

9. Building Institutions on Weak Foundations: Lessons from Latin America

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The liberal and democratic ideology, far from expressing our concrete historical situation, obscured it. The political lie installed itself almost constitutionally among our countries. The moral damage has been incalculable and reaches into deep layers of our character. Lies are something we move in with ease. During more than a hundred years we have suffered regimes of brute force, which were at the service of feudal oligarchies, but utilized the language of liberty (Octavio Paz).¹

Throughout his career, Guillermo O'Donnell used Latin American cases to challenge and refine dominant theories and concepts in comparative politics --often ones that were based, either explicitly or implicitly, on studies of advanced industrialized countries. Indeed, O'Donnell's writings on bureaucratic authoritarianism, democratic transitions, and the problems facing new democracies --delegative democracy, informal institutionalization, state weakness and the (un)rule of law-- all used Latin American reality to challenge some basic assumptions underlying existing theories of democracy.

Much of O'Donnell's later work focused on how state and institutional weakness shaped the character of new democracies.² During the early 1990s, when the literature on (formal) institutional design was taking off, O'Donnell highlighted the importance of weak (1993, 1994) and informal (1996a) institutions. These writings pointed to a key problem in the new institutionalist literature in Latin America. Many studies of democratic institutions are based on an assumption of institutional strength: that is, they assume that the rules that are written into 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. Institutions in the developing world vary widely, both in terms of their enforcement and in terms of their durability (Levitsky and Murillo 2009). This

variation has important implications for how institutions work, how (and why) they are created, and how they change. Although formal institutions are not uniformly weak in developing countries (nor uniformly strong in developed ones), the vast differences in the enforcement and stability of rules in Latin America suggests that institutional strength should be treated as a variable, rather than a taken-for-granted assumption.

A central insight of O'Donnell's later work, then, is that democratic politics work very differently in a weak institutional environment. By weak institutional environment, we mean a context 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 power and preference distributions.³ Because actors in such a context are often uncertain about whether rule violations will trigger sanctions, and because they are less likely to view unstable rules as legitimate (or "taken for granted") (Henisz and Zellner 2005), their incentives for compliance with formal rules are weaker.⁴ The result is high uncertainty and short time horizons, as actors cannot reliably use formal rules to guide their expectations about others' behavior.

Latin America is a particularly useful place to study the causes and consequences of institutional weakness. Although institutional weakness is hardly confined to Latin America, it is more common --and more extreme-- in the region than in the advanced industrialized countries upon which much of the institutionalist literature is based. Moreover, one finds considerable variation in institutional strength *within* Latin America, both across countries and within national territories (i.e., O'Donnell's (1993) "brown areas").⁵ This variation in institutional strength creates opportunities for scholars to refine existing theories of institutions while broadening their comparative scope.

This chapter examines issues of institutional change in a weak institutional environment. Taking as our point of departure the pioneering work by Kathleen Thelen and her collaborators,⁶ we argue that institutional change in Latin America often approximates *neither* the punctuated equilibrium models nor the modes of gradual change described by Thelen. Rather, institutional change often takes the form of “serial replacement,” in which institutions repeatedly undergo abrupt and wholesale transformation. The paper then examines the conditions that give rise to patterns of serial replacement. The second part of the paper turns to the relationship between enforcement and institutional change. It argues that systematic non-enforcement can be an important source of institutional stability, and that increased or reduced enforcement can itself be an important mode of institutional change.

We limit our discussion to cases in which states possess a minimum of control over the national territory (that is, where it exercises a legitimate monopoly of force in a Weberian sense). Where the state does not exist in much of the national territory (e.g., guerrilla-controlled zones in Peru in the 1980s or Colombia in the 1990s), or where the state is so weak that it fails to enforce even when governments attempt to do so (e.g., Haiti in the 2000s), it is virtually meaningless to talk about formal institutional enforcement. Our focus, then, is on cases in which the reach of the state makes enforcement possible—and uneven enforcement is thus rooted in choices made by elites, rather than the state’s absence or failure.

Rethinking Institutional Change in the Advanced Industrialized Countries: From Punctuated Equilibrium to Gradual Change

Institutionalism dominated the study of comparative politics in the 1990s and into the 2000s. Whereas an initial wave of literature focused on institutional effects,⁷ subsequent scholarship

turned to questions of institutional origins and change (Greif and Laitin 2004; Mahoney and Thelen 2010; Pierson 2004; Streeck and Thelen 2005; Thelen 1999, 2004; Weingast 2005). The impulse to study institutional change originated within the historical institutionalist tradition. Rational choice institutionalists did not view institutional change as particularly problematic. Because rational choice approaches to institutions generally treat them as in equilibrium, they expect institutional change whenever underlying power and preference distributions change.⁸ Historical institutionalists, by contrast, highlighted the “stickiness” of institutions, or the fact that many institutional arrangements persisted long after their originating power and preference distributions had changed (Thelen, Steinmo, and Longstreth 1992). Yet as Thelen observed, historical institutionalists’ focus on institutional continuities limited their capacity to explain change (1999; also Thelen and Steinmo 1992). Much of the early historical institutionalist literature employed a “punctuated equilibrium” model of change, in which long periods of continuity are punctuated by periods of abrupt and far-reaching change (Krasner 1984; Pempel 1998: 1-3). These studies thus distinguished between what Swidler calls “settled” times (1986: 278), in which the rules of the game are firmly established, and “unsettled times,” when the rules are up for grabs and radical change becomes possible (1986: 283). Such “discontinuous” models of change underlie many path dependent analyses, which tend to treat periods of institutional change as “critical junctures,” after which institutional arrangements were expected to “lock in” (Mahoney and Thelen 2010: 7; Streeck and Thelen 2005: 6-7).⁹

Yet as Thelen and her collaborators show, punctuated equilibrium models fail to capture many forms of institutional change. Institutional change is often *not* abrupt and discontinuous, but rather slow and gradual (Mahoney and Thelen 2010; Streeck and Thelen 2005; Thelen 2004). Mahoney and Thelen (2010) identify four modes of gradual institutional change: (1)

Displacement; or the “removal of existing rules and the introduction of new ones” (Mahoney and Thelen 2010: 15-16); (2) *Layering*, or the creation of new rules alongside old ones, thereby changing the way the original rules structure behavior; (3) *Drift*, in which the original rules remain intact but their impact is altered by changes in the external environment (Mahoney and Thelen 2010: 17) and (4) *Conversion*, in which “rules remain formally the same but are interpreted and enacted in new ways” (Mahoney and Thelen 2010: 17-18). Although these changes may occur rapidly, Thelen and her co-authors argue that institutional change is more often a “slow-moving process” (Mahoney and Thelen 2010: 15; Streeck and Mahoney 2005: 19-22). Rather than abruptly dismantling the rules, then, actors slowly subvert, build around, or redirect them.

Thelen and her co-authors are correct in asserting that institutional change is often gradual and subtle, rather than abrupt and discontinuous. However, their emphasis on gradual change is most appropriate in a strong institutional environment (such as those in most advanced industrialized democracies), in which the core rules of the game (i.e., political regime, legal system) are entrenched and actors expect that existing rules will endure and be regularly enforced. In weak institutional environments, in which actors do *not* necessarily expect existing rules to endure (and may expect them to fail), processes such as layering, drift, and conversion—in which actors seek to change behavior and outcomes while leaving the old rules formally intact—are less common. Indeed, patterns of formal institutional change are likely to resemble neither the punctuated equilibrium model nor the modes of gradual change developed by Thelen and her collaborators. Rather, they often take the form of serial replacement, in which change is both *radical and recurrent*.

A Latin American View: Serial Replacement as a Distinct Pattern of Institutional Change

Latin American reality poses challenges to both “punctuated equilibrium” models of institutional change and the models of gradual change described in the previous section. On the one hand, punctuated equilibrium models are often of limited utility, for as Kurt Weyland observes, institutional change in Latin America is “surprisingly discontinuous” (2008: 283). For example, scholars of democratization developed path dependent arguments linking the institutional arrangements created during transitions to longer-term regime outcomes (Agüero 2000; Karl and Schmitter 1991; Munck and Leff 1997; Schmitter and Karl 1992; J. S. Valenzuela 1992). Transitions were treated as critical junctures in which the rules of the game were up for grabs, and it was assumed that the new rules would “lock in” and then shape subsequent regime trajectories (Agüero 2000; Karl 1990; Karl and Schmitter 1991; Schmitter and Karl 1992; J. S. Valenzuela 1992). Thus, Schmitter and Karl argued 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” (1992: 59). Scholars paid particular attention to the institutional prerogatives of the military, arguing that military-led transitions would result in “perverse institutionalization” and the consolidation of “tutelary democracies” (J. S. Valenzuela 1992). Thus, in countries like Brazil, Chile, and Ecuador, where militaries retained considerable power during transitions, the institutionalization of military prerogatives was expected to be a “major obstacle to future democratic self-transformation” (Schmitter and Karl 1992: 62-63; also Hagopian 1990; J. S. Valenzuela 1992). These predictions were off the mark, however. In most cases, the institutions created during transitions did not “lock in,” but rather were quickly modified or dismantled (Hunter 1997). In Ecuador and Peru, constitutions written during transitions were replaced in the 1990s; in Brazil,

many military prerogatives were stripped away within a decade; even in Chile, where institutions have historically been stable, Pinochet's "protected democracy" was largely dismantled by 2005. Thus, punctuated equilibrium models led scholars to overstate institutional continuity in new Latin American democracies.

At the same time, however, institutional change in Latin America often does not approximate the gradual modes of change described by Mahoney and Thelen (2010). Rather than being infrequent and radical (i.e., punctuated equilibrium models) or ongoing and gradual, institutional change in much of Latin America is *frequent and radical*. Indeed, in some cases, the rules are overhauled with such frequency that --to use Swidler's (1986) language-- they appear to be permanently "unsettled." We call this pattern serial replacement (see Figure 9-1).

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Examples of serial replacement abound. Take Latin American constitutions. Bolivia's first post-colonial constitution, which was drafted in 1826, lasted only five years; its successor, the 1831 constitution, lasted only three years. Constitutions were replaced again in 1834, 1839, 1843, 1851, 1861, 1868, 1871, and 1878 (Loveman 1993: 237-255). The 1880 constitution was thus Bolivia's tenth in barely half a century. Bolivia was hardly unique. In the Dominican Republic, Ecuador, Peru, and Venezuela, constitutions were replaced at least 10 times during the first century of independence --a stark contrast to the US constitution, on which most Latin American charters were originally modeled (Elkins et al. 2009: Appendix, Table A.1). In some countries, these patterns have persisted in the contemporary period. For example, Ecuador

changed constitutions in 1978, 1998, and 2008, and it has now done so more than 20 times in fewer than 200 years of independence (Pachano 2010).

Serial replacement can also be seen in processes of economic liberalization in the 1980s and 1990s. In the advanced industrialized countries, economic liberalization took place “incrementally, without dramatic disruptions” (Streeck and Thelen 2005: 4). Indeed, according to Streeck and Thelen, “an essential and defining characteristic of the ongoing worldwide liberalization of advanced political economies is that it evolves in the form of gradual change” (2005: 4). Welfare state institutions also evolved in a gradual manner (Pierson 1994). Even in the most radical reform cases, such as Reagan and Thatcher, “the fundamental structure of social policy remain[ed] comparatively stable” (Pierson 1994: 182). Pension systems in particular were found to be particularly “sticky,” as even the most ambitious reform-minded governments were “strongly conditioned by the structure of programs already in place” (Pierson 1994: 73).

In Latin America, by contrast, economic liberalization often entailed the rapid and wholesale dismantling of economic institutions. In Argentina, Bolivia, Peru, and elsewhere, governments undertook sweeping institutional reforms --including large-scale privatization and deregulation and a dramatic restructuring of trade and foreign investment regimes-- of a kind that had previously been associated only with Pinochet-style dictatorships. Welfare state institutions were also radically reconfigured. In Argentina, Bolivia, El Salvador, and Peru, for example, governments dramatically overhauled pension systems, replacing pay-as-you-go systems with privatized systems. Not only were Latin American reforms more rapid and far-reaching than in the advanced industrialized countries, but in many countries, new market institutions proved short-lived. In Venezuela, Argentina, Bolivia, and elsewhere, a variety of market-oriented

institutions that were created during the 1980s and 1990s --including new private pension systems in Argentina and Bolivia-- 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. Arend Lijphart writes that “[o]ne of the best-known generalizations about electoral rules is that they tend to be very stable” (1994: 6), while Dieter Nohlen argued that major changes in electoral systems “are rare and arise only in extraordinary historical circumstances (1984: 218). Yet as Karen Remmer observes, electoral rules in Latin America “are notable less for their ‘stickiness’ than for their fluidity” (2008: 7).¹⁰ For example, Venezuela employed 13 different electoral laws between 1958 and 1998, which meant that electoral reforms were “more frequent than elections” (Remmer 2008: 176; also Crisp and Rey 2001: 176). 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” (Pachano 2010: 80). Finally, Argentina’s 24 provinces undertook 34 electoral reforms between 1983 and 2003, adopting --and discarding-- a wide range of electoral systems (Calvo and Micozzi 2005). For example, ten provinces adopted the double simultaneous vote (*ley de lemas*) system between 1987 and 1991; by 2003, however, six of these provinces had eliminated the system (Calvo and Escolar 2005: 106-107).

A fourth example of serial replacement is decentralization. Decentralizing reforms are widely viewed as sticky. Many analyses of the origins of federalism treat it as a path dependent process, in which initial center-periphery bargains prove enduring (Gibson 2004; Gibson and Faletti 2004; Ziblatt 2006). In Peru, however, decentralization has been a fluid and reversible process. Whereas Peru was a centralized state in the 1960s and 1970s, broken down into 25

departments with limited autonomy and no elected government, the 1979 constitution “mandated a federal-like system of regional governments” (Mauceri 2006: 51). The change was implemented in the late 1980s, when Congress hurriedly passed a law that subsumed Peru’s 25 departments into 12 regions to be governed by elected regional assemblies and indirectly elected presidents (Levitt 2012: 62-63; McNulty 2011: 28-29). The new arrangement proved short-lived, however. Following Alberto Fujimori’s 1992 presidential coup, the regional governments were dissolved and replaced by appointed Transitional Regional Administration Councils (CTAR), based on the old departments. The CTARs, in turn, were dismantled after Fujimori’s fall, and in 2002, a decentralization law established a new system of 25 regions, to be governed by directly elected regional presidents (McNulty 2011).

Explaining Serial Replacement

What explains serial replacement --and why is it so widespread in Latin America? To a significant extent, the causes of serial replacement lie in institutional origins. Much of the literature assumes that institutions are born strong (or in equilibrium), in the sense that they are designed more or less in line with (1) domestic power and preference distributions and (2) existing social and political norms. In other words, all actors initially accept the rules or lack the power to overturn them. Although institutions may subsequently experience drift or conversion, at the time of their creation, they are assumed to initially represent the preferences of (or a settlement among) key power holders.¹¹ In most established democracies, where formal rule-making authorities (e.g., executives, parliaments, courts) are fully vested with power and either represent or are able to impose rules upon powerful state and societal actors, these assumptions generally hold.

Such conditions do not always hold in Latin America, however. Historically, formal institutions in Latin America 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 (1986) highlighted the role of uncertainty in transitions, arguing that it heightens the importance of contingency --and agency-- in institutional design. Yet uncertainty -- either about the underlying rules of the game or about power and preference distributions-- 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 and/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, powerful veto players are generally incorporated into the formal rule-making process, via political parties, legislative representation, corporatist bargaining, and legalized interest group activity (or lobbying).¹² This has not always been the case in Latin America. Although elections, political 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 (e.g., Somoza, Trujillo), formal democratic institutions served as little more than window dressing. In other cases --including hybrid regimes and many new democracies-- 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 military, the Catholic Church, and economic elites (Karl 1995). The role of informal veto players was especially manifest where conservative forces failed to translate their *de facto* power into electoral strength (e.g., post-1912

Argentina) (Gibson 1996); where the proscription of major parties left powerful socioeconomic actors without formal representation (e.g., Argentina between 1955 and 1973) (McGuire 1997); and in hybrid or “tutelary” regimes in which militaries retained *de facto* veto power despite formal transitions to civilian rule (e.g., El Salvador, Honduras, Guatemala, and Panama in the 1980s) (Karl 1995).

The existence of powerful informal veto players may give rise to transient institutions in two ways. First, it increases the likelihood of miscalculation: where veto players are not formally incorporated into the rule-making process, rule writers are more likely to misjudge their power and/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.¹³

Why have levels of uncertainty and/or incongruity between rule-writers and power holders been higher, historically, in Latin America than in the established industrial democracies? Several factors appear to be important:

Regime instability. Latin America has long been characterized by regime instability. Prior to the Third Wave of democratization, 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.¹⁴ Transitions are often characterized by uncertainty regarding power distribution and actors’ preferences (O’Donnell and Schmitter 1986), 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 of --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 Elkins, Ginsburg, and 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” (2009: 73). For example, Peruvian *caudillo* Ramón Castilla seized power in 1855 in alliance with radical liberals inspired by the 1848 European revolutions (Loveman 1993: 224). A constitutional convention, which was “dominated by liberals,” then produced “the most radical constitution Peru had yet seen” (Sobrevilla 2010: 34-35). The new charter weakened the executive and reduced the influence of the church and the armed forces (Loveman 1993: 224-225). However, the liberal constitutional framework was “compatible neither with President Castilla’s own powerful personality and charismatic leadership nor with the political power of the new social groups rising with the economic expansion of the 1850s” (Loveman 1993: 224). Castilla, who “preferred a flexible, centralist, authoritarian constitution,” pushed through a new constitution in 1860 (Loveman 1993: 227). Likewise, Brazil’s 1934 constitution, which was written by an elected constituent assembly --influenced by Weimar Germany-- in the wake of the 1930 transition, greatly strengthened the legislative and judicial branches vis-à-vis the executive. However, Brazil’s powerful president, Getulio Vargas, “chafed under the charter’s restrictions” (which, among other things, would have prevented his re-election in 1938) and dissolved it in 1937, replacing it with a far less liberal constitution (Elkins, Ginsburg, and Melton 2009: 73).

Electoral volatility. Although regime instability declined in Latin America after the 1980s, levels of electoral volatility remained high --or increased-- throughout much of the region (Roberts and Wibbels 1999), 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 (Sanchez 2009).¹⁵ Thus, parties that controlled the presidency and/or Congress in one period virtually disappeared in the next one.¹⁶ Electoral volatility may have two possible effects. First, like regime transitions, electoral volatility 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 T-1, a radical reconfiguration of the party system from one election to the next may leave the actors who designed the rules too weak to defend them at T-2 (effectively creating an inter-temporal incongruence between rule writers and political power holders). In such cases, the new rules may simply lack the time to take root. Whether it is 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 (Pierson 2004).¹⁷ 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 (Remmer 2008). 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 re-design. Electoral volatility may also help explain recent constitutional fluidity in Ecuador. Ecuador’s 1998 constitution was designed by established parties in consultation with indigenous groups, which had emerged as powerful actors in the 1990s (De la Torre 2010). Yet before the new constitution could gain a minimum of societal legitimacy, the indigenous movement divided and weakened 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 --non-existent in 1998-- won a majority. Likewise, Peru's decentralization in the 1980s was passed by an APRA-dominated legislature (Levitt 2012: 62-63; McNulty 2011: 28-29). However, APRA and other established parties were displaced in the early 1990s by outsider Alberto Fujimori. A personalistic autocrat with little organized regional-level support, Fujimori dismantled the newly elected regional governments after his 1992 coup (O'Neill 2005: 200-201). Regional governments were "not yet anchored in the conscience of the population" (Thedieck and Buller 1995: 219); thus, when Fujimori moved to recentralize, "the public did not clamor to keep the regional governments intact" (McNulty 2011: 31). Fujimori's fall from power triggered another dramatic shift in the party system, and anti-Fujimori forces, which dominated the 2001-2006 legislature, passed a new decentralization law in 2002 (McNulty 2011).

Social inequality. Most Latin American states have for decades granted full political rights to all citizens, despite the persistence of extreme socioeconomic inequality (see Brinks and Botero, this volume). Yet 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 as such in the formal political system. Such a disjuncture increases the likelihood that elected governments will over-estimate their capacity to sustain the rules they create --or to enforce the rules without triggering a fatal attack on them. An interesting example in this regard is Chile. Chile's institutional stability during the mid-twentieth century --despite extreme inequality-- may have been facilitated by a 1914 reform that sharply restricted the electorate, thereby preserving congruence between ruler writers and power holders. However, the establishment of universal suffrage in the 1960s undermined this congruence, particularly after the election of Socialist

President Salvador Allende (A. Valenzuela 1978). Once the economic elite lost control of the rule-writing process, it first sought to change the rules to weaken the presidency and then backed a military coup.¹⁸

Institutional borrowing. Like many former colonies, Latin American states are prone to import institutions from abroad.¹⁹ As Weyland (2007, 2008) 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.²⁰ 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, a tendency to adopt foreign institutional 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 institutions in an effort to alter those norms and power structures). Although borrowed institutions sometimes take root, they are more likely, *ceteris paribus*, to suffer displacement. Mismatches between domestic conditions and those in the institution's country of origin have been shown to undermine institutional performance (Mukand and Rodrik 2005). An example is the diffusion of regulatory institutions (Jordana and Levi-Faur 2005). During the 1990s, Latin American governments adopted regulatory institutions in telecommunications and electricity under pressure from international finance institutions (Henisz, Guillen, and Zelner 2005). Yet many of these new arrangements failed to take root, as a disjuncture between the adopted institutions and local perceptions of fairness left them vulnerable to attack by local opponents during crises (Henisz and Zelner 2005).

Rapid institutional design. As Anna Grzymala-Busse (2011) has argued, the pace of institutional design affects institutional durability. When institutions are created in a slow-paced manner, actors have time to evaluate their (often unintended) consequences, calculate how the rules affect their interests, and organize collectively in defense of (or opposition to) the rules. Rules that survive a slow-paced 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 their potential consequences and/or how their interests are affected, and mechanisms of reproduction have less time to emerge (Grzymala-Busse 2011). Elkins, Ginsburg, and Melton make a similar argument in their study of constitutional endurance, arguing that constitutions born of an “inclusive” drafting process, in which a wide range of groups are consulted, are more likely to endure (2009: 78-81).

In Latin America, formal institutions are often created quickly, for at least two reasons. First, as O’Donnell (1994) argued in his essay on delegative democracy, institutions of “horizontal accountability --in particular, legislative and judicial bodies-- are weak in much of the region, such that 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 undertake sweeping institutional reforms in little time. However, because such reforms are undertaken in the absence of extensive consultation or public debate, they often are flawed or politically unsustainable” (O’Donnell 1994: 64). Second, the *de facto* weakness of institutional veto players is exacerbated in much of Latin America by the frequency and depth of crises (O’Donnell 1993, 1994). Severe socioeconomic or political crises --and the perceived need for quick action to restore governability-- are often used to justify executive rule by decree and sweeping reform initiatives (or “packages”) undertaken without

public consultation or debate, which undermines their sustainability (O'Donnell 1994).

Argentina provides an example of this dynamic. After taking office in a context of hyperinflation in 1989, President Carlos Menem initiated a rapid economic liberalization process in which many of the country's public and economic institutions --including trade and investment laws, the public bureaucracy, and the tax, financial, and regulatory systems-- were radically redesigned. Many reforms were adopted by decree or pushed through Congress quickly and with limited public debate. Just over a decade later, however, another profound socioeconomic crisis paved the way for another round of sweeping reforms --many of which reversed the reforms of the 1990s-- under President Néstor Kirchner.

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 fledging 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 interest and institution-specific investments that increase the costs of replacement.

This process of institutional failure and replacement may be self-reinforcing. As scholars such as North (1990) and Pierson (2000) have argued, institutional stability is often self-reinforcing. An initial period of institutional persistence generates expectations of stability. When actors expect institutions to endure, they are more likely to invest in them; thus, initial durability allows actors to make institution specific investments. As institutions gain legitimacy

and become taken for granted, actors adapt their strategies to them rather seeking to change them. As these investments accumulate, existing institutional arrangements grow increasingly attractive relative to their alternatives, raising the cost of replacement. Institutional instability may follow a similar path-dependent logic,²¹ in which an initial period of institutional failure -- rooted in historically contingent circumstances-- effectively locks a polity into what Helmke (2007: 28) calls an “institutional instability trap.” Where institutions are repeatedly overturned, actors may develop expectations of instability (Grzymala-Busse 2011; Przeworski 1991: 82). If actors believe that institutions are unlikely to endure, they will become less invested in those institutions; indeed, they may invest in skills and technologies appropriate to a weak institutional environment (and thus develop a stake in non-institutional politics). Finally, repeated crises may undermine public support for particular institutions, thereby lowering the cost of future attacks on them (Helmke 2007: 28). Consequently, the cost of institutional replacement remains low, which increases the likelihood of change --and reinforces expectations of institutional weakness.

Argentina followed such a path of institutional instability after 1930 (Levitsky and Murillo 2005a). Decades of regime instability had a powerful effect on actor expectations (Spiller and Tommasi 2007). Due to the frequent collapse, suspension, or purge of core regime institutions, Argentines came to expect instability. Betting that institutions would be replaced or purged with each change of government or regime, political and economic actors did not invest in them. In fact, many actors --including Peronist unions, economic elites, and conservative politicians-- invested in skills, organizations, and alliances that helped them survive in a context of regime instability (Cavarozzi 1987; McGuire 1997). As a result, the cost of institutional change remained persistently low.

Enforcement and Institutional Change

Variation in enforcement and compliance is central to understanding institutional change in weak institutional environments. As Mahoney and Thelen observe, gaps between formal rules and actual compliance --a product of factors such as ambiguity in the rules, cognitive limitations, the character of underlying norms, and problems of implementation-- create opportunities for contestation and serve as sources of incremental change (2010: 10-14). They suggest that the level of discretion in interpreting or enforcing the rules shapes the character of institutional change. Where actors enjoy wide discretion, change is likely to occur within the institution itself --via drift or conversion-- rather than via displacement and the creation of new rules (Mahoney and Thelen 2010: 18-22).

Mahoney and Thelen (2010) focus on *de jure* variation in discretion over enforcement, or discretion that is prescribed (or at least permitted) by the rules. Such discretion is important to understanding patterns of institutional change. Take immigration regulation in the United States. Since 1986, US immigration laws on the books have remained largely unmodified. However, this stability obscured important policy shifts, as governments varied enforcement levels depending on political conditions and the demands of their core constituencies. Strict enforcement of immigration laws imposes heavy costs on many US businesses and well-to-do households. Hence, legal restrictions on immigration in the US were weakly enforced in the 1990s, when, in the context of a booming economy, the interests of employers prevailed. Although the subsequent growth of the undocumented population generated demand for comprehensive immigration reform, such a reform proved politically impossible, particularly in the wake of the 2008 recession (which reduced employers' demand for labor and increased public hostility to liberal immigration policies). Unable to reform the immigration laws, the Obama administration

responded to increased public opposition to illegal immigration by stepping up enforcement. In 2011, under pressure from core constituencies, the government again relaxed enforcement of deportation policies. These changes were done via formal directives issued by the executive.²² In other words, discretion over enforcement was largely *de jure*, or built into the rules.

In weak institutional environments, discretion over enforcement is often much wider, 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 (Acemoglu, Johnson, and Robinson 2001; Centeno 2002; O'Donnell 1993, 1999c). Thus, even where the formal rules are relatively unambiguous, *de facto* discretion over enforcement yields considerable variation in terms of actual compliance. Rulers thus 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.

Two examples serve to highlight the role of *facto* discretion over enforcement in Latin America: civil service laws and judicial independence. 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 (Echebarría 2006; Grindle 2010; 2012: 265-66). As in all countries, these civil service laws contain a range of legal loopholes and ambiguities.²³ Yet neither formal rules nor *de jure* discretion tells us much about actual hiring practices in Latin American bureaucracies, for one finds "significant differences between *de jure* and *de facto* practices in the region" (Grindle 2010: 6-7). Whereas merit-based hiring systems are respected in a few countries (e.g. Brazil, and to a lesser extent, Chile and

Costa Rica), in many other countries (e.g., El Salvador, Guatemala, Nicaragua, Paraguay) government authorities (enjoy near-total *de facto* discretion in making patronage appointments (Grindle 2010: 7).

Likewise, although rules protecting judicial tenure security are fairly clear in most of Latin America, countries vary widely in terms of how well Supreme Court justices are actually protected from executive intervention (Stein et al. 2006). According to Brinks and Blass (2011), many Latin American constitutions contain “engine room attributes,” or formal procedural details,²⁴ which serve as (often little noticed) “poison pills” that transform what are nominally independent Supreme Courts into Potemkin courts. Although such engine room attributes are sources of *de jure* discretion, governments in much of the region also exercise considerable *de facto* discretion over court appointments. In Argentina, for example, despite the existence of a US-style constitutional clause granting lifetime tenure security to Supreme Court justices, nearly every incoming president purged or packed the Court between the 1940s and the mid-2000s (Helmke 2004). Indeed, scholars have found no relationship between levels of *de jure* and *de facto* independence in Latin American judiciaries (Sousa 2007).²⁵

Latin American reality thus suggests the need to broaden our understanding of discretion to include both the ambiguities found within the parchment rules and actors’ *de facto* discretion in applying those rules. *De facto* discretion over enforcement grants authorities with a critical degree of agency. Where such discretion exists, authorities effectively have two options when rules come under pressure from powerful actors: they may change the rules, or they may cease to enforce them. In the sections below, we explore some of the theoretical and practical implications of these two strategies, showing how low enforcement can be a source of

institutional stability and how varying enforcement levels can be an important --and deliberate-- source of institutional change.

Low Enforcement as a Source of Institutional Stability

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 et al. write that “fealty to the dictates of the constitution...and [constitutional] endurance are inextricably linked” (2009: 77). Yet in some cases, institutional endurance is rooted in the *systematic absence* of such fealty. Weak enforcement lowers the stakes surrounding formal institutional outcomes, which can dampen 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 they would otherwise seek to overturn.

The relationship between non-enforcement and stability can be seen in the case of Mexico under the PRI. Constitutionally, Mexico’s post-revolutionary order was remarkably stable. The 1917 constitution was among the most enduring constitutions in Latin American history, surviving into the twentieth century. However, constitutional clauses that threatened the vital interests of the ruling party and its allies, including 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 PRI elites’ preference for non-enforcement. Had the alternative of non-enforcement not been available, demands for institutional change would have likely been more intense.

By contrast, increased enforcement of Argentine electoral institutions during the twentieth century undermined their stability. Electoral fraud had been pervasive in the 1930s as Argentine elites, like their Mexican counterparts, developed alternative power arrangements (Cantu and Saiegh 2010). However, after the activation of the popular sector by Perón weakened older patronage networks and increased monitoring, electoral fraud grew costly. The enforcement of electoral results generated stronger incentives for military intervention and the dismantling and re-writing of electoral rules, thereby generating a pattern of serial replacement that contrasted sharply with the stable-but-weakly enforced institutions observed in Mexico.

Formal rules may thus remain on the books because *de facto* discretion over enforcement protects powerful actors from their undesirable effects. When do actors choose to maintain the formal rules and instead invest their energy into shaping (and in many cases, preventing) enforcement? Generally, they do so when the existence of the formal institutions is perceived to generate some positive value for a domestic or international audience. For example, elites in peripheral states may deem certain institutions to be essential to gaining or maintaining international standing. Elections are a clear example. Though often marred by fraud and abuse, elections have been widely retained by autocrats as a means of retaining international support (Herman and Brodhead 1984; Karl 1986). Likewise, many governments maintain on the books (but rarely enforce) child labor statutes, laws protecting the rights of women, indigenous people, or ethnic minorities, and other laws deemed critical to maintaining their standing in the international community.²⁶

The maintenance of weakly or unevenly enforced institutions may also have domestic value. In post-revolutionary 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 deem that their removal would generate politically costly societal opposition. For example, most Latin American states have maintained laws banning abortion --in many cases, despite very limited enforcement-- because removing them would trigger public opposition from the Catholic Church.

“Window dressing” institutions are often accompanied by informal rules that help guide actors’ expectations in a context of low or uneven enforcement. To the extent that such informal institutions stabilize actors’ expectations and lower the stakes associated with formal institutional outcomes, informal institutions may serve to reinforce or enhance the stability of the formal rules. Informal rules were widespread, for example, in post-revolutionary Mexico. PRI elites faced the problem of presidential succession in a context of regular, but *de facto* non-competitive, elections (and an enforced ban on re-election). Over time, they developed an informal institution, called the *dedazo*, in which sitting presidents unilaterally chose their successor from a select pool of candidates (cabinet members) who followed a set of clear rules (e.g., abstain from campaigning, mobilizing supporters, or attacking rivals, publicly support the eventual nominee). Outgoing presidents would then retire from political life (Langston 2006). The *dedazo* shaped leadership succession in Mexico for half a century, contributing in a central way to the stability of Mexico’s formal electoral regime.²⁷ Another example is the informal norms governing police killing. As Daniel Brinks (2006, 2008) has shown, widespread police killing of suspected criminals in parts of Brazil is rooted not only in the weak enforcement of the law, but also in a set of informal norms within the law enforcement community that permits -- and in some cases, encourages-- such killing.

Although informal institutions are often viewed as deeply entrenched and thus slow to change, in fact, many of them collapse or change quickly when levels of formal institutional

enforcement change. For example, the *dedazo* and other informal institutions in Mexico (e.g., *concertaciones*, the “metaconstitutional” powers of the presidency), which survived for years while electoral institutions were weakly enforced, collapsed quickly in the 1990s due to heightened enforcement of those institutions (Eisenstadt 2006; Langston 2006).

Variation in Enforcement as a Source of Institutional Change

Altering the *de facto* level of enforcement may be an important mode of more incremental institutional change. Indeed, it may be understood as a form of institutional “conversion” (Mahoney and Thelen 2010: 17-18), in that the 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 recognizing a major policy reversal.

De facto institutional change via reduced enforcement can be seen in the area of labor regulation in Latin America. Latin American labor laws have proven surprisingly resilient, even during the heyday of the Washington Consensus (Murillo 2005). Yet enforcement levels have varied considerably across time. As scholars such as Graciela Bensusan (2007) and Maria Lorena Cook (2007) have shown, reduced enforcement was frequently employed as a means of achieving “*de facto* labor flexibility.” Throughout Latin America, governments came under pressure to “flexibilize” labor laws during the 1990s (Murillo 2005). In a few cases, such as Fujimori’s Peru, this was done by formally dismantling pre-existing labor codes. However, other governments --particularly those with ties to organized labor-- found the political costs of labor reform to be too high (Murillo 2005). Many of these governments pursued “*de facto* flexibility” via reduced enforcement. For example, Mexico’s Federal Labor Law has remained unchanged since the 1930s, but during the neoliberal 1990s, enforcement agencies dramatically altered the

way the law was applied (Bensusan 2007). Similarly, although the Menem government made only minor reforms to Argentina's labor law, it drastically reduced resources for monitoring and enforcement of the law.²⁸ In Mexico and Argentina, then, the stability of labor institutions was enhanced by weak enforcement in the 1990s. Although the formal rules were relatively unambiguous, governments used their discretion over enforcement to achieve *de facto* labor flexibility. Rather than pursuing the more politically costly path of changing the letter of the laws, governments simply weakened their enforcement.

Institutional change may also be achieved through the enforcement or "activation" of previously dormant formal institutions.²⁹ 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 and increased electoral competition during the 1990s put an end to *de facto* presidential dominance and gradually empowered Congress, state governments, and other institutions.³⁰ The weakening of the presidency and the strengthening of federalism brought 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 civic and judicial activism (see Gauri and Brinks 2008; Brinks and Botero, this volume). This process can be seen in the diffusion of new social or "third generation" rights (e.g., right to health care, shelter, ethnic recognition, communal lands, and a clean environment) in Latin America in the 1990s and 2000s. As the chapter by Brinks and Botero (this volume) argues, the enforcement of new constitutional rights requires that beneficiaries have a dense infrastructure of "lateral

support,” including civil society groups, international NGOs, and allies in the legal system, to ensure that those rights are enforced. In the absence of such support, particularly in highly unequal societies, new rights are likely to remain “token gestures” (Brinks and Botero, this volume). Indeed, when new social rights were initially incorporated into constitution-writing processes in Argentina, Brazil, Colombia, and elsewhere, few observers expected them to be enforced (Htun 2003: 126; Klug 2000). (Expectations of low enforcement may have been what permitted their inclusion in the first place.) Many of these new constitutional rights did, in fact, remain window dressing (Brinks and Botero, this volume). Yet in some cases, such as Colombia and Brazil, civil society groups mobilized effectively for enforcement, using the legal system to activate the social rights written into new constitutions. On several occasions, constitutional court rulings compelled governments to implement policies aimed at enforcing these rights (Cepeda-Espinosa 2004; Gauri and Brinks 2008). For example, the Colombia’s 1991 constitution grants indigenous peoples property rights over ancestral territories and, consequently, the natural resources located therein (art. 329-331). Thus, indigenous groups were given the constitutional right to be consulted over all resource exploitation projects in these territories. Initially, this right was not respected, but in 1997, the Constitutional Court compelled enforcement by ordering the suspension of an oil exploration project in the U’wa territory because the consultation requirement had not been met (Cepeda-Espinosa 2004: 623).

Another example of institutional activation is the prohibition of vote buying in Brazil. Although vote buying has been formally prohibited in Brazil for decades, these bans were rarely enforced prior to the adoption of Law 9840 in 1999 (Nichter 2011: 4-7). Under Law 9840, enforcement increased markedly: nearly 700 politicians were removed from office for vote buying between 1999 and 2010 (Nichter 2011: 7). According to Simeon Nichter (2011), civil

society contributed in an important way to the unprecedented (if still partial) enforcement of Law 9840. The church-based Brazilian Commission on Justice and Peace and other civil society groups formed more than 300 “9840 Committees” to monitor local politicians and report acts of vote buying, and preliminary evidence suggests that prosecution for vote buying is more frequent where such church based organizations are present (Nichter 2011: 19-23).

Institutional activation may also be a product of international pressure, especially in smaller, peripheral states seeking access to international assistance or markets. For example, in countries where elections and other democratic institutions were on the books but not seriously enforced during the Cold War (e.g., Dominican Republic, El Salvador, Guyana), a combination of heightened international scrutiny and a credible threat of international punitive action raised the cost of non-enforcement --thereby creating incentives for institutional activation-- in the post-Cold War era (Levitsky and Way 2010). Another example is the impact of US trade agreements on the enforcement of Latin American labor laws. All but one of the 11 regional and bilateral trade agreements (RBTA) signed between the US and Latin American governments in the 1990s and 2000s include labor law enforcement as an explicit condition for membership.³¹ A recent study by Murillo, Schrank, and Ronconi (2011) found that states that negotiate a trade agreement with the US invest twice as heavily in labor inspectors as do those which do not sign trade agreements.³² In these cases, exogenous changes in US preferences --rooted in the end of the Cold War and the rise of a labor-backed Democratic administration-- encouraged not only the adoption of new institutions, but the enforcement of existing ones by shifting the preferences of domestic power holders who sought to maintain the support of key external allies.

In sum, *de facto* discretion over enforcement in Latin America is qualitatively different from *de jure* discretion over enforcement of regulations in advanced democracies. Not only do

actors exploit ambiguities in the formal rules, but in many cases, they choose not to enforce them. This dimension of *de facto* variation in enforcement is critical to understanding institutional stability and change in weak institutional environments. We have argued that 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 contribute to institutional stability by shielding powerful actors from undesired effects of the rules. We also argued that the activation/de-activation of formal rules via changes in enforcement may be a substantively important form of institutional change. In some cases, pressure from civil society or external actors may activate dormant institutions without need for legal change. In fact, the focal point provided by existing rules should make mobilization for enforcement easier to achieve than agreement over a new institutional design.

Because the activation/de-activation of formal rules is a relatively infrequent phenomenon, and because it tends to occur in incremental fashion (formal rules remain intact), this pattern of institutional change may be located in the bottom left quadrant of the figure presented earlier in the paper. Hence, we have identified two distinct patterns of institutional change --serial replacement and institutional activation/de activation-- that merit study alongside the patterns of models of gradual change identified by scholars of advanced democracies.

Conclusion

This paper has examined patterns of institutional change in a context in which the rules are unstable and/or unevenly enforced. In such an environment, institutional change often approximates neither a punctuated equilibrium model of infrequent but dramatic change nor the modes of gradual change outlined by Thelen and her collaborators. Rather, it often follows a

pattern of serial replacement, characterized by repeated episodes of wholesale change. In such cases, the cost of institutional replacement for powerful actors is low. Where the cost of replacement is low, institutional stability is often rooted in the preferences, rather than the strength, of key veto players. Under some conditions, powerful opponents of an institution prefer non-enforcement to displacement. The paper also examines how gradual change may occur in a weak institutional environment. For example, where *de facto* discretion over enforcement is high, decreased enforcement may yield a process of conversion in which real institutions are converted into “window dressing” ones. Alternatively, increased enforcement may “activate” previously dormant institutions.

Future research should exploit the considerable within-country variation that exists along the different dimensions of institutional strength to better understand the sources of institutional strength and weakness. Even in countries with weak institutional environments, one can find striking variation in durability and enforcement, both across institutions and over time. For example, Argentine labor laws have proven far more durable than other institutions. Whereas the financial system, the pension system, trade and investment rules, and other social and economic institutions were dramatically reformed --often more than once-- in the 1990s and 2000s, collective labor law remained untouched, despite two major attempts to reform it (Murillo 2005, 2011). Similarly, in Peru, enforcement of civil service laws and other bureaucratic rules increased markedly within the Central Bank and Finance Ministry during the 1990s and 2000s, but enforcement within other areas of the state did not (Dargent forthcoming). Future research might also explore sources of change in patterns of institutional durability and/or enforcement. How, for example, might patterns of serial replacement be overcome? In parts of Latin America, some of the conditions that we associated with serial replacement have changed in recent years.

For example, regime instability has declined markedly since the 1980s (Mainwaring and Perez-Liñán 2005). Has stable democracy resulted in more gradual and incremental processes of institutional change? Socioeconomic inequality has also declined (albeit less dramatically) over the last decade (López-Calva and Lustig 2010). Might this change bring greater congruence between rule-writers and power holders?

In the spirit of O'Donnell's search for a more effective and progressive citizenship in Latin America, we conclude by highlighting two important sources of tension in our argument. First, there may be an inherent tradeoff between institutional scope and stability in weak institutional environments.³³ Institutions that are not very ambitious in their design --those that seek to affect less change-- are less likely to trigger opposition from informal veto players and thus more likely to take root. By contrast, institutions that are more ambitious in their design -- those that seek to affect 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 -- for example, it includes few social rights-- that proved both enforceable and durable. Argentina's 1949 (Peronist) constitution, which "set forth a series of new guarantees regarding the worker, the aged, the family, education, and property" (Ilsley 1952: 230), 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 path out of this dilemma may be the activation over time of ambitious but 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 the informal power-holders are included in the rule-writing process --so that such actors have no incentive to block the enforcement of fledgling institutions or dismantle them before they take root. Thus, 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 suffer from a lack of legitimacy among the majority of citizens who, their political equality notwithstanding, are not endowed with such power. In a democracy, then, politicians will 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. The way out, perhaps, is something akin to O’Donnell and Schmitter’s (1986) democratization “on the installment plan:” ambitious institutional reforms that, with the help of civil society, may be activated once they have taken root. As in O’Donnell and Schmitter’s (1986) work on transitions, the role of agency thus remains vital.

NOTES

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¹ Cited by Hirschman (1961: 272).

² See, for example, O’Donnell (1993, 1994, 1996a, 1999c and 2010).

³ It should be noted that rational choice approaches to institutions do not expect institutions to survive changes in power and preference distributions, as such changes undermine the equilibrium upon which the rules are based. However, rational choice accounts cannot explain why, in some contexts, institutional equilibria tend to be so ephemeral.

⁴ On the distinction --and relationship-- between enforcement and compliance, see Levi (1997) and Bergman (2009).

⁵ One also finds considerable within-country variation across institutions.

⁶ See Thelen (1999, 2004); Streeck and Thelen (2005); Mahoney and Thelen (2010).

⁷ For an excellent review, see Carey (2000).

⁸ Some rational choice institutionalists have explored patterns of institutional change; see in particular, Greif and Laitin (2004) and Weingast (2005).

⁹ On critical junctures and their relationship to path dependent arguments, see Collier and Collier (1991).

¹⁰ Excluding democratic transitions, rules governing presidential runoffs, and rules translating votes into seats, Remmer identifies 28 “distinct [electoral] reform episodes” in Latin America between 1978 and 2002 (2008: 13).

¹¹ Indeed, for rational choice institutionalists, rules would not be created in the absence of such equilibrium.

¹² Moe (1995) describes how power-holders are represented in the US Congress and use their institutional power to shape the structure of new agencies. As a result, even when they cannot prevent the creation of new institutions, they influence their powers and functioning.

¹³ For example, Argentina’s military government attempted to prevent a Peronist electoral victory in 1973 by imposing an electoral reform that replaced the electoral college with a presidential runoff system and established a residency requirement to keep the exiled Perón off the ballot. However, Perón ally Héctor Cámpora won, called new elections (which Perón won), and the presidential runoff system was subsequently abandoned.

¹⁴ For example, Argentina experienced five transitions to democracy or semi-democracy and six military coups between 1912 and 1983, for an average of one transition every seven years. Bolivia experienced eight transitions between 1936 and 1982, for an average of one transition every six years. Peru experienced six transitions between 1948 and 2000, for an average of one transition every eight years.

¹⁵ In Ecuador, the 2002 and 2006 presidential elections were won by political forces that did not exist in the previous election. In Guatemala, none of the top four finishers in the 2007 and 2011 elections existed in 2000.

¹⁶ In Peru, for example, Alejandro Toledo's Possible Peru, which controlled the presidency and Congress in the 2001-06 period, won just two legislative seats (down from 45) in 2006, and APRA, which controlled the presidency and Congress in the 2006-2011 period, won only four seats in Congress (down from 36) in 2011.

¹⁷ Although some institutional arrangements (for example, pay-as-you-go pension systems) may develop supportive constituencies quickly, many others do not. Moreover, shifts in overall policy performance, themselves a product of high levels of economic volatility, often shape the preferences of beneficiaries.

¹⁸ The Pinochet dictatorship's constitutional, legal, and electoral reforms aimed at creating a "protected" democracy (e.g., appointed senators, military autonomy, binomial electoral system, independent central bank) may be understood as an effort to restore congruence between rule makers and power-holders; indeed, the success of these efforts likely contributed to Chile's relative institutional stability between 1990 and 2010.

¹⁹ For example, close ties between the creole elite and Western Europe (and later, the United States) encouraged post-colonial elites to adopt Western-style institutions --such as US-style constitutions and presidential systems-- in an effort to emulate Western political systems. Other examples include the extension of male suffrage and the adoption of Southern European-style labor regulation during the twentieth century.

²⁰ This pattern of institutional emulation can be traced back to the early independence period, during which *creole* elites self-consciously sought to model their countries on the United States and Western Europe. Albert Hirschman's description of the evolution of Latin American ideologies of development is telling. He traces the evolution from Bolivar's "self-laceration" to the late 19th century Argentine elite's strategy of borrowing institutional designs from the United

States (Hirschman 1961: 275). For an alternative view of the causes of institutional and policy diffusion, see Simmons and Elkins (2004).

²¹ See also Grzymala-Busse (2011).

²² The fact that the directives were formal allowed for a degree of internal and public debate. See “US to Review Cases Seeking Deportation”

(<http://www.nytimes.com/2011/11/17/us/deportation-cases-of-illegal-immigrants-to-be-reviewed.html?ref=opinion>); “Deportations Under New US Policy are Inconsistent”

(<http://www.nytimes.com/2011/11/13/us/politics/president-obamas-policy-on-deportation-is-unevenly-applied.html?ref=us>). Also, see the union webpage for their opposition to the new enforcement patterns: <http://www.iceunion.org/> (accessed February 2013).

²³ According to Grindle, the percentage of public jobs that are legally available for patronage appointments ranges from less than two percent in Argentina, Colombia, Chile, Mexico, and Peru, to 9-10 percent in Bolivia and Brazil, to 18 percent in Guatemala (2010: 5-6).

²⁴ These include rules and procedures that cover the number of actors involved in the appointment process, the process of judicial renewal, internal voting rules (e.g., requirements for supermajorities), and the ease with which governments are able to invoke the courts.

²⁵ Likewise, Rosenbluth and Helmke (2009) argue that justices’ *de jure* independence is not necessarily a good predictor of their *de facto* independence.

²⁶ Of course, such laws may also be kept on the books for the purposes of maintaining domestic legitimacy.

²⁷ Likewise, the Mexican constitution created a weak executive branch, but a set of informal or “metaconstitutional” powers greatly strengthened the presidency under PRI rule (Weldon 1997).

²⁸The number of federal labor inspectors declined from 212 in the 1980s to just 71 in 1994 (Murillo, Schrank and Ronconi 2011). Interestingly, after 2003, when tighter labor markets and the election of a left-of-center Peronist government strengthened union bargaining power, labor law enforcement increased dramatically. The number of federal labor inspectors increased nearly seven-fold, from 71 in the mid-1990s to 475 in 2007 (Murillo, Schrank and Ronconi, 2011).

²⁹Awapara (2010) calls these “latent” institutions.

³⁰ Stricter enforcement was rooted in the creation of an independent electoral authority (with members selected via legislative supermajorities (Magaloni 2005), which, in turn, was a product of the PRI government’s efforts to maintain international legitimacy and ward off domestic opposition mobilization.

³¹For example, the US-Chile Free Trade Agreement stipulated that member countries had to enforce their own labor laws (Martin 2005: 203). Similar language was inserted into subsequent agreements with Panama, Peru, Colombia, and the so-called CAFTA countries (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic) (Schrank and Piore 2007). The lone exception is the North American Free Trade Agreement (NAFTA), which relegates labor standards to a controversial “side agreement” between the US, Canada, and Mexico.

³²The study compares the ratio of labor inspectors to economically active workers in countries that negotiate a trade agreement with the US versus those that do not.

³³In their analysis of constitutional endurance, Elkins, Ginsburg, and Melton (2009) question the relationship between scope and durability, arguing that constitutions with broad scope may endure if the constitution-making process includes a broad range of actors.