

Leonardo Avritzer (2019). *The Two Faces of Institutional Innovation Promises and Limits of Democratic Participation in Latin America*. Cheltenham, UK: Edward Elgar Publishing. Series: Advances in critical policy studies. ISBN: 9781789904277. Hardcover/Paperback.

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From countries of the North to countries of the South, institutional innovations are a growing trend. In Latin America this is especially the case since the region's re-democratization. This book is mandatory for everyone who is interested in the quality of democracies, especially for those researching on innovations in democracies around the world and those who want to take a critical analytical look on innovations from the perspective of their capacity to deepen democracy and expand rights.

The approach taken by the author unites two streams of political studies, those that are mainly concerned with administrative efficiency and not with participation and those that are focused on innovation without considering the limits of innovation. The author asks the following questions: Is innovation good *per se*? Is it good when innovations go beyond the political system and public policies? The book is mainly divided in three parts: the first part is dedicated to the theoretical discussions on institutional innovation, the second part scrutinizes six cases of participatory budgeting, three cases of accountability and last part analyzes two cases of judicial innovation. With this analysis, the author produces a valuable contribution to the field by pointing to the importance of analyzing the effect of implemented innovations in democracies.

Avritzer makes the relevant argument that the distinction of different innovations in democracies has not received sufficient attention in the literature since it is important to understand whether innovations enhance participation of the population or give power to specific groups. When analyzing institutional innovations in democracies it is therefore crucial to focus on its capacity to foster citizenship and deepen democracy. Avritzer argues that innovation has to be analyzed in the intersection between the design of innovations and the political system. The political system is often ambiguous with regard to innovation and is in most of the cases a blocking factor.

The book provides a very insightful analysis on two types of innovations in democracies – democratic and judicial – and how they differ in their effects in the case of Latin American countries. Although some scholars see judicial innovation just as an internal reorganization of the balance of powers and not as an innovation, Avritzer holds on the

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argument that judicial innovation is an innovation since it is legitimized through its claim of innovation. The main conclusion presented in his book is, that while democratic/political innovation in public policy is bottom-up and horizontal and has democratizing effects, judicial/administrative innovation has a top-down and vertical characteristic and strengthens non-democratic actors.

Political or democratic innovation is understood as a change in design and enhancement of citizen participation in policy elaboration. During the re-democratization process in Latin American countries incentives to social participation were introduced in the Brazilian, Colombian and Bolivian constitutions for example. Two democratic innovations are discussed in the book: participatory budgeting and councils. Participatory budgeting (PB), that is composed of budget-making, deliberative institutions and citizen education, is the most important democratic innovation that has origins in the developing world and is at the same time the most successful democratic innovation. It is probably the only Southern innovation that was applied also in Northern countries. With the comparison of participatory budgeting in Brazilian and Argentinian cities the author shows that different countries and cities can learn from the successful cases of PB in Brazil and Argentina. The main argument here is, that there is a difference between deepening democracy and improving governance in the application of PB. Successful cases of PB in Brazil and Argentina are those, where participation is broad and connected to the political system and supported by it. Most of different cases of PB outside of Latin America miss the democratization elements since the budget is small and preset, there is non-citywide political influence and a participation of a small group.

The second analyzed democratic innovation are the councils in Brazil, Bolivia and Mexico where innovation is integrated into law and is relatively independent from the political system. In Mexico, the innovation consisted in fraud control of elections, in Brazil in health and social assistance and in Bolivia in health and education. These are the most successful participatory innovations in Latin America as they have a political continuity that is non-electoral. Even though these innovations were impacted by political backlashes these cases of participatory accountability as a form of social control have a continuance because of its legal structure. This distinguishes it from participatory budgeting which is more dependent on the support given by the political system.

Judicial innovation on the other hand is understood as self-contained changes strengthening right-based and top-down policies through judicial institutions and strengthens legal corporation members. Judicial/administrative innovations basically focus on the de-politization of the public administration. The author alludes that this form of

innovation itself is not problematic, but it becomes questionable when the introduction of the innovation is constituted as an innovation with democracy deepening purpose. In the case of judicial innovation, it may lead rather to disempowerment, which is shown by the cases of the Brazilian *Ministério Público* (Public Prosecutor's Office) and the constitutionalization of judicial review. According to Avritzer, the events in Brazil from 2014 to 2016 showed that this legal format may be jeopardous. The danger comes from the assumption that actors from professional corporations and civil society can act similarly.

In the Brazilian case the expansion of rights was accompanied by the expansion of the legal corporation. While the Brazilian Supreme Court's capacity for constitutional revision was an advancement as well as the broadening of the scope of actors, such as civil society actors, that could go to court, the Brazilian Supreme Court started to revise the executive branch with regards to social policy decisions as is shown by the example of public policies related to public health. And since the legislative branch was not willing to reorganize the political system the Supreme Court took on the task to do so, which in turn gave the Supreme Court more power. The same patterns can be observed for the *Ministério Público* that had initially progressive decisions about broadening rights and defending environmental issues, but then started to take away authority from the political system regarding public policy making. Interestingly in both cases, the civil society approved on many occasions the strengthening of the judicial branch and the *Ministério Público*.

The Colombian case of judicial innovation is more successful. Colombia held regular elections since the late nineteenth century with a stable judicial tradition. Two innovations were introduced in the new Colombian Constitution. The first was the separation between the Supreme Court and the independent Constitutional Court, that was created in 1991 which changed the organization of the *acción de tutela* (writ of protection), a legal instrument that every individual can use to charge public officials with violation of constitutional rights. The second enabled the broadening of citizens' actions against constitutional amendments issued by the government. The author points to two positive cases of judicial review in Colombia, that demonstrate that in Colombia the judicial innovation was focused on rights and balance of power, contrasting with the Brazilian case, where the judicial innovation evoked a power supremacy.

The examples from both parts of the analysis, on democratic/political innovation and judicial/administrative innovation show the importance of distinguishing different innovations in terms of their capacity to deepen democracy. It remains however unclear how democracy and the deepening of democracy are defined. If democratic participation is equated with deepening of democracy, it would have been meaningful to clarify that.

While the part on democratic innovations is elaborated within the whole literature on democratic innovation and with in-depth scrutiny, different cases are compared within and outside Latin America, and even the possibility of replicability of these innovations in different country or city contexts is discussed, the second part on judicial and administrative innovation went a bit short in these aspects. The general conclusion on judicial/administrative innovation relies basically on the case of Brazil, while the more positive results from the Colombian case in judicial innovation seem to take a back seat in the overall conclusions.

It would have been useful for the analysis to contextualize more the judiciary in the context of the other constitutional powers, their power balances and the political system in the Brazilian case, since both judicial innovations started with progressive decisions before the two institutions turned into more monopolistic power *apparatus*. This leads me to the following question: Was it the malfunctioning of the constitutional powers, the executive and legislative branch, that enabled the judicial branch to gain more power over time at the expense of the legislative and executive branch? The author mentions also several times that the civil society in most of the cases applauded the decisions taken by the judiciary. The analysis of data from June 2018 from Datafolha on public opinion on the trust in Brazilian institutions reveals that most the respondents do not trust political parties (68%), the National Congress (67%) or the Presidency (64%). In comparison to the other mentioned institutions, only 39% do not trust the Supreme Court and only 30% do not trust the *Ministério Público*. Hence, it does not come as a surprise that the civil society applauded for example the increased judicial power in the formulation of public policies, denying the executive branch's power to formulate public policies (page 106) or the Supreme Court's interference in Senate trials and the enforcements of rules with regards to party loyalty (page 103) given the "backwardness" of the Brazilian National Congress (page 103) to undertake reforms. Deducting from these public opinion data, the Brazilian population sees in the judiciary a refuge. The recent example from June 2019 on the Supreme Court's decision to criminalize homophobia illustrates this well. 10 from 11 ministers recognized an unconstitutional delay of the legislative branch to deal with this issue.² Can we therefore argue, that the success of the judicial innovation rather depends on the performance of the other powers in the democratic system?

This brings me to the second point: The Colombian case. More attention has been given to the Brazilian case, where the analysis was undertaken with more detail. Since most

² <https://www.bbc.com/portuguese/brasil-47206924>

of the countries in Latin America have undergone re-democratizations, the Colombian case seems to be rather a deviant case in terms of its decades-long democracy and stable judicial tradition. The author mentions the strong Latin American tradition of family and patrimonial occupation of positions in the judicial system that strongly influenced judicial innovations (page 101), but he does not elaborate that in the concrete Brazilian and Colombian cases to see whether this tradition differed between these two cases. Does Colombia have a weaker tradition and was therefore a more successful case, where the judicial innovation was more focused on the expansion of rights rather than the expansion of corporate power or was it the overall political system that was more receptive to more progressive judicial innovation? Finally, I ask myself whether one can conclude - beyond the Latin American region - that judicial innovation, may rather work in a country context of less family and patrimonial occupation of positions in the judicial system? A short comparison with other regions - as it has been done in the part on democratic innovations - would have provided even more comprehensive knowledge about judicial innovation.

To conclude, the book is well worth reading and is an important piece of research as it opens research on the types of innovations and invites to more critical analysis of this subject. Given that many democracies around the world face different challenges and need to find innovative solutions for their problems, it is of high importance to assess innovations with a critical eye in terms of their effect on democracy.