

Courts, Powers And Social Change: A Case Study On The Impacts Of Litigation Of Socioeconomic Rights In Brazil Beyond The Courtroom

Authors : Rafael Bezerra de Souza, José Ribas Vieira

Abstract : The judicial litigation on socio-economic rights (SERs), in a context of increasing centrality of the judiciary as an area of political debate for civil society actors, has assumed greater importance in the last two decades. This tendency to seek social change through the courts generated a long tradition of research on the role of legal institutions and of legal mobilization in the US and some European countries. However, little is known about these processes in Latin America, Asia and Africa. A significant portion of the Brazilian constitutional doctrine did not bother to investigate the phenomenon of constitutional judicial litigation of socio-economic rights, in a practical and empirical look, from the functioning of democratic institutions. The central issue of this study draws attention to the theoretical and analytic deficit of Brazilian constitutional doctrine: the lack of a holistic understanding of the effects and impact of judicial decisions. Consequently, for a proper understanding was analyzed if the trend of judicial litigation in Brazil - to ensure the fulfillment of its institutional mission to protect and ensure the effectiveness of socio-economic rights - has been accompanied by the establishment of institutional mechanisms that enable decision making and the implementation of SERs in complex cases involving structural and public policy. The lack of empirical studies in Law in order to verify this hypothesis justified the adoption of the case study method as an interdisciplinary methodological strategy between Law and Political Science, aiming to construct an explanation of the Raposa Serra do Sol Case and, in a complementary way, the process-tracing technique. Drawings of small-n type or case studies, when guided by theory, are more suitable to problems it is supposed to increase the potential of intensive analysis of causal processes. As a preliminary result, the Brazilian Supreme Court was not a sufficient agent to implement a relevant social change and to assure the protection of the social rights, because there were few measures that directly impacted the behavior of other institutional political actors and should, therefore, be considered another actor within a complex institutional arrangement.

Keywords : courts, case study, judicial litigation, social change

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