1. Comparative constitutional law in Latin America: an introduction

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Comparative constitutional law is a field that purports to be truly global in nature. Yet in recent years some scholars have suggested that the field suffers from a clear disciplinary bias or blind spot: it tends systematically to overlook the constitutional challenges and experiences of “the Global South” (Maldonado 2014, p 5).

In economics, the Global South critique is generally understood to be a critique about the distribution of global wealth and resources: if the “North” is defined as North America, Western Europe and economically developed parts of East Asia, the North is then home to only 25 per cent of the world’s population, but controls 80 per cent of the world’s wealth. Ninety-five per cent of citizens living in the North have access to enough food, shelter and a functioning education system, whereas in the global “South” – i.e. Africa, Latin America, the Middle East and developing Asia – this figure is closer to 5 per cent.

In constitutional law, the critique is somewhat different: it is that comparative constitutional law scholarship has tended to focus on the problems and challenges facing wealthy, consolidated constitutional democracies – i.e. challenges such as how best to balance commitments to individual rights and security, to respond to problems of reasonable disagreement in the context of the interpretation and enforcement of first-generation constitutional rights, or realize the claims of progressive generations to full social inclusion – while ignoring key challenges facing less wealthy and stable democracies, particularly those related to socio-economic distribution (Maldonado 2014; Hirschl 2014).

These challenges arise with different degrees of intensity in different parts of the Global South. In the last few decades, some parts of the Global South have enjoyed extended periods of democratic government, and economic growth and prosperity, while others have faced renewed threats of state failure, civil war, famine, public health crisis and rising
inequality (Stokke and Tornquist 2013; Kahn 2016; Mitlin and Satterthwaite 2013; Pop-Eleches and Robertson 2015). Some countries within the Global South have also clearly received more attention from comparative constitutional scholars than others: as Ran Hirschl (2014) notes, countries in the Global South such as South Africa, India and Colombia have hardly been overlooked by comparative scholars working in the Global North (pp 220–1). Indeed, the experience of these countries has been the subject of a rich and vast array of work by comparative scholars in the last decade (Choudhry, Khosla and Mehta 2016; Issacharoff 2015; Tushnet and Khosla 2015; Khosla 2012; Roux 2013; Landau 2012; Dixon and Landau 2015; Landau and Dixon 2015; Young 2014; Young and Lemaitre 2013).

It is still true, however, that in relative terms the experiences and challenges of many countries in the Global South have been underrepresented in comparative constitutional law scholarship. We were aware of this danger when we edited our first volume on Comparative Constitutional Law (2011), and proud that that volume included the work of numerous scholars working in, or originating from, the Global South (see e.g. Cheibub and Limongi 2011; Davis 2011). But inevitably, our own work suffered from the same flaws as other attempts to create a truly global survey of comparative constitutional developments: in its selection of both case studies and authors, it tended to give disproportionate space to North America and Europe, at the potential expense of Africa, Latin America, the Middle East and Asia.

We have sought since then quite explicitly to address this deficit by following this initial global work with a more regionally focused companion volume on Comparative Constitutional Law in Asia (2014). We are delighted with the reception this work has received, and the way in which scholars working in Asia and elsewhere have responded to the attempt to provide a more nuanced picture of the full variety of comparative constitutional law experience worldwide, and particularly in countries that tend to be neglected by more traditional approaches to comparative constitutional law originating from the US and Europe. This volume, on Comparative Constitutional Law in Latin America, is in many ways simply the next chapter in this project – i.e. an attempt to develop a more complete, and truly global, approach to comparative constitutional law and legal studies. Our approach has been to pursue general themes – equality, judicial power, the organization of government – in a regional context, threading the needle between universalism and an approach that focuses only on single countries in isolation.

A focus on Latin America is a logical “next step” in this project for a number of reasons. It is a continent of enormous demographic and
economic importance: it has a population of over 600 million, and nominal GDP of 6 trillion dollars. It has close ties to the US and Australia, where our own work as scholars is grounded. And it is a continent with an extremely long and rich history of written constitution- alism. The combination of a large number of countries with long histories of independence, as well as periods of great instability, means that Latin America has produced roughly a third of all constitutions in independent nation-states since 1789.

It is the region in which the amparo proceeding, a judicial remedy specifically conceived for the protection of constitutional rights against harms or threats inflicted by authorities on individuals, was developed (Brewer-Carias 2009, p 1), and in which courts have been increasingly called upon “to decide a litany of hot-button social, political, and economic questions” (Helmke and Rios-Figueroa 2011, p 1). In doing so, they have also often developed “creative arguments and solutions” which have gone “largely unnoticed in the English-speaking world” (Gonzalez-Bertomeu and Gargarella 2016, p 1; see also Gargarella 2013, p vii). Latin American “social rights constitutionalism” has also made key contributions to the law, both in institutional and academic terms, with repercussions in other regions. As Rodriguez-Garavito (2015) has identified, by studying the Latin American experience, “former critics have come to embrace the idea of enforceable socio-economic rights and they have been incorporated into debates about US and European constitutional theory” (p 9). It is also the “home” or birthplace of the Global South critique in comparative constitutional law (Maldonado 2014).

Of course, as with Asia, there are dangers to any kind of regionally based approach to comparative constitutional studies. Regions are themselves large and internally diverse, as is certainly true of both Asia and Latin America. Attempts to canvass constitutional developments across an entire region will thus often themselves suffer from the same flaws as truly global approaches to comparative constitutional scholarship: they will often overlook important, but understudied, countries and case studies, which tend to challenge rather than confirm existing constitutional understandings. The volume, however, explicitly invites contributors to take a more fine-grained and selective approach to constitutional developments within the region, and to focus in a more sustained, in-depth way on developments in a particular subset of countries. The result is also consistently a rich and illuminating – if not always regionally representative – set of insights.

As one would both hope and expect, the project of broadening the comparative constitutional law canon has also evolved in a number of distinct ways, as it has been applied to and developed in a Latin
American context. First, compared to *Constitutional Law in Asia* (2014), this volume on Latin America includes a far larger number of contributions from new authors, not part of our original 2011 volume. This reflects the increasing depth and richness of the field of comparative constitutional studies in the region: there are now so many talented scholars working on constitutionalism in Latin America, who have deep knowledge of both regional and global constitutional archetypes, patterns and developments, that it simply seemed wrong to overlook them in compiling the list of contributors to this volume. One might in fact say the same about constitutional scholarship on Asia. *Comparative Constitutional Law in Asia* (2014) was certainly deeply enriched by the dialogue that occurred during its preparation between scholars working in the US, Australia and Europe, and those situated in Asia (see Harding and Bui 2016). Since 2011, when this dialogue occurred, the number of scholars working on constitutional developments in countries across the globe has also rapidly and notably increased.

Second, compared to prior volumes, this volume includes work by many more scholars who are critical or skeptical of the democratic constitutional project. Our 2011 volume includes numerous valuable contributions along these lines, including a wonderful chapter by Petter on the relationship between transnational and national governance in North America, with particular attention to the loss to meaningful democratic self-government created by NATO. This volume, however, goes much further in drawing on the work of scholars critical of liberal democratic constitutionalism.

Helena Alviar Garcia, for instance, in analyzing the right to property in the region concludes that even quite left-leaning “social” and “dependista”-influenced approaches to constitutional property rights are limited in their capacity to promote economic redistribution in Latin America. Redistribution, she argues, is

stalled by the coexistence of different definitions of property; the concentration of public resources for economic development plans that privilege a liberal classical view of growth, property and distribution; existing conflicts between access to land, the right to work and the right to develop enterprises, [and by] the contradictions between identities at the margins – indigenous groups, Afro-descendants and peasants – who may be provided with collective titles to property (p 154).

Javier Couso likewise suggests that, in the domain of socio-economic rights, the Latin American experience points to clear limits on the capacity of constitutions to achieve social and economic transformation, when implemented against a backdrop of the Washington consensus, or
increasing global “neoliberalism” (p 12). Against this backdrop, Couso notes, the evidence from Latin America seems to be that “courts can achieve something in terms of individualized justice, nothing in terms of transforming the overall neoliberal model, and much in terms of raising consciousness regarding the injustices and other problems that the latter generates” (p 12). Similarly, in surveying the right to equality in the region, Roberto Gargarella argues that “[i]n spite of its strong declarations of constitutional rights, Latin America is the most unequal region in the world.” Part of the reason for this, he argues, is that contemporary constitutionalism “does not seem to recognize the peculiar place occupied by the ‘organic’ part of the Constitution,” and has thus focused too greatly on individual rights, at the expense of changes to this more structural aspect of the constitution – or what is ultimately the real “engine room” of political change (pp 12–14).

One of the important questions we invite readers to reflect on as they engage with this work is whether this is the product of the distinctive critical legal training received by many leading Latin American constitutional scholars, or rather the product of some deeper failure or tension within democratic constitutionalism in the region. Another possibility is that it simply reveals tensions within any democratic constitutional project: the conflict between different aims and ideals on the part of different democratic actors will mean that any notion of “substantive” constitutional success in this context is an illusory ideal. Instead, success can only be measured in more procedural or institutional terms, whereby the focus is on whether constitutions help promote greater democratic consciousness, debate, dialogue and mobilization around issues of social, economic and political justice (cf Ginsburg and Huq 2016; Dixon and Roux forthcoming).

Third, several of the chapters in this volume explore the relationship between constitutionalism and political thought or ideology, in ways that take the collection in a new direction compared to prior work on global constitutional patterns, and Asian constitutionalism. Couso, for example, considers how constitutions in many Latin American countries have been the site of a deep contest between social democratic and neoliberal ideas: he suggests that Latin America is in fact a highly valuable laboratory for studying “what happens when justiciable socioeconomic rights are inserted into a neoliberal economic system” (p 12). Chapters by Zachary Elkins and Mark Tushnet likewise explore, from somewhat different directions, the role of Bolivarian political thought and ideology on the evolution of constitutional government in the region.

An important question raised by these contributions is thus how we should react, as comparative constitutional scholars and observers, to this
nexus between constitutional law and political ideology: should we regard it, for example, as an authentic expression of the distinctive ideas and understandings of a particular people, at a given historical moment, and thus a welcome rejection of a more one-size-fits-all approach to democratic constitutionalism (cf Versteeg 2014)? Or should we see it as representing a far more deliberate, self-conscious attempt by certain political elites in Latin America to manufacture support for their regimes, in ways that are far more suspect from the perspective of a commitment to democracy (see e.g. Landau 2012; Dixon and Landau 2015).

A final distinction is that, compared with other volumes, the approach in this one is more interdisciplinary. The contributions by Gabriel Negretto and Elkins, for example, examine constitution making and the Bolivarian texts from a political science perspective, using the lens of large-n or empirical constitutional analysis. Tushnet, while conducting a text-based analysis of various Bolivarian constitutions, uses a “word cloud” to determine the frequency of certain language in these constitutions: using this technology also finds that, despite some similarity in the participatory institutions these constitutions create and more standard liberal models of citizen participation, the language of these constitutions is quite distinctive in its emphasis on the notion of a “shared” model of governance (or in use of words such as “público, pública and social”). And other contributions, such as those by Gargarella and Julieta Lemaitre, seamlessly integrate political, historical and legal analysis, while paying particular attention to the role of social movements as well as broader ideas and ideologies within the region.

Beyond these distinctions, the chapters can be divided into four broad groups. A first group concerns constitutional formation and legitimacy. In his chapter on constitution making, Negretto reviews the general literature, both normative and empirical, on constitution making, and then tests various questions about the relationship between constitution-making procedures and constitutional endurance using a unique Latin American dataset; while Joel Colón-Ríos traces notions of constituent power in Latin America, focusing on historical examples of Venezuela (1811), Colombia (1886), Bolivia (1967), and Ecuador (2011).

A second set looks at specific constitutional histories and models, with particular attention to the Bolivarian cases which have attracted a good deal of interest in recent years. Lucas Lixinski examines the crucial issue of transitional justice in the region, while Elkins and Tushnet focus on the Bolivarian cases: Elkins develops a set of tests to show that these constitutions are especially influential in terms of their style, perhaps even more than content, while Tushnet conducts a detailed textual
analysis of these constitutions, to determine the extent to which they represent distinct models of non-liberal constitutionalism.

A third set looks at specific constitutional rights and structural provisions. Alviar Garcia examines the right to property, in particular its social and ecological functions. Couso looks at other economic provisions of constitutions in the region, and in particular the connection between constitutional socio-economic rights guarantees and increasing global commitments to free-market policies. Gargarella traces the rise of substantive understandings of the right to equality in the region, but also its limits in terms of true social and economic transformation and redistribution.

And a fourth set looks at courts and adjudicative techniques. David Landau’s chapter grapples with the role of constitutional courts in the region in the context of constitutional guarantees of socio-economic rights, and guarantees of same sex equality. Carlos Bernal focuses on how courts in the region approach the adjudication of social and economic rights. Raul Sanchez Urribarri reviews the comparative judicial politics literature and examines the factors that lead to judicialisation, focusing on the empowerment of constitutional courts within the region, while Oscar Vilhena Vieira cites theories of political insurance and hegemonic preservation as explanations for the rise of powerful courts in countries such as Colombia and Brazil (compare Ginsburg 2003; Hirschl 2007), as well as the important institutional differences between courts in the two countries. Alexandra Huneeus, in turn, looks at the role of the Inter-American Court of Human Rights in protecting human rights in the region, and both the power and limits of that role.

Ultimately, we must leave for others to decide what a volume such as this can contribute to broader comparative constitutional thinking in scholarship, particularly in terms of the lines of new inquiry and analysis it invites or opens up. We note, however, several distinctive themes raised by the extremely rich and impressive contributions to this volume, in addition to those already discussed.

First, the chapters highlight the importance of considering non-liberal constitutional models, as a potentially distinctive constitutional model. At the outset, Elkins shows that it is in fact meaningful to examine the constitutions of Venezuela (1999), Bolivia (2008) and Ecuador (2009) as a potentially Bolivarian model. He finds that, if one compares these constitutions to the full set of constitutions worldwide, across time, they are notably distinctive in their length: in fact, they are 20,000 words longer than they should be, controlling for regional and time-fixed effects (p 9). They also have strong textual similarities, particularly in the domain of individual rights: the three constitutions have very high textual
similarities scores (p 14), and more rights in common than one would expect, given their shared temporal and geographic setting (p 15). Indeed, Elkins finds that “the effect of their being Bolivarian is even greater than the effect of these contextual” factors in predicting their scope (p 15).

Tushnet then goes to engage in an even closer textual reading of these constitutions, to determine whether they are in fact evidence of a distinctive, non-liberal alternative to traditional constitutional models. Specifically, he focuses on the idea of these constitutions as “pluri-national” (i.e. giving recognition to both non-indigenous and indigenous nations within the state, or the idea of multiple competing sovereignties), as one potential indicator that they have such a distinctive status. Ultimately, he concludes that all three constitutions are at once “traditional and new, liberal and pluri-national”, or in key ways glosses or improvements on, rather than true alternatives to, liberal constitutional models. If one examines the preamble to such constitutions, their general language and institutions, they clearly reflect both distinctive pluri-national ideas about indigenous empowerment, recognition and the environment and traditional liberal ideas – about multiculturalism (p 15), a unified system of justice (in Venezuela and Bolivia) (p 20) and ordinary democratic mechanisms for citizen participation. But the focus on pluri-nationalism Nonetheless helps expand our understanding on the global constitutional canon, and also of how new ideas and institutions are added to that canon: Tushnet notes the role of both Bolivarian political movements and internal processes of learning and borrowing, among these countries, as key forces driving the progressive evolution of pluri-national constitutional ideas.

Similarly, in examining constitutional property rights in the region, Alviar explores three distinctive conceptions of property rights, at least one of which in recent years is quite distinctive to Latin America: the liberal view of property, the “social view,” that sees property as serving a social function, which entails responsibilities for individual property holders; and a “dependista”-inspired view, which protects private property and caused a major redistribution of resources toward the state. At the same time, Alviar argues that the conflict between these different conceptions of property, and the gap between constitutional law on the books and in action in Latin America is itself a major obstacle to effective economic redistribution, or the redistribution of rural land. Via a focus on countries in the region, and particularly Colombia and Bolivia, she thus highlights both new models and understandings of property rights and new understandings of how these models can intersect or conflict, in ways that serve as an obstacle to economic and political change.

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In exploring the right to equality in the region, Gargarella likewise notes an important distinctive dimension to understandings of substantive equality within Latin America – i.e. the “limited” but nonetheless distinctly egalitarian reforms adopted in the last few decades giving indigenous groups a right to “consultation” in various contexts (pp 14–16). Gargarella also notes the consistent conflicts and difficulties with the implementation of this right, and the degree to which its implementation is limited by “neo-developmental” governments committed to the exploitation of natural resources, even over the objections of relevant indigenous communities (p 15). Drawing on the Latin American experience in this, and other contexts, he thus suggests that there is a pressing need for scholars of constitutional equality to devote greater attention to the “engine room” of constitutional change – i.e. the structural or organic, not simply rights-based dimensions to a constitution, even if what we are concerned about is primarily the realization of rights themselves.

In this way, we believe that the volume serves as a powerful confirmation of the benefits of a “bottom up” approach to broadening the agenda for comparative constitutional law scholarship, drawing on a broad variety of comparative experiences – the capacity for a more truly global approach to comparative constitutional law to generate new lines of inquiry and analysis, by reference to the distinct challenges and problems facing constitutional systems outside the US and Europe.

Equally, we believe that the volume confirms the benefits of a more “top down” approach to broadening comparative constitutional enquiry – i.e. the degree to which attention to a broader range of comparative case studies can refine our existing constitutional assumptions, categories and understandings. In examining different processes of constitution making in the region, for instance, Colón-Ríos notes two broad approaches to constitution making, or understandings of constituent power: first, the “constituent power of the nation” approach, and second, “constituent power of the people” approach. He also traces the dominance of the first approach in various actual processes of constitution making in the region, in Venezuela in 1811, Colombia in 1886 and Bolivia in 1967, and the rise of a second model in more recent processes of constitution making in Ecuador (2008). This, he suggests, can also be understood as further evidence for a more general global trend toward increased popular participation in processes of constitution making (p 19). At the same time, he notes that close attention to the Latin American experience in this context reveals the important ways in which the two models ultimately intersect or overlap: one notable example is the way in which
the idea of the “constituent power of God” has played a role in both settings (pp 2, 19).

Similarly, in analyzing processes of constitution making in 18 Latin American countries from 1900 to 2014, Negretto helps refine existing global constitutional understandings of the relationship between procedures for constitution making and various substantive outcome variables, such as the endurance of a constitution. First, Negretto constructs a new set of categories for comparing or “coding” different constitution-making procedures, which considers the legality of the process, the body charged with making a constitution, the rules governing representation in such a body, and procedures and requirements for citizen participation. Second, he surveys the different theoretical understandings of how procedural variables of this kind may contribute to the substantive “success” or endurance of a constitution, and goes on to test these different hypotheses by examining the empirical relationship between these variables and outcome measures, such as the absolute duration or endurance of a constitution, or its duration during competitive elections (p 14). Ultimately he finds that few procedural variables have any statistically significant effect on these outcomes (only legal continuity and the type of constituent body have any statistically significant effect, and one that is negative) (p 24). He thus concludes that while constitution-making procedures may matter for very short-term, political outcomes, they are unlikely to have sustained long-term impact. He also suggests that the correlation he does find is most likely due to the fact that the selection of procedural rules will often reflect “the preferences and relative bargaining power of constitution makers [at] the particular historical juncture that triggered the process,” and not the independent effect of those procedural rules themselves (p 28). In this way he also contributes an extremely important refinement to existing global studies of the relationship between constitutional procedures and endurance (cf Elkins, Ginsburg and Melton 2009).

Lixinski, in examining models of transitional justice in the region, notes the degree to which the actual practice and implementation of such models inevitably overlaps and shifts over time. Moreover, he suggests that this is not simply the product of “learning” over time, or the consequence of Latin America having pioneered transitional justice experiments, but also the social and political power of various actors in different countries, influenced in part by the “global justice” movement. Lixinski also suggests the distinctive lessons from Latin America as to the ripple effects of choices about transitional justice on other, later, constitutional design choices.
Huneeus, in examining the Inter-American Court of Human Rights and constitutionalism in the region, notes the quite different institutional scale and resources of the court, compared to both national counterparts and the European Court of Human Rights, and the puzzle this poses for explaining the court’s quite significant influence in the region. She notes, however, that the court has carefully calibrated its interventions in particular areas, so as to use doctrines (such as the doctrine of “conventionality control”) which directly enlist national courts in the region as partners in the process of implementing the Inter-American Convention. Attention to these patterns thus helps enrich and complicate existing global understandings of the relationship between regional and national courts. The Latin American experience may also offer new perspectives on long-standing debates about the legitimacy of supra-national forms of judicial review: while the Inter-American Court has been criticized for its active intervention in national politics, Huneeus suggests that the regional–national dialogue created by the conventionality control doctrine may provide an important answer to these objections.

Alviar Garcia, in examining constitutional property in the region, focuses on the gap between law on the books and law in action – and identifying a range of practical obstacles to land redistribution, often hidden by more abstract, global accounts of the right to property of the kind developed by comparative constitutional scholars.

Similarly, in examining patterns of church–state relationship in Latin America, Lemaitre identifies three broad models of disestablishment. These are, in decreasing order of hostility to some form of inter-relationship of this kind, the anticlerical, laicidad and cooperation models. She also goes on to show how the way in which these different models play out in various countries in the region ultimately depends on “the paths of disestablishment in each national history, and on the results of the successive struggles over its meaning.” She thus encourages comparative constitutional scholars to adopt a more nuanced, socio-logically grounded understanding of models of church–state relationship more generally; and further, to adopt an approach that is strongly gender conscious. One of the key distributive consequences of different models of church–state relationship in the region, she suggests, is in the domain of sexual and reproductive rights. It is also impossible to understand the struggles over these issues in different countries “without a thick description of the cultural context, rooted in 200 years of constitutional conflict over Church–State separation” (pp 4, 18–19), and understanding of the role played by transnational forces and ideas – i.e. the role of foreign courts, international organizations and the Catholic Church in particular (pp 17–20).
Bernal, Landau, and Sanchez Urribarri, in turn, all grapple with global debates over convergence in constitutional law, using Latin America as an important additional test of these broader theories. Bernal, in his chapter on the constitutional protection of economic and social rights, notes the relatively high level of convergence in the substantive standard used by courts in the region in the adjudication of such claims, and in particular in the use of the “minimum core” doctrine in countries such as Colombia, Costa Rica and Brazil. He suggests that there are only two broad exceptions to this dominant trend: a greater reliance on a test of “proportionality” in Argentina, and a weaker or deferential approach in countries such as Venezuela, Bolivia, Nicaragua and Ecuador (pp 13–14). The explanation for this convergence toward a strong-form, minimum-core-based standard, Bernal further argues, is also clearly not that it is universally accepted by scholars and judges globally, or free from criticism. Indeed, he notes criticism of the standard, by a variety of scholars including one of us (Dixon 2007), and his own work seeking to develop an alternative proportionality-based approach. Instead, he suggests, the explanation is likely two-fold, and far more particular to the particular pattern of constitutionalism in Latin America, involving (i) the diffusion of constitutional ideas within the region, and the role of the Inter-American Court of Human Rights and encouraging a strong rather than weak approach to the enforcement of various rights, and (ii) both the need and opportunity for courts in countries such as Colombia, Costa Rica and Brazil to adopt an approach to social rights that attempts to “compensate for the predominance of the president and the deficit of political control by the Parliament” in the domain of social and economic policy (p 16).

Conversely, drawing on case studies of both socio-economic rights enforcement and same-sex relationship recognition, Landau makes the point that superficial or textual convergence has not led to convergence in fact; even transnational cross-pollination of judicial doctrines and interpretive theories has not led to convergence at the level of outcome. Besides the usual local variables, he emphasizes differences in judges’ conception of their own role across the region as equally important to explaining this divergence at the level of substance outcomes. These conceptions, Landau suggests, may not be wholly immune to change – either over time, or as a product of deliberate legal and political attempts at reform – but they are clearly difficult to change, in ways that pose barriers to the rapid substantive diffusion of various constitutional ideas within the region.

Similarly, in writing about constitutional courts in the region, both Sanchez Urribarri and Vieira note that only some countries in Latin
America have witnessed the dominant global trend of increasingly powerful constitutional courts (see e.g. Tate and Vallinder 1995; Hirschl 2004). Countries such as Colombia and Costa Rica have clearly seen the rise of constitutional courts with what they call “a protagonist” or “super-court” role in the political life of their respective countries. But equally, other courts in the region have been much weaker or less significant as a force in democratic politics – either because they are controlled or perceived to be controlled by external political actors (such as in Ecuador under a Paraguayan Venezuela), or because they have chronic internal institutional weaknesses (e.g. Venezuela).

In noting these patterns, Landau, Sanchez Urribarri and Vieira thus also make an important general point about the different levels at which constitutional convergence may or may not occur (see e.g. Law 2008; Tushnet 2009; Dixon and Posner 2011). Even superficial textual convergence, of the kind that exists in a number of areas in Latin American constitutions, may not lead to more substantive convergence in constitutional outcomes if there are sufficient differences across countries in institutional structures, or theories of various institutions’ role in enforcing those textual guarantees, or major differences in social and political conditions (Landau; Vieira).

Further, they suggest that greater attention to the limits on substantive or deep convergence in courts’ role in the region has the potential to offer a number of important payoffs: attention to such differences, Landau argues, may actually help point us to the importance of locating judicial review, and its function, within the particular political context and challenges facing a country, rather than (simply) more universal theories of constitutional rights. Similarly, Sanchez Urribarri suggests that attention to weak, as well as strong, constitutional courts within the region can help us gain a better understanding of the mechanisms by which courts become weakened, or captured in this way, and thus also the potential pathways for future “improve[ment] in the quality of the judiciary in Latin America and beyond” (p 14).

We do not expect this volume to be the only, or last, word on comparative constitutional law in Latin America. There are already numerous other monographs and edited collections, in English and Spanish, that complement this work, and that ideally should be read alongside it. We can also look forward in the near future to the publication of an even more comprehensive and encyclopedia-like treatment of constitutional law in the region, with the forthcoming publication of the Oxford Handbook of Comparative Constitutional Law in Latin America.
Each volume of this kind, however, contributes in important ways to broadening and deepening existing conversations about comparative constitutional law and practice. By connecting this volume to earlier work on comparative constitutional patterns (Ginsburg and Dixon 2011; Dixon and Ginsburg 2014), we also believe that this volume makes a distinct and important contribution to that conversation.

REFERENCES


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