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The Uneven Performance of Third Wave Democracies: Electoral Politics and the Imperfect Rule of Law in Latin America

*Joe Foweraker
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ABSTRACT

This article investigates the performance of the new democracies of the third wave by developing a conceptual model of the core elements of liberal democratic government and by constructing a new Database of Liberal Democratic Performance. The performance is shown to be uneven in two main ways. First, the institutional attributes of democratic government advance while individual and minority rights languish. Second, particular institutional attributes coexist uncomfortably, as do particular rights. A comparison of Brazil, Colombia, and Guatemala complements the big picture drawn from the database and focuses on the specific contextual conditions that can create the general political contours of the wave. The uneven democratic performance of these cases is mainly explained by the combination of persistent oligarchic power and a largely unaccountable military. Yet uneven performance, and the imperfect rule of law in particular, does not necessarily prevent democratic survival.

The number of democracies in the world has rapidly increased over the past three decades, but the quality of these democracies is uneven.¹ It is alleged that many of the new democracies are being “hollowed out” (for example, Diamond 1999, 49). The consequence is the spread of electoral democracy, where political parties compete for control of the government through relatively free and fair elections (O’Donnell 1997); but not liberal democracy, with an effective rule of law underpinning individual and minority freedoms and protections (Diamond 1999, chaps. 1, 2). A claim to liberal democracy may serve to legitimate state authority nearly everywhere, but the reality falls far short of the global triumph of liberal democratic government.²

This essay sets out to investigate the uneven quality of the new democracies of the third wave; that is, those formed from 1970 through 1998. It demonstrates that the institutional attributes of democratic governance advance while individual and minority rights languish. But this is not the whole story. Distinct institutional attributes may coexist

uncomfortably in many emerging democracies, and this is also true of different democratic rights. Thus, this study will show that the vertical accountability implicit in electoral politics does not necessarily entail an equal degree of horizontal accountability (O'Donnell 1997, 1999; Schedler 1999). The latter is often checked by military prerogatives and military influence over civilian government. Equally, the political rights required for electoral politics can promote more intense political contestation, but civil rights may suffer as a result.³ Yet the continuing fragility of civil rights in general does not prevent the reinforcement of property rights in particular. Indeed, civil and minority rights violations may flow directly from the lack of horizontal accountability and from the violent defense of private property in conditions of poverty and social exclusion.

The inquiry is framed by a conceptual model of liberal democratic performance that serves as the blueprint for a Database of Liberal Democratic Performance. The model specifies the distinct aspects of democratic performance that should be measured, and is therefore a model of how precisely liberal democratic governments are expected to perform. The new democracies of the third wave can then be described by the uneven or incomplete presence of these distinct aspects of democratic performance. One resulting observation is that governments are indeed voted in and voted out through elections that are reasonably free and fair, but that the "institutional environment of elections" (Riker and Weimer 1993, 79, n.2) is far from fully established.⁴ The model specifies the ways and degrees in which this environment is lacking.

By differentiating distinct aspects of performance, the model can suggest the dynamic and interactive effects that help shape the political contours of the third wave. But it is not a formal model that requires trade-offs across different measures of performance in logical fashion. On the contrary, the uneven democratic performance of the new democracies, whether structured by trade-offs or not, can only be explained by the political context and the political culture. For this reason, the general account of the political contours of the third wave derived from the database is complemented by a particular but still comparative inquiry into the contextual conditions of the wave in Brazil, Colombia, and Guatemala. On the basis of the contextual inquiry, this study will argue that it is in these kinds of conditions (but not uniquely in these conditions) that democratic performance is likely to be uneven, with a tendency for specific aspects of performance to trade off against each other.

INVESTIGATING THE THIRD WAVE

The conceptual model assumes that liberal democratic government is founded on the two key principles of liberty and equality, which must

be upheld by the rule of law and the sovereignty of the people. Furthermore, the model specifies that these two principles are achieved in practice through the operation of eight core liberal democratic elements, and that these elements comprise two main axes that combine the individual experience of democracy (rule of law) with the institutional efficacy of democratic government (sovereignty of the people). The first axis contains the legal elements of civil rights, property rights, political rights, and minority rights. These rights and the rule of law are important guarantees of individual freedoms and protections, and thus help to deliver the substance of democracy to the citizenry at large. The second axis contains the institutional elements of accountability, representation, constraint, and participation. These are the elements that protect the rule of law by making government accountable to the people.⁵

The model is designed to reflect the broad consensus that exists on the foundational principles of liberal democracy. The intellectual grounds for the consensus were created by long traditions of both liberal and democratic thought, beginning in seventeenth-century England, and in the encounter and conversation between them. The classic statement of liberal principles is found in Locke's *Second Treatise*, and his defense of the constitutional protection of individual liberty and equality under the rule of law has remained central to liberal theory ever since (Locke 1924, 180–83).

The first strands of modern democratic thought were skeptical of the ability of the law to protect liberty and equality unless each citizen could “exercise an equal right of participation in the making of the laws” (Skinner 1998, 69–70). By making government accountable to the people, self-rule provides a guarantee that it will uphold the law, thereby supplying the essential democratic link to liberal democracy. Over time, the consensus was extended to include the main institutional and legal means for achieving and defending the principles of liberty and equality, and each of the model's elements can be justified by arguments from mainstream liberal democratic theory (see Foweraker and Krznnaric 2000).

The Database of Liberal Democratic Performance collates measures of these 8 elements (see Foweraker and Krznnaric 1999) and covers the years 1970 to 1998, inclusive, in order to capture the full shape of the third wave. Its 21 variables were chosen to provide serviceable time-series measures that are sensitive (sufficient variation), diverse (in sources and substance), and scaled in more than one way (ordinal and interval). At the same time, the objective was to use tried and tested measures wherever possible to maximize reliability and economy of effort. All the measures have been employed in mainstream comparative work on democracy and democratic institutions (see appendix).⁶

The Database is global in scope, and its universe comprises 40 country cases. The criteria for their selection can be found in the appendix.

The selection was made from democratic governments only, with a minimal and procedural threshold for democracy sufficient to warrant inclusion. Thus, the database includes both “electoral” and “liberal” democracies, in Diamond’s language (1997a, 1999), because the difference between the two is a matter of democratic performance—and this is precisely what the database sets out to measure. It is assumed that the better and the more consistently a democratic government performs (across distinct liberal democratic elements), the more liberal it is likely to be.

Within this broad democratic universe, case selection turned mainly, if not exclusively, on questions of data availability and geographical scope and consistency. For example, countries with less than one-and-a-half million inhabitants were excluded, partly on grounds of data scarcity and partly to increase comparability across cases.

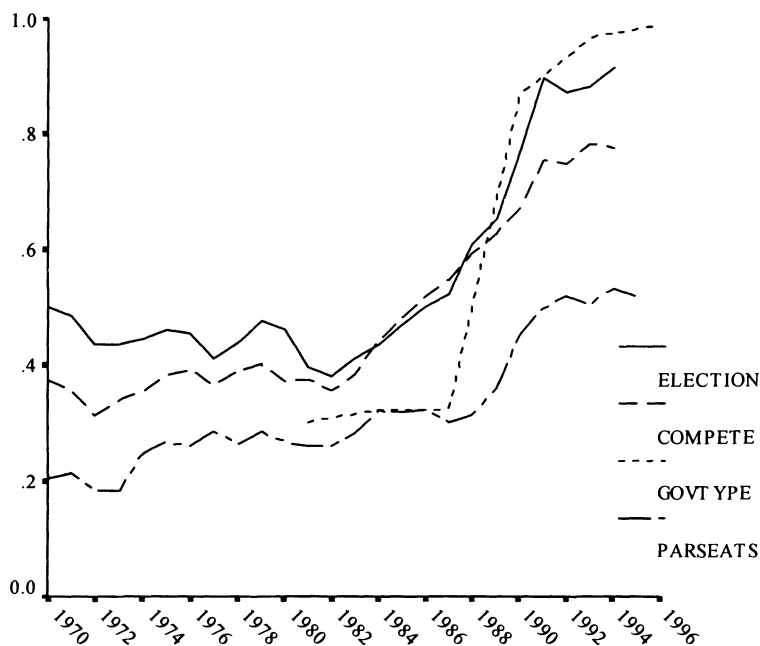
Once assembled in this way, the database can be deployed to describe the political contours of the third wave. But it does so differently from the extant studies. Previous measures of democracy, such as those of Polity III or Freedom House, tend to subsume different aspects of performance into a single score, thereby obscuring variations in performance across distinct democratic elements or attributes.⁷ This database, in contrast, provides a differentiated picture of the third wave. The picture is drawn from selected variables for the 23 cases of the 40 in the database that are new democracies; that is, that became democratic in or after 1970, with average scores presented from 1970 to 1998 for every year that data are available.⁸

Four variables were selected to capture competitive, electoral politics and political representation (figure 1). All four variables show the same pattern of little change until 1982, with a marked rise from the mid-1980s that accelerates in subsequent years before flattening again in the 1990s. In effect, they all reproduce the conventional shape of the third wave that is familiar from Freedom House and Polity III, and tell the same story of a third wave that has succeeded in spreading the formal institutions of procedural democracy across the globe.⁹

A different picture emerges, however, for the six variables selected to reflect the practical performance of civil and minority rights over the same years (figure 2). In stark contrast to the rising trajectory of the political-institutional variables, all these variables remain flat throughout the period of the third wave. In other words, despite the rapid dissemination of competitive electoral politics across the new democracies, civil and minority rights are still fragile, suggesting that the citizens of these democracies remain unprotected and vulnerable. The electoral and representative institutions of government are fully present, but individual and minority rights are absent or ineffective.¹⁰

The story of a differentiated third wave that enshrines Schumpeterian competitive politics at the expense of civil and minority rights can

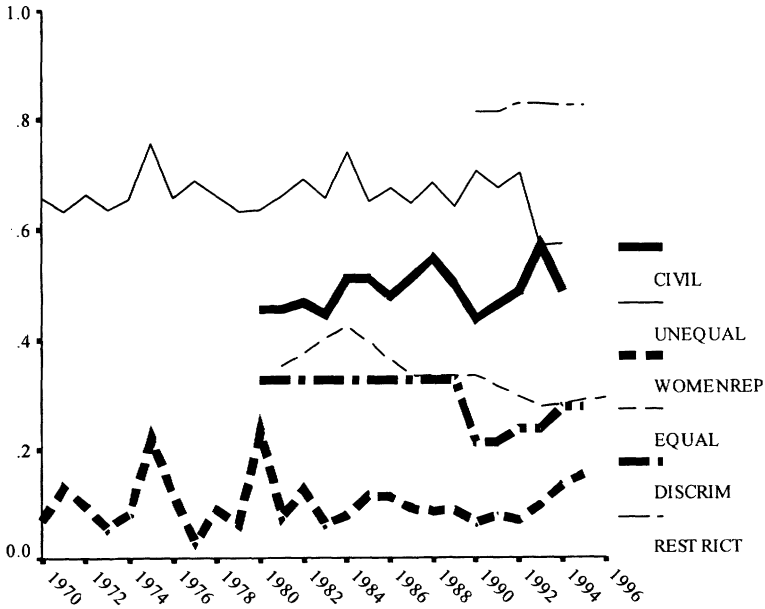
Figure 1. Scaled Mean Institutional Scores for 23 New Democracies



ELECTION: vertical accountability
 COMPETE: political rights of competition
 GOVT YPE: civilian or military control
 PARSEATS: breadth of representation in the political system

be seen to correspond to mainstream accounts of democratic transition that focus on the “short-term maneuvering” and negotiation of elite actors (Levine 1988, 385). Elite decisionmaking is required to establish the terms of the pacts and settlements that will found the new democratic regime (see, for example, Higley and Gunther 1992; Hagopian 1990). Competitive electoral politics are central to the institutional arrangements that will underpin the pacts and establish the boundary conditions for procedural consensus among the elite actors. Broadly speaking, this is the “Lockean” approach to democratic constitutionalism, which, in the contemporary context, is imagined as a process of “institutionalizing uncertainty” (Przeworski 1986, 58–59). Unwittingly, these accounts accurately reflect the political content of third wave democracies that appear to ignore “the citizenry at large” and its “wish to be rid of tangible evils” (Rustow 1970, 354–57). Democracy is a matter of mass as well as elite; but without the real practice of civil liberties and minority rights, the secure substance of democracy cannot be delivered to the individuals who compose the polity. The uneven quality of

Figure 2. Scaled Mean Rights Scores for 23 New Democracies



CIVIL: civil rights

UNEQUAL: income inequality as proxy for equality before law

WOMENREP: percentage of women in the lower legislative chamber

EQUAL: women's legal equality of access to social goods

DISCRIM: political discrimination against minorities

RESTRICT: cultural restrictions on minorities

these new democracies therefore means that democratic constitutionalism often has little to do with the citizens' lived experience.

CONTEXTUALIZING THE MEASURES

The database draws a big picture of a third wave characterized by advancing electoral politics combined with retarded civil and minority rights. But it does not and cannot describe the historical and contextual conditions that—taken together—may begin to explain the big picture. This is one aspect of the classic methodological trade-off between large-N comparative research and a close-focus, hermeneutic style of analysis.

The inquiry therefore now moves to complement the big picture with a small-N comparison that explores particular variables in particular contexts. Its purpose is twofold. First, it seeks to ground the global measures and see whether the big picture conforms to what is happening on the ground. If the measures succeed in characterizing the political content of the third wave, then those characteristics should be evi-

dent in the country cases that provide the raw scores. Second, it seeks to reveal some possible reasons for the uneven quality of third wave democracy and to suggest the characteristic ways that distinct aspects of democratic performance may trade off against each other. The small-N comparison cannot demonstrate general relationships, but it may provide the raw material for specific causal inferences.

In this regard, it must be recognized that the general political characteristics of the third wave may have different causes in different contexts. It cannot be argued that the cases selected for the small-N inquiry, namely Brazil, Colombia, and Guatemala, are representative of the global sample in any statistical sense. Nor are they necessarily exemplary of the characteristic conditions of uneven democracy in Latin America overall, or even of the nine Latin American cases in the database. On the contrary, they simply illustrate, in clear and often dramatic fashion, how specific contextual conditions can contribute to creating the general political effects described by the big picture.

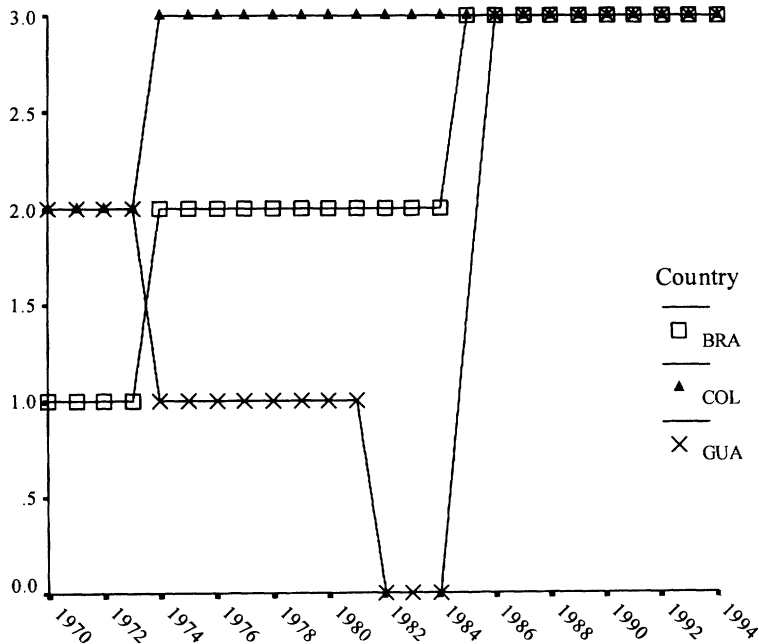
These three cases are themselves different one from the other. Brazil went through a gradual transition, Guatemala a rapid one in conditions of civil war, while Colombia has employed elite pacts to restore and secure a restricted democracy by ensuring the alternation of the two main parties in government.¹¹ Yet their comparison does reveal the continuing impact of oligarchic power and military prerogatives on their overall democratic performance.

Electoral Politics versus Civil and Minority Rights

The first step is to ascertain whether these three cases conform to the big picture of institutional advance with retarded rights. The country measures for vertical accountability (figure 3) appear successful in tracking the main institutional changes.¹² Brazil goes through a "stepped" process of liberalization and transition, with a significant political opening in 1974 and legislative and indirect presidential elections in 1985 (Weffort 1989, 339; Lamounier 1989, 113; Skidmore 1989, 33).¹³ The Guatemala measure drops with the fraudulent election of 1974 and hits zero with the military coup of General Ríos Montt in 1982. The rapid rise to a top score (indicating free and fair elections) in 1986 records the election of a civilian president, ending 30 years of more or less continuous military rule. The score nevertheless seems somewhat optimistic.¹⁴

Colombia has been free of direct military rule since 1958, but competitive party politics was constrained by the National Front coalition that shared all offices between the two major parties, including alternating presidencies (Kline 1996, 182). The measure marks the end of the coalition in 1974 and gives Colombia a top score for a free electoral system since that time (Archer 1995, 165; Deas 1986, 642).¹⁵

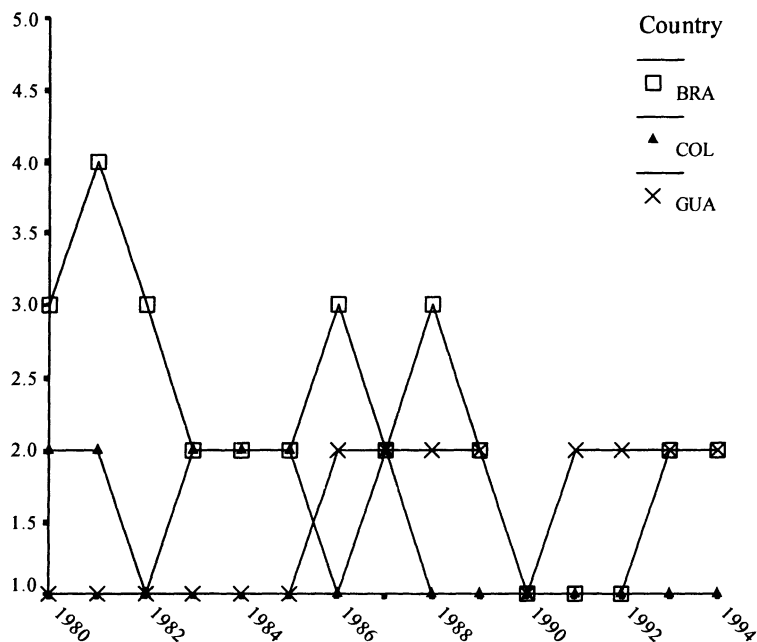
Figure 3. Vertical Accountability (ELECTION) in Brazil, Colombia, and Guatemala



The country measures for civil and minority rights, in contrast, suggest that these are certainly no stronger in Colombia and Guatemala, while they appear to have weakened yet further in Brazil (figures 4 and 5). Brazil's civil rights score for 1994 indicates "high levels of political murder and disappearance," while its minority rights score comes to reflect "social ostracism." Brazil saw persistent abuse of civil rights by both civil and military police throughout the 1980s and into the 1990s, including torture, death squads, and the murder of street children. The failures of the judicial system leave many perpetrators unpunished. Indigenous minorities have suffered years of abuse, while black Brazilians experience consistent discrimination by the police, the judicial system, and the labor market (Mitchell and Wood 1997, 14; Reichmann 1995, 36; Amnesty International 1980–92; Pedone 1996, 86).¹⁶

Civil rights abuses continued unchecked in Guatemala despite the democratic transition. Groups targeted for torture and "disappearance" included journalists, trade unionists, lawyers, judges, students, academics, lay workers, priests, party activists, and human rights campaigners. Until the mid-1990s, many leftist candidates could not run for office without fearing for their lives. The judicial system, moreover, systematically failed to bring the guilty to justice (Krznicaric 1997, 64–65; Amnesty

Figure 4. Civil Rights (CIVIL) in Brazil, Colombia, and Guatemala

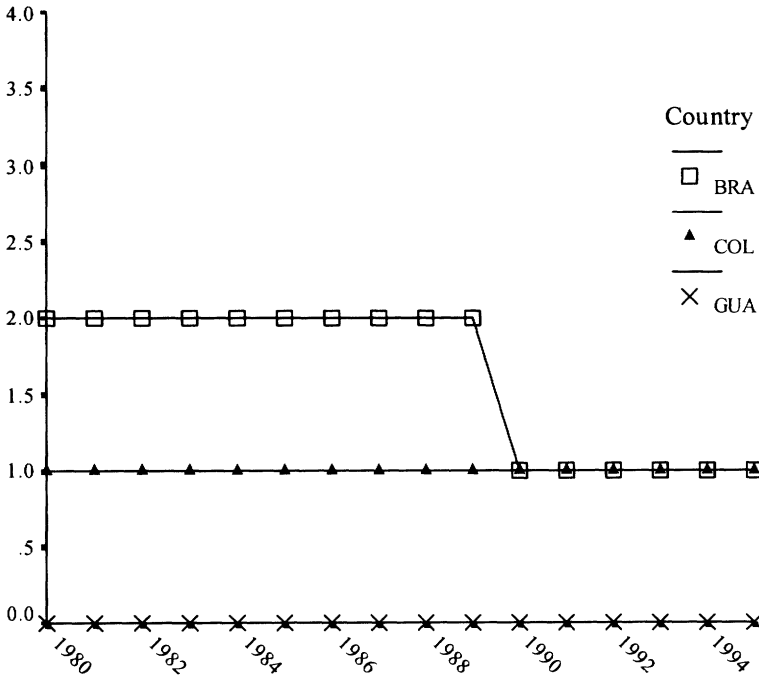


International 1980–1998; La Rue 1995, 76). Indigenous peoples have been forcibly recruited into self-defense patrols while their own organizations have been repressed; displaced populations have suffered some of the worst military violence (Krznaric 1997, 64–65).¹⁷

In Colombia, the military’s counterinsurgency campaigns in response to guerrilla groups such as the Revolutionary Armed Forces of Colombia (FARC) and the proliferation of paramilitary organizations have led to similar abuses. Elections have been especially violent and marked by hundreds of assassinations of left-wing activists and candidates. Disappearances and death squads are a commonplace of political life. The government has ruled under an almost continuous state of siege since 1949, restraining civil authority and expanding the legal range of military control. Since 1991, public order courts have damaged due process and reinforced military impunity. Colombia’s small indigenous minorities are treated as “subversive” by the security forces and routinely murdered over land disputes (Amnesty International 1980, 1982, 1991, 69; Molano 1992, 216; Chernick 1998, 29; Lee 1995, 29).¹⁸

This brief contextual account of the three cases confirms that the advances made in political rights and parliamentary representation have not been matched by improvements in the record of civil and minority rights. There are strong indications, furthermore, especially in Colombia

Figure 5. Minority Rights (DISCRIM) in Brazil, Colombia, and Guatemala

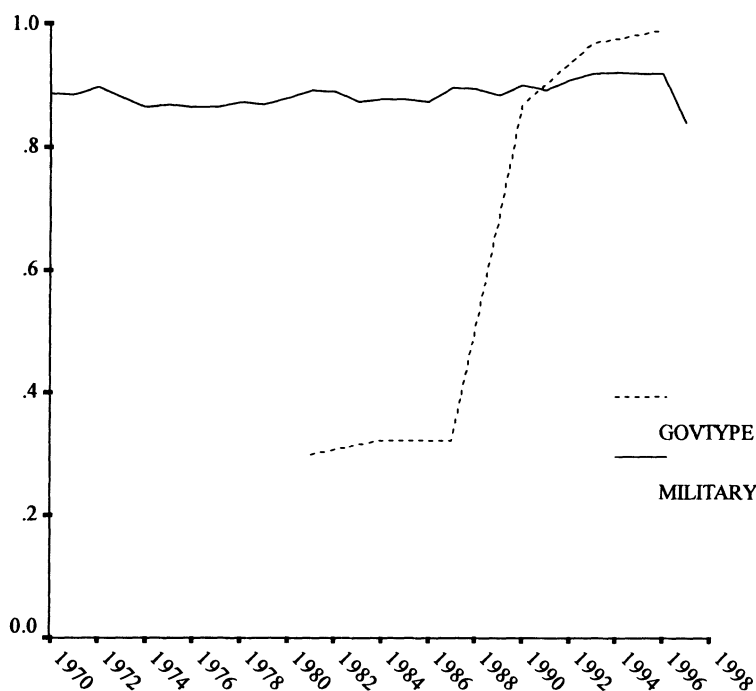


and Guatemala, that a more open or intense process of political competition (and the extension of political rights) may lead to infringements of civil and minority rights. The oligarchy has little compunction about resorting to violence if it perceives its vital interests to be threatened. It must be conceded, however, that the state does not always perpetrate the abuses and may not necessarily be able to prevent them. In short, there are problems of government here as well as of democracy.

Vertical versus Horizontal Accountability

The degree of vertical accountability achieved through the electoral process may not be matched by a similar degree of horizontal accountability within the newly minted civilian and democratic government. Military accountability, in particular, is especially difficult in Latin America, where democratic constitutions are all imbued with special military prerogatives that reflect its "constitutional and supraconstitutional mission as guardian of national security and sovereignty" (Loveman 1998, 123). The military has recurrently invoked this mission when destroying democratic government. Despite the spate of democratic transitions of

Figure 6. Scaled Mean Horizontal Accountability Scores for 23 New Democracies

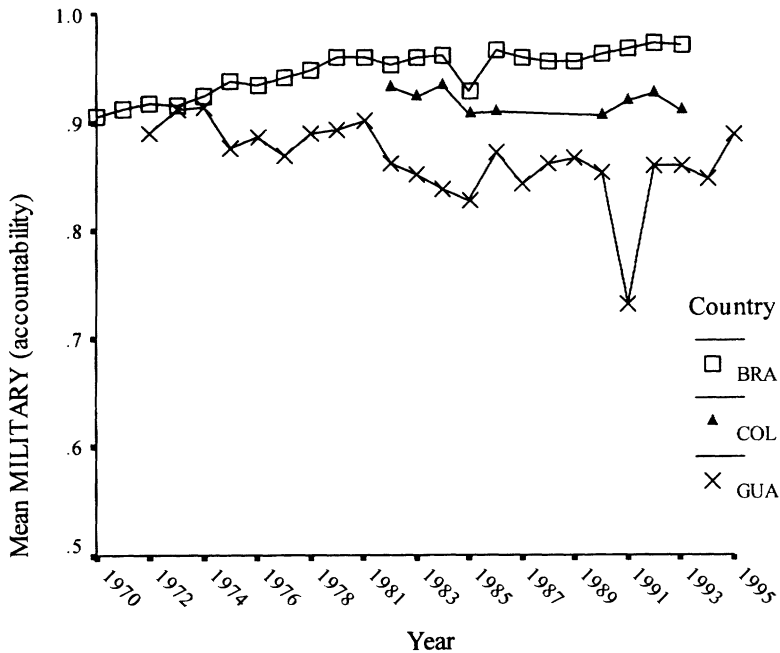


the 1980s, the military still demands “a formal constitutional and statutory role in the new regimes” (Loveman 1998, 121–27). As a virtual fourth branch of government, the military enjoys a wide range of privileges and immunities, including impunity for past and, often, present civil rights abuses (Cruz and Diamint 1998, 17).

Despite the spread of civilian government (GOVTYPE), the rate of military spending (MILITARY) in third wave democracies does not diminish (see figure 6).¹⁹ Although continued high spending may relate to the demands of external defense in particular cases, it is remarkable that spending holds constant across all 23 new democracies in the database. This suggests that the third wave has failed to curtail the autonomy of many military establishments, which continue to extract institutional “rents” as their price for staying out of democratic politics.

The exception to this rule among the country cases is Brazil, where military spending fell steadily throughout the 1980s (see figure 7). This may properly be interpreted as reflecting a reduction in the military influence on civilian government (Hunter 1995, 425).²⁰ Still, many military prerogatives continue intact.²¹ The military retains autonomy in the management of its own corporate business and continues to act “con-

Figure 7. Horizontal Accountability (MILITARY) in Brazil, Colombia, and Guatemala



stitutionally” in the defense of law and order (Acuña and Smulovitz 1996, 26). It is in this role that the military and its police frequently infringe basic civil rights and liberties.

In Guatemala, by contrast, military spending continued to increase throughout the democratic transition of the mid-1980s. War against the guerrillas continued unabated, and military control of the countryside was comprehensive as ever (Wilson 1993, 136). At least 50,000 people were resettled in model villages and 725,000 placed in civilian “defense patrols” (Dunkerley 1994, 79).

The new democratic constitution contained 40 clauses of military immunities and prerogatives (Amnesty International 1987; Jonas 1989), including impunity for past rights violations, with the military intelligence apparatus intact and the military role in internal security unmitigated (Zur 115, 56). There was no democratic scrutiny of either the military’s political autonomy or its economic-corporate power, and the military threatened the government at the first sign of civilian interference in its affairs (Trudeau 1993, 131; Sieder and Dunkerley 1994). The almost complete lack of accountability is apparent in the feeble mandate of the Truth Commission, which finally began its hearings in 1996, and the persistence of military violations of civil rights.

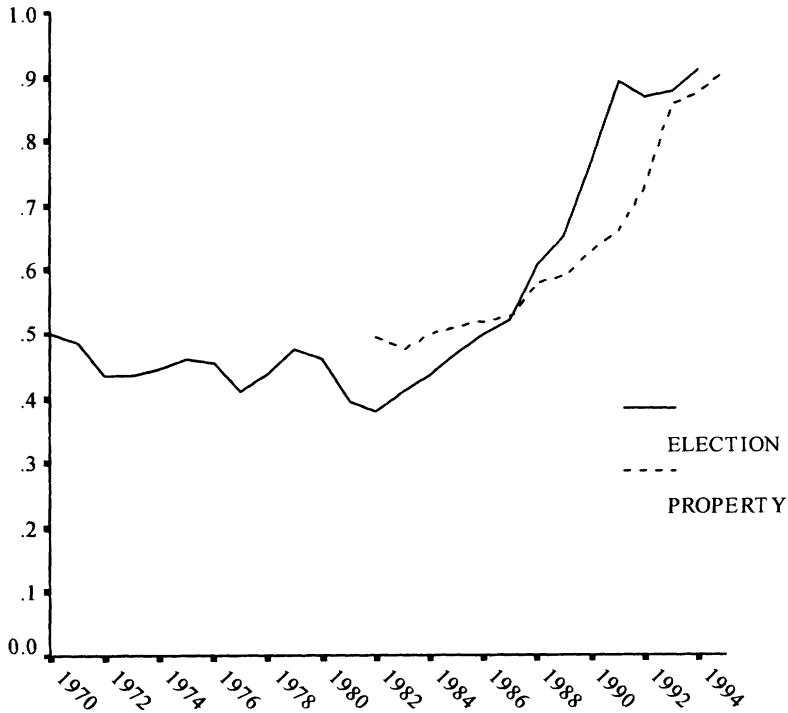
Military spending in Colombia remains high and constant, reflecting the steady expansion of the military's legal mandate to wage war on the guerrillas (Hartlyn 1989, 317). The military has made full use of its enhanced powers in the "Special Public Order Zones"—such as those created by government emergency decrees in 1997—where some of the most flagrant abuses of civil rights have occurred (Amnesty International 1997, 122). Furthermore, the military's use of paramilitary groups removes any vestige of accountability and reinforces its impunity (Vargas Meza 1998, 25; Chernick 1998, 29; Pearce 1990, 214).²² Thus, the problem of horizontal accountability is quite as serious in Colombia as it is in wartorn Guatemala and certainly more acute than in Brazil. In all three cases, the problem explains much of the failure to establish secure civil rights under the rule of law.

Property Rights versus Civil and Minority Rights

All liberal democratic constitutionalism encompasses specific individual rights that provide a bulwark against unbridled majority control and thereby act to protect democracy (Sunstein 1993, 342). Liberal theory sees this as a virtue of all private rights, both civil and economic. But property rights are considered to be distinct from civil rights in general, since they directly constrain government power (Nedelsky 1993, 242) and underpin the protection of civil rights by diffusing political power (Dahl 1989, 252). Property rights are also understood to contribute to system stability by limiting the policy dimensions that are subject to democratic choice and by preventing recurrent struggles over the distribution of wealth in particular (Riker and Weimer 1993, 80). Yet despite their virtuous contribution to constraint and stability, property rights are still seen as ambivalent and potentially antidemocratic. For, in contrast to the inclusive quality of most civil rights, property rights have come to be "exclusive" (Macpherson 1978, 199), and sometimes violently so.

The graphic description of the third wave democracies drawn from the database shows that the rise of electoral politics and vertical accountability is closely tracked by the measure of protection of property rights (see figure 8), while civil and minority rights remain unprotected. This synchronicity is strengthened in some degree by the "dual transition" in Central and Eastern Europe to democratic systems and market-based economies (5 out of 23 cases in the database). But in the elite-centered view of democratic transition, the pacts and settlements that underpin the process are designed first and foremost to protect elite interests and thus bind elite actors to the democratic outcome (Karl and Schmitter 1991, 281). Property rights therefore have an "overriding importance" in all new democracies (Schmitter 1995, 23), while the extension of political rights that accompanies the transition may encourage challenges to those

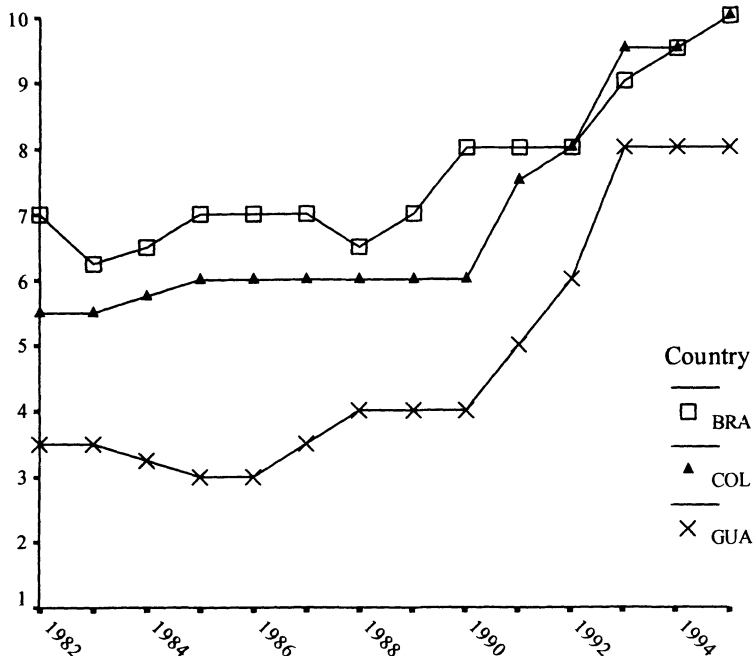
Figure 8. Scaled Mean Vertical Accountability and Property Rights for 23 New Democracies



rights. It is often the violent vindication or defense of property rights that links the increases in political rights to the infringements of civil rights. In the three Latin American cases, the property rights that are most keenly contested are those of landed property.²³

The country case variables all suggest that property rights became better protected in the late 1980s and 1990s (see figure 9). In Brazil the landowning oligarchy mobilized sufficient support within the National Constituent Assembly (1987–88) to resist calls for an agrarian reform during the process of democratic transition (Payne 2000; Hagopian 1996, 251). The Rural Democratic Union in particular fought hard to protect landed property from the threat of “reformist” governments in the 1980s (Payne 2000), and the titling of Indian lands in the 1990s favored the private landowners (Schwartzman et al. 1996, 37). By 1995 there was little or no perceived risk of land expropriation in Brazil. Legal and constitutional protections have consistently been backed by force, and landowners have enjoyed the support of civil and military police in suppressing the claims of peasants and indigenous minorities (Amnesty International 1980–92; Payne 2000). Land disputes have led to wide-

Figure 9. Property Rights (PROPERTY) in Brazil, Colombia, and Guatemala



spread killing in the countryside; most of the victims have been leaders of rural trade unions and peasant movements (especially the Landless Movement) and priests, lawyers, and environmentalists working with them. Indeed, the democratic transition has hardly mitigated the violent defense of landed property that was commonplace under the military governments (Foweraker 1981), and may even have exacerbated it.

In Guatemala, too, the rural oligarchy's traditional political dominance has continued through the period of democratic transition. But here, the popular organizations pressing for agrarian reform were explicitly linked to guerrilla activity, and treated accordingly. Peasant and indigenous groups were routinely evicted from the land by private or state security forces (Schirmer 1997), including both the police and specialized "rapid reaction" units (Amnesty International, 1997, 25), frequently using illegal and violent means. The judicial system tended to favor the landowners in land disputes and to ignore the landless (Bastos and Camus 1995, 117-18; Gidley 1996, 34; Amnesty International 1997, 25-26). When the issue of land reform was eventually debated as part of the peace process, landowning interests successfully lobbied for a pattern of modernization based on respect for private property (Krznnaric 1999, 12-13).

The defense of landed property by the traditional oligarchy in Colombia (Pearce 1990, xii; Kline 1996, 177) has been bolstered by the creation of a “narco-oligarchy” that has used the profits from the illicit drug trade to amass some eight million acres of land since the 1970s. Old and new oligarchies alike employ private armies to repel land claims by both guerrilla and peasant groups, often with extreme violence (Vargas Meza 1998, 23; Restrepo 1992, 289). The attacks on indigenous groups during land disputes have often led to tortures and assassinations (Pearce 1990, 134).

Colombia is distinctive in further securing the regime of private property in land by pursuing successful peace accords with a number of guerrilla organizations, such as M-19. But the overall pattern of protecting property rights through violent violation of civil rights is very similar to that of Brazil and Guatemala. The three cases differ only in degree, and in every case the lack of accountability of military and police and the fierce defense of property rights lead inexorably to the assaults on civil and minority rights.²⁴

EXPLAINING UNEVEN PERFORMANCE

The small-N comparison of the three Latin American cases confirms the big picture of the uneven performance of third wave democracies drawn from the database. In particular, it shows how political party competition through electoral politics can take hold even while civil and minority rights remain fragile and uncertain. It also suggests specific causes that may produce this particular pattern of uneven performance; namely, the unchanging nature of oligarchic power and the constitutional and political prerogatives that render the military largely unaccountable. It shows how the oligarchy and military often work hand in hand, with military police and paramilitary organizations acting to protect oligarchic power, especially in the form of private property in land.²⁵ Thus, the evidence of the small-N inquiry points plausibly to the conclusion that it is the combination of oligarchic power and military prerogatives that explains the patchy and imperfect rule of law and the failure to achieve a stable rights regime.

This conclusion must remain speculative on at least two counts. First, although the case materials reveal different ways that the oligarchy and military undermine the rule of law, they still fall short of specifying the key causal mechanisms that produce this effect. Second, it is impossible to “test” this conclusion using statistical methods of any kind because there are no comparative measures of oligarchic power, and hence no easy way of operationalizing the causal mechanisms at work, whatever they are. It is possible, however, to offer a brief theoretical statement of these causal mechanisms—a statement that is consistent

with both previous field research and the mainstream literature but that must remain subject to further testing through the inductive method.

The main theoretical claim can be briefly stated. Oligarchic power produces an imperfect rule of law through the structural support it provides to clientelist politics. The pervasive presence of clientelism, in turn, has two major political effects. First, it underpins what Weber terms a patrimonial pattern of politics, which shows no clear and enduring distinction between the private and public spheres (Weber 1968, 1028) and therefore no cultural defense of a *res publica* that requires the rule of law. Second, clientelism assumes and promotes a particularistic style of politics that produces and reproduces power through particular relationships of favor and loyalty that are inimical to the general claims of individual rights. The tension between the particularism of clientelism and the universalism of an effective regime of individual rights has been explored elsewhere (Foweraker 1993, chap. 10, 1995, chap. 5; Foweraker and Landman 1997, chap. 2). These studies support the assertion that particularistic politics impair the rule of law in many third wave democracies and that this "particularism vigorously inhabits most formal political institutions" (O'Donnell 1997, 49).

Thus, in Brazil, regional oligarchies have retained their traditional powers through deeply embedded systems of patronage, while clientelist political machines in national government, especially the national congress, have operated to protect military autonomy and landed property (Hagopian 1996, 222, 247, 249; De Souza Martins 1996, 196, 204, 209; Mainwaring 1995, 387–90; Weffort 1989, 340). In Guatemala, party politics is patronage politics, where the traditional oligarchic families have continued to exert a powerful influence over the elected executive (Rosada Granados 1992, 103; Casaus Arzú 1992, 106; Dosal 1995, 188). In Colombia, national politics is divided among oligarchic domains that encompass local and regional politics and severely constrain the reach of political parties and political representation (Abel and Palacios 1991, 674–76; Archer 1995, 190–91; Melo 1998, 66; Restrepo 1992, 282; Hartlyn 1988, 172–76; Pecaut 1992, 220; Leal Buitrago 1990, 35; Kline 1996, 173; García Márquez 1997).

The theoretical assertion is that it is conditions like these that subvert the rule of law and prevent judicial reform; that typically promote trade-offs between political rights and civil rights, property rights and minority rights, and vertical and horizontal accountability; and that therefore go a long way to explain the differentiated contours of the third wave—at least in these particular cases.

Oligarchic power is not abstract or invisible; it operates through the interrelationships among powerful political families. In Brazil, the principal families of the political elite of Minas Gerais remain especially strong, and have successfully colonized political parties and maintained control

of local politics, in addition to preventing agrarian reform (Hagopian 1996, 222, 247, 249). Moreover, "no group or political party is today in a position to govern Brazil except by means of alliances with those traditional groups—and therefore, without large concessions to the needs of political clientelism" (De Souza Martins 1996, 196). In Guatemala, the networks of the Castillo, Novella, Gutiérrez, and Herrera families enjoy government protection and incentives to their areas of economic interest—brewing, cement, chicken, and sugar, respectively. Family members and high-level employees frequently occupy government jobs, including ministerial posts (Casas Arzú 1992, 106). In Colombia, apart from the new "narco-oligarchy," traditional families dominate politics and the press; "the sons of ex-presidents [appear] as candidates for the presidency or other political posts in disproportionate numbers, [and so do] the sons of senators and regional leaders" (Melo 1998, 66).

THE RULE OF LAW AND THE SURVIVAL OF THIRD WAVE DEMOCRACIES

This inquiry into the political context of the third wave is very far from complete. It takes a selection of measures from the database in order to examine just three relationships in three country cases. This summary inquiry, furthermore, may recognize, but cannot explore in detail, the impact of contextual differences on the uneven quality of democracy: regional political traditions and the strength of federalism in Brazil, the militarization of the countryside and genocide in Guatemala, the drug trade and the state's renunciation of its monopoly on violence in Colombia. Yet this study does reveal striking similarities across the cases. Electoral politics appear to persist in the absence of civil and minority rights. The armed forces and the police remain largely unaccountable to elected civilian government. The landed oligarchy frequently resorts to violence to protect its private property. Consequently, oligarchic actors are free to pursue political power through competitive party politics; but the poor, the powerless, and the minorities remain unprotected and subject to abuse.

What is at issue here is the rule of law. In some degree, this rule is imperfect because of the incomplete or contradictory nature of the law itself. The special immunities and protections of the military or police clearly contribute to damaging the integrity of civil and minority rights. (The residual problem here is the often long-term suspension of constitutional guarantees in specious conditions of domestic strife or national emergency.)

The main problem, however, is simply that the law is bypassed or subverted, and this is a problem of accountability. In principle, democratic government is designed to safeguard the rule of law by making government accountable to the people. But in conditions of continuing

oligarchic power and clientelistic control, the principles and practice of accountability are fractured or enfeebled. The result is freely elected governments that “either do not respect or do not maintain the state based on the rule of law” (Merkel 1999, 10; compare Zakaria 1997). The governments enjoy the democratic legitimacy of popular election, but the people are not sufficiently sovereign to defend the rule of law and prevent the violation of their liberties and protections.

The mainstream accounts of these new democracies argue, however, that they will never be “consolidated”—will not survive—without an effective “rule of law to ensure legal guarantees for citizens’ freedoms and independent associational life” (Linz and Stepan 1996, 7). It is the rule of law that underpins consolidated democracy by its specific effects on political attitudes and political behavior.²⁶ Without the rule of law, democracy will have no routine and ingrained expectations that make it the “only game in town” (Linz and Stepan 1996, 15–16).²⁷ It will not, therefore, achieve the “widespread legitimation” (Diamond 1997b, xix) so essential to consolidation.²⁸ Thus, consensus and active consent will enable new democracies to endure. But these conditions will only obtain if the new democratic governments are capable of defending the integrity of the rule of law.

Still, the historical reality of the third wave and the increasing longevity of many third wave democracies cast doubt on these assumptions. The evidence suggests, on the contrary, that third wave democracies can and do survive without a fully effective rule of law. The law has a formal presence but is not fully established, because it has to contend continually with the informal rules that coalesce in clientelism (O’Donnell 1997, 47). The result is an imperfect rule of law that is repeatedly subverted by the informal rules that favor the oligarchy and discriminate systematically against the powerless. What survives is a form of democracy that is only partially constrained by *Rechtstaat* (Linz 1964; for more detail, see Foweraker 2001).

The salient exception to this institutionalized informality (partial or complete, depending on the country in question) is the electoral arena, which remains protected or “ring-fenced” (O’Donnell 1997, 49). This relative immunity may be achieved through the measure of accountability implicit in political party competition. It may also be buttressed by international monitoring and stimulated by the requirements of international legitimacy and finance. After all, membership in the democratic club brings privileges and serves to assuage sanctions, and governments can claim membership only so long as elections proceed regularly and unhindered.

The database provides graphic evidence of the imperfect rule of law in third wave democracies and of the enduring division between ring-fenced electoral politics and the fragility of civil and minority rights and liberties. It may be conjectured that the uneven quality of these new

democracies is simply a consequence of being new, and that, given time, they will come to fit the more even profile of the old democracies. The evidence is not yet in, however. Whether the electoral principle alone is sufficient to promote a fully effective rule of law over the longer term is an open question, one that will no doubt receive different answers in different political contexts and at different historical moments.

APPENDIX: VARIABLES AND CASES

The Database of Liberal Democratic Performance was designed to capture the third wave, and therefore covers the years 1970 to 1998, inclusive. It comprises 21 variables and 40 cases. Because scores do not exist for each variable for each year, the database contains just 8,958 observations out of a potential total of 24,360.

Variables

Variables were chosen according to their geographic and temporal range, their affinity with the values to be measured, and their empirical quality. The database was designed for both balance and texture, with an even distribution of measures to values, a mixture of ordinal and interval level indicators, and a variety of scale ranges. The following list classifies the variables according to the distinct aspects of democratic performance and references their sources.

Accountability

- ELECTION executive recruitment competition, Polity III (Jagers and Gurr 1995)
 GOVTYPE civilian versus military government, Binghamton (Cingranelli and Richards 1999)
 MILITARY military spending as percentage of total central government spending (IMF 1997)

Representation

- DISPROP electoral disproportionality, Gallagher's least-squares (Lijphart 1994; Zelaznik 1999)
 PARSEATS size of legislature/number of seats held by largest party (Banks 1997)

Constraint

- EXECONST executive constraints, Polity III (Jagers and Gurr 1995)
 LOCALTAX local and state government tax revenue as percent of central tax revenue (IMF 1997)

Participation

LEGIVOTE legislative votes as percent of voting-age population (International IDEA 1997)

PRESVOTE presidential vote as percent of voting-age population (International IDEA 1997)

Political Rights

COMPETE competitiveness of participation, Polity III (Jaggers and Gurr 1995)

UNION trade union rights, Binghamton (Cingranelli and Richards 1999)

CENSOR government media censorship, Binghamton (Cingranelli and Richards 1999)

Civil Rights

CIVIL Amnesty International human rights reports (Poe and Tate 1994; Poe et al. 1999)

UNEQUAL income inequality, Gini coefficient (Deiningner and Squire 1996)

PRISON prisoners per 100,000 population (Walmsley 1996; SPACE/Council of Europe)

Property Rights

ECONFREE Index of Economic Freedom, Heritage Foundation (Johnson et al. 1998)

PROPERTY risk of expropriation, Political Risk Services (Knack and Keefer 1995)

Minority Rights

WOMENREP percent of women in lower house of legislature (Inter-Parliamentary Union 1995)

EQUAL women's equal rights, Binghamton (Cingranelli and Richards 1999)

DISCRIM political discrimination, Minorities at Risk (Haxton and Gurr 1997)

RESTRICT cultural restrictions, Minorities at Risk (Haxton and Gurr 1997)

All 21 variables have been used in some form in published work (although this study has often varied their geographical scope and temporal range). ELECTION, EXECONST, and COMPETE are taken directly from the Polity III dataset created and analyzed by Jaggers and Gurr (1995). GOVTYPE, UNION, CENSOR, and EQUAL are all found in the Binghamton Human Rights dataset applied by Cingranelli and Richards

Table 1. Democracies Compared

Old Democracies (17)	
USA, Canada, Japan	Highly developed capitalist states
Costa Rica, Venezuela, Colombia	Latin America's three "old" institutional democracies
Denmark, Netherlands, Switzerland	"Consensual" democracies ^a
UK, France, Italy	Nonconsensual democracies ^a
Australia, New Zealand, India, Sri Lanka	Shared British colonial heritage; in Asia/Oceania
Israel	Only Middle Eastern old democracy
New Democracies (23)	
Chile, Argentina, Brazil	Southern Cone dictatorships
El Salvador, Nicaragua, Guatemala	Central American cases with civil wars
Poland, Hungary	Economically advanced Central European, non-Ottoman
Bulgaria, Romania, Albania	Economically less advanced Central European, Ottoman heritage
Spain, Portugal, Greece	Southern European dictatorships
South Korea, Philippines, Taiwan	East, Southeast Asian
Pakistan, Bangladesh, Turkey	Islamic influence
South Africa, Malawi, Ghana	African states with British colonial experience

^aAs classified by Lijphart (1984, 219).

(1998). DISCRIM and RESTRICT come from the Minorities at Risk dataset and appear in a number of studies by Haxton and Gurr (1997). The CIVIL variable is an updated version of the one used by Poe and Tate (1994).

The variables DISPROP, LOCALTAX, LEGIVOTE, PRESVOTE, UNEQUAL, PRISON, and WOMENREP all derive from Lijphart's work (1994, 1999); he uses them to create proxy measures of representation, constraint, participation, civil rights, and minority rights. In some cases, these variables were extended by calculating new scores (for example, DISPROP) or importing new information (for example, PRISON). Hunter (1995) provides the inspiration for the MILITARY variable. Vanhanen's (1997) Index of Democratization uses an indicator very similar to

PARSEATS. The Heritage Foundation's ECONFREE is analyzed in Johnson et al. (1998), while Knack and Keefer (1995) use PROPERTY for their study of property rights.

Cases

Cases were selected on both methodological and practical grounds. The initial population was the 118 countries described as either "liberal" or "electoral" democracies by Diamond (1997a) and as reaching a minimum threshold of procedural democracy by Freedom House standards. Countries with fewer than 1.5 million inhabitants were eliminated (leaving 82 cases), as were countries formed or reformed as nation-states since 1970, including both Germany and the Czech Republic (leaving 67 cases). Countries were also eliminated if they did not appear in either the Minorities at Risk database (Haxton and Gurr 1997), the Binghamton Human Rights database, or the Political Risk Services database on property rights (Knack and Keefer 1995). This left 56 cases, of which 17 were "established" democracies.

Additional countries were eliminated in order to balance the number of "established" and "new" democracies and to achieve an appropriate geographic spread. This left 40 countries, distributed into selected clusters on historical, geographical, economic, or institutional grounds. Clusters such as the three former Central American dictatorships (Guatemala, El Salvador, and Nicaragua) were included, whereas cases like Papua New Guinea or Mali were excluded.

NOTES

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1. Twenty-five years ago there were some 35 democracies in the world, most of them wealthy and industrialized nations in the West. Today this number has grown to about 120. Huntington argues that at least 30 countries turned democratic between 1974 and 1990 (1993, 3), while Diamond takes Freedom House data to show that the number of democracies increased from 39 in 1974 to 118 in 1996 (Diamond 1997a, 22). Consequently, democratic governments now outnumber all others. Jagers and Gurr (1995) claim that the proportion of democracies rose from 27 percent in 1975 to 50 percent in 1994.

2. The "remarkable consensus concerning the legitimacy of liberal democracy" served as the premise of Fukuyama's thesis on "the end of history" (1992, xi). Doubts about the quality of the new democracies imply that the new democratic constitutions may enshrine democratic principles that fail to operate in practice, and that the populations of new democratic states do not therefore enjoy liberal democratic freedoms. But it is also the case that some of the most populous states are not democracies (China, Indonesia).

3. In other words, as political rights advance, civil rights decline and deteriorate. This was as true of Europe after World War I as it is of many countries of the third wave. Civil rights are often violated by traditional oligarchies in their fight to maintain property and privileges.

4. "The degree to which a political system is democratic depends on the practical effectiveness and political relevance of voting in terms of participation (the promotion of popular choice), liberty (the freedom to pursue one's goals), and equality (the facilitation of self-respect and self-realization)" (Riker and Weimer 1993, 79, n. 2).

5. Any model will necessarily reduce the political complexity of the real world, and it is recognized that none of the distinct elements of this model constitutes a pristine category. For example, the model distinguishes between political and civil rights, in keeping both with mainstream democratic theory and with most extant measures of democratic performance. Yet the distinction may easily be overdrawn, insofar as free and fair elections clearly require effective civil liberties. For the practical purposes of comparative analysis, however, it is still possible to separate the basic rights and procedures of electoral politics (regular elections, universal suffrage, the right to form political parties, and so on) from civil rights violations, even though the latter will often impair both the "freedom" and "fairness" of elections. The blurred boundary between civil and political rights is recurrently evident in the small-N comparison presented here, but the distinction continues to create considerable analytical leverage.

6. A full account of the construction of the database and the decisions governing the rejection and selection of variables, in particular, can be found in Foweraker and Krznicar 2001. Overall, we sought to diversify data sources as much as possible and to review measures from the cognate disciplines of international relations, economics, and even criminology, as well as political science; to strike a balance between ordinal and interval-level measures, varying scale ranges to increase overall sensitivity; to leave all the measures unweighted, since weightings are so difficult to justify; to avoid measures derived from either events data, owing to inconsistencies of reporting and recording, or survey data, owing to the intractable problems of applying them comparatively; and to include at least two and no more than four measures for each of the eight liberal democratic values—to increase confidence in the validity of the measures.

7. The Polity III Democracy Scale (Jagers and Gurr 1995) and the Freedom House Index of Political Freedom (Freedom House 1997) are the standard aggregate indices of democracy that both place country cases on a single, ordinal scale. In principle, the Polity III scale encompasses electoral and representative institutions, while the Freedom House Index reflects both institutions and political rights, such as freedom of opposition and association.

8. All variables have been scaled from 0 to 1 for ease of presentation, despite the distortions that different scale ranges may introduce.

9. The annual average scores from Polity III (1970–94) and Freedom House (1972–98) were plotted for the 40 cases in this database, with both variables scaled from zero to one. They show a third wave that builds slowly in the 1970s, gains momentum in the 1980s, and accelerates rapidly in the late 1980s and early 1990s. This is the "global trend in the direction of democratization" (Jag-

gers and Gurr 1995, 477) that reaches a “high-water mark” in the early 1990s (Diamond 1997a, 23). But although the number of “electoral democracies” rapidly increased in this way, the number of “liberal democracies” (with higher scores from Freedom House) expanded more slowly (Diamond 1997a, 25).

10. In the 17 old democracies of the database, both the institutional variables and the rights variables remain flat and constant over time. Since these are all liberal democracies where individual and minority rights are mainly protected under the rule of law, this picture of “no change” (not shown here) conforms to our expectations.

11. By a minimal and strictly procedural definition, Colombia is an old democracy. But its electoral politics became fully competitive again only in 1974—at the beginning of the third wave—and this makes it appropriate for the small-N inquiry.

12. Raw scores rather than scales will be used for all individual country measures.

13. The measure does not reflect the turning point of 1982, when the opposition gained a majority in the lower chamber and the government permitted direct election of state governors.

14. The return to civilian rule was tightly controlled by the armed forces, which have continued to dominate Guatemalan political life and subvert the electoral process (Jonas 1991, 157). But the electoral system has survived a number of difficult challenges since 1986 (coup attempts in 1988 and 1989 and a “self-coup” by the president in 1993), and an end was negotiated to the civil war (Jonas 1991, 167). So there is some good reason for the measure to remain constant during this time.

15. Even after 1974, however, all cabinet ministers, governors, mayors, and other administrative positions not part of the civil service were still divided equally between the main parties. It was not until 1986 that the system changed to something resembling government and opposition (Kline 1996, 182–83).

16. Improvements include the prohibition of torture in the 1988 Constitution, some prosecutions for rights abuse in 1992, and government endorsement of international agreements to protect rights (Amnesty International 1989, 1993). But these are changes more in principle than in practice.

17. The measure does not reflect some improvements. Human rights procurators have played an important role in the fight against impunity. The demobilization of military commissioners in 1995 reduced military control of justice in the countryside. The presence of the UN Mission to Guatemala (MINUGUA), as part of the peace process, has been a deterrent to human rights abuses (Krznnaric 1999, 10).

18. By the mid-1990s, public order court cases accounted for half of Colombia’s prison inmates, 90 percent of whom were still awaiting trial (Weiner 1996, 35).

19. This variable has been inverted for the purposes of presentation; for example, if military spending is 8 percent of total central government expenditure, the inverted score is 0.92. Less military spending represents higher democratic performance.

20. Hunter shows a decline in spending similar to our database, but her absolute levels of military spending are higher because she excludes the gov-

ernment's internal debt in her calculations of government expenditure (Hunter 1995, 437, n. 46).

21. When civilian replaced military government in 1985, the armed forces retained six cabinet posts and a majority on the National Security Council (CSN) and National Information Service (SNI) (Hagopian 1996, 226; Acuña and Smulovitz 1996, 24–25), but lost some ground in the 1990 restructuring of these two bodies.

22. A measure of accountability may possibly be restored through a negotiated peace process with guerrilla groups. Success has been patchy. One of the principal groups, M-19, was brought into electoral politics, and other accords have been signed on a piecemeal basis. But the issues of military reform, judicial reform, and rights guarantees have not been addressed (Leal Buitrago 1990, 41; Hartlyn 1988, 224–28; McDonald 1997, 11).

23. In this regard, the small-N comparison tends to confirm Barrington Moore's general thesis that the presence of a strong rural oligarchy impedes the emergence of "the Western version of democracy" (1966, 418).

24. It may be objected that property owners are quite "within their rights" to defend their property and do not infringe civil or minority rights in the process. But property rights, especially landed property rights, are legally moot and highly contested throughout much of Latin America, and their defense by the oligarchy is often nothing more or less than a raw assertion of oligarchic power. For a full account of the legal complexities of land titling and tenure in Brazil see Foweraker 1981, chaps. 4, 5.

25. Military prerogatives are clearly important in these cases, but may not be so everywhere. In the new democracies of Eastern Europe, the consolidated privileges of the *nomenclatura* may have the same salient role. In the same way, property rights are likely to have a different impact on democratic performance in these two contexts (Borneman 1997, 24).

26. It emerges from Linz and Stepan's argument that the rule of law is central to the other four "arenas" of consolidated democracy. On the one hand, "the necessary degree of autonomy and independence of civil and political society must be embedded in and supported by the rule of law." On the other, the rule of law is integral to a "useable state bureaucracy" and a regulated "economic society" (Linz and Stepan 1996, 10–11).

27. This sense of consensus about the rules of the game is clearly linked to Przeworski's notion of "institutionalizing uncertainty" (Przeworski 1986, 58) because the political actors must be convinced of the institutional guarantees that minimize the threat to their longer-term interests. But the notion refers most directly to the reiterative game of electoral democracy, in which today's losers must be able to think of themselves as tomorrow's winners.

28. It is not always clear, however, "who must accept formal democratic rules, and how deep must this acceptance run" (O'Donnell 1997, 48) and, in particular, whether it is just the oligarchy or the mass of the population that must support democracy. Although most survey data seek out the general attitudes of the population, the Latin American historical record demonstrates that "democracies are overthrown by elite conspiracies, not popular revolt," with loss of popular support neither "a necessary nor sufficient condition for democratic breakdown" (Remmer 1995, 113).

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