

ARTICLE

Who Are You and What's Your Issue? Winning in Collective Litigation in Colombia

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Abstract

This article analyzes the role of the Colombian Council of State, the administrative court of highest level in Colombia, in cases of collective litigation (*acción popular*). It answers the questions: Do outcomes in these cases vary depending on the right under litigation? Do parties with more resources achieve better outcomes? Does the government hold an advantage when facing other parties? The article analyzes quantitatively an original database of collective litigation cases on environmental protection, public security, the rights of consumers, and administrative morality, and interprets these findings using interview data. Results show that parties' success rates vary depending on the right under litigation. The national government has the highest litigation success rate, but individuals are more likely to win than stronger parties like department and local governments. The article presents implications following the literature on courts and rights protection in the Global South and party capability.

Keywords: collective litigation; Colombia; rights protection; party capability

Resumen

Este artículo analiza el rol del Consejo de Estado Colombiano, la corte administrativa de mayor nivel jerárquico en el país, en casos de acciones populares. El artículo responde a las preguntas: ¿El resultado de estos casos varía dependiendo del derecho colectivo en litigio? ¿Los actores con más recursos obtienen mejores resultados en litigio que las partes que tienen menos recursos? En este artículo presento una base de datos original de acciones populares en materia de medio ambiente, seguridad pública, derechos de consumidores y usuarios y moralidad administrativa y adelanto un análisis cuantitativo de la misma. Interpreto los resultados cuantitativos con base en material de entrevistas semi-estructuradas. Mis hallazgos apuntan a que el porcentaje de éxito de las partes varía dependiendo del derecho colectivo en litigio. También presento evidencia de que el gobierno a nivel nacional tiene el mayor porcentaje de victorias en sede de litigio en acciones populares, pero demandantes individuales tienen mayores probabilidades de obtener mejores resultados que los gobiernos departamentales y municipales. Presento conclusiones con base en la literatura de cortes y protección de derechos en países del sur global y en materia de capacidad de las partes.

Palabras clave: litigio colectivo; Colombia; protección de derechos; capacidad de las partes

Among Latin American countries, Colombia holds an important place when it comes to analyzing the role of courts in rights protection. The Colombian Constitution of 1991, the Constitutional Court (Corte Constitucional), *acción de tutela* (a writ that provides prompt remedy to violations of constitutional rights), and the advance in litigation have caught the attention of researchers. But in the context of a country with deep inequities intensified by a long internal conflict against guerrilla groups, whether courts have fostered social change or not is still a relevant question. This article focuses on the role of the Council of State (Consejo de Estado, the council), the administrative court of highest level at the national level, when ruling in cases of collective litigation (*acción popular*, AP). I answer the following questions: Do outcomes in AP vary depending on the right under litigation? In AP litigation, do parties with more resources achieve better outcomes? Does the government hold an advantage when facing other parties?

In the Latin American context, the judiciary has been subject to multiple reforms aimed at ensuring that courtrooms are venues for citizen engagement and social equity; the Colombian Constitution of 1991 is an example of this trend (Wilson 2009; Schor 2009; Landau 2012; Finkel 2004; Côrtes et al. 2021). How these reforms have been implemented and their results vary considerably from one country to the other (Vieira 2017; Sanchez Urribarri 2017). Overall, skepticism has grown. Despite the longer catalog of rights and the resort to courts, inequality is still a serious problem in the region (Gargarella 2017). The relevance of these questions relates to whether courts can advance rights protection. The literature has provided mixed answers: in some cases, courts protect elites; in others, they have advanced rights protection for parties with fewer resources (Nuñez 2010; Brinks 2011; Rodríguez-Raga 2011; Botero et. al 2021). Factors affecting judicial decision-making such as the type of right and party resources require further analysis. I focus on these factors.

The Constitutional Court is an example of positive judicial intervention (Landau 2010; Schor 2009; Lemaitre and Sandvik 2015; Rodríguez-Raga 2011; Wilson and Gianella-Malca 2019; Botero and Gamboa 2021), but just a few studies have focused on the council (Páez-Murcia, Lamprea-Montealegre, and Vallejo-Piedrahita 2017; Lamprea and Páez 2018). The Council of State is the only court of its kind in Latin America. Although several Latin American countries created councils following the French legal tradition (Rodríguez-Rodríguez 2005), the Colombian council is the only one that remains. The council has been characterized as a conservative court that often defers to the government (Páez-Murcia 2018) although in recent years it has aimed for being more active in rights protection (Páez-Murcia, Lamprea-Montealegre, and Vallejo-Piedrahita 2017).

AP is a form of collective litigation aimed to protect constitutional collective rights such as environmental protection, rights of consumers, public security, and administrative morality (Colombian Constitution of 1991, Art. 88). Another key characteristic of AP is that it was included in the Constitution to open a procedural door for citizens to challenge powerful actors like big corporations and the government.¹ These characteristics of AP allow us to explore whether party capacity affects the council's decision-making.

Because data on AP in Colombia is scattered and not systematized, research on this type of litigation has been scarce (Londoño-Toro and Torres-Villarreal 2012; Lamprea and Páez 2018). The Ombudsman (Defensoría del Pueblo) reported that in ten years of use (2008–2018) citizens have frequently used AP in environmental protection (17%), public space (15%), public health (14%), and urban development and planning (13%) (Londoño-Toro and Torres-Villarreal 2012). Despite these areas of litigation being relevant in the country, there is no research that empirically assesses the council's decision-making.

This article analyzes an original database of all the AP cases decided by the Council of State at the appeal level on administrative morality, public security, the environment, and

¹ Asamblea Nacional Constituyente Plenaria, June 10, 1991, <http://babel.banrepcultural.org/cdm/singleitem/collection/p17054coll28/id/25/rec/4>.

consumer's protection from 1997 to 2017. I coded data on parties' resources, the core legal claim, the year when the case was decided, and the decision of the case. To answer my research questions, I use a multivariate logistic regression model. I also conducted thirteen interviews with key actors in Colombia, including plaintiffs, governmental workers in organizations that have been sued in AP, justices and auxiliary justices at the council, and citizens in grassroots organizations who have followed the implementation of these rulings.

I show that the type of right under litigation affects the council's decision-making. In cases of environmental violations and public safety, plaintiffs (mostly individuals) are more likely to win; in cases of administrative morality, defendants (mostly governmental organizations) are more likely to win. I also show that the type of party who files an AP affects how the council rules. The party capability literature shows that parties with more resources and experience tend to come out ahead, but it is unclear whether these findings hold across different types of cases or rights under litigation. This article addresses this gap.

Courts in the Global South and rights protection

Courts' active role towards rights protection is a pattern that has surfaced in Latin America and other countries of the Global South. Judges intervene in key structural cases of broad violations of socioeconomic rights, keeping public and private parties accountable and enforcing structural remedies (Rodríguez-Garavito 2010). In one example of this pattern, the Supreme Court of India has addressed environmental issues (Sahu 2008) and nonjusticiable social rights, and in some cases has elevated them to the status of fundamental rights (Shankar and Mehta 2008). The Constitutional Court in South Africa has had a key role in cases of housing and health care, engaging the government in actions to advance rights protection (Pieterse 2008). In Latin America, the Costa Rican Supreme Court Constitutional Chamber has relaxed procedural rules and encouraged citizens to file suits, empowering marginalized groups to protect their rights (Wilson and Cordero 2006). In Brazil, courts have shaped how the right to health should be protected (Ferraz 2010). The Colombian Constitutional Court has led one of the most far-reaching rights revolutions in Latin America (Wilson 2009).

Whether the impact of these courts' rulings is far-reaching has been assessed, with mixed results. In South Africa legal developments to protect socioeconomic rights have not brought social transformation (Langford 2014). In Chile the Supreme Court did not promote rights protection and chose a role that would allow it to protect its status among other political actors (Couso 2005). In contrast, Costa Rica and Colombia have led a "real rights revolution" where broad definitions of legal standing and low cost in the access to higher courts allowed individuals to successfully use litigation to protect their rights (Wilson 2009). Ecuador, Honduras, Paraguay, and Venezuela offer examples of courts that are perceived as captured by political influence and having minimal effects on rights protection (Sanchez Urribarri 2017).

Researchers have explored whether the type of right under litigation, among other factors that affect courts' decision-making, leads to different outcomes. Simmons (2009) found that in litigation under international treaties, when these treaties focus on a right that affects the government's ability to achieve its political goals the treaty will be less effective. In the case of the Brazilian Supremo Tribunal Federal, justices largely support mainstream government policies and are less likely to support second- and third-generation rights, although they have been cautiously moving toward a more active approach (Brinks 2011). In Costa Rica and Colombia, LGBT communities have achieved positive outcomes when litigating in anti-discrimination claims, but when focusing on same-sex marriage or adoption by same-sex couples, they have not been successful (Wilson and Gianella-

Malca 2019). In cases of abstract constitutional review, the Colombian Constitutional Court defers significantly more often to the government in cases involving the protection of individual rights than when individual rights are not at stake (Rodríguez-Raga 2011). In freedom-of-speech litigation in Colombia, India, and South Africa, rulings vary depending on the content of the claim: in sexually explicit speech, courts tend to rule in favor of parties with resources; in cases of economic speech, judges rule in favor of nonelite claimants; while in cases of religious speech, results are mixed (Botero et al. 2021). Considering this literature, I expect the type of right under litigation to affect who wins in AP.

Party capability theory

Another factor that shapes judicial decision-making and has been broadly explored in the literature is party capability. Parties with more financial resources and litigation experience (“the haves”) are more successful in litigation than those with fewer resources and less experience (“the have-nots”) (Galanter 1974). Researchers have emphasized the advantages the government holds when acting as a plaintiff or a defendant in litigation (Wheeler et al. 1987). Kritzer (2003) found that in the United States the government has a fundamental advantage in litigation because rules are made by the government and judicial workers are, in the end, governmental workers.

The applicability of party capability has been explored in different legal systems and countries, with mixed results. In England, Atkins (1991) found evidence that party capability is one of the factors explaining the decision-making process of the Court of Appeals and that asymmetries between individuals and the government are strong predictors of the court’s decisions. Xin He and Yang Su (2013) analyzed adjudication decisions from Shanghai courts and found that stronger parties are more likely to win in litigation, but given the strong influence of the government over the judiciary, it is impossible to ensure equal footing for parties in litigation.

Studies in Israel and Taiwan have found limited evidence of the applicability of party capability. In Israel, the “haves” enjoy limited advantages in litigation outcomes; other factors like legal representation, judges’ ideology, and the ability to reach favorable out-of-court settlements bring advantages to “weaker parties” (Dotan 1999; Dotan and Hofnung 2001). In Taiwan, there is evidence that better legal representation and the court’s discretion over its docket have larger effects than party resources (Chen, Huang, and Lin 2014).

In the Colombian case, evidence conflicts on how party capability affects judicial decision-making. Páez-Murcia, Lamprea-Montealegre, and Vallejo-Piedrahita (2017) show that in AP cases of administrative morality the government has won more cases than other parties, but in AP cases of environmental litigation individuals (who are litigants with fewer resources) have obtained favorable rulings more frequently than the government. Botero et al. (2021) found that in cases of freedom of expression, the Constitutional Court rules differently in favor of elites or in favor of nonelite actors, depending on the content of the case. Considering the literature, I expect for the government to achieve positive outcomes in AP litigation in some areas, but I also expect individual plaintiffs to come out ahead in AP in other areas.

The Colombian context: The 1991 Constitution, collective litigation, and the council

The 1991 Constitution included a rich enunciation of constitutional rights (Wilson 2009), and one of the new writs to protect them is AP. AP is a cause of action to enforce collective rights (Art. 88), and any person or organization has legal standing to file one (Congreso de

la República de Colombia, Ley 472, 1998). The constitution and the law provide a long list of collective rights (Constitución de Colombia 1991, Art. 88; Ley 472, 1998; Ley 1437, 2011) that can be categorized in two groups: first, collective public goods that do not ensure individual compensation (e.g., public patrimony, public space, public security, and administrative morality) (Art. 86, Constitución de Colombia; Art. 4, Law 472 of 1998); second, goods that although collective in nature have led to individual compensation (Art. 86, CP; Art. 4, Law 472 of 1998). Examples of this category are public health and environmental cases where the council has required the government and other private parties to provide specific goods and services to citizens (Rodríguez-Garavito 2010).

Collective litigation at its core fulfills the need of leveling the ground in litigation between the “haves” and the “have nots.” During the constitutional debates, the framers addressed existing inequalities in litigation and designed AP to face this problem² under the assumption that individual citizens would mobilize to protect collective rights: “It [AP] has been an important advance towards making a more solidary society . . . so the only way to protect rights [collective constitutional rights] is through the actions of one or more individuals to protect the group” (Asamblea Constituyente Comisión Quinta, April 16, 1991, 9). Some framers expressed concern that this writ could raise the standards of governmental responsibility, making it liable for risks and damages beyond its control.³ Despite these tensions around the framing of AP there were high hopes for the social changes that it could bring.

The Council of State is the administrative court of highest hierarchy in the country and the one with jurisdiction over AP. The role of the council in rights protection is part of the mixed system of judicial review designed by the 1991 Constitution. The constitution followed a concentrated approach by granting the Constitutional Court jurisdiction to review laws and executive orders; also, it granted the council jurisdiction to review administrative regulations that do not fall under the jurisdiction of the Constitutional Court (Arts. 237 and 241, Colombian Constitution). The constitution followed a diffuse system in two ways: (1) it allows all courts in the country to declare the inapplicability of statutes deemed contrary to the constitution; and (2) the constitution created writs like *tutela* and AP (Brewer-Carías 2009) that allow for immediate protection of constitutional rights to be granted by judges. Other countries in Latin America that adopted a mixed system of judicial review are Brazil, Dominican Republic, Ecuador, Guatemala, Mexico, Nicaragua, Peru, and Venezuela (Navia and Ríos-Figueroa 2005; Brewer-Carías 2009)

Justices at the council have recognized the challenge they face to meet the expectations of the 1991 constitutional reform. During debates on the Administrative Code in 2009, justices at the council argued specifically that administrative judges could also be “rights protectors.” Traditionally administrative judges have been perceived merely as enforcers of laws, but during these debates justices expressed the need for them to embrace a new role, closer to the one that the Constitutional Court has performed (Exposición de Motivos, Ley 1437, 2009).

In this article I focus on four collective rights: environmental protection, public security, the rights of consumers, and administrative morality. I chose these rights because they target different policy areas and aspects of social life; I am aiming to capture variation given their different goals and remedies. There are also noticeable differences in the level of use of these four rights: environmental protection has been the most frequently used

² “From a social perspective it is [AP] an invaluable mechanism . . . civil justice is costly in general but particularly for citizens who are financially weaker” (Asamblea Constituyente Plenaria, June 10, 1991, 141).

³ “I am just trying to make it so those who govern this country do not find themselves literally overwhelmed by lawsuits about almost everything they do. These lawsuits would be filed under the assumption that all possible risks could have been foreseen by the government” (Asamblea Constituyente Comisión Quinta, April 16, 1991, 6).

between 2010 and 2018 in the country (15%); consumers and users and administrative morality have been used less frequently (5% and 8% respectively), while public security has been used in less than 1% of the suits filed (Londoño-Toro and Torres-Villarreal 2012). These data are taken from a sample of 3,639 AP cases in the country, which represents only 3.2% of the total AP cases filed. Although these are not enough data to draw conclusions about patterns in Colombia, these are the cases that the Ombudsman Office keeps in the only centralized database of AP cases in the country, which highlights the limited availability of data on AP.

AP has acted as a fire alarm mechanism when the government or private parties are harming or misusing resources that should benefit society at large or specific communities. Although collective rights are not redistributive in nature (e.g., they don't assign resources directly to lower-income populations), they aim to improve situations where public goods are at stake. These situations will benefit the public in general and in particular those who are more in need of public resources because they do not have access to privatized versions of these services (e.g., public space and public security). From this perspective AP protects equitable access to governmental services.

Expectations and hypotheses

I expect to find that the Council of State's decisions per type of right are significantly different. I will test this hypothesis with a t-test (Appendix 3):

H_{null}: The means of the council's decisions per type of right do not differ.

H₁: The means of the council's decisions per type of right differ.

I also expect to find that both party resources and type of right have an effect on the council's decision-making, even taking the other into account along with year as a control and an indirect measure of other variables. I will test these expectations with the following two hypotheses using a logistic regression (Appendix 3):

$$Decision = B_6(P_{res}) + B_5(D_{res}) + B_4(R_{Env}) + B_3(R_{Sec}) + B_2(R_{Cons}) + B_1(Year) + B_0$$

H_{null}: The council's decision-making is not affected by plaintiff's or defendant's resources accounting for type of right and year.

H₂: The council's decision-making is affected by plaintiff's and/or defendant's resources accounting for type of right and year.

H_{null}: The council's decision-making is not affected by type of right accounting for plaintiff's or defendant's resources and year.

H₃: The council's decision-making is affected by type of right accounting for plaintiff's or defendant's resources and year.

Data and methods

In exploring whether party resources and the type of right affect the councils' decision-making I analyze an original database of all the cases of AP decided by the council at the

appeal level from 1997 to 2017. I analyzed 516 cases in total.⁴ I also analyze interview data with relevant actors in AP.

I focus on cases at the appeal level for two reasons: first, there is no database that centralizes information of the courts in all thirty-two departments, so no reliable information at the department level is available.⁵ Second, council decision-making affects other courts in the country that use the council's jurisprudence to support their decisions.⁶ Other studies in party capability, both in the United States and in other countries, have similarly focused on courts at the national level (Songer, Sheehan, and Haire 1999; McGuire 1995; Dotan 1999; Chen, Huang, and Lin 2014).

I identified the cases as they are available on the council's web search engine by using a variety of key terms (Appendix 1).⁷ I used additional criteria to clean up my data: I did not include cases that were filed through other injunctions (e.g., torts, public contracting, and judicial review). I focused on final rulings (*sentencias*) and did not include procedural decisions (*autos*); I assumed that only in the final ruling the council decides on who wins the case. I only included cases that could fall under one type of collective right. Although plaintiffs can base their claims on the violation of one or several constitutional rights, I decided to exclude cases with overlaps to be able to explore the effects of individual rights (Appendix 2 lists these cases). I focused on cases where the keyword matched the core legal claim. After applying these criteria, I identified 510 relevant cases.

My key variables are parties' resources and the core legal claim. I coded information on the types of parties and assigned them to broader groups. Files of the cases do not include specific information related to the parties' socioeconomic status, and only some cases mention whether parties had legal representation. Instead, I followed what has been done in other studies (Wheeler et al. 1987; Songer, Sheehan, and Haire 1999; Songer and Sheehan 1992) by assigning plaintiffs and defendants to broader groups and then making assumptions of their resources. Although this "party typology measure" has been criticized (Szmer, Songer, and Bowie 2016), given the limitations in available data I conducted a qualitative analysis of these cases and collected interview data with relevant actors that allowed me to gather insights into party resources.

I used six groups to categorize plaintiffs and defendants: individuals; nonprofits; private businesses; local governments; department governments; and the national government. Under the nonprofit category I used different codes for local and transnational nonprofits; no transnational nonprofits appeared in the data. I used different codes for big businesses and small businesses, and coded this information using web searches of businesses' budgets and range of their operations (Appendix 4). Regarding individual litigants, I considered whether the individual was acting on her behalf or representing an organization. I coded these cases accordingly. Following conventions in the literature I assumed that (1) individuals have fewer resources than nonprofits, businesses, or the government; and (2) nonprofits and small businesses have fewer resources than large businesses.

I also coded information on the type of right under litigation as it was identified in the suit. The variable "type of right" was coded following the criteria I described earlier in this section (see also Appendix 2).

⁴ See Appendix 5; *n* varies per analysis due to missing information in the council's database. Each table and figure shows the *n* on each analysis. The differences between *n* in any analyses is at most 1.9%. Appendix 5 shows which cases have missing information.

⁵ There are twenty-seven Administrative Tribunals in the country. Websites for the judiciary provide administrative information on the tribunals but do not have a search function (see <https://www.ramajudicial.gov.co/portal/>).

⁶ The appeal level decisions are the ones with the most rule-making opportunities (Albiston 1999).

⁷ Consejo de Estado, Consulta de Jurisprudencia, Buscador Tradicional, <https://consejodeestado.gov.co/buscador-de-jurisprudencia2/index.htm>.

I included a control variable for the year when the decision was made. The literature on constitutional reforms in Latin America suggests that factors like domestic political dynamics (Sanchez Urribarri 2017; Bernal 2017), ideology, and the structure of the judiciary (Landau 2017; Vieira 2017) have shaped rights protection. Tracking time is a way to explore how the council has reacted to these factors; this variable will show whether there are shifts in the council's decision-making over time that could correspond to key political or ideological changes in Colombia. My dataset includes cases from 1997 (when the first case was decided) through 2017.

Regarding the council's decision, I followed what has been done in other studies, coding who won the case by comparing what was requested in the suit and whether the court granted it or not (Songer, Sheehan, and Haire 1999; Haynie 1994).⁸ The variable "decision" was coded as a win for the plaintiff if the council declared that the constitutional collective right was violated and granted the injunction. If the council stated that no violation of collective rights took place, then it was coded as a win for the defendant. In a few cases ($n = 6$) the council partially granted the case to the plaintiff, for instance by stating that a constitutional collective right was violated but that the defendant was not responsible; I coded these cases as a tie and did not include them in the analysis.

Cases on administrative morality were coded entirely by the researcher. Research assistants provided support in coding cases on public security, environment, and consumers' protection.⁹ In these cases, a sample of cases was coded independently to assess intercoder reliability. In each case, a minimum of 91% reliability was achieved, showing that the coding was highly reliable.¹⁰

I conducted thirteen interviews with key actors in Colombia, including plaintiffs, bureaucrats in public organizations, justices at the council, and citizens who have followed the implementation of these rulings.¹¹ Interviewees were selected on the basis of their experience with AP as litigants or their experience with the implementation of rulings. I identified main narratives in these interviews and coded them accordingly.

Findings

Plaintiffs in these cases are individuals in a vast majority (82.6%, $n = 426$; most of them men), while most defendants are local governments or local agencies (62.7%, $n = 322$). In a few cases, governmental agencies have appeared as plaintiffs (5.24%, $n = 27$), particularly when oversight agencies, like the Ombudsman, have filed suits (Figure 1).

Who wins in these cases varies considerably depending on the type of right under litigation. While in cases of public security and environmental issues plaintiffs are more likely to win, in cases of administrative morality defendants are more likely to win (Table 1). Even when comparing cases of environment and public security, the two categories in which the plaintiffs' likelihood to win is high, the difference is significant (Table 2).¹²

Litigation in administrative morality is a scenario where plaintiffs tend to lose in the highest proportion in comparison to the other rights. The council has stated that a violation of administrative morality is the illegal behavior of a public agent, in which the motivation

⁸ Some scholars have suggested that a victory in the courtroom may not be the best measure for success (Grossman, Kritzer, and Macaulay 1999, 901; Albiston 1999). Although I agree with these considerations, I chose to focus on the information available in the cases as a starting point for future empirical analysis.

⁹ The database on environmental AP cases received funding from Facultad de Derecho Universidad de los Andes (Colombia).

¹⁰ In environmental cases, a sample of 10% of the cases was coded, achieving a 91% final reliability test. In the case of security and consumers' protection, a sample of 15% of the cases was coded a second time; all the variables achieved a 100% reliability, except for two that we recoded to achieve a 100% final reliability.

¹¹ IRB from Universidad de La Sabana (Colombia), research project DER-48-2015.

¹² See description of the hypotheses and their interpretation for the t-test in Appendix 3.

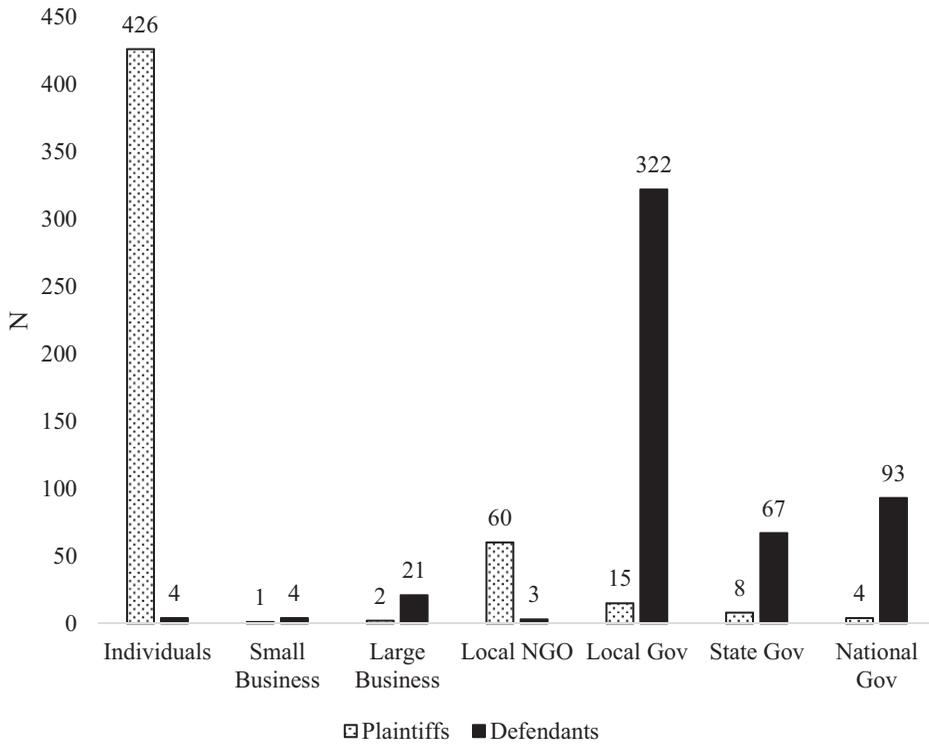


Figure 1. Plaintiffs and defendants in AP cases for environmental protection, administrative morality, public security, and consumers' rights (author's own data). Plaintiffs n = 516. Defendants n = 514.

Table 1. Likelihood of plaintiffs winning cases, by type of right.

Right	Mean	SD	N
Environment	0.69	0.46	249
Administrative morality	0.23	0.42	146
Public security	0.81	0.39	75
Rights of consumers and users	0.41	0.50	37

Table 2. Two sampled t-test, comparisons of likelihood of litigants winning cases by right. Plaintiff win 0/1.

t-test (difference of means plaintiff win, by the type of right)	t-value	p-value
Environment - Morality	$t(395) = 9.78$	$p < .001$
Morality - Security	$t(221) = -9.878$	$p < .001$
Security - Environment	$t(324) = 2.078$	$p = .038$
Security - Consumers	$t(112) = 4.726$	$p < .001$
Consumers - Environment	$t(286) = -3.463$	$p < .001$
Morality - Consumers	$t(183) = -2.131$	$p = .034$

Table 3. Party success rates overall.

Type of party	Overall success rate (n)
Individual	55.4% (417)
Nonprofit	41.9% (62)
Business	40.7% (27)
Local government	40.3% (313)
Department government	53.6% (69)
National government	63.7% (91)

was different from the public good (AP170 of 2001; 68001-23-31-000-2011-00148-01). Litigation on administrative morality represents 30% of the cases in the database, which shows that although this right is frequently used, the council is not supportive of these claims.

Conversely, in cases of public security and environmental protection citizens have prevailed in litigation over the government. The council has acknowledged that the government is responsible for providing safe conditions that will allow citizens to enjoy life in community in public spaces such as roads, parks, and sidewalks (e.g., case 68001-23-15-000-2003-00765-01). In cases of environmental violations, the council has ruled in favor of plaintiffs on the assumption that the government is responsible for protecting the environment and enforcing environmental regulations. An example of this is a case in which citizens sued the City of Paipa for granting a license to a colliery that polluted the river (case 15001-23-31-000 2001-01470-01).

In consumers' rights, plaintiffs win in 41% of the cases. These cases focus on damages suffered by groups of consumers due to the conditions that have been set by retailers, businesses, and service providers (e.g., case 25000-23-15-000-2010-02799-01). Plaintiffs are required to prove that the damage is collective rather than individual; lack of evidence on this aspect is what motivates rulings against plaintiffs.

Following studies of party capability, I calculated the success rate per type of party (Table 3).¹³ This measure describes whether parties' resources increase their likelihood to come ahead in litigation. The overall success rate is calculated as the overall average of success when acting as either a plaintiff or as a defendant, but not both. I coded information on businesses' (small or large) and nonprofits' (local versus transnational) size and found that no transnational nonprofits appeared in these cases.¹⁴ Businesses had but a few appearances in both roles, as plaintiffs (one small and two large businesses) and defendants (two small and twenty large businesses). I did not separate these categories in Table 3 because the frequencies were low and the separation along resources became no longer meaningful.

The overall success rate shows that the national government wins the most often (63.7% overall success rate), which confirms my expectations that the government holds an advantage in AP. Individuals came in second with a 55.4% win; this pattern is surprising

¹³ Songer and colleagues argued that the net advantage index is a more accurate measure of litigation success than the overall success rate because it accounts for the relative frequency of a certain party appearing as a plaintiff or as a defendant (Songer and Sheehan 1992; Sheehan, Mishler, and Songer 1992). In my data, some of the plaintiffs' and defendants' categories have a very small number of cases, and thus the index may not be a reliable measure of litigation success. For example, according to the index (Table 3) businesses are considerably more successful in collective litigation than individuals. Businesses appear only 27 times in these cases (as plaintiffs and defendants), while individuals appear 418 times.

¹⁴ See Appendix 4 about coding of business size.

Table 4. Party success rates by type of right.

Type of party	Success rate on environment (n)	Success rate on morality (n)	Success rate on security (n)	Success rate on consumers (n)
Individual	70.4% (189)	21.6% (125)	81.1% (69)	44.1% (34)
Nonprofit	52.4% (42)	7.14% (14)	66.7% (3)	33.3% (3)
Business	12.5% (8)	50% (4)	25% (4)	63.6% (11)
Local government	33.9% (174)	76.4% (72)	15.8% (57)	30% (10)
Department government	29.4% (34)	94.1% (17)	25% (4)	71.4% (14)
National government	45.2% (31)	78.4% (51)	42.9% (7)	50% (2)

because despite individuals' limited resources and experience, they come out ahead when facing other parties that are presumably more resourceful and experienced, such as local governments and businesses. It is noticeable that while local governments are frequent plaintiffs and defendants in these cases (they appear 313 times in these cases), their success rates are low when compared to parties with fewer resources.

To further explore these patterns, I calculated parties' success rates per type of right and found that who wins varies dramatically with the right in litigation (Table 4). For example, in cases of public security and environmental protection, individuals' success rate is the highest among all party categories. In cases of administrative morality, the government (national, department, and local levels) has the highest success rate among all categories. Although individuals have the highest number of appearances in litigation of administrative morality (125), their success rate is only 21.6%. Additionally, parties engage in litigation differently by type of right. For example, local governments have engaged in environmental litigation more frequently than in other rights.

In summary, the data in Tables 3 and 4 show that parties with more resources do not always come ahead. The analysis per right shows considerable variation on who wins these cases. To know whether these patterns are statistically significant I modeled the conditions on which parties win, based on their presumed resources and the type of right.

Modeling the council's decision-making and party capability

I used a multivariate logistic regression model where the dependent variable is "plaintiffs' wins," coded as 1 if the plaintiff won the case and 0 otherwise. The independent variables are plaintiffs' resources, defendants' resources, type of right under litigation, and year of the decision. The variables plaintiffs' resources and defendants' resources are ordinal measures coded on the basis of the party's presumed budget, resources, and litigation experience. These variables are coded as follows: 1 = individual, 2 = small businesses and nonprofits,¹⁵ 3 = large business, 4 = local government, 5 = department government, and 6 = national government. I expect plaintiff's resources to be positively correlated to

¹⁵ All nonprofits in my database are local and all of them were coded as small nonprofits. While it is possible that some of these organizations have more resources or litigation experience than local businesses, that has not been documented in the literature. The literature shows that among plaintiffs in environmental AP, Colombian nonprofits (both large and small) make up a small percentage (Páez-Murcia, Lamprea-Montealegre, and Vallejo-Piedrahita 2017). The variables "plaintiffs' resources" and "defendants' resources" are coded assuming that both small nonprofits and small businesses have access to similar resources, rather than creating an additional level in the variable.

Table 5. Logistic regression. Analysis of likelihood of plaintiff success in AP in environmental protection, administrative morality, public security, and consumers and users at the council.

Independent variable	b (SE)	z ratio	Prob.
Plaintiffs' resources ⁺	1.31 (.16)	2.14	.033*
Defendants' resources ⁺	.72 (.086)	-2.75	.006***
Right: Environment	6.90 (1.74)	7.64	.000***
Right: Security	12.02 (4.42)	6.76	.000***
Right: Consumers	1.53 (.63)	1.04	0.298
Year of decision	1.126 (.028)	4.75	.000***
Constant	.32 (.20)	-1.78	.076

N = 506.

Pseudo R² = .1999.

Control: Right: Administrative Morality (omitted from the table).

Dependent variable: plaintiff win 0/1.⁺Independent variable explained in text.

*p < .05; **p < .01; ***p < .001.

the dependent variable and defendants' resources to be negatively correlated with the dependent variable.¹⁶

I created dummy variables to control the effect of the type of right (environment, public security, or administrative morality). Finally, the variable "year" is a scale that ranges from 0 to 20 (decisions range from 1997 to 2017). In Appendix 3 I describe the hypotheses tested by the model and their interpretation.

The model confirms that plaintiffs' and defendants' resources are significant (at the .05 and the .01 levels respectively) and in the expected direction. Plaintiffs' resources are positively correlated to plaintiffs' wins, while defendants' resources are negatively correlated to plaintiffs' wins. The coefficients for each variable are shown in Table 5.

The dummy variables "right: environment" and "right: security" are significant at the .001 level and both are correlated with an increased probability of a favorable ruling for the plaintiff compared to administrative morality. This is evidence that plaintiffs are more likely to win when filing suits on public security and environmental issues than in administrative morality. The variable "right: consumers" is not significant when compared to administrative morality so there is no evidence to suggest plaintiffs are more or less likely to win, after controlling for the other variables.

I also explored whether the effects of parties' resources vary depending on the type of right under litigation. I ran a second model where I tested for interactions and found that the variables of the interactions were not significant. Although my data does not provide evidence that parties' resources mediate the effect of the type of right, there are indications that type of right mediates party resources, as shown with the t-test in Table 2. A possible explanation for these results is that when breaking down the data into clusters of type of party versus type of right (e.g., cases where nonprofits have appear in litigation in cases of administrative morality) the number of observations in my database is small. More data will be needed to further explore this relationship.

¹⁶ Recent studies adjusted the scale to capture differences between local governments and large business, assuming that local governments are weaker than large businesses (Szmer, Songer, and Bowie 2016). I did not follow this assumption because the variation among different local governments that appear as litigants is large. For instance, the city of Bogotá has over 8 million people and the city of Sibaté has a population of around 38,500. This variation does not allow me to assume that large corporations have more resources than local governments. To test the hypothesis that the government holds an advantage as a litigant, I used a scale where local governments are stronger than private corporations.

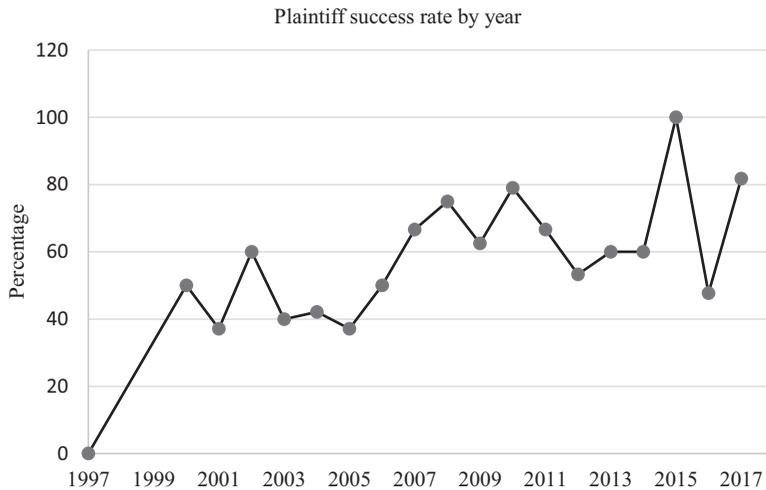


Figure 2. Overall plaintiff success rate by year. N = 507.

The model shows that “year” is a strong predictor of the council’s decisions ($p < .001$) and is positively correlated to plaintiffs’ wins, which indicates that over time the council has tended to rule in favor of the plaintiffs. I found that the growth in plaintiffs’ wins over time has been gradual, and the changes in the data do not coincide with elections or other major political events in the country (Figure 2).¹⁷

Analysis

My findings show that both type of right and party capability affect how the council rules. From the perspective of the type of right, plaintiffs are more likely to win in environmental and public safety cases. From the perspective of type of party, the national government is more likely to reach a positive outcome than any other party, and individuals have higher rates of success than stronger parties such as department and local governments. In the following pages I will unpack these findings.

Type of right in the council’s decision-making

In AP, the council rules differently depending on the type of right under litigation confirming previous research (Simmons 2009; Brinks 2011; Wilson and Gianella-Malca 2019; Rodríguez-Raga 2011; Botero et al. 2021). The council has developed different narratives depending on the type of right, increasing or decreasing the level of responsibility for the government to compensate damages to collective rights.

In cases of administrative morality, the council has required that the plaintiffs prove the ill intention of a public servant, which quite often exceeds the capacity of plaintiffs (AP170 of 2001; AP00818 of 2006; 68001-23-31-000-2011-00148-01). Litigants are discouraged from filing an AP on administrative morality because of this requirement. In a case

¹⁷ The decrease in plaintiffs’ wins in 2016 is due to administrative morality cases. Out of the twelve cases decided in 2016, in seven the government won; six of these cases are claims on administrative morality, demonstrating the pattern of the council’s decision-making to defer to the government in cases of administrative morality.

decided in 2006, a citizen sued the department of Guajira and a private contractor, arguing that the department had been negligent in the oversight of a contract to build a public stadium and that public resources were wasted. The council argued that because of the lack of planning by the department this project was behind schedule, but that the plaintiff did not provide evidence of corruption or fraud. The council ruled in favor of the defendants (44001-23-31-000-2003-00090-01-AP).

A different narrative is found in cases of environmental protection where once the evidence of pollution is presented by the plaintiff, the government is made responsible. In a case decided in 2006 a citizen sued CORPOMAG (department-level environmental authority), DADMA (local-level environmental authority), and the Ministry for Environment arguing pollution in a river. The council ruled in favor of the plaintiff and required from CORPOMAG and DADMA to design a plan improving the situation of the river; it also demanded that the administration reported back to the court every three months for the duration of the plan (47001-23-31-000-2004-00112-01-AP). Similarly in cases of public safety, it is enough for the plaintiff to prove that a threat or harm was posed to public safety for the council to rule in their favor.

Why are there different standards in these cases? One possible explanation relates to how the rights have been defined by either the constitution or the law. The more clearly the right has been characterized, the more willing is the council to grant the action to the plaintiff. In cases of administrative morality, a vague concept for which the legislation has not provided criteria for implementation, the council is less likely to support plaintiffs' claims. This behavior mimics what Feeley and Rubin (2000, 5) described as interpreting versus policy making: "When judges engage in interpretation, they invoke the applicable legal text to determine the content of the decision But when judges engage in policy making, they invoke the text to establish their control over the subject matter, and then rely on nonauthoritative sources, and their own judgement, to generate a decision that is predominantly guided by the perceived desirability of results."

In environmental cases, the council uses interpretation, building on the content of existing regulations to decide, but in administrative morality (where regulations are scarce) the council has avoided policy making, which would be necessary to determine the responsibility of the government.¹⁸ This behavior fits the pattern of strategic judicial behavior that argues that one key concern of judges is maintaining their courts' institutional power (Botero and Gamboa 2021; Ruibal 2012).

Another possible explanation lies in whether the right under discussion is tangible or not. An environmental violation is tangible since it is possible to gather tangible evidence of pollution: dirty water, polluted air, higher levels of noise, and so on. Administrative morality is not tangible, and the council has ruled that the ill intention of a public servant to violate the law is needed. The burden of what type of evidence is required varies considerably from one right to another, and with it, the direction of the ruling.

What is the significance of these findings in terms of the role of the council in rights protection? One possible implication is that areas like environmental litigation offer a promising terrain for plaintiffs to advance their causes. Interview data I collected shows that AP has opened a space for citizen engagement in environmental cases that goes past filing lawsuits. A water activist in Bogotá (and the leader in the *Veeduría Ciudadana*¹⁹ for

¹⁸ Relevant regulations in environmental issues are the Colombian Constitution, Law 142 of 1994 (public utilities), Law 99 of 1993 (Sistema Nacional Ambiental), Law 472 of 1998 (collective rights and popular actions), and Decree 2811 of 1974 (Código de Recursos Naturales).

¹⁹ *Veedurías Ciudadanas* allow citizens to exert oversight on administrative, political, judiciary, electoral, legislative, and oversight organizations (Art. 270, Colombian Constitution, and Art. 1, Law 850 of 2003).

the Bogotá River) described how the AP related to pollution in the Bogotá River has allowed citizens to participate in the implementation of the ruling:

When the ruling by the council [was handed down] as a second instance ruling we were already working and we attended lots of meetings with Justice Velilla, who at the time managed that topic [wrote the opinion] and we followed up until the decision was handed down early 2014. . . . Several organizations that were sued at the local level complained and said “I’m not guilty, I’m not guilty” and the justice then decided and said “well, you are responsible for this and that, and you have to do this and that, and this is the timeline.” (Interview 10, May 29, 2018)

It is relevant to mention that the role of *Veedurías Ciudadanas* described by this interviewee focused on an urban setting. Citizen involvement in rural areas runs into challenges related to fewer resources available, making it less likely for individuals to file AP (Páez and Vallejo Piedrahita 2021).

Type of party in the council’s decision-making

Despite the pattern of government wins, the pattern of individual wins is striking in my database. There is no evidence of whether plaintiffs were affiliated to an organization in some capacity and information of their socioeconomic status is not available, so it is unclear how litigation has been funded. Gauri and Brinks (2008, 16) argue: “Collective claims and claims on behalf of the underprivileged require the presence of well-funded, PIL-oriented organizations. . . . Without these organizations, substantial numbers of these claims will likely arise only among relatively well-off groups in modernized settings.” I did not find evidence of public interest litigation organizations funding the lawsuits. I found interview data (Interview 9, 2012) that these claims are mostly promoted by relatively well-off citizens (with and without legal training), who can fund these claims for a limited amount of time. These findings confirm previous research (Botero et al. 2021; Páez-Murcia, Lamprea-Montealegre, and Vallejo-Piedrahita 2017; Lamprea and Páez 2018) that argues that parties with more resources not always come out ahead in litigation.

What explains individual wins is puzzling. Gauri and Brinks (2008) propose that litigation is only one phase in the cycle of public-policy litigation that leads to the legalization of a policy. Each stage of the legalization process involves a decision by strategic actors, one of them being the litigants who file lawsuits (Stage 1) in anticipation of judicial receptivity (Stage 2) (Gauri and Brinks 2008). As described in the previous section, citizens are aware that AP litigation allows them to participate in the implementation of rulings, and they are aware of the potential transformative effects of this mechanism (Interview 10, 2018). This is an incentive for individuals to keep using AP.

Although I built my analysis on the assumption that the government is a stronger litigant than businesses, following other scholars (Londoño-Toro and Torres-Villarreal 2012), arguably in the Colombian case large businesses have more resources than local governments.²⁰ This limitation of the party capability theory does not seem to affect my findings since I did not find a single case of a large corporation facing a small government in collective litigation.

My analysis shows that the council has become more supportive of plaintiffs’ claims over time. It is possible that this reflects a change in judges’ ideology or their engagement in rights protection. In Colombia there is not a good measure to capture judge’s ideology; new judges are appointed by current judges in the council, and although political

²⁰ See information on the coding of small versus large businesses in Appendix 4.

affiliation could be a relevant factor in the appointment process, aspiring judges' ideology and political affiliation is not openly stated.²¹

Regarding the use of AP by nonprofits, I found that just a few of these actors have filed AP cases and they focus on environmental protection and public security. Interview data suggest that judges are not sympathetic to nonprofit organizations litigation (Interview 4, auxiliary justice, Council of State, 2012). This interviewee argued that it is likely that nonprofits have sponsored AP cases, but they avoid showing as litigants to reduce the impact of this negative bias against them. Although other forms of constitutional litigation (e.g., *tutela*) have been key mechanisms for nonprofits to activate and further rights protection (Rodríguez-Garavito 2010; Saffon and García-Villegas 2011), that has not been the case for AP.

Overall, my research shows that both the type of right and party capacity affect the council's judicial decision-making in AP. Exploring these factors individually falls short for understanding how courts rule and who benefits from litigation. Quantitative and qualitative data show that both of these factors have an effect on how the council makes decisions. Particularly, my research provides evidence that the narratives developed by the council vary from one right to another, affecting the levels of responsibility different parties bear and the type of evidence they are required to provide.

Conclusions

This article analyzes how the Council of State rules in AP, focusing on the type of right under litigation and party resources as two key factors when understanding the role of this court in rights protection. I found that these two factors have enough independent explanatory power to both be significant even when taking the other into account. This means that whether AP is an effective mechanism in rights protection needs to be analyzed differently depending on the type of right and who the litigants are. For example, environmental protection and public security are areas where collective litigation can improve rights protection in Colombia, even accounting for the advantage that the government holds in the courtroom. At the same time, administrative morality is an area where parties with more resources, particularly the national government, are more likely to win.

These findings are relevant because understanding what courts do is essential in strengthening governance in democratic systems (Botero and Gamboa 2021; Taylor 2006). The evidence in this article shows that similarly to other courts in the Global South, the council has been a strategic actor when ruling in AP and that the goal of improving equality in the courtroom highly depends on the right under litigation. Despite these reasons for skepticism, the fact that individual litigants have achieved high success rates and that they have been active participants in the implementation of AP rulings provide reasons for optimism. Furthermore, environmental protection is a matter of growing importance not only in Colombia but in the region. In the Colombian context, current challenges like the growth of illegal mining and water pollution emphasize the need for causes of action that allow citizens to achieve remedy. This article provides evidence that AP litigation can be an effective mechanism for citizens to air these disputes.

Three factors remain to be explored: first, taking into consideration the deep inequalities between urban and rural areas in Colombia, future research will be needed to explore the possible impact and limitations of AP in rural settings. Rural areas in Colombia have been at the center of phenomena like the internal conflict with guerrillas, the rise of new

²¹ Other countries face similar challenges and have found alternative measures to judges' ideology, as in the case of Costa Rica (Informe del Estado de La Justicia, CONARE, 2019, 64). This type of index has yet to be developed in Colombia.

subversive groups, water conflicts, corruption, and poverty. Whether AP can be an effective tool to address them is yet to be assessed. Second, future research will be needed to explore how the type of right and party capability interact with other relevant factors that shape judicial decision-making. For example, justices' ideologies, compliance rates, and patterns and the role of oversight agencies (Alviar García 2017; Couso 2017; Couso and Hilbink 2011) are factors that speak to the political and legal context of the court, but which were not explored in this article. Future research will need to address challenges in data collection in AP given the absence of a centralized database that could allow researchers to explore them. Third, in terms of legal mobilization, it is yet to be explored whether the number of rights that plaintiffs bring as part of their suit affects their likelihood to win. When filing a suit for AP, plaintiffs can choose from among the list of collective rights those that they perceive were violated. It is possible that framing violations in terms of a larger number of rights would allow justices to choose those that they want to support. Further research will be needed to assess this possibility.

Supplementary material. To view supplementary material for this article, please visit <https://doi.org/10.1017/lar.2022.103>

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References

- Albiston, Catherine. 1999. "The Rule of Law and the Litigation Process: The Paradox of Losing by Winning." *Law and Society Review* 33 (4): 869–910.
- Alviar García, Helena. 2017. "Looking beyond the Constitution: The Social and Ecological Function of Property." In *Comparative Constitutional Law in Latin America*, edited by Rosalind Dixon and Tom Ginsburg, 153–175. Cheltenham, UK: Edward Elgar Publishing.
- Atkins, Burton M. 1991. "Party Capability Theory as an Explanation for Intervention Behavior in the English Court of Appeal." *American Journal of Political Science* 35 (4): 881–903.
- Bernal, Carlos. 2017. "The Constitutional Protection of Economic and Social Rights in Latin America." In *Comparative Constitutional Law in Latin America*, edited by Rosalind Dixon and Tom Ginsburg, 325–343. Cheltenham, UK: Edward Elgar Publishing.
- Botero, Sandra, R. Ellett, T. M. Keck, and S. Stohler. 2021. "Free Expression and Judicial Power in Colombia, India, and South Africa." *Law and Social Inquiry* 46 (2): 331–363.
- Botero, Sandra, and Laura Gamboa. 2021. "Corte al Congreso: Poder judicial y trámite legislativo en Colombia." *Latin American Research Review* 56 (3): 592–606.
- Brewer-Carías, Allan R. 2009. *Constitutional Protection of Human Rights in Latin America: A Comparative Study of Amparo Proceedings*. Cambridge: Cambridge University Press.
- Brinks, Daniel M. 2011. "'Faithful Servants of the Regime': The Brazilian Constitutional Court's Role under the 1998 Constitution." In *Courts in Latin America*, edited by Gretchen Helmke and Julio Ríos-Figueroa, 128–153. Cambridge: Cambridge University Press.
- Chen, Kong-Pin, Kuo-Chang Huang, and Chang-Ching Lin. 2014. "Party Capability versus Court Preference: Why Do the 'Haves' Come Out Ahead?—An Empirical Lesson from the Taiwan Supreme Court." *Journal of Law, Economics, and Organization* 31 (1): 93–126.
- Côrtes, L., C. Gianella, A. M. Páez, and C. Vallejo Piedrahíta. 2021. "Comparing Experiences of Constitutional Reforms to Enshrine the Right to Water in Brazil, Colombia, and Peru: Opportunities and Limitations." *Water* 13 (24): 3519. <https://doi.org/10.3390/w13243519>.
- Couso, Javier A. 2005. "The Judicialization of Chilean Politics: The Rights Revolution That Never Was." In *The Judicialization of Politics in Latin America*, edited by Rachel Sieder, Line Schjolden, and Alan Angell, 105–129. New York: Palgrave Macmillan.

- Couso, Javier. 2017. "The 'Economic Constitutions' of Latin America: Between Free Markets and Socioeconomic Rights." In *Comparative Constitutional Law in Latin America*, edited by Rosalind Dixon and Tom Ginsburg, 343–360. Cheltenham, UK: Edward Elgar Publishing.
- Couso, Javier, and Lisa Hilbink. 2011. "From Quietism to Incipient Activism: The Institutional and Ideological Roots of Rights Adjudication in Chile." In *Courts in Latin America*, edited by Gretchen Helmke and Julio Ríos-Figueroa, 99–127. Cambridge: Cambridge University Press.
- Dotan, Yoav. 1999. "Do the 'Haves' Still Come Out Ahead? Resource Inequalities In Ideological Courts: The Case of the Israeli High Court of Justice." *Law and Society Review* 33 (4):1059–1080.
- Dotan, Yoav, and Menachem Hofnung. 2001. "Interest Groups in the Israeli High Court of Justice: Measuring Success in Litigation and in Out-of-Court Settlements." *Law and Policy* 23 (1): 1–27.
- Feeley, M. M., and E. L. Rubin. 2000. *Judicial Policy Making and the Modern State: How the Courts Reformed America's Prisons*. Cambridge: Cambridge University Press.
- Ferraz, O. L. M. 2010. "Harming the Poor through Social Rights Litigation: Lessons from Brazil." *Texas Law Review* 89: 1643–1668.
- Finkel, Jodi. 2004. "Judicial Reform in Argentina in the 1990s: How Electoral Incentives Shape Institutional Change." *Latin American Research Review* 39 (3): 56–80.
- Galanter, Marc. 1974. "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change." *Law and Society Review* 9 (1): 95–160.
- Gargarella, Roberto. 2017. "Equality." In *Comparative Constitutional Law in Latin America*, edited by Rosalind Dixon and Tom Ginsburg, 176–197. Cheltenham, UK: Edward Elgar Publishing.
- Gauri, Varun, and Daniel M. Brinks, eds. 2008. *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*. Cambridge: Cambridge University Press.
- Grossman, Joel B., Herbert M. Kritzer, and Stewart Macaulay. 1999. "Do the 'Haves' Still Come Out Ahead?" *Law and Society Review* 33 (4): 803–810.
- Haynie, Stacia L. 1994. "Resource Inequalities and Litigation Outcomes in the Philippine Supreme Court." *Journal of Politics* 56 (3):752–772.
- He, Xin, and Yang Su. 2013. "Do the 'Haves' Come Out Ahead in Shanghai Courts?" *Journal of Empirical Legal Studies* 10 (1): 120–145.
- Kritzer, Herbert M. 2003. "The Government Gorilla: Why Does Government Come Out Ahead in Appellate Courts?" In *In Litigation: Do the 'Haves' Still Come Out Ahead?*, edited by Herbert M. Kritzer and Susan S. Silbey, 342–370. Stanford, CA: Stanford University Press.
- Lamprea, Everaldo, and Angela M. Páez. 2018. "Collective Environmental Litigation in Colombia: An Empirical Assessment." In *Courts and the Environment*, edited by Christina Voigt and Zen Makuch, chap. 8. Cheltenham, UK: Edward Elgar Publishing.
- Landau, David. 2010. "Political Institutions and Judicial Role in Comparative Constitutional Law." *Harvard International Law Journal* 51 (2): 319–377.
- Landau, David. 2012. "The Reality of Social Rights Enforcement." *Harvard International Law Journal* 53 (1): 189–247.
- Landau, David. 2017. "Judicial Role and the Limits of Constitutional Convergence in Latin America." In *Comparative Constitutional Law in Latin America*, edited by Rosalind Dixon and Tom Ginsburg, 227–252. Cheltenham, UK: Edward Elgar Publishing.
- Langford, Malcolm. 2014. "Introduction: Civil Society and Socio-Economic Rights." In *Socio-Economic Rights in South Africa: Symbols or Substance?*, edited by Malcolm Langford, Ben Cousins, Jackie Dugard, and Tshepo Madlingozi, 1–34. Cambridge: Cambridge University Press.
- Lemaitre, J., and K. B. Sandvik. 2015. "Shifting Frames, Vanishing Resources, and Dangerous Political Opportunities: Legal Mobilization among Displaced Women in Colombia." *Law and Society Review* 49 (1): 5–38.
- Londoño-Toro, Beatriz, and María Lucía Torres-Villarreal. 2012. "¿Podrán las acciones populares Colombianas sobrevivir a los recientes ataques legislativos y jurisprudenciales?" *Vniversitas* (124).
- McGuire, Kevin T. 1995. "Repeat Players in the Supreme Court: The Role of Experienced Lawyers in Litigation Success." *Journal of Politics* 57 (1): 187–196.
- Navia, Patricio, and Julio Ríos-Figueroa. 2005. "The Constitutional Adjudication Mosaic of Latin America." *Comparative Political Studies* 38 (2): 189–217.
- Núñez, Rodrigo M. 2010. "Ideational Origins of Progressive Judicial Activism: The Colombian Constitutional Court and the Right to Health." *Latin American Politics and Society* 52 (3): 67–97.
- Páez Murcia, Ángela M. 2018. "Contesting Courts, a Case of Rights' Protection in Colombia." *ILSA Journal of International and Comparative Law* 25 (3): 393–532.
- Páez-Murcia, Ángela M., Everaldo Lamprea-Montealegre, and Catalina Vallejo-Piedrahita. 2017. "Medio ambiente y acciones populares en Colombia: Un estudio empírico." *Vniversitas* 66 (134): 209. <https://doi.org/10.11144/javeriana.vj134.maap>.

- Páez, Angela M., and Catalina Vallejo Piedrahita. 2021. "Channeling Water Conflicts through the Legislative Branch in Colombia." *Water* 13 (9): 1214. <https://doi.org/10.3390/w13091214>.
- Pieterse, M. 2008. "Health, Social Movements, and Rights-Based Litigation in South Africa." *Journal of Law and Society* 35 (3): 364–388. <https://doi.org/10.1111/j.1467-6478.2008.00443.x>.
- Rodríguez-Garavito, César. 2010. "Beyond the Courtroom: The Impact of Judicial Activism on Socioeconomic Rights in Latin America." *Texas Law Review* 89: 1669.
- Rodríguez-Raga, Juan Carlos. 2011. "Strategic Deference in the Colombian Constitutional Court, 1992–2006." In *Courts in Latin America*, edited by Gretchen Helmke and Julio Ríos-Figueroa, 81–98. Cambridge: Cambridge University Press.
- Rodríguez-Rodríguez, Libardo. 2005. *Derecho administrativo general y colombiano*. Bogotá: Editorial Temis.
- Ruibal, Alba. 2012. "Innovative Judicial Procedures and Redefinition of the Institutional Role of the Argentine Supreme Court." *Latin American Research Review* 47 (3): 22–40.
- Saffon, M. P., and M. García-Villegas. 2011. "Derechos sociales y activismo judicial: La dimensión fáctica del activismo judicial en derechos sociales en Colombia." *Estudios Socio-Jurídicos* 13 (1): 75–107.
- Sahu, Geetanjoy. 2008. "Implications of Indian Supreme Court's Innovations for Environmental Jurisprudence." *Law, Environment and Development Journal* 4 (1): 1–19.
- Sanchez Urribarri, Raul A. 2017. "Between Power and Submissiveness: Constitutional Adjudication in Latin America." In *Comparative Constitutional Law in Latin America*, edited by Rosalind Dixon and Tom Ginsburg, 276–299. Cheltenham, UK: Edward Elgar Publishing.
- Schor, Miguel. 2009. "An Essay on the Emergence of Constitutional Courts: The Cases of Mexico and Colombia." *Indiana Journal of Global Legal Studies* 16 (1): 173–194.
- Shankar, S., and P. Mehta. 2008. "Courts and Socioeconomic Rights in India." In *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*, edited by Varun Gauri and Daniel M. Brinks, 146–182. Cambridge: Cambridge University Press.
- Sheehan, Reginald S., William Mishler, and Donald R. Songer. 1992. "Ideology, Status, and the Differential Success of Direct Parties before the Supreme Court." *American Political Science Review* 86 (2): 464–471.
- Simmons, Beth A. 2009. *Mobilizing for Human Rights: International Law in Domestic Politics*. Cambridge: Cambridge University Press.
- Songer, Donald R., and Reginald S. Sheehan. 1992. "Who Wins on Appeal? Uppercuts and Underdogs in the United States Courts of Appeals." *American Journal of Political Science* 36 (1): 235–258.
- Songer, Donald R., Reginald S. Sheehan, and Susan Brodie Haire. 1999. "Do the 'Haves' Come Out Ahead over Time? Applying Galanter's Framework to Decisions of the US Courts of Appeals, 1925–1988." *Law and Society Review* 33 (4): 811–832.
- Szmer, John, Donald R. Songer, and Jennifer Bowie. 2016. "Party Capability and the US Courts of Appeals: Understanding Why the 'Haves' Win." *Journal of Law and Courts* 4 (1): 65–102.
- Taylor, Matthew M. 2006. "Beyond Judicial Reform: Courts as Political Actors in Latin America." *Latin American Research Review* 41 (2): 269–280.
- Vieira, Oscar V. 2017. "Ambitious Constitutions: Prominent Courts." In *Comparative Constitutional Law in Latin America*, edited by Rosalind Dixon and Tom Ginsburg, 253–275. Cheltenham, UK: Edward Elgar Publishing.
- Wheeler, Stanton, Bliss Cartwright, Robert A. Kagan, and Lawrence M. Friedman. 1987. "Do the 'Haves' Come Out Ahead? Winning and Losing in State Supreme Courts, 1870–1970." *Law and Society Review* 21 (3): 403–445.
- Wilson, Bruce M. 2009. "Institutional Reform and Rights Revolutions in Latin America: The Cases of Costa Rica and Colombia." *Journal of Politics in Latin America* 1 (2): 59–85.
- Wilson, Bruce M., and J. C. R. Cordero. 2006. "Legal Opportunity Structures and Social Movements The Effects of Institutional Change on Costa Rican Politics." *Comparative Political Studies* 39 (3): 325–351.
- Wilson, Bruce M., and C. Gianella-Malca. 2019. "Overcoming the Limits of Legal Opportunity Structures: LGBT Rights' Divergent Paths in Costa Rica and Colombia." *Latin American Politics and Society* 61 (2): 138–163. <https://doi.org/10.1017/lap.2018.76>.