

# JUDICIAL POWER IN LATIN AMERICA

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- Cultures of Legality: Judicialization and Political Activism in Latin America.** Edited by Javier A. Couso, Alexandra Huneeus, and Rachel Sieder. New York: Cambridge University Press, 2010. Pp. vii + 287. \$85.00 cloth. ISBN: 9780521767231.
- Courts in Latin America.** Edited by Gretchen Helmke and Julio Ríos-Figueroa. New York: Cambridge University Press, 2011. Pp. x + 342. \$99.00 cloth. ISBN: 9781107001091.
- High Courts and Economic Governance in Argentina and Brazil.** By Diana Kapiszewski. New York: Cambridge University Press, 2012. Pp. v + 289. \$99.00 cloth. ISBN: 9781107008281.
- Judicial Power and Strategic Communication in Mexico.** By Jeffrey K. Staton. New York: Cambridge University Press, 2010. Pp. xiv + 221. \$75.00 cloth. ISBN: 9780521195218.
- The Making of Law: The Supreme Court and Labor Legislation in Mexico, 1875–1931.** By William J. Suarez-Potts. Stanford, CA: Stanford University Press, 2012. Pp. ix + 348. \$60.00 cloth. ISBN: 9780804775519.

Political scientists working in the field of public law tend to organize phenomena into four main analytic categories: (1) institution building or empowerment; (2) activation of these institutions, once empowered; (3) decision making within these institutions; and (4) the broader social impact or effect of these decisions. The related analytic concepts and arguments extend to other legal institutions, but courts dominate as objects of inquiry, resulting in a literature that emphasizes court empowerment, court activation, judicial decision making, and judicial impact. Many disciplines conduct research in these areas and approach them differently; sociologists, for instance, might reclassify court activation research as accounts of legal mobilization. The interdisciplinary work that falls under the umbrella of “law and society” frequently examines how law operates in practice or in action, analyzing how informal, social, political, or economic factors shape legal institutions, behavior, and social change.

Court empowerment covers the process of expanding the judiciary’s ability to hear cases and shape policy. Empowerment can include expanding the range of types of cases a court can hear (jurisdiction); the range of actors that can reach the court as litigants (standing), among other attributes of justiciability (that is, whether a case or issue is able to reach and be decided by the courts); and also the effects of a decision. Empowering courts can also mean making courts more independent from other relevant actors, so that courts are not beholden to other

interests. Here, studies of court empowerment may focus on mechanisms of judicial selection, retention, promotion, discipline, or dismissal, along with judicial tenure.<sup>1</sup>

Court activation examines how courts, once empowered, are triggered to decide cases. As noted above, laws regarding standing or jurisdiction can narrow or broaden who is able to activate courts, and in some cases judges themselves may have the power to initiate investigations or attract cases. Beyond formal, de jure rules governing how accessible courts are and who is allowed or empowered to activate courts, existing research emphasizes a variety of de facto material and nonmaterial factors that shape whether actors are able, in practice, to trigger courts.<sup>2</sup>

Research on decision making examines how and why judges vote on issues or decide cases, either individually or collectively as collegial bodies. Various factors are leveraged to explain decisions but two approaches dominate: the attitudinal or ideological model, which anticipates that judges' political preferences drive decisions,<sup>3</sup> and the strategic model, which anticipates that judges have policy preferences but that they pursue these preferences while also considering constraints imposed by other actors, institutions, and contextual circumstances.<sup>4</sup>

Last, once decisions are rendered, judicial impact research examines the aftermath of those decisions. Do elected officials comply with or resist the ruling? Might they even retaliate, seeking to curb the power of the court, or even impeach judges or dismantle judicial institutions? This area of research is underdeveloped in comparison to the previous three. Notable contributions in the reviewed works include the entries by Andrea Castagnola and Aníbal Pérez-Liñán, and by Gretchen Helmke and Jeffrey K. Staton, both in *Courts in Latin America*, as well as Diana Kapiszewski on retaliation and compliance patterns in Argentina and Brazil, in *High Courts and Economic Governance*.

The concept of judicial power operates across all four areas and thus provides a useful lens through which to explore five books that have emerged in recent years on judicial matters in Latin America. Here I offer an overview of the books, placing each volume in the broader context of the four research areas outlined above. I then examine the core concept of judicial power across all the books, and theoretical arguments relating to judicial power. I close with some suggestions for future research, including areas highlighted by the authors.

#### OVERVIEW OF WORKS REVIEWED

Two edited volumes are among the works reviewed. Gretchen Helmke and Julio Ríos-Figueroa's *Courts in Latin America* is a collection written entirely by

1. Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (New York: Cambridge University Press, 2003).

2. Charles Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (Chicago: University of Chicago Press, 1998).

3. Jeffrey A. Segal and Harold J. Spaeth, *The Supreme Court and the Attitudinal Model Revisited* (Cambridge: Cambridge University Press, 2002).

4. Lee Epstein and Jack Knight, *The Choices Justices Make* (Washington, DC: CQ Press, 1998).

political scientists, focused primarily on explaining the decision making of judges on high courts across Latin America, though questions of empowerment (and disempowerment) enter into several chapters (e.g., Castagnola and Pérez-Liñán on Bolivia; and Helmke and Staton on cross-national evidence of court curbing). The volume highlights two dimensions of judicial decision making on these high courts—judicial assertiveness in mediating interbranch conflicts and in protecting rights—and proceeds to document and explain variation on both dimensions. Helmke and Ríos-Figueroa's introductory chapter documents the overall cross-national variation on these two dimensions and provides an overview of the main theoretical approaches to understanding judicial decision making, noting that strategic accounts dominate the literature. The volume includes chapters on the variation in judicial power and independence across Latin America (Ríos-Figueroa); the rights protectiveness of Costa Rica's Constitutional Chamber (Bruce M. Wilson); the surprising strategic deference of Colombia's Constitutional Court, which is conventionally regarded as more activist, assertive, and rights protective (Juan Carlos Rodríguez Raga); the shift from "quietism" to "incipient activism" in Chile's courts, which have traditionally been conservatively passive (Javier Couso and Lisa Hilbink); the pro-administration, governance role of the high court in Brazil, acting as a reliable ally or "faithful servant" to the executive's preferred policies (Daniel M. Brinks); the shifting roles of the Brazilian high court over the last two decades, from negotiating interbranch conflicts to potentially becoming more rights protective (Diana Kapiszewski); the ideological and jurisprudential profiles of justices on the Mexican Supreme Court (Arianna Sánchez, Beatriz Magaloni, and Eric Magar); a theory of judicial independence tested through examination of the United States and Argentina (Rebecca Bill Chavez, John A. Ferejohn, and Barry R. Weingast); the assertiveness of high courts in Argentina and Chile regarding emergency powers and freedom of expression rights (Druscilla Scribner); the rise and fall of judicial review on Bolivia's high courts (Castagnola and Pérez-Liñán); and a formal theory of interbranch conflict in the legal process, spanning the activation of litigation, decision making, and compliance in Latin America (Helmke and Staton).

*Cultures of Legality*, edited by Javier A. Couso, Alexandra Huneus, and Rachel Sieder, is dedicated to examining the phenomenon of "legal cultures" in Latin America and the causal role of cultural-ideational factors in shaping judicial power and social relations in the region. In contrast to *Courts in Latin America*, contributors to this second collection include not only political scientists but also legal scholars and those based in law schools, as well as scholars based in sociology and anthropology departments. Another difference between the two volumes is that rather than emphasizing how actors pursue their preferences in the context of strategic constraints, this volume places analytic emphasis on understanding how actors' ideational preferences and motivations formed in the first place and what consequences they generate. The introductory chapter defines legal cultures as hybrid, multiform, and dynamic, contrasting starkly with a dominant literature in the United States that posits judges' attitudes as fixed

or relatively stable.<sup>5</sup> Beyond the introduction, this volume includes chapters on legal discourse and social change in Colombia, particularly how legal concepts can be appropriated and reappropriated for both progressive and regressive legal programs (Pablo Rueda); the internal culture of the Brazilian Supremo Tribunal Federal (Kapiszewski, complementing the discussion of “court character” in her full-length book also reviewed here); the rise of rights-related thinking on the Supreme Court in Mexico (Karina Ansolabehere); the potential for regional legal integration (Huneus); the transformation of legal and constitutional discourse in law schools across Latin America (Couso); legal culture and indigenous rights in Guatemala, showing how nonstate actors mimic the forms of state interactions in order to legitimize grievances (Sieder); the convergence of legal and political activism in Venezuela, showing how corporate lawyers have refashioned themselves as cause lawyers for traditional economic and political elites, challenging the government during the Chávez era (Manuel A. Gomez); legal mobilization and indigenous rights in Chile (Anne Skjaevestad); legal culture, opportunity structures, and support structures for legal mobilization in Argentina (Catalina Smulovitz); and a concluding chapter that develops a framework for understanding how novel cultural appropriations of the law are marshaled in the pursuit of social and political change in Latin America (Pilar Domingo).

Among the three monographs under review, two focus primarily on Mexico. In *Judicial Power and Strategic Communication*, Jeffrey K. Staton examines the decision making of justices on Mexico’s high court. In a fresh twist on the existing literature, Staton shifts our attention from the behavior of judges on the bench to the extrajudicial activities of judges—their behavior off the bench—and highlights the selective way in which judges promote their decisions before the public. Thus Staton highlights a special kind of strategic, extrajudicial conduct, namely judicial public relations, as a central object of inquiry in constructing judicial power. That is, “high courts are trying to get their public relations right” (5), and they do so to “construct their power” (22). In this view, courts are strategic, self-empowering political actors with their own media operations.

Also on Mexico, *The Making of Law* by William J. Suarez-Potts traces the evolution of labor law in Mexico from 1875 to 1931, when comprehensive federal labor law was approved. Suarez-Potts’s primary analytic interest is the causal role played by the judiciary, mainly the high court of Mexico, in shaping that evolution of labor law. Ultimately, he finds that in an unlikely setting—a country belonging to the civil law tradition, passing through phases of authoritarianism and revolutionary crisis—the judiciary was powerful enough to influence the development of the law. Suarez-Potts’s discussion of the legal mobilization of business groups to push a labor law agenda toward the courts in Mexico offers an example of court activation that might usefully be compared to two chapters in *Cultures of Legality*—Smulovitz’s discussion of former labor attorneys who provide a support

5. Segal and Spaeth, *The Supreme Court and the Attitudinal Model Revisited*; cf. Andrew D. Martin and Kevin M. Quinn, “Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953–1999,” *Political Analysis* 10, no. 2 (2002): 134–153.

structure for rights litigation in Argentina, and Gomez's examination of corporate attorneys turned cause lawyers in Venezuela.

Finally, in *High Courts and Economic Governance*, Kapiszewski offers a fascinating, comprehensive, and in-depth study of the high courts of Argentina and Brazil and their most important decisions affecting economic policy, focusing primarily on the period 1985–2004. Kapiszewski's main interest is interbranch relations, meaning patterns of judicial decision making and responses by the political branches. After examining the origins of court character in each country, she argues that this character is highly stable in both countries and explains variation in interbranch relations across the two countries since the 1980s. Kapiszewski's concept of a fixed court character contrasts with the dynamic conceptualization of ideational factors in *Cultures of Legality*.

#### CONCEPTUALIZING JUDICIAL POWER

A key phenomenon of interest in these volumes is judicial power. Some authors further the development of that concept; however, the concept is not used in the same way across the works reviewed, which raises questions about complementarity and the accumulation of knowledge.

In their landmark volume *The Global Expansion of Judicial Power*, C. Neal Tate and Torbjörn Vallinder characterized the expansion of judicial power, or "judicialization," as occurring along two dimensions: the expansion of judicial review, and the spread of court-like practices and procedures to nonjudicial settings, that is, beyond courts.<sup>6</sup> In other words, judicial power could be understood as the capacity of the courts to interpret the law (in Justice John Marshall's famous formulation, the power to "say what the law is"), as well as the increased legitimacy of court-like practices in noncourt settings, for example, in workplace negotiations, administrative hearings, community groups, and so on, what Sieder in *Cultures of Legality* calls "juridification" (161). Restating, we can understand the process of creating or expanding the scope of judicial review as judicial empowerment (court building), and the process of exercising judicial review as judicial decision making. Both are dimensions of court power—one in theory and the other in practice. We might also speak of the spread of court-like procedures to noncourt settings as a sign of the legitimacy, that is, reputational power, of courts and their practices.<sup>7</sup>

Against this conceptual background, how do the scholars here understand judicial power? Suarez-Potts stands apart in that he understands power as influence, specifically as the power of the court's decisions to shape legislation. His conclusion concerning Mexico is based on the fact that the 1931 federal labor legislation was shaped, at least in part, by the labor law decisions of the country's

6. C. Neal Tate and Torbjörn Vallinder, *The Global Expansion of Judicial Power* (New York: New York University Press, 1995).

7. See Rachel Sieder, Line Schjolden, and Alan Angell, eds., *The Judicialization of Politics in Latin America* (New York: Palgrave Macmillan, 2005); Diana Kapiszewski and Matthew M. Taylor, "Doing Courts Justice: Studying Judicial Politics in Latin America," *Perspectives on Politics* 6, no. 4 (2008): 741–767.

high court in the years leading up to 1931. While courts must have some elements of power in order to even decide a labor law case, this notion of judicial influence does not find an analog in Tate and Vallinder's framework.

In *Courts in Latin America*, Ríos-Figueroa sets the stage for the rest of the volume by generating a power index and an independence index for all high constitutional courts in Latin America from 1945 to 2005. The power index is composed of de jure institutional features: type of review (abstract or concrete), timing of review (a priori or a posteriori), jurisdiction (centralized or decentralized), effects (*inter partes* or *erga omnes*), and access (open or restricted). Notably, except for the borderline case of Honduras, the author finds no empirical examples of courts that lack political independence yet are powerful. In any case, none of Ríos-Figueroa's indicators capture Suarez-Potts's notion of judicial influence.

Staton's conceptualization of judicial power blurs the line between power and independence. He narrows judicial power to its de jure and de facto components and defines the de jure component as formal jurisdictional boundaries, that is, what kinds of cases a court has the power to decide. Conversely, de facto power is presented as the actual compliance with these decisions. Staton relies on the latter, using power to mean that "an actor can cause by its actions the outcome that it prefers," and goes on to say that this definition is "identical" to that of judicial independence used by other authors (9). He acknowledges, however, that a competing definition of independence intends the concept only to mean that a judge's decision was made free from external influence, regardless of compliance. Thus, by power, Staton means compliance, which coincides with one definition of independence, while viable alternatives distinguish between de jure power, independence, enforcement of court decisions, and the ability of courts to effect broader social change.

In their contribution to *Courts in Latin America*, Staton and coauthor Helmke also speak of interbranch relations, including not only decision making and compliance but also court activation. These three phenomena are components of what they call the legal process or legalization process, following Varun Gauri and Daniel M. Brinks (2008).<sup>8</sup> Thus judicial power is about interbranch relations along the three stages of this legalization process: activation, decision making, and compliance.

Kapiszewski follows Helmke and Staton in noting that judicial power is about both judicial decision making and the response of political branches to those decisions, that is, interbranch relations. Thus she emphasizes the need to examine "patterns of judicial decision making and elected branch responses . . . in tandem" (5, emphasis in original). The strength of the interbranch relations approach is that it offers a fuller, more satisfying treatment of the concept of judicial power. That is, in order to understand whether a court is powerful, we need to know something about how it rendered a decision and also whether that decision was followed. Thus judicial power is about both decision making and compliance.

The discussion above raises multiple questions about concept formation. Spe-

8. Varun Gauri and Daniel M. Brinks, eds., *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World* (New York: Cambridge University Press, 2008).

cifically, a concept like interbranch relations, which merges areas of inquiry related to activation, decision making, and impact, can raise questions about where to draw conceptual boundaries. For instance, if we are looking to add depth or texture to decision making in order to give a fuller definition of judicial power, why stop with compliance? Working forward from the decision, if we want to expand our notion of judicial power, would we not also want to know whether the decision and compliance were able to produce the desired effect in society? In this conceptualization, then, judicial power is not just about interbranch relations but about state-society relations, perhaps over a longer time frame. If that is the case, then it may be difficult to identify judicial power in the short term. In other words, as the concept of judicial power expands to be intellectually more satisfying, it becomes more difficult to observe empirical referents of the concept and therefore more difficult to know judicial power when we see it.

Alternatively, working backward from the decision, would we not also need to know something about how the court acquired the ability or authority to decide a case in the first place? Or how the parties in the case were able to gain access to the court? Or how the grievance motivating the case was mobilized or harnessed into a legal claim? As Charles Epp notes, without an agenda of cases brought to a legal system, a court is powerless to act even on the most relevant of issues.<sup>9</sup> Helmke and Staton attend to this, in part, by including litigation in their model of the legal process, but that does not explain how courts become empowered in the first place.

Returning to the earlier discussion of the four research areas of public law scholarship—court building, court activation, decision making, and judicial impact—the concept of interbranch relations seems to draw alternately on decision making and limited portions of judicial impact (Staton, Kapiszewski), or on activation, decision making, and limited portions of impact (Helmke and Staton). To be sure, much of the existing literature on judicial politics has focused on institution building. Recent work on interbranch relations may be highlighting elements of activation, decision making, and impact as a corrective to earlier emphasis on court building, but the conceptual issues remain.

With these observations in mind, it may seem unsatisfying to focus on a single part of court power, for example, decision making, but it also seems unsatisfying to examine judicial power conceived broadly, that is, as interbranch relations, where the decision to stop broadening the concept seems arbitrary. Still, as long as concepts are clearly defined and relationships to other nearby concepts articulated, there is room for a diversity of work on judicial power.

#### THEORIES RELATED TO JUDICIAL POWER

The reviewed books attempt to explain specific outcomes in relation to all four areas of inquiry introduced earlier. While the conceptual definition of outcomes is not always the same across reviewed works, several analytic themes emerge.

9. Charles R. Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (Chicago: University of Chicago Press, 1998).

In *Courts in Latin America*, the central question posed is why judges decide cases the way they do. More specifically, the contributors ask why judges on constitutional high courts are or are not assertive in adjudicating disputes in the separation of powers (interbranch relations), and why they are or are not assertive in protecting individual rights. All chapters have as a reference point the standard framework of separation of powers, which posits that division or fragmentation among the elected branches (e.g., increased electoral competition, divided government) creates an opening for courts, essentially allowing more independence, and in this (independent) space courts can be more assertive. Crucially, contributing authors (e.g., Helmke and Ríos-Figueroa, 16–18; Couso and Hilbink, 105–107) note that even where political fragmentation or other strategic openings emerge, courts will not diverge from dominant policies if courts share the same policy preferences or ideology. Thus, faithful to the broader strategic argument running throughout the volume, in order to understand judicial behavior on the bench, we need to understand who the relevant actors are and know something about their preferences as well as the constraints under which they are operating.

In a landmark volume on strategic decision making, Lee Epstein and Jack Knight divide strategic constraints into two categories: external and internal.<sup>10</sup> The basic type of external strategic constraint in Latin America comes in the form of the concentration of political power. This power concentration can come in several manifestations, including a dominant executive and unified government. In *Courts in Latin America*, Rodríguez-Raga finds that the Colombian high court, which has a reputation for protecting individual rights, tends to defer to the executive, especially at the start of the executive's term in office, when the public mandate is perceived as strongest. What is otherwise regarded as a highly autonomous constitutional court yields to political pressure when executive power is high. Scribner notes that political fragmentation has the anticipated positive effect on court power in Chile and Argentina, but only in enabling courts to check executive power, not in facilitating the protection of rights. Similarly, Chavez, Ferejohn, and Weingast chronicle the positive effect that divided government can have on the protection of rights and the arbitration of interbranch conflicts in the United States and Argentina.

Other types of external constraints can come in the form of public opinion and economic context. Public opinion and the court's legitimacy are key elements of Staton's argument regarding judicial public relations. Legitimacy also figures into Kapiszewski's argument regarding the causal role of court character, but her argument, at least in Brazil, also heavily emphasizes the pragmatic response of judges to the country's economic conditions, another external constraint. Economic crisis also plays a constraining role for Suarez-Potts, contributing to the evolution of labor law in Mexico. Finally, Castagnola and Pérez-Liñán's work on Bolivia demonstrates the unusually difficult strategic environment created by extreme political polarization.

Strategic constraints can also come in forms that are internal to the judiciary as an institution. In *Courts in Latin America*, Wilson discusses the openings produced

10. Epstein and Knight, *The Choices Justices Make*.



by new procedural rules in Costa Rica. In their entry, Couso and Hilbink discuss the effects of internal institutional rules on judicial behavior. In their chapters, Brinks and Kapiszewski discuss the manner in which rules governing judicial selection and promotion shape the profile of judges on Brazil's high court.

As clearly acknowledged in *Courts in Latin America*, strategic openings alone are not sufficient to generate assertiveness if the court is not motivated. Here, judicial preferences—ideas—come to the forefront. Several chapters speak to this notion, including those by Couso and Hilbink, Brinks, Kapiszewski, and Scribner. The last of these emphasizes that, while political fragmentation helps explain variation in the court's willingness to check executive power, ideology is a key predictor of variation in explaining the court's willingness to protect freedom of expression rights. This is echoed in Kapiszewski's *High Courts and Economic Governance in Argentina and Brazil*, which advances the argument that court character helps explain interbranch relations on economic policy. Readers might ask whether the court character thesis extends to cases involving other types of issues, for example, individual rights or liberties.

While *Courts in Latin America* highlights the strategic approach to understanding decision making and gives some attention to preferences, these preferences and the broader causal role of cultural-ideational factors in explaining outcomes of interest beyond judicial decisions are the core concern of the other edited volume, *Cultures of Legality*. Here, "legal cultures" operates as a broad umbrella term for a variety of ideational forces that exert a causal influence on outcomes of interest, whether judicial empowerment, judicial activation, decision making, or broader impact and social change. Building on Hilbink,<sup>11</sup> Couso (and Couso and Hilbink in *Courts in Latin America*) examines the cultural-ideational transformation taking place in judicial role perception. Gomez's chapter emphasizes that legal movements and cause lawyers come in all political stripes and colors, just as Epstein and Steven Teles, in early and more recent work, respectively, have demonstrated regarding the conservative legal movement in the United States.<sup>12</sup> Indeed, the role of ideas extends beyond the formal settings of courts to nonstate contexts. For instance, Sieder and Skjaevestad examine legal culture in the mobilization of indigenous rights in Guatemala and Chile, respectively. Covering intellectual territory and analytic points familiar to social movement research,<sup>13</sup> Domingo's concluding chapter shows how groups can marshal cultural-ideational factors in the pursuit of broader social or political change.

Ideas also play strong analytic roles in the single-author volumes. Staton's dis-

11. Lisa Hilbink, *Judges beyond Politics in Democracy and Dictatorship: Lessons from Chile* (Cambridge: Cambridge University Press, 2007).

12. Lee Epstein, *Conservatives in Court* (Knoxville: University of Tennessee Press, 1985); Steven M. Teles, *The Rise of the Conservative Legal Movement: The Battle for Control of the Law* (Princeton, NJ: Princeton University Press, 2008).

13. Doug McAdam, John D. McCarthy, and Mayer N. Zald, "Introduction: Opportunities, Mobilizing Structures, and Framing Processes: Toward a Synthetic, Comparative Perspective on Social Movements," in *Comparative Perspectives on Social Movements: Political Opportunities, Mobilizing Structures, and Cultural Framings*, ed. Doug McAdam, John D. McCarthy, and Mayer N. Zald, 1–20 (Cambridge: Cambridge University Press, 1996).

discussion of judicial power and compliance moves into a discussion of the legitimacy accorded by the public to courts (chapter 6). Legitimacy is also a component of Kapiszewski's concept of court character, and the other informal attributes of this concept lend it a decidedly cultural connotation. Further, while Suarez-Potts emphasizes the role of judicial decisions in shaping labor law in Mexico, he also notes the causal role of ideas, especially the spread from Europe of ideas regarding social legislation.

A key weakness of rational-strategic accounts is that preferences are often assumed or given, leaving the origin of preferences unexplained. Causes and consequences of ideas are distinct research questions, and these books are primarily concerned with the latter, but several do give attention to the origin of ideas. Kapiszewski, in particular offers a historical, path-dependent account of Argentina (chapter 3) and Brazil (chapter 4), essentially arguing that the character of the high court in each country was fixed in the middle of the twentieth century. She stresses the persistence or continuity of cultural-ideational factors. Indeed, the resilience of court character as presented by Kapiszewski raises a kind of double-edged analytic sword. On one hand, the path-dependent argument works well to explain the continuity of this cultural-ideational phenomenon. Further, if correct, the court character thesis raises serious critiques of judicial reform projects that generally ignore cultural-ideational dynamics. On the other hand, if the empirical record shows patterns of change in court character, these changes would be largely unanticipated and unexplained by a path-dependent approach.<sup>14</sup> Separately, Couso's contribution to *Cultures of Legality* traces the origins of ideational transformation to law schools and legal scholars throughout Latin America, coming closer to works by Hilbink and Matthew C. Ingram that focus on the networks of judges and other legal elites, and on the spread of ideas along these networks.<sup>15</sup>

## CONCLUSION

The reviewed books illustrate the breadth and diversity of scholarship on judicial power in Latin America. Covering a range of countries and decades of institutional development and behavior, the research also reveals some of the conceptual and theoretical richness in this area of research. Future research could fruitfully examine the causal role of ideas, subnational courts and other legal institutions, regional or supranational institutions, and legal institutions beyond courts, including communal justice institutions.

*Cultures of Legality* offers new and exciting attention to the causal role of cultural-ideational factors. Ideas, especially in their causal role, tend to be understudied in Latin America. Perhaps most pressing in this area is the need for

14. Rogers M. Smith, "Historical Institutionalism and the Study of Law," in *The Oxford Handbook of Law and Politics*, ed. Keith E. Whittington, R. Daniel Kelemen, and Gregory A. Caldeira, 46–59 (Oxford: Oxford University Press, 2008).

15. Lisa Hilbink, "The Origins of Positive Judicial Independence," *World Politics* 64, no. 4 (2012): 587–621; Matthew C. Ingram, "Networked Justice: Judges, the Diffusion of Ideas, and Legal Reform Movements in Mexico," Working Paper 385 (Notre Dame, Ind.: Helen Kellogg Institute for International Studies, 2012).

research on how judges acquire new ideas or, more broadly, on the origins of cultural-ideational factors.

Subnational courts and other legal institutions below high courts continue to be understudied. This is especially striking in a region with large federal systems and a wide variety of local justice institutions. Alternatively, instead of scaling down, future research could also examine regional or international law and legal institutions, including not just the inter-American system, but also the Andean Tribunal of Justice, the relatively new Caribbean Court of Justice, and other supranational bodies or international movements in law.<sup>16</sup> Aside from moving to a subnational or supranational level of analysis, future researchers could also examine legal institutions beyond courts and formal judicial fora, as Sieder does. Most welcome would be additional work on how key concepts, such as power, and key arguments within both strategic and ideational accounts operate in these different settings.

16. Richard Snyder, "Scaling Down: The Subnational Comparative Method," *Studies in Comparative International Development* 36, no. 1 (2001): 93–110.