

COMBINING LEGAL AND
POLITICAL APPROACHES:
Recent Scholarship on Human Rights in Latin America

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- LA PAZ, VALOR Y PRECIO: UNA VISION COMPARATIVA PARA AMERICA LATINA.* By Carlos Basombrío Iglesias. (Lima: Instituto de Defensa Legal, 1996. Pp. 226.)
- HUMAN RIGHTS AND DEMOCRATIZATION IN LATIN AMERICA: URUGUAY AND CHILE.* By Alexandra Barahona de Brito. (New York: Oxford University Press, 1997. Pp. 333. \$65.00 cloth.)
- THE STRUGGLE FOR HUMAN RIGHTS IN LATIN AMERICA.* By Edward L. Cleary. (Westport, Conn.: Praeger, 1997. Pp. 181. \$57.95 cloth, \$18.95 paper.)
- HACIENDO MEMORIA EN EL PAIS DE NUNCA MAS.* By Inés Dussell, Silvia Finocchio, and Silvia Gojman. (Buenos Aires: Editorial Universitaria de Buenos Aires, 1997. Pp. 175.)
- AMNISTIA Y RECONCILIACION NACIONAL: EN CONTRA DEL CAMINO DE LA JUSTICIA.* By La Fundación Myrna Mack. (Guatemala: Fundación Myrna Mack, 1996. Pp. 308.)
- DERECHOS HUMANOS Y CIENCIAS SOCIALES: PROBLEMATICAS A FIN DE SIGLO.* Edited by Juan Carlos Gardella. (Rosario, Argentina: Homo Sapiens, 1996. Pp. 182.)
- DEMOCRACY AND HUMAN RIGHTS IN THE CARIBBEAN.* Edited by Ivelaw L. Griffith and Betty Sedoc-Dahlberg. (Boulder, Colo.: Westview, 1997. Pp. 278. \$79.00 cloth, \$28.00 paper.)
- GLOBALIZACION, INTEGRACION Y DERECHOS HUMANOS EN EL CARIBE.* By the Instituto Latinoamericano de Servicios Legales Alternativos. (Bogotá, Colombia: ILSLA, 1995. Pp. 216.)
- CONSTRUCTING DEMOCRACY: HUMAN RIGHTS, CITIZENSHIP, AND SOCIETY IN LATIN AMERICA.* Edited by Elizabeth Jelin and Eric Hershberg. (Boulder, Colo.: Westview, 1996. Pp. 238. \$75.00 cloth, \$25.00 paper.)
- RADICAL EVIL ON TRIAL.* By Carlos Santiago Nino. (New Haven, Conn.: Yale University Press, 1997. Pp. 220. \$35.00 cloth, \$17.00 paper.)

The study of human rights in Latin America has paralleled the course of regime transitions in the region. As authoritarian regimes committed widespread and egregious abuses in the 1970s that included extrajudicial executions and forced disappearances, human rights issues became prominent for students of Latin America. During this period, scholars equated change in human rights with the collapse of authoritarian rule and the initiation of democratization. When a growing number of democratic transitions took place in the 1980s, scholarly attention turned to the role of foreign actors (especially the United States) in eliciting reform and the promises of democratization. After a period of initial optimism, studies of human rights in Latin America have become more critical and less formalistic.

This trend represents a common thread running throughout recent scholarship on human rights: the interaction between legal and political factors. Four themes can be identified in this line of research. First, students of human rights are now paying more attention than ever to the historical sources of problems with human rights. These sources, political and legal, typically fall under the rubric of institutional legacies. Second, a move is afoot to broaden the concept of democracy to include the rule of law and the observance of human rights. This trend includes calling attention to the interdependence of different international norms on human rights and the importance of economic development. Third, studies have focused increasingly on the question of “settling past accounts,” or issues of retroactive justice. It is perhaps here that legal and political approaches intersect most markedly. Last, many analysts are no longer satisfied with examining formal institutions only. To a greater extent than in the past, they are now emphasizing the role of socialization, or informal legal and political processes. These issues are all evident to one degree or another in the ten works listed here. My review will be structured around these four themes, highlighting the principal challenges facing human rights in contemporary Latin America.

Institutional Legacies

Renewed interest in institutions has served to contextualize issues surrounding human rights. In particular, researchers are now examining the sources of human rights violations. Although attention to institutions is not new, current studies differ from previous ones in at least two ways. First, legal and political institutions are now being treated as historical products requiring explanation more than as features endemic to the region. Second, while authors diverge in the particular institutions they choose to examine—constitutional systems, legal structures, property rights, or judicial mechanisms—they all assume that effective reform will depend on governments in the region confronting institutional legacies.

Attention to institutional legacies pervades much of the work on the Caribbean, where the institutionalization of socioeconomic imbalances is said to be at the root of ongoing abuses of human rights. Julio Fernández Bulté in *Globalización, integración y derechos humanos en el Caribe* criticizes the scant protection of human rights afforded by the common law systems in the Caribbean. He laments especially the absence of an explicit bill of rights in many national constitutions. A first step for reform, he contends, must be to translate basic human rights norms into positive constitutional law. In a similar vein, Robert Maguire's contribution on Haiti in *Democracy and Human Rights in the Caribbean* asserts that despite recent legal and institutional reforms, the main challenge for human rights in Haiti is to eliminate legal categories that historically have dichotomized society into opposing groups. Larman Wilson's case study of the Dominican Republic in the same volume likewise attributes weak protection of human rights to the historical development of domestic institutions on the island.

Notwithstanding the attention paid in the two books on the Caribbean to institutional factors, the contributors take the effect of prior institutions mostly for granted, remaining silent on the origins of these institutions and failing to specify the nature of their impact. Without such elaboration, the arguments often come across as ideologically driven, especially in *Globalización, integración y derechos humanos*, the result of a conference held in Cuba in late 1994. Admittedly, the primary objective of these essayists is not to discuss at length the question of institutional legacies in the Caribbean. Yet a more thorough treatment of the subject might have strengthened their broader arguments about the role of the past in mediating contemporary human rights issues.

Manuel Antonio Garretón discusses institutional legacies in the Southern Cone in his contribution to *Constructing Democracy: Human Rights, Citizenship, and Society in Latin America*. He contends that overcoming violations of human rights ultimately requires understanding the historical development of the military and judiciary. In his view, while current regimes are constrained by the nature of coalition politics, their political systems are also marred by human rights amnesties and controversial court decisions. Domestic politics need to confront these institutional legacies head on if they want to secure durable long-term reform. Garretón's essay provides the beginnings of a more concrete and sophisticated analysis of institutional legacies on human rights.

Carlos Basombrío Iglesias takes an explicitly historical stance that is even more critical in *La paz, valor y precio: Una visión comparativa para América Latina*. Focusing primarily on Peru and secondarily on El Salvador, Colombia, and Guatemala, he links human rights violations to prior institutional developments. In explaining particular forms of violence, Basombrío traces contemporary violence to basic patterns of land concentration, or the ways in which peasants have been systematically marginalized and

denied access to property. Basombrío labels rural areas as the principal zones of violence and campesinos as the primary targets of state terror. Once violence begins, he maintains, its course is determined largely by land disputes and agrarian reform. These historical and institutional conditions place peasants in the middle of a conflict between the state security apparatus and guerrilla groups, a struggle that inevitably leads to violations of human rights.

La paz, valor y precio makes a strong argument about the role of long-standing institutions in recent violence in the region. It is unique among the works reviewed here in tracing institutional sources to the domestic distribution of material resources. Sociologist Basombrío is at his best in carrying out a solid comparative design that highlights the tension between social violence and reform. The book would have benefited nonetheless from a more fully developed theoretical chapter. Without it, the links between institutional legacies and contemporary human rights challenges remain underdeveloped and ultimately tenuous. Still, Basombrío opens the door to begin exploring more systematically the complex relationships among institutions, ideas, and material interests over time.¹

Gabriel Ganón's contribution to *Derechos humanos y ciencias sociales: Problemáticas a fin de siglo* employs an essentially political-economic approach to explain the weaknesses of the rule of law in Argentina. The institutional legacies he analyzes are found in the interplay of economic history and legal culture. Highlighting the relationship between law and power, Ganón's essay expands this small volume of theoretical and multidisciplinary essays, most written by law professors at a human rights center in Argentina. While Ganón's piece is necessarily cursory, it is more explicit than the other works on the subject of institutional legacies.

A similar effort to trace issues of democratization to historical sources is made by some of the contributors to *Constructing Democracy: Human Rights, Citizenship, and Society in Latin America*. For example, in a comparative analysis of the Southern Cone, Carlos Acuña and Catalina Smulovitz argue that historical differences in the military's social integration have influenced democratization. The fragmentation of the Argentine military has kept it relatively more subordinate during civilian rule than either its Brazilian or Chilean counterparts. The authors suggest that redefining the role of the armed forces under democracy is the Achilles' heel of human rights reform in Latin America.

1. A study that examines the role of ideology in explaining state repression is David Pion-Berlin, *The Ideology of State Terror: Economic Doctrine and Political Repression in Argentina and Peru* (Boulder, Colo.: Lynne Rienner, 1989). For a bibliographic guide to research on human rights in Latin America in the 1980s, see Steven Perkins, "Latin American Human Rights Research, 1980–1989: A Guide to Sources and a Bibliography," *Denver Journal of International Law and Policy* 19 (1990):163–267.

Although institutional legacies are not the primary concern of the authors under review here, it is noteworthy that the subject is now being incorporated into scholarship on human rights. Despite the focus on various institutions, all ten works concur that prior institutional developments have marked current human rights issues indelibly, especially post-transitional reforms. The books also move beyond conventional assumptions about the politically contingent nature of human rights violations to a historical understanding of the structural constraints underlying social violence.

While these books make an important contribution in acknowledging the role of institutional histories, this body of research is more suggestive than explicative of institutional legacies. Those interested in human rights have an opportunity to pick up where these works leave off. For example, researchers could mine the broader institutionalist literature in the social sciences to explain the institutional origins and dynamics of human rights practices.² *Derechos humanos y ciencias sociales* takes steps in this direction but does not tap into much of the contemporary work on institutions. At a minimum, these works have opened an avenue of research for students of Latin America interested in exploring the impact of institutional legacies on human rights.

Democracy and the Rule of Law

A second major theme in the new literature on human rights in Latin America is a concern with recasting the relationships among human rights issues, democracy, and the rule of law.³ The basic assumption is that protection of human rights cannot be understood independently of political and legal institutions. Analyses in this area are especially attentive to the interdependence of individual "first-generation" rights (civil and political rights) and collective "second-generation" ones (economic, social, and cultural rights).

Scholars consider the implementation of both sets of rights essential to the effective functioning of democracy. They view violation of one set of rights as tied to violation of the other. Contributors to *Democracy and Human Rights in the Caribbean*, for example, note that economic costs can limit access to legal recourses (such as the filing of habeas corpus writs). This situation is especially problematic because most victims tend to belong to the most vulnerable groups in society. Along similar lines, Ramiro Sagarduy's note-

2. For works that review recent institutional approaches, see chaps. 4–7 in *A New Handbook of Political Science*, edited by Robert E. Goodin and Hans-Dieter Klingemann (New York: Oxford University Press, 1996); and Thomas A. Koelble, "The New Institutionalism in Political Science and Sociology," *Comparative Politics* 27 (Jan. 1995):231–43.

3. See also *Transition to Democracy in Latin America: The Role of the Judiciary*, edited by Irwin P. Stotzky (Boulder, Colo.: Westview, 1993).

worthy contribution to *Derechos humanos y ciencias sociales* examines the recent privatization and commodification of personal security.

Those interested in framing human rights issues in terms of democracy and the rule of law emphasize the interdependence of individual and collective rights. Their argument takes various forms. A few authors focus on the conceptual interdependence of human rights with political and legal institutions. In *Constructing Democracy*, Rodolfo Stavenhagen categorizes human rights norms into a set of basic or universal rights that apply to all persons under all circumstances and “peripheral rights” pertaining to specific groups. He asserts that both sets of rights are interrelated insofar as one set cannot be enjoyed without the other. In discussing group rights, Stavenhagen surveys indigenous rights and explores issues of racial and gender discrimination. Fábio Wanderley Reis focuses in the same volume on what he considers to be a fundamental affinity between the state and the market, one that undergirds a liberal conception of human rights. The central problematic of human rights for him is the tension between the atomistic individual who claims rights and the solidaristic one who acknowledges communal responsibilities.

Other analysts emphasize how international factors shape the dual nature of human rights violations, referring to the systematic violation of individual rights and the structural abuse of collective rights. Globalization is said by some to encourage domestic and regional restructuring projects that can intensify economic and social inequality and thereby undermine civil and political rights. This perspective is the central theme of *Globalización, integración y derechos humanos*, which traces human rights violations to international economic relations. In a case study of the Dominican Republic in *Democracy and Human Rights in the Caribbean*, Larman Wilson turns instead to international political relations and singles out past interventions by the United States as a key obstacle to human rights reform.

Similarly, many of the contributors challenge the conventional wisdom that economic development facilitates democratic governance. In the absence of respect for human rights, the authors argue, no amount of economic growth will yield effective democracy and the rule of law. A pattern of exclusionary policies may emerge instead. Dorith Grant-Wisdom structures her analysis of Jamaica around these issues. She argues in *Democracy and Human Rights in the Caribbean*, “Citizenship is not only a national concept; it is related to the problem of unequal distribution of resources in society, and so it involves human rights” (p. 209). Basombrío makes a similar argument in *La paz, valor y precio*, questioning whether a direct relationship exists between poverty or economic injustice and political justice. If the relationship is a causal one, he asks poignantly, why does political violence occur in countries like Brazil that enjoy relatively high standards of living? Moreover, why have transitions sometimes taken place in the face of deteriorating economic conditions? Basombrío observes that once violence be-

comes in the interest of a powerful group, economic and social factors tend to exacerbate it.

Another contingent of authors highlight the importance of surpassing a Schumpeterian electoral notion of democracy to take into account the rule of law and the protection of human rights. Invoking a legalistic conception of democracy in the Eastern Caribbean, Francis Alexis in *Democracy and Human Rights in the Caribbean* discusses the importance of constitutional guarantees and due process, including the rule of law, separation of powers, and an independent judiciary.

Many of these analysts are nonetheless critical of overemphasizing the role of formal law in democratization, recognizing that the law itself can be used to institutionalize repression. This is especially evident in many of the contributions to *Democracy and Human Rights in the Caribbean*. Damián Fernández's original essay on human rights in Cuba calls attention to standard legal contradictions. For example, human rights instruments often contain clauses (such as *la ley de peligrosidad* in Cuba) that allow state agents to undermine human rights whenever national security is deemed at stake. In a similar vein, Larman Wilson draws a crucial distinction between procedural and substantive aspects of the law, noting that neither should be neglected at the expense of the other. In the same volume, editor Ivelaw Griffith also employs a critical approach in examining the role of human rights norms, political discourse, and nonstate actors.

More explicitly than the other works under review, *Constructing Democracy* moves beyond formal institutions to address questions of informal social processes. The contributors to this volume are especially concerned with individual and collective beliefs about the role of citizens in a democratic society. The collection's contention is that without changes in "the culture of citizenship," any new institutional arrangements are likely to be ineffective. Fábio Wanderley Reis echoes this belief in drawing a useful distinction between the civil and civic dimensions of citizenship: *civil* connotes the formal law while *civic* evokes social processes. He argues that any effective construction of citizenship must involve these twin processes.

Jennifer Schirmer's contribution on the Guatemalan military in the same volume pays similar attention to the double-edged nature of the law. Schirmer examines how violators of human rights can appropriate the discourse of human rights and in the process undermine human rights guarantees during democratization. The manipulation of language, Schirmer reminds readers, can be a powerful tool in the hands of an already powerful actor. In a novel essay that also focuses on the power of discourse, Teresa Caldeira examines "the talk of crime," meaning the ways in which criminals are described, the stigmatization of human rights defenders, and the concomitant loss of political freedom.

All the works being reviewed here share a commitment to conceptualizing human rights norms multidimensionally and critically. Accord-

ingly, research is shedding some of the simplistic assumptions that often characterized the ideological study of human rights in the past. This new wave of scholarship is grappling instead with longstanding tensions between individual and collective rights, rights and responsibilities, formal and informal institutions. Recent scholarship on human rights in Latin America is at long last beginning to define human rights as a broad-gauged and complex phenomenon.

Retroactive Justice

As Latin American societies have democratized, many of them have faced the “*nunca más* dilemma”: the trade-offs between pursuing justice for past abuses of human rights and focusing on prevention of future violations.⁴ One of the first steps toward retroactive justice is truth telling, the process of investigating and making public past abuses of human rights. This process has taken several forms in Latin America: presidentially appointed commissions in Bolivia (1982), Argentina (1984), and Chile (1990); parliamentary commissions in Uruguay (1985–1986) and Paraguay (1989); an international commission in cooperation with national governments in El Salvador (1993) and Guatemala (1995); national nongovernmental organizations in Brazil (1985) and Uruguay (1986–1989); and international nongovernmental organizations in Honduras (1993).

Truth telling in general and human rights trials in particular raise a host of questions about the merits of seeking justice retroactively. Are the potential benefits worth any costs? What is the impact of human rights trials on democratization and the rule of law? And what should be the role of regional and international actors in the quest for retroactive justice? Researchers are now turning to these questions.

In *Human Rights and Democratization in Latin America: Uruguay and Chile*, Alexandra Barahona de Brito examines the political conditions underlying “the policies of truth-telling and justice” (p. 1). She focuses on how the post-dictatorial regimes in Uruguay and Chile responded to their societies’ calls for truth and justice. She also asks how participants in the trials perceived their own contribution to democratic governance. For Brito, state accountability lies at the heart of democratization.

Brito advances four central arguments. First, complete truth is an unattainable ideal, but even partial truth can serve as a legitimizing force during a political transition. Second, the effectiveness of human rights trials is relative. Because democratic rule implies a degree of pluralism, the trials themselves need to conform to due process and the rule of law. Third, such trials alone are neither necessary nor sufficient for democratic consolidation because they need to occur as part of broader institutional reforms.

4. Garretón alludes to this dilemma in his contribution to *Constructing Democracy*.

Last, the effectiveness of human rights trials cannot be evaluated with only interest-based (instrumentalist) criteria. Rather than treating human rights trials as a means to democratization, one should not underestimate their contribution to truth telling and justice seeking. As Brito points out, "Demands for truth and justice are about reclaiming history in the face of denial and the restoration of accountability and equality before the law in the face of impunity" (p. 9).

Human Rights and Democratization in Latin America is organized chronologically according to the periods of state repression, transition, and democratization. Like others writing on the subject, Brito is interested in moving away from a deterrence-based approach to human rights accountability.⁵ She diverges from similar accounts, however, in her assessment of the ultimate usefulness of trials. Brito considers government-sponsored truth telling usually preferable to its absence. For her, the value of trials of violators lies in the symbolic realm, especially their role in constructing collective identity and memory. Symbolic actions, she claims, can help legitimate democracy. This outcome can occur through various means that include establishing criminal responsibility, bringing to light the institutional sources of state repression, resolving outstanding legal issues, and providing some material compensation.

Bruto notes subtly that human rights trials are not related directly to democratization. In the cases she examines, Chile was more successful than Uruguay with regard to accountability but less able to consolidate democracy after the trials. Neither country has fared well in achieving the institutional reforms that are critical for the long-term protection of human rights. The trials' weaknesses, Brito observes, are more a manifestation of the broader problems facing these societies than a cause of weak democratic consolidation.

In *Radical Evil on Trial*, Carlos Santiago Nino explores the difficulties of responding to massive violations of human rights ("radical evil") with measures usually reserved for criminal behavior. After discussing historical and normative issues, primarily with regard to the Argentine experience, he concludes that some degree of retroactive justice can help to protect democratic values. Retroactive justice enhances democratic consolidation by strengthening the rule of law.

Nino is nonetheless attentive to the moral, political, and legal problems associated with rendering judgments retroactively. Legally, for example, ascribing responsibility and settling jurisdictional issues are not simple matters. The legal problems of retroactive justice are further compounded by certain political and social conditions: nonconsensual transitions, long

5. Another recent critique of conceptualizing trials on human rights in terms of deterrence is provided by Jaime E. Malamud-Goti in *Game without End: State Terror and the Politics of Justice* (Norman: University of Oklahoma Press, 1996).

periods between human rights abuses and trials, diffuse social responsibility, and a cohesive group of perpetrators.

Radical Evil on Trial is framed largely in terms of debates on criminal justice. Nino opposes retributive and preventive views of punishment, which emphasize victims' rights and collective goals respectively. In their place, he supports a consensus theory of punishment that takes into account both rights and goals and recognizes the legal rights of defendants (p. 185). Accordingly, he examines common defenses or pleas used by the accused to justify or excuse past behavior, such as necessity, lawful defense, state of war, or due obedience.

Nino proposes that international law and domestic politics be used to complement one another in confronting questions of retroactive justice. He nonetheless disagrees with those who evoke an "international duty" to punish past violations of human rights.⁶ He believes that in Argentina such a duty would have further polarized society by pitting human rights organizations against the armed forces. He suggests instead that international law "recognize the right of the world community to punish human rights violations in an international forum" (p. 187). But in the final analysis, national governments would remain the best guarantors of human rights. Reminiscent of Basombrío's discussion of human rights and democracy, Nino questions the long-term costs of protecting human rights under democratization. He concludes that while retroactive justice may sometimes undermine democratic stability, a greater potential danger lurks in overlooking past abuses.

Manuel Antonio Garretón relies on polling data in his contribution to *Constructing Democracy*, claiming that failure to punish human rights abuses shapes societal perceptions of democracy. In his view, the Southern Cone cases demonstrate the risks of attempting to resolve human rights issues comprehensively. Argentina's radical steps as well as Chile's more gradual ones proved to be ineffective. What is needed is thoroughgoing reform of the military and the judiciary, the actors responsible for the egregious nature of human rights violations.

The essays and documents in *Amnistía y reconciliación nacional: En contra del camino de la justicia* were collected by the Fundación Myrna Mack of Guatemala. This collection challenges the view that human rights amnesties can contribute to national peace and reconciliation. The contributors argue that such amnesties undermine national goals by rewriting history and erasing the collective memory. For them, national reconciliation is a long-term process requiring fundamental changes in political culture, the role of the military, and the strength of civil society. Opposition to amnes-

6. See for example Diane F. Orentlicher, "Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime," *Yale Law Journal* 100 (1991):2539–69.

ties is treated as a sociopolitical means of achieving national unity and reconciliation.

Amnistía y reconciliación nacional focuses on amnesties in Guatemala (twelve were declared between 1982 and 1988) but also surveys amnesties across Latin America. Taking the legal sphere as their touchstone for evaluating human rights amnesties, the contributors place their subject largely in the context of international and regional norms. According to Ariel Dulitzky, such amnesties can be examined along two dimensions: specific cases of abuse and institutional structures of impunity. Dulitzky sets out to demonstrate that states have a dual obligation under international law to investigate past violations of human rights and to punish those found responsible. Like others in the volume (including two essayists on El Salvador and Argentina), Dulitzky focuses on the role of the Inter-American Commission on Human Rights. José Zalaquett also draws on international law (including the Convention against Torture) in arguing that states have an international obligation to punish human rights abuses. He discusses issues of reparation and prevention as well as questions of punishment, clemency, and due obedience. Like Dulitzky, Zalaquett reminds readers that punishment should not be an excuse for violating the rights of the accused.

This collective work complements the other books on retroactive justice in its wide geographic scope. For example, Robert Norris's contribution surveys sources of impunity in Latin America: military rebellions in Argentina; referendum in Uruguay; political instability in El Salvador; self-impunity in Nicaragua; and self-amnesty in Guatemala. Emilio Mignone devotes an essay to impunity in Argentina, as does Enrique Bernales for Peru.

Helen Duffy summarizes the position of most of the contributors to *Amnistía y reconciliación nacional* in asserting that amnesties should be "opposed, condemned, and rejected" (p. 251). According to Duffy, amnesties not only violate international law but morally compound human rights abuses by pardoning them. On a practical level, human rights amnesties are deemed counterproductive because they undermine national reconciliation and peace.

As the region with the most experience in retroactive justice, Latin America and its cases have much to reveal about this emerging phenomenon.⁷ The books reviewed here lay the foundations for fruitful cross-regional comparison. These works also highlight the two-sided nature of accountability for human rights: on the negative side, the dangers of politicizing human rights trials and the limits of deterrent-based punishment; and on the positive side, the symbolic and long-term benefits for democratization and national reconciliation.

7. On the issue of impunity, see also *Impunity in Latin America*, edited by Rachel Sieder (London: Institute of Latin American Studies, 1995).

Constructing Change

In a marked departure from previous research, current work has begun to problematize legal and political changes. Implicit in this “constructivist agenda” are assumptions of social optimism and voluntarism: if current problems in human rights have been created, they also can be reformed. But these works are not at all naive about how to induce change in the human rights arena. The authors tend to emphasize long-term solutions and the role of nonstate actors. In fact, almost all the volumes reviewed discuss the role of social movements.⁸ Even analysts who promote formal legal and political reforms still place their greatest hope in the activities of nonstate actors.

Damián Fernández’s study of Cuba in *Democracy and Human Rights in the Caribbean* is especially informative about the nature of a human rights movement and its links to political opposition groups. According to Fernández, the recent proliferation of human rights groups in Cuba (more than a hundred in 1993) has contributed to a growing national debate about economic and social rights. As emergent elements of Cuban civil society, moreover, human rights groups are considered by this author to be vital actors in any eventual liberalization. Fernández bases his argument on the Cuban government’s attempt to co-opt the language and symbols of the human rights movement even while repressing its activists. He may exaggerate the extent to which discourse on human rights has shaken “the premises on which the state and the regime were rejected,” but the symbolic impact of human rights norms may still be significant (p. 108). In the same volume, Robert Maguire discusses the importance of grassroots organizations in Haiti, a country with a cycle of state violence and societal resistance.

Edward Cleary’s *The Struggle for Human Rights in Latin America* also spotlights the role of social movements in explaining change in human rights. Cleary wants to know how societal actors contribute to shaping discourse, opening political spaces, and legitimizing moral values. To this end, he reviews four “waves” of social movements since the 1970s. Cleary warns, however, that “enclaves of authoritarianism” persist in the region in the form of socioeconomic disparities, gender-related discrimination, and problems within the judiciary (p. 44). Despite these insights, *The Struggle for Human Rights in Latin America* ultimately fails to live up to its title because it lacks a clear theoretical focus and is weakly grounded historically. Trac-

8. The social movement literature is extensive. Recent examples include Joe Foweraker and Todd Landman, *Citizenship Rights and Social Movements: A Comparative and Statistical Analysis* (Oxford: Oxford University Press, 1997), which focuses on Brazil, Mexico, Chile, and Spain. See also Alison Brysk, *The Politics of Human Rights in Argentina* (Stanford, Calif.: Stanford University Press, 1995). A review of the literature is provided by Paul Lawrence Haber in “Identity and Political Process: Recent Trends in the Study of Latin American Social Movements,” *LARR* 31, no. 1 (1996):171–88.

ing the beginning of the human rights era to the Chilean coup in 1973, Cleary takes the sources of human rights violations in the 1970s largely for granted. His book concludes with a chapter on challenges for U.S. foreign policy, but it sidesteps the implications of its findings for the domestic and regional spheres.

A book intended for use in Argentine classrooms, *Haciendo memoria en el país de nunca más* zeroes in on the task of social construction. The self-declared purpose is to help forge an Argentine polity that is informed about “the missing chapter” in the country’s history. The text focuses on four issues: state-society relations, the case of youth, cycles of violence and tolerance, and the question of historical memory. Although the work is primarily descriptive, authors Inés Dussell, Silvia Finocchio, and Silvia Gojman are careful to embed their empirical material in broader debates from political philosophy and ethics as well as in the global context. The material presented is broad in scope and attentive to political, legal, social, and cultural issues. The resulting book is no more and no less than a solid introduction to Argentina’s human rights history.

Analysts in other works under review here look outside individual countries to examine the constructive role of regional and international organizations. Contributors to *Globalización, integración y derechos humanos*, for example, suggest that the diversity of national legal mechanisms in the Caribbean has been used as an excuse for not creating a regional system. Fernández Bulté therefore calls for a regional human rights charter distinct from the Inter-American Convention on Human Rights and attentive to the particular problems of the Caribbean.

Kathryn Sikkink’s essay in *Constructing Democracy* is devoted to the international dimensions of human rights issues. Unlike prior studies that focused exclusively on U.S. foreign policy, Sikkink draws attention to the role of an international human rights network—made up of international governmental organizations (IGOs), international and domestic non-governmental organizations (NGOs), foundations, and churches—that helps to create crucial transnational linkages. She seeks to explain different international responses to comparable human rights situations. Her answer lies in the activities of the human rights network, which exerts leverage primarily through information channels. The essay fits into a broader agenda of determining the effectiveness of international pressure in protecting human rights. Accordingly, she defines effectiveness in terms of its short-, medium-, and long-term impact, including its import on strengthening regional and international human rights organizations, contributing to democratization, and redefining sovereignty.

In general, *Constructing Democracy* identifies three issues at the nexus of society and democratization that are essential for understanding human rights issues: equity and inequality, social struggles for democracy, and the emergence and consolidation of citizenship. Co-editor Elizabeth

Jelin, for example, focuses on how citizenship is constructed “from below.” How do citizens view their role in society in terms of rights and responsibilities vis-à-vis one another and the state? At a minimum, Jelin asserts, citizenship entails “a struggle about who is entitled to say what in the process of defining common problems and deciding how they will be faced” (p. 104). Although the gap between human rights norms and realities may be widest during periods of dictatorship, Jelin cautions that this gap continues to exist but is merely less apparent during democratization. She explores these issues at the level of individuals and national institutions, treating citizenship and human rights as continually evolving concepts.

The contributors to *Constructing Democracy* are to be commended for exploring uncharted territory. They discuss convincingly how human rights and democratization are “historical-cultural constructs” bounded by time and space (p. 39). They do not offer a single solution to dilemmas associated with human rights: past abuses versus future protection, individual versus collective rights, equality versus diversity, the universal versus the local, public responsibilities versus the right to privacy. But they argue that making these dilemmas “public” helps forge the national agendas and social struggles that can lead to change. In short, *Constructing Democracy* contends that the building of legal and political institutions is necessary for democratic governance and human rights protection but must be tempered by processes of socialization. Put differently, if legal and political reform is to be effective in the long term, the majority of citizens must view it as legitimate.

Another volume that discusses the social construction of human rights law and politics is *Derechos humanos y ciencias sociales: Problemáticas a fin de siglo*. Adopting a critical and interpretive approach concerned with the subjectivity of social analysis, the contributors also emphasize issues of legitimacy and social action. In so doing, they cover a wide range of topics that include violence as social control, the environment, indigenous rights in Argentina, and even consumer rights. Editor Juan Carlos Gardella offers an essay on the discourse of the inter-American system of human rights. Using content analysis of regional legal instruments, he shows that regional norms on human rights are coherent but sometimes ambiguous means of defining legitimacy. *Derechos humanos y ciencias sociales* complements some of the other volumes’ emphases on citizenship, placing equality at the intersection of human rights law and politics (p. 129).

All these works seek to problematize to some degree the legal and political factors that researchers on human rights conventionally have taken for granted. While largely successful, this line of theorizing faces a common challenge. It bears the burden of showing how the social factors posited as being analytically prior to political and legal institutions have shaped outcomes in human rights. Scholars indeed have moved in this direction, partly by incorporating insights from the social-movement litera-

ture. What remains to be done is to trace the links among various factors: social action, political and legal institutions, and change in human rights.

Conclusion: The State of the Art

The books reviewed here reveal that the scope of scholarship on human rights in Latin America has expanded considerably in recent years. Human rights practices are no longer treated as simple and nonproblematic phenomena but as complex and constructed social action. Moreover, human rights norms have been unbundled or disaggregated, so that a broader array of rights is covered in the literature beyond the civil rights studied during authoritarian rule. Similarly, the unique political and institutional problems associated with transitional settings, especially issues of retroactive justice and the social bases of democracy, have become the locus of much of the research in the 1990s.

What is missing from this body of scholarship? First, researchers need to undertake broader comparisons. Some of the works here do just that, including those by Basombrío and Brito, the essays by Acuña and Smulovitz, and Sikkink's contribution to *Constructing Democracy*. Cross-national comparisons are only a first step, however. Students of human rights issues in Latin America have not explored fully the possibility of using broader comparisons. In addition to comparing countries, it is time to begin designing comparisons of different rights, issue areas, institutional trajectories, and time periods.

Second, this body of research would benefit from greater theoretical self-consciousness on the part of scholars. Much work in this area retains an anecdotal quality that is rich in descriptive value and offers insight into potentially significant factors. These contributions notwithstanding, greater effort must be made to build arguments that not only match the details of a limited case (or cases) but are situated within a broader corpus of research.

Third, current research is plagued by having raised more questions than it has answered. This problem is evident, for example, in discussions about the importance of informal institutions, a concern of all the works considered here. Researchers have argued persuasively that formal institutions are not sufficient for assuring effective protection of human rights, and they have shown that formal institutions can undermine human rights guarantees. But they have yet to elaborate fully the implications of their argument. Which institutions matter? Why do they matter? What explains institutional change? These questions still beg for answers.

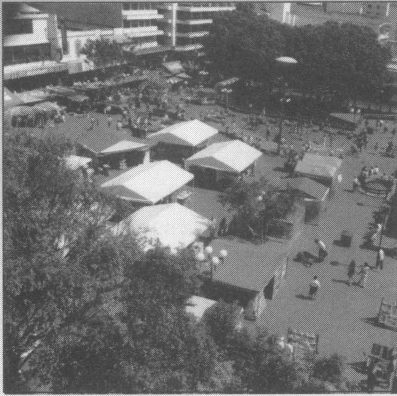
In spite of these gaps in existing research, recent scholarship has taught several important lessons. Foremost, political and legal institutions are key factors in explaining human rights practices, but they have to be placed in the context of historical and social change. Empirically, the focus

is now on the role played by human rights in transitional societies: the interdependence of human rights with democratization and the rule of law as well as the challenge of retroactive justice. Practically, the emphasis is on joining "bottom-up" processes that operate over the long term, such as socialization in the domestic sphere and transnational pressure internationally, with "top-down" solutions calling mostly for state reform and international governmental pressure.

Reflecting in part the largely unexpected difficulties of protecting human rights under democratization, scholars have shed the unbridled optimism that characterized earlier work. Indeed, current scholarship is sober about the course of change in human rights. Despite regime transitions, societies have often remained indifferent to ongoing abuses. Emergency legislation continues to coexist alongside fragile systems of due process and the rule of law. As Basombrío observes, it is a cruel irony that Latin American governments have committed so many abuses on the path to democracy and human rights.

While scholars are employing different strategies and focusing on diverse issues, a concern for combining political and legal factors to understand contemporary human rights issues pervades the new literature on the subject in Latin America. Despite this important development, it remains unclear after reading these works why political and legal institutions can explain change in some instances but not in others. Part of the answer may lie in a more theoretically grounded understanding of the conditions that mediate institutional change. Recent scholarship on human rights issues in Latin America has laid the foundations for this endeavor. The next wave of research needs to explore the missing link between political and legal institutions and change in human rights.

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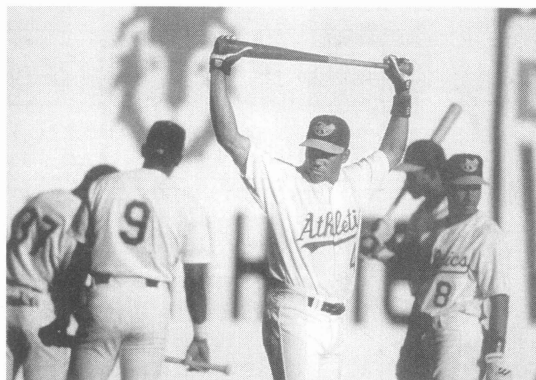
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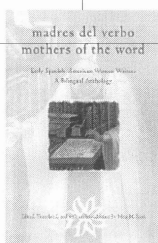
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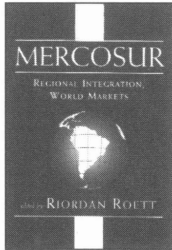
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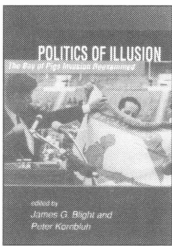
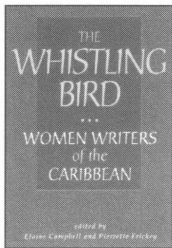
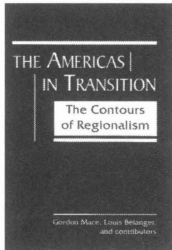
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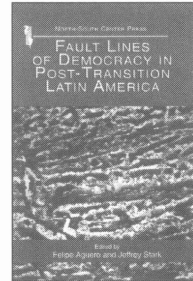
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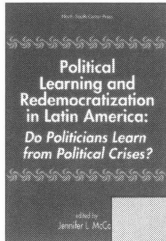
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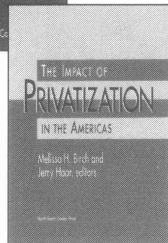


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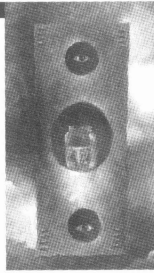
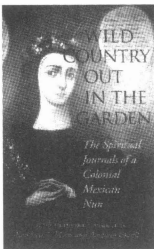
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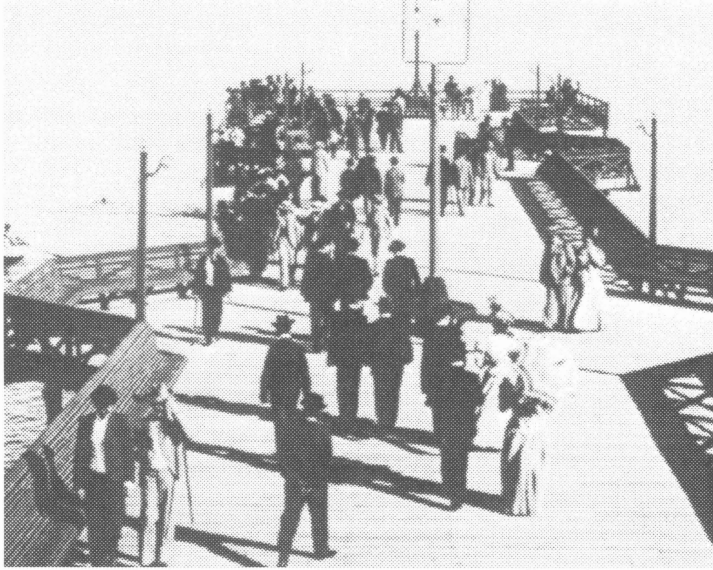
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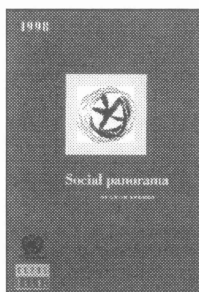
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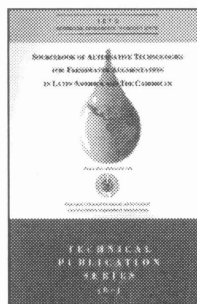
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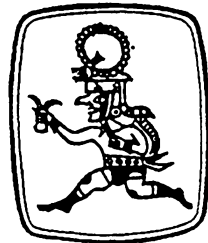
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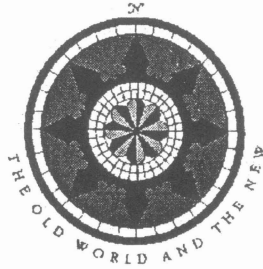
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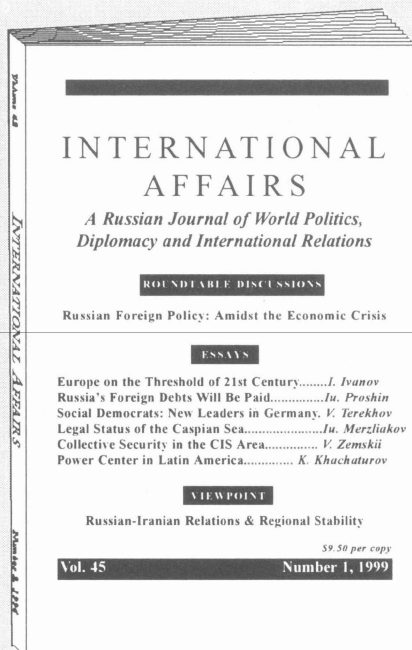
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