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Ambivalent Legal Mobilization: Perceptions of Justice and the Use of the Tutela in Colombia

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This article explores the relationship between legal consciousness and legal mobilization in the context of constitutional rights in Colombia. Citizens report extremely low confidence in the state and the judiciary, yet hundreds of thousands of Colombians make constitutional rights claims through the *acción de tutela* procedure each year. Why does profound skepticism of the ability of the judiciary to provide justice and fair treatment seem to coexist with high levels of use of the legal system? How do perspectives on rights and the legal system relate to observed mobilization of the law? Drawing on 74 interviews and an original 310-person survey, this article develops legal consciousness theory, identifying the specific beliefs that encourage or discourage individuals to turn to the courts to make claims to their rights. In the Colombian case, understandings of law and the state encourage the use of the tutela procedure, not due to the realizable promise of the state to protect rights or the majestic power of the law, but because the tutela is understood to be the only mechanism through which citizens can access their rights. In other words, citizens turn to the courts because there is no other alternative.

> We have rule of law, but I say anything can be said on paper, because [the law as it is written] is wonderful, but we have a very, very deep problem in terms of the application of justice, because we have a lot of corruption… Justice is crap, of course.[1,2]

So responded an upper-class resident of Bogotá, Colombia, when asked to evaluate the country's legal system. National

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[1](Bogotá 34). "Pues estamos en un estado de derecho, pero yo digo el papel aguanta todo porque es una maravilla, pero sí, tenemos un problema muy, muy profundo en términos de la aplicación de la justicia, porque tenemos una corrupción muy, muy grande… la justicia es una porquería, evidentemente."

[2]All translations in this article are my own. Quotations are presented in English with Spanish footnotes to preserve each respondent's actual words. Minor edits were made to facilitate understandability.

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surveys indicate that the negative view expressed above is far from unique.[3] These perceptions give reason for alarm, according to long-standing theories about the judicial role in democratic states. Specifically, the triadic logic of conflict resolution sets out that the impartiality of courts directly feeds into their legitimacy, giving reason for both parties to the dispute to consent to the court's involvement and, in particular, for the loser to accept the judgment (Shapiro 1981). This legitimacy then reinforces judicial independence, as the executive and legislature are both less able and less willing to place undue pressure on the courts, allowing the courts to continue to decide cases impartially, which results in a virtuous circle.[4] In the Colombian case, Landau (2010a: 153, 2010b) demonstrates how the emergence of the Constitutional Court as a "workhorse for middle-class claims" and its ensuing popularity bolstered its power and its ability to sidestep political influence. Here, we might expect this reported lack of confidence in the judiciary, which is by no means limited to Colombia, to translate into limited use of the courts.[5] Yet, this is not so.

Each year, the number of citizens filing legal claims grows, even after accounting for population growth. The most common legal mechanism used is the *acción de tutela*, which was created with the 1991 Constitution, alongside various other institutional reforms meant to address what has been called a "crisis of representation" (Mainwaring 2006) and to bolster an ailing, inefficient, and untrusted legal system. The acción de tutela is an innovative legal development related to the *amparo* and *recurso de protección* created elsewhere in Latin America.[6] The tutela, which is an appeal for immediate relief, allows citizens to make claims to their constitutionally protected fundamental rights without need for a lawyer. In theory, an individual—verbally or in writing—can

[3] For instance, Latinobarometer surveys between 1996 and 2015 show that between 22.8 percent and 41.3 percent of Colombian respondents reported "some" or "a lot" of confidence in the judiciary, with the average sitting at 32.5 percent. A study of judicial needs conducted in urban areas in Colombia between 2011 and 2013 found that 81.8 percent of respondents thought that justice came at a "slow" or "very slow" pace, and 54.8 percent of respondents evaluated judicial officials as either "corrupt" or "very corrupt" (La Rota et al. 2014).

[4] See also Benesh (2006) on the importance of public support for the courts in reinforcing the rule of law.

[5] See Hendley (1999, 2012) on Russia, Gallagher (2006) and Gallagher and Yang (2017) on China, and Smulovitz (2010) on Argentina, among others.

[6] Over the course of the nineteenth and twentieth centuries, Latin America countries adopted some form of the amparo, a legal mechanism that allows citizens immediate access to the courts to claim their rights. The scope of the amparo differs across countries, from solely habeas corpus claims to nearly any constitutional right, with the tutela being perhaps the most expansive of these mechanisms. For more on regional trends related to the amparo procedure, see Brewer-Carías (2009) and Quinche (2015).

simply detail a problem in his or her life to a judge, whose job it is to assess whether or not a rights violation may have occurred, regardless of whether or not the individual characterized the problem as one related constitutional rights. All judges in the country must hear tutela claims and must respond to each claim within 10 days in the first instance, making the tutela a relatively cheap, easy, and quick legal mechanism. Still, filing a tutela claim is not costless, as individuals must travel to the courthouse during business hours and often wait in long lines to submit their paperwork. These time and resource costs pale in comparison to the costs of filing other kinds of legal claims, but they are not negligible for those of relatively little means. The Constitutional Court has the power to review every tutela decision, though given the sheer quantity of tutela claims, the Court only formally reviews a small fraction of cases.[7]

In the early 1990s, the Colombian government engaged in a multipronged educational campaign, featuring a television program, smaller advertising spots, board games, and comic books—in addition to mandatory teaching in schools—to spread information about the new constitution and the tutela. Regional-level bodies in some, but not all, departments have also held outreach programs, from the early 1990s to the present day. Even so, it is not immediately clear why citizens who express a near total lack of confidence in the judiciary would seize upon this tool to air their grievances. In this context, the volume of constitutional claims advanced by Colombian citizens is shocking. Thousands upon thousands of Colombians turn to the judiciary every year to demand the protection of their rights through the use of the tutela procedure—from claiming the right to receive a response to a petition request to the right to a minimum standard of living. In 2014, nearly 500,000 tutelas were filed, which is roughly equivalent to 1 percent of the total Colombian population (Defensoría del Pueblo n.d.). As is clear, Colombian citizens often turn to the courts to make claims to their constitutional rights.

Drawing on 74 interviews and an original 310-person survey, this article examines this apparent disconnect between expressed assessments and action, moving from the aggregate to the individual level to examine the dynamics of mobilization decisions. The data under investigation fall under three categories: perspectives shared by the general population, by a marginalized community (or a "least likely" group), and by claimants. Together,

[7] Fidelity to existing jurisprudence and legal reasoning are understood to drive the revision process, but the decision to review is ultimately subject to the discretion of the magistrates of the Constitutional Court, specifically whichever magistrates are "on duty" in a particular week.

these three sources of data allow for the analysis of two research questions. Why does profound skepticism of the ability of the judiciary to provide justice and fair treatment seem to coexist with high levels of use of the legal system? How do perspectives on rights and the legal system relate to this observed mobilization of the law?

A robust literature on legal consciousness has demonstrated the complicated and sometimes contradictory nature of beliefs about and mobilization of law (Bumiller 1988; Engel 1984; Ewick and Silbey 1998; Feeley 1979; Sarat 1990; Sarat and Felstiner 1989; Yngvesson 1988). Though initial studies concentrated primarily on legal consciousness in the United States, subsequent studies have expanded this focus both in terms of geography (Boittin 2013; Engel and Engel 2010; Gallagher 2006; McMillan 2011) and substantive area (Nielsen 2000; Hoffman 2003; Hull 2003, 2016; Wilson 2011; Young 2014). This article further expands the geographic and thematic scope of these studies.

In addition, this article makes two primary substantive contributions. First, unlike most previous contexts studied, Colombia is what we might call a high mobilization environment. That is, individuals (and groups) have turned with great frequency to the legal system to make claims. This frequency of claims-making is made possible by a uniquely permissive institutional arrangement (whose core feature is the tutela procedure). Not only has legal consciousness in this kind of setting not previously been studied, but it is also a setting in which the contours of beliefs about law are perhaps most paradoxical. While Colombian citizens express little to no trust in the legal system, they continue to file constitutional rights claims at unheard of rates. Second, the article pinpoints the concrete pathways through which legal consciousness affects individual mobilization decisions. In doing so, it builds on Ewick and Silbey's (1998) foundational work on legal consciousness. A central claim of legal consciousness scholarship is that it matters how people understand their worlds and their relative positioning in those worlds, particularly that these understandings affect the actions people take. Yet, relatively little is known about the process by which legal consciousness—a complex, dynamic phenomenon—translates into individual action or inaction. This article seeks to fill that gap.

Specifically, I investigate how beliefs about the state, legal system, and rights in Colombia relate to the use of the tutela procedure to make claims about constitutionally protected rights. In other words, the focus of this article is on the relationship between legal consciousness and legal mobilization in the realm of constitutional rights, expressly identifying the constituent parts of legal consciousness—beliefs—that encourage or discourage the use of legal tools to make claims. Vanhala (2011) defines legal

mobilization as "any type of process by which an individual or collective actors invoke legal norms, discourse, or symbols to influence policy or behavior." For analytical clarity, I constrain this definition somewhat to refer to the individual use of legal strategies (involving legal institutions, mechanisms, and actors) to make claims.[8] Throughout this article, whenever I use the term legal mobilization, I am referring to the individual use of the tutela procedure. Following Zemans (1983), I consider legal mobilization as a form of political participation. Importantly, the use of the legal procedures to make rights claims is a political act, not only a legal one. When citizens make claims on the state, they are implicitly calling for changes in relationship between state and society, in the provision of goods by the state, and in the protection of rights. While the claim in question may be purely personal in nature for the individual claimant, the consequences of that claim—or the aggregation of many individual claims—are political.[9]

I find that in Colombia, understandings of law and the state encourage the use of the tutela procedure, not due to the realizable promise of the state to protect rights or the majestic power of the law, but because the tutela offers one possible ray of hope in an otherwise limited choice set. The tutela is understood to be the only mechanism through which citizens can access their rights—the goods that they absolutely need or that have been constitutionally promised to them. In other words, there is no other alternative.[10] In what follows, I present a discussion of the scholarship on legal consciousness and behavior, before introducing three sources of originally collected data. Next, I offer an assessment of these data and a discussion of the consequences of this paradoxical relationship between beliefs about the law in Colombia. Conclusions follow.

Legal Consciousness, Logics of Behavior, and Legal Mobilization

This section first defines what consciousness is, before specifying the meaning of legal consciousness and connecting legal

[8] Importantly, some scholars emphasize the importance of considering legal mobilization outside of the realm of formal legal institutions, mechanisms, and actors. Features of the legal system may significantly impact the way individuals think and act in other settings (McCann 1994).

[9] While in some ways, this understanding pushes contemporary thinking on legal mobilization, which tends to focus on group claims, often in the form of strategic litigation, this approach is consistent with the roots of legal mobilization theory (Zemans 1983).

[10] Thanks to Ben Manski for this phrasing.

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consciousness with legal mobilization. Within the discussion of legal consciousness, I summarize the three ideal types—"before the law," "with the law," and "against the law"—first introduced by Ewick and Silbey (1998). I then describe the conceptual and methodological challenges in connecting consciousness, which operates at the collective level, with individual behavior. Finally, I introduce three expectations, or working hypotheses, that explore how legal consciousness and legal mobilization might be connected.

Consciousness, as Ewick and Silbey (1998: 39) explain, refers to:

> . . .a reciprocal process in which the meanings given by individuals to their world become patterned, stabilized, and objectified. These meanings, once institutionalized, become part of the material and discursive systems that limit and constrain future meaning making. . .Through language, society furnishes images of what those opportunities and resources are: how the world works, what is possible, and what is not.

Here, consciousness is not reducible to the sum of individual experiences and understandings. Consciousness, instead, operates at the collective level, though it is comprised by and can be demonstrated in the beliefs and actions of individuals. These experiences, understandings, and beliefs—and the actions they prompt—come together in a reciprocal and intersubjective process to form consciousness.

Before moving on to the idea of legal consciousness, a discussion on beliefs is necessary. Beliefs refer to subjective truth-claims about the world. They may be factually correct or incorrect, and they may or may not be grounded in moral assessments. They form the constituent parts of a worldview—or consciousness—and the basis for meaning-making, which is defined as the "social process through which people reproduce together the conditions of intelligibility that enable them to make sense of their worlds" (Wedeen 2002: 717).[11] Further, every identifiable belief exists among (at the very least, implicit) alternative beliefs. Given the existence of alternatives, beliefs become more impactful when compelling to others, though a belief that is not compelling to many people might be particularly influential for a particular individual. Historical contexts and present-day power relations impact the likelihood and viability of specific beliefs and their alternatives. Beliefs form the basis upon which individuals act, whether elite or grassroots actors.

[11] Importantly, all beliefs held by individuals or shared across a group need not always be entirely coherent or logically consistent with one another.

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In everyday life, we point to beliefs as motivators or justifications for actions, even when we do not use the language of beliefs. Take, for example, these two sentences: I voted because it is my duty to vote. I did not vote because my vote does not matter. Each sentence declares two things, (1) that an action did or did not occur, and (2) that the decision about whether or not to act was prompted by a belief that voting is a duty or that voting does not matter. Social life—personal experiences or the experiences of similarly situated individuals in terms of race, class, gender, or other social categories—may encourage one person to believe that voting is a duty and another that his or her vote does not count. Even so, individuals may have a near infinite number of beliefs upon which they do not act (Lane 1973). The mere presence of a belief is not sufficient to provoke any particular action. Further, neither beliefs nor individuals exist in social vacuums. No crisp causal arrow moves unidirectionally from beliefs to actions all the way up to the construction of the social world; instead, these relationships are characterized by feedback and coconstitution. Again, the emergent construct that derives from the expression and interaction of beliefs, through language or nonverbal action, is consciousness.

Legal consciousness is commonly defined as "the ways people understand and use the law… the way people conceive of the 'natural' and normal way of doing things, their habitual patterns of talk and action, and their common-sense understanding of the world" (Merry 1990: 5). Thus, beliefs about law that emerge from individual and collective experiences in the world form legal consciousness. It is crucial to note that legal consciousness is not synonymous with legal knowledge. The veracity of the beliefs that make up legal consciousness is, relatively speaking, less important than the fact that those beliefs are held. For example, whether or not one actually is required to have a lawyer to file a particular claim is, in a given moment, less significant than whether or not a potential claimant believes a lawyer is necessary. Legal consciousness research seeks to explain "how the different experiences of law become synthesized into a set of circulating, often taken-for-granted understandings and habits" (Silbey 2005: 324).

Ewick and Silbey (1998) offer three ideal types of legal consciousness—"before the law," "with the law," and "against the law." "Before the law" refers to a context in which law is understood to exist outside of, separate from the messiness of everyday life—"law is majestic, operating by known and fixed rules in carefully delimited spaces" (28). In the "with the law" model, law takes on a game-like form. Here, one can strategically manipulate the rules of the game to attain personal benefits. "Against the

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law" refers to a setting in which individuals are subject to "arbitrary and capricious" power, though that does not preclude the possibility of resistance. The conventional wisdom is that more marginalized populations are more likely to experience this arbitrary and capricious power of the law and view the law as a peripheral force in their lives.[12] While these ideal types delineate specific understandings that individuals have about the ways in which law broadly interpreted affects their worlds, these understanding are neither fixed nor unitary within or across groups or over time, nor are these ideal types mutually exclusive. Studies of legal consciousness investigate not only what people say about their worlds—whether explicitly in terms of law or not—but also how people act in their worlds (Ewick & Silbey 1998; McCann 1994; Merry 1990).

The focus, consequently, is not simply on formal legal institutions, but on the ideas, beliefs, and perceptions individuals and groups have about the purposes of legal actors, institutions, and mechanisms, as well as the impacts they have. These ideas, beliefs, and perceptions need not be fully articulated to be impactful. As Hull (2003: 653) finds, "social actors can engage in practices that both reflect and produce legality without necessarily describing or recognizing those practices as in any sense 'legal'." Further, as Nielsen (2000: 1059, emphasis in original) argues:

> Legal consciousness also refers to how people do *not* think about the law; that is to say, it is the body of assumptions people have about the law that are simply taken for granted… Thus legal consciousness can be present even when law is seemingly absent from an understanding or construction of life events.

This unconscious or subconscious level is especially significant for the study of legal consciousness. Still, even consciously negative or ambivalent views on law may correlate with legal mobilization. Hendley (1999, 2012) finds that in the Russian context a profound sense of apathy toward the broader legal system can exist in conjunction with high levels of litigation, where resignation, not hope, defines the views of litigants toward the legal process. Similarly, in the case of Argentina, Smulovitz (2010: 238) shows that "although in the last 20 years normative perceptions about the law and evaluations about performance of the judiciary have

[12] See Sarat (1990) on this point, and see Boittin (2013) and Levine and Mellema (2001) for case studies challenging this conventional wisdom.

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worsened, the use of legal procedures and the process of judicialization has intensified."

Scholarship on legal cynicism supports these conclusions about the potential disjuncture between broader social views and individual action. Sampson and Bartusch (1998: 782) hold that legal cynicism, or "'anomie' about law" implies that "support for what one personally views as 'appropriate' (or normative) forms of conduct does not necessarily imply support for the regulations of the larger society or the mechanisms used to enforce such conduct." In other words, an individual may refrain from engaging in or supporting deviant behavior while also not personally viewing the legal apparatus as legitimate. Similarly, individuals may advance legal claims strategically or partially, without fully endorsing the legal system, what it represents, or what it protects (see also Lovell 2012).

This article builds on the legal consciousness tradition, taking as its starting point that while seemingly objective conditions such as institutional design, structural inequalities, and responsiveness or openness of both governmental and nongovernmental agencies may impact mobilization, this impact will be indirect, through the way various actors interpret, subjectively and intersubjectively, those very conditions. This line of reasoning leads to a specific claim about legal consciousness, that *beliefs held by potential claimants condition when and on which issues legal mobilization occurs*. In other words, individuals make rights claims on the basis of their understandings of the law and the state, and these views are reinforced by the experience of making rights claims. Importantly, neither beliefs nor potential claimants exist in a vacuum. The proposition here is not that a particular belief *causes* rights mobilization, but that one's understanding of the world—which, again, is socially constructed but individually held—encourages and discourages certain sets of actions, rendering X thinkable and doable, while Y unthinkable and therefore undoable. More specifically, the way individuals understand the state, the legal system, and their rights has the effect of inspiring them to make (or not to make) a given legal claim.

Many studies point to structural and institutional variables rather than legal consciousness as drivers of mobilization. If this were the case, we would see a relationship between the severity of grievances, openness of formal judicial institutions, openness of other state institutions, and/or strength of civil society actors and legal mobilization, regardless of the way citizens think about and understand their rights, the legal system, and the state. Undoubtedly, grievances matter for the process of legal mobilization. The question for an explanation based on the severity or frequency of grievances is what explains *legal* grievance

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formation, or how something unfortunate comes to be understood as something legally objectionable. Much of the time, grievances go unclaimed, or even unrecognized. With respect to institutional openness, *perceptions* of openness are key. Yes, formal institutional rules matter, but if citizens do not view institutions as potentially open, responsive, and/or useful, then it is unlikely that they will turn to those institutions. In the Colombian case, it is fundamental that the tutela procedure exists in the form that it does—its design allows citizens to utilize it relatively easily. Still, formal design alone cannot explain why citizens use the tutela to make claims to some right in some situations but not to other rights in other situations. Finally, legal clinics as well as several state institutions, such as the Personería and the Defensoría del Pueblo, do help citizens file legal claims, suggesting that civil society may have an important role to play. However, while these organizations may facilitate the ability of citizens to present tutelas, they do not explain why citizens come to view the legal system option as the correct way to pursue the solution to their problems. Thus, I hold that the linkages between beliefs about the law and the state and mobilization should be explored in greater detail, and I set out to do that here.

Drawing on inductively gleaned insights—in dialogue with existing literature on legal consciousness and legal mobilization—I generate three behavioral expectations from studies of legal consciousness and broader theories of political behavior. These expectations should not be taken as hypotheses to be formally tested, but rather as propositions to be explored. Importantly, as scholarship on legal consciousness and legal pragmatism indicates, individual behavior cannot reasonably be separated from the social context in which it is embedded (Baum 2006; Ewick and Silbey 1998). The goal here is to identify pathways along which individuals might make decisions about how to proceed with their lives. Some of the time, these decisions in Colombia might result in turning to the formal legal system to file tutela claims, and sometimes these decisions might not. These context-specific decisions have implications for the individuals making the decisions as well as for the social contexts in which they operate.

The first behavioral expectation draws on the idea that behavior is the manifestation of how an individual understands themselves relative to their social contexts, or what I call here their "orientation." Certain orientations catalyze certain behaviors and foreclose others. I add the qualifier "naïve" to indicate the rather simplistic logic linking ideal types of legal consciousness and behavior, which discounts the possibility of complicating beliefs, needs, or experiences from intervening in behavioral decisions. This expectation should be thought of as a baseline.

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Table 1. Legal Consciousness Behavioral Expectations

Naïve Orientation Expectation (1)	Individuals must view themselves as "before the law" or "with the law" in order to engage in legal mobilization. Those who understand themselves to be situated "against the law" do not turn to the courts to make rights claims.
Outcome Expectation (2)	Prospects for a remedy are good if I pursue this kind of claim in the courts, or it will not be overly difficult for me to make this kind of claim in the courts.
Practice Expectation (3)	Making this kind of claim in the courts is simply what one does, or it is appropriate for me to make this kind of claim in the courts.

The second expectation suggests that individuals engage in cost-benefit calculations when deciding whether or not and how to mobilize, where material concerns, or more specifically expected material gains weighed against the expected difficulty of making claims, determine strategic mobilization decisions (Gallagher 2006; Hendley 2012).[13] The third expectation, on the other hand, suggests that common sense about what one does—or what one ought to do—drives behavior. It may be useful to consider expectations 2 and 3 in light of the logics of consequences and appropriateness (March and Olsen 1998) and the logic of practice (Bourdieu 1977).[14] Each of these expectations refers to a different set of beliefs. Table 1 lays out these three behavioral expectations in more detail.

The naïve orientation expectation (1) suggests that the way an individual understands him- or herself relative to the law will strongly influence their likelihood of mobilizing, specifically that individuals who understand themselves to be situated "against the law" at a given moment will be more likely to view formal legal institutions as sites of, at best, the replication of inequalities or, at worst, sites of punishment, rather than as sites of promise, thus making them less likely to turn to the courts under any circumstances.[15] In other words, the implication is that those who fall within the lower class or are otherwise marginalized are expected to express less confidence in the organs of the state and

[13] As Gallagher (2006: 803) notes, this strategic calculus reflects the "with the law" ideal type described by Ewick and Silbey (1998), wherein actors consider the law as a sort of game that can be played effectively or poorly and whose rules can (sometimes) be manipulated.

[14] Often the logics of practice and appropriateness are separated into two distinct explanations for behavior. I combine them here for the sake of simplicity. Neither explanation focuses on the expected outcome, which would be the case following a logic of consequences (the outcome expectation), or on how the actor understands him or herself (the orientation expectation).

[15] The argument is not that certain individuals or groups always understand themselves as "against the law." These understandings are both dynamic and contingent, but even so, they have real consequences in specific situations.

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to make legal claims using the tutela procedure less often. In the outcome expectation (2), a means-end calculation drives decisions about whether or not to air grievances in the courts. Importantly, the focus here is on the way individuals understand the process and expected outcome of legal mobilization, not on "objective" measures of access to the legal system. Claimants must believe that they have a high chance of success or that the process of making the claim will be relatively easy. This calculation might involve, for example, an assessment of whether or not the state seems to be inherently biased against the claimant and whether or not rights are meaningful in real life, and not just on paper. In real terms, then, the expectation is that an association between confidence in the legal system and in propensity to file tutela claims will emerge. Instead, however, it could be that mobilization has assumed a taken-for-granted quality, and individuals simply do not make the assessments implicated in the second expectation; in other words, mobilization becomes what one does, which is the practice-based expectation (3). Here, the expectation is not that claimants will exhibit an unthinking acceptance of the tutela, but instead will suggest that it is appropriate, right, or common sense to file such a claim. The logic underlying this explanation is further detailed below.

Data and Methods

This article draws on three sources of data collected in the three largest cities in Colombia—two sets of interviews and an original survey. One set of interviews was conducted in Bogotá in February and March 2017. With the help of a Colombian research firm, the *Centro Nacional de Consultoría*, respondents were randomly selected within three class categories (lower, middle, and upper). Interviews were conducted in locations chosen by the respondent, usually the respondent's home. Over the course of an hour-long semi-structured interview, respondents were asked to share their views on their neighbors and neighborhoods, on any difficulties they or their family members had in terms of topics ranging from healthcare, housing, education, social security or pensions to minor disputes between neighbors, and, at the end of the interview, on the Colombian legal system.

I conducted the second set of interviews—24 unstructured individual and group interviews with 43 people—in Comuna 14 of Aguablanca, Cali during April and May of 2017. Aguablanca is a marginal district of Cali, comprised of several smaller units called *comunas*. The district is densely populated and is home to approximately 700,000 people. Disproportionately high levels of

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violence and poverty characterize the district. These interviews took place in respondents' homes and more often than not took the form of informal conversations about justice in Aguablanca or in Colombia. A local interlocutor connected me with each interviewee and was present for the majority of these interviews—as such, interviewees were primarily part of her social network and are not necessarily representative of the district as a whole. Frequently, family members, friends, or neighbors of the primary respondent wandered into the room in which we were conducting the interview. At times, some of them would decide to join in.

After transcription, both sets of interviews were organized, coded, and analyzed. I grouped responses by question to facilitate comparisons across gender, class, and location. From there, I created sub-groupings that corresponded to the implications of each of three behavioral expectations outlined in the previous section, looking specifically for patterns of support as well as statements that did not accord with these expectations. I translated illustrative quotations, which appear in the discussion below.

The survey was based on a convenience sample of people waiting in line outside the Palacio de Justicia in Medellín to file a tutela claim in April 2017. As such, they reflect the views of individuals who had already decided to file a legal claim. In total, 310 respondents were surveyed. Importantly, this survey only includes claimants—individuals who had already recognized something in their lives as problematic and who had decided to turn to the legal system to address that problem. These individuals are not necessarily representative of the broader population.

Together these three sources of data offer a far-reaching perspective on how Colombians view the law, their rights, and the legal system, in addition to the times in which they have, in fact, used the courts to make legal claims. By conducting interviews in Aguablanca, I was able to examine how marginality, and the violence and economic difficulties that accompany it, affect both beliefs about the law and legal mobilization. People living in Aguablanca might be more likely to face difficulties accessing their rights and thus have a higher rate of grievances than other communities. On the other hand, people living in Aguablanca may also be more likely to hold negative views on the state and the judiciary due to more frequent experiences with the state's coercive power. The survey allows me to focus in on the experiences of claimants—those individuals who have decided to make legal claims—and the randomly sampled in-depth interviews give me an overview perspective on how individuals of different

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socioeconomic statuses who may or may not have filed a legal claim view these issues. I turn now to an analysis of these data.

Assessing Beliefs and Action

In the following section, I examine the expectations described above, drawing on data from each of these sources. First, however, I make the case that individuals who fall within the samples of interviewees and survey respondents have, in fact, made constitutional rights claims in the courts. Importantly, individuals across all three sources of data reported having used the tutela procedure to claim their constitutional rights. Respondents across class categories in the Bogotá sample said they already had filed a tutela claim, or that someone close to them had. Only one respondent who had used the tutela previously said that he would not in the future. Around 10 percent of respondents said they would not use the tutela procedure, and 13 percent responded that they were unsure. More than three-quarters of respondents said they would—generally adding the condition "if necessary" and generally interpreting the question with respect to a hypothetical health problem (though the question itself offered no such specification). Residents of Aguablanca reported less experience with the tutela than interviewees in the Bogotá sample, though most did state that they would file a tutela claim in the future if need be. Those who said that they had filed tutela claims exclusively had filed with respect to a health rights claim. Of course, all individuals surveyed were planning to file a tutela claim—that was a condition of their selection for the survey. Two-thirds of survey respondents identified themselves as belonging to the lower class, while just about one-third reported middle class status. Only two respondents belonged to the upper-class.[16] Interestingly, just 8 percent of those surveyed were filing a tutela claim for the first time, and the average number of tutelas filed per person was 3.7. About 55 percent of respondents were filing a tutela claim related to a healthcare need, just over one-quarter were filing an information request (*derecho de petición*), and nearly 17 percent were filing to claim victim status or benefits. The use of the tutela procedure as reported by interviewees and survey respondents largely reflects national-level statistics—health claims make up a large percentage of all tutelas filed each year, as do derecho de petición claims. I turn now to a discussion of each of the three behavioral expectations in light of these data.

[16] Following the substantive questions, respondents were asked about the *estrato* that appears on their electric bill. Cut coarsely, estrato 1 and 2 are considered lower class, 3 and 4 middle class, and 5 and 6 upper class.

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Naïve Orientation Expectation

The naïve orientation expectation suggests that individuals who understand themselves as situated "against the law," facing an arbitrary and powerful state institution, will be, relatively speaking, not very likely to turn to the courts to make rights claims. As such, this section begins with an examination of the perspective of residents of the marginal sector of Aguablanca, where the presence of the state has generally been limited to a police presence understood as both coercive and capricious, before moving on to a discussion of the views expressed in the Bogotá interviews.

Across the interviews in Aguablanca—whether with men or women, relatively better or worse off individuals, Afro-Colombians or mestizos—respondents noted that money determines treatment by the state in several senses. For one, money matters insofar as corruption rules. In the words of one respondent, "Corruption is blatant; it's everywhere in the justice system."[17] Several interviewees shared a story about a young man from the neighborhood who had been beaten up by someone from another neighborhood. This young man and his mother filed a legal complaint. The story continues with the second man's family hiring a good lawyer and paying off both the police and the judge. Ultimately, the first young man was cast as the aggressor and threatened with jail time. Instead of finishing the legal process, he fled to the countryside. While I cannot verify the details of these events, this story speaks to the widespread perception that the justice system, from the police to the courts, is unjust, capricious, and driven by money rather than truth or fairness. In another sense, money matters because the legal system is complicated, the public defenders are inadequate, and having a good lawyer will change your outcome. Further, as one respondent held, "The public defenders are thieves, not all of them, but the majority."[18] The perception is that they charge even though they are supposed to represent clients for free. Other lawyers are so costly as to be out of reach for most residents of Aguablanca. Finally, in a third sense, money matters because it confers respect; poor people are simply not respected by state authorities.[19] Here, among residents of Aguablanca, the "against the law" positioning is clear. Yet, as mentioned above, Aguablanca is not characterized by the absence of legal claims, as

[17] (Aguablanca 5). "La corrupción tan verraca que hay. Por todo lado [en el sistema de justicia]."

[18] (Aguablanca 1). "Los abogados del estado… son ladrones, no todos, pero la mayoría."

[19] (Aguablanca 23).

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would make sense given the naïve orientation expectation. Residents routinely file legal claims—though they only discussed the tutela in relation to health, and some stated (inaccurately) that the tutela could only be used to make claims about healthcare.[20]

Interestingly, many of the views espoused by residents of Aguablanca were echoed in the interviews conducted with residents of Bogotá, regardless of class, though the expectation would be that those who are worse off would be more likely to understand themselves as situated "against the law." Almost no one reported a belief close to the "before the law" positioning, instead pointing to wide gaps between law on paper and law as it is applied or to external factors that rendered the legal system unjust. One respondent from the lower class said, "It seems to me that the justice system is something terrible... For example, a person who steals a yogurt serves 4 years, and a person who goes and kills someone else or rapes a girl serves 2 years... I say that is not justice."[21] Similarly, an interviewee from the middle class remarked, "[The application of justice] must be the same for all, not that there is justice for some in one way and for others, another. As they say, 'a los de ruana unas leyes y a los privilegiados otra' [for the poor, some laws, and for the privileged, others]. That should be the same for everyone. There should be one law."[22] An upper-class respondent echoed this perception, also referring to the saying "la ley es para los de ruana." She continued, "The people who have more money have more ways to solve their problems."[23] Here, across class categories, the dominant assessment of the legal system points not to its majesty, but to its fundamental inequity. Still, as noted in the previous section, most interviewees either had filed legal claims themselves or a friend or family member had. These interviews, combined with the Aguablanca interviews, indicate that a simple linkage between one's positioning and expected behavior offers an incomplete story about the relationship between beliefs about law and legal mobilization.

[20] They also file *demandas* or lawsuits related to police conduct and report crimes like theft. The dynamics of these claims are beyond the scope of this project but should be the object of study in future research.

[21] (Bogotá 36). "Me parece que [el sistema de justicia] es algo terrible... Por ejemplo una persona también se roba un yogur y va y paga cuatro años y una persona va y mata a otra o viola una niña y va y paga dos años... digo yo eso no es justicia."

[22] (Bogotá 4). "[La aplicación de la justicia] debe ser igual para todos, no que haya justicia para unos de una forma y para otros de otra. A las personas como dicen a los de ruana unas leyes y a los privilegiados otra. Eso debe ser igual para todos. La ley debe ser una sola."

[23] (Bogotá 34). "La gente que tiene mucho dinero, tiene más posibilidades de solucionar muchas cosas."

Outcome-Based Expectation

The outcome-based expectation holds that individuals rely on means-ends calculations about whether or not to engage in legal mobilization. These calculations involve an assessment of the ease of making claims and the likely effectiveness of doing so. Almost everyone in the Bogotá evaluated the legal system negatively. One lower-class respondent stated simply, "It would be better to say that Colombian law does not exist,"[24] and an upper-class respondent likewise noted, "Justice here in Colombia does not function; there are no laws."[25] Isolating the differences of rights on paper and how the law functions in everyday life, one lower-class interviewee noted that "in some ways, one is sold the image that things have tended to improve [with the Constitution of '91], but one does not see that change,"[26] a view echoed by the upper-class interviewee quoted at the outset of this article. Another lower-class woman further stated, "Realistically, people of few resources have not been the beneficiaries of any constitution,"[27] questioning the idea that law anywhere helps the poor. Yet another lower-class respondent noted that corruption impedes the judiciary from being a useful forum in which to seek justice, perhaps especially for the worst off: "Corruption takes over the whole world... The one who gives the most money is the one who is right. The people who have the least resources are vulnerable, and they are not given justice."[28] Members of the upper-class shared similar views. One reported, "This is how I see it; it is money everywhere. Judges are bought. Magistrates are bought. Prosecutors are bought. Everything is money. There is no justice here!"[29] By and large, assessments of the judiciary's inefficacy do not appear to vary along class lines.

Interviewees in Aguablanca reported similar views on the large gap between rights and laws as they are written in the Constitution and in the codes and how they work in practice. As one respondent described, the major problem facing the legal system

[24] (Bogotá 29). "Mejor dicho la ley Colombiana no existe."

[25] (Bogotá 6). "La justicia acá en Colombia no sirve; no hay leyes."

[26] (Bogotá 11). "En cierto modo a uno le venden la imagen de que tienden a mejorar [con la Constitución del 91] pero uno no ve ese cambio."

[27] (Bogotá 39). "Pues realmente digamos que las personas de bajos recursos no han estado muy beneficiados, digamos que con ninguna constitución."

[28] (Bogotá 13). "La corrupción se lleva a todo el mundo... Al que le entre más dinero es él que tiene la razón. Las personas que tienen menos recursos son vulnerables ante que no se les de justicia."

[29] (Bogotá 50). "Así es como yo lo veo, es dinero por todos lados. Se compran los jueces, se compran los magistrados, se compran los fiscales. Todo es con dinero. ¡Aquí no hay justicia!"

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is that "[t]here is the absence of the application of the laws as they are. Here we have laws, but they are not applied as they are [or as they should be]," and that the same applies to rights.[30] This perception contrasts to that of other residents who tended to state things like, "There is no law," or, "The law does not exist."[31] These views are not necessarily incommensurate, as the former is a statement of objective fact (there are technically laws in Colombia), while the latter offers a subjective, experiential view (residents rarely experience the law outside of delegitimizing factors such as violence and corruption). Another resident explicitly referenced the differences between the constitutional text and everyday life: "It is one thing what the Constitution says and another what happens... the rights, every day they are violated. All of them are violated."[32]

Few respondents in Bogotá gave any suggestion that they viewed their constitutional rights as effective tools in and of themselves. Instead, interviewees appeared to have more confidence in the idea that rights could have real consequences in their everyday lives only through the use of the tutela procedure. One respondent from the middle class, for example, pointed to the key role of the tutela in transforming what is written in the Constitution into substance: "I think it is important to know what [the tutela] is, to know that it is a right that is in the Constitution that, in fact, allows us to fight for the rights we all have. The tutela allows us to assert what is constitutionally written."[33] An upper-class respondent similarly reported that he viewed the tutela as "an excellent mechanism to access and assert my rights."[34] Across classes, interviewees shared views that suggested skepticism about the value of their rights, especially in the absence of the tutela.

Survey respondents reported very similar views. Nearly 70 percent stated that they were unconfident or very unconfident that the judiciary treated all citizens equally. Only 19 out of 310 respondents said there were confident in the judiciary, and zero respondents reported that they were very confident. Thus,

[30] (Aguablanca 6). "Falta aplicar las leyes como son. Aquí hay leyes, pero no se aplican como son."

[31] (Various Aguablanca interviews). "No hay ley. La ley no existe."

[32] (Aguablanca 5). "Una cosa lo que dice la Constitución y otra cosa lo que hacen... los derechos, todos los días los violan. Todos los violan."

[33] (Bogotá 35). "Creo que es importante saber lo que es [la acción de tutela], conocer que es un derecho que está en la Constitución, que pues que de hecho nos permite luchar por los derechos que todos tenemos. Una acción de tutela nos permite hacer valer lo que constitucionalmente está escrito."

[34] (Bogotá 32). "[La acción de tutela es] un excelente mecanismo para poder acceder y hacer valer mis derechos."

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respondents reported little confidence in encountering a fair judiciary. Twenty percent of respondents pointed to the view that the state should protect their rights as the primary reason for filing a tutela claim, which could be interpreted as minimal support for the idea that their constitutional rights are "real" or claimable. The nature of the survey does not allow for the same level of nuance that emerges in responses to open-ended interview questions; however, the survey does yield evidence that the evaluations of the general population in questions about the judicial system carry through to individuals who use the legal system. Here, claimants do not appear to be fundamentally different from nonclaimants in their assessments of the state and the judiciary.

In this context of general lack of faith in the state, the judiciary, and rights, perhaps citizens view the tutela as distinct from the rest of the state's legal apparatus, as an effective tool in an ineffective system. During a group interview in Aguablanca, members of one family (living in extreme poverty, even for Aguablanca) explained, "We have filed many legal claims, and they do not care [or respond]," no matter what type of claim, whether to obtain access to government services or to report the excessive use of force by the police.[35] One woman described the process of filing a tutela claim for the right to health as follows:

> You do not need a lawyer, but when you go to the Palace of Justice, there is a man in front who does everything for 10.000 or 15.000 COP [$3–5 US] – a processor. And you say, "Good morning, what happened is… [I would like] to place a tutela," and the man processes it for you. You have to have a copy of your ID and wait in line… and after a few days, you get the response. If you do not pay a processor here, nothing happens.[36]

Ultimately, the judge found in favor of this woman's right to health claim; however, in the decision, he declared that she should have access to diapers and creams, not the 24-hour nurse she had requested. In Aguablanca, citizens rarely, if ever, reported believing that the tutela was effective in protecting their rights.

[35] (Aguablanca 1). "Ponemos una cantidad de demandas y ellos no les importa."

[36] (Aguablanca 6). "No necesitas un abogado, pero vas al frente del Palacio de Justicia y hay un señor en frente que hace todo por 10 o 15 mil – un tramitador. Y tú dices buenas señor, lo que pasa es… para colocar una tutela y el señor tramite. [Tienes que tener una] fotocopia de la cédula y [esperar en] la fila… y después unos días, la respuesta. Si usted no paga un tramitador aquí, no hacen nada."

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In the Bogotá sample, however, views on the tutela procedure were mixed. One respondent of the middle class described that the tutela the following way:

> [The tutela] gave the ordinary citizen the possibility to enforce their rights or show difficulties in the fulfillment of some fundamental right… Before the tutela, there was nothing one could do. It was necessary to wait for a politician to be elected, and if he cared about that community, wait for him to intervene in some way. Not now. Now, an individual, a single person, can file a complaint with the tutela.[37]

An interviewee from the upper class similarly considered that "[The tutela] helps, it is a tool that makes those responsible respond to what one is asking for."[38] Further, a middle class respondent held, "[The tutela] is the only thing that works—we use it because it works."[39] On the other hand, some respondents critiqued the way the tutela procedure functions in practice. As one member of the lower class noted, "The tutela is good, but what happens is that they do not comply… the people do not comply."[40] Others argued that too many tutelas have been filed, that judges are overburdened by tutelas and that sometimes people abuse the procedure. An interviewee from the lower class noted, "Lately, the courts are so full of tutelas… Already [the tutela] lost its efficiency."[41] One member of the upper class spoke specifically about the overuse of the tutela, stating, "People abuse the tutela a lot and it takes up a lot of time to resolve [the tutela claims]," stressing an already overtaxed legal system.[42] Finally, some respondents simply held negative views on the tutela. As one lower-class respondent remarked, "[The idea of the tutela is] to assert our rights, but that does not work… that is a lie, it does nothing for

[37] (Bogotá 9). "…le dio la posibilidad al ciudadano común de hacer cumplir o de mostrar que hay dificultades en el cumplimiento de algún derecho fundamental… antes de la acción de tutela no había nada que hacer, tocaba esperar a que un político se eligiera y que le importara esa comunidad para que interviniera de alguna manera, ahora no. Ahora un individuo, una sola persona, con una acción de tutela puede poner una denuncia."

[38] (Bogotá 6). "[La tutela] le ayuda a uno, es una herramienta que hace que los responsables de lo que uno está tutelando le respondan por lo que uno está pidiendo."

[39] (Bogotá 44). "[La tutela] es lo único que funciona – lo usamos porque es lo que funciona."

[40] (Bogotá 13). "[La acción de tutela es] buena, [pero] lo que pasa es que no se cumplen… la gente no cumple."

[41] (Bogotá 1). "Últimamente como que las acciones tutela como los juzgados están tan llenos de ella… Ya perdió su eficiencia."

[42] (Bogotá 33). "La gente abusa mucho y eso quita mucho tiempo también para poder resolver las cosas."

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you."[43] Similarly, a woman from the middle class noted that filing a tutela "seems to me a waste of time and above all fills the courts... the perception I have is that it is of no use."[44] Thus, while respondents in Bogotá generally agreed that the justice system as a whole leaves much to be desired, perspectives on the effectiveness of the tutela procedure were more varied.

Surprisingly, the ease of filing a tutela procedure does not appear to have impacted the decisions of respondents whether or not to make a legal claim. When asked to describe the process of filing a tutela claim, why they filed a tutela claim—if they had—and if they would file a tutela claim in the future, no respondents mentioned that the process was easy, nor did anyone volunteer the idea that one should file the tutela in the face of rights violations. In fact, several respondents reported having to wait in long lines to file their claims and reported dissatisfaction with the length of time that passed between the presentation of the claim and the resolution of their case. These views resonate with those reported in Aguablanca. When interviewees did talk about the process of filing a tutela, they spoke of the lines one must wait in and the costs one must pay (e.g., to the "processor" described above). While the tutela process in this view is not necessarily something that is difficult to navigate, it does require time and financial resources, rendering it somewhat less accessible for citizens. Even among survey respondents—who had all committed to the tutela process at the time of the survey—only 32 percent pointed to the relative ease as the primary reason they chose to file their claim. About one-third of respondents envisioned a positive outcome resulting from their tutela claim, and around one-third offered the view that the tutela is the best tool to address the problem at hand. Nearly half of respondents, on the other hand, thought a favorable outcome was unlikely or very unlikely. Importantly, the best tool is not necessarily a good tool—it may be the only tool or the best of a set of sub-par options. This response simply means that relative to all other options, the tutela is better. Here, across all three groups, concerns about ease and effectiveness of the tutela appeared determinative only for a small portion of respondents.

Overall, neither set of interviewees nor the survey respondents reported confidence in the state or the judiciary. Some suggested that they thought the tutela would effectively allow them to claim their rights, though others reported skepticism about the

[43] (Bogotá 29). "[La idea de la tutela es] hacer valer nuestros derechos, pero eso para que, eso nunca sirve para nada... eso es mentira, eso no hace nada por uno."

[44] (Bogotá 18). "Me parece una pérdida de tiempo y un desgaste y sobre todo llenar más allá esos juzgados... la percepción que yo tengo es que no sirve para nada."

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utility of the tutela. Similarly, some respondents argued that the tutela was not difficult to use and pointed to that ease as a reason to file a tutela claim, while others argued that the tutela was more difficult to use that they had expected or that the ease of use was not a primary determinant in whether or not to file a claim. This discussion should not be taken to mean that no one uses means-ends calculations when considering a tutela claim, but it does offer reason to question the utility of an outcome-based framework for describing broad patterns of behavior in this case.

Practice-Based Expectation

Finally, the practice-based explanation of this seeming disconnect between citizen use of the tutela procedure and their reported beliefs about the state and the legal system would suggest that a logic of practice is at play, where citizens, regardless of the costs or consequences of doing so, file legal claims, simply because that is what one does, or because that is what is understood as appropriate to do. In defining practice theory, Neumann (2002: 629) explains that practices are "incorporated and material patterns of action that are organized around the common, implicit understandings of the actors." The thought process is not one of careful deliberation, of weighing the expected consequences of option against another, but instead of common sense.[45] Here, filing a tutela could be understood as a practice or as an "appropriate" course of action. Evidence in support of this explanation would include statements such as "It's the right thing to do," or "It's what we do."

An example of this perspective is evident in one in-depth interview with an upper-class resident of Bogotá. The interviewee noted that "today, the way to resolve problems is through the tutela. Nowadays, it is used for health issues, but you can use it for any right that you feel is being violated."[46] This statement could be read as support for the idea that filing tutelas is simply what one does, especially in the realm of health, thus following the logic of practice. However, given its reference to "the way to resolve problems," it could also be read as following outcomes-

[45] Importantly, however, as Schmidt (2014: 819) notes, habits—in a pragmatist theory of practice—are not "purely unreflective modes of thought and individual (nonsocial) action." Schmidt clarifies that habits may be considered, in Dewey's terms, as "standing predilections and aversions." In this sense, habits may play a similar role to the role I describe with respect to beliefs above. For an alternate view on the extent to which practices are reflexive or representational in nature, see Pouliot (2008).

[46] (Bogotá 20). "Hoy en día la manera de resolver los problemas es a través de la tutela, digamos que hoy en día se utiliza todo los temas de salud pero ya tú la puedes poner para cualquier cosa algún derecho que tu sientas que se está vulnerando lo puedes poner o algún derecho."

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based reasoning. Further, among all interview and survey respondents, there were no other responses that indicated support for the logic of practice explanation.

Even so, the tutela appears to become taken-for-granted as part of the terrain of Colombian life. It is ubiquitous, appearing in news stories, op-eds, and podcasts, as well as in colloquial conversation (in verb form, *entutelar*). It could be, however, that the ubiquity of the tutela at the discursive level has not translated evenly or concretely into thinking about how individuals claim their rights in real terms. At any rate, neither the interviews nor the survey results offer support for the logic of practice explanation for mobilization.

So What Explains Mobilization and Why Does It Matter?

All three sources of data offer perspectives on the legal system and rights that do not easily harmonize with high levels of use of the legal system to make rights claims. When asked why the tutela is used so frequently, judges and lawyers repeatedly report that "everyone knows the tutela" and that citizens see the tutela "as the solution for everything," or "today, with the tutela, the judge is in your hands," yet when asked directly, citizens rarely if ever report these views. More commonly, people reported filing tutelas—especially those claiming the right to health—not because they have faith that it will work or that it is simply what one does, but because that is what one *has to do* given the reality of limited options. In the words of one respondent from the middle class, "Unfortunately, in Colombia, in order to access health services, you have to file tutelas,"[47] and a woman from Aguablanca noted, "Everything [in healthcare] happens through the tutela."[48] Similarly, an upper-class resident of Bogotá reported:

> The only way to claim that right [to health] so that they listen is through the tutela. To me, it is sad that we have come to this, because health should be an issue that is mandatory, but as it is not, we have to resort to this, and not everyone gets a satisfactory answer [or result].[49]

[47] (Bogotá 9). "Desafortunadamente en Colombia para acceder a algunos servicios de salud hay que poner tutelas."

[48] (Aguablanca 6). "Todo funciona a medida de tutelas."

[49] (Bogotá 46). "La única manera de reclamar ese derecho [a la salud] y que los oigan es a través de la tutela. Me parece que pues tristemente hay que llegar a eso porque el tema de la salud debería ser un tema que es de carácter obligatorio pero como no es así entonces hay que recurrir y no todo el mundo obtiene una respuesta satisfactoria."

In this sense, then, the tutela is understood as the effective entry-point into the healthcare system.[50] Tutelas may or may not be effectual, but no other options exist, except for doing nothing. If the problem is deemed to be important enough, doing nothing may not be considered a viable option.[51] In other words, the tutela might be the only potential solution for anything. Accordingly, even if the judiciary is biased and even if the procedure might not work, pursuing any other strategy is likely to be futile.[52] The options are to file a tutela or simply continue to live with the problem; there is no other alternative.[53] Legal consciousness informs the response set available to citizens. Beliefs about law and the state lead citizens to be skeptical of the likelihood that the tutela procedure will lead to a positive outcome, but these beliefs also lead them to view other options as less favorable. Even those who understand themselves to be situated "against the law," subject to arbitrary decisions on the part of judges or other actors, thus, will engage in legal mobilization through the tutela.[54] This finding largely corresponds with Gallagher's work on "informed disenchantment" (2006). Individuals continue to make legal claims, despite less-than-fully-satisfactory

[50] As might be expected, the Constitutional Court has ruled that the tutela cannot be a required part of the process of obtaining healthcare (see C-950/07). However, this ruling does not mean that citizens do not perceive such a role for the tutela.

[51] What differentiates those who do not act from those who do is an open question. Generally speaking, mobilization—both social and legal—occurs at rates lower than might be warranted by possible grievances or "justiciable events" (McCarthy and Zald 1977; Genn 1999).

[52] In some ways, this conclusion meshes with Hendley's (2012) findings on the use of Russian courts. She argues that a combination of need and capacity explain the continued use of courts despite professed distrust. In the Colombian case, however, capacity of the claimant appears to be less relevant, as a large percentage of lower class individuals file tutelas, rather than use of the courts being the domain of wealthy individuals or firms. This may be the result in part of the relatively low costs associated with the tutela procedure.

[53] The key difference between my account and a practice- or habit-based account is that while it may be common sense to file a tutela to gain access to healthcare, the justification offered goes beyond that. Filing a tutela is not only understood as common sense; it is understood the only option. Filing is not simply what one does, but instead it is what one has to do.

[54] This account has focused on the views of (potential) claimants, not on service providers or judges. I make no claims as to the accuracy of the views held by those interviewed. Whether these views are "true" or "right," they have an impact on the way citizens interact with the world around them. Interestingly, one former lawyer for a large health clinic reports that patients often try to game the system, engaging in dangerous behaviors in the clinic—such as submerging recently repaired wounds in the toilet to try to contract an infection—that might allow them to gain *pensión de invalidez* status and therefore receive more resources from the state. These patients might fit better the "with the law" ideal type, using the tutela strategically to acquire something, like a state pension. However, this view was not expressed by claimants or potential claimants themselves and thus is not part of the main analysis.

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experiences with the courts and despite less-than-positive expectations for future interactions with the courts.

How exactly citizens learn about the tutela might have a significant impact on their propensity to use the mechanism to make claims. When asked how they learned about the tutela procedure, nearly half of the survey respondents pointed to a lawyer as the source of their information. Twenty-one percent said they learned from civil society or an NGO, while 16 percent said friends or family. Ten percent recalled learning about the tutela in school. One man remembered seeing a program on television that explained what the tutela was. Even in the case that a lawyer was the primary source of information, the question of why legal cynics would turn to the legal system for redress remains. Some individuals reported that in the case of healthcare, their insurance companies directed them to file tutelas (after having denied coverage for a needed medication or procedure). Overall, then, there appear to be several pathways through which citizens learn about the tutela, and the way in which citizens learn about the tutela does not appear to be associated with decisions about whether or not to use it. The "no other alternative" explanation is consistent both with these various sources of knowledge about the mechanism and with the observed aggregate negative evaluations of the legal system, though these pathways should be explored in more detail in future research.

Regardless of relative marginality, class, or claimant/nonclaimant status, Colombian citizens report strikingly little confidence in judicial institutions, despite continued use of legal tools to make rights claims. The case of legal mobilization in Colombia has offered little support for the idea that those individuals who find themselves situated "against the law" will not engage in legal claims-making. Respondents across samples and across socioeconomic statuses expressed the view that Colombian law is capricious and unfair, yet individuals in all groups filed legal claims. Outcomes-based calculations based on the ease and effectiveness of filing legal claims may influence the decisions of some individuals, but they do not seem to account for the broad patterns of claims-making identified here. Finally, though the use of the tutela has become something of an accepted part of the process of accessing healthcare for many Colombians, using the tutela is understood not so much what one does (as suggested by the practice-based explanation), but what one has to do, the only option one has—and it is understood as an option that may or may not be effective. Importantly, the tutela is not, strictly speaking, the only route through which citizens can pursue access to their rights. In some cases, individuals or groups could file other kinds of legal claims, they could pressure their elected

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representatives directly, they could protest, or take any number of more specific actions. Yet, in this context, the tutela is understood to be the only action one can take.

These findings should not be taken to mean that legal consciousness does not impact legal mobilization. Rather, they show that legal consciousness affects mobilization in complex ways. The beliefs and understandings actors have about their rights, the state, and the legal system encourage the use of the tutela, because citizens come to understand their rights through the lens of the tutela, viewing the tutela as their only possible option for accessing something they want, whether that thing is the response to a petition request or access to a specific medication or formal recognition by the state.[55]

The consequences of this emergent understanding that the tutela is the only means through which Colombians can realize their rights (or simply access the goods and services they want or need) are substantial. Perhaps most significant in this case is the filtering of social and political demands into the legal sphere. As Silbey (2005: 325) notes, "the seemingly individualized, disparate decisions of legal actors cumulate to reflect the wider array of social forces more than the facts of specific incidents." Though the judicialization of politics has been a global process, it has taken on a unique form and depth in Colombia through the ability—and apparent necessity—of citizens to file individual rights claims. Nowhere is this more apparent than in the realm of healthcare provision, in large part due to the understanding that one must file a tutela claim to even access the healthcare system. Shifts toward judicialization change the nature of obligation between citizen and state. Specifically, citizens have access to the rights promised to them in the constitution not as the result of implemented public policy or their ability to demand accountability from their elected officials, but because of their ability to file legal claims.

Importantly, even with the tutela, the realization of rights is not uniform. In fact, class appears to play a significant role. Uprimny and Durán (2014: 41) find that middle- and upper-class citizens have generally benefitted more from the judicial protection of health through the tutela procedure, because they are better able to access the legal system than the impoverished and marginalized, despite the 1991 constitutional changes meant to

[55] It might be most accurate to say that while these things are rights in accordance with the way the Constitutional Court has interpreted constitutional provisions, the citizens included in this study generally did not describe them as rights. Instead, citizens referred to something they wanted or needed that could be procured (possibly) through the use of the tutela procedure.

improve conditions of access.[56] Landau (2014) similarly concludes that the most disadvantaged citizens have not benefitted from these legal changes to the degree than their wealthier counterparts have. These initial studies affirm insights from broader law and society literature on how material and social resources influence the ability of citizens to realize their rights (Galanter 1974). All Colombians may have the right to claim their rights but not everyone can, in fact, claim their rights, and not everyone has the right to an implemented solution to their rights claim in practice.

The long-term significance of the existence of the tutela procedure and the persistent lack of confidence in the state remain to be seen. At this point, more than 25 years after the constitutional reform, the impact of what may have been a good faith attempt to expand citizenship by virtue of broader rights guarantees appears to be a reiteration of the same old story, that all citizens are equal, but some are more equal; that everyone has rights, but some have a better ability to realize their rights. This is not to say that the 1991 Constitution and the tutela have had no effect on the lived reality of citizens; such a conclusion is undoubtedly false. The claim here is more limited, that the implementation of the 1991 Constitution has not resulted in substantive citizenship gains for all. Just as the existence of the tutela procedure should not be taken to mean that a thick or robust citizenship has been realized, continued use of the tutela should not be taken to mean uncritical faith in either the tutela itself or the legal system more generally. Instead, the persistent use of the tutela indicates the paucity of other options. Citizens use the tutela because there is no other alternative.

Conclusion

This article has explored the relationship between legal consciousness and legal mobilization among everyday Colombian citizens, drawing on three sources of originally collected data. Across the three largest cities in Colombia, regardless of class or relative marginality, citizens report a profound lack of faith in the judiciary's ability or willingness to provide justice and in the broader state's ability or willingness to protect their rights. Yet, every year in large numbers, citizens turn to the court to make rights claims, requesting that judges call on state and private entities to change their behavior. In Colombia, as is the case elsewhere, citizens

[56] Notably, even though *judicial* protections of healthcare seem to be unequal, significant reforms to the healthcare system in 1993 resulted in the expansion of coverage from about 25 percent of the population in 1995 to 90 percent of the population in 2011 (Lamprea 2015: 61).

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continue to make claims through the legal system, participating in the construction of "hegemonic legal consciousness" (Silbey 2005: 349), where formal legal institutions maintain functional legitimacy "despite repeated evidence of law's failure to live up to its own ideals" (Hull 2016: 553). This disconnect presents an interesting puzzle—if citizens have so little trust in the courts, why do they turn to them with such frequency?

The argument advanced here is that the beliefs that citizens hold about the state, the legal system, and their rights—developed through personal experiences and on the basis of word of mouth—condition them to view the *acción de tutela* as the one possible way to resolve their problems, especially for—but not limited to—issues related to health. Though citizens do not necessarily see the judiciary as an ally or the tutela as an easy and effective tool, every other option is less promising; there is no other alternative to the tutela. Some individuals are what we might call "true believers," professing full faith in the tutela's transformative potential in the country, while others view the tutela procedure negatively, as a waste of time. Overall, however, claimants seem to be largely ambivalent, employing the tutela because it is the best option of a limited choice set. This conclusion runs contrary to declarations made by legal elites and media outlets, which tend to report exuberant and even overuse of the tutela by everyday citizens.

This study has introduced empirical evidence of the deep skepticism with which Colombian citizens view the state, especially with respect to the state's ability to provide justice and protect constitutional rights. The high frequency of use of legal procedures, especially the tutela, obscures this profound distrust in state institutions. Examining legal mobilization in conjunction with legal consciousness allows for a fuller understanding of the dynamics at play. Though it may be tempting to dismiss some of this distrust as citizens simply misunderstanding the legal process—for example, getting caught up in rumors of corruption or not recognizing that delays often result from the protection of the rights of both those bringing cases before the courts and defendants—these findings should be taken on their own terms. This is how Colombian citizens across socioeconomic statuses from three major cities report their views on the state, the legal system, and their rights.

Multiple agendas for future research follow from this study. First, this study focused on the beliefs and actions of citizens located in major cities. The barriers to accessing the judiciary are much higher, on average, for individuals located in rural areas than for those living in cities. Further, citizens living in the countryside may have drastically different experiences with the state

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than their fellow citizens from urban areas. How does geography affect both legal consciousness and legal mobilization? Second, this study focused on individual decisions regarding whether or not to make claims in the courts. Future research ought to compare how this individual mobilization relates to collective action, specifically legal mobilization by social movements. Third, subsequent studies ought to examine in more detail the diffusion of information about legal mechanisms and institutions, specifically considering how different people come to learn about the tutela procedure, and how or if the manner or context in which potential claimants learn about the procedure influences their use of it. Fourth, future research should examine the Colombian case vis-à-vis similar phenomena elsewhere in the Latin American region, where citizens across countries frequently have turned to procedures such as the amparo to advance rights claims, in order to probe the extent to which the "there is no other alternative" explanation travels across contexts. Finally, in keeping with the investigation of policy feedback (Schattschneider 1935), future research should explore how views change over time, specifically how experiences using legal mechanisms like the tutela to make rights affects citizens' perceptions of the state.

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