

The Rule of Law in Latin America: A Selected Annotated Bibliography



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This collection of resources is intended to present a diverse selection of articles, reports, and books on the rule of law. From a purely academic perspective, we hope it inspires introspection and reflection by individuals and, in particular, for military professionals. We anticipate that the readings cited in this bibliography will encourage and enrich the discussion of these issues in communities dedicated to the study of security and defense matters.

This is not intended to be an exhaustive or definitive bibliography, but rather a “living” document, one that grows and evolves as new issues and new materials arise. This bibliography was last updated on September 10, 2013. We welcome any suggestions or recommendations for additional texts. Please email them to Patrick.paterson@ndu.edu.

Inclusion of materials in this bibliography does not imply or constitute endorsement of the views contained in them by the Perry Center, NDU, or the Department of Defense. The diversity of the material is intended as part of a broader educational effort to provide different points of view and to stimulate discussion.

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Philosophy and Theory

Definitions and Jurisprudence

Lord Bingham, “The Rule of Law,” *Cambridge Law Journal* 66:1 (March 2007), pp. 67-85

The transcript from the Sir David Williams Lecture at the University of Cambridge given in November 2006, this article provides an overview of the concept, eventually concluding that its core states that “all persons and authorities within the state...should be bound by and entitled to the benefits of laws publicly and prospectively promulgated and publicly administered in the courts.” It then defines eight conditions required in order to establish the rule of law.

Richard Greenstein, “Why the Rule of Law,” *Louisiana Law Review* 66:1 (Fall 2005), pp. 63-94

The article attempts to make sense of and justify the rule of law when we think about the law as indeterminate and, therefore, unable to specify the limits of governmental power that protect us from tyranny. In this way, it builds upon the conception of the rule of law as the basis of democratic governance and incorporates an analysis of its social construction within modern systems of governance.

Matthew Kramer, “On the Moral Status of the Rule of Law,” *Cambridge Law Journal* 63:1 (March 2004), pp. 65-97

The author argues that the rule of law is not an inherently moral ideal, but simply the state of affairs obtained when a legal system exists and functions. He elaborates upon this contention and counters some of the criticisms that his argument will receive. He also counters some of the criticisms that his argument has received in the past.

Andrei Marmor, “The Rule of Law and its Limits,” *Law & Philosophy* 23 (2004), pp. 1-43

The author articulates a specific conception of the rule of law with a focus on assessing its benefits and defining its limits. He contends that the essence of the rule of law as an ideal is that people ought to be governed by law, which involves two components. First, it requires that governments and *de facto* political authorities should guide their subject’s conduct through the law. Second, it requires that the law through which the government rules should be developed in a way that it can actually guide human conduct.

Thomas Nachbar, “Defining the Rule of Law Problem,” *The Green Bag* 12 (2009), pp. 303-318

The author addresses the attempt of many scholars and policymakers to develop a concrete definition for the rule of law. All of these definitions attempt to implement an abstract concept as

a means to a concrete strategic effort, particularly in military operations. As a result, it is impossible to separate the how of rule of law from the what of rule of law, given the need to develop an operational imperative in a concept as deeply rooted in morality as the law.

Guillermo O'Donnell, "Why the Rule of Law Matters," *Journal of Democracy* 15:4 (October 2004), pp. 32-46

The author defines the rule of law as one of the necessary pillars upholding democracy. However, he argues that democracy requires a particular conception of the rule of law that includes "political rights, civil liberties, and mechanisms of accountability which in turn affirm the political equality of all citizens and constrain potential abuses of state power." He defines this conception as the democratic rule of law and attempts to conceptualize it and analyze it empirically.

Joseph Raz, "The Rule of Law and its Virtue," in Raz, *The Authority of the Law: Essays on Law and Morality* (Oxford University Press, 1979)

The author presents the original philosophical vision for the rule of law as an instrumental conception with positivist elements. He argues that the rule of law must operate as a system but that the system may function for non-democratic ends, as it had in previous totalitarian regimes. He concludes that the rule of law must incorporate considerations of human rights as a secondary component in relation to the system of laws that regulate society.

Frederick Schauer, "Rules and the Rule of Law," *Harvard Journal of Law and Public Policy* 14:3 (1991), pp. 645-695

The author addresses the issue of the connection between rules and the rule of law. He profiles recent disputes about legal positivism as an account of law, contrasts between two forms of rule-based decision-making and particularistic decision-making, and claims that law cannot tolerate rule-based decision-making.

William E. Scheurman, "The Rule of Law at Century's End," *Political Theory* 25:5 (October 1997), pp. 740-760

The author reviews three different books on jurisprudence from the mid-nineties in order to evaluate the rule of law within modern society and assess its relationship with modern economic and political systems, particularly capitalism and democracy.

Brian Z. Tamanaha, *Law as a Means to an End: Threat to the Rule of Law* (Cambridge: Cambridge University Press, 2006)

The author warns against an instrumentalist conception of the rule of law, which he argues may eventually work to weaken the law as a way to restrain power and reduce the common good. He

also analyzes the history of instrumental conceptions for the rule of law in the United States and the way that it has influenced modern debates over policy.

Jeremy Waldron, “Is the Rule of Law an Essentially Contested Concept (in Florida)?” *Law & Philosophy* 21 (2002), pp. 137-164

The author addresses the tendency of both the Bush and the Gore campaign during the uncertainty of the 2000 US Presidential Election to invoke the rule of law as a means to ensure their electoral victory. He uses this as a starting point to evaluate the analytical ambiguities about the rule of law and the history of contention surrounding its use throughout history.

Measurements and Metrics

Mark David Agrast, Juan Carlos Botero, Joel Martinez, Alejandro Ponce, and Christine Pratt, *The World Justice Project Rule of Law Index* (Washington, DC: World Justice Project, 2012)

The authors provide their findings for the annual index that they compile on the rule of law in various countries throughout the world. They analyze 48 rule of law indicators organized around nine conceptual dimensions: limited government powers, absence of corruption, order and security, fundamental rights, open government, regulatory enforcement, civil justice, criminal justice, and informal justice.

Marcelo Bergman, “The Rule, the Law, and the Rule of Law: Improving Measurements and Content Validity,” *Justice System Journal* 33:2 (2012), pp. 174

The author examines the role of states in establishing the rule of law, identifies several flaws in the current indexes, and calls for better measurements through two substantive claims. First, there is a need to account for law enforcement and citizen’s compliance as key components of the rule of law. Second, Measurements for the rule of law should be based on behavioral data.

Juan C. Botero and Alejandro Ponce, “Measuring the Rule of Law,” *World Justice Project Working Paper Series N.001*, November 2010

The World Justice Project develops an annual rule of law index that uses quantitative measurements to assess a country’s adherence to the rule of law. The paper discusses the methodology used in the development of that index, as well as the nine metrics selected (limited government powers, absence of corruption, order and security, fundamental rights, open government, regulatory enforcement, access to civil justice, effective criminal justice, enforcement justice).

Joroen Moller and Svend-Erik Skaaning, “Systematizing Thin and Thick Conceptions of the Rule of Law,” *Justice System Journal* 33:2 (2012)

The authors compile the various definitions of the rule of law and systematize those definitions into a unified topology between thinner (minimalist) and thicker (maximalist) conceptions. They develop analytical distinctions between the shape (core), sanctions (control), source (consent), and substance (content) of the rules.

Svend-Erik Skaaning, “Measuring the Rule of Law,” *Political Research Quarterly* 63:2 (June 2010), pp. 449-460

The article provides a comparative review of seven commonly used rule of law indexes and argues that the particular measures used in each individual index “differ in both form and appropriateness and that the differences have consequences for empirical results.” It then addresses several of the weaknesses within the indexes and proposes some potential solutions.

Stefan Voigt, “How to Measure the Rule of Law,” *Kyklos* 65:2 (May 2012), pp. 262-284

The paper provides a brief survey about the rule of law’s most important aspects to social scientists. He specifically points to two dimensions: 1) “different legal dimensions have developed slightly different concretizations of the subject;” and 2) “a thin version of the concept is usually separated from a thick one.” He then provides two different proposals on how to measure the rule of law, one an ideal type and the other a practical approach when limited data is available.

US Agency for International Development, *Guide to Rule of Law Country Analysis: The Rule of Law Strategic Framework – A Guide for USAID Democracy and Governance Officers* (Washington, DC: US Agency for International Development, 2010)

The guide summarizes the accumulated findings of USAID and its strategies to address weak or inadequate justice systems. It provides a conceptual framework for analyzing challenges to the rule of law, as well as guidelines for conducting a justice sector assessment and for designing and prioritizing program interventions. It argues that rule of law promotion serves as the basis for democratic governance.

US Department of State, *Governing Justly and Democratically: Indicators and Definitions* (Washington, DC: US Department of State, 2009)

The reference guide provides an extensive overview on the indicators used by the US government for operating units working on governance and democracy interventions. They include the rule of law and human rights, good governance, political competition and consensus building, and civil society.

Relationship with Democracy

Franz Von Beuda-Beckmann, Keebeet von Benda-Beckmann, and Julia Eckert, *Rules of Law and Laws of Ruling: On the Governance of Law* (London: Ashgate, 2009)

The authors explore the changing relations between law and governance, examining how changes in the structure of governance affect the relative social significance of law within situations of legal pluralism. They argue that there has been a re-regulation rather than a de-regulation, propagated by a plurality of regulative authorities and this re-regulation is accompanied by an increasing ideological dominance of rights talk and juridification of conflict.

Rebecca Bill Chavez, *Rule of Law in Nascent Democracies* (Stanford: Stanford University Press, 2004)

The author uses Argentina as a case study to examine patterns of power in the political, economic, and societal realms in order to explain how the rule of law emerges. She argues that the dispersal of political power among competing actors of comparable strength is the necessary condition for the rule of law. In other words, the rule of law exists through the fostering of competitive politics.

Seung-Whan Choi, "The Democratic Peace through an Interaction of Domestic institutions and Norms: Executive Constraints and the Rule of Law," *Armed Forces & Society* 39 (2013), pp. 255-283

The author argues that existing models of democratic peace theory are unspecified because they do not account for the possibility of interaction between institutional and normative factors. He creates a model to correct for this possibility and concludes that when institutional and normative constraints on the executive are high, the possibility for interstate conflict is low.

Francis Fukuyama, "Transitions to the Rule of Law," *Journal of Democracy* 21:1 (January 2010), pp. 33-44

The author argues that strong legal systems did not spontaneously emerge simply because there was an economic demand for them, as some economists suggest. Rather, the law developed "exogenously" - that is, for reasons external to the economic system, such as religious belief. He further argues that the West European pattern of development was one in which the rule of law existed before anyone tried to construct a strong modern state.

Guillermo O'Donnell, "On the State, Democratization, and Some Conceptual Problems (A Latin American View with Glances at Some Post-Communist Countries)," *Kellogg Institute Working Paper* 192 (April 1993)

The author argues that for proper understanding of many processes of democratization, current conceptions of the state must be revised, especially with reference to its legal dimension. On this

basis, several contrasts are drawn between representative, consolidated democracies and the democratic forms that are emerging in newly democratized countries.

Mark Ungar, *Elusive Reform: Democracy and the Rule of Law*, (Boulder, CO: Lynne Reiner, 2002)

The author argues that democracy cannot exist without the proper rule of law. He explains when democratic regimes are able to enact such measures and, once enacted, the limits of their effectiveness. He concludes that executive dominance and judicial disarray lead to rule of law reforms but that these two conditions return to threaten those very changes.

Stefan Voigt, “Making Constitutions Work: Conditions for Maintaining the Rule of Law,” *Cato Journal* 18:2 (Fall 1998), pp. 191-208

The author examines the ability of a government to enforce constitutional provisions that guarantee individual liberty, such as the rule of law. He argues that the constitution is part of a larger framework and should therefore not be considered a society’s most basic institution. He then identifies pre- or extra-constitutional factors that enable societies to enforce their provisions effectively.

Barry Weingast, “The Political Foundations of Democracy and the Rule of Law,” *The American Political Science Review* 91:2 (June 1997), pp. 245-263’

The author develops a game-theoretic approach to the problem of political officials’ respect for the political and economic rights of citizens. He models the policing of rights as a coordination problem among citizens, but one with asymmetries difficult to resolve in a decentralized manner. He concludes that democratic stability depends on a self-enforcing equilibrium in which political officials have a self-interest in respecting democracy’s limits upon their behavior.

Relationship with Human Rights

Evan J. Criddle and Evan Fox-Decent, “Human Rights, Emergencies, and the Rule of Law,” *Human Rights Quarterly* 34 (2012), pp. 39-87

The authors analyze the normative basis for international law’s regulation of public emergencies by arguing that human rights are best conceived as norms arising from a fiduciary relationship between states (or state-like actors) and persons subject to their power. They then explain how those emergency powers can be reconciled within international conceptions of the rule of law.

Evan Fox-Decent, “Is the Rule of Law Really Indifferent to Human Rights,” *Law & Philosophy* 27 (2008), pp. 533-581

The author evaluates the argument that the rule of law does not refer to a particular substantive conception of rights but only the instrumental institutions and processes that create a society built

upon adherence to the law. He argues that while parts of the no-rights thesis is compelling for its separation of form and substance, the thesis does not provide a compelling reason to suppose that the rule of law is indifferent to human rights and particular freedoms.

Randall Peerenboom, "Human Rights and the Rule of Law: What's the Relationship?"
Georgetown Journal of International Law 36:3 (Spring 2005), pp. 809-945

The author considers several explanations for the international human rights movement's sudden heightened attention to rule of law. He argues that the rule of law then may provide one way to shore up the shaky foundation of the human rights movement. Whatever the human rights movement's conceptual and normative shortcomings, the movement's biggest failure has been not making good on the promise of a better life enjoyed by all in accordance with the Utopian ideals contained in the ever-swelling list of human rights.

Armed Conflict and the Use of Military Force

Introduction and Theory

Jeffrey F. Addicott and Guy B. Roberts, “Building Democracies with Southern Command’s Legal Engagement Strategy,” *Parameters* 31:1 (Spring 2001), pp. 72-84

The authors argue that the publication of a legal engagement strategy by US Southern Command demonstrates an effort to promote the concept of professional law-based militaries that operate in accordance with the rule of law, respect internationally recognized human rights, and are subordinate to civilian governments. In short, it provides a blueprint for democracy building in the context of rule of law operations.

Captain Christopher M. Ford, “The Rule of Law for Commanders,” *Military Review*, January-February, 2008.

The author argues that all Army units constantly engage in a full spectrum of operations, from stability to high-intensity combat and that the rule of law provides the thread that connects all of these operations. He then evaluates the spectrum of US Army operations in Afghanistan and Iraq. He then develops a working definition of the rule of law for military commanders and explains its relationship with the post-conflict phase of military operations.

Agnes Hurwitz and Reyko Huang, *Civil War and the Rule of Law: Security, Development, Human Rights* (Boulder, CO: Lynne Rienner, 2008)

The authors address three fundamental questions: How do rule of law programs contribute to conflict management? What strategies best address the challenges to securing the rule of law in fragile countries? What place do rule of law policies have in efforts to achieve stable and equitable development? They analyze rule of law programs in the context of conflict prevention, peacekeeping, and peacebuilding activities and emphasize the critical relationship linking the rule of law, security, development, and human rights.

Colonel John F. Hussey USAR, “Seizing the Initiative by Establishing the Rule of Law during Combat Operations,” *Military Review* (January/February 2013), pp. 30-37

The author argues that, in any future military operations, US commanders will be expected to plan for stability operations integrate non-DOD agencies into military contingency plans. In this way, preparing forces for rule of law operations is critical for success of the strategic end state. He concludes that the failure to consider and plan for those factors may have strategic consequences that can undermine national objectives.

Cornelia Weiss, “Respecting Human Rights and the Rule of Law: The New Zealand Defense Force,” *Ian Axford (New Zealand) Fellowships in Public Policy*, August 2012

The author investigates the respect for human rights and the rule of law in operations by the New Zealand Defense Force. She concludes that the New Zealand Defense Force’s respect for human rights and the rule of law in military operations is one of its greatest, unacknowledged strengths. While not flawless and lawless with the complications of contradictions, New Zealand can offer the beginnings of a blueprint with some transferable elements for the rest of the world.

US Army Judge Advocate General’s Legal Center and School, *Rule of Law Handbook: A Practitioner’s Guide for Judge Advocates* (Charlottesville, Virginia: United States Army Judge Advocate General’s Legal Center and School, 2011)

The handbook compiles a variety of reports from previous years on rule of law assistance operations by various US government agencies. First established in 2007, it covers the history of rule of efforts within post-conflict societies, its relationship with US national security strategy, and the necessary information to assist rule of law efforts in current American operations.

US Department of the Army, *Stability Operations, Field Manual 3-07* (Washington, DC: US Department of the Army, 2008)

The manual articulates the official Army doctrine for stability operations. It thus provides direction and guidance for any stability actions undertaken in the field. It extensively addresses the question of the rule of law, with references to the rule of law occurring in each of the manual’s six chapters as well as appendix sections.

Counterinsurgency

Thomas Nachbar, “Counterinsurgency, Legitimacy, and the Rule of Law,” *Parameters* 42:1 (Spring 2012), pp. 27-38

The author analyzes the role of legitimacy as an element of counterinsurgency doctrine and the rising emphasis on the rule of law as a means to deliver that stability. He argues that, although legitimacy is the main objective in counterinsurgency, US counterinsurgency and stability operations doctrines both lack a meaningful definition of legitimacy and a model for how the rule of law contributes to legitimacy.

Thomas Nachbar, “The Use of Law in Counterinsurgency,” *Military Law Review* 213 (2011), pp. 140-164

The author argues that, although counterinsurgency doctrine is consumed with building both legitimacy and the rule of law, it lacks a clear understanding of how law contributes to legitimacy. He also examines the ways in which law can build legitimacy, a strategic objective of

counterinsurgency. He concludes that the law, if not used effectively and properly, may actually be undermined during the initial process of counterinsurgency operations.

Operations in Afghanistan and Iraq

Pamela Constable, “The Rule of Law and its Limits,” *Journal of Democracy* 18:2 (April 2007), pp. 84-98

The author examines the violent comeback campaign of Taliban insurgents six years after the overthrow of the Taliban. She argues that restoring security will require bringing more aid and better government to neglected rural areas, but it will be impossible to deliver those improvements so long as officials, workers, and projects remain vulnerable to attack. She concludes that although Afghanistan has successfully held elections and met the formal requirements for a transition to democracy, it remains beset by problems that fester unchecked.

Kara Jensen, “Obstacles to Accessing the State Justice System in Rural Afghanistan,” *Indiana Journal of Global Legal Studies* 18:2 (Summer 2011), pp. 929-950

The author argues that, while the US mission in Afghanistan is to create a stable, democratic country that will no longer serve as a stronghold for terrorist organizations. Since the US takeover in 2001, however, most rule-of-law promotion has focused on urban centers, which has allowed the Taliban to gain traction in rural areas by creating its own alternative justice system. She discusses the obstacles facing citizens in rural Afghanistan and proposes several solutions.

Kenneth Katzman, *Afghanistan: Post-Taliban Governance, Security, and US Policy*, Congressional Research Services, 25 June 2013

The author provides a historical overview on the operations of the United States and partnering countries to provide security assistance and development programs to Afghanistan in order to develop the contemporary challenges and future obstacles of governance after the withdrawal of military forces in 2014. He pays particular attention to concerns of Afghan stability, foreign election monitoring programs, and international assistance efforts for economic development.

Zalmay Khalizad, “Lessons from Afghanistan and Iraq,” *Journal of Democracy* 21:3 (July 2010), pp. 41-49

The author analyzes democratization and post-conflict reconstruction efforts in Afghanistan and Iraq in order to think about the challenges of supporting democratization in post-conflict settings. He argues that the key focus of these efforts should be the process of achieving post-conflict stability through political agreements among important groups, the stability of constitutional and governmental institutions, and the effectiveness of the electoral system and political leadership.

Sari Kuovo, *State-Building and the Rule of Law: Lessons from Afghanistan* (Rome: NATO Defense College, 2009)

The author provides an analysis of the ongoing stabilization and state-building process in Afghanistan with a focus on rule of law. The paper situates rule of law reform within the framework of the broader stabilization and state-building effort in Afghanistan. The authors analyze if and how the internationally supported and implemented strategies for rule of law reform are contributing to the promotion of rule of law in Afghanistan.

Whit Mason, *The Rule of Law in Afghanistan* (Cambridge: Cambridge University Press, 2011)

The author has compiled an anthology of essays explaining how the West's intervention in Afghanistan has produced no results in ten years despite an enormous investment of resources. He argues that development efforts have misunderstood the rule of law by assuming that it is a particular set of institutions that can be exported rather than a state of affairs in which citizens believe that it makes sense to act within the authority of the law.

Robert Perito, "Establishing the Rule of Law in Iraq, *United States Institute of Peace Special Reports* 104 (April 2003)

The author discusses the prospects for the US government to establish the rule of law while stabilizing Iraq in the wake of the invasion to depose Saddam Hussein. He draws from the various discussions and proposals from a workshop held in the April of 2003 to provide a series of recommendations for post-conflict reconstruction and stabilization.

Peacekeeping and Stabilization

Till Blume, "Security, Justice, and the Rule of Law in Peace Operations," *International Peacekeeping* 15:5 (2008), pp. 713-721

The author reviews four different books on the ability of forces to establish the rule of law as an element of reconstruction and stabilization operations. He analyzes the recent development of bureaucratic agencies dedicated to the rule of law within the international system and the many difficulties that they face in the implementation of their programs.

Kristen Daghish and Histoshi Nasu, "Towards a True Incarnation of the Rule of Law in War-Torn Territories: Centering Peacebuilding in the Will of the People," *Netherlands International Law Review* 54 (2007), pp. 81-114

The authors clarify the legal considerations surrounding UN involvement in the transitional administration of territories and develops an appropriate legal formulate for administration with particular attention drawn to the right of self-determination for local residents. It examines the legal basis of transitional actions, the legal status of UN administered territory, and the legal powers conferred upon UN administrators.

Hylke Dijkstra, “The Planning and Implementation of the Rule of Law Mission of the European Union in Kosovo,” *Journal of Intervention and Statebuilding* 5:2 (2011), pp. 193-2010

The author evaluates the planning process and initial implementation of the Rule of Law Mission of the European Union in Kosovo (EULEX). He concludes that the original intention was to have a smaller presence than the predecessor United Nations Mission in Kosovo (UNMIK). Yet a lack of settlement on Kosovo’s international status caused the European Union to have a robust mandate and it was unable to make a fresh start in order to distinguish itself from UNMIK.

Stephen Golub, “The Rule of Law and the UN Peacebuilding Commission: A Social Development Approach,” *Cambridge Review of International Affairs* 20:1 (2007), pp. 47-67

The author argues that the dominant top-down, state-centered paradigm for rule of law operations is problematic and contrasts with an alternative strategy known as legal empowerment. Through the use of legal services, legal capacity building and legal reform for disadvantaged populations, the integration of legal empowerment can help to alleviate poverty, ameliorate conflict, and prevent chaos or repression in societies with weak institutions.

Damien Kingsbury, “Policing, Rule of Law, State Capacity and Sustainable Peace in Timor-Leste,” *Journal of International Peacekeeping* 14 (2010), pp. 353-374

The author uses Timor-Leste as a case study to investigate the link between development, state capacity, and sustainable peace. He concludes that that key state institutions such as the judicial system and law enforcement agencies are required to function well and develop in accordance with the rule of law in order to act as contributors and guarantors to a state of perpetual peace.

Thomas Nachbar, “The U.S. Military's Role in Rule of Law Development: From Intervention to Security Assistance,” *Virginia Public Law and Legal Theory Research Paper No. 2013-12* (April 2013)

The author evaluates the role of the US military in programs for rule of law development. Through a theoretical analysis of US implementation programs in Afghanistan and Iraq, he argues that the viability of rule of law assistance programs by the US military is contextual on the nature of the program and the difference between small-scale assistance programs and large-scale interventions.

Robert Perito, Michael Dzedzic, and Beth DeGrasse, “Building Civilian Capacity for US Stability Operations: The Rule of Law Component,” *United States Institute for Peace Special Report* 118 (Summer 2004)

The authors examine the requirements for the US government to develop a civilian capacity to deploy police, judges, and corrections officials for peace and stability operations. It builds on

extensive research with US government agencies that would probably contribute to rule of law capabilities.

James T. Quinlivan, “Force Requirements in Stability Operations,” *Parameters* 25:4 (Winter 1995), pp. 59-69

The author investigates the numbers required for stability operations, both for entire countries and individual cities, and explores the implications of those numbers for deployment, rotation, readiness, and personnel retention.

Post-Conflict Reconstruction

Giovanni Bassu, “Law Overruled: Strengthening the Rule of Law in Post-conflict States,” *Global Governance* 14:1 (January/March 2008), pp. 21-38

The author identifies a growing gap in the definition for the rule of law in political discourse, its implementation by practitioners, and its development in academic analysis. He introduces some clarity to the plurality of meanings of the rule of law, looks at some of the ways in which it has recently applied in international cooperation, and maps out a new approach to promote it in post-conflict states.

Charles T. Call, *Contracting Justice and Security after War* (Washington, DC: US Institute of Peace, 2007)

The authors examine the experiences of countries that have recently undergone transitions from conflict with significant international involvement. They generalizations based on careful comparisons of justice and security reforms in some of the most prominent and successful cases of transitions from war of the 1990s drawn from Central America, Africa, the Balkans, and East Timor.

Seth G. Jones, Jeremy M. Wilson, Andrew Rathmell, and Jack Riley, *Establishing Law and Order after Conflict* (Santa Monica, CA: Rand Corporation, 2005)

The author examines in detail the post-Cold War reconstruction efforts of Iraq, Afghanistan, and Kosovo, three major cases in which the United States and its allies have attempted to reconstruct security institutions. He then compares them with similar but smaller projects in Panama, El Salvador, Somalia, Haiti, Bosnia, and East Timor.

Jane Stromseth, D. Wippman, and Rosa Brooks, *Can Might Make Rights? Building The Rule of Law After Military Interventions* (Cambridge: Cambridge University Press, 2006)

The authors analyze why it is so difficult to create the rule of law in post-conflict societies such as Iraq and Afghanistan and offer critical insights into how policymakers and field workers can improve future rule of law efforts. They argue that a narrow focus on building institutions such

as courts and legislatures misses the complex political and cultural issues associated with the societal commitment to the values associated with the rule of law.

Joris Voorhoeve, *From War to Rule of Law: Peace Building after Violent Conflicts* (Chicago: University of Chicago Press, 2007)

The author demonstrates that newly emerging democracies may need much more than emergency economic support. Restoring the rule of law, he shows, can involve the training of a new police force, for example, or the creation of an international war crimes tribunal. He concludes that any disregard for human rights or delay in civilian reconciliation can lead to serious resurgences in violence.

The International System

International Conceptions

William Bishop, “The International Rule of Law,” *Michigan Law Review* 59:4 (1961), pp. 553-574

The author articulates a vision for an international rule of law in which international relations operates in accordance with established practices of law as a means to settle disputes. He assesses the ability of the international system to develop a system for the rule of law and discusses its development at the present moment.

Rosa Brooks, “The New Imperialism: Violence, Norms & the Rule of Law,” *Michigan Law Review* 101:7 (June 2003), pp. 2275-2340

The author defines a new area of study in the place where international law, comparative law, and domestic law intersect. She takes as a basic premise that there are many situations in which it is justifiable and beneficial for the US and other actors to seek to promote human rights and the rule of law abroad, and that at times even military interventions are necessary and justifiable in order to convince readers that there is indeed a problem with how human rights and the rule of law are promoted. She also defines a preliminary research agenda for this new field, outlining the kinds of questions that need to be asked, and suggesting some of the things that are needed to start feeling towards some answers.

Simon Chesterman, “An International Rule of Law?” *American Journal of Comparative Law* 56:2 (2008)

The author argues that the rule of law is almost universally supported at the national and international level because of its widely divergent means of definition. He proposes a core definition of the rule of law as a political ideal and argues that its applicability to the international level will depend on that ideal being seen as a means rather than an end, as serving a function rather than defining a status.

Terry Nardin, “International Pluralism and the Rule of Law,” *Review of International Studies* 26 (December 2000), pp. 95-110

The author discusses the contemporary character of law in the international system given the changes created by globalization. He argues that globalization will not destroy the present international system based on Westphalian nation-states but, if it did, it would be replaced by a new system of world law that will remain relevant due to the idea of the law itself.

Nikolas Rajkovic, “Global Law and Governmentality: Reconceptualizing the Rule of Law as Rule through Law,” *European Journal of International Relations* 18:1 (2012), pp. 29-52

The author challenges optimistic assessments about the rule of law as an element of global governance. He argues that the concept is often employed with sparse inquiry into the politics of its practical meaning. In particular, he addresses the development of a global judiciary system and concludes that it would operate less as a constraint on state power and more as a rationale for the means of ruling by particular vested actors.

John Steinbruner, “The Rule of Law,” *Bulletin of Atomic Scientists* 47:5 (June 1991), p. 20

The author examines the changes to the international system created by the end of the Cold War. He argues that changes in international security and economic cooperation may create a new world order on the basis of the rule of law. He also outlines several conditions that would describe this new condition of the international system.

Jeremy Waldron, “The Rule of International Law,” *Harvard Journal of Law & Public Policy* 30:1 (2006), pp. 15-30

The author focuses on how one should think about the rule of law in the international arena. He addresses both the particular conceptions and enforcement provisions of international law and whether or not international law constitutes a particular set of international legal values. He particularly emphasizes the rule of law as a means to pursue justice and the social good and the way that it constrains the actions and considerations of international lawyers.

Bernhard Zangl, “Is There an Emerging International Rule of Law,” *European Review* 13:1 (2005), pp. 73-91

The author argues that an international rule of law complementing modern states' domestic rule of law seems to be emerging and considers four different aspects of international law where it is emerging. Albeit still far from what we are used to from the domestic rule of law, the emergence of an international rule of law can be regarded as indicative of a fundamental transformation of modern states.

International Engagement

Juan Carlos Botero, Ronald Janse, Sam Muller, and Christine S. Pratt, *Innovations in the Rule of Law* (New York: World Justice Project, 2012)

The authors compiled a series of concise papers on international conceptions on the rule of law in order to highlight some of the recent innovations and insights developed within the international community in the past decade. They hope that these reports will supplement the high-profile meeting on the rule of law at the UN General Assembly in the fall of 2012 and can provide a basis of discussion for international organizations, governments, and civil society.

Thomas Carothers, *Promoting the Rule of Law Abroad* (Washington, DC: Carnegie Endowment for International Peace, 2006)

The author analyzes international rule of law promotional efforts and explains why many of these programs are ineffective. He then provides a series of essays providing significant critiques of the international rule of law community and assesses different efforts by various countries, international organizations, and civil society groups throughout the world

Thomas Carothers, “A Quarter-Century of Promoting Democracy,” *Journal of Democracy* 18:4 (October 2007), pp. 112-126

The author evaluates the achievements of democracy assistance efforts over the past quarter-century. He argues that democracy assistance has found its place within US foreign policy and the assistance efforts of established democracies and international organizations. He also addresses the new context for democracy promotion and emerging contemporary challenges.

Rachel Kleinfeld, *Advancing the Rule of Law Abroad* (Washington DC: Carnegie Endowment for International Peace, 2012)

The author argues that persuasively argues that rule-of-law reform is poised to advance from an initial, somewhat exploratory generation of assistance efforts to a more knowing and effective second generation. She reconsiders current conceptions on the rule of law and evaluates them in the context of several available types of cases.

Amichari A. Megan, Thomas Risse, and Michael McFaul, *Promoting Democracy and Rule of Law: American and European Strategies* (New York: Palgrave MacMillan, 2009)

The authors systematically compare U.S. and EU strategies to promote democracy around the world -- from the Middle East and the Mediterranean, to Latin America, the former Soviet bloc, and Southeast Asia. In doing so, they debunk the pernicious myth that there exists a transatlantic divide over democracy promotion.

John F. Murphy, “The United States and the Rule of Law in International Affairs,” (Cambridge: Cambridge University Press, 2004)

The author explains why the United States does not always accept the rule of law in international affairs, even though it has made immense contributions for its creation, adoption, and implementation through an analysis of the US legal system and the idiosyncrasies of the international legal process.

Katharina Pistor, “Advancing the Rule of Law: Report on the International Rule of Law Symposium Convened by the American Bar Association, November 9-10, 2005,” *Berkeley Journal of International Law* 25:1 (2007), pp. 7-43

The author discusses the proceedings of the international rule of law symposium convened by the American Bar Association in 2005. It highlights the primary points of the debates and their implications for launching yet another round of rule of law reform. It emphasizes that simple recipes for the rule of law as an elixir for governance are fundamentally misguided. Instead, it tries to emphasize the contestation and debate around rule of law efforts.

US House, Committee on International Relations, *Rule of Law Assistance Programs, Hearing 107-66* (Washington, DC: US Government Printing Office, 2002)

The hearing evaluates more than a decade of US foreign assistance programs to countries in order to promote the development of legislation, institutions, procedures, and habits that establish the primacy of law and justice over fiat and corruption. It assesses the efficacy and implementation of programs administered by the Departments of State, Justice, Treasury, and the US Agency for International Development.

International Organizations

Lawrence Finkelstein, “the Rule of Law, the United States, and the United Nations: An Ambiguous Record,” *American Foreign Policy Interests* 28 (2006), pp. 297-303

The author argues that at the founding of the United Nations in 1945, the United States perceived the rule of law in an ambiguous manner that caused it to reject the rule of law pillar that it helped it to design. He concludes that in subsequent years, this ambiguity has persisted as officials have avoided, and sometimes flouted, limitations on the freedom of action to pursue what was seen as the nation’s best strategic interest, which has led to numerous confrontations between the United States and the United Nations.

Josef Kunz, “The United Nations and the Rule of Law,” *The American Journal of International Law* 46:3 (July 1952), pp. 504-508

The author examines how the relatively new development of the United Nations can contribute to the rule of law among nations and influence the role of international law within the international community. He argues that, in order to be truly effective, the United Nations cannot underestimate the influence of international law as a means to influence the policy options available to particular states.

UN Security Council, “Cross-Cutting Report on the Rule of Law,” *Security Council Report 2011 No. 3*, 28 October 2011

The report addresses the efforts of the Security Council in relation to the rule of law, a thematic aspect of the Council’s agenda since 2003. The report analyzes the relationship between the law and the Council and the degree to which the rule of law has been incorporated into the Council’s work in conflict and post-conflict settings and the extent to which the rule of law guides the actions of the council.

UN Security Council, *the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General*, S/2004/616, 23 August 2004.

The report analyzes the increased focus on rule of law establishment programs at the United Nations Security Council, particularly through transitional justice mechanisms in post-conflict societies. It discusses the importance of effective support programs and the need for the rule of law in post-conflict societies. It also explores potential justice mechanisms like tribunals and truth commissions.

Regional Issues in Latin America

Introduction and Overview

Frederick R. Anderson and Claudio Grossman, “Lawyers and the Rule of Law in the Western Hemisphere,” *The University of Miami Inter-American Law Review*, 20:1 (Fall 1988), pp. 115-130

The authors argue that all of the issues shaping international relations in the Western Hemisphere have significant legal components. As a result, attorneys in the United States and Latin America will have a particular responsibility to address them cooperatively. They provide a framework to overcome intellectual and cultural traditions in order to cause successful collaboration.

Pilar Domingo, *Rule of Law in Latin America* (London: Institute of Latin American Studies, 2001)

The authors present a compilation of essays analyzing international efforts to promote judicial reform and the rule of law in Latin America. Drawing from these essays, they conclude that a closer questioning of common assumptions regarding the relationship between the rule of law, democracy, and economic markets are necessary for effective rule of law promotion by international donors.

Linn Hammergren, “Latin American Experience with Rule of Law Reforms and its Applicability to Nation Building Efforts,” *Case Western Reserve Journal of International Law* 38 (2006), pp. 63-93

The author evaluates the context and efforts of Latin American reforms to the rule of law, the Latin American experience with nation building efforts, and the lessons of this experience for other regions and challenges. She concludes that, even with many successes, there are still new challenges emerging today that require continued attention.

Carlos Lozada, “Latin America,” *Foreign Policy* 135 (March/April 2003), pp. 18-23

The author discusses the attempt of neoliberal reforms and other supposed cures that would end the economic turmoil and political instability of the Latin American region. He concludes that efforts to implement and reform the rule of law only represent another of the silver bullets, such as democracy or dollarization, that do not actually benefit the region. As a result, Latin American governments should instead focus on economic reform efforts.

Max G. Manwaring, “The Challenge of Governance and Security in Latin America,”
Strategic Studies Institute Colloquium Brief

The author provides a comprehensive assessment of security issue in Latin America and the Caribbean. He concludes that states must use all possible instruments of state power to address a new inclusive threat-environment that entails considerations of stability, development, peace, and sovereignty. To do this, states must deal with these threats through the establishment of good governance practices.

Luz E. Nagle, “On Armed Conflict, Human Rights, and Preserving the Rule of Law in Latin America,” *Penn State International Law Review* 27 (2008-2009), pp. 1-44

The author examines the impact of internal armed conflict, terrorism, and human rights violations on the rule of law in Latin America and what steps effected states must take. She argues that the UN and OAS must take a leadership role in stabilizing the region, which can be accomplished by encouraging needed reforms within vital government and legal institutions and by reaffirming that protection of human rights and respect for the rule of law are paramount to long-term development and regional security.

Rogelio Perez-Perdomo, “Rule of Law and Lawyers in Latin America,” *Annals of the American Academy of Political and Social Science* 603 (January 2006), pp. 179-191

The author addresses the dissonance between the constitutionalism and legalism of lawyers in Latin American society with their support for authoritarian regimes as members of the political elite. He argues that since there was no market for legal services during this period, lawyers depended on those who controlled the political apparatus.

US House, Committee on International Relations, *Transparency and the Rule of Law in Latin America* Hearing 109-100 (Washington, DC: US Government Printing Office, 2006)

The hearing examines the state of justice sector reforms, government transparency, and the rule of law in Latin America. It analyzes the relationship between the rule of law and issues of political and social insecurity that result in high rates of crime, drug trafficking, and homicides. In particular, the hearing analyzes the potential for lawlessness within countries in which the rule of law is weak.

Counter-Terrorism and Organized Crime

Fletcher Baldwin Jr and Theresa DiPerna, “The Rule of Law: An Essential Component of the Financial War against Organized Crime and Terrorism in the Americas,” *Journal of Financial Crime* 14:4 (2007), pp. 405-437

The authors explore the complexities of compliance with international and customary law when faced with terrorist threats. They argue that terrorism cannot be successfully repelled unless the

legitimacy of international and domestic law is adhered to by states out of a sense of reciprocal obligation in accordance with the principle of *pacta sunt servanda* (pacts shall be respected).

Arthur Chaskalson, “The Widening Gyre: Counter-Terrorism, Human Rights, and the Rule of Law,” *Cambridge Law Journal* 67:1 (2008), pp. 69-91

The author addresses the lessons from international responses to acts of terrorism and how those responses have shaped education about terrorism. He also analyzes the dilemma of using law as a means to approach terrorism given that terrorism operates through means that have specifically rejected the law as a tool.

Democratic Governance

Donna Lee Van Cott, “Latin America’s Indigenous Peoples,” *Journal of Democracy* 18:4 (October 2007), pp. 127-141

The author argues that the recent political mobilization and formal incorporation of indigenous peoples are among the key influences shaping the quality of democracy in Latin America today. In countries where they constitute a large segment of the population, the incorporation of these groups represents a major power shift and weakening of institutions built upon their exclusion. In countries where they constitute a smaller part of the electorate, their recent inclusion denotes a more generalized opening of the political system to excluded and vulnerable sectors of society.

Joe Foweraker and Roman Krznaric, “The Uneven Performance of Third Wave Democracies: Electoral Politics and the Imperfect Rule of Law in Latin America,” *Latin American Politics & Society* 44:3 (Fall 2002), pp. 29-60

The authors investigate the performance of the new third wave democracies in Latin America by developing a conceptual model of the core elements of liberal democratic government and by constructing a new dataset. They conclude that institutional attributes of democratic government have advanced while individual and minority rights have languished and that particular institutional attributes coexist uncomfortably with particular rights.

Juan E. Mendez, Guillermo O’Donnell, and Paulo Sérgio, (Un)Rule of Law in Latin America (Notre Dame: University of Notre Dame Press, 1999)

The author argues that, although military dictatorships have transitioned to civil governments in the region, many authoritarian practices have not been affected and that there is a significant gap between the letter of the law and constitutional protections for rights and the application of law enforcement in underprivileged communities. He places these developments in relation to the rule of law and its implications for Latin American civil democracies.

Anthony W. Pereira, *Political (in)Justice: Authoritarianism and the Rule of Law in Brazil, Chile and Argentina* (Pittsburgh: University of Pittsburgh Press, 2005)

The author analyzes the role that the rule of law plays in authoritarian governments through a historical-institutional study of military regimes in Argentina, Brazil, and Chile. He argues that these three cases show that attempts by judicial and military organizations to impose institutional solutions to the problem of organizing repression succeed and bind them together or fail and drive them apart.

Frank M. Walsh, “The Legal Death of the Latin American Democracy: Bolivarian Populism’s Model for Centralizing Power, Eliminating Political Opposition, and Undermining the Rule of Law,” *Law and Business Review of the Americas* 16:2 (Spring 2010), pp. 241-258

The author profiles the rapid and vast changes undertaken by Hugo Chavez to remake the Venezuelan polity through ostensibly legal mechanisms in order to recentralize his power. He focuses on the three step process undertaken by Chavez, its use as a model by Evo Morales in Bolivia and Rafael Correa in Ecuador, and how rule of law reform can address the subversion of democratic institutions for authoritarian rule.

Economics and Finance

Marcelo Bergman, *Tax Evasion and the Rule of Law in Latin America: the Political Culture of Cheating and Compliance in Argentina and Chile* (University Park, PA: Pennsylvania State University Press, 2009)

The author shows how success in getting citizens to pay their taxes is related intimately to the social norms that undergird the rule of law. The threat of legal sanctions is itself insufficient to motivate compliance, he argues. That kind of deterrence works best when citizens already have other reasons to want to comply, based on their beliefs about what is fair and about how their fellow citizens are behaving.

James Lebovic, “Spending Priorities and Democratic Rule in Latin America,” *Journal of Conflict Resolution* 45:4 (August 2001), pp. 427-452

The author tests whether democracy has produced a shift in the budget priorities of Latin American countries from military to civilian spending between 1974 and 1995. He concludes that the level of democratic rule within a country has a significant positive effect on the ration between nonmilitary spending and military spending, which provides that Latin American democratization has caused significant budgetary changes in favor of the general population.

Joseph L. Staats and Glen Biglaiser, “Foreign Direct Investment in Latin America: The Importance of Judicial Strength and the Rule of Law,” *International Studies Quarterly* 56 (2012), pp. 193-212

The authors investigate the influence of regime type and specific political institutional variables related to judicial strength and the rule of law as important determinants of foreign direct investment within a country. They conclude that both judicial strength and the rule of law are important determinants for the prospects of foreign direct investment in a Latin American country.

Law Enforcement and Police-Military Relations

Catherine Barnard and Ivan Hare, “Police Discretion and the Rule of Law: Economic Community Rights versus Civil Rights,” *Modern Law Review* 63:4 (July 2000), pp. 581-595

The authors discuss the legal proceedings in the United Kingdom around the exporting of live animals in order to address the issue on required policing levels by domestic and Community law when protesters interfere with the pursuit of a lawful trade. It considers two conflicting rights of free expression, one manifested as economic conduct and the other as legal protest.

Joel F. Cassman, “Building the Rule of Law: A Model of Police-Military Relations in Latin America,” *Low Intensity Conflict & Law Enforcement* 11:1 (Spring 2002), pp. 1-28

The author argues that US policy makers and academics have neglected the deep institutional rivalries between police agencies and military services in Latin America. These problems have complicated US national goals of democratization, strengthening the rule of law, and combating the production and trafficking of illicit drugs in the region. He then attempts to develop an analytical model to study police-military conflicts in the region and prospects for reform.

Karen Guttieri, “Civil Military Operations and the Rule of Law Curriculum Development Report,” Working Session at the Naval Postgraduate School, 9-10 December 2011

The author summarizes the findings and prospects for developing a curricular course at the Naval Postgraduate School on Civil Military Operations and the Rule of Law. She reviews the motivation for the education program owing to the prominence of civil-military operations in general and the complexity of rule of law functions in particular. She also addresses the necessities and requirements of a certificate to demonstrate sufficient knowledge of the rule of law and its implications for civil-military relations.

Tony Murney, Sue-Ellen Crawford, and Andie Hider, “Transnational Policing and International Human Development – A Rule of Law Perspective,” *Journal of International Peacekeeping* 15 (2011), pp. 39-71

The authors conduct an empirical analysis of the relationship between the rule of law and human development in the world order as a way to determine whether lasting development can be achieved in emerging states without progress in the rule of law. They conclude that the rule of

law and human development are essential to one another to ensure development in emerging states and that operational policies should be modified in order to reflect this conclusion.

Joseph Tulchin and Meg Ruthenberg, *Towards a Society under Law: Citizens and their Police in Latin America* (Washington, DC: Woodrow Wilson Center, 2006)

The authors cover general issues and themes of community policing and police reform, with chapters on the impact of community policing, the role of advocacy networks, urban social policies and crime, and the cost of crime. They also include case studies of police reform, community policing, Argentina's national plan for crime prevention, and crime in Mexico City.

Legal Institutions and Judicial Systems

Daniel M. Brinks, “Informal Institutions and the Rule of law: The Judicial Response to State Killings in Buenos Aires in the 1990s,” *Comparative Politics* 36:1 (October 2003), pp. 1-19

The author addresses the inability of the judicial system in both Argentina and Brazil to prosecute the large number of police homicides committed each year as well as the rise of informal institutions throughout the region. He offers a precise definition of informal institutions and evaluates one informal institution in an area vital to democracy, the enforcement of civil rights, and its effect on the judiciaries in São Paulo and Buenos Aires involving police homicide.

Brett Kyle and Andrew Reiter, “Dictating Justice: Human Rights and Military Courts in Latin America,” *Armed Forces & Society* 38:1 (2012), pp. 27-48

The authors address the tendency of Latin American military judicial systems to try all crimes involving military personnel rather than just those subject to the military code of justice. They develop a theoretical model to explain the state of military court jurisdiction over military personnel for human rights violations in democracies in 17 Latin American countries. They conclude that the variation in the reform of military courts is a result of the relative balance between the extent of military autonomy and the strength of the civilian reform movement.

Pilar Domingo, “Judicialization of Politics or Politicization of the Judiciary? Recent Trends in Latin America,” *Democratization* 11:1 (2004), pp. 104-126

The author uses the particular cases of Argentina and Mexico to examine the judicialization of politics in Latin America by surveying several inter-connected processes with regard to the democratic aspiration of building the rule of law and enhancing citizenship. He argues that, more than ever before, regime legitimacy is linked to the credibility and success of rule of law construction.

Tom Ginsburg and Tamir Moustafa, *Rule by Law: The Politics of Courts in Authoritarian Regimes* (Cambridge: Cambridge University Press, 2008)

The authors bring together leading scholars in comparative judicial politics to consider the causes and consequences of judicial empowerment in authoritarian states. They demonstrate the wide range of governance tasks that courts perform, as well as the way in which courts can serve as critical sites of contention both among the ruling elite and between regimes and their citizens.

Sandra Joireman, “Colonization and the Rule of Law: Comparing the Effectiveness of Common Law and Civil Law Countries,” *Constitutional Political Economy* 15 (2004), pp. 315-338

The author argues that the rule of law is one of the most important components of any explanation of cross-national differences in economic well-being and analyzes the effect of legal systems in influencing the rule of law. She finds that the effective protection of property rights in common law systems influences rule of law statistics rather than the institutions themselves.

William C. Prillamen, *Judiciary and Democratic Decay in Latin America: Declining Confidence in the Rule of Law* (Westport, CT: Praeger, 2000)

The author presents a series of case studies analyzing the relationship between the strength of the judiciary system and the strength of democratic institutions in Latin America. He concludes that political forces are responsible for ineffective judicial reforms and that effective democratic consolidation cannot occur until Latin American governments develop the political capital for successful reforms.

Edmundo Jarquin Calderon, *Justice Delayed: Judicial Reform in Latin America* (Washington, DC: Inter-American Development Bank, 1998)

The authors present an anthology of essays that highlight the importance of the link between strengthening the justice systems and promoting investment and growth in Latin America. They argue that economic analysis should be applied to judicial reform strategies and that there is a significant correlation between the rule of law and economic efficiency that governments must consider in their proposed reforms.

Linn Hamner, “Fifteen Years of Judicial Reform in Latin America: Where We are And Why We Haven’t Made More Progress,” US Agency for International Development, March 2002

The author evaluates the success of judicial reform efforts in Latin America since the early eighties. She concludes that these reforms have created visible changes and significant improvements for many judicial systems, but also argues that the incremental and complicated process of reform leaves room for many more improvements that require implementation in the coming years.

Brett Kyle and Andrew Reiter, “Military Justice in New Democracies: Explaining the Process of Military Court Reform in Latin America,” *Law & Society Review* 47:2 (2013), pp. 275-407

The authors focus on how the process of reforming military courts in Latin America has played out in each of the democracies in the region transitioning from authoritarian rule. They outline two distinct pathways of reform: unilateral efforts on the part of civilian reformers and strategic bargains between civilian reformers and the military. They conclude that reform efforts that do not engage and bargain with the military directly generally fail to achieve long term compliance and improvements in human rights practices.

Rachel Sieder, “Renegotiating Law and Order: Judicial Reform and Citizen Responses in Post-War Guatemala,” *Democratization* 10:4 (2003), pp. 137-160

The author examines judicial reform efforts in Guatemala since 1996 and considers their relationship with attempts by citizens to secure justice “from below,” ranging from efforts to secure prosecutions of those accused of gross violations of human rights to summary executions of suspected petty criminals. She argues that rising levels of crime constitute a central challenge for the post-war justice system, hampering judicial reform efforts and undermining citizen confidence in the legal system.

Transitional Justice

Jeffrey Davis, “Struggling through the Web of Impunity: The Jorge Carpio Nicolle Case,” *Human Rights Review* 8:1 (October 2006), pp. 53-66

The author uses the case of Jorge Carpio Nicolle in Guatemala as a case study to analyze the mechanisms that preserve impunity in Latin American nations struggling to emerge from violent conflict and embrace the rule of law. He argues that the ineffective influence of parallel powers, the ineffectiveness of the judicial process, and obstructive legal doctrine destroy domestic efforts to prosecute those responsible for human rights violations.

James McAdams, *Transitional Justice and the Rule of Law in New Democracies* (Notre Dame, IN: University of Notre Dame Press, 1997)

The author has compiled a volume of essays discussing how democratizing regimes should address the issue of transitional justice. They conclude that the legacy of human rights abuses in democratizing nations cannot be ignored and that the responses of the leaders of these states should devise responses to these challenges in a way that will be directly relevant to the quality and sustainability of democracy.

J. Patrice McSherry, “Military Power, Impunity, and State-Society Change in Latin America,” *Canadian Journal of Political Science* 25:3 (September 1992), pp. 463-488

The author discusses the legacy of military repression during the transition from authoritarian to democratic rule in Latin American countries. She argues that impunity granted to the armed forces, and entrenched structures of the national security apparatus within the state, tend to perpetuate military power to the detriment of the democratic forces in the state and in the society.

Case Studies by Country

Argentina

Rebecca Bill Chavez, “The Construction of the Rule of Law in Argentina: A Tale of Two Provinces,” *Comparative Politics* 35:4 (July 2003), pp. 417-437

The author addresses the respect for judicial autonomy in two different Argentine provinces in order to evaluate relative respects for the rule of law. She argues that electoral democracy can create the conditions for the rule of law given sufficient party competition, in itself determined by conditions of economic development and the resulting elite competition or collusion that it produces. She concludes by identifying five potential indicators for judicial autonomy.

Bolivia

John M. Carey, “Palace Intrigue: Missiles, Treason, and the Rule of Law in Bolivia,” *Perspectives on Politics* 7:2 (June 2009), pp. 351-356

The author analyzes the precarious position of the Bolivian presidency given that many Presidents leave office under duress and are often subject to legal jeopardy. He argues that the case of Eduardo Rodriguez Velte provides a case that demonstrates the weakness of the rule of law in Bolivia and the political motivations that sustain it. He provides a summary of the case and its political mobilization before proposing a series of recommendations for reform.

Chile

Arturo Valenzuela and Lucia Dammert, “Problems of Success in Chile,” *Journal of Democracy* 17:4 (October 2006), pp. 65-79

The authors analyze the first few months of the Bachelet administration in Chile. They argue that, while the general inexperience of the administration partly caused the ineptitude on display when dealing with student strikes, Bachelet also faces a deeper issue with her approach to governance. They conclude that she and the Chilean political elite must make parties more inclusive while safeguarding their essential role as instruments of democratic governance.

Colombia

Gabriel Marcella, “Democratic Governance and the Rule of Law: Lessons from Colombia,” *Strategic Studies Institute*, December 2009

The author discusses the progress Colombia has made in the past two decades from a failing state plagued by insecurity to its current period of relative stability. He argues that security and the rule of law have played fundamental roles in the development of this progress and stability. He then discusses how changes in the rule of law and related programs changed the nature of governance in Colombia.

El Salvador

Charles T Call, “Democratization, War, and State-Building: Constructing the Rule of Law in El Salvador,” *Journal of Latin American Studies* 35 (November 2003), pp. 827-862

The author uses the case study of El Salvador to argue that justice and security are tremendously important for the survivability and everyday relevance of democracy, given that crime is the chief threat to support for democracy. He also explores competing views of institutional reform and supports path-dependent mode-of-transition approaches that postulate heightened agency to adopt new rules and reform institutions during uncertain transition periods.

DW Jackson, JM Dodson, and L. Nuzzi O’Shaughnessy, “Protecting Human Rights: The Legitimacy of Judicial System Reform in El Salvador

The authors argue that research on democratic institutions in the region ignore the importance of judicial systems in the development of liberal democracies. They examine the efforts at judicial system reform in El Salvador since the 1992 Peace Accords and relate those reforms to popular perceptions of previous institutions, institutional reforms, and new institutions created through the peace process. They conclude that the reforms upon which the El Salvadorian democracy rest still base themselves upon shaky foundations.

Margaret Popkin, *Peace Without Justice: Obstacles to Building the Rule of Law in El Salvador* (University Park, PA: Pennsylvania State University Press, 2000)

The author analyzes the role of international actors, notably the United States and the United Nations, and the contributions and limitations of international assistance in efforts to establish accountability and reform the justice system in El Salvador. She discusses the essential role of civil society in attempts to establish accountability and an effective justice system for all, and looks at the reasons for and the consequences of the limited role played by Salvadorian civil society. She also addresses the challenges facing democratic reform efforts in the context of a postwar crime wave.

Guatemala

Liliana Goldin and Courtney Dowdall, “The Rule of Law and the Enforcement of the Law:

Worker's Understanding of Labor Rights in the Central Highlands of Guatemala," *Latin American Perspectives* 39 (2012), pp. 133-154

The authors report on their findings from interviews with indigenous Maya workers to investigate the disconnect between factory conditions, perceived rights, labor laws, and law enforcement. They conclude that indigenous workers in transnational factories fall outside the boundaries of national and international law, which means that they lose their rights and entitlements due to their ambiguous relationship with national and international law.

Victoria Sanford, "The Grey Zone of Justice: NGOs and the Rule of Law in Postwar Guatemala," *Journal of Human Rights* 2:3 (September 2003), pp. 393-405

The author evaluates the recent debates about the role of national and international NGOs in the process of Guatemalan post-conflict reconstruction. She problematizes the rule of law and the role of NGOs in national and local peace-building initiatives through the use of a legal case study involving Mayan citizens and the Rio Negro massacre.

Mexico

Caroline C. Beer, "Judicial Performance and the Rule of Law in the Mexican States," *Latin American Politics and Society* 48:3 (Fall 2006), pp. 33-61

The author analyzes the various theoretical approaches that cite political economy, rational choices, social capital, and institutional structures as determinants for the performance of judicial institutions and uses judicial performance in Mexican states as a case study. She provides evidence to support the institutional rational choice hypothesis that political competition generates judicial independence and argues that poverty, political participation, and an export-oriented economy also seem to influence judicial access and effectiveness.

Diane Davis, "Undermining the Rule of Law: Democratization and the Dark Side of Police Reform in Mexico," *Latin American Politics and Society* 48:1 (Spring 2006), pp. 55-86

The author examines whether democratization, under certain historical conditions, may relate to the deteriorating rule of law. She uses the case study of Mexico City to argue that the institutionalized legacies of police power inherited from Mexico's one-party system have severely constrained its newly democratic state's efforts to reform the police. She concludes that when democracy undermines rather than strengthens the rule of law, more democratic mechanisms can actually diminish the quality of Mexican democracy.

Gareth A. Jones, "Resistance and the Rule of Law in Mexico," *Development and Change* 29 (1998), pp. 499-523

The author examines how a group in Mexico used the law as a means to resist the State's attempt to expropriate land for urban development. He argues that the law served as a method of

opposition as well as a symbol that allowed resistance to manifest itself as a form of rights. Through this process, the legal discourse exposed deeper concerns for justice, ethnicity, and nationhood.

Carlos Nash Licona, “The Merida Initiative and Mexico’s Legislative and Constitutional Reforms,” *Small Wars Journal*, 12 June 2012

The author addresses Mexican President Felipe Calderon’s attempts to fight narco-trafficking and the drug cartels prevalent within the Mexican state. He highlights several legislative and reform efforts, including the Merida Initiative for greater military cooperation within the United States. He argues that reform attempts must also focus on the development of the rule of law, given the unpopularity of the police within the country and the ability of the drug cartels to operate with relative impunity.

Andreas Schedler, “The Mobilization of Distrust,” *Journal of Democracy* 18:1 (January 2007), pp. 88-102

The author argues that the 2006 presidential elections pushed Mexico’s fledgling democracy from relative stability into a period of tension and uncertainty. He examines the contingent and structural sources of the post-election dispute over the victor. He concludes that the allegations of vote-rigging were unfounded, yet credible, due to two principal factors: a self-reinforcing spiral of distrust among political actors and discrete failures by the institutions of governance.

Pamela Starr, “Neither Populism nor the Rule of Law: The Future of Market Reform in Mexico,” *Law and Business Review of the Americas* 15:1 (Winter 2009), pp. 127-151

The author analyzes the political setting in democratic Mexico which explains the country’s limited capacity to make progress on its pending reform agenda. It illuminates the structure of Mexico’s transitional democracy, the character of its three main political parties, and the legacies of authoritarianism that constrain the political maneuverability of the national government.