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GOVERNANCE *and* THE LAW

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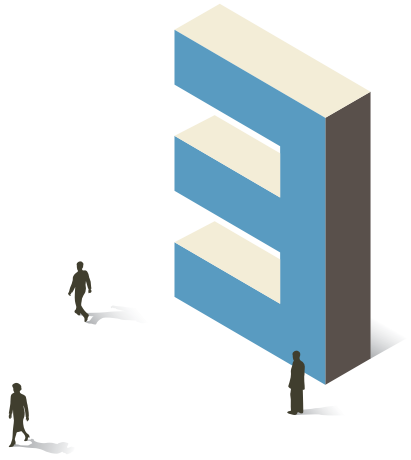
CHAPTER 3

The role of law



Long before the Code of Hammurabi set the law for ancient Mesopotamia, people subjected themselves—sometimes by cooperative agreement, sometimes under threat of force—to rules that would enable social and economic activities to be ordered. As societies evolved from close-knit kinship groups to larger and more diverse communities with more complex activities, the need for more formal rules increased (Fukuyama 2010). In modern states, law serves three critical governance roles. First, it is through law and legal institutions that states seek to *order the behavior* of individuals and organizations so economic and social policies are converted into outcomes. Second, law defines the structure of government by *ordering power*—that is, establishing and distributing authority and power among government actors and between the state and citizens. And third, law also serves to *order contestation* by providing the substantive and procedural tools needed to promote accountability, resolve disputes peacefully, and change the rules.

It has long been established that the *rule of law*—which at its core requires that government officials and citizens be bound by and act consistently with the law—is the very basis of the good governance needed to realize full social and economic potential. Empirical studies have revealed the importance of law and legal institutions to improving the functioning of specific institutions, enhancing growth, promoting secure property rights, improving access to credit, and delivering justice in society.[1]

As everyday experience makes clear, however, the mere existence of formal laws by no means leads to their intended effects. In many developing countries, the laws on the books are just that; they remain unimplemented, or they are selectively implemented, or sometimes they are impossible to implement. Governments may be unable to enact "good laws"—that is, those reflecting first-best policy—or "good laws" may lead to bad outcomes. And law itself may be used as a means of perpetuating insecurity, stagnation, and inequality. For example, for decades South Africa sustained a brutal system of apartheid rooted in law. It also has become common for political leaders in illiberal regimes to legitimize nondemocratic rule through changes to the constitution, such as amendments that extend term limits. Every day, actions that exert power over others, such as displacing the poor from their land, detaining dissidents, and denying equal opportunities to women and minorities, are taken within the authority of the law. In well-documented cases, laws intended to secure property rights have served to privilege powerful actors by allowing them to seize land and register it at the expense of rural farmers, or to perpetuate class systems and power relations.[2]

Law can be a double-edged sword: although it may serve to reinforce prevailing social and economic relations, it can also be a powerful tool of those seeking to resist, challenge, and transform those relations.[3] At the local, national, and global levels, states, elites, and citizens increasingly turn to law as an important tool for bargaining, enshrining, and challenging norms, policies, and their implementation. By its nature, law is a device that provides a particular language, structure, and formality for naming and ordering things, and this characteristic gives it the potential to become a force independent of the initial powers and intentions behind it, even beyond the existence of independent and effective legal institutions. Law is thus simultaneously a product of social and power relations and

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a tool for challenging and reshaping those relations. Law can change *incentives* by establishing different payoffs; it can serve as a focal point for coordinating *preferences and beliefs*; and it can establish procedures and norms that increase the *contestability* of the policy arena.

Law and the policy arena

Like policy, law does not live in a vacuum. Following the discussion in chapter 2, the nature and effectiveness of laws are primarily endogenous to the dynamics of governance in the policy arena. The ability of law—"words on paper"—to achieve its aims depends on the extent to which it is backed up by a credible commitment in order to coordinate expectations about how others will behave and to induce cooperation to promote public goods. This ability in turn is shaped by the interests of elites and by the prevailing social norms.

The task of defining law has captured the minds of legal scholars, philosophers, and sociologists for centuries. H. L. A. Hart (1961, 1) observed that "few questions concerning human society have been asked with such persistence and answered by serious thinkers in so many diverse, strange and even paradoxical ways as the question 'What is law?'" Theorists have debated the essence of law for centuries, including the extent to which law refers to custom and social ordering, requires state-backed coercion, and encompasses notions of justice (box 3.1).

This Report sidesteps these philosophical debates and uses the term *law* or *formal law* in its most conventional sense to mean positive state laws—that is, laws that are officially on the books of a given state—at the national or subnational level, whether they were passed by a legislature, enacted by fiat, or otherwise formalized. Law here means the de jure rules. The operation of law requires a *legal system* composed of *actors* and *processes* whose function it is to make, interpret, advocate, and enforce the law. This system includes legislatures, judicial and law enforcement institutions, administrative agencies, as well as the legal profession, advocates, and civil society groups.

In all societies, state law is but one of many rule systems that order behavior, authority, and contestation. These rule systems include customary and religious law, cultural and social norms, functional normative systems (rule systems developed for the common pursuit of particular aims such as sports leagues or universities), and economic transactional normative systems (Tamanaha 2008). Such legal and normative pluralism (box 3.2) is neither inherently good nor bad: it can pose challenges, but it can also generate opportunities.

Plural normative systems can complement state laws by providing order where state institutions are not accessible, by alleviating the burden on state

Box 3.1 What is law?

Countless theorists have attempted to define law. The definitions generally fall into one of three categories, which were initially set forth two millennia ago in the Platonic dialogue *Minos*: (1) law involves principles of justice and right; (2) law is an institutionalized rule system established by governments; and (3) law consists of fundamental customs and usages that order social life. Adherents of the first category are natural lawyers such as Thomas Aquinas, who assert that the defining characteristic of law is its morality, justice, and fairness. Evil legal systems or evil laws are disqualified as law in this view. The second category aligns with H. L. A. Hart and other legal positivists, who base their definition on the existence of a legal system that consists of substantive laws (primary rules) and laws governing how those rules are made (secondary rules), without regard for the justness of the law. Under this approach, evil legal systems count as law, but customary law and international law, which lack centralized enforcement systems, are not considered fully legal. The third category is represented by anthropologists and sociologists such as Eugen Ehrlich and Bronislaw Malinowski, who focus on customary law or living law. They reject the notion that law must consist of an organized legal system and instead recognize that the central rules by which individuals abide in social interactions count as law. Three key fault lines run across these conceptions of law: the first regarding the normative value of law, the second the systematic form of law, and the third the function of law.

Source: Brian Tamanaha, Washington University in St. Louis.

Box 3.2 Legal and normative pluralism

The phenomenon of "legal pluralism"—the coexistence of multiple legal systems within a given community or sociopolitical space—has existed throughout history and continues today in developing and developed countries alike. Modern forms of legal pluralism have their roots in colonialism, through which Western legal systems were created for colonists, whereas traditional systems were maintained for the indigenous population. That traditional or customary law still dominates social regulation, dispute resolution, and land governance in Africa and other parts of the developing world is well documented. In some cases, customary law, including a variety of traditional and hybrid institutional forms of dispute resolution, are formally recognized and incorporated into the legal system, such as in Ghana, South Africa, South Sudan, the Republic of Yemen, and several Pacific Islands states. In others, such forms continue to provide the primary means of social ordering and dispute resolution in the absence of access to state systems that are perceived as legitimate and effective, such as in Afghanistan, Liberia, and Somalia. Customary legal systems reflect the dominant (yet evolving, not static) values and power structures of the societies in which they are embedded, and as such are often thought to fall short of basic standards of nondiscrimination, rights, and due process. The extent to which they are considered legitimate and effective by local users is an empirical question and a relative one in light of the available alternatives.

A further source of normative pluralism is social norms—generally accepted rules of behavior and social attitudes within a given social grouping. Although they may be less visible than codified laws, they are highly influential. A vast literature documents how social norms derived from communal and identity groups, professional associations, business practices, and the like govern the vast majority of human behavior.[a] Social norms are a fundamental way of enabling social and economic transactions by coordinating peoples' expectations about how others will act. Social sanctions, such as shame and loss of reputation, or at times socially sanctioned violence, are a powerful means of inducing cooperation to prevent what is regarded as antisocial and deviant behavior (Platteau 2000).

Yet another source of normative pluralism is generated by today's globally interconnected world, in which a multitude of governmental, multilateral, and private actors establish and diffuse rules about a wide range of transactions and conduct (see chapter 9). Increasingly, the local experiences of law are informed by these broader rules covering topics such as trade, labor, environment, natural resources, financial institutions, public administration, intellectual property, procurement, utility regulation, and human rights. These rules can take the form of binding international treaties and contracts (hard law) or voluntary standards and guiding principles (soft law). These rules may reinforce, complement, or compete with state law to govern public and private spaces (Braithwaite and Drahos 2000; Halliday and Shaffer 2015).

Source: WDR 2017 team.

a. Ellickson (1991); Sunstein (1996b); Basu (2000); Posner (2000); Dixit (2004).

institutions, or by enabling diversity of preferences. For example, informal mediation of land disputes by community authorities, customary or religious determination of personal and family matters, and arbitration of contract disputes by business associations complement the state legal system in many countries. However, in some cases multiple rule systems may create confusion, undermine order, and perhaps lead to perverse outcomes. These issues could arise when people can no longer rely on the expectation that others will act in accordance with a certain set of rules (Basu 2000). In West Africa, violent communal land conflict is 200–350 percent more likely where there are competing legal authorities because the lack of certainty reduces incentives to solve disputes peacefully (Eck 2014). Where formal state laws differ sharply from the content of other prevailing social norms and rule systems, they are less likely to be obeyed and may undermine trust in the state (Isser 2011).

Finally, pluralism can help pave constructive pathways to development outcomes by enabling contestation and the shaping of preferences. Throughout history, social entrepreneurs and clever intermediaries have proven to be deft at opportunistically selecting from among legal and normative claims and authorities to advance their aims.[4] Thus legal pluralism can serve to expand the languages and sites in which contests over power are waged. In India's

Gujarat and Uttar Pradesh states, advocate groups established informal women's courts (*nari adalat*) to provide an alternative legal avenue for women subjected to domestic violence. These courts enabled women to draw on community norms, state law, and international human rights to contest unequal power relations and to shape emerging norms (Merry 2012).

The interaction of law, norms, and power is fundamental to understanding how law works to underlie persistence or change in the dynamics of the policy arena across its three core roles, to which we now turn.

Ordering behavior: The command role of law

In this role, law is an instrument of policy. It is the means by which governments codify rules about how individuals and firms are to behave in order to achieve economic and social policy outcomes, including in the criminal, civil, and regulatory domains. What makes these laws—essentially words on paper—lead to the expected outcomes, or not? How do laws interact with power, norms, and capacity to create incentives, change preferences, and generate legitimacy? Although there is agreement that the legal system affects economic performance, there is no consensus in terms of *how* it affects performance (box 3.3). This section draws on the legal, sociological, and economic scholarship to look at three interrelated ways that law serves to induce particular behavior, and why these may fail. These are the *coercive power of law*, the *coordinating power of law*, and the *legitimizing power of law*. Although they operate with distinct logic, these three mechanisms rarely work alone but rather in joint ways that interact with power, norms, and capacity to provide the commitment and collective action needed to produce results.

The coercive power of law depends on the existence of a credible threat of being caught and punished or a credible commitment to obtaining a reward for compliance.

The coercive power of law: Incentivizing behavior change through coercion or sanctions

Perhaps the most conventional reason that people obey the law is fear of sanctions.[5] If people, acting according to their narrow self-interest, do not behave in a socially desirable way, sanctions can be used to induce cooperation by changing incentives. In other words, the coercive power of law shapes the options available to people by making some actions infeasible or just too costly. The traditional law and economics approach uses a cost-benefit analysis: people will obey the law as long as the cost of noncompliance (factoring in the likelihood of being caught) is higher than the benefits. Thus state bureaucrats will refrain from accepting bribes if the cost and likelihood of being caught are higher than the benefit of accepting the bribe. Manufacturing companies will comply with environmental regulations if there is a high likelihood of being fined an amount greater than their profit margin gained from noncompliance. Families can be induced to send their female children to school if the consequence of noncompliance is sufficiently severe. The converse holds true as well, such as a law that generates a credible reward for compliance—for example, a law requiring people to register for an identity card to gain access to welfare benefits. This finding also extends to state entities. For example, compliance with the regulations of the European Union, World Trade Organization, or World Bank Group depends on the belief that the rewards of membership will outweigh the alternative.

The coercive power of law depends on the existence of a credible threat of being caught and punished or a credible commitment to obtaining a reward for compliance. As Basu (2015) argues, that credibility depends on the extent to which the law is able to coordinate people's beliefs and expectations about what others—fellow citizens and the officials who implement and enforce laws—will do (see also Malaith, Morris, and Postlewaite 2001). However, three conditions must be met. First, the state needs the technical, physical, and human *capacity* to carry through with consistency. Second, the law must provide strong enough incentives to overcome the gains from noncompliance, taking into account that many people may not exhibit "rational behavior" (World Bank 2015), as well as overcome adherence to any alternative conflicting *normative* order. Third, the law needs to be in line with the incentives of those with enough *power* to obstruct implementation so they will go along with it (unless truly effective restraints on such power exist). Together, these conditions will create a credible commitment that will induce rational compliance.

Take, for example, a law prohibiting bribery. First, people need to believe that the state has the capacity to detect and punish those engaged in the practice—that is, it has effective administrative and law enforcement institutions. Even if the state does not have adequate reach to detect violations everywhere, it could be aided by private enforcement to the extent the law (in combination with a broader range of related laws) incentivizes whistle-blowing by those in a position to do so. And finally, the sanction for violating the law must leave the perpetrator worse off than any benefits from engaging in bribery.

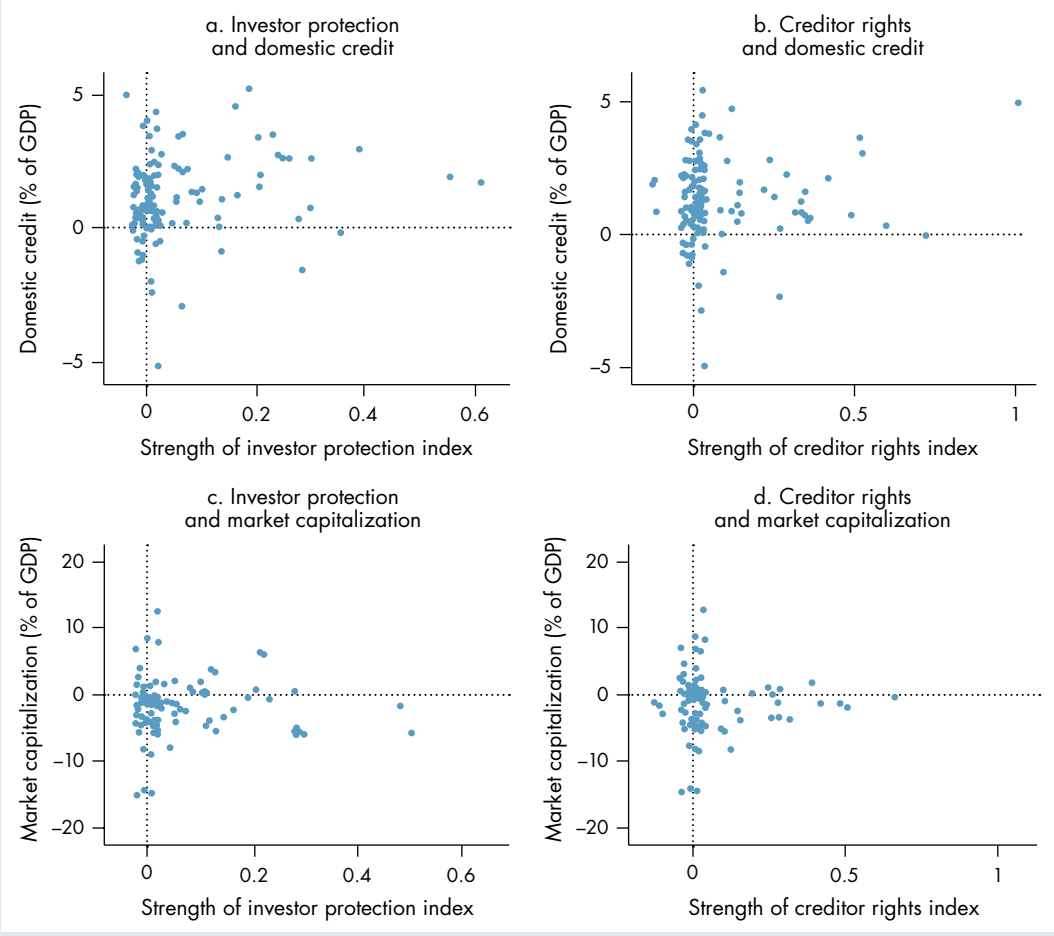
Box 3.3 Legal origins: Theory and practice

One of the most influential explanations of why some countries have legal systems that support more dynamic market economies than others is the legal origins theory put forward by La Porta and others (1998) and La Porta, Lopez-de-Silanes, and Shleifer (2013). This theory posits that countries that inherited a common law rather than a civil law system from their colonial occupiers have stronger investor and creditor rights, lower legal formalism, more efficiency of contract and debt enforcement, and higher judicial independence. These strengths are attributed to the strong role of private property as well as the adaptability of the case law system that characterize British common law.

The legal origins theory sparked a significant effort to reform laws and regulations to imitate common law rules (Besley 2015). Yet, empirical analysis shows that there is no clear relationship between changes in legal rules and changes in economic outcomes, reinforcing the idea that changes in the form of laws do not necessarily change the way the legal systems function (see figure B3.3.1). This analysis is further backed by evidence finding only

Figure B3.3.1 Changes in investor protection and creditor rights have little impact on economic outcomes

Effects of changes in legal indexes on financial indicators



Source: WDR 2017 team, using data from Oto-Peralías and Romero-Ávila 2016.

Note: In the graphs, domestic credit extended to the private sector by banks and market capitalization of listed domestic companies are expressed in percentage of gross domestic product (GDP).

(Box continues next page)

Box 3.3 Legal origins: Theory and practice *(continued)*

weak correlations between changes in "Doing Business" indicators and firm-level enterprise surveys (Hallward-Driemeier and Pritchett 2011). In addition, the degree of legal convergence depends on the application and interpretation of law, making the differences based on legal traditions less clear. Indeed, Oto-Peralías and Romero-Ávila (2014) argue that, empirically, common law does not generally lead to legal outcomes superior to those provided by French civil law when precolonial population density or settler mortality or both is high. In addition, they find that the form of colonial rule in British colonies mediates between precolonial endowments and postcolonial legal outcomes.

These findings are in line with this Report's argument that the effect of laws and policies is endogenous to governance dynamics. The extent to which particular laws are able to facilitate commitment and collective action in light of existing power, capacity, and norm constraints is far more predictive of economic outcomes than the content of the rules themselves. As critics of the legal origin theory have argued, the manner in which legal systems were transplanted and adapted over time—that is, whether colonial law became embedded in and responsive to local context and demand or remained superficial—is more indicative of any path dependencies than the origin of the law (Berkowitz, Pistor, and Richard 2003; Oto-Peralías and Romero-Ávila 2014).

Source: WDR 2017 team, based on Oto-Peralías and Romero-Ávila (2016).

But getting this formula right is complicated and costly. For example, too weak a sanction will be absorbed as part of the cost of doing business, while too strong a sanction for the behavior of potential whistle-blowers will reduce the number of people who will engage in private enforcement.[6]

But even with the right formula, the law must contend with powerful interests. To the extent that they benefit from bribery, enforcement will likely be blocked or not consistent or credible. Norms may also compete in ways that undermine implementation. Several studies have looked at the effect of "practical norms" or "culture" on the impact of laws. For example, laws establishing meritocratic civil service have gone unimplemented in Cameroon and Niger because of an overpowering norm that people should not be sanctioned for breaking the rules unless it is an egregious violation. The importance of social networks and neopatrimonial logic also undercuts the willingness of officials to sanction workers. As Olivier de Sardan (2015, 3) notes, "The gap between official rules and actual behavior is, per hypothesis, not a space where norms are forgotten or missing, but a space where alternative norms are in use."[7]

Competing normative orders can lead to perverse effects. For example, rigorous prosecution of domestic violence in Timor-Leste during its administration by the United Nations resulted in a significant reduction in the reporting of domestic violence because of the devastating social stigma and economic consequences for women (Chopra, Ranheim, and Nixon 2011). Similarly, stricter mandatory arrest laws for crimes related to domestic violence in the United States were found to be associated with higher murder rates of intimate partners because reporting of episodes of escalating violence to the police decreased (Iyengar 2009; Goldfarb 2011). In India, a recent law mandating the death penalty for convicted rapists could have similar effects because of the greater pressure now on women not to report a rape (Pande 2015). India has had strong laws on the books prohibiting a range of gender-based violence, including child marriage, sex-selective abortion, dowry payment, and domestic violence, but these have barely made a dent in behavior because the social sanctions associated with abandoning customary practice to follow the law are far stronger (Pistor, Haldar, and Amirapu 2010). Here the norm is likely operating at several levels. It undercuts the incentive created by the legal sanction, and it also likely undermines a credible commitment because powerful interests (and individuals in legal institutions) may also adhere to such norms.

Social norms that are not based on deep-rooted attitudes can also undercut the intended outcome of a law. As Ellickson (1991) famously documented in the study *Order without Law*, laws that conflicted with the social norms developed to regulate cattle herding in a California county confused cattlemen and led to increased conflict. A law introduced by the British in colonial India allowing agricultural lenders to enforce debts in court was intended to make credit markets more competitive to the benefit of farmers. However,

in practice the law had the opposite effect because it undercut the incentives that lenders had under an informal enforcement regime to lend at favorable interest rates (Kranton and Swamy 1998).

An effective system of legal compliance based on sanctions is therefore quite difficult to achieve. It requires significant investment in capacity and infrastructure and careful analysis of the types of incentives most likely to work. However, even those measures will not suffice in the face of power and norm constraints. These considerations lead to the second and third mechanisms through which law affects behavior, which do not rely on force.

The coordinating power of law: A focal point for change

The second way that law leads to economic and social policy outcomes is by serving as a focal point for coordinating behavior. This is also known as the expressive power of law (Cooter 1998; McAdams 2015). Here law acts as a signpost—an expression—to guide people on how to act when they have several options, or, in economic terms, when there are multiple equilibria (Basu 2015; McAdams 2015). People comply with the law because doing so facilitates economic and social activities.

The easy case is when the law establishes rules about a neutral activity to which citizens have no particular normative attachments. Thus when the law mandates driving on the right- or the left-hand side of the road, people generally comply, not because they fear punishment but because doing so facilitates road safety. The harder question is whether the law in its expressive role can coordinate behavior around more highly charged issues, where alternative norms and preferences are strong. In such cases, the law would need to shift norms and preferences away from alternative options in such a way that the law becomes the salient focal point.

Consider the astonishing success of the ban on smoking in public places in many parts of the world even in the absence of rigorous state enforcement. Here scholars have demonstrated that the ban has served to empower those persons—nonsmokers—who adhere to its substantive point to pressure smokers to refrain. In a short period of time, this empowerment has shifted societal norms so that the wrong of smoking in public places has become internalized (McAdams 2015). In other words, the ban has served to change the balance of power and norms in the policy implementation arena by legitimizing the claims of some over others. Sunstein (1996a) calls this phenomenon the *norm bandwagon* in which the lowered cost of new norms leads an increasing number of people to reject old norms until a tipping point is reached at which the old norm elicits social disapproval.

For this process to work, a critical mass of supporters of the new norm is needed, and they must be able to engage in collective action to push toward the tipping point. "When there are contestations in local norms, formal law can strengthen the stance of those whose norms are most closely aligned with the legal rule" (Shell-Duncan and others 2013, 824). The more deeply held the old norm and the weaker the supporting coalition for the new norm, the more care is needed to introduce a new norm through law so it does not backfire. Gradual or partial enforcement, coupled with education, awareness, and coaxing campaigns, allow time for norms to shift (Acemoglu and Jackson 2014).

This process of norm shifting has been analyzed and documented by legal anthropologists as a process of "translation" or "vernacularization" involving intermediaries who act as bridges between the world of formal law and the real experiences of local people (Merry 2006). For example, the introduction of an inheritance law in Ghana that was not in line with customary systems was followed by a slow evolution of custom and social change. The formal law was not enforced through coercion; rather, it served as a magnet to provide people with an alternative to custom (Aldashev and others 2012). Similarly, legal prohibition of female genital mutilation in Senegal provided an "enabling environment" for those who wished to abandon the practice. In Senegal, this legal prohibition, together with a robust education and awareness campaign, shifted more people to this category. However, among those who adhered strongly to the practice, the fear of prosecution (even though no sanctions were carried out) drove the practice underground, seriously impairing the health of some young women (Shell-Duncan and others 2013).

Law acts as a signpost—an expression—to guide people on how to act when they have several options.

This is not to overstate the expressive power of law. Law does not do the work of shifting a norm by itself, but rather depends on the incentives it provides to those who already accept the new law, as well as a range of support programs that drive the process of internalizing the new norm more broadly. Although rigorous enforcement can backfire, sometimes enforcement is needed to kick-start the process of norm shifting and internalization. For example, during the first term in which a constitutional amendment mandating gender quotas in village councils in India was implemented, voters' attitudes toward women were generally negative. After two terms of repeated exposure to women candidates,

however, men's perceptions of the ability of women to be leaders significantly improved (Beaman and others 2009). Moreover, the aspirations of parents and their adolescent daughters for education were positively affected (Beaman and others 2012), and women's entrepreneurship in the manufacturing sector increased (Ghani, Kerr, and O'Connell 2014). In the United States, a large coercive force was required to implement racial desegregation laws in the face of mass and even violent resistance, but over time these laws contributed to internalizing the norm change (Schauer 2015).

One way in which development affects governance is by changing norms. Certain norms are more responsive to a higher level of development. The introduction and effectiveness of child labor regulations have been shown to be related to income levels; as households rely less on children's incomes, the impact of formal regulations increases (Basu 1999). In India, however, child labor regulations led to a decline in child wages and a shift to greater child labor among poorer families (Bharadwaj and Lakdawala 2013). Some norms are much more persistent and less responsive to change, such as those founded on some religious or philosophical principles.

The legitimizing power of law: Creating a culture of compliance

Although sanctions can be used to control deviant behavior, and law can, under the right conditions, gradually shift certain norms, these are extremely costly and ad hoc ways of inducing changes in behavior. Ultimately, a culture of voluntary compliance with the law depends on the legitimacy of the law. Scholars point to three kinds of legitimacy: outcome, relational, and process legitimacy (as described in chapter 2). The latter two are particularly relevant to the role of law. *Relational legitimacy* (also referred to as *substantive legitimacy* in some strands of the literature) refers to a situation in which the content of the law reflects people's own social norms and views of morality. In such cases, the law is largely irrelevant because people would comply for reasons independent of the existence of the law. Even though the threat of sanctions lurks in the background, it is primarily there to handle the exceptional cases of deviance (Schauer 2015).

In heterogeneous societies, for substantive legitimacy the law must strike a balance between recognizing differences in worldviews and enabling society to function as a cohesive entity (Singer 2006). Thus debates over how states formally take into account religious law or customary law are fraught with deeply political issues, with significant implications for legitimacy. For example, in Bolivia, Colombia, and Ecuador constitutional recognition of communal rights and indigenous law was critical in expanding state legitimacy through a sense of shared citizenship (Yashar 2005). Formal incorporation of Islamic law is at the heart of contests to define national identity in states and regions with large Muslim populations from Libya to Mindanao. And official recognition of forms of traditional or customary law remains an important issue in defining state-citizen relations in much of Sub-Saharan Africa.

Process legitimacy (also referred to as *procedural legitimacy*) refers to a situation in which laws are respected and observed to the extent that they emerge from a system deemed fair and trustworthy. Many years ago, German sociologist Max Weber (1965) argued that rational legal authority (in contrast to traditional or charismatic authority) depends on a society's belief in the legitimacy of order. In his seminal study, Tyler (2006) offers empirical support for the argument that people obey laws for reasons other than fear of punishment when they believe the laws are the product of a system they believe to be legitimate. Legitimacy here refers to procedural regularity, opportunity for citizen input, and the respectful treatment of citizens by those in authority, or what this Report refers to as *contestability*. These findings were confirmed in a study of cross-country survey data in Africa. People's compliance with the law was found to be related to their normative judgment about the legitimacy of government, based on assessments of government competence and performance, but particularly on perceptions that government is procedurally just (Levi, Tyler, and Sacks 2012).

Transplanting laws from one country to another has often failed in the absence of a process of adaptation and contestability. Based on an econometric study of 49 countries that were recipients of foreign law, Berkowitz, Pistor, and Richard (2003) found that countries that adapted the transplanted law to meet their particular socioeconomic conditions, or had a population that was already familiar with basic principles of the transplanted law, or both, had more effective legality than countries that received foreign law without any similar predispositions. Similarly, legal transplants in the context of integration into the European Union were more successful to the extent that they were accompanied by efforts to empower a variety of domestic state and nonstate actors through multiple methods of assistance and monitoring, and

that they were able to merge monitoring and learning at both the national and supranational levels (Bruszt and McDermott 2014). By contrast, in parts of southeastern Europe the transplantation of judicial reform and anticorruption laws that bypassed legislative processes and other forms of adaptation did not produce the desired effects (Mendelski 2015).

Ordering power: The constitutive role of law

In this second role, law plays the more foundational constitutive role of defining the de jure governance process. It is through law—generally constitutions[8]—that states establish and confer power on state actors, defining the authority and responsibilities of different agencies and branches of government and their role in the policy-making and implementation process, as well as formal constraints on their power.[9] This task is typically carried out by drafting provisions that set out a range of checks and balances, including the horizontal allocation and separation of powers between different branches; by requiring special procedures for amendment; by establishing independent supervisory and review bodies; and, increasingly, by including a bill of rights. These formal de jure arrangements, as modified by informal and de facto arrangements, establish the nature of the policy bargaining arena. In this way, constitutions are effectively rules about making rules. This section addresses why and when the formal rules in fact determine the allocation and limits on power, or act only as "parchment barriers," as well as the other roles that constitutive laws play in shaping the dynamics of governance.

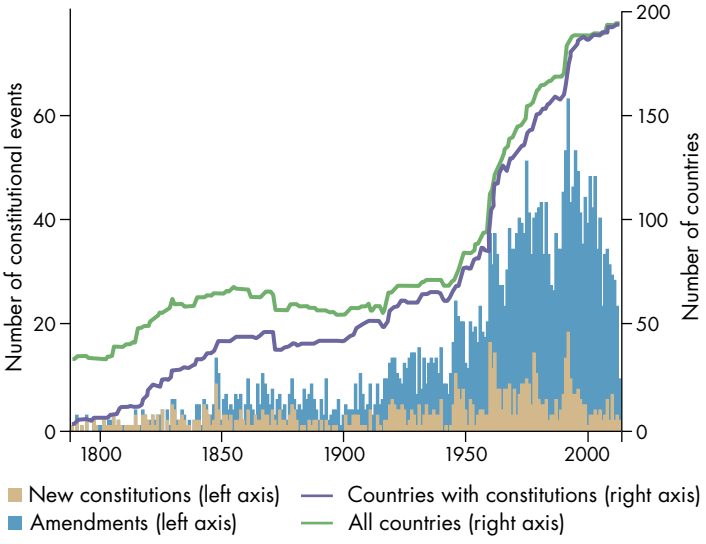
Constitutions: Rules about making rules

Constitutions are proliferating (figure 3.1). The growing number corresponds to both the increase in the number of independent states as well as the mass transition of countries in central Europe and in the former East European bloc in the post-Soviet era. It also reflects the fact that constitutions are generally short-lived. The average life span of a constitution is 19 years, and in Latin America and eastern Europe it is a mere eight years (Negretto 2008; Elkins, Ginsburg, and Melton 2009). Constitutions are thus an important object of political bargaining and ordering, with significant energy invested in designing and adopting them. This is true across all types of political regimes (Ginsburg and Simpser 2014).

And yet the effectiveness of constitutions in constraining power through rules is mixed, leading

Figure 3.1 Constitutions have become ubiquitous, but they are often replaced or amended

Number of countries with constitutions and number of constitutional events, 1789–2013

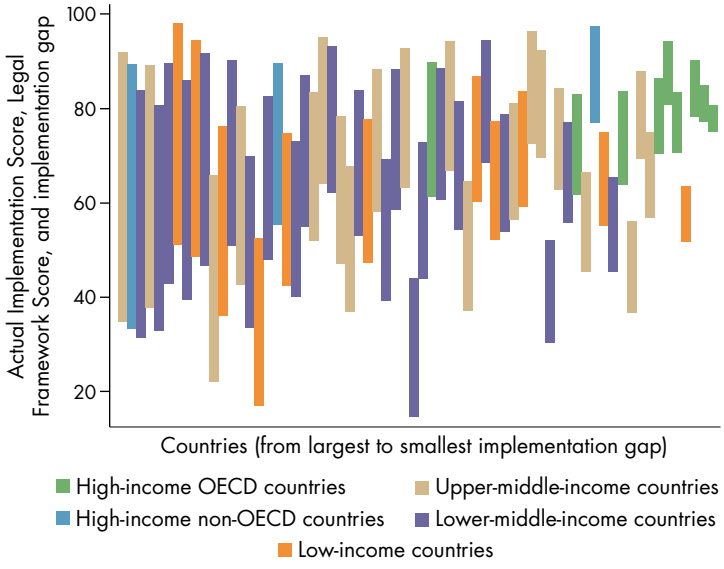


Source: WDR 2017 team, using data from Comparative Constitutions Project, 2015.

to two kinds of governance failures. The first—as reflected in the short life span of constitutions—is when the bargain itself fails. The second is when the words on paper persist, but the rules are ignored in the face of power and deal making. In the first failure, the result could be positive to the extent that it leads to a new, more stable, bargain. But it also could be detrimental to development outcomes if conflict ensues and if chronic failure undermines the credible commitments needed to support investment and pro-poor policies. Empirical evidence on the extent to which constitutional endurance matters is mixed. Elkins, Ginsburg, and Melton (2009) demonstrate significant associations between longer-lived constitutions and various social and political goods, including protection of rights, democracy, wealth, and stability, but establishing causality is problematic. In any event, the entrenchment of fundamental principles and its positive impact on credible commitment and coordination generally strengthen as constitutions age.

The second type of failure—widespread divergence between constitutional limitations on power and actual practice—is more directly associated with poorer development outcomes (figure 3.2). As explored in chapters 5 and 6, failure to uphold the security of property rights and basic civil, political, and economic rights has negative impacts on both growth and equity. More generally, failure to enforce rule-based limits on

Figure 3.2 In every country, there is a gap between the laws on the books and the laws implemented, but high-income OECD countries generally do better than low- and middle-income countries



Sources: WDR 2017 team, based on data from World Bank, World Development Indicators (database), 2015, and Global Integrity (database), 2012.

Note: The data used are for 2009–11. Global Integrity's Legal Framework Score measures the quality of laws "on the books" in six categories: (1) nongovernmental organizations, public information, and media; (2) elections; (3) government conflicts of interest, safeguards, and checks and balances; (4) public administration and professionalism; (5) government oversight and controls; and (6) anticorruption legal framework, judicial impartiality, and law enforcement professionalism. The Actual Implementation Score measures actual practice. These scores range between 0 and 100, with 0 being the worst score and 100 being perfect. The implementation gap is the difference between the two indexes and thus the length of the bar. OECD = Organisation for Economic Co-operation and Development.

power skews the bargaining process in favor of elite interests. Nevertheless, divergence from the rules may also be an important means of holding together elite bargains. To understand what accounts for divergence between the rules and practice, it is helpful to first examine the conditions under which rules stick.

Constitutions as a commitment and coordination device

Why would rulers adhere to constitutional rules on the limits of power? Unlike regular laws that have organized institutions of enforcement, constitutions pose the ultimate question of who guards the guardians.[10] The answer is that effective constitutions need to be self-enforcing. Constitutions are essentially bargains among major interest groups about how to allocate power. As long as these groups feel they are better off with the rules than without them, the rules will stick. Thus effective constitutions establish an equilibrium by addressing problems of coordination and commitment (Weingast 2013). Constitutions facilitate elite cohesion by coordinating which institutions play which role, thereby minimizing the costs of renegotiation and conflict. The so-called entrenchment of provisions, requiring a high standard for change in the form of amendment, provides credibility over time by guarding against shifts in preference, thereby enhancing the credibility of commitments (Ginsburg 2010; Ginsburg and Simpser 2014). Once entrenched, the rules become "sticky" as institutionalized arrangements develop around them, and it is far less easy for major interest groups to exit if they become unhappy with the allocation of power. Significantly, constitutions also serve as a coordinating device to enable collective action by citizens in the event of a transgression by those in power.

An analysis of a data set of every constitution since 1789 found that enduring constitutions generally have certain common characteristics. They need to be sufficiently inclusive to give potential spoilers an adequate payoff for staying inside the bargain (how to do so is explored further in chapter 4). They need to be flexible and adaptive so they can be resilient in the face of shocks that can change the balance of power among interest groups. And they need to be specific: the degree of specificity appears to correlate positively with endurance, perhaps because it reduces the scope for subsequent disagreement and requires more investment in negotiation, giving people a bigger stake in success (Elkins, Ginsburg, and Melton 2009).

How effective constitutions are at enabling citizen collective action for enforcement is related to the way in which constitutions act as a focal point. Even when politicians have little intention of adhering to constitutional provisions—such as when constraints on power and rights are adopted as aspirational or rhetorical appeasement—the words on paper can matter to the extent that they enable collective action. This is particularly important during times of conflict among elites, when constitutions can serve as devices of horizontal accountability. Thus, for example, in Tunisia adoption of international human rights treaties by the prior regime was largely seen as an empty gesture. Yet, during the transition to a new government, these provisions were seized upon by opposition forces and used to structure that government. Even when the legal enforceability of constitutions is limited, the language of constitutional protection has frequently been used as a basis for political mobilization by competing elite groups (Ginsburg and Simpser 2014). As will be discussed more fully, constitutions also serve as an important device of vertical accountability because the special

status accorded to constitutional rights can enable citizen collective action aimed at the fulfillment of those rights.

Explaining divergence between law and practice

A number of studies have sought to demonstrate empirically how various institutional designs optimize the coordination and commitment embraced by different configurations of elite interests. In theory, different political institutions—such as presidential versus parliamentary or majority vote versus proportional representation—create different incentives that favor certain outcomes.[11] Actual outcomes, however, depend on the extent to which these de jure rules are in fact used as the main locus of political activity—that is, whether or to what extent political actors choose to invest in these institutions so that they become a self-reinforcing equilibrium (Caruso, Scartascini, and Tommasi 2015).[12]

In many developing countries—and to a certain extent, in developed ones as well—power is often exercised through a means other than those prescribed by law. Such alternative means are sometimes called "alternative political technologies" (Caruso, Scartascini, and Tommasi 2015) or "informal institutions" (Helmke and Levitsky 2004; Khan 2010). These means include a variety of ways of making bargains and deals outside the rules, including conventions for brokering power, clientelism, and purchasing favor (bribery, vote buying), as well as nonstate authority structures such as traditional or religious mechanisms. In some cases, the use of a means of exercising power not based on law is simply a matter of deviance and abuse. But often it is serving the purpose of solving commitment and collective action problems in ways more in line with elite incentives and the de facto distribution of power. In such cases, as Khan (2010, 1) explains, "informal institutions like patron-client allocative rules, and informal adaptations to the ways in which particular formal institutions work play a critical role in bringing the distribution of benefits supported by the institutional structure into line with the distribution of power." In other words, divergence between the law and practice is rarely an absence of rules but rather a matter of replacing law with rules that may be better suited—under the circumstances—to generating and meeting shared expectations in order to uphold basic stability through elite bargains (North and others 2013). The conditions under which deals-based elite bargains evolve into rule-based governance constrained by law are the subject of chapter 7.

Ordering contestation: The role of law in change

> *It is true that in history the law can be seen to mediate and to legitimize existent class relations. Its forms and procedures may crystallize those relations and mask ulterior injustice. But this mediation, through the forms of law, is something quite distinct from the exercise of unmediated force. The forms and rhetoric of law acquire distinct identity which may, on occasion, inhibit power and afford some protections to the powerless.*
>
> —E. P. Thompson (1975, 266)

The role of law in ordering behavior and ordering power is primarily about how elites use law to implement policies and to exercise authority. The third role of law is about how citizens—nonelites—use law to challenge and contest the exercise of power. As the quotation by the historian E. P. Thompson describes, law is both a product of social and power relations and a tool for challenging and reshaping those relations. This section examines how law, often in combination with other social and political strategies, can be used as a commitment and coordination device to promote accountability, and also to change the rules of the game to foster more equitable bargaining spaces.

Law is both a product of social and power relations and a tool for challenging and reshaping those relations.

In well-developed legal systems, legal institutions promote accountability by imposing horizontal checks on authorities and providing a forum for vertical claims by citizens. These legal institutions include courts and associated agencies such as prosecutors and police; special-purpose adjudicative and oversight bodies such as ombudsmen, auditors, and anticorruption or human rights commissions; and the public administrative law functions of executive agencies such as those involved in property allocation and registration, the issuance of identity documents, or the provision of health, education, and sanitation services. The extent to which these institutions are accessible and effective forums for citizens to challenge the more powerful in society varies considerably from country to country, as a function of historical circumstances as well as the political calculus of elites. Spotlight 3 on effective legal institutions discusses these conditions in depth.

Even though legal systems in many countries continue to lack effectiveness and autonomy, there has been a marked trend toward juridification of social and political contestation across the globe. As Rodríguez Garavito (2011, 274–75) has noted, "The planetary expansion of the law is palpable everywhere: in the

avalanche of constitutions in the Global South; in the growing power of judiciaries around the world; in the proliferation of 'law and order' programs and the 'culture of legality' in cities; in the judicialization of policy through anticorruption programs led by judges and prosecutors; in the explosion of private regulations, such as the voluntary standards on corporate social responsibility; and in the transmutation of social movements' struggles into human rights litigation." Law increasingly provides the common language for, and demarcates the arenas of contest among, very different contenders: citizens and states; multinational corporations and indigenous people; states, citizens, and international organizations.[13]

Law and social rights

In one example of how law is changing the contestability of policy arenas, a majority of developing countries have incorporated social and economic rights into their constitutions, and citizens are increasingly using these provisions to advance development goals (Brinks, Gauri, and Shen 2015). This trend has been most striking in Latin America, where the courts have been transformed—from weak, dependent, ineffective institutions to central players in issues at the forefront of politics and development. A key reason for this shift in role is that judicial actors have been emboldened by political fragmentation to assert the power of their institutions at the same time that citizens are demanding this role (Couso, Huneeus, and Sieder 2010; Helmke and Rios-Figueroa 2011). In India, legal institutions—at least at the level of the Supreme Court—have also proven to be an important venue for contestation, with an extensive tradition of public interest litigation and high-profile legal challenges to dominant power interests and social norms.[14] India's Supreme Court has upheld the rights of the disadvantaged and has enhanced government accountability over issues such as child and bonded labor, environmental hazards, public health, and nondiscrimination (Shankar and Mehta 2008; Deva 2009). Courts in South Africa have also made important judgments holding government accountable for the provision of housing and affordable antiretroviral drugs, among other things (Klug 2005; Berger 2008).

In social justice litigation, the legal action itself need not result in a favorable judgment to be a successful part of a contestation. Even judicial defeats can be leveraged by activists to coordinate collective action around rights consciousness (McCann 2004; Rodríguez Garavito and Rodríguez-Franco 2015). As explored further in chapter 8, the success of such efforts depends to a large degree on the ability of claimants to ground the language of rights in local social and political structures of demand—a process Brinks, Gauri, and Shen (2015) call "vernacularization." As Santos and Rodríguez Garavito (2005) argue, political mobilization at the local—and often international—level is a necessary precursor of effective rights-based strategies for the disadvantaged. Thus efforts to empower the aggrieved to use law and courts must combine legal awareness with broader strategic coalition building.

Law has also proven to be a powerful tool of accountability even outside of legal institutions by framing claims and serving as a coordinating device. For example, in China citizens are increasingly deploying official laws and policies in efforts to hold district officials accountable for illegal extraction, rigged elections, and corruption—a process dubbed "rightful resistance." Courts seldom feature in these efforts, which tend to "operate near the boundary of authorized channels, employ the rhetoric and commitments of the powerful to curb the exercise of power, hinge on locating and exploiting divisions within the state, and rely on mobilizing support from the community" (O'Brien and Li 2006, 2). The use of legal discourse, without recourse to courts, has also played a central role in tenant associations' claims to adequate housing in Kenya, indigenous groups' contests over land and natural resources in Mexico, and garment workers' efforts to gain fair labor conditions in Bangladesh (Newell and Wheeler 2006). In these cases, the law serves to "name and frame"—that is, to structure dialogue and provide a coordination device for more contentious strategies for accountability.

Legal institutions and credible commitment

Where state legal institutions have lacked the capacity for credible commitment, they have at times sought support from international actors. For example, aware of its inability to commit to fair anticorruption procedures against powerful interests, Guatemala sought support from the United Nations to establish the International Commission against Impunity in Guatemala (CICIG). The CICIG has successfully prosecuted over 150 current or former government officials, and in 2015 it charged the sitting president with corruption, leading to his resignation. Other countries, including Bosnia and Herzegovina, Cambodia, Fiji, Kosovo, and the Solomon Islands, have allowed international judges and prosecutors in their courts to enhance credible commitment

around sensitive and political cases. Although these initiatives have led to the successful prosecutions of sensitive war crimes and corruption cases, they have also been criticized for lack of sustainability in that they bypass rather than engage directly in the domestic bargaining arena.

Where domestic courts are perceived as weak in the face of powerful interests, citizens have brought legal cases to other jurisdictions. This approach has been facilitated by the growing recognition of the concept of universal jurisdiction for severe crimes, as well as by the increasingly transnational character of powerful interests. For example, local communities affected by severe environmental damage caused by a mining company in Papua New Guinea sought redress in an Australian court, the home jurisdiction of the company. Although the legal case itself was settled and not wholly successful in containing the damage, it triggered a change in the local bargaining arena, mandating that community representatives be engaged in negotiating community development agreements with the company and government (Kirsch 2014).

Transnational legal pluralism and contestability

The legal arena today extends beyond the borders of nation-states in other ways as well. As discussed further in chapter 9, an era of "global governance" is under way. It is characterized by the proliferation and fragmentation of global, regional, and transnational instruments, including binding laws (so-called hard law, including treaties and conventions) and soft law (voluntary guidelines, standards, principles, and codes of conduct). The domains covered by these instruments go far beyond relations among nation-states to reach deep into the way national state and nonstate actors govern in many areas, including business, labor, crime, information, public financial management, intellectual property, procurement, utility regulation, human rights, food and safety standards, and environmental sustainability. The formation of these transnational governance regimes parallels this Report's framework: they are the product of contests among multiple actors—state, private, and civic—shaped by power, interests, and norms, which in turn are shaped and reshaped by the outcomes of these rules (Braithwaite and Drahos 2000). This web of legal pluralism creates opportunities for domestic actors seeking to contest the prevailing power and norms. Global factory workers in Mexico and Guatemala appealed to international labor standards and company codes of conduct and successfully managed to improve working conditions and to unionize in a context in which it would have been difficult otherwise to overcome entrenched resistance. Critical to their success were their links to transnational advocacy networks that exerted pressure on local governments (Rodríguez Garavito 2005). Cambodian garment workers also benefited from international labor standards that served as a commitment device for the government in order to gain favorable trade conditions (Adler and Woolcock 2009). Elsewhere, indigenous groups have been key players in the formation of international standards for extractive industries, in particular the norm of free, prior, and informed consent (Rodríguez Garavito 2011). In these examples, legal standards were converted into institutional arrangements that enhanced the contestability of the bargaining arena: collective bargaining arrangements, a tripartite labor arbitration council, and procedural requirements for consultations between extractive companies and local communities.

Getting to the rule of law

In establishing the rule of law, the first five centuries are always the hardest.

—Gordon Brown

The *rule of law* is widely recognized as necessary for the achievement of stable, equitable development. Indeed, over the last few decades no other governance ideal has been as universally endorsed.[15] There is far less agreement, however, on what it means. At a minimum, the rule of law requires that government officials and citizens be bound by and act consistent with the law (Tamanaha 2004; Fukuyama 2014). But this in turn requires that the law be clear, certain, and public and that it be applied equally to all through effective legal institutions.[16]

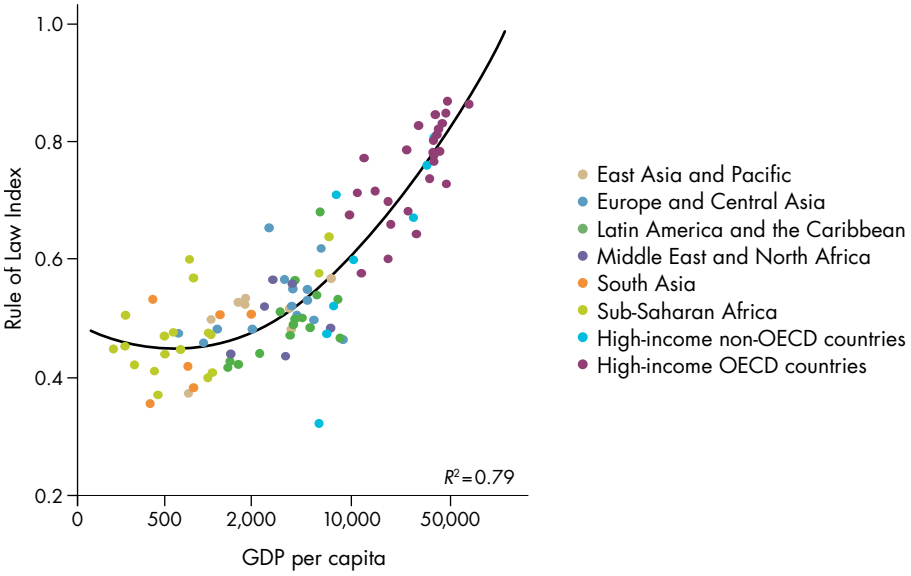
The *rule of law* is widely recognized as necessary for the achievement of stable, equitable development.

"Thin" versions of the rule of law have largely given way to "thicker" versions that move beyond a focus on procedure to one on substance requiring adherence to normative standards of rights, fairness, and equity.[17] The United Nations exemplifies this normative stance, defining the rule of law as "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and a principle of standards."[18]

Correlations between indicators of the rule of law and income levels are strong (figure 3.3).

Figure 3.3 The rule of law is strongly correlated with high income

Rule of Law Index versus GDP per capita, 2015



Sources: WDR 2017 team, based on data from the World Justice Project, Rule of Law Index, 2015, and World Bank, World Development Indicators (database), 2015.

But the direction of causality and the mechanisms that determine this association are less well understood (box 3.4).

Meanwhile, this chapter has focused not on the rule of law but on the *role of law*—the instrumental way through which groups and individuals in society use law as a means of promoting, enforcing, and institutionalizing interests or objectives. Attention to the microfoundations of laws' effectiveness can help policy makers and citizens design laws and strategies more likely to achieve success (box 3.5). Ultimately, it is through this dynamic between power and contestation that societies shape their transitions to the rule of law.

Box 3.4 Transitions to the rule of law

Compared with the extensive literature on transitions to democracy, a surprisingly small amount of systematic work has been carried out on transitions to a modern rule of law. History reveals three separate types of transitions from which one can learn: (1) the shift from a customary, informal, and often highly pluralistic system of law to a unified modern one; (2) how powerful elites come to accept legal constraints on their power; and (3) how countries successfully adapt foreign legal systems to their own purposes.

The shift from a customary or pluralistic system to a codified modern one is usually motivated, at base, by actors who believe a single formal system will better serve their interests, particularly their economic interests in expanded trade and investment. Scale matters: at a certain point, the personal connections that characterize customary systems become inadequate to support transactions between strangers at great remove. However, the transition costs are high, and the customary rules are often preferred by the existing stakeholders. Therefore, political power is critical to bringing about the transition.

Formal law is usually applied first to nonelites ("rule *by* law"). There then is a shift to "rule *of* law" when the elites themselves accept the law's limitations. North, Wallis, and Weingast (2009) have argued that constitutional constraints become self-reinforcing when power in the system is distributed evenly and elites realize that they

(Box continues next page)

Box 3.4 Transitions to the rule of law *(continued)*

have more to gain in the long run through constitutional rules. What this theory does not explain, however, is why these same elites stick to these constraints when the power balance subsequently changes and one group is able to triumph over the others. Similarly, independent courts are always a threat to elite power, and so why do rulers come to tolerate them when they have the power to manipulate or eliminate them? These questions suggest that constitutionalism needs to be underpinned by a powerful normative framework that makes elites respect the law as such. Subsequent respect for the law will depend heavily on the degree of independence maintained by legal institutions—the judiciaries, bars, law schools, and other structures that have persisted even after their religious foundations have disappeared.

Finally, as for importing foreign legal systems, perhaps the most important variable determining success is the degree to which indigenous elites remain in control of the process and tailor it to their society's own traditions. Japan experimented with a variety of European systems before settling on the German civil code and Bismarck constitution. Later in the 20th century, China, the Republic of Korea, and other Asian countries similarly adapted Western legal systems to their own purposes. In other cases such as Hong Kong SAR, China, Singapore, and India, the colonial power (Great Britain) stayed for a long time and was able to shape the local legal norms in its own image. Even so, today India practices a far higher degree of legal pluralism than does Great Britain itself, as part of the process of local adaptation. Less successful have been cases in Sub-Saharan Africa, where customary systems were undermined by colonial authorities but not replaced by well-institutionalized modern systems.

Much more research is needed on the question of legal transitions. It is clear that a fully modern legal system is *not* a precondition for rapid economic growth; legal systems themselves develop in tandem with modern economies. It may be that the point of transition from a customary to a formal legal system occurs later in this process than many Western observers have thought. But relatively little is known about the historical dynamics of that transition, and thus too little in the way of theory is available to guide contemporary developing countries as they seek to implement the rule of law.

Source: Prepared by Francis Fukuyama for WDR 2017.

Box 3.5 Understanding the role of law in context

As this chapter has argued, law is not an unqualified good. Depending on the context, law might functionally

- Empower change actors—*or*—reinforce existing power
- Provide order and certainty—*or*—create conflict and exacerbate confusion
- Build legitimacy—*or*— undermine legitimacy
- Structure contests—*or*—distract from real sites of contest.

To produce the effects that appear first in each line of this list, legal interventions should ensure that the forms prescribed by law are able to demonstrate commitment and to induce collective action toward the desired end. Specifically, effective laws are able to

- Change preferences by enhancing substantive focal points around which coordination can occur
- Change incentives by changing payoffs to lower the cost of compliance or increase the cost of noncompliance
- Shape bargaining spaces that increase the contestability of underrepresented actors.

Source: WDR 2017 team.

Notes

1. Acemoglu (2003); Galiani and Schargrodsky (2010); Besley and Persson (2014).
2. See, for example, Thompson (1975); Mattei and Nader (2008); and Lund (2012).
3. Thompson (1975); Epp (1998); McCann (2004); Rodríguez Garavito (2011).
4. See, for example, Benton (2001); Belmessous (2011); and Yannakakis (2015).
5. See Schauer (2015) for an extensive argument about the importance of the role of force in law.
6. For a debate on legalizing bribe giving, see Basu (2011) and Dufwenberg and Spagnolo (2014).
7. See also Acemoglu and Jackson (2014) and d'Iribarne and Henry (2015).
8. A constitution is certainly not the only instrument that sets out rules about power, but it is the most visible one and the most systematically studied. A range of other laws that confer authority and define responsibilities and limitations on power, such as local governance laws and enabling laws for various state agencies, are also relevant.
9. Acuña and Tommasi (1999) propose a similar classification of rules applied at a more practical level (policies, organizational forms, rules about making rules).
10. Regular laws are also plagued by this same question. It is for this reason that Basu (2015) emphasizes that laws work only to the extent that they establish credible expectations about what others will do.
11. See, for example, Buchanan and Tullock (1962); Persson and Tabellini (2003); and Voigt (2011).
12. This discussion draws on Aoki (2001) and Greif (2006).
13. Comaroff and Comaroff (2001); Rajagopal (2003); Hirschl (2004); Santos and Rodríguez Garavito (2005).
14. However, the trend of public interest litigation in India has been criticized for shifting in recent years from pro-poor causes to promoting the interests of the upper classes (Gauri 2009). Indeed, if law and legal institutions can be used for pro-poor ends, they can likewise be used for other causes (Scheingold 2004).
15. Tamanaha (2004); Carothers (2006); Desai and Woolcock (2015).
16. Hadfield and Weingast (2014) model how these characteristics are necessary to achieve an equilibrium of behavior in line with the rule of law.
17. This aligns with the views of legal and moral philosophers such as Lon Fuller and John Rawls, who define law in terms of natural justice and fairness.
18. The definition continues: "It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency" (United Nations 2004, 4).

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