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*Edited by Rachel Sieder, Karina Ansolabehere,
and Tatiana Alfonso*

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LAW AND SOCIETY IN LATIN AMERICA

An Introduction

Rachel Sieder, Karina Ansolabehere, and Tatiana Alfonso

In common with other regional traditions of law and society studies, law and society research in Latin America is concerned with the relationship between law – understood broadly as norms, institutions, and practices – and long-run patterns of development, political environment, institutional forms, and cultural specificities. However, as we argue in this introduction, even when it is impossible to characterize such a diverse region, the distinctive contours of socio-legal research in Latin America have been particularly shaped over time by key political and historical junctures, and by the changing nature of the socio-legal academy.¹ Unsurprisingly, law and society scholarship in the late twentieth century was marked by shifts in the region's political history: from the initial optimism about legal transplants during the period of the Alliance for Progress, and the subsequent law and development movement, through the pessimism of the years of dictatorship when authoritarian legal orders were consolidated, to the role that human rights and new constitutional orders have played in numerous states following transitions from authoritarian rule and civil war. More recently, scholarship has focused on issues such as the justiciability of the rights of indigenous and Afrodescendant peoples, the relationship between law and legal institutions, and social change, or the judicialization of governmental corruption that has led to highly charged confrontations between executives, legislatures, and the judiciary in many countries of the region.

Latin America's socio-legal academy has also developed during recent decades. It is smaller and less institutionalized than its United States and European counterparts, and its members tend to be more directly involved in attempts within their countries (and increasingly across the region as a whole) to secure progressive social change through law. It is also an academy characterized by a high degree of methodological heterogeneity and rich cross-disciplinary dialogs, straddling law, legal philosophy, sociology, political science, history, anthropology, and cultural studies. Compared to the USA and Europe, less large-scale quantitative comparative research is undertaken, a result both of funding limitations and the relative lack of established expertise in cross-regional quantitative legal analysis.² Although the division between Marxist and liberal approaches has marked the history of Latin American law and society scholarship, it is also the case that rather than developing around specific theoretical and methodological trends or departures (as in the United States and European socio-legal academy), empirically informed socio-legal scholarship has tended to be led by a focus on specific issues and problems: for example, gender discrimination, or police violence, to name just two topics that have generated a wealth

of research in recent years. Multidisciplinary approaches including historical, jurisprudential, ethnographic, and institutional analyses are increasingly a standard feature of such scholarship. This volume aims to map the emerging contours of law and society research in Latin America and contends that an understanding of how law has been studied in the region can contribute to understandings of law more broadly.

Law and society is a field with shifting boundaries. For that reason, any attempt to define its limits and shape is a controversial and complicated enterprise. In the United States and Europe, we can identify historical trajectories of the field's development with reference to certain organizations, universities, and research centers such as, for example, the Law and Society Association in the United States,³ the University of Wisconsin, Oñati in the Basque country,⁴ the Center for Social Studies (CES) in Coimbra, or human rights programs at the Institute of Latin American Studies in London, or at the Chr. Michelsen Institute in Norway. By contrast, within Latin America itself the field has not been as closely linked to the development of particular organizations, although – as we signal in this introduction – a diversity of institutions in different countries has played a key role in its formation at distinct moments in time.⁵

We use here two criteria to identify the law and society field in Latin America. The first is a pragmatic one: Latin America as both a site of interest and a place of production for law and society studies. Second, despite the field's diffuse contours in a region where no one association or publication exists that articulates academic production, we define it according to a common denominator, namely the shared interest in *law in action*. Rather than specific methodological or theoretical perspectives, this is what primarily defines law and society studies in the region. Widely different contributions all share a concern to understand how law functions in practice: how it is represented and imagined by different groups, the distinct ways in which law is used and invoked, and the effects it produces. As a consequence of this point of departure, and in contrast to earlier attempts to survey the field of socio-legal studies in the region (see the important contribution of García-Villegas and Rodríguez-Garavito 2003), we do not attempt to characterize law or law and society in the region. The diversity of the legal, social, and political trajectories of 17 countries makes this an impossible task and ultimately, we would argue, one of limited analytical purchase, given that many features of law – understood as a social construction – in Latin America are in fact now common to law everywhere. Although one of our points of departure is the profound gap between law in action and law on the books throughout the region, the idea that social life is or can ever be ordered by legal norms is on the wane in most socio-legal scholarship. In addition, the blurring of the lines between the legal and the illegal is a global phenomenon, not just one restricted to the Global South (Comaroff and Comaroff 2006, 2016). Latin America has long been characterized as a region which simultaneously fetishizes the law, affording it great symbolic power, while at the same time offering a panorama of weak rule of law or even “lawlessness.” Yet these characteristics – even were they found to hold uniformly throughout the region – now appear generic to socio-legal realities in most of the world.

Given the aforementioned diversity our review is necessarily partial. What we aim to do in this introduction, therefore, is to map tendencies. The tendencies we identify are not causal factors as such, but rather the product of a specific shared historical context defined by the superposition of new constitutional realities, legal pluralism, spiraling violence, and the rise in the importance of human rights narratives, together with the consolidation of an increasingly professionalized and internationally connected socio-legal academy within Latin America and beyond. This translates into an agenda in which classic concerns about the symbolic efficacy of the law combine with a focus on legal institutions and the convergences between legality and illegality in a region of acute and enduring socioeconomic, racial, and gender inequalities.

What historical processes of state formation explain persistent violations of human rights and extremely high levels of violence? What is the role of law and legal institutions in either perpetuating or transforming these patterns? Can new constitutional rights be enforced, altering entrenched historical patterns of socioeconomic and racial inequalities? These questions have been central to the recent expansion of socio-legal scholarship on Latin America, which is shaped by the tension between the imperfection and indeterminacy of law and legal institutions on the one hand, and the increased recourse to those institutions by a range of actors, on the other.

In the following section, we trace the main thematic foci and perspectives of key junctures in the development of law and society scholarship in the region. As we will show, the field has become more complex and rich in recent years, and is now characterized by a diversity of themes and a critical mass of studies on specific issues.

Key moments in the study of law in action in Latin American law and society scholarship

Although it is far from easy to identify all studies of law in action in Latin America, there is a consensus in the literature that the law and development movement, linked to the Alliance for Progress in the 1960s, constituted the starting point for growing interest in the link between law and social change in the region (García-Villegas and Rodríguez-Garavito 2003). From then to the present we can identify certain long-run shifts in perspectives. First, earlier thinking about law in action as “noncompliance” or the lack of observance of legal norms susceptible to transformation by means of “appropriate” reforms has given way to an understanding of law in action as a complex process wherein the gap between law in action and law on the books is a constitutive feature of law itself (and therefore, to a recognition that the “benevolent” effects of judicial reforms are contingent on a multitude of legal, political, and social processes). Second, there has been a movement away from approaches that conceived of the state as a unified, homogenous actor, toward a broad understanding of the state as a fragmented space containing multiple legalities and powers. Third, whereas in the 1960s law and its production was understood as predominantly state-centered, it has increasingly come to be understood as an increasingly international and subnational phenomenon involving different dynamics between formal structures, international bodies, and a range of political and social actors, and disputing processes occurring at different scales. In addition, we can observe a densification of the academy as the number of studies carried out by scholars based in Latin America and those outside the region has increased, together with the links between them. Thematically, the field of study itself has also become broader: law in general, the legal professional, and legal reform are no longer at the center of analysis and more specific agendas have multiplied. One example would be the different studies concerned with legal mobilization around a range of issues, or another the broadening of research on judicial actors and institutions. In what follows we present a brief overview of key junctures and topics.

The origins of concern with law in action in Latin America can be traced back to the 1960s with the rise of the law and development movement (Trubek and Santos 2006). Defined by attempts to modernize countries deemed “underdeveloped,” this movement understood law as a privileged tool for the transformation of the traditional into the modern, with legal transplants, and the reform of the legal profession at its core. The state (conceived of as a unitary entity) would thus, be afforded the tools required to achieve economic development and political modernization. Binary dichotomies – tradition/modernity; compliance/noncompliance with rules and laws – defined the analytical framework of the movement, whose central aim was to establish

the legal foundations of the developmentalist state, for example, through measures such as agrarian reforms. Critical studies that questioned the assumed relationship between legal reforms, the legal profession, and their influence on development were developed largely outside Latin America, specifically within the North American academy by David Trubek and Marc Galanter (1974), founders of the law and society movement in the USA.

Another important moment in the thematic evolution of law in action perspectives in Latin America was connected to the emergence of authoritarian developmentalist regimes. Guillermo O'Donnell's influential publications, *Modernization and Authoritarianism* (1972) and *The Bureaucratic Authoritarian State* (1982), questioned the relationship between democracy and development assumed by modernization theory (which was the paradigm underpinning the law and development movement), and focused on the forms of state domination generated by political projects to restrict popular political participation in favor of business interests. These studies posited that such tendencies were constitutive of modern socio-political and economic dynamics in South America, especially in Argentina and Brazil. However, the legal dimensions of authoritarian rule were not as central to regional theories of the state as was the case, for example, in Asia (Ginsburg 2003). In this context, studies concerning law and society were organized around two issues or axes: on the one hand, the (non)-functioning of legal institutions and the judiciary, and on the other, the start of the Marxist tradition of critical legal studies in Latin America, which questioned the power of law to transform society, emphasizing instead its nature as a mechanism of domination.

The first group of studies concentrated on analyzing deficiencies in terms of judicial independence and functioning in the region, using United States measures of judicial independence and constitutional control as the standards for comparison. These descriptive and comparative studies were carried out by United States academics, such as Carl Schwarz (1973), Joel Verner (1984) and David Clark (1975), and were notable for their lack of historical contextualization of the relationship between judicial and political power in Latin America. The second group of studies was developed by Latin American Marxist lawyers, who aimed to challenge hegemonic legal perspectives and promote alternative uses of law. Under the banner of critical legal studies (*Crítica Jurídica*), these perspectives were promoted by Mexican, Brazilian, and Argentine scholars, including Oscar Correas (an Argentine who developed his academic career in Mexico) and Carlos Cárcova, also from Argentina. Although their studies were largely theoretical and philosophical as opposed to empirical, the importance of this growing movement questioning the progressive nature of law cannot be overstated. For example, these critical perspectives contributed to the concept of "alternative law" that underpinned the founding of ILSA, the Latin American Institute for Alternative Law and Society (*Instituto Latinoamericano para una Sociedad y un Derecho Alternativo*) in Colombia in 1978. ILSA's collaborative action research with popular and social movements – which continues to the present day – focused on supporting counter-hegemonic forms of law "from below." These groups of legal scholars were largely comprised of university professors who trained future generations committed to these critical perspectives. They also created spaces for intellectual exchange and diffusion, such as the Marxist journal *Crítica Jurídica*, published by the National Autonomous University of Mexico (UNAM) and publications such as *El Otro Derecho* or *Beyond Law* in the case of ILSA. This current of research built a trenchant critique of state law, and also prioritized alternative ways of understanding and conceiving of law. In this sense, its concern with issues of noncompliance was channeled into alternative practices and forms of social regulation or law.

The third moment in the historical trajectory of law and society studies in the region was that of the transitions to democratic rule in the Southern Cone and Central America. With these transformations, the concern for the rule of law and the relationship between democracy and

development, together with the challenges of how to respond to the massive violations of human rights committed under the previous regimes, raised new expectations and questions about the role that law and legal institutions could play in the new democracies. The transitions to democracy also brought a new impulse to legal reforms to strengthen the rule of law, which was understood in two registers: first, legal security for investment, and second, equality before the law and the seeking of justice for human rights violations committed by the authoritarian governments. Legal scholars and public intellectuals such as Carlos Nino in Argentina played a central role in developing a progressive legal agenda in the context of transition, inspiring a generation of law and society scholars across the region. Dating from this period, international human rights regimes came to play an increasingly important role as local actors invoked international instruments in order to pressure for domestic change (Keck and Sikkink 2001). At the same time, the agenda for judicial reform was supported by multilateral agencies, led by the World Bank, to the point that it is possible to talk of a second wave of the law and development movement concerned with cementing the transition to open market economies through the “rule of law” (Dezalay and Garth 2002). A similar set of legal transplants was promoted across the region at this time, including judicial councils for the selection of judges, and judicial training schools to professionalize practitioners (Carothers 2001). Simultaneously, the first prosecutions against perpetrators of human rights occurred, including the emblematic trial of the former leaders of the military junta in Argentina, together with the first attempts to democratically overturn amnesty laws that prevented the prosecution of those responsible for gross violations of human rights, as in the case of Uruguay in 1989. In subsequent years, processes of transitional justice for gross violations of human rights under authoritarian rule that occurred following the transitions in both the Southern Cone and Central America became a key field of comparative study, increasing scholarly interest in Latin America’s legal institutions and socio-legal mobilizations. Such was the significance of the regional experience that it is estimated that more than half of all human rights trials carried out in the world have taken place in Latin America (Payne et al. 2015). Subsequently the global law and society field of transitional justice studies increased exponentially, and within this the leading role played by studies of Latin America, many carried out by regionally-based scholars, has been indisputable. The principle questions guiding this research have to do with discovering the most adequate combination of transitional justice mechanisms to achieve legal convictions for past human rights violations, truth, and reparations for victims, and with the relationship between processes of transitional justice, democracy, and human rights (see chapter by Martínez and Gutiérrez in this volume; Skaar, García-Godos, and Collins 2016). This ongoing area of research is marked by a particularly fluid exchange between scholars based in the region and their counterparts in the USA and Europe, and also by a high degree of movement between academia, nongovernmental organizations (NGOs), and different think tanks. In the following section, we identify a fourth moment in the field, one that shapes the different agendas presented in this volume.

Contemporary Trends in Law and Society Scholarship in Latin America

The fourth moment we identify for the field of Latin American law and society studies is anchored in the critique of neoliberal governance and development, which gathered force at the end of the 1990s, and is marked by the (productive) tension between more studies concerned with the optimal functioning of legal institutions, and those focused on the ways in which systemic socioeconomic and racial inequalities in the region relate to socio-legal phenomena.

Rising expectations about law and legal institutions were enshrined in the first wave of constitutional reforms, which both expanded the canon of rights and increased the autonomy and

power of legal institutions (see the chapters by Gargarella, Pou, González-Bertomeu, Uggla, and Michel in this volume). The so-called new constitutionalism in Latin America commenced with the Brazilian constitutional reform of 1988 and in subsequent years spread across the region. Most of the new charters sought to install legal orders reflective of the socio-political projects advanced within the transitions, incorporating broad bills of rights and in many cases also revising the structure of the state (Negretto 2013). In terms of new recognitions, special mention should be made of the incorporation of indigenous peoples' rights in response to the demands of the continental-wide indigenous movement, which began to develop in the 1980s. The most far-reaching transformations in this sense occurred in Ecuador and Bolivia, with the approval of so-called pluri-national constitutions in 2008 and 2009, respectively. These constitutions ostensibly aimed to recognize the specificities and claims of indigenous people – and to a lesser extent in the case of Ecuador, Afrodescendants, thereby incorporating different perspectives on politics, law and society within the legal orders of those nation-states (Santos 2005; Yrigoyen 2011). The region-wide wave of multicultural and pluri-national constitutional engineering implied the formal recognition of legal pluralism and spheres of autonomy for indigenous governance, representing a radical break with monist republican traditions. Scholar-activist networks such as the Latin American network of legal anthropology (*Red Latinoamericana de Antropología Jurídica*, RELAJU) played a fundamental role in circulating regional scholarship on multicultural constitutionalism and innovative jurisprudence on indigenous rights between countries in the region (Chenaut, Gómez, Ortiz, and Sierra 2011), and United States and European scholars also developed important comparative studies on these topics (Van Cott 2000, 2008; Sieder 2002; Schilling-Vacaflo and Kuppe 2012; Yashar 2005).

Many of the new constitutions incorporated international human rights law into the constitutional block, opening up unprecedented opportunities for judicial innovation and encouraging closer relations between domestic and international courts. This has been referred to as the double movement of constitutionalization of international law and the internationalization of constitutional law. In addition, these constitutional reforms strengthened – at least in the books – the power of constitutional courts, generating new opportunity structures for their institutional development and the assumption by high courts throughout the region of new roles in the resolution of political and social conflicts (Helmke and Ríos-Figueroa 2011). Yet while shifts to more democratic models of state organization pointed to renewed expectations in the law, they also revealed the immense difficulties of building state security forces and legal systems respectful of human rights, together with challenges for democratic governance posed by the massive increase in social and criminal violence. Although the mass disappearances, killings, and massacres committed by the military-authoritarian regimes receded, in contexts of persistent institutional weakness, widespread poverty and acute socioeconomic and racial inequality the shift to elected government and the promise of liberal, rights-protecting constitutions failed to guarantee the fundamental human rights of most citizens. Authoritarian, arbitrary, and extrajudicial practices on the part of state agents persisted. Consistently high levels of social violence affect large sectors of the population: roughly a third of all recorded global homicides occur in Latin America and some of the worst homicide rates in the world are registered among poor, non-white urban youth in the region's cities, such as San Salvador, Rio de Janeiro, or Caracas. Prevailing social attitudes reinforce messages that certain sectors are beyond the protection of the law. Deep-rooted race and class discrimination plays a central role in weakening social ties, solidarity, and a sense of moral obligation of the rich and powerful toward the poor and excluded (Vilhena Vieira 2011; Méndez, O'Donnell, and Pinheiro 1999). At the same time, these sectors are often viewed by elites as dangerous populations to be contained and so are disproportionately penalized by criminal law – indeed the penal system functions largely to protect elites from

the poor. While this is not a purely Latin American phenomenon and has been amply documented in the USA by law and society scholarship, excessive use of force, and unlawful killings by police forces, combined with high levels of social violence extending to vigilantism and so-called “social cleansing,” underscore a central concern for regional law and society scholarship (Brinks 2006; Snodgrass Godoy 2006). In the years following the transitions and the issuing of the new constitutions, much law in action scholarship in Latin America has focused on violence, the relations between legality and illegality and issues of accountability on the part of the military and security forces, and state actors more generally. Critical race studies, while central to scholarship on institutional violence in the USA, is only starting to make inroads to law and society analyses in Latin America, but is a growing area of research.

The new constitutions were studied as processes of institutional reform, and also as doctrinal shifts that posed complex legal dilemmas for the judiciary (Negretto 2013). The different processes of constitutional transformation and their influence on emergent legal doctrine led legal scholars to shift from their traditional focus on civil (and criminal) law, to a renewed concern with the study of constitutional law (Couso 2010). For example, the question of how to incorporate the criteria of the Inter-American Court of Human Rights into domestic adjudication, and how international norms are appropriated and vernacularized by judicial actors, dominated studies of “constitutionalism in action” (see chapter by Pou in this volume). The annual SELA or Seminar in Latin America on Constitutional and Political Theory run by Yale Law School since the mid-1990s has proved to be a particularly important North–South hub for regional law and society scholarship on the new constitutionalism.⁶ Interest was reflected in a greater number of studies of comparative constitutionalism, not just within Latin America but also between countries of the Global South (Bonilla 2013). This, in turn, implied transformation in the socio-legal communities and a widening of conversations and interactions, bringing new perspectives to the analysis of constitutional change in the region, evidenced by the circulation of concerns with progressive constitutionalism or activist courts in favor of social rights (Yamin and Gloppen 2011; Langford, Rodríguez-Garavito, and Rossi 2017).

A focus on the reform and design of legal institutions, as well as their functioning and political and social consequences, was one of the principle ways in which the new socio-political dynamics in Latin America were translated into law and society research agendas. In the early 1990s, much scholarship was markedly normative and instrumentalist in character, in effect engaging in the ideological construction of the state; the “state effect” described so incisively by Timothy Mitchell (1991). Scholars invoked abstract notions such as the “rule of law” and the Weberian dictum of state monopoly over the means of coercion, invariably contrasting idealized forms of law in the North with their absence in the South (Rodríguez-Garavito 2011, 13). Following an initial wave of studies signaling the links between law, democracy, and international rule of law promotion, with a particular focus on judicial reform (Domingo and Sieder 2001; Dakolias 1996; Pásara 2007), research more identified with the methods of North American political science developed causally driven empirical analyses of existing state institutions. Focusing on institutional design and judicial behavior (and drawing on United States studies of judicial behavior), these works strengthened the field of comparative judicial politics (Ansolabehere 2007; Hilbink 2007; Helmke 2005; Finkel 2008; Domingo 2000; Ríos-Figueroa and Staton 2012; Kapizewski 2012). The legacy of these pioneering studies, examining the relationship between justice and politics in contexts of authoritarianism and emergent democracies, continued with new research concerned with the factors explaining the different roles assumed by judicial institutions, and their capacity to generate social transformation by (re)distributing power and resources (Gloppen et al. 2010; Gauri and Brinks 2010). The judiciary was conceived as an arena for social justice and accountability claims, particularly with regard to international

human rights standards and norms (see the chapter by Ansolabehere in this volume). The dimensions of international politics, the diffusion of legal ideas, and relations between legal institutions, civil society, and social movements promoting certain issues and causes came to constitute central issues in the field of study. These were generally approached from perspectives of legal mobilization, or of constitutional change understood as processes of legal mobilization (see the chapters by Saldivia, Wilson and Gianella, and Machado et al. in this volume). Topics which have generated a rich body of comparative and single case studies across the region in this register include movements in favor of sexual and reproductive rights, and health rights (Albaracín 2011; Bergallo and Michel 2016; Yamin and Gloppen 2011). Scholarship has circulated through congresses of USA scholarly networks regularly attended by Latin American academics, including the Latin American Studies Association (LASA) and the American Political Science Association (APSA).⁷ In addition to interest in the functioning of courts, research on legal institutions, their reform and the challenges facing them also experienced an increase (Halliday 2013), especially on state prosecution bodies (see chapter by Michel in this volume); the police (see chapter by Dammert in this volume); prisons (see chapter by Macaulay in this volume) and the national human rights institutions created in the 1990s, which constituted a key case of legal diffusion and innovation (see chapter by Uggla in this volume). As well as political science and sociology, legal anthropology has also provided critical ethnographic analyzes of penal institutions, judicial bureaucracies, and processes of legal reform – for example, the work of Argentine, and Brazilian scholars such as Sofia Tiscornia, María Victoria Pita, María José Sarabayrouse, Josefina Martínez, and Roberto Kant do Lima (Tiscornia 2004; Tiscornia, Kant de Lima, and Eilbaum 2009). This reflects the shift within law and society scholarship toward more decentered understandings of the state, with a focus on the micro-politics, subjectivities, and material practices that underpin the making of the law (see chapter by Barrera and Latorre this volume).⁸ As more constructivist perspectives have gained ground vis-à-vis normative approaches in Latin American law and society scholarship, concern with legal pluralism has extended beyond the initial focus on indigenous peoples. Earlier approaches championing legal pluralism as emancipatory have been superseded by work that analyzes the fragmented nature of state power – for example, exploring the role of paramilitary and parastatal elements in contemporary state formations. More generally, ethnographic and anthropological approaches to the study of law and justice in Latin America are gaining ground (Brunnegger and Faulk 2016).

Yet despite tendencies toward decentering the state and growing sociological and legal anthropological concerns with processes of state formation and transmutation, the axis of civil society/state (or social movements/state) remains fundamental to the field of law and society in Latin America, perhaps to a much greater extent than in other regional traditions of law and society scholarship. The analysis of legal institutions signaled above has been accompanied by a huge increase in research on processes of legal mobilization by different social movements, in turn linked to a broader literature analyzing the role of different civil society groups in securing greater rights guarantees and state accountability (Mainwaring and Welna 2003; Peruzzotti and Smulovitz 2006; Isunza and Olvera 2010). In Latin America, social movements have framed their demands in the language of rights and have used legal change and strategic litigation as central tools in their efforts to secure socioeconomic, political, and cultural transformations. Law and society scholars have analyzed the nature and effects of these strategies, often with reference to an international law and society literature focused on the processes, practices, and subjectivities through which the transnationalization of human rights occurs (Keck and Sikkink 1998; Risse, Ropp, and Sikkink 1999; Merry 2005; Merry and Goodale 2007; on Colombia see Santos and García-Villegas 2001; on Mexico see Hernández 2016). Social movement theory has shaped regional law and society scholarship, with a theoretical and methodological emphasis on

concepts and tools such as framing, discourse analysis, network analysis, and both single case and causal multi-case comparative studies (see Lemaitre and Sandvik 2015 for an insightful critique of the application of social movement theory to violent contexts). Of particular concern has been the analysis of emancipatory or counter-hegemonic processes of socio-legal mobilization, what Boaventura de Sousa Santos and César Rodríguez-Garavito in a signal volume (2005) called “legal globalization from below.”

Compared to the early 1990s, socio-legal mobilization linked to issues of governance and social justice now occupies a more prominent role in regional law and society research agendas. Many scholars are themselves public intellectuals, key figures in national debates and reform processes promoting liberal, “emancipatory,” and rights-based understandings of law. While most law training throughout the region remains highly formalistic, a number of key nodes exist that encourage human rights litigation and law in action perspectives – for example, the Universidad de Los Andes in Bogotá, or the ITAM in Mexico (see chapters by Fortes and Gómez in this volume). Prominent NGOs and civil society organizations engaged in strategic litigation and applied socio-legal research – such as DeJusticia in Colombia, CELS (Centro de Estudios Legales y Sociales) in Argentina, Fundar in Mexico, or the Instituto de Defensa Legal in Peru – have further shaped the field. Indeed the co-production of knowledge and the fluidity of relations between academia, civil society, and (increasingly) national and regional legal institutions are distinguishing features of law and society scholarship in Latin America. To provide just one example of this kind of interface: the Guatemalan Instituto de Estudios Comparados en Ciencias Penales (ICCPG) was established by former students of Argentine legal scholar and human rights activist Alberto Binder at the start of the 1990s. The ICCPG developed applied empirical socio-legal research in Guatemala and has played a key role in advancing human rights-based reform of the criminal justice system in that country. Former ICCPG director Claudia Paz y Paz Bailey spearheaded the national fight against impunity during her time as head of the Guatemalan public prosecution services and subsequently as part of the interdisciplinary group of experts appointed by the Inter-American Commission on Human Rights to investigate the forced disappearance of 43 students in Ayotzinapa, Mexico. Similar examples of such fluidity and cross-regional exchange can be found in the law and society field in many countries throughout the region. Internships at the Inter-American Commission and Inter-American Court, together with the work of organizations such as CEJIL (Center for Justice and International Law) (which engages in strategic litigation within the Inter-American System) and key United States-based organizations – for example, the Center for Reproductive Rights in New York – have played a vital role in consolidating transregional epistemic law and society communities characterized by increasingly international practitioner perspectives on law.

Last, but not least, all these changes in the role of law, and in the relationships between politics and law, combined with the diversification of the academy interested in understanding law in action, implies a revision of theoretical approximations. The incorporation of longer historical perspectives, reflections about the frontiers between the legal and the illegal, the focus on the constitutive tension between law, civilization, and barbarism in Latin America, law and race studies, law and gender, international relations, and legal compliance are all important in re-theorizing approaches to the study of law and society in the region and beyond, and are the focus of the first section of this Handbook. We underline the need to question persistent dichotomies in the study of law, such as compliance/noncompliance, legal/illegal or state/non-state. Critical interrogation of these often taken for granted binaries, in the light of developments in Latin America and in dialog with scholarship from other regions of the world holds out the promise of new critical agendas for law and society scholarship.

Organization of the Handbook

The chapters that follow are divided into four parts: Part I Law, Politics, and Society; Part II New Constitutional Models and Institutional Design; Part III Law and Social Movements; and Part IV Emergent Topics. Together the chapters provide an overview of longstanding concerns and recent innovations in law and society scholarship from Latin America. They also evidence its rich interdisciplinary tradition, drawing on legal philosophy, comparative politics, sociological approaches, and – increasingly – the turn toward more ethnographic and micro-level approaches to analyzing the constitution of law that have long been in evidence in United States and European law and society research. At the same time, many of the issues that regional law and society scholarship has analyzed, including the indeterminacy of the law and the line between the legal and illegal, or the social and political dimensions of efficacy and compliance, are increasingly of concern to law and society scholarship more broadly. As law and society as a field becomes more global in nature, North–South dichotomies – which were always informed by an enduring parochialism in northern scholarship – are ever harder to sustain.

The chapters in Part I of this Handbook, “Law, Politics, and Society,” address a number of key cross-cutting theoretical and conceptual debates, which have featured prominently in Latin American law and society research. These include: the nature of the state and the relationship between state formation, law and legal change; the role that culture plays in compliance or noncompliance; the dynamics between law and the deep-rooted and intersecting inequalities of race, gender and class, together with the persistently high levels of social violence that characterize the region; and legal pluralism and the relationship between legality and illegality. In his contribution, Argentine legal theorist Roberto Gargarella reflects on the specificities of constitutional development in Latin America over the *longue durée*, underlining what the regional experience has to offer to political and constitutional theory more generally. He identifies five distinct phases of Latin American constitutionalism since the foundation of the republics, reflecting on the shifting dynamics between law, politics, and different institutional, and normative configurations. He concludes that despite comparatively broad bills of rights, and a long-standing tradition of social rights constitutionalism, the power structures of the state in Latin America’s constitutions (what Gargarella calls the “engine room”) remain highly concentrated. Gargarella’s analysis thus, tempers more presentist analyses of “neo-constitutionalism” that overestimate the transformative power of law. In their chapter on law and the state in Latin America, political scientists Lisa Hilbink and Janice Gallagher review recent trends in the literature and assess their implications for future research. They identify two broad approaches to the problem of weak states and weak rule of law in the region: on the one hand, those that focus on institutional barriers such as lack of judicial independence or access, and lack of state embeddedness in society; and on the other, those that emphasize the role different actors external to the judiciary play in shaping the state and law. These two approaches, although closely related, and complementary to our current understanding of the law and the state, have reached high levels of specialization on their own and to some extent, a certain level of independence from each other.⁹ In fact, as Hilbink and Gallagher’s review signals and González-Bertomeu’s chapter shows, analysis of institutional features tend to focus on how courts work and to theorize explanatory factors that are internal to them. Conversely, and as Wilson and Gianella in this volume show for the case of social movements, scholars that analyze processes of judicialization tend to pay more attention to the role of actors outside of the courts. Among the recent trends highlighted by Hilbink and Gallagher are a shift from a sole focus on apex courts toward studying lower courts; a growth in studies comparing subnational units, institutions, and issues; and analyses of citizens’ attitudes to the law and their experience of the state more broadly.

Their chapter points to the increasing complexity of comparative research on law and the state in Latin America, and its richness.

In her chapter Rachel Sieder discusses the concept and practice of legal pluralism, a central concern of law and society scholarship, and places the regional literature on legal pluralism (which has tended to focus largely on indigenous peoples and the struggles to formally recognize their autonomy rights) in dialog with the extensive research on legality, illegality, and violence in Latin America. She reviews key contributions and conceptual approaches to legal pluralism in the regional scholarship, and offers a typology of different types of illegality. Emphasizing the contributions that constructivist, anthropological approaches to law have made to regional scholarship, Sieder points to the complex interplay between different legal, quasi-legal, and illegal regimes – or what she terms “fragmented sovereignties” – in securing order and “plural constellations of governance” in Latin America. Mauricio García-Villegas considers the historical roots of the regional “culture of noncompliance” with the law, referencing a wide range of allusions to noncompliance in Spanish and Portuguese literary tropes and historical works. As he emphasizes, interest in noncompliance is relatively marginal to United States and European law and society research, yet it is a central – although still understudied – aspect of social and political life in Latin America. García-Villegas identifies three approaches in the literature: noncompliance as rational choice; as political resistance to authority (drawing on both *iusnaturalis* and Marxist traditions); and as response by both the powerful and the powerless to contextual specificities. He points to a normalized “practice of exception” in Latin America and underscores the relevance of its analysis for understanding the apparent expansion of noncompliance, violence, and illegality in the contemporary world. In her chapter Julieta Lemaitre signals the long-running tension between civilization and barbarism in Latin America, with law historically constituted on the side of elite civilizing forces and barbarism representing those who live in regions “without God or law” i.e., beyond state legality. Opposing the simplistic idea that what these regions and sectors lack is the presence of the state or the arrival of the law, Lemaitre argues that violence is a central problem of law in Latin America that neither liberal nor Marxist or post-Marxist perspectives have adequately theorized. Calling for theories of law grounded in the realities of the region, she also advocates a social constructivist approach to exploring the regulation of social order in zones “without law,” with an emphasis on uncovering what is seen as legitimate and what is normalized. In their chapter Leticia Barrera and Sergio de la Torre consider the technical and material dimensions of bureaucratic and legal knowledge, and the ways in which ethnographic, anthropological approaches have in recent years explored the processes by which the state is instantiated in Latin America. They argue that technical aspects of the law (including doctrines, regulations, case files, and protocols, together with legal routines and procedures) structure forms of expertise, governance, and knowledge relations, thus constituting law’s “inner life.” Drawing on examples from their own work (on the field of judicial practice in Argentina and disputes over land tenure in Colombia) they argue for a focus on state bureaucracy and its legal technologies as an object of enquiry on its own terms. In other words, rather than taking the gap between law on the books and law in action as a point of departure, Barrera and la Torre maintain that fine-grained analysis of the material aspects of law making within institutions provides a different way of knowing about how law works and is experienced as different “knowledge practices” by a range of actors.

Isabel Jaramillo reviews the development of feminist legal theory in Latin America and considers its contributions to the transnational field of law and gender studies. Providing an account of the different ways in which Latin American feminist legal scholars have confronted tensions between transnational and local feminist organizing and scholarship, and between sexual inequality and other forms of oppression, she identifies three broad approaches, which she terms

solidaristic, radical, and political feminism. Jaramillo analyzes the different actors and constituencies, issues, conceptual premises, doctrinal innovations, and scholarly production that have marked these three currents. She concludes that feminist scholarship from the region is particularly characterized by contributions that emphasize multiple subordinations and the intersectionality of race, class, ethnic, and gender inequalities. Tanya Hernández examines dynamics between race and law in Latin America, mapping recurrent research themes in the socio-legal literature on race, which has mainly focused on Afrodescendant populations, and the ways in which states throughout the region have addressed ideas of race and racial discrimination. She explores three sets of socio-legal debates: the limits of multicultural constitutional reform for full political participation; the limits of the regional emphasis on criminal law to address discrimination; and the challenges to recent attempts to deploy United States style affirmative action policies. Highlighting the traditional separation between indigenous/ethnicity and Afrodescendant/race, Hernández ends by insisting on the need to name the racial nature of structural violence in order to elucidate the nature of state formation and power in Latin America, something which is gaining more traction not just in regional law and society scholarship but in the social sciences overall.

The final two contributions of this section consider the relationship between law and development in the region. From a liberal perspective, Pedro Fortes reviews the checkered history of the law and development movement in Latin America, describing its different phases, conceptual framings, and key actors. He revisits the project of legal development through the transformation of legal education and professional lawyering, concluding that centers of excellence in legal education were indeed established in Latin America and that the current challenge is how to extend innovative approaches and the empirical study of law beyond these nodes. He concludes by insisting on the needs for capabilities or human needs-based definitions of development, advocating an empirically, and incrementally-based approach. By contrast, Carlos Rivera Lugo reviews Marxist perspectives on the relationship between law and the economy, emphasizing the importance of what he refers to as a “dissenting, decolonizing and creative endeavor” in Latin America that has attempted to develop Marxist thought beyond its European origins. Rivera Lugo considers the relationship between law – understood as a tool for domination and the reproduction of capital – and the current stage of globalized neoliberal political economy as reflected in Latin American contexts. He warns against perspectives that over-emphasize the relative autonomy of the law and underlines the need to analyze law and economy in tandem. He also points to the generative potential for Marxist thought of current dialogs between different historical experiences of the communal, and those of indigenous peoples in Latin America, something which holds out the promise of a break with Eurocentric framings of the region’s historical development, pointing to the radical potential of its autochthonous legal expressions.

Part II, “New Constitutional Models and Institutional Design,” signals the growth in the region of studies of law in action focused on legal institutions, an area that was of marginal interest to law and society studies even two decades ago. This section of the Handbook focuses on research into ombudsmen, police, judicial institutions, constitutional courts, and the Inter-American System of Human Rights. While the content of the chapters necessarily differs, they share a series of concerns: independence-accountability; power-efficacy; improvement of criminal justice versus abuses of criminal justice; the diffusion of human rights; and transformations of the legal profession. Interest in the independence and accountability of the judiciary, ombudsmen, and police focuses on the possibilities of judicial institutions controlling political power. This continues to be a central topic in the study of legal institutions in Latin America. These general concerns are underpinned by a shared regional history of political instability,

authoritarianism, and super-presidentialism, which in turn has generated conceptual debates about what independence is and how it can be measured, and about accountability functions more broadly. However, at the same time as scholars focused on institutional and extra-institutional determinants of institutional behavior, they have also analyzed the performance of these institutions.

In accordance with neo-institutionalist perspectives in political science, these studies share a certain baseline assumption that institutional performance depends not only on rules but also on interests, power relations, and the perspectives of the different actors involved. Studies of judicial institutions, judicial behavior, and ideational studies underline such concerns. In this sense, they share perspectives, which emphasize the dynamic, and contingent nature of judicial independence, accountability, power, and efficacy. Nonetheless, it is important to underline the fact that reflections on power and efficacy also imply the study of undesired or unanticipated consequences. Multiple problems are generated by awarding power to institutions that operate as authoritarian enclaves or which are driven by bureaucratic inertia and corruption. Studies of institutions that form part of the criminal justice system – police, prosecutors' offices, and prisons – best express this tension between improvement and abuse. In all these cases, in addition to an interest in institutional reforms and their possibilities, research has also traced processes and identified practices that violate human rights or which operate as mechanisms to criminalize groups considered as dangerous because of their social class, race, or because of links that exist between state security institutions and criminal organizations.

As well as these shared concerns, we can identify two overarching issues in this section of the Handbook. One is the diffusion of ideas, tools, and institutions of human rights, which foregrounds the diffusion of doctrinal and legal institutions, the relation between domestic and international courts, the role of the Inter-American System, the new demands on the judiciary that assumes a fundamental role in social change and human rights accountability, and the tensions, and conflicts that this implies. The other overarching issue is that of the legal profession. Research on legal institutions signals that legal professionals are key actors (although by no means the only ones): these include lawyers, judges, public prosecutors, and defenders. The relationship between the legal profession and legal institutions is marked by a double movement or tension: legal professionals are the main implementers of reforms, which at the same time impact their professional exercise.

The analysis of legal institutions in Latin America set out in this section enables the reader to identify different research perspectives. Some are more concerned with causal explanations and frameworks; others with more descriptive or ethnographic approximations. Critical perspectives exist alongside constructivist and positivist approximations. The chapters in Part II therefore, signal a diversity of theoretical and methodological perspectives, as well as research interests (as signaled in the first section of this introduction). A brief description of the chapters serves to illustrate the diversity of themes, concerns and perspectives.

Juan González-Bertomeu's chapter on judicial politics in Latin America reviews the main themes in this field, which is in turn one of the signal innovations in studies of law in action in the region. González-Bertomeu identifies five central issues: independence; power; judicial conduct; legal culture and ideas; and judicial activism and compliance with sentences. His contribution sets out a multiplicity of competing perspectives on the analysis of judicial politics, without trying to integrate them into a single approach. The chapter by Francisca Pou also focuses on high courts, but from a different vantage point. Analyzing the regional characteristics of constitutional justice, Pou emphasizes what she considers to be the main Latin American innovations in constitutional law, such as hybrid judicial review models that overcome the dichotomy between United States and European models. She also underlines efforts by high

courts in the region to develop communications policies to facilitate links with the wider public, and the importance of relations between high courts and other tribunals in the circulation of legal ideas. Verónica Michel's chapter reviews research approaches to a new subject of study in the region; public prosecutor's offices. As well as signaling the most relevant research, she indicates the three underlying areas of enquiry that inform it: judicial politics (particularly with reference to theories of judicial independence, power, and accountability); studies on the functioning of criminal justice systems, focusing particularly on abuses and the repressive use of criminal law; and finally, research examining legal responsibility for human rights violations and the importance of prosecutorial bodies in these processes. For his part, Fredrik Uggla in his contribution on human rights ombudsman's offices revisits the relationship between independence and efficacy, tracing the spread, and evolution of these institutions throughout Latin America since the 1990s. Uggla underlines the importance of interactions between ombudsman's offices and other institutions, and signals what comparative experience indicates about positive results. In her chapter on the police, Lucía Dammert indicates the research deficit on police institutions in the region, proceeding to review reform processes, actors' behavior, and overall tendencies, such as the trend toward militarization of the police. Fiona Macaulay analyzes prison systems, pointing to what she calls "prisoner capture," a process involving extensive reliance on pretrial detention, the hyper-penalization of petty crimes that increases the prison population, and self-government of carceral institutions by organized groups of prisoners. For Macaulay the overall context of rollback of social welfare provision and the absence of policies for social integration explains the region's overreliance on criminal law. Karina Ansolabehere's chapter focuses on the ways in which domestic judicial powers function as arenas for human rights. She signals three different research agendas that have marked the field in Latin America in recent years: the reception of international human rights law; legal responsibility for human rights violations; and social justice. In her chapter, she observes that these different research strands examining the relationship between the judiciary and human rights in the region are not always in dialog. Considering future prospects for the Inter-American Human Rights System, Alexandra Huneus underlines the importance of geostrategic analysis of human rights regimes in a global context marked by the advance of anti-globalization discourses, the decline of United States hegemony and the rise of authoritarian populisms. She revisits the body of legal and socio-legal scholarship on the Inter-American System and human rights in the region to examine how it can be reframed in order to inform new questions posed by the changing world order. Finally, Manuel Gómez considers changes in research agendas on legal professionals in Latin America. He underlines the importance of the legal profession, especially the role of lawyers in processes of judicial reform. One of the central distinguishing features of Gómez's chapter is precisely the relative paucity of research in this area, which in turn signals new possibilities for future agendas.

Part III of the Handbook turns the spotlight on the relationship between "Law and Social Movements" in Latin America. To some extent, this section is the counterpart of the preceding section focusing on institutions and constitutions, and signals the two principal ways in which the relationship between law and society has been problematized in recent years: on the one hand, a focus on institutions and, on the other, a concern with questions of equality and the transformative potential of law and legal institutions. One good example of the complementary relation between the emphasis on institutions on the one hand and the role of social actors in shaping them, on the other, is the dialog between the scholarship on judicial politics and judicialization of politics, respectively. The first field – as mentioned above and explained by González-Bertomeu – builds on the idea that institutional features, internal politics, and level of embeddedness of the institutions may explain institutional performance and outcomes.

Scholarship that focuses on social movements as agents of the process of judicialization of politics – as illustrated in Wilson and Gianella's chapter in this section – explains the processes through which social grievances and claims are transformed into legal claims, target specific institutions, and ultimately also play a role in shaping institutional responses. The empirical puzzle of how institutions work is composed by the two counterparts and even though the two camps share many theoretical debates, each strand of research is now producing its own set of scholarship.¹⁰ The common denominator of this section lies in the ways in which law has been used to advance a range of social justice causes, and in the analysis of the types of judicial, political, and social responses such efforts have generated. In synthesis, this section focuses on the ways in which civil society actors have used law to pursue social change. Understandings of the judicialization of politics as broad processes, which include more than resort to judicial review mechanisms, underpin these preoccupations. What are the factors which lead to the judicialization of politics? Why do some causes find more success in the courts than others? What processes of legal and political diffusion occur to facilitate judicialization? These are some of the questions considered in this Part III of the Handbook. The different chapters are united by an interest in the ways in which the activation of legal mechanisms and discourses generates transformative processes. Although they recognize more sanguine or indeed pessimistic perspectives on these issues (Rosenberg 2008), in general authors recognize the difficulty of determining generic answers and underline the importance of understanding specific contexts and processes. Perhaps for this reason, in-depth single country, or issue case studies have increasingly been complemented by more comparative analyses, which seek to uncover the causal factors underlying successful cases of transformative judicialization. The chapters in this section are informed by diverse concerns and issues, including the factors contributing to judicialization, transitional justice, social movements, and framing processes, the circulation of legal knowledge and democratic constitutionalism. This diversity of approaches illustrates the multiple entry points to analysis of law and social movements in Latin America, although by no means do we cover all the social movements in the region that have made recourse to legal mobilization – for example, indigenous movements, and environmental movements are two important cases not covered in detail in this section.

In their chapter, Bruce Wilson and Camila Gianella revise the evolution of the literature on the judicialization of politics in Latin America. They identify different moments in this process, including an initial concern with questions of accountability and a subsequent turn to the use of the judicial arena as a means to advance different social causes. Their review underlines some of the causes that have had most echo in Latin American processes of judicialization, including rights to health, social, economic and cultural rights, and LGBTI (lesbian, gay, bisexual, transgender, and intersex) rights. Laura Saldivia's chapter analyzes processes of legal change linked to rights to sexual diversity, an area that has witnessed significant advances in some countries in the region. Saldivia anchors her analysis in the case of Argentina, the first country in the world to pass legislation to recognize rights to sexual identity, and analyzes the ways in which this legal advance was diffused from a peripheral country to the core of global rights agendas, as well as the ways in which the movement in favor of rights to sexual diversity contributed to generating new constitutional interpretations. In their chapter Marta Machado de Assis, Ana Luíza Villela de Viana Bandeira, and Fernanda Matsuda consider the advances and obstacles encountered by women's movements with respect to rights to legal abortion. On the basis of a case study of Brazil, they contrast the struggle against domestic violence with the agenda on reproductive rights. They explore the reasons underlying the different advances in both movements' struggles, pointing to the key role played by framing in legal mobilization and the ways these are tied to different moral and discursive disputes over women's rights. Lastly, Elena Martínez Barahona

and Martha Liliana Gutiérrez consider the importance of transitional justice studies in Latin America, signaling recent advances in the field and future research agendas.

Part IV of the Handbook focuses on what we have termed “Emergent Topics,” including corruption, impunity, and drug trafficking, military jurisdiction, and land conflicts, all central contemporary challenges for Latin America’s legal and political systems and societies. As we have underlined in this introduction, scholarship concerned with the inefficacy of the law and high levels of violence and impunity has long characterized law and society studies in Latin America. The changing dynamics between legality and illegality remains a central analytical concern, together with the ways in which beliefs and behaviors related to the law change over time through the interplay between different forms of agency, structural features, and contests over power. Yet as we have signaled in this introduction, the coincidence between hyper-legality and growing judicialization, and the massive growth in criminal activities is not just a Latin American but rather a global phenomenon (Comaroff and Comaroff 2006, 2016). The contributions in this section offer new perspectives on the relationship between corruption, organized crime, legal reform, and enforcement in Latin America, which in turn suggest important lines of enquiry for analyzing the socio-legal dimensions of current regional and global reconfigurations of politics and economics.

In the first chapter of the section, Rodrigo Meneses approaches the persistent and still novel issue of urban regulation and the theorization of Latin American cities as specific sites of socio-legal research. Meneses reviews the existent research on urban regulation to show the indeterminate nature of urban property regimes in the region. He illustrates this argument by reviewing the scholarship on street regulation and the social and construction of public space through constant and iterative processes of interaction between authorities and the population. The chapter by Tatiana Alfonso Sierra maps the contribution of Latin American socio-legal research to the understanding of a classical legal institution: property. She argues that law and society research in the region has approached the institution from different perspectives and theoretical frames, creating a fragmented landscape, and parallel conversations. Her chapter reviews this literature, identifying five key theoretical contributions as well as the ways in which a common interest on law in action around property has evolved into different subfields. The first, on law and development, has established a solid conversation with policy makers and development agencies with a new emphasis on alternative forms of property and not only on private individual property. The second line of research in the region explained the rapid urbanization processes of Latin American cities with the formality/informality binary and has evolved to conversations with urban studies and planning tools, dealing with property as one possible set of relations for organizing the city. The third contribution is a more anthropological approach based on the idea of the plurality of legal forms and the fourth set of questions deals with ideas of property rights in a globalized age. Finally, the chapter presents a fifth line of research in which the study and defense of territorial rights of ethnic groups in Latin America is starting to get closer to debates about property. The author calls for an integrated analysis of property – and legal institutions in general – as a multifaceted institution that allows us to understand how law mediates between social and economic processes, social outcomes, and power struggles in society. In her chapter, Linn Hammergren reviews both existing scholarship and multiple journalistic and official sources on corruption and organized crime in the region, setting out what we know to date about regional trends. She provides an extensive overview of relevant research and its limitations, drawing on scholarship and data from four countries – Brazil, Colombia, Guatemala, and Mexico – and identifying shared and country-specific patterns. Hammergren ends her chapter with a call for more theory building and causally inferred research exploring the impacts of contemporary configurations of corruption and organized crime on the prospects

for legality and justice in the region. In his chapter, Julio Ríos-Figueroa analyzes the “new militarism,” which has seen a renewed prominence of the military in Latin America’s internal security affairs, including the fight against organized crime, terrorism, and even mass protests deemed a threat to national security. He reviews three areas where this new militarism is in conflict with rule of law and democracy: the clash between constitutions and the military’s mission statements; the scope and nature of military justice, and; the dynamics between national courts and the regional human rights system with respect to judicial oversight and the appropriate limits on military power. Ríos-Figueroa emphasizes the need for more socio-legal analyses of the new militarism, arguing it is one of the key features shaping the future of the region’s fragile democracies. Alejandro Madrazo and Catalina Pérez Correa also underline the need for more socio-legal analyses of the so-called “war on drugs” in Latin America, which – as they point out – offer possibilities for the study of criminal law in action. They argue that the (United States-led) emphasis on treating narcotics as a criminal and public security issue, rather than a health and public safety issue, has been disastrous for the regional prospects for democratic rule of law. Madrazo and Pérez Correa trace the ways in which the increasingly punitive enforcement of drug laws has led to the militarization of public security, hyper-penalization of drug-related crimes, the criminalization of consumers, the frequent violation of due process rights and an increase in corruption, torture, and use of lethal force by state authorities. They conclude with a call for more ethnographic analyses of processes of criminalization in order to reveal the consequences of drug policies, and for more attention to the impacts of drug policies and the new militarism on Latin America’s constitutional orders and law in action.

Concluding Thoughts

This Handbook attempts to provide a broad panorama of law and society research in Latin America, signaling regional concerns, setting out research trajectories and findings, and underlining the contributions of law and society research in Latin America to wider debates in law and society. Probably the most signal feature of contemporary law and society scholarship in the region is its questioning of key dichotomies that have characterized dominant narratives on law and society: compliance/noncompliance; legality/illegality, and; law on the books/law in action. We have identified two main cleavages: first, more theoretically versus more methodologically driven studies of Latin America’s legal institutions and practices, and; second, the persistence of more normative as opposed to more constructivist approaches to law. These cleavages continue to structure the field in what we consider to be productive tensions.

Nonetheless, a number of areas not addressed here are necessary to enrich future law and society scholarship in Latin America. First, there is a need for more long-run historical analyses and debate with historians of law and society in Latin America. Historians of the region’s colonial and republican periods have documented and analyzed the central role that law, litigation, and contestations over justice played in structuring relations between governments and populations in previous periods and over the *longue durée* (see for example, Salvatore and Aguirre 1990; Cutter 1995; Carey 2013). Analysts of the contemporary period need to consider the historical role of courts in political struggles in Latin America, as well as the legal history of particular claims and engagements. The long-run traditions of resort to the courts for routine individual and collective claims highlighted by historians, contrasts with the current emphasis of socio-legal analysts on constitutional rights litigation, support structures for strategic judicialization, and far-reaching legal and political transformations. This contrast between what Rodrigo Uprimny referred to as “protagonistic” versus “routine” justice (2016) – i.e., constitutional jurisprudential developments versus citizens’ everyday encounters with ordinary justice – requires greater

reflection by law and society scholars in order to generate more regionally grounded theory. Second, inevitably a number of important topics have not been included here, including law and migration, and commercial law and legal globalization from above, to name just two. Reflection on these issues is vital for the future development of the field. Third, the contributions in this Handbook point to the unevenness of production of socio-legal scholarship and statistical data across the region. While some countries figure prominently in the literature (this varies according to topic), others are notably absent. Greater attention to the outliers and to least similar cases in the future can only enrich our understandings of the dynamics between law and society across the region. In conclusion, we hope that this Handbook stimulates a broader set of conversations about law and society in Latin America and points to the contributions scholarship from and about the region can make to global law and society studies.

Notes

- 1 A third contributory factor, which we do not explore in any detail here, is the changing public role of lawyers throughout the region.
- 2 The varying quality and availability of official statistics across the region is another significant factor, as is the uneven access to decisions of the high courts in the 17 countries.
- 3 In the USA, the definition of the field has been paired with the emergence, changes, and fractures of the Law and Society Association and law and society programs in universities.
- 4 The Oñati International Institute for the Sociology of Law has been a center of production of world-wide socio-legal research as its founders – the Basque country, the Socio-Legal Research Committee and the International Sociological Association – aimed in 1989. The Oñati institute has fulfilled this mission through academic conferences, publishing venues, and a varied offer of academic programs. As has been shown by Ibarra (2018), an analysis of the production of Oñati reveals some of the main features and topics of socio-legal research in and about Latin America and how the field can be mapped through the academic production of alumni and scholars around Oñati.
- 5 These northern-based centers and associations have been important hubs for the development of law and society studies in Latin America, enabling North–South and South–South interaction and exchange. English has dominated as a language of publication, although Spanish and Portuguese are also important for the transnational circulation of knowledge.
- 6 SELA's sponsoring institutions include: the University of Palermo and the University of Buenos Aires (Argentina); the Getulio Vargas Foundation (Brazil); the Adolfo Ibañez University, the University of Chile, and the Diego Portales University (Chile); the University of Los Andes (Colombia); the Autonomous Technological Institute of Mexico (ITAM) and the Center for Economic Research and Teaching (CIDE) (Mexico), and UNAM; the Paraguayan Institute for Constitutional Law; the Pontifical University of Peru (PUCP) and the Peruvian University for Applied Science; the University of Puerto Rico and the Pompeu Fabra University in Barcelona. For a history of SELA see <https://law.yale.edu/centers-workshops/yale-law-school-latin-american-legal-studies/sela/history-sela> Consulted November 20, 2017.
- 7 By the 1990s a critical mass of regionally-based law and society scholars had been trained in the USA (and to a much lesser extent in Europe), a trend which continues. In addition, national government-funded research councils in Argentina, Mexico, and Brazil have for many years promoted “internationalization” of nationally produced research, favoring publications in English by academics working in those countries.
- 8 In contrast to law and society studies in the USA and Europe, litigant-centered approaches have only recently gained ground within the field in Latin America, although there is a long regional tradition of legal anthropological studies on indigenous justice systems and litigants' disputing strategies within them – see for example, Nader (1990), Collier (1973), and Sierra (2004).
- 9 This volume includes one chapter on each of these trends that Hilbink and Gallagher signal; the first, by González-Bertomeu in Part II, reviews research on the main topics examined by scholars of judicial politics; the second, by Wilson and Gianella, analyzes the external side of judiciary-society relations, that is the role of social movements in advancing social causes.
- 10 That is the reason why this volume includes two different chapters that review recent developments and future agendas of each of the research strands. See González-Bertomeu on judicial politics in Part II and Wilson and Gianella on the process of judicialization of politics in this section.

References

- Albarracín, Mauricio. 2011. "Corte constitucional y movimientos sociales: el reconocimiento judicial de los derechos de las parejas del mismo sexo en Colombia." *Revista Sur*, Vol. 8 (14): 7–33.
- Ansolahehere, Karina. 2007. *La Política Desde la Justicia: Cortes Supremas, Gobierno y Democracia en Argentina y México*. Mexico: FLACSO.
- Bergallo, Paola and Agustina Ramón Michel. 2016. "Abortion." In Juan González-Bertomeu and Roberto Gargarella (eds.), *The Latin American Casebook: Courts, Constitutions and Rights*. London and New York: Routledge: 36–59.
- Bonilla, Daniel. 2013. *Constitutionalism of the Global South*. New York: Oxford University Press.
- Brinks, Daniel. 2006. *The Judicial Response to Police Killings in Latin America. Inequality and the Rule of Law*. New York: Cambridge University Press.
- Brunnegger, Sandra and Karen Faulk (eds). 2016. *A Sense of Justice. Legal Knowledge and Lived Experience in Latin America*. Stanford, CA: Stanford University Press.
- Carey, David. 2013. *I Ask for Justice. Maya Women, Dictators and Crime in Guatemala, 1898–1944*. Austin, TX: University of Texas Press.
- Carothers, Thomas. 2001. "The many agendas of rule-of-law reform in Latin America." In Rachel Sieder and Pilar Domingo (eds.), *Rule of Law in Latin America: The International Promotion of Judicial Reform*. London: Institute of Latin American Studies: 4–16.
- Chenaut, Victoria, Magdalena Gómez, Héctor Ortiz, and María Teresa Sierra. 2011. *Justicia y Diversidad en América Latina. Pueblos Indígenas ante la Globalización*. Mexico: CIESAS/FLACSO Ecuador.
- Clark, David. 1975. "Judicial protection of the constitution in Latin America." *Hastings Constitutional Law Quarterly*, Vol. 2: 405–42.
- Collier, Jane. 1973. *Law and Social Change in Zinacantan*. Stanford, CA: Stanford University Press.
- Comaroff, Jean and John Comaroff. 2006. "Law and disorder in the postcolony: an introduction." In Jean and John Comaroff (eds.), *Law and Disorder in the Postcolony*. Chicago, IL: University of Chicago Press.
- Comaroff, Jean and John Comaroff. 2016. *The Truth about Crime: Sovereignty, Knowledge, Social Order*. Chicago, IL: University of Chicago Press.
- Couso, Javier, Alexandra Huneeus, and Rachel Sieder (eds.). 2010. *Cultures of Legality. Judicialization and Political Activism in Latin America*. New York: Cambridge University Press.
- Cutter, Charles. 1995. *The Legal Culture of Northern New Spain, 1700–1810*. Santa Fe: University of New Mexico Press.
- Dakolias, Maria. 1996. *The Judicial Sector in Latin America and the Caribbean: Elements of Reform*. Washington, DC: World Bank.
- Dezalay, Yves and Bryant Garth. 2002. *The Internationalization of Palace Wars. Lawyers, Economists and the Contest to Transform Latin American States*. Chicago, IL: Chicago University Press.
- Domingo, Pilar. 2000. "The independence of the supreme court in Mexico." *Journal of Latin American Studies*, Vol. 32 (3): 705–35.
- Domingo, Pilar and Rachel Sieder (eds). 2001. *Rule of Law in Latin America: The International Promotion of Judicial Reform*. London: Institute of Latin American Studies.
- Finkel, Jodi. 2008. *Judicial Reform as Political Insurance. Argentina, Peru and Mexico in the 1990s*. Notre Dame, IN: University of Notre Dame Press.
- García-Villegas, Mauricio. 2002. *Normas de Papel: La Cultura de Incumplimiento de las Reglas*. Bogotá, DeJusticia/Siglo del Hombre Editores.
- García-Villegas, Mauricio and César A. Rodríguez-Garavito (eds.). 2003. *Derecho y Sociedad en América Latina: Un Debate Sobre los Estudios Jurídicos Críticos*. Bogotá: ILSA/Universidad Nacional de Colombia.
- Gauri, Varun and Dan Brinks (eds). 2010. *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*. Cambridge and New York: Cambridge University Press.
- Ginsburg, Tom. 2003. *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*. New York: Cambridge University Press.
- Gloppen, Siri, Bruce Wilson, Roberto Gargarella, Elin Skaar, and Morten Kinander. 2010. *Courts and Power in Latin America and Africa*. New York: Palgrave Macmillan.
- Halliday, Terence. 2013. "Why the legal complex is integral to theories of consequential courts." In Diana Kapiszewski, Gordon Silverstin, and Robert A Kagan, (eds.), *Consequential Courts: Judicial Roles in Global Perspective*. New York: Cambridge University Press: 337–48.

- Helmke, Gretchen. 2005. *Courts under Constraints: Judges, Generals, and Presidents in Argentina*. New York: Cambridge University Press.
- Helmke, Gretchen and Julio Ríos-Figueroa (eds.). 2011. *Courts in Latin America*. Cambridge and New York: Cambridge University Press.
- Hernández, Aida Rosalva. 2016. *Multiple Injustices: Indigenous Women, Law, and Political Struggle in Latin America*. Tucson, AZ: Arizona University Press.
- Hilbink, Lisa. 2007. *Judges Beyond Politics in Democracy and Dictatorship: Lessons from Chile*. Cambridge and New York: Cambridge University Press.
- Ibarra Rojas, Lucero. 2018. "América Latina y la mirada socio-jurídica del Instituto Internacional de Sociología Jurídica de Oñati (IISJ)". *Oñati Socio-legal Series* [online], forthcoming. Available from: <http://ssrn.com/abstract=3124993> Consulted December 10, 2018.
- Izunza Vera, Ernesto and Alberto Olvera (eds.). 2010. *Democratización, Rendición de Cuentas y Sociedad Civil: Participación Ciudadana y Control Social*. Mexico City: CIESAS.
- Kapiszewski, Diana. 2012. *High Courts and Economic Governance in Argentina and Brazil*. New York: Cambridge University Press.
- Keck, Margaret and Kathryn Sikkink. 1998. *Activists Beyond Borders: Advocacy Networks in International Politics*. Ithaca, New York: Cornell University Press.
- Langford, Malcolm, César Rodríguez-Garavito, and Julieta Rossi (eds.). 2017. *Social Rights Judgements and the Politics of Compliance. Making it Stick*. Cambridge and New York: Cambridge University Press.
- Lemaitre, Julieta. 2011. "¿Constitución o barbarie? Como repensar el derecho en las zonas 'sin ley.'" En *El Derecho en América Latina*, ed. César Rodríguez-Garavito: 47–68.
- Lemaitre, Julieta and Kristin Sandvik. 2015. "Shifting frames, vanishing resources, and dangerous political opportunities: legal mobilization among displaced women in Colombia." *Law & Society Review*, Vol. 49 (1): 5–38.
- Mainwaring, Scott and Christopher Welna (eds.). 2003. *Democratic Accountability in Latin America*. Oxford: Oxford University Press.
- Méndez, O'Donnell, Pinheiro (eds.). *The (Un)Rule of Law & the Underprivileged in Latin America*. South Bend, IN: University of Notre Dame Press.
- Merrill, Calvin and Kelsey Mayo. 2015. "Charting the 'classics' in law and society. The development of the field over the past half-century." In Austin Sarat and Patricia Ewick (eds.), *The Handbook of Law and Society*. Malden MA and Oxford: Wiley Blackwell: 18–36.
- Merry, Sally Engle. 2006. *Human Rights and Gender Violence: Translating International Law into Local Justice*. Chicago, IL: University of Chicago Press.
- Merry, Sally and Mark Goodale (eds.). 2007. *The Practice of Human Rights: Tracking Law between the Global and the Local*. Cambridge and New York: Cambridge University Press.
- Mitchell, Timothy. 1991. "Society, economy and the state effect." In George Steinmetz (ed.) *State/Culture: State Formation after the Cultural Turn*. Ithaca, Cornell University Press: 76–97.
- Nader, Laura. 1990. *Harmony Ideology*. Stanford, CA: Stanford University Press.
- Negretto, Gabriel. 2013. *Making Constitutions: Presidents, Parties, and Institutional Choice in Latin America*. Cambridge and New York: Cambridge University Press.
- Pásara, Luis (ed.). 2007. *Los Actores de la Justicia Latinoamericana*. Salamanca: Ediciones Universidad de Salamanca.
- Payne, Leigh A., Francesca Lessa, and Gabriel Pereira. 2015. "Overcoming barriers to justice in the age of human rights accountability." *Human Rights Quarterly*, Vol. 37 (3): 728–54.
- Peruzzotti, Enrique and Catalina Smulovitz (eds.). 2006. *Enforcing the Rule of Law. Social Accountability in the New Latin American Democracies*. Pittsburgh, PA: University of Pittsburgh Press.
- Ríos-Figueroa, Julio and Jeffrey Staton, J. 2012. "An evaluation of cross-national measures of judicial independence." *The Journal of Law, Economics, and Organization*, Vol. 30 (1):104–37.
- Risse-Kappen, Thomas, Stephen Ropp, and Kathryn Sikkink. 1999. *The Power of Human Rights: International Norms and Domestic Change*. New York: Cambridge University Press.
- Rodríguez-Garavito, César (ed.). 2011a. *El Derecho en América Latina. Un Mapa para el Pensamiento Jurídico del Siglo XXI*. Buenos Aires: Siglo XXI editores.
- Rodríguez-Garavito, César. 2011b. "Global governance, indigenous peoples, and the right to prior consultation in social minefields." *Indiana Journal of Global Legal Studies*, Vol. 18 (1): 263–305.
- Rosenberg, Gerald N. 2008. *The Hollow Hope: Can Courts Bring About Social Change?* Chicago, IL: University of Chicago Press.

- Salvatore, Ricardo and Carlos Aguirre (eds.). 2001. *Crime and Punishment in Latin America: Law and Society Since Late Colonial Times*. Durham, NC: Duke University Press.
- Santos, Boaventura. 1995. *Towards a New Commonsense: Law, Science and Politics in the Paradigmatic Transition*. New York: Routledge.
- Santos, Boaventura and Mauricio García-Villegas (eds.). 2001. *El Caleidoscopio de las Justicias en Colombia*. Bogotá: Ediciones Uniandes/Siglo del Hombre.
- Santos, Boaventura and Rodríguez-Garavito, César (eds.). 2005. *Law and Globalization from Below: Towards a Cosmopolitan Legality*. Cambridge and New York: Cambridge University Press.
- Schilling-Vacaflor, Almut and René Kuppe. 2012. "Plurinational constitutionalism: a new era of indigenous-state relations?" In Detlef Nolte and Almut Schilling-Vacaflor (eds), *New Constitutionalism in Latin America – Promises and Practices*. Burlington, VT: Ashgate: 347–70.
- Schwarz, Carl. 1973. "Judges under the shadow: judicial independence in the United States and Mexico." *California Western International Law Journal*, Vol. 3: 260–332.
- Sieder, Rachel (ed.). 2002. *Multiculturalism in Latin America: Indigenous Rights, Diversity and Democracy*. New York: Palgrave Macmillan.
- Sierra, María Teresa (ed.). 2004. *Haciendo Justicia: Interlegalidad, Derecho y Género en Regiones Indígenas*. Mexico City: CIESAS/ Porrúa.
- Skaar, Elin, Jemima García-Godos, and Cath Collins. 2016. *Transitional Justice in Latin America: The Uneven Road from Impunity to Accountability*. New York: Routledge.
- Snodgrass Godoy, Angelica. 2006. *Popular Injustice: Violence, Community, and Law in Latin America*. Stanford, CA: Stanford University Press.
- Tiscornia, Sofia (ed.). 2004. *Burocracias y Violencia. Estudios de Antropología Jurídica*. Buenos Aires: Antropofagia.
- Tiscornia, Sofia, Roberto Kant de Lima, and Lucía Eibaum (eds). 2009. *Burocracias Penales, Administración Institucional de Conflictos y Ciudadanía. Experiencia Comparada entre Brasil y Argentina*. Buenos Aires: Antropofagia.
- Trubek, David M, and Alvaro Santos. 2006. *The New Law and Economic Development: A Critical Appraisal*. Cambridge and New York: Cambridge University Press.
- Uprimny, Rodrigo. 2016. "Justicia rutinaria y protagonista: una caracterización de la justicia colombiana." In Mauricio García-Villegas and María Adelaida Ceballos Bedoya (eds), *Democracia, Justicia y Sociedad: Diez Años de Investigación en Dejusticia*. Bogotá: Dejusticia: 181–91.
- Van Cott, Donna Lee. 2000. *The Friendly Liquidation of the Past: The Politics of Diversity in Latin America*. Pittsburgh, PA: Pittsburgh University Press.
- Van Cott, Donna Lee. 2008. *Radical Democracy in the Andes*. Cambridge: Cambridge University Press.
- Verner, Joel. 1984. "The independence of supreme courts in Latin America: a review of the literature." *Journal of Latin American Studies*, Vol. 16 (2): 463–506.
- Vilhena Vieira, Oscar. 2011. "Desigualdad estructural y estado de derecho." In *El Derecho en América Latina*, ed. César Rodríguez-Garavito: 27–46.
- Wolkmer, Antonio Carlos. 2015. *Pluralismo Jurídico, Fundamentos de Uma Nova Cultura no Direito*. 4th edition. São Paulo: Saraiva.
- Yamin, Alicia Ely and Siri Gloppen (eds). 2011. *Litigating Health Rights. Can Courts Bring More Justice to Health?* Harvard, MA: Harvard University Press.
- Yashar, Deborah. 2005. *Contesting Citizenship in Latin America: The Rise of Indigenous Movements*. New York: Cambridge University Press.
- Yrigoyen, Raquel. 2011. "El horizonte del constitucionalismo pluralista: del multiculturalismo a la descolonización." En *El Derecho en América Latina*, ed. César Rodríguez-Garavito: 139–59.