

# The Informal Dimension of Judicial Politics: A Relational Perspective

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Annu. Rev. Law Soc. Sci. 2017. 13:413–30

First published as a Review in Advance on May 24,  
2017

The *Annual Review of Law and Social Science* is  
online at [lawsocsci.annualreviews.org](http://lawsocsci.annualreviews.org)

<https://doi.org/10.1146/annurev-lawsocsci-110316-113750>

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## Keywords

judicial, networks, courts, Global South, relational approach, informality

## Abstract

This article proposes a relational approach to studying judicial politics in non-Western societies—a framework for the systematic analysis of informal relations between judges and other actors, within and outside the judiciary, based on common political interests, ideas, social identity, and even clientelistic obligations. We reflect on how these relations might help explain a variety of outcomes of interest, such as the organization of courts, judicial behavior, and judicial reform. We also highlight some of the methodological challenges of this approach in collecting and analyzing comparative data. In doing so, we seek to build an agenda for research on informal judicial politics beyond Western democracies.

## INTRODUCTION

Courts have become central to political life throughout the world. Yet despite a growing body of scholarship (e.g., Dressel 2012, Ginsburg & Moustafa 2008, Helmke & Rios-Figueroa 2011, Kapiszewski et al. 2013, Sieder et al. 2005), there is still considerable debate about the conditions in non-Western countries that support courts in holding political authorities accountable and contributing to democratic consolidation. More recently, excitement about courts as champions of liberty in developing democracies seems to have waned; despite their formal duties some courts not only are failing to help consolidate democracy and fulfill the expectations generated by institutional reforms but are even becoming tools of political elites (Ellett 2013, Popova 2012, Trochev 2011).

Most reviews of the growing comparative judicial politics literature (e.g., Bowen 2013, Ferejohn et al. 2009, Kapiszewski & Taylor 2008) sum up how scholars have explored a plethora of institutional, structural, and ideological variables for explaining key phenomena and processes of interest, such as judicial decision making and other manifestations of judicial behavior; appointments, promotions, and demotions; and judicial power and legitimacy. The informal dimension of judicial politics is a diverse area of inquiry that covers not only informal institutions of relevance for judicial politics (cf. Helmke & Levitsky 2006, p. 12) but also broader dynamic patterns of personal interactions, relations, and primordial ties that affect how judges behave and perform. These informal practices can both codetermine and compete with behavior promoted by formal political institutions (Gryzamała-Buse 2010, Helmke & Levitsky 2004, Radnitz 2011).

Prior research in other disciplines, such as sociology and anthropology, has long acknowledged informal mechanisms of aggression, solidarity, and prestige emerging from personal contacts and interactions in the context of formal organizations (Selznick 1943). And yet, although similar dynamics play out within the judiciary and other state institutions that interact with it, empirical studies until recently have rarely approached such informal dimensions within judiciaries from a systematic, comparative perspective.

Comparative analyses of judicial institutions and judicial behavior have arisen mainly in the context of programmatic systems, where politicians compete for power by endorsing particular policy values and platforms, as tends to occur in stable Western democracies. Thus, dominant models of judicial behavior assume that political and legal systems are solidly institutionalized, constraining judges via accepted mechanisms and doctrines (legal models), reflecting ideological preferences (attitudinal models), or conceiving judges as actors who respond to the preferences of other actors and the surrounding institutional environment (strategic models). What the models have in common is that they presume a rational process in which the judges follow personal policy preferences (for a summary accounts of these perspectives, see Baum 1998, 2006).

Constructivists may consider these approaches to be erroneous interpretations of a staged reality that is more about the exercise of power and maintenance of social order via legitimacy-creating processes than about rational and functional decision making (Peters 2008, Shapiro 1981). Indeed, it is hard to deny that judicial procedures, particularly those that have been transplanted, envision judges as professional and rational decision makers only; the judicial process ignores that the judge is “an entity with a biography,” and personal ties vanish (Feldman 2016, p. 66). The normative opposition to rational assumptions that only judges’ thoughts and personal convictions might matter is a case in point (Epstein & Segal 2005). But why should the personal attributes of a judge’s biography and personality be sidelined? This is even more relevant if we take into account that the dominant judicial behavior models transfer with difficulty to countries beyond Western democracies, sometimes failing to capture the realities of judicial behavior in other sociopolitical environments (on this topic, see Dyevre 2010).

Hence, anecdotal evidence suggests an urgent need to recognize and take account of the informal dynamics in which courts and judges are embedded, for instance, by looking more closely at the role of judicial, social, and political networks on and off the bench (Trochev & Ellett 2014). Though we are far from saying that informality does not exist in Western societies and judiciaries, the most obvious empirical examples are from non-Western countries in recent years. Take, for instance, the impeachments of chief justices in the Philippines and Indonesia, who were seen to be closely entangled with political networks that seem to have influenced high-profile political cases (Butt et al. 2016; Vitug 2012, p. 255), or concerns raised about the apolitical status of the judges investigating alleged corruption by the Brazilian Labor Party administration in the run-up to President Dilma Rousseff's 2016 impeachment (Melo 2016). Similarly, appointments of close political allies to high courts in Poland (Bugarič & Ginsburg 2016) and Venezuela (Alarcon et al. 2016, Corrales 2015), and efforts to employ rival judicial networks, as in Turkey (Olçay 2016), against sitting judges illustrate the informal dynamics—some secret, some public—that can influence a range of outcomes and processes of interest for judicial politics. It is in fact somewhat surprising that informality has received so little systematic attention.

To help fill this gap, we explore the informal dimensions of judicial politics from a relational perspective. We draw on judicial politics studies that have explicitly addressed the informal dimension broadly defined, focusing mostly on works that have, implicitly or explicitly, highlighted, identified, or applied a relational approach to judicial politics. This perspective embraces the fact that, at least in non-Western polities, formal and informal practices are closely interwoven, and personal interactions are central to day-to-day institutional realities (Hale 2011, Helmke & Levitsky 2004, Scott 1972). Judges cannot insulate themselves from informal norms of friendship, clientelism, corruption, and patrimonialism that regularly compete with, or even displace, formal institutions and rules. Moreover, relational aspects may be central to understanding how judges function in settings where the exercise of their prerogatives, or their prospects of enjoying such benefits as material welfare, professional advancement, or political influence, may be conditioned by their connections, or lack of them, with individuals or groups that have access to such benefits. Individuals who want to be judges may be limited by such considerations in making autonomous decisions without being exposed to any direct harassment or institutional manipulation. Transmission of policy ideas and articulation and achievement of policy goals can also be influenced by such interpersonal links.

Although this scholarship is still emerging, reflecting the gradual awareness of the importance of informality, a solid foundation on which to build is now in place. To this end, first we consider works that have a theoretical and comparative orientation, many of which have emerged from regions beyond the West. Second, we elaborate on the relational approach to judicial politics, which we consider to be particularly promising for systematic empirical research into its informal dimension. Thus, we delineate the conceptual dimensions of the relational approach, particularly the key features of judicial networks, before exploring the actual effects of the approach for a range of judicial phenomena, such as appointments and careers, institutional and legal reform, judicial decisions, and independence and legitimacy. Finally, we briefly discuss the challenges related to data collection and analysis of informal judicial politics and propose avenues for further research.

## **TOWARD A RELATIONAL APPROACH TO INFORMAL JUDICIAL POLITICS**

A distinct new line of inquiry about judicial politics seeks to rethink informality and elaborate on the nature, dynamics, and consequences of judges' relationships with each other and with other individuals and groups. At least implicitly this emerging scholarship has often used a relational

perspective on judicial behavior to explain variations in several factors, such as judicial autonomy, ideational diffusion, patronage appointments, and even actual court decisions. This relational turn recognizes the critical role of informal relationships and networks in animating individual behavior, including that of judges. It thus sheds light on the obscure but influential “connections that must exist among judges and between the judiciary and outside authorities” (Russell 2001, p. 22).

## The Roots of the Approach

Questions about the theoretical and empirical reach of the dominant attitudinal, strategic, and legal approaches to the study of judicial politics explain the need for a relational approach. For instance, a singular focus on the legal policy preferences of judges has been criticized even in Western settings, where scholars have suggested that judges may pursue numerous goals beyond legal policy, such as personal standing with public and legal audiences (Baum 2006), career considerations and personal aspects of workload and leisure time (Posner 2008), or maintenance of collegial relations on the bench (Friedman 2006). Moreover, many assumptions, particularly with regard to how institutional and ideological variables influence judicial decision making, travel with difficulty outside the Western world: Not only do numerous comparative studies address a host of other factors (Kapiszewski et al. 2013) but also empirical studies often struggle to find support for traditional models in non-Western contexts (Escresa & Garoupa 2012, Pruksacholavit & Garoupa 2016). Legal anthropologists have long emphasized the “significance of [informal] parallel contexts,” shaped by informal relations, but the law and social science community has yet to acknowledge and incorporate the social context as an integral part of “the very study of law itself” (Moore 2015, p. 13).

The contributions from developing countries and emerging democracies that have provided a critical impetus for the study of judicial politics are also at times disconnected from traditional models. Often writing in light of political liberalization processes in the 1980s and 1990s, and the uneven outcomes of their institutional reforms, scholars have grappled with the divergent experiences and actual realities of judicial practices in these countries. Studies of Latin America seeking to understand how political institutions work in the region, for instance, recognized early the gap between formal institutional specifications and the everyday practices of courts and rule of law institutions (Verner 1984); identified persistent problems post judicial reform related to institutional weakness (Hammergren 2007, Prillaman 2000); and consistently acknowledged the influence of patronage, clientelism, and corruption in the region’s emerging democracies (e.g., Auyero 2000, Fox 1994, Hilgers 2011, Levitsky 2003, Lyne 2009, Stokes 2009). Authors working on court systems in Africa were similarly quick to draw attention to the struggles of judges to maintain their judicial independence, with some portraying judges as victims of informal interference (Dezalay 2015, VonDoepp 2005, Widner 2008) and appealing to them to resist and to engage in judicial activism for the good of democratization (Kanté 2008, p. 171; Quansah & Fombad 2009). Case studies of courts in Asia have similarly illuminated how judicial systems have struggled for independence against deep-rooted cultures of corruption, as well as how some courts and judges have instead sustained authoritarian structures and elite coalitions (Dick & Lindsey 2002, Li 2012, Peerenboom 2010, Pompe 2005).

Many of these studies share the notion that a wide range of different structural dynamics may need to be reckoned with to analyze how judicial institutions work in a given setting. In turn, this recognition should lead scholars to modify, or at best complement, the approaches to judicial inquiry that have been traditionally applied in institutionalized democratic settings. For instance, there is widespread recognition that analyses of African political realities need to take into account persistent informal practices (Bayart 2009, Erdmann & Engel 2007) that affect the rule of law

(Comaroff & Comaroff 2007). Likewise, studies in Southeast Asia have long acknowledged the effects of patrimonialism and clientelism, to the extent that the latter is often seen as the dominant pattern in the region (Scott 1972). And in Latin America there is general recognition of how family relations, *compadrazgo*, patronage, and clientelism can affect how political institutions work (Stokes 2009). Similar accounts are also reported for the post-Soviet republics (Hale 2014, Popova 2012, Trochev 2011) and the Middle East (Hertog 2010, Lust-Okar 2005, Lust 2009).

Yet despite the general recognition of common regional patterns, that understanding has only recently begun to be extended to the courts themselves, though partial insights can be garnered from political studies of courts, judicial reform, and corruption in a variety of contexts (Buscaglia 1996, Dick & Lindsey 2002, Khoo 1999, Pompe 2005, VonDoepp 2009, Wilson et al. 2010). And some have argued that judges may abuse the powerful informal networks that tie them to politics and publicly relevant individuals and institutions (Prempeh 2006, p. 603; Trochev & Ellett 2014). The result has been that although it was widely acknowledged that informal practices and patterns have some influence on courts, until recently there has been little systematic inquiry into how such informal networks are structured and just how they affect judges and court decisions.

### Aspects of the Relational Perspective

This neglect, however, is waning. In studying subregional courts in Mexico, for instance, Ingram (2012; 2016a,b) has specifically employed a network perspective to explore how ideas are diffused, as well as the consequences for institutional reform and jurisprudence. Similarly, recent work by Pozas-Loyo & Rios-Figueroa (2016) focuses on the birth and development of patronage networks within the Mexican federal judiciary and how the networks have influenced appointments at all court levels, much to their detriment. And on the basis of cases from sub-Saharan Africa and the post-Soviet republics, Trochev & Ellett (2014) illustrate how informal networks can be mobilized in support of court independence, for instance, when creating and mobilizing alliances with civil society (Brett 2015).

But such positive accounts are the exception. Drawing on a sample of cases from sub-Saharan Africa and Latin America, Llanos et al. (2016) have shown how social ties based on loyalty and obligations have become important channels of communication through which political branches interfere informally with the judiciary—principally because such interference is less costly politically than blatant repression. Similar interference based on loyalty ties has been identified in Venezuela (Sanchez Urribarri 2011, 2012) and for the Supreme Court of the Philippines (Dressel & Inoue 2016).

Other studies from Africa have also highlighted how informal and personal relations often affect the process of appointments to courts (Adouki 2013, Fombad 2014, Roux 2016). One recent study characterizes a key judicial actor in Togo as the “shadow strategist” (Dezalay 2015, p. 5)—a very insightful image that combines both the systematic and targeted use of relationships and the voluntary informality. The political dynamics of appointments in the Philippines (Chua et al. 2012) or of regional networks of judges in Asia (De Visser 2016) are also valuable examples of how informality and networks are increasingly incorporated in the analysis of court systems beyond the Western world.

Of course, many other works provide equally important insights, though perhaps with a less clear focus on informality. Case studies in Latin America have provided detailed accounts of how courts in Argentina, Chile, and Brazil are embedded in each country’s political dynamics (e.g., Hilbink 2007, Ingram 2016a, Kapiszewski 2012, Pereira 2005). Likewise, studies of courts in Asia have detailed the dynamics between judicial actors and political elites (Vitug 2010, 2012) and the influence of political connections on jurisprudence when courts have become politicized

(Dressel 2010, Tonsakulrungruang 2016). Similar insights can be gleaned from seminal work on judiciaries in Africa; the personal story of Tanzania's long-serving Chief Justice Francis Nyalali is an early example (Widner 2001), as is Roux's (2016, p. 13) account of South Africa's Constitutional Court given the ruling party's dominance over appointments, when he argues that "[departing] from traditionally accepted reasoning methods [. . .], the judges might have reasonably thought, would have given the ANC a handy pretext to appoint more politically compliant judges when the next opportunity arose." This quote implies strategic action but it also presumes that decision-making conventions are reinforced by informal relations rather than by professional conviction—an implication that needs further investigation.

### **Applying the Relational Perspective: Judicial Networks**

Thus, a growing body of literature is now spotlighting the importance of understanding how informality, in particular relational factors, affects court systems in different parts of the world. These accounts acknowledge that formal and informal practices are interwoven and that personal interactions are central to the day-to-day agency of the judiciary. Judicial behavior can thus be seen as a function of how judges relate to each other and to individuals and groups in the surrounding sociocultural context.

Clearly, how relational dynamics operate on, off, and between courts is becoming central to research on courts. Operating from the assumption that judges are embedded in circles of social interaction—from the judicial hierarchy and political actors to friends and family—this perspective suggests that judicial behavior and the legitimacy of the courts are crucially shaped by relational flows in the social and professional webs to which judges belong. In doing so, it raises questions about how much judicial behavior is a matter of individual characteristics alone; it also complements established approaches by explicitly shifting attention from individuals to the ties between them.

Appointment politics is a good example of the difference. We have already identified numerous scholars who emphasize how the selection and appointment of judges matter. From a non-relational perspective, the mechanism that turns appointments into an effective instrument to influence judicial behavior is simply the individual experience of a judge or a candidate for the bench. Using the relational lens allows for a deeper and broader look at the quantity and quality of ties that give effect to appointments. Obviously, any appointment process establishes a relationship between appointer and appointee. Legal-bureaucratic systems emphasize the need to disable personal interests in such processes, although some functional interests, such as ideological closeness, are widely accepted. Yet the literature suggests biases exist on both levels in judicial appointments throughout the world.

What is noticeably missing, though, are analyses of the relationships themselves. The socio-centric relational perspective suggests that the character of the ties is a factor that determines the future behavior of appointees. This lens does not leave individual learning completely out of the frame, but it homes in on what people connected by personal or institutional ties can expect from each other and why. Questions naturally then arise: What makes a relationship strong? What establishes a trustworthy informal relationship? The studies reviewed have framed potential answers, but in a rather disconnected way: family and friendship, ideological commitment, social dependency, cultural obligations. The list goes on.

Social network analysis (SNA) has also recently emerged as a fruitful lens for the issues highlighted here. As we next review the rather insular attempts to apply the relational lens in judicial politics, we use SNA to help find sometimes hidden implicit pieces and arrange them into a systematic picture that may help map directions for further research.



## MAPPING INFORMAL NETWORKS

The relational approach assumes that the shape and character of informal networks influence a range of phenomena of interest for judicial politics, such as the decisions judges make, public perceptions of how they do their jobs, and political actors' attitudes toward the judiciary. Although this would seem to invite the use of network analysis, few studies so far have explicitly used formal network analysis to investigate judicial politics (Dressel & Inoue 2016, Ingram 2016b, Pozas-Loyo & Rios-Figueroa 2016, Stroh 2016). Part of the reason might be the lack of the necessary framework and terminology for defining axes along which informal ties may be ordered and judicial networks may be described and mapped. In other words, because networks can explain legal and societal outcomes, a systematic map of the relational dimension of judicial politics should make it easier to assess explanatory variables and produce comparable results. Drawing on the literature to date, we identify three critical questions to describe the pattern of personal judicial relations that are not formalized: (a) In what arena are the relations established, (b) how transparent are the relations, and (c) what types of ties motivate the relationship?

### The Arena

The structures of the personal and associational relations of judges can form a complex pattern tied to a variety of social arenas. The easiest way to distinguish them is to think of (a) professional relations in the workspace, i.e., internal relations within the courts, which may reflect, for instance, shared ideas and ideologies, esprit de corps, or friendship, and (b) relations with external actors, which may be, e.g., political, social, or familial. We distinguish three arenas in which informal personal relations may play out:

- On-bench relations are established between judges within the same court and other internal actors. These may take the form of groups of judges seeking to strengthen their position in relation to other external actors—say, in defense of judicial autonomy—or of collective efforts to address conflicts within the judiciary.
- Off-bench relations refer to the multifaceted social, political, and other links that judges maintain outside the judiciary, such as previous ties that judges established as individuals before or beyond their professional lives but that can be activated in relation to a judge's function in the courtroom.
- Between-bench describes informal networks of judges in different courts within the same jurisdiction and country or even across international boundaries. Here, we exclude the formal dimension of such transnational organizations as the European Judicial Network or the Association of Asian Constitutional Courts and Equivalent Institutions, although we recognize that from them often emerge informal structures and relationships.

In real networks these arenas are hardly isolated from each other. For example, social on-bench and off-bench relations may well overlap, but the fact that two judges on the same bench belong, for example, to the same social identity group would tie the two via the off-bench world, a situation different from their professional ties. Thus, some judicial networks focus only on one arena, whereas in other networks, individual judges might serve as bridges between different arenas, with effects on the network as a whole (Granovetter 1973). Thus, judicial networks may integrate on-, between-, and off-bench relations in different configurations and densities. Distinguishing these networks analytically can enhance our knowledge of the relative importance of different types of networks to each other, among other phenomena of judicial behavior.

## Transparency

The term latent community, taken from the technical language of advanced SNA, is a good illustration of how to think of another axis that helps map informal judicial networks. Networks can vary in how much they operate openly or instead act shrouded in secrecy. Trochev & Ellett (2014) propose a sequential resistance strategy of judges against blatant interference from the executive. The ladder of escalation starts with activation of secret networks for negotiation and ends with open protest based on mobilization of alliances. Assuming that judges prefer discretion to public action, the authors show how the degree of transparency may change the effects of similar networks, such as between-bench judicial alliances. Furthermore, a recent study on Benin implicitly suggests that political actors or the public may perceive the existence of hidden networks that conjectured network members might not recognize or might even deny exist (Stroh 2016). Yet even conjectured networks can have strong effects. Although the empirical observation of the difference between strategically secret and untruly conjectured networks constitutes a methodological challenge, the distinction between hidden and public nevertheless seems useful as a second heuristic dimension.

## Types of Ties

The third heuristic axis refers to the mode of bonding, the motivation to establish and sustain the tie. We conceive this dimension as a continuum from purely material benefits to ideational motivations. The corrupt exchange of money for decisions or trading in clientelistic benefits such as judicial appointments or contracts related to court operations might lie at one end of the continuum, with ideational communities at the other. It seems fair to assume that a mix of ideas and benefits shapes most judicial networks, for instance, when benefits include career advancement or public esteem. Political relations can also be hybrids of ideational ties and particular material benefits. Studies from Latin America, for instance, suggest how different modes of bonding can overlap, as in legal bureaucratic and ideological communities in Venezuela and Colombia or clientelistic and corrupt ties in Mexico (Nunes 2010, Pozas-Loyo & Rios-Figueroa 2016, Sanchez Urribarri 2012). Other recent works suggest that the types of networks most relevant for the judiciary are based on recruitment to judicial positions, political interests (partisan or ideological), patronage and clientelism, and friendship; networks can also be based on primordial cultural, regional, and religious ties (Dressel & Inoue 2016, Ingram 2012, Shambayati 2015, Stroh 2016).

In any case, the relationship dynamics are in essence guided by informality. Similarly, the ties between members of these networks can be characterized by such intrapersonal dynamics as reciprocity, self-presentation, individual benefit, ideational affinities, identity, authority, and loyalty. A friendship network may be expected to be characterized mainly by aspects of self-presentation or ideational affinities; career development networks by aspects of reciprocity or individual benefits; and clientelistic networks by authority and loyalty, often reinforced by shared regional, cultural, or kinship ties.

Given these complexities, the three-dimensional heuristic space that we propose here to map judicial networks (**Table 1**) is only a first step to systematizing judicial networks in general terms. Individual judges may certainly belong to various types of networks. This comparative scheme can even help us identify particularly strong parts of a judicial network because formalized network theory suggests that the more overlapping ties actors or groups have, the stronger the network itself.

Any mapping tool for judicial networks must not be considered static: Informal networks evolve and their focus or form can move across the dimensions over time. So far, we know little about the origins and dissolution of informal networks. However, some network types imply long-standing personal relations, such as friendships that developed at school or university; others



**Table 1**    **Heuristic dimensions of judicial networks: exemplary illustrations**

Dimension 1: Arenas					
			Bench		
			On	Between	Off
Dimensions 2 and 3: modes and transparency	Ideas	Public	Judges organized in judicial parties along ideological lines (Shambayati 2015)	Idea-based reform coalitions and factions across court levels (Ingram 2016a)	Overlapping membership circles of judges and social, legal and political actors in idea-based associations and parties
		Secret	Clubs on the bench that share a common set of values (Nunes 2010)	Ideational linkages between judges in the appointments of judicial positions (Pozas-Loyo & Rios-Figueroa 2016)	Some ideational linkages between judges and civil society actors (Moustafa 2007, Trochev & Ellett 2014)
	⋮	⋮	Long-standing university friendship networks tying judges of the same generation (Dressel & Inoue 2016)	Loyalties based on international training and exchange programs	Identity-based social obligations that tie judges with politicians based on regional, religious, or cultural traits (Stroh 2016)
	Material benefits	Public	Promotion to Chief Justice; other high-profile appointments, including posttenure rewards (Magaloni 2008, Popova 2012)	Transfers and internal promotions across court levels, benches (Trochev 2011)	Judges receive payments from proxy organizations (Bowen 2013)
		Secret	Side payments from executives to influence decision making in high-profile cases (Vitug 2012)	Clientelistic judicial appointments exchange for loyalty (Sanchez Urribarri 2012)	Payment of bribes; or close interactions between judges and lawyers, involving ethics violations (Khoo 1999)

suggest conviction-based relations that may tie individuals with short notice, such as ideological on-bench networks. Given this diversity of structures, the judge’s belonging to an informal network and those relationships are not necessarily good or bad, although informal relations are easily associated with a “dirty togetherness,”<sup>1</sup> which seems to produce undesirable outcomes—particularly in the context of judicial decision making, where formality and rule adherence are expected to prevail. However, when normative considerations are left aside, a promising avenue for the systematic exploration of different types of networks and communities to which judges belong—how judges live in society as human beings—opens.

## EFFECTS OF INFORMAL JUDICIAL NETWORKS

Mapping networks in a systematic way is a starting point only, although an important one because it lays the foundation for the most relevant research questions. Thus, how do informal judicial

<sup>1</sup>In a humorously pointed remark, Martin Krygier used this term, borrowed from Adam Podgórecki (1994), at a workshop in Canberra in March 2015 in discussing the associations the term judicial networks evokes.

networks affect the organization and function of judicial systems in non-Western societies? A number of works demonstrate—more often implicitly than explicitly—the leverage obtained by bringing networks to the center of judicial inquiry, focusing on different types of dynamics related to the effect of networks on judicial organization, decision making, autonomy, and power.

### **Appointments and Careers**

Recurrent arguments—some journalistic, some academic—suggest that informal networks influence appointments to the bench and judicial promotions, with far-reaching consequences for judicial independence, professionalism, and overall institutional performance. The influence of informal networks on appointments, discipline, and promotion might politicize judges and heighten the risk of intracourt and on-bench conflicts should they split into intransigent opposing camps concerned more about representing networks of friends and patrons than about enforcing accountability (Fombad 2014). Similarly, patronage relationships tied to informal networks can undermine judicial integrity by promoting selected judges or even rewarding loyal high court judges with prized government positions after retirement (Gomez 2011).

Informal networks also raise questions about standard policy recommendations for institutional reform, such as promotion of independent professional appointment commissions or multitrack appointments—where different branches of government respectively nominate judges to the highest bench (e.g., Cape Town Principles in the Commonwealth). In fact, where independent commissions are in charge of judicial selection, monitoring, and promotion, political networks might actively lobby commission members in favor of certain candidates or lobby the appointing executive once a commission prepares a shortlist (Chua et al. 2012, Sanchez Urribarri 2011; for a rigorous critique of reform prescriptions without due account of the underlying informal dynamics in post-Communist countries, see Kosař 2016). Likewise, multitrack appointments seem at best to have strategically diffused the activities by various networks seeking to influence the selection of judges and have encouraged candidates to actively seek network support (see, for Indonesia, Butt 2015), despite the widely hypothesized moderating influence of multitrack appointments (Ginsburg 2003, p. 45).

The role of informal networks in regard to judicial appointments and career advancement is not purely negative. In fact, ideational and professional networks within and outside the judiciary might provide checks and balances, for instance, by supporting institutional reform efforts or meritocratic practices (Ingram 2012). Similarly, greater transparency of appointment processes has brought wider public scrutiny, helping constrain the operations of informal networks. Moreover, informal networks may even become formalized, as in the case of judicial parties in Turkey (Shambayati 2015, Shambayati & Kirdis 2009). In short, current research offers a complex picture of how informal networks interact with judicial appointments and careers—one that encourages further research.

### **Institutional and Legal Reform**

Previous scholarship has highlighted how political, military, and criminal networks have often actively undermined the justice sector through corrupt activities and resistance to wider reforms, particular in postauthoritarian settings (Armytage 2012, Domingo & Sieder 2001, Sieder 2010). Scholars have also drawn attention to the dynamics within the judiciary itself, highlighting the often-ambiguous stance of judges about judicial reform and new institutional structures, such as specialized courts (Domingo 2004, Klein 2003, Pompe 2005). Indeed, studies of factors that motivate judges to take a stand for or against institutional reform have explicitly brought attention to the

role of informal networks. Drawing on established scholarship on the rights-oriented expansion and contraction of the judicial agenda in Western democracies and beyond (Epp 1998, Hilbink 2009, Hirschl 2004), these studies have highlighted the role of ideational networks of judges in animating and sustaining judicial and legal change (Hilbink 2007, Ingram 2016b, Nunes 2010). For instance, Ingram (2016a) shows how close contacts among judges in Mexican subnational courts shape their own subjective, nonmaterial commitments to reform, thus providing empirical evidence for how ideational networks can shape, or hinder, the introduction of institutional change, such as judicial councils, and of new legal and jurisprudential practices. Moreover, historical accounts of patronage networks and how they change over time are also reminders that networks may have limited ability to resist change, particularly when they fail to deliver expected results.

## Judicial Decisions

There is widespread acknowledgment that attitudes, values, and ideology are critical determinants of judicial behavior (cf. the attitudinal model). Additionally, studies have highlighted other ideational factors affecting court decisions, such as judicial role conceptions, for instance, with regard to judicial activism or conservatism (Couso et al. 2010, González-Ocantos 2016, Hilbink 2012). Yet judges do not operate in a social vacuum. In fact, informal interference with the courts by political actors has long been acknowledged (Russell & O'Brien 2001), and scholars concerned with politicization of the courts have long observed the personal and associational relations between politicians and judges and the consequent dangers for judicial deference and partisan decisions in political cases (e.g., Basabe-Serrano 2015, Popova 2012, Sanchez Urribarri 2011). As a result, others have sought to elicit specifically how political or hierarchical pressures are transmitted via professional or university networks to the bench when the government is party to a case (Dressel & Inoue 2016). Together, these studies illuminate how judicial decision making might be shaped by a host of informal networks.

## Independence and Legitimacy

What role do networks have in shaping the independence and legitimacy of the judiciary? Scholarly attention to formal judicial networks—networks in which courts share experience, information, and standards of legal interpretation—has been growing both in Europe (Harlow & Rawlings 2007) and elsewhere (De Visser 2016). Notably, formal networks are often incubators for informal exchanges, given deliberately open collaboration to foster exchange of ideas as well as technical cooperation. This is particularly obvious in Asia, where, given the unusual diversity of regimes, judicial networks have begun to replicate patterns of informality in what is known as the Association of Southeast Asian Nations process. The regular exchanges of specialized constitutional courts in particular have fostered a sense of community and personal friendships (De Visser 2016). Recent scholarship on Africa spotlights how the international professional community of lawyers and judges can help strengthen personal between-bench ties that encourage judges to make decisions that might challenge domestic political interests (Brett 2015).

There is growing evidence that such networks are important not only for transmitting ideas and technical knowledge but also for protecting judicial autonomy and fostering more assertive behavior against other political branches. For instance, informal alliances between judges and societal actors in support of judicial autonomy have helped defend and sustain more assertive courts in sub-Saharan Africa and post-Communist countries (Trochev & Ellett 2014). International networks of justices, most recently the European Judicial Network response to a crackdown on the Constitutional Court in Poland, have helped courts defend themselves against executive

encroachment, or assert decisions in areas of human rights outside the tolerance level of the political regime. In short, both national and international networks may be critical to the dynamics surrounding judicial independence and autonomy because they provide much-needed support for one of the weakest branches of government. Similarly, where support networks are missing or political networks are perceived to dominate the bench, the public legitimacy of the court may be severely compromised (Stroh 2016).

## WHAT TO CONSIDER NEXT: METHODOLOGICAL CONSIDERATIONS

What are the most appropriate methods for generating data on and analyzing judicial networks? The relational perspective raises nontrivial challenges for data collection and analysis. And while formal SNA forms the natural core, we hardly advocate for a single approach. We believe it best to call on a host of qualitative and quantitative methods to learn as much as possible about the nature, dynamics, and effects of informal judicial networks.

SNA can measure a variety of interpersonal effects and processes, and it has often been used to make systematic comparisons between different types of relations over time and across units. Particularly in the last decade SNA has become increasingly popular across the social sciences (Borgatti et al. 2009) and for political inquiry (Lazer 2011, Victor et al. 2016, Ward et al. 2011). Ideally, for judicial politics scholars SNA can be a powerful tool to analyze interactions between judges and other social and political actors (individual or associational) and to measure how ideas, preferences, and different types of resources and advantages are disseminated between them. Quantifying networks also helps integrate the relational perspective more closely with traditional statistical methods, allowing for more complex research and analysis. SNA has already been adopted as the method of choice to study relational data on a variety of legal topics, such as court precedents (Lupu & Voeten 2012), the structure of the legal profession in the United States (Katz & Stafford 2010), and the diffusion of legal reform concepts in Latin America (Ingram 2016b).

However, the network paradigm goes beyond quantitative SNA; there is also a well-grounded qualitative research tradition (Prell 2012, pp. 28–43). Depending on the nature of the hypothesis being investigated and even practical considerations, qualitative analyses may be more appropriate. Qualitative data collection can also be essential for providing context and triangulating the data used in quantitative assessments.

Qualitative inquiry is particularly useful for judicial studies. Information about judges and their relations is generally biased geographically and in time, which is difficult enough to collect and assess in the Western context but even more difficult in the developing world. Hence, there is a real need to collect basic data through qualitative fieldwork and interviewing, followed by descriptive analysis of the basic actors and patterns found.

Whether or not the research is designed to generate qualitative or quantitative relational data, it will be difficult to describe and analyze informal networks across different sociopolitical contexts. The social relations of judges—their loyalties, affiliations to political groups, connections with business and other actors, and especially corrupt or clientelistic practices—are often difficult to observe directly. Judges and other judicial actors, who often work in a political context shaped by corruption, are well aware of the risks of personal contacts with politicians and other influentials. Public contact can quickly create suspicion and be interpreted as undue, thus reducing judicial legitimacy in the eyes of the public and other political elites. These real-world research conditions may certainly affect the reliability of data collection.

As a result, cautious and creative ways are needed to observe and record informal connections and the bonds at the core of the relational analysis. Researchers should employ rigorous tactics

that allow access to the data required without affecting its quality or creating ethical problems for interviewees or others. Most often, this information is acquired through such well-known methods as qualitative interviews, archival research, and systematic analysis of numerous secondary sources.

In interviews, researchers must be particularly careful about the questions asked and their implications. Judges generally form a cautious professional community that seeks to avoid close scrutiny. Many judges see secrecy and discretion as part of the norms for carrying out their duties and may even consider it offensive to provide information they consider private. Therefore, attempts to research a judge's personal ties and other relevant information may easily affect not only their answers with respect to specific questions but even their attitude toward the interview as a whole. Failed interviews can be particularly damaging because courts and surrounding actors form small, tight-knit communities. Thus, it is critical to be prepared to gain the confidence of those interviewed, particularly in unstable or conflictive political contexts. Familiarity with as much public information as possible before interviewing judges can yield special advantages (Ellett 2015).

Research on informal judicial networks thus cannot rely on interviewing only one target group. Instead, it means deliberately expanding beyond interviews with sitting and retired judges to other potential network members. This may include actors in the legal complex (e.g., lawyers, clerks) or those generally in political institutions (e.g., the appointments commission) or civil society (e.g., media, academia, business). It may also extend to friendship circles, university associations (e.g., fraternities, sororities), and further personal connections (e.g., marriages, godparent relationships).

Archival research is also vital for acquiring and interpreting relational data. One should not underestimate the availability of written documents. Top judges are public figures, especially in the age of judicial power, where judges are often at the storm center of political life. For instance, in many Latin American and post-Communist countries, professional resumes are available online, and high courts often release speeches and other information about judges, due in large part to the emphasis on transparency and data availability in judicial reform programs. Asian and African courts are also catching up in cyberspace, though at variable speeds. However, even if there is no systematic information on professional profiles online, there might be abundant information available from such credible journalistic sources as major newspapers, specialized blogs, legal commentary outlets, and reporters who regularly cover the courts.

Assembling dense data for developing countries is facilitated by the fact that judges are often members of a relatively small national elite group who tend to share educational and professional trajectories, so that the number of ties and the complexity of networks can be kept manageable. Also, the growing role of courts in the political process has often stimulated greater public scrutiny of sitting judges, even by investigative journalists, which can be informative about both individual judges and the workings of entire judicial institutions. In some places, international promotion of the rule of law has multiplied the number of nongovernmental organizations and cooperation partners that know a lot about judiciaries and judges. Yet because all these potential informants may be part of judicial networks, data triangulation and careful in-depth listening are crucial for successful data collection.

## CONCLUSIONS

Although the informal dimension of judicial politics in many parts of the world has been widely acknowledged, its relational aspect has so far received little systematic treatment. By drawing out implicit assumptions in judicial politics scholarship and highlighting new insights from emerging scholarship on courts in non-Western societies, we identify a network-based, relational perspective from which to study judicial institutions and judicial behavior. In complementing traditional

perspectives in judicial politics and acknowledging the general significance of informal relations in formal organizations, it sheds light on the types of networks to which judges belong and how these networks vary in their effects on actual judicial decision making, maintenance of judicial autonomy, and the legitimacy of the institution of the judiciary. Empirically grounded in the realities of Africa, Asia, and Latin America, the relational approach to informal judicial politics offers the opportunity to better understand the nuances of judicial politics—perhaps even in areas that have been over- as well as understudied. It may be that viewing non-Western societies from this new standpoint will also open up new perspectives on how informality operates on judicial systems in the West.

## DISCLOSURE STATEMENT

The authors are not aware of any affiliations, memberships, funding, or financial holdings that might be perceived as affecting the objectivity of this review.

## ACKNOWLEDGMENTS

The authors thank La Trobe University's Institute for Human Security and Social Change and the Research School of Asia Pacific and the Crawford School of Public Policy, both at the Australian National University, for hosting the Informal Networks in Non-Western Judiciaries workshop in Canberra, March 26–27, 2015, which allowed for stimulating discussions on the theme explored here.

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