

***Replacing and Amending Constitutions:  
The Logic of Constitutional Change in Latin America \****

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### **Abstract**

Since 1978, all countries in Latin America have either replaced or amended their constitutions. What explains the choice between these two substantively different means of constitutional transformation? This article argues that the replacement of constitutions depends on the power-sharing features of constitutional design, the frequency of institutional crises, and the capacity of political actors to transform the constitution by means of amendments or judicial interpretation. It also argues that in a context of party pluralism, amendments can only be used as a means of constitutional change if amendment procedures are relatively flexible. The article provides statistical evidence to support these arguments and discusses the normative implications of the analysis.

Since 1978, all the countries of Latin America have either replaced or amended their constitutions. These are, however, substantively different means of constitutional transformation. While the replacement of the existing constitution involves a political decision to create a new legal order, amendments, like judicial interpretation, are mechanisms of legal adaptation that preserve the continuity of the constitution in a changing environment. The frequent replacement of constitutions thus puts into question the legal and political foundations of democratic regimes. What explains the choice between replacements and amendments?

It is argued here that the replacement of constitutions within stable democratic regimes depends on the power-sharing features of constitutional design, the frequency of institutional crises, and the capacity of political actors to transform the constitution by means of amendments or judicial interpretation. It is further argued that in a context of party pluralism, as is the case in contemporary Latin America, amendments can only be used as a means of constitutional transformation if the pertinent procedures are relatively flexible. This article provides statistical evidence to support these arguments and discusses their normative implications. In particular, it is suggested that while new Latin American democracies may foster constitutional stability by adopting power-sharing institutions, more flexible amendment procedures, and strong mechanisms for constitutional adjudication, it is likely that constitutional crises will continue to provide incentives for the enactment of new constitutions.

The article first considers the problem of constitutional change in comparative perspective. This is followed by a discussion in section 2 of the reasons and various means for constitutional change. From this discussion emerge several general hypotheses about

constitutional replacements and amendments, which are tested in section 3 using different models of regression analysis for longitudinal data. The article concludes with a discussion of the implications of the analysis for constitutional design, and of the factors that work against constitutional stability in Latin America's new democracies.

### **1. The Problem of Constitutional Change**

Constitutions cannot remain immutable; they need to be transformed to adapt to deep changes in the political, social, and economic environment. One way to change constitutions is through textual alterations, either through amendments or via wholesale replacement. Constitutions can also be modified over time without textual changes, typically by means of constitutional court rulings. Less visibly, constitutions may also be transformed by legislative and executive decisions, or by the informal practices of political actors (Ackerman 1991, Levinson 1995).

These are very different means of constitutional transformation. According to classic constitutional theory, amendments and judicial interpretation are the main mechanisms to adapt constitutions to changing circumstances. In practice, constitutions are also replaced, but this is not considered to be a regular means of adapting a constitution to new conditions (Lutz 1995, Murphy 2007: 498). The enactment of a new constitution involves the legal abrogation of its predecessor and signals the latter's failure to work as a governance structure at a particular historical juncture. This is why most constitutions do not provide

for their own replacement, thus turning this alternative into an irregular form of constitutional change.<sup>1</sup>

Given the disruptive nature of replacements, constitutional theory suggests they should be exceptional events. Constitutions are supposedly established by the sovereign decision of the people, which should occur only during extraordinary times, as in a revolution or in the midst of a major political crisis (Ackerman 1991). Constitution-making in established democracies seems to confirm this expectation. The current US constitution, for instance, dates to 1789, the year it was formally ratified. In some western European countries, such as France, Spain, Portugal, and Greece, constitutional replacements have been more frequent, but several other countries of the region, such as Norway, Belgium, and Denmark, retain constitutions enacted in the nineteenth century. On average, the countries of western Europe adopted 3.2 constitutions from 1789 to 2001 (see Blaustein and Flanz 2008), with a mean lifespan of 76.6 years.

Constitutions have been less enduring in other regions of the world, including Latin America. Since independence, a total of 193 constitutions have been enacted in this region, 103 of them during the twentieth century (see Table 1). 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 in the twentieth century. The mean lifespan of constitutions was 28.7 years after independence, and 22.6 years during the twentieth century.

**<Table 1 about here>**

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<sup>1</sup> In order to make replacement a regular mechanism of constitutional transformation, several countries (Nicaragua, Colombia, Ecuador, Venezuela, and Bolivia) have recently adopted provisions for replacement as

Due to the exceptional durability of Latin America's new democracies, the rate of constitutional replacement decreased somewhat between 1978 and 2008. Even so, an average of almost one new constitution was enacted per country during this period. This is a relatively high rate of constitutional replacement, particularly if one considers that not all the countries of the region established new constitutions with the inauguration of democracy; that some democratic regimes (Costa Rica, Colombia, and Venezuela) had already been established by 1978; and that most democracies have since been stable. As of 2009, every Latin American country except for Costa Rica, Mexico, Panama, Dominican Republic and Uruguay had adopted a new constitution and some, like Ecuador, had established more than one.<sup>2</sup>

There is also considerable variation in the rate of amendment to existing constitutions.<sup>3</sup> Interestingly, however, constitutional amendments and replacements may be inversely related. The frequent replacement of constitutions obviously prevents the accumulation of amendments. At the same time, since constitutions only endure if they adapt to changing circumstances, amendments may be essential for constitutional survival (Negretto 2008, Elkins, Guinsburg, and Melton 2009). As shown in Table 2, the mean number of amendments is significantly higher in western Europe than in Latin America. One reason for this relationship is that constitutions tend to last longer in the former than in the latter region. But the mean amendment rate, that is, the number of amendments divided by the years a constitution has been in force, is also higher, which indicates that

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a procedure different from amendment.

<sup>2</sup> Bolivia enacted a new constitution in 2009.

constitutions are more frequently amended in western Europe than in Latin America, even after we control for durability.

<Table 2 about here>

This comparison suggests that constitutional replacement and amendment are two very different means of constitutional transformation: the first formally displaces an existing constitution; and the second implies its continuity. Thus, the main goal of a theory of formal constitutional change should be to explain why political actors alter existing constitutions, and why they opt for replacement or amendment. A comparative theory of constitutional change should also explain the interaction between formal and informal mechanisms of constitutional adaptation, such as judicial interpretation. In what follows, I outline the basic elements of such a theory.

## **2. Explaining Constitutional Change**

Absent a state-of-nature situation, in which there is no legal order, constitutional change can be conceptualized as a two-step decision. The first consists of deciding whether to maintain or change existing constitutional structures. If change is opted for, the second step consists of choosing between alternative means of constitutional transformation. While the first decision is determined by how satisfied political actors are with existing institutions, the second is determined by the suitability and availability of different alternatives of

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<sup>3</sup> In this article I do not distinguish between major and minor constitutional alterations. An amendment is taken to mean any explicit, formal alteration made in accordance with constitutional procedures and which

change.

### ***A. Incentives for Constitutional Change***

It has been argued that because institutions establish hurdles to their own reform, change may be inhibited by even a modest level of uncertainty about the possible outcome of alternative institutional arrangements (Shepsle 1986: 75). The logic of this argument applies with particular force to constitutions. To create a new constitution it is generally necessary to convene a popularly elected constituent assembly, to approve the new text in a referendum, or both. Constitutional amendments usually require qualified congressional majorities, and sometimes a further level of approval, such as a second vote in a different legislative session or legislature, or ratification by voters or a number of states in federal countries. In addition, most constitutional provisions impose strong informational requirements, to anticipate the effects of different rules under changing political conditions. Even so, politicians do not always choose to maintain the status quo. Why is that?

Since institutional change is always costly and the expected benefits of alternative institutions are uncertain, rational risk-averse politicians are unlikely to initiate revisions unless the payoffs obtained from the existing constitution become too low or negative. This suggests that 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. I propose that the value of maintaining an existing constitution or some of its provisions decreases when the former cannot adapt to new political conditions, when it no longer serves the interests of powerful political actors, or

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ensures the legal continuity of an existing constitution.



when it fails to enable the provision of public goods by elected representatives and citizens no longer see it as legitimate (Negretto 2011). There may also be incentives for change when the constitution fails to adapt to technological changes, to policy shifts or to new social values. In such cases, however, the way is paved for means of constitutional change that are more informal than replacements or amendments.

#### *Political transformations at the state or regime level*

Profound political changes, such as the founding of a new state or a regime transition, usually require a new form of legality. New states almost invariably symbolize their birth by enacting a constitution. The same may happen with regime transitions, but in such instances the scope for variation is greater. Authoritarian regimes may simply suspend an existing democratic constitution. Democratic regimes may opt to restore a pre-authoritarian constitution, to maintain a constitution enacted during the authoritarian period, or to introduce amendments to adapt an authoritarian constitution to new political conditions. The choice depends on which constitution is considered more capable of effectively and legitimately organizing the new democratic regime, and on the balance of forces between the outgoing authoritarian regime and democratic forces (Geddes 1990).

#### *Balance-of-power shifts and institutional adaptability*

Constitutional change may also occur when existing institutions no longer serve the interests of those with the power to change them, or when the losers under a particular set of rules organize a successful reform coalition. This form of constitutional change usually follows important shifts in party competition, as when established parties collapse or

decline, or when new parties and political leaders emerge. But constitutions do not change with every shift in the distribution of power and preferences, which then raises the question of whether some institutions are more able than others to accommodate the changing interests of parties and party leaders.

Just as a fragmentation of the party system may prompt political actors to initiate reforms to make a constitution more consensual and inclusive, a sudden concentration of power in the hands of one party may lead to changes that make a constitution more majoritarian and exclusionary (Alexandre 2001). But there is reason to believe that power-sharing institutions are more resilient than power-concentrating institutions to temporary shifts in political competition. Since restrictive rules create absolute winners and losers, some degree of uncertainty regarding future outcomes provides both incumbents and challengers with an incentive to adopt more inclusive institutions (Colomer 2001: 210). Once created, pluralist institutions are not likely to face the same pressures for change because, over time, they encourage the emergence of a larger number of actors with a vested interest in their maintenance.<sup>4</sup> In addition, the long-term trend in both new and established democracies has been toward increasing party pluralism and fragmentation (see Coppedge 2001, Colomer 2004). This trend, which is very strong in contemporary Latin America, should reinforce the survival of power-sharing constitutions (Negretto 2009b).

### *Dysfunctional constitutional performance*

A final factor that is likely to render an existing constitution obsolete is its dysfunctional

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<sup>4</sup> Przeworski (1991: 38) made a similar point: “constitutions that are observed and last for a long time are those that reduce the stakes of political battles.”

performance. Constitutions are governance structures that organize electoral competition, enable representatives to provide public goods, and maintain citizen support for a political regime. When constitutions fail to perform these tasks, politicians are likely to have an incentive to replace them or amend their provisions. In such cases, the decision to initiate revisions usually is preceded by a perception of institutional crisis among political elites, the media, and the general public. This may take the form of a governability crisis, as when a regime is unable to adopt collective decisions and implement them effectively, and/or the form of a crisis of legitimacy or representation, as when voters reject current institutions and demand reforms to increase representation and accountability.

All these reasons for constitutional change are well represented in the historical experience of constitution-making in Latin America. Regime transitions have become a less important cause over time, however. Almost half of all constitutional replacements and amendments enacted by elected constituent assemblies from 1900 to 1977 were adopted as part of a process of transition to democracy. The situation changed after 1978. As new democracies became more stable, most constitutional replacements and amendments have been undertaken in response to balance-of-power shifts among party actors, or to the failure of the political regime to provide public goods demanded by voters.

### ***B. Means of Constitutional Change***

The decision to alter constitutional structures is followed by another about *how* to change them. An analysis of the latter choice must start by explaining the option to replace a constitution (see Negretto 2008, Elkins, Guinsburg, and Melton 2009). What factors account for this kind of extraordinary, usually irregular, form of constitutional change? I

propose that constitutional replacement occurs when the events triggering constitutional change necessitate the creation of a new form of constitutional legality, or when other alternatives for change are not feasible.

There may be substantive reasons to enact a new constitution. For instance, convening a constituent assembly to draft a new constitution may be the most reasonable option during a transition to democracy, or in response to a constitutional crisis. Both events may call for a “new beginning,” so replacement becomes more appropriate than constitutional amendment. By contrast, changes initiated to accommodate an existing constitution to shifts in the balance of power among political actors are more likely to prompt adaptation by amendment rather than by wholesale replacement. Amendment processes are more amenable to bargaining and accommodation than replacements, which usually require specially elected constituent conventions and highly publicized deliberations (Elster 1995).

However, the decision to replace the constitution can be determined by more contingent and practical considerations, such as whether amendments are viable under the circumstances. This leads to the question of which factors promote amendments and how they affect the possibility of replacement. Donald Lutz has explicitly addressed this question.<sup>5</sup> According to Lutz (1995: 245), constitutions can only endure if they are amended neither too often nor rarely. A moderate rate of amendment, in turn, depends on amendment procedures that finely balance flexibility and rigidity. But this argument presents two problems.

First, it is impossible to formulate a universal standard of what constitutes a moderate rate of amendment. This will depend on how frequently the constitution needs to be modified; and that, in turn, depends on extra-constitutional factors, such as the relative stability of the political, social, and economic environment. While a low amendment rate may be adequate to preserve the constitution in a stable environment, it may undermine the constitution if environmental shifts demand frequent reforms.

Second, the rate of amendment does not depend solely on procedural obstacles. The distribution of partisan power is just as important. The most rigid amendment procedure can become flexible in a dominant party system, as under the hegemony of the Institutional Revolutionary Party (*Partido Revolucionario Institucional*, PRI) in Mexico. By contrast, a flexible amendment procedure may become rigid in practice if party system fragmentation becomes very high, as has been the case in Ecuador since 1979. Further, the rate of amendment also depends on whether party actors agree on which reforms should be enacted. Even a large number of parties may coordinate to adopt amendments, regardless of the amendment procedure, if there is a reform consensus. This may be the case of Brazil, where the amendment rate has been high since 1988 in spite of the fact that no less than three parties have usually had to agree to pass amendments.

The foregoing suggests that in new democracies facing frequent demands for institutional and policy reform, as is the case in Latin America, the likelihood of

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<sup>5</sup> In recent years, a growing number of political scientists (Lutz 1995; Rasch and Congleton 2006; Lorenz 2005; Nolte 2008) have elaborated general propositions on the logic of constitutional amendments, although Lutz is the only author to examine the relationship between constitutional amendments and replacements.

constitutional replacements should be inversely related to the amendment rate.<sup>6</sup> On the other hand, since most of Latin America's new democracies have fragmented party systems, the amendment rate can only increase if amendment procedures are relatively flexible, or if legislators agree on what reforms should be undertaken. To be sure, individual case studies are required to observe the heterogeneity or homogeneity of the institutional preferences of constitution-makers. Studies including a large number of cases can only trace the impact of procedural rules and the distribution of partisan power on amendments.

Judicial interpretation constitutes an alternative to amendments as a mechanism of constitutional adaptation (Levinson 1995: 20). A body authorized to arbitrate in constitutional controversies and decide on the constitutionality of laws and executive orders may introduce significant changes to an existing constitution without altering its text. Clearly, judicial interpretation may not be an alternative to amendment when constitutional change requires explicit constitutional alterations. Further, given a moderate measure of judicial independence, political actors may be unable to use judicial interpretation to adapt constitutions as they can with amendments. Judicial interpretation is the best means to adapt a constitution to new social values, technological changes, or policy shifts in a gradual, decentralized way.

However, in relation to replacements judicial interpretation can play a role similar to amendments. The more frequent the adaptation of the constitution to a changing

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<sup>6</sup> Along similar lines – albeit assuming a direct relation between amendment procedures and amendment rates – Holmes and Sunstein (1996) have argued, in contrast with Lutz, that when it comes to preserving the constitution in rapidly changing political contexts, flexible amendment procedures may be preferable to stringent ones. See also Barros (2004).

environment through judicial interpretation the lower should be the social or political pressures to replace the constitution. This may be more pronounced when amendments are difficult to implement due to a high number of institutional or partisan veto players. However, one should not assume that formal amendments are always inversely related to constitutional adaptation by judicial interpretation. Constitutions may be adapted using both amendments and judicial interpretation, in which case constitutional durability should be enhanced.<sup>7</sup>

It is not possible to observe directly whether judicial interpretation works as an alternative mechanism for constitutional adaptation, except in single case studies. But we can infer the importance of constitutional adjudication by observing its features across countries. The scope, access, and effects of constitutional adjudication are crucial variables (Navia and Rios-Figueroa 2005, Rios-Figueroa 2011). Judicial interpretation is more likely to be used as a mechanism of constitutional adaptation when there is greater scope for constitutional adjudication to protect individual rights, to resolve constitutional controversies between branches of government, and to rule on the constitutionality of laws or decrees. Constitutional adjudication is also more likely to play this kind of role if both governmental actors and citizens can set in motion a constitutional review process, and if the decisions adopted by constitutional courts are universally valid and do not apply only to the parties involved in a judicial process.

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<sup>7</sup> Colombia, where constitutional changes by formal amendment and judicial interpretation have both increased since 1991, is perhaps the clearest example of this.

### ***C. Observable Implications***

The preceding analysis suggests several observable implications about the occurrence of constitutional replacements and amendments. One set of implications refers to aspects of constitutional design, another to the political environment and specific political events. The following general hypotheses can be proposed:

**H1:** The risk of constitutional replacement is likely to increase with regime transition, institutional crisis, and changes in the party political context

**H2:** The risk of constitutional replacement is likely to decrease with the existence of power-sharing institutions.

**H3:** The risk of constitutional replacement is likely to decrease with the frequency of amendments and the strength of constitutional adjudication.

**H4:** The frequency of amendments is likely to increase when party system fragmentation is low, and when party system fragmentation is high but amendment procedures are flexible.

### **3. The Determinants of Constitutional Change in Latin America**

Latin America is an excellent testing ground for these hypotheses. Although the region has been prolific in constitutional change, there is an important variation in the rate of replacements and amendments within and across countries, as well as in terms of design and political conditions.



*Dependent Variables: Replacements and Amendments*

The focus here is on the determinants of two outcomes: the duration of a constitution until its replacement; and the average number of amendments that a constitution experiences per year of life. In order to explore the mechanisms that explain these two outcomes, I collected data on constitutional replacements and amendments in 18 Latin American countries from 1946 to 2008.<sup>8</sup>

This dataset includes only constitutions in force during years when presidents and assemblies were elected and more than one party competed in elections.<sup>9</sup> The sample represents 95 percent of the total number of constitutions in force between 1900 and 2008 during years of competitive elections.<sup>10</sup> The mean time of survival of the constitutions included in the sample is 21.9 years. The mean number of amendments per constitution is 5.5, and the mean amendment rate per year of life 0.17.

As regards replacements, the database traces the life of a constitution from its enactment to its replacement.<sup>11</sup> A constitution is considered to be new when its drafters claim it is new, usually by indicating the abrogation of the previous constitution and all its amendments at the end of the text. In doubtful cases, country sources on the evolution and

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<sup>8</sup> See Negretto (2008) for data sources.

<sup>9</sup> This includes constitutions adopted and enacted during years of competitive elections and constitutions (such as the 1967 Bolivian constitution) adopted by an authoritarian regime, but later implemented during years of competitive elections. My coding of years of competitive elections follows Przeworski et al. (2000: 28-29) except for the retroactive application of the alternation rule.

<sup>10</sup> The only constitutions of this type not included in the dataset are the 1917 and 1934 Uruguayan constitutions during years of non-competitive elections (1918-1933 and 1938-1941, respectively).

<sup>11</sup> Except for the first constitution of each country included in the study, all subsequent ones are observed from the year after their enactment. Constitutional demise is considered to occur in the year that a new constitution is enacted.

history of constitutions were consulted.<sup>12</sup> If these sources differ about whether a constitution was amended or replaced, I consider a constitution to be new when it is enacted by a popularly elected constituent assembly.<sup>13</sup>

As regards amendments, the database traces the number of amendments a constitution experiences per year of life. The relevant outcome is the amendment rate, which is the number of amendments divided by the number of years the constitution has been in force (Lutz 1995: 243). This accurately measures the adaptability of a constitution by means of amendments, and controls for the durability of the constitution. There is some ambiguity, however, about whether amendments should be counted by article, by issue, or by the aggregate reforms approved in a year (see Rasch 2008). I opted for the latter because it is less open to interpretation and controversy about the counting rule, and because the institutional determinants of amendments usually remain constant within the same year. The amendment rate in a given year thus ranges from a minimum of 0 to a maximum of 1.<sup>14</sup>

### *Explanatory Variables*

I start by analyzing the factors that may explain constitutional durability. One set of covariates of theoretical interest relates to specific constitutional provisions that may increase or decrease the risk of replacement, such as the degree of power-sharing permitted by constitutional electoral and decision-making rules, the rigidity of amendment

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<sup>12</sup> See Negretto (2008) for data sources.

<sup>13</sup> There is a consensus among constitutional theorists that new constitutions are established by popularly elected constituent assemblies. See Ackerman (1995).

<sup>14</sup> If different articles are reformed in different voting sessions but within the same year, I count them as a

procedures, and the strength of constitutional adjudication.

To observe the degree of power-sharing in electoral rules I focus on the rules to elect presidents: the formula and electoral cycle; the presidential term; and re-election rules. The formula for presidential election determines the number of candidates competing in this election; and indirectly, in combination with the electoral cycle, it also determines the number of parties competing in the legislative election (Golder 2006). The most restrictive rule is plurality rule with concurrent congressional elections (0); the most inclusive (2) is majority rule; and intermediate formulas (1) are plurality rule with non-concurrent congressional elections and presidential elections by qualified plurality rule (Negretto 2006). Presidential terms and re-election rules affect alternation in power and rotation in office. Presidential terms range from the least pluralist (0) of 6 or more years to the most pluralist of 4 or less years (2), with intermediate values (1) of 5 years. Re-election rules range from the least pluralist of consecutive (one or indefinite) re-election (0) to the most pluralist of no re-election (2), with re-election after one or two terms as intermediate (1) rules. The addition of these scores provides an index of electoral power-sharing (ELECTSHARE) ranging from a minimum of 0 to a maximum of 6.

To observe the degree of power-sharing in institutional rules I focus on three central variables of the separation-of-powers system: congressional structure, presidential veto, and judicial independence. The first variable captures whether congress is bicameral; the second whether the president has a veto subject to qualified majority override in congress; and the third whether constitutional judges are granted sufficient institutional

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single amendment. This means that there is a limit of 1 on the maximum number of amendments per year.

independence from political pressure.<sup>15</sup> The addition of these scores provides an index of institutional power sharing (INSTSHARE) which goes from a minimum of 0 to a maximum of 3.

Different indexes have been proposed to measure the rigidity of amendment procedures (Lutz 1995, Rasch and Congleton 2006, Lorenz 2005). Two basic procedures determine the obstacles to amend the constitution: the threshold of votes required in congress, and the number of institutional actors whose consent is necessary for approval (Rasch and Congleton 2006: 335). These procedures cannot be combined into a single ordinal scale of rigidity, however. For instance, it is not clear whether an amendment requiring a two-thirds majority in a unicameral congress is more rigid than another requiring an absolute majority vote in two chambers or in two different legislatures. Moreover, there is a potential negative correlation between the two measures because amendments passed by only one body (such as a unicameral congress) tend to require a qualified majority vote.<sup>16</sup> Given these measurement problems, it is not surprising that one often finds mixed and even contradictory results in studies that attempt to determine which of the proposed indexes of rigidity better explains the rate of amendments (Ferejohn 1997; Rasch 2008).

As a measure of procedural rigidity, I use the number of institutional actors whose consent is necessary to pass an amendment. The measurement is intuitive and has a better

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<sup>15</sup> This variable is based on Ríos-Figueroa's index of judicial independence (2011). This index ranges from a minimum of 1 to a maximum of 6. I recoded it as a dummy variable, in which judicial independence equals 1 if it receives a score of 3 or more in the original index.

<sup>16</sup> In the case of Latin America, for instance, no constitution over the last 60 years provides for the approval of amendments by a single body voting by simple majority.

negative correlation with the amendment rate than any other measure.<sup>17</sup> The variable (VETOPOINT) is coded as a numerical variable indicating the number of instances an amendment must pass before it can be approved. It ranges from a minimum of approval in one chamber (0) to a maximum of approval in two chambers (or two different legislatures), plus approval by the executive or some additional procedure, such as a popular referendum (2). Intermediate scores (1) may result from the intervention of any two instances of approval.

In order to measure the strength of constitutional adjudication I use Rios-Figueroa's index of judicial power (2011). This index (ADJUDICATION) adds the number of instruments for constitutional review specified by a constitution, and considers whether the instrument has general effects and whether it is accessible to all citizens. The index ranges from 0 to 8, with higher scores indicating greater institutional capacity of constitutional judges to act as interpreters of the constitution.

The second set of covariates of theoretical interest refers to events, such as regime transitions, institutional crises, and changes in the party political context, which may affect the risk of constitutional replacement. Regime transition (TRANSITION) has a value of 1 when there is a transition to democracy and of 0 otherwise.<sup>18</sup> Institutional crises (INSTCRISIS) are measured by tracing the occurrence of irregular transfers of power and extreme forms of executive-legislative conflict in which the chief executive or

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<sup>17</sup> See Rasch and Congleton (2006: 334-335). The same correlation exists in my own database.

<sup>18</sup> The coding for regime transitions follows the classification of Przeworski et al. (2000).

congressional leaders attempt to terminate the constitutional term of the other branch.<sup>19</sup>

The variable is coded as 1 when a crisis occurs and 0 otherwise. The party system is considered to change when a new party or coalition obtains 20 percent or more of the popular vote in legislative elections within ten years of its first appearance in the electoral arena.<sup>20</sup> Party political changes (PARTYCHANGE) are coded as 1 when a new party or coalition wins 20 percent or more of the vote and 0 otherwise.<sup>21</sup>

Five additional control variables are considered. The durability of a constitution may be related to its origins. For instance, there may be a greater incentive to replace constitutions that are established by non-elected authorities or unilaterally imposed by a dominant party as soon as the balance of forces changes. The variable ORIGINS therefore measures the degree of inclusiveness of the coalition that enacts the constitution: for non-elected authorities the value is 0; for a constituent assembly under the control of one party the value is 1; for a coalition of two parties the value is 2; and for a reform coalition including more than two parties the value is 3.<sup>22</sup> The variable DIFFUSION controls for the contagion effect of constitutional replacements in neighbouring countries, and measures the percentage of countries in each sub-region (South, Andean, Central and North) that have replaced their constitutions in five-year intervals. LEGACY controls for the influence of previous failures on the probability of replacement and is coded as a numerical variable

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<sup>19</sup> The coding of military coups and civilian revolts is based on Smith (2005), Nohlen (2005), and various country sources. The coding of extreme forms of executive-legislative conflict is based on Pérez-Liñán (2007).

<sup>20</sup> In the absence of information about legislative elections, I used the share of votes in presidential elections, the share of seats in congress, or the share of seats in constituent assemblies. Data on elections was collected from Nohlen (2005). Data on political parties was collected from Nohlen (1993, 2005), Coppedge (1997), Mainwaring and Scully (1995), and Alcántara (2004).

<sup>21</sup> In all these variables, the effect of the event is considered to last 5 years from the date of its occurrence. I tried a shorter (4) and longer (6) time measure without finding significant variations in the results.

indicating the number of constitutional replacements in a country in a given year since 1900. INFLATION and GROWTH are continuous variables measuring the average rate of inflation and gross domestic product (GDP) per capita growth in five-year intervals.<sup>23</sup> These variables trace the impact of economic conditions on constitutional stability.

For the analysis of the amendment rate I kept all of the above-mentioned variables, except the control variables specifically related to replacements, and added others that are relevant to explain amendments. One of these (ENPSEATS) measures the impact of party system fragmentation using the Laakso-Taagepera index (1979) of the effective number of parties in the single or lower chamber of congress. Another is the length of the constitution in words (LENGTH). The longer and more detailed the constitution is, the more likely is that it regulates policy matters, which makes it more likely that there will be frequent amendments to enable policy changes.

### *Methods and Results*

I use a Cox proportional hazard model (Cox 1972) to explore the factors that affect the probability of a country replacing its constitution.<sup>24</sup> This model allows us to estimate the effect of variables on the hazard rate of an event, in this instance a constitutional replacement (Allison 1984, Box-Steffensmeier and Jones 1997, 2004; Box-Steffensmeier and Zorn 2001). To explore the factors that affect the rate of amendments per year in the

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<sup>22</sup> Data from Negretto (2009a).

<sup>23</sup> Data from the Oxford Latin American History Database (<http://oxlad.keh.ox.ac.uk/>).

<sup>24</sup> As Box-Steffensmeier and Jones (2004: 88) argue, the Cox model should be the first modelling strategy chosen when the main focus of analysis is how some covariates or set of covariates influences the risk that some important event will occur.

life of a constitution, I have used a cross-sectional time-series Tobit model, which accounts for the limited maximum variation of the amendment rate.<sup>25</sup>

Table 3 shows the results of the proportional hazard analysis of constitutional duration.<sup>26</sup> The sign of the coefficient indicates whether a variable increases (+) or decreases (-) the risk of replacement, while asterisks indicate its statistical significance. I have used two models, one with the amendment rate, and the other with amendment procedures as independent variables.

**<Table 3 about here>**

The first model supports the hypothesis that the risk of constitutional replacement decreases as the rate of amendment increases.<sup>27</sup> It also shows that while the risk of replacement decreases with power-sharing institutions and stronger constitutional adjudication, it increases with institutional crises. Model 2 replaces the rate of amendments by the level of rigidity of amendment procedures. The rigidity of amendment procedures appears to increase the risk of replacement but its effect is not statistically different from zero, which suggests that the amendment procedure may not be a direct indicator of the amendment rate. The remaining variables have effects similar to those observed in Model 1, except the

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<sup>25</sup> The results of this model do not change with the use an ordinary least squares model and the findings on amendment procedures are robust to specifications for autocorrelation and heteroscedasticity.

<sup>26</sup> The proportional hazard assumption of the Cox model was tested for each covariate using Schoenfeld residuals. None of the main variables violates the assumption. The Efron method for handling ties was used for all regressions.

<sup>27</sup> In a separate test, I compared the effect of the amendment rate with the squared amendment rate on replacements. Both coefficients maintained a negative sign, suggesting that the relation between the amendment rate and constitutional durability is not curvilinear, at least for the constitutions included in this sample.



inclusiveness of the reform coalition that enacted the constitution, which appears to significantly decrease the risk of replacement.

Table 4 shows three models for the analysis of the determinants of the amendment rate. The first includes amendment procedures and party system fragmentation; the second an interaction term of both variables; and the third adds the remaining control variables.

**<Table 4 about here>**

Model 1 shows that the amendment rate tends to decrease as amendment procedures become more rigid. At the same time, party system fragmentation significantly increases the rate of amendments. These results call for interpretation. As the number of parties in the system increases, there may be more demands for constitutional adaptation through amendment. At the same time, however, a higher level of party system fragmentation should lead to a lower amendment rate if the relevant procedures are stringent.

This is what Model 2 suggests when we include an interactive term between party system fragmentation and the stringency of amendment procedures. The model shows two things. First, that at low levels of party system fragmentation, the amendment rate does not decrease, even as the amendment procedure becomes more rigid. Second, it shows that party system fragmentation increases the amendment rate only when the amendment procedure is most flexible (vetopoint = 0). However, if both the amendment procedure

becomes more rigid and party system fragmentation increases, the amendment rate tends to decrease.<sup>28</sup>

Model 3 is the full model. Consistent with the results for party system fragmentation, it shows that electoral power-sharing increases the rate of amendments, although institutional power-sharing decreases the rate, just as it does the likelihood of constitutional replacement. The strength of constitutional adjudication is positively and significantly correlated with the rate of amendments, which provides prima facie evidence that amendments and judicial review may work together as means of constitutional adaptation. As expected, the word length of a constitution correlates positively with an increase in the amendment rate.

None of the political events that were predicted to increase the risk of constitutional replacements increases the rate of amendments. And one such event – institutional crisis – correlates negatively with amendments in a highly significant way. As expected, then, extraordinary political events such as institutional crises provide incentives for constitutional change, more often through replacement than amendment. Regime transitions also have an inverse relationship to amendments, although the impact is weaker than for institutional crises. This finding makes sense of recent experiences with constitution-making in Latin America occurring under democratic regimes undergoing deep institutional crises.

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<sup>28</sup> Significance tests show that the amendment rate tends to decrease systematically if the effective number of parties in congress rises above two, and if there are more than two instances of approval for the adoption of amendments.

## **Discussion**

I have argued that the occurrence of constitutional replacements depends on constitutional power-sharing rules, the frequency of institutional crises, and the capacity of political actors to transform the constitution through amendments or judicial interpretation. I have also argued that in the fragmented party systems prevailing in most Latin American democracies, amendments are a viable means of constitutional change only if amendment procedures are relatively flexible. The analysis presented in this article provides preliminary support for these hypotheses.

Replacements occur when particular political events decrease the value of maintaining existing constitutional structures. Regime change is one such event, although its effect tends to decrease as democratic regimes become more stable. Balance-of-power shifts may also lead to constitutional replacement when the old constitution cannot accommodate the interests of new actors. This lack of adaptability, however, tends to occur more often when the constitution has a power-concentrating design. Finally, institutional crises work particularly strongly against the maintenance of a constitution. Since 1978, open constitutional transgressions through military or civilian coups have been rare occurrences in Latin America. But the region still suffers from governmental instability and inter-branch conflict. In recent years, these events have triggered processes of constitutional replacement (Peru in 1993, Ecuador in 1998 and 2008, and Venezuela in 1999), suggesting that constitutional instability is likely to persist as a response to government instability and institutional crisis in the region.

The occurrence of constitutional replacements is also related to whether it is possible to use amendments and constitutional adjudication as alternatives means of constitutional transformation. The rate of amendments is inversely correlated to replacements and depends both on the rigidity of amendment procedures and levels of party pluralism. In particular, where there is party pluralism, constitutional amendment seems to increase when amendment procedures are sufficiently flexible. In turn, the possibility of adapting the constitution by judicial interpretation depends on the strength of the instruments for constitutional adjudication.

Since electoral systems have become more inclusive, and party system fragmentation has increased during the last decades in Latin America, these findings suggest that choosing relatively flexible amendment procedures can facilitate constitutional adaptation via amendments and limit the incentives for constitutional replacement. The same should be true when there are stronger instruments of constitutional adjudication either as an alternative or as a complement to flexible amendment procedures. This opens an interesting avenue of research on the factors influencing the decisions of constitution-makers about the stringency of amendment procedures and the strength of judicial review. Multiparty reform coalitions have been the norm in Latin America since 1978. If members of these coalitions behave rationally, they may support a strong process of constitutional adjudication, which protects the interests of minority parties. For the same reasons, however, they may prefer stringent amendment procedures that provide minority parties with more opportunities to block amendments they do not agree with. But if this analysis is correct, then the institutional choices of a multiparty constituent body may not be optimal to preserve constitutional stability.

This analysis must be complemented with qualitative case studies, which are more appropriate to trace the impact of certain variables. The perceived legitimacy of constitutional origins—not fully captured by the nature of reform coalitions—may affect the constitutional reform strategies. A constitution of revolutionary origins, or one sealed by a national pact is more likely to survive than one that is perceived to be the outcome of a self-interested bargain. Public trust in representative institutions and constitutional courts may also affect the choice of means to change a constitution. Amendments must usually be approved by elected congresses, which voters in many Latin American countries see as corrupt and scarcely representative of their interests. The same can apply to constitutional judges. In this context, political elites may find that convening a constituent assembly is the best strategy to create the hope of a new beginning among deeply disillusioned citizens.

**Table 1****Constitutional change in Latin America**

<b>Country</b>	<b>Constitutions since independence</b>	<b>Constitutions 1900–2008</b>	<b>Constitutions 1978–2008</b>	<b>Amendments 1978–2008*</b>
Argentina	3	3	1	0
Bolivia	16	6	0	4
Brazil	7	6	1	16
Chile	7	3	1	9
Colombia	7	2	1	15
Costa Rica	12	4	0	15
Dom. Rep.	13	4	0	2
Ecuador	19	9	3	4
El Salvador	15	7	1	6
Guatemala	7	5	1	1
Honduras	14	8	1	21
Mexico	6	2	0	26
Nicaragua	12	8	1	3
Panama	4	4	0	5
Paraguay	6	4	1	0
Peru	13	5	2	5
Uruguay	6	6	0	4
Venezuela	26	16	1	4
<b>Total</b>	<b>193</b>	<b>103</b>	<b>15</b>	<b>140</b>
<b>Mean</b>	<b>10.7</b>	<b>5.7</b>	<b>0.83</b>	<b>7.7</b>

Source: Author's calculations, based on: *Constituciones Hispanoamericanas*

(<http://www.cervantesvirtual.com/portal/constituciones/>); Political Database of the Americas

(<http://www.georgetown.edu/pdba>); and country sources.

\* This column refers to the number of amendments adopted between 1978 and 2008.

**Table 2****Constitutional amendments in western Europe and Latin America, 1789-2001**

<b>Region</b>	<b>Constitutions</b>	<b>Mean number of constitutions</b>	<b>Amendments (3)</b>	<b>Mean number of amendments (3)</b>	<b>Mean amendment rate (4)</b>
<b>Western Europe (1)</b>	<b>51</b>	<b>3.2</b>	<b>1971</b>	<b>123.19</b>	<b>2.088</b>
<b>Latin America (2)</b>	<b>192</b>	<b>10.7</b>	<b>141</b>	<b>2.28</b>	<b>0.28</b>

*Source:* Same as Table 1 for Latin America; and Blaustein and Flanz (2008) and Rasch and Congleton (2006) for Western Europe.

**(1)** 16 countries

**(2)** 18 countries

**(3)** Amendments to constitutions in force in 2001 since they were enacted

**(4)** Number of amendments by years of life

*Source:* Rasch and Congleton (2006), Blaustein and Flanz (2008), Negretto (2008).

Table 3

## Cox regressions of duration of constitutions in Latin America, 1946–2008

Dependent Variable: Duration of Constitutions until Replacement		
Independent Variables	Model 1	Model 2
ELECTSHARE	-0.083 (.161)	-0.214 (.155)
INSTSHARE	-0.465 (.182) **	-0.453 (.217) **
AMENDRATE	-7.109 (2.408) ***	_____
VETOPOINT	_____	.072 (.244)
ADJUDICATION	-0.499 (.141) ***	-0.470 (.149) ***
TRANSITION	.235 (.673)	.190 (.712)
INSTCRISIS	3.423 (.765) ***	3.469 (.690) ***
PARTYCHANGE	.180 (.451)	.069 (.561)
ORIGINS	-0.019 (.016)	-0.030 (.016) *
LEGACY	.032 (.063)	.0271 (.069)
DIFFUSION	.413 (1.59)	.191 (1.71)
ECGROWTH	-0.008 (.079)	-0.033 (.102)
ECCRISIS	-0.001 (.000)	-0.000 (.000)
Log pseudo-likelihood	-36.887	-39.267
N	727	727

Numbers in parenthesis are robust standard errors clustered by country  
 \*\*\* p < 0.01; \*\* p < 0.05; \* p < 0.1



Table 4

**Cross-sectional time-series Tobit regressions of constitutional amendments in Latin America, 1946–2008**

<b>Dependent Variable: Amendment Rate</b>			
<b>Independent Variables</b>	<b>Model 1</b>	<b>Model 2</b>	<b>Model 3</b>
<b>VETOPOINT</b>	-.117 (.026)***	.061 (.036) *	.078 (.036) **
<b>ENPSEATS</b>	.036 (.004) ***	.107 (.011) ***	.068 (.010) ***
<b>VETOPOINT*ENPSEATS</b>		-.053 (.007) ***	-.037 (.007) ***
<b>ELECTSHARE</b>			.056 (.006) ***
<b>INSTSHARE</b>			-.089 (.018) ***
<b>ADJUDICATION</b>			.014 (.008) *
<b>LENGTH (LOG)</b>			.055 (.020) ***
<b>TRANSITION</b>			-.029 (.014) **
<b>INSTCRISIS</b>			-.054 (.012) ***
<b>PARTYCHANGE</b>			-.008 (.013)
<b>ECGROWTH</b>			.000 (.002)
<b>ECCRISIS</b>			.000 (.000)
<b>Wald Chi2</b>	120.46	176.08	430.10
<b>Log pseudo-likelihood</b>	350.570	373.537	456.125
<b>N</b>	735	735	727

Numbers in parenthesis are robust standard errors clustered by country  
 \*\*\* p < 0.01; \*\* p < 0.05; \* p < 0.1

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