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Lessons from Latin America

BUILDING INSTITUTIONS ON WEAK FOUNDATIONS

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Throughout his career, Guillermo O'Donnell used Latin American cases to challenge and refine theories of democracy that were based, either explicitly or implicitly, on studies of advanced industrialized countries. During the “third wave” of democratization, when the literature on constitutional design was at its peak, O'Donnell pointed to the important role played by weak and informal institutions.¹ This work highlighted a major problem in many studies of Latin American institutions: They were based on an assumption of institutional strength—that is, they assumed that the rules written on parchment are minimally stable and regularly enforced.

Although such assumptions may be appropriate for analyses of advanced industrialized democracies, they travel less well to Latin America and other developing regions. As we have argued elsewhere, institutions in the developing world vary widely in terms of their enforcement and their durability.² Indeed, many Latin American democracies are characterized by weak institutional environments in which 1) enforcement of the rules is low, or there exists broad de facto discretion with respect to their application; and 2) institutional durability is low, in that formal rules change repeatedly, rarely surviving fluctuations in the distribution of power and of preferences. In such a context, actors do not know whether rule violations will trigger sanctions or whether existing rules will persist. The result is high uncertainty and narrow time horizons, as actors cannot reliably use formal rules to guide their expectations about how other actors will behave. Such an environment has

important consequences for institutional development. Unstable rules and widespread discretion over rule enforcement powerfully shape how and why actors create institutions, as well as why, when, and how those institutions change.

Patterns of institutional change in much of Latin America do not easily fit established theory. Many contemporary analyses of institutional development are based on “punctuated-equilibrium” models, in which long periods of continuity are punctuated by periods of abrupt and far-reaching change. Such models often underlie path-dependent analyses, which treat periods of institutional change as “critical junctures,” after which the rules of the game are said to “lock in” or become “sticky.” More recently, scholars such as James Mahoney and Kathleen Thelen have challenged this model, arguing that institutional change is more frequently a gradual and slow-moving process, in which actors subvert, build around, or redirect the rules rather than dismantle them.³ Both of these models assume a strong institutional environment, in which the underlying rules of the game are well established. This may limit their utility in weak institutional environments, in which actors do not expect existing rules to endure or be evenly enforced.

Indeed, Latin American reality poses a challenge to *both* punctuated-equilibrium and gradual models of institutional change. For example, scholars of democratization developed path-dependent arguments linking the institutional arrangements created during transitions to longer-term regime outcomes. Transitions were treated as critical junctures in which the rules of the game were up for grabs, and it was often assumed that the rules crafted during this period would “lock in” and then shape subsequent regime trajectories.⁴ Thus Philippe C. Schmitter and Terry Lynn Karl predicted that conditions during transitions “would determine the initial distribution of resources among actors, and that these temporary disparities would be converted—through rules, guarantees, and roles—into enduring structures.”⁵

Scholars paid particular attention to the institutional prerogatives of the military, warning that military-led transitions would result in “perverse institutionalization” and the consolidation of “tutelary democracies.”⁶ In countries like Brazil and Chile, where militaries wielded considerable power during transitions, the institutionalization of military prerogatives was expected to be a major obstacle to future democratic consolidation. These predictions were off the mark. In most cases, institutions forged during transitions did not “lock in,” but rather were quickly modified or dismantled. In Ecuador and Peru, constitutions written during the transitions of the late 1970s were replaced in the 1990s; in Brazil and Chile, key military prerogatives were eliminated within a decade or two. Thus punctuated-equilibrium models led scholars to overstate institutional continuity in new Latin American democracies.

Yet institutional change in much of Latin America also looks dif-

FIGURE—PATTERNS OF INSTITUTIONAL CHANGE

	Incremental	Radical
Frequent	Gradual Change (Mahoney and Thelen)	Serial Replacement
Infrequent		Punctuated Equilibrium

ferent from models of gradual change. Rather than being infrequent and radical or ongoing and gradual, institutional change in much of Latin America is *frequent and radical*. We call this pattern *serial replacement* (see Figure). Examples of serial replacement abound. Take Latin American constitutions. Bolivia’s first postcolonial constitution, which was drafted in 1826, lasted only five years; its successor, the 1831 Constitution, lasted only three years. Bolivia’s constitution was replaced again in 1834, 1839, 1843, 1851, 1861, 1868, 1871, and 1878. Likewise, in the Dominican Republic, Ecuador, Peru, and Venezuela, constitutions were replaced at least ten times during the first century of independence—a stark contrast to the U.S. Constitution, on which most Latin American charters were originally modeled. In some countries, these patterns persist. Ecuador changed constitutions in 1978, 1998, and 2008, and it has now done so more than twenty times since independence.

Serial replacement can also be seen in the process of economic liberalization that took place in the 1980s and 1990s. In the advanced industrialized countries, economic liberalization was incremental. Indeed, according to Wolfgang Streeck and Kathleen Thelen, “an essential and defining characteristic of the . . . liberalization of advanced political economies is that it evolves in the form of gradual change.”⁷ Welfare-state institutions also evolved in a gradual manner. Even in the most radical reform cases, such as the United States under Ronald Reagan (1981–89) and the United Kingdom under Margaret Thatcher (1979–90), “the fundamental structure of social policy remain[ed] comparatively stable.” Pension systems proved particularly “sticky,” as governments were “strongly conditioned by the structure of programs already in place.”⁸ In Latin America, by contrast, economic liberalization often entailed the rapid and wholesale dismantling of economic institutions. Several Latin American governments (such as those of Carlos Menem in Argentina [1989–99] and Alberto Fujimori in Peru [1990–2000]) undertook sweeping institutional reforms of a kind that had previously been associated only with dictatorships like that of Chilean strongman Augusto Pinochet (1973–98). Welfare-state institutions were also radically reconfigured. For example, governments in Argentina, Bolivia, El Salvador, and Peru thoroughly overhauled pension structures, replacing pay-as-you-go systems with privatized systems. Yet many of these reforms proved short-lived. In

Argentina, Bolivia, Venezuela, and elsewhere, a variety of market-oriented institutions created in the 1980s and 1990s were dismantled in the 2000s.

Serial replacement is also evident in the area of electoral reform. Scholars of electoral systems—particularly those in advanced industrialized countries—have highlighted their stability. According to Arend Lijphart, “one of the best-known generalizations about electoral rules is that they tend to be very stable.”⁹ Yet as Karen Remmer observes, electoral rules in Latin America “are notable less for their ‘stickiness’ than for their fluidity.”¹⁰ For example, Venezuela employed thirteen different electoral laws between 1958 and 1998, which meant that there were more electoral reforms than elections. Likewise, Ecuador’s electoral system has undergone “incessant” change since 1978: “Not a single election has been carried out under the same rules as the previous election.”¹¹

Explaining Serial Replacement

The causes of serial replacement lie, to a significant extent, in institutional origins. Much of the political-science literature assumes that institutions are born strong (or in equilibrium), in the sense that they are designed more or less in line with the distribution of domestic power and preferences and existing social and political norms. In other words, all actors initially accept the rules or lack the power to overturn them. In most established democracies, where formal rule-making authorities (executives, parliaments, and courts) are fully vested with power and either represent powerful state and societal actors or are able to impose rules upon them, these assumptions often hold.

Such conditions frequently do not hold in Latin America, however. Historically, formal institutions there have often been born weak (or out of equilibrium). Such stillborn or transient institutions appear to be rooted in two conditions. One is extreme uncertainty. O’Donnell and Schmitter highlighted the role of uncertainty in transitions, arguing that it heightens the importance of contingency—and of agency—in institutional design.¹² Yet uncertainty—either about the underlying rules of the game or about the distribution of power and preferences—also increases the likelihood of miscalculation. When uncertainty is high, those in control of the rule-writing process are more likely to misjudge the preferences or strength of powerful actors, leaving newly designed institutions vulnerable to displacement.

A second condition that gives rise to stillborn or transient institutions is incongruence between formal rule-making processes and *de facto* power holders. In established democracies, veto players are generally incorporated into the formal rule-making process, via political parties, legislative representation, corporatist bargaining, or legalized interest-group activity. This has not always been the case in Latin America. Al-

though elections, parties, legislatures, and nominally independent judiciaries have existed throughout much of the region's history, the degree of correspondence between those formal institutions and actual power distributions and decision-making centers has varied widely.

In extreme cases, such as Nicaragua under the Somozas (1936–79) and the Dominican Republic under Rafael Trujillo (1930–61), formal democratic institutions served as little more than window dressing. In other cases, their power was ambiguous and contested. Elections produced governments and legislatures whose authority to make binding rules was often constrained by informal veto players such as the military, the Catholic Church, and economic elites. Such incongruence was especially manifest in hybrid or “tutelary” regimes in which militaries retained *de facto* veto power despite formal transitions to civilian rule, as was the case in much of Central America in the 1980s.¹³

The existence of powerful informal veto players may give rise to transient institutions in two ways. First, like high uncertainty, the existence of such veto players increases the likelihood of miscalculation: Where they are not formally incorporated into the rule-making process, rule writers are more likely to misjudge the veto players' power or preferences. Second, a disjuncture between rule writers and informal power holders may create incentives for the former to design institutions aimed at weakening the latter. Although such efforts are sometimes successful, they often fail, resulting in institutional displacement.

Why have uncertainty and incongruity between rule writers and power holders historically been so much greater in Latin America than in the established industrial democracies? Several factors appear to be important:

Regime instability. Regime instability has long plagued Latin America. Prior to the third wave, many countries in the region experienced regime transitions—between civilian and military rule or from dictatorship to dictatorship—at a rate of more than one per decade. Transitions are often characterized by uncertainty about power distributions and actors' preferences, as well as a disjuncture between rule writers and *de facto* power holders. In such a context, those in temporary control of the rule-writing process (constituent assemblies, transitional or weak civilian governments) may ignore the preferences—or misjudge the strength—of powerful veto players, leaving new institutions vulnerable to displacement.

Frequent transitions thus increase the likelihood that institutions will be born weak. Indeed, as Zachary Elkins, Tom Ginsburg, and James Melton note, Latin American history is “littered with” transitional constitutions—often written by constituent assemblies that were insufficiently representative of powerful leaders—that met an early demise because they “stood in the way of executive ambition.” For example,

Brazil's 1934 Constitution, written by an elected constituent assembly in the wake of the 1930 transition, greatly strengthened the legislative and judicial branches vis-à-vis the executive; however, Brazil's powerful President Getúlio Vargas (1930–45) “chafed under the charter's restrictions” (which, among other things, would have prevented his re-election) and dissolved it in 1937, replacing it with a far less liberal constitution.¹⁴

Electoral volatility. Although regime instability declined in Latin America after the 1980s, levels of electoral volatility remained high throughout much of the region, often producing dramatic shifts in political-power configurations from election to election. In Ecuador, Guatemala, and Peru, for example, party collapse was so extreme in the 2000s that party systems were effectively created anew at each election. Parties that controlled the presidency or Congress in one period were marginal in the next one.

Electoral volatility has two effects. First, like regime transitions, it generates uncertainty about power distributions, which increases the likelihood of miscalculation. Second, rapid and dramatic shifts in power distributions make it less likely that newly created institutions will take hold. Even when actors design rules in line with underlying power distributions at the time, a radical reconfiguration of the party system may leave the actors who initially designed the rules too weak to defend them later on. In such cases, the new rules may simply lack the time to take root. Whether due to public legitimacy, the emergence of constituencies with a vested interest in their preservation, or simple “taken for grantedness,” the passage of time tends to have a stabilizing effect on institutions. Hence, institutions that emerge amid rapidly changing power constellations should, all else equal, be less likely to endure.

Electoral volatility may explain the repeated reconfiguration of electoral rules in much of Latin America. If parties in power often design electoral rules in their own self-interest, then extreme volatility—in which the dominant parties repeatedly lose power to new ones—should result in frequent electoral redesign. Electoral volatility may also help to explain recent constitutional fluidity in Ecuador. Ecuador's 1998 Constitution was designed by established parties in consultation with indigenous groups that had emerged as powerful actors in the 1990s. Yet before the new constitution could gain a minimum of public legitimacy, the indigenous movement divided and weakened, and established parties were displaced by outsiders. When newly elected outsider Rafael Correa called a constituent assembly in 2007, the political forces responsible for the 1998 Constitution were marginal, and pro-Correa forces—nonexistent in 1998—won a majority.

Social inequality. Most Latin American states have for decades granted full political rights to all citizens, yet extreme socioeconomic

inequality persists. The coexistence of political equality and extreme socioeconomic inequality often creates a disjuncture between formal rule writers elected by politically equal citizens and powerful socioeconomic actors who are not necessarily represented in the formal political system. Such a disjuncture increases the likelihood that elected governments will overestimate their capacity to sustain the rules that they create—or to enforce the rules without triggering a fatal attack against them. Chile offers an interesting example. Chile's institutional stability during the mid-twentieth century, despite extreme inequality, may have been facilitated by restrictions on suffrage, which helped to preserve congruence between rule writers and power holders. The establishment of universal suffrage in the 1960s undermined this congruence, particularly after the 1970 election of Socialist Salvador Allende. Once the economic elite lost control of the rule-writing process, it first sought to weaken the presidency and then backed a 1973 military coup that culminated in Allende's death and Pinochet's rise to power.

Institutional borrowing. Like many former colonies, Latin American states are prone to import institutions from abroad. As Kurt Weyland has shown, Latin American governments routinely emulate institutional models employed by successful neighbors, often without serious regard to how those institutions align with domestic power structures or pre-existing norms.¹⁵ Incentives to borrow from abroad are often reinforced by conditionality imposed by Western governments or international financial institutions. Whether the mechanism is diffusion or conditionality, the adoption of foreign models exacerbates problems of incongruence between rule writers and power holders, as governments necessarily pay less attention to how those institutions correspond to domestic norms and power structures. (Indeed, they may adopt foreign institutions precisely in an effort to alter those norms and power structures.) Although borrowed institutions sometimes take root, they are more likely to suffer displacement. An example is the diffusion of regulatory institutions, which various Latin American governments adopted in the 1990s under pressure from international financial institutions. Many of these new arrangements failed to take root, as a disjuncture between the adopted institutions and local perceptions of their fairness left them vulnerable to attack.

Rapid institutional design. Institutional durability may also be affected by the pace of institutional design.¹⁶ When institutions are created slowly, actors have time to evaluate their consequences, calculate how the rules affect their interests, and organize collectively in defense of (or opposition to) the rules. Rules that survive a slow process of formation are thus more likely to enjoy organized support and other means of institutional reproduction. By contrast, when rules are designed quickly, actors are more likely to miscalculate how their interests are affected

and other potential consequences of those rules, and mechanisms of reproduction have less time to emerge.

In Latin America, formal institutions are often created quickly, for at least two reasons. First, as O'Donnell argued, institutions of horizontal accountability—in particular, legislative and judicial bodies—are weak in much of the region; as a result, these parchment veto players are, in effect, paper tigers. By using decree authority or plebiscitary appeals to circumvent parties, legislatures, and other agents of horizontal accountability, executives can often quickly implement sweeping institutional reforms. Yet because such reforms are undertaken without extensive consultation or public debate, they often are flawed or politically unsustainable.

Second, the *de facto* weakness of institutional veto players is exacerbated by the frequency and depth of crises. Severe socioeconomic or political crises—and the perceived need for quick action to restore governability—are often used to justify rule by decree and sweeping reform “packages” undertaken without public consultation or debate, which again undermines their sustainability.¹⁷ In Argentina, for example, Carlos Menem took office amid a severe crisis and initiated a set of dramatic reforms, many of which were adopted quickly, often by decree, and with limited public debate. Just over a decade later, however, a new socioeconomic crisis paved the way for another round of sweeping reforms, many of which reversed those of the 1990s.

In sum, serial replacement is most likely where power distributions are uncertain or rapidly shifting and there is greater incongruence between the formal rule-writing process and underlying power structures. Uncertainty and incongruence are exacerbated by regime instability, electoral volatility, social inequality, frequent borrowing from abroad, and rapid institutional design encouraged by crises and the *de facto* weakness of formal institutional veto players. When powerful actors are excluded from the rule-writing process, they are likely to attack fledgling institutions early on. Consequently, new institutions are unlikely to endure long enough to gain broad public legitimacy, stabilize actors' expectations, or generate the kinds of vested interests and institution-specific investments that increase the costs of replacement.

Enforcement and Institutional Change

Variation in enforcement is central to understanding change in weak institutional environments. In weak institutional environments, discretion over rule enforcement is much wider than in many advanced industrialized democracies, for it is rooted not only in the inevitable ambiguities found in the letter of the law (*de jure* discretion) but also in actors' ability to avoid enforcement in direct violation of the rules (*de facto*

discretion). In much of Latin America, a weak or uneven rule of law has long enabled powerful actors to violate or ignore certain rules with impunity.¹⁸ Thus, even where the formal rules are relatively unambiguous, de facto discretion over enforcement yields considerable variation in terms of actual compliance. Rulers therefore enjoy a broader range of options: They may enforce the rules, use de jure discretion to limit enforcement, or use de facto discretion to permit—or engage in—the outright violation of the rules.

The role of de facto discretion over enforcement can be seen in the implementation of civil-service laws. All Latin American countries have civil-service laws on the books mandating merit-based appointments in the public sector and restricting the executive's capacity to make patronage appointments. As is the case in all countries, these civil-service laws contain a range of legal loopholes and ambiguities. Yet as Merilee Grindle shows, there exist major differences between "de jure and de facto practices" across the region.¹⁹ Whereas merit-based hiring systems are respected in a few countries (such as Brazil, Chile, and Costa Rica), in other countries (for example, Guatemala, Nicaragua, and Paraguay) government authorities enjoy near-total de facto discretion in making patronage appointments. Such discretion grants government officials a critical degree of agency, in effect expanding their options when rules come under pressure from powerful actors: Authorities may change the rules, look for legal loopholes within the rules, or simply select when to enforce the rules.

Non-enforcement may be a source of formal institutional stability. Enforcement and stability are often viewed as complementary. In their work on constitutional endurance, for example, Elkins and his coauthors write that "fealty to the dictates of the constitution . . . and [constitutional] endurance are inextricably linked."²⁰ Yet in some cases, institutional endurance is rooted in the *systematic absence* of such fealty. Weak enforcement lowers the stakes of formal institutional outcomes, which sometimes lessens opposition to those institutions. By softening (or eliminating) an institution's effects on informal veto players and other potential losers, weak enforcement may induce powerful actors to accept rules that they would otherwise seek to overturn.

The relationship between non-enforcement and stability can be seen in the case of Mexico under the Institutional Revolutionary Party (PRI). Constitutionally, Mexico's postrevolutionary order was remarkably stable. The 1917 Constitution survived through the end of the century. Yet constitutional clauses that threatened the vital interests of the PRI and its allies, including those mandating free and fair elections, limits on executive power, judicial-tenure security, and a variety of progressive social rights, were routinely violated. Thus formal institutional stability in twentieth-century Mexico was rooted less in veto possibilities (PRI governments could easily change the rules) than in the preference of PRI

elites for non-enforcement. If the alternative of non-enforcement had not been available, demands for institutional change probably would have been more intense.

Formal rules may thus remain on the books as window dressing when their existence generates some benefit for governments, but de

Relaxed enforcement may provide an under-the-radar means of abandoning the status quo without publicly acknowledging a major policy reversal.

facto discretion over enforcement protects powerful actors from the undesirable effects of these rules. For example, elites in peripheral countries may deem certain formal institutions to be essential to gaining or maintaining international standing. Elections are a clear example. Many autocrats have retained elections (though they are often marred by fraud and abuse) as a means of retaining international support. Likewise, many governments keep on the books (but rarely

enforce) child-labor statutes; laws protecting the rights of women, indigenous people, and ethnic minorities; and other laws deemed critical to maintaining their standing in the international community.

Window-dressing institutions may also have domestic value. In postrevolutionary Mexico, for example, regular elections were for decades viewed as essential to regime legitimacy and elite cohesion. In other cases, weakly enforced laws remain on the books because governing elites believe that their removal would trigger costly popular opposition. For example, all Latin American countries except for Cuba and (more recently) Uruguay have laws banning abortion—despite widespread variation in the enforcement of such laws—because removing them would trigger public opposition from the Catholic Church.

Stable window-dressing institutions are often accompanied by informal rules that help to guide actors' expectations in a context of limited enforcement. To the extent that such informal institutions stabilize actors' expectations and lower the stakes associated with formal institutional outcomes, informal institutions may enhance the stability of the formal rules. Informal rules were widespread, for example, in postrevolutionary Mexico. PRI elites faced the problem of presidential succession in a context of regular, but de facto noncompetitive elections (and an enforced ban on reelection). Over time, they developed the *dedazo*, an informal institution in which sitting presidents unilaterally chose their successor from a select pool of candidates (cabinet members) who obeyed a set of clear rules (to abstain from campaigning, mobilizing supporters, or attacking rivals, for example, and to publicly support the eventual nominee). Outgoing presidents would then retire from political life. The *dedazo* shaped leadership

succession in Mexico for half a century and contributed in an important way to the stability of Mexico's formal, but weakly enforced, electoral regime.

Reduced Enforcement and Institutional Activation

In a weak institutional environment, altering the *de facto* level of enforcement may be an important mode of institutional change, as parchment rules remain the same but their impact changes considerably. For example, relaxed enforcement may provide an under-the-radar means of abandoning the status quo without publicly acknowledging a major policy reversal.

Labor regulation in Latin America during the 1990s is a case in which reduced enforcement led to *de facto* institutional change. Latin American labor laws have proven surprisingly resilient, even during the heyday of the Washington Consensus. Yet enforcement levels have varied considerably over time. As scholars such as Graciela Bensusán and Maria Lorena Cook have shown, reduced enforcement was frequently employed as a means of achieving “*de facto* labor flexibility.”²¹ During the 1990s, Latin American governments came under pressure to liberalize labor laws. Yet many governments (particularly those with ties to organized labor), deeming the political costs of labor reform to be too high, pursued “*de facto* flexibility” via reduced enforcement. For example, Mexico's 1931 Federal Labor Law remained unchanged until recently. Yet during the 1990s, enforcement agencies used high levels of discretion in the enforcement of the law. In order to appease labor unions allied to the ruling PRI, however, the government also refused to reform the law. Similarly, although the Menem government left Argentina's labor law largely intact, it sharply reduced resources for monitoring and enforcing the law.²² In Mexico and Argentina, then, the stability of labor institutions was enhanced by weak enforcement in the 1990s. Rather than pursuing the more politically costly path of changing the letter of the law, governments simply weakened its enforcement.

Institutional change may also be achieved through the enforcement or “activation” of previously dormant formal institutions. An example is democratization in Mexico. Unlike many third-wave transitions in Latin America, Mexico's democratization was not accompanied by constitutional change. Rather, it entailed the activation of key elements of the (formally democratic but weakly enforced) 1917 Constitution. Stricter enforcement of electoral rules, together with increased electoral competition, put an end to *de facto* presidential dominance and empowered Congress, the judiciary, state governments, and other institutions, thereby bringing the regime much closer to the design of the 1917 Constitution. To a significant extent, then, Mexico's democratization occurred via constitutional *activation* rather than constitutional change.

The activation of previously dormant institutions is often rooted in a combination of social and judicial activism. For example, judicial activation of latent constitutional norms has occurred in countries such as Brazil and Colombia, where new constitutions included a plethora of social or “third-generation” rights (such as the right to health care, shelter, ethnic recognition, and a clean environment) that few observers expected to be enforced. Yet civil society groups mobilized around demands for their enforcement, using the legal system to activate these new constitutional rights, and on several occasions constitutional-court rulings compelled governments to implement policies aimed at enforcing those rights.

Finally, institutional activation may be a product of external pressure, especially in peripheral countries seeking access to international assistance or markets. For example, in countries where democratic institutions existed but were not seriously enforced during the Cold War, a combination of heightened international scrutiny and a credible threat of external punitive action in the 1990s raised the cost of non-enforcement—thereby creating incentives for institutional activation.²³ Another example is the impact of U.S. trade agreements on labor-law enforcement in Latin America. All but one of the eleven regional and bilateral trade agreements signed between the United States and Latin American governments in the 1990s and 2000s included labor-law enforcement as an explicit condition for membership. Conditionality appears to have had an impact: A recent study found that states that negotiate trade agreements with the United States invest twice as much in labor inspectors as do those which do not.²⁴

In short, *de facto* discretion over enforcement is critical to understanding patterns of change in Latin America. Weak enforcement can be an important source of formal institutional stability. In a context of incongruence between rule writers and informal power holders, uneven enforcement may stabilize formal institutions by shielding powerful actors from their undesired effects. At the same time, the activation of formal rules via increased enforcement may be a substantively important form of institutional change, even in the absence of legal reform. In such cases, window-dressing rules may provide a useful focal point for civil society groups, making mobilization in support of greater enforcement easier to achieve than an agreement on the design of new rules from scratch.

The Importance of Agency

In the spirit of O'Donnell's search for a more effective and progressive citizenship in Latin America, we wish to highlight two important sources of tension in our argument. First, in weak institutional environments there may be an inherent trade-off between institutional scope

and stability. Institutions that are not very ambitious in their design—in other words, those that seek to achieve less change—are less likely to trigger opposition from informal veto players and thus more likely to take root. By contrast, institutions that are ambitious in their design—those that seek to achieve greater change—are more likely to threaten the interests of powerful actors.

Two scenarios exist in such a context. If the rules are enforced, the probability of institutional instability is high. Alternatively, limited enforcement of ambitious rules may enhance their stability. Chile's 1980 Constitution is an example of a limited-scope institution (it includes few social rights) that proved both enforceable and durable. Argentina's 1949 (Peronist) Constitution is an example of an ambitious constitution that proved short-lived, whereas Mexico's 1917 Constitution is an example of an ambitious constitution that endured due to low enforcement. A potential resolution to this dilemma may be the activation, over time, of ambitious, but initially weakly enforced institutions. As noted above, Brazil's 1988 Constitution and Colombia's 1991 Constitution approximate this dynamic.

Second, it is easier to create durable and effective institutions when informal power holders are included in the rule-writing process, thereby reducing their incentive to dismantle or block the enforcement of fledgling institutions before they take root. Therefore, more effective institutions should emerge where the formal incorporation of powerful actors into the rule-writing process gives them a legal veto over rules that affect their interests. In highly unequal societies, however, such institutions may lack legitimacy among the majority of citizens, who, their political equality notwithstanding, are not endowed with such power.

In new democracies, then, politicians may be tempted to use electoral majorities to create more broadly appealing institutions that, if enforced, will be vulnerable to attack by informal veto players—which could easily generate patterns of serial replacement. A way out, perhaps, is something akin to O'Donnell and Schmitter's democratization “on the installment plan”²⁵: ambitious institutional reforms that, under pressure from civil society, may be activated over time. Following O'Donnell and Schmitter, then, the role of agency thus remains vital.

NOTES

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