



## CONSTITUTIONAL CHANGES IN THE ANDES

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### ABSTRACT

In order to be effective, Constitutions are expected to be long-lasting and stable, but definitely not immutable; they require certain modifications over time to respond to new social and political circumstances. In the Andean countries, however, constitutional modification has been the rule, and durability the exception. Besides the practical implications of these constant changes, the phenomenon has aroused interest among political scientists and legal scholars. The vast literature on constitutional writing has developed several theories on the motives of constitutional change, but the recent and frequent constitutional changes in the Andean region have presented a challenge to the existing theoretical developments. This literature review seeks to identify how different authors have read and understood the frequent constitutional changes in the Andes, and explain the strengths and weaknesses of their theories.

**Key words:** Constitutions, theories on constitutional reform, constitutional modification, constitutional rigidity, constitutional flexibility.

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## **LOS CAMBIOS CONSTITUCIONALES EN LA REGIÓN ANDINA**

### **RESUMEN:**

Para garantizar su efectividad, se espera que las Constituciones sean duraderas y estables, pero no inmutables; requieren de ciertas modificaciones para responder las nuevas circunstancias políticas y sociales. En los países Andinos, sin embargo, la modificación de las constituciones ha sido la regla, mientras que la durabilidad ha sido la excepción. Además de las implicaciones prácticas que estos cambios constantes generan, el fenómeno ha generado interés entre académicos. La vasta literatura acerca de la escritura de constituciones ha desarrollado una serie de teorías acerca de los motivos para el cambio constitucional, sin embargo, se ha enfrentado a un reto al momento de analizar los cambios constitucionales en los Andes. Esta revisión de literatura busca identificar de qué manera han sido leídos los frecuentes cambios constitucionales en los países andinos en la literatura que versa sobre la materia, y explicar las fortalezas y debilidades de las teorías planteadas.

**Palabras clave:** Constituciones, teorías sobre las reformas constitucionales, reformas constitucionales, rigidez constitucional, flexibilidad constitucional

### **1. OVERVIEW**

Constitutions, as documents that “contain a set of rules which aim at regulating the channels of access to principal government positions, the allocation of powers among different branches of government, and the rights of citizens”<sup>1</sup>, determine the basic structure of the state and the political regime and set the rules of the game for the politics of a country. Therefore, in order to be effective, constitutions are expected to be long-lasting, durable and stable, but not immutable. Constitutions require certain modifications over time to respond to new social and political circumstances that emerge in different nation-states. In Latin America, however, constitutional modification and replacement has been the rule, and stability and durability the exception. “A total of 194 constitutions have been enacted in this

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1 Gabriel L. Negretto. (2013). *Making Constitutions: Presidents, Parties, and Institutional Choice in Latin America*. Cambridge University Press. P. 1

region since independence, of which 103 have been in force from 1900 to 2008. This is an average of 10.7 constitutions per country since the early decades of the nineteenth century, and an average of 5.7 constitutions per country from 1900 to 2008”<sup>2</sup>. Only in “the period between 1978 and 2010, 350 constitutional amendments have been passed in Latin America”<sup>3</sup>.

Within Latin America, the Andean countries have been the place where the region’s long tradition of constitutional replacement and amendment has been most evident and complex. Constitutional reforms in the last decades of the Andes’ constitutional history are characterized by being both extremely frequent and significantly profound. Andean countries such as Bolivia, Ecuador, Peru and Venezuela are not only among the countries that have had the highest number of constitutions in comparison to the rest of the world, but also the ones with some of the deepest changes. “In Latin America, constitutional reforms in the Andean countries since the 1990s have been considered among the most radical”<sup>4</sup>, since they have developed concepts and created new institutions that cannot be found in any other region of the world and transformed some of the most basic institutions and characteristics of the state. Some legal scholars even refer to this phenomenon as the ‘new Latin American constitutionalism’.<sup>5</sup>

The constitutions that have been written in these countries in the past decades have strongly shaped and determined the political events of the Andean region. These recent changes, because of their frequency and their innovative content, have had exceptionally relevant practical implications. It is true that some of these changes have been necessary and that they have introduced progressive institutions that address the realities of these countries in a better way. However, since constitutions come to be accepted as definitive laws that define political institutions, rights and authority, their constant and frequent change results in the lack of an “underlying consensus on the division of authority and respect

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2 Gabriel L. Negretto. (2013). *Making Constitutions: Presidents, Parties, and Institutional Choice in Latin America*. Cambridge University Press. P. 20.

3 Almut Schilling-Vacaflor & Detlef Nolte. (2012). *New constitutionalism in Latin America: promises and practices*. Farnham: Ashgate Publishing, Ltd. P. 7

4 Rickard Lalander. (2012). *Neo-Constitutionalism in Twenty-first Century Venezuela: Participatory Democracy, Deconcentrated Decentralization or Centralized Populism?*, in Almut Schilling-Vacaflor & Detlef Nolte (Eds). *New constitutionalism in Latin America: promises and practices*. Farnham: Ashgate Publishing, Ltd. P. 163

5 Almut Schilling-Vacaflor & Detlef Nolte. (2012). *New constitutionalism in Latin America: promises and practices*. Farnham: Ashgate Publishing, Ltd. P. 3

for the independence of different government branches<sup>76</sup>, which can lead to instability.

Besides the practical implications of these constant changes in the Andean region, the phenomenon has aroused interest among political scientists and legal scholars. The vast literature on constitutional writing has developed several theories and explanations on the motives of constitutional change and reform. However, the recent and frequent constitutional changes in the Andes region have presented a challenge to the existing theoretical developments. Constitutional change in this specific region of the continent differs from other regions of the world and from what the theory asserts in the sense that it does not necessarily come after a time of crisis. What are the causes for the recent frequent constitutional changes in the Andes, where the most significant recent changes have occurred in the middle of already existing democracies? What are the strengths and weaknesses of the theories of constitutional changes that seek to explain these changes?

## 2. BACKGROUND

Approving a new constitution is certainly not a simple process. Still, Latin American leaders are frequently inclined to do it, which suggests that, in the region, “the incentives to replace or amend a constitution crucially hinge on the factors that decrease the value of existing constitutional structures and increase the expected benefits of alternative arrangements<sup>77</sup>. This has been particularly interesting to scholars who study constitution writing and constitutional choice. Constitution writing in general has been studied by scholars for decades; however, the focus on Latin America, and specifically in the Andes region, started to be developed after these countries transitioned to democracy, since the 1970s and 1980s were the decades with the greatest number of changes, and the 1990s and 2000s the decades with the most radical ones.<sup>8</sup>

There have been very different approaches to the topic within this period of time. “Bibliographies and reviews of studies on constitutionalism show that many empirical studies have analyzed constitutional change in various ways

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6 Craig Arceneaux. (2013). *Democracia Latin America*. Boston: Pearson. P. 108

7 Gabriel L. Negretto. (2012). Replacing and Amending Constitutions: the Logic of Constitutional Change in Latin America. *Law & Society Review* 46(4): 749-779. P. 755

8 Almut Schilling-Vacaflor & Detlef Nolte. (2012). *New constitutionalism in Latin America: promises and practices*. Farnham: Ashgate Publishing, Ltd. P. 7

and with different goals in mind”<sup>9</sup>. Some of these studies have focused on the effect that particular Latin American institutions have on future decisions related to constitution writing and reform, such as Sartori (1944); Lane and Mæland (2000); and Congleton and Swedenborg (2006). Some others have focused on how constitutions are created and how they are changed after periods of political crisis or transformation, such as Elster, Offe and Preuss (1998).<sup>10</sup>

Other scholars have focused on doing comparative studies in order to understand the Latin American phenomenon, such as Weaver (2000), Manfredi (1997), Kaiser (2002), Lorenz (2011), Lutz (1994), Negretto (2009), Roberts (2008), Lorenz (2005), and Ferejohn (1997) (Lorenz 2012). However, as it can be seen, these different lenses through which scholars have analyzed the topic have not been necessarily divided by periods of time. There have been scholars focused on political or institutional factors, and scholars focused on comparative or structural research, in each of the aforesaid decades.

According to Detlef Nolte and Almut Schilling-Vacaflor, instead of dividing these theories by periods of time, the studies can be classified into two main approaches: static and dynamic. “Static approaches use a fixed set of variables whose causal effect on constitutional continuity or change is supposedly always the same. By contrast, dynamic approaches presume that the effect of particular variables may vary over time”<sup>11</sup>.

Despite the very varied approaches of these scholars’ research, “there is still neither a satisfactory general theory on constitutional change nor a consistent terminology or typology of constitutional change in political science or law”<sup>12</sup>. Furthermore, there have been different periods of constitutional change in the region that have been very distinct from each

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9 Astrid Lorenz. (2012). Explaining Constitutional Change: Comparing the Logic, Advantages and Shortcomings of Static and Dynamic Approaches, in Almut Schilling-Vacaflor & Detlef Nolte (Eds). *New constitutionalism in Latin America: promises and practices*. Farnham: Ashgate Publishing, Ltd. P. 7

10 Astrid Lorenz. (2012). Explaining Constitutional Change: Comparing the Logic, Advantages and Shortcomings of Static and Dynamic Approaches, in Almut Schilling-Vacaflor & Detlef Nolte (Eds). *New constitutionalism in Latin America: promises and practices*. Farnham: Ashgate Publishing, Ltd.

11 Almut Schilling-Vacaflor & Detlef Nolte. (2012). *New constitutionalism in Latin America: promises and practices*. Farnham: Ashgate Publishing, Ltd. P.5

12 Astrid Lorenz. (2012). Explaining Constitutional Change: Comparing the Logic, Advantages and Shortcomings of Static and Dynamic Approaches, in Almut Schilling-Vacaflor & Detlef Nolte (Eds). *New constitutionalism in Latin America: promises and practices*. Farnham: Ashgate Publishing, Ltd. P. 7

other. While some theories can explain certain periods of constitutional change, they cannot account for others. This is the case with the most recent changes in the Andes, which have been different from previous periods in terms of frequency, content, and amendment procedure. As Albert Noguera has argued, “the recent constitutional processes in Latin America have established a new constitutional paradigm”<sup>13</sup> that is even more complex than the previous periods of constitutionalism. Our contemporary understanding of the field of research serves as an interesting analysis of the previous decades of constitutional change. However, research about the most recent changes in this particular region has yet to be developed.

### 3. APPROACHES

#### 3.1. Political and power-related explanations

Several theories about constitution writing in Latin America are related to political power. These theories usually propose that constitutional change occurs as a consequence of the constant changes in the balance of power, the irregular means of seizing power and the flexible and weak political systems in the region. Political and power-related explanations offer a variety of reasons as to why leaders opt for a new constitution, such as a constitution’s failure to work as a governance structure, a regime change, or politically strategic motivations. Negretto explains that constitutions are replaced when they fail to work as governance structures or when their design prevents competing political interests from accommodating to changing environments. According to the author, “constitutions are likely to be replaced when constitutional crises are frequent, when political actors lack the capacity to implement changes by means of amendments or judicial interpretation, or when the constitutional regime has a power-concentrating design”<sup>14</sup>. He further explains that Latin American constant regime type change makes leaders more likely to decide to write a new constitution for their regime, since writing a new constitution is the most reasonable option in the face of a constitution that does not allow the new political regime to be viable.<sup>15</sup>

13 Almut Schilling-Vacaflor & Detlef Nolte. (2012). *New constitutionalism in Latin America: promises and practices*. Farnham: Ashgate Publishing, Ltd. P. 7

14 Gabriel L. Negretto. (2012). *Replacing and Amending Constitutions: the Logic of Constitutional Change in Latin America*. *Law & Society Review* 46(4): 749-779. P. 750

15 Gabriel L. Negretto. (2012). *Replacing and Amending Constitutions: the Logic of Constitutional Change in Latin America*. *Law & Society Review* 46(4): 749-779. P. 758

In a future research, Negretto also highlighted that changing a constitution is usually a long and complex process, but argued that under the institutional circumstances of Latin America, leaders have considered that the costs of replacing or amending constitutions may be lower than the costs of leaving these structures unreformed<sup>16</sup>, and he specifically outlines three types of political events that can upset the existing constitutional equilibrium and produce a constitutional change: political transformations at the state or regime level, balance-of-power shifts among political actors, and institutional crises that stem from the dysfunctional performance of the constitution.<sup>17</sup>

Similarly, Schor proposes that the large number of constitutions adopted by Latin American countries is due to “the regularity of irregular accession to power by presidents and dictators”<sup>18</sup>. He elaborates on why it has proven so difficult to entrench constitutions in Latin America, and explains that it has to do with the fact that the frequent political leadership changes, mainly in the hands of the elites, have been characterized by irregular accessions to power. In other words, these leaders that have frequently achieved power by means not established in legal documents or constitutions, and have been willing to change the ‘rules of the game’ in their favor, allowing for constitutions to be perceived as malleable documents. “Every change in political leadership is a potential constitutional crisis if the selection of new leaders means that the fundamental rules of the game might be changed with the adoption of a new constitution”<sup>19</sup>. He finally suggests that the logic of this constitutional cycle can only be broken if power is devolved from elites to rules, and if constitutional politics become separated from ordinary politics and societies gain the understanding that constitutions should be difficult to change.<sup>20</sup>

### 3.2. Social and cultural explanations

Some other scholars are more focused on how social factors affect constitution writing, and therefore attribute the frequent constitutional changes to Latin

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16 Gabriel L. Negretto. (2013). *Making Constitutions: Presidents, Parties, and Institutional Choice in Latin America*. Cambridge University Press. P. 45

17 Gabriel L. Negretto. (2013). *Making Constitutions: Presidents, Parties, and Institutional Choice in Latin America*. Cambridge University Press. P. 46

18 Miguel Schor. (2006). Constitutionalism through the looking glass of Latin America. *Texas International Law Journal* 41(1): 1-38. P. 7

19 Miguel Schor. (2006). Constitutionalism through the looking glass of Latin America. *Texas International Law Journal* 41(1): 1-38. P. 7

20 Miguel Schor. (2006). Constitutionalism through the looking glass of Latin America. *Texas International Law Journal* 41(1): 1-38. P. 8

American society. They suggest that constitutional change occurs because society believes that constitutional reforms as appropriate mechanisms to solve institutional, political, social and economical deficits. These social forces, which consider that a change of constitution can solve those problems, are constantly pressing for changing the established institutions. One of the main proponents of these theories is Roberto Gargarella . He first recognizes that there are certain institutional and political deficits that continue to affect the political life of the region, and therefore foster constitutional changes. However, he contends that constitutional reforms occur because they are seen by society and leaders as adequate mechanism to address some of these difficulties, without considering that constitutional reforms are not necessarily the most appropriate means to solve political, social, economic and cultural problems without also resorting to other institutional changes.<sup>21</sup>

Correspondingly, Van Cott has also proposed that these changes are due to the well-spread view that constitutions are appropriate means to solve crises that are not only of a political nature; she further indicated that these frequent changes have to do with the fact that Latin America has long been a region in which many social sectors have been excluded, and therefore, that these marginalized groups are the ones that are more likely to see constitutional reform as a suitable opportunity to increase their political participation and improve their social situation. Constitution making has been seen as “a symbolic act in which the people give their consent to the institutions and values of their self-government”<sup>22</sup>, and therefore, constitution changing has been seen as an opportunity to reform the institutions and values that have excluded some sectors. By analyzing recent cases of indigenous movements in Bolivia and Colombia, the author explains that constitutions are written as a means to ensure the “inclusion of the formerly excluded during crucial political moments”<sup>23</sup> and to grant much-needed legitimacy to new constitutions.

On the same note, but pointing to some different factors, Arceneaux indicates that constitutional change in Latin America is rooted in the tradition of legal positivism<sup>24</sup>. His explanation is a socio-cultural one, which contends

21 Roberto Gargarella. (2013). *Latin American Constitutionalism, 1810-2010: The Engine Room of the Constitution*. Oxford University Press. Pp. 196 – 208.

22 D. Lee Van Cott. (2000). Latin America: constitutional reform and ethnic right. *Parliamentary Affairs* 53(1): 41-54. P. 41.

23 D. Lee Van Cott. (2000). Latin America: constitutional reform and ethnic right. *Parliamentary Affairs* 53(1): 41-54. P. 42.

24 Legal positivism is a philosophy of law that emphasizes that law is socially constructed. According to this view, there is no ethical justification for the content of the law; norms are created by the legislator and justified on social needs and legal effectiveness



that according to Latin American social thinking, the law does not come from some higher authority or from fixed ethical principles. On the contrary, it is formulated as a practical response to the pressing economic, political, or social needs of the day, or as new values develop. Therefore, he implies that leaders feel the responsibility to constantly change constitutions in order to satisfy the evolving political needs.<sup>25</sup>

Finally, Brandon recognizes that constitutions are changed after a constitutional failure. He points out that this failure is due to the fact that they do not satisfy political and social needs and therefore that their replacement occurs because society either wants to make specific substantive choices that are different from those in the former constitution or to devise new institutions or procedures for enacting choices.<sup>26</sup>

### **3.3. Contagion and imitation of constitutional models as an explanation of failure**

Another set of authors has examined that constitutional change occurs as a consequence of the fact that Latin American constitutions have not always reflected the reality of society. They have failed to be the creatures of their own environment due to imitation of other models that have not always been suitable for these countries. Fitzgibbon earlier detailed how Latin America has had many constitutional changes as a consequence of the fact that the existing constitutions “failed to be the creatures of their own environment; they were simply alien adoptions and adaptations”<sup>27</sup> of other countries’ models. Later on, Arend Lijphart implied that Latin American constitutional change is based on the idea of diffusion, contagion or imitation of constitutional models that have prevented these documents from satisfying the social and political needs of the region. He examined how Latin American constitutions have always been influenced by constitutions from other countries or regions.<sup>28</sup>

Cheibub, Elkins & Ginsburg also outline how certain institutions, such as

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25 Craig Arceneaux. (2013). *Democracia Latin America*. Boston: Pearson. P. 101

26 Mark Brandon. (2001). Constitutionalism and constitutional failure, in Sotirios A. Barber & Robert P. George (Eds). *Constitutional Politics: Essays on Constitution Making, Maintenance, and Change*. Princeton, N.J: Princeton University Press. P. 307

27 Russell H. Fitzgibbon. (1945). “Constitutional Development in Latin America: A Synthesis”. *The American Political Science Review* 39(3): 511-522. Cambridge University Press. P. 521

28 Arend Lijphart. (1991). Constitutional Choices for New Democracies. *Journal of Democracy* 2(1): 72-84.

presidentialism, are entrenched in Latin American constitutions because of the deep influences they have received from other countries. Besides the colonial heritage from Spain, these authors highlight how Latin American elites “were fully acquainted with Enlightenment thought and drew on eclectic sources, including French and British thought, and notably the 1812 constitution of Cádiz”<sup>29</sup>, and influenced by the United States’ model, and consequently personified those ideals in the constitutional models of their countries.

### **3.4. Explanations related to content and length of existing Latin American constitutions**

Finally, some authors have developed theories that determined that the length of these constitutions and their flexibility or lack of difficulty in amendment process largely explain the rate of constitutional amendment in Latin America. After analyzing data from a series of countries, they concluded that while the amendment rate tends to increase when constitutions are lengthier and more detailed, it is likely to decrease when amendment procedures are rigid. In this sense, Lutz explains that these two variables, related to the structure of the constitution, are the main cause for the frequent changes and amendments.<sup>30</sup> Negretto further suggests that “while new Latin American democracies may foster constitutional stability by adopting inclusive institutions, more flexible amendment procedures, and strong mechanisms for constitutional adjudication, it is likely that constitutional crises will continue to provide incentives for the constant renegotiation of constitutional agreements”<sup>31</sup> because of their length and flexibility in amendment procedures.

## **4. DISCUSSION**

Due to the complexity of the processes of constitutional change and the great number of variables that intervene in them, there is not one single theory or set of theories that can account for the entire phenomenon of frequent constitutional change in Latin America. The social explanations proposed by Gargarella (2013), Van Cott (2000) and Brandon (2001), for example, can account for

29 José Antonio Cheibub, Zachary Elkins & Tom Ginsburg. (2012). Still the land of presidentialism? Executives and the Latin American constitution, in Almut Schilling-Vacaflor & Detlef Nolte (Eds). *New constitutionalism in Latin America: promises and practices*. Farnham: Ashgate Publishing, Ltd. P. 75

30 Lutz, Donald S. (1994). Toward a Theory of Constitutional Amendment. *American Political Science Review* 88(02): 355-370.

31 Gabriel L. Negretto. (2012). Replacing and Amending Constitutions: the Logic of Constitutional Change in Latin America. *Law & Society Review* 46(4): 749-779. P. 750

the recent changes in the Andes since they propose that social forces in Latin America are the ones that constantly push for constitution change, and the most recent changes have been either pushed or supported by large percentages of the population of these countries. Two clear examples of this are the cases of Ecuador and Bolivia: two countries whose most recent constitutions have created new institutions focused on social change, such as a branch for citizen participation and social control and expanded rights for certain social groups.<sup>32</sup> In Ecuador, replacing the existing constitution with a more inclusive one was one of the campaign promises of President Rafael Correa. “Correa’s proposal to call elections for a constituent assembly charged with writing an entirely new constitution won a massive 82 percent ‘yes’ vote”<sup>33</sup>, and the constitution was approved with a popular support of 63.93%.<sup>34</sup> Similarly, the most recent constitution of Bolivia, which was approved by 61.43 of voters, introduced profound changes to benefit unattended sectors of society by limiting private property and ownership, promoting the participation of the state in the economy by calling for a mixed economy, and enlarging the senate in order to promote representation.<sup>35</sup>

Likewise, Arcenau’s (2013) socio-cultural explanation related to legal positivism can also account for the overwhelming support that these constitutional changes have. This support reflects how engrained the idea that the provisions established in a constitution can solve social, political and even economic problems is in Latin American individuals, which makes it easier for leaders to perform a constitutional change despite the legal and procedural impediments that are inherent in the process of changing a constitution. However, although these theories offer an adequate explanation for these recent changes, they cannot explain some previous constitutional changes that were not necessarily pushed and supported by the masses and that only brought electoral or power-related reform. Therefore, social explanations are of limited applicability since they do not apply to those constitutions that did not reflect major social changes, but to political changes that benefitted those in power, such as the extension of electoral terms or the increase of functions and powers of the executive

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32 Almut Schilling-Vacaflor & Detlef Nolte. (2012). *New constitutionalism in Latin America: promises and practices*. Farnham: Ashgate Publishing, Ltd. P. 3

33 Catherine M. Conaghan. (2008). Ecuador: Correa’s Plebiscitary Presidency. *Journal of Democracy* 19(2), 46-60. The Johns Hopkins University Press. P. 46

34 Adrián López & Paula Cubillos Celis. (2009). Análisis del Referéndum Constitucional 2008 en Ecuador. *Íconos: Revista de Ciencias Sociales* 13(1). Quito, Ecuador: FLACSO. P. 14

35 Stéphanie Rousseau. (2011). Indigenous and feminist movements at the constituent assembly in Bolivia: locating the representation of indigenous women. *Latin American Research* 46(2): 5-28. P. 2

branch. Additionally, social factors by themselves cannot change a constitution or produce a replacement. They serve as motives for politicians, so political explanations are necessary complements to these kinds of theories.

Political explanations suggest that transformation at regime level, balance-of-power shifts and institutional crises cause constant constitutional change in Latin America. Besides the fact that these theories need to be complemented with the social explanations in order to account for the recent constitutional changes, they cannot explain why some countries in other regions of the world go through those events without changing a constitution. Negretto's three types of political events that can upset the existing constitutional equilibrium<sup>36</sup> can be seen in many other regions of the world. It is clear that these theories do not imply that every time there is a big political change there is a constitutional change, too. On the contrary, they suggest that every time that there is a constitutional change there has been a big political change before. However, these theories fail to explain what is particular of Latin America that makes it a region with so many constitutional changes. Furthermore, Schor's (2006) theory about the 'regularity of irregular accession to power' in Latin America as a cause of constant constitutional change does not account for the most recent changes that have been made by democratically elected leaders. In sum, it is difficult to identify a clear causal relation between political changes and constitutional change. Despite the above-mentioned weaknesses, these theories do explain how some institutional weaknesses can provide propitious settings for constitutional change. Negretto's (2012) argument on how unstable political institutions foster constitutional change is accurate in the sense that it does not exclusively point to political instability but to institutional instability as a facilitator of constitutional change.

The theories that identify contagion and imitation of constitutional models as explanations of constitutional change have succeeded at identifying that one of the causes of failure of Latin American constitutions is the fact that they contain institutions that are not appropriate for the political and social realities of the region. It is a fact that several Latin American constitutions have failed to represent the social and political environment of their countries, and therefore they have required change over time. However, even though these theories can explain the earliest constitutional reforms, they do not offer causation for the most recent constitutional changes of the Andes that have not been focused on replacing the unsuitable institutions. Just as the social explanations failed to account for those changes that did not bring social change, these theories fail

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36 Gabriel L. Negretto. (2012). Replacing and Amending Constitutions: the Logic of Constitutional Change in Latin America. *Law & Society Review* 46(4): 749-779.

to explain those constitutional changes that do change the countries' 'imported' institutions and do not explain their frequency.

Finally, explanations related to the content and length of Latin American constitutions provide an additional factor that facilitates constitutional change but do not necessarily explain causes. It is a fact that the constitutions of the countries of the Andean region are long, and that their amendment procedures are generally simple, which fits Negretto (2012) and Lutz's (1994) theories. Nonetheless, they are insufficient as an explanation since they cannot justify several important elements of constitutional change such as why the most recent changes have been so radical, or what motivates leaders to change these constitutions besides the ease of the amendment procedures. Finally, they do not help us understand exactly when constitutional reform happens.

## **5. FUTURE RESEARCH**

As it has been shown, the most recent constitutional changes in the Andes challenge the existing theories of constitutional writing and constitutional reform in the sense that they do not necessarily come after a time of crisis, they are not always related with a change in the balance-of-power of a country or in its regime type, and they have still been a common phenomenon even after these countries transitioned to democracy. The existing theories have been able to identify several factors that can explain these changes, but they need to complement each other in order to account for the entire phenomenon as a whole.

Social explanations can account for the recent changes in the Andes since these changes have had overwhelming popular support and have been focused on satisfying popular needs. Nonetheless, these theories fail to explain some previous constitutional changes from the region that were not pushed or supported by the masses and did not bring social change. Political explanations cannot necessarily account for constitution changes after a political change has occurred or when it has not, but they do accurately explain some of the major constitutional changes that have occurred in the region and they also take into consideration the major institutional weaknesses of Latin America that have certainly provided a propitious environment for leaders to adopt the practice of regularly changing constitutions.

Theories related with contagion and imitation can explain the earliest constitutional reforms but do not offer causation for the most recent ones. They do not account for the frequency of the changes or for the fact that many

constitutional changes do not seek to amend the unsuitable, ‘imitated’ or adopted institutions. Similarly, the explanations related to the content and length of the constitutions contribute an additional and very important factor of causation, since it has been empirically proven that length and process of amendment have a direct impact on the rate of constitutional reform of a country, but they also require the findings of other theories in order to fully explicate how and when these changes occur.

Regarding further research, it would be interesting to analyze how social and political forces interact with one another; for example, if there are certain political institutions of Latin America that allow social forces to more actively push for constitutional change, or certain social characteristics that deeply influence the establishment of political institutions that allow leaders to have relatively simple constitutional amendment procedures. Additionally, future research should also focus on how social and political forces interact with the length and flexibility of amendment. Combining these practical forces of a country’s social and political life with structural characteristics of the constitution would offer a more comprehensive explanation of the phenomenon. Negretto has already tried to combine his political explanations with the ones related to length and flexibility by analyzing the correlation between these two factors and the amount of active political parties, but he has concluded that it does not appear to have affected the extent of constitutional change.<sup>37</sup> However, other social and political factors could have an important impact.

Moreover, it would be fruitful to divide the analysis of constitutional change by periods and observe the main economic, social, and political institutions of those periods where constitutional change has been most frequent and radical. Since the period with the most constitutional changes occurred between 1978-1989<sup>38</sup>, which corresponds with the well-known ‘lost decade’ in economic terms and with the time when many transitions to democracy occurred, there might be a correlation between constitutional change and economic forces or regime type. Finally, it would be interesting to observe whether the new constitutions of the Andes, that include more participatory provisions for constitutional reform, and for the countries’ political life in general, will produce more constitutional amendments.

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