

Deák Ágnes¹:

HOW CAN WE BETTER UNDERSTAND THE FUNCTIONING OF INSTITUTIONS? AN UNORTHODOX APPROACH

Daniel M. Brinks, Steven Levitsky, María Victoria Murillo (Eds.), *The Politics of Institutional Weakness in Latin America*, Cambridge University Press, 2020, 339 p.

An exceptionally versatile book has been published by one of the most respected research communities specializing in Latin American research. The book provides a complete panorama of the latest findings in research on the institutional system. In addition to a completely new conceptual and theoretical approach, it reinforces the authors' assumptions with a wide range of empirical research that focuses on the most relevant topics of Latin American reality, mainly in the political and the economic fields while also revealing the complex interconnectedness and interaction of different aspects. Through the combined arc of case studies it becomes evident how inextricably intertwined these areas are, how the results of political decision-making mechanisms impact different fields of economic life or certain groups in the society. The editors of the volume, namely Daniel M. Brinks (University of Texas at Austin), Steven Levitsky (Harvard University), and María Victoria Murillo (Columbia University) and the contributing authors (sixteen altogether) provide one of the most significant and extensive analyses of the functioning mechanisms of the Latin American institutional system in recent years.

In Latin American countries institutional weaknesses have manifested already since the early decades, in fact since the birth of the new independent republics. The new constitutions and laws were largely modelled on the counterpart institutions in the United States and aimed at large-scale transformation of the colonial order and society, such as the separation of state and church or the establishment of a banking system that laid the foundations for economic development. By redrawing the power structure and social status quo and

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extending powers to a large part of the society, the leaders of the independence struggles wanted to create new solid bases for the emerging nations. However, the ideas and crafted plans were not achieved in most of the Latin American countries during the following decades or even throughout the twentieth century. This has led to the absence or the fragility of secure property rights or the rule of law. The reasons behind this are to be found in the regular changes of the institutional framework, in the conflicts between the social groups with different cultural heritage, thus in the weak cooperation, and the socio-economic inequalities inherited from the colonial past. [Bértola et al., 2010; Fukuyama, 2011; Williamson, 2015] The dominant institutional panorama evolved throughout the 20th century has undergone significant changes since the 1990s. Not only did neoliberal reforms transforming economic life sweep across the region, but with them began a democratic transition. The book aspires to examine the results and inefficiencies of this three-decade long process from the institutional perspective. Its originality derives from placing the subject in a completely new theoretical approach and analytical framework, aiming to reveal some elements of institutional transformation, and demonstrating different forms of institutional weakness through an extremely rich range of empirical research. Eleven chapters are devoted to complementing a broad presentation of the theoretical concept with analysing current topics in the Latin American region such as the instability of electoral institutions, the phenomenon of chronic abrupt termination of presidential terms, the institutional framework for sustaining the informal economic sector, the application of environmental laws and the institution regulating relations between indigenous communities and actors in the extractive industries or the law to protect women from violent acts in Mexico among others.

After decades of authoritarian regimes, Latin America experienced a progressive period during the '90s. Beyond the turn to neoliberal economic policies, political systems and societies underwent significant changes in almost all areas: electoral systems and constitutions were rewritten, new institutions of participatory democracy emerged, granting rights to education, health care, cultural heritage of ethnic groups and opening space for the formation of social movements. However, recent decades have proven that the introduction of new institutions have not generated continuous positive trends in the region in several aspects. Boom and bust cycles, most recently in the first decade and a half of the 2000s, catalysed by the commodity price rise and fall due to the Chinese economy's demand and drop for raw materials, are common features in the region which have multiple implications. Latin American economies' vulnerability to economic volatility through dependency on exports of natural resources and international interest rates is a common characteristic which has important political consequences as well, since citizens cast their vote based on economic outcomes. [Campello and Zucco, 2020] Inequality and

poverty, the detrimental effects of economic production on the environment and traditional rural communities, and increasing violence have remained pressing challenges at both national and regional levels. Partial failure of institutional reforms is reflected in many areas: new electoral systems have not improved the party system, high levels of informal economic activity have been perpetuated, regular inconsistencies in compliance with environmental and labor laws and the lack of legal procedures investigating violence against indigenous communities and women have been widespread in the region.

The volume reveals these shortcomings and unrealized hopes. It aims to explore the mechanisms that determine the institutional stability, the compliance or noncompliance with the rules, the processes through which institutional weakness develops undermining democratic systems and reducing economic effectiveness. The stakes are high, as a strong institutional system could promote laws and public policies to reduce inequalities, which are perceptible in all aspects of Latin American reality, to prevent clientelism which intertwines politics and public administration, to hinder activities damaging environment, or to enhance property rights and redistributive measures to improve the living conditions of the poor. To set a research agenda to analyse the factors and processes of institutional weakness requires no less, the authors argue, than a completely new conceptualization and theory, especially in the field of comparative politics.

The authors formulate a fundamentally new starting point: examining the weaknesses of the institutional system should not only appear as background information in political-economic analysis, as part of the landscape (expression used by the authors), but as *a variable*. This approach necessitates adequate conceptualization, which has so far been lacking in previous research within the historical institutionalist tradition. The Authors provide a new theoretical foundations suitable for the recognition, measurement, and comparison of its diverse forms. Along with these efforts the authors also introduce a new language with several original concepts and definitions, so to follow the logic of the analysis in the empirical chapters we must first understand the terminology.

The most important focal point is that institutional weakness is not a possible or accidental planning or design error, rather *conscious political strategy* that denotes the power imbalances that exist in a given political environment/space. The basic premise is that institutional strength means that actors do something that they would not do in the absence of the institutions. Strong institutions generate a change in the distribution of power and expectation in institutional outcomes that are different from previous institutional outputs. The difference between the previous and the new one caused by change is called the strength ("S"), which is greater than zero. By implication, "S" is the cost to those who prefer the original condition and the benefit pursued for those who favour the change. While

some institutions do more to protect the environment or property rights than others, comparing the strengths of different institutions is important not only in the compliance they effectuate, but also in how much effort they put into achieving/anticipating change. As the authors examine the difference between the goal set by the institution and the original state, in their model the strength is relative, institutions that set more modest goals and manage to implement them can also be considered strong ones or relatively strong if it is consequential in its goals without achieving perfect compliance.

To sum up, the new concept effectuates three important main dimensions. First, *ambition*: how much the rule changes the status-quo to make the actors change the behavior; second, *compliance*: how much the letter of the law matters; and third, *stability*: how long the institutions survive to have the ability to shape the expectations of the actors. The case studies based on empirical research present a variety of the circumstances that can be sources of institutional weakness. Table 1 shows the different types of institutional weakness analysed in the chapters.

Table 1: Types of institutional weakness

Institutional weakness	Dimensions		
	<i>Ambition</i>	<i>Compliance</i>	<i>Stability</i>
	<i>Insignificance</i>	<i>Noncompliance</i>	<i>Instability</i>
	institution has zero ambition, although fully executing objectives, not modifying the original status-quo, actors' behavior	type 1: nonenforcement: prescribe behavioral change but state officials do not want to enforce the institution effectively a. window dressing institutions (chapter 11) b. forbearance (chapter 5) c. selective enforcement (chapters 4, 8 and 9)	serial replacement of electoral laws (chapter 2)
		type 2: nonpunitive enforcement unsanctioned institutions (chapter 8.)	instability trap (chapter 4)
		type 3: weak state capacity relative to societal resistance a. standoffish states and intermittent enforcement (chapter 7) b. aspirational laws (chapter 6)	

Source: own elaboration

As a result, the authors identify three main categories of institutional weakness: *insignificance*, *noncompliance* and *instability*. *Insignificance* categorizes

institutions that have formal rules with zero ambition. Even if they fully execute their objectives, they do not modify the original status-quo. These institutions do not have any real impact, if they achieve anything, that is merely symbolic. In the other two categories, *noncompliance* and *instability*, despite the fact that the rules have a significant ambition, the "S" is (almost) reduced to zero, producing weak institutions.

The empirical case studies reveal the diversity of the causes and processes that prevent the practical implementation, the compliance with, and stability of, the ambitious rules on paper. Within the *noncompliance type* three groups are distinguished: one is the case of *state nonenforcement*, where state officials do not want to enforce the institution effectively. The second includes cases of *nonpunitive enforcement actions*, when even though the rule is applied there is no significant consequence for the actors if they break the new rule (thus no real incentive exists to change behavior). In the cases belonging to the third group, the effectiveness of institutions fails at *the weak capacity of the state to cope with societal resistance*.

In the *nonenforcement cases* the authors determine three different subgroups. Some institutions would be able to bring about a change in behavior, but government officials do not enforce their rules. These are *window dressing institutions* whose rules are designed without the intention of enforcing them. This includes the institution of "prior consultation"², which is widely accepted in the region, and in its early stages, it was only a law aimed at gaining international and national attention, with no intention of being implemented. Later in some countries e.g. Bolivia the political integration of social actors and the increasing compliance of the institution as the state supported the demands of the communities, transformed the initial window dressing status (ratification alone without regulatory framework) into a strong one. (Faletti chapter 11) Alisha Holland (chapter 5) challenges the conventional wisdom that the wealthy influence the institutional design for their favor and through her empirical research in the capitals of Colombia and Peru found ample evidence why informal housing (squatting) and employment (street vendors): problems remain pervasive. She explains the widespread existence of the informal sector, which is one of the most characteristic features of Latin American economies, by introducing the concept of *forbearance*. The concept describes the intentional non-enforcement

² In 15 countries in the region, the International Labour Organization (ILO) Convention 169 on Indigenous and Tribal People of 1989 was ratified in the last decades. The ILO Convention 169 provides prior consultation as a collective right to indigenous communities in areas where mega-infrastructure or extractive investments are planned. This means that local, affected indigenous communities must be given the opportunity to be consulted before commencing natural resource exploitation activities, thus giving them the possibility to influence the implementation of certain activities.

of the rules by state officials. In her analysis low level bureaucrats consider the political and human consequences of the national laws high among the poor. Holland's fieldwork's research reveals (as she calls) *the coercion gap* as the diverse policy motivations of those representing the different levels of the legislative (national) and the enforcement (local) processes are reflected in weak institutional functioning. The third category is *selective enforcement*, in which enforcement takes place ad hoc, depending on the authority's decision to apply or not the regulations to particular social groups (by region, class, etc.) of society. (Saffon and González chapter 9 about land right in Mexico)

In the case of *nonpunitive* institutions, i.e. when institutions are so weak that they do not encourage actors to change behavior, the letter of the rule is fully applied, but the cost of compliance is much more high than the punishment for noncompliance, thus it becomes an *unsanctioned institution*. In Argentina Chaco commercial farmers pay the low fine for deforestation and continue their behavior, thus the objective of the anti-deforestation rules is not reached and the strength of the institutions evaporate, because the landowners act as if the institution had not been approved by the federal government bodies despite its full enforcement. (Fernandez and Garay chapter 8)

Two chapters of the book (Amengual and Dargent chapter 7 and Htun and Jensenius chapter 6) explore the third large group of noncompliance cases where the government has the will to abide by the rules, but *the capacity of the state is incomplete* and thus it is unable to carry out its intentions. To maintain the state's enforcement capacity over a longer period of time when the introduction of rules aims to achieve substantial change in behavioral patterns in society requires bureaucratic organization and infrastructure. Many states in the region are characterized by lacking of these resources, moreover building the capacity of the state is a lengthy process facing many challenges, e.g. political ones, and the enforcement of some institutions falls victim to it. One of the subgroups within this category is *standoffish states and intermittent enforcement* analysed in the Peruvian and Argentine construction and Bolivian gold mining case studies. Alliances or conflicting relationships between those exercising central political power and representatives of local business groups and trade unions have determined the imbalances that led to the enforcement (or not) of the law. It is either a) intermittent, meaning there is no clear pattern or b) selective, because the state is weak and does not have enough resources to apply the rule at national level, thus it has to decide to which social groups or on what territorial basis to apply the rule, e.g. in big cities rather than in the countryside. (Amengual and Dargent, chapter 7) The other subgroup of institutions only achieves *aspirational status*. Societal resistance can be so strong against an institution that wants to fundamentally change the forms of behavior rooted in the past that although state

capacity is significant for enforcement, compliance remains low. The case study of this type of noncompliance explores the low implementation and poor enforcement of laws against violence against women and their causes in Mexico. (Htun and Jensenius, chapter 6)

Compliance or non-compliance with an institutional expectation depends fundamentally on the result of the interaction between state enforcement and the bottom-up societal reaction. This can manifest itself in cooperation or resistance, depending on how much the rules coincide with or go against existing social norms and the distribution of power. When some social actors have an interest in compliance of the rules, this situation requires less enforcement effort and lower capacity from the state, while in cases when new institutions face opposition from powerful interests groups (even with high level of state capacity to enforce them) results in low compliance. Hence, the state's enforcement capacity is relational and strong institutions create compliance if the state has the infrastructural capacity and the intention to enforce the rules, and there is the necessary cooperation for compliance from the societal actors. The case study which presents the successful reform of the Labor Inspectorate of the Dominican Republic started in the 1990s is a good example of the process and for strong institution representing an exception in the book. Although in the case of the Caribbean country, the transformation of the civil service was an institutional import in response to foreign pressure, the author points out that the institution's effectiveness was determined by the coincidence of several factors, requiring the same circumstances as in cases of the national ones. These internal and external actors' interests, namely the pressure of international advocacy agencies, the audience's value embodied in external support and the lower resistance of the national societal groups made the longer-term effort of state enforcement effective (Schrack, chapter 10).

Three chapters of the volume are devoted to the empirical analysis of *institutional instability*. Latin American political mechanisms provide interesting cases studies in three important areas: the *volatility of electoral institutions* (Calvo and Negretto, chapter 2), *the conditions for the survival of constitutions enacted under authoritarian regimes* (Albertus and Menaldo chapter 3.) and the *crises of presidential regimes* (Helmke, chapter 4). Chapter 2 by Calvo and Negretto explores the causes and consequences of institutional instability based on the electoral system and takes Western European practice as a basis for comparison. As the electoral system is the basis of modern democratic functioning, its changes and instability over time is one of the characteristics of institutional weakness. The authors reinforce the widely accepted view that electoral reforms in the new democracies emerged in the Latin American region in the 1980s is constantly frequent, as countries in the region underwent 112 electoral reforms between 1980

and 2015, which involve changes in any aspect whether in the house, senate or presidential elections. The study also demonstrates that the level of instability in the region depends on the type of electoral regime and reforms are not implemented in all democratic institutions at the same time. Two main processes are revealed by the authors: the effects of political and economic shocks that contribute to regular reforms in electoral systems, and the importance of strong constitutional control on the executive branch by the judicial and legislative ones which reduces the rate of changes. Weak enforcement or lack of compliance of constitutional constraints not only increase the frequency of electoral reforms by reducing the cost of changing the institution, but also by influencing the preferences of electoral voters.

Changes in voter preferences also impact on the distribution of party support, which ultimately encourages political actors to introduce reforms, thus creating an “instability trap” process. These research findings are closely related to those of Gretchen Helmke (chapter 4), known as an expert on Latin American presidential systems. As a follow-up to her previous work [Helmke, 2017] in which she introduced the concept of “instability trap” describing the self-reinforcing process of institutional crisis through which the decreasing public trust in the institutional system reduces the cost of its rapid replacement, she successfully applies the model introduced by the volume’s editors to reveal processes of crises in presidential systems. There has been a significant series of reports about Latin American presidents involved in various corruption cases leading to their resignation in recent years. The phenomenon can even be considered one of the hallmarks of the region, which gives a rationale for research the mechanisms that causes the interruption of presidential terms. Helmke’s analysis, built on her own database, in which she develops her own methodology in line with the basic concept of the volume, examines the possibility of holding the presidency through the role of interbranch conflicts. She concludes that in most cases, the departure of presidents before ending their fixed terms occurs when they have no control over congress, despite their constitutional power.

Chapter 3 by Albertus and Menaldo echoes the results of the research of Calvo and Negretto. However, the former do not focus on electoral reforms, but constitutions enacted under authoritarian regimes, which are often in force even during the restoration of the democratic system, showing an exceptional case as strong institution. Their analysis covers a longer time period and pays attention not only to political actors but also to their economic allies. However, the findings are similar: if political actors are strong, they can secure their benefits for longer term by designing and changing institutions, while the role of shocks, especially economic ones is also highlighted as a potential driver of institutional change. Unlike other authors, they find that the outgoing authoritarian elites do not only

ensure themselves an advantageous transition before leaving the dictatorship, but they tend to determine essential elements of upcoming democratic institutions so that these also benefit them.

If someone is not particularly interested in the peculiarities related the functioning of Latin American institutions, it is still worth reading the book for “merely” gaining methodological knowledge and inspiration. As much as the book’s theoretical underpinnings and empirical case studies are substantive, its diverse qualitative and quantitative methodologies used by the various authors (such as Calvo and Negretto’s statistical analysis or Faletti’s process tracing method) also provide interesting methodological insights. The editors themselves acknowledge that a number of difficulties and drawbacks can arise while carrying out research facing ample methodological challenges which requires particularly creative solutions on behalf of the researchers. Especially in the cases of non-compliance, where the issue is closely linked to observations or measurements of violation, sanctions and enforcement efforts. Although there are real victims of violation (whether violence against women or not offering proper working conditions) which would not be difficult to observe (monitoring, reporting) yet in several cases a significant proportion of them remains hidden from the authorities, so data collection is constrained by lack of social cooperation. Overcoming this requires innovative solutions from researchers, such as the ones used by Htun and Jensenius (chapter 6) to measure social support for compliance based on a national survey. Another method used by Fernández Milmanda and Garay (chapter 8) is to use the deforestation rate as an indicator for circumventing environmental rules to measure their ineffectiveness. In the case of enforcement, a good example of measurement is how Schrank (chapter 10) measured the result of the transformation of the civil service system as professional standards of state labor inspector staff employed in Dominican ministries increased.

The chapters on instability contain a wide range of statistical databases, which are particularly valuable being unique ones collected by the researchers themselves e.g. Helmke (chapter 4) has created a dataset on presidential periods, crises (partly based on her previous research), Calvo and Negretto (chapter 2.) on electoral periods throughout Latin America and in Albertus and Menaldo’s chapter (3.) on constitutional change not only on regional but global scale. Measuring instability has its difficulties as well, as the editors argue in the conceptualization, institutional change often results from adaptation to changing external circumstances. Calvo and Negretto apply in their chapter the global benchmark to measure the stability of electoral rules in the region, considering their repeated change due to the low level of impediments to change and volatile partiality of the actors who managed the process of drafting the constitution.

The role of qualitative research methodologies, in particular interviews, which in many cases complement research based on survey or statistical methods, should be emphasized. In-depth interviews with elected politicians such as the mayor of a city, the leader of the opposition party or participants of social movements (e.g. in research of Holland, Helmke, Faletti) allow for an even more detailed understanding of certain forms of institutional fragility and the exploration of nuances.

The chapters in the book present circumstances and political strategies that give rise to different forms of weak institutions, whether due to noncompliance or instability, are described and analysed: different levels of enforcement, lack of state capacity or top-down disinterest, cooperation or resistance of certain social groups, all with different outcomes. The variety of cases in the volume is not only reflected in the diversity of thematic topics (such as environmental regulation and prior consultation, violence against women, presidential terms and constitutions – among others) but also in geographical terms, as case studies range from the Caribbean zone through the Andean region to the Southern Cone countries.

The book is an account of how the goals set at the beginning of the democratic transition thirty years ago have been achieved in Latin America. As the illustration on the book cover strikingly condenses this into an image: the institutional system is still on shaky foundations.³

Institutional theories' starting point is that the functioning of the institutions requires some level of stability, which, however as Levitsky and Murillo state in their previous work, is not a common feature in the Latin American region. They rather use the fitting expression of *"serial replacement"* meaning that almost each new government formulates its own rules for the political and economic environment. [Levitsky and Murillo, 2014] Permanent changes of the electoral systems and constitutions in comparison with similar institutions in Western European democracies are convincing examples (see Calvo and Negretto chapter 2 in the volume) for the phenomenon. The authors' purpose is to reveal and determine institutional instability and as many other forms of institutional weakness as possible exploring the mechanisms that create them through the role of societal actors and the configuration of power imbalances. At the same time the authors refrain from making a normative judgment that having strong institutions cannot cause problems (e.g. constitutions of authoritarian regims), but they do argue that many challenges in the region are linked to the weak ones.

Based on the case studies, the authors summarize three basic and closely related causes of the permanence of institutional weakness over decades. One is

³ Cover design: A figure balancing on a plank stretching between two houses of cards.

inequality, which is present in the region in many aspects such as economic, social, gender and ethnic minorities. In contrast to the conventional wisdom, in which the wealthier social strata have more intention and means to avoid compliance, the volume draws attention to strikingly different situations. The second reason is *low state capacity*, which has also had determinants in the political and economic life of Latin American states over the past two centuries since independence, such as severe conflicts between certain social groups or opportunities for integration into the world economy. Weak states are also more vulnerable, lacking resources and society's willingness to apply law enforcement in all areas. The third reason is *economic and political volatility*, neither of which is a new phenomenon in the region, they manifested in various forms during the twentieth century, such as the "lost decade" of the 1980s in economic terms and in military coups as drastic changes in the political scene. Despite the fact that democratic stability has increased during the last decades, certain elements of it, e.g. electoral volatility, incomplete presidential terms, disintegrated party system still remain general characteristics. The periodic recurrence of crisis and prosperity, as a common feature of the countries in the region e.g. inflation fluctuations or the dependency on commodity export booms have not been eradicated but create sources of institutional weakness.

The Reader might rightly ask, what has changed during the centuries since independence if the same causes of institutional weakness assumed by the authors still exist? Has there been any progress at all?

Yes, there is significant institutional development not only if we take the early 20th century as a benchmark, but the beginning of the democratic transformation in the 1990s. The third wave of democratization has not been without lasting results. Important components of the political-social-bureaucratic institutional system have been strengthened, e.g. indigenous communities' rights are considered in constitutions, social policies and competitive elections have been implemented. At the same time, as the authors argue spread of democratic functioning itself, the increasingly inclusive civic and political participation, competitive elections and the strengthening of social movements created conditions for aiming to achieve more ambitious goals. However, these attempts lead to uneven compliance and then inadequately enforced regulations due to the effects of high inequalities in all aspects. Thus the main motto and promise of the first decades of the 21st century, equality, has not been achieved in the field of law enforcement either. All this creates a self-reinforcing process in which inequalities and economic fluctuations combined with political instability, would result in weak institutions which catalyse the root causes over time. Nevertheless, some chapters in the book suggest that partial or significant behavioral change has taken place in some cases. Even if certain systemic features are changing slowly, e.g.

inequality, some elements of progress can be traced and the path dependence in some aspects has been altered – at least partially, if not as a whole or not definitively.

The editors and authors do not only want to draw attention to the Latin American region, but also to provide a framework for further analysis and call colleagues in academia to explore the causes of current global trends, such as the decay and transformation of democratic institutions and the growing manifestations of inequalities of income and access to services, whether in the Central European or Asian region or in long-standing democracies. The book provides a fundamentally new perspective on the implementation of the authors' research agenda, not only for researchers specializing in the field of Latin American studies. For them of course it is a must read, but it is also a highly recommended book for experts in political science, economics and. The tasks and responsibilities of researchers of social sciences should be the unceasing examination of real processes, their backgrounds and main driving forces. However, thorough analysis requires an ever-renewing approach and versatile methodologies. The authors of this volume completed this task outstandingly. The comprehensive approach of the volume makes it useful as a valuable source of information based, insightful and in-depth analyses. Its new approach, variety of ways focusing, on specific cases and country-specific studies in some of the chapters, might be particularly interesting for public sector representatives, decision and policy makers and lawyers both inside and outside the region.

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