

Courts and Social Transformation in New Democracies: An Institutional Voice for the Poor? Edited by Roberto Gargarella, Pilar Domingo, and Theunis Roix. Aldershot: Ashgate Publishing, 2006. Pp xv + 311; index, bibliography. £65 (hardback). ISBN 0 7456 4783 8.

This volume brings together papers from a 2004 conference at Torcuato di Tella University in Buenos Aires on the emergence of courts as arenas for social change in new democracies. The heart of the volume is a series of case studies that document the surprisingly successful struggles for social rights litigation in a variety of contexts. Many of the cases are drawn from Latin America, but the volume also includes chapters on Africa, India and Eastern Europe.

The volume has an explicitly normative take, seeking not only to document the trend but to justify it against traditional critiques. These critiques include institutional questions about the capacity of courts to engage in essentially distributive decisions about resource allocation, as well as concerns over the legitimacy of unelected judges doing so. The first chapter, by Roberto Gargarella, seeks to address these challenges by grounding judicial involvement in norms of deliberative democracy. He begins with a Rousseauian conception of democracy, asserting that positive state action is necessary to ensure that all citizens have the material basis to be capable of participating in public life. When the state fails to take such action, courts can advance democratic deliberation by providing a channel for the poor to raise claims. The role of courts is not to make the ultimate decisions about the proper levels of resource allocation, but to remind the state's overtly political branches to take some action and to ensure that minimum levels of support are constitutionally protected.

The descriptions of the various cases echo this conception and suggest that many of the theoretical critiques of judicial involvement are overblown. The account of Jackie Dugard and Theunis Roix of the South African Constitutional Court, for example, is quite critical of the court's limited role in expanding access to the poor, but acknowledges that the Court has shown skill in "steering the exercise of its review powers between the Scylla of overzealous enforcement and Charybdis of non-justiciability" (p. 119.) Andras Sajó's chapter on Hungary argues that the Court has essentially played a role in protecting middle class entitlements rather than truly exercising transformative role, a point echoed to some extent in some of the cases from the Colombian Constitutional Court described by Rodrigo Yepes (p. 136). There appear to be effective political mechanisms limiting overly zealous forms of judicial empowerment. Nevertheless, it is also clear that courts have also served as a vehicle for the articulation of new rights claims by the poor in a wide variety of contexts.

The chief lacuna in the volume is the failure to engage the recent positive literature on the timing and impact of judicial empowerment, particularly Ran Hirschl's *Towards Juristocracy* (2004). The cases described here engage Hirschl's claims that judicial empowerment is a strategy of declining hegemony and tends to undercut broader strategies of social transformation. But the editors do not address his work, or indeed attempt to generate predictions about the political conditions in which we can expect to see social rights litigation emerge. Couso's excellent chapter on how the left in Latin America discovered rights provides some insight into the process, but is not generalized. Siri Gloppen's theoretical chapter provides a rigorous analytic

framework for understanding the different trajectories of social rights litigation in various countries. But the framework is ultimately descriptive in character and does not provide a fully *political* account of the development.

Altogether this is a very useful contribution to the growing literature on courts in new democracies, examining a common question of great importance across a wide array of cases. The accumulated case studies provide an impressive catalog of the variety of ways in which courts can advance the cause of the poor, as well as a sober assessment of the limitations of judicial strategies of social transformation.

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