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## Note from the Editors\*

One of the ways to bridge the gap between the academies of the Global South and the Global North is to encourage the engagement of intellectuals from the Global North in the academic production made in our countries regarding our legal landscapes. In this issue, we strive to advance this goal by presenting research articles on topics within Latin American public law, articulated in the prevailing language of the Global North Academy. This approach has proven to be productive, as it has sparked interest and discussion about our legal systems in the realm of comparative public law and constitutionalism.

Consistent with the tradition of the *Revista Derecho del Estado*, the issue offers a diverse selection of original works that cover a broad spectrum of public law topics. Readers will find relevant and thought-provoking pieces covering constitutional law, international law, judicial politics, philosophy of law, and empirical studies of law. The articles are organized into three sections, progressing from theoretical and comparative issues to in-depth case studies. In the following paragraphs, we will briefly present the contents of each of the sections.

The first part of the issue delves into comparative studies on constitutional law, showcasing a pair of engaging articles that address two long-standing debates in the field: the enforceability of socio-economic rights and the democratic legitimacy of judicial review itself. David Landau's opening article tackles the rather painful gap between the regional consensus on the justiciability of socio-economic rights and the actual empirical record of their judicial enforcement in countries such as Brazil, Colombia, Chile, and Mexico. Landau's work invites reflection on the strengths and limitations of individual claims, "defensive" social rights, and structural remedies to achieve social transformation. He proposes a more "holistic" constitutional approach involving political parties and accountability institutions like human rights commissions and ombudspersons to enforce socio-economic rights, shifting away from a court-centric framework.

The second article by Alejandro Cortés offers a fresh and theoretically rich view on the democratic deficit of judicial review. Drawing on the work of Phillip Pettit, Aron Harel, and Cristina Lafont, Cortés persuasively defends judicial review as a "conversation initiator." He argues that, under certain conditions, courts can be conceived as another political form of citizen involvement that align with the republican ideal of self-government. He examines the empirical institutional tenets of such participatory conception of judicial review, exploring factors such as constitutional rigidity, rules of standing, the right to a voice in the courtroom, and rules for constitutional

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justices that may influence the actual potential of courts in promoting the republican ideal.

The following section features three innovative pieces that explore the intersection between international and comparative law. María José Gómez Ruiz provides a normative analysis of the frequently disregarded Right to Candidacy (RC) in representative democracies, emphasizing its significance as equal to the Right to Vote (RV). Gómez Ruiz scrutinizes empirical practices related to the legal qualifications for office, finding that the thresholds for these qualifications are typically more stringent for the RC than for the RV. The author challenges this disparity, arguing for aligning the formal qualifications for the RC with those for the RV to enhance democratic and representative opportunities for all citizens.

In the subsequent piece, Enrique García-Tejeda examines the relationship between Behavioral Law and Economics in the traditional approach. He revisits the “endowment effect” experiment to demonstrate the complementarity between behavioral law and economics, often seen as opposing disciplines, when applied to complex areas like the regulation of Transportation Network Companies. The study brings the explanatory and predictive capabilities of the behavioral perspective to the fore, and calls attention to its potential to expose hitherto unidentified legal phenomena.

Mario Urueña-Sánchez and Héctor Olásolo then address the complex question of defining private military and security companies (PMSCs) within the context of international humanitarian law (IHL). Drawing from ongoing debates around the similarity of PMSCs to mercenaries and the efficacy of existing international law regulations, the authors propose key distinguishing factors of PMSCs. They use an interdisciplinary approach to analyze international conventional law and better define PMSCs.

The third and final section includes three case studies relevant to the understanding of public law in practice in Latin America. José Manuel Álvarez Zárate analyses the legal framework concerning arbitration in Colombian procedural and administrative law to reveal the obstacles to the protection of public interest in such proceedings. Reflecting on Constitutional Court decisions, he highlights the tension between constitutional mandates for the protection of public interest and the “private-leaning perspective” favored by arbitration and the legal formalism surrounding arbitral practice.

The next case study concerns a lengthy transnational legal battle of Ecuadorian origin. In this piece, Víctor Cabezas provides a very detailed procedural history of the Isaias Brothers case to highlight the political, social, and economic conditions that gave rise to the legal dispute, and to explain the shifts from domestic to international legal strategies. The author contends that this case also exemplifies the multi-level protection of human rights in the Americas and problematizes the relationship between the opinions of the

United Nations committees and domestic jurisdictions through the use of the constitutional bloc, a doctrine of great relevance in Latin America.

The issue concludes with a thoughtful assessment by Camilo Sánchez and Karolina Naranjo of the merits and limitations observed during the twelve years of implementing Colombia's land restitution policy. By employing both quantitative and qualitative data, the authors demonstrate that the outcomes of the land restitution program depend on doctrines, regulations, and the bureaucracy surrounding institutions, rather than solely on the design or the governmental support to the program. The authors thoroughly examine the influence exerted by the central government on the implementation of restitution policies, as well as the contributions made by the *Land Restitution Unit* (URT in Spanish) in overcoming implementation obstacles and addressing the needs of victims. Through this analysis, they offer valuable insights into the institutional dynamics of transitional justice in Colombia as well as lessons applicable to institutional reforms during transitions in other countries.

We would like to express our gratitude to the authors, reviewers, and contributors who have made this publication possible. Additionally, we extend our thanks to *Revista Derecho del Estado* for inviting us to edit this special issue. Our hope is that the collection of articles featured herein stimulates meaningful academic exchange and contribute to the advancement of public law scholarship.

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