

## I

## The Political Origins of Institutional Weakness

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The third wave of democratization transformed Latin America. Across the region, regime transitions triggered a plethora of institutional reforms aimed at enhancing the stability and quality of both the new and the few long-standing democracies. Most states adopted new constitutions. Many of them extended new rights to citizens, including unprecedented social rights, such as the right to health care, housing, and a clean environment (Klug 2000; Yashar 2005; Brinks and Blass 2018). Electoral systems were redesigned – at least once – in every Latin American country except Costa Rica;<sup>1</sup> judicial and central bank reforms spread across the region (Jácome and Vásquez 2008); and governments launched far-reaching decentralization initiatives and experimented with new institutions of direct or participatory democracy (Falleti 2010; Cameron, Hershberg, and Sharpe 2012; Altman 2014; Mayka 2019).

Yet these new institutions often failed to generate the outcomes their designers expected or hoped for. Constitutional checks and balances did not always constrain presidents (O'Donnell 1994); nominally independent judiciaries and central banks often lacked teeth in practice;<sup>2</sup> electoral reforms failed to strengthen party systems (Remmer 2008); newly enshrined social rights were often not respected in fact (Gauri and Brinks 2008); presidential term limits were circumvented or overturned (Pérez-Liñán 2007; Helmke 2017); and civil service laws, tax laws, and labor and environmental regulations were enforced unevenly, if at all.<sup>3</sup> Put simply, political and economic institutions remained

<sup>1</sup> See Calvo and Negretto, this volume.

<sup>2</sup> See Cukierman, Web, and Neyapti (1992); Bill Chavez (2004); Helmke (2004); and Brinks and Blass (2017).

<sup>3</sup> See Bensusán (2000); Piore and Schrank (2008); Bergman (2009); Ronconi (2010); Murillo, Ronconi, and Schrank (2011); Coslovsky (2011); Grindle (2012); Gingerich (2013); and Amengual (2014).

poorly enforced, unstable, or both. Even after more than three decades of democracy, formal institutions only weakly shape actors' behavior in much of Latin America, creating a sizeable gap between the parchment "rules of the game" and their expected, or at least stated, outcomes.

That gap is consequential. Institutional weakness narrows actors' time horizons in ways that can undermine both economic performance (Spiller and Tommasi 2007) and the stability and quality of democracy (O'Donnell 1994). Democracy requires that the rule of law be applied evenly, across territory and across diverse categories of citizens. That is, every citizen should be equal before the law in spite of inequalities created by markets and societies. Institutional weakness undermines that equality – and it hinders efforts to use laws and public policies to combat the multifaceted inequalities that continue to plague much of Latin America. Institutions, of course, are not uniformly positive. They may exclude, reinforce inequalities, or – as Albertus and Menaldo (2018, this volume) show – protect authoritarian elites. In some cases, democratization may require the dismantling of such institutions. In general, however, no democracy can function well without strong institutions.

Although the problem of institutional weakness has been widely recognized in the field of comparative politics, it has not been adequately conceptualized or theorized. Researchers tend to treat it as a feature of the landscape rather than as a variable—or, importantly, as a political strategy. To build theories about the causes and consequences of institutional weakness we need a clear conceptual framework that allows us to identify, measure, and compare different forms of institutional weakness. This volume takes an initial step toward such a framework.

The volume focuses on Latin America. It does so because the region contains both an important set of shared characteristics and useful variation. With few exceptions, Latin American countries possess at least minimally effective states and competitive electoral (if not always fully democratic) regimes. Thus, these are not cases in which political institutions can be dismissed as predictably and uniformly meaningless. Moreover, the region contains within it substantial variation on the dimension of institutional strength – across countries, across institutions, and over time. A focus on Latin America allows us to exploit this variation, while simultaneously benefiting from the insights generated by a close-knit community of scholars with a shared knowledge of the region's history and cases.

Issues of institutional strength are of great consequence in Latin America. Given the region's vast inequalities and state deficiencies, the potential impact of institutional reform *on paper* is often strikingly high. If laws aimed at eliminating corruption, clientelism, racial discrimination, or violence against women, or rules designed to redistribute income to the poor, enforce property rights against squatters, or protect the environment, were actually complied with over time, the social and distributional consequences would be enormous. So the stakes of institutional compliance and durability are high.

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Struggles over whether and how the rules are enforced, and whether or not they remain on the books, have prominent winners and losers. Scholars must understand what drives these struggles – and what determines their outcomes.

Although this volume focuses on Latin America, its lessons clearly travel beyond the region. Incentives to create and sustain weak institutions are endemic across the Global South. Indeed, they may be found in industrialized democracies as well. Thus, understanding the causes and consequences of institutional weakness is critical for comparative politics more broadly.

WHY INSTITUTIONAL WEAKNESS MATTERS  
 FOR COMPARATIVE POLITICS

Recent research highlights the need for scholars of comparative politics to take institutional weakness seriously. Take Gretchen Helmke's (2004) study of executive–judicial relations in Argentina. Established theories of judicial politics – which draw heavily on the case of the United States – tell us that lifetime tenure security for Supreme Court justices should enable justices to act with political independence. But when rules of tenure security are routinely violated, such that justices know that voting against the executive could trigger their removal, judicial behavior changes markedly. Helmke finds that when institutions of tenure security are weak, as in Argentina during much of the twentieth century, justices are more likely to vote with presidents during the early part of their term. As the president's term in office concludes, however, justices tend to engage in “strategic defection,” ruling in line with the party or politician they expect to succeed the outgoing president (Helmke 2004). Thus, Helmke identifies – and theorizes – a pattern of judicial behavior that diverges markedly from what would be expected in a strong institutional context.

Alisha Holland's (2017) research on forbearance and redistribution similarly highlights the importance of taking variation in enforcement seriously. Most analyses of redistributive politics in Latin America focus on formal social policies such as public pension and health-care spending. By such measures, redistributive efforts in the region are strikingly low: social expenditure as a percentage of gross domestic product (GDP) is barely half of the average for Organization for Economic Co-operation and Development (OECD) countries, and unlike most OECD countries, taxes and transfers only marginally reduce income inequality (Holland 2017: 69–70). In unequal democracies such as those in much of Latin America, the persistence of such small welfare states may seem puzzling. By adding the dimension of forbearance, or deliberate nonenforcement of the law, Holland offers insight into why such outcomes persist. The state's toleration of illegal activities such as squatting and street vending distributes considerable resources to the poor (Holland estimates that in Lima it amounts to around \$750 million a year [2017: 9]). Thus, whereas most Latin American states do little, in formal terms, to support housing and

employment for the poor, nonenforcement of laws against squatting and street vending creates an “informal welfare state,” in which “downward redistribution happens by the state’s leave, rather than through the state’s hand” (Holland 2017: 11).

Forbearance has powerfully shaped long-run welfare-state development in Latin America. Because forbearance entails less taxation than formal redistribution, governments and their nonpoor constituencies may come to prefer it; and when the poor organize to preserve forbearance, popular demands for formal redistribution are often dampened. This “forbearance trap” can lock in informal welfare states for decades (Holland 2017: 237–276). A central lesson from Holland’s work, then, is that understanding the politics of redistribution in unequal democracies requires a focus not only on policy design but also on enforcement.<sup>4</sup>

Alison Post’s (2014) research on foreign and domestic investment in infrastructure in Argentina offers another example of how variation in institutional strength shapes policy outcomes. Foreign multinationals – with their deep pockets and long time horizons – are widely expected to hold an advantage over domestic firms in winning favorable infrastructure contracts where institutional veto points constrain governments (Levy and Spiller 1996; Henisz 2002) or international third-party enforcement is included in contracts (Elkins, Guzman, and Simmons 2006; Büthe and Milner 2008). However, Post (2014) shows that in weak institutional environments, this is often not the case. In a context of economic and political volatility, where governments are able to alter the terms of contracts regardless of formal rules, domestic investors with extensive linkages to local economies and politicians are better positioned to sustain and, when necessary, renegotiate contracts.<sup>5</sup> Such “informal contractual supports” may be less important in an institutional environment with strong property rights. However, in a context of institutional instability, they help explain why domestic investments often prevail over foreign ones. Post (2014) thus shows how the behavior of both governments and investors changes in a weak institutional environment, producing investment outcomes that differ markedly from those predicted by the existing literature.

Attention to institutional instability has also reshaped our understanding of electoral design. Most comparative scholarship assumes that those who design the electoral rules do so with a self-interested goal: to maximize their electoral advantage. The most influential work in this area assumes that politicians engage in *far-sighted* institutional design. In other words, they design electoral rules in pursuit of relatively long-term goals (Rokkan 1970; Rogowski 1987; Boix 1999).

<sup>4</sup> Variation in enforcement should also influence individual preferences over social policy, in line with Mares’s (2005) finding that prior individual experience with state institutions affects policy preferences.

<sup>5</sup> Such renegotiation often entails cross-sectoral bargains that violate rules governing market concentration and conflict of interest (Post 2014; Post and Murillo 2016).

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Boix (1999), for example, argues that conservative elites in much of early twentieth-century Europe replaced plurality electoral systems with proportional representation (PR) systems in an effort to minimize their losses in the face of the growing electoral strength of socialist parties. Such theories of far-sighted design hinge on some critical assumptions: for example, actors must believe that the rules they design will endure over time; and they must have some certainty that they themselves will continue to benefit from those rules. In other words, far-sighted designers of electoral rules must be able to “predict with some certainty the future structure of electoral competition” (Boix 1999: 622). Neither of these assumptions holds in weak institutional environments. Where electoral volatility is high, and where institutions are easily replaced, far-sighted institutional design is more difficult. In such a context, rule designers remain self-interested, but they are less likely to be far-sighted. Rather, as scholars such as Karen Remmer (2008) and Calvo and Negretto (this volume) argue, politicians will be more likely to design rules aimed at locking in short-term electoral advantages. Such short-sighted design may well have the effect of reinforcing institutional instability. Allowing for variation in rule designers’ time horizons should, therefore, enhance the external validity of theories of institutional design, facilitating their application across different national contexts.

Finally, attention to variation in institutional strength has yielded new insights into the dynamics of institutional change. Recent work in the historical institutionalist tradition focuses attention on forms of gradual institutional change emerging from the reinterpretation or slow redeployment of existing written rules (Thelen and Streeck 2005; Mahoney and Thelen 2010; Conran and Thelen 2016). This scholarship was a useful response to an earlier literature that emphasized discontinuous change – moments of dramatic and far-reaching change, followed by long periods of path-dependent stasis (Krasner 1988). Yet the patterns of layering, drift, conversion, and exhaustion identified by Kathleen Thelen and her collaborators operate in a context of strong formal institutions. As we have argued elsewhere (Levitsky and Murillo 2009, 2014), the dynamics of institutional change can be quite different in a weak institutional environment. Rather than being characterized by “stickiness,”<sup>6</sup> institutional change tends to be rapid and thoroughgoing, often following a pattern of serial replacement, in which rules and procedures are replaced wholesale – without ever settling into a stable equilibrium (Levitsky and Murillo 2014).

Second, actors in a weak institutional environment may achieve real substantive change by modifying enforcement or compliance levels rather than changing the rules. Mahoney and Thelen (2010) have shown how gaps in compliance can serve as a mechanism of hidden change via the subtle reinterpretation of institutional goals, even as formal institutional structures remain intact. Building on this insight, recent scholarship shows how the “activation”

<sup>6</sup> For example, Streeck and Thelen (2005: 18) explicitly assume the “stickiness of institutional structures” in their discussion of economic liberalization in the advanced democracies.

of previously dormant institutions can be an important source of change (see Levitsky and Murillo 2014). At the same time, noncompliance may also be a source of formal institutional *stability*, especially when it tempers an institution's distributive consequences (Levitsky and Murillo 2013).<sup>7</sup> During the 1990s, for example, Latin American governments seeking more flexible labor markets weakened enforcement of existing labor laws while keeping them on the books (Bensusán 2000; Cook 2007).

Recent research thus suggests the need for a more conscious focus on institutional weakness as an object of study; as a conscious political strategy rather than as “random error” that obstructs proper institutional analysis. That is what this volume seeks to do.

#### DEFINING INSTITUTIONS

Before we conceptualize weak institutions, we must define institutions. Most institutionalists begin with North's (1990: 3, 4) definition of institutions as “the humanly devised constraints that shape human interaction ... [in ways that are] perfectly analogous to the rules of the game in a competitive team sport.”<sup>8</sup> In previous work (Brinks 2003; Helmke and Levitsky 2006), some of us have argued that institutions are made up of rules, and, in the context of defining informal institutions, sought to differentiate rules from purely descriptive statements or expectations about behavior. For this project, we adopt the same starting point – the notion that (formal) institutions are made up of (formal) rules. This allows us to focus on formal constraints that are “humanly devised” and recognized as compulsory within a polity. Many definitions stop there, but for our purposes we must push beyond the implicit equation of institutions with stand-alone rules. In all cases, we are concerned with the effectiveness of sets of rules, rather than with single rules in isolation, even though a single rule may sometimes stand in as shorthand for the institution as a whole.

We therefore define a formal institution as a set of officially sanctioned rules that structures human behavior and expectations around a particular activity or goal. Elinor Ostrom (1986: 5) defined institutions as

the result of implicit or explicit efforts by a set of individuals to achieve order and predictability within defined situations by: (1) creating positions; (2) stating how participants enter or leave positions; (3) stating which actions participants in these positions are required, permitted, or forbidden to take; and (4) stating which outcome participants are required, permitted, or forbidden to affect.

<sup>7</sup> For example, during the debate in 2018 over Argentina's abortion laws, supporters of the existing ban argued that reform was not necessary because no women were actually penalized for terminating their pregnancies ([www.lanacion.com.ar/2157341-aborto-no-faltar-a-la-verdad](http://www.lanacion.com.ar/2157341-aborto-no-faltar-a-la-verdad)).

<sup>8</sup> See also Peters (2011: 146).

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She later added to this classification, arguing that institutions are further defined by rules that specify (5) the consequences of rule violation, which in most cases we expect to be associated with a specific sanction (Crawford and Ostrom 1995).<sup>9</sup> We simplify Crawford and Ostrom's "grammar" somewhat, specifying a (formal) institution as a set of formal rules structuring human behavior and expectations around a statutory goal by (1) specifying actors and their roles; (2) requiring, permitting, or prohibiting certain behaviors; and (3) defining the consequences of complying or not complying with the remaining rules.

Our conceptual scheme relies on identifying the statutory goal of formal institutions – the second element in our definition, above. As we will see in the next section, a strong institution is one that sets a nontrivial goal and achieves it, whereas a weak institution achieves little or nothing, either because it fails to achieve an ambitious goal or because it never set out to accomplish anything. We set statutory goals as the benchmark rather than the (stated or implicit) policy objectives of institutional creators because we recognize that the ultimate policy aim of institutions – often a product of compromise among distinct and even competing interests – may well be ambiguous or contested (Moe 1990; Schickler 2001; Streeck and Thelen 2005; Mahoney and Thelen 2010). By taking the statutory goal itself as a starting point, we can more easily identify how the preferences and strategies of actors work to weaken or strengthen institutions. Whether the institution succeeds in achieving its policy objective or produces far-reaching unintended consequences can be analyzed separately under more conventional policy effectiveness rubrics.<sup>10</sup>

Institutions may be *transformative*, in that they seek to move outcomes away from the status quo, or *conservative*, in that they seek to preserve the status quo in the face of potential change. This volume focuses primarily on transformative institutions, both because they are more often the subject of political and policy debates in Latin America and because they are more often identified as being weak. Nevertheless, conservative or status quo-preserving institutions can be of great importance. Property laws are a clear example. Civil codes enshrining traditional gender roles and family structures are another. Albertus and Menaldo's work (2018, this volume) on the persistence of authoritarian constitutions that protect wealthy elites from redistribution by constraining democratic governments shows that conservative institutions are widespread in Latin America. The conceptual scheme we propose works in either case. Whether conservative or transformative, institutions are meant to make it more likely that social,

<sup>9</sup> Similarly, definitions of "law" or "systems of social control" highlight the role of coordinated classes of rules that define not just required, proscribed or permitted behavior, but also mechanisms for enforcement, actors, consequences and the like (see, e.g., Hart 1961; Ellickson 1991).

<sup>10</sup> It is thus entirely possible, in this conceptual scheme, for a strong institution to nevertheless fail to achieve the policy objectives that prompted its creation.



economic, or political outcomes will be closer to a defined statutory goal than to some less preferred alternative outcome.

Weak formal institutions should not be confused with informal rules, or those that are “created and enforced outside officially sanctioned channels” (Helmke and Levitsky 2006: 5). Informal institutions may coexist with either strong or weak formal institutions. When they coexist with weak institutions, they may either reinforce them by providing a second mechanism that promotes the expected behavior (“substitutive”) or undermine them by promoting an alternative behavior (“competing”) (Helmke and Levitsky 2006: 14). Although we recognize (and discuss below) the importance of informal rules in generating institutional strength or weakness, our focus here is on formal institutions.

Finally, it is important to distinguish formal institutions, or rules, from the organizations that are either the targets of those rules (e.g., political parties, interest groups, firms) or dedicated to enforcing or implementing the rules (e.g., bureaucracies). By keeping rules and organizations conceptually distinct, we can evaluate whether strengthening state agencies – hiring more inspectors, spending more on training bureaucratic personnel, or establishing meritocratic criteria – actually enhances compliance with the institution, as do Ronconi (2010), Schrank (2011), and Amengual (2016) in their work on labor regulations and the civil service.

The Concept of Institutional Weakness

We now turn to conceptualizing institutional weakness. We expect strong institutions to redistribute and refract power, authority, or expectations in order to produce an institutional outcome (*io*, in Figure 1.1) that diverges from what the preinstitutional outcome (*po*) would have been.<sup>11</sup> An institution may be designed to produce an outcome (shown in Figure 1.1 as *io'*) that is more ambitious than that which it actually produces. A strong institution, however, makes a difference because the distance between *io* and *po*, a parameter we call *S* (for strength), is greater than zero. *S*, of course, is a cost to those who prefer *po* and exactly the benefit sought by those who prefer *io* or *io'*.

We can use the following graph to illustrate this and set up a vocabulary to use as shorthand:

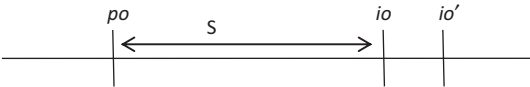


FIGURE 1.1. Strong institution –  $io-po > 0$ .

<sup>11</sup> We use “preinstitutional” here in the same sense in which people commonly use “prepolitical.” It is not meant to imply temporality, but rather simply what might happen in the absence of the institution.



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It is important to note that the move from *po* to *io* is not a move from the state of nature to an institutionalized context. Indeed, *po* could be (in the case of a conservative institution) a feared future outcome the institution is designed to prevent, and *io* may be the status quo it seeks to preserve. The idea is that the institution of interest has been added to the array of interlocking institutions that impinge on any given social and political activity in hopes of producing a particular outcome that might not otherwise obtain, either presently or in the future. The comparison point is a counterfactual – our best estimate of what might happen if the institution were to disappear or be replaced.

Central to our understanding of institutional strength, then, is the institution's *ambition* – the degree to which institutions are designed to change outcomes relative to what they would otherwise be. In Figure 1.1, this is the distance between the statutory goal (*io'*) and the preinstitutional outcome (*po*). Some institutions seek to do more than others – raise more taxes, offer greater protection to workers or the environment, more narrowly constrain the executive, or more radically protect private property, for example. Any comparison of the strength of two different institutions must therefore assess not only whether they endure or generate compliance, but also how much work they are doing to generate or prevent change.

We might have adopted a relative, rather than an absolute, concept of institutional strength. In Figure 1.1, this would mean a focus on the proportion of the institutional goal that is achieved ( $S/(io' - po)$ ) rather than *S* itself. Although such an approach may be appropriate in some cases (e.g., when comparing identical institutions), it rewards institutions with meager levels of ambition. Institutions that propose to do little and achieve the little they propose would appear strong, while institutions that seek to produce or prevent radical transformations and accomplish much, but not all, of their goal would be scored as weaker – despite doing more work. Thus, an institution may still be relatively strong if it is consequential in terms of its goals, despite falling short of full compliance. Most of our analysis holds ambition constant and focuses on compliance with, and stability of, the formal rules. However, we also introduce (below) the concept of “insignificant” institutions to characterize formal rules with zero ambition, in that they do not alter the status quo (*po*) even when achieving perfect compliance.<sup>12</sup>

<sup>12</sup> This does not mean, of course, that the level of noncompliance ( $io'-io$ ) is irrelevant. Even an institution that generates significant effects in the direction of its formal goals might pay an important price if compliance is low. The institution may lose legitimacy, and the consequent public cynicism may undermine support for the institution, leading to instability. Scholars have made this argument, for example, with respect to the inclusion of social rights in Latin American constitutions. Although by some measures these institutions have had important effects (Gauri and Brinks 2008; Brinks and Gauri 2014), their uneven application has generated strong critiques (Mota Ferraz 2010; Langford et al. 2011).

### Social Norms and Institutional Strength

This volume focuses on formal institutions. As noted above, however, formal rules always coexist with unwritten social norms and other informal institutions, and their effectiveness and stability may be powerfully affected by their interaction with those norms (North 1990; Helmke and Levitsky 2004; Levitsky and Ziblatt 2018). Social norms shape individual incentives to comply with laws or report violations, which, in turn, shape the behavioral effects of regulations (Acemoglu and Jackson 2017). Take dueling in the antebellum United States. Although antidueling laws “were on the books in all states” (Wells 2001: 1807), compliance with these laws varied by region: whereas dueling disappeared in northern states in the early nineteenth century, it remained widespread in the South. This variation has been attributed to differences in underlying social norms. In the North, public acceptance of dueling evaporated in the wake of the 1804 Hamilton–Burr affair, but in the South, strong social norms – which treated duels as “affairs of honor” – induced citizens and state officials to ignore the law (Wells 2001: 1818–1825). Thus, even though every southern state had adopted antidueling legislation by the 1820s, charges were rarely brought against duelists, and when they were, “[s]outhern judges and juries... were unwilling to enforce” the law (Wells 2001: 1830–1833). As Harwell Wells put it, enforcement “relied too heavily on men deeply embedded in the very social processes the laws sought to overturn” (2001: 1831). Ultimately, it was the Civil War – which weakened the social norms that sustained dueling – that led to the disappearance of dueling (and the enforcement of antidueling laws) in the South (Wells 2001: 1838–1840).

Understanding the strength of formal institutions thus requires attention to the normative bases of those institutions. This task is simplest in the case of transformative institutions that seek to move outcomes away from a status quo that is congruent with social norms – we can, for example, track movement toward the institutional goal over time. But norms often undergird formal institutions – especially conservative ones – in less discernible ways. For example, many formal institutions generate compliance because they are reinforced by congruent social norms (Levi 1988, 1997; North 1990). As is always the case when two potential independent variables are colinear, this complicates the empirical exercise of inferring institutional strength. In such a case, to be able to attribute causal efficacy to the formal institution rather than the informal norms, we would want to show some nontrivial likelihood that the outcome would be different absent the formal institution, in spite of congruent social norms – in other words, that *po* is distant from the social norms as well. We might find, for instance, that some powerful political, social, or economic actor would not be constrained by social norms but is constrained by the formal institution. Observers argue that this was the case with presidential term limits in Colombia in 2010. Broad public and