

EDITORIAL

(English)

<https://doi.org/10.22395/ojum.v18n36a13>

2018 was a year of important commemorations: it marked the 70th anniversary of the entry into force of the Italian Constitution; the 40th of the expedition and endorsement of the Spanish Constitution; and the 30th of the Brazilian Constitution. But at the same time, the democratic rise to power of radical leaders and political parties in these countries leads to fear for institutions and human rights guarantees that have been taken for granted for decades. In Italy, we have the conformation of a government through a coalition of two radical parties —Movimiento 5 Estrellas and La Liga—. In Spain, there is the warning given by the fascist-like movement called Vox, which achieved significant representation in the Andalusian elections; and in Brazil, we have the rise to power of Jair Bolsonaro, a leader who has made statements in favor of the dictatorship, as well as racist, homophobic and chauvinist remarks: These are examples of the crisis that democracies face today.

But without a doubt, the most mediatic example is the management style of Donald Trump as president of the United States. Some think that he alone is causing the crisis of the North American institutions, but the truth is that his administration is a consequence of that very same crisis that has been in development for decades, and Trump knew how to channel it in his favor. For many years, the United States president's personality has been a non-institutionalized limit: If the president has a prudent character, the balance is maintained; if he has a strong personality, the balance breaks down in favor of the executive. But what would happen if he has a self-centered, erratic and unstable personality? Institutions are in greater danger than ever.

For 230 years, Americans have been building a legal and political model based on constitutional supremacy, separation of powers, and checks and balances that prevent one of the powers from exceeding and trying to take the place of the other two. In practice, the balance has been broken in favor of the executive power, and that has given way to the so-called imperial presidency; it becomes evident more than by lack of controls, by the type of personality that American presidents have¹.

We are facing the danger that parties, movements and political leaders who do not believe in democracy, use the aforementioned crisis to put an end to it. Thus, "the

¹ Mendieta, D., & Tobón, M. L. (2018). *La separación de poderes y el sistema de pesos y contrapesos en Estados Unidos: del sueño de Hamilton, Madison y Marshall a la amenaza de la presidencia imperial*. Revista Jurídicas, 15(2), 36-52. DOI: 10.17151/jurid.2018.15.2.3

tragic paradox of the electoral path towards authoritarianism is that the assassins of democracy use its institutions in a gradual, subtle and even legal way to liquidate it [translation by the publisher]"².

The checks and balances system, and the separation of powers, are in danger in many parts of the world: autocracy, populism and antisystem political parties have more popular support. As researchers, we have the duty to study the causes and consequences of these social phenomena.

Once they are democratically elected, populist leaders seek to undermine the foundations of democracy: It has already happened, it is happening, and it will happen again. For a long time, we have been concerned with the study of human rights, but perhaps we have neglected the study of the institutions that make up the public powers. In the USA, the necessary majority is changed for the Supreme Court elections, and it is intended to modify the electoral system; in Brazil, the elected president threatens to retire his country of both the Paris Agreement and Mercosur; in Colombia, the government party proposes to create a "Super Court" (Supercorte), and to increase the number of JEP judges. Those changes are not minor, because they will define the future of these three countries, but are they justified only to satisfy the interests of factional leaders who despise democratic values?

Article 16 of the Declaration of the Rights of Man and of the Citizen (1789) becomes more valid than ever: "Any society in which the guarantee of rights is not assured, nor the separation of powers determined, has no Constitution".

Human rights cannot be guaranteed if there is no separation of powers. Today, we have the duty to resume studying institutions and defending democracy. We have a commitment to the rule of law because without it, our professional practice does not make sense. In compliance with this duty, we are now publishing twelve papers in three languages —Spanish, Portuguese and English— from three countries: Brazil, Chile, and Colombia. We hope to contribute to the building of fairer and guarantee-based societies.

David Mendieta
Editor

² Levitsky, S., & Ziblatt, D. (2018). *Cómo mueren las democracias* (p. 16). Barcelona: Ariel.