

# Legislative Institutionalization: Historical Origins and Analytical Framework\*

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## Abstract

This article revises the theory of legislative institutionalization, which emerged in political science to analyze historical trends in the U.S. Congress. It singles out Polsby's "The Institutionalization of the U.S. House" as the starting point of this theory and maintains that this theory takes aim at understanding the historical development of legislatures, besides highlighting issues of governance, authority building, and differentiation from the environment. After reviewing the observations and criticisms raised by the theory, this article provides an analytical framework to study the institutionalization of national, democratic legislatures, based upon a traditional process-oriented concept of legislative institutionalization. This framework draws from theoretical contributions made by institutional sociologists and both presidential and legislative researchers, all of which are brought together to understand the process that presides over the institutionalization of a legislature. Finally, this article suggests the existence of a link among the dimensions of the institutionalization process, the institutional design of a legislature, and the exchanges between the legislature and the environment.

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## Keywords

Legislative Institutionalization; Legislature; Legislative Development; Political Institutions.

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# Institucionalización legislativa: orígenes históricos y marco analítico

## Resumen

Este artículo revisa la teoría de la institucionalización legislativa que surgió en la Ciencia Política para analizar tendencias históricas en el Congreso de los Estados Unidos de América. Este artículo hace referencia al artículo *The Institutionalization of the U.S. House* de Nelson Polsby como punto de partida de la teoría, y sostiene que dicha teoría busca comprender el desarrollo histórico de los congresos, además de tratar problemas de gobernanza, construcción de autoridad y diferenciación del ambiente. Luego de revisar las observaciones y críticas hechas a la teoría, este artículo provee un marco analítico para estudiar la institucionalización de las asambleas legislativas nacionales democráticas, basado en un concepto procedimental tradicional de institucionalización legislativa. Este marco se basa en contribuciones teóricas hechas por sociólogos institucionales e investigadores presidenciales y legislativos, que son consideradas para comprender el proceso mediante el cual un congreso se institucionaliza. Finalmente, este artículo sugiere la existencia de un vínculo entre las dimensiones del proceso de institucionalización, el diseño institucional de un congreso y los intercambios entre este y su ambiente.

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## Palabras clave

Institucionalización Legislativa; Congreso; Desarrollo Legislativo; Instituciones Políticas.

## Introduction

Legislatures differ all over the world. Some of them are big enough to include an internal bureaucracy that handles their legislative workload, whereas others are smaller, so they hardly have more than a clerical staff to running errands. There are legislatures that do not even have appropriate facilities to function permanently, whereas others keep growing over time.

No doubt, problems of comparison among legislatures are evident, although differences among legislatures have nothing to do with the level of economic development of a country but with something else, e.g. institutional design, policy-making authority, political regime, party system, etc.

These remarks advice focusing on what transpires along the way through which an organization becomes an institution (Cf. North, 1990); in other words, focusing on the process by which a legislature institutionalizes. Precisely, this is what the theory of legislative institutionalization is all about. It deals with process —instead of outcome (Cf. Peters, 1999)—, making thus possible to understand choices and events throughout the legislative development process (Cf. Przeworski, 1993; Schmitter and Karl, 1993; Rosenthal, 1996; Ziblatt, 2006). As such, it does not ignore the historical record, which shows that gradualism, trial-and-error, and contention presided over the institutionalization of several legislatures (Cf. Ann-Lee, 1996; Saivetz, 1996; Eckstein, 1998). If anything, these circumstances suggest that legislative institutionalization is a conflict-ridden process wherein phenomena of mutual causality cannot be written off beforehand.

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Besides helping students to understand the historical development of legislatures, finding out about legislative institutionalization is important for several reasons, as follows: First of all, it has an overall positive effect on the governance of a polity by strengthening regular policy-making and positive valuations for a setting, the legislature, wherein dialogue and majority decisions preside over the decision-making process, e.g. Brazil, Chile, Costa Rica, Colombia, Czech Republic, Germany, Uruguay, among others. Governance, in turn, is positively related to liberalization, democratization, policy effectiveness, and horizontal accountability. Polities lacking institutionalized legislatures, e.g. Argentina, Belarus, Ecuador, Guatemala, Honduras, Kyrgyzstan, Paraguay, among others, face governance problems so, more likely than not, agencies other than the legislature handle political conflicts, e.g. army, executive agencies, official or dominant parties (Cf. Close, 1995; Solt, 2004; Mainwaring and Hagopian, 2005; Fish, 2006; Palanza,

Scartascini and Tommasi, 2012). Secondly, legislative institutionalization amounts to recognizing legislatures as political actors to be reckoned with by the executive, which decides “to govern through them by governing with them” (Opello, Jr., 1986, p. 292); that is, it implies that a legislature has achieved a self-sustaining quality based upon the social support that elicits its policy-making authority. Thirdly, it provides members with an identity that is conducive to their handling of legislative businesses which emerges from internal regulations, both formal and informal, that establish legislative procedures and an incentive structure for members, e.g. salary, perks, and staff (Cf. Polsby, 1968; Huntington, 1973; Fiorina, 1992).

After reviewing the literature on the theory of legislative institutionalization, this article offers an analytical framework to study the institutionalization of national, democratic legislatures. This framework draws from theoretical contributions made by institutional sociologists and both presidential and legislative researchers, especially those concerned with the U.S. House and American state legislatures. Indeed, comparative legislative research carried out in the United States sheds light on conceptual issues involved in the theory, given the diversity of legislative systems that exists in that country; however, research on Britain’s House also highlights relevant issues about the unfolding of the process in a legislature from a parliamentary regime, as shown below. [ 183 ]

According to this framework, legislative institutionalization implies both an internal dimension and an external dimension, each of which touches upon different legislative-building elements that solidify over time, as follows: internal complexity, managerial autonomy, and personnel differentiation. In so doing, this framework partakes of a traditional process-oriented concept of legislative institutionalization, according to which legislative structures and routines gradually achieve stability, permanence, distinctiveness, and sustainability in a polity, without assuming their survival at all costs. Finally, the aforementioned dimensions emerge at a different pace over time, although this article suggests that their emergence have something to do with the institutional design of a legislature, e.g. transformative legislature under a presidential regime, arena legislature under a parliamentary regime, etc., and the exchanges between the legislature and the environment, e.g. the party system.

# 1. A Historical Overview of the Theory of Legislative Institutionalization

## 1.1. The Origins of the Theory

The theory of legislative institutionalization emerged out of a concern with historical trends in the U.S. Congress in the late 1960s, based upon research about the role and formation of institutions carried out by sociologists (Witmer, 1964; Polsby, 1968; Kornberg, 1970).

Political science took stock of sociological institutionalism through comparative politics at first. Huntington (1965) defined institutions as “stable, valued, recurring patterns of behavior” (p. 394), and institutionalization as “the process by which organizations and procedures acquire value and stability” (p. 394). He maintained that institutionalization strengthened organizations, while enabling them to set themselves apart from the environment. Huntington (1965) characterized institutionalized organizations by their adaptability, complexity, autonomy, and coherence, but he did not provide standards to identify and measure these criteria.

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Drawing from Huntington, Polsby applied institutionalization theory to the U.S. House. Polsby (1968) defined neither institution nor institutionalization; instead, he focused on behavioral patterns that characterized an institutionalized legislature, as follows: 1. It distinguishes itself to a high degree from the environment, i.e. boundedness. 2. It exhibits a division and interaction of specialized functions that makes it relatively complex, i.e. internal complexity. 3. It relies on universalistic and automated decision-making to perform legislative functions, i.e. automaticity.

Polsby (1968) measured these characteristics as follows: 1. Boundedness: its indicators refer to the channeling of careers opportunities as expressed in the growth of the reelection rate of House members and the specialization of leadership. 2. Internal complexity: its indicators address the internal division of labor as reflected in the autonomy and growth of committees, agencies of party leadership, and congressional expenditures and perks. 3. Automaticity: its indicators refer to the transit from discretionary to universalistic decision-making as expressed in the growth of the seniority rule to determine committee leadership and the settling of contested elections based upon merits.<sup>1</sup>

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<sup>1</sup> Polsby (1968) measured some of these characteristics through historical episodic records, because some operational indicators of internal complexity (e.g. committees' autonomy and importance,

The evidence persuaded Polsby (1968; 1975), on the one hand, that the U.S. House exhibited a trend toward greater institutionalization characterized by a convergence of most indicators from 1890 through 1910, and on the other hand, that non-bureaucratic, decentralized organizations could institutionalize over time. Moreover, Polsby, Gallagher and Spencer (1969) commented later, as follows:

It is an interesting anomaly that these two phenomena, progressive decentralization of power and institutionalization, are not normally associated, and that 'ideal types' describing the natural history of organizational development typically presume a movement toward, rather than away from, concentration of power (p. 807).<sup>2</sup>

## 1.2. The Theory under Fire

Legislative scholars contested Polsby's conclusions, characteristics, and indicators of an institutionalized U.S. House, especially in the aftermath of the mid-1970s upheaval in House elections. These criticisms dealt with the measurement of boundedness, the directionality and change implied in the institutionalization process, and the link between legislative professionalization and legislative institutionalization.

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Regarding the measurement of boundedness, criticisms dealt with methodological issues overlooked in Polsby's work, but did not bring down the theory. Thus, Dometrius and Sigelman (1991) held that a long tenure of a small cadre of House leaders determined (and kept) institutionalization, because it provided for continuity and stability of congressional operations that counterbalanced rapid membership turnovers;<sup>3</sup> likewise, Fiorina, Rohde and Wissel (1975) maintained that Polsby's measurement overstated the congressional turnover rate by counting new added seats members as first-time members, in circumstances that congressional turnover might have declined earlier.

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growth of specialized agencies of party leadership, and increase on the provision of emoluments and auxiliary aids to members) and automicity (e.g. settlement of contested elections on merits) were difficult to come by in net and comparable time-series.

<sup>2</sup> Haerberle (1978) used legislative institutionalization to account for patterns of subcommittee activity in the U.S. House from the 80th to the 94th Legislature later by focusing on discrete indicators of their activity, permanency, and distinctiveness.

<sup>3</sup> Hibbing (1999) also maintained that institutionalized organizations indoctrinate newly arrived members, who adjust their behavior to their folkways.

Regarding the directionality and change implied in the institutionalization process, Polsby (1968; 1975) pointed out to the reversal of this process by the Civil War. He said that:

As institutions grow, our expectations about the displacement of resources inward do give us warrant to predict that they will resist decay, but the indications of curvilinearity in our present findings give us ample warning that institutions are also continuously subject to environmental influence and their power to modify and channel that influence is bound to be less than all-encompassing (1968, p. 168).

However, critics took aim at the mid-1970s upheaval in the House that allegedly disproved the theory. Cooper and Brady (1981) maintained that Polsby did not heed to the relationship between the internal characteristics of the House and the environmental influences on congressional change, which were “related to more fluid and less abstract aspects of environmental values, linkage, and work” (p. 998). Thus, they pointed out that organization theory explained congressional change better than legislative institutionalization theory.

[ 186 ] Although this criticism drove to a reexamination of the environmental influences on the institutionalization process, Polsby (1981) had already admitted the impact of the environment on legislatures by that time as shown above, so he rejected organization theory because it could not accommodate both the horizontal authority structure and the conflict management function of Congress.<sup>4</sup>

Regarding the link between legislative professionalization and legislative institutionalization, research at two American state legislatures evinced that they were different dimensions of legislative development. Indeed, Chaffey (1970) found that the Montana “amateur” legislature used the rule of seniority, had internal complexity, and specialization of roles instead of the Wisconsin “professional” legislature.

On the other hand, further research on these legislatures assessed the generalizability of legislative institutionalization therein. These studies confirmed the heuristic value of legislative institutionalization by adapting the theory to the research setting, given the organizational differences between the U.S. House and state legislatures. Likewise, they showed that the boundary separating American state legislatures from their environment

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<sup>4</sup> Patterson (1981) also rejected organization theory, but on different grounds.

was becoming thinner over time as the environment was encroaching upon the legislature. Interestingly enough, the evidence suggested that diverse types of democratic legislatures may exhibit different characteristics in terms of institutionalization, which attested to the impact both of their design and their environment.

A case in point was Squire's study on the California Assembly wherein he found that seniority did not determine committee leadership, which persuaded him to maintain that members' goals drove the institutionalization process therein; after all, a more decentralized power structure gave Assembly members leverage in policy-making (Squire, 1992). Taking stock of Polsby's view on decentralization, Squire (1992) concluded that "institutionalized legislatures are those where decentralization is found in addition to well-developed boundaries and increased internal complexity" (p. 1.048). By the same token, Rosenthal (1996) used institutionalization as a perspective on legislative development to maintain that boundedness was the "conceptual core of institutionalization" (p. 185), so it had to include new elements about the relationship between the legislature and the environment (besides personnel differentiation), i.e. adherence to norms and managerial autonomy. According to Rosenthal (1996), the separation between state legislatures and their environments was falling apart swayed by the term-limits phenomenon, the public, and the media, so "no longer can it be said, that the state legislature is an end value itself rather than an instrument for pursuit of other values" (p. 195).

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Interestingly enough, research on a Western, European parliamentary legislature shed light on the impact of institutional design (and by extent the party system) on legislative development complementing, somehow, previous findings on American state legislatures. Thus, focusing on Britain's House, Hibbing (1999) maintained that legislative institutionalization assumes an organizational movement in a specific direction, whose strength varies according to the type of legislature, e.g. the U.S. Congress versus a legislature in a parliamentary regime, which gave way to an upper limit on the institutionalization of every type of legislature. In that way, Hibbing (1999) claimed that: "Just as some legislatures cannot institutionalize as much as others, legislatures [...] cannot institutionalize as much as more common hierarchical forms" (p. 161).



## 2. A Framework to Study Legislative Institutionalization

### 2.1 Conceptual Background

The theory of legislative institutionalization focuses on the process of legislative development from a historical perspective, namely, it deals with process instead of outcome (Peters, 1999). It takes the whole legislature, or legislative institutions, as a unit of analysis while conceiving it as an organization that moves toward growing stability, permanence, and distinctiveness by increasing boundedness, complexity, and automicity, especially at the national level. Needless to say, it assumes unidirectional change over time, but it also makes room for environmental influences both external and internal, as shown above (Polsby, 1981; Hibbing, 1999).

Indeed, Eisenstadt (1968) defined institutionalization as “a process of continuous crystallization of different types of norms, organizations, and frameworks which regulate the processes of exchange of different commodities” (p. 414). This definition implied both continuity and change in social norms and structures, because institutionalization gave way to groups that challenged effective system boundaries (Cf. Eisenstadt, 1964; Peters, 1999).<sup>5</sup>

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Legislative scholars overlooked this inference, though. They suggested instead that legislative institutionalization implied stability and permanence of legislative structures. Thus, Loewenberg and Patterson (1979) defined it as “the process by which legislatures acquire a definite way of performing their functions that set them apart” (p. 21). Hibbing (1988) defined it as “the process by which a body acquires a definite way of performing its functions—a way that sets it apart from its environment and that is independent of the membership and issues of the moment” (p. 682). Hibbing and Patterson (1994) defined parliamentary institutionalization as “the process by which a body becomes autonomous, bounded, routinized, and stable” (p. 147). Conversely, Sisson (1974) made room for change through a multidimensional model that defined it as “the existence and persistence of valued rules, procedures, and patterns of behavior which enable the accommodation of new configurations of political claimants and/or demands within a given organization” (p. 24).

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<sup>5</sup> Eisenstadt (1968) maintained that: “Such institutionalization is, of course, not random or purely accidental; but neither is it fixed or unchanging” (pp. 414-415).

On this vein, Jepperson (1991) maintained that institutionalization is a process by which a social order or pattern attains a self-reproductive nature (even in a unplanned form), which persistence depends upon internal, routine-like procedures that counter departures from agreed-upon forms, but it does not ensure its survival (Cf. Brady, 2001; March and Olsen, 1984). Accordingly, he held that institutionalization is distinct from social entropy, socialization, absence of reproductive processes in social behavior, and reproduction of a social pattern by action (Cf. Eisenstadt, 1968; Judge, 2003).

The end-result of this theoretical discussion is a process-oriented concept of legislative institutionalization according to which legislative structures and routines gradually achieve stability, permanence, distinctiveness, and sustainability in a polity based upon cognitions, agreed-upon norms, and the embeddedness of the legislature's patterns in a supporting social system (Cf. Patterson and Copeland, 1994; Obando, 2009).

## 2.2 Dimensions and Elements

The historical record shows that gradualism, trial-and-error, and contention presided over the institutionalization of several legislatures, e.g. the U.S. House, Britain's House, Chile's National Congress, Uruguay's General Assembly, Germany's Bundestag, among others. These circumstances suggest that legislative institutionalization is a conjunctural, conflict-ridden process wherein phenomena of mutual causality cannot be written off beforehand.

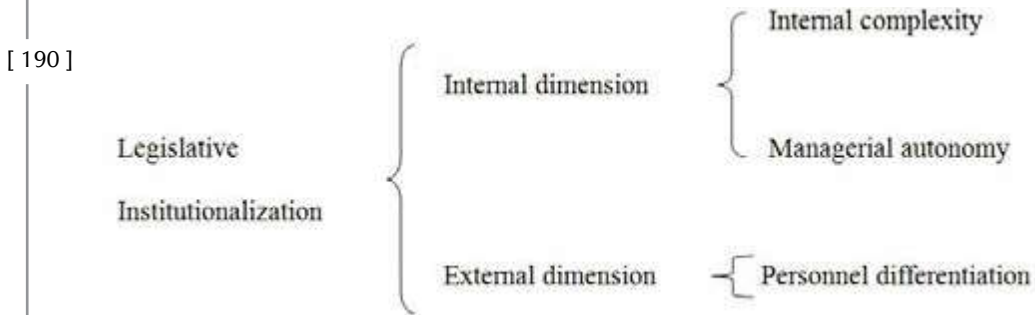
However, studying the institutionalization of national, democratic legislatures advises to distinguish different dimensions through an analytical framework, just as presidential scholars did it regarding the American presidency (Cf. Ragsdale and Theis, 1997). These dimensions encompass different legislative-building elements that both emerge and solidify over time, all of which push the legislature —through the legislative institutionalization process—, toward the finish line where it becomes an institution whose existence and role are taken for granted by members of the political system. Nevertheless, these elements need not to concur all at the same time; actually, they may concur over a period of time, but the specific length of time is undetermined beforehand.

Taking a cue from presidential studies, this framework distinguishes both an internal dimension and an external dimension of the legislative institutionalization process for analytical purposes (Cf. Ragsdale and Theis, 1997), though both of them adapted to the legislative setting. Indeed,

the external dimension deals with the differentiation of a legislature from the external environment, while the internal dimension deals with the permanence, regularity, and strengthening of powers, structures, and internal processes of a legislature.

These dimensions encompass some legislative-building elements which existence ought to be verified by the student, as follows: the external dimension encompasses the element of personnel differentiation and the internal dimension encompasses the elements of internal complexity and managerial autonomy (Figure 1). Although these elements coincide with conceptual categories drawn from legislative studies (Cf. Polsby, 1968; Rosenthal, 1996), they are adapted to the relationship among dimensions and elements described above. In so doing, personnel differentiation refers to the valuation of legislative service by members; internal complexity deals with the structural development of a legislature; finally, managerial autonomy has to do with the building of legislative authority.<sup>6</sup>

**Figure 1.** Legislative institutionalization: dimensions and elements



Source: Obando, 2009, p. 27.

Regarding the emergence of the aforementioned dimensions during the legislative institutionalization process, it is possible to surmise that they emerge at a different pace over time based upon research on national and subnational legislatures reported above, which suggests that their emergence have something to do with the institutional design of a legislature, e.g. transformative legislature under a presidential regime, arena legislature under

<sup>6</sup> Rosenthal (1996) understood managerial autonomy as an element of boundedness through focusing both on state legislation and popular initiatives from without about members' compensation, term-limits, the legislature's budgetary authority and structure, reduction of the legislative session, redistricting, ethical issues, among others.

a parliamentary regime, etc. (Cf. Polsby, 1975), and the exchanges between the legislature and the environment, e.g. the party system.

In this connection, Judge (2003) envisioned legislative institutionalization as a two-step, serial process consisting of differentiating the legislature from the environment at first and increasing internal complexity later, so the consolidation of the external dimension defined legislative institutionalization, which reminds Rosenthal's view regarding American state legislatures (1996); if so, legislatures institutionalize from the outside in (Cf. Rosenthal, 1996, pp. 186-194). However, in *Legislative Institutionalization in Chile, 1834-1924*, I evinced that the internal dimension emerges at first, while the external dimension emerges at last, after analyzing data about a transformative legislature in a presidential regime, e.g. the early Chilean legislature (1834-1924), so the aforementioned elements emerge in following order: internal complexity, managerial autonomy, and personnel differentiation; therefore, legislatures institutionalize from inside out, instead of the other way around.

## Conclusion

The analytical framework offered herein to study the institutionalization of national, democratic legislatures relies upon the heuristic value of legislative institutionalization, besides partaking of a procedural concept thereof. The cumulated evidence from both intra-national research and cross-national research strongly suggests that these legislatures have different thresholds regarding legislative institutionalization. The latter advises including multiple indicators of elements thereof in research variables to achieve valid inferences (Cf. Hibbing, 1988).

In this regard, it goes without saying that the institutional design of a legislature—including constitutional engineering, and the exchanges between the legislature and the environment in terms of the influence of political actors from without, such as the party system, social movements, media, etc.—, have a direct impact on the odds that a legislature may reach a high threshold regarding institutionalization, as Hibbing (1999) correctly pointed out. Somehow, this realization confirms Polsby's early assertion (1975) that democratic legislatures should be placed along a continuum which end-points are the U.S. Congress (a transformative legislature) and Britain's House (an arena legislature), which is perfectly applicable to the theory at hand.

Accordingly, the aforementioned analytical framework shall be helpful to unveil some type of gray zone populated by today's legislatures that exhibit

different levels and dynamics of legislative institutionalization, especially through diachronic studies, e.g. France's National Assembly, Germany's Bundestag, Chile's National Congress, Costa Rica's Legislative Assembly, among others, but it also shall allow to perform asynchronic comparisons among legislatures that share certain structural features based upon their location on the legislative continuum mentioned above (Cf. Forrest, 1994; Obando, 2009). Nonetheless, it may be of little use to do research on rubber-stamp legislatures or legislative councils from autocratic regimes which, by definition, hardly reach beyond the element of internal complexity, if ever, besides being units of analysis more appropriate to other research approaches, such as party nomenclature, bureaucratic elites, etc.

All in all, the study of the legislative institutionalization process of national, democratic legislatures brings together topics found at the crossroads of empirical institutionalism, legislative studies, and comparative politics; in so doing, it not only sheds light on how an institution (a legislature) comes into being, but it also highlights the importance of political institutions for a polity.

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