

THE ACHILLES HEEL OF DEMOCRACY

Featuring the first in-depth comparison of the judicial politics of five understudied Central American countries, *The Achilles Heel of Democracy* offers a novel typology of “judicial regime types” based on the political independence and societal autonomy of the judiciary. This book highlights the undertheorized influences on the justice system – criminals, activists, and other societal actors, and the ways that they intersect with more overtly political influences. Grounded in interviews with judges, lawyers, and activists, it presents the “high politics” of constitutional conflicts in the context of national political conflicts as well as the “low politics” of crime control and the operations of trial-level courts. The book begins in the violent and often authoritarian 1980s in Guatemala, El Salvador, Honduras, and Nicaragua and spans through the tumultuous 2015 “Guatemalan Spring”; the evolution of Costa Rica’s robust liberal judicial regime is traced from the 1950s.

Rachel E. Bowen is an assistant professor of political science at The Ohio State University, where she teaches courses on Comparative Politics, American Politics, Constitutional Law, and Gender and Politics on the Mansfield Campus. She has been researching Central America since 2002.

The Achilles Heel of Democracy

JUDICIAL AUTONOMY AND THE RULE OF
LAW IN CENTRAL AMERICA

RACHEL E. BOWEN

The Ohio State University



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press
978-1-107-17832-8 — The Achilles Heel of Democracy
Rachel E. Bowen
Frontmatter
[More Information](#)

CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom
One Liberty Plaza, 20th Floor, New York, NY 10006, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
4843/24, 2nd Floor, Ansari Road, Daryaganj, Delhi - 110002, India
79 Anson Road, #06-04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107178328

DOI: 10.1017/9781316823514

© Rachel E. Bowen 2017

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2017

Printed in the United States of America by Sheridan Books, Inc.

A catalogue record for this publication is available from the British Library

Library of Congress Cataloging-in-Publication data

Names: Bowen, Rachel E., author.

Title: The achilles heel of democracy : judicial autonomy and the rule of law in Central America / Rachel E. Bowen.

Description: Cambridge [UK] ; New York : Cambridge University Press, 2017.

Identifiers: LCCN 2017005280 | ISBN 9781107178328 (hardback)

Subjects: LCSH: Judicial independence – Central America. | Justice, Administration of – Central America. | Judges – Central America. | Political questions and judicial

power – Central America. | Rule of law – Central America. | BISAC: LAW / Comparative.

Classification: LCC KG3495 .B69 2017 | DDC 347.9728/012 – dc23

LC record available at <https://lccn.loc.gov/2017005280>

ISBN 978-1-107-17832-8 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Contents

<i>List of Tables</i>	<i>page</i> vii
<i>List of Figures</i>	viii
<i>Acknowledgments</i>	ix
1 Societally Penetrated Judiciaries and the Democratic Rule of Law	1
2 The Evolution of Judicial Regimes	34
3 Costa Rica: A Liberal Judicial Regime	73
4 Government Control Regimes in Central America versus the Rule of Law	110
5 Clandestine Control in Guatemala	143
6 Partisan Systems	191
Conclusion: Judicial Regimes and the Democratic Rule of Law	222
APPENDIX A: Methodology and Sample	245
APPENDIX B: Technical Aspects of the Costa Rican Judiciary	254
APPENDIX C: Technical Aspects of the Guatemalan Judiciary	257
APPENDIX D: Technical Aspects of the Nicaraguan Judiciary	261

APPENDIX E: Technical Aspects of the Honduran Judiciary	263
APPENDIX F: Technical Aspects of the Salvadoran Judiciary	265
<i>Works Cited</i>	269
<i>Index</i>	287

Tables

1.1	Selected World Justice Program Indicators, 2015	<i>page</i> 6
2.1	Judicial Political Independence vs. Judicial Societal Autonomy	40
2.2	Judicial Regime Types	47
2.3	Consequences of Judicial Regime Types	52
2.4	Mechanisms for Change and Continuity in Reform Processes	66
3.1	Important Factors in the Appointment of Judges in Costa Rica	86
5.1	Important Factors in the Appointment of Judges in Guatemala	165
A.1	Interviews, 2009–2010	247
A.2	Political Views of Self and Government (Averages for Each Country)	253

Figures

1.1	Homicide Rates per 100,000 (2000–2014)	<i>page</i> 7
1.2	Crime Victimization in Central America (2004–2012)	7
1.3	Percent of Respondents Viewing Corruption as “Somewhat or Very Generalized” (2004–2012)	8
3.1	Caseload of the Costa Rica Constitutional Chamber (1989–2014)	80
3.2	Trust in Institutions, Costa Rica (2004–2012)	101
A.1	Postgraduate Experience, Costa Rica	250
A.2	Postgraduate Experience, Guatemala	250
A.3	Annual Participation in Professional Trainings, Costa Rica	251
A.4	Annual Participation in Professional Trainings, Guatemala	251
A.5	State of Democracy	251
A.6	Preferred Regime	252
A.7	Functioning of the Judiciary	252

Acknowledgments

In the decade and a half I have lived with this project, I and it have enjoyed the support of more people than I could ever list. I regret that I cannot personally thank the individuals who participated in this research because of promises of anonymity. The judges, lawyers, and activists with whom I spoke gave generously of their time, pointed me down fruitful avenues, and offered invaluable perspective. This book would not exist without them. Their thoughtful and passionate dedication to their countries was inspiring. I can thank Jorge Vargas Cullell of Estado de la Nación in Costa Rica for his enthusiasm for my research.

At Georgetown, my adviser, John Bailey, was endlessly patient with me throughout my graduate years. I also owe a debt of gratitude to Douglas Reed for his support. One could have no better cheering section. At Georgetown, I also had the good fortune to be a part of a supportive group of friends interested in questions of constitutionalism, notable among them Matthew Taylor and Susan Alberts. I also owe a debt of gratitude to the late C. Neal Tate. Since coming to Ohio State, my Mansfield Campus colleagues have provided endless support, the most significant manifestation of which has been Write Club and its sometimes-shifting membership. Previous drafts of all or part of this work were generously read by Alexei Trochev, Raul Sanchez Urribarri, Sarah Brooks, Marcus Kurtz, Susan Delagrange, Cynthia Callahan, and Joseph Fahey. Research assistance was provided by Vittorio Merola, who was instrumental in coding the 2010 questionnaires, and Hannah Chelimsky. At Cambridge University Press, I thank four anonymous reviewers and my editor, John Berger. Any and all errors or omissions in this book, however, are entirely my own.

My earliest travels to Central America came as a part of my dissertation research. At that stage, I was fortunate to receive a field research fellowship from Georgetown University's Center for Latin American Studies in 2003 and

a Beinecke Scholarship from the Harry S. Truman Good Neighbor Foundation in 2004. The 2003–2004 Jill Hopper Memorial Fellowship from the Department of Government at Georgetown University provided the invaluable opportunity to retain a stipend while conducting research in Guatemala and Nicaragua. Later rounds of field research in 2009–2010 were made possible by a Seed Grant from the Mansfield Campus of The Ohio State University, which also allowed me to arrange my classes to accommodate another extensive field work year in Guatemala and Costa Rica in 2009 and subsequently awarded me a Special Research Appointment in 2011 to facilitate early drafting of this project. Research assistance for this project was supported by two Faculty Grants from the Mershon Center for International Security Studies of The Ohio State University.

I thank the Latin American Public Opinion Project (LAPOP) and its major supporters (the United States Agency for International Development, the Inter-American Development Bank, and Vanderbilt University) for making available the data used to construct several of the charts in chapters one and three.

Parts of chapters one and two have previously been published in *Political Research Quarterly* in December 2013 under the title “Judicial Autonomy in Central America: A Typological Argument” (Vol. 66, No. 4, pp 830–841). I am indebted to three anonymous reviewers at *Political Research Quarterly* for pushing me to take my thinking about the typological argument and its implications deeper.

I also wish to thank my family. My wife, Jen, has learned more about Central American judicial politics than perhaps any architect before her. My parents, John and Laveta Bowen, provided repeated logistical support for my travels and a great deal of child care for my writing. Until our divorce, Delano Lopez was also an enthusiastic cheerleader for me and this project, including accompanying me on most of my research travels. This book is dedicated to my son, Peregrin.