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RESEARCH ARTICLE

Embedding constitutional rights

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Abstract

This article details the concept of constitutional embedding and demonstrates its utility in four country-rights cases. Constitutional embedding refers to the process by which some understanding of constitutional rights comes to take root in everyday life, moving from words on paper to something that shapes expectations and behavior. The degree of constitutional embedding varies along two dimensions: social and legal, or how individuals and groups operating in the social sphere understand and relate to constitutional rights, and how those working in the formal legal sphere do so. In a global political climate defined by democratic backsliding, powerful vested interests, and backlash against moves toward equality, the status of constitutional rights and how they become and remain embedded is doubly important. The constitutional embedding framework highlights how interactions between legal elites and ordinary citizens constitute the extent to which constitutional law influences daily life. The framework has broad applicability across contexts and rights domains.

Keywords: constitutions; constitutional rights; constitutional change; constitutional embedding; everyday life

Constitutions are the founding documents of the state. They outline how power is held, shared, and constrained (Galligan and Versteeg 2013). They also determine, at least formally, who is a full member of the political community and what political membership entails (Van Cott 2000). Further, constitutions and constitutional rights have major distributional consequences, impacting everything from the parameters of fiscal policy to the likelihood of endemic political corruption (Persson and Tabellini 2004). Yet, constitutional design is not always translated into practice (O'Donnell 1994), and gaps between what is written and what is experienced on the ground are often yawning (Gould and Barclay 2012).

Constitutions and judicial review are said to exist because of elite struggles and the need to protect market activity. In terms of elite struggles, constitutions and judicial review serve (at least) three purposes: they can lay out elite values, placate revolutionaries, and provide insurance against uncertainty. One take on constitutions suggests that they reflect the sincere values of those involved in the constitution-drafting process (historically elites). Thus, constitutions can be understood as 'mission statements' (King 2013). Another approach emphasizes the constraints that constitutions might impose on elite power. Elites allow for these constraints in order to keep what power

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they can in the face of revolutionaries or other viable challengers (Hirschl 2004; Acemoglu and Robinson 2009). Yet another approach suggests that those currently in power develop constitutions in the hope of constraining any other elites who may take power later on (Ginsburg 2003; Dixon and Ginsburg 2017). In terms of the protection of economic activity, the idea is that codified property rights and independent courts allow for the peaceful and efficient resolution of disputes, which then facilitates economic activity (North and Weingast 1989).

While these works give us a robust understanding of constitutional origin stories, they tell us less about how constitutional law impacts everyday citizens or how citizens come to make constitutional rights claims. The scope of constitutional law has been expanding over time, as more and more issues have been 'judicialized' or 'constitutionalized' (Van Cott 2000; Hirschl 2011; Brinks, Gauri and Shen 2015). Issues once thought of as falling within the purview of public policy or as private matters have been claimed as constitutional rights and adjudicated in the formal legal system.

Furthermore, constitutions are not always long-lived: on average, constitutions globally have been amended every five years and replaced entirely every nineteen years (Elkins, Ginsburg and Melton 2009; Versteeg and Zackin 2016). So, just because a constitution is drafted and enters into force does not mean that it will persist or have any meaningful influence on politics. If rules are constantly changing – because, for example, constitutions are subject to 'serial replacement' (Levitsky and Murillo 2013) – or if those rules are disconnected from reality – because, for example, the constitutions that lay them out are 'sham constitutions' (Law and Versteeg 2013) – this instability and detachment will render those constitutions 'parchment institutions' (Carey 2000).

How do constitutions come to be more than 'parchment institutions?' One pathway could emerge if constitutional rights recognitions translated into increases in government spending. 'Rights without resources' are almost by definition 'cheap talk' (Chilton and Versteeg 2017). Scholars have begun to investigate this possibility, largely finding that no such relationship exists. Ben-Bassat and Dahan (2008: 118), for example, find a 'positive correlation between constitutional commitment to social security and government transfers (and contribution rates to social security) and between the right to health and health policy performance', though they find no overall relationship between social rights commitments and social spending. Chilton and Versteeg (2017: 713) likewise conclude that social rights recognitions are 'not associated with statistically significant or substantively meaningful increases in government spending on education or health care'.

However, this is not the only pathway through which a constitution and constitutional rights may impact everyday life. A focus on correlations between textual changes and spending may obscure ideational transformations that can significantly influence how legal system officials and everyday citizens understand themselves, their roles and relationships, and the very meaning of rights. I introduce the concept of 'constitutional embedding' to help make sense of these ideational transformations in legal and social life and their consequences.[1] Constitutional embedding refers to the process by which some vision of constitutional law and constitutional rights comes to take root in everyday life, emerging as the dominant understanding of the constitution in a society.[2] It is helpful to think of constitutional embedding along two dimensions: social and legal, or how

[1]The constitutional embedding framework can be thought of as an application of Scheppele's (2004) 'constitutional ethnography'.

[2]To be clear, the focus of this article is constitutional *rights*.

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individuals and groups operating in the social sphere understand and relate to constitutional rights, and how those working in the formal legal sphere do so.[3]

The process of constitutional embedding is neither uniform nor necessarily stable. As such, it makes more sense to consider the extent to which particular features of constitutions, like particular rights provisions, have become embedded socially or legally. Constitutions themselves may be the result of compromises and myopia, and constitutional amendments may render once-coherent constitutional infrastructures contradictory (Fruhstorfer 2019). It is taken as a truism that constitutional rights will conflict, and judges and legal theorists have developed a variety of approaches to resolving these contradictions in just ways (e.g., Barak 2012). Further, social and political realities may change such that certain features of constitutions may rapidly become outdated (Nwokora 2022).

Thus, in this article, I explore 'country-rights cases', tracking the extent to which particular constitutional rights have become embedded in particular constitutional contexts and how that embedding has changed over time. Because I seek to illustrate the utility of the constitutional embedding framework rather than to make causal claims about the effects of constitutional embedding, I have chosen cases 'purposively' (Seawright and Gerring 2008), with the aims of exploration and depth of understanding. These cases vary in geographic region, age of the constitution, type of right, and degree of embedding and the case discussions reflect these differences. By maximizing variation across these different factors, I hope to show that this framework is not limited to a particular time, location, or set of rights. The country-rights cases that I investigate here include the right to health in Colombia (embedded both socially and legally), the right to housing in South Africa (embedded legally, but not socially outside of a few NGOs and social movements), the right to justice in Mexico (embedded socially, but not legally outside of the highest strata of the Mexican justice system), and the gamut of constitutional rights in Russia (embedded neither socially nor legally).

The conceptual framework of constitutional embedding helps us to understand how constitutional rights come to take on particular meanings in particular contexts. In a global political climate defined by democratic backsliding, powerful vested interests, and backlash against moves toward equality, the status of constitutional rights and how they become and remain embedded is doubly important. To the extent that a constitution is democratic, its embedding presents a challenge to those who wish to erode democracy and a boon for those who wish to protect it. Independent courts in particular can leverage embedded constitutional rights to protect against backsliding (Gamboa, García-Holgado and González-Ocantos 2024). The constitutional embedding framework highlights how the interactions between legal elites and ordinary citizens constitute the extent to which constitutional law shapes everyday life. The framework has broad applicability across contexts and rights domains.

What is constitutional embedding?

Constitutional embedding refers to the process by which some vision of constitutional rights become core parts of social and legal life, and constitutional embeddedness refers to the degree to which this has occurred.[4] In other words, we might think of constitutional

[3]This is an artificial but analytically useful distinction.

[4]This section deepens my initial exploration of the constitutional embedding framework in Taylor (2023b).

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embedding as a measure of the extent to which constitutional rights provisions have become part of what shapes social and legal expectations and behavior. Note that the claim here is not about the textual accuracy of understandings of constitutional rights, but whether (and how) some understanding of constitutional law and rights influences everyday life. The content or substance of the understanding of the constitution will differ across contexts, but it can include ideas like the constitution is a 'transformative' one, or that is it one that creates a 'social state under the rule of law', or that it is one that is unique to the traditions of some specific country. Constitutional embedding suggests that one vision has become dominant, though not exclusive, in a population. The fact of constitutional embedding does not mean that the constitution 'works' for everyone or that all constitutionally recognized rights are protected all of the time. Instead, it means that there has been a transformation of politics that centers, rather than sidelines, constitutionalism.

In some ways, constitutional embedding is related to both the judicialization of politics (or 'mega-politics'), the activation of law, or the emergence of constitutional culture. Hirschl (2011: 253) defines the judicialization of politics as 'the reliance on courts and judicial means for addressing core moral predicaments, public policy questions, and political controversies' and the judicialization of mega-politics as such a reliance when it pertains to 'matters of outright and utmost political significance that often define and divide whole polities' (Hirschl 2008: 93). The concept of constitutional embedding requires no judgments about whether an issue is a moral predicament, public policy question, or political controversy. Instead, it refers to some vision of constitutional law and whether or not that vision of law shapes expectations and behaviors in everyday life, among legal professionals and ordinary people. An embedded constitution likely contributes to the judicialization of politics, though that depends in large part on what rights provisions the constitution includes and how social and legal actors understand those provisions. In their study of Latin American institutional weakness, Brinks, Levitsky, and Murillo (2020) note that laws, policies, and procedures can be activated or deactivated by the courts, though their focus is on why institutional weakness has persisted, rather than on how exactly institutions might be activated. Constitutional embedding is one way that constitutional law may become 'activated'. Finally, the outcome of constitutional embedding is similar to what Siegel (2006) calls 'constitutional culture' in her investigation of the relationship between social movements, judges, and constitutional thought, though the constitutional embedding framework is also attentive to those without connections to judges or social movements.

As an analytic move, it is helpful to distinguish two dimensions of constitutional embedding: social embedding and legal embedding. While the social sphere of course is not fully distinct from the legal sphere, and vice versa, this move allows us to home in on the different actors and settings involved in constitutional embedding. For social embedding the focus is on those who we might call 'ordinary' or 'everyday' people, those who live their lives in ways that sometimes dramatically intersect with constitutional law, but more often those intersections fade to the background or appear as interruptions. These folks go to work and school, run errands, participate in politics, and get into and resolve disputes, often outside formal legal language and institutions. Legal officials, of course, do all of these things as well, but their lives more obviously involve the trappings of law. Their work necessitates facility with legal language, familiarity with courthouses and judges' chambers. This latter group of individuals and spaces comprise the focus of legal embedding: lawyers, judges and clerks; courthouses, judges' chambers and law schools. In fact, the extent to which the legal and the social are distinct is an empirical question, and one that might provide evidence of constitutional embedding (or the lack thereof). Table 1 sets out

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Table 1. Two dimensions of constitutional embedding

Social embedding
Everyday people develop a set of beliefs about the constitution
People start to talk about specific rights and legal tools that can be used to claim rights in casual, informal or everyday contexts
Folks actually make legal claims to their rights
Legal embedding
New legal institutions, mechanisms and actors meant to instantiate a particular vision of constitutional law are created
Judges and lawyers establish, alter and expand precedent related to that vision of law
The mainstream view among active lawyers and judges (including those who work at levels below the high courts) is that this vision of law is viable and appropriate

the observable implications of the social and legal dimensions of constitutional embedding. The sections that follow differentiate social and legal embedding from partially related concepts.

Social and legal embedding and related concepts

Social embedding occurs when ordinary individuals develop a set of beliefs about the constitution, when discussions about rights become part of everyday language, specifically concerning certain rights and legal tools used to claim those rights, and when individuals actually make legal claims to assert their rights. While social embedding shares similarities with the concept of a shift in constitutional veneration (Levinson 1990), constitutional patriotism (Gloppen 1997), and legal consciousness (Merry 1990; Ewick and Silbey 1998), it diverges from these concepts in key ways. Constitutional embedding differs from constitutional veneration and patriotism in that while these terms suggest a stable and often positive attitude toward the constitution, the concept of embedding allows for flexibility in the content and evaluation of the legal vision. A constitution or a particular constitutional right can be embedded and impact how members of the general public think about act without it being viewed positively or as something that ought to exist. In all cases, however, this orientation toward constitutional law results from a set of feelings and experiences, rather than factual knowledge alone (Franks 2019).

Legal consciousness studies explore the construction of identity, the state's use of law to exert control over society, and the relationship between individual and collective consciousness and decisions about when and how to mobilize (Chua and Engel 2019). While legal consciousness refers to 'the ways law is experienced and understood by ordinary citizens' (Merry 1985), and it is not reducible to legal knowledge. Legal consciousness is broader than social embedding and refers to generalized views on law. The concept of social embedding allows us to home in on the elements of legal consciousness that correspond to constitutional rights specifically. A constitution will not be embedded socially if it does not impact legal consciousness, but there are also determinants of legal consciousness that have nothing to do with constitutional rights per se. Especially in the context of the creation of a new constitution or the amendment of

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an existing constitution, attention to social embedding particularly rather than legal consciousness generally will allow researchers to better attend to the sometime subtle, yet still impactful ways in which views about rights and law can shift. In the context of newly enacted constitutions, constitutional law is often seen as a means to 're-found' a country and emphasize new values and commitments. When people frame their grievances and claims in constitutional terms, they are essentially connecting their demands to a larger political project.[5]

Legal embedding occurs when new legal institutions, mechanisms, and actors come to feature in the daily work of law, when judges establish, alter, expand, or limit precedent related to some vision of constitutional law, and when the mainstream view among active lawyers and judges is that this vision of law is generally viable and appropriate (or at least defensible). These shifts should be visible not only among judges at apex courts, but also those lawyers and judges who work at lower-level courts. Skeptics within the legal profession may remain, though over time their voices will become more and more marginal within the community of lawyers and judges who work on constitutional law. Here, the modifier 'legal' is a reference to the formal legal system and the actors involved in it. Legal embedding may or may not reflect 'official' state narratives about the constitution or constitutional rights, as crafted by political elites. In fact, some of the time, judges' interpretation of constitutional rights may run counter to the preferences of politicians and may more closely reflect the desires of or views held by ordinary citizens. The extent to which the view of the constitution that is legally embedded and 'formal' or 'official' understandings of the law overlap is an empirical question that should be examined in specific contexts.

Legal embedding is related to, but moves beyond, a change in institutional culture or judicial role conceptions (e.g., Hilbink 2008). Howard (1977: 916) defines judicial role orientations as 'normative expectations shared by judges and related actors regarding how a given judicial office should be performed'. The focus is not on the issue-specific preferences of individual judges, but on a more general sense of what judges understand to be appropriate behavior. Role conceptions may sit at the level of the individual, but they also may be the product of socialization within the courts or selection into the courts (Hilbink 2007, 2012; Couso and Hilbink 2011). This socialization or selection process helps to define the institutional culture of the courts. Legal embedding diverges from judicial role conceptions in that it covers not only what judges do or ought to do, but also what constitutional law does or ought to do. The reference point is specifically the constitution. Judges may be motivated to work within the constitutional vision for either ideological, strategic, or subconscious socialized reasons.

Positioning constitutional embedding

The social and legal dimensions of embedding are not independent of one another. Instead, they develop recursively and together define how and the extent to which embedded a constitutional order is at any given moment. Constitutional embedding is not a binary outcome; instead, it describes a process that falls along a spectrum. It is not only possible but likely for embedding to be uneven or partial at any given moment. Uneven embedding implies variation in the degree to which different constitutional rights are embedded, with some being embedded more extensively than others. It is theoretically

[5]I thank Ke Li for this insight.

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possible that one right may be embedded while no others are, though we might suspect that categories of rights (like civil rights or social rights) will follow similar patterns of embedding. Partial embeddedness suggests that there is relatively more embedding on one dimension compared to the other, indicating that a dominant vision of constitutional rights has emerged and become normative or even unquestioned among everyday citizens, whereas legal professionals disagree on the meaning and value of the constitution (or vice versa). A context characterized by embedding along only one dimension indicates a lower overall level of constitutional embedding compared to a context where both social and legal embedding have taken place. A partially embedded constitution is likely to have a diminished impact, although it can still influence expectations and behavior related to claiming rights (in socially embedded cases) or judicial behavior (in legally embedded cases). Furthermore, both uneven and partial embedding can potentially deepen over time, as embedding gradually extends across different rights arenas or sectors of society. The exact dynamics of uneven or partially embedded constitutions should be examined empirically in context-specific ways.

The positioning of social and legal embedding is not fixed and is likely to vary significantly at sub-national levels and across different social or racial groups, classes, and other categories of difference. The presence and role of the state can vary greatly between more central and peripheral areas (O'Donnell 1993). Scholars have also observed how marginalized communities, particularly those affected by race and class-based subjugation, experience the state's coercive rather than protective or distributive capacities (e.g., Soss and Weaver 2017). These social experiences and the state's orientation toward these groups will shape both dimensions of constitutional embedding.

If we were to plot social embedding on the *x*-axis and legal embedding on the *y*-axis, as shown in Figure 1, the degree of constitutional embedding would increase as we move up and to the right. The top right quadrant (shaded dark gray) reflects more complete constitutional embedding, where the beliefs and behaviors of social and legal actors alike are influenced by the constitution. In the top left quadrant, there is a significant degree of legal embedding but limited social embedding. Here, we would see changes in the legal system and the expectations of judicial actors, while societal expectations and discourses remain relatively unchanged. Lawyers and law-oriented NGOs may still push forward legal claims some of the time, forming a support structure for litigation (Epp 1998), but we would not expect to see a wide range of claims brought about by individuals or other social groups. At the bottom right, we have a high degree of social,

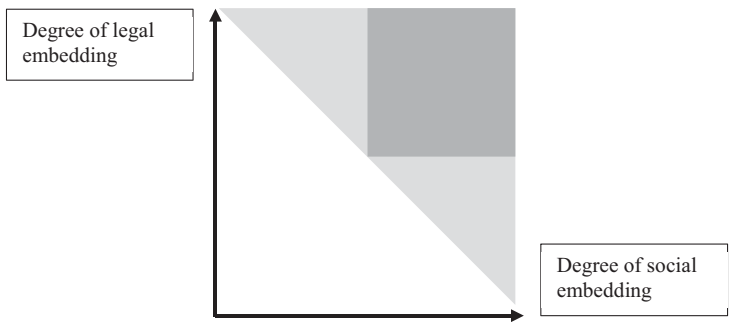


Figure 1. Plotting constitutional embedding.

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but not legal embedding. In this case, rights talk may still be consequential as folks mobilize outside the legal sphere (McCann 1994), and continued mobilization within the legal sphere may over time encourage judges to accept the validity of rights claims (Taylor 2020).[6] In the bottom left quadrant (not embedded either socially or legally), we have a constitution as that is understood by both social and judicial actors as largely insignificant.

The translation of a new constitutional vision into social and legal discourse is not guaranteed. There are various challenges or barriers that can undermine the embedding or stability of constitutions or constitutional orders (Taylor 2023b). These include the existence of prior and potentially contradictory sets of beliefs about law, justice, and fairness; the empowerment and disempowerment of different sets of actors who may wish to bolster or contest new constitutional understandings; the incorporation or exclusion of different kinds of grievances and the people for whom those grievances are relevant; and the workload of implementing a new constitutional vision, which may overburden lawyers, judges, and other legal professionals.

Variation in constitutional rights embedding: Country-rights cases

In this section, I apply the concept of constitutional embedding in four real-world contexts, examining variation along the social and legal dimensions of embedding. Constitutional rights – even though they are often described as interconnected – are not uniformly realized, though they may be near-uniformly disregarded. Rather than trying to situate entire constitutions as embedded or partially embedded, in what follows, I detail four country-rights cases: the rights enshrined in the 1993 Russian Constitution, the right to housing in the 1996 South African Constitution, the right to justice in the 1917 Mexican Constitution, and the right to health in the 1991 Colombia Constitution.[7] These cases were chosen purposively to illustrate variation across both dimensions of constitutional embedding. Figure 2 plots the four country-rights cases along the legal and social embedding dimensions.

In the following sections, I provide brief overviews of both dimensions of constitutional embedding with respect to these specific country-rights cases. These case studies emphasize relevant differences across cases. Future systematic analyses should incorporate more detailed investigations that draw on a wide range of methodological tools, from surveys to interviews to ethnographic participant observation to carefully examine each of the components of social and legal embedding described in Table 1 above.

Rights and the 1993 Russian Constitution

The 1993 Russian Constitution, particularly with the 2020 amendments, is an example of an unembedded constitution, where variation along both the social and legal dimensions of embedding has flattened. The Russian Constitution includes 64 rights. This constitution protects all seven dimensions of executive power outlined by the Comparative Constitutions Project (2016), while largely limiting the formal power of the legislature

[6]That said, repeated claim-making can have the opposite effect on judges (Kim et al. 2022).

[7]The sections on Colombia and South Africa draw on work I have published elsewhere (Taylor 2020, 2023a,b).

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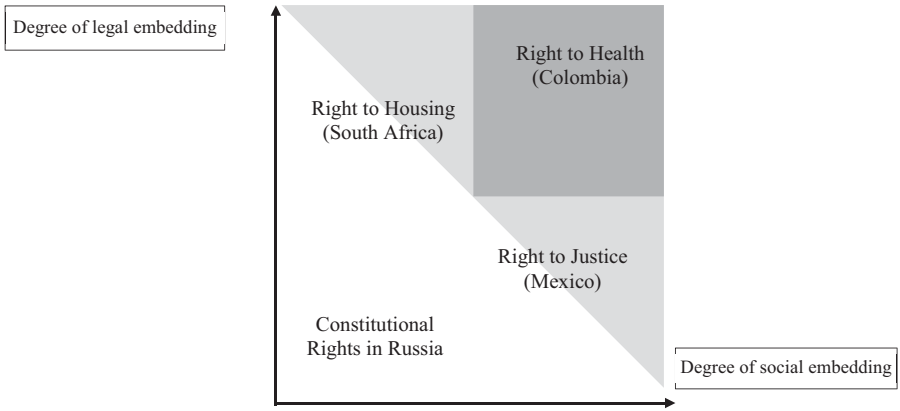


Figure 2. Plotting constitutionally embedded cases.

and the judiciary. But constitutional embedding is not simply a measure of formal allowances or restraints.

Constitutional embedding also has to do with practices within the formal legal sphere and the broader social sphere. Enduring signs of legal embedding, especially below the Constitutional Court, are lacking. Part of this may have to do with the early history of both the Constitutional Court and the 1993 Constitution. The first Constitutional Court (1991–1993) found itself in the midst of a violent conflict between then-President Boris Yeltsin and the Parliament, a conflict that involved an impeachment, an attempted dissolution of parliament, and a military invasion of the parliament building. Yeltsin came to see the Constitutional Court as being on the side of Parliament and sought to eliminate the Constitutional Court or at least limit its power in the 1993 Constitution (Burnham and Trochev 2007). Over the next few years, the Constitutional Court kept a relatively low profile, while the Supreme Court sought to expand its own power.

Even so, according to a detailed analysis by Maggs (1997), both the Supreme Court and the Commercial Courts (*arbitrazh*) have ventured into constitutional adjudication at times. Initially, both rejected the possibility or advisability of constitutional adjudication. Maggs (1997: 113) cites Deputy Chief Judge Vitriansky's criticism of a lower court decision, in which he 'indicat[ed] that the court should have applied a USSR statute that invalidated the Executive Committee's action', and notes that 'this criticism perhaps reflected the spirit of the times when a USSR statute normally trumped a constitutional provision'. Within a few years, however, both courts began to reference constitutional law. While Maggs views these efforts optimistically, as evidence of constitutionalism trickling down, he also shows that the Supreme Court in particular often cites both the 1993 Constitution and the prior Soviet-era Constitution (1978), a practice that would seem to undermine the primacy of the 1993 Constitution.

Furthermore, Burnham and Trochev (2007: 382) report that this relative harmony lasted only until about 1998, when the Constitutional Court set out to expand its power once again:

> Its most significant efforts have been through decisions interpreting its jurisdictional grants very broadly. The other courts, led by the Supreme Court, have fought back,

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> using various techniques, including lobbying the legislature for additions to their jurisdiction, defying some Constitutional Court decisions and "overcomplying" with others to create a flood of complaints to the Constitutional Court.

These conflicts within the judicial branch have taken on other forms as well. For example, throughout the 1990s, the Russian Constitutional Court had to repeatedly order 'the Russian judiciary to follow the rules of the Russian constitution, not the guidelines of the USSR Supreme Court, a task that the Russian Supreme Court failed to do' (Trochev 2008: 113). Politicians, bureaucrats, and lower-court judges still do not always or routinely comply with Constitutional Court decisions, though the Court's power has ebbed and flowed over time (Trochev 2008). None of this suggests any substantial degree of the legal embedding of any feature of the 1993 Constitution.

While there is some debate about the extent to which the 1993 Constitution is connected to or distinct from social and political life, most observers suggest that informal norms supersede formal legal rules (e.g., Rose 1995; Hale 2011) and that societal actors do not view law as useful in the pursuit of rights protections or social change (Hendley 1999). Instead, observers describe the Constitution's 'relevance to daily life and its capacity to constrain arbitrary state actions [a]s questionable' (Hendley 2024). Yet, as Thornhill and Smirnova (2018) show, Yeltsin-era reforms helped to make legal knowledge more accessible, including the creation of television shows featuring live courtroom experiences and the development of legal resources in public libraries. Putin-era reforms focused on increasing access to courts and the adoption of new procedural codes. Increases in the use of the courts followed these reform efforts, such that 'by 2016, the courts of general jurisdiction in Russia heard more than 17,000,000 civil and administrative cases per year, almost twice as many as in 2008' (Thornhill and Smirnova 2018: 567). For Thornhill and Smirnova, the claim is not that the constitution meaningfully constrains government actors and protects the rights of individuals. Instead, they see 'the government's endeavor to stimulate demand for law across society [as] part of a wider strategy to promote access to law as a means to integrate social actors more fully in the political system and to solidify the political system as a formal institutional order' (570). Further, rights-based strategic litigation draws on international human rights law and the European Court of Human Rights, rather than constitutional law, suggesting that even among those who are more predisposed to have a well-develop rights consciousness, the constitution is not a focal point (Thornhill and Smirnova 2018).

While the 1993 Constitution had not been legally or socially embedded prior to these amendments, the 2020 amendments ensured that the Constitution – and especially constitutional rights – would be even less relevant to everyday life. The 2020 amendments (there were 206 of them) impacted about 60% of the 1993 Constitution. They included easing the rules regarding presidential term limits, subordinating the status of international law relative to constitutional law, and allowing the Federation Council (the upper house of parliament) and the President to remove judges from office. Had those amendments not been approved, Putin's time in office would have been up in 2024. The amendments clearly expanded the power of the executive and limited the power of the federal judiciary. 24 of the amendments directly involved the Constitutional Court, and while many of the 24 simply reiterated legislative changes to the Court's power, Grigoriev (2021: 27) concludes that several were made with the intention of 'politicizing and instrumentalizing the Court for the president's benefit'. As Pomeranz (2020) puts it, the 2020 amendments 'signify a return to the Soviet practice, where

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the nation's highest law was largely ornamental and disconnected from its actual system of governance'. Thus, the 1993 Russian Constitution serves as an example of a constitution whose rights are embedded neither legally nor socially, where the constitution itself is best understood as a 'parchment institution'.

The right to housing in the 1996 South African Constitution

The right to housing in the 1996 South African Constitution serves as an example of legal embedding without much accompanying social embedding (Taylor 2023b). The 1996 Constitution features 60 rights, including a range of social rights, and with the constitutional reforms of the 1990s, a new Constitutional Court and a variety of other new institutions meant to promote the realization of rights were created. These changes were meant to foster not only legal but also social transformation (Langa 2006). Examining the right to housing, we see clear evidence of legal embedding. This vision fits within the Constitutional Court's broader understanding of 'constitution-building approach' that would be at once responsive to citizens' needs and largely deferential to the executive branch's policy preferences (Fowkes 2016). However, this understanding of constitutional rights has made few inroads into broader South African society (beyond a few major movements and legal advocacy organizations).

The development of housing rights jurisprudence is particularly evocative of this orientation. Dozens of social rights cases – ranging from claims to housing to health to water – have come before the South African courts, and the Constitutional Court's decisions in the housing rights cases, in particular, have been hailed in textbooks around the world as emblematic of a new approach to law. First and foremost among these is *Government of the Republic of South Africa and Others v Grootboom and Others*, which came before the Court in 2000. The case involved the attempted eviction of 900 people living in a squatter settlement near the city of Cape Town. In the decision, Justice Yacoob noted that '[s]ocio-economic rights are expressly included in the Bill of Rights; they cannot be said to exist on paper only'. The decision further clarified a focus on the 'reasonableness' of policy decisions, drawing on the phrase 'reasonable legislative and other measures' included in Constitution (reasonableness was not precisely defined, though the decision did indicate that clear respect for human dignity would be integral to an assessment of reasonableness). Ultimately, the Court found that the state's housing policy was unreasonable and therefore unconstitutional because it neglected to provide for those in desperate need, and the decision mandated that the government develop an emergency housing policy.

In later housing rights cases, South African Constitutional Court judges detailed the concept of 'meaningful engagement' as a key part of determining whether evictions or attempted evictions violated the constitutional right to housing. Meaningful engagement refers to a requirement to try to put in place a mediation process or some other kind of formalized, direct face-to-face interaction before a legal case is heard. This doctrine emerged in the Constitutional Court's decision on the *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others* (2008) case, but it originates from a case heard four years prior, *Port Elizabeth Municipality v Various Occupiers* (2004).

The *Port Elizabeth Municipality* case involved the potential eviction of 68 people who were living in shacks built on privately owned land. Justice Sachs, writing for the Court,

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commented on the promise of 'respectful face-to-face engagement or mediation through a third party', stating:

> [T]hose seeking eviction should be encouraged not to rely on concepts of faceless and anonymous squatters automatically to be expelled as obnoxious social nuisances. Such a stereotypical approach has no place in the society envisaged by the Constitution; justice and equity require that everyone is to be treated as an individual bearer of rights entitled to respect for his or her dignity.

Justice Sachs did not use the phrase 'meaningful engagement' in the decision. However, he did hold that the eviction in question would not meet the 'just and equitable' standard – a standard set forth in the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act of 1998 – for a number of reasons, one of which being the absence of an effort to 'listen to and consider the problems of this particular group of occupiers'.

The *Olivia Road* case involved the potential eviction of more than 400 occupiers of unused or abandoned buildings in downtown Johannesburg. The Court issued an interim order which stated in part that 'The City of Johannesburg and the applicants are required to engage with each other meaningfully and as soon as it is possible for them to do so'. This interim order, written by Justice Sachs, and the subsequent decision in the case, written by Justice Yacoob, detailed the concept of meaningful engagement. Justice Yacoob's decision also suggested that the reasonableness of a policy has to do with the extent to which it respects human dignity. Meaningful engagement thus is based on the way in which early justices understood the concept of dignity and how that ought to play out in contemporary South African life. It also sets out a specific role for the Court, moving beyond simply processing courtroom filings to considering what happens before a dispute comes to the court.

Neither the litigants themselves nor civil society actors drove the turn to meaningful engagement. Instead, the impetus came from the judges on the Constitutional Court. As someone who was clerking for the Court at the time told me, '[M]y recollection is that this whole idea of meaningful engagement wasn't raised by the parties, wasn't the basis on which the case was argued. It was raised by the judges at the hearing, and then kind of pushed by them'.[8] The emphasis on meaningful engagement outlived Justice Sachs and the other judges comprising the first Constitutional Court bench, and future judges applied the concept to new types of cases, including both education- and water-related cases. Not only did the Constitutional Court adopt the language of meaningful engagement, but so did High Court judges, who were perhaps less likely to favor progressive or expansive interpretations of constitutional law.[9] These changes to housing rights jurisprudence, especially the adoption of the concept of meaningful engagement, are suggestive of deep legal embedding of the right.

[8]Interview with author, 1 March 2018.

[9]These cases include *Governing Body of the Juma Musjid Primary School & Others v Essay N.O. and Others* (2011 – Constitutional Court, education); *Rand Leases Properties v Occupiers of Vogelstruisfontein and Others* ('Rand Leases') (2011, 2013, 2014 – High Court, housing); *Federation for Sustainable Environment and Others v Minister of Water Affairs and Others* (2012 – High Court, water); *Schubart Park Residents' Association and Others v City of Tshwane Metropolitan Municipality and Another* (2012 – Constitutional Court, housing); *Head of Department, Department of Education, Free State Province v Welkom High School and Another; Head of Department, Department of Education, Free State Province v Harmony High School and Another* (2013 – Constitutional Court, education); *Ngomane and Others v Govan Mbeki Municipality* (2016 – Constitutional Court, housing); *Daniels v Scribante and Another* (2017 – Constitutional Court, housing).

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That the right to housing has become legally embedded in South Africa does not mean that the most expansive vision of that rights has been embedded or that this embedding has carried over to other rights. In fact, the right to housing has been understood as something that regulates how evictions can be carried out and sets out obligations on both the state and private actors in the context of evictions. Other understandings of a right to housing might instead include positive obligations on the state to provide all citizens with permanent homes, and South African housing rights jurisprudence has been critiqued on these grounds. And the legal embedding of the right to housing-understood-as-eviction-limitations has not necessarily led to widespread gains in access to things like water (Dugard 2021) or healthcare (Taylor 2020), though the wholesale legal embedding of all constitutional rights may be an unreasonable metric.

Across all rights, including the right to housing, social embedding has lagged. Some social movements some social movement organizations, like Abahlali baseMjondolo and Treatment Action Campaign, have used filed constitutional rights claims that resulted in significant victories (halting eviction plans throughout the city of Durban and gaining access to HIV medications nationwide). Members of these movements know constitutional rights jurisprudence and ordinary legislation on their respective issues inside and out.[10] However, these instances stand apart. Rights claiming through the courts have not become a fixture of everyday life outside of law schools, courtrooms, NGOs, or legal aid offices.

In short, everyday South Africans have not come to view the constitution or legal claim-making as central to their lives. Tait (2022) provides a robust account of why social embedding has not occurred, pointing to what she calls the 'thinkability' (or lack thereof) of legal mobilization among Black South Africans in the province of KwaZulu-Natal. The issue is not that formal access to courts does not exist, though it is limited (Dugard 2006, 2015), or that constitutional rights provisions are absent. Instead, what stands in the way is that peoples' 'perceptions from their lived experiences or the retelling of others' experiences encountering the law, its actors, and the broader state', ranging from allegations of corruption to witchcraft to institutional inefficiencies, inhibit the ability of potential claimants from even imagining the possibility of turning to the formal legal sphere to deal with certain kinds of problems (Tait 2022: 3; Tait and Taylor 2023). Thus, while support structures (Epp 1998) may propel litigation some of the time, the social embedding of constitutional rights has not been followed.

The 1917 Mexican Constitution and the right to justice

The Mexican Constitution of 1917 presents an example of the opposite: social embedding without (the same degree of) legal embedding. According to many observers, one of the key challenges for legal continuity in the Mexican case has been the ease of constitutional amendment. As of 2020, the constitution had been amended 737 times across 245 distinct reforms (Pozas-Loyo, Saavedra-Herrera and Pou-Giménez 2022). The rate of amendment appears to be increasing over time – between 2000 and 2016, the constitution was amended 77 times (Rivera Leon 2017). 114 of 136 articles have been amended (Rivera Leon 2017). The constant state of flux, or what observers call 'hyper-amendment' or 'hyper-reformism', may spur the development of robust (if ever-changing) bodies of constitutional interpretation (Pozas-Loyo, Saavedra-Herrera,

[10]Fieldnotes, 20–21 November 2017, visits with Abahlali members.

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and Pou-Giménez 2022), but it seems to inhibit deep legal embedding beyond the highest echelons of the judiciary.

Mexico was one of the first countries to adopt a long list of constitutional rights, and famously recognized some social rights, even before the Weimar Constitution. While reform efforts prior to the 2000s largely left the Bill of Rights untouched. Throughout the early 2000s, however, new rights were added (ranging from the right to an adequate environment to the right to access public information to the right to food) and other rights were expanded (including political rights, the right to education, and indigenous rights). The Mexican Constitution includes a list of 81 rights. The substance of these rights is determined by decisions issued by the Supreme Court, which as Pozas-Loyo, Saavedra-Herrera, and Pou-Giménez (2022: 19) note 'is written down nowhere' and 'If tomorrow the Supreme Court changes its views, the contours of the Mexican Bill of Rights will effectively change, and with them, the core of the Mexican Constitution'. Thus, while the possibility of legal embedding at the level of the Supreme Court is clear, the likelihood of enduring embedding among lower court judges and other legal professionals seems low, regardless of the right in question.

With respect to disappearances specifically, the Supreme Court of Justice has emerged as an open adopter of international norms, moving to embrace the 2011 reforms that integrate international law into Mexican domestic law. In 2021, the Court issued a decision on case involving the disappearance of seven men by Veracruz police (Amparo en Revisión 1077/2019). As Citroni (2021) summarizes, the decision holds that the state has 'the obligation to search for a disappeared person and the corresponding results of the investigation are at the core of the non-derogable right of every person not to be subjected to enforced disappearance' and that the state must 'provide content and meaning to the obligations to prevent, investigate and guarantee redress for human rights violations and the corresponding rights to truth, justice and reparation'. The decision also required Mexican state authorities to comply with 'urgent actions' of the United Nations Committee on Enforced Disappearances. In doing so, the Court moved from language of the 'obligation to search', featured in the International Covenant for the Protection of All Persons from Enforced Disappearances to the 'right to search', suggesting that the right to search for the disappeared is fundamentally related to the rights to truth and justice (Citroni 2021). The rights surrounding the issue of disappearances (the right to life, the right to truth, the right to justice and now the right to search) have been embedded legally at the level of the Supreme Court in Mexico.

Lower courts – whether state or federal – have been less than willing or able to follow the lead of the Supreme Court. Numerous scholars have documented the failures of the Mexican lower courts both in general (Taylor 1997; Cornelius and Shirk 2007) and in homicide and disappearance cases in particular (Gallagher 2019). The general challenges have to do with limited capacity and persistent corruption (Ingram and Shirk 2012), which inhibit efficient, professional procedures. Le Clercq and Rodriguez (Le Clercq and Lara 2021: 223) report that 94% of the time, crimes are unreported or uninvested, if they are reported, and they categorize Mexico as a country with 'high impunity', particularly at the state level. This situation is not wholly limited to state courts, however. The Inter-American Commission on Human Rights issued a report in 2015 that concluded that there have been 'only six federal court convictions in Mexico for the crime of forced disappearance' (2015, 13), despite there being more than 100,000 registered disappearances (OHCHR 2022). Gallagher (2017) holds that part of what perpetuates impunity is a 'judicial bottleneck', where cases stagnate between the reporting and investigation phases. Only in very limited circumstances

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can civil society actors break through this bottleneck (Gallagher 2019). This reality has led Ansolabehere (2019: 227) to argue that 'there [has been] a decoupling of the Federal Judiciary's active role in the diffusion of international human rights norms and the pursuit of accountability for human rights violations'.

Constitutional rights discourse would seem to be alive and well in Mexico despite this constant state of change to the constitutional text and the wavering consideration of rights by the judiciary – and some of these rights appear to be socially embedded, not just saturating NGO reports. For example, Gallagher (2022) details how those whose loved ones were disappeared have developed a robust knowledge of rights, rules, and procedures and have innovatively used repeated claim-making to try to attain information about what happened and ideally justice and accountability for the disappearances. This has occurred despite this disconnect with the formal legal system. Even though rights are rarely if ever vindicated, families of the disappeared keep pushing. Gallagher (2022) attributes this to the nature of the grievance: a loved one being disappeared is fundamentally reorienting, and experiences that might otherwise dissuade one from continuing to make claims pale in comparison to that life-shaking event.

Not only have families of the disappeared gained this knowledge and pushed the state in meaningful ways to search for the disappeared and, some of the time, prosecute those responsible for the disappearances, but they have also led a shift in broader social understandings of the issue. The dominant state discourse around disappearances since the 2000s was 'that the victims were "involved in something" (drugs or organized crime) and therefore "deserved their fate"' (Moon and Treviño-Rangel 2020: 722). This discourse made it easy for police and prosecutors alike to dismiss the concerns of families of the disappeared and even inhibited some individuals from mobilizing or asking too many questions. However, those who did mobilize 'claim[ed] that victims of violence are deserving of justice and challenge[d] government narratives that the victims are complicit in their own victimization because of their politics or affiliations with criminal groups' (Gallagher 2019: 252). These claims did not fall on deaf ears: in fact, they served to mobilize more and more family members of the disappeared. As Gallagher (2022: 223) points out, in the early 2010s, 'there was no victims' movement in Mexico', yet, 'since then, more than 100 collectives in most Mexican states have emerged'. She further notes that:

> By 2020, however, sustained mobilization, along with sympathetic members of the media, had managed to challenge this culture of blame and the practice of blaming and criminalizing victims. Apart from searching for their loved ones, members of [collectives of family members of the disappeared] are regularly invited to local universities and churches to talk about what it's like to be a family member of someone who has been disappeared; to urge young people to help; and to educate them on what it means not to "revictimize" people directly affected by violence (2022: 225).

In this way, the social embedding of rights around disappearances – the rights to life, to justice, to search, to truth – has expanded beyond just those immediately or directly affected by disappearances to shape broader social attitudes, even in the absence of robust legal embedding throughout the judiciary. Overall, we see a high degree of legal embedding of these rights at the Mexican Supreme Court of Justice, a low degree of legal

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embedding everywhere else in the Mexican legal apparatus, and a growing degree of social embedding across Mexican society.

The right to health and the 1991 Colombian Constitution

In Colombia, the centering of constitutionalism has involved the rise to prominence of the *acción de tutela* procedure and the Constitutional Court, both of which were the products of the 1991 Constitution. The 1991 Constitution recognizes 76 rights and sets out an intentional shift from a more liberal style constitution to a constitution that would undergird a 'social state under the rule of law' (*estado social de derecho*). The constitution locates rights in three different chapters – 'fundamental' (civil and political); 'social, economic, and cultural'; and 'collective and environmental'. The tutela procedural, according to a literal reading of the constitution, only applies to 'fundamental' rights. Article 86 notes that the tutela can be used by 'every person… for the immediate protection of his/her fundamental constitutional rights when that person fears the latter may be violated by the action or omission of any public authority'. The tutela procedure allows Colombians to make concrete claims to their constitutional rights without need of a lawyer or any technical legal knowledge, and judges must respond to tutela claims within ten days in the first instance. All tutela decisions go before the Constitutional Court, which was set out as the apex court for all constitutional matters in the country. Between 1992 and 2019, the Court typically heard or reviewed around 1,000 cases per year (both tutela cases and abstract review cases).

Following the largely uncoordinated, citizen-led use of tutela claims, the Constitutional Court offered both symbolic recognitions and concrete remedies for violations of the right to health especially, changing the status of the right in the process (to a 'fundamental' constitutional right in 2008). While the right to health has perhaps been most embedded both socially and legally, it is not the only right to be embedded in Colombia. The Court also constructed robust protections in the face of violations of the rights of victims of the country's armed conflict and the rights of those who have been imprisoned (Rodríguez-Garavito 2011), and social understandings of those issues have changed as well. Further, the Court has heard and responded favorably to claims to rights to receive information from government agencies (*petición* claims), and to a healthy environment and clean water.

These rights recognitions are not simply legal or academic shifts; they have become part of everyday life. Colombians have reconfigured the term tutela into a variety of verb forms – *tutelar*, *entutelar*, *hacer tutela*, *estar tutelando* (Taylor 2023b) – which reflects the process of 'vernacularization' or local adoption and adaptation (Merry 2006). Whether their view on the tutela is positive or negative, citizens describe that they had or that they 'tutela' something or someone if need be. Colloquial references to the tutela appear in op-eds, news stories, and podcasts. This legal procedure, far from being something that sounds awkward, artificial, or like academic gibberish, has entered the realm of common sense and common speech. Beyond these linguistic shifts, Colombians have also used the tutela with startling frequency – with roughly eight million tutela claims filed between 1992 and 2022, with well over two million of those tutelas claiming the right to health since 2003 (Taylor 2023b). The use of the tutela procedure has, for better or worse, become seen as a necessary part of accessing healthcare services (Lamprea 2015; Taylor 2018), despite a Constitutional Court ruling that the tutela *cannot* be a required part of the process of obtaining healthcare in 2007

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(C-950/07). Through the tutela procedure, the right to health has become socially embedded.

Alongside the rapid growth of the use of the tutela procedure by ordinary Colombians, judges have expanded their understandings of constitutional law and developed doctrines that allowed for more robust rights protections than originally outlined by the 1991 Constitution (Taylor 2020, 2023b). Again, a literal reading of the constitutional text would suggest that the tutela could not be used to make health rights claims (or any social rights claims). Yet, Constitutional Court judges articulated a vision of constitutional law that would allow for a case-by-case analysis of the fundamentality of rights and the consideration of whether particular cases resulted in fundamental and non-fundamental rights being connected (the *conexidad* doctrine) or whether 'vital minimum' conditions for life were undermined by the violation of an otherwise non-fundamental right (*mínimo vital* doctrine). Judges even turned to the connection doctrine to legitimate tutela claims to unenumerated individual rights, like the right to water (Sutorius and Rodríguez 2015; Páez and Piedrahíta 2021), though claim-making around those rights has not yet taken off to the same extent as the right to health. In the case of the right to health, Constitutional Court judges declared the right fundamental in itself in the T-760 decision of 2008, effectively moving its position in the 1991 Constitution or rendering the chapter headings obsolete.

Lower court judges followed suit on tutela claims, and even when they did not, those decisions were overturned after review by the Constitutional Court. A random sample of 1260 tutela claims reviewed by the Constitutional Court between 1992 and 2015 shows that overturned or partially overturned 59% of all reviewed tutelas and 62% of reviewed tutelas that featured social rights claims (Taylor 2023a, 2023b). The Constitutional Court only reviews about 1% of tutela claims, and is more likely to review cases that appear to be decided incorrectly or ones that bring up new issues, so the roughly 60% overturn rate should not necessarily be interpreted as evidence of a substantial divergence in understanding between lower court judges and those at the Constitutional Court. What's more instructive here is that the percentages are similar, whether the rights in question are social rights, like the right to health, or not. Overall, these patterns suggest a deep degree of legal embedding of the right to health.

The combination of social and legal embedding prompted continued claim-making and continued positive judicial responses to health tutela claims. Over time the 1991 Constitution and the Constitutional Court developed what Landau (2014) describes as a 'constituency', something we don't often associate with the judicial branch of government. The place of the 1991 Constitution in social and legal life allowed it to survive challenges from actors like former presidents Ernesto Samper and Álvaro Uribe, who at various times tried to reform (limit) the tutela procedure and otherwise disempower the Constitutional Court (Taylor 2023b). The use of the tutela to claim the right to health seems to be a major part of this story. The right to health is firmly embedded both socially and legally in Colombia, while other rights found in the 1991 Colombian Constitution are – for the moment – less so. For instance, the right to housing has not emerged as a frequently claimed right, despite some early mobilization around the right (Uprimny 2007). Judicial decisions in response to the limited number of housing tutela claims that have been made seem to have stymied further claim-making (Rueda 2010; Taylor 2023b). To take another example, the right to water appears to be becoming more embedded over time, at least legally if not socially (Sutorius and Rodríguez 2015). The differences in constitutional embedding of the rights to health,

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housing, and water in Colombia demonstrate that constitutional embedding is not uniform across constitutions or contexts.

Conclusions and questions for future research

Constitutional embedding refers to the process by which some understanding of constitution law comes to take root in everyday life. The concept is agnostic with respect to the content of that understanding. We can think about constitutional embedding along a continuum, with one end being constitutions as empty promises, and the other end being constitutions that effectively shape expectations and behavior. As the country-issue case studies above show, there is significant variation in the embedding of constitutional rights along two dimensions: social and legal. While the social dimension of constitutional embedding tracks whether and to what extent a right comes to shape expectations and behavior among ordinary people, legal embedding corresponds to the influence of a right on lawyers, judges, and other legal personnel. My hope is that this discussion of constitutional embedding will set off a research agenda that explores new questions related to the process which constitutional rights come to impact social and legal life. In particular, comparative work, which examines different country contexts as well as subnational variation in rights embedding and rights realization, will be necessary to develop this research agenda. In what follows, I lay out a few of the areas that I think are ripe for further inquiry.

First, the factors that facilitate or inhibit constitutional embedding merit further study. Examining the presence and impact of various factors before, during, and after the drafting of a constitution seems to be a promising approach. In terms of factors present prior to the constitution-drafting process, the presence and quality of popular mobilization in favor of constitutional change, support for constitutional change among the general public, and the substance of calls for constitutional change (in relation to the resulting constitution). Features of constitution-drafting process likely also have downstream consequences for the manner in which the resulting constitution and specific rights provisions become embedded – if at all. Relevant variables likely include the type of drafting process, the nature or intensity of public participation, the quality of outreach efforts, and the existence of referenda on the constitution draft. After a constitution has been drafted, approved, and entered into force, the groundwork for constitutional embedding has perhaps occurred, but there is no guarantee that the new constitution will come to shape social or legal life. Factors that are likely to be impactful include features of new constitution, such as the number of rights enumerated, the creation of new apex courts (like the South African Constitutional Court) or constitutional chambers within existing courts, and the creation of new access mechanisms (like the tutela in Colombia); legal claim-making; civic and legal education programs; and media outreach and the tenor of media coverage of the constitution, rights claimants, and constitutional judges and lawyers. Future research should explore the universe of mechanisms that might propel constitutional embedding. Which mechanisms are more or less effective? How do different mechanisms work with or against one another? Are certain mechanisms more likely to push constitutional embedding soon or long after a constitution is promulgated?

In addition, investigations into the timing of constitutional embedding may yield interesting findings. The process of constitutional embedding would seem to be most likely to develop soon after a constitution is drafted, as the constitution-drafting process would likely be featured in the news and might have allowed for direct citizen

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engagement. The act of participating in the constitution drafting process may have long-term social consequences, creating a sense of buy-in or ownership over the constitution (Van Cott 2000; Moehler 2007). This may be especially true with respect to rights provisions suggested and debated by the broader population, rather than imposed by elites. On the other hand, disillusionment may follow if the popular participation does not result in tangible effects on the resulting text. But there is no feature of the concept of constitutional embedding that would necessarily suggest only a short window of possibility. Rights come to prominence or relevance at different times, generating attention from lawyers and social groups where there once was none.

Another set of important questions has to do with constitutional amendment and reform. What is the relationship between stability of the constitution and constitutional embedding? Does the threat of reform or amendment have the same effects as implemented changes? A constitution that is repeatedly reformed may seem to be too unstable to be relevant to everyday life. Or repeated reforms may keep the constitution in the news, may draw attention to it, may make it seem nearby, possible to be impacted. A constitution that is rarely reformed may be interpreted as far from everyday life, as untouchable. Further, constitutional reforms may impact one part of the constitution and not others. Relatedly, we might wonder about how do partial (legal with social, or social without legal) and uneven (some rights, but not others) forms of constitutional embedding work in practice? Can a right remain partially embedded indefinitely, or will a low degree of one dimension of embedding eventually undercut the other dimension of embedding? How durable are the beliefs of social actors that something is a legal right, even if legal actors continually reject that view?

Finally, it is also important to note that legal claim-making and constitutional embedding may not always be 'good' things. Constitutions are the founding documents of the state, but that state may be hegemonic, exclusionary and discriminatory (Leonard and Cornell 2019). Constitutions intentionally attempt to crowd out or at least control alternative ways of organizing society (Swenson 2018). The turn to law and rights can limit what is alternately described as radical, revolutionary or transformative thinking (Glendon 1993), and law offers only a limited set of remedies for the challenges plaguing social actors (Abel 1982). And, as many have noted, legal claim-making is only one form of citizenship practice, 'one that might reify rather than offer redress for preexisting disadvantage' (Taylor 2023b: 17). At the same time, the embedding of constitutional rights provides tools, if imperfect ones, for people to contest and try to improve the conditions of their lives. Future research ought to systematically explore the extent to which constitutional embedding translates into public investment in constitutional rights and the realization of those rights across contexts.

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