

References

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Cultures of Legality: Judicialization and Political Activism in Latin America. Edited by Javier A. Couso, Alexandra Huneeus, and Rachel Sieder. New York: Cambridge University Press, 2010. 287 pp. \$85.00 cloth.

Reviewed by David Landau, Florida State University

This edited volume is a substantial contribution to the impressive literature on comparative courts and on the global trend toward judicialization. The editors aim to critique prevailing approaches in two ways. First, they seek to move beyond narrower theories that explain increases in judicial power as a consequence of the interests and incentives of either judges or politicians (Ginsburg 2003; Hirschl 2004). The editors instead assert that legal cultures play a prominent role in explaining these phenomena. Second, the editors seek to shift away from an exclusive focus on judges and courts; various chapters focus instead on the use of legal discourse by actors outside the courts, such as indigenous groups, human rights organizations, members of civil society, and the legal academy.

The resulting volume is a collection of essays loosely bound by these themes. For example, the editors pointedly avoid giving a specific definition of *legal culture* and instead leave this to each individual chapter author. Given the current state of knowledge in the field, this is more of a strength than a weakness. Existing debates in political science about the value of culture as an explanatory variable are stuck on the question of whether it is possible to isolate and prove the effect of culture on other phenomena. The way forward for the time being is probably in the presentation of more specific evidence, rather than abstract theorization.

The key fact in the study of Latin American law is the extraordinary diversity of legal systems across a range of variables—the independence of judiciaries, the reception of international law, the kinds of constitutional decisions issued and reasoning styles employed, and the individuals and groups that use the courts. This makes Latin America an ideal setting for testing and expanding theories in comparative law and politics.

This book's individual chapters suggest many ways in which to improve upon existing theory. One key pathway for investigation is the complex relationship between formal legal rules and culture. Diana Kapiszewski convincingly argues that over time, the formal rules affecting judicial selection, case selection, and decision writing help to construct a "court culture" that affects the way a court decides cases and interacts with other branches of government. Karina Ansolabehere suggests a similar point when she notes that the post-1994 design of the Mexican Supreme Court, which has offered privileged access to political parties and politicians but very little access to individuals, has adversely affected the court's willingness to expand its rights jurisprudence. These contributions develop a historical-institutionalist mode of inquiry that is important in studies of the U.S. Supreme Court (Whittington 2007) but that, with important exceptions (e.g., Hilbink 2007), has been absent in comparative courts.

It should be possible to expand this line beyond judicial design to ask, for example, whether the ways in which courts are engaged with other political actors in earlier periods impact the way judges behave in the modern era. It might be, for example, that courts given largely private-law tasks early on (as in Chile) develop a kind of passivity not seen in other courts (Colombia, Brazil) that were given more prominent roles in adjudicating federalism or separation of powers disputes from an early date. Another key question here is the durability, or stickiness, of this kind of culture: while some evidence (Chile) suggests that judicial culture can survive constitutional rewrites and fundamental judicial redesigns, other evidence (Colombia after 1991) suggests that changes in judicial design can produce immediate and radical changes in how judges behave.

A second major theme, as Pilar Domingo points out, is "the power of ideas" (p. 258). Recent legal history throughout Latin America, as in many other regions of the world, has been marked by the reception of the "new constitutionalism," a set of ideas that links international human rights discourse with constitutional law, privileges the rights portions of constitutions over their organic content, and emphasizes substantive justice over the formalistic methods of interpretation traditionally dominant in the region. As Couso points out, this set of ideas has had an extraordinary impact on legal training—constitutional law in many countries has shifted from being an unimportant topic to being the dominant field in law schools. New constitutionalism has also had a significant impact on many judicial systems, although the extent of this influence has varied from massive (Colombia, Costa Rica) to virtually nonexistent (Chile, Mexico).

There is an urgent need for more research on the reasons for these differences. Is it that lawyers and local legal discourses in

some countries (perhaps, say, Mexico) are more inward looking and thus resistant to change than are lawyers and legal actors in other, more outward-looking legal cultures (say, Colombia)? Or are the decisive actors located elsewhere, either in the judiciary or, as Pablo Rueda's contribution suggests, in the agendas of the actors who use the courts?

But the third and perhaps most important question concerns the effects of these cultural changes on key variables in Latin American law and politics. Where the new constitutionalism has been broadly received by courts, does it change the way these institutions interact with international actors and other institutions in their own systems? Huneeus provocatively points out that the influence of the reception of "new constitutionalist" ideas is complex: relatively receptive courts such as the Argentine Supreme Court, as well as relatively resistant courts like the Chilean high courts, have rejected rulings of the Inter-American Court, although in subtly different ways. And in countries where a constitutional rights discourse is spreading beyond the courts to affect the way lawyers and civil society approach problems, and a constitutional culture is being constructed, do these developments strengthen democracy or undermine it by shunting legitimacy away from democratic institutions? These are big questions with complicated answers, but they are the kinds of broader questions opened up by the approaches of this volume. And they are the right questions to be asking.

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Chinese Justice: Civil Dispute Resolution in Contemporary China.
 Edited by Margaret Y. K. Woo and Mary E. Gallagher. Cambridge,
 UK: Cambridge University Press, 2011. 407 pp. \$99.00 cloth.

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This collection of essays, the result of a conference at Harvard in 2007, is a welcome contribution to the small body of interdiscipli-