Rule of Law and Lawyers in Latin America

Rogelio Pérez-Perdomo

The ANNALS of the American Academy of Political and Social Science 2006; 603; 179
DOI: 10.1177/0002716205283132

Rule of Law and Lawyers in Latin America

By
ROGELIO
PÉREZ-PERDOMO

From the nineteenth century onward, lawyers have been the leading members of Latin American political elites. Nevertheless, Latin American countries have been plagued with caudillos and dictators, and lawyers have been these strongmen's collaborators. The article explains the dissonance between the constitutionalism and legalism taught at the universities and the sordid political practices that resulted from the lack of independence of the legal profession: there was not a market for lawyers' services, so lawyers depended on those who controlled the political apparatus. The situation started changing in the late twentieth century. During this recent period, lawyers and judges have shown more independence and have become active political players, using the law as an instrument for opposing arbitrary political practices. The new trend is explained not only by the increased awareness of the rule of law values but also by the existence of a market for legal services.

Keywords: lawyers' political roles; Latin American politics

Nowadays we tend to associate rule of law with notions of liberty and democracy. The linkage with liberty comes from the limits that are imposed on public officials. The state is perceived as the most influential apparatus of power, which is why the restrictions imposed on the role of public officials and the protection of citizens' rights are perceived as a guarantee of liberty. It is also believed that the rule of law protects the electoral system and ensures the rights of minorities. In this sense, the rule of law is perceived as a political value.

Rogelio Pérez-Perdomo is dean of the Facultad de Estudios Jurídicos y Políticos, Universidad Metropolitana, Caracas, Venezuela. He has served as the academic director of the Stanford Program for International Legal Studies (California) and of the International Institute for the Sociology of Law (Onati, Spain). He has published in the fields of history and sociology of law. His most recent book is Latin American Lawyers: A Historical Introduction *(Stanford University Press, 2006).*

NOTE: I thank Richard Schwartz for the invitation to write this article and Manuel Gómez for his assistance in the research and editing.

DOI: 10.1177/0002716205283132

winning, the judiciary can perform poorly, and public officials—from police officers to the president—can commit abuses against citizens. This is why strengthening the judiciary has become a critical task in each of these Latin American countries as a way to improve the rule of law.

[I]ndependent judges, who administer justice in a transparent and accountable manner through the most modern means, are the best guarantors of the rule of law.

The basic idea is that independent judges, who administer justice in a transparent and accountable manner through the most modern means, are the best guarantors of the rule of law. Following this reasoning, since the 1990s, each country has invested important resources to improve judicial and administrative procedures, to strengthen the training of judges, and to invest in new technologies geared to modernize and improve courts' management (Pásara 2004). An important portion of the resources devoted to these reform processes have come through loans from the World Bank and the Inter-American Development Bank, or through donations from the United Status and some European countries for specific projects. This has helped to create a homogeneous agenda (Domingo and Sieder 2001; Hammergren 2003; Rodríguez 2001).

We might want to ask if by focusing on the judiciary and, in general, on the legal rules, democracy and rule of law would become stronger in Latin America. This article offers an analysis of some general aspects of the experiences that we, as Latin Americans, currently have. I will make frequent references to history, in particular to recent history, and give special attention to the role of lawyers. In the first part, I explore the Latin American tradition and its connection with the rule of law and, in particular, with respect to the role of lawyers and their relationship with the political system. In the second part, I will analyze the most recent initiatives and will assess their chance of succeeding.

Rule of Law and the Social Position of Lawyers

The countries that we now call Latin American became independent from Spain and Portugal during the first decades of the nineteenth century.[2] Indepen-

dence required them to adopt constitutions modeled after those common in that time. Among the essential features were the distribution of the state apparatus in different branches and the bill of rights. The obvious question for us in light of this article is why during the nineteenth and twentieth centuries, the idea of a constitutional government, as stated in documents, was so difficult to put in practice? From our standpoint, the answer might be partially in the role of lawyers in the tension between stated ideals and real policies put into practice.

The truth is that lawyers were very important long before independence. Law graduates were used widely by the Iberian monarchies that founded the great colonial empires as administrators of their interests. These monarchies, however, followed opposing policies in relationship with the legal education. Spain favored the establishment of universities in its American provinces; law schools were among the main priorities. Since the mid-sixteenth century, universities were established, and by the early nineteenth century, each important city in Spanish America had at least one university. Legal studies, along with theology, were at the heart of university courses. The number of law graduates (as in general, the number of university graduates) was low. The number of lawyers was even lower since clerics had restrictions to practice law. Toward 1800, the number of lawyers in all Spanish America was probably around one thousand (around ten for every ten thousand inhabitants). The total of law graduates was at least twice that number since many of them were direct officials of the monarchy or the Catholic Church without having obtained the habilitation as lawyers (Pérez-Perdomo 2004).

Portugal followed a different educational policy by avoiding the establishment of universities in Brazil. Wealthy Brazilians had to go to Coimbra to pursue their careers. As a consequence of this restrictive policy, the number of law graduates in 1800 was around 250, in a country with less than 3 million inhabitants.[3] That is 8 for every 100,000 inhabitants.

In spite of these low figures,[4] the general perception at the time, at least in Spain and its colonies, was that there were too many lawyers. The reason probably lies in the fact that lawyers and law graduates saw themselves as potential officials for the crown. The number of positions was limited due to the prohibition against the "sons of the country" *(hijos del pais)* to serve as high officials in their own countries and also because most of the tasks performed by today's lawyers (like representing private citizens in courts) were left to solicitors *(procuradores)*. The solicitors did not have a formal legal training but were very knowledgeable of the practice of law. Lawyers deemed these tasks unworthy of their prestige and social position.

A lawyer was seen as a socially important person, related to an *audiencia* or high court. The normative image of the lawyer was closer to an official of the state than to a defender of the citizens. Lawyers were men of "honor," but that honor derived from their service to the monarch and, later on, to the state (Uribe-Urán 2000; Gaitán Bohórquez 2002).

As owners of the political knowledge of the time and members of the colonial high class, lawyers had the most independence, and in fact, they became its civil leaders. In the period of independence, the lawyers drafted the constitutions, the laws, manifests, and *proclamas*; in other words, they were the architects of the

state. Between 1811 and 1830, the Latin American countries were the great producers of constitutional texts. Each country adopted at least one constitution, and frequently several, enacted one after another. All these constitutions contained provisions about the division of the state in separate branches (generally, the executive, the legislature, and the judiciary) and also about certain rights.

Legal education experienced an important transformation after independence. In Brazil, universities and legal studies were established. In every country, the programs of study and the teaching methods also changed. New courses were added to the traditional teaching of Roman and canonical law. One of these new courses covered constitutional law. The most successful book for this course was Florentino González's *Lecciones de derecho constitucional*, which in general terms describes the constitutional government.[5]

In sum, since the inception of independent states, Latin American legal scholars became familiar with the central ideas of the constitutional government that we now call rule of law. It can be said that rule of law is within the Latin American legal tradition, at least in relationship to the knowledge and culture of legal scholars. Under the traditional idea of constitutional government, the emphasis is on the limit imposed upon the different organs of the state more than on the citizen's rights.

During the nineteenth century and at the beginning of the twentieth century, the number of lawyers remained low and their main role was to fill high government positions (Serrano 1994; Pérez-Perdomo 2004, 1981). Well into the twentieth century, working for the government was still the main job for lawyers in Brazil (Falcão 1979), but by midcentury, lawyers became business advisers and started representing individual clients. Also in Chile, a tension between the state and the market as potential competitors for legal services has been reported (de la Maza 2001). One could state that this is the general trend (Pérez-Perdomo 2004).

During this long period, lawyers were always part of cabinets, parliaments, and also served as leaders of political parties. In some countries like Chile, lawyers were also chiefs of state. This is how lawyers became important members of the political elite. Countries were well equipped with parliaments, judicial systems, and an initially small—but steadily increasing—number of lawyers. At the beginning, legal knowledge was not restricted to lawyers: cultivated people were familiar with the fundamental works in law, and among those who wrote about law there were a certain number of nonlawyers (Pérez-Perdomo 2004). During the twentieth century, however, legal knowledge became more specialized.

On the other hand, there is a general perception that political life occurred in a different fashion than the way for which the constitution and other legal instruments provided. The variation among different countries and between different times within each country might be relevant. In each country, there were relatively stable periods when institutions functioned well and also other times of enormous turmoil including civil wars. In general terms, Latin American political systems during the nineteenth and twentieth centuries can be labeled as personalist *(personalistas)*. By this, we mean that the system's axis was an individual who set the pace of the political apparatus and was its most predominant player. There is no

doubt that Santa Ana or Porfirio Díaz in Mexico, Juan Vicente Gómez in Venezuela, Vargas in Brazil, Perón in Argentina, Pinochet in Chile, and Fujimori in Peru were dissimilar characters who ruled their countries under very diverse political systems in different times. However, they all had in common the important presence that each of them played in their political arenas and also the absence of constitutional constraints to their power and the safeguard of individual rights.

How is it possible that prominent lawyers helped these governments? How is possible that many distinguished legal professionals served in high positions during these regimes and, to some extent, acquiesced the massive violation of constitutional rights? Why did the lawyers who were judges or Supreme Court justices not put their efforts in stopping the abusive conduct of those in power?

A complete study would require that we analyze the particular features of each regime, the attitude of lawyers toward the system, and the motivations that prominent legal professionals had to actively participate in it. Such study is beyond the scope of this article, but at least we may be able to highlight some hypotheses.

The cooperation of lawyers with dictators and strong men is not a Latin American peculiarity. Judges and lawyers did not offer any resistance to Hitler in Germany, and the resistance to Mussolini in Italy was weak at best (Müller 1991). Leading law professors, as Schmidt and Rocco, became important actors of those totalitarian regimes. Most French judges and prosecutors applied the repressive and anti-Semite Nazi law as part of their ordinary activity during the Vichy regime (Bancaud 2002). The lack of resistance or the collaboration may have several explanations. In first place, collaborating with authoritarian regimes can be seen as an opportunity to amass a personal fortune and to enjoy the privileges of power. It can also be that once somebody is tied to a particular regime, it is very difficult to separate from it, as often occurs with criminal networks or mafias. Wealth, power, and fear could encourage a particular conduct, but they are not absolute values. It is probably an exaggeration to think that well-educated jurists would renounce the values that were inculcated to them to embrace a regime that overtly contradicts the fundamentals of the law. We could understand such weakness in some jurists, but we should not believe this moral abjection to be the rule.

A more plausible explanation has to do with the belief that leaning toward an authoritarian ruler might be seen by lawyers as a lesser harm or even as a relatively good thing under difficult circumstances. The majority of Latin American countries are socially and ethnically heterogeneous, with a high echelon that has control over most of the wealth. This stratum is predominantly formed by European ascendants; most lawyers came from this group. The majority of the population is from mixed *(mestizo)* ascendance, with indigenous features. Conflicts within the upper class have allowed others to become part of the political scenario, thus inducing fear of a general turmoil. The collaboration with rulers like Porfirio Díaz, Juan Vicente Gómez, Pinochet, or Fujimori, who were known for rising into power during grave domestic commotions, might be explained with this motivation.

Another hypothesis may have to do with their intellectual linkage with the state and with market conditions. During the nineteenth century and part of the twentieth century, lawyers were seen as state officials. In fact, the state was the great

employer; there was not really a need for legal services that would allow an important number of lawyers to practice on their own and be able to make a living out of it. Lawyers may feel rewarded by being allowed to participate in governmental or parliamentary decisions or by acting as judges, and this could make them overlook the negative features of the regime. This is even more enticing when the lawyer does not have other gratifying options.

In general terms, Latin American political systems during the nineteenth and twentieth centuries can be labeled as personalist (personalistas).

In sum, there are conceivable reasons why people educated within the idea of a constitutional government and well versed about the need to protect human rights feel compelled to collaborate—without any moral guilt—with dictatorial regimes that often violate human rights. Toward the end of the nineteenth century and during the first half of the twentieth century, the idea that law was completely unrelated to ethics and its notion as a neutral discipline became popular. Positivism claimed the total separation of law and ethics. The law was seen as a neutral technology that could be at the service of any cause or regime.

Recent Tensions

During the past fifteen years, many efforts and significant changes have occurred. Democratization or the replacement of military governments with democratically elected governments was the feature of the 1980s and 1990s. Argentina, Brazil, Chile, Ecuador, Paraguay, Peru, Uruguay, and several Central American countries followed this path. In Mexico, a regime based on a hegemonic party became a truly pluralistic democracy. However, this is far from being a clear path. Several democratically elected presidents became authoritarian rulers with a tendency to corrupt the political system. Menem in Argentina and Fujimori in Peru are clear examples of democratically elected authoritarian presidents with no respect for human rights or limitations on their power. Colombia and Venezuela, with party-controlled democracies during the second half of the twentieth century, have elected clearly authoritarian presidents (Uribe, Chávez) who made important

constitutional changes to strengthen their power.[6] Gutiérrez, in Ecuador, also tried to amass power with much less success and was forced out.

At the same time of this tremulous democratization, there has been an important effort to reform the judiciary. These projects are not totally alike. Almost every Latin American country had reformed procedures (mostly in the context of the criminal trial). As a result, the power of judges has been limited in a transition from the written, inquisitorial style to the oral and adversarial system. Courts have adopted new technologies and managerial practices. Judges have undergone training; small-claims justice and alternative dispute resolution mechanisms have gained attention (Pásara 2004). The World Bank, the Inter-American Development Bank, and various countries and donor organizations have contributed to these projects, even though the beneficiary countries by themselves have been the ones to set their priorities (Domingo and Sieder 2001; Hammergren 2003; Jensen 2003). This explains why, in each country, the emphasis put into the different aspects of the judicial reform vary and also why the results are different.

The balance of these efforts is not easy to assess. It is true that in almost all countries, the courts are now equipped with more computers, and function in new and better buildings where modern technologies are applied; but it does not seem that justice is more accessible to everyone, that it protects better the rights of citizens, or that judges are more independent and impartial.

In general, judges have not had the power to circumvent the uncontrolled authoritarianism of rulers like Fujimori, Menem, or Chávez. Judges have not even been able to protect the rights of those citizens or groups of citizens who oppose these governments. In other countries like Costa Rica, Chile, Mexico, Brazil, and Colombia, judges have been more independent and have become political arbitrators. It is also true that these judges have encountered more plural political systems and more moderated presidents.

The novelty is in the use of the judiciary as a tool for political participation. This means, in the first place, that citizens and lawyers have used the courts to protect their own political interests. Latin America has a long tradition of human rights violations, electoral fraud, and apparently legal decisions geared to exclude certain groups from the political arena. Irregularities have not ceased with democratizations, and they are not likely to cease in the immediate future. Now the citizens have turned to the courts. When we look back to fifty years ago, political wrongdoings were retaliated with political means, not with judicial actions.

Fifty years ago, the separation between politics and law was greater. In the perspective of the analysis of the professions, this means that lawyers avoided filing politically controversial claims before the judges, who also stood away from ruling on those cases. Certainly, governments were not less abusive than those in present times, but citizens and especially lawyers were not willing to use legal remedies and the justice system to defend their rights. An example from Venezuela may help us illustrate this point. Colonel Pérez Jiménez won the presidential election of 1952 through fraudulent means. In 1957 (after becoming a general), he tried to get reelected through a plebiscite, which was a questionable procedure from the constitutional point of view. This triggered a general opposition within the population,

and in January 1958, he was forced to resign. In 2004, similar behavior on the part of Lieutenant Colonel Chávez generated a fierce judicial activity.

Another example is the fourth chamber (or constitutional chamber) of the Costa Rican Supreme Court, which every year has decided thousands of cases challenging judicial rulings that in other times were complied with, with virtually no resistance. Among those thousands of claims is the case of former president Oscar Arias, who challenged the constitutional provision that forbade the reelection of former presidents, under the argument that such rule violated his constitutional rights. The chamber decided in his favor, thus introducing a new element in the Costa Rican political system. The constitution was enacted in 1949, and nobody had challenged it before.

Fifty years ago, people opposed corrupt governments, but none of them used the legal system as a tool for challenging the government.

It is interesting to see how citizens and lawyers have decided to step forward and take enormous risks to protect their rights against authoritarian regimes in light of the likelihood of an adverse ruling and the risk to the claimant's personal safety. As an example, during Pinochet's dictatorship in Chile, many people "disappeared." This occurred when the government's security forces, sometimes in uniform, detained citizens without allowing them to contact their relatives. When others began inquiring, the government simply denied that the detentions took place. Some of the disappeared people were released after being tortured; others were simply never found. In spite of the enormous risk that it posed to the victims, their relatives, and lawyers, many claims were filed. Some Chilean judges made brave decisions, even though the Supreme Court justices leaned toward the government and ruled that judges should not take action after the authorities declared that an individual was not detained (Frühling 1984; Correa Sutil 1997).

Judges at times rule against the interests of the political establishment, despite the political leaders' lack of respect for the judges. One such case is Venezuela. The judges of the First Court for Administrative Contentious matters issued several important rulings against some policies enacted by President Chávez's government. After several incidents, the government's special police took over the court building and the judges were fired. A similar event took place at the Electoral Chamber of the Venezuelan Supreme Court. A decision favoring the opposition created a conflict in which the Constitutional Chamber (the majority of its members progovernment) got involved. As a result, several justices of the court were

forced to resign, and the government drafted and enacted a new law that allows appointing and firing justices very easily (Pérez-Perdomo 2005). More than two hundred judges have been fired in 2004 and 2005 (of a total of approximately fifteen hundred in the country), and in many cases it was due to political motivations.

Interestingly, the Constitutional Chamber of the Costa Rican Supreme Court, the Colombian Constitutional Court, and the Venezuelan Supreme Court during the 1990s were first-class political arbitrators. This has been achieved because lawyers have been eager to bring claims against the government, and courageous judges have been willing to decide them. Also, the features of the political system have allowed a more pluralistic judicature and more independent judges. Clearly, judges have stopped being the Cinderella of the state's branches and have assumed the role given to them by the constitution even if they never exercised it in the past.

In sum, the novelty is not in the abusive power exerted by authoritarian governments in having control over the judges and firing those who oppose the regime. The innovation is that now, some lawyers and judges have taken a step forward to challenge the establishment through legal means. It is remarkable how in some cases this has lead to a stronger and truly independent judiciary.

Most impressive are when judges take a stand knowing that they will be fired or sanctioned and when lawyers take actions in spite of their practical futility and the risk that it poses for them.

The reason for this could be political. We have seen that an important number of judges and lawyers who lined up with Pinochet, Fujimori, or Chávez shared or currently share their political projects (or maybe simply for opportunistic reasons). At the same time, some judges and lawyers oppose those regimes. The distinctiveness is in the use of the law as an instrument for political struggle. Fifty years ago, people opposed corrupt governments, but none of them used the legal system as a tool for challenging the government.

The second motivation is the identity with the values of rule of law. A legal professional might feel ideologically close to a political leader or program, but such loyalty shall be limited by the rule of law. We should assume that judges and lawyers, at least from time to time, deem justice and legality as their cardinal values.

Going further in the analysis of the motivations might be like walking on quicksand, but the most important are the social manifestations. Lawyers who use the court system to voice their rights in spite of a very difficult political situation—for example, the risk of becoming political prisoners—do it simply because they believe that there are still some judges guided by high professional values who can decide according to the law. Such lawyers might also be guided by a merely selfish interest: a politically controversial legal action may bring them fame and publicity. Perhaps there is a market for the lawyer who after becoming famous may get referrals.

On the other hand, whoever chooses to hide real motivations and uses the principles of the legal system as a façade ends up legitimating it. The saying, "hypocrisy is the homage that the vice gives to the virtue," is appropriate. Lip service is not innocuous.

The independence that we can now see in a growing number of lawyers has a material substratum: a market for legal services that did not exist fifty years ago. This gives force to the idea of law detached from politics. We feel farther away from the rule of law, but as a social conscience we are closer (López-Ayllón and Fix-Fierro 2003; Vianna et al. 1999). The studies on legal or constitutional culture show the same ambiguity. A study on Mexico (Concha-Cantú et al. 2004) concluded that the public values the equality in law enforcement and the good work of justice but criticizes impunity. In simple terms, people are for the rule of law. At the same time, people have a weak knowledge of the constitution and do not esteem the performance of judges and other law enforcement officials. Probably the situation for the rest of Latin America is not very different.

Could we affirm that the investments and efforts put into judicial reform in Latin America are making the rule of law ingrained? The answer is a nuanced negative. It seems uncontested that there is a bigger conscience about the greater importance of the law (Smulovitz 2002), which explains the enormous investments and efforts. However, it is more difficult to accept that the adoption of new technologies geared to improve the courts' management or that the adoption of new procedural laws could have a direct impact.

We are convinced that a more expedite, transparent, and accessible justice strengthens the rule of law, but we have yet to see the effects of the judicial reform efforts.

An aspect that has been left aside is the training of jurists in the values of the rule of law. The legalistic positivist teaching typical of Latin America might reinforce the notion of law as a neutral value, as a mere social technology. Some reform agendas have paid special attention to the training of judges. Perhaps the most salient case is that of Chile, where the program emerged after the concern that the majority of the judges—starting with the Supreme Court justices—were insensitive to the massive violation of human rights during the seventeen years of dictatorship. Nonetheless, in general, the efforts geared to educate the judges seem to have done and achieved little (Binder 2001). Perhaps the obstacle is before that stage, in the legal education. In this respect, the law and development movement of the 1970s had a better aim, except for the fact that it tended to make law subordinate to the economy without giving credit to its own values.

Notes

1. Democracy, rule of law, and respect of human rights are closely linked in the Inter-American Democratic Charter (2001), an international treaty signed by all hemispheric countries for the strengthening of democracy. Rule of law is considered today as equivalent to the concept of *estado de derecho*, in Spanish (*état de droit* and *Rechtstaat* in French and German, respectively). They were quite distinct concepts in the past. Both rule of law and *estado de derecho* were not originally associated with democracy or liberal democracy, as it is today (Pereira Menaut 2003; Joujan 2003; Heuschling 2002; Böckenförde 2000; Halliday and Karpik 1997).

2. Latin America includes also Haiti, a former French colony, whose history and legal systems are poorly known in other Latin American countries. The conflicts leading to the independence started in 1808, in rela-

tion with the Napoleonic invasion of Spain. Most countries became effectively independent in the decade of the 1820s.

3. Between 1776 and 1800, 236 Brazilian men graduated in law at Coimbra (Barman and Barman 1976). The number of lawyers was probably smaller.

4. The number of lawyers is low if we compare it with the priests' numbers. There were fewer lawyers in Latin America than priests and monks in Mexico City. For a discussion on numbers and the perception of excess, see Pérez-Perdomo (2004, 61).

5. González (1869) was probably the best-known constitutional law handbook in the second half of the nineteen century in Argentina, Colombia, and Venezuela. The book has thirty-seven lectures, and only four deal with rights. For earlier times, the book used was Constant (1825). García Pelayo (1949) is probably the most influential constitutional handbook in the second half of the twentieth century. None of these books give much importance to constitutional rights. The *Manual político del venezolano* by Francisco Javier Yanes (1959) is an important exception. The book is an analysis of fundamental rights. This brief book was originally published in 1839 but did not have an impact till later.

6. There is a vast bibliography on transition to democracy in Latin America. For example, see O'Donnell, Schmitter, and Whitehead (1986); and Agüero and Stark (1998).

References

Agüero, Felipe, and J. Stark, eds. 1998. *Fault lines of democracy in post-transition Latin America*. Miami, FL: North/South Center Press.

Bancaud, Alain. 2002. *Une exception ordinaire. La magistrature en France 1930-1950*. Paris: Gallimard.

Barman, Roderick, and J. Barman. 1976. The role of the law graduate in the political elite of imperial Brazil. *Journal of Interamerican Studies and World Affairs* 18.

Binder, Alberto. 2001. Los oficios del jurista: la fragmentación de la profesión jurídica y la uniformidad de la carrera judicial. *Sistemas judiciales* 1 (1).

Böckenförde, Ernest W. 2000. *Estudios sobre el estado de derecho y la democracia*. Madrid, Spain: Trotta.

Concha-Cantú, Hugo A., Héctor Fix-Fierro, Julia Flores, and Diego Valadés. 2004. *Cultura de la constitución en México*. Mexico City: Universidad Nacional Autónoma de México.

Constant, Benjamín. 1825. *Curso de política constitucional*. Paris: Librarie Parmentier.

Correa Sutil, Jorge. 1997. "No victorious army has ever been prosecuted" . . . The unsettled story of transitional justice in Chile. In *Transitional justice and the rule of law in new democracies*, ed. A. J. McAdams. South Bend, IN: University of Notre Dame Press.

de la Maza, Íñigo. 2001. Lawyers: From the state to the market. Master's thesis, Stanford Law School, Stanford, CA.

Domingo, Pilar, and R. Sieder, eds. 2001. *Rule of law in Latin America. The international promotion of rule of law*. London: Institute of Latin American Studies.

Falcão, Joaquim. 1979. Lawyers in Brazil: Ideals and praxis. *International Journal of the Sociology of Law* 7.

Frühling, Hugo. 1984. Poder judicial y política en Chile. In *La administración de justicia en América Latina*, ed. J. de Belaúnde. Lima, Peru: Consejo Latinoamericano de Derecho y Desarrollo.

Gaitán Bohórquez, Julio. 2002. *Huestes de Estado. La formación universitaria de los juristas en los comienzos del estado colombiano*. Bogotá, Columbia: Centro Editorial de la Universidad del Rosario.

García Pelayo, Manuel. 1949. *Manual de derecho constitucional comparado*. Madrid, Spain: Editorial Revista de Occidente.

González, Florentino. 1869. *Lecciones de derecho constitucional*. Buenos Aires, Argentina.

Halliday, Terence C., and L. Karpik. 1997. *Lawyers and the rise of Western political liberalism*. Oxford: Clarendon.

Hammergren, Linn. 2003. International assistance to Latin American justice programs: Toward an agenda for reforming the reformers. In *Beyond common knowledge. Empirical approaches to the rule of law*, ed. E. Jensen and T. Heller. Stanford, CA: Stanford University Press.

Heuschling, L. 2002. *État de droit, Rechstaat, rule of law*. Paris: Dalloz.

Rule of law can be considered an important achievement of civilization but shall not be treated as a factual situation. The citizens' aspiration is that public officials perform their duties within the boundaries set forth by the constitution and other legal instruments, and they expect their rights to be preserved. In this sense, the rule of law is a normative model. By so understanding the rule of law, we also imply that it can be used as an instrument to evaluate the performance of the real political and legal systems. For example, the statement that Spain during the early twenty-first century is a model of rule of law does not mean that all public officials operate within their boundaries and that everybody's rights are dully safeguarded. If we say that Spain under Franco's ruling was not a model of rule of law, we do not imply that law was not important at all during that time or that no public official operated within the legal boundaries. What we are really trying to convey is that today's Spain is closer to the rule of law's normative model than during Franco's era. In general, it is believed that those who exercise public duties today are more constrained (legally and constitutionally) than in the past and that any abuses or violations are more likely to be prosecuted than under Franco's ruling. In other words, today there is more freedom and democracy. We are doing a value assessment on Spain's legal and political system.

Naturally, the rule of law is closely related to the idea of law. In the notion and name of *rule of law*, law is deemed to impose limits on the state's power and, specially, on each one of its different branches. *Law* implies the constitution and other legal instruments but also encompasses the entire apparatus in charge of interpreting and enforcing it, to wit: the courts, lawyers, police, military, and in general, all citizens. This article is about legal professionals, their relationship with the state, and their role in making it work.

The operation of a political-legal system is closely related to economic, social, and cultural aspects. Our awareness about its complexity does not prevent us from being able to analyze the role of certain social or professional groups in making the system work. It is possible that lawyers, military forces, landowners, businesspeople, and also foreign superpowers have had an influence in the direction that different Latin American countries have taken in different historical moments. That is why we will make an effort to analyze the particular group formed by legal professionals. The way in which a political-legal system works is undoubtedly linked to economic, social, and cultural factors.

Democratization is a common feature in Latin America during the beginning of the twenty-first century. Today, the presidents of all countries, with the exception of Cuba, have been democratically elected. This differs from the 1970s and 1980s, a time during which the majority of Latin American countries were in hands of dictators, some of whom became known for the massive violation of human rights. The rule of law has been linked to democratization because our notion of democracy is liberal,[1] but has the rule of law in Latin America achieved similar progress to that accomplished by democratization?

According to the general perception, the adoption of the rule of law faces more difficulties than the functioning of democracy (Schor 2003; Pereira 2000). Even in countries that hold elections periodically, and where the opposition has a chance of

Jensen, Eric. 2003. The rule of law and judicial reform: The political economy of diverse institutional patterns and reformers' responses. In *Beyond common knowledge. Empirical approaches to the rule of law*, ed. E. Jensen and T. Heller. Stanford, CA: Stanford University Press.

Joujan, Olivier. 2003. État de droit. In *Dictionnaire de la culture juridique*. Paris: Presses Universitaires de France.

López-Ayllón, S., and H. Fix-Fierro. 2003. "Faraway, so close!" The rule of law and legal change in Mexico 1970-2000. In *Legal culture in the age of globalization. Latin America and Latin Europe*, ed. L. Friedman and R. Pérez-Perdomo. Stanford, CA: Stanford University Press.

Müller, Ingo. 1991. *Hitler's justice. The courts of the Third Reich*. Cambridge, MA: Harvard University Press.

O'Donnell, Guillermo, Philippe Schmitter, and Laurece Whitehead, eds. 1986. *Transitions from authoritarian rule. Latin America*. Baltimore: Johns Hopkins University Press.

Pásara, Luis, comp. 2004. *En búsqueda de una justicia distinta. Experiencias de reforma en América Latina*. Lima, Peru: Consorcio Justicia Viva.

Pereira, Anthony. 2000. An ugly democracy? State violence and rule of law in post-authoritarian Brazil. In *Democratic Brazil: Actors, institutions and processes*, ed. P. Kingstone and T. Powers. Pittsburgh, PA: University of Pittsburgh Press.

Pereira Menaut, Antonio-Carlos. 2003. *Rule of law o estado de derecho*. Madrid, Spain: Marcial Pons.

Pérez-Perdomo, Rogelio. 1981. *Los abogados en Venezuela. Historia de una elite intelectual y política 1780-1980*. Caracas, Venezuela: Monte Ávila.

———. 2004. *Los abogados de América Latina. Una introducción histórica*. Bogotá: Universidad del Externado de Colombia.

———. 2005. Judicialization and regime transformation: The Venezuelan Supreme Court. In *The judicialization of politics in Latin America*, ed. R. Sieder, L. Schjolden, and A. Angell. London: Palgrave Macmillan.

Rodríguez, César. 2001. Globalization, judicial reform and the rule of law in Latin America: The return of law and development. *Beyond Law*, 23.

Schor, Miguel. 2003. The rule of law and democratic consolidation in Latin America. Paper presented at the meeting of the Latin American Studies Association, Dallas, TX.

Serrano, Sol. 1994. *Universidad y nación. Chile en el siglo XIX*. Santiago, Chile: Editorial Universitaria.

Smulovitz, Catalina. 2002. The discovery of law: Political consequences in the Argentina case. In *Global prescriptions—The production, exportation, and importation of a new legal orthodoxy*, ed. Yves Dezalay and B.Garth, 249-75. Ann Arbor: University of Michigan Press.

Uribe-Urán, Victor M. 2000. *Honorable lives. Lawyers, family, and politics in Colombia, 1780-1850*. Pittsburgh, PA: University of Pittsburgh Press.

Vianna, Luis Werneck, Maria Alice Rezende de Carvalho, Manuel Palacios Cunha Melo, and Marcelo Bauman Burgos Vianna. 1999. *A judicialização da política e das relações sociais no Brasil*. Rio de Janeiro, Brazil: Editora Revan.

Yanes, Francisco Javier. 1839/1959. *Manual político del venezolano*. Caracas, Venezuela: Academia Nacional de la Historia.