Chapter 2

Explaining Constitutional Change:
Comparing the Logic, Advantages
and Shortcomings of Static and
Dynamic Approaches

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There is a large and diverse body of empirical research on constitutional change and ‘new constitutionalism’ in contemporary societies, yet a general theory of constitutional change is still lacking. Researchers interested in democratic constitutionalism are confronted with various competing assumptions and explanations regarding particular, often unrelated, cases. In order to facilitate cross-referencing and conceptual consistency in the study of new constitutionalism in Latin America, this chapter provides an overview of the main theoretical perspectives on constitutional change beyond the specific regional context of Latin America, classifies the existing studies on constitutional change, and discusses their individual advantages and shortcomings.

The chapter distinguishes between static and dynamic approaches according to their logic of explanation (not according to issues of explanation), thus contributing to the current conceptual discussion in comparative research on institutional change, and constitutions in particular. Static or constant-cause approaches explain constitutional change using particular variables, or sets of variables, the causal effect of which on constitutional continuity or change is always the same. X affects Y, therefore variations of X result in variations of Y. Dynamic approaches explain constitutional change as an effect of variables, or sets of variables, which may vary over the course of time. According to them, variations of X do not necessarily result in variations of Y, depending on the broader context.

The chapter first describes the current status of research on constitutional change, its systems of classification, and outlines a framework to evaluate the explanatory power of different approaches to researching the topic. The second part provides a review and evaluation of static approaches. The third part investigates dynamic approaches; and the fourth part, based on a comparison of the main features of the approaches, specifies how each of them contributes to theory-building about constitutional developments in Latin America and other regions of the world.
Classifying and Evaluating Studies on Constitutional Change

The term ‘new constitutionalism’ captures the fact that constitutions have spread all over the world, enhanced judiciable civil, political, economic, social and cultural rights, and changed the relationship between central states and regions, and between the state and its citizens. This trend has also increased the importance of constitutional courts, ombudsmen and other institutions which supervise compliance with norms in practice (Roesler 2007).

Accordingly, the research on constitutions has grown. Bibliographies and reviews of studies on constitutionalism show that many empirical studies have analysed constitutional change in various ways and with different goals in mind (Law 2010, Bufacchi 1995, CEPC 2003). Some of these studies focus on the effects of particular institutions established by constitutions (Sartori 1994, Lane and Mæland 2000, Congleton and Swedenborg 2006), while others describe their symbolic character and integrative function (Vorländer 2002). Some analyses investigate how constitutional decisions are taken in the age of globalization and transnational, international and supranational law (Wiener 2008, Weiler and Wind 2003, Slaughter and Burke-White 2002), while others are more focused on how constitutions are created and changed after revolutions or more general processes of political transformation (Elster, Offe and Preuss 1998). Comparative studies on constitutional change include comparative case studies (Weaver 2000, Manfredi 1997, Kaiser 2002, Lorenz 2011), and analyses based on a large number of cases (Lutz 1994, Negretto 2009, Roberts 2008, Lorenz 2005, Ferejohn 1997, Law and Versteeg 2011).

Despite these tremendous efforts to research constitutional change empirically, there is still neither a satisfactory general theory on constitutional change nor a consistent terminology or typology of constitutional change in political science or law (Grimm 1994: 316, Voßkuhle 2004: 458). Most of these analyses are case studies, which attempt to explain a particular constitutional reform or its effects within a given context. Studies of this type often focus much more on the empirical details of the case than on overarching theoretical questions, failing to link systematically their findings to other case studies. Such studies use various sets of explanatory variables that are operationalized in different ways, while ignoring variables which are considered to be of great importance in other theoretical or empirical analyses of constitutional change. As a result, many case studies produce a wealth of empirical data but are inefficient when it comes to exploiting this wealth to enrich theory-building on constitutional change or comparative empirical research.

Large-N comparative studies of constitutional amendments and replacements are significantly fewer in number because they must rely on difficult to obtain homogeneous and valid data for a large number of cases. These studies often test hypotheses which, though theoretically convincing, fail to explain constitutional change empirically and are more or less inconsistent with the observations made by experts on particular cases and countries. The absence of data on real events or
on the games that real actors play leads to an inefficient exploitation of advanced methodological techniques, and to the creation of elegant but unrealistic theories (Green and Shapiro 1994). Therefore, researchers who work with particular cases often hesitate to pursue this line of research.

In order to advance theory-building in the field of constitutional politics, it is necessary to promote and facilitate communication and coordination among researchers regarding their theoretical assumptions and foci of empirical research. This chapter therefore evaluates the logical structure of existing studies on constitutional change. It classifies static and dynamic approaches, and notes the advantages and shortcomings of each one. This classification departs from previous comparative analyses of studies on institutional change, of which studies on constitutions are a sub-species. Studies on institutional change are mainly divided into rational choice, historical and sociological approaches (Hall and Taylor 1996, Immergut 1998). This classification was based on the different understandings of what institutions are and the sources of change in each approach. As a result of fruitful academic debate, these approaches were reflected upon more consciously, so that points of tangency between them have grown and much cross-borrowing of ideas and methods has taken place (Thelen 1999: 371, Scharpf 1997: 29ff.). All studies on institutions, for example, rely on rational actors. Therefore the classification has become somewhat vague.

Today, the differences between static and dynamic models to explain institutional change1 are more striking because these approaches often use the same variables (culture, ideology or rational choice, among others) in different ways and contexts, which results in contradictory predictions and explanations. Some rational choice theorists, for example, derive their assumptions on institutional change from models of ‘one-shot games’ with a small set of descriptive variables which are meant to explain the outcome. This is a kind of static modelling. Dynamic models consider the broader context and acknowledge the influence of time, or of recurring interactions, on the effect of these variables. This difference is explained in more detail in the following sections.

The classification of static and dynamic approaches brings together studies on constitutional change with discussions in other policy fields that have focused increasingly on processes, time and sequences (Cohen et al. 1972, Kingdon 1995, Pierson 2000, Rueschemeyer and Stephens 1997, Thelen 2003). This chapter also uses universal criteria to evaluate the structure of the approaches used to explain constitutional change (De Vaus 2001), specifying which concept of constitutional change they adopt, their logic, the elements and level of complexity (number of variables and links) of explanation, the scope of cases which the approach attempts to explain, the level of abstraction, and the testability of the approaches for more

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1 Thelen proposes a quite similar classification of ‘constant-cause explanations’ and ‘path-dependency explanations’ (Thelen 2003: 214ff.): However, since dynamic models of explanation do not always focus on path dependency (see below), this chapter uses the term ‘dynamic approaches’.
than one case. These criteria relate to the general structure of the approaches. Methodological questions are left out because any theory and research design may be combined with any method of data collection, with qualitative or quantitative research methods (De Vaus 2001), which are therefore not specific to particular approaches. The results of the systematic evaluation of the approaches can be used to identify the advantages and shortcomings of each, as well as to provide recommendations regarding their suitability for specific research questions and the appropriateness of the combined application of these approaches.

**Static Approaches: Clear, Universal, Limited Variables**

Static approaches operationalize constitutional change as the formal adoption of a constitution or constitutional amendment. This political decision is explained using variables or sets of variables which consistently cause the same effects. These approaches, although generally open to testing many variables, often focus on one or a small number of relatively abstract possible causes, such as culture, constitutional rigidity or federalism. The explanatory models developed are quite clear and simple. This allows for comparisons of many cases and increases the probability that the models may be universally valid, that is, able to explain many, if not all, cases.

On closer examination, static approaches often focus on either the genuine structural causes of change or on the processing of these causes by political actors, which is restricted by existing institutional norms. The first group of studies starts from the premise that constitutions are based on, and reflect, particular ideas. They are seen, for example, as institutional solutions to ensure political efficiency, as resulting from power relations, or as reflecting cultural norms. Accordingly, shifts in the underlying conditions must result in changes to the constitution, which would otherwise risk being abandoned and substituted by another (Elkins, Ginsburg and Melton 2009, Negretto in this volume). These explanatory models are based on the implicit or explicit assumption that constitutions are in equilibrium with the ‘founding’ variables. Changing the constitution is a way to preserve or to re-establish equilibrium with the underlying variables (Thelen 2003: 212).

At the same time, many scholars (and politicians) believe that democracy can be ‘designed at the drawing board’ by wise political actors (Sartori 1994) or exported from established democracies to authoritarian states. Democratization studies conceptualize constitutional change as an important prerequisite for reforming political systems as a whole. Democratization must include the introduction of democratic constitutionalism in order to guarantee fundamental rights, free elections, the separation of powers, and the rule of law (Elkins 2010: 973). Constitutional changes in Latin America are therefore often assessed positively.

Another variable that is assumed to be important when explaining constitutional politics and change is the federal or unitary character of a country. Federal constitutions are introduced in heterogeneous countries in order to satisfy
the interests of various social groups. They institutionalize a higher degree of institutional complexity. Even incremental context changes at the federal or state level often result in complex shifts and changes in other policy domains or at another level. The representatives of the various territorial authorities, and elected politicians at the federal level, all have significant influence and have formal means to defend their interests (Behnke and Benz 2009, Riker 1964, Bednar 2005, Livingston 1956). Federal systems are thus constantly facing incentives or pressure to change the constitutional order, so constitutional amendments are more likely to occur. Non-federal systems are less complex, and potentially diverging national or regional interests are not institutionalized. Accordingly, established unitary democracies face considerably fewer incentives and less pressure to change their constitution. This example demonstrates that static approaches to explain constitutional change may well recognize certain dynamics in theorizing about the interrelations between the variables, but their overall effect is formally modelled as constant.

Constitutional culture or tradition is also often considered to have a significant and quite constant influence on constitutional change. It has been noted that different constitutions have resulted from the differences between the concepts underlying US constitutionalism, Anglo-Saxon rule of law, the German Rechtsstaat and the French état de droit over ‘how much’ rule of law a democracy needs and over the nature of sovereignty (Rosenfeld 2001, Offe and Preuss 1991). Constitutions preserve these differences and have a strong impact on political decisions and on the national identity of the constitutional community (Ackerman 1989: 477, Law and Versteeg 2011). Constitutional change may serve to protect the community against new norms imposed by external forces or to preserve the compatibility between the polity and the constitutional culture when facing moderate shifts in the interpretation of the constitution and its principles (cf. Smith 2003, Vorländer 2002, Gebhardt 1999, Brodocz 2003).

As stated previously, another group of studies which uses a static approach focuses more on the factors determining how actors process incentives and pressures to change the constitution. These studies do not necessarily follow the logic of equilibrium solutions, but rather suggest that institutional provisions for amending a constitution determine how the various incentives for change are translated into constitutional amendments or replacements. It is one of the fundamental provisions of all constitutions that all modifications and amendments must be approved by a political majority. Many researchers assume that high procedural obstacles to constitutional change cause lower constitutional amendment rates, irrespectively of the particular incentives to change the constitution emanating from its environment (among others, Acosta Romero 1993: 13, Lutz 1994, Ferejohn 1997: 523, Maddex 1996: 13, Manfredi 1997: 132, Weaver 2000, Spiliotopoulos 1995; Venizelos 1999). Indeed, in a one-time interaction, the larger the number of actors involved in the decision-making process, the higher the cost of consensus-building, the higher the value of the forgone benefit of not undertaking certain other activities in that time, and the higher the risk that single political actors will veto a proposal.
The quality and length of the constitution are two other, more or less static, characteristics believed to have an influence on the probability of constitutional change. High quality constitutions are hypothesized to change less frequently, while constitutions which have certain shortcomings are believed to be changed more often (Sartori 1994). Extensive constitutions are theorized to be changed more often because they contain more provisions which may not stand the test of time, or may no longer be compatible with the interests of actors; by contrast, less extensive constitutions are considered to be more flexible and open to implicit (informal) change by interpretation which makes formal change unnecessary (Lutz 1994, Elkins, Ginsburg and Melton 2009). Here, the quality of an established constitution and its length are factors which constantly influence the processing of incentives and pressure for change.

The effect of the particular circumstances in which a constitutional amendment is proposed on the processing of the amendment proposal is another constant cause for constitutional change. Such variables include the partisan veto structure, the discrepancy or congruence between the veto players’ preferences, and the scope of reform of the amendment proposal. Rationalist and institutionalist studies explain constitutional change on the basis of the configuration of veto players who benefit from a specific institutional configuration (Elster 1993, Holmes 1993: 196 ff, Sejersted 1993: 135, Bogdanor 1988: 4, Lane and Mæland 2000, Congleton 2006, Congleton and Swedenborg 2006, Laffin 2000). These studies suggest that actors generally adopt only such constitutional changes that promise a benefit for them, and that they prefer incremental modifications over extensive reform because the effects of the former are easier to predict (Voigt 1999, Sejersted 1993: 135, North 1990).

The age of a constitution is another variable that is quite often used to explain constitutional amendments or replacements. It has been assumed that the older a constitution is, the more likely it is that it will be changed as a result of context changes (Roberts 2008, among many others). However, the mechanism behind the assumed correlation is not clear. What exactly causes constitutional change? The age of the constitution may be a dummy for various factors of change, including a change of ideas, integration into supranational organizations, and shifts in the distribution of power, among others.

Because the set of variables is limited and the number of cases (observations) is high, there is the risk of misinterpretation. It is often argued, for example, that constitutional changes are an effect of democratization (Roberts 2008, for example). Indeed, this seems plausible at the first glance. However, the variable democratization is often operationalized and measured by using the rankings of Freedom House, the European Union (EU) or some other institution. These base their evaluation on the presence of formal institutional reform towards greater freedom or free elections, which become manifest in constitutional changes, inter alia. This means that the explanatory variable – democratization – already contains the aspect of institutional change, such that the explanation of institutional change becomes circular. Both the independent and the dependent variable measure the same thing.
Further, some Latin American cases indicate that the importance of constitutional change for democratization may be overestimated. Bolivia and Argentina maintained a constitution in 1982 and 1983 that was enacted (Bolivia 1967) or modified (Argentina 1972) during an authoritarian period; in Chile the 1980 constitution of the Pinochet dictatorship was simply amended in 1989. According to Elkins, Ginsburg and Melton (2009), roughly 19 and 27 per cent of transitions to democracy and authoritarianism, respectively, coincide with constitutional change, and authoritarian states often introduce constitutions with democratic elements for ‘window dressing’ purposes (see also Elkins 2010: 973f.).

All in all, static approaches are very useful when explaining patterns of constitutional change across different political systems and constitutional principles. Other great advantages are that they are testable for many cases and helpful in determining the hierarchy of importance of different possible causal factors. Some empirical analyses have found strong evidence for their hypotheses. For example, it was shown that in established democracies the higher the degree of political fragmentation, the higher the constitutional amendment rate. Within these democracies, low constitutional rigidity is a necessary but insufficient condition for constitutional amendments (Lorenz 2010).

However, this approach has its limitations. Constant-cause models do not adequately explain why the willingness to cooperate in constitutional politics often changes over time without any modification of the variables responsible for the genesis of the constitution. Nor can they explain the emergence of varying constitutional preferences within a system or a situation. If, say, a particular constitutional culture has significant effects on constitutional development, then why do actors who are influenced by this culture develop diverging constitutional preferences? Further, such approaches do not sufficiently explain why some institutions remain stable despite context changes, while others implicitly change (cf. Thelen 2003: 210).

The empirical evidence for the explanatory power of some of the above variables for constitutional change varies considerably. In general, constitutional amendments and replacements take place much more frequently than conventional constant-cause models suggest. Irrespective of this general trend, cycles of constitutional activism can be observed in many systems, which may not be explained by shifts in the abovementioned explanatory variables. The federal or unitary character of a system, for example, often remains stable while the system experiences phases of constitutional continuity and change. Some recent empirical studies suggest that the effect of institutional obstacles to constitutional amendments, such as required majorities and referenda, has, in fact, been overestimated (Rasch and Congleton 2006, Roberts 2008).

In some cases, the explanation offered is insufficient to account for the entire sample under study. The pattern of constitutional change in federal democracies, for instance, is divided. Most such democracies change their constitutions frequently, while others rarely adopt regular laws to promote explicit constitutional change (the US, Australia and Canada). The evaluation of the investigated sample also
shows that the relationship between rigidity and constitutional change is much more evident in Latin America (Negretto 2009) than in the longer established democracies (Lorenz 2010). Obviously, with partial explanations such as these, we face the well-known methodological problems of having a small number of cases with their own characteristics, and of the uneven distribution of cases.

Because of the lack of adequate operationalizations and comparable data such as the effect of culture, some hypotheses have not been tested systematically for many cases, although important steps have taken in this direction (for example, by Elkins, Ginsburg and Melton 2009). Given this, the great advantage of static approaches – the possibility of testing hypotheses for many cases and of developing universal explanations – cannot be fully exploited in practice. It is not yet clear whether this is due to the current status of empirical research or because the logic of their theoretical foundations is not adequate to explain real-world developments.

**Dynamic Approaches: Multi-Causal, Complex, Detailed**

Like static approaches, dynamic studies conceive of constitutional change as the adoption of a constitution or constitutional amendment. In order to explain it, they take into account different variables at detailed stages of development, such as informal agreements during negotiations, and a change of norms without modifications to the text. This is because they assume that variables do not necessarily have the same effect on constitutional continuity or change at every point in time, and that formal stages of development (such as the adoption of a constitutional amendment) are not the end of the story. Regarding Latin America, for example, it has been noted that introducing or reforming democratic constitutions does not guarantee political change if other context variables are not sufficiently benevolent. Often, constitutional changes even are not intended to ensure the long-term effect of norms but to mobilize short-term public support in a given political situation (cf. Cifuentes 2007; Garzón Valdés 2000).

Obviously, factors that were responsible for the genesis of an institution may be different from those sustaining it over time, which neutralize that institution’s effects in practice and generate pressure or incentives to change it (cf. Thelen 2003: 218). Because of the complex nature of interaction effects, timing and sequencing are important. Detailed process-tracing analyses are therefore useful to identify how configurations of variables affect constitutional development.

While dynamic approaches generally focus on variables similar to those used by static approaches, because they adopt a broader subject of investigation and diverging logic of explanation, they are can use many different variables as potential determinants of constitutional change. Typical elements include the relations and interaction between particular actors within a given institutional context. Actors must be aware of the reasons for change, develop institutional alternatives, and negotiate these alternatives before change can take place (Braun
Other explanatory variables include (sequences of) previous political choices and contingencies, longer historical processes, and varying political and social contexts. The variables are not seen as being independent from each other and are operationalized in various ways, from a relatively low\(^2\) to a high level of abstraction. Their varying configurations are understood as descriptions of specific episodes, or as turning points within longer processes. The inclusion of the different possible variants of various factors covering longer periods of time results in detailed and complex models.

The important added advantage of process-tracing studies is that they examine the dynamics of actors or social structures and their interaction with formal constitutional rules, such as political struggle, compromise, and the diffusion of ideas. Process-tracing studies can explain shifts in actors’ willingness to change the constitution in an unchanged context, the varying amplitude or frequency of constitutional change within a system, and the timing of reform. But before discussing the advantages and shortcomings of static and dynamic approaches, let us illustrate this point by considering a few examples of different types of process-tracing studies.

Historical sociological approaches base their explanations on the analysis of extended periods of time, pointing out the impact of political struggles and crises (Banting and Simeon 1985, Levinson 1995b, Loewenstein 1961), and acknowledging the possibility that factors which were not important during the making of a constitution may become important for constitutional change. Changes in a constitution may become necessary if provisions that were considered appropriate at the time the constitution was adopted have become inadequate because the social, economic and political context has changed (Loewenstein 1961: 21, Bogdanor 1988: 381). Here, changes in the broader context stimulate particular changes in actors’ preferences and lead to institutional change. Crises, domestic change, and changes in the international context such as supranationalization and other phenomena, interact and may together open windows of opportunity for constitutional change. Studies on European constitutionalism, for example, have shown how actors are influenced by past national norms but may develop new perceptions and supranational norms (Wagner 1999). Thus, variables are not seen as universally causing certain effects.

Some studies point out that constitutions are shaped by struggles between classes and other macrostructures, but that constitutional change is mainly the result of the interplay between political elites competing for resources. In Germany, after the adoption of the constitution in 1949, distinct modes of interaction emerged among parties and Länder governments, which allowed a trade-off between party

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\(^2\) The level of abstraction is considered to be low if, for example, a study distinguishes between nominal parties rather than classifying them according to whether they belong to the government or the opposition, or according to their ideological position, party family, electoral success, blackmailing power, or other criteria.
competition, on the one hand, and joint policy-making, on the other. These actors frequently adopted constitutional amendments concerning the redistribution of responsibilities and finances between the federal level and the Länder. The direction of change was always influenced by the particular power relations in place among the actors involved. In the 1990s, for example, diverging partisan majorities in the chambers of parliament made it more difficult for the Christian Democrats, then the ruling government party at the federal level, to achieve their policy goals. Christian Democratic leaders of Länder governments then initiated a public debate on what they called ‘good federalism’, which would make federalism more competitive and give the federal and sub-national levels more decision-making autonomy. This resulted in a slight shift in the public perception of federalism, and when the Social Democrats, in their role as the ruling government party, later faced decision-making problems caused by diverging majorities similar to those experienced by the Christian Democrats earlier, they, too, changed their minds. This opened the way for negotiations of a reform of federalism in Germany which – after complicated interactions which cannot be discussed here in detail – eventually led to more competitive federalism (Scharpf 2009).

Dynamic models, however, may also focus on a smaller set of variables, such as the interaction between decision-making costs and the rigidity of amendment procedures. It has been argued that, given a constant constitutional rigidity, each constitutional amendment adopted within a specific period of time lowers the de facto threshold for subsequent amendments because it decreases the associated decision-making cost. The reason for this effect is that an infrastructure of negotiation emerges, which can be used for other negotiations later. Actors also tend to have more trust in each other’s willingness to cooperate because the stable overall institutional framework allows them to anticipate future interactions without fearing instability as a possible negative externality of constitutional change. All else being equal, the more stable the overall institutional framework and the shorter the period of time since the last constitutional amendment, the higher the probability that a constitutional amendment under negotiation will be adopted. Over time, this scale effect diminishes the impact of institutional restrictions to change, favouring a slight overall increase in the number of constitutional amendments – but only to a certain point – while constitutional rigidity remains the same (Lorenz and Seemann 2009). This model of explanation is dynamic because the individual variables do not cause constant or linear effects, it is their interaction which disturbs such causal relationship and results in non-constant and non-linear effects.

Other empirical analyses of constitutional politics emphasize the role of negotiation dynamics in explaining constitutional change (Braun 2009, Schultze 2000, Schönlaub 2003, Elster 1993, Elster et al. 1998), including sequences of varying interaction orientations (cf. Scharpf 2003: 10ff). During the first negotiation phase, proposals for even minor alterations of the constitution cause major conflicts and actors are only willing to cooperate on issues which further their own interests. If the agenda-setter is still able to step into negotiations at this point, the
players are more inclined to compromise and to argue (instead of bargaining) in the second phase. Often, constitutional provisions are agreed upon, even if they require considerable changes to the powers and routines of the participants and thus are very costly (Joerges and Neyer 1997; Scharpf 1988, 2003, and Closa 2004). This leads to an asymmetry of possible benefits which puts the agenda-setter at an advantage. During the competitive last stage of negotiations, actors agree to cooperate if they expect gains from the amendment or from side benefits; if the adoption is compatible with tactics in political competition; and if the agenda-setter is willing to make necessary modifications or to accept demands symbolically. So the conditions for compromise vary over time despite a stable overall context.

Inter-venue effects during negotiations and the emergence of a path of negotiation also have an influence on constitutional change, in that they reduce the number of perceived options for constitutional change. For example, small gains are more readily accepted during the final stage of negotiations than during the first negotiation phase because the actors evaluate these gains in relative rather than in absolute terms, comparing the gains with those of others who negotiated previously with the agenda-setter. Risk aversion is also lower in this phase than in the first stage. Both phenomena are obviously influenced by the fact that the actors want what is often a protracted negotiation process to result in a decision rather than a non-decision. When a constitutional amendment is finally adopted, the distribution of gains that follows is shaped substantially by the first proposal of the agenda-setter and by a number of agreements made during the competitive stage of negotiations; while compromises reached during the cooperative stage of negotiations usually focus on operational and legal issues of implementation, not on alternative ways to reach the political aims or on the suitability of these political aims as such (Lorenz 2011, Weaver 2000).

Dynamic approaches are well-suited to explain how decisions on constitutional change and the details of these decisions are influenced by fluid configurations of variables; and how and why interaction effects between variables may eliminate the effect of single structural determinants such as culture, federalism and constitutional rules. Dynamic approaches make it easier to explain why constitutional development does not always follow the predicted course or why, contrary to what constant-cause approaches suggest, constitutions are immune to certain incentives or pressures to change.

However, the main advantage of dynamic approaches – their complexity – is also a major obstacle when trying to formulate a consistent general theory of constitutional change. In general, the more variables, levels of analysis, and interplays between variables over the course of time are included in the explanatory model, the more difficult it becomes to really understand all the interactions among the variables, to avoid the problem of collinearity (some independent variables are approximate or linear combinations of some other variables), and to ensure that the general model makes sense. Even if the independent variables are logically independent from each other, often more than two variables co-vary, which makes it impossible to determine and confirm the hierarchy of the causal factors. And
even where specific combinations of causes for constitutional change can be isolated for specific cases, such combinations may be so particular that they cannot be tested for many cases and so the assumptions regarding causal relationships cannot be considered universally valid.

Sometimes even complex analyses culminate in ‘thin’ diagnoses of the main cause of constitutional change. This is especially true for the many case studies which identify certain actors as having caused a constitutional amendment or constitutional replacement. Charles de Gaulle, for example, was considered to have ‘caused’ the introduction of the French Fifth Republic in 1958, which gave him and the government more power (Carcassone 1988). At first glance, this is a historical fact, but it is not a causal explanation which can be applied to other cases or be falsified. Even if we focus the explanation on de Gaulle’s intention to maximize power, this is not a valid explanation because many actors strive to maximize their power and do not succeed in introducing (indeed, may not even want to introduce) a constitution comparable to that of the Fifth Republic. So explanations which rely on certain persons are precise only at first glance.

As with static approaches, the assumed effect of other key variables is often plausible but too unspecific to be empirically testable (cf. Grimm 1994: 316). Political instability and crisis, which are often believed to cause constitutional change, are vague concepts. What we mean by political instability or crisis depends on subjective evaluations, unless we can define them in precise terms. Therefore, their possible effect on constitutional change can only be measured for more than one case if they are clearly defined and operationalized. But how to determine the type or level of political instability or crisis that inevitably leads either to constitutional change or has no impact whatsoever on a constitution?

It is interesting to note that, unlike static approaches, process-tracing studies generally do not intend to provide comprehensive, universal explanations. A greater willingness to contribute to theory-building would no doubt lead to more joint efforts to resolve the abovementioned problems.

**Recommendations for Use in Comparative Perspective**

Which of the two approaches described in this chapter is best suited to explain constitutional change? Before we summarize their respective advantages and shortcomings, it is important to emphasize that the dynamic or static character of the approaches does not, in itself, imply any specific prediction as to the frequency of constitutional amendment or replacement. Static models may well predict many reforms if the key variables are assumed to stimulate change, while dynamic approaches may predict constitutional continuity if the key variables are assumed to cause path dependency and stalemate. Some authors have argued, for example, that even unfavourable institutional configurations may produce increasing returns and therefore remain stable (cf. Pierson 2000, Thelen 1999: 384 ff.). As already mentioned, both approaches also base their explanations on similar variables.
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<thead>
<tr>
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<th>Static approaches</th>
<th>Dynamic approaches</th>
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<tbody>
<tr>
<td><strong>Subject</strong></td>
<td>Formal adoption of a constitution or constitutional amendment</td>
<td>Various types of change, including implicit change of the constitution</td>
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<tr>
<td><strong>Logic</strong></td>
<td><em>First assumption:</em> Constitutions are the result of specific variables. If the variables change, then the constitution also changes. <em>Second assumption:</em> All constitutional change must pass through an institutional, actor-related bottleneck.</td>
<td><em>Third assumption:</em> Variables that lead to the genesis of a constitution may be different from those which determine its subsequent development. <em>Fourth assumption:</em> The variables must not necessarily have the same effect at every point in time.</td>
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<tr>
<td><strong>Elements</strong></td>
<td>Federal/unitary system, culture, constitutional rules and power relations, among others.</td>
<td>See under static approaches, plus contingencies, interactions and embeddedness.</td>
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<tr>
<td><strong>Level of abstraction</strong></td>
<td>Medium-to-high</td>
<td>Low-to-high</td>
</tr>
<tr>
<td><strong>Complexity</strong></td>
<td>Low-to-medium</td>
<td>Low-to-high</td>
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<tr>
<td><strong>Universality</strong></td>
<td>Medium-to-high</td>
<td>Valid for particular cases or mid-range</td>
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<tr>
<td><strong>Testability</strong></td>
<td>Good</td>
<td>Limited</td>
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<tr>
<td><strong>Useful for explaining</strong></td>
<td>Long-term patterns of change across different political systems and different constitutional norms; hierarchy of causal factors</td>
<td>Change that contradicts the previous influence of variables; varying willingness to implement change and frequency of change in unchanged contexts; the timing of reform</td>
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<tr>
<td><strong>Not useful for explaining</strong></td>
<td>Temporal variation within political systems; the timing of change; implicit change; change without changes in the ‘founding variables’</td>
<td>Hierarchy of the causal factors; many cases (if the model is moderately or highly complex)</td>
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The difference between the two approaches used to explain constitutional change consists in their logic of explanation rather than in the expectation of change or continuity and the explanatory variables. Table 2.1 summarizes the observations detailed in this chapter regarding the main explanatory features. The first assumption, adopted by static approaches, is that constitutions are results of particular variables. If these variables change, then the constitution also changes. The second assumption describes this relationship more precisely by adding
that all constitutional change must pass through an institutional, actor-related bottleneck. Both these assumptions are widely accepted in political research on democratic constitutionalism. The third basic assumption used in dynamic approaches is in conflict with the first assumption in that it asserts that variables which lead to the genesis of a constitution may be different from those which determine its subsequent development. However, the possibility expressed in this may be implies that the first assumption might also be true. The same holds for the fourth assumption, which states that all variables do not necessarily have the same effect at every point in time. The latter assumption may not contradict the first and third assumptions, but it significantly reduces their ability to explain constitutional change, thus broadening the focus of explanation to include a larger array of possible explanatory variables in various possible explanatory configurations.

The first and second assumptions may also result in complex explanatory models (although actually they are often less complex), but dynamic approaches allow for more elements to be taken into account, including contingencies, interaction effects of variables, and varying configurations of variables over time. The level of abstraction of both approaches is medium to high, but in practice there are many applications of a dynamic approach with a low level of abstraction. While hypotheses derived from static approaches generally can be tested easily because of the lower level of complexity involved, the findings from dynamic studies can only be tested to a certain degree. However, unlike static approaches, dynamic studies usually do not intend to provide universal explanatory models anyway.

This comparison of the explanatory features of static and process tracing approaches suggests that each provides valuable insights into the relationships between actors, institutions and the broader context, and their effects on constitutional change and continuity. Static approaches are particularly well-suited to identify long-term patterns of constitutional amendment and replacement across different political systems and different constitutional norms; and are better able to determine the hierarchy of causal factors. Ironically, however, political science has thus far failed to exploit this key advantage and establish a general explanation for constitutional change that can be verified empirically for a high number of cases.

However, this theoretical gap can be filled by using more detailed approaches that include time-related variables, which makes them well-suited to explain how decisions about constitutional change, and the details of these decisions, are influenced by dynamics of interaction between the variables; and how and why these interactions and contingencies influence the effect of culture, constitutional rules or federalism, as hypothesized by static approaches. Dynamic approaches can explain a varying willingness to implement change and the frequency of change in unchanged contexts as well as the timing of reforms. However, the additional insights provided by these approaches, while satisfying the demand for greater in-depth knowledge and complex explanations, may not be testable for other cases if they are very specific; and they may fail to identify the hierarchy of influence of the selected variables.
The above comparison allows us to make some recommendations regarding the use of these approaches. Studies on constitutional stability and change should be designed with due consideration for the above described advantages and shortcomings, and for the results of other studies. Ideally, such studies should always prove whether the approaches really arrive at diverging explanations of a given empirical phenomenon. If the explanations or predictions differ only slightly or establish different foci, it is reasonable to use a static approach because it is less demanding with regard to data collecting and processing and has strong methodological advantages. However, if they are in conflict, then it should be investigated in depth and for more cases which one of the alternative explanations is more suitable.

Notwithstanding this general recommendation, each approach is particularly useful for certain research questions. Dynamic approaches are the most appropriate when explaining the varying willingness to implement change, and the frequency of change within systems and unchanged contexts; and the underlying political mechanisms of constitutional change and continuity. Static approaches do not work in such cases. They are more appropriate when the main research interest is to identify general patterns of constitutional change across political systems with different constitutional norms, and to determine a causal hierarchy of determinants. Provided they are employed in such a way as to complement and challenge each other, both approaches combined have the potential to contribute to theory-building.

**Concluding Summary**

Inspired by the apparent absence of a general theory of constitutional change, this chapter has compared the structure, advantages and shortcomings of existing studies beyond Latin America, and assessed their contribution to theory-building. To this end, existing studies were classified as static or dynamic in approach, because assuming a constant or dynamic effect of certain independent variables may result in competing predictions and is therefore the most obvious distinctive feature of the existing studies on constitutional change.

It was shown that static approaches often base their explanatory models on a limited set of variables, formulate clear hypotheses, and attempt to develop universally valid explanations; by contrast, dynamic approaches propose multi-causal, detailed, complex models to explain constitutional change. While both approaches use structural and institutional variables to explain formal constitutional change or stability, dynamic approaches tend to operationalize constitutional change on a broader scale by highlighting interrelations between actors, contingencies and interactions of variables. They tend to use a lower level of abstraction and, in contrast to static approaches, are intended to develop mid-range theories rather than universal ones. The testability of static models of explanation is better.
What does this mean for those interested in studying new constitutionalism in Latin America? Based on the comparison, it is recommended that one should always consider whether static or dynamic approaches would result in competing explanations for a given empirical phenomenon, or in competing predictions concerning the results of given sets of variables. If they do compete, the appropriateness of the alternative explanations should be investigated in depth. In general, the use of a static approach has methodological advantages when it comes to identifying general patterns of constitutional change across political systems, and different constitutional norms and a causal hierarchy of determinants. If, for example, strong constitutional improvements of minority rights and the introduction of direct democracy do not go hand in hand with changes in practice, then such approaches could demonstrate that an authoritarian environment hampers compliance with constitutional rights. But they cannot explain why rights provisions were improved if that authoritarian environment remained constant. The use of dynamic approaches is recommended where the aim of research is to explain this varying willingness to implement constitutional change, and the frequency of change in unchanged contexts. They are also suitable to explain the underlying political mechanisms of constitutional change and continuity. There is considerable potential for complementarity between both approaches to contribute to theory-building, so they may be combined.

References


