

Jamie Baxter*

Leadership, Law and Development

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Abstract: This article critically examines the role of political leadership in shaping and sustaining institutional reforms. While leadership has recently attracted a great deal of attention from other social scientists, law and development scholars have only begun to seriously consider the influence of leaders on institutions and development outcomes. The article explores the new mantra that “leadership matters” as cause for both careful optimism and renewed attention to some deeper anxieties about the future directions of law and development. On one side, emerging models of leadership provide important insights about how to change dysfunctional institutions and how to sustain those changes over the long run. A number of major studies published in the last few years have made some version of the claim that successful reforms inevitably require the dedicated leadership of one or more prominent individuals, positing good leaders as a necessary condition for institutional transitions. But the argument that good leadership itself determines good institutions also risks reproducing one of the most obstinate dilemmas in modern social theory: the contest between “structure” and “agency” as causal explanations of social change. If the new mantra that “leadership matters” represents a shift in focus away from the structure of law and politics and towards the influence of individual agents’ choices, actions, talents and beliefs, there is good reason to be sceptical about whether simply privileging agency over structure—or the inverse—has any greater chance of success than the many failed attempts to do just that in other fields of knowledge over the past several decades. Instead, the present moment could be a valuable opportunity to assess whether alternative and more integrative approaches to the longstanding structure-agency impasse in development law and policy are possible.

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1 Leadership, Law and Development

The promise of institutional change has beguiled and, by turns, bedevilled the field of law and development. Reforming dysfunctional institutions remains an

*Corresponding author: Jamie Baxter, Schulich School of Law, Dalhousie University, 6061 University Avenue, Halifax, Nova Scotia, B3H4R2, Canada, E-mail: jamie.baxter@dal.ca

alluring priority for the field, but law and development's disappointing track record of implementing law reforms over the past few decades has tempered some of its early enthusiasm and accentuated the limits of our current understanding about how people, groups and nations actually undertake the work of institutional change.¹ Amid this ardour and impasse, more dispassionate proposals for a cautious incrementalism are gaining momentum. As resistance builds to the tradition of "grand theories" in development policy,² the focus of institutional analysis has turned to contingent approaches that call for interpreting causal variables of change in context.³

This article critically examines the role played by one variable—the role of *political leadership*—in shaping and sustaining institutional reforms.⁴ While leadership has recently attracted a great deal of attention from other social scientists,⁵ law

1 K. Davis and M. Trebilcock, *The Relationship between Law and Development: Optimists versus Skeptics*, 56 *American Journal of Comparative Law*, no. 4 (2008), 917–919. M. Prado and M.J. Trebilcock, *Path Dependence, Development, and the Dynamics of Institutional Reform*, 59 *University of Toronto Law Journal*, no. 3 (2009), 346–348.

2 M.J. Trebilcock, *Between Universalism and Relativism: Reflections on the Evolution of Law and Development Studies*, 66 *University of Toronto Law Journal*, no. 3 (2016), 332.

3 "More specifically, it has come to be widely recognized that the particularities of a given country's history, culture, geography, political evolution, economic structure, and ethnic, religious, and demographic make-up, as well as a host of other country-specific features, will importantly shape what is both desirable and feasible as a set of development strategies." Trebilcock (2016), *ibid.*, at 333. The quality of institutional settings as "configurational" and "nonseparable" was recognized early on by E. Ostrom, *An Agenda for the Study of Institutions*, 48 *Public Choice*, no. 1 (1986), 14.

4 While most of the literature canvassed in this article focuses on national leaders elected to political office, many if not all of the insights discussed apply equally to sub-state and local political leaders. On political leadership generally, see R. Elgie, *Studying Political Leadership: Foundations and Contending Accounts* (New York: Springer, 2016); M. Bennister, *New Approaches to Political Leadership*, 4 *Politics and Governance*, no. 2 (2016). For a working definition of "leadership" used in this article, see Part 1, below.

Some of the emerging work on leadership in law and development extends beyond this focus on political leaders to encompass leadership within public bureaucracies and private firms. This broader approach has been taken, for example, in The World Bank, *Putting Leadership at the Center of Development: The Collaborative Leadership for Development Approach* (Washington: The World Bank Group, 2016). There are extensive literatures on leadership and structural change from the fields of management science and organizational studies which are not the main focus of this article—but I return to this literature in the concluding section as a key source of inspiration for building more robust analyses of political leadership in the context of development and institutional change.

5 "The study of political leadership is currently experiencing a renaissance." M. Bennister, B. Worthy and Paul t'Hart (eds.), *The Leadership Capital Index: A New Perspective on Political Leadership* (Oxford: Oxford University Press, 2017), p. 2.

and development scholars have only begun to seriously consider the influence of political leaders on institutions and development outcomes.⁶ A number of major studies published in the last few years have made some version of the claim that successful reforms inevitably require the dedicated leadership of one or more prominent individuals, positing good leaders as a necessary condition for institutional transitions.⁷ Implicitly, these studies suggest that successful reforms would not have occurred—or would have occurred in a very different way or at another time—if their leading actors had been absent from the scene. The World Bank itself has begun to take such ideas seriously, moving them into the mainstream with the publication of a new approach that aims to put “leadership at the centre of development.”⁸

In this article, I explore the new mantra that “leadership matters” as cause for both careful optimism and renewed attention to some deeper anxieties about the future directions of law and development. On one side, emerging models of leadership provide important insights about how to change dysfunctional institutions and how to sustain those changes over the long run. While some recent studies have been vague when describing what leaders actually do to drive institutional change—amounting to little more than weary-worn claims that great people sometimes make history—others have begun to develop sophisticated models to explain how leaders strategically manipulate politics, establish new norms of behaviour and act as entrepreneurs of ideas to construct or make space for better institutions. Studies in this vein likewise recognize that, in the course of their actions, influential leaders can help polities to confront core problems of path dependency that make formal rules and informal norms so difficult to transform. This work now amounts to an increasingly robust account of leadership that pulls back against the enervating determinism that has sometimes gripped the field.

6 Margaret Levi’s earlier work on governance has proved prescient in this respect, see M. Levi, *Why We Need a New Theory of Government*, 4 *Perspectives on Politics*, no. 1 (2006), 10–13. This article leaves open the question of how to define “development” in the context of studying leadership. As I discuss in Part I, below, much of the recent empirical work on leadership and development has been focused on the connection between political leaders and economic growth. The early evidence for this connection is compelling and, I argue, provides a strong motivation for law and development scholars to explore the concept of leadership in more depth. But, as I discuss, the most significant challenge for the field law and development at the present time is to explain how leaders influence institutional changes—whether or not these changes are designed to improve growth, to promote human well-being, or to achieve other development objectives. I assume that, by shaping institutional change, leaders may pursue different goals for development but leave it for future work to explore how these different goals might alter the general dynamics I describe below.

7 Part I, “2 How ‘Leadership Matters’” below.

8 The World Bank, *supra* note 4, p. 2.

But the bolder argument that good leadership itself determines good institutions also risks reproducing what is undoubtedly one of the most obstinate dilemmas in modern social theory: the contest between “structure” and “agency” as causal explanations of social change. Sociologists, international relations theorists, political scientists and others have endlessly debated whether social structures (laws, culture, norms, organizations, social classes, etc.) or human agents are ultimately responsible for changes in those structures, agents and their outcomes over time.⁹ For its part, law and development has—quite naturally, it seems—applied a mostly structural lens to these questions, emphasizing the norms and rule-structures that support and constrain change.¹⁰ But if the mantra that “leadership matters” represents a shift in focus away from the structure of law and politics and towards the influence of individual agents’ choices, actions, talents and beliefs, there is good reason to be sceptical about whether simply privileging agency over structure—or the inverse—has any greater chance of success than the many failed attempts to do just that in other fields of knowledge over the past several decades. Instead, the present moment could be a valuable opportunity to assess whether alternative and more integrative approaches to the longstanding structure-agency impasse in development law and policy are possible.

In the next section, I canvas the emerging literature on why “leadership matters” for law and development. First, I explore the empirical evidence that connects leadership to economic growth. While this evidence suggests a causal link between leadership and growth as one goal of development, it says little

⁹ Leading works include, in sociology: M.S. Archer, *Morphogenesis versus Structuration: On Combining Structure and Action*, 33 *The British Journal of Sociology*, no. 4 (1982), 455–483 and A. Giddens, *The Constitution of Society: Outline of a Theory of Structuration* (Cambridge: Polity Press, 1984); in international relations and political science: A. Wendt, *The Agent-Structure Problem in International Relations Theory*, 41 *International Organization*, 335–370 and J. Mahoney and R. Snyder, *Rethinking Agency and Structure in the Study of Regime Change*, 34 *Studies in Comparative International Development*, no. 2 (1999).

For a popular definition of “structure” as both the pattern of resource allocation and the rules that comprise economic systems, see A. Giddens, *Central Problems in Social Theory: Action, Structure, and Contradiction in Social Analysis* (Berkeley: University of California Press, 1979). A useful definition of “agency” is “the capacity of any social actor to act; agents behave according to their internal composition and history, and their external relations. Agents do not always conform to norms of behaviour, although they often do.” S. Garikipati and W. Olsen, *The Role of Agency in Development Planning and the Development Process: Introduction to the Special Issue on Agency and Development*, 30 *International Development Planning Review*, no. 4 (2008), 329.

¹⁰ An instructive example is D. Acemoglu, S. Johnson and J.A. Robinson, “Institutions as a Fundamental Cause of Long-Run Growth”, in P. Aghion and S.N. Durlauf (eds.), *The Handbook of Economic Growth* (Amsterdam: Elsevier, 2005)

about how leaders influence institutions to achieve growth or other goals. I argue that the primary challenge of law and development scholars is therefore to define the different mechanisms by which leaders influence institutions and institutional change. The following section then situates the emerging literature on leadership against the broader intellectual history of post-war economic development theory. A brief overview of this history reveals a persistent pattern in which successive schools of thought work to identify a set of structural causes for underdevelopment, then proceed to respond to those impediments by proposing “solutions” that turn on the roles and capacities of particular agents. These solutions, in turn, ground the structural critiques of succeeding or opposing policy models—which themselves go on to propose some novel mechanism of transformative agency. I sketch these intellectual cycles to suggest that, if historical patterns hold, the recent turn towards leadership as agency may serve as much to reinforce the current impasse as it does—on its own—to help us better understand the dynamics institutional change. In the final part of the article, I suggest a few promising avenues through which law and development scholars might confront this impasse and reconcile the causal relationships between institutions and leaders—between structures and agency—in future work.

2 How “Leadership Matters”

The idea that “leadership matters” for development has percolated mainly among economists over the last few decades, but bolder and more complex causal claims about the relationship between *institutions*, leadership and development have only recently begun to emerge. Lee Alston, who along with his co-authors emphasizes leadership in a recent study of Brazil,¹¹ has mused that it is time for development theory to move “beyond institutions”.¹² Meanwhile, Jones and Olken observe that “if institutions have explanatory power, it is then perhaps a natural next step to ask whether national leaders, who may partly control or substitute for formal institutions, exert personal influences on growth.”¹³ Likewise, in explaining the successes of good governance and rule-of-law reforms in Singapore, Botswana and elsewhere, Robert Rotberg argues

¹¹ L.J. Alston, M. A. Melo, B. Mueller, and C. Pereira, *Brazil in Transition: Beliefs, Leadership, and Institutional Change* (Princeton: Princeton University Press, 2016).

¹² L.J. Alston, *Beyond Institutions: Beliefs and Leadership*, 77 *The Journal of Economic History*, no. 2 (2017), 353–372.

¹³ B.F. Jones and B.A. Olken, *Do Leaders Matter? National Leadership and Growth since World War II*, 120 *The Quarterly Journal of Economics*, no. 3 (2005), 839.

that strong leaders with sufficient “political will” ultimately matter “more” for development than institutions—although institutional reforms remain the primary means through which leaders appear to achieve their individual aims.¹⁴ While other writers have been more cautious about how they describe the relationship between leadership and institutions, each new study in this vein contributes to a mounting critique of past law and development scholarship for ignoring the important role of individual actors in its accounts of change¹⁵—a critique that echoes recurring claims from cognate fields that “the broad repertoire of scholarly explanations [of social change] has left very little room for human agency in general, or for leadership in particular.”¹⁶

In large part, these critiques resonate because law and development’s theoretical tools have done a much better job at explaining institutional persistence than it has at accounting for institutional change. As Prado and Trebilcock have argued, the concept of path dependency—the existence of endogenous, increasing returns to the status quo institutional matrix¹⁷—helps to explain why it is so difficult to reform dysfunctional institutions, even when it is broadly accepted that reforms are welfare enhancing.¹⁸ With its emphasis on self-reinforcing mechanisms and the switching costs derived from past events, theories of path dependency show a heavy “structuralist bias” that stems “from the difficulty of combining an appreciation for historical continuities and enduring institutions with a sensitivity to the dynamism of human agency.”¹⁹ Notwithstanding key historical moments that produce “critical junctures”, this structural account of change has provided few opportunities to identify concrete strategies for reform. Moreover, the most promising proposals to address path-dependent institutions—such as strategies for institutional bypass or the priority

14 R. Rotberg, *The Corruption Cure: How Citizens and Leaders Can Combat Graft* (Princeton: Princeton University Press, 2017).

15 Only rarely is this critique made explicit. An important exception is A. Leftwich, *Bringing Agency Back*, 6 *Politics and Human Agency in Building Institutions and States*. Synthesis and Overview Report of Phase One of the Leaders, Elites and Coalitions Research Programme, Research Paper (2009); A. Leftwich, *Beyond Institutions: Rethinking the Role of Leaders, Elites and Coalitions in the Institutional Formation of Developmental States and Strategies*, 37 *Forum for Development Studies*, no. 1 (2010), 93–111.

16 R.J. Samuels, *Machiavelli’s Children: Leaders and Their Legacies in Italy and Japan* (Ithaca: Cornell University Press, 2003), p. 2.

17 For a strong argument that these—and only these—features should define path-dependent phenomena, see T. Rixen and L.A. Viola, *Putting Path Dependence in Its Place: Toward a Taxonomy of Institutional Change*, 27 *Journal of Theoretical Politics*, no. 2 (2015), 301–323.

18 Prado and Trebilcock (2009), *supra* note 1.

19 Mahoney and Snyder (1999), *supra* note 9, p. 18.

sequencing of reforms²⁰—are themselves structural solutions that lack much if any identifiable role for individual agents. The claim that “leadership matters” responds to this perceived failure by introducing human agency into accounts of institutional change in an effort to move away from the inherent determinism of path dependency and to better explain those instances in which changes actually occur.²¹

In this section I begin by canvassing the evidence that links political leaders to changes in national economic growth, because it is this link that has attracted the most sustained attention empirically. In reviewing this literature, I note that there are several possible ways to define “political leadership” in development contexts, but for present purposes two key characteristics of these leaders capture a functional definition that appears to be broadly shared among those working in this area. First, leaders are uniquely endowed in ways that set them apart from other members of a group. These endowments might take the form of superior material resources, but also include non-material resources like talents and knowledge, and the ability to command moral authority.²² Second, leaders enjoy a “generalized salience”, meaning that they command attention from a broad cross-section of the general public.²³ Together, these two characteristics mean that leaders have the potential for outsized influence over institutional changes in various ways that distinguish them from the average citizen and from other privileged elites who control material resources, but who operate mostly outside the public view.

2.1 Leaders and Growth: The Evidence

The available quantitative evidence presents a compelling case that certain key historical leaders—both good and bad—are causally linked to changes in

²⁰ A succinct account of these “two complimentary strategies” is provided by Trebilcock (2016), *supra* note 2, pp. 348–351. For a study of institutional bypass, see M. Prado and A.C. da Matta Chasin, *How Innovative Was the Poupatempo Experience in Brazil? Institutional Bypass as a New Form of Institutional Change*, 5 Brazilian Political Science Review, no. 1 (2011), 11–34.

²¹ Mahoney and Snyder (1999), *supra* note 19, pp. 9–10, argue that leadership studies represent the archetype of agential or “voluntarist” accounts of institutions change.

²² Samuels (2003), *supra* note 16, p.2 conceives “of leaders as political actors who have a greater range of assets than others in the community for ‘stretching’ the constraints of geography and natural resources, institutional legacies and international location.” On moral authority, see Alston et al. (2016), *supra* note 11, pp. 204–207/281.

²³ J. Ahlquist and M. Levi, *Leadership: What it Means, What it Does, and What We Want to Know About it*, 14 Annual Review of Political Science (2011), 5.

national and regional economic growth over time. The evidence is less clear about what qualities or characteristics of a leader might drive growth up or down. Because I am primarily interested in the narrower question of how leaders influence institutions, I discuss the evidence below mainly to point out that linking leadership to growth has provided a compelling reason for law and development scholars to take leaders more seriously by digging deeper into the underlying dynamics of institutional change.

Attempts by development economists to map the relationship between leaders and growth have been confounded by the problem that the direction of causation between the two is especially difficult to disentangle. While individual leaders might plausibly influence growth by introducing new policies or reforming certain institutions, it is equally plausible for economic conditions to affect a leader's tenure in office—such as when a leader is voted out of power or forcibly overthrown because they attract blame for an economic downturn.²⁴ Jones and Olken use data on the natural deaths of incumbent leaders at the national level to predict changes in countries' GDP per capita over time.²⁵ Because these deaths—due to health or personal accidents, for example—result in leadership changes independent of economic conditions in the country, observed changes in national growth will, all else equal, directly reflect the change in leadership. The inference here is that some traits of the leader or some consequences of their actions while in power causally contributes to economic development. As Jones and Olken observe, attempting to establish that leaders influence national economic conditions sets a very high bar for the leadership variable: one might believe that leaders influence particular policies, laws or norms without expecting that leaders directly affect overall national growth.²⁶ Nevertheless, Jones and Olken find that changes in leadership on average correlate with per capita GDP in the immediate period (1–2 years) following the change—both upward and downward, depending to some extent on the particular characteristics of the leader.²⁷ While neither a leader's age nor length of tenure in office appears to affect the magnitude of their impact on growth, the death of more autocratic leaders is predicted to increase growth on the order of 2.1% per standard deviation in leadership “quality”.²⁸ Interestingly, the deaths

²⁴ Jones and Olken (2005), *supra* note 13, p. 836.

²⁵ Jones and Olken (2005), *supra* note 13. This approach has also been adopted by T. Besley, J.G. Montalvo and M. Reynal-Querol, *Do Educated Leaders Matter?*, 121 *The Economic Journal*, no. 554 (2011), 205–227.

²⁶ Jones and Olken (2005), *Ibid.*, p. 836.

²⁷ *Ibid.*, p. 852.

²⁸ *Ibid.*

of leaders in more democratic regimes showed no significant effects on growth. These predicted impacts are further influenced by the institutional environment of the country in which autocrats operate, including the existence of political parties and legislatures—leading Jones and Olken to conclude that “leaders matter [especially] when institutions are weak.”²⁹

More recent work has confirmed the central finding that “leaders matter” for economic growth, while adding nuance by starting to explore which characteristics leaders possess that mediate their influence. For example, Besley and colleagues find that higher educational attainment predicts a leader’s positive impact on growth—perhaps because better educated leaders are simply more competent and make better informed policy choices, or because they are more likely to focus on “broad-based economic objectives” and public goods rather than “narrow sectional interests.”³⁰

In his study of county-level development in China, David Bulman takes an alternative approach to linking leadership with economic change by using data on leaders who govern in multiple jurisdictions, thereby isolating their individual contributions to development in each locale.³¹ Bulman finds that county-level units within China vary substantially in their levels of development, which he attributes in large part to differences in leadership. Consistent with national-level studies, the magnitude of the leadership effects identified in Bulman’s sample is impressive, predicting nearly one-fifth of the variance in GDP growth across local counties.³²

These results linking leaders to economic growth raise an intriguing set of questions about “[t]he exact mechanism at work in explaining how leadership matters,” and in particular how these mechanisms relate to institutional change.³³ Scholars have started to explore this question in more detail, identifying the policies and, in some cases, institutions that are altered by different leaders to affect growth. Research examining national fiscal policies under different leaders, for example, has found that leaders’ socio-economic backgrounds are strong predictors of policy type once leaders come to power.³⁴

²⁹ *Ibid.*, p. 858.

³⁰ Besley et al. (2011), *supra* note 25, p. 206.

³¹ D.J. Bulman, *Incentivized Development in China: Leaders, Governance, and Growth in China’s Counties* (Cambridge: Cambridge University Press, 2016), pp. 118–23.

³² *Ibid.*, p. 121.

³³ Besley et al. (2011), *supra* note 25, p. 219.

³⁴ B. Hayo and F. Neumeier, *Political Leaders’ Socioeconomic Background and Fiscal Performance in Germany*, 34 *European Journal of Political Economy* (2014), 184–205, explore these links, although their study is limited to leaders in Germany and thus of narrower scope than the studies cited above.

Somewhat more amorphously, the most recent study by Besley and colleagues finds that leaders who are more “resilient”—meaning that they enjoy a more secure position in office, either as a result of exogenous factors or because of personal traits or talents that allow them to hold on to power—are less likely to acquiesce to the introduction of new political institutions that constrain their own executive authority.³⁵ To some extent, quantitative empirical tests of these factors are still limited by the depth and degree of standardized data available on individual leaders in development contexts—although recent methodological advances, such as the construction of a new “Leadership Capital Index” to measure important leadership traits, promise opportunities to expand this work in the near future.³⁶

2.2 Leaders and Institutional Change

The evidence above suggests a compelling link between leadership and growth, but empirical work has largely left open the question of what leaders actually “do” to exert this influence. Theorists working the new institutionalist tradition have started to fill this gap by describing how leaders dictate, bargain and trade—among other things—to shape the institutional transitions that may, in part, ultimately lead to changes in growth. In contrast to much of law and development scholarship to date, these studies position “good” leadership as a fundamental driver of change in development settings, focusing on uniquely endowed and salient individuals who influence and guide institutional reform. Leaders in this emerging literature play a host of different functional roles. Some scholars have simply underscored the greater authority or political power of certain leaders—especially those at the head of authoritarian regimes—to mandate or coerce institutional change, emphasizing differences in national leaders’ “political will” as the principal explanation for variation in institutional outcomes across countries and over time. Others have focused on the strategic capabilities of certain leaders in coordinating reformist activity to overcome collective action problems. Rather than simply mandating change, these leaders engage in skilled arbitrage among elites or “dominant networks” to achieve their goals. Yet others have honed in on the general salience of leaders to show how key individuals can produce institutional changes through activities that set a public example for others to follow. Over time, such “disruptive” actions by leaders can lead to

35 T. Besley, T. Persson and M. Reynal-Querol, *Resilient Leaders and Institutional Reform: Theory and Evidence*, 83 *Economica*, no. 332 (2016), 584–623.

36 See Bennister (2016), *supra* note 5.

new norms that eventually become institutionalized as formal rules. Finally, some scholars in this literature have emphasized the cognitive aspects and capacities of successful leaders who privately identify new opportunities for change and seek influence public ideas and beliefs in ways that make their followers more receptive to institutional transitions. Following Bulman's four-part classification of the qualities that define good leadership, call each of the four functional roles of leaders just described "control", "connections", "courage" and "creativity."³⁷

Below I describe each of these functional roles, or theories about what leaders "do" to change institutions, in more detail. After discussing each role in turn, I conclude this section by exploring the policy implications of the new leadership research for the field of law and development more broadly.

2.2.1 Control: Leading by Fiat

One way that leaders can shift institutions is simply by changing the law when they are sufficiently powerful to do so. That strong leaders can sometimes change institutions by fiat will strike some as a fairly intuitive—if largely trite—observation. Equating leadership with political authority has a relatively long pedigree in the field law and development, in particular with earlier theories of the "developmental state" through which autocratic leaders figured prominently in attempts to "bring the state back in" to accounts of development.³⁸ But whatever its limitations, the theory of leading by fiat provides a useful starting point to link leadership and institutional change, not least because it helps to distinguish and underscore by contrast the various non-coercive functions of leadership that have fuelled much of the interest in leaders, law and development over the past decade.

The leadership-as-political authority perspective attracts a significant following among scholars who argue that leadership matters.³⁹ This perspective is

³⁷ Bulman (2016), *supra* note 31, p. 124.

³⁸ See, for example, R. Stubbs, *What Ever Happened to the East Asian Developmental State? The Unfolding Debate*, 22 *The Pacific Review*, no. 1 (2009), 6, who cites "determined leadership" as one of the essential elements of the developmental state. Leadership in this literature is frequently identified with a small cohort of "developmental elites", though here the emphasis has tended to be more on shifting alliances of senior bureaucrats than on individual leaders. A. Leftwich, *Bringing Politics Back in: Towards a Model of the Developmental State*, 31 *Journal of Development Studies*, no. 3 (1995), 405–407.

³⁹ See A. Persson and M. Sjöstedt, *Responsive and Responsible Leaders: A Matter of Political Will?*, 10 *Perspectives on Politics*, no. 3 (2012), 619–621.

well illustrated by a prominent new study from Robert Rotberg that examines the basis for anti-corruption measures and rule-of-law reforms in several country-level case studies.⁴⁰ Rotberg argues that the “leadership factor” has been the decisive variable for several developing countries in transforming dysfunctional bureaucracies into accountable and efficient regimes.⁴¹ He sees strong national leaders as instrumental to breaking “decisively with past practices” in ways that curb rent seeking, ensure credible political commitments and quash influence peddling.⁴² In this account, leaders exercise mostly unconstrained agency, setting in motion reforms to formal rules and enforcement mechanisms that restructure the incentives of businesses and government officials and deter corrupt behaviour.⁴³ Good institutions follow “from leadership actions to establish abstemious and enlightened democratically inclined political cultures” that support and sustain such transitions.⁴⁴ Rotberg’s primary examples of good leadership—Lee Kuan Yew’s governance reforms in Singapore and Seretse Khama’s reforms in Botswana—illustrate contrasting leadership styles and strategies that nevertheless both coincided with dramatic reductions in levels of national corruption, reinforcing the idea that successful change in these contexts depended heavily on the qualities, talents or other resources of the leaders themselves rather than on structural conditions or on the specifics of the strategies pursued.

Political power may of course be essential to good leadership in some contexts. But comprised as it is of isolated cases without a deeper theoretical account of leadership roles, Rotberg’s study and others in this vein do not take us very far in resolving a clearer picture of what leaders actually “do” to reform institutions. If there is a theme that links Rotberg’s cases, it appears to be connected to the authoritarian nature of both Lee and Khama’s efforts and the sometimes draconian methods they employed to weed out corruption—such as, in Lee’s case, changes to the rules of evidence that enabled him to prosecute government officials associated with the faintest suggestion of bad behaviour.⁴⁵ In addition to the political power that allowed these leaders to implement their changes, much turned on their exercise of “political will” to use that power for the public good. Rotberg suggests that, at least for the leaders in his study, this

⁴⁰ Rotberg (2017), *supra* note 14.

⁴¹ *Ibid.*, p. 223.

⁴² *Ibid.*, pp. 223–224.

⁴³ *Ibid.*, p. 225.

⁴⁴ *Ibid.*, pp. 227–228.

⁴⁵ *Ibid.*, pp. 234–236. For an analogous strategy at the country-level in China, see Bulman (2016), *supra* note 31, p. 127.

exercise of political will was based not on their own “moral scruples” but on an instrumental calculus to promote growth and development and to protect or reinforce their own legitimacy over time.⁴⁶ What this argument fails to explain, of course, is how some leaders come to possess this foresight and political will, while so many other corrupt authoritarian leaders eschew the same calculus when faced with clear opportunities for reform.

2.2.2 Connections: Leading by Coalition

A second way that leaders can change institutions flows from their capacity to manipulate the procedural levers of lawmaking in a manner that forges connections among networks of elites and gets “others in power to go along.”⁴⁷ This is a leader’s capacity to set the agenda for collective decision-making—what some have described as itself a “structural” theory of leadership.⁴⁸

Such structural theories are closely linked to the social choice tradition in political science, building on the Kenneth Arrow’s observation that legislative cycling when leaders have the power to rank the voting order allows them to determine the outcomes of political processes simply by establishing which issues are voted first.⁴⁹ More generally, where procedural rules grant agenda-setting power to leaders or enable them to exercise veto powers, leaders’ preferences can heavily influence the path and pace of institutional change. These ideas have served as the basis for William Riker’s theory of heresthetics, which he described as the “art of political manipulation,” or “the art of setting up situations.”⁵⁰ Leaders who master this art have, in Riker’s view, several options open to them in securing their desired outcomes, including changing the set of relevant decision-makers, changing the set of actions available to those decision-makers, framing the evaluation of outcomes by others and altering the procedural mechanisms by which decisions are made.⁵¹

⁴⁶ Rotberg (2017), *supra* note 14, p. 223.

⁴⁷ Alston et al. (2016), *supra* note 11, pp. 207/281. There is related a literature on the role of leadership in coordinating collective action in community-level common-pool resource settings, although studies in this vein do not always draw a clear on the distinction between “leaders” and other “elites”. For an example, see Trond Vedeld, *Village Politics: Heterogeneity, Leadership and Collective Action*, 36 *The Journal of Development Studies*, no. 5 (2000).

⁴⁸ Ahlquist and Levi (2011), *supra* note 23, pp. 6–7.

⁴⁹ K.J. Arrow, *Social Choice and Individual Values* (New Haven: Yale University Press, 1951).

⁵⁰ W.H. Riker, *The Art of Political Manipulation* (New Haven: Yale University Press, 1986); W.H. Riker, *The Strategy of Rhetoric: Campaigning for the Ratification of the Constitution* (New Haven: Yale University Press, 1996).

⁵¹ A good synopsis of these various mechanisms is provided in Riker (1996), *ibid.*, pp. 209–210.

Adrian Leftwich has been a central proponent of such connective and structural theories of leadership in development contexts, observing that we need to understand how leaders “have, or have not, been able to forge the necessary formal or informal coalitions which in practice build, maintain or transform not only developmental states but all state structures and developmental institutional arrangements.”⁵² Contrary to Rotberg’s account, Leftwich argues that political and economic “settlements”—in which leaders negotiated coalitions between the private sector, labour and other political elites—were crucial to developmental state successes in both Singapore and Botswana, Rotberg’s two primary case studies.⁵³

The vision of leaders as coalition builders and masters of strategic manipulation also pervades Alston and colleagues’ recent volume on Brazil’s “virtuous path” to institutional reform and development since the mid-1990s.⁵⁴ Faced with a daunting economic environment of hyperinflation and stagnation in the early 1990s, Brazil’s much lauded fiscal and constitutional reforms were closely tied to the leadership of Fernando Henrique Cardoso, initially in his role as Finance Minister and later as President until the early 2000s. In Alston et al.’s view, Cardoso changed the trajectory of Brazilian development by steering the country through a period of “massive institutional change” to control fiscal expenditures, stabilize the Brazilian currency, and eventually introduce a suite of constitutional amendments designed to improve primary education, reform pensions, fight poverty and set rules for minimum investments in the health sector.⁵⁵ His successes in this regard turned on his strategic use of the presidential Office to set the legislative agenda and, where necessary, exercise an effective veto over alternative reforms. Cardoso was also a master at “coalition management”, including the “strategic allocation of cabinet portfolios, pork and policy concessions” to persuade others within the dominant network to go along with controversial reforms.⁵⁶ The institutional changes produced by these manoeuvres opened the way for the widespread privatization of state-owned enterprises and ultimately transformed the nature of capitalist development in the country.⁵⁷

If Rotberg’s account of leadership by fiat leaves individuals unconstrained to pursue institutional changes, the view that leaders are artful manipulators of

⁵² Leftwich (2010), *supra* note 15, p. 95.

⁵³ *Ibid.*, pp. 101–102.

⁵⁴ Alston et al. (2016), *supra* note 11, pp. 204–207/281.

⁵⁵ *Ibid.*, pp. 116–126.

⁵⁶ *Ibid.*, p. 122.

⁵⁷ *Ibid.*, p. 125.

procedure and elite coalitions is burdened by its dependence on the pre-existing political institutions that set the terms for coordinative action. As Helms has noted, these “perspectives in political leadership research could be said to focus more on the institutional context in which leaders operate and less on the phenomenon of leadership itself.”⁵⁸ On this view, Cardoso’s successes in Brazil turned very little on any of his own particular actions, choices or beliefs, and were more directly determined by the institutional structure of the Brazilian congress and its relationship to the presidential office. Here, Cardoso serves largely as a placeholder for the structural sources of leadership and authority, providing an account that, like Rotberg’s, leaves us to wonder exactly what it is that leaders themselves uniquely “do” to produce institutional change.

2.2.3 Courage: Leading by Doing

Another set of studies have predicted that leaders can influence institutions more gradually over time by engaging in public actions that set an example for others to follow.⁵⁹ In this model, individual leaders seed a new set of practices that eventually grow into informal norms and ultimately become codified as formal rules. When leaders act “disruptively”—that is, outside the bounds of expected practices and norms—their salience among other political actors and the general public makes these actions especially influential in shifting expectations. Leaders, in other words, use their special position of influence to set in motion gradual changes in informal institutions which—after a period of dissonance with status quo rules—may become formalized, supplanting old rules with new ones or fulfilling the objectives of the old rules by ensuring that they are faithfully observed and enforced. In this model, norms—or “slow-moving institutions”—can frequently precede formal rules as the driver of change.⁶⁰

Bidner and Francois model this process to demonstrate how leading by doing can produce strong rule-of-law institutions, using the case of Benin’s long-serving autocratic president, Matthieu Kerekou, as their principal example.⁶¹ Prompted by the end of the Cold War, Kerekou “volunteered”

58 L. Helms, “Institutional Analysis”, in R.A.W. Rhodes and P. ‘t Hart (eds.), *The Oxford Handbook of Political Leadership* (Oxford: Oxford University Press, 2014), p. 195.

59 Levi (2006), *supra* note 6, p. 12.

60 G. Roland, *Understanding Institutional Change: Fast Moving and Slow-Moving Institutions*, 38 *Studies in Comparative International Development*, no. 4 (2004), 109–131.

61 C. Bidner and P. Francois, *The Emergence of Political Accountability*, 128 *The Quarterly Journal of Economics*, no. 3 (2013), 1397–1448.

to hold open presidential elections in the late 1990s and—perhaps more remarkably—agreed to freely concede power after losing the popular national vote to his primary challenger.⁶² More than 15 years later, after subsequent re-election as President, Kerekou agreed to observe the term and age limits established by Beninese law, despite all indications that he had strong personal incentives to maintain his hold on power. These choices by Kerekou in favour of political accountability ran contrary to the norms observed by Kerekou himself and his predecessors until the early 1990s. By the time Kerekou agreed to step down permanently as president, Bidner and Francois argue new norms of good governance had entrenched themselves in Benin’s democratic practices, helping to fulfil the formal promise of existing laws and effectively constraining the choices available to Kerekou to retain his hold on power. This perspective suggests that when leaders establish a new rule-of-law norm and—crucially—continue to follow this norm by acting accountably over time, their actions are not only widely known but also cause the public to become more optimistic about good behaviour in the future. As a result, the electorate becomes more willing to punish transgressors of the new norm such as by voting them out of office, further strengthening the norm and, in some cases, leading to its eventual institutionalization as a formal rule.⁶³

Extending this model, Acemoglu and Jackson show that the “visible actions of prominent individuals” such as Mandela and Ghandi can play a central role in changing institutions when those changes require a group to overcome inherent coordination or collective action problems.⁶⁴ In their model, social norms of corruption persist because imperfect information about deviating practices makes it difficult to coordinate around a new set of established behaviours⁶⁵:

Consider, for instance, the example of norms of corruption within the police force ... If the history of the actions of prominent police officers or corruption cases indicates that there is a social norm of high corruption, then even moderately favourable signals of current behaviours are interpreted as being due to noise and individual police officers will be unwilling to curtail their corruption. This role of social norms as frames of reference (in shaping the interpretation of past signals) leads to a form of history-driven norm of corruption: high corruption persists partly because, given the prevailing social norm, the signals the police officers generate even with honest actions are misinterpreted and cannot be trusted, thus discouraging honest behaviour.

⁶² *Ibid.*, p. 1398.

⁶³ *Ibid.*, pp. 1401–1402.

⁶⁴ D. Acemoglu and M.O. Jackson, *History, Expectations, and Leadership in the Evolution of Social Norms*, 82 *The Review of Economic Studies*, no. 2 (2014), 423–456, at 423.

⁶⁵ *Ibid.*, p. 448.

This dilemma can be resolved by the presence of a salient leader whose actions are well known by potential followers. In Acemoglu and Jackson's policing example, "a prominent police officer or commissioner may choose a highly visible honest action to break the social norm of corruption."⁶⁶ As in Bidner and Francois' theory, this result is possible because the actions of salient leaders create opportunities for future actors to coordinate by establishing new expectations about non-corrupt behaviour. In a world in which these expectations and beliefs about the activities of others are highly uncertain, the actions of prominent leaders can have large and lasting impacts on change simply by being the ones that are most cheaply and predictably observed.

More so than leading by fiat or coalition, the theory of leading by doing brings us closer to an account of what leaders themselves uniquely "do" to transform institutions. This account focuses attention on a leader's salience to her followers as a crucial aspect of leadership and suggests that leaders' influence on law reform can be much subtler—and less immediate—than simply mandating change. It does not, of course, attempt to explain why leaders might choose to engage in disruptive actions that can themselves be personally costly. Moreover, the leading by doing theory may be more relevant to some types of institutional reform, such as anti-corruption measures and political reform, than others such as land reform—though the interaction between changing norms and formal laws can produce powerful consequences in the latter as well.⁶⁷ Finally, it is not always clear that even a simple action by leaders or others will always be concisely understood and applied across a population of followers, as interpretive complexity tends to increase along with the dissemination of information across individuals and groups.⁶⁸

⁶⁶ *Ibid.*, p. 449.

⁶⁷ Insightful studies on the interaction between law and norms in cases of land reform are: J. Ensminger and J. Knight, *Changing Social Norms: Common Property, Bridewealth, and Clan Exogamy*, 38 *Current Anthropology*, no. 1 (1997), 1–24; D. Fitzpatrick, *Evolution and Chaos in Property Right Systems: The Third World Tragedy of Contested Access*, 115 *Yale Legal Journal* (2006), 996–1048; R. Bubb, *The Evolution of Property Rights: State Law or Informal Norms?*, 56 *Journal of Law and Economics*, no. 3 (2013), 555–594; L. Putzel, A.B. Kelly, P.O. Cerutti and Y. Artati, *Formalization as Development in Land and Natural Resource Policy*, *Society and Natural Resources* (2015), 453–472; F.K. Upham, *The Paradoxical Roles of Property Rights in Growth and Development*, 8 *Law and Development Review*, no. 2 (2015), 253–269.

⁶⁸ On interpretive complexity in the land reform context, see D. Fitzpatrick and A. McWilliam, *Bright-Line Fever: Simple Legal Rules and Complex Property Customs among the Fataluku of East Timor*, 47 *Law and Society Review*, no. 2 (2013), 311–343.

2.2.4 Creativity: Leading through Political Entrepreneurship

Finally, there has been a growing interest in the relationship between ideas, leadership and institutions that characterizes the role of leaders as actors who influence public beliefs to create the conditions conducive to reform. This perspective on leadership is linked closely to a renewed emphasis on the role of ideas and beliefs in political economy and to a new body of work that challenges predominant public choice theories of vested or elite interests as the primary determinants of policy and institutional changes. Dani Rodrik, for example, has critiqued “the notion that there is a well-defined mapping from ‘interests’ to ‘outcomes’” in the dynamics of change, arguing that the beliefs of relevant actors shape their own preferences for reform, affect how they respond to existing institutional constraints, determine how they understand the available choices and how those choices relate to or cause outcomes.⁶⁹ Because they impact each stage in the mapping from interests to outcomes, individuals’ ideas and beliefs about the world are key targets for prominent leaders to influence exert influences in ways that differ significantly from the strategic moves available to Riker’s herestheticians in the course of special interest politics. Both because of their general salience and their control over ideational as well as material resources,⁷⁰ leaders can have a heavy impact on shared ideas about whether status quo institutions are working or not, or about the set of available options for reform.

Rodrik and others have drawn on López and Leighton’s concept of leaders as “political” or “institutional” entrepreneurs who “notice loose spots in the structure of ideas, institutions, and incentives and then find ways of implementing these new ideas into society’s shared institutions.”⁷¹ Likewise, some have pointed out that “[d]evelopment entrepreneurs are leaders who commit to making social organizations work for the greater good by creating the circumstances that lead to the adoption of better institutions,” including by bringing institutional alternatives “to the public consciousness.”⁷² Recognizing that institutional

⁶⁹ D. Rodrik, *When Ideas Trump Interests: Preferences, Worldviews, and Policy Innovations*, 28 *Journal of Economic Perspectives*, no. 1 (2014), 190.

⁷⁰ Samuels (2003), *supra* note 16, p. 5.

⁷¹ E. López and W. Leighton, *Madmen, Intellectuals, and Academic Scribblers: The Economic Engine of Political Change* (Stanford: Stanford University Press, 2012), p. 24. For a discussion of “institutional entrepreneurs” in organizational theory see R. Garud, C. Hardy and S. Maguire, *Institutional Entrepreneurship as Embedded Agency: An Introduction to the Special Issue*, 28 *Organization Studies*, no. 7 (2007), 957–969.

⁷² J. Faustino and D. Booth, *Development Entrepreneurship: How Donors and Leaders Can Foster Institutional Change*, Working Politically in Practice Series: Case Study, no. 2 (2014), 20.

path dependence is a powerful force resisting change, López and Leighton argue that “when the right elements come together at the right time and place and overwhelm the status quo, it is because special people make it happen.”⁷³ In their view, political entrepreneurs are not necessarily leaders who themselves develop and articulate new ideas or ideologies. Instead, leaders as entrepreneurs are individuals who are uniquely situated to identify existing or impending points of disequilibrium in the existing set of institutions, which they successfully translate into “opportunities for profitable arbitrage.”⁷⁴ That is, leaders under this theory do not affect change by simply imposing their own ideas or beliefs on others; rather they perceive and articulate latent beliefs and work to foreground those beliefs in the public view.⁷⁵ Rodrik draws a useful analogy here to theories of technological innovation—just as new technologies relax production constraints on physical resources, new ideas promoted by political entrepreneurs relax the political constraints that allow more room for institutional changes within existing structures of decision-making and control.⁷⁶

A number of case studies have emerged in recent years that examine how leaders work to change ideas in pursuit of institutional change. Especially important has been the extent to which leaders effectively shift their followers’ “cognitive maps” of the state in ways that cause those followers to interpret their own interests differently.⁷⁷ For example, Mehta and Walton observe that a group of influential political leaders who emerged from India’s independence struggle had a powerful influence over post-independence development in the country by positively framing the need for a mixed state-led economy.⁷⁸ Similarly, Alston et al. supplement their structural account of Cardoso’s leadership in Brazil with a portrait of his ability to perceive and predict changes in broadly shared public ideas about the role of the developmental state.⁷⁹ While Cardoso’s success at reforming Brazilian institutions turned in part on his manipulation of procedural levers, his greater contribution, in Alston et al.’s view, may have been to “restructure” older public ideas about the role of the state and about the objectives of fiscal policy in favour of new commitments to “fiscally sound

⁷³ López and Leighton (2012), *supra* note 71, pp. 190–191.

⁷⁴ W. Naudé, “Entrepreneurship and Economic Development: Theory, Evidence and Policy”, in B. Currie-Alder, R. Kanbur, D.M. Malone and R. Medhora (eds.), *International Development: Ideas, Experience, and Prospects* (Oxford: Oxford University Press, 2013), p. 3.

⁷⁵ Alston et al. (2016), *supra* note 11, pp. 186/281.

⁷⁶ Rodrik (2014), *supra* note 69, pp. 198–199.

⁷⁷ P.B. Mehta, and M. Walton, *Ideas, Interests and the Politics of Development Change in India: Capitalism, Inclusion and the State*, ESID Working Paper No. 36 (2014), 3, 6.

⁷⁸ *Ibid.*, p. 25.

⁷⁹ Alston et al. (2016), *supra* note 11, pp. 199–203/281.

social inclusion.”⁸⁰ Cardoso and his team achieved this transition by promoting a widespread belief in the public’s fear of inflation and its economic consequences, laying the foundation for institutional reforms to combat inflation by granting greater fiscal control to the central bank and by introducing constitutional amendments that would broaden the reach of social policy to help stabilize economic conditions.

The literature on ideas and institutional change has grown rapidly over the past decade, and much work remains to make manageable the concept of “ideas” and to describe the specific mechanisms through which leaders shift public thinking and cognitive maps. Like leading by doing, the theory of ideational entrepreneurship emphasizes a leaders’ general salience to their followers but may also elaborate on a more direct route through which leaders use their resources to influence formal law reforms. Moreover, existing work has not yet grappled with the question of how pre-existing institutional structures shape information flow and interpretation and thus constrain the leaders’ agency to further impact institutional changes.

2.3 Implications for Development Policy

Together, the four models of how leadership “matters” described in this section variously address what Douglas North has identified as the three main structural barriers that historical path dependence creates for institutional change.⁸¹ First, inherited belief systems structure pervasive incentives against change and limit private and public perceptions about the available options for reform. Political entrepreneurs who work to foreground new ideas can disrupt the inertia of these inherited belief systems and ultimately diminish the value of increasing returns faced by actors and organizations operating within the status quo. Second, the interdependency of institutions in a given context can make isolated changes difficult or impossible to implement, while the compounded costs of system-wide reforms inevitably confront political resistance, especially from established elites.⁸² Here, leaders who successfully engage in coalition building and political manipulation may go a long way towards facilitating the kinds of coordination necessary to overcome or work around such resistance to more comprehensive

⁸⁰ *Ibid.*, p. 117.

⁸¹ D.C. North, *Understanding the Process of Economic Change* (Princeton: Princeton Academic Press, 2005). For a discussion of these structural barriers in the context of law and development, see Prado and Trebilcock (2009), *supra* note 1, p. 354.

⁸² Trebilcock (2016), *supra* note 2, pp. 348–349.

reforms. Third and finally, North has observed that institutional success generally implicates changing both formal rules and informal social norms, as well as their enforcement characteristics. Leaders who exercise strong political authority can often change formal institutions by fiat, but they may also have a key role to play in changing social norms by using their high degree of general salience to set an example for others to follow. While such processes of informal change will take time, the example of Kerekou's success in Benin suggests that intentional strategies dedicated to these kinds of leading-by-example reforms remain feasible from a policy perspective.

But, if we therefore take seriously the notion that “leadership matters” for institutional change, then what policy implications follow for the field of law and development? At a broad level, the new emphasis on leadership serves to reinforce the field's recent commitment to idea that developing countries themselves should be empowered and supported to take the lead in institutional reforms rather than be subject to coercive policies imposed by outsiders.⁸³ The new leadership research may provide a focal point to help reify this idea by identifying actors within developing countries who are most likely to conduits of change and by lending a degree of specificity to various ways in which those actors can be supported to shape institutional reforms. This direction certainly appears to inform the World Bank's new *Collaborative Leadership for Development Approach*, with its emphasis on “process expertise” and “adaptive leadership” that is “deeply embedded in culture or social norms.”⁸⁴ Likewise, it corresponds with scholarly attempts to develop “a micro-social perspective of institutional change” that identifies “key actors and conditions that may shape grassroots institutional processes” while arguing for “a greater appreciation of culture, religion and fragility.”⁸⁵

Beyond this broader insight, the literature on leadership and institutions has yet to link its theoretical progress to specific policy proposals for action—though a number of guiding ideas are beginning to emerge. One line of thinking emphasizes the need to equip local leaders with the knowledge, skills and other human capital resources that can make them more effective agents for change. Leftwich observes, for example, the individuals who have been

⁸³ See Leftwich (2010), *supra* note 15, p. 109; Trebilcock (2016), *supra* note 2, pp. 335–336. At the same time, scholars have stressed “middle-level generalizations” that support institutional borrowing or sharing where appropriate, especially between developing countries who share similar contexts. *Ibid.*, p. 270.

⁸⁴ World Bank (2016), *supra* note 4, pp. 2–3.

⁸⁵ H.A. Ritchie, *Unwrapping Institutional Change in Fragile Settings: Women Entrepreneurs Driving Institutional Pathways in Afghanistan*, 83 World Development (2016), 39, 49.

successful at leading by coalitions have higher rates of secondary and tertiary education—a point that is supported to some extent by the empirical literature on leaders and growth.⁸⁶ Rather than simply expanding educational opportunities in general, this view directs attention to more specific skills in navigating politics among both elite networks and the general public. A second line of thinking focuses not on leaders themselves, but on supporting other interests within developing polities that are increasingly seen as central to making leaders more accountable and effective in pursuing their specific roles. For example, one proposal in this vein has observed that traditional forms of financial development assistance can induce rent-seeking among leaders, and advocates for an alternative approach that ties aid to requirements for information disclosures about its uses for institutional reform directly to citizens.⁸⁷ Arguably, this model could increase the public's ability to select good leaders and to sanction those leaders who are insufficiently responsive to demands for change. Similarly, policies that invest in strengthening key organizations in developing country politics—such as trade unions and business associations—may facilitate productive political bargaining by increasingly the capacity of leaders to forge coalitions and coordinate action.⁸⁸

3 Structure and Agency in Development Theory

While the literature canvassed above offers compelling support for the argument that “leadership matters” for institutional change, how should we evaluate the more controversial claim that good leaders are *determinative* of good institutions? At its extreme, this view proposes a radical shift in the focus of law and development—one that renders institutions largely epiphenomenal to developmental change and places the emphasis of reform on influencing, training and/or supporting the individual actors who are ultimately responsible for institutional reforms.⁸⁹

Remarkably, development theory as a whole has shown little awareness of the extent to which its movements and changing policy prescriptions have

⁸⁶ Besley et al. (2011), *supra* note 25, p. 206.

⁸⁷ S. Devarajan and S. Khemani, “If Politics is the Problem, How Can External Actors be Part of the Solution?” *World Bank Group Policy Research Working Paper 7761* (2016).

⁸⁸ Leftwich (2010), *supra* note 15, p. 109.

⁸⁹ “[I]nstitutions may be studied as dependent variables. In this latter case, leadership is defined in terms of the willingness and ability of individuals to shape and change their institutional and organizational environments, or to create new institutions.” Helms (2014), *supra* note 58, p. 195.

tracked the intellectual struggle between structures and agents as explanations for change over time. In this section, I argue that ignoring the lessons of this intellectual history—by seeking to privilege agency over structure, or the inverse—likely condemns law and development scholars to repeat it. I begin by retelling the history of economic development policy in the post-war era from the perspective of the structure-agency debate, in order to give some context to the recent emphasis on leadership and agency. The point of tracing this history is to show that cyclical movements from theories of structure to agency and back to structure again have tracked the rise and fall of successive development paradigms.⁹⁰ I argue that law and development is not immune from these dynamics, raising the challenging question of how best to integrate both structure and agency in a way that maintains the field's contributions to institutional reform while making room for the role of individuals with real and diverse interests, aims and abilities.

3.1 A Brief Intellectual History

Histories of development theory often remark on the dualisms that have pervaded and shaped the field—for example, between “state” and “market” as the appropriate driver of growth,⁹¹ or between “universalism” and “relativism” as a frame for the ends of development.⁹² But none of these narratives acknowledge that development theory has also tended to oscillate between structural and agent-centred accounts of social change. The intellectual history below departs somewhat from standard stories that tell the chronology of development theory

90 The lines between structural and agential ontologies of social change are, of course, blurry in practice—a point that Karl Marx well recognized when he observed that “[m]an makes his own history, but he does not make it out of the whole cloth; he does not make it out of conditions chosen by himself, but out of such as he finds close at hand.” Karl Marx, “The Eighteenth Brumaire of Louis Bonaparte”, Project Gutenberg, accessed December 17, 2017, <https://www.gutenberg.org/files/1346/1346-h/1346-h.htm>.

91 See B. Fine, “Neither Washington nor Post-Washington Consensus: Challenging Development Policy in the Twenty-First Century”, in B. Fine, C. Lapavistas and J. Pincus (eds.) *Development Policy in the Twenty-First Century* (London: Routledge, 2001), p. 16; Stubbs (2009), *supra* note 35, pp. 4–5. On the market-state dualism in institutionalist thought more generally, see E. Ostrom, *Beyond Markets and States: Polycentric Governance of Complex Economic Systems*, 100 *American Economic Review* (2010), 641–672.

92 Trebilcock (2016), *supra* note 2.

as a succession of contested ideas,⁹³ and instead foregrounds the evolving tensions between structure and agency *within* different schools of development policy and thought. This account is by no means comprehensive, but it illustrates the point that a contest between structural and agential theories of development has not only been endemic to the field—it continues to be reproduced as a central justification for unseating dominant policy paradigms and constructing new ones. That dynamic—now playing out within law and development—holds important cautionary lessons for the new leadership-and-institutions research agenda and more broadly for the field as a whole.

Historical accounts of development policy often begin with the post-war turn to “modernization” as the guiding frame for international development. Modernization theory envisioned development as a “total social process” that would transform the structural components of nation-states through successive stages of social progress, from the traditional and pastoral to the modern and industrial.⁹⁴ This perspective identified the primary causes of underdevelopment as structural in nature, arguing that the under-specialization of traditional economies was inadequate to the rapidly industrializing demands of the post-war world. A shift in economic structure was predicated to be the main driver of future progress. Walter Rostow’s influential book, *The Stages of Economic Growth*, typified this approach with its emphasis on the “take-off” stage of development, during which countries made the crucial step to achieve rapid growth in a small number of economic sectors (e.g. textiles, railroads, ship-building), which in turn drove growth in the rest of the economy.⁹⁵ To achieve take-off, Rostow advocated for states to prioritize capital accumulation in leading sectors, funded by increased private savings and public investment. Once this pivotal stage of structural transformation had been achieved, developing states would be set on a well-defined path to “maturity”, ultimately entering into an “age of high mass consumption.”⁹⁶

Modernization theory undoubtedly grew out of an early focus on the structural dynamics of the economy as the foundation of development, rendering each stage of growth as part of a linear and evolutionary progression. Rostow

⁹³ For example, see M.J. Trebilcock and M. Prado, *What Makes Poor Countries Poor? Institutional Determinants of Development* (Cheltenham: Edward Elgar Publishing, 2011), pp. 1–40.

⁹⁴ H. Bernstein, *Modernization Theory and the Sociological Study of Development*, 7 *The Journal of Development Studies*, no. 2 (2007), 141–160; S.P. Huntington, *The Change to Change: Modernization, Development, and Politics*, 3 *Comparative Politics*, no. 3 (1971), 283–285.

⁹⁵ W.W. Rostow, *The Stages of Economic Growth*, 12 *The Economic History Review*, no. 1 (1959), 1–16.

⁹⁶ *Ibid.*, pp. 8–13.

himself drew a close comparison between modernization and classical Marxism as narratives in which historical determinacy set the conditions for future progress.⁹⁷ Within a decade, however, the structural perspective would find itself under considerable strain as frustration mounted at its failure to “account for the growing gap between countries of the advanced industrial West and the large majority of new states in the Third World,” and to produce effective policies that addressed this trend.⁹⁸ But before these pressures would cause analysts, agencies and academics to abandon modernization theory en masse, they would first cause a fundamental rift between its “more or less structural and more or less psycho-sociological variants.”⁹⁹ While the former emphasized policies designed to shift the structural features of economic organization, the latter targeted the transformation of individual agents and the production of modern, enlightened individuals.¹⁰⁰ Just two years after Rostow wrote *The Stages of Economic Growth*, Harvard psychologist David McClelland would publish his book *The Achieving Society*, which posited an “achievement motive” as the fundamental determinant of economic growth in developed countries. Apart from tracking how individuals came to acquire such an achievement motive, McClelland self-consciously developed his theory to “see man [sic] as the *creator* of his environment, as well as a creature of it.”¹⁰¹ That is, McClelland sought to reorient a modernization theory of development around the concept of human agency. In this project, McClelland would find inspiration in Rostow’s own writing, in which the latter sought to characterize his approach as one that “does not yield rigid, inevitable stages of history”, but rather “a succession of patterns of choice ... made within the framework permitted by the changing setting of society: a setting itself the product of both objective material conditions and of the prior choices made by men [sic].”¹⁰² In fact, a closer reading of *The Stages of Economic Growth* revealed

⁹⁷ *Ibid.*, p. 14.

⁹⁸ R. Higgott, *From Modernization Theory to Public Policy: Continuity and Change in Political Science of Political Development*, 15 *Studies in Comparative International Development*, no. 4 (1980), 31

⁹⁹ J. Delacroix and C. Ragin, *Modernizing Institutions, Mobilization, and Third World Development: A Cross-National Study*, 84 *American Journal of Sociology*, no. 1 (1978), 123. See also A. Portes, *Modernity and Development: A Critique*, 8 *Studies in Comparative International Development (SCID)*, no. 3 (1973), 247, observing that “[t]he two general categories which define the passage from a folk-rural stage to an urban-industrial one are changes in individual subjective orientations and changes in the structure of social relationships.”

¹⁰⁰ Delacroix and Ragin (1978), *Ibid.*, p. 125. See also K. Manzo, *Modernist Discourse and the Crisis of Development Theory*, 26 *Studies in Comparative International Development*, no. 2 (1991), 13–14, who note the emphasis of modernization theory on Western-style education and training.

¹⁰¹ D. McClelland, *The Achieving Society* (New York: The Free Press, 1961), p. 392.

¹⁰² Rostow (1959), *supra* note 95, p. 15.

it to be fairly well attenuated to human agency in the process of modernization—illustrated, for example, in Rostow’s emphasis on what he called the “demonstration effects” of developed country industrialization in which the transmission of ideas of progress themselves “consisted in making men [sic] in less advanced societies perceive that new positive choices were open to them”.¹⁰³ On this view, the hero of modernization theory was the capitalist entrepreneur who, through invention and prudent investment, would drive the division and specialization of labour toward industrial success.¹⁰⁴

More so than any of its structural variants, it was modernization theory’s emphasis on the individual actor that would expose it to the most severe critiques of dependency theorists beginning in the early 1970s. Dependency theory’s leading figure, Andre Gunder Frank, attacked Rostow for largely ignoring the histories of underdeveloped countries.¹⁰⁵ For Frank, modernization’s attention to ahistorical individual actors and its blindness to both national histories and to the global conditions that shape centre–periphery relations rendered it inadequate to the task of a guiding framework for development. Drawing as they did from Marxist and neo-Marxist analyses, Frank and other dependency theorists would reintroduce a deep structuralism into global development policy by making a pointed critique of modernization’s liberal figure of “reasoning man ... whose use of reason would enable him to see himself, not God, as the origin of language, the maker of history, and the source of meaning in the world.”¹⁰⁶ The central premise of dependency theory was that underdevelopment in the global South was produced by—and necessary to—the structural inequalities of the global economic order.¹⁰⁷ The theory looked not only beyond individuals for the causes of development and underdevelopment, but also beyond individual nation-states, insisting “that the logic of contemporary southern development can only be grasped by placing this process firmly within a globally defined historical context.”¹⁰⁸ Its main architectural analogy of centre–periphery relations in global capitalism captured most clearly dependency theory’s focus on structural conditions and served as the springboard for advocates of a new economic nationalism who argued in favour of import

¹⁰³ *Ibid.*, p. 5.

¹⁰⁴ R. Peet and E. Hartwick, *Theories of Development: Contentions, Arguments, Alternatives* (New York: Guilford Publications, 2015), p. 152.

¹⁰⁵ *Ibid.*, p. 161.

¹⁰⁶ Manzo (1991), *supra* note 100, p. 7.

¹⁰⁷ T. Smith, *The Underdevelopment of Development Literature: The Case of Dependency Theory*, 31 *World Politics*, no. 2 (1979), 248.

¹⁰⁸ *Ibid.*, p. 248.

substitution policies that would help to disengage developing countries from a global order seen as so detrimental to their respective interests.

But, as with modernization theory, the aggressive structuralism that characterized dependency theorists' earliest critiques was met over time with internal dissent that produced new attempts to reintroduce a degree of agency into accounts of development and change. Writing at the end of the 1970s, Tony Smith called into question dependency theory's bedrock structuralism by seeking "to establish some measure of the relative autonomy of the various Third-World countries which comes from the real strength of local traditions and institutions."¹⁰⁹ Smith took aim at the policy prescriptions of dependency theorists who saw nationalization as the only effective response to the centre-periphery relations, and attempted to reposition the agency of nation-states and of their domestic political leaders who were responsible for making policies best suited to their particular contexts. By bringing the nation-state back into focus and by emphasizing the choices available to different nations and to local political leaders about which development policies to pursue, Smith's counter-critique argued for a set of solutions to the structural inequalities of the global economic order that shifted attention back again to the role of individual actors.

Like its predecessor, dependency theory's attempts to grapple with the conceptual dualism between structure and agency in pursuit of a better approach to development would open the way for the next policy paradigm that supplanted it. Even as dependency theory became the basis on which to bring the agency of developing states back in, neoliberal reformers in the 1980s and 1990s honed their critiques on the pervasive state failures that they would come to view as a main cause of underdevelopment. Neoliberalism's theory of state failure was underwritten by an emerging political economy that framed development barriers as a consequence of rent-seeking political elites with vested interests in regulatory inefficiency and state control.¹¹⁰ Key to neoliberal theory was the idea that incentives for rent-seeking were themselves structural in nature—an endemic feature of developing country politics that could only be remedied by a return to the neoclassical market as the locus for individual agency, competition and choice. To promote this agency, neoliberal policies sought to privatize state-owned goods and services and to deregulate transactions on the assumption that any imperfections in these markets would inevitably be

¹⁰⁹ *Ibid.*, p. 288.

¹¹⁰ Z. Önis and F. Senses, *Rethinking the Emerging Post-Washington Consensus*, 36 *Development and Change*, no. 2 (2005), 264.

less detrimental to development than the predictable failures of national politics.¹¹¹

It was of course neoclassical economists' lack of attention to constraints on individual choices in the market—that is, their inattention to institutions as the structure of rules within which market actors operate—that the new institutionalists sought to expose in the final decades of the twentieth century. That critique would, in turn, become the basis for important strains of the modern law and development movement. As Douglass North observed¹¹²:

Conceptually, what must be clearly differentiated are the rules from the players. The purpose of the rules is to define the way the game is played. But the objective of the team within that set of rules is to win the game ... Modelling the strategies and skills of the team as it develops is a separate process from modelling the creation, evolution, and consequences of the rules.

By drawing a sharp line between rules and players, the new institutionalist underpinnings of law and development drew the focus of development policy back once again to questions of structure, and with it to the historical determinacy of path dependence as the predominant dynamic of institutional stasis and change. From the new institutional perspective, underdevelopment is caused primarily by laws and norms that promote corruption, leave proprietary and contractual entitlements unclear, and undermine the predictable enforcement of the rule of law. Until quite recently, law and development scholars have been content to seek out policies and reform measures that aim to shift these structural conditions in ways that yield new institutional equilibria more conducive to developmental ends.

This brief history describes the rise of law and development's conventional focus on institutions as reproducing historical cycles between structural and agential theories developmental change. It is now easier to see the turn towards a theory of individual leadership as the next phase in this cycle. Dissatisfaction with the determinism of path-dependent institutions has led some law and development scholars to seek out and foreground the contingencies and

111 On the other hand, neoliberal development theory is viewed by some as premised on a fundamentally structural rather than agential model of the world—one that incorporates individual choices only to the extent that these are wholly determined by the logical structure or contexts in which they were made. C. Hay and D. Wincott, *Structure, Agency and Historical Institutionalism*, 46 *Political Studies*, no. 5 (1998), 951–957; D. Marsh and G. Stoker, *Theory and Methods in Political Science* (London: Palgrave Macmillan, 2010), p. 213; M.V. Wrenn, *Agency and Neoliberalism*, 39 *Cambridge Journal of Economics*, no. 5 (2014), 1231–1243.

112 D.C. North, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990), pp. 3–5.

disruptions of individual actors in order to fashion a more compelling explanation for the dynamics of successful or unsuccessful reform. But if the post-war history of economic development policy teaches anything, it is that a polar return to agency exposes law and development, inevitably, to yet a further set of structural critiques. The general thrust of those critiques is not difficult to anticipate. Each emerging theory of leadership described above assumes rather than seeks to explain leaders' own motivations for undertaking institutional reforms, whether through control, connections courage or creativity.¹¹³ Likewise, the means by which prominent leaders gain power or become salient to a broad cross-section of the public is rarely if ever addressed in the literature.¹¹⁴ Where does "political will" come from?¹¹⁵ As Geoffrey Hodgson has noted, "[I]n some circumstances it is legitimate to take the individual as given, as a simplifying abstraction. But individuals nevertheless remain to be explained."¹¹⁶

4 Addressing the Impasse

The intellectual history of post-war development theory above paints a somewhat dismal view about where the new emphasis on leadership may lead the field of law and development. It suggests that each turn towards agency in development theory signalled a growing dissatisfaction with the failures of a structural analysis, but just as quickly exposed these theories of agency to a recurrent set of structural critiques. Attempts simply to reproduce earlier cycles by adding leadership to the mix in law and development is at least as likely to undermine the field's influence as extend its insights. At the same time, earlier sections of this article made clear that both the empirical evidence and increasingly sophisticated models of leadership by economists and others underscore the promise of integrating leaders into institutional analysis in ways that open new avenues for progress on policy implementation and design. Moreover, the desire to foreground human agency in theories of institutional change aligns with broader trends in law and development that seek to make institutional

¹¹³ This is a problem noted by N. Schofield, *Architects of Political Change: Constitutional Quandaries and Social Choice Theory* (Cambridge: Cambridge University Press, 2006).

¹¹⁴ Ahlquist and Levi (2011), *supra* note 23, p. 18.

¹¹⁵ "[T]he carriers of the contemporary policy discourse on political will tend to adopt an excessively voluntaristic view of leaders, effectively down-playing the contextual influences on their behavior." Persson and Sjöstedt (2012), *supra* note 39, p. 618.

¹¹⁶ G. Hodgson, *The Evolution of Institutional Economics: Agency, Structure and Darwinism in American Institutionalism* (London: Routledge, 2004), p. 6.

analysis more contextual and contingent, and to support actors within developing polities to shape and drive change rather than transpose a template of reforms from the outside.

How then can law and development take leadership seriously while avoiding the pitfalls encountered by earlier policy paradigms? History suggests the need for frameworks that integrate both structure and agency into causal explanations of institutional change and work to understand their mutual influences and shared processes of transformation over time.¹¹⁷ Useful frameworks will recognize and explain the crucial roles of leaders and other human agents without rendering institutions merely consequential to individual beliefs, aims and actions. They would identify not only how leaders shape institutions but also how pre-existing institutions influence, constrain and enable leaders and define their scope of action.

The challenge of reconciling agency and structure in causal explanations of change has, of course, been a perpetual problem for social theory, generating vast literatures that yield many possible approaches but few satisfying answers to the dilemma. Close attention to these debates may yet provide important insights for law and development, though I leave it for future research to construct and test new models that undertake the work of better integrating law and leadership. I conclude the article by suggesting that scholars might focus their efforts on two especially promising approaches to thinking about institutional change that have recently emerged *within* institutional analysis and which may function as the basis for future work.

One of these approaches is inspired by social constructivists who, following the sociologist Anthony Giddens' much debated structuration thesis, address the structure-agency dilemma by collapsing the strict separation between the two concepts and by redefining them as co-constitutive elements of social life.¹¹⁸ On this view, institutional structures are both the outcome of practices undertaken by human actors and the very medium through which those practices take place and are reproduced. Institutions from this perspective are defined by their

117 For a concise distinction between “frameworks”, “theories” and “models” in institutional analysis, see E. Ostrom, *Background on the Institutional Analysis and Development Framework*, 39 *Policy Studies Journal*, no. 1 (2011), 8–9; E. Ostrom, *Understanding Institutional Diversity* (Princeton: Princeton University Press, 2005). An in-depth analysis based on Ostrom's work is P.D. Aligică, *Institutional Diversity and Political Economy: The Ostroms and Beyond* (Oxford: Oxford University Press, 2014).

118 Giddens (1979), *supra* note 9. For example: “[a]ll action is embedded in institutional structures, which it simultaneously produces, reproduces, and transforms.” T. Lawrence, R. Suddaby, and B. Leca, *Institutional Work: Refocusing Institutional Studies of Organization*, 20 *Journal of Management Inquiry*, no. 1 (2010), 52

objective qualities external to individual actors but also by their subjective interpretations internal to those actors. It is the intersection of these objective and subjective qualities that gives institutions and other social structures their durability while presenting opportunities for actors to participate in the process change over time. As the basis for a growing body of otherwise diverse and quite disparate work on institutions and institutional change, Vivian Schmidt claims that constructivist theories have begun to ground a distinctive approach, a new “fourth” school of institutional thought that Schmidt calls “discursive institutionalism.”¹¹⁹

While discursive institutionalists have yet to take up the project of analysing the role of leadership in development contexts, the framework they have created for studying ideas and discourses offers a promising set of tools for linking developmental leadership with institutional change. Two sets of conceptual classifications employed by these scholars may be particularly useful here. First, discursive institutionalists have been careful to distinguish between the different levels at which ideas operate.¹²⁰ At the most concrete level, ideas are solutions offered by entrepreneurial leaders or others to respond to or resolve specific, predefined problems. But while an “idea provides the means for solving the problem and accomplishing those objectives” it is generally true that “problems and objectives are not pre-established.”¹²¹ At a higher level, ideas therefore take the form of “problem definitions” that articulate and circumscribe both the domain of lawmaking and the scope and nature of the problems to which legal solutions are addressed. Clearly, leaders not only put forward and advocate for their preferred solutions; they also invest considerable effort in defining the broader problems to which they seek to respond. Once set, these problem definitions in turn define the range and type of solutions available, and they influence which solutions are regarded as better or worse. Finally, ideas can operate at the level of “public philosophies” or “worldviews” that span particular problem-solution sets and speak to the whole range of underlying assumptions “that undergird the policies and programs with organizing ideas, values and principles of knowledge and society.”¹²²

119 See V.A. Schmidt, *Discursive Institutionalism: The Explanatory Power of Ideas and Discourse*, 11 *Political Science*, no. 1 (2008), 127–146; V.A. Schmidt, *Speaking of Change: Why Discourse Is Key to the Dynamics of Policy Transformation*, 5 *Critical Policy Studies*, no. 2 (2011), 106–126.

120 J. Mehta, “The Varied Roles of Ideas in Politics: From ‘Whether’ to ‘How’”, in D. Béland and R.H. Cox (eds.), *Ideas and Politics in Political Science Research* (Oxford: Oxford University Press, 2011), pp. 39–40/283.

121 *Ibid.*, pp. 39/283.

122 Schmidt (2008), *supra* note 119, p. 306.

Going further, ideas at each of these levels can be classified as either “normative,” ascribing value to particular actions, or “cognitive,” articulating a set of causal relationships about how such actions are realized. To the extent that—as discursive institutionalists claim—institutions and ideas *about* institutions are largely inseparable, it is simply not possible to talk about institutional changes without addressing the key actors responsible for and shaped by those institutions. The high level of detail supplied by discursive institutionalists about how ideas function and the characteristics of their evolution over time renders this type of analysis more tractable and helps to avoid the fuzziness that can too often come with introducing ideas into causal explanations of change.

But as Schmidt points out, it is not enough to integrate ideas into a theory of institutional change in a more nuanced fashion—as works such as Alston et al.’s volume on Brazil, discussed above, have tended to do. Any plausible theory of institutional change must also describe the mechanism by which ideas are shared and contested between the different actors who interpret them. These, in their broadest sense, are the “discourses” in discursive institutionalism that encompass “both a set of ideas about public life and a process of interaction among public actors and with society at large focused on generating and legitimizing those ideas.”¹²³ A focus on discourse sets the stage for a second conceptual classification offered by discursive institutionalists between the “coordinative discourses” that occur between leaders and other political elites and the “communicative discourses” by which leaders engage the public to debate and disseminate their ideas. This distinction underscores the fact that—as suggested in Part 2—leaders inevitably work both to coordinate between other elites and to communicate with the general public, while recognizing that “[a]lthough polities always contain both coordinative and communicative discourses, in most circumstances one or the other predominates.”¹²⁴

Discursive institutionalists have worked hard to distance their approach from a “radical relativism” that renders all institutions as impermanent social constructs.¹²⁵ Nevertheless, challenges remain in determining how a constructivist approach can best be integrated with other institutional approaches, including whether fundamental insights are lost by collapsing the conceptual distinction between structures and agents. One alternative strategy to address the problem of structure and agency is to move beyond conventional sources of

¹²³ V.A. Schmidt, *How, Where and When Does Discourse Matter in Small States’ Welfare State Adjustment*, 8 *New Political Economy*, no. 1 (2003), 134.

¹²⁴ *Ibid.*, p. 137.

¹²⁵ V.A. Schmidt, “Discursive Institutionalism: Understanding Policy in Context”, in F. Fischer et al. (eds.), *Handbook of Critical Policy Studies* (Cheltenham: Edward Elgar, 2015), 179.

inspiration in political science and comparative politics, and turn instead to the organizational literature on leaders in familiar social settings such as unions, religious groups and the firm. Unsurprisingly, organizational theorists in these settings have been closely attentive to the roles of managers and others in positions of leadership—perhaps under the assumption that individuals in organizational settings generally wield considerable influence over the organization’s mission and procedures. At the same time, several studies of organizational leadership have taken pains to demonstrate how a leader’s influence is curtailed by the institutional structures of their organizations—even those structures which leaders themselves have played a prominent part in creating. The approach suggested by organizational studies is therefore closer in spirit to Margaret Archer’s realist critique of constructivism, in that it preserves the distinction between structure and agency but situates these components in an ongoing causal relationship where structure logically precedes human agency—though it is likewise produced and reproduced as the outcome of social interaction.¹²⁶

Organizational theory has long been an incubator for research on leadership in settings distinct from the context of electoral politics and the state—settings that have important consequences for defining the relationship between leaders and institutional change because they lack the element of coercive authority that is so often assumed in political contexts and which tends to drive the view that leaders act relatively freely to implement change. More so than political leaders, the corporate managers, union officials, and others who lead organizations generally have limited ability to coerce their members into complying with their objectives and instead rely heavily on their ability to convince others to follow their lead. Much of organizational theory has therefore been devoted to understanding what Max Weber called “charismatic leadership.”¹²⁷ The most fundamental question here has been: How do leaders achieve their organizational goals by getting others within the organization to “go along”?¹²⁸ An answer to this question helps to explain why people choose to follow the—sometimes idiosyncratic—aims and aspirations of their leaders, how leaders coordinate group activities and how they earn the

¹²⁶ Archer (1982), *supra* note 9.

¹²⁷ M. Komai, M. Stegeman, and B.E. Hermlin, *Leadership and Information*, 97 *The American Economic Review*, no. 3 (2007), 944; B.E. Hermlin, “Leadership and Corporate Culture”, in R. Gibbons and J. Roberts (eds.), *Handbook of Organizational Economics* (Princeton: Princeton University Press, 2012), p. 433.

¹²⁸ J. Ahlquist, and M. Levi, *In the Interest of Others: Organizations and Social Activism* (Princeton: Princeton University Press, 2013), p. 19.

ongoing consent of group members, including consent to endure the costs of institutional reforms and other aspects of organizational change, especially when these costs are uncertain from the outset.

One line of research in this vein of particular interest to law and development scholars argues that leaders are valuable to their followers because they have access to and control over valuable knowledge about the world—such as broader economic conditions, policies, political dynamics or world affairs.¹²⁹ This knowledge is valuable to followers because it enables them to coordinate their productive activities, and it therefore enables leaders to strike a bargain in order to gain compliance with at least some of the leaders' organizational goals. From this perspective, individual leaders shape institutional change by forging a type of social contract with their followers—one that is itself subject to implementing certain institutional constraints that facilitate coordination and ensure credible commitments over the long term.

This perspective on leadership finds its roots in the contractarian tradition motivated by Ronald Coase's early work on the nature of the firm. Coase sought to explain why firms exist as an organizational form—that is, why factors of production within the firm are arranged hierarchically and under the centralized management of leading "entrepreneurs" while those outside the firm tend to be allocated by price mechanisms in the market.¹³⁰ His answer proposed that firms make it possible to economize on the high contracting costs that typically characterize arms-length transactions. By standardizing and streamlining inputs such as labour contracts to allocate workers among particular tasks, firms offer distinctive advantages or efficiencies over market mechanisms of decentralized allocation. However, as Alchian and Demsetz would later recognize, a firm's managers are in no better position to achieve these efficiencies by fiat or authoritative control than are market actors.¹³¹ Instead, Alchian and Demsetz argued that the unique and defining feature of the firm is its leader, or "centralized contractual agent in a team production process."¹³² This reframing of the leader-follower relationship within an organization as fundamentally contractual led to a set of questions about how firm managers contract with or otherwise induce team members to coordinate inputs, given that individual contributions to group effort are generally difficult or impossible to observe

¹²⁹ Ahlquist and Levi (2011), *supra* note 23, p. 8.

¹³⁰ "Our task is to ... discover why a firm emerges at all in a specialized exchange economy." R.H. Coase, *The Nature of the Firm*, 4 *Economica*, no. 16 (1937), 390.

¹³¹ A. Alchian and H. Demsetz, *Production, Information Costs, and Economic Organization*, 62 *The American Economic Review*, no. 5 (1972), 777–795.

¹³² *Ibid.*, p. 778.

directly and therefore cannot serve as the basis for a binding contract *a priori*—a problem which would become widely known as “moral hazard in teams”.¹³³

Attempts to resolve the moral hazard problem have given rise to a view of leadership that links institutional theory with the economics of incomplete information.¹³⁴ Following Herbert Simon’s study of bounded rationality,¹³⁵ the individuals who comprise organizations are no longer assumed to have complete information about the actions of others or about the broader economic, social and political conditions that link their own actions to collective outcomes. For example, individuals may have limited knowledge about the general state of the economy or about national politics—knowledge which they need in order to decide how much of their own effort to contribute in concert with others towards the organizations’ collective mission. Leaders who have privileged access to this knowledge can therefore demand support for their own goals and corresponding institutional changes as a kind of quid pro quo for continuing to deliver effective leadership. While this type of model may be especially well suited to understanding leadership at the local level or in smaller groups, it has also been applied in studies of larger organizations such as national labour unions that count their membership in the hundreds of thousands.¹³⁶

Organizational theories of leadership are appealing as a source of inspiration for law and development because they take seriously the interplay between individual agents and institutional structures, recognizing that leaders can and do work to change institutions in ways that achieve their goals even while they remain subject to both pre-existing path dependencies and self-imposed constraints that maintain the mutual benefits of effective leadership. An

133 B. Holmstrom, *Moral Hazard in Teams*, 13 *The Bell Journal of Economics*, no. 2 (1982), 324–340.

134 “Informational theories of leadership emerge out of the game-theoretic analysis of coordination dilemmas with incomplete information.” Ahlquist and Levi (2013), *supra* note 128, p. 45. See also Margaret Levi and Brad Epperly, “Principled Principals in the Founding Moments of the Rule of Law”, in J. Heckman, R.L. Nelson and L. Cabatingan (eds.), *Global Perspectives on the Rule of Law* (London: Taylor and Francis, 2013), p. 192; North (2005), *supra* note 78, p. 64.

135 H.A. Simon, *Models of Bounded Rationality: Empirically Grounded Economic Reason* (Cambridge: Massachusetts Institute of Technology Press, 1982). Simon himself has described the theory of bounded rationality in terms that distinguish it from structural approaches to social change. “Bounded rationality is simply the idea that the choices people make are determined not only by some consistent overall goal and the properties of the external world, but also by the knowledge that decision makers do and don’t have of the world, their ability or inability to evoke that knowledge when it is relevant, to work out the consequences of their actions, to conjure up possible courses of action, to cope with uncertainty ... and to adjudicate among their many competing wants.” H.A. Simon, *Bounded Rationality in Social Science: Today and Tomorrow*, 1 *Mind & Society*, no. 1 (2000), 25.

136 Ahlquist and Levi (2013), *supra* note 128.

organizational perspective also offers a natural starting point for broadening the present focus on political leadership to encompass leadership in settings such as firms, business and labour associations, and bureaucracies. And by sustaining the distinction between structures and agents, organizational theorists have developed and tested models that offer a degree of conceptual clarity over the promising but still diffuse set of analytical tools identified by discursive institutionalists. At the same time, organizational theory still lacks models that adequately incorporate the significant role of ideas and discourses into the context of organizational leadership. Ideally, future work on leadership, law and development will explore new avenues to bridge these divides and reconcile the assertion that both leadership and institutional preconditions matter for understanding institutional change.

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