Comparative Latin American Constitutionalism

edited by
Silvia Bagni
Serena Baldin

EUT

BIBLIOTECA DELLA SOCIETÀ APERTA
STUDI E RICERCHE 13

This book is one of the outcomes of the research activities carried out within the research project PRIN 2017 "From Legal Pluralism to the Intercultural State. Personal Law, Exceptions to General Rules and Imperative Limits in the European Legal Space" (2020/2023). This book emerged out of a shared realisation. The editors found that while a vast legal literature on constitutionalism in Latin America exists in Europe, no single volume has provided an overview of the main institutional models of constitutional law in the region. This book focuses on classic public law issues in order to gain insight into recent constitutional innovations. It is also the result of a precise methodological choice, which embraces a comparative approach. Latin American legal facts – that is, forms and types of state, presidentialism and constitutional justice – are not simply observed as national events. Rather, these institutions are contextualised in a broader way, looking at the relationships between two or more systems in order to identify trends.

Silvia Bagni is Associate Professor in Comparative Public Law at the University of Bologna (Italy) and, since 2022, PI of the research project PRIN 2017 "From Legal Pluralism to the Intercultural State. Personal Law, Exceptions to General Rules and Imperative Limits in the European Legal Space".

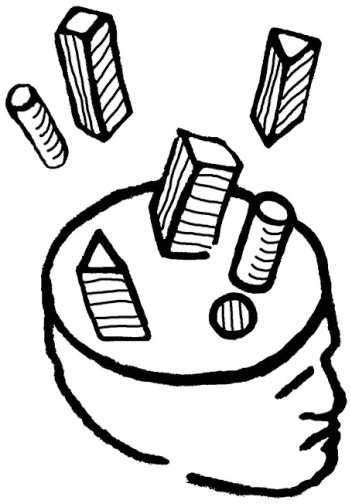
Serena Baldin is Associate Professor in Comparative Public Law at the University of Trieste (Italy) and currently Jean Monnet Module Coordinator of the project "The Rule of Law in the new EU Member States", co-funded by the European Union.

9 788855 114257

Euro 18,00

BIBLIOTECA DELLA SOCIETÀ APERTA

STUDI E RICERCHE **13**



BIBLIOTECA DELLA SOCIETÀ APERTA
Studi e ricerche

This book is the English version of *Latinoamérica. Viaggio nel costituzionalismo comparato dalla Patagonia al Río Grande*, Silvia Bagni and Serena Baldin (a cura di), Giappichelli, Torino, 2021.

This book is one of the outcomes of the research activities carried out within the Research Project PRIN 2017 "From Legal Pluralism to the Intercultural State. Personal Law, Exceptions to General Rules and Imperative Limits in the European Legal Space" (PI – prof. Lucio Pegoraro – CUP J34I19004200001).

UPI UNIVERSITY PRESS ITALIANE
Opera sottoposta a peer review secondo il protocollo UPI – University Press Italiane

Coordinamento editoriale
Pasquale Viola

Impaginazione
Elisa Widmar

ISBN 978-88-5511-425-7 (print)
ISBN 978-88-5511-426-4 (online)

EUT Edizioni Università di Trieste
via Weiss 21, 34128 Trieste
https://eut.units.it
https://www.facebook.com/EUTEdizioniUniversitaTrieste

Comparative Latin American Constitutionalism

edited by
Silvia Bagni
Serena Baldin

EUT EDIZIONI UNIVERSITÀ DI TRIESTE

Table of Contents

Forms of Government

Constitutional Justice

Forms of Government

Chapter 7
The Presidential Form of Government in Argentina and Chile

FRANCESCO DURANTI*

Summary: 1. Methodological premise. – 2. The presidential form of government and its circulation in Latin America. – 3. Presidents and parliaments in Argentina and Chile. – 4. The form of government in the emergency.

1. Methodological premise

Reasoning about forms of government in comparative public law requires, first, to outline clear methodological premises.

On the subject of forms of government, it certainly seems appropriate, from the point of view of the method of approaching the question, to have recourse also to the data and acquisitions of other sciences – including, in particular, political science – which have, over time, collected a series of elements useful to the investigation, expressly taking into account the fact that, in the field of analysis of the institutional system of the various legal systems, a constructive interdisciplinary comparison allows comparative investigation to be more effective (Hirschl 2014).

* Associate Professor of Comparative Public Law at the University for Foreigners of Perugia.

In the study of forms of government, what differentiates, in any case, the analyses of constitutionalists from those of political scientists is, precisely, the method, since legal scholars are concerned with studying the constitutional regulatory framework and the rules governing the relationship between organs, whereas the comparative contribution of political scientists concentrate on the incidence of political subjects in relation to the functioning of institutions.

At the same time, however, the comparatist lawyer dealing with forms of government cannot, of course, disregard the historical, social, and political context in which legal institutions live, so that it is certainly appropriate to make use of the results achieved by other sciences, with the specific caveat, however, of bringing them back within the framework of one's own legal method of approaching the inquiry (Volpi 2020).

Without, in any case, forgetting that in borderline areas – such as forms of government – the necessary need for comparatists, jurists and political scientists, to employ the results of inquiry from their respective areas of research, must give adequate indication of the ends and means employed, with the other caveat that, while making use of each other's expertise, should avoid the risk of carrying out a legal analysis by assuming as the determinants element the mere description of the performance of constitutional institutions, rather than proceeding to the necessary identification of the prescriptive profiles related to the constitutional arrangement examined (Pegoraro 2014).

This is particularly appropriate about the presidential form of government, which has been, as it is well known, the subject of investigation mainly by political science scholars.

In this contribution the approach of investigation will, therefore, be the comparative constitutional law one, taking into consideration the various normative profiles related to the relationship between the constitutional organs that define in an overall sense the form of government of the systems under analysis.

The choice has, then, fallen on the comparison between two countries of the extreme *Cono Sur* (Argentina and Chile) bordering each other, which, at the end of the long and complex authoritarian season, have adopted their own constitutions without, however, proceeding to the election of a Constituent Assembly and whose respective presidential forms of government show various traits of differentiation (at least) at the constitutional level, so that – as effectively noted in the opening essay of this volume (Pegoraro, chapter 1) – "within this framework, the study of the

form of government makes it possible to highlight the differences between the various systems and to make the resulting sub-classifications".

2. The presidential form of government and its circulation in Latin America

The classification of forms of government and the criteria for identifying the various models have long fascinated comparatists.

Without going back over here the extensive, stimulating, reflections that have accompanied the numerous researches in the field over time, several elements now appear to have tended to be common to the studies done on the subject.

First, the very definition of the form of government according to the constitutional perspective, which can be identified as that set of legal norms (written and unwritten) that characterize the distribution of power among the constitutional organs at the top of the system (Head of State, Parliament, and Government).

Secondly, the profile concerning the determinants elements to be taken into consideration to proceed to the typological classification of forms of government.

In this regard, two legal-constitutional profiles appear to be essential to classify the various forms of government present in contemporary systems, namely: a) the presence or absence of the relationship of confidence between Parliament and Government; b) the different modes of derivation of the Government, which can be an emanation of Parliament or of a monocratic organ of executive power (Head of State or Prime Minister).

Thus, by jointly employing these classification criteria, it is possible to identify the presidential form of government, which is characterized by a monocratic executive (President) as a direct expression of the will of the people and by the strict separation of powers, based on the absence of the relationship of confidence between Parliament and Government, as well as the non-existence of the power of dissolution of Parliament by the President, the constitutional institutions being in office for the term provided for and prefixed directly by the constitutional text.

It is widely known, in this regard, that the idealtype of the presidential form of government is the constitutional experience of the United States of America, which is the only democratic system that has continuously adopted this model since the constitution of 1787 (Pegoraro, Rinella 2017).

Without further investigating the issue of the form of government in the US (which is obviously not the subject of this contribution), this experience, even in the context of the different phases it has gone through over time, is characterized by one aspect – the real cornerstone of the US constitutional structure – that is absolutely central in its most widespread interpretation, namely the overall constitutional balance between powers achieved by means of the various checks and balances set up for this purpose by the federal constitution (Martinelli 2020).

The principle of the strict separation of powers must, thus, be understood as being combined with that of the dynamic balancing between constitutional institutions, whereby none of them can end up overwhelming the others, but each has – within the scope of its own constitutional attributions – the prerogative to control and moderate the others in the exercise of their respective functions, with the result of effectively guaranteeing not only the harmonious balance of powers, but also the fundamental freedoms of citizens (Volpi 2020).

The US presidential form of government has circulated in various other systems in Asia and Africa, but mainly in Latin America, where it began to spread from the achievement of independence in the first half of the 19th century and today distinguishes – although in different variations – the totality of the systems in the area, without any of them having adopted the parliamentary form of government.

After a long and complex authoritarian season, Latin American constitutional orders began, as is well known, their democratic transition – with different paths and different outcomes – only in the late 1980s.

What seems to emerge most clearly from the reflections of scholars who studied the subject of the presidential form of government in Latin America is, in any case, the considerable diversity of constitutional arrangements achieved in the systems of the area, such as to prevent the reconstruction of a single – and unitary – model of Latin American presidential form of government (Carpizo 2009).

Another element of strong convergence in the doctrine is, then, certainly represented by the profound difference of the form of government of Latin American systems from the US presidential idealtype, so that its transposition has given rise to an implementation considered degenerative compared to the original model – variously defined by scholars as presidentialist regime, hyperpresidentialism, caudillism, presidential preponderance, democratic dictatorship, elective monarchy, representative caesarism (Ceccherini 2020) – since it is characterized by the excessive series of constitutional pre-

rogatives and institutional resources available to Presidents, such as to profoundly alter the recalled constitutional balance between powers typical of the US form of government.

Consider, in this regard, the power to dissolve Parliament; the power (sometimes exclusive) of legislative initiative; the possibility of resorting – even in cases other than those of emergency – to the adoption of presidential decrees with the force of law; the possibility (often without particular constitutional constraints) of calling a referendum; and the power to proclaim states of emergency or exception (with profound weakening of constitutional guarantees for citizens' rights and freedoms): elements, these, that – with different combinations between them – recur in numerous constitutional systems of Latin America.

Extending the analysis to the party system, the deviation from the US idealtype appears, then, even more pronounced: instead of being based on a consolidated two-party system, the Latin American political scenario appears, in fact, to be characterized by a fragmented multipartyism – thanks also to the adoption of non-selective electoral systems for the election of Assemblies – with political formations that are not very cohesive, poorly institutionalized and often unable to ensure solid support for presidential policies, nor to oppose them alternatively (Di Giovine 2020).

Based on these interpretive premises, scholars have proposed an attempt to reconstruct the common elements recurring in the presidential form of government in Latin American systems, identifying as such: a) an autonomous, strong, political legitimisation of the presidential office, deriving from popular election by direct suffrage; b) the broad constitutional powers – ordinary and extraordinary – in favour of the president; c) the inadequate institutional control (of the legislative and the judicial) over the executive; and d) the consequent, problematic balancing of the powers of the state, not consistent to the North American model of effective checks and balances between them (Mezzetti 2020a).

Thus, rather than an effective system of checks and balances in the constitutional relations between the executive and the legislative, there is rather a *mutuo bloqueo* between them, given that: a) the presidential power of legislative initiative sometimes requires qualified quorums for subsequent parliamentary approval; b) the presidential power of veto (which can be either total or partial) turns out to be surmountable by Parliament, in many cases, only with particularly high majorities, thus conditioning – if frequently employed – significantly the actual exercise of the legislative function; c) the complexity of the legislative process and the lack of cohesion of parliamen-

tary majorities increase the (often abusive) use of presidential decree; d) different electoral systems and non-simultaneous elections for Parliament and the President produce, in not a few cases, political outcomes of varying complexity, resulting in complicated, institutional deadlocks (Mezzetti 2020a).

Therefore, the invitation – proposed by careful doctrine – to construct "*clases 'ductiles' de la forma de gobierno*" in Latin America seems particularly appropriate (Pegoraro 2018).

Thus, at least three classificatory subtypes can currently be identified within the Latin American presidential form of government: pure presidentialism, attenuated presidentialism and parliamentarised presidentialism (Carpizo 2009), or – according to other definitions – pure presidentialism, attenuated parliamentarised presidentialism and hegemonic parliamentarised presidentialism (Nogueira Alcalà 2017).

The first subtype – pure presidentialism – in the Latin American version is characterized by the power granted to the President of the Republic to appoint (without prior advice from Parliament) and dismiss ministers; in the mutual irrevocability between the President and Parliament; in the presidential (exclusive) legislative initiative in economic-social matters; in the prerogative granted to the President of vetoing laws; in parliamentary control over the executive limited to questions and interpellations, without any possibility of actually bringing into play the political responsibility of ministers; in the configuration of the impeachment against the President and federal officials. This first subtype characterizes the constitutional experiences of Chile, Brazil, Honduras and Mexico, among others.

The second subtype – attenuated presidentialism – also provides for a monist executive in which the President is Head of State and Government, holder of numerous and relevant constitutional powers, but is balanced by a Parliament, elected by a non-selective proportional electoral system, which is given the prerogative of expressing no-confidence in individual ministers and in the *Jefe de Gabinete* (a sort of embryonic Prime Minister, where provided for in the constitution). The constitutional systems of Argentina, Costa Rica, Guatemala and Bolivia, for example, can be placed in this second subtype.

Lastly, the third subtype – hegemonic presidentialism – is marked, as a genuinely distinctive trait from the previous ones, by the attribution to the President of the power to dissolve Congress, without, however, the latter being able to symmetrically cause the early termination of the President's office for purely political/fiduciary reasons. Parliament can, however, challenge ministers, individually or collectively, thus forcing them to resign. Hegemonic presidentialism, in the recalled classificatory proposal, char-

acterizes, among others, the experiences of Uruguay, Peru, Venezuela and Ecuador (Nogueira Alcalà 2017).

3. Presidents and parliaments in Argentina and Chile

With the Argentine elections of 1983 and the Chilean elections of 1989, the democratic transition in the two countries began, as is well known, after the long and dramatic authoritarian season, marked by military regimes that were strongly repressive of citizens' rights and freedoms.

In both *Cono Sur* jurisdictions – unlike many post-authoritarian constitutional experiences in Latin America (Mezzetti 2020b) – there is no election of a Constituent Assembly to approve a new fundamental charter: in Argentina, the constitutional text that predates the authoritarian period survives; in Chile, the drafting of the 1980 constitution is, on the other hand, strongly marked by the authoritarian influence of General Pinochet and his followers.

Without exploring in depth the albeit interesting question of the democratic transition and constituent path undertaken by the two countries, the most important institutional element here is represented by the numerous constitutional revisions adopted over the years in the two systems, culminating with the wide-ranging Argentine charter reform adopted in 1994 and the equally wide-ranging Chilean constitutional revision of 2005, which constitute (substantially) the constitutional set-up still in force today and which, therefore, will be dealt with in the following, taking into comparative consideration the various elements of analogy and distinction between the two systems.

As for the election of the president, the two charters – although both provide for election by direct universal suffrage – differ as to the electoral mechanism concretely adopted for choosing the officeholder.

In Chile, the constitution (art. 26) stipulates that the president is elected by an absolute majority of the votes cast: if none of the candidates obtains this quorum, a second round of voting is held reserved for the two candidates with the most votes in the first round, with the candidate who obtains the most votes in the run-off being elected.

In Argentina, the election of the president and vice president takes place in two rounds of voting (art. 94 const.); the second round, however, is not held in two cases: a) if the presidential ticket with the most votes obtains at least 45% of the votes cast in the first round (art. 97 const.);

or, b) if the ticket with the most votes in the first round obtains at least 40% of the votes and there is a margin of more than 10% over the runner-up (art. 98 const.).

The constitutional rules on the duration of the presidential term, the limits to re-eligibility and the cases of substitution for (temporary and permanent) impediment of the President also differ appreciably.

In Argentina, the term of office of the president is four years, renewable consecutively for one time only (art. 90 const.). In the cases of death, resignation, revocation or impediment of the President, the Vice-President performs the presidential functions, until the end of the term of office; if he/she also falls into one of the previous conditions, it is the Congress that regulates the substitution until the election of a new President (art. 88 const.).

In Chile, the term of office of the President is likewise four years, but the officeholder is not immediately eligible, upon expiration, for re-election for a subsequent term (art. 25 const.).

Since a Vice-President is not elected at the same time as the President of the Republic, the Chilean constitution regulates the possibility of a deputy President in a very articulate manner (art. 29): if the President is temporarily unable to perform his duties, the deputy President is successively assigned to the most senior minister in office or, if he/she is unable to do so, to the President of the Senate, to the President of the Chamber of Deputies or, again, to the President of the Supreme Court.

In the event of a permanent impediment, if there are less than two years left before the end of the presidential term, Congress is called upon to elect – by an absolute majority of the deputies and senators – his successor; if, on the other hand, there are more than two years left before the end of the term, a new presidential election must be held by direct universal suffrage: in both cases, however, the newly elected President remains in office until the end of the original term of office of the person replaced and cannot stand for the next presidential election.

As for the President's powers, both the Argentine (art. 99) and Chilean (art. 32) constitutions contain a broad enumeration of constitutional prerogatives assigned to the Head of State.

Among the main powers granted to the President, it is of interest here to consider those related to legislative powers and relations with Parliament.

In both Argentina and Chile, the constitution assigns legislative initiative to the President, but only in Chile does the charter give him exclusive legislative initiative in economic-financial, social and budgetary matters (art. 65), thus giving him an absolutely dominant role in the legislative process.

The presidential veto power is, then, regulated in both constitutions and can be overridden by the respective parliaments only with a quorum of two-thirds of the votes (art. 83 const. Argentina; art. 73 const. Chile), but only in Argentina is the partial veto power expressly regulated, which allows the President the significant prerogative of enacting only part of a law approved by Congress, referring the remaining text to the Houses of Parliament for reconsideration (art. 80 const.).

In both systems, the president is, therefore, a true "*órgano colegislador*" (Nogueira Alcalà 2017).

Still about legislative powers, the power to adopt decrees with the force of law conferred on the President by the two charters is of relevance.

In Chile, the constitution establishes that Congress may, by law, delegate to the President the power to adopt decrees with the force of law in matters not reserved by the constitution to the Chambers themselves: the decree remains in force for one year from its entry into force and the delegation law may establish further conditions and limitations to the decree (art. 64 const.).

In Argentina, the President cannot adopt decrees with the force of law except in exceptional circumstances in which it is not possible to wait – for reasons of necessity and urgency – the time required for the law formation process.

The decree-law (which cannot intervene in penal, fiscal, electoral and political party matters) is countersigned by all the ministers and is submitted by the *Jefe de Gabinete*, within ten days of its adoption, to the Permanent Bicameral Commission – composed of deputies and senators proportionally respecting the composition of the two Chambers – which in the following ten days must render its opinion on the matter to Congress (art. 99 of the Constitution).

The Argentine constitution also provides for the possible adoption of delegated decrees in favour of the executive (art. 76).

The Presidents of Argentina and Chile have, in any case, wide-ranging powers in relation to the regulation of states of constitutional exception and emergency (which will be adequately discussed in the following section).

The constitutional prerogatives assigned to Parliaments – both of which have a Bicameral structure (Chamber of Deputies and Senate) – for the exercise of the function of control over the executive are of a different nature and institutional characteristics in the two systems.

In Chile (art. 52, paragraph 1 of the Constitution), one-third of the members of the Chamber of Deputies are granted the right to submit ques-

tions and interpellations to ministers who are called to answer them before the Assembly; in any case, such acts of scrutiny may not be adopted more than three times in each session against the same minister.

With a quorum of at least two-fifths of the deputies, the Chamber may also establish a commission of enquiry to request acts and information from members of the executive. The same constitutional provision, however, expressly clarifies that all the acts of inquiry – which fall within the exclusive competence of the Chamber of Deputies alone – never have the effect of bringing into play the political responsibility of ministers.

In Argentina, both Chambers are granted the prerogative to submit questions and interpellations to ministers, who are required to appear before the Assemblies to provide the requested information (art. 71 const.).

But in Argentina – unlike the Chilean system – the possibility of sanctioning the political responsibility of the (only) *Jefe de Gabinete* through the approval of an explicit motion of no-confidence by both Chambers is also constitutionally established: pursuant to art. 101 of the Constitution, in fact, each of the Houses has the possibility – by an absolute majority of its members – to call a motion of no-confidence against the *Jefe de Gabinete*, which, in order to determine the obligation for the latter to resign, must be approved by both Houses with the quorum of an absolute majority of their respective members.

The constitutions of both systems provide, then – similar to the US model – for the impeachment of the President, which can be activated, for the serious violations indicated by the norms (art. 52 const. Chile; art. 53 const. Argentina) by the respective Chambers of Deputies (in Chile, by an absolute majority; in Argentina, by a two-thirds majority) and judged by the Senates, which may convict and remove from office Presidents only with the approval of a qualified majority of two-thirds of their members (art. 53 const. Chile; art. 59 const. Argentina).

From the analysis of the constitutional arrangements of the two systems emerges, therefore, the institutional attempt practised (only) in Argentina – with the 1994 revision – to mitigate the excessive presidential preponderance, introducing an element of strengthening the Parliament through the institution of parliamentary censure against the *Jefe de Gabinete*, in order to enhance a sort of "parliamentarisation" of the system (Gambino 2020).

Constitutional practice, however, shows that this attempt does not appear, at present, to be productive of any effect in the sense indicated.

In Argentina (as, for that matter, in Chile), Parliament still constitutes an "*órgano debilitado que no permite contrapesar efectivamente al gobierno*"

(Nogueira Alcalà 2017), nor has the *Jefe de Gabinete* evolved into a sort of effective Prime minister, but is rather a mere coordinator of the other ministerial colleagues, at the complete disposal (and confidence) of the President of the Republic and without any margin of real autonomy in identifying the political direction of the executive.

Not even the institution of ministerial countersignature – necessary for the validity of any presidential act (art. 100 const. Argentina; art. 35 const. Chile) – has ever departed from its nature as a mere control on the formal regularity of the act, with the consequence that ministerial refusal of countersignature has always entailed, in institutional practice, the resignation of the minister and his/her rapid replacement by the President.

Thus, ultimately, "*en el contexto latinoamericano la hibridación del presidencialismo con algunas instituciones parlamentarias no ha frenado la hegemonía presidencial, la que se ha mantenido incólume en los países, como Argentina, en que dichos mecanismos han sido introducidos*" (Nogueira Alcalá 2017).

From the point of view of constitutional practice, the typological classification that sees the experiences of Argentina and Chile placed in two distinct classes tends, therefore, to blur, since the presidential preponderance appears, however – also in Argentina – to significantly characterize the actual functioning of the constitutional order.

This does not affect, however, the fact that – as pointed out acutely by others – the introduction in Argentina of parliamentary censure against the *Jefe de Gabinete* may evolve, in the future, the form of government "*hacia el semipresidencialismo*" (Pegoraro 2018).

4. The form of government in the emergency

The Presidents of Argentina and Chile have, as previously stated, considerable constitutional powers to manage states of crisis, emergency, and exception.

Thus, in Chile, the constitution contains an entire chapter (*Estados de excepción constitucional*: art. 39-45) dedicated to the analytical regulation of states of constitutional exception, which can be decreed by the President of the Republic alone – who also determines their geographical area of application (Piergigli 2021) – for the hypotheses of internal and external war, serious internal disorder, emergency and public calamity (art. 39).

The declaration of a state of siege (art. 40 const.) – for internal/external war or serious internal disorder – is attributed to the President, while

Congress must decide (accepting or rejecting the presidential declaration) within five days. A state of siege due to internal unrest or war can last up to fifteen days, with no possibility for the President to request an extension.

The state of catastrophe (art. 41 const.), in case of public calamity, is likewise declared by the President, informing Congress of the actual measures taken to manage the emergency situation, which is entrusted by the President to the *Jefe de la Defensa Nacional*. After six months have elapsed, Congress may pronounce for the termination of the state of catastrophe, unless the President requests – with the consequent consent of Congress – an extension for a period even longer than one year.

A state of emergency (art. 42 const.) may be declared by the President, in case of serious breach of public order or serious danger to national security, for a period of fifteen days, which may be extended for a further fifteen days. For subsequent extensions, the President must obtain the prior consent of Congress, providing the necessary information on the measures taken.

The constitution (art. 43), in any case, specifies the constitutional freedoms and rights that may be restricted by the President's decision for each of the various states of constitutional exception stated in the preceding articles.

These limitations may not, however, extend to constitutional institutions, nor to the holders of their respective offices (art. 44); while the guarantee of effective judicial remedy against limitations on the constitutional rights of citizens continues to apply, without, however, the courts – unlike in other countries (Piergigli 2021) – being able to rule on the *de facto* circumstances that determine the presidential decree in states of exception (art. 45).

In Argentina, the President may declare a state of siege in the event of internal disorder or external attack to protect the constitution and its institutions, decreeing the suspension of citizens' constitutional guarantees, without, however, being able to impose punishments or sentences, but can, however, order the arrest or forced transfer of citizens (art. 23 of the constitution).

The recent health emergency in connection with the Covid-19 pandemic was the most interesting stress test for the latest developments in emergency management in the form of government in the two systems under consideration.

Chile and Argentina were, in this regard, the first countries in Latin America to react quickly to the health emergency: in Chile, with Decree no. 4/2020 of 5 February 2020 and the subsequent presidential decree on 18 March 2020 of the state of catastrophe provided for by art. 41 const.; in Argentina, with the *decreto de necesidad y urgencia* no. 260/2020 of 12 March 2020, containing

measures of prevention and sanitary containment for the period of thirty days, then further extended by subsequent decrees, without resorting to the *estado de sitio* referred to in art. 23 const., but with the adoption of the decree-laws governed by art. 99(3) of the Charter.

In Argentina, the adoption of Decree-Law no. 260/2020 and subsequent decrees was not, however, followed – as the constitution requires – by a meeting of the Permanent Bicameral Commission to evaluate the contents of the decree, nor did Congress meet to express its political considerations on the matter, so that the long inactivity of the Houses during the phase of the health emergency "has in fact generated a situation of 'hyper-presidentialism', as has already occurred at various times in Argentine history" (Spigno 2020).

The question of constitutionality of Decree no. 260/2020 was, however, subjected to judicial scrutiny in the *Kingston, Patricio s/ Habeas corpus* case, where both the criminal court of first instance and the court of appeal recognised its constitutional compliance in each case.

In Chile, the health emergency has, first of all, entailed the postponement of the referendum on the election of the Constituent Convention from 26 April to the following 25 October 2020, but – unlike in Argentina – the Chilean Congress has continued to meet, albeit in virtual mode, considering and evaluating the various measures adopted by the executive under art. 41 of the Constitution, which (as seen) provides that the management of the emergency situation resulting from the state of catastrophe is entrusted by the President to the *Jefe de la Defensa Nacional*.

The Chilean Supreme Court, hearing – with *recurso de protección* (art. 20 of the Constitution) – numerous questions concerning the legality and proportionality of the various measures adopted by the executive, has, in any case, recognised their full legitimacy (sentence no. 39506-2020).

REFERENCES

Ackerman B.
Brazil's Constitutional Dilemma in Comparative Perspective: Do Chile and Spain Cast Light on the Bolsonaro Crisis?, in ICONNECT-Blog, July 16, 2020.

Carpizo J.
voice *Forma di governo presidenziale*, in L. Pegoraro (a cura di), *Glossario di diritto pubblico comparato*, Roma, 2009.

Ceccherini E.
Le democrazie incerte in America Latina. Le ragioni di un mancato consolidamento, in *DPCE OnLine*, 3, 2020.

Chaisty P.
Cheeseman N., Power T.J., *Coalitional Presidentialism in Comparative Perspective. Minority Presidents in Multiparty Systems*, Oxford, 2018.

Cheibub J.A., Elkinks Z., Ginsburg T.
Latin American Presidentialism in Comparative and Historical Perspective, in *Texas Law Review*, 89, 2011.

Di Giovine A.
Le forme di governo, in P. Carrozza, A. Di Giovine, G.F. Ferrari, *Diritto costituzionale comparato*, V ed., Roma-Bari, 2020.

Dixon R., Ginsburg T. (eds)
Comparative Constitutional Law in Latin America, Cheltenham-Northampton, 2017.

Frosini T.E.
Le forme di governo e i sistemi elettorali, in T.E. Frosini (a cura di), *Diritto pubblico comparato. Le democrazie stabilizzate*, Bologna, 2019.

Gambino S.
Democrazia e forme di governo nelle esperienze costituzionali latinoamericane: derive illiberali o degenerazioni autoritarie?, in *DPCE Online*, 3, 2020.

Groppi T.
Chile 2021: Una Constitución para el Siglo XXI, in *DPCE Online*, 1, 2021.

Hernandez A.H.
Presidencialismo y Federalismo en Argentina, in *Federalismi.it*, 1, 2010.

Hirschl R.
Comparative Matters. The Renaissance of Comparative Constitutional Law, Oxford, 2014.

Hübner Mendes C., Gargarella R. (eds)
The Oxford Handbook of Constitutional Law in Latin America, Oxford, 2021.

Martinelli C.
Il ruolo del Parlamento nei sistemi presidenziali maturi, in R. Tarchi (a cura di), *Parlamento e parlamentarismi nel diritto comparato*, Milano, 2020.

Mezzetti L.
Ruolo ed evoluzione del Parlamento nei sistemi presidenziali latino-americani, in R. Tarchi (a cura di), *Parlamento e parlamentarismi nel diritto comparato*, 2020a.

Mezzetti L.
*L'America Latina*in P. Carrozza, A. Di Giovine, G.F. Ferrari (a cura di), *Diritto costituzionale comparato*, V ed., Roma-Bari, 2020b.

Nogueira Alcalà H.
La tipología de gobiernos presidencialista de América Latina y gobiernos semipresidenciales en Europa, in *Estudios Constitucionales*, 2, 2017.

Olivetti M.
Il plebiscito del 25 ottobre 2020, prima tappa del processo costituente cileno, in *DPCE Online*, 1, 2021.

Olivetti M.
Il Cile torna sotto i riflettori: un processo costituente in una democrazia consolidata, in *Federalismi.it*, 33, 2020.

Pegoraro L.
Diritto costituzionale comparato. La scienza e il metodo, Bologna, 2014.

Pegoraro L.
América Latina como categoría y objeto de comparación, in *Diritto pubblico comparato ed europeo*, 1, 2018.

Pegoraro L., Rinella A.
Sistemi costituzionali comparati, Torino, 2017.

Piergigli V.
Dagli "stati di eccezione" al processo costituente. Una ricostruzione della recente esperienza cilena, in *DPCE Online – Osservatorio sul processo costituente cileno*, 2021.

Spigno I.
Emergenza sanitaria vs. emergenza costituzionale in America latina: una prospettiva comparata, in *DPCE Online*, 3, 2020.

Tarchi R. (a cura di)
Parlamento e parlamentarismi nel diritto comparato, Milano, 2020.

Volpi M.
Libertà e autorità. La classificazione delle forme di Stato e delle forme di governo, VII ed., Torino, 2018.

Volpi M.
La classificazione delle forme di governo, in G. Morbidelli, M. Volpi, G. Cerrina Feroni (a cura di), *Diritto costituzionale comparato*, Torino, 2020.