

WHAT IS “CONSTITUTIONAL EFFICACY”? CONCEPTUAL OBSTACLES FOR RESEARCH ON THE EFFECTS OF CONSTITUTIONS

Andrea POZAS LOYO*

*ABSTRACT. When and why are codified constitutions efficacious? Answering these key and apparently straightforward questions turns out to be extremely challenging. The road to responding to them is paved with conceptual, theoretical, and empirical difficulties. In this article, I make a modest, but nevertheless hopefully useful, claim: that overlooking certain conceptual difficulties is detrimental to the advancement of the theoretical and empirical agenda on constitutional efficacy. In other words, I posit that empirical and theoretical research linked to these questions can benefit from a clear conceptualization of constitutional (or more broadly formal) efficacy that is consistent with their research objectives. It is not uncommon for social and political science research in this area to overlook the question “how should constitutional efficacy be conceptualized?” A close analysis of academic sources makes it clear that even specialized literature on questions related to constitutional (or more broadly formal) efficacy have assumed conceptualizations that are theoretically problematic given their research objectives, potentially leading to theoretical inconsistencies or inaccurate empirical conclusions. To exemplify this point, I analyze the conceptualization of constitutional efficacy used in two influential political science texts: Barry Weingast’s “The Political Foundations of Democracy and the Rule of Law” and Gretchen Helmke and Steven Levitsky’s *Informal Institutions and Democracy*. I argue that the conceptualizations of constitutional (or more broadly formal) efficacy used in their theoretical proposals are not adequately suited to their own research objectives, and that this conceptual misfit affects the theoretical consistency and empirical applicability of their conclusions.*

KEY WORDS: *Constitutional Efficacy, Concept Building, Informal Institutions, Self-enforcing Constitutions, Weingast, Helmke and Levitsky.*

* Dra. Andrea Pozas Loyo, Researcher at the Institute for Legal Research, UNAM.
 Email: apl228@gmail.com

RESUMEN. ¿Cuándo y por qué las constituciones codificadas son eficaces? Responder estas preguntas cruciales y aparentemente directas han resultado un reto mayúsculo. El camino a su resolución está plagado de dificultades conceptuales, teóricas y metodológicas. En este artículo defendiendo una tesis modesta pero, espero, útil: Ignorar ciertas dificultades conceptuales es perjudicial para el progreso de la agenda teórica y empírica sobre la eficacia constitucional. En otros términos, afirmo que la investigación teórica y empírica vinculada a estas preguntas puede beneficiarse de una conceptualización clara de eficacia constitucional (o de manera más general de eficacia formal) que sea consistente con los objetivos de su investigación. Un análisis a detalle de las fuentes académicas muestran que incluso la literatura especializada sobre cuestiones vinculadas a la eficacia constitucional han presupuesto conceptualizaciones que son teóricamente problemáticas con sus objetivos de investigación, y que ello los puede conducir a problemas de orden teórico y empírico. Para ejemplificar este punto analizo la conceptualización de eficacia constitucional utilizada en dos influyentes estudios de ciencia política: “*The Political Foundations of Democracy and the Rule of Law*” de Weingast e *Informal Institutions and Democracy* de Helmke y Levitsky. Argumento que las conceptualizaciones de eficacia constitucional (o de manera más general de eficacia formal) empleadas en sus estudios no son adecuadas para los objetivos de su investigación, lo cual genera problemas para la consistencia y aplicabilidad de sus propuestas.

PALABRAS CLAVE: *Eficacia Constitucional, Conceptos, Instituciones Informales, Constituciones como Equilibrio, Weingast, Helmke, Levitsky.*

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