LARR Latin American Research Review

Sieder, Rachel. 2020. Revisiting the Judicialization of Politics in Latin America. *Latin American Research Review* 55(1), pp. 159–167. DOI: https://doi.org/10.25222/larr.772

BOOK REVIEW ESSAYS

Revisiting the Judicialization of Politics in Latin America

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This essay reviews the following works:

The Achilles Heel of Democracy: Judicial Autonomy and the Rule of Law in Central America. By Rachel E. Bowen. New York: Cambridge University Press, 2017. Pp. x + 302. $35.99 paperback. ISBN: 9781316630907.

Manipulating Courts in New Democracies: Forcing Judges off the Bench in Argentina. By Andrea Castagnola. New York: Routledge, 2017. Pp + 184. $54.95 paperback. ISBN: 9780367372033.

Judicial Politics in Mexico: The Supreme Court and the Transition to Democracy. Edited by Andrea Castagnola and Saúl López Noriega. New York: Routledge, 2016. Pp. xiv + 190. $48.95 paperback. ISBN: 9781138697829.

Courts and Social Transformation in New Democracies: An Institutional Voice for the Poor? Edited by Roberto Gargarella, Pilar Domingo, and Theunis Roux. New York: Routledge, 2016. Pp. xiv + 328. $59.95 paperback. ISBN: 9781138264540.

Shifting Legal Visions: Judicial Change and Human Rights Trials in Latin America. By Ezequiel A. González-Ocantos. New York: Cambridge University Press, 2016. Pp. xiii + 342. $36.99 paperback. ISBN: 9781316508800.

Beyond High Courts: The Justice Complex in Latin America. Edited by Matthew C. Ingram and Diana Kapiszewski. Notre Dame, IN: University of Notre Dame Press, 2018. Pp. viii + 359. $55.00 hardcover. ISBN: 9780268102814.

Initial contributions to the study of judicial politics in Latin America were linked by a common set of questions and concerns: What explains the increasing recourse to the courts by social movements? How can courts play a more significant role in social justice struggles and respond to systematic violations of human rights? What factors account for the behavior of high courts in Latin America, and for the variations between them? Will increased judicial activism lead to backlash and attempts by the other branches to limit judicial autonomy? In the intervening decade and a half since the publication of our edited volume on the judicialization of politics in Latin America,[1] courts in Latin America have, inter alia, supported the impeachment of sitting presidents, convicted former presidents of genocide and gross violations of human rights, upheld rights to same sex marriage and women's sexual and reproductive rights, confirmed indigenous peoples' rights to territorial autonomy, and mandated governments to guarantee the social, economic, and cultural rights of displaced people. Yet they have also conspicuously failed to guarantee citizens' basic human rights or bring the powerful to account in many instances, and in some notorious examples, executives have reengineered high courts in order to rein in their independence. In contrast

[1] Rachel Sieder, Line Schjolden, and Alan Angell, eds., *The Judicialization of Politics in Latin America* (New York: Palgrave Macmillan, 2005).

to the cautiously optimistic predictions of two decades ago, clearly democratization has not led to the consolidation of judicial institutions. Many of the earlier questions posed about the interactions between courts and society remain just as relevant to current scholarship on law and politics in Latin America, a rich and complex field which continues to expand in breadth, depth, and theoretical and methodological sophistication. In broad terms the literature on judicial behavior has tended to focus quite narrowly on intracourt dynamics and factors including institutional design and the interests and motivations of judges, while the judicial politics literature tends to pay more attention to factors external to courts, such as processes of socio-legal mobilization, "rights revolutions," and the transformation of social and political conflicts into legal disputes. The former body of research has tended to deploy more strategic, rational-choice explanations and quantitative or mixed methodologies, while the latter has generally favored more institutional-historical and constructivist perspectives and qualitative research methods including ethnographic analyses, for example of different processes of socio-legal mobilization. The books reviewed here build on both sets of literature and in so doing go some way toward bridging internally and externally oriented explanations of judicial behavior. They advance our knowledge in significant ways, generating new theoretical insights, methodological routes, and empirical data to enhance our understanding of the ways in which different political and social actors, as well as institutional and cultural factors, enable and constrain the actions of the judiciary. Taken together, they consider the explanations of judicial behavior which have dominated in political science (explanations which have tended to focus on formal institutional design, the balance of power between the branches, or party dominance and fragmentation), but critique these earlier explanations as too narrow. Instead they go beyond rational choice models that privilege judges' strategic calculations vis-à-vis the other branches and look instead to long-term processes of institutional development, professional formation, and transformations within legal cultures, considering changing interactions between courts and a broader range of actors. Renewed interdisciplinary debates are thus leading to richer and more complex explanations of legal behavior and legal change. For example, sociologists, legal scholars, and anthropologists are increasingly exploring the legal culture of courts in Latin America, examining the role of bureaucratic routines, legal artifacts, and competing legal imaginations in shaping the law and judicial behavior.[2] While the individual trajectories and strategic preferences of judges are important in explaining judicial behavior, so too are institutional histories and architectures, the everyday bureaucratic routines of courts, and of course their interactions with a wide range of social actors ranging from human rights and civil society organizations to organized criminal syndicates.

The texts reviewed in this essay include two exemplary comparative studies by political scientists: Ezequiel González-Ocantos focuses on changing judicial responses to gross violations of human rights in Argentina, Peru, and Mexico; Rachel Bowen analyzes the limits of judicial autonomy in the five Central American republics. Two books consider the experiences of specific courts in the region: political scientist Andrea Castagnola explores the limits of court autonomy in Argentina, while the volume edited by Castagnola and Saúl López Noriega sheds new light on developments within Mexico's supreme court. The contribution edited by political scientists Matthew C. Ingram and Diana Kapiszewski concentrates on the federal systems of Mexico, Argentina, and Brazil and proposes theoretical and methodological routes for moving beyond the traditional focus on high courts in order to analyze the workings of the broader "justice complex." Finally, the volume edited by legal scholars Roberto Gargarella, Pilar Domingo, and Theunis Roux now reissued in paperback sets Latin American experiences of judicial activism and "pro-poor" adjudication in a broader comparative perspective, including cases from South Africa, India, Angola, and Hungary.

Compared to other regions of the world, Latin America has long been a front-runner in the judicial prosecution of gross violations of human rights committed under military or authoritarian rule, generating a rich body of work in the field of transitional and post-transitional justice analyzing the region's "justice cascade." While much of this literature has focused on social movements and issues of truth, justice, and reparations, surprisingly little to date has analyzed in any detail the interaction between judicial actors and human rights organizations. Ezequiel González-Ocantos's magisterial study asks why courts do or do not respond to efforts to prosecute past violations of human rights, comparing two countries where remarkable progress has been made in recent years—Argentina and Peru—and a third, Mexico, where very little progress

[2] There is an emerging anthropological literature on supreme courts and courts more generally in Latin America. See, for example, on Argentina: Leticia Barrera, *La corte suprema en escena: Una etnografía del mundo judicial* (Buenos Aires: Siglo XXI, 2012); and on Mexico, Erika Bárcena, "El oficio de juzgar, la corte y sus cortesanos: Estudio etnográfico de la Suprema Corte de Justicia de la Nación y su incorporación del derecho internacional de los derechos humanos" (PhD diss., CIESAS, Mexico City, 2018). On ideational changes and judicial behavior see Javier Couso, Alex Huneeus, and Rachel Sieder, eds., *Cultures of Legality: Judicialization and Political Activism in Latin America* (New York: Cambridge University Press, 2010).

https://doi.org/10.25222/larr.772 Published online by Cambridge University Press

is in evidence. Examining explanations of judicial behavior emphasizing strategic calculations, he offers a theory of judicial action inspired by sociological institutionalism that privileges the role of legal culture and legal diffusion and attempts to pinpoint the factors accounting for what he calls "legal preference shifts" among judges and prosecutors. He observes that "judicial actors are socially embedded creatures, anchored in organizational environments governed by informal rules and expectations, and surrounded by social forces trying to influence who they are and how they think" (287). González-Ocantos persuasively argues that in order to transform the behavior of the bench vis-à-vis gross violations of human rights, litigants and social movements need to adopt carefully calibrated strategies that offer new legal framings and arguments, transforming the internal cultures of courts and public prosecutor's offices in order to effect the vernacularization of international human rights law. Also key to this shift are sustained efforts to back up changes in the "legal imagination" with the provision of new technical skills, providing judges and prosecutors with the means to investigate, litigate, and adjudicate complex cases of historical gross violations of human rights, in which evidentiary standards and routes to successful prosecution demand skill sets considerably different from those developed in ordinary criminal law.

González-Ocantos's research represents an important contribution to understanding how "rights revolutions" happen in practice. He demonstrates how human rights organizations can transform the professional values and worldviews of judicial actors and engender new bureaucratic procedures and routines by converting innovative legal arguments about human rights into a form of cultural capital, thus altering traditions of judicial behavior. Systematizing a wealth of human rights expertise and strategies through careful process tracing, he shows how norm diffusion and ideational change occurred within the different judicial bureaucracies he examines. In this respect his book offers important insights for scholars and litigants across the region, underlining the need to go beyond analyses that focus on the composition of the bench, interactions between different judges, or the presence of external threats to judicial independence, and look to how to transform the legal profession's self-perception of its mandate and its accepted interpretative standards. In fact, such transformation strategies have long been deployed by Latin America's most innovative human rights organizations, but until now these efforts have not been systematically analyzed in ways that contributed to broader theories of judicial behavior and change. González-Ocantos argues that in the most successful case of legal preference transformation leading to human rights prosecutions (Argentina), activists employed both "pedagogical" and later "replacement" strategies; under the Kirchners they were able to lobby for the replacement of conservative justices who opposed prosecutions. In Peru pedagogical strategies deployed by NGOs in alliance with key legal academics succeeded in transforming a formalistic judiciary and embedding a new "legal imagination" on the question of prosecuting those responsible for gross violations of human rights, but the backlash against the court following the return of Alan García to power impeded efforts to secure a more pro-rights bench. During the transitional government of Vicente Fox in Mexico the human rights community was divided on the question of pursuing prosecutions for crimes committed during the "dirty war" of the 1970s and lacked legal expertise; ultimately they failed to devise institutional transformation strategies for the judiciary.

Of all the courts examined in the works cited here, Mexico's is perhaps the most notorious example of a bureaucratic and formalistic court that seems to stubbornly adhere to judicial nationalism. The volume edited by Andrea Castagnola and Saúl López Noriega sheds light not just on the Mexican court's performance and recent institutional transformations, but also on its inner life, combining strategic, historical-institutional, and cultural analysis. What explains the performance of the court since the transition from one-party rule in 2000? What are the prospects for it to become a tribunal that not only manages federalism (its traditional role under one-party rule) but also responds to the increasing demands from citizens and social actors that it guarantee rights? Mexico today constitutes one of the worst human rights emergencies in Latin America, so this is far from a simply academic debate. In 2011 a watershed reform incorporated international human rights treaties into the constitutional block and affirmed the pro-persona principle; the same year the constitutional writ or *amparo* was reformed, opening the possibility of class action suits and empowering any judge to carry out a constitutional review with potential *erga omnes* effects. Recent years have witnessed a steady increase in attempts to litigate violations of human rights appealing to a range of international norms and precedents, and pedagogical strategies on the part of human rights NGOs aimed at the bench are now more in evidence. Nonetheless, "legal support structures" remain weak compared to other countries in the region. As most of the contributors to this timely volume underline, Mexico's supreme court has yet to adopt a strong pro-rights stance and continues to issue rulings characterized by an absence of clear, innovative jurisprudential arguments to protect human rights. In his chapter, Pedro Salazar (currently director of the legal research institute at Mexico's national autonomous university) argues strongly in favor

https://doi.org/10.25222/larr.772 Published online by Cambridge University Press

of a more rights-protecting court and analyzes a series of key human rights cases heard in recent years. Salazar acknowledges the strong procedural and substantive limitations to rights litigation and identifies the need for a "cultural change" within the Mexican judiciary—something that will require careful strategies on the part of actors external to the court. Castagnola and López Noriega offer an econometric analysis of the court's voting between 2000 and 2011 based on a valuable new data set of over one thousand cases of constitutional controversies and constitutional actions (*amparos*). As they point out, the current volume of litigation is in stark contrast to the years between 1917 and 1994, when just fifty-five constitutional controversies were resolved. Countering explanations of judicial behavior based exclusively on strategic calculation, they advocate an historical reading of the political context combined with a close reading of judges' ideological preferences and voting behavior, concluding that the court's continued deference to the executive since 2000 is linked to long-lasting "ways of doing politics," that is, the mind-set and institutional-political culture linked to the Partido Revolucionario Institucional. In their contribution Andrea Pozas-Loyo and Julio Ríos-Figueroa consider the changing relationship between military and civilian courts, analyzing recent court-led limits placed on military jurisdiction by way of a diachronic analysis of the court's stance on the autonomy of military jurisdiction spanning 1917 to 2013. They argue that the Mexican court has traditionally played a strategic role, arbitrating political conflicts rather than protecting fundamental rights, but that slowly the court has transitioned from regime supporter to constitutional interpreter. Today the key question is whether the court can play a role in sanctioning military excesses in a security and political crisis marked by some thirty-six thousand homicides in 2019 alone and a total of more than sixty-one thousand forced disappearances officially recognized to date.

Legal scholar and former clerk at the court Francisca Pou Giménez offers a rich chapter analyzing its institutional characteristics and legal culture. The Mexican court simultaneously functions as constitutional court, the apex of management of the national judiciary, and the final court of appeal for all courts in the federation. Together with other contributors to this volume, Pou Giménez asks whether such an unwieldy and administratively overburdened institution can ever function as an effective guarantor of human rights. In addition she highlights a range of factors mitigating against the court speaking with one authoritative voice, including the organization of the judges' chambers or *ponencias*, the internal election of the court's president, and recent transparency reforms involving the televising of debates before a combined opinion is reached, all of which exacerbate internal fragmentation and competition. While rightly celebrated rulings on abortion, same-sex marriage, and free speech have indeed been issued in recent years, fine-grained reading shows that the court has failed to delineate a clear rights-protecting jurisprudence. Pou Giménez's analysis points to the (perhaps obvious) fact that institutional trajectories and internal organization matter: not all courts are the same, and not all courts offer the same possibilities for promoting the "legal preference change" that González-Ocantos highlights. This opens important avenues for future comparative research. Matthew Ingram's excellent conclusion summarizes the main findings of the chapters and situates the overall contribution of the volume for a wider audience. He underlines the need for more systematic research on legal support structures in Mexico: evidently who litigates what and how in the future is critical to the development of judicial politics. Although they do not spell it out, the contributors to this book underline a crucial point: if civil society actors can manage to "talk to" the court, advancing new legal concepts and interpretations, they may yet prove instrumental in transforming the court's self-perception and thus its behavior, empowering it in the process. However, as this volume and the other works reviewed here suggest, outcomes will depend on much more than pro-rights litigation.

The collection edited by Matthew Ingram and Diana Kapiszewski aims to contribute to advancing broader theories of judicial behavior and change by moving beyond the study of high courts and examining a range of justice sector institutions and their interactions at national and subnational levels (what they term the "justice complex"). They underline the need for an holistic approach studying "out and down" from apex institutions and, most importantly, frame the volume as a first step in a broader theory-generating exercise that asks how well theories about judicial behavior derived largely from the study of high courts travel to explain behaviors and outcomes within the justice complex as a whole. The individual chapters themselves tend to focus on just one or two institutions, but they generally adhere to the editors' emphasis on their networked character as part of a larger justice system, as well as attending to their call for cross-national comparisons, starting with the de jure design of institutions (most of the chapters adopt a law-on-the-books rather than a law-in-action approach).

Azul Aguiar-Aguilar offers a cross-national analysis of procedural and pro-independence reforms to the public prosecutor's office (PPO) that considers the role of what she terms "justice sector interest groups,"

https://doi.org/10.25222/larr.772 Published online by Cambridge University Press

understood as different actors within and beyond the formal institutions of the justice complex that support greater accountability and due process. Through process tracing, she offers an analysis of the political opportunities, mobilizing structures, and frames that these groups deployed in reform processes in Brazil, Argentina, and Mexico, concluding that theories of legal mobilization offer a better explanation of outcomes than governance or insurance theories of judicial empowerment. In one of two chapters focusing primarily on Brazil, Ernani Carvalho and Natália Leitão propose a framework for measuring prosecutorial independence that considers external independence vis-à-vis other branches of government and internal independence within the PPO itself. Their cross-regional analysis suggests that high de jure external independence is an insufficient guide to the behavior of Brazil's Ministerio Público, largely because of the weakness of rules for selecting and removing the attorney general. In her chapter, Catalina Smulovitz studies "down" in Argentina, seeking to explain variations in the provision of public defense across the provinces. Applying a rigorously designed typology, her empirical analysis reveals that the supply of defenders (the local lawyer market) combined with the size of the province and its population is more important in explaining variations in access to public defense services than formal institutional arrangements or the specific justice needs of a province's citizens. Smulovitz's work has implications for broader discussions about the relationship between federalism and access to justice: as she states, "if territorial arrangements can be another source of inequality, access to justice—a critical aspect of democratic quality— may vary by the specific location in which actors live" (in Ingram and Kapiszewski, 114). Diana Kapiszewski, John Seth Alexander, and Robert Nyenhuis draw on the institutional design and comparative judicial politics literatures to offer a comparative analysis of electoral high courts in Latin America that seeks to account for variation in their design. Arguing that electoral high courts need to be approached as part of a broader complex of apex courts, they propose a rich framework examining four key institutional attributes: stability, powers, authority, and independence. Their empirical analysis points to significant variations across the electoral courts of Brazil, Mexico, Argentina, and Venezuela, variations they argue are largely due to regime politics and the nature and timing of their respective political transitions. Sídia Maria Porto Lima offers a detailed historical-institutional analysis of key rulings of Brazil's apex electoral court since the 1940s that applies established theories of judicial behavior to account for the court's behavior. José Mário Wanderley Gomes Neto, Ernani Carvalho, Danilo Pacheco Fernandes, and Louise Dantas de Andrade study "down" to consider a specific case of judicial review: the Brazilian Supreme Court chief justice's use of the writ of suspension at the request of the executive in order to override lower court challenges to government policy, as occurred in the infamous case of the Belo Monte hydroelectric dam. Based on an original data set of writ of suspension decisions over two decades, and drawing on existing theories of judicial decision-making, they reveal patterns in this highly centralized and individualized form of what they term "reverse judicial review." Matthew Ingram's conceptually rich and empirically dense chapter also studies "out and down," offering an analysis of the strength or weakness of federal and subnational judicial councils in Mexico that considers their relationships with courts and political parties. Building on the extant literature on judicial independence and court strength, Ingram provides a conceptual framework for comparative measurement, hypothesizing that "councils fall into one of two general categories: an external control model (in which council membership, dominated by political actors, yields high accountability and therefore low independence) or an internal control model (in which council membership, dominated by judicial actors, yields high independence and therefore low accountability)" (in Ingram and Kapiszewski, 263). His conclusions support the emerging consensus that a mixed representation model is the optimum design for judicial councils. The odd chapter out in this collection is that offered by Ingram and Mary L. Volcansek, which considers transnational protection of human rights in Latin America, specifically the impact of the Interamerican Court of Human Rights. This is because all but one of the chapters in this important book study "out and down" rather than "up"; supranational and transnational drivers of judicial behavior are largely absent in the explanatory frames or methodological designs offered here.

The transferability, or not, of standard explanations of judicial politics is also a concern of Andrea Castagnola. In many countries in Latin America judicial turnover is far higher than formal rules of tenure decree. In her sole-authored book Castagnola argues that the political benefits of manipulating courts in what she terms "developing democracies" outweigh the costs, encouraging politicians to prioritize short-term political advantage over institutional consolidation. Arguing against the transferability of theories of "strategic retirement" based largely on the US experience, Castagnola develops a theory of what she calls "vacancy creation." She argues that politicians in Argentina induce judges to leave their seats through a range of institutional and noninstitutional tactics, including threats of impeachment, "moral coercion" (accusations of corruption or wrongdoing), financial inducements (such as retirement packages), and

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media campaigns against justices and their families. Rather than strategic calculations, she claims "political persecution, moral attrition and coercion" (22) force justices to resign from the bench. An innovative aspect of Castagnola's research is that rather than just looking at the federal level she analyzes the courts in all of Argentina's twenty-four provinces. Her examination of subnational diversity demonstrates that even weak executives have used informal pressures to obtain compliant courts. Diachronic and econometric analysis suggests that after 1946 politics matter more than formal rules for the stability of courts in Argentina, establishing a path dependency that continued after the transition to democracy. Castagnola concludes that in provinces where one party has ruled since 1983, intraparty factionalism explains court turnover, whereas in provinces where there is a multiparty system, both party and faction matter. Her book contributes to a growing trend in law and politics research in Latin America analyzing subnational politics: for example, Catalina Smulovitz's work on domestic violence laws in Argentina, or Matthew Ingram's research on the reform of subnational courts in Brazil and Mexico, as well as both authors' respective work in the edited volume reviewed here.[3] Ultimately, Castagnola's analysis of "vacancy creation" in Argentina aims to generate new theory, looking beyond formal institutional design and the strategic literature and bridging the gap between US-based and Latin American– based theories of judicial politics.

Threats to judicial independence emanate not only from politicians who maneuver to achieve more pliant courts but also from a wide range of powerful social actors. As well as constituting an obligatory reference for anyone attempting to understand contemporary judicial politics in Central America, Rachel Bowen's rich comparative study of the five Central American republics offers a novel typology of "judicial regime types" that has relevance for the analysis of law and politics far beyond the isthmus. Bowen's theoretical framework takes both the political independence and what she terms the "societal autonomy" of the judiciary into account. A judicial regime includes "the patterns of relations with a variety of powerful actors, the ability and willingness of the judiciary to exercise its authority, and the ways in which politico-legal conflicts are resolved both within and without the courts" (26). She argues that in the absence of societal autonomy, formal judicial independence will not guarantee citizens' rights; to ensure favorable outcomes, courts need to be autonomous not just from political forces but also from societal actors who exert extralegal pressures including violence, threats, and bribes. Her framing therefore directly addresses the issue of state capture by criminal actors. Central America, one of the most violent regions in the world, is a sadly apt context for such explorations. As Bowen rightly observes, "comparative judicial politics scholarship has delved extensively into the dynamics of overcoming partisanship but has reflected much less on the influence of criminality on justice sector institutions" (10). In this respect, her book is an important contribution. She analyzes not only constitutional justice but also criminal law; this combined analysis of what Rodrigo Uprimny once called the extraordinary and ordinary dimensions of justice is welcome. As Ingram and Kapiszewski and others argue, too much of the judicial politics literature has focused on high courts and constitutional controversies, neglecting analysis of routine legal proceedings, where most citizens encounter the law and where the influence of powerful private parties most typically occurs.

Bowen develops a typology of four judicial regime types combining high/low political independence and high/low societal autonomy, and then proceeds to describe the "judicial regimes" of the five Central American republics between 1979 and 2015, something she refers to as "a theory generating typological exercise" (72). She stresses that there is no necessary evolution toward liberal judicial regimes; while they are relatively stable, judicial regimes can change over time from one type to another (and back again). As she ably demonstrates, rather than a linear progression from deferential toward more "activist" or independent courts, the record in fact indicates a back and forth movement reflecting the different forces competing for control and influence. Her four judicial regime types include high societal autonomy regimes, which can be either "liberal judicial regimes," which are independent from political and social forces (Costa Rica post-1989), or "partisan control judicial regimes," which have low political independence but high societal autonomy (Costa Rica 1948–1989; Honduras, Nicaragua, and El Salvador in the 1990s and 2000s). She argues that while constitutional justice tends to be deferential to the other branches in partisan regimes, the performance of ordinary justice is variable. The key to partisan judicial regimes is stable strong parties whose elites bargain with each other effectively. Low societal autonomy regimes, by contrast, are either "authoritarian judicial regimes," in which judges have little independence from the political branches and are also threatened by powerful social actors (Guatemala, Honduras, El Salvador, and Nicaragua in the 1980s),

[3] Matthew Ingram, *Crafting Courts in New Democracies: The Politics of Subnational Judicial Reform in Brazil and Mexico* (New York: Cambridge University Press, 2015); Catalina Smulovitz, "Legal Inequality and Federalism: Domestic Violence Laws in the Argentine Provinces," *Latin American Politics and Society* 57, no. 3 (2015): 1–26.

https://doi.org/10.25222/larr.772 Published online by Cambridge University Press

or "clandestine control judicial regimes," which have low societal autonomy and medium to high political independence (postwar Guatemala is the archetype here, although El Salvador maintains some aspects of a clandestine control regime). In contrast to the partisan regimes, Guatemala's political party fragmentation and instability means politicians lack institutional means to control the judiciary and therefore tend to resort to corruption and violence.

Bringing together a range of insights from socio-legal and legal-institutional scholarship, Bowen shows how formal rules and informal norms together generate different "currencies of conflict resolution," which can include constitutional law, statutory law, money, and violence. Different currencies or mixes of these elements tend to prevail in the different judicial regime types. She argues that while socially embedded judiciaries can advance rights through their rulings, they can also extend violent or corrupt mechanisms throughout the body politic, a tendency she predicts will deepen as organized crime networks become more entrenched in state institutions (her demonstration of the links between the "perverse formalism" of judicial appointments procedures in postwar Guatemala and the penetration of state institutions by corrupt and criminal actors is illuminating in this respect). Bowen also predicts that international donor efforts to increase the independence and constitutional orientation of judges is likely to lead to increased conflict with partisan politicians in weakly democratic political regimes, "particularly as judges' role-orientations are increasingly shaped by international norms that conflict with partisan desires" (226). Bowen's study directs our attention to the rights-protecting potentialities of different judicial regimes: as she underlines, regimes lacking interbranch independence can be more or less respecting of citizens' rights. Through her innovative framework combining political independence and societal autonomy, Bowen therefore criticizes the "one-size-fits-all" approach to judicial reform, which emphasizes judicial independence and aims to build "liberal judicial regimes." Instead she directs us to think about which kind of less-than-independent judiciary might best protect the most vulnerable.

The volume on "pro-poor judicial activism" edited by Roberto Gargarella, Pilar Domingo, and Theunis Roux is a paperback reprint of a book first published in 2006 resulting from a workshop held at the University of Buenos Aires that I was fortunate to attend. At that time, judicial politics in Latin America was emerging as an interdisciplinary field of study, and it was a moment of cautious optimism. Although no one argued that courts alone could resolve deep socioeconomic and racial inequalities, participants supported legal mobilization and litigation in favor of disadvantaged groups, pointing to the role courts could play in guaranteeing social and economic rights and promoting emancipatory social transformation. In his chapter, legal scholar Christian Courtis points to the trend in Latin America of incorporating human rights instruments into the constitutional bloc. Argentina, Brazil, and Colombia were front-runners in this regard, but by 2018 countries that had initially lagged (Chile, Mexico) had amended their constitutions and/or ratified key international rights instruments, encouraging a steady increase in rights litigation. Courtis signals the growing body of case law on social and economic rights in Latin America: for example, rights to health in Colombia and Costa Rica, or environmental rights in Brazil, which would have been unthinkable a few decades previously. This trend has only deepened in the years since this book was first published, opening the possibilities for "legal preference shifts" in a range of fields and issues as judicial actors share and study innovative jurisprudence and legal argumentation in order to establish standards for similar cases. Foreshadowing the other works reviewed in this essay, Courtis's contribution underlines the importance of judicial culture, arguing that without "the development of standards, criteria and practices" (in Gargarella, Domingo, and Roux, 180) among the judiciary, the operation of abstract legal norms is impossible. Legal scholar and philosopher Roberto Gargarella offers a normative justification for pro-poor court action, developing a theory of deliberative democracy that points to the importance of dialogic encounters between the political and judicial branches, and to the role courts can play in mediating and facilitating dialogue between society and the political branches. Both Gargarella and Rodrigo Uprimny (the latter in a particularly rich chapter on Colombia's Constitutional Court) argue that the development of international human rights law, together with new "rights rich" constitutions and the high level of ratification of international instruments in Latin America mean that in specific circumstances courts can and should intervene on social justice issues when the political branches are not receptive to the needs and demands of disadvantaged groups. Uprimny's chapter offers an insider's view into one of the most studied courts in Latin America (he was a deputy justice at the Colombian court for a decade between 1994 and 2004, and then directed DeJusticia, one of the region's leading strategic litigation NGOs). He discusses the innovative legal doctrines developed by the court, such as that of "connection," by which social rights are defended to the extent that they are a necessary condition for the protection of fundamental rights and human dignity. The landmark decisions on the rights of prisoners and displaced people points to the role courts can and should play in the defense of marginalized, nonmajoritarian groups. At the same time, most

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of the authors consider the standard criticisms of judicial activism and urge caution, especially in the light of the budgetary and policy implications of social and economic rights rulings and the skewed distribution patterns that can occur; for example, José Reinaldo de Lima Lopes in his chapter on health and education class actions in Brazil recognizes historical patterns of bias toward middle-class litigants. Taken together, these chapters point to the ways in which some courts in the region, notably those of Argentina, Brazil, and Colombia, are devising standards, criteria, and innovative legal doctrine on questions of social, economic, and cultural rights.

When first published, the book's signal contribution was to identify an emerging phenomenon and, through a range of more theoretical chapters and case studies, to suggest future agendas for comparative research. Political scientist Siri Gloppen's chapter maps out the range of explanatory variables that underpin processes of social rights litigation, signaling the stages and elements to be considered in any analysis of pro-poor court action. She distinguishes four dimensions of the litigation process: voice (Can disadvantaged groups reach the courts, do they want to?); court responsiveness (Do judges listen and are they willing to act to defend social rights?); capability (Do judges have the means to respond?); and compliance (Are their decisions implemented and upheld?). This implies a dizzying array of factors, including movements' associative capacity, rights awareness in society, the existence of legal support structures, degrees of judicial independence, the composition of the bench, prevailing theories of judicial interpretation, and judicial culture, to name just a few. Gloppen's early mapping asks us to consider carefully what resources exist to facilitate courts' transformative potential at each of the four stages of litigation, and has contributed to more focused, causal explanations and comparisons across selected cases. Indeed, subsequent years have seen important publications on social and economic rights litigation in Latin America.[4]

Lastly, Javier Couso's prescient chapter in the Gargarella, Domingo, and Roux volume signals the intersection between the shift to neoliberal models of economic development in Latin America, and the regional and global "rights revolution" extending to social, economic, and cultural rights. Although Couso was writing over a decade ago, this disjuncture between the promise of rights instruments, on the one hand, and the effects of dominant forms of economic development (and their legal and illegal dimensions), on the other, continues to underpin debates on social, economic, and cultural rights in the region. As sophisticated legal support structures have emerged in many countries, this disjuncture continues to propel to the courts those frustrated with the limited ability of politics to transform deep-seated inequalities or defend them in the face of new forms of violence. Despite the pessimism that tends to inform much debate on the prospects for court-led transformation today, and the inability of judiciaries to guarantee human rights and rein in the violence affecting so many, the judicialization of popular claims continues alongside other forms of collective political action, engendering new forms of legal imagination, argumentation, and diffusion. The works reviewed here greatly advance our understanding of judicial politics in Latin America; they overcome the earlier division between "internally" and "externally" oriented explanations of judicial behavior, combining different research approaches in rigorous and systematic analyses that provide persuasive explanations of developments in a highly complex field. They will undoubtedly inform our analysis of the potentialities and limits of courts and their roles in broader social and political transformation for many years to come.

Acknowledgements

I thank Tatiana Alfonso Sierra for her insightful comments on a first draft of this essay.

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[4] See for example the numerous publications of DeJusticia in Colombia; Alicia Yamin and Siri Gloppen, eds., *Litigating Health Rights: Can Courts Bring More Justice to Health?* (Cambridge, MA: Human Rights Program, Harvard Law School, 2011); or the recent volume edited by Malcolm Langford, César Rodríguez-Garavito, and Julieta Rossi, *Social Rights Judgements and the Politics of Compliance: Making It Stick* (New York: Cambridge University Press, 2017).

https://doi.org/10.25222/larr.772 Published online by Cambridge University Press

How to cite this article: Sieder, Rachel. 2020. Revisiting the Judicialization of Politics in Latin America. *Latin American Research Review* 55(1), pp. 159–167. DOI: https://doi.org/10.25222/larr.772

Submitted: 01 June 2018 **Accepted:** 15 October 2018 **Published:** 19 March 2020