an Electoral Council that is violating the principle of universal vote, disregarding the provisions in articles 62 and 63 of the Bolivarian Constitution, in which it is recognized that "suffrage is a right. It will be exercised through free, universal, direct and secret votes. The law will guarantee the principle of the personalization of suffrage and proportional representation."

Based on a regressive and forced interpretation imposed by the Constitutional Chamber of the Supreme Court, which substitutes the right to universal suffrage for indirect mechanisms of election in the election of parish councils, **the CNE has pieced together an unstable scaffolding upon which it convenes a fraudulent Constituent Assembly.** All this to protect a presidential initiative that clearly lacks any kind of legitimacy of origin. By announcing that the CNE increased the number of constituents to 545, and that they will be chosen on sectoral and territorial bases, Ms. Lucena endorses the abolition of the universal vote for the exercise of popular sovereignty.

The formula announced by Tibisay Lucena is as technically absurd as it is unconstitutional and undemocratic. The convocation of the Constituent Assembly is taking place outside of that stipulated in article 347 of the Constitution, which states that the Venezuelan people are the only ones who possess the original constituent power. In this way, it definitively puts an end to the right of the Venezuelan people to democracy.

The only ones who will be able to exercise their right to vote are unionized students, unionized business leaders, unionized farmers, unionized persons with disabilities, unionized workers, unionized pensioners, and community councils. **The ascendancy of these ideas lies in the corporatist and totalitarian political lines of fascism.** It is hard to believe that there exists a country in the Americas that, in the 21st century, has made such an arbitrary and anachronistic decision. Not only does it deprive the sovereign of its right to elect by universal suffrage, imposing an unjustifiable restricted vote, but it also robs the sovereign of any decision-making capacity in the future by forcing the convening of an illegitimate Constituent Assembly, which seeks to definitively denaturalize the Magna Carta.

It is difficult to conceive a more forced, discriminatory and arbitrary legal aberration. **Ms. Lucena is the author and co-responsible for the worst attack on the institutional functioning in Venezuela.** And that is not resolved by calling a referendum to approve the Constitution once it has been written. That does not resolve the legal and constitutional defects of origin in the process, that is de-legitimized because it ignored the people as the true constituent power.

As Secretary General of the Organization of American States I must condemn this attack against the essential foundation of democracy: universal suffrage. And as a citizen of the Americas I will always be among those who are aware that dictatorships are not only forged on the basis of tyrants who repress, imprison, torture, cut off freedoms, sow hunger, poverty and disease. **In order to exist, dictatorships also need people like Tibisay Lucena, who -abusing their functions and diverting their institutional responsibilities- are able to abandon principles and values to preserve their position and their rights,** regardless of what is being sacrificed in return, nothing less than the will of the people.

People like Tibisay Lucena, that continue stripping democracy of its content, work to serve the consolidation of the interests of a dictatorship imposed through the suffering of its people, sustained by the killing of its people, by the political imprisonment of opposition leaders, and by torture. The sterility of the manipulated sentences of the Supreme Court is clear proof of that. It is not even possible to determine what exercise of legal fiction she had to undertake in order to reach the conclusion that the direct expression of the popular will through universal suffrage in a referendum is not only not necessary to convene a Constituent Assembly, but it is dispensable and may be replaced by another expression of the Public Power.

...

The informal cooptation of the EMB's executive board by electoral commissioners that were ideologically aligned with the regime, early since the CNE's inception in 1999, was key for the Chávez administration. During Chávez's second term (2001-2007) the CNE's partiality was harder to identify and denounce because of the regime's popularity and because in both presidential elections (1998 and the 2000) Chávez had undoubtedly won by a majority of votes. Technically, compared to its regional counterparts, the CNE was a highly proficient institution and this explains why former US President Carter referred publicly to the electoral process in Venezuela as one of "the best in the world" while Hugo Chávez was in his third mandate (Carter 2012, Weisbrot 2012). The informal cooptation and partiality of the CNE, however, had been denounced very early by the opposition. During Chávez's second term, the main accusations formulated by opposition parties were related to the CNE's unwillingness to limit the use of state resources favoring the ruling party during –and between– campaigns, the unequal conditions to compete, the use of social programs to condition the vote, the gradual monopolization of the media, the opacity of the EMB regarding technical and administrative procedures, and the

arbitrary decisions systematically favoring the regime or affecting the opposition, such as the illegal disclosure of *La Lista Tascón* (Súmate 2004).³³⁴

The informal cooptation the CNE's executive board not only affected its –external– administrative decisions favoring the regime during the different phases of the electoral process or its incapacity of regulating and creating more leveled conditions of electoral competition. The administrative configuration of the EMB gave its executive board the capacity to directly intervene, supervise and –internally– decide on most *bureaucratic* and *policy level* decisions. The formal elimination of *executive-level* ICMs and, thus, of ICMs at the *administrative, bureaucratic* and *policy level* created spaces of opacity that were recurrently denounced by opposition parties.

In key administrative areas such as voter registration, for instance, authors like González Lobato (2012) Rachadel (2010) acknowledge how the CNE's legal framework adopted in 2002 (the LOPE) –compared to the CSE's previous partisan scheme established in the *Ley Orgánica del Sufragio (LOS)* and to the 1997 *Ley Orgánica del Sufragio y Participación Política (LOSPP)*– restricted *political organizations* from accessing information, auditing *bureaucratic* procedures, and the participate in *policy* decisions. According to Rachadel (2010: 27), the LOPE granted the

³³⁴ La Lista Tascón was a list containing millions of signatures of citizens supporting the recall referendum of President Chávez in 2003-2004 that were formally delivered to the CNE and that were allegedly leaked to the National Assembly member Luis Tascón, founder of the Chavista party MVR. According to most country-level experts interviewed during fieldwork, the list was recurrently used by the Venezuelan government to discriminate against those citizens that had signed list to remove Chávez from office.

The CNE's partial decisions gradually increased during the second and third Chávez administrations and, during the first and second administrations of Nicolás Maduro, they would radicalize by taking more drastic measures, including impeding parties and candidates to compete and those listed by the General Secretary of the OAS.

CNE an excessive discretionary power to regulate procedures and create new statutes. In terms of the legal framework regulating the Electoral Registry, the LOPE does not specify procedures the timing for depurating the registry of voters or the deadline to publish a definite version. Compared to the LOSPP, the obligation of the EMB to grant access to political parties, individual citizens, or independent candidates, to the registry of voters was eliminated from the new regulation.

In terms of the auditing capacity of parties, Rachadel (2010) also recognizes that, compared to previous regulatory frameworks, the specific regulations regarding the transparency and audit mechanisms for automated processes, such as the number of machines that could be audited or the system used for the transmission of electoral results, were also eliminated. For this country-level expert (Rachadel 2012:29):

En los casos indicados, para muchos sectores de la población es inconveniente otorgar al Consejo Nacional Electoral facultades amplias de regulación, porque existe el convencimiento de que tales potestades serán ejercidas en la forma que más convenga al grupo oficialista, como se ha visto en procesos electorales anteriores. En tal sentido, por ejemplo, la determinación de la hora del cierre de las mesas electorales no se ha realizado en función de las exigencias de los electores, sino que se han otorgado prórrogas, aún cuando no hubieran ya electores pendientes para votar, o se ha ordenado la reapertura de centros de votación ya cerrados, porque interesa al oficialismo, el cual aprovecha hasta última hora para organizar movilizaciones de electores, generalmente con recursos públicos, e incluso con apoyo de la fuerza militar. Por cierto, que en la LOPE se sincera parcialmente esta situación y se dispone que la hora de cierre será a las 6 PM, en lugar de a las 4 PM, como se establecía en la legislación anterior. Decimos “parcialmente” porque no hay garantía de que los centros de votación se cierren a la hora indicada, cuando no hay electores en la cola.

Similarly, González Lobato (2012) argues that the 2009 *Ley Orgánica de Procesos Electorales*, compared to the LOSPP of 1998, eliminated a key article (Art. 116) obligating the EMB to inform the public –including political parties– about the current state of the electoral registry. Since Chávez’s second term (2001-2007) the CNE limited the information made public arguing it was protecting citizens privacy rights. In 2005, the EMB’s chairman Jorge Rodríguez, publicly declared that the petition of political parties to access the voter registry’s database containing the residence of voters had no legal ground and that the CNE, under no circumstance, would grant parties full access to the registry (Mendoza 2005). On this issue, the European Union noted in a technical report during the 2005 legislative elections that the argument used by the CNE to justify its administrative decision had never been used in previous elections.³³⁵ According to González Lobato (2012), this situation generated uncertainty and was clearly contrary to the transparency policy that had historically prevailed in Venezuela and adopted by most EMBs in third-wave democracies.

This same type of arbitrary decisions by the CNE were documented by the *Súmate* organization in a technical report regarding the process for validating the 2003-2004 recall referendum to remove Chávez from office (Súmate 2004). In the report they denounce the CNE for arbitrarily imposing new requirements, changing the deadlines, and significantly reducing the number of valid signatures necessary for activating the recall referendum. During a fieldwork interview with Ricardo Estévez, former member of the *Súmate* organization, described the validation process of signatures as a “black box.” In his words, “it was very hard for anyone

³³⁵ See: European Union: Final Report of the 2005 parliamentary election. Cited by González Lobato (2012).

outside of the electoral institution to identify the methodology and criteria that was being applied by the authorities to verify and validate the signatures that had been presented.”³³⁶ For Estévez, the CNE’s attitude towards the validation of signatures set the tone for all future petitions made by civil society groups and parties opposing government. It also made evident the inequality and inconsistency of the CNE to apply the same criteria when the ruling party or government asked the EMB to take an administrative decision to organize events that would benefit the regime.

Lastly, another area of electoral management where the absence of ICMs has been counterproductive for transparency –and impartiality– is electoral boundary delimitation. During the Chávez administration Venezuela’s electoral system began transitioning from being a predominantly proportional electoral system to a mixed-majoritarian one (Briceño 2013). A key administrative decision affecting political representation, especially for majority electoral systems (where the winner takes it all), is the definition of electoral boundaries. There are many ways in which electoral delimitation is implemented in third-wave democracies. A key administrative feature for ensuring the neutrality of the process are the transparency and clarity of the rules, the consistency in which the rules are applied, availability of information, and inclusion of different social and political actors (Trelles et al., 2016).

According to Héctor Briceño, a political scientist affiliated to the *Universidad Central de Venezuela*, that specializes in elections, the CNE has systematically favored the regime by creating electoral districts to maximize the representation of the ruling party (Briceño 2011 and 2017). Similarly, Monadli (2010) argues that the arbitrary manipulation of electoral boundaries is one of

³³⁶ Fieldwork interview conducted by the author in the headquarters of *Súmame* organization. Caracas, Spring of 2014.

the reasons explaining how the ruling party obtained 60% of the seats at the National Assembly after obtaining only 49% of the vote. According to Monaldi (2010):

Es notable que la manipulación de circuitos electorales hecha por el CNE ocurrió fundamentalmente en los estados en que la oposición es mayoría o está cerca de serlo. Además, los criterios de diseño cambiaron de estado a estado de manera claramente oportunista. Por lo tanto, es evidente que la mayoría oficialista en el CNE utilizó esta estrategia para beneficiar del partido de gobierno buscando reducir el número de diputados opositores.

El caso del Distrito Capital es ilustrativo. Con las circunscripciones existentes en 2005 y la distribución de votos obtenida en 2010, la oposición hubiera obtenido la mitad de los diputados nominales. Por ejemplo, al antiguo circuito conformado por las parroquias El Paraíso y La Vega en que hubiera ganado la oposición se le agregaron las parroquias de Macarao, Caricuao y Antímano, con lo cual el oficialismo obtuvo los dos diputados de esa nueva circunscripción.

Similarly, according to journalist Eugenio Martínez there were many examples illustrating this type of manipulation in the preamble 2010 parliamentary election (Martínez 2015):³³⁷

During the parliamentary elections of 2005 La Vega and El Paraiso parishes comprised District 3 and elected a nominal deputy. But the CNE decided to integrate them into District 5, together with the Caricuao, Macarao, and Antímano parishes, assigning the election of two nominal deputies to this jurisdiction. In this case, gerrymandering merged two parishes that had elected an opposition deputy with three parishes that could be classified as Chavez strongholds, which before had only elected one deputy.

In 2010, the Capital District elected 10 deputies, three of which were selected from voting lists. The results gave the PSUV seven deputies (six nominal and one list) and the

³³⁷ Cited in Reporte Especial N°08: Circuitos Electorales elecciones parlamentarias 2015 I. Electoral Integrity Project Venezuela. Available: <https://politikaucab.net/2015/04/17/piev-reporte-especial-no08/>

opposition three deputies (one nominal and two list). If the CNE had not ‘changed’ the constituencies, the opposition would have won five seats and the PSUV would have won five others.

Contrary to most countries redefining its electoral cartography approximately every decade to guarantee the principle of “one man, one vote,” in Venezuela this exercise has been implemented by the CNE systematically before every legislative election.³³⁸ In Mexico, the inclusion of parties in the process (*policy level* ICM) has forced the EMB to define clearly the methodology and rules for implementing this procedure. By allowing parties to formulate counterproposals, this *policy level* ICM has contributed for political actors in Mexico to reach a consensus when renewing the electoral cartography.³³⁹ According to country-level experts like Briceño, Martínez, and Monaldi, the maps that have been approved by the CNE in Venezuela have consistently introduced a political bias favoring the ruling party. The absence of *policy level* ICMs has prevented opposition parties to participate and formulate observations or counterproposals to the plans that the EMB has adopted.

³³⁸ As noticed in the Reporte Especial N°08: Circuitos Electorales elecciones parlamentarias 2015 I, the legal framework does not establish how and when multi-member circuits must be delimited, granting discretionary powers to the CNE to make this decision.

³³⁹ Including parties in a technical –policy level implementation– process does not mean delegating to them the administrative responsibility to draw districts (as happens in a majority of U.S. states, where local legislatures are responsible for redefining the local and federal electoral geography of their state). To the contrary, it means that the electoral authority, with or without the advice of a group of experts, will approve the methodology, criteria and final output of the process. Parties, however, can be consulted during the different stages and are able to suggest changes to the authority which, in turn, is obligated to publicly justify its decisions, adopt systematically the same criteria, and explain why a specific map was adopted.

7.2.4 Concluding remarks

The main objective of insulating electoral management from political parties was to increase the credibility of elections and building a *de facto* autonomous EMB. In those terms, the electoral reforms of 1997 and 1999 have failed. It is true that the Venezuela gradually transitioned from being a relatively stable electoral democracy –from the moment Chávez was elected president for the first time in 1998– to an electoral authoritarian regime during the administration of Maduro. This process, however, took over a decade. The informal cooptation and factious role played by the CNE negatively affected the credibility of the institution to organize free and fair elections. As emphasized by Almagro, the CNE became key for the derailment of democracy in Venezuela.

As noticed in the *Electoral Integrity Project Venezuela* report about citizens' perception of the electoral system, approximately six out of ten citizens either have none or very little trust in the CNE. Two out of every three citizens believe that public resources are used by the ruling party for political (campaign) purposes. Three out of every five citizens believe that the CNE is a partial EMB. Seventy-five percent of the respondents declared observing at least one type of irregularity during previous elections. Sixty-three percent of respondents believe that opposition parties faced adverse conditions for electoral competition, compared to those running for the ruling party. More than half (51%) of the respondents doubted of the secrecy of their vote.³⁴⁰

³⁴⁰ See: Reporte Especial: Percepciones ciudadanas del sistema electoral venezolano. Electoral Integrity Project Venezuela. Available: <https://politikaucab.files.wordpress.com/2014/10/estudio-de-opinic3b3n-pc3bablica-cuantitativo1.pdf>

The main lesson from the Venezuelan experience is that institutional insulation is insufficient to guarantee an EMB's *de facto* autonomy. Even when the EMB has high levels of technical expertise, administrative capacity and bureaucratic professionalization, the institution can still be influenced by external actors. Institutional insulation has worked in countries where the elite has manifested their long-term commitment with democratic rule (i.e., Costa Rica or Chile). In many third-wave countries, however, this commitment has proved to be either weak or not permanent. In countries undergoing a democratic transition, or holding elections under semi-competitive environments, the insulation of the EMB might end up having counterproductive effect for the EMB's *de facto* autonomy and for the quality of elections.

In the case of Venezuela, the absence of formal and informal ICMs at the *executive, administrative, bureaucratic and policy levels* granted the EMB's executive board the capacity to take discretionary decisions. In the future, if the political elite decides to reinstate democratic elections, a more consociational administrative scheme will be necessary for the EMB to regain both citizens and the elites' trust. A possible way to do so, is by adopting a series of ICMs that will allow political actors to get involved –without deciding– in the different administrative levels in order to supervise key decisions affecting electoral organization.

7.3 KENYA: FORMAL INSULATION AND POLITICAL UNREST

The history of electoral administration in Kenya is relevant for this study because it shows how the role of a *de jure* autonomous EMB (the ECK) during a country's transition to democracy can lead to post electoral conflict and violence. More importantly, perhaps, it reveals how the absence of formal and informal ICMs, along with corruption scandals, have contributed to the

incapacity of the newly configured EMB (IEBC) to consolidate its reputation under a highly politicized environment.

This chapter's section is subdivided into three subsections. In the first subsection I explain the sociopolitical context during Kenya's transition to holding multiparty elections, focusing on two aspects that have played a key role for the country's electoral dynamics: ethnicity and party politics. In the second subsection I describe the configuration of the Electoral Commission of Kenya (ECK) from the moment the country had its first multiparty election in 1992, until the EMB was disbanded in 2008 as a consequence of the 2007 post-electoral conflict.

In this subsection I also explain the early adoption of an informal *executive-level* ICM between 1997 and 2002, and how this ICM was gradually eliminated from the institution in the preamble to the 2007 presidential election. I describe the configuration of an Interim Independent Electoral Commission (IIEC) that helped the political elite transition to a new constitutional order in 2010 after the country experienced a post-electoral conflict in 2007 that rapidly turned into a political and humanitarian crisis killing more than 1,500 and displacing approximately 600 thousand people.³⁴¹

In the third subsection, I describe the configuration of the Independent Electoral and Boundary Commission (IEBC). I explain why despite the institution increased its levels of *de jure* –formal– autonomy, its insulation from the political elite, as well as the appointment of an EMB's executive board formed by commissioners coming from minority ethnic groups, have been key

³⁴¹ See: "Kenya opposition cancels protests." BBC News. April 12, 2008. Available online: <http://news.bbc.co.uk/2/hi/africa/7344816.stm>, and "Kenya Ethnic Clashes Intensify." Al Jazeera. January 28, 2008. Available online: <https://web.archive.org/web/20080220193929/http://english.aljazeera.net/NR/exeres/CA34AA32-041D-497D-BE2B-A463562C6FFF.htm>.

contributing factors preventing the institution from consolidating its reputation as a *de facto* autonomous EMB. Finally, I conclude with some thoughts about the role that the IEBC has played for Kenya's democracy and the challenges faced by the EMB in the near future.

7.3.1 A Transition Without Institutionalization

Kenya became independent from the British rule in 1963. One year later, in 1964, Kenya's first republic was established and Jomo Kenyatta became its first president. In contrast to Ghana, where a clear bipartisan divide can be traced back to the pre-independence days (Figure 5.2), Kenya rapidly transitioned into a *de facto* single-party rule that lasted approximately three decades since its independence (Kyle 1999, Tordoff 1997).³⁴² After an unexpected death in 1978, Kenyatta was succeeded by the Vice President, Daniel arap Moi, in 1979. Moi remained in power until 2002. During the first three decades after the country's independence (1963-1992), Kenya was ruled exclusively by the Kenya African National Union (KANU). In June of 1982, the National Assembly officially declared Kenya as a one-party state, political opposition was banned,³⁴³ and

³⁴² As recognized by Tordoff (1997), one-party systems were extremely common in Sub-Saharan Africa, especially during the 1960s and early 1970s. Although there are significant differences across cases, in most countries politics revolved around charismatic leaderships. During this period, as a mean to maintain political stability, many African countries transitioned from federal to unified systems of government. In the case of Kenya, this centralization began with the establishment of the republic in 1964. As a consequence of centralization, regional political organizations lost power against a centralized bureaucratic machinery (Tordoff 1997; Nyström 2000).

³⁴³ Opposition leaders like Jaramogi Oginga Odinga, were imprisoned during Jomo Kenyatta's administration. Years later, during the Moi administration, he was placed again under house arrest. His son, Raila Odinga, was also placed under house arrest in 1982 for allegedly conspiring against Moi. He was imprisoned again in 1988 and 1990, along with Kenneth Matiba, and Nairobi's Mayor Charles Rubia, for protesting against Moi's single-party rule and promoting multiparty elections in the country. Others, like Peter Nyong'o, fled into exile during Moi's administration and returned to Kenya once multiparty politics were allowed. In 1988, for instance, Queue-voting (an 'open balloting' system where voters line up behind the candidate of their choice) replaced the secret ballot system. Among other political restrictions, this led

politics revolved around personalistic leaderships and the historic ethnic cleavages that had historically confronted the political elite (Tordoff 1997).³⁴⁴

As many other Sub-Saharan countries, Kenya's population is divided among ten major ethnic tribes.³⁴⁵ The predominant group in power, however, has been the Kikuyo. Since Kenya's independence in 1963, the country has had four presidents. Three of them have been Kikuyo. Jomo Kenyatta, who served from 1962 to 1979, Mwai Kibaki, from 2002 to 2013, and Uhuru Kenyatta, from 2013 to 2022. Moi, who served from 1979 to 2002, is the only president belonging to a different ethnic tribe, the Kalenjin.

In contrast to other African countries with a similar level of ethnic heterogeneity, such as Ghana, the Kenyan political elite did not adopt mechanisms to prevent party politics revolving around ethnic and territorial divides.³⁴⁶ In the early 2000s, Moi was willing to step down, but during his two decade mandate –or during Jomo Kenyatta's administration– statutes and constitutional mechanisms promoting the institutionalization of the party system were absent. This was recognized by Mr. Samuel Kivuitu, ECK's former chairman between 1997 and 2008 (Kivuitu 2001):

to a nation-wide controversy and led the opposition to demand a plural and multi-party democracy (EU Report 2002).

³⁴⁴ The land owned by British settlers, for instance, were expropriated, subdivided and given to ethnic groups. With the support of Kenyatta, the Kikuyo, Embu and Meru tribes repossessed "stolen lands" that had traditionally belonged to other groups, representing approximately over 70% of the population. Kenyatta's favoritism to its own ethnic group, however, began setting-up the environment for long-term ethnic animosities (Prunier 2008).

³⁴⁵ According to the Kenya National Bureau of Statistics (KNBS), the largest ethnic groups are the Kikuyu (22%), Luhya (14%), Luo (13%), Kalenjin (12%), Kamba (11%), Kisii (6%), Mijikenda (5%), Meru (4%), Turkana (3%), and Massai (3%).

³⁴⁶ As I discuss in the previous chapter, the Ghanaian political elite adopted a series of constitutional mechanisms that forced political parties to have a national scope and prevented them from making any reference to the ethnic or territorial cleavages.

Only political parties that are registered are allowed by law to participate in elections. A Government department carries out registration. Except for a few references to political parties in the Constitution and the National Assembly and Presidential Elections Act, **political parties are treated by the law, like it treats social clubs, football clubs, funeral associations, religious and revival societies etc.** They are registered under the same Act of Parliament. From its provisions **it is clear that the Act was never intended to deal with political parties.**

This situation requires attention. There should be a legal regime that will lead to proper organization of political parties. Indeed, **it is not possible to see how the political parties as currently constituted and operated can account for public funds which may be given to them in order to improve their performance and potency.**

Since the country transitioned to multiparty politics in 1992, the number of registered parties has oscillated between fifty and one hundred and sixty political organizations.³⁴⁷ On one hand, party fragmentation was favorable to Moi's regime during the country's transition to multiparty elections because it facilitated its endurance in power and, on the other, Kenya's electoral politics have historically revolved around a personalistic –and clientelistic– basis. According to authors like Ajulu (1998), “the proliferation of a plethora of political parties since

³⁴⁷ According to the Electoral Commission of Kenya, in 2007 there were over one hundred registered political parties. Tordoff (1997) and Nyström (2000) explain that, between 1969 and 1982, Kenya retained "a system of open party primaries, in which aspirant candidates were free to stand, but in a de facto one-party system where the official party (KANU) did not face any real challenges. These authors acknowledge that during this period Kenya's political parties had a weak ideological base and a weak organizational machinery (Tordoff 1997: 4, 134). Kenyatta portrayed himself as the only charismatic –and clientelistic– leader in the political realm. In order to retain support, political alliances with trade unions, co-operative societies, and the army became increasingly important (Tordoff 1997: 134-5). This made of Kenya an administrative state which, under the Kenyatta and Moi's administrations, relied more on the bureaucracy, than on their own party (party) for purposes of development, execution of policy, and control.

1992 has nothing to do with principles or ideological differences but rather motivated by political greed and personal ambitions.”³⁴⁸

According to Bosire, the interaction between ethnic groups and party politics is more pronounced in Kenya, than other countries in the region. The political elite has historically used ethnic and territorial cleavages to its convenience. This perception was confirmed in many other fieldwork interviews with national and international country-level experts.³⁴⁹ Historically, the political elite has registered new parties and coalitions shortly –three months– before elections take place. They are organized around personalistic leaderships –usually with strong territorial or ethnic enclaves– and align temporarily to a coalition. More than being ideologically driven organizations, parties have traditionally competed around changing and volatile coalitions.³⁵⁰

³⁴⁸ As acknowledge by Ajulu (1998), political parties did not have access to public funding in the 1992 and 1997 elections. Public funding was introduced until 2002 and a Political Parties Act was not adopted until 2011. According to scholars like Richard Bosire, Lecturer in the Department of Political Science at the University of Nairobi, Moi deliberately decided to open the electoral realm in a weakly institutionalized and fragmented party system. It was in his interest to “compete in an unlevelled electoral playing field.” Fieldwork interview conducted by the author at the University of Nairobi, Nairobi, Kenya. Spring 2014.

³⁴⁹ Fieldwork interviews with Simon Carter, Regional Director for Sub-Saharan Africa of the International Development Research Center (IDRC), Philip Nyinguro, Professor of Political Science at the University of Nairobi, and Okero Isaack Otieno, Democratic Governance Expert of the United Nations Development Program for the Strengthening of Electoral Processes in Kenya. These interviews were conducted in Nairobi during the Spring of 2014 at the IDRC’s headquarters, the University of Nairobi and the UNDP’s main office in Nairobi, respectively.

³⁵⁰ The National Rainbow Coalition (NARC), for instance, began as an alliance between the Liberal Democratic Party (LDP), led by Raila Odinga, and the National Alliance Party of Kenya (TNA), led by Mwai Kibaki. This alliance nominated Kibaki for the 2002 presidential election against the party that had ruled Kenya for over 40 years, the Kenya African National Unity (KANU), represented by Uhuru Kenyatta. The NARC lasted until 2005, when Raila Odinga took a different stand from the Kibaki’s administration on the constitutional referendum. Odinga, along Uhuru Kenyatta, formed the Orange Democratic Movement (ODM) in 2005 as a political movement opposing Kibaki’s constitutional reform agenda. Two years later, in 2007, Kibaki ran for reelection representing the Party of National Unity (PNU), a coalition of parties including the including the KANU, the National Alliance Party of Kenya (TNA), Narc-Kenya, Ford-Kenya, Ford-People, Democratic Party, and Shirikisho. As the head of KANU, Uhuru Kanyatta aligned with the incumbent (Kibaki) and competed against Raila Odinga’s ODM. In a highly

These two elements of the Kenyan sociopolitical environment –i.e., the salient ethnic cleavages and the poorly institutionalized party system– have directly affected the configuration and internal workings of electoral administration in Kenya. Specifically, it has affected the type – and effectiveness– of ICMs adopted before and after the 2010 constitutional reform. The prevalence of the ethnic animosity between tribes affected the internal dynamics of the EMB since multiparty elections began in 1992. A key discussion that took place within the Inter-Parties Parliamentary Group (IPPG) in 1997, for instance, was the inclusion of an informal *executive-level* ICM to balance the ECK’s executive board and guarantee the neutrality of the commission. This informal ICM served to increase the EMB’s reputation during the 1997-2002 period.

According to country-level experts like Winnie Mitullah, Director of the Institute for Development Studies (IDS) at the University of Nairobi, the ECK, despite still being informally influenced by the Executive Branch, was able to build a positive reputation and it was recognized by political actors and citizens as a *de facto* autonomous EMB.³⁵¹ Especially after the 2002 presidential elections, which culminated in a peaceful transition putting an end to the four decade rule of the KANU, and the 2005 referendum where the motion that was being supported by the

contested, politicized, and questioned 2007 presidential election, Kibaki was declared winner by approximately a two hundred thousand vote difference (Kibaki’s PNU obtained 46.42% of the vote, while Odinga’s ODM obtained 44%).

Five years later, in 2013, Kenyatta would run against Raila Odinga’s ODM. Kenyatta formed the Jubilee Alliance, which included the National Alliance (TNA), the National Rainbow Coalition (NARC), the United Republican Party (URP), and the Republican Congress (RP). The Jubilee alliance eventually became a political party in 2016. Uhuru Kenyatta would contend against Odinga’s ODM again in the 2017 presidential election, which was later challenged and nullified by the Supreme court. In a second election taking place two months later (October of 2017), Odinga decided to withdraw from the race and shortly after declared himself Kenya’s legitimate president.

³⁵¹ Interview conducted by the author. Institute for Development Studies at the University of Nairobi. Spring, 2014.

Kibaki administration was rejected by approximately 58% of the vote. As recognized by Kivuitu (2001), additional informal ICMs –consultative groups with parties– were also adopted by the ECK to establish a communication mechanism between parties and the EMB:

All the same when elections are imminent, whether general elections or by-elections or whenever the ECK is about to embark on an exercise that will affect elections **the ECK holds consultative meetings with the registered political parties and discusses with their representatives the whole matter. These consultations have proved to be beneficial to the political parties and ECK.** The parties' contributions on such occasions are remarkable. The ECK is very grateful to all the political parties for this cooperation.

The changing political factions, along with the volatility and fragmentation of the party system, however, made it extremely difficult for the political elite to establish clear and stable ties at different administrative levels within the electoral bureaucracy in the long term.

As shown in Table 7.2, during most of the 1992-2008 period, the Electoral Commission of Kenya (ECK) was not able to maintain these informal *executive-level* and *external* ICMs. Only between 1997 and 2002, the political elite –through an informal agreement reached in the Inter-Parties Parliamentary Group (IPPG)– decided to include an informal *executive-level* mechanism in the EMB's executive board by appointing commissioners that included members representing both the ruling party and the opposition (mainly with electoral commissioners representing a balance between the largest ethnic tribes, the Kikuyu and Luo). According to Mitullah, this informal

executive level-ICM was later eliminated when Kibaki's administration informally coopted commissioners in the preamble to the 2007 presidential election.³⁵²

The only ICMs present in both EMB's (the ECK and the Independent Electoral Boundary Commission, the IEBC, established in 2011) were *street level*-ICMs, which were not as effective given the volatility and restricted regional presence of most opposition parties, especially during the early years of multiparty elections. The fourth column shows the presence of an additional formal ICM –the adoption of the Political Parties Liaison Committee (PPLC)– in the post-2010 period that was introduced as a recommendation from the Kriegler Commission after the 2007 post-electoral crisis (Kriegler and Waki Report 2009).

³⁵² After conducting fieldwork interviews with political actors, electoral officials, as well as national and international country-level experts, there was a generalized consensus that during most of the ECK's institutional period organizing multiparty elections (1992-2008), the informal executive-level ICM only lasted a few years. The EMB was described, in general, as a formally and informally coopted EMB by both the Moi and Kibaki administrations, especially during its early (1992-1997) and during the preamble to the 2007 election (2005-2008). This is what explains the "absence" of both formal and informal executive, bureaucratic and administrative-level ICMs in Table 7.2.

Table 7. 2 Internal Consultative Mechanisms (ICMs) and EMB's De Facto Electoral

Autonomy in Kenya (Pre and Post 2010)

Formal vs. Informal ICMs	Type of ICM	Kenya (Pre-2010)	Kenya (Post-2010)	Causal Effect of ICMs on <i>De Facto</i> Autonomy
Formal	Executive Level	Absent	(=) Absent	Allows the presence and inclusion of external actors in executive-level deliberations (e.g., formal representation of parties within the EMB's executive board).*
	Administrative Level	Absent	(=) Absent	Guarantees external actors access to information / inclusion in administrative decision making (e.g., representation of parties within the EMB's committee system).
	Bureaucratic Level	Absent	(=) Absent	Enables external actors to audit and verify the compliance of formal rules and bureaucratic procedures (e.g., parties directly monitoring the voter registration process).
	Policy Level	Absent	(=) Absent	Allows external actors to supervise and participate during policy implementation procedures (e.g., partisan interaction during electoral boundary delimitation exercises).
	Street Level	Present	(=) Present	Enables external actors to monitor the compliance of formal procedures during election day (e.g., presence of party agents within polling stations).**
	External Consultation Committee	Absent	(+) Present	Promotes consensus building, creates communication channels and increases transparency (e.g., formal agreement to inform and include parties in key administrative deliberations).***
Informal	Plurality of partisan ties within the EMB's Executive Board	Absent	(=) Absent	Prevents unilateral decision making and creates incentives to build consensus among commissioners with different ideological alignments (e.g., informal partisan ties of "non-partisan" members of the EMB's executive board).
	External Consultation Committee	Absent	(=) Absent	Promotes consensus building, creates communication channels and increases transparency (e.g., informal agreement to inform and include parties in key administrative deliberations).****
EMB's De Jure vs. De Facto Autonomy		Kenya (Pre-2010)	Kenya (Post-2010)	
De Facto Autonomy*****	~	Low	(↑) Med-Low	~
De Jure Autonomy*****	~	Low	(↑) Med-High	~

Note: Table elaborated by the author. The year in each of the four cases was determined by the moment the current EMB was formally established and became formally (de jure) independent. The IFE in the case of Mexico, the Electoral Commission in Ghana, the Consejo Nacional Electoral in Venezuela, and the Independent Electoral and Boundary Commission of Kenya.

*Executive-level ICMs include mixed-partisan configured EMBs' executive boards, as well as "non-partisan" boards where parties are formally represented with the right to speak, but not to vote. The (+), (-), and (=) symbols denote the adoption or elimination of either a formal or informal ICM from one period to another. The (=) symbol denotes the status quo prevailed. In Mexico, for instance, parties have been formally embedded within the EMB since 1946.

** Street-level ICMs allow parties to formally register representatives (agents) to be present within polling stations supervising the voting process during the day of the election. This mechanism, however, becomes more effective when parties are sufficiently institutionalized in order to have the organizational means, as well as the territorial presence, to monitor the different phases of the voting procedures across all regions. Out of the five formal ICMs enlisted here, street-level ICMs are more related to the capacity of parties to monitor the compliance of procedures during the election day, than to the internal workings of the EMB. The effectiveness of this ICM also requires that party agents are formally represented within the polling station for monitoring, but not for administrative purposes (e.g., working as polling officials). In the pre-1999 Venezuela, for instance, the appointment of partisan polling officials negatively affected the EMB's perception as a de facto autonomous EMB.

*** This formal type of ICM allows parties to establish a two-way interaction with the EMB. Depending on each country, it might be used differently to serve either a single or the multiple causal links described here. In the case Kenya, this formal ICM has been used more as a top-down information mechanism between the EMB and political parties.

**** This informal type of ICM allows parties to establish a two-way interaction with the EMB. Depending on each country, it might be used differently to serve either a single or the multiple causal links described here.

***** Cases were classified according to the author's fieldwork interviews with country-level experts and the V-Dem's measure of EMBs' de facto Autonomy (EMB Autonomy) with respect to other EMBs in the country's respective region. The (↑), (↓), and (=) symbols represent an increase, decrease or no change in the levels of de facto autonomy from one period to the other.

***** Following Hartlyn's et al., (2008) classification, EMBs were classified based on the institutions' legal (de jure) independence from other branches of power, on the appointment mechanism used to designate the EMB's executive board, as well as the formal partisan configuration of the board. In Ghana and Kenya, for instance, both the EC and the IEBC became formally independent EMBs when they were established, but the Executive Branch still plays a dominant role in the appointment of the members of the executive board. In Venezuela, the EMB transitioned from having a mixed-partisan executive board to a fully "non-partisan" –formally independent– executive board.

As described by authors like Napier (2015: 156-157), the adoption of this type of *external consultation* mechanisms with political parties has been key conflict-resolution mechanism in

Democratic Republic of the Congo, Ghana, Tanzania, Lesotho, Namibia, Malawi, Zambia, Zimbabwe, Kenya and Mali. According to Napier, this type of *external consultation* mechanism has affected positively of the quality of elections in weakly institutionalized democracies with politicized environments:

Since the early 1990s, multiparty elections in Africa in particular, have become the most important manifestation of a democratic process. In countries where the election process and the results of elections are in dispute, the whole democratic process of a country is called into question. Prime examples of this are the disputed Kenyan elections held in 2007, the Zimbabwean elections in 2008 and 2013, the Cote d'Ivoire elections in 2010, and the Malawian elections in 2014. Political Party Liaison Committees or Party Liaison Committees (PLCs) –variously also called election committees, inter-party/multi-party liaison committees, peace committees, election panels or conflict management committees– play a very important role in ensuring the smooth functioning of the election processes, assisting in ensuring electoral justice and supporting the acceptance of election results.

Despite the fact this type of formal *external consultation* mechanism has been highly effective in countries such as South Africa –the Party Liaison Committee (PLC)–, the adoption of the PPLC in Kenya was clearly insufficient to guarantee the EMB's *de facto* autonomy.³⁵³ The

³⁵³ According to Napier (2015:), party liaison committees “have had varying degrees of success in relation to their respective electoral management bodies.” ... “Not much is known about these committees in other parts of Africa. The South African PLC is probably more formalized than others and has a track record of good electoral governance and the successful resolution of conflict.”

case of electoral administration in Kenya shows how the adoption of formal rules promoting the EMB's *de jure* independence in 2010, and the adoption of a certain type of formal ICMs, has been insufficient for organizing credible elections. As shown in the two bottom rows of Table 6.2, while the EMB significantly increased its levels of *de jure* autonomy after 2010, the IEBC was not able to consolidate its reputation during the 2013 and 2017 presidential elections. To the contrary, according to most country-level experts, its reputation as a *de facto* autonomous EMB has decreased since the newly configured IEBC was established in 2011.

In the following two subsections I explain the configuration and internal workings of the ECK and how its role contributed to the 2007 violent post-electoral conflict. I also explain how the elite reacted by disbanding the EMB and adopting an Interim Independent Electoral Commission (IIEC) to help the country transition to a new constitutional order in 2010. In the final subsection I explain why after creating a *de jure* Independent Electoral and Boundary Commission in 2011, which followed a template based on best international practices in electoral management (i.e., the recommendations formulated by the 2008 Kriegler Commission), Kenya's EMB has not been able to build a reputation as a *de facto* autonomous EMB.³⁵⁴

³⁵⁴ After the establishment of the 2010 constitution and the inception of a *de jure* autonomous emb in 2010, the two subsequent presidential elections (2013 and 2017) have been challenged by the opposition and the iebc has been accused of being informally coopted by the regime and favoring the ruling party to endure in power. In the latter election (2017) the opposition leader, raila odinga, challenged the results and the supreme court nullified the election. Two months later, odinga withdrew from the presidential race (see: kenya presidential election cancelled by supreme court. Bbc news, 1 september 2017, available online: <http://www.bbc.com/news/world-africa-41123329>, also see: kenya's raila odinga quits election re-run. Bbc news, 10 october 2017, available online: <http://www.bbc.com/news/world-africa-41572128>).

7.3.2 Absence of ICMs and Post Electoral Conflict (Pre-2010)

The Electoral Commission of Kenya (ECK) was originally established in the 1963 independence Constitution of 1963 –sections 38(4), and 48 (1-10)– and it was constituted as a *de jure* autonomous EMB formed by 11 members. According to section 48 (1: a-d), the ECK’s executive board would be chaired by the Speaker of the Senate, the Speaker of the House would act as Vice-Chairman, a member appointed by the Governor General (on the advice of the Prime Minister), and a member representing the Nairobi area and each one of the seven regions appointed by the Governor General (on the advice of the President of each Regional Assembly).³⁵⁵

This configuration changed when Kenya became a Republic in 1964. The new legal framework established that the President of the Republic, instead of the Governor General, would be responsible for appointing the majority of members of the ECK’s executive board. According to the 1964 Constitution, the president would directly appoint a member representing the Executive Branch, and each one of the seven members representing the different regions. Since the

³⁵⁵ This same section of the 1963 Constitution established that “In the exercise of its functions under this Constitution the Commission shall not be subject to the direction or control of any other person or authority,” and that the ECK would “regulate its own procedures” and that “any decision of the Commission shall require the concurrence of a majority of all the members thereof.” Although the Constitution recognized the ECK as a *de jure* autonomous EMB, it lacked administrative, bureaucratic and financial autonomy from the Executive Branch. The role of overseeing elections and voters’ registration, for instance, relied on the Supervisor of Elections, who administratively relied on the Attorney General’s Office. As the centralization of power by the Executive increased, the functions of that ECK were reduced to electoral boundary delimitation. The registration of political parties, for instance, was done by the Registrar General, a separate administrative body accountable to the Attorney General’s Office. The provincial administration, appointed by the Executive, was responsible for implementing most administrative decisions at the regional level.

country was a *de facto* one-party state, the president had both formal and informal control over the EMB.

The administrative configuration of the ECK changed again with the establishment of the 1969 Constitution. In this new legal framework, Jomo Kenyatta's administration decided to keep the responsibility of appointing the members of the EMB's executive board in the Executive Branch. According to section 41(1-3) of the Constitution, the ECK would be formed a chairman and not less than four members appointed by the President. The Commission was in charge of electing a vice-chairman from among its commissioners, and the members of the board could not be representatives at the National Assembly or hold any office in the public service, armed forces or in the East African community. As in the 1963 Constitution, the 1969 legal framework (Section 41, numerals 9-10) also established that the ECK "shall not be subject to the direction of any other person or authority" and that the Commission should regulate its own procedures.

That is, during the first decade after the country's independence electoral administration was the responsibility of a *de jure* autonomous EMB. Although the configuration of the ECK in 1963 initially entailed a balanced representation between the legislative-executive branches and regional representatives, this configuration changed in 1964 when the president became responsible for unilaterally appointing the majority of members of the ECK's executive board. This formal rule –the unilateral appointment responsibility of the president– was ratified with the 1969 Constitution and kept during most of the Moi's administration (1979-2002).³⁵⁶

³⁵⁶ The 1997-2002 period was the first time were an informal agreement –through the IPPG– was reached between the president and the opposition to appoint a "balanced" executive board. The president, however, kept his privilege of unilateral appointment capacity recognized in the Constitutional.

Despite Kenya had been a *de facto* one-party system since its independence, the National Assembly formally declared Kenya a *de jure* one-party state with the Amendment Act No. 7 of 1982 (Tordoff 1997).³⁵⁷ Elections, however, were still held and formally organized by the ECK. Although the EMB was a *de jure* autonomous institution, it was formally and informally controlled by the Executive Branch from 1963 to 1992. According to Bosire, the commission relied administratively and financially on the Executive Branch. During the Moi administration elections were managed through the Attorney General's Office, which had a Supervisor of Elections that delegated to district commissioners and civil servants at the regional level most of the administrative and organizational tasks.³⁵⁸

³⁵⁷ According to Winder (2004), "the ruling party organized a "Political Information System" seminar in Nairobi and Mombasa for March 8-13, 1982. The seminar involved representatives of the single party states of Malawi, Zambia, Tanzania, and Uganda, who converged to question the efficacy of political parties in post-colonial Africa and advocate one-party democracy as a viable alternative. Two months later (in May 1982) the Kenyan opposition leaders who had proposed the formation of a second party were expelled from the ruling party, and their representatives were detained. On May 26, 1982, the governing council of the ruling party (composed of 12 members) instructed ruling party parliamentarians and the Attorney General to prepare a bill amending the constitution such that Kenya would officially become a one-party state."

³⁵⁸ Fieldwork interview conducted by the author with Professor Richard Bosire. Department of Political Science. University of Nairobi. Spring 2014. According to Gekara (2009), "when Kenya gained independence, parliamentary and local authority elections and the registration of voters were under the supervisor of elections, a civil servant in the Attorney-General's chambers."

This dependency on the Executive Branch, along with the lack of specific administrative and procedural regulations, was identified by the Kriegler Commission in 2008 (Kriegler 2009): "Beyond the Constitution and section 3-3B of the National Assembly and Presidential Elections Act, there is no law governing many of the ECK's institutional and operational aspects. This is in stark contrast to the situation in some countries in Africa (such as Malawi and Ghana) and elsewhere where this is provided for in a dedicated law to back up constitutional provisions on, for instance, establishment and security of tenure. It is also in contrast to the position of a number of Kenya's own constitutional bodies, such as Judiciary and Parliamentary Service Commission."

In terms of financial independence, the ECK's dependence on parliament, especially during the single-party era, compromised the autonomy of the commission (Kivuitu 2001): "The finances for the ECK's operations other than the salaries and allowances payable to the Commissioners are voted for by Parliament as part of the Government's Annual Budget. That means, for instance, that funds for registration of voters and for holding of elections for each year have to be passed by Parliament. Consequently, if no funds are so

In the preamble to the 1992 presidential election, the KANU Assembly and the Moi administration repealed Section 2(A) of the Constitution. With this constitutional amendment, Kenya formally transitioned back to a multi-party state in December 1991. As many other countries in the region, the Moi administration was pressured –internally and internationally– to transition to democracy in the late 1980s. The Office of Supervisor of Elections was replaced, in practice, by the ECK as the sole body responsible for organizing elections. As a response to these pressures, Moi also decided to introduce term limits for the presidency in the Constitution (Ajulu 1998).³⁵⁹

The adoption of multiparty politics in 1991 forced the President to appoint a new executive board to lead the organization of the 1992 general elections. Moi *unilaterally appointed* the late Justice Zacchaeus Chesoni, along with nine other members, as electoral commissioners of the ECK’s executive board (Kivuitu 2001).³⁶⁰ According to section 41 of the Constitution, the Chairman and the Vice Chairman were supposed to meet the same qualifications as Judges of the

approved or the approved sums are less than is required for the elections the ECK will have no funds to perform that essential function. Elections can become necessary at any time. There can indeed be more by elections than was originally planned and thus budgeted for. Consequently, it is essential that funds for elections should be available always. Furthermore, that dependency can be used to compromise the independence of the ECK. In most countries election management bodies take money directly from the Consolidated Fund or some suitable constitutional arrangement is in place. It is time Kenya rectified this weakness.”

³⁵⁹ As described by Ajulu (1998), Kenya's multi-party elections were a consequence of the 'democracy experiment,' which started with a regional third-wave of democratization in the early 1990s, and the donor pressures –e.g., in the 1991, for instance, the Paris Consultative Group decided to withhold approximately \$1 billion in aid programs until pending political and electoral reforms were approved. These pressures would ultimately lead to the repeal of Moi’s administration of section 2(A) of the constitution.

³⁶⁰ According to Bosire, the figure of the Supervisor of Elections was abolished in 1991 and the ECK was recognized as the sole administrative body responsible for the conduct of elections. The number of commissioners increased Gekara (2009), the number of commissioners increased to 11 in 1992 and 12 in 1993.

High Court. In addition to the statutory requirements to guarantee the neutrality of the EMB, electoral commissioners were supposed to take an oath of office and follow a Code of Conduct to impartially exercise their administrative responsibilities.³⁶¹

In practice, however, there is a generalized consensus among most national and international country-level experts that the ECK's electoral commissioners, *unilaterally appointed* by Moi in 1991, were ideologically aligned with the ruling party. That is, there is agreement among experts that the EMB was formally, and informally, coopted by the Executive Branch. Moi won the 1992 presidency by a margin of over 10% against Kenneth Matiba, representing the Forum for the Restoration of Democracy–Asili party (FORD-Asili). This first multiparty election, however, was characterized by high levels of politicization, violence and fraud.³⁶²

Although Moi was elected by a relatively wide margin, the first multiparty elections were characterized by allegations of electoral manipulation, fraud (i.e., ballot-box stuffing), and ethnic

³⁶¹ According to section 41 of the Constitution, members of the legislature, public service office-holders and members of the Armed Forces were not allowed to be appointed as electoral commissioners. According to late Samuel Kivuitu (2001), former chairman of the EMB between 1997 and 2008, the Constitution safeguards the EMB from external manipulation by guaranteeing the tenure of its members, which were appointed for a renewable 5-year period and who enjoyed the same protection against removal as Judges of the High Court (i.e., they could only be removed from office after a special tribunal –appointed by the president– had determined that there was evidence of misconduct). For Kivuitu (2001), these constitutional provisions protected the ECK from the interference of any person, or authority, in connection with the performance of its work. These mechanisms were intended to promote “the independence of the ECK from harassment, intimidation, blackmail, pressure and the like from all likely sources.” For most country-level experts, however, these provisions that were supposedly to guarantee the neutrality of the election, were far from ensuring impartiality of electoral administration.

³⁶² According to a Human Rights Watch report, the results of the 1991 first multiparty elections were marred by allegations of ballot-box stuffing, and targeted ethnic violence in the Rift Valley Province. Human Rights Watch accused several prominent Kenyan politicians, including President Daniel arap Moi and Vice President, George Saitoti, of inciting and coordinating the violence (Human Rights Watch 1993). Available online: <https://www.hrw.org/report/1993/11/01/divide-and-rule-state-sponsored-ethnic-violence-kenya>

violence.³⁶³ According to Bosire, in the preamble to the 1992 presidential election opposition parties were more concerned with the unequal conditions of electoral competition –and the metaconstitutional powers of the president–, than with the configuration of the ECK’s executive board or the internal workings of the electoral bureaucracy.³⁶⁴

Five years later, in 1997, Kenya would have its second multi-party general election. It was until the preamble to this election when an Inter-Parties Parliamentary Group (IPPG) was formed by the largest parties –i.e., KANU, FORD-Asili, Democratic Party, and FORD-Kenya– represented in the legislature.³⁶⁵ According to authors like Branch (2011: 228) and Ajulu (1998: 277), the IPPG was an *informal party platform* designed to “blunt the impact of the demands of an electoral reform agenda promoted by the opposition” that culminated legitimizing the Moi reelection machine.³⁶⁶

³⁶³ Authors like Bratton and Van de Walle 1997, for instance, classify the 1991 Kenyan election as a flawed transition to democracy.

³⁶⁴ This also happened in Mexico. During the mid-1970s and early 1980, the opposition was initially concerned with the legal framework regulating electoral competition and political representation. It was not until the early 1990s when the formal and informal aspects of electoral autonomy became a priority in the political negotiation between opposition and the ruling party.

³⁶⁵ The IPPG was created as a response to the Moi’s administration legitimacy crises after the 1992 presidential election, where opposition parties, including the National Convention Executive Committee (NCEC), pressured for Moi to adopt a series of reforms that would allow to create more equal conditions of electoral competition and political representation. This is when the statement “No reforms, no elections” became the opposition’s motto (Ajulu 1998; NCEC 1997).

³⁶⁶ Ajulu (1998: 277) recognizes, however, that the IPPG had breakthrough effect by securing some important –although superficial– reforms. These included the amendment to the Public Order Act (Cap 56) to facilitate freedom of assembly and, perhaps more importantly, that the electoral process would be supposedly delinked from the state apparatus. Among the most important agreements were that the ECK would be responsible for managing the campaign process without the interference by the provincial administration; delegating to the ECK the capacity to hire prosecutors to expedite the process of electoral petition; and granting powers to the ECK in order for the EMB to monitor the media coverage by the Kenya Broadcasting Corporation (IPPG 1997).

One of the main informal agreements reached within the IPPG was the expansion of the ECK's executive board to 21 members and the inclusion of opposition parties in the nomination process of electoral commissioners. It was agreed that Samuel Kivuitu would preside the EMB and that each party represented within the IPPG would nominate up to 10 electoral commissioners on a proportional basis in accordance to the number of seats they had in parliament (Kivuitu 2001). The Executive Branch, however, reserved its formal right of unilaterally appointing all members of the ECK's executive board. According to country-level-experts like Bosire and Mitullah, during this election Moi remained as an extremely influential figure, but the partisan check and balance within the EMB's executive board slightly improved the standing of the opposition within the EMB.³⁶⁷

Allowing opposition parties to nominate electoral commissioners for the EMB became a key strategic decision that allowed elections to continue as the only legitimate mechanism to access power. Although this served more as a mean to legitimate Moi's mandate (Branch 2011), this informal *executive level* ICM, compared to the previous ECK's executive board that in charge of organizing the 1992, also allowed opposition parties to have a presence at the EMB's executive-level and have direct access to information and decisions that they did not have before. As recognized by Ajulu (1998), and most country-level experts, conditions of electoral competition were still significantly biased in favor of the ruling party, but the presence of the opposition within the EMB's executive board was perceived as a first concession of the regime.³⁶⁸

³⁶⁷ Interviews conducted by the author during fieldwork in Nairobi, Kenya. Spring 2014.

³⁶⁸ The main two limitations of this concession –i.e., allowing opposition parties to nominate ECK's electoral commissioners– was that this consociational scheme was only an informal agreement and, that the Executive Branch kept the legal –formal– responsibility to unilaterally appoint the EMB's executive board. According to Marshall (1998), the reforms adopted in 1997 did not address the problems in voter

The consociational agreement to have an informal *executive-level* ICM within the ECK was also in place in 2002 and lasted until the end of Kibaki's first tenure. Between October and December of 2002, the electoral commissioners –including the 10 members that had been nominated by opposition parties in 1997– were re-appointed for a second term in the ECK's executive board.

Kibaki, representing the National Rainbow Coalition (NARC), won the election by an extremely comfortable margin of over 30 percent of the vote against Uhuru Kenyatta, representing the official party (KANU).³⁶⁹ As recognized in the EU Kenya's 2002 General Election Observation Report (2002: 16), the 2002 general election was perceived positively by national and international actors:³⁷⁰

In its preliminary statement on 29 December 2002, the EU EOM concluded that the 2002 elections “mark an important step forward in the process of democratic development in Kenya.” The EU EOM further concluded that the people of Kenya were generally able to freely cast their votes for the candidates of their choice. The overall conduct of the elections constituted an example for other countries in the region, also because the electoral process resulted in the first transfer of power from one political group to another since independence. However, the elections also

registration procedures that left approximately two million Kenyans disenfranchised or constrained the constitutional powers of the executive.

This incomplete reform process left the country ill prepared for democratic elections. As in 1992, President Moi emerged victorious, but the electoral process has been described as chaotic, marred by irregularities and a highly repressive pre-election environment (Ajulu 1998).

³⁶⁹ While Kenyatta obtained approximately 1.8 million votes (30.2%), Mwai Kibaki obtained approximately 3.6 million votes (61.3%).

³⁷⁰ Although the elections were affected by the high levels of politicization and ethnic confrontation, the four decade rule of KANU came to an end and the country had its first alternation in power through relatively successful election. Compared to the 1992 and 1997 elections, the levels of violence reported across the country were significantly lower.

showed a number of shortcomings and some incidents of violence, which have raised concerns with the EU EOM.

From an administrative perspective, the 2002 elections were generally well conducted, the ECK and its staff were well equipped, and appeared generally competent and properly trained (EU Report 2002). According to most international organizations observing the election (i.e., the Carter Center, USAID/US Embassy, the British High Commission and the Donor Democratic Development Group, political parties, compared to the previous 1992 and 1997 elections, were able to campaign actively in a far more peaceful and conducive atmosphere than in previous elections.³⁷¹

As in previous elections, however, voter registration raised serious concerns among opposition parties and international monitoring organizations. According to the EU Report (2002), the register of voters was seriously flawed impeding a number of potentially eligible voters to register and obstructing many citizens, in the possession of the prescribed documents, from voting. While these flaws did not materially affect the result of this presidential election, the mission recommended updating the registry with urgency.

Political parties, through a relatively plural and balanced ECK's executive board, were able to indirectly access not only *executive-level* decisions, but also to get involved in *administrative* and *bureaucratic level* procedures through the EMB's committee system. The ECK had set in place a General Purposes Committee, which included liaison matters, a Voter Registration and

³⁷¹ As acknowledged in the EU Report (2002) the ECK had worked closely with the Institute for Education in Democracy (IED), among many other Kenyan non-governmental organizations, to improve internal management procedures and strengthening the ECK's capacity.

Computer Committee, a Legal and Electoral Reform Committee, a Finance and Planning Committee, a Committee on Programmes, which included voter education, and a Committee on Recruitment and Training. Through these committees, electoral commissioners were able to access information and manifest their concerns at different administrative levels.

Additionally, political parties were able to interact with the ECK through the adoption of the *Party Liaison Committee* (PLC). Although this this informal type of *external* ICM would later become formally recognized by the IEBC, it served as a communication mechanism between political parties and the EMB approximately one year before the election took place to discuss key organizational decisions related to the different stages of the election (i.e., voter registration, location or polling stations and operational procedures). According to the EU Report (2002 19):

Through regular meetings in the Party Liaison Committee, **the ECK started a close dialogue with political parties in early 2002**. The ECK and the parties discussed issues related to the organizational aspects of the electoral process (checking the voters register, lists of polling stations, new counting procedures). The date chosen for the 2002 elections was contested, but the ECK maintained its unanimous decision. **On occasions, the ECK would show a lot of flexibility with the political parties**, for example on 25 December 2002, when the ECK in consultation with the parties decided to ignore a provision of the law relating to the entitlement to vote if a voter's name was not on the voters' register.

After the 2002 alternation in power, a second major election that was perceived as successfully organized was the 2005 constitutional referendum. This allowed the ECK to begin building a positive reputation and, despite the constitutional mechanism granting the president the

unilateral capacity to appoint commissioners, it allowed the EMB to be recognized by most political actors and citizens as a relatively *de facto* autonomous institution.

Kibaki had campaigned promising a constitutional reform. Among the key proposals of his agenda was concentrating power in hands of the president at the expense of the prime minister and parliament. Kibaki's administration also advocated for a wide number of provisions ranging from bans on abortion and same-sex marriage, to equal rights for women, quotas for people with disabilities in public life, and the design of Kenya's flag. The debate over this constitutional reform generated a division within the ruling coalition. Approximately a quarter of Kibaki's cabinet opposed the policy, including Raila Odinga.³⁷²

Although the Kibaki and key government officials proactively campaigned for the “Yes” vote, the proposed constitutional reform was rejected. Given the high levels of illiteracy in the country, symbols were used in the ballots and political debate to represent the different alternatives (a banana representing “Yes,” and an orange representing “No.”) The proposed constitutional reform was rejected by approximately 58% of voters. Although violent events were registered during the campaign period (nine people died), the process itself is recognized by most country-level experts as a peaceful and well-organized process.

In the preamble to the 2007, Kibaki took a key decision affecting the *informal* 1997 IPPG arrangement allowing opposition parties to nominate approximately half of the EMB's executive board. This agreement had been in place during the 1997 and 2002 elections. It allowed ideologically aligned electoral commissioners with opposition parties to participate at different

³⁷² See: <https://www.theguardian.com/world/2005/nov/22/kenya.davidfickling>

levels (i.e., *executive, administrative, and bureaucratic*) within the ECK. According to most country-level experts, this consociational –and informal– arrangement, despite the increasing levels of violence, ethnic confrontation and unequal conditions of electoral competition in the country, had been key for the organization of relatively successful and credible elections. Especially during the 2002 peaceful alternation in power and the 2005 constitutional referendum where the motion that was being backed by Kibaki’s administration was clearly rejected.

Kibaki’s decision to unilaterally nominate and appoint the ECK’s members of the executive board, whose term had expired, in the preamble to the 2007 election severely undermined the elites’ trust in the ECK that had been built during the previous decade. The president, arguing he was exclusively making use of a constitutional mandate, unilaterally appointed electoral commissioners and marginalized the opposition. By doing so, he took away the spaces that were indirectly used by electoral commissioners endorsed by the opposition to participate and access key administrative decisions. According to the *Daily Nation*, one of the main journals in Kenya, Kibaki’s decision to unilaterally name new members of the ECK was perceived as “outrageous.”³⁷³

President Kibaki last night ignored pleas for cross-party consultations and named nine new Electoral Commissioners. This sets the stage for a confrontation between the Government and the Opposition as the country prepares for the General Election later this year.

The new commissioners have a five-year term, meaning they will preside over both the General Election later this year and the one in 2012. The appointment **was immediately**

³⁷³ See: Shimoli, Eric and David Mugonyi. 2007. “Outrage as Kibaki names new ECK team.” *The Daily Nation*. Kenya. January 12, 2007. Available online: <https://www.nation.co.ke/news/1056-165248-mbojrjz/index.html>

condemned by Mwingi North MP Kalonzo Musyoka as **“dictatorial” and a big blow to democracy**. Mr Musyoka, who was a guest on the NTV live talk show On the Spot with Julie Gichuru, said: **“This is an election year and the President is trying to rig the election in his favour.”** He added: **“This is a big blow to democracy. We thought President Kibaki was a stickler to the rule of law but this has not happened. We totally disapprove of this.”**

The new appointments were announced in a special edition of the Kenya Gazette dated yesterday. The new commissioners will replace eight commissioners whose terms expired last year and one who died. **Orange Democratic Party of Kenya leaders** meeting in Naivasha described the appointments as **“sad”**, **accusing the President of unilateralism**. They promised to issue a comprehensive statement today. The Opposition has insisted that President **Kibaki should convene a meeting with party leaders in the spirit of the Inter Party Parliamentary Group (IPPG) meetings of 1997** to come up with a new list of commissioners through negotiations.

The ECK which is being replaced by the new appointments was named after **political parties negotiated on a seat-sharing deal based on the number of seats in Parliament**. Though the new deal was not written into law, President Kibaki, who was then Leader of the Official Opposition, supported it. MPs from the President’s then Democratic Party actively joined those from Ford Kenya, Kanu and the Kenya National Congress in **hammering out the deal, which allowed the 1997 polls to be held**. The then President Moi, bowing to Opposition demands, at the time named commissioners appointed by opposition parties represented in Parliament. Contributing to the Motion to adopt the IPPG proposals, President Kibaki, who gave the Opposition’s response, chided those who had doubted that the IPPG talks would succeed.

...

ODM-K leaders Raila Odinga, Kalonzo Musyoka, Musalia Mudavadi, Peter Anyang' Nyong'o and William Ruto had **insisted that ECK commissioners should be appointed according to political parties' representation in Parliament.** This, they said, would **ensure the elections were monitored by an independent commission with representation reflecting the political reality in the country.** In fact, this was among the issues the ODM-K leaders and the committee on Administration of Justice and Legal Affairs were demanding to be included in the minimum reforms package for the elections to be seen to be free and fair. The Law Society of Kenya had also joined the debate saying the IPPG agreement should be adhered to. However, the Government has been silent on demands for consultations. **ECK chairman Samuel Kivuitu too has said the commission will not be seen to be representative if the nine slots were not filled in a manner reflecting the political reality in the country.**

Although there were many contributing factors leading to a violent post-electoral conflict in 2007, there is a generalized consensus that this decision negatively affected the ECK's reputation. It also eliminated the EMB's institutional capacity to channel external political pressures through an *informal consociational* ICM that had served as a communication, accountability and consensus building space for opposition parties within the commission.

According to the Kriegler Commission Report (2009), the ECK's role and administrative decisions –including organizational, procedural, and technical mistakes– during the preparatory phase of the election, during the election day, and in the following days of the election, also were contributing factors that increased the tension and levels of politicization that eventually led to a

violent ethnic conflict leaving behind approximately 1,500 dead and 600 thousand people displaced.³⁷⁴

³⁷⁴ Kibaki was declared the winner by approximately 230 thousand votes three days after the presidential election took place on December 27, 2007. Following the ECK's declaration of his victory, Kibaki was promptly sworn in for his second term on the same day and he immediately called for the "verdict of the people to be respected and for healing and reconciliation to begin."

During the day of the election, the ECK's chairman declared that there were some problems in the vote counting, noting that one constituency had reported a turnout rate of 115%, and shortly after he declared to the Standard that he "did not know whether Kibaki won the election" (see:

http://usatoday30.usatoday.com/news/world/2007-12-30-kenya_N.htm?csp=34, and <https://www.telegraph.co.uk/news/worldnews/1574462/Kenyas-poll-chief-does-not-know-if-Kibaki-won.html>).

Early results indicated that Odinga held a strong lead on December 28. One day later, on the 29th, the ODM declared Odinga the winner of the election. As more results were announced, however, Odinga's advantage shrank to approximately 38 thousand votes with almost 90% of the votes counted (180 out of 210 constituencies). On the morning of December 30, Raila Odinga publicly accused the government of fraud, urged Kibaki to concede defeat, and called for a recount. He said that the ODM would not challenge the election because the courts, as well as the ECK, had been coopted by Kibaki's administration. Supporters of Odinga's Orange Democratic Movement (ODM) alleged electoral manipulation.

Although international observers documented irregularities committed by both sides, most international organizations such as the European Union, declared the election had been characterized by serious administrative irregularities and classified it as a "flawed" election arguing the Electoral Commission had failed to establish "the credibility of the tallying process to the satisfaction of all parties and candidates" (EU Report 2007). Similarly, the United Kingdom's Foreign Secretary, David Miliband, declared that his country had "real concerns" about the election.

After the violent ethnic confrontation took place across Kenya's major cities, the Former United Nations Secretary, Kofi Anna, intervened to bring both government and opposition to the negotiating table. On February 28, 2008, a power-sharing agreement was signed by Kibaki and Odinga (The National Accord and Reconciliation Act of 2008), which established the office of the Prime Minister and created a coalition government. The power-sharing Cabinet, headed by Odinga as Prime Minister, was eventually named on April 13 and sworn in on April 17. Subsequently, on March, 2008, opposition parties and the government agreed to form to non-judicial bodies to investigate and report the main issues leading to this severe political and humanitarian crisis, the Independent Review Committee (IREC) and the Commission of Inquiry on Post-Election Violence (CIPEV). A few months later, in November of 2008, parliament disbanded the ECK, which would eventually be replaced by the Interim Independent Electoral Commission (IIEC) in May, 7 of 2009. See: Krieglner (2009); "2007-2008 Kenyan Crisis" Wikipedia. Accessed on 06/06/2018. Available online:

https://en.wikipedia.org/wiki/2007%E2%80%932008_Kenyan_crisis#cite_note-SABC-24;

"Kenya opposition cancels protests." BBC News. April 12, 2008. Available online:

<http://news.bbc.co.uk/2/hi/africa/7344816.stm>; and "Kenya Ethnic Clashes Intensify." Al Jazeera. January 28, 2008. Available online:

<https://web.archive.org/web/20080220193929/http://english.aljazeera.net/NR/exeres/CA34AA32-041D-497D-BE2B-A463562C6FFF.htm>.

Among the main areas related to the organization and operation of elections reviewed by the Independent Review Committee (IREC) were the i) institutional design and management; ii) security of tenure; iii) institutional (legal) independence; iv) composition of the ECK and appointment of commissioners; v) operation procedures of the ECK; vi) the ECK's secretariat; vii) funding of the ECK; viii) and the ECK's advisory role on legal reforms (Kriegler 2009). It is difficult to evaluate which of these areas had a greater impact for the 2007 post-electoral outcome. Several key aspects emphasized by the commission, however, are relevant for the argument presented in this work (Kriegler 2009: 3-10):

Institutional Independence

The ECK has sufficient institutional independence to discharge its mandate. However, by its own account, this is limited by its lack of financial independence and the general political behavior of the various actors in Kenyan elections. In our analysis, this paper provisions give ECK the institutional independence to do its work. *What is needed is an appointment process that inspires public confidence in the Commission and selection criteria that ensure commissioners have the integrity, sense of judgment and mettle to referee a political contest without being unduly influenced by political pressure.*

Appointment of Commissioners

Contrary to what has become customary in many countries with independent electoral commissions, the **President does not need to consult with any other institution or persons in appointing ECK members**. It is also worth noting that there are no legal criteria to guide the President in making such appointments (where in terms of professional, representation of diverse interests or otherwise). *This apparent lacuna in the legal framework has been the subject of such controversy over many years.*

Commissioners are appointed for (renewable) five-year terms. Because the first set of commissioners were appointed in the election year (1992), and another of each set of commissioners was appointed in the next election year (1997), *this time very shortly before the elections, the end of five-year cycle has currently coincided with an election year, potentially causing significant disruptions in the planning and implementation*. Ten commissioners were replaced in January 2007, with elections scheduled for December that year (the chairman's mandate was renewed only in December, after some uncertainty and public debate). Quite apart from the effect of the eventual new appointments, *uncertainty as to what the president would decide vis-à-vis retaining or replacing the vacating commissioners, as well as the absence of consultation where he did make new appointments, contributed to pre-election tension and undermined the ECK's credibility as an independent body capable of delivering fair elections.*

Debates on reforming the ECK led in 1997 to the Inter-Parties Parliamentary Group (IPPG) *agreement that the parliamentary opposition would supply the president with a list of nominees*, from which he would appoint ten commissioners. It could be argued that the

increasing number of members in itself makes reaching consensus on an issue more difficult than it otherwise would have been.

Although the IPPG accord was never entrenched in law, with the terms of commissioners appointed under the arrangement approaching expiry in 2002, President Moi renewed their appointments. After 2002, when commissioners died and concluded their terms, ***President Kibaki replaced them without reference to the IPPG accord. This caused little initial acrimony, but as he continued to replace commissioners in this manner –especially as the 2007 general elections drew closer– discontent surrounding the matter was rekindled.*** The President preferred to follow the letter of the Constitution, using his elusive prerogative to appoint new members, while the opposition demanded he observe the spirit of the IPPG agreement. ***The issue became particularly acute in 2007, in which year the President appointed fifteen members.***

As has been mentioned, in the ***absence of any consultative requirement, the Constitution grants the President total latitude in appointing ECK members.*** The only criterion stipulated – and even then, this applies solely to the chairman and the vice-chairman– is that they “shall be persons who have or are qualified to hold office of judge of the High Court or Judge of appeal.” In practice, this means that a Commission could comprise a majority of members lacking any professional experience or expertise in election management or other skills that could contribute to the judicious and evenhanded management of an electoral process. ***As the legislation now stands, Kenya’s electoral commissions does not seem to conform to any clearly defined appointment principles.*** Inevitably, ***its credibility suffers, since key stakeholders cannot feel a sense of (part) ownership of the structure, nor can they place much faith in its inherent professional competence.***

On Composition of ECK and Appointment of Commissioners

IREC recommends that the ***requirement for a broad consultative process prior to the appointment of ordinary members and the chairman of the ECK be given legislative grounding; consultation should include political parties and civil society in its broadest sense.*** It is not essential to any purpose that the actual appointment be made by the President. ***Alternative means should be considered, including appointment by Parliament.*** IREC recommends that the maximum number of commissioners be reduced to such a number as are functionally able to do the work. The currently bloated structure at the top should be trimmed radically.

IREC recommends that expiry of the ***terms of office of ECK members not coincide with election years.*** Ideally, a fully composed commission should be in office for two years prior to the conduct of general or presidential elections. IREC recommends that the ***ECK be made accountable to Parliament, without prejudice to its status as an independent body; this should affect the channels by which it establishes and seeks approval for its budgetary requests.***

...

Concerning Nominations

1. IREC recommends that ***a standing liaison committee*** be set up comprising the ***ECK and political parties*** as a first step towards the enactment of nomination rules which must be strictly adhered to.

The Kriegler Commission emphasizes two different aspects affecting the independence of the EMB. On one hand it focuses on the consociational aspect of the appointment process and, on the other, it focuses on procedural and legal aspects that could improve. Both of these recommendations would later become key for the conformation of the IIEC and the IEBC, which I describe in the following subsection.

The former, the consociational nature of the appointment, was recognized by the IREC by stating that despite having “the sufficient (formal) institutional independence to discharge its mandate,” the EMB “needed an appointment process that inspires public confidence...” It also noticed that the constitution grants the President the unilateral capacity to nominate and appoint the EMB’s electoral commissioners and that the absence of consultation were contributing factors to *pre-election tension and undermined the ECK’s credibility as an independent body capable of delivering fair elections.*

As noted by IREC, this unilateral appointment capacity had been questioned by the opposition a decade before, which led to the IPPG agreement to allow parties to informally participate in the nomination process. This informal consociational mechanism was key not only for the 1997 elections to take place, but also for the 2002 peaceful alternation in power, and a relatively successful 2005 referendum. It was Kibaki’s decision to neglect this agreement which generated discontent among the political elite and created an acute problem of credibility in the preamble to the 2007 process.

In the absence of any consultative requirement, “IREC recommends that the requirement for a broad consultative process prior to the appointment of ordinary members and the chairman of the ECK be given legislative grounding; consultation should include political parties and civil

society in its broadest sense.” As shown by Loret de Mola (2014) in his comparative study of appointment mechanisms of electoral authorities, the vast majority countries nominate and appoint electoral commissioners, directly or indirectly, through a consensus process involving the legislature.³⁷⁵

As in the case of Ghana, the direct appointment of commissioners by the executive branch is more likely to generate more tensions and undermine the credibility in the impartiality of the EMB. IREC recognized this situation and emphasized that it was not essential to any purpose that the actual appointment of electoral commissioners is made, unilaterally, by the President. The Kriegler Commission recommended considering alternative means, such as including the appointment by Parliament.

Related to this same issue, the IREC recognized that the 2007 legislation did not allow the political elite to conform to any clearly defined appointment principles and, thus, the credibility of the EMB suffered because “the key stakeholders cannot feel a sense of (part) ownership of the structure, nor can they place much faith in its inherent professional competence.” As described earlier, the informal IPPG agreement to indirectly establish an *executive level* ICM through the consociational appointment of commissioners that were endorsed by different political parties, gave the political elite that “sense of ownership.” Not only of the appointment procedure, but also to indirectly have access to key decisions and procedures within the different administrative levels of the EMB.

³⁷⁵ In many cases this process involves another branch of power (i.e., the judiciary) or the participation of civil society.

The latter, the procedural and legal aspects of the process that could be improved, were recognized by the Kriegler Commission, first, by emphasizing that the EMB “needed selection criteria that ensure commissioners have the integrity, sense of judgment and mettle to referee a political contest ...” Second, the IREC emphasized that renewing the EMB’s executive board shortly before each general election represented a serious risk that had caused “significant disruptions in the planning and implementation of elections.” And third, it recommended reducing the total number of members in order to become more functional and that the ECK should be made accountable to Parliament, without prejudice to its status as an independent body, to improve the channels by which the EMB seeks approval for its budgetary requests.

All of these observations were considered in the conformation of the new EMB once the constitutional reform was approved in 2010. The size of the EMB’s executive board, the timing of replacing electoral commissioners, and its reliance on parliament for budgetary purposes were included in the new legal framework. The commission emphasized the need to include legal criteria, mainly a detailed description of qualifications, that would guarantee the professionalism and impartiality of electoral commissioners, as well as any other characteristics that would allow the executive branch to guide its decision.

This last recommendation, as argued in previous chapters, assumes that formal rules establishing the “non-partisanship” of electoral commissioners can guarantee their impartiality. To the contrary, and as argued in the following subsection, I argue that it is the embedded system of checks and balances (ICMs) which allows EMB’s, in semi-competitive environments, to create the means to channel external political pressures and reinforcing formal rules and procedures.

Although the rest of the Kriegler Commission identified and formulated additional organizational and administrative recommendations that would help the EMB improve its procedures, it neglected a key aspect: the direct or indirect inclusion of consociational mechanisms that would allow the political elite to, formally or informally, have access to the wide array of administrative decisions and to increase the levels of transparency and accountability at the *executive, bureaucratic and policy* levels.

That is, with its recommendations, the IREC indirectly suggested the configuration of a *de jure* independent –insulated– EMB where its “non-partisan” commissioners would guarantee the neutrality of the Electoral Commission, allowing it to become a *de facto* autonomous EMB in the long term. The IREC did emphasize however, the relevance of formally adopting a “standing liaison committee” between the ECK and political parties as a first step towards the enactment of nomination rules. As recognized in the 2002 EU Report, the ECK had already adopted informally a Political Parties Liaison Committee (PPLC) to communicate with parties. Given the successful experience of the Party Liaison Committee (PLC) in South Africa (Clive 2015), however, the IREC recommended the EMB to formally adopt this type of external ICM with political parties.

In the following subsection I explain the creation of an interim EMB (the IIEC) to manage elections and the inception of a new Independent Electoral and Boundary Commission (IEBC) after the 2010 constitutional reform. I explain why in spite of adopting most recommendations that were based on best international standards, Kenya’s EMB was not able to build a positive reputation and recognized as a *de facto* autonomous institution almost a decade after its inception.

7.3.3 *De Jure* Autonomy and Institutional Insulation (Post-2010)

Many factors affect an institution's capacity to build a positive reputation. In the case of Kenya, two of the most frequently mentioned explanations for the EMB's incapacity to build a positive reputation have been a weakly institutional setting affected by both corruption and administrative inefficiencies, as well as the lack of a highly professionalized bureaucracy (EU Report 2013). Despite the a newly configured EMB –the Independent Electoral and Boundary Commission (IEBC)– was created in 2011, both in 2013 and 2017 the presidential elections were questioned and challenged by the opposition. In 2017, the presidential election was nullified, and the main opposition party decided to withdraw from the second race organized by the IEBC. Similar to Mexico's 2006 post-electoral crisis, Raila Odinga, the main opposition candidate, proclaimed himself as the legitimate president of Kenya.³⁷⁶

In this subsection I analyze some of the key aspects behind the institutional configuration of the newly created IEBC and explain what factors have prevented this institution to be recognized as a *de facto* autonomous EMB. After the 2007 post-electoral conflict, the Kriegler Commission (IREC) formulated a series of recommendations in 2008, which led to the disbandment of the ECK, the creation of an Interim Independent Electoral Commission (IIEC) to organize a constitutional referendum between 2009 and 2011, the adoption of a new Constitution in 2010, and the establishment of a new *de jure* autonomous EMB (IEBC) in 2011. Additionally, a

³⁷⁶ In the 2006 port-electoral conflict, left-wing candidate, Andrés Manuel López Obrador did not recognize the electoral result or the Electoral Tribunal's resolution and proclaimed himself the legitimate president of Mexico.

series of statutes regulating elections, political parties, campaigns and party financing, as well as legal disputes were also adopted during this period.

What results paradoxical about this case is that, despite renovating the institutional and bureaucratic apparatus, the EMB has been unable to build a positive reputation. I argue that in addition to the external elements that have historically affected electoral competition in Kenya – i.e., high levels of ethnic confrontation, the unequal condition for competition and a weakly institutionalized party system–, the internal institutional arrangement insulating the institution from external actors has also affected the IEBC’s capacity to become a *de facto* autonomous EMB. This institutional insulation has prevented the political elite from adopting a series of consociational mechanisms (ICMs) allowing the main stakeholders competing for power to interact, supervise, audit, recommend, and participate within the EMB at different administrative levels.

As recognized by most international monitoring agencies, administrative and bureaucratic inefficiencies have significantly affected the IEBC’s reputation during the 2013 and 2017 elections (EU Report 2013 and 2017). The institutional insulation of the IEBC and the “minority” conformation of its executive board, as acknowledged by country-level experts like Kivuva and Chiloba, have constrained the capacity of political actors to interact within the commission, making it easier for the losing side to not recognize the legitimacy of the EMB’s decisions and to question its *de facto* independence.³⁷⁷

³⁷⁷ Fieldwork interview with Joshua Kivuva, professor of political science at the University of Nairobi and Ezra Chiloba, former UNDP elections expert in Kenya and current Chief Executive Officer of the IEBC between 2015 and 2017. Nairobi. Spring of 2014.

According to Issack Hassan, former chairman of the IIEC and of the IEBC between 2011 and 2016, after the ECK had been disbanded by parliament in November 2008, the coalition government –also known as the *Government of National Unity*– had three objectives: i) creating an interim electoral commission; ii) begin the works for renewing the registry of voters in Kenya; and iii) organize a referendum to approve a new Constitution, establishing the framework for a new electoral commission.³⁷⁸

The Interim Independent Electoral Commission was formally established on May 7 of 2009. Informally, the nomination and appointment processes were negotiated by both Kibaki and Raila Odinga. According to Winnie Mittulah, Director of the Institute for Development Studies at the University of Nairobi, they decided to appoint a group of nine electoral commissioners with a technical and legal background that would be able to design the country's new electoral bureaucracy and implement key technical administrative procedures, such as the registration of voters and renew Kenya's electoral cartography. Kibaki and Odinga decided to create an executive board that would have a balanced regional representation, where no ethnic group had the capacity to override others, and where the chairmanship would be given to Somali (a minority ethnic group that was perceived as neutral).

According to Professors Nyong'o, Okero and Oloo, the informal system of checks and balances that had prevailed at the ECK's *executive-level* between 1997-2002 (product of the IPPG agreement), was not in place anymore. The nomination and appointment of the IIEC's executive board was based more on technical and legal qualifications, than on ideological or ethnic ties.

³⁷⁸ Fieldwork interview with Issack Hassan at the Independent Electoral and Boundary Commission's Headquarters. Nairobi, Kenya. Spring 2014.

Hassan had practiced private law, specializing in commercial and constitutional law, and had also served as a Commissioner on the Constitution of Kenya Review Commission (CKRC) from 2000 to 2005. His appointment as chairman of the IIEC in 2009 was seen as neutral by most country-level experts.

At the time, the challenges of the IIEC were significant. A new voters registry had to be built, an electoral boundary delimitation process had to be implemented, and a new bureaucratic institution had to be designed. According to Joshua Kivuva, political scientist at the University of Nairobi, automated registration of voters was implemented across 18 constituencies and the 2010 constitutional referendum was successfully organized. Voters were asked if they approved the Constitution that had been previously approved by the National Assembly. The referendum had a high level of turnout (approximately 8.9 million people, out of total of 12.6 million registered citizens, casted their vote) and it was approved by approximately 70% of the votes (IIEC 2010).

Both Kibaki and Odinga had campaigned in favor of the referendum and, although the levels of politicization were relatively low when compared to previous elections, the performance of the IIEC was positively perceived by citizens and the political elite. The new 2010 Constitution included most of the recommendations that had been formulated by international organizations and the Kriegler Commission in 2008 (EU Report 2013). In the preamble to the 2010 Constitution, the IEBC enjoyed high level of trust and support among citizens. According to the EU electoral observation mission, the IEBC “was set up through a long, rigorous and transparent consultation process carried out to elect the commissioners and culminating in the approval by the National Assembly and the President.” (EU Report 2013).

According to the 2010 Constitution, the IEBC was established as a *de jure* independent institution responsible for supervising and conducting elections in the country. The EMB not only was granted formal independence at the constitutional level but was also guaranteed financial and administrative autonomy. Article 250 established that independent commissions shall consist of at least three, but not more than nine members and, in order to guarantee the impartiality of the EMB, Article 88 established that any person that “within the preceding five years, held office, or stood for elections as a member of Parliament or of a county assembly; or a member of the governing body of a political party; or holds any State office” would not be eligible for appointment.

In November of 2011, the IEBC was formally established with an executive board formed by seven electoral commissioners and a chief executive officer acting as the commission secretary.³⁷⁹ Article 250 of the Constitution established that the chairperson and electoral commissioners shall be approved by the National Assembly and appointed by the President. This article also established that “Appointments to commissions and independent offices shall take into account the national values referred to in Article 10, and the principle that the composition of the commissions and offices, taken as a whole, shall reflect the regional and ethnic diversity of the people of Kenya.”

The institutional configuration of the IEBC followed closely the recommendations that international monitoring organizations –i.e., the European Union Observation Mission– and the Kriegler Commission had formulated after the 2007 post electoral conflict. There were three formal institutional arrangements that were set in place to guarantee the impartiality of the

³⁷⁹ The latter shall be appointed by the members of the commission.

electoral commission. First, the Constitution was clear about the qualification that should guide the nomination and appointment process. It clarified, for instance, that the EMB's executive board should be formed exclusively of "non-partisan" electoral commissioners (with no link to government). Second, it established an interbranch appointment mechanism involving both the legislative and the executive branch. And third, it established that the composition shall reflect the regional and ethnic diversity of the people of Kenya.

These three formal mechanisms were key for constraining both the appointment process and the internal dynamics within the IEBC since its inception. The first two, were a product of the recommendations formulated by IREC. In the case of the first mechanism, it was assumed that a constitutional clause establishing that the appointment of person with no previous partisan ties or previous experience in government would guarantee the impartiality of the board.³⁸⁰ During the nomination and appointment process, this generated a prolonged and detailed discussion about the professional background of each one of the members of the commission. The second mechanism, the interbranch requirement for appointment, took away from the executive branch the unilateral capacity to designate the EMB's executive board. This obligated the political elite to build consensus over the appointment process and was seen as favorable by most political actors and country-level experts. Lastly, the third mechanism emphasized the importance of creating a commission representing the regional and ethnic diversity.

³⁸⁰ As I discussed earlier in previous chapters, this idea is based on a Rawlsian perception of electoral commissioners, where "non-partisan" members act impartially, do not interact within the institution taking sides or forming blocks based on the ideological alignment with the party or political group that sponsored them through the appointment process.

This last constitutional requirement is important because it has its origin in the 1963 Constitution, which established that eight, out of the eleven members of the ECK, should represent each one of the seven regions of the country and the area of Nairobi. Since ethnic confrontations had been present since the reintroduction of multiparty politics in 1992, this constitutional clause was introduced in 2010 to prevent that the EMB could be informally coopted by a majority of electoral commissioners with ties to one of the predominant ethnic groups (Kikuyu and Luo) that had been in conflict since the country's independence.

These three mechanisms prevented the two main political factions in the country to create informal ties with the EMB's executive board or to establish an *executive-level* ICM as had happened in the 1997-2002 period. Issack Hassan, a Somali, was appointed as Chairman of the IEBC. Not only he belonged to a minority ethnic group but, at the moment of the nomination and appointment process, there were no clear ties with a specific political faction or evidence of collaborating with a previous administration. The regional and ethnic minority logic during the appointment process impeded the political elite to create an effective system of checks and balances within the commission.

To the contrary, Hassan was appointed chairman because his work leading the IIEC between 2009 and 2011, was seen positively by the two political leaders –Kibaki and Odinga– negotiating the conformation of the new EMB and his ethnic background, at the moment, was perceived as “neutral.” Although electoral commissioners were in charge of appointing the CEO of the IEBC, country-level experts like Richard Bosire, political scientist at the University of Nairobi, recognize that Raila Odinga had initially backed the appointment of Hassan as chairman and informally negotiated the appointment of James Oswago as Chief Executive Officer of the IEBC.

Political parties were formally included in in IEBC through the adoption of the Political Parties Liaison Committee (PPLC). The effect of this *external* ICM on the capacity of the IEBC to build a positive reputation, however, was rather limited. It cannot be compared, for instance, to other formal and informal *external* ICMs of this type adopted by the IEBC counterparts in Ghana – i.e., the IPAC– or South Africa –i.e., the PLC– and that have had a major impact on the capacity of these EMBs to build a reputation as *de facto* autonomous EMBs. In Kenya the PPLC had been informally adopted by the ECK during the 1997-2002 period, and its institutionalization was recommended by the Kriegler Commission in 2008.³⁸¹ The main limitation of the PPLC has been that given the fragmentation and volatility of the party system in Kenya, party representatives

³⁸¹ Johann Kriegler, former chairman of South Africa’s Independent Electoral Commission and who led the IREC in 2008, promoted the formal adoption of mechanisms like PPLC in Kenya. According to Clive (2015), the Party Liaison Committee (PLC) has been a highly effective conflict resolution mechanism within the South African EMB.

According to the Office of the Registrar of Political Parties, which is the office in charge of regulating the formation, registration, and funding of political parties, the PPLC was formed following discussions between IIEC, Registrar of Political Parties and all the 47 registered political parties in 2009. They adopted the Nakuru Resolutions in March 2010. In order for political parties to join the PPLC, they are required to subscribe and agree to be bound by the Nakuru Resolution of 13th March 2010. Membership is only open to all fully registered political parties.

Formally, The Political Parties Act, 2011 Sec (38) establishes Political Parties Liaison Committee at the National and County Level. The principal function of the PPLC is to provide a platform for dialogue between the Registrar, Electoral Commission and political parties. The objectives of the PPLC are: a) To champion and advocate for free, fair, peaceful and transparent electoral environment and processes in Kenya; b) To provide a platform for structured multi-party dialogue between Political Parties and the Electoral Management Body on issues relating to the organization and conduct of elections and the electoral environment generally; c) To enhance genuine interaction, experience sharing and information exchange between political parties and the Electoral Management Body (EMB) as a way of building trust and confidence in the electoral process; d) To identify gaps and shortcoming in the electoral law and process and adopt a consultative and pro-active approach in making suggestions for improvement; e) To carry out any other objective as the Political Parties’ Liaison Committee shall deem necessary. In June of 2016, for instance, the PPLC decided to create six subcommittees to discuss issues related to: 1. Finance; 2. Legal and Dispute Resolution; 3. Internal & External affairs; 4. Civic, Political Education, & Publicity; 5. Electoral Process; and 6. Audit & Compliance. (See: Office of the Registrar of Political Parties: (<http://www.orpp.or.ke/index.php/en/extract-of-the-report-on-the-analysis-of-the-okoa-kenya-initiative>).

within the EMB do not work as effective checks at the different administrative levels, nor they serve as effective communication agents with the political elite.

As described during a fieldwork interview by Okero Isaack Otieno, Democratic Governance Expert of the United Nations Development Program for the Strengthening of Electoral Processes in Kenya, “political parties are not seen as a counterweight to the EMB, they [referring to the IEBC electoral commissioners] treat parties like children. Political parties do not have real oversight capacity within the EMB, they do not have stable platforms. Parties do not –and cannot– give the IEBC sleepless nights, only Raila Odinga can do that.” Issack Hassan, former chairman of the IEBC, confirmed that –in practice– the PPLC in Kenya has functioned more as a top-down information mechanism. Compared to Ghana’s IPAC, which became a highly effective consensus building and conflict resolution mechanism in the 1990s, Hassan considered that Kenya’s PPLC has served as a platform for the IEBC to communicate with all registered parties and to “keep them on the same track” regarding the different phases of the process, but never as a conflict resolution mechanism between the political elite and the EMB.³⁸²

³⁸² According to Senator Peter Nyong’o, Secretary General of ODM, the PPLC was not an effective conflict resolution mechanism. In a fieldwork interview during the Spring of 2014, Nyong’o recognized that “this party platform only met when the commission wanted it to meet, too many parties were represented within the PPLC, and it was hard to get any satisfying answer from the institution.” He said that they had formally manifested their concerns within the PPLC regarding a) the IEBC did not offer parties the proper channels to audit the machines that would be used during the election (i.e., lack of transparency and accountability); b) the security of electoral materials and the guarantee that state security forces would not intervene favoring the ruling party (i.e., security conditions before, during, and after the election) and c) state intervention and the illegal use of civil servants and security forces at the regional level (i.e., unequal conditions of electoral competition). According to Nyong’o, the ODM took to the PPLC all of these concerns, but the party never received a satisfactory response from the IEBC. They were forced to go to Court, were the approximately 180 petitions filed by his party revolved around these issues. For Nyong’o, however, the IEBC’s executive board and the Judiciary had been coopted by the ruling party. He explained that the logic behind Moi’s saying of “why pay for an expensive lawyer, when the judge is cheaper,” still

The expectations on the performance of the IEBC for the 2013 elections were very high. The IIEC had set the ground for an increasing public confidence in electoral management. The new 2010 Constitution met the most recommendations –i.e., based on good international practices and standards– that had been formulated after the 2007 post-electoral conflict, a secondary legal framework had been enacted between 2010 and 2011 (e.g., The Political Parties Act and The Elections Act), the EMB’s executive board was formed by “non-partisan” electoral commissioners representing the regional and ethnic diversity of the country, and the 2011 registration process had been successfully carried out.

The configuration of the IEBC’s executive board was informally controlled by the opposition. According to UNDP elections expert, Okero Isaack Otieno, a public announcement to renew the electoral commission was made, an interview panel was created and chaired by the opposition (ODM). Although the work of the IIEC between 2009 and 2011 was seen positively by the two main competing factions –Kibaki’s administration and Raila Odinga–, the ODM leadership insisted in renovating the board. Hassan, who had chaired the IIEC and belonged to the

prevailed in Kenya’s party politics and that commissioners and judges in Kenya usually end up “responding to the interests of whoever butters their bread the most.”

This was confirmed by, Partick Mutahi, a policy analyst in Nairobi collaborating with The Nation, “the matters of the register are sole domain of the IEBC and the PPLC cannot intervene. Hence, there is little that parties could have done through this mechanism to ensure the quality of the registry. The IEBC is an independent body and any dispute with the parties ends up in court. More than an accountability mechanism to promote transparency and the enactment of formal rules and procedures by the IEBC, the PPLC serves more as an information and conflict resolution among the parties –or conflicts that parties have internally–, but not as an accountability/monitoring mechanism. Also see:

<https://www.nation.co.ke/oped/opinion/-little-has-been-learnt-from-the-Kriegler-Commission/440808-3204984-6rgechz/index.html>

Somali ethnic group, could stay because both his role as head of the IIEC and the adoption of new technology to aid in the creation of a new registry were seen positively by most political actors.³⁸³

The opposition insisted in appointing a “minority” executive board representing the country’s regional and ethnic diversity in order to guarantee the neutrality of the commission. According to Otieno, the opposition initially believed that the conformation of a “minority” board would prevent the Kikuyu elite –i.e., Kibaki’s administration– gaining control of the EMB as had happened in the preamble to the 2007 election. According to Ezra Chiloba, Electoral Analyst of the UNDP in Kenya, the vast majority of the IEBC’s commissioners appointed in 2011 did not have previous political trajectories or salient public records. Except for Hassan, and a former Ambassador, the rest of the EMB’s members came from the private practice and were not ideologically aligned to the main political/ethnic factions competing for power.

For Winnie Mitullah, Director of the Institute of Development Studies, the conformation of the IEBC’s “minority” executive board based on the ethnic and regional diversity, prevented the political elite to establish ties within EMB. In addition to appointing a “non-partisan minority based” executive board, the opposition informally pressured commissioners to appoint James Oswago as the Chief Executive Officer –Executive Secretary– of the IEBC. Oswago had previously collaborated with Hassan at the IIEC and his appointment was endorsed by the ODM. According to Otieno, the ODM leadership perceived this a key position within the IEBC because of its administrative responsibilities and control over the bureaucratic structure. By having

1.1 ³⁸³ See: “PNU fears raila crafting friendly electoral team.” Daily nation. 09/17/2018. Available online: <https://www.nation.co.ke/news/politics/PNU-fears-Raila-crafting-friendly-electoral-team-/1064-1238108-a1u81ez/index.html>

someone they could trust, they would minimize the risk of bias in the EMB's main administrative areas.

A few weeks before the 2013 election took place, however, political tensions began escalating. According to most country-level experts interviewed during fieldwork, the IEBC's inconsistent administrative decisions around the *procurement* process to acquire electronic equipment during the preparatory phase of the election, became one of the most salient issues and rapidly escalated into accusations of political corruption and biased decisions made by the EMB favoring the ruling party. As recognized by the EU Report (2013: 3-4):

The efficiency of the IEBC was sometimes **hindered by the inconsistencies in the decision-making process**, resulting in a series of delays such as a **three-month delay in voter registration due to procurement difficulties**, late decisions regarding **polling stations and distribution of materials**. In addition, the IEBC's **investment in technology to ensure transparency and efficiency**—specifically in relation to voter registration and identification, as well as the processing of results—**failed to deliver**. The collapse of both the Electronic Voter Identification Device (EVID) and the Electronic Transmission Results System (ETRS) **removed the guarantees which technology was supposed to bring to the elections**. What is more, according to the EU, the **processing of official results was lacking in transparency**. Neither election observers nor party agents had adequate access to the process in the constituency, county and national tallying centers.

Although international monitoring organizations such as the EU recognized the validity of the 2013 electoral process and electoral results, the administrative irregularities of the IEBC

negatively affected the EMB's perception as a *de facto* autonomous institution.³⁸⁴ Despite all the formal and administrative efforts to increase the credibility in elections and confidence in electoral management, the EMB was accused of being coopted by the ruling party. Raila Odinga, publicly accused the IEBC of rigging the election and challenged the results in court. In a public interview after the election Odinga declared:³⁸⁵ "Rigging of an election is not just on the polling date. I don't know whether it is by design or by omission."

James Oswago, the IEBC's Executive Secretary and whose appointment had initially been endorsed by the ODM leadership, was accused of corruption, suspended from the IEBC and accused of being "bribed" by the regime.³⁸⁶ For country-level experts like Kivuva, Bosire and Otieno, the administrative inefficiencies and the corruption scandals around the 2013 procurement process were extremely harmful for the IEBC's reputation. Although the adoption of new technology was supposed to increase the confidence in elections, administrative mistakes eroded the trust that had been built between 2009 and 2013.³⁸⁷

³⁸⁴ The EU Report (2013: 1) acknowledges: "Kenya's General Elections were characterized by a huge society-wide push for peaceful, transparent and credible elections. Kenyans should be congratulated for their civic pride and responsibility, queuing patiently for long hours to cast their vote. While several serious violent incidents occurred in some parts of the country, overall the atmosphere was calm, and the democratic spirit of Kenyans prevailed."

³⁸⁵ See: [odinga alleges unfairness before kenyan vote. Reuters. 03/02/2013. Available online: https://www.reuters.com/article/us-kenya-elections-odinga/odinga-alleges-unfairness-before-kenyan-election-idusb92107h20130302](https://www.reuters.com/article/us-kenya-elections-odinga/odinga-alleges-unfairness-before-kenyan-election-idusb92107h20130302)

³⁸⁶ See: <https://www.nation.co.ke/news/politics/IEBC-to-name-Oswago-successor-on-Monday/1064-2585820-heb181/index.html>

³⁸⁷ According to Bosire, electronic equipment was not only turned in late (voting kits were being delivered to electoral officials one or two days before the day of the election) but, in many cases, the equipment did not work. It was reported that the vast majority of officials that were supposed to manage the equipment had not been properly trained. This was confirmed by Professor Oloo, who emphasized that the inefficiencies in the procurement process, and the late delivery of equipment, undermined the credibility of the election because "citizens were expecting an automated process, and they ended up in long lines and with machines that were not working."

According to Bosire, the administrative inefficiencies surrounding the procurement process also revealed the existing tensions between parliament and the IEBC. According to Hassan, the 2010 constitutional framework made the EMB accountable to parliament. Since the IEBC's budget required the approval of the legislative branch, this external accountability mechanism indirectly made the EMB rely on the legislature to define internal decisions, such as the type of technology that would be needed to guarantee the impartiality of the election, and how much financial resources would become available to purchase such technology. According to Kivuva, the institutional arrangement adopted with the 2010 Constitution assumed that having an external check –i.e., parliament– would allow parties to indirectly acquire oversight capacity over the administrative decisions of the EMB, without having parties directly intervening in the IEBC's administrative decisions.

This external check, however, became counterproductive since the parliamentary intervention in the procurement process –after it became a public scandal– was perceived as a violation of the IEBC's independence in 2013. This institutional design –i.e., having a third institution acting as an external check–, in part, responded to the necessity of insulating the EMB from political actors. According to Kivuva, creating an EMB accountable to the legislature was perceived as a preferred mechanism to embedding parties within the IEBC. Although creating a “non-partisan minority” electoral commission was originally intended to guarantee the impartiality of the EMB, administrative inconsistencies –i.e., the procurement corruption scandal or the lack of adequate planning causing a delay in the registration process– rapidly became a reason for the opposition to refute the IEBC's *de facto* autonomy.

Institutional insulation, in this specific case, resulted detrimental to the EMB. Given the absence of *executive, administrative, bureaucratic* and *policy* level ICMs, the IEBC was “abandoned” by the political elite –which had initially endorsed its “non-partisan minority” configuration justifying it as a source of independence– and accused of being coopted by the ruling party. In highly politicized and competitive environments, institutional insulation can become a double edge sword. On one hand, insulation can serve as a mean to guarantee impartiality but, on the other, it can be used against the institution’s own reputation when there is evidence of bureaucratic incompetence.

In the 2006 presidential election, for instance, the EMB –administratively speaking– was highly proficient. Given that political parties were embedded within the EMB –formally and informally– at different administrative levels, it was harder for the losing party to disqualify and question –publicly and in court– the legitimacy of the IFE’s administrative decisions. In Kenya, administrative incompetence immediately became a source of confrontation and it was rapidly used by opposition as evidence of the EMB’s lack of *de facto* autonomy. In Raila Odinga’s words: “Rigging of an election is not just on the polling date. I don’t know whether it is by design or by omission.”³⁸⁸ *That is, although it is hard to prevent a losing party from recurring to the disqualifying strategy –e.g., using the “I did not lose, they cheated” argument– in third-wave countries holding elections in semi-competitive environments, it is harder proving that administrative inefficiencies in electoral management were not politically motivated in those cases where electoral institutions have been insulated from internal checks and balances.*

³⁸⁸ See: <https://www.reuters.com/article/us-kenya-elections-odinga/odinga-alleges-unfairness-before-kenyan-election-idusbre92107h20130302>

In the inter-election period between 2013 and 2017, the Kenyan political environment maintained the high levels of politicization and ethnic confrontation among the two main competing factions. For the former IEBC's chair, the country was not far from experiencing again a similar violent outburst. Kenyan politics have historically revolved around a dynamic were "the winner takes it all." According to Hassan, this logic has made it extremely difficult for the political elite to reach agreements and decrease the tension between the two main ideological factions. The EMB, according to Hassan, has been caught in the middle of this conflict. While conducting fieldwork in Nairobi in the Spring of 2014, more than one year after the presidential election had taken place, one of the main demands of the opposition (ODM) was the disbandment of the IEBC.³⁸⁹

For Odinga, the administrative irregularities of the 2013 elections were clear evidence electoral manipulation and that the EMB had been informally coopted by Kenyatta's administration. According to Hassan, former chairman of the IEBC, by not recognizing the IEBC as a legitimate institution, Odinga found a way to pressure Kenyatta's administration. By discrediting the IEBC, the opposition was discrediting the government. When I interviewed him in the IEBC's headquarters he confessed that the environment was so politicized, and animosity was so bad, that he believed that a violent confrontation could take place at any time. He also manifested feeling concerned for his personal security.

³⁸⁹ While conducting fieldwork in Nairobi in the Spring of 2014, for instance, I was invited to a political rally organized by Orange Democratic Movement party at Uhuru Park. Raila Odinga had just returned to Kenya from a three month stay in the United States and he was demanding the disbandment of the IEBC in order to be reestablish an institutional dialogue with Kenyatta's administration. This issue, remained as one of the opposition's priorities during Uhuru Kenyatta's first term (2013-2017) in government. At the time, other salient issues on the ODM's agenda were security, terrorism, economic development and corruption.

Things did not change significantly for the 2017 election. The IEBC failed again to organize a credible election. The level of confrontation between Kenyatta's administration and the opposition made it really hard for the political elite to reform the EMB in such a way that they could build a consociational scheme by including ICMs at different administrative levels. The IEBC's administrative decisions were recurrently questioned by the opposition, and technical irregularities and corruptions scandals were, once again, used by the opposition to accuse the EMB of being informally controlled by the ruling party before, during and after the election took place.

After the Supreme Court nullified the August presidential election and opposition withdrew from the second presidential race held in October.³⁹⁰ Shortly after, Raila Odinga declared himself the legitimate president of Kenya.³⁹¹ According to the EU Report (2017):

³⁹⁰ According to The New York Times: "The election on August 8 was conducted peacefully and was largely praised by international observers. But David Maraga, the court's chief justice, declared the result "invalid, null and void" after siding with the opposition, which had argued that the vote had been electronically manipulated to assure a victory for President Uhuru Kenyatta.

The Supreme Court decision came as a surprise, even to Mr. Odinga and his supporters, who had complained about election irregularities. A top election official in charge of voting technology was killed about a week before the election, and although the casting of ballots went smoothly, the electronic transmission of vote tallies was flawed, leading the opposition to assert that as many as seven million votes had been stolen.

The Independent Electoral and Boundaries Commission, which was in charge of the vote, "failed, neglected, or refused to conduct the presidential election in a manner consistent with the dictates of the Constitution," the court said.

The six-judge Supreme Court found no misconduct on the part of the president, Mr. Kenyatta, but it found that the commission "committed irregularities and illegalities in the transmission of results" and unspecified other issues. "Irregularities affected the integrity of the poll," Justice Maraga told a stunned courtroom."

See: Kenya Supreme Court Nullifies Presidential Election. September 1, 2017. The New York Times. Available online: <https://www.nytimes.com/2017/09/01/world/africa/kenya-election-kenyatta-odinga.html?Mcubz=3>

³⁹¹ See: <http://www.bbc.com/news/world-africa-42870292>

Prior to the 2017 elections an **electoral reform process was undertaken extremely close** to election day. This resulted in a compressed timeframe that put extremely high levels of **operational pressure on the new IEBC commissioners**, including in regard to the **adoption and use of election technology**. This was particularly difficult in a highly politicized environment. Of the 22 recommendations made by the 2013 EU election observation mission (EOM), it appears that only 2 have been fully implemented.

...

Despite improvements, there is a persistent lack of trust in the **IEBC**, showing a need for enhanced independence and accountability. Given the tensions between political camps, the **IEBC needed to be above suspicion and to be transparent and trusted by all. The IEBC did not sufficiently consult stakeholders and despite some efforts public communication lacked sufficient structure, consistency and depth**. The Supreme Court's annulment of the presidential election put the IEBC under **intense pressure and some internal IEBC divisions became very apparent**. Nevertheless, the IEBC made significant technical improvements that were evident on the 26 October election day. Following NASA's decision to withdraw its candidates, there were regular demonstrations against the IEBC outside its offices, and some NASA supporters violently disrupted electoral preparations in some parts of the country. These violent and illegal actions put the IEBC and its staff in a difficult and dangerous position.

While some hoped that the use of more **technology** would prevent fraud, reliance on technologies did not remove mistrust and led to specific new concerns. These became very evident with the **torture and murder of Chris Msando, a prominent IEBC ICT manager**, at the end of July. After the general elections, NASA made claims that the displayed keyed-in presidential results were "*computer-generated*", despite the availability of paper and scanned results forms substantiating the declared results. There was improved use of ICT in the fresh presidential election, with enhanced voter identification and results transmission with data made available promptly. Overall **capacity and security testing of technology was late and**

insufficient. Institutional ownership of ICT by the IEBC remained limited and **implementation challenges arose from its dependence on contracted private sector service providers and limited knowledge transfer.** The contracting of technology companies also significantly increased the cost of the elections.

7.3.4 Concluding Remarks

This chapter shows that the elites' commitment to democracy as a long-term interaction is key ingredient for holding credible elections. The case of Kenya reveals, however, how the institutional design affects the capacity of actors to interact within the EMB, how the institution's decisions have resulted key for explaining the lack of credibility in elections or the levels of political unrest, and how institutional insulation –absence of checks and balances– can be counterproductive for countries organizing elections in semi-competitive or highly politicized environments.

By insulating the EMB, electoral commissioners in the post-2010 period have been unable to engage well with the political elite. Despite creating a *de jure* autonomous EMB, and renewing their statutes and procedures based on international standards, the IEBC has been unable to consolidate its reputation as a *de facto* autonomous EMB. Compared to Ghana, where the executive branch still preserves the constitutional capacity to unilaterally appoint the EMB's executive board, Kenya has a more robust legal and administrative framework. Its Ghanaian counterpart, however, has been able to develop significantly higher levels of *de facto* autonomy.

7.4 FINAL THOUGHTS

The cases of Venezuela and Kenya show the different circumstances in which ICMs were adopted but, perhaps more importantly, they reveal two different paths through which institutional *insulation* has affected *de facto* autonomy.

In the case of Venezuela, the partisan configured CSE was able to build a positive reputation during most of the second part of the twentieth century. Parties were embedded within the EMB through an *executive-level* ICM allowing the main political factions to directly intervene at different administrative levels. With the collapse of the party system in the late 1980s, and the arrival of an outsider to power a decade later, the institution became formally insulated from political parties creating unfavorable conditions for transparency, accountability and consensus building between the ruling party and opposition. Institutional insulation was used by the Chávez regime to gain full control of the EMB and use the institution to endure in power.

In contrast, the case of Kenya illustrates how after the introduction of multiparty politics in 1992, the political elite found a path –i.e., the IPPG agreement– to adopt an *informal executive level* ICM that allowed the country to hold peaceful and relatively successful elections during the 1997 and 2002 period, including the first alternation in power when the four decade rule of KANU came to an end in 2002. This case also reveals that, ICMs require a minimum commitment political elite to work and how the elimination of the ECK's internal system of checks and balances during Kibaki's administration became one of the contributing factors to the 2007 post-electoral conflict.

Finally, the Kenyan case also reveals that the adoption of formal rules does not guarantee the organization of credible elections. After completely renovation its legal framework, Kenya's

IEBC was unable to build a reputation as a *de facto* autonomous EMB during the 2013 and the 2017 elections. The latter, were nullified by the Supreme Court. There are many variables that have negatively affected the credibility of elections in Kenya. Among the most important, the historical ethnic cleavage and the predominant permanence in power of a single ethnic tribe since the country's independence, the fragmentation and volatility of the party system, administrative irregularities and corruption scandals involving the EMB's electoral officials. The insulation of the IEBC, however, has also contributed to the highly politicized environment by preventing the political elite to establish a stable consociational internal check and balance system allowing the institution to effectively channel external political pressures and using ICMs as conflict resolution –or consensus building– mechanisms.

8.0 CONCLUSION

8.1 OVERVIEW AND FINDINGS

My work contributes to the literature of electoral governance by showing that the adoption of internal consultative mechanisms is an alternative path to institutional *insulation* for *third-wave* EMBs to develop higher levels of *de facto* independence. This is especially the case in contexts where presidents tend to be stronger than other institutions, where elections are held under semi-competitive environments, and where formal institutions are usually superseded by informal ones.

In the first part of the dissertation I show that measures of *de facto* autonomy for electoral bureaucracies have been omitted in the main studies of electoral governance. After replicating these studies and including measures of *de facto* autonomy, I show that they outperform any formal measures of *de jure* independence (i.e., mechanisms used to appoint electoral commissioners or partisanship of EMBs' executive boards). My work contributes to the literature in this subfield by showing that the distinction between *de jure* and *de facto* autonomy, which is well known in comparative studies of judicial independence. In the case of electoral governance, this difference has been ignored by previous studies because in advanced industrial democracies formal rules effectively constrain bureaucratic behavior. The gap between formal and informal practices in new democracies, however, is significantly wider.

In the second part of the dissertation I compare several cases to establish the foundations of *de facto* electoral autonomy. I conducted original fieldwork in Mexico, Venezuela, Ghana, Kenya, and Egypt, when democracy still looked possible in some of these countries. In line

with some crucial findings in the literature on judicial independence, I find that the balance of power between competing political forces is crucial to secure *de facto* autonomy for electoral management bodies. A key difference, however, is that while the literature on judicial independence measures this balance through electoral outcomes (and thus takes for granted the electoral process), I trace this balance of forces to the internal rules governing the electoral bureaucracy. When electoral management bodies develop internal consultative mechanisms that allow the main stakeholders (parties and politicians) to participate in key decisions, they ultimately remain more independent. Paradoxically, the transparent *engagement* of political parties, not the bureaucracy's *insulation* from them, produces the conditions for effective autonomy. This finding extends Lijphart's (1978) insights about consociational democracy to the study of electoral integrity and throws light into the ongoing debate about the relationship between institutional arrangements within electoral bureaucracies and *de facto* independence.

8.2 LIMITATIONS

There are many institutional, historic, and sociopolitical variables affecting the organization of elections. In third-wave countries, as recognized by Pastor (1999b), the role played by *de jure* autonomous EMBs is among the most important. The organization of free and fair elections, and the impact these processes have on democracy, is not a single stage game. In order to reinforce democratic values, a minimum commitment of the political elite is required, and elections must be

held repeatedly (Lindberg 2006). In those cases where the elites are clearly willing to respect electoral outcomes (even when electoral results are contrary to their own interest), an *insulated* institutional design can be sufficient for the EMB to guarantee the neutrality of the electoral process. In many others, however, the institutional configuration of the EMB plays a key role and, in every election, these institutions have the capacity to reinforce –or deter– the enactment of formal rules. It is here where the adoption of ICMs, and the internal dynamics within the EMB, positively affect the quality of elections.

Incorporating the conceptualization of ICMs to the electoral governance literature provides a better understanding of the mechanisms promoting *de facto* electoral autonomy in third-wave countries. It is through ICMs that the elites are able to create a dynamic of vetoes within the EMB; build both formal and informal information channels with key institutional actors; and establish internal consensus-building mechanisms for solving disputes or changing the *status quo*. On the contrary, the absence of these mechanisms explains, in part, why some EMBs in regions like Latin America and Sub-Saharan Africa –despite becoming *de jure* independent– have not been able to build a positive reputation. In many cases, especially in third-wave countries holding elections under semi-competitive conditions, institutional *insulation* has become counterproductive for *de facto* electoral independence because it restricts the capacity of these institutions to become more transparent and accountable and because it makes electoral bureaucracies more vulnerable to external political manipulation through informal means.

The examples I discuss in this work illustrate the different contexts under which *de jure* autonomous EMBs have been created in Latin America and Sub-Saharan Africa. It also shows the different paths these institutions have followed to develop higher levels of *de facto* autonomy. They

show how different dimensions (i.e., the inter-branch balance of power or the disposition of the elite to hold free and fair elections) have affected the capacity of these institutions to become *de facto* autonomous. As acknowledged by Lehoucq (2002), it is no surprise that three of the most stable presidential systems in Latin America also have the oldest electoral commissions in the region (Lehoucq 2002: 36):

In 1925, the constitution-makers in *Chile* created the Tribunal of Electoral Certification to issue official election results (Cruz-Coke 1984: 104; Jaramillo 1998: 207, 236). It both ran elections for all public offices and judged the validity of allegation of fraud. In 1924, *Uruguayan* parties formed an electoral court as an agent of the bicameral legislature. The congress entrusted the court with the task of reviewing all election results before the Senate, and the Chamber of Deputies, in line with the constitution, certifies final election results. Eight years later, a new constitution made the electoral court completely responsible for electoral governance... In 1925, *Costa Rican* politicians established the Grand Electoral Council to oversee the tally of the vote. Slightly more than two decades later, parties converted the Council into a tribunal. They made it completely responsible for the organization of elections, the supervision of the electoral registry, and the preliminary tally of the vote (Lehoucq 1995; Lehoucq and Molina, forthcoming).

The favorable conditions for democracy in these three cases, for instance, was key for the political elite to *delegate* electoral management to a *de jure* autonomous institution early in twentieth century. In all three countries, electoral courts or tribunals were constituted to manage elections. The internal institutional arrangement within these bureaucracies, however, has affected *de facto* autonomy in different ways. These differences, for instance, created an internal institutional dynamic –between political actors and electoral bureaucrats– that affected the institutional configuration adopted after these countries experienced a democratic breakdown.

While in Chile, for instance, the elite decided to adopt a *mixed-model* of electoral management after the regime of Pinochet,³⁹² in Costa Rica and Uruguay, the elite decided to keep the same institutional arrangement throughout the twentieth century. In Costa Rica, the *de jure* independent *Electoral Tribunal* remained the main authority responsible for electoral administration, whereas in Uruguay the *Electoral Court* readopted a consociational scheme where political parties played a primary role checking each other within the EMB. These different institutional arrangements have positively reinforced –in different ways– the EMBs’ levels of *de facto* autonomy and its capacity to organize credible elections. Contrary to the cases of Venezuela and Kenya, where *insulation* facilitated the informal political cooptation of the EMB, the cases of Benin, South Africa, Colombia, Ghana, and Mexico, show the different historical circumstances and ways in which the adoption of both formal and informal ICMs has positively affected the capacity of EMBs to build a positive reputation and affect the quality of elections.

Some of these cases, however, also show that the adoption and effectiveness of ICMs can be closely tied –endogenous– to the predisposition of elites to make things work. Although cases such as Colombia, South Africa, or Ghana show the value that the adoption of ICMs (rather than *insulating* these institutions) had for electoral bureaucracies to be recognized as *de facto* independent in contexts of ethnic divide or high politicization, the elites’ commitment to hold free and fair elections in these countries was also key during the transition phase and the EMBs’ inception. In the case of Ghana, for instance, the leadership of the EMB’s chairman during his two-decade tenure was very important for the adoption of an informal ICM (the IPAC) and to keep this

³⁹² This changed in 2015 when Chile’s SERVEL became a fully *de jure* independent institution in 2015.

mechanism in place in turbulent times (e.g., the highly contested presidential elections during the 1990s and 2000s). The adoption of an informal ICM, however, would have not worked if Rawlings would have decided to undermine the EMBs' autonomy from the beginning.

The unilateral removal of Ghana's EMB chairperson (Charlotte Osei) by President Akufo-Ado in 2018, became a negative precedent for the independence of Ghana's Electoral Commission. Given the EMB's low levels of formal independence from the executive branch, and that IPAC has remained as an informal institution since its inception, this ICM is unlikely to survive if the two main competing factions are not clearly committed with democracy in the long-run. The case of Mexico is a stronger case to clear the endogeneity problem because ICMs were adopted in the 1940s, when conditions for democracy were extremely unfavorable. The adoption of ICMs back then allowed opposition parties to identify spaces of improvement and procedures that would eventually need to change in order to level the playing field. The early adoption of ICMs in the case of Mexico reinforced the inclusion of parties within the EMB to validate decisions and increase the credibility in electoral management. After the 1988 electoral crisis, the inception of a *de jure* independent EMB became necessary. The presence of ICMs in the pre-1988 period became a key reference for the administrative configuration of IFE in the 1990s.

Mexico's situation after the 2018 presidential race represents a challenge for the future of INE's independence. The presence of a president with majoritarian status in both chambers will be useful to see the extent to which INE's reputation can be used to combat a strong president – Andrés Manuel López Obrador – that has systematically discredited the institution that validated his own election. The president elect has already mentioned that during his administration political parties will receive half of the public funds they receive, has mentioned that his administration will

organize plebiscites for policy decision-making purposes (e.g., like the national consultation for building a new airport in Mexico City that was organized by his own party and has already been discredited by opposition parties and actors of civil society). It will not be surprising if he pushes forward an electoral reform promoting the *insulation* of the EMB in order to make it “really independent” from political parties, just as Chavez did with the CNE. This situation shows that although ICMs have contributed to build INE’s reputation since it became a *de jure* autonomous EMB in the mid 1990s, there is not much electoral bureaucracies can do when the elites –or a political faction– decides to change the rules of the game or distance themselves from a long-term commitment towards democracy.

8.3 IMPLICATIONS

The findings of my work are relevant for ongoing debates about the institutional design of electoral management bodies. Many countries in the Middle East that began holding elections after the Arab Spring, or countries that are trying to begin holding free and fair elections, are having debates about which type of institutional arrangements within the EMB will allow them to build trust in elections. In Colombia, for instance, this debate was held as part of the electoral reform during the peace negotiations held between the FARC and the Santos administration.

Table 8.1 synthesizes the different types of ICMs embedded within EMBs across Latin American and Sub-Saharan Africa. What these categories show is that there is a wide variety of arrangements by which parties can be embedded within EMBs. Previous literature on electoral

governance created a dichotomous categorization of electoral bureaucracies as either partisan or independent institutions. Most scholars assumed that “non-partisan” EMBs would be more likely to achieve higher levels of *de facto* autonomy, but they overlooked at the different ways in which parties can be embedded within “non-partisan” electoral bureaucracies.

Table 8. 1 Internal Consultative Mechanisms (ICMs) and EMB's De Facto Electoral Autonomy in Four Latin American and African Countries

Formal vs. Informal ICMs	Type of ICM	Mexico (Pre-1990)	Mexico (Post-1990)	Ghana (Pre-1993)	Ghana (Post-1993)	Venezuela (Pre-1999)	Venezuela (Post-1999)	Kenya (Pre-2010)	Kenya (Post-2010)	Causal Effect of ICMs on <i>De Facto</i> Autonomy
Formal	Executive Level	Present	(=) Present	Absent	(=) Absent	Present	(-) Absent	Absent	(=) Absent	Allows the presence and inclusion of external actors in executive-level deliberations (e.g., formal representation of parties within the EMB's executive board).*
	Administrative Level	Absent	(+) Present	Absent	(=) Absent	Present	(-) Absent	Absent	(=) Absent	Guarantees external actors access to information / inclusion in administrative decision making (e.g., representation of parties within the EMB's committee system).
	Bureaucratic Level	Absent	(+) Present	Absent	(=) Absent	Present	(-) Absent	Absent	(=) Absent	Enables external actors to audit and verify the compliance of formal rules and bureaucratic procedures (e.g., parties directly monitoring the voter registration process).
	Policy Level	Absent	(+) Present	Absent	(=) Absent	Present	(-) Absent	Absent	(=) Absent	Allows external actors to supervise and participate during policy implementation procedures (e.g., partisan interaction during electoral boundary delimitation exercises).
	Street Level	Absent	(+) Present	Absent	(+) Present	Present	(=) Present	Present	(=) Present	Enables external actors to monitor the compliance of formal procedures during election day (e.g., presence of party agents within polling stations).**
	External Consultation Committee	Absent	(=) Absent	Absent	(=) Absent	Absent	(=) Absent	Absent	(+) Present	Promotes consensus building, creates communication channels and increases transparency (e.g., formal agreement to inform and include parties in key administrative deliberations).***
Informal	Plurality of partisan ties within the EMB's Executive Board	Absent	(+) Present	Absent	(=) Absent	Present	(-) Absent	Absent	(=) Absent	Prevents unilateral decision making and creates incentives to build consensus among commissioners with different ideological alignments (e.g., informal partisan ties of “non-partisan” members of the EMB's executive board).
	External Consultation Committee	Absent	(=) Absent	Absent	(+) Present	Absent	(=) Absent	Absent	(=) Absent	Promotes consensus building, creates communication channels and increases transparency (e.g., informal agreement to inform and include parties in key administrative deliberations).****
EMB's De Jure vs. De Facto Autonomy		Mexico (Pre-1990)	Mexico (Post-1990)	Ghana (Pre-1993)	Ghana (Post-1993)	Venezuela (Pre-1999)	Venezuela (Post-1999)	Kenya (Pre-2010)	Kenya (Post-2010)	
De Facto Autonomy*****	~	Low	(!) High	Low	(!) High	High	(!) Low	Low	(!) Med-Low	~
De Jure Autonomy*****	~	Low	(!) High	Low	(!) Med-High	Med-High	(!) High	Low	(!) Med-High	~

Note: Table elaborated by the author. The year in each of the four cases was determined by the moment the current EMB was formally established and became formally (de jure) independent. The IFE in the case of Mexico, the Electoral Commission in Ghana, the Consejo Nacional Electoral in Venezuela, and the Independent Electoral and Boundary Commission of Kenya.
 *Executive-level ICMs include mixed-partisan configured EMBs' executive boards, as well as “non-partisan” boards where parties are formally represented with the right to speak, but not to vote. The (+), (-), and (=) symbols denote the adoption or elimination of either a formal or informal ICM from one period to another. The (=) symbol denotes the status quo prevailed. In Mexico, for instance, parties have been formally embedded within the EMB since 1946.
 ** Street-level ICMs allow parties to formally register representatives (agents) to be present within polling stations supervising the voting process during the day of the election. This mechanism, however, becomes more effective when parties are sufficiently institutionalized in order to have the organizational means, as well as the territorial presence, to monitor the different phases of the voting procedures across all regions. Out of the five formal ICMs enlisted here, *street-level* ICMs are more related to the capacity of parties to monitor the compliance of procedures during the election day, than to the internal workings of the EMB. The effectiveness of this ICM also requires that party agents are formally represented within the polling station for monitoring, but not for administrative purposes (e.g., working as polling officials). In the pre-1999 Venezuela, for instance, the appointment of partisan polling officials negatively affected the EMB's perception as a *de facto* autonomous EMB.
 *** This formal type of ICM allows parties to establish a two-way interaction with the EMB. Depending on each country, it might be used differently to serve either a single or the multiple causal links described here.
 **** This informal type of ICM allows parties to establish a two-way interaction with the EMB. Depending on each country, it might be used differently to serve either a single or the multiple causal links described here.
 ***** Cases were classified according to the author's fieldwork interviews with country-level experts and the V-Dem's measure of EMBs' *de facto* Autonomy (EMB Autonomy) with respect to other EMBs in the country's respective region. The (!), (!), and (=) symbols represent an increase, decrease or no change in the levels of *de facto* autonomy from one period to the other.
 ***** Following Hartlyn's et al., (2008) classification, EMBs were classified based on the institutions' legal (*de jure*) independence from other branches of power, on the appointment mechanism used to designate the EMB's executive board, as well as the formal partisan configuration of the board. In Ghana and Kenya, for instance, both the EC and the IEBC became formally independent EMBs when they were established, but the Executive Branch still plays a dominant role in the appointment of the members of the executive board. In Venezuela, the EMB transitioned from having a mixed-partisan executive board to a fully “non-partisan” –formally independent– executive board.

8.4 FUTURE AVENUES OF RESEARCH

There are two main avenues of research that I have not sufficiently discussed in this work. On one hand, more research is needed to explore how countries in other regions have used ICMs to guarantee the neutrality of electoral management. EMBs in many Commonwealth Caribbean countries, Eastern Europe, and South East Asia, for instance, have adopted consociational arrangements in electoral management. In the United States, despite having a decentralized governmental scheme, political parties play a central role in many state level electoral commissions. Parties appoint representatives in these commissions to ensure that formal procedures will be enacted.

On the other hand, we need to have a better understanding of how different ICMs affect *de facto* autonomy and if some of these mechanisms are more effective than others. A possible way to do this, for instance, is by looking at the neutrality of policy specific processes such as electoral boundary delimitation. Having parties participating in this process, without delegating to them the capacity to decide like it happens in the majority of U.S. states, increases the levels of transparency and accountability surrounding during the implementation of this process.

When comparing countries, the type of ICM, and their effectiveness, is also related to the capacity of parties to enforce these mechanisms. Although highly institutionalized parties are not required for ICMs to exist or work, there are strong reasons to suspect that more stable and institutionalized parties are in a better position to participate within the EMB and enforce formal rules and procedures.

APPENDIX A

Table A 1 Existing Expert Indices and Cross-National Survey Resources Monitoring Electoral Integrity

Project	PI	Period	N. nations	N. elections	Data sources	Core concept and Measures
<p>Electoral Integrity Project (EIP)</p> <p>The Expert Survey of Perceptions of Electoral Integrity 3.0</p>	Pippa Norris, Ferrán Martínez I Coma, and Richard W. Frank	2012-2014	107	127 +	Survey of country expert perceptions of electoral integrity. It is based on evidence from 1,429 experts.	<p>Measures expert perceptions around different dimensions of the electoral cycle including questions on the following topics: 1) Electoral Laws, 2) Electoral Procedures, 3) Electoral Boundaries, 4) Voter Registration, 5) Party Registration, 6) Campaign Media, 7) Campaign Finance, 8) Voting Process, 9) Vote Count, 10) Post-election, and 11) Electoral Authorities.</p> <p>https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/9114</p>
<p>Varieties of Democracy (V-Dem 4.0)</p>	Michael Coppedge, Staffan I. Lindberg, John Gerring, Jan Teorell	1900-2014	118	-	Coding by Country Project Managers, Country Coordinators and Country Experts.	<p>Offers a comprehensive and refined conceptualization of democracy. Offers indicators that show the varieties of democracies across the world and measures variables through democracy's 7 high-level principles: 1) Electoral, 2) Liberal, 3) Participatory, 4) Majoritarian, 5) Consensual, 6) Deliberative, and 7) Egalitarian.</p> <p>https://v-dem.net/en/</p>
<p>Electoral Democracy index</p>	Freedom House	1989-2015	195	-	Freedom House expert assessments of political rights	<p>Electoral democracy is measured by Freedom House as part of their annual assessments.</p> <p>Countries are classified as an 'electoral democracy' if they score in total 7 points or more (out of a possible 12) for the three political rights subcategory questions on electoral process: 1. Is the head of government or other chief national authority elected through free and fair elections? 2. Are the national legislative representatives elected through free and fair elections? 3. Are the electoral laws and framework fair? Countries also need to score as a total of</p>

						<p>20 points or more (out of a possible 40) for all ten political rights questions.</p> <p>For details, see https://freedomhouse.org/report-types/freedom-world#.VZ_fQZNVikp and https://www.freedomhouse.org/report/freedom-world-aggregate-and-subcategory-scores#.VZ_gtZNVikp</p>
Database of Political Institutions (DPI)	Philip Keefer (World Bank)	1975-2012	180	-	World Bank	<p>The Database of Political Institutions (DPI) contains 125 variables, mainly measuring aspects of the political system and electoral rules. The variables are organised in five groups:</p> <ul style="list-style-type: none"> ☐ <i>Chief executive variables.</i> E.g., presidential or parliamentary system, years in office, the chief executive's party affiliation. ☐ <i>Party variables in the legislature.</i> Variables describing various aspects of the legislature and parties in the legislature, e.g., number of seats held by various parties, whether one party holds an absolute majority and date of elections. ☐ <i>Electoral rules.</i> E.g., plurality or proportional electoral systems, threshold for representation, whether or not elections are affected by fraud. ☐ <i>Stability and checks and balances.</i> E.g., age of present regime, checks and balances, polarisation. ☐ <i>Federalism.</i> E.g., whether there are autonomous regions and whether municipal governments are locally elected. <p>http://www.nsd.uib.no/macrodatabguide/set.html?id=11&sub=1 http://www.nsd.uib.no/macrodatabguide/topic2.html?code=1001&cat=Electi ons%20and%20political%20parties http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/0..contentMDK:20649465~pagePK:64214825~piPK:64214943~theSitePK:469382,00.html</p> <p>Users of the variables Checks or Polarization should cite Philip Keefer and David Stasavage (2003). "The Limits of Delegation: Veto Players, Central Bank Independence and the Credibility of Monetary Policy." <i>American Political Science Review</i> (August).</p>
Democracy Time-series Dataset	Pippa Norris (2009)	1971-2007	191	600 variables	Harvard	<p>Democracy Timeseries Data Release 3.0, January 2009</p> <p>This dataset is in a country-year case format, suitable for <i>time-series</i> analysis. It contains data on the social, economic and political characteristics of 191 nations with over 600 variables from 1971 to 2007. It merges the indicators of democracy by Freedom House, Vanhanen, Polity IV, and Cheibub and Gandhi, plus selected institutional classifications and also socio-economic indicators from the World</p>

						<p>Bank. New variables including the KOF Globalization Index and the new Norris-Inglehart Cosmopolitan Index. Note that you should check the original codebooks for the meaning and definition of each of the variables. The period for each series also varies. Note that the Excel version is for Office 2007 only. This is the dataset used in the book, Driving Democracy.</p> <p>January 2009. This database gathers several of the datasets described here...</p> <p>http://www.hks.harvard.edu/fs/pnorris/Data/Data.htm</p>
Democracy Cross-national Data	Pippa Norris (2009)	2007-1990	191	1000 variables	Harvard	<p>Democracy Crossnational Data, Release 3.0 Spring 2009</p> <p>This dataset is most suitable for <i>comparisons of 191 contemporary states</i>, with a limited number of lagged variables. It contains data on the social, economic and political characteristics of 191 nations with over 1000 variables.</p> <p>March 2009</p> <p>http://www.hks.harvard.edu/fs/pnorris/Data/Data.htm</p>
Quality of Elections Data (QED)	Judith Kelley (Duke University)	1977-2004	172	1206	US State Department Annual Country Reports on Human Rights Practices	<p>Measures multiple indices of electoral quality. The quality of national legislative and presidential elections, where quality is summarized as Acceptable (0) Ambiguous (1), and Unacceptable (2).</p> <p>For details, see Judith Kelley. 2010. <i>Quality of Elections Data Codebook</i>. http://sites.duke.edu/kelley/data/.</p> <p>See also Judith G. Kelley. <i>Monitoring Democracy: When International Observation Works, and Why it Often Fails</i>. Princeton University Press.</p>
Observation	Waiting for ICPSR to grant access for Off campus					

	use.					
National Elections across Democracy and Autocracy (NELDA)	Susan Hyde and Nikolay Marinov (Yale University)	1945-2010	162	2,948	Various including news media archives, election data handbooks, and online election guides.	Measures many indices of electoral quality which can be used to classify regimes. In particular, electoral competition in national presidential and legislative contests is coded by: (i) Was opposition allowed? (ii) Was more than one party legal? And (iii) Was there a choice of candidates on the ballot? For details, see Susan D. Hyde and Nikolay Marinov. <i>Codebook for National Elections across Democracy and Autocracy</i> (NELDA) Nov 10th 2011 http://hyde.research.yale.edu/nelda/
Observation	Data needs a lot of work.					
Index of Electoral Malpractice (IEM)	Sarah Birch (Essex University)	1995-2007	61	161	Observer mission reports by the EU, OAS and OSCE	Electoral malpractice, defined as “the manipulation of electoral processes and outcomes so as to substitute personal or partisan benefit for the public interest”, as measured with 15 items and collapsed into a 1-5 summary scale according to the (i) legal framework, (ii) campaign practices, and (iii) electoral administration. For details, see Sarah Birch. 2012. <i>Electoral Malpractice</i> . Oxford: Oxford University Press. For the dataset, see http://www.essex.ac.uk/government/electoralmalpractice/index.htm
The CIRI Human Rights Project	David L. Cingranelli and David L. Richards	1981-2010	195		United States Department of State’s Country Reports on Human Rights Practices and Amnesty International	The CIRI project classifies electoral self-determination: This variable is understood to indicate how far citizens enjoy freedom of political choice and the legal right and ability in practice to change the laws and officials that govern them through free and fair elections (the right to self-determination). Limited (0): the right to self-determination through free and fair elections did not exist in law or practice. Moderate (1): citizens had the legal right to self-determination, but in practice there were some limitations. High (2): citizens had the right to self-determination through free and fair elections in both law and practice. For details, see http://ciri.binghamton.edu/

Table A 2 Cross-National Survey Resources Monitoring Electoral Integrity

Project	Period	N. nations	N. elections	Data sources	Measures
World Values Survey 6 th Wave	2010-2014	c.60	c.60	National surveys of the adult population	<p><i>Electoral integrity and electoral malpractice</i> are monitored using a 9-item battery of questions where responses to each item are coded on a scale from 1 ‘Very often’ to 4 ‘Not at all often’.</p> <p><i>“In your view, how often do the following things occur in this country’s elections?”</i></p> <ol style="list-style-type: none"> 1. <i>Votes are counted fairly;</i> 2. <i>Opposition candidates are prevented from running;</i> 3. <i>TV news favors the governing party;</i> 4. <i>Voters are bribed;</i> 5. <i>Journalists provide fair coverage of elections;</i> 6. <i>Election officials are fair;</i> 7. <i>Rich people buy elections;</i> 8. <i>Voters are threatened with violence at the polls;</i> 9. <i>Voters are offered a genuine choice at the ballot box.”</i> <p>http://www.worldvaluessurvey.org/</p>
Comparative Study of Electoral Systems (CSES) Module I	1996-2002	30	30	National election surveys of the general electorate	<p>Public perceptions of the fairness of elections, on a 5-point scale, monitored by the question: <i>“In some countries, people believe their elections are conducted fairly. In other countries, people believe that their elections are conducted unfairly. Thinking of the last election in [country], where would you place it on this scale of one to five where ONE means that the last election was conducted fairly and FIVE means that the last election was conducted unfairly?”</i></p> <p>Fairly Unfairly</p> <p>1 2 3 4 5</p> <p>http://cses.org/</p>

Global-Barometers Round 1	2000-2006	2 c.38		National surveys of the adult population	<p>"On the whole, how would you rate the freeness and fairness of the last national election, held in [country name]? Was it:..."</p> <ol style="list-style-type: none"> 1. Completely free and fair 2. Free and fair, but with minor problems 3. Free and fair, with major problems 4. Not free or fair 8. [Do not read] Can't choose 9. [Do not read] Decline to answer <p><i>"Please look at this card and tell me how much confidence you have in each of the following groups, institutions or persons mentioned on the list: a lot, some, a little or no confidence?... The electoral commission."</i></p> <p>www.globalbarometers.org/</p>																				
Americas Barometer	2004, 2006, 2008, 2010	8-26		National surveys of the adult population	<p>'On this card there is a ladder with steps from 1 to 7, where one is the lowest step meaning 'Not at all' and 7 is the highest step and means 'a lot'. 'To what extent do you trust elections?'</p> <table border="0"> <tr> <td>Not at all</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>A lot</td> <td>N/A</td> <td>Dk</td> </tr> <tr> <td>1</td> <td>2</td> <td>3</td> <td>4</td> <td>5</td> <td>6</td> <td>7</td> <td>88</td> <td>98</td> <td></td> </tr> </table> <p>http://www.vanderbilt.edu/lapop/</p>	Not at all							A lot	N/A	Dk	1	2	3	4	5	6	7	88	98	
Not at all							A lot	N/A	Dk																
1	2	3	4	5	6	7	88	98																	

APPENDIX B

Table B. 1 List of Variables Affecting Electoral Autonomy

Stage	Theory	Variable	Type of Variable	Variables, Data and Operationalization	Source	Time Span		
First Stage	Electoral Autonomy	Formal	DV	Institutional autonomy and legal capacity	ACE/IDEA and personal research	2013		
		Informal		Electoral bureaucracy performance/election events	Judith Kelley (2011) dataset	1975-2004		
	Democracy and Democratization	Years of Democracy/Wave of Transition	Level of Democracy	IV	Year of transition to democracy	Polity dataset	1800-2011	
			Bureaucratic Professionalization	IV	Democratic level indicator	Polity dataset; Freedom House Index	1800-2011/1990-2004	
		State fragility, effectiveness, and legitimacy indices	Bureaucracy quality	IV	State fragility, effectiveness, and legitimacy indices	State Fragility Index and Matrix	1995-2012	
			Bureaucratic effectiveness/regulatory quality		Bureaucratic effectiveness/regulatory quality	ICRG Political Risk Group Quality of Government Quality of Government Datasets/World Governance Indicators from World Bank (Bureaucratic effectiveness, regulatory quality), also see Bersch, et al. paper	1984-2013 1999/1946-2009	
		Delegation	Trust in government	Government corruption scandals/CP	IV	Government popular support	World Value Survey? / ICRG Political Risk Group Cross-National Time Series Database (see Anibal)	1984-2013
	Internal Political Resources			IV	Number of corruption scandals/Corruption and Accountability Perception of the public sector	ICRG Political Risk Group Corruption Perceptions Index	1984-2013 (ICRG) 1995-2013	
	Effective number of parties and nationalization		Electoral competitiveness for presidential elections	IV	Number of parties and party nationalization	Comparative Study of Electoral Systems (CSES)/Democratic Electoral Systems Around the World/World Development Indicators (World Bank)/ask Anibal and Scott	2000-2010 (No. of S. Panel) / 1946-2000	
			Political violence	IV	Electoral competitiveness/legislative strength	World Development Indicators (World Bank), ask Anibal and Scott/ICRG Political Risk Group	1984-2013 (ICRG)	
	Electoral federalism: centralization		Public/Private financing	IV	Interstate, societal, and communal warfare/state failure	Armed Conflict and Intervention (ACI) Dataset	1946-2012	
			Executive and military involvement in electoral processes	IV	Type of governmental administration	World Development Indicators (World Bank)		
	Diffusion and International Context		Strength, credibility and independence of judicial system	External political/policy pressure: USAID, World Bank, ADB	IV	Percentage of public resources for campaigns	ACE/IDEA and personal research	2013
		External pressure from electoral observation: UN, I/NDP, OAS, EU		IV	Military involvement in elections	World Development Indicators (World Bank), ask Anibal and Scott/ICRG Political Risk Group	1984-2013	
		Diffusion effect: surrounding countries adopting autonomous EMS	IV	Independence of the judicial branch	Judicial checks and balances (De la Porta)/World Development Indicators (World Bank)/ask Anibal and Scott, David Brinks?	2004		
	Second Stage	Democratic Stability	Post electoral conflict	DV	Number and type of post electoral conflicts	Nelda dataset	1970-2004	
			Electoral autonomy	IV	Institutional autonomy and legal capacity	ACE/IDEA and personal research	2013	
		Quality of Democracy	Trust in elections, electoral institutions and democracy	Formal	IV	Electoral bureaucracy performance/election events	Judith Kelley (2011) dataset	1975-2004
				Informal		Institutional autonomy and legal capacity	ACE/IDEA and personal research	2013
		Political Engagement	Engagement and participation	Formal	DV	Trust in elections and electoral institutions	Nelda dataset	1970-2004
Informal				IV	Electoral turnout	ACE/IDEA and personal research	2013	
Electoral autonomy			Formal	IV	Institutional autonomy and legal capacity	ACE/IDEA and personal research	2013	
			Informal	IV	Electoral bureaucracy performance/election events	Judith Kelley (2011) dataset	1975-2004	

Table B. 2 Academic Literature using EMBs' Formal Autonomy as an Explanatory Variable

Publciation	Explanatory Variable	Description	Period	Countries	Region	Method	Outcome Variable	Description	Source	Finding
Norris (2015) <i>Cambridge University Press</i>	EMBs Formal/Legal Independence (IDEA)	3 categories (Independent - Mixed - Governmental)	2014	91	Cross-regional	OLS Regression	Perception of Electoral Integrity (experts)	Expert Survey Index composed of multiple variables	Electoral Integrity Project	The formal organizational structure of EMBs is not a significant predictor of the levels of electoral integrity.
Rosas (2010) <i>Electoral Studies</i>	EMBs Formal/Institutional Independence (appointment/ tenure) ¹	Index of Independence (0-10)	1997-1998; 2005-2006	18	Latin America	Multilevel model REML (Gelman et al., 2004).	Trust in elections (citizens)	Survey Q. Clean and Fair Elections (Y/N)?	Latinobarometer Survey	Citizens trust elections in more democratic countries with formally independent EMBs.
	EMBs Formal/Professional Independence (partisanship/ appointment) ²	3 Point Scale Nomination (Partisan - Court - Congress)					Trust in elections (political elite)	Survey Q. Degree of confidence on cleanness of elections (1-5)?	Parliamentary Elites of LA Survey	Elites have better evaluations of elections when EMBs are insulated from politics.
Birch (2008) <i>Electoral Studies</i>	EMBs Formal Independence (Legal independence) ³	Dummy (Y/N?)	1996-2003	28	Cross-regional (mostly Western democracies and some Eastern European countries)	Multilevel Logit (Steenbergen and Jones, 2002; Jones et al., 1992)	Trust in elections (citizens)	Survey Q. Was last election conducted fairly (Y/N)?	Comparative Study of Electoral Systems Project Survey	Popular confidence in elections is lower in countries with formally autonomous EMBs.
Hartlyn, McCoy and Mustillo (2007) <i>CPS</i>	EMBs Formal/Professional Independence (partisanship of EMB's Board Members)	4 Categories (Independent - Partisan)	1980-2003	19	Latin America and the Caribbean	Partial Proportional Odds-ordered Logit (Williams 2006)	Quality of elections	3 Categories (Acceptable, Flawed, Unacceptable)	Observation and media reports	Formal Independence matters when rules are likely to be respected. Low quality elections more likely when incumbent seeks reelection and margins are wide. Formally non-partisan and independent EMBs affect positively the quality of elections.
Molina and Hernández (1999) <i>CENDES</i>	EMBs Formal Independence (partisanship in EMB)	3 Categories (Partisan; Non-partisan w/ partisan appointment; Non-partisan w/o partisan appointment)	1995	8	Latin America	Logit	Trust in elections (citizens)	Clean or fraudulent elections (Clean/Fraudulent)?	Latinobarometer Survey	Non-partisan EMBs affect positively the perception of clean elections, except in countries with a hegemonic party system.

Notes: 1. Based on Hartlyn et al., (2008) and Moreno et al., (2003); 2. Based on Molina and Hernández (1999); 3. Based on Lopez Pintor 2000; 4. Based on Moreno et al., (2003).

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