APPLICATION FOR FORD-LASA SPECIAL PROJECT FUNDING

Judicialization of Politics and Legal Culture in Latin America: An International Research Collaborative

I. Introduction to the Project

The expansion of democracy throughout Latin America over the last 20 years has dramatically altered the legal landscape. Courts across the region have been granted or have claimed for themselves greater constitutional powers, and several high courts have begun to play leading roles in key political struggles. At the level of legal culture, democracy has brought with it a series of new expectations about the possibilities of the rule of law. Law, and courts in particular, have come to be regarded as the main guardians of the rights and freedoms necessary for economic growth (De Soto 1998, Castelar Pinheiro 2002). At the same time, leftist groups have shed their traditional view of courts as obstacles to progress and begun viewing courts as strategic allies towards social and political reform (Couso 2006). Indeed, during the region’s most recent economic crisis, citizens in Argentina and Colombia alike used courts as the stage for political resistance (Smulovitz 2005).

This growing involvement of judiciaries in politics and policy-making, a trend called the judicialization of politics, is controversial. Proponents claim that the judicialization of politics can lead to greater political participation (Stone Sweet 2000), and that more powerful judiciaries will help to balance political power in a region traditionally dominated by executives not held accountable for their actions (Peruzzotti and Smulovitz 2006). Judicialization can thus help deepen democracy and entrench the rule of law (Ginberg 2003, Ely 1980). Critics counter that the judicialization of politics may amount to nothing more than a change in the arena where crude politics takes place: The other face of the judicialization of politics may well be the politicization of justice (Santos 2002:330-1), which would undermine the rule of law (Atria 2003).

Our international research explores these questions by bringing together leading and emerging scholars of Latin American courts and law to conduct research and exchange ideas on the region’s fast-changing legal landscape. The initial focus of our collaborative project will be the role that legal culture plays in enhancing or limiting the judicialization of politics in its positive role of promoting democracy and social justice.1 Thus, we will produce a series of paper exploring the changing notions of law that accompany, cause, and are a consequence of this incipient judicialization of politics, and

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1 By “legal culture” we mean the attitudes that the population at large and relevant legal actors (judges, jurists and lawyers) have toward both law and the legal process (Friedman & Scheiber, 1994).
exploring the link between these changes and positive political change, such as greater political participation. We will meet three times over the next year to discuss participants’ ongoing research projects exploring these themes, and aim to publish our findings in an edited volume over the following year (2007-2008).

II. Judicialization and Hemispheric Collaboration

While the region’s judiciaries have received much attention from policymakers and scholars in recent years, collaborative hemispheric research has the potential to make a distinct and much-needed contribution.

Multi-lateral organs like USAID, the World Bank, and the Inter-American Development Bank, have become involved in what has been known as the “rule of law project”, emphasizing institution-building as an integral part of economic development (Sarles 2001, Dakolias 1995). This trend has been especially important in Latin America, where these institutions have spent millions of dollars during the last four decades in promoting judicial reform (Domingo & Sieder 2001). These projects, however, have tended to adopt a narrow economic approach, regarding courts mainly as a means to secure property rights, investment, and economic development. But this view of judicial power is not sufficiently responsive to the variety of needs and expectations of the people of these countries (Santos 2002), and may even lead to greater democratic decay (Prillaman 2000).

Analyses of judicial power that come from within the region rather than from the world of multi-lateral institutions are usually single-case studies that focus on specific countries (Helmke 2004, Hilbink 2001), or paired comparisons lacking a comprehensive vision of the region (Iaryczower et al 2006). There have been a few attempts to take on a regional perspective (Sieder et al 2005). But these studies have not tried to build more general theories about common patterns of transformation by systematically comparing the region’s judiciaries. Such a regional perspective is particularly promising for theory-building since the Latin American countries share a legal tradition as well as the experience of democratization and, in many cases, de-regulation.

Finally, scholars have neglected the link between judicialization and legal culture in Latin America, perhaps due to the relative lack of communication between those scholars – mainly from law and sociology – who have traditionally focused on Latin American law and society, and those – mainly from the political science field – who have been engaged in evaluating the judicialization of politics in the region. The law and society approach tends to emphasize how law is received and understood outside legal institutions, adding a much-needed bottom-up perspective to the study of law and courts.

By gathering scholars of differing disciplinary backgrounds from across the region into a long-term research collaborative, we aim to fill these three gaps in the literature. We have gathered scholars who study law from a wide variety of perspectives, and not just the narrow economic perspective held by Washington-based reformers. Further, we include scholars working in and “on” a variety of Latin America countries. This should allow the project to have a truly regional scope. Finally, we have chosen scholars from two distinct fields which have so far been isolated from each other: that branch of political science which concerns itself with the ‘judicialization of politics,’ and
III. Working Plan and Request for Funds

The project, which has already received partial funding, includes 14 scholars of Latin American law, some based in the United States and Europe, but most based in Latin America (see below). Our aspiration is to publish the resulting papers together as a book or in an academic journal over the following year (2007-2008). Towards that goal, we have planned three workshops over the next year (July 2006-July 2007). It is for the third workshop that we request funding from FORD-LASA.

The first workshop will take place this July in Baltimore during the annual meeting of the Law and Society Association (LSA). At this meeting, four scholars will present their paper proposals. We will also establish a working method and a chronogram. Travel and boarding for the scholars has been funded by LSA and by the Center for the Study of Law and Society, at U.C. Berkeley.

The second workshop will take place in November at the University of Wisconsin, Madison (U.W.). In this workshop the participants will expose and discuss 10 papers-in-progress, emphasizing how they grow from and contribute to our driving questions. Specifically, we will address the conceptual and methodological challenges, aspiring to arrive at common understandings of key concepts such as “legal culture” and “the judicialization of politics.” We also hope to begin developing shared hypotheses about the relationship of legal culture and the judicialization of politics in the region. This method will allow academics from different backgrounds and using different approaches to write papers that “talk to each other,” together yielding a deeper knowledge about the relation of legal cultures and the judicialization of politics in Latin America. Travel and boarding for 10 scholars has been funded by the U.W. Law School and the Latin American, Caribbean and Iberian Studies Program.

The third meeting will take place at the 2007 LSA conference, to be held in Berlin, Germany. While the first two group meetings will be devoted to the conceptual and methodological aspects of the project, the third will focus on the substantial findings of each of the scholars, and their theoretical and policy implications. From these discussions, we will elaborate our shared conclusions and emerging theories as the final step before the publication of an edited volume on judicialization and legal culture in Latin America. At this meeting, the LSA will provide mentoring for the editing and publishing process. (They have also promised other perks, such as special mention in the meeting programme.)

Thus, we request funds for travel and board for the summer 2007 workshop. We estimate that we will require US$1,400 per scholar, and request US $11,200 to fund eight scholars who will be traveling from Latin America.
IV. The Participants

The following scholars have confirmed their participation in the International Research Collaborative:

Organizers:

Javier Couso, Professor of Law and Politics, and former director of the Center of Socio-Legal Research, Universidad Diego Portales, Santiago; 2006 Tinker Visiting Distinguished Professor, University of Wisconsin, Madison

Alexandra Huneeus, Fellow, Center for Democracy, Development and the Rule of Law, Stanford University

Pablo Rueda, LLB, Graduate Student, Jurisprudence & Social Policy Department, University of California, Berkeley

Other Participants:

Catalina Smulovitz, Director, Departamento de Ciencia Política y Estudios Internacionales, Universidad Torcuato Di Tella

María Inés Bergoglio, Doctora en Ciencia Política y Relaciones Internacionales Centro de Investigaciones Jurídicas y Sociales, Universidad Nacional de Córdoba, Argentina.

Martín Federico Bohmer, Dean of Facultad de Derecho de la Universidad de Palermo, Argentina.

Pilar Domingo, Researcher, Instituto de Estudios de Iberoamerica, Universidad de Salamanca

Hector Fix-Fierro, Researcher, Instituto de Investigaciones Jurídicas of the National Autonomous University of Mexico (UNAM).

Mauricio García-Villegas, Professor Universidad Nacional de Colombia, Law School, Research Director Centro de Estudios de Derecho, Justicia y Sociedad.

Leigh Peyne, Professor of Political Science, University of Madison, Wisconsin

Rogelio Pérez-Perdomo, Dean of Universidad Metropolitana, Caracas, Venezuela

Catalina Smulovitz, Director, Departamento de Ciencia Política y Estudios Internacionales, Universidad Torcuato Di Tella
Rachel Sieder, Senior Lecturer in Politics at the Institute for the Study of the Americas, School of Advanced Studies, University of London

Boaventura de Sousa Santos, Professor, University of Coimbra School of Economics, Portugal; Distinguished Scholar, University of Wisconsin – Madison, Law School

Rodrigo Uprimny, Professor Universidad Nacional de Colombia Law School; Director, Centro de Estudios de Derecho, Justicia y Sociedad

References:


Domingo, Pilar and Rachel Sieder (eds.). Rule of Law in Latin America: The International Promotion of Judicial Reform


Santos, Boaventura de Sousa Toward a New Legal Common Sense, (2002).

