

## INTERVIEW WITH ANÍBAL PÉREZ-LIÑÁN (UNIVERSITY OF NOTRE DAME)

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Aníbal Pérez-Liñán is Professor of Political Science and Global Affairs at the University of Notre Dame. His research focuses on democratization, the rule of law, political stability, and institutional performance among new democracies. He is currently researching the political conditions that preclude judicial independence in developing countries and the consequences of political radicalization for democratic survival.

His publications include *Presidential Impeachment and the New Political Instability in Latin America* (2007); and, with Scott Mainwaring, the award-winning *Democracies and Dictatorships in Latin America: Emergence, Survival, and Fall* (2013).

He is Editor-in-chief of the *Latin American Research Review*, the scholarly journal of the Latin American Studies Association (LASA), and co-editor with Kellogg Institute Director, Paolo Carozza, of the *Kellogg Series on Democracy and Development* at the University of Notre Dame Press.

This interview is divided into three main sections. The first section addresses current research and the challenges to judicial politics field of study. The second section targets Brazilian and Latin American politics focusing on the potential inter-branch crisis. Moreover, the last section summarizes practical suggestions for Brazilian researchers that want to publish in international journals, besides some inspiring reflections about the future of academic research in a global and tech-based society.

## SECTION 1 – CURRENT RESEARCH AND JUDICIAL POLITICS FIELD OF STUDY

**Karina Denari [KD].** *The first question I would like to address is based on your recent work. Two of them focus on the judicial instability promoted by constitutional reforms in Latin America (PÉREZ-LIÑÁN, CASTAGNOLA, 2016) and the strategic retirement of Justices based on political reasons (PÉREZ-LIÑÁN, ARANA ARAYA, 2017). Can you tell us a bit a little bit more about your current research focus and when you started your broader interest in the field of judicial politics and judicial behavior studies?*

**Aníbal Pérez-Liñán [APL]:** I was always interested in the executive branch, and that is why I conducted earlier work on impeachment. However, what happened about a decade ago was that my graduate students started to show interest in the judicial politics. There was a whole generation of students at the University of Pittsburgh, like Andrea Castagnola, in Argentina, or Juan Carlos Rodriguez-Raga, in Colombia, or Agustin Grijalva, in Ecuador, who expressed substantial interest in studying democratic institutions from the perspective of the judiciary. I came to this topic because of the excitement that my students were soaring with.

Initially, I was concerned about the relationship between the executive branch and the Supreme Court and the judiciary. That is why we developed this project with Andrea Castagnola on purges in Supreme Courts and institutional reforms that lead to the reorganization of the judiciary and political manipulation of the high courts. However, as I got more involved in this topic, I find it more and more interesting because it is a topic that is at the intersection of political science and law and sometimes international relations. So, it is a fascinating field.

**KD.** *Very related to this last thing you said about the intersectionality of this field of study, Nancy Maveety (2003, p. 4) says that the study of judicial behavior has been the vehicle by which the field of “public law” connects to the theoretical and methodological development in the discipline of political science. Public law, as we know, was present in the very beginning of political science and now returns as a trendy field of studies, with active courts deciding the political life of countries. How do you see the state*

*of the discipline right now and its future development? Do you think that judicial politics is a promising field of study for both scholars in political science and law, and as you also said international relations scholars?*

**APL:** Originally the study of law and politics was connected because scholars studied the State from the perspective of public law. So, their understanding of the State was this idea of the State as law, as created by law. Moreover, of course, this is very clear in Kelsen's view of the State, but it is also evident in the work of some very prominent political scientists who inherited this tradition or were trained in this tradition. For example, here at Notre Dame, Guillermo O'Donnell. If you read his work systematically over time, he shows a consistent concern about the State and the understanding of the State as informed by law.

At present, I think, we have changed our perspective, we do not reduce the State to the logic of the law anymore. We study the role of legal institutions, judiciary prosecutors or control bodies in the relationship with Congress and with electoral incentives of politicians and the politics of the executive branch. We instead see the legal process in the context of a State that is much more complex, that sometimes is regulated by law, or economic interests, sometimes it is regulated by informal institutions that transcend the formal characteristics of the law and the Constitution.

I think this opens a fantastic opportunity for both political scientists and legal scholars.

For political scientists, we have a growing opportunity to understand the law and its influence on society in more sophisticated ways. Also, for legal scholars, we have a growing opportunity to acquire an empirical view.

**KD.** *In the complex scenario you mentioned, what are the abilities and new tools that law and political science scholars should invest?*

**APL:** I think acquiring new methodological tools is very important for everybody in political science and law. Not necessarily because people will use them in the research all the time, but because by understanding these methodological tools they are able to read works in

other disciplines and have access to new sources of information and insights that otherwise would be lost.

So in this regard, I think that for legal scholars the development of more systematic training in data analysis is going to be crucial in the future so that they can establish a critical dialogue with the social sciences. For political scientists, I think that there is an expanding set of tools that are now developing in computer science for text analysis that will be increasingly useful to understand legal decisions and how legal decisions have an impact in the behavior of other actors in the society.

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## **SECTION 2 – BRAZILIAN, LATIN AMERICAN POLITICS, AND JUDICIAL BEHAVIOR**

**KD.** *In Latin America, we note the strengthening of judicial power in the past decades, especially after the third wave of constitutionalism. This pattern can be noted by the growth in the number and the prominence of judicial decisions defining public policies, validating affirmative actions and dealing with corruption scandals or even reframing electoral rules. Do you recognize such a trend in Latin American countries and how do you see judicial empowerment in a long run perspective for the region?*

**APL:** It seems that the courts play an increasingly important role as countries become more democratic because multiple issues represent conflicts either between the State and society or between different political parties. Moreover, when those conflicts cannot be solved directly through the political process, that is, when political parties are not able to absorb those demands from society and process them, political losers have two options: they can go to the streets or they can go to the judiciary. Also, many times, political actors have taken to the streets in Latin America, we have seen cycles of protests throughout the region. However, the more institutional option is to appeal to the judiciary to settle these conflicts on constitutional grounds.

So for that reason, in Latin America, but pretty much everywhere I think, we have seen a process of judicialization of political conflicts - both conflicts about public policy but also conflicts about the distribution of power among politicians and policy-making.

The judiciary sometimes, quite unwillingly, has been forced to be the referee of some of those conflicts, even if judges sometimes don't want to do it. In practice, what this means is that this judiciary is by default placing a position of power because they are forced to settle disputes that otherwise politicians would solve in the legislature or through negotiations among parties, social movements and officials. As the judiciary has gained power, in my opinion, this is a positive development for democracy because this means that the legal system has become a space to contest power.

There are two risks for the future in this regard. The first risk is that judges, like any other political actor, will abuse their power. So they will use their power in arbitrary ways, for partisan purposes or personal purposes or serve the interests of particular sectors of society which creates a problem for the legal theory because we want the judiciary that is independent. If the judiciary uses that independence improperly, rather than an independent judiciary, becomes a corporatist – protecting its interests.

The other peril, central to the history of Latin America – not so much in Brazil, but crucial in many other countries – is that politicians that anticipates this risk can undermine the independence of the judiciary in a pre-emptive move. They take over Supreme Courts and Constitutional Tribunals either by packing them – they may expand the number of justices in high courts – or sometimes they will dismantle the judiciary progressively by depriving it of resources and forcing the resignation of judges they do not trust. In that case, the judiciary loses independence and society loses space and opportunity to contest the powerful. That is all an adverse outcome for democracy.

**KD.** *In the case of academic freedom in schools and universities in Brazil, the Brazilian Supreme Court had recently performed a step back in hearing a case that was scheduled in a plenary session after intense pressure by the newly elected Executive and Congress (FOLHA DE SÃO PAULO, 2018). This strategic docket control is also followed by a declaration from the President of the Brazilian Supreme Court, Dias Toffoli, that it “is the moment for judicial bodies to withdraw from political questions and return to the classic Separation of Powers” (EL PAÍS, 2018). How do you predict that the progressive Brazilian Supreme Court will*

*behave in the face of the most conservative Congress since re-democratization? The recent back off in hearing a leading case after political pressure represents a threat to judicial independence or effectively prevent an inter-branch crisis in a polarized society?*

**APL:** The Supreme Courts are always in this peculiar position of enforcing constitutional rights even against the preferences of the majority, so they have this odd role in democracies. They are central leaders in the democratic system, and they have a central role in a democratic system, but they are not elected. They are guardians of a constitution that they need to interpret, at the same time quite often they need to interpret against the will of the majority. It is a tough position for many courts.

It seems that the Brazilian STF is now waiting very carefully, in a strategic perspective. We have a long debate in political science whether justices behave based on their policy preferences or their ideological preferences and if they behave strategically in their relationship with other branches. The prudence of the STF now suggests that they are behaving strategically. They want to avoid a confrontation with a newly elected government, and for as long as possible, to preserve their legitimacy in front of the majority who supported the government.

I would expect that now the government was just elected, but if the government becomes unpopular over time, the court will feel more confident in ruling against the government. So if the majority in Congress dissolves, then the Supreme Court will be more confident in ruling against the government.

**KD.** *How the Brazilian Congress impacts in these dynamics?*

**APL:** One of the issues why the STF has been so influential and so important is precise because Congress historically has been so fragmented. If there was a clear majority party in the Brazilian Congress, I think we would see an STF very prudent in most cases, as it is now.

By Latin American standards, the STF has been historically a very stable court. Its members have been quite stable over time which is

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unusual in Latin America, where members of the Supreme Court's quite often have been purged for political reasons.

**KD.** *Talking more specifically about Brazilian recent elections, how do you think that Jair Bolsonaro represents a very Brazilian phenomenon related to the rise of evangelical groups in Congress and the social reaction against Workers Party (PT) after Lava Jato, or how do you think Bolsonaro is connected to other authoritarian leaders in other democracies?*

**APL:** I think it is both. What is common to other countries is that many voters are dissatisfied with liberal democracy and they are willing to put the liberal democracy at risk to promote a change of some kind. This has happened for multiple reasons, including the economic crisis in Europe and Latin America. However, I also think this is part of the fact that societies have changed very rapidly over the past 50 years.

If we think about, for example, values about sexuality and gender roles and many other issues, our societies have changed very quickly and sometimes has been easier for parts of society to adapt to that change, but much harder for other parts of society. Similarly, concerning economic globalization, some segments of societies have significantly benefited from it, like us - and probably everybody reading this. However, for many other parts of society, they have been the losers in that process because of age, because of levels of education and training that the economic opportunities have contracted and not expanded.

In this sense, I think societies are pushing back against some of the changes that we have seen in the past 50 years that at some point were presented as inevitable, and they may be inevitable, but that is not useful information for somebody who is caught by those changes.

That is one part of this story. The other part of the story is that, in the past, perhaps many people felt that way and were outraged with the different social transformations. However, mainstream political elites and mainstream media were presented at discourse about these processes that were very nuanced, very complex and they emphasize how inevitable those prospects are to some extent, and how important some of those social changes are concerning transforming our



societies. People complained about those changes and were critical, but they did so in private because the public discourse was not very open to those criticisms.

However, now I think communication technology is such that politicians who say the most outrageous things are the ones who more naturally attract attention in social media. This attention is due either because people feel identified with what they say, is the kind of things that they always thought that they were never able to say, or either because they attract attention from people who feel offended at what they are saying.

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However, for whatever reason, they gain immediate attention, and so moderate politicians are having a tough time capturing the attention and imagination of the public as more radical politicians that criticize liberal discourses on liberal democracy are doing. The radical politicians have an advantage in the media space nowadays, we have seen this in the US, in Eastern Europe and we have seen this in Brazil.

However, other aspects I think are distinctively Brazilian — the fact that Lava Jato undermined the PT and PSDB, of course. And the fact that basically, PSDB made, in my view, a major strategic mistake in supporting impeachment in 2016. If PSDB had not supported the impeachment, the PT would have been very unpopular, and basically, they would have naturally won the next election.

All those factors, that are very characteristic of the Brazilian context, create an opportunity in which the person who is there to rip the benefits of this crisis was this politician who three years ago was a minor player in Congressman politics. Also, I am sure many people who voted for him will regret it soon. However, at this particular moment, he was the expression of dissatisfaction with the existing democratic system.

**KD.** *Is there a room for a critic of the PT behavior, insisting in Lula as a candidate or not supporting other left-wing parties?*

**APL:** I think PT is in a problematic situation now which is they have a very loyal following that is large enough, so that they will not give away, for the goal of capturing power, but that flow is not large enough



to form a majority. Also, people either voted for Bolsonaro or PT, but also, I think many people did not vote.

It is was a gamble in polarization, hoping that the division of society would work in your favor. However, for a candidate like Bolsonaro that worked. In a world of moderate politicians, Bolsonaro has no place because he is a minor player. The only way in which he can differentiate himself from the rest is being completely outrageous, and in a moment of crisis and in which people are angry, these politicians feed people's anger, and they exploit it.

### SECTION 3 – RESEARCH DIFFUSION AND THE FUTURE OF PUBLICATIONS

**KD.** *As an Editor-in-Chief of a prestigious Review, how academic research is impacted and disrupted by these new formats for diffusing academic works, mass media, and new interdisciplinary fields and perspectives on social sciences?*

**APL:** About the format, I think technology is crucial in the way that traditional academic formats are being redefined. The Latin American Research Review (LARR) which is a journal that has more than 50 years, one of the most traditional journals from Latin American studies, for example, is not published on paper anymore. The Latin American Studies Association (LASA) made the decision some years ago that publishing in paper form was unnecessary and therefore that we should publish the journal entirely online, in electronic format, and that the journal should be open access. In that sense, every student in every region of the world with interest in learning about Latin America could read the articles that the LARR publishes. So that was a great decision. The process to publish in the journal continues to be the same: it is a peer-reviewed journal, and the standards of quality and evaluation have not changed, but the impact of the journal is growing.

Concerning that, academic journals talk to a minimal audience, usually trained in the academic field, but the technology allows us now to disseminate the most important findings to broader audiences. So that is another important challenge for academic researchers worldwide and journals, in particular. In the LARR we also have created a

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blog in which authors publish shorter versions of the articles, connecting their findings with current debates in the news. Journalists and people interested in general in the topic can read the blog without the technical aspects and the jargon of the academic researchers and identify the main findings and connecting them with the current debates.

However, then there is the third challenge: once we have all that information available, how to attract readers and audiences to that material? In the past, people received the journal, the articles in print and they look through the pages of the journal to see if there was something that they wanted to read. Nowadays we need to reach people and say: “we have this wonderful article, you should read it!”. Also, that is why we have also developed much more presence in social networks, both on Twitter and Facebook, so that readers will identify the articles we published in the Journal and the shorter pieces that we publish in the blog.

**KD.** *If a Brazilian graduate student or a researcher at the beginning of their career would like to publish in an international journal, what would be the main advice that you would tell him/her to start strategically looking for a journal or maybe thinking about how to frame his/her research in an attractive perspective to an international audience.*

**APL:** I would recommend two things. The first one is academic writing is writing articles or books, and we should think about them as a literary genre. They have specific rules and certain unwritten rules that people who are familiar with them follow - even if they are not written anywhere. It is imperative to identify journals in which the people publish on the subjects we want to publish. Also, read them very carefully to understand how those articles are organized, how they are presented, what makes them successful in a way. That is what reviewers who want to see, first of all.

The other thing I would say, more regarding the substance, is that it is critical when we publish articles to be aware that articles should have a central idea. Moreover, the articles should be structured around the central idea, the central contribution. The central goal

of the article is first to support this idea with evidence, empirical or theoretical, to show that this idea is novel and to show that this idea contributes to current debates in the literature. That makes the article successful.

It is very common for many of us, and I tend to make this mistake as many people do, we have many ideas that we like, as if they were like “pets” we have, and we tend to put multiple ideas in one article, but we never develop those ideas in full. Also, so, that is very frustrating for reviewers because they never know exactly what the article is about, what is the most important idea to defend. Those articles usually fail.

**KD.** *And the last question is about the future of your research: do you already have the next steps planned?*

**APL:** About my future research, the topic I would like to cover is about compliance with Human Rights decisions in the Inter-American system. It seems to me that in times when we are observing a backlash against the discourse of human rights, and politicians are increasingly willing to challenge principles of human rights openly that we assumed that they were settled and accepted, the Inter-American Commission on Human Rights and the Inter-American Court are going to become more and more critical.

Unfortunately, we see some backlash against the Inter-American system and many states are attacking the system in different ways. So, I think it is going to be very important to understand under what conditions this system can be more effective and how we can work to strengthen it.