CHAPTER FOUR

SOCIAL EMBEDDING

Now that we have this tool, I "tutela" everything.[1]

Álvaro, 57, Bogotá

This chapter examines how the 1991 Constitution came to be embedded in Colombian society, focusing on the social component of constitutional embedding. Social embedding refers to the process by which constitutional rights talk becomes part of everyday discourse and experience. How can we know when a constitution has become socially embedded? When constitutions are socially embedded, constitutional rights and legal tools become part of (1) common knowledge and (2) language, and citizens actively make (3) legal claims to constitutionally recognized rights. Embedding occurs along a continuum. A single piece of evidence of embedding by itself will be suggestive at most, but we can confidently make relative statements about changes in embedding over time and across space. Just because embedding has begun – or just because embedding has become evident – does not mean that it will endure. Unless and until this embedding becomes part of a self-reinforcing process, it might simply reflect the momentary acceptance of a constitutional order; one that could be dislodged relatively easily.[2]

Following the spread of information about the new constitution, Colombian citizens experimented with the filing of tutela claims on the basis of newly codified constitutional rights, namely social rights. Over time, these experiences with legal mobilization resulted in a key

[1] Bogotá interview 22. "Cuando tenemos esa herramienta entonces entutelo por todo."
[2] I take up this question of dislodging in Chapters 6–8.

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shift in understanding (some of) the problems in their lives as specifically legal in nature; what I describe as the "social construction of legal grievances" (Taylor 2020a). Simultaneously, the development of judicial receptivity occurred, as judges came to view these same grievances as issues that should be resolved in the formal legal sphere (a process detailed in Chapter 5). These two processes – the social construction of legal grievances and the development of judicial receptivity – reinforced one another, creating a feedback loop and ensuring both the social and legal embedding of the 1991 Constitution and therefore social constitutionalism in Colombia.

The rest of this chapter proceeds as follows. I first demonstrate that the social embedding of 1991 Constitution has, in fact, occurred. After that, I show how legal mobilization has served as a mechanism of social embedding through a close examination of the social construction of legal grievances, in the process demonstrating that this process has been particularly striking with respect to the right to health. The tutela itself has become a feature of Colombian daily life, particularly in its connection to other features of the 1991 Constitution, like the newly enshrined social rights. In this way, social constitutionalism was embedded socially in Colombia. Social embedding has occurred to such an extent that citizens continue to file claims to their new constitutional rights, especially the right to health, despite ambivalence about the effectiveness of the tutela mechanism.

4.1 SOCIAL EMBEDDING: THE COMMONPLACE OF THE TUTELA

The embedding of a constitutional text becomes discernible as relevant terms (in this case, e.g., "tutela") and images enter – and remain present in – the realm of the common knowledge and the vernacular of the population of interest (in this case, everyday Colombians). Once these terms and figures cease to be understood as purely legal or technical in nature, or once they become part of everyday life, social embedding has begun. During the 1990s, the tutela became ubiquitous in Colombia, appearing across media platforms and making its way into the quotidian expressions and expectations of citizens. It was not just that the tutela became ubiquitous in the abstract. Instead, citizens explicitly connected the tutela to rights that were newly codified by the 1991 Constitution. In this section, I detail how the tutela moved beyond the confines of the formal legal sphere to take hold in the everyday lives of

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Colombians, before demonstrating the close connection of the tutela and newly codified constitutional rights.

In the early 1990s, the Colombian government engaged in a multipronged educational campaign. This educational campaign featured a television program, smaller advertising spots, board games, and comic books, in addition to mandatory teaching in schools, all of which was geared toward spreading information about the new constitution and the tutela procedure. Regional-level bodies in some, but not all, departments (states) have also held outreach programs, from the early 1990s to the present day. The national government even commissioned the translation of the 1991 Constitution into braille, in addition to the primary indigenous languages spoken in the country.[3] In an interview, Andrés Gómez, who was part of these educational campaigns, commented that "when the constitution came out, there was a constitutional pedagogy process, and that process lasted about three years."[4] After that, various councils and ministries oversaw these pedagogical efforts. Gómez explained that these early efforts "were eminently circumstantial and were not designed as a public policy per se, but were developed by the official on duty."[5] In what follows, I highlight two of the more coordinated pedagogical efforts – the television program, *La tutela factor humano*, and the board game, Tutela y Juega ("Tutela and Play") – that together provide a window into the government's constitutional education strategy.

Manuel José Cepeda, who served as an advisor to President César Gaviria during the constitution-drafting and implementation process (and later became a Constitutional Court justice), described the television program to me in an interview in February 2017. He explained, "*La tutela factor humano* was like a soap opera."[6] The program – which was at times hosted by famous Colombians like the comedian, activist, journalist, and politician Jaime Garzón – featured representations of

[3] By 1994, the Ministry of Justice and the Department of Anthropology at the Universidad de los Andes had translated the constitution into seven indigenous languages: Guambiana, Ikun, Kamentsa, Inga, Kubeo, Wayuunaiki, and Nasa Yuwe.

[4] Elite interview 179 (March 4, 2021). "Cuando salió la constitución hubo un proceso de pedagogía constitucional y ese proceso de pedagogía duró como tres años."

[5] Elite interview 179 (March 4, 2021). "Entonces todos los desarrollos anteriores que hubo digamos de pedagogía constitucional, eran eminentemente circunstanciales y no eran diseñados como una política pública per se, sino que eran elaborados bajo la mirada de digamos del funcionario de turno."

[6] Elite interview 68 (February 23, 2017).

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real tutela claims that had already been decided. In total, seventy-two episodes of *La tutela factor humano* played over the government-owned television network, *Audiovisuales*. The program was originally intended to air for only a year, but it ended up being extended for a second year, before being replaced in the Thursday night lineup by *Full House* (El Tiempo 1995).

Sandra Bernal, one of the show's producers, during an interview in 2021, shared that "the objective of the program was to show the benefits of the tutela,"[7] specifically "the human story behind the tutela."[8] Bernal further reflected on the process by which she and her colleagues chose cases for the show. She would go the Constitutional Court and sift through claims, looking for cases that were "visually attractive." She continued, "so, what does visually attractive mean? It was something that was like a story, that could be told visually on television, that was rich [in details]."[9] I asked Bernal to say more about the tutela claims she remember selecting for the show. She replied:

> One case that stood out to me was a case in Fusagasugá [a town about 50 kilometers southwest of Bogotá] that involved a woman who found a baby in a garbage can. So, the lady welcomed the baby, she raised her as if she were her daughter. Later, the Colombian Institute of Family Welfare told her that the girl, well, she had to hand her over, that the girl was not legally hers. But then she filed a tutela claim, asking that they recognize that she had already cared for the girl, and that the girl did not really know who she was. She was a girl who was abandoned, a girl who in a very bad state of health when she was found.[10]

[7] Elite interview 180 (April 12, 2021). "El objetivo del programa era mostrar los beneficios de la tutela."

[8] Elite interview 180 (April 12, 2021). "[L]a parte humana, la parte detrás de eso de la tutela."

[9] Elite interview 180 (April 12, 2021). "Como te digo yo empecé ahí como asistente de producción y después ya como productora, tenía que ir a la corte constitucional, mirar las tutelas, mirar un caso que fuera atractivo visualmente. Somos para televisión, llevar unos casos, yo los llevaba. Había unas personas que ayudaban a seleccionar esos casos, me decían: 'Sí, Sandra este está interesante, este no está tan interesante pues para televisión' … Entonces, visualmente atractivo ¿Qué era? Era una cosa que fuera como una historia que se pudiera contar visualmente en televisión, que fuera rica."

[10] Elite interview 180 (April 12, 2021). "Bueno, a ver, de los que me acuerde que me impactó mucho fue un caso en Fusagasugá de una señora que encontró una bebé en una caneca de basura. Entonces pues la señora acogió a la bebé, la crio como si fuera su hija. Después el Instituto Colombiano de Bienestar Familiar le dijo que esa niña pues había que entregarla, que esa niña no era pues legalmente de ella. Pero entonces pues ella puso una tutela, diciendo pues que le reconocieran que esa niña

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In the end, the Constitutional Court found in favor of the adoptive mother.

Beyond looking for a clear and compelling human story behind the legal claim, Bernal explained that she was looking for cases that had already been decided by the Court. At times, she and other members of the production team spoke with Constitutional Court justices, including José Gregorio Hernández, to get a more complete sense of what had happened in particular cases. These visually appealing, fully settled cases would help to educate the general public as to the scope of their constitutional rights.

A typical episode proceeded as follows. Over melodramatic music, the introduction to the show would offer a reminder to the audience:

> Many correctly say that the constitutional recognition of a series of rights does not by itself guarantee their effectiveness, but it is the first step to achieve that objective and to ensure that Colombians not only feel that the constitution rules over them, but that they also feel it protects them and belongs to them – *La tutela factor humano*.[11]

The audience would then learn about the claimant's background and hear a short, simple discussion of the problem they faced. As the episodes progressed, the audience would meet others who were affected by the same problem. Later on, the results of the tutela claim would be summarized in a voiceover. The narrator would read out the Constitutional Court's decision, listing the constitutional rights implicated and explaining how the decision relates to lower-court decisions. The show would then end with the following statement:

> With this tutela claim, a whole community benefited. We will see you next Thursday at 7:30 on Channel A, so that we can see another "human factor" that motivated a Colombian to file a tutela claim.[12]

pues como ya ella la había cuidado, no se sabía realmente de quién era. Era una niña que estaba abandonada, una niña que llegó muy mal."

[11] *La tutela factor humano* episode. "Muchos dirán con razón que la definición constitucional de una serie de derechos no garantiza por sí sola su efectividad, pero es el primer paso para alcanzar ese objetivo y para lograr que los colombianos no solo sientan que la constitución los manda, sino que los protege y les pertenece. La tutela factor humano."

[12] *La tutela factor humano* episode. "Con esta acción de tutela sea beneficiado toda una comunidad. Los esperamos el próximo jueves a las siete y 30 por el canal A, para que veamos otro Factor Humano que motivó a un colombiano a interponer una acción de tutela."

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Edwin Cruz Rodríguez, in a discussion of his relationship to the show, held that *La tutela factor humano* was a show that documented how:

> A long-haired student "entutelaba" [literally, tutela-ed] his school for violating his right to free development of personality by trying to force him to cut his hair, [and] a pregnant teenager did the same to avoid being expelled. The tutela was offered to us not only as a safeguard of rights, but also as an important engine of social and cultural change.[13]

Using an accessible narrative form, the television show educated citizens about the tutela mechanism and constitutional rights.

This television program was only one part of the Gaviria administration's constitutional education outreach. In a similar effort, Andrés Gómez developed the board game, Tutela y Juega, with support from the United Nations and the Colombian national government. In an interview in 2021, Gómez told me about his efforts to create and share the game. The country's Ministry of Education ultimately bought and distributed 10,000 copies of the game, and Gómez and others held workshops in schools after the country to introduce students to the game. Figures 4.1 and 4.2 show Gómez at these workshops in Cauca, a department in the southwestern part of the country. National newspapers, including *El Tiempo* and *El Espectador*, as well as regional papers, including *El Pais* (Cali), *El Colombiano* (Medellín), and *La Patria* (Manizales), covered the release of the game in January 1994.[14] In addition to running news articles about the game, *El Tiempo* also ran comic strips that referenced the game.

Tutela y Juega features cards that outline real-world examples and asks players to choose from a list of options on how best to respond. For example, one card that is meant to expose players to the ability to make tutela claims regarding the right to health reads:

> An employee of a company had a spinal injury several years ago that could leave her incapacitated for life. The solution was to operate on

[13] "Un estudiante de pelo largo 'entutelaba' su colegio por vulnerar su derecho al libre desarrollo de la personalidad al pretender obligarle a cortarse el pelo, una adolescente en estado de embarazo hacía lo mismo para evitar ser expulsada: la tutela se nos ofrecía no sólo como una salvaguarda de derechos, sino también como un importante motor de cambio social y cultural" (Cruz Rodríguez 2013). Cruz Rodríguez is a political scientist at the Universidad Nacional de Colombia.

[14] Photocopies on file with author.

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Figure 4.1 Andrés Gómez explaining how to play Tutela y Juega.
Source: Photograph provided by Andrés Gómez (Gómez R., Andrés. (2014) Foto tomada a niños indígenas Paeces, con servidores públicos en la Gobernación del Cauca, en actividad lúdica a través de la implementacion del Juego "Tutela y Juega." Presidencia de la República, PNUD).



Figure 4.2 Andrés Gómez (back row, center) after a workshop on Tutela y Juega.
Source: Photograph provided by Andrés Gómez. (Gómez R., Andrés. (2014) Foto tomada a niños indígenas Guambianos, con servidores públicos en la Gobernación del Cauca, en actividad lúdica a través de la implementacion del Juego "Tutela y Juega." Presidencia de la República, PNUD).

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her; however, social security would not cover the operation. What can she do?

A. File a tutela
B. Continue to file petitions
C. Go to a homeopathic doctor[15]

The correct answer, of course, is A.

The primary goals of the game were to teach children about the tutela mechanism and how to use it. As part of his remarks introducing Tutela y Juega to the country, President César Gaviria said: "We are determined that constitutional rights will become part of everyday language, that new citizens will be actively linked to democracy, that they will use the instruments that the Constitution endowed them, in short, that they will not see the State as a distant entity and unattainable, but as an ally of their hopes and expectations."[16] Speaking more specifically about the board game, he said he hoped that in "Colombian homes, schools, and universities, we can have more children playing Tutela, claiming life, instead of spending their free time playing 'Cops and Robbers' or 'Cat and Mouse,' where there are always those who kill and those who die."[17] Here, we get a glimpse of the aspirational political goals behind the 1991 Constitution, with a vision of benevolent law and order replacing a history of violence.

During our interview, Gómez pointed to two examples of times that young people had learned about the tutela through Tutela y Juega and had gone on to successfully file tutela claims. The first example garnered national attention, with a story running in *El Tiempo* in October

[15] Read to me by Gómez during our interview. Elite interview 179 (March 4, 2021). "Una empleada de una empresa tenía hace varios años una lesión de la columna que la podía dejar incapacitada de por vida, la solución era operarla, sin embargo, no le daban turno en el seguro social. ¿Qué puede hacer? Entonces había tres opciones … A: Interponer una acción de tutela. B: Seguir presentando peticiones. C: Ir donde un médico naturista."

[16] "Estamos empeñados en que los derechos constitucionales hagan parte del lenguaje cotidiano, que los nuevos ciudadanos se vinculen a la democracia de manera activa, que utilicen los instrumentos de que los dotó 1a Constitución, en fin, que no vean a1 Estado como un ente alejado e inalcanzable, sino como un aliado de sus ilusiones y expectativas" (Gaviria 1993: 3).

[17] "[P]ara que en el mayor número de hogares colombianos, de colegios y de escuelas podamos tener más niños jugando a la tutela, reivindicando la vida, en vez de dedicar su tiempo libre a jugar a 'ladrones y policías' o al 'gato y al ratón' donde siempre hay quienes matan y quienes mueren" (Gaviria 1993: 4).

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1994. Mayulay Villegas Vásquez, a twelve-year-old girl living in San José del Sur, a neighborhood to the southeast of the city of Santa Marta on the Atlantic coast of Colombia, had received Tutela y Juega as a gift from her father. After playing the game, she filed a claim against Telesantamarta and Gases del Caribe, a claim that ultimately led to the neighborhood gaining access to telephone, gas, and other public services.[18] The second example involved Gómez teaching a course on constitutional law in Armenia, a city in the western part of Colombia. A student in that class raised her hand and told Gómez that she had played Tutela y Juega as a child. She explained that she had successfully filed a tutela claim regarding a landfill that leaked contamination runoff into a river near her home. Gómez concluded this story by telling me that "the game did fulfill an important objective, which was to educate citizens in the institution, I say institution because the tutela has become an institution."[19]

While it is difficult to quantify exactly how many Colombians learned about the tutela through these government-sponsored constitutional education initiatives, my interviews with everyday Colombians offer suggestive evidence that the initiatives did have lasting impacts. One interviewee even explained that he learned about the ability to use this legal mechanism to make rights claims from a program he had seen on television:

> My mom's husband, for example, suffers from epilepsy so he has to be on medication … [and] it had been impossible for him to get those medications … [but] I heard on television that one can place a tutela claim. I know that if you send in a tutela claim, if you file it, they have – I do not know if it is a time of five or seven days to answer you – [but] they should answer you. It is assumed that with [a positive decision] that they are going to deliver those medicines … but no, they kept telling him "No, not right now." So, he went back and filed another tutela claim … Immediately, the judge gave the order for the medications, and they were [ultimately] delivered.[20]

[18] See *El Tiempo* (October 8, 1994).

[19] Elite interview 179 (March 4, 2021). "Entonces el juego sí cumplió un objetivo importante que era educar a los ciudadanos en la institución, yo digo institución porque la tutela se ha convertido en una institución."

[20] Bogotá interview 7. "El esposo de mi mama por ejemplo el sufre de epilepsia entonces él tiene que estar en tratamientos con eso y … ha sido imposible que le den esos medicamentos … Yo he escuchado en la televisión que si a uno no le dan un derecho esto puede colocar un derecho de tutela, una acción de tutela, entonces

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This example shows how exposure to the tutela and the 1991 Constitution through public education campaigns on television can translate into legal mobilization.

Additionally, we can observe evidence of the vernacularization of the term "tutela." Everyday Colombians, who I interviewed in 2017 in Bogotá, Medellín, and a marginal neighborhood on the outskirts of Cali called Agua Blanca, used the following verbs when discussing their use of the tutela: *interponer*, *poner*, *colocar*, *presentar*, *mandar*, *montar*, *hacer*, and *usar*. The phrase "___ una/la tutela" has become widely used. Further, some shortened this construction to "*tutelar*," "*entutelar*," or "*estar tutelando*." For instance:

- "The tutela has already lost its efficiency. They are supposed to comply based on one tutela ruling, but not now. I think they found a way to evade those tutela decisions … the lawyers of the companies, because I believe they can appeal the decisions of tutelas, I believe that they can 'tutela' [*entutelar*] a tutela again."[21]
- The tutela is a tool that "benefits and helps one, it's a tool that makes those responsible for what one is 'tutela-ing' [*está tutelando*] respond to what one is asking for."[22]
- "Now that we have this tool, I 'tutela' [*entutelo*] everything– because the upstairs neighbor celebrates birthdays every fifteen days, if the insurance company does not provide me with a service, I 'tutela' [*entutelo*] them, if the power goes out in my neighborhood, I file a tutela. So, in these ways, the word 'tutela' became part of the background."[23]

fue como eso. Sé que se envía una carta a modo de derecho de tutela, la radicas, ellos tienen no sé si es un tiempo de 5 o 7 días en contestarte, te deben contestar. Se supone que con algo afirmativo o bueno de que te van a entregar esos medicamentos en el caso de él y te los deben dar, pero en el no, ha hecho eso, le dicen que no hay en el momento, el vuelve y pone otra tutela … Inmediatamente le daban su orden para que fuera por sus medicamentos y se los entregaban."

[21] Bogotá interview 1. "Ya perdió su eficiencia … Pues se supone que deberían cumplir en base de un fallo de tutela, pero ahora no, creo que se encontraron la forma de evadir esos fallos de tutela … los abogados de las empresas porque creo que ahora los fallos de las tutelas se pueden apelar, creo que a una tutela la pueden entutelar nuevamente."

[22] Bogotá interview 6. "[La tutela es una herramienta] que beneficia y le ayuda a uno, es una herramienta que hace que los responsables de lo que uno está tutelando le respondan por lo que uno está pidiendo."

[23] Bogotá interview 22. "Cuando tenemos esa herramienta entonces entutelo por todo, porque el vecino de arriba celebra cumpleaños cada 15 días, si la entidad

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- "I have a child whose right to education was being violated … They told me that the tutela was the ideal tool to protect [*hacer tutelar*] this right … I got a response [to my tutela claim] in an agile and effective way, because I 'tutela-ed' [*tuteló*] a right that had been violated for my son."[24]

These examples illustrate some of the ways that the term "tutela" has transformed and entered colloquial Colombian discourse. "Tutela" is not simply a formal, technical legal term (like "writ of protection" or "writ of certiorari" are in American English), but one that has become part of everyday speech and everyday life.

The understandings that folks express about the tutela and their constitutional rights may or may not all be technically accurate. Gabriel Roldán, a judge in Medellín, shared the following story with me in an interview:

> People even at the lowest levels ask about tutela. Look, for example, in my house we had domestic workers for many years and one of the last ones said to me "Don Gabriel, can you help me to file a tutela?" And I asked, "for what?" And she said, "displacement." I asked, "why displacement? You are not displaced." And she said, "my neighbors are not displaced, and they have also won tutela claims as displaced persons."[25]

He went on to say that he had explained that this was not how the tutela was supposed to work. If the 1991 Constitution and the tutela procedure were not embedded, we would not expect to hear references to them at all, whether accurate or inaccurate – and certainly not from people who have no formal legal training or education. Misunderstandings are perhaps even more informative than the parroting of correct information for social embedding. Misunderstandings reflect how

prestadora de salud no me da el servicio, la entutelo, si en mi barrio se va mucho la luz entonces, monto una tutela. Y entonces se nos volvió que la palabra tutela, se volvió tan paisaje."

[24] Medellín interview 5. "Yo tengo un hijo menor de edad el cual le estaban vulnerando el derecho a la educación … Me dijeron que la herramienta idónea para hacer tutelar de este derecho de mi hijo era la tutela … Obtuve respuesta de manera ágil y efectiva, pues se me tuteló derecho que tenía vulnerado para mi hijo."

[25] Elite interview 74 (March 22, 2017). "La gente hasta de los más bajos niveles le pregunta a uno por la tutela. Mire por ejemplo en mi casa tuvimos por muchos años empleadas de servicio doméstico y una de las ultimas me decía 'Don Gabriel ¿usted me ayuda para presentar una tutela?' y yo '¿para qué?' Y dice 'porque de desplazada' y '¿Por qué de desplazada si usted no es desplazada?' y dice 'mis vecinas no son desplazadas y también han ganado tutelas como desplazadas.'"

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information has been refracted through social interaction, through word of mouth and vernacularization. These kinds of misunderstandings provide another glimpse into just how pervasive and normal references to legal mobilization for rights through the tutela procedure have become – and just how socially embedded the 1991 Constitution has become.

4.2 LEGAL MOBILIZATION AND SOCIAL EMBEDDING

The vision of the 1991 Constitution as one that offers potentially meaningful rights protections through tutela claims entered everyday discourse in the early 1990s. But would it remain there? Beyond simply knowing about the tutela, citizens also had to embrace it, to use it to make claims to the rights enshrined in the constitution. Colombian citizens have turned to the tutela to make rights claims in greater and greater numbers in the decades following the implementation of the 1991 Constitution. Julieta Lemaitre, who was, at the time of our interview, a law professor at the Universidad de los Andes (later she became a judge in the Special Jurisdiction for Peace), noted how unexpected the rise of the tutela was, stating that "I don't think in 1991 anybody could have seen the importance of tutela, but by 1994, 1995, certainly, people were starting to get it. By the end of the decade, it was clear that it was important, the only game in town."[26] Juan Sebastián Tisnés, a judge working in Medellín, echoed this view that citizens came to view the tutela as integral to their ability to obtain a wide variety of goods, services, and protections:

> [W]e want to resolve everything through the tutela, right? … For example, if you dismiss me as your worker, instead of going to labor court, I file a tutela claim … The health [claims], if they delivered the medications, you would not have to file a tutela, or if they delivered the drugs to you, you would not have to file a tutela. I think it is both that everything is resolved by way of the tutela or we believe that everything is resolved by way of the tutela, and because state entities do not apply that Article II of the constitution [that stipulates that the state has the duty to "serve the community, promote the general welfare, guaranteeing the effectiveness of the principles, rights, and duties stipulated by the Constitution"].[27]

[26] Elite interview 20 (September 6, 2016). Other interviewees echoed this notion.

[27] Elite interview 72 (March 15, 2017). "Todo lo queremos resolver por tutela ¿cierto? … Por ejemplo tú me despides a mi como tu trabajador y yo en vez de ir a la Justica

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Another judge working in Medellín, Gabriel Roldán, shared a similar view: "today I think that no Colombian imagines life without the tutela. It's that simple. It would be hard to imagine what Colombian society would be like without this mechanism."[28]

During interviews, everyday Colombians confirmed this sense that the tutela had become fundamental to citizens. For example, one interviewee pointed to the key role of the tutela in transforming what is written in the Constitution into substance: "I think it is important to know what [the tutela] is, to know that it is a right that is in the Constitution that, in fact, allows us to fight for the rights we all have. The tutela allows us to assert what is constitutionally written."[29] Yet, this adoption of the tutela has not translated evenly into claim-making across issue areas.

The combination of right to petition and right to health tutelas comprised the majority (between 63 and 76 percent) of tutela claims filed between 2003 and 2019.[30] The right to petition – which allows citizens to make "respectful" requests of the government, often for information – is exactly the kind of claim that the tutela was originally designed to facilitate. What ensured the deep embedding of the tutela in general and the 1991 Constitution in particular into Colombian social life, however, was claim-making regarding the right to health – a newly codified right, and one that arguably falls outside of the scope of the tutela, at least as it is described in text of the Constitution. Juan Carlos Esguerra, the delegate behind the tutela proposal at the constituent assembly, explained to me that:

> At the beginning, if you would look at the Constitution, the first answer would be tutela is not for social rights. Because for tutela is constructed for the fundamental rights and fundamental rights are chapter number

Laboral interpongo la tutela … De los de salud, si tu entregaras los medicamentos no tendrías que interponer tutela, o si a ti entregaran los medicamentos no tendrías que interponer tutela entonces creo que son las dos que todo es resuelto por vía de tutela o creemos que todo se resuelve por vía de tutela, y porque las entidades del estado no aplican ese artículo dos de la constitución política."

[28] Elite interview 74 (March 10, 2017). "Hoy creo que ningún colombiano se imagina sin la tutela, es así de sencillo, sería difícil imaginar cómo sería la sociedad colombiana sin este mecanismo."

[29] Bogotá interview 35. "Creo que es importante saber lo que es [la acción de tutela], conocer que es un derecho que está en la Constitución, pues que hecho nos permite luchar por los derechos que todos tenemos. Una acción de tutela nos permite hacer valer lo que constitucionalmente está escrito."

[30] Disaggregated data are not available before 2003.

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> one and the social rights are chapter number two … So, the tutela is [technically] not for them.[31]

Yet, in 2019, of more than 620,000 tutelas filed, 207,368 invoked the right to health. How did that happen? In this rest of this chapter, I explore the social construction of legal grievances in the Colombian context, paying particular attention to how constitutional law, the tutela, and healthcare came to be understood as fundamentally intertwined. This process – along with the development of judicial receptivity to particular kinds of claims (a topic explored in Chapter 5) – resulted in a feedback loop, spurring continued legal mobilization and embedding the 1991 Colombian Constitution.

The formal rules that regulate the tutela procedure help to mitigate the need for a traditional support structure for claim-making (Wilson 2009). Even so, actors not employed in or by the formal legal system, including pharmaceutical and insurance companies, advocacy networks, NGOs, and community organizations, were fundamental to changing ideas about the tutela and the right to health. In the case of health claims, actors not usually associated with the legal system, such as insurance and pharmaceutical companies, helped to cement the understanding that access to healthcare is a fundamentally legal issue among claimants. Concretely, citizens came to think of filing tutela claims when they were denied access to medicines, surgeries, or procedures.

By examining patterns of tutela claims rather than taking an individual case as the unit of analysis, I reveal two key incentive structures in the realm of health rights claims. First, individual citizens found practical incentives to file tutela claims. Second, insurance and pharmaceutical companies found monetary incentives to encourage the use of the tutela procedure. The combination of these incentive structures spurred changes in beliefs about how law could and should be used in the realm of healthcare.

In terms of incentives for citizens, the massive yet uneven expansion of the healthcare system that began with Law 100 of 1993 generated many potential grievances, as citizens gained access in theory (if not in practice) to more and more services and developed a greater sense of entitlement to those services.[32] Between 1995 and 2011, the

[31] Elite interview 35 (September 23, 2016).
[32] The Law 100 reforms were based on the Chilean healthcare system.

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percentage of the Colombian population included in the healthcare system expanded from 25 percent to 90 percent, increasing further to 95 percent by 2016 (Lamprea 2015: 61; Lamprea and García 2016). This expansion resulted in substantially increased levels of coverage, but that coverage did not necessarily translate into real access to healthcare services for newly covered individuals. Over time, individual citizens came to understand the filing of tutelas as what one must do to receive healthcare services, and the relatively low cost of the tutela procedure allowed many citizens to file claims.

The incentive structure for insurance companies worked as follows. The companies could reasonably expect to reduce the number of people seeking access to medications, services, and procedures by initially denying that access and encouraging the filing of tutela claims.[33] Even when those medications, services, and procedures were covered in the benefits plan, the companies could reasonably expect that not everyone would follow through with tutela claims: some might pay out-of-pocket and others might simply move on without whatever it was that they had sought.

What's move, in certain circumstances, the state would help to pay for medicines and procedures out of an established fund called the Fondo de Solidaridad y Garantía, relieving the insurance company of that duty, but only after the filing of a tutela (Lamprea 2015). The idea behind this fund was to ensure that individuals would not be inhibited from accessing the medicines or procedures they needed simply because of a gap in coverage. Yet, the system was particularly susceptible to fraud and manipulation by actors in the health sphere who could deny access to a medical service that should have been covered and suggest that the patient file a tutela, as noted above. Importantly, this opportunity for manipulation was not necessarily one that would have been predictable when the fund was created (during the Law 100 reform of 1993). In 1993, it was not yet clear that the judges would be so receptive to health claims.

While some insurance companies have better reputations than others (and some seem to perform better than their reputations would suggest), the general understanding among everyday Colombians is that the healthcare sphere is characterized by mismanagement, understaffing,

[33] Interviews with former clerks (elite interviews 2 and 4, both conducted August 4, 2016).

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fraud, and corruption. It is unclear exactly how frequently this kind of fraudulent and negligent activity occurs (though news reports suggest it has not necessarily been uncommon[34]), but it is less important for my account that this behavior was, in fact, pervasive than that it is *viewed as* pervasive and that the behavior of insurance companies was interpreted as encouraging the use of the tutela in the realm of health.

Everaldo Lamprea (2015) has documented financial ties between pharmaceutical companies and patients' organizations engaged in the filing of tutela claims with the hopes of expanding the scope of covered medications. These kinds of connections can be interpreted as a manipulation of the tutela process, but they also reflect the convergence of interests between patients who need specific medications and companies that would like to increase access to and the purchasing of those same drugs. Regardless of the interpretation, there is a pathway through which pharmaceutical companies encourage the use of the tutela for the protection of the right to health.

Alejandro Gaviria, the minister of health from 2012 to 2018, summarized the factors that influenced the increased use of the tutela for health claims as follows:

> People started to see in the tutela a way to expand the benefits plan one by one. For patients very sick with cancer, the basic plan did not include the medication they needed, so they would go before a judge … I believe that this is the first dimension. And the basic plan was never updated [early on]. The tutela was a way to update [the plan] and [get it to] include [the medicines you needed]. I believe that there is a second point that has to do with collective learning. Society and, above all, lawyers learned that this was the way to do things. And then there were agents among the pharmaceutical industry who began to see in the tutela a way to incorporate the latest innovations into the health system and [in the process] capture public resources.[35]

As a result, the tutela and the healthcare system came to be inextricably linked in people's minds. This was one consequence of the social embedding of the 1991 Constitution.

Thus far, I have inferred this connection between the tutela and healthcare based on behavior (that citizens routinely make health rights claims with the tutela). My interviews from across the country provide illustrative evidence that at least some everyday Colombians

[34] See, e.g., El Espectador (2012) and El Tiempo (2012).
[35] Elite interview 56 (November 2, 2016).

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do, in fact, view the two as interlinked. For example, one interviewee summarized, "unfortunately, in Colombia, in order to access health services, you have to file tutelas."[36] Two other interviewees offered detailed examples of the role of the tutela in the healthcare system. One reported:

> I have a relative who is very sick. I had to file tutela actions that said the health clinic would not do the [necessary] surgery or give the [necessary] medication. Sometimes they comply, and they attend to the patient. Many times, no … [In these situations,] you have to get an order of contempt or file another tutela or go to the media. The [first] tutela is not enough.[37]

A second, drawing on personal experience, noted:

> My sister has a very complicated medical problem and has to take medications … They are covered in the [public health benefits plan], but they are not generic … She had to file a tutela claim for the [insurance company] to cover them, and [now] they're covering them. There are cases in which, unfortunately, if you think about it, it should not be a tutela claim. There should be an established process for each thing, but the tutela has become the thing that one has to use to gain access to citizenship services.[38]

The tutela is understood as the effective entry point into the healthcare system (as well as the access point for other citizenship goods). Responding to this perception in 2007, the Constitutional Court issued a decision noting that the tutela cannot be a required part of the process of obtaining healthcare (C-950/07). That the Court felt the need

[36] Bogotá interview 9. "Desafortunadamente en Colombia para acceder a algunos servicios de salud hay que poner tutelas."

[37] Agua Blanca interview 18 (April 15, 2017). "La acción de tutela con la salud, pues por los menos yo tengo un familiar grave en la clínica … Me toca que colocar una acción de tutela donde dice no quieren atender, no quieren hacer la cirugía o no quieren dar el medicamento. A veces la acatan y pues atienden la paciente. Muchas veces, no … Un orden de desacato u otra vez otra orden de tutela o a los medios de comunicación … para atender al paciente. [¿La tutela no es suficiente?] No."

[38] Bogotá interview 44. "Por ejemplo mi hermana tiene un problema medico muy complicado y tiene que tomar medicamentos … Están dentro del POS pero no son genéricos … y ella tuvo que instaurar una acción de tutela para que la EPS se los cubriera y se los está cubriendo. Hay casos en los cuales lamentablemente si lo piensa uno bien pues no debería ser una acción de tutela. Debería haber un proceso establecido para cada cosa, pero se ha convertido la acción de tutela en que para el servicio al ciudadano uno tiene que establecer una acción de tutela."

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to issue such a declaration indicates the prevalence of the view that the tutela was a necessary part of accessing healthcare. Because of the way the healthcare system became judicialized, problems related to access to health came to be viewed as legal grievances.

My argument is not that these insurance and pharmaceutical companies explicitly call on individuals to file tutela claims in every case (though sometimes that does happen), but that a generalized linkage of healthcare and the tutela has emerged: the combination of incentives for insurance and pharmaceutical companies and incentives for individuals have reinforced the understanding of health as a legal issue. These incentives are particularly influential considering the unique features of the tutela, such as the low cost and quick response rate. The understanding that one must file a legal claim in order to have access to health services would be less likely to prompt litigation in a setting where litigation is costly and time-consuming.

4.3 CLAIM-MAKING DESPITE AMBIVALENCE

Colombian citizens continue to file tutela claims despite ambivalence, uncertainty, and even skepticism about both the process of filing a claim and the likely outcome. This is further evidence that the 1991 Constitution has become embedded in Colombian society. If Colombians were simply responding to cost–benefit analyses of whether or not to file tutela claims or to engage constitutional rights, we would have reason to doubt that the 1991 Constitution was truly socially embedded. Embedding indicates moving beyond means–ends calculations regarding legal tools to understanding them as common sense. In this section, I draw primarily on interviews conducted with everyday Colombians – fifty in-depth interviews with residents of Bogotá in February and March 2017, and twenty-four unstructured individual and group interviews with forty-three people in Agua Blanca, Cali during April and May of 2017 – and a survey of 310 people waiting in line outside the Palacio de Justicia in Medellín to file a tutela claim in April 2017.[39]

Almost everyone in the Bogotá sample evaluated the legal system negatively, regardless of social class. One poor respondent stated simply, "it would be better to say that Colombian law does not exist,"[40] and a wealthy respondent likewise noted, "justice here in Colombia

[39] For more on data collection, see Chapter 1 and the Appendix.
[40] Bogotá interview 29. "Mejor dicho la ley colombiana no existe."

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does not function; there are no laws."[41] Isolating the differences of rights on paper and how the law functions in everyday life, one interviewee noted that "in some ways, one is sold the image that things have tended to improve [with the 1991 Constitution], but one does not see that change."[42] Another poor woman concluded, "realistically, people of few resources have not been the beneficiaries of any constitution,"[43] questioning the idea that the law anywhere helps the poor. By and large, assessments of the judiciary's inefficacy do not appear to vary along class lines.

Interviewees in Agua Blanca reported similar views on the large gap between rights and laws as they are written in the Constitution and in the codes and how they work in practice. As one respondent described, the major problem facing the legal system is that "there is the absence of the application of the laws as they are. Here we have laws, but they are not applied as they are [or as they should be]," and that the same applies to rights.[44] This perception contrasts with that of other residents who tended to state things like "there is no law" or "the law does not exist."[45] These views are not necessarily incommensurate, as the former is a statement of objective fact (there are technically laws in Colombia) while the latter offers a subjective, experiential view (residents rarely experience the law outside of delegitimizing factors such as violence and corruption). Another resident explicitly referenced the differences between the constitutional text and everyday life: "It is one thing what the Constitution says and another what happens … the rights, every day they are violated. All of them are violated."[46]

Few respondents in Bogotá gave any suggestion that they viewed their constitutional rights as effective tools in and of themselves. Instead, interviewees appeared to have more confidence in the idea that rights could have real consequences for their everyday lives only through the

[41] Bogotá interview 6. "La justicia acá en Colombia no sirve; no hay leyes."
[42] Bogotá interview 11. "En cierto modo a uno le venden la imagen de que tienden a mejorar [con la Constitución del 91] pero uno no ve ese cambio."
[43] Bogotá interview 39. "Pues realmente digamos que las personas de bajos recursos no han estado muy beneficiados, digamos que con ninguna constitución."
[44] Agua Blanca interview 6. "Falta aplicar las leyes como son. Aquí hay leyes, pero no se aplican como son."
[45] Various Agua Blanca interviews. "No hay ley. La ley no existe."
[46] Agua Blanca interview 5. "Una cosa lo que dice la Constitución y otra cosa lo que hacen … los derechos, todos los días los violan. Todos los violan."

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use of the tutela procedure. One middle-class respondent, for example, pointed to the key role of the tutela in transforming what is written in the Constitution into substance: "I think it is important to know what [the tutela] is, to know that it is a right that is in the Constitution that, in fact, allows us to fight for the rights we all have. The tutela allows us to assert what is constitutionally written."[47] A well-off respondent similarly reported that he saw the tutela as "an excellent mechanism to access and assert my rights."[48] Across classes, interviewees shared views that suggested skepticism about the value of their rights, especially in the absence of the tutela.

Survey respondents reported very similar views. Nearly 70 percent stated that they were unconfident or very unconfident that the judiciary treated all citizens equally. Only 19 out of 310 respondents said they were confident in the judiciary, and zero respondents reported that they were very confident. Thus, respondents reported little confidence in encountering a fair judiciary. Twenty percent of respondents pointed to the view that the state should protect their rights as the primary reason for filing a tutela claim, which could be interpreted as minimal support for the idea that their constitutional rights are "real" or claimable. The nature of the survey does not allow for the same level of nuance that emerges in responses to open-ended interview questions; however, the survey yields evidence that the evaluations of the general population carry through to individuals who use the legal system. Here, claimants do not appear to be fundamentally different from nonclaimants in their assessments of the state and the judiciary.

Given this general lack of faith in the state, the judiciary, and rights, perhaps citizens view the tutela as distinct from the rest of the state's legal apparatus, as an effective tool in an ineffective system. During a group interview in Agua Blanca, members of one family (living in extreme poverty, even for Agua Blanca) explained that "we have filed many legal claims, and they do not care [or respond]," no matter what type of claim, whether to obtain access to government

[47] Bogotá interview 35. "Creo que es importante saber lo que es [la acción de tutela], conocer que es un derecho que está en la Constitución, que pues que de hecho nos permite luchar por los derechos que todos tenemos. Una acción de tutela nos permite hacer valer lo que constitucionalmente está escrito."

[48] Bogotá interview 32. "[La acción de tutela es] un excelente mecanismo para poder acceder y hacer valer mis derechos."

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services or to report the excessive use of force by the police.[49] Another woman living in the neighborhood described the process of filing a tutela claim for the right to health as follows:

> You do not need a lawyer, but when you go to the Palace of Justice, there is a man in front who does everything for 10,000 or 15,000 COP [at the time about US$3–5] – a processor. And you say, "Good morning, what happened is … [I would like] to place a tutela," and the man processes it for you. You have to have a copy of your ID and wait in line … and after a few days, you get the response. If you do not pay a processor here, nothing happens.[50]

Ultimately, the judge found in favor of this woman's right to health claim; however, in the decision, he declared that she should have access to diapers and creams, not the twenty-four-hour nurse she had requested. In Agua Blanca, citizens rarely, if ever, reported believing that the tutela was effective in protecting their rights.

In the Bogotá sample, however, views on the tutela procedure were mixed. One middle-class respondent described the tutela in the following way:

> [The tutela] gave the ordinary citizen the possibility to enforce their rights or show difficulties in the fulfillment of some fundamental right … Before the tutela, there was nothing one could do. It was necessary to wait for a politician to be elected, and if he cared about that community, wait for him to intervene in some way. Not now. Now, an individual, a single person, can file a complaint with the tutela.[51]

An upper-class interviewee similarly considered that "[the tutela] helps, it is a tool that makes those who are responsible respond to what one is

[49] Agua Blanca interview 1. "Ponemos una cantidad de demandas y ellos no les importa."

[50] Agua Blanca interview 6. "No necesitas un abogado, pero vas al frente del Palacio de Justicia y hay un señor en frente que hace todo por 10 o 15 mil – un tramitador. Y tú dices buenas señor, lo que pasa es … para colocar una tutela y el señor tramite. [Tienes que tener una] fotocopia de la cédula y [esperar en] la fila … y después unos días, la respuesta. Si usted no paga un tramitador aquí, no hacen nada."

[51] Bogotá interview 9. "[L]e dio la posibilidad al ciudadano común de hacer cumplir o de mostrar que hay dificultades en el cumplimiento de algún derecho fundamental … antes de la acción de tutela no había nada que hacer, tocaba esperar a que un político se eligiera y que le importara esa comunidad para que interviniera de alguna manera, ahora no. Ahora un individuo, una sola persona, con una acción de tutela puede poner una denuncia."

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asking for."[52] Further, a middle-class respondent said, "[the tutela] is the only thing that works – we use it because it works."[53] On the other hand, some respondents critiqued the way the tutela procedure functions in practice. As one member of the lower class noted, "the tutela is good, but what happens is that they do not comply … the people do not comply."[54] Others argued that too many tutelas have been filed, that judges are overburdened by tutelas, and that sometimes people abuse the procedure. An lower-class interviewee noted, "lately, the courts are so full of tutelas … Already [the tutela] lost its efficiency."[55] One member of the upper class spoke specifically about the overuse of the tutela, stating, "[p]eople abuse the tutela a lot and it takes up a lot of time to resolve [the tutela claims]," stressing an already overtaxed legal system.[56] Finally, some respondents simply held negative views on the tutela. As one lower-class respondent remarked, "[the idea of the tutela is] to assert our rights, but that does not work … that is a lie, it does nothing for you."[57] Similarly, a middle-class woman noted that filing a tutela "seems to me a waste of time and above all fills the courts … the perception I have is that it is of no use."[58] Thus, while respondents in Bogotá generally agreed that the justice system as a whole leaves much to be desired, perspectives on the effectiveness of the tutela procedure were more varied.

Interestingly, the view that the tutela is likely to be effective is not a necessary condition for the filing of tutela claims. This disconnect was especially clear in the interviews conducted by several research assistants from the Universidad de Antioquia with the Medellín survey respondents about two weeks after the survey had been conducted

[52] Bogotá interview 6. "[La tutela] le ayuda a uno, es una herramienta que hace que los responsables de lo que uno está tutelando le respondan por lo que uno está pidiendo."

[53] Bogotá interview 44. "[La tutela] es lo único que funciona – lo usamos porque es lo que funciona."

[54] Bogotá interview 13. "[La acción de tutela es] buena, [pero] lo que pasa es que no se cumplen … la gente no cumple."

[55] Bogotá interview 1. "Últimamente como que las acciones tutela como los juzgados están tan llenos de ella … Ya perdió su eficiencia."

[56] Bogotá interview 33. "La gente abusa mucho y eso quita mucho tiempo también para poder resolver las cosas."

[57] Bogotá interview 29. "[La idea de la tutela es] hacer valer nuestros derechos, pero eso para que, eso nunca sirve para nada … eso es mentira, eso no hace nada por uno."

[58] Bogotá interview 18. "Me parece una pérdida de tiempo y un desgaste y sobre todo llenar más allá esos juzgados … la percepción que yo tengo es que no sirve para nada."

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(when the first decision to their tutela claim should have been issued). These interviews – with only minor discrepancies – followed one of two scripts: positive and upbeat, with no or only minor complaints about the process, or negative but resigned. One respondent, Liliana, shared her positive analysis with one of my research assistants:[59]

Could you tell me about your experience filing a tutela? Why did you decide to file a claim?
I needed to resolve a health problem with the insurance company.[60]
What was the process like?
I went where they receive tutela claims, stood in line, and handed it in.[61]
What was the result?
Well, they responded quickly and decided in my favor.[62]
What do you think of the results?
Good, because when one appeals for a right, and if they respond in favor, I think that's excellent.[63]
What did you like about the process and what did you not like?
[I liked] that the process was quick, but standing in line was very tedious and the time one waits there to hand in the tutela is very long.[64]
Would you use the tutela again (in the future)?
Yes, as long as one needs it, because you really have to watch over your rights and make the authorities comply.[65]

Another respondent, Rosita – who had already filed four tutela claims – held a decidedly more negative view of the tutela procedure:[66]

Could you tell me about your experience filing a tutela? Why did you decide to file a claim?
I filed a tutela claim, because I had a problem with a surgery I wanted.[67]

[59] Medellín interview 7.
[60] "La necesidad de que me resolvieran un problema que tenía de salud en la EPS."
[61] "Yo fui allá donde reciben las tutelas hice la fila y la entregué."
[62] "Pues allá me respondieron rápido y me la dieron a favor."
[63] "Bien, porque cuando uno apela por un derecho y pues si se lo responden a favor de uno, me parece que eso es excelente."
[64] "Que la respuesta fue rápida, pero hacer filas eso siempre fue muy tedioso y es muy largo el tiempo que uno espera allá para poder entregar la tutela."
[65] "Si, siempre y cuando la necesite porque uno de verdad tiene que velar por sus derechos y hacer que las autoridades pues lo hagan cumplir."
[66] Medellín interview 6.
[67] "Mira yo creo que la acción tutela porque tenía problema con una cirugía que me quería hacer."

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What was the process like?
It's traumatic, because you have to wait in many lines, but it didn't help me much.[68]
What was the result?
Nothing. The bypass surgery has still not been done yet.[69]
What do you think of the results?
Well, they're bad, because I didn't get what I want.[70]
What did you like about the process and what did you not like?
I like that there's the possibility of filing a tutela, but if one doesn't get what one is proposed, then really, I'm not happy with that.[71]
Would you use the tutela again (in the future)?
I don't know. I would have to, because there are no other options, but it doesn't work either really.[72]

What immediately stands out is that Liliana evaluated the experience positively after receiving a decision in her favor, while Rosita evaluated the experience negatively after receiving a negative response. One striking commonality, however, is that both women said that they would use the tutela again: Liliana enthusiastically and Rosita reluctantly. Others with whom we followed up echoed Rosita, saying that even though they were not satisfied with the tutela process, they might "have to" file a tutela claim again, "because there are no other options."[73]

Colombians have accepted the tutela and their ability to make claims to newly codified rights (like the right to health) under the 1991 Constitution, despite mixed views about the usefulness of the tutela. The use of the tutela to make rights claims may or may not result in material changes, but no other options exist, except for doing nothing. If the problem is deemed to be important enough, doing nothing may not be considered a viable option.[74] In this way, the 1991 Constitution

[68] "Ese es más traumático porque hay que hacer muchas filas, pero no me sirvió mucho de menos."
[69] "Nada, porque la cirugía para el bypass no me la han hecho todavía nada."
[70] "No pues malo, porque no se ha logrado lo que yo quiero."
[71] "Me gustó porque existe la posibilidad de colocar la tutela, pero si uno no logra lo que se está proponiendo entonces no, realmente no estoy contenta con eso."
[72] "Hay yo no sé tocaría porque no hay como otras posibilidades, pero no como sirve demasiado verdad."
[73] Medellín interview 12. See also Medellín interview 4.
[74] What differentiates those who do not act from those who do is an open question and should be the subject of future research. Generally speaking, mobilization – both social and legal – occurs at rates lower than might be warranted by possible

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came to be socially embedded and understood as a fundamental part of Colombian life.

4.4 CONCLUSION

Social embedding reflects the degree to which a constitution impacts daily social life. Outside of judges' chambers, lawyers' offices, and law school classrooms, how meaningful are constitutional rights promises? Do citizens talk about and use legal mechanisms to make claims to their rights? Do citizens even know about and believe in the possibility of making such claims?

This chapter detailed the process of the social embedding of the 1991 Colombian Constitution. In a relatively short period of time, citizens came to adopt core features of the 1991 Constitution into their everyday discourse and practices, most notably the tutela procedure. The process of social embedding began with government outreach and educational campaigns, as well as the spread of information through the media. Eventually, knowledge of tutela and social rights came to take on a life of its own. Legal mobilization served as a mechanism of social embedding, as citizens repeatedly filed tutela claims regarding new constitutional rights, even when they were not necessarily convinced of its effectiveness. Filing tutela claims came to be seen as "what one has to do" (Taylor 2018), despite official declarations on the contrary. And, as a result, the Constitution of 1991 became embedded socially – as part of what is considered "normal," "ordinary," or "everyday" at the social level.

I next turn to the process of legal embedding, or how the 1991 Constitution came to shape the expectations and behaviors of actors within the formal legal sphere. A context of social embedding without legal embedding is likely to spur claim-making initially, but if judges, lawyers, and other representatives of the state dismiss these claims as misguided, inappropriate, or unreasonable, that lack of legal embedding will begin to undermine social embedding. Chapter 5 not only details how legal embedding occurred in Colombia, but also how it reinforced social embedding. That both components of constitutional embedding occurred together ensured that the 1991 Colombian Constitution could withstand myriad future challenges and endure as a key feature organizing both social and legal life.

grievances or "justiciable events" (e.g., McCarthy and Zald 1977; Felstiner, Abel, and Sarat, 1980; Genn 1999).

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