This book offers a new theoretical framework for understanding the mediator role played by constitutional courts in democratic conflict solving. The book proposes an informational theory of constitutional review in which constitutional courts obtain, process, and transmit information to parties in a way that reduces the uncertainty causing their conflict. The substantive focus of the book is the role of constitutional courts in democracies where the armed forces are fighting internal armed conflicts of different types: Colombia, Peru, and Mexico in Latin America and also Israel, Turkey, and Pakistan. Through detailed analyses of the political context, civil-military relations, and the constitutional jurisprudence on military autonomy and the regulation of the use of force the book shows that constitutional courts can be instrumental in striking a democratically accepted balance between the exercise of civilian authority and the legitimate needs of the military in its pursuit of order and national security.

**Julio Ríos-Figueroa** is Associate Professor of Political Science at Centro de Investigación y Docencia Económicas (CIDE), in Mexico City.
Comparative constitutional law is an intellectually vibrant field that encompasses an increasingly broad array of approaches and methodologies. This series collects analytically innovative and empirically grounded work from scholars of comparative constitutionalism across academic disciplines. Books in the series include theoretically informed studies of single constitutional jurisdictions, comparative studies of constitutional law and institutions, and edited collections of original essays that respond to challenging theoretical and empirical questions in the field.

Books in the Series

Constitutional Courts as Mediators
Julio Ríos-Figueroa

Perils of Judicial Self-Government in Transitional Societies
David Kosář

Engaging with Social Rights
Brian Ray

Making We the People
Chaïhark Hahm and Sung Ho Kim

Radical Deprivation on Trial
Cesar Rodríguez-Garavito and Diana Rodríguez-Franco

Unstable Constitutionalism
Edited by Mark Tushnet and Madhav Khosla

Magna Carta and its Modern Legacy
Edited by Robert Hazell and James Melton

International Courts and the Performance of International Agreements
Clifford Carrubba and Matthew Gabel

Reputation and Judicial Tactics
Shai Dotan

Constitutions and Religious Freedom
Frank Cross

Constitutionalism in Asia in the Early Twenty-First Century
Edited by Albert Chen

Social Difference and Constitutionalism in Pan-Asia
Edited by Susan H. Williams

Constitutions in Authoritarian Regimes
Edited by Tom Ginsburg and Alberto Simpser

Presidential Legislation in India
Shubhankar Dam

Social and Political Foundations of Constitutions
Edited by Denis J. Galligan and Mila Versteeg

Consequential Courts
Edited by Diana Kapiszewski, Gordon Silverstein and Robert A. Kagan

Comparative Constitutional Design
Edited by Tom Ginsburg
CONSTITUTIONAL COURTS
AS MEDIATORS

Armed Conflict, Civil-Military Relations, and the Rule of Law in Latin America

JULIO RÍOS-FIGUEROA
Centro de Investigación y Docencia Económicas (CIDE), Mexico City
To Andrea, Inés, and Eva
CONTENTS

List of Figures page x
List of Tables xi
Acknowledgments xiii

1. Constitutional Courts and the Armed Forces 1
2. A Theory of Constitutional Courts as Mediators 18
6. Judicial Regulation of the Use of Force in Colombia, Peru, and Mexico 151
7. Constitutional Courts as Mediators beyond Latin America 178
8. Constitutional Courts and Democratic Conflict Solving 200

References 207
Index 225
FIGURES

1.1 Scheme of the Argument page 10
1.2 The Armed Forces before the Constitutional Courts 12
2.1 The Spectrum of Conflict Resolution 21
3.1 Decisions on Military Autonomy in Colombia, 1958–2013 48
3.2 Scope of Military Jurisdiction in Colombia, 1958–2013 49
4.1 Decisions on Military Autonomy in Peru, 1997–2013 85
4.2 Scope of Military Jurisdiction in Peru, 1980–2013 86
5.1 Decisions on Military Autonomy in Mexico, 1917–2013 122
5.2 Decisions on Conflict of Jurisdiction in Mexico, 1917–2013 123
5.3 Scope of Military Jurisdiction in Mexico, 1917–2013 124
6.1 Frequency of Violations to Physical Integrity Rights 162
6.2 De Facto Judicial Independence (Colombia, Peru, and Mexico) 168
6.3 Per Capita Membership in Human Rights INGOs (Colombia, Peru, and Mexico) 170
TABLES

2.1 Conditions of different roles for constitutional courts page 35
3.1 Emergencies and expansion of military justice, by president (1962–74) 54
3.2 Composition of Colombian Constitutional Court, by president (1990–2014) 68
4.1 Composition of Peruvian Constitutional Tribunal, by president (2000–2014) 103
5.1 Composition of the Mexican Supreme Court, by president (1994–2014) 143
6.1 Most similar cases research design: Judicial regulation of the use of force 156
6.2 De jure judicial independence and powers of constitutional review in Colombia, Peru, and Mexico 166
Cambridge University Press
978-01-107-07978-6 - Constitutional Courts as Mediators: Armed Conflict, Civil-Military Relations, and the Rule of Law in Latin America
Julio Ríos-Figueroa
Frontmatter
More information
The difference between articles and books, someone said to me, is that when you write an article you know the starting and the end points. But when writing a book, research can take you in many different directions right after departing. I am not sure if the statement regarding articles is right, but in my case the comment about books could not be more accurate. Writing this book has been a long, hard, at many times uncertain, but always enriching journey in which I was privileged to have the support of many generous individuals and institutions in different capacities.

To keep the project moving at critical crossroads, dead-ends, and diversions Andrea Pozas-Loyo, Jeffrey K. Staton, and Rodrigo Uprimny were absolutely crucial. I simply would not have reached this final destination without your help. Thank you. Throughout the drive I was fortunate to get warning signs and alternative route suggestions from insightful friends and colleagues including Javier Angulo, Karina Ansolabehere, Luz Marina Arias, Allyson Benton, Carlos Bravo, Daniel Brinks, José Antonio Caballero, Tom Clark, Henar Criado, Luis de la Calle, Zachary Elkins, Tulia Falletti, Jennifer Gandhi, Tom Ginsburg, Juan González Bertomeu, Ezequiel González Ocantos, Hernán Gulco, Martha Liliana Gutiérrez, Gretchen Helmkne, Francisco Herreros, Sandra Hincapié, Ran Hirschel, Christoph Hönnige, Gary Jacobsohn, Claudio López-Guerra, Noam Lupu, Ignacio Marván, Ximena Medellín, Pablo Mijangos, Gabriel Negretto, Roberto Niembro, Maria Popova, Xisca Pou, Sabrina Ragone, Javier Martín Reyes, Alejandra Ríos, Maria Paula Saffon, Ignacio Sánchez-Cuenca, Raúl Sánchez-Uribarri, Camilo Saavedra, Andreas Schedler, Gilles Serra, Hootan Shambayati, Udi Sommer, and Luis Daniel Vázquez. My heartfelt thanks to all of you.

In and on Colombia, Peru, and Mexico I benefited from the knowledgeable and generous advice of César Bazán Seminario, Yahyara Bernal, Camilo Castillo, José Ramón Cossio, Eduardo Dargent, Mauricio García Villegas, Pablo Kalmanotivz, Lilia Mónica López Benitez, David Lovatón Palacios, Gina Cabarcas Maciá, Manuel José Cepeda, Jaime Córdoba
Triviño, César Landa Arroyo, Alejandro Madrazo, Raúl Mejía, Aldo Ponce, César Rodríguez Garavito, Juan Carlos Rodríguez Raga, Edgar Saavedra Rojas, and the military and judicial officials who are mentioned in the respective chapters. A big thank you to several research assistants who participated at different stages of the project: Nancy Camacho Díaz, Camilo Castillo, Sicabí Cruz, Berta Díaz, María Fernanda Gómez Abán, Ana María Montoya, María Fernanda Nieto, Jimena Salazar, César Valderrama, and Javier Zúñiga Ramiro. Susan Thomae gracefully corrected the grammar and spelling of the manuscript.

I gratefully acknowledge the generous and continuous institutional support of my academic home, Centro de Investigación y Docencia Económicas (CIDE) and its División de Estudios Políticos, as well as to authorities who encouraged me and supported the project: Javier Aparicio, David Arellano, Enrique Cabrero, Guillermo Cejudo, Sergio López Ayllón, Andreas Schedler, and Ignacio Marván. I spent the academic year 2012–13 working on this project at the stimulating Instituto Juan March, now IC3JM, partaking of the generosity of its director Ignacio Sánchez-Cuenca and its wonderful community. DeJusticia and the Universidad de los Andes in Colombia, and the Instituto de Defensa Legal/Justicia Viva and the Pontificia Universidad Católica in Peru, were hospitable and unsparing. I presented different versions and parts of the book at meetings, seminars, and conferences hosted by many institutions and organizations including the American Political Science Association, the Latin American Studies Association, the European Consortium for Political Research, the University of Chicago, the University of Houston, La Trobe University in Melbourne, the División de Estudios Políticos and the División de Estudios Jurídicos at CIDE, CIDETe-Aguascalientes, the political science seminar at the Instituto Tecnológico Autónomo de México, the Universidad Diego Portales, the Fundación Getulio Vargas, GIGA-Hamburg, the Instituto de Investigaciones Jurídicas at the Universidad Nacional Autónoma de México, FLACSO-México, the Consejo Superior de Investigaciones Científicas and the Centro de Estudios Políticos y Constitucionales in Madrid, the Universidad de Salamanca, the Universidad de San Andrés in Buenos Aires, the Universidad de los Andes in Bogotá, the Pontificia Universidad Católica del Perú, the Center of Constitutional Studies at the Mexican Supreme Court, and the University of Oxford. A terrific book workshop organized by the series editors on Comparative Constitutional Law and Policy and hosted by the Department of Government at the University of Texas–Austin gave me the final push in the right direction.
to bring this book to what readers have in their hands. Thank you to the participants in these events.

Whatever this book is and is not has been influenced in direct and indirect ways by my professors at New York University: John Ferejohn, Barry Friedman, Stephen Holmes, Bernard Manin, Pasquale Pasquino, and Adam Przeworski. I have had the privilege to learn from them much more than what they formally teach in classes, seminars, talks, discussions, papers, and books, which already is an invaluable lot. Their intellectual curiosity, scholarly craftsmanship, and passionate commitment are examples that will be with me for the rest of my life.

In what has been a longer, at times harder and more uncertain, and yet more fulfilling journey my family and many dear friends with whom I have shared these years of life are the fuel that keeps the wheels moving. A special thank you to my parents, Amparo and Julio; and to my brother and his wife, Jorge and Mariví. Thank you also to my dear in-laws, Aurora, Ricardo, Julia, and Fernando. The book is dedicated to my life accomplice, Andrea, and our two new little passengers Inés and Eva in the hopes that our voyage is much longer and full of discoveries.