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### **High Courts and Social Media in Latin America**

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# High Courts and Social Media in Latin America

## Abstract

This article presents the first comparative evaluation of the social media presence of 17 Latin American high courts. We explore the intensity with which they use Twitter, Facebook, and YouTube, as well as the level of influence that each court has developed on these platforms. The resulting classification of courts shows how their performances differ: the most influential courts are not necessarily the most active; rather, they make a differentiated use of social media. The least influential courts show great dispersion around their respective levels of activity. Additionally, we present a preliminary evaluation of the relationship between the level of trust in the judiciaries and the courts' presence on social media. We see that courts with higher levels of distrust are moderately more active and tend to have less influence. Two motivations could explain the court behaviour in social media: the pursuit of strategic self-promotion, and an ideal of institutional transparency.

Keywords: constitutional courts, supreme courts, institutional legitimacy, social media, Latin America

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# High Courts and Social Media in Latin America

Mariana Llanos and Cordula Tibi Weber

## Article Outline

- 1 Introduction
- 2 Courts and Their Relationship with the Public
- 3 Latin American Courts in Social Networks: Intensity and Influence
- 4 The Role of Courts in Social Media
- 5 Conclusion

Bibliography

Annex

## 1 Introduction

The Paraguayan Supreme Court is usually perceived as an institution dominated by political interests and prone to corruption (Basabe-Serrano, 2015; Tibi Weber and Llanos, 2016). However, a recent initiative by this court has the potential to change its public image: Since November 2018, its plenary sessions have been broadcast live on YouTube. About once a week, the interested public has the chance to observe how the judges act and argue, and how they take decisions. This communication initiative of the Paraguayan court is not unique in the region. Over the past decade, Latin American constitutional and supreme courts have increasingly used social media platforms to present their institutions to the public and to promote

their work. The rise of social media has provided them with a useful and inexpensive tool to reach a broad audience. Some courts have reached a large number of followers with their social media accounts. For example, the official YouTube channel of the Brazilian Federal Supreme Court, which was the first among Latin American courts to begin broadcasting its activities through this platform, had accumulated nearly 41 million clicks and 363,000 subscribers by March 2021. Certain Latin American courts, such as the Argentine and the Mexican Supreme Courts as well as the Brazilian Federal Supreme Court, have been described as the most active in the world in terms of their relationship with the media in general and also as pioneers in the use of social media in particular.

To use social media with such intensity, courts need to make their work accessible to a broader audience. A recent volume by Davis and Taras (2017) analyses how courts relate to the public through the media and, to a lesser extent, through social media. Two general purposes are pointed to as explaining the new activism of the courts in public (Taras, 2017, p. 1): First, courts may be seeking to increase the public's knowledge about their work – in other words, their intention is primarily informative or educational. Second, courts may want to promote a positive image of themselves in order to mitigate the mistrust in the judiciary common in many countries. The latter lends itself to strategic self-promotion activities on social media. The aforementioned edited volume includes some Latin American courts (Argentina, Brazil, and Mexico) that are very active in public relations and describes their role with respect to the media as a “very Latin American type of democratic populism,” or: “hypertransparency” (Taras, 2017, p. 11). However, even today, single-case studies on the public relations of Latin American courts dominate; comparative studies on the use of social media by the courts in the region are nonexistent. Only a comparative and systematic analysis of the phenomenon will allow us to assess whether such social media activism by courts includes all of Latin America, or if it is instead the behaviour of a few exceptional courts that drives this perception. Such a regional comparison can also help us to better understand the motivations behind this new court behaviour. Within these pages, we present the first comparative assessment of the role of Latin American highest courts in social media. This is an exploratory analysis of a limited time period – namely, a one-year observation extending from November 2018 to November 2019. Despite the relatively short period under examination, we are able to detect some general patterns and interesting trends.

We focus on the highest courts with constitutional review powers from 17 Latin American countries, investigating the intensity with which these courts use social media and assessing the degree of their influence.<sup>1</sup> Our investigation focuses on the three most important platforms: Twitter, YouTube, and Facebook. We construct two indicators to quantify two dimensions of social media use: intensity and influence. By combining these dimensions, we can assess the

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1 The 17 countries defined as at least “partially free” in the 2018 Freedom House Index were included in this analysis: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, the Dominican Republic, and Uruguay.

importance of social media for each court and the effectiveness of its strategy in the use of these platforms. Despite the exploratory nature of this article, its results enable us to provide a preliminary classification of the higher courts regarding their role in social media. This classification shows that, although most of the courts are very active, their role in social networks is diverse. While there are very active and influential courts, there are also others that, despite the intensive use of these platforms, reach only a very small audience. In order to better understand the motivations behind the use of social media by the courts, we compare the two dimensions – intensity of use and influence – with current levels of distrust in the judiciaries. This helps us to ascertain whether a lack of public support of the institution could be a major driver of social media use by the courts.

In the next section, we discuss explanations from the judicial politics literature and include information available on the use of social media in particular Latin American cases. The third section introduces the analysis of the intensity and influence of court behaviour vis-à-vis social media and succinctly discusses the different types of content that courts publish in social media. In the fourth section, we combine these two indicators to better understand the role of each court. The last section presents the conclusions and some ideas for future research.

## **2 Courts and Their Relationship with the Public**

In their volume on court–press relations, Davis and Taras (2017, p. 303) conclude that the role of the judiciary in the political system depends largely on citizens’ understanding of the functions of the court and the decisions it takes. Thus, a close relationship between the media and the judiciary would be necessary to increase public understanding. However, little is known about such relationships. This lack of knowledge concerns not only court–press relations, but also other kinds of public relations of courts, such as those carried out through their institutional websites or social media accounts. In spite of this, some Latin American courts are known for their propensity to communicate with the public through these platforms.

The Brazilian Federal Supreme Court was the first Latin American court to turn to social media, when it opened a YouTube account in November 2005. There, it began broadcasting information about its tasks and work, the judicial system as a whole, and outstanding judicial decisions. Through this initiative, it consolidated a strategy of media relations that had already begun to evolve in the mid-1980s (Falcao and de Oliveira, 2013). Given its official website established as early as 1996 and its broadcasting of sessions (including every plenary session) over television and radio since the middle of the first decade of the 2000s, the Brazilian Federal Supreme Court has been regarded as the “most transparent high, constitutional court in the Americas” (Ingram, 2017, pp. 58), one which “has pursued a fairly aggressive public relations strategy using its own media operations to enhance its visibility, openness, and transparency” (ibid., p. 67).

Similarly, the Argentine Supreme Court began an extensive communication strategy a few years after its Brazilian counterpart, “with the explicit goal of improving the Supreme Court’s legitimacy and public image and fortifying its authority vis-à-vis other political actors” (Scribner, 2017, p. 14). This strategy was the reaction to a crisis of institutional legitimacy that had resulted from the court’s politicisation during President Menem’s governments in the 1990s and from its role in the severe socio-economic crisis of 2001. In this context, the Argentine Supreme Court adopted a series of measures to change its public image (Barrera, 2013; Ruibal, 2009). Some of these measures were implemented through the so-called “transparency by-laws,” which included, for example, the introduction of *amicus curiae* briefs and public hearings. Since 2006, the Judicial Information Center (Centro de Información Judicial, CIJ) has been responsible for providing information on judicial decisions to the general public and to civil society organisations (Scribner, 2017, p. 22). The CIJ runs all the social media accounts that present the work of the court.

Although these two well-known courts have shown an early and intensive use of social media, information is scarce on most other courts in the region and on the courts’ motivations for this behaviour. We argue that from a theoretical point of view the incentives to use social networks are high: courts may use them as vehicles to improve levels of public trust, to generate strategic support when their power is contested by the other branches of government, or simply to disseminate information about their work and decisions. Last but not least, using social media requires little financial investment and little personnel.

## 2.1 Legitimacy and Trust in the Judiciary

The initial impulse behind both transparency and self-promotion strategies by courts in social networks may result from a low level of institutional legitimacy or from the interest in maintaining a certain level of legitimacy. Thus, these initiatives would respond to the need to build, improve, or maintain public support, considered the most necessary element to build and maintain institutional legitimacy. Usually, a distinction is made between specific and diffuse support (Easton, 1975). The first refers to the approval of institutional performance in the short term, as a reaction to specific policies, while the second denotes a fundamental commitment to the institution or the will to support it “beyond mere satisfaction with the performance of the institution at the moment” (Gibson, 2012, p. 5).

Courts, as unelected institutions, have more difficulties generating such support (Wells, 2007). However, greater transparency tends to have a positive impact on the legitimacy of an institution (De Fine Licht, Naurin, Esaiasson and Gilljam, 2014, p. 127). Studies on the legitimacy of the US Supreme Court and lower courts (Benesh, 2006; Caldeira, 1986; Caldeira and Gibson, 1992; Gibson and Caldeira, 2009), as well as some studies on other national higher courts in developed democracies (Gibson, Caldeira and Baird, 1998), show that knowledge

about courts (how they operate and their tasks) increases their legitimacy (Caldeira and Gibson, 1992). It has also been revealed that less educated people show less confidence in judicial institutions (Benesh, 2006). Further, the theory of the positivity bias (Gibson and Caldeira 2009) proposes that by paying attention to a court, people not only gain more knowledge about it, but are at the same time exposed to “powerful symbols of judicial legitimacy,” such as the judges’ robes or rituals used in the courtroom (*ibid.*, 437). In the US context, these symbols increase the exposed population’s perception that courts are different from ordinary political institutions, thus enhancing the courts’ legitimacy. However, a study by Holtz-Bachas (2017) on the German Constitutional Court shows that if courts enjoy a high level of public trust, they do not have many incentives to increase transparency around their work (*ibid.*, p. 115), suggesting that the relation between trust and transparency initiatives needs further exploration.

There are few studies on the legitimacy of courts in new democracies. Gibson and Caldeira (2003) and Gibson (2016) test the applicability of their findings from the United States for courts in new democracies with case studies of public support for the South African Constitutional Court. Their results indicate that, in developing democracies, courts tend to be less able to mobilise their symbols to generate legitimacy. Working with a sample of ten Latin American countries, Salzman and Ramsey (2013) show that the existing connection between knowledge of the court and judicial legitimacy in developed democracies cannot be automatically transferred to the context of developing democracies: They argue that the public’s confidence in courts in developed democracies increases with higher levels of knowledge “because the courts in these countries largely perform as intended” (*ibid.* 76). By contrast, “individuals in Latin America with more political knowledge will recognize the inadequacies of their judiciaries, which will cause lower levels of confidence in that institution” (*ibid.*).<sup>2</sup>

Although existing studies on judicial legitimacy suggest that courts in both developed and developing countries find reasons to open themselves to the public, we assume that in the latter they will behave strategically: they will not only try to reach people with a higher educational level, but they will seek to transmit a positive image of their work as an institution. Whether they also seek to present their institution in ways that help dispel the widespread perception that judges are a distant elite group needs to be tested (Gargarella, 2015).

Courts with high and low levels of legitimacy may both have incentives to use social media, albeit with different purposes. When the starting point is low legitimacy and high distrust in the judiciary, the purpose can be self-promotion with the goal to improve a damaged public image. When the starting point is, instead, a higher level of legitimacy, courts may still have high incentive to use social media to maintain that level – for instance, by following an ideal of institutional transparency.

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2 With a cross-regional analysis, Aydın and Şekercioğlu (2016) confirm these findings.

## 2.2 Strategic Self-Promotion

According to the strategic approach, judges act in a complex institutional context that structures their relationships with other actors. In this interdependent context they often do not decide in accordance with their own sincere ideological preferences (Segal and Spaeth 1993) but rather pay attention to the preferences and likely reactions of other relevant actors (mainly, their colleagues, elected officials, and the public) (Epstein and Knight 1998). In principle, the courts are insulated from direct pressure from the public. However, public opinion is important in judicial decision-making for two reasons (Bricker 2016): First, judges lack the power to enforce their decisions, which means that gaining public support may increase their chances of obtaining compliance. Power holders may be more inclined to comply with the decisions of a court that enjoys a high degree of public support than with the decisions of a less popular one. Second, public support is the only source courts can use to protect themselves against governmental attacks. When courts have enough public support, political powers are more likely to refrain from interfering with the judiciary. A typical example is the Colombian Constitutional Court. Its practice of including civil society organisations in the decision-making process in important cases, along with a decision policy favouring the interests of the middle classes, led to strategic alliances with important support groups. With the help of these groups, the court was able to successfully defeat court-curbing as well as court-packing initiatives by President Uribe (2002–2010) (Landau 2015).

In his study on the Mexican Supreme Court's public relations, Staton (2010) shows that judges in developing democracies strategically decide what specific decisions and information about their work to publicise. The author observes "a tension between the goals of building transparency and legitimacy" (*ibid.*, p. 7): when the courts are not exposed to political interference and their independence is not contested by the elected branches, they can choose complete transparency regarding their decisions. On the contrary, courts that are limited by political powers may decide against full transparency in cases that reveal their lack of impartiality in salient political controversies and, consequently, question their legitimacy (*ibid.*).

If the elected branches of government question the judiciary's independence, courts may demonstrate strategic activism on social media – meaning, they are more likely to lean towards strategic self-promotion than to disseminate information with full transparency.

## 2.3 The Ideal of Transparency in Information

Two different motivations may underlie the extensive use of social networks to share information about judicial work. One is the aim to improve a court's reputation. Garoupa and Ginsburg (2015) argue that in the past, the internal audience (within the judiciary) was more important for judicial reputation. However, as a result of the increasing visibility of the law and importance of the judiciary at the global level (*ibid.*, p. 88), judges today are more aware of their reputation among external audiences. The authors regard the judicialisation of politics as

a factor that increases the demand for judicial accountability, which in turn requires an enhanced judicial reputation and incentivises institutional innovations that aim to improve this reputation (*ibid.*, p. 49).

A second explanation for the extensive use of social media by courts may be the result of a change of ideas at the court or in the judicial culture. Legal culture is a broad concept that entails the understanding of the interpretation of law not only by judicial actors, but by society as a whole. This perspective regards judges as “imaginative and creative agents” (Hilbink 2012, p. 615). The behaviour of judges is shaped by “the collective conceptions within their communicative community of what a good judge should do” (Gloppen 2004, p. 122). The arrival of new judges to the court or international exchanges between courts (Taras, 2017, p. 5) can renew concepts about the role of the institution and its judges. These changes may include, for example, the consideration of social networks as important tools for institutional transparency. The arrival of younger judges, socialised in the use of new technologies, can also facilitate this opening.

Courts following the ideal of transparency in their institutional work may mostly publish relevant information on cases, decisions, and functions of the court in general. This informative objective may, in some cases, be accompanied by an educational one. The educational purpose is not directly connected to an increase in transparency – although the informational and educational purposes feed each other – but rather to the goal of achieving a public who are informed about their rights and ways to claim them.

## **2.4 Intensity of the Use of Social Media and Level of Influence**

Existing theoretical perspectives and works conclude that in developing democracies the highest courts have numerous reasons to actively participate in social media. To discern what specific objectives each court is pursuing, a comprehensive study of the content of its publications on these platforms would be necessary. To evaluate the role of Latin American courts in social media, in these pages we first analyse the intensity with which they use social media and the degree of influence they achieve with their activism. Intensity of use refers to the propensity of a court to act on social networks, and influence refers to the attitude – attentive or indifferent – of its audiences. The issues are connected: incentives to get involved in social media will be greater if the audience is attentive, and the audience will be more attentive if the published content is interesting. Furthermore, if the audience grows, the potential of each account to attract more followers will also grow. However, there are various factors (contextual and structural) that may prevent intensity of use and influence from coming together.

Combining both dimensions, we envision four types of court behaviour: The first would be a very active and highly influential court, the second less active but also highly influential. This latter court would have a highly attentive audience but behave in a more reserved way in relation to its virtual audience than the first. These two virtual communication strategies may

be considered as very effective. The third type of court would be characterised by being very active, though less influential. In this case, the court's strategy on social media may be regarded as unsuccessful. Perhaps the public's interest in or knowledge about the court in general is very low, or the way information is presented does not spark the interest of its potential audience. The fourth type refers to a court that is not very active and does not have much influence. In this case, we do not expect the court to have a specific strategy for the use of social networks.

The dimensions of intensity of use and influence are quantitative approximations of the role of the courts in social media and, therefore, do not allow us to deeply explore the motives of this digital activism. Further, it is possible that the types of court behaviours predicted by crossing these dimensions do not manifest exactly in the ways described, or that they appear as continuums rather than as distinct types. Despite these limitations, we think that the two dimensions of a court's social media presence and the aforementioned types of court behaviour connected to the nature of their presence on social media offer us a starting point for the analysis of our observed data.

### **3 Latin American Courts in Social Networks: Intensity and Influence**

In this section, we operationalise the two dimensions – intensity of use and influence – to analyse the presence of 17 Latin American courts on social media. The analysis is concentrated on the three most important social media platforms: Twitter, as the most relevant platform for political discussions; YouTube, as the most relevant platform for the transmission of videos; and Facebook, as the most important social media network in Latin America. Recent data from Latinobarómetro Corporation revealed that Facebook is the most used social media platform: between 38 and 68 per cent of citizens use this platform in Latin American countries. YouTube users range between 18 and 48 per cent of the population, while Twitter users range only between 2 and 16 per cent of the population (Latinobarómetro Corporation, 2018).

Some of the accounts included in our analysis represent the entire judiciary but are directed by the Supreme Court: this is the case in Costa Rica, Honduras, Nicaragua, Panama, Paraguay, and Uruguay. The Argentine Supreme Court is represented on social media by the Centro de Información Judicial (CIJ) – the Judicial Information Centre, under the direction of the court. In cases where there is a Constitutional Court, this always has its own accounts on the social media platforms, as a logical consequence of its institutional separation from the judiciary. A table included in the Annex shows that most courts started using at least one of the three platforms around 2010 – an exception being the YouTube channel of the Brazilian Federal Supreme Court, which was already up and running in 2005. Three courts do not have a Facebook account: the Brazilian Federal Supreme Court and the Uruguayan Supreme Court as well as the Chilean Constitutional Court. Two Facebook accounts have been inactive – that is, without posts or publications – for years: those of the Argentine Supreme Court and the

Guatemalan Constitutional Court. The same applies to the Twitter account of the Nicaraguan Supreme Court.

To put this information into a global perspective, we compare it to the use of social media by some of the world's most renowned courts – in Germany, the United States, and the United Kingdom. Latin American courts are comparatively more present in such platforms. For example, the German Constitutional Court and the US Supreme Court have only Twitter accounts and are not present on the other two platforms. The German Constitutional Court started using Twitter very recently, in 2015, while most Latin American courts have been using all three platforms for a longer period. In addition, in many cases, the individual Latin American courts' accounts have more followers than the other three accounts. For example, the Twitter account of the Mexican Supreme Court has accumulated more than half a million followers, compared to the 183,000 followers of the US Supreme Court.

The analysis of Twitter data was possible through accessing its Application Programming Interfaces (API). We used R software and the *rtweet* package (Kearney, 2019) to collect data on the current number of followers as well as the maximum number of accessible tweets from each account.<sup>3</sup> For YouTube data, we used the information on the accounts from the platform and combined it with information from the company SocialBlade, which evaluates and compares the level of influence of YouTube users.<sup>4</sup> Since August 2019, access to Facebook's APIs has been highly restricted. For this reason, the analysis of Facebook data is much more limited than that of Twitter (Bruns, 2019). However, because of Facebook's widespread use, we wanted to include data from the platform in our analysis, so we decided to manually extract the necessary information from the respective Facebook accounts.

In the remainder of the section, we first present an evaluation of the intensity of the use of the three platforms by each court, and then the information we gathered on the influence of each court on each social network. Finally, we briefly discuss our observations vis-à-vis the content of the publications.

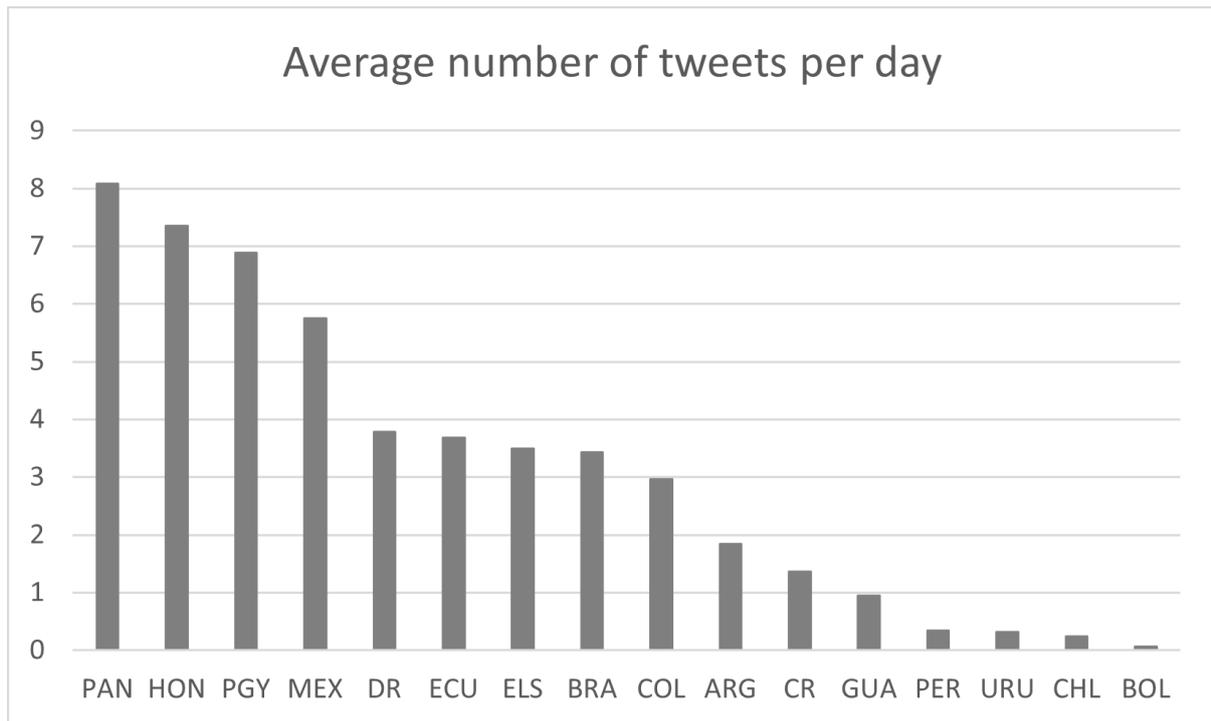
### 3.1 Intensity of Use

To compare the intensity with which the various courts use Twitter, we used the average number of tweets per day. Figure 1 shows that most of the accounts had on average more than one tweet per day. Some courts stand out for being very active: Panama, Honduras, Paraguay, and Mexico.

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3 Twitter APIs allows for the download of the most recent 3,200 tweets of any account.

4 <<https://socialblade.com/>>.

**Figure 1. Intensity of Twitter Use**

*Source:* Authors' own compilation.

*Note:* Authors' own elaboration; daily average calculated for the total number of tweets for the period from 21 November 2018 to 20 November 2019. The account of the Nicaraguan Judiciary is inactive.

To assess the intensity of the use of YouTube by the courts, we collected the total number of videos uploaded to the platform. Table 1 shows that there is a group of very active courts that uploaded more than one thousand videos, led by Brazil. In general, most of the courts were relatively active on this platform.

**Table 1. Intensity of YouTube Use**

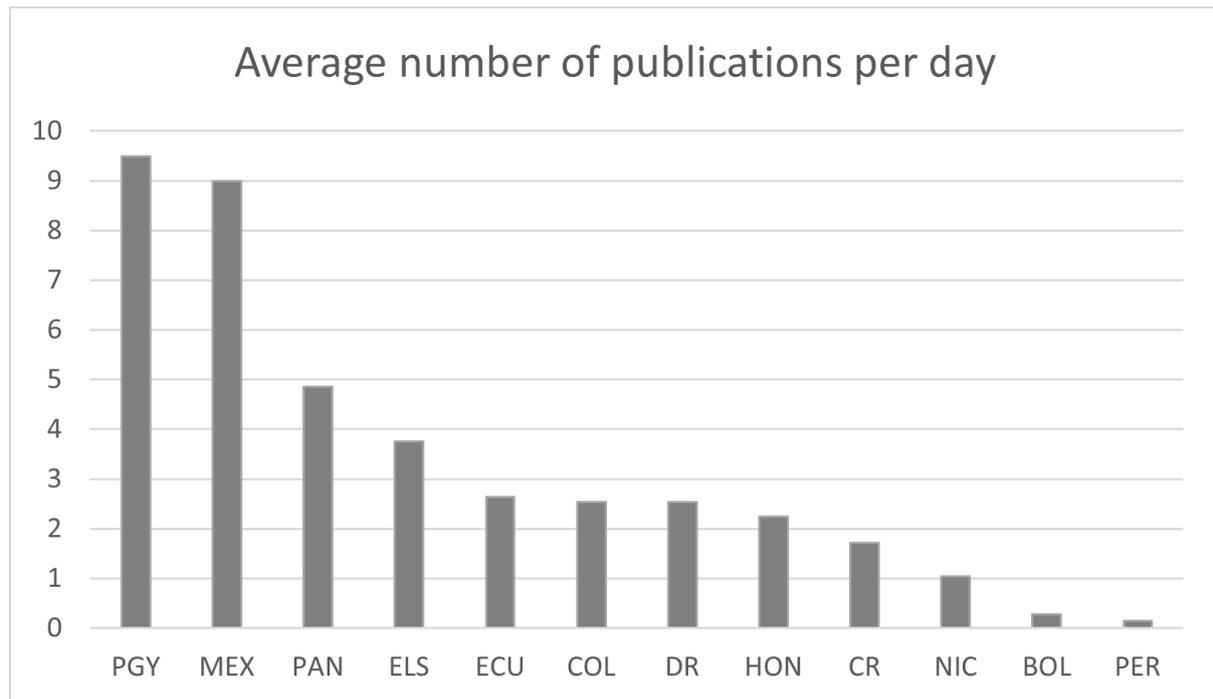
Uploaded videos	
>5,000	Brazil
>1,000	Argentina, Chile, El Salvador, Guatemala, Paraguay
>500	Peru
>100	Colombia, Costa Rica, Dominican Republic, Honduras, Panama
<100	Bolivia, Ecuador, Mexico, Nicaragua, Uruguay

*Source:* Authors' own elaboration based on [www.socialblade.com](http://www.socialblade.com) and the respective YouTube accounts.

*Note:* Number of videos uploaded until 22 November 2019.

To analyse the intensity of the use of Facebook, we manually counted the posts in the respective accounts for four weeks, between 30 October and 26 November 2019. A total of 1,127 posts were collected for this period. Figure 2 shows the average number of posts per day.

Similar to the use of Twitter, the highest intensity of use corresponds to the courts of Paraguay, Mexico, and Panama.

**Figure 2. Intensity of Facebook Use**

Source: Authors' own compilation.

Note: Five countries with inactive accounts or no account on Facebook.

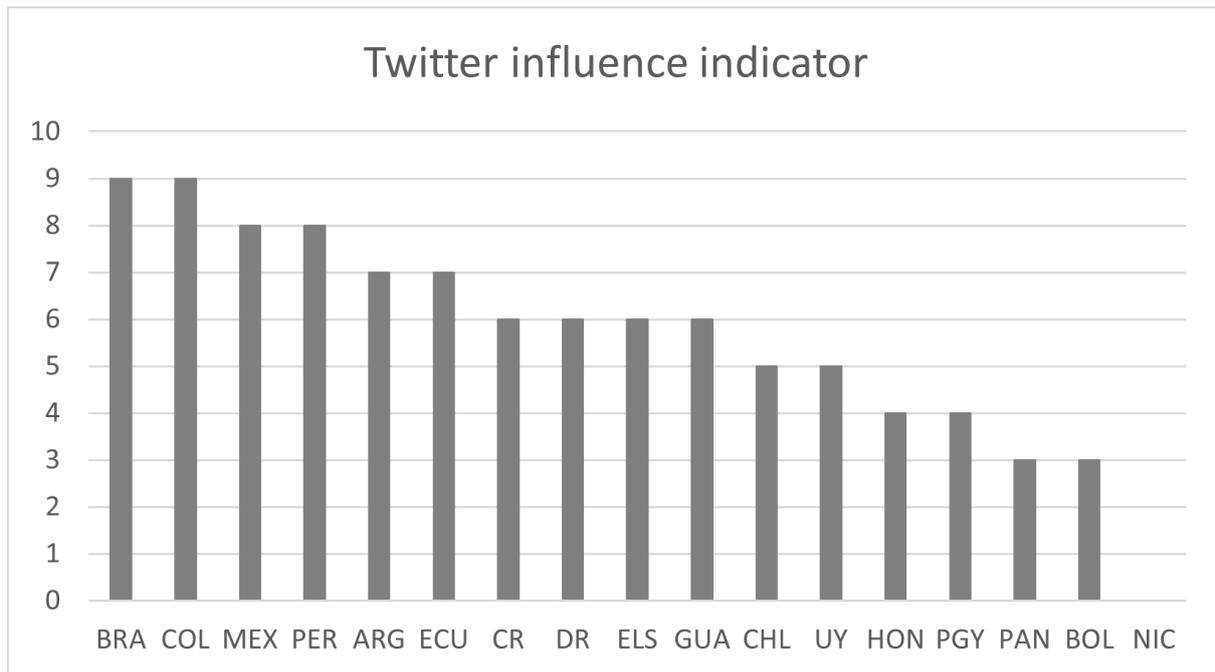
### 3.2 Influence in Social Media

Now we turn to the measure of influence in social media. Due to the broader access to Twitter data, we were able to create a Twitter influence indicator that contains three elements: the number of followers as a percentage of the country's total population (World Bank, 2018), the number of likes per tweet, and the number of retweets per tweet. For each item, the performance of each account was rated as high, medium, or low.<sup>5</sup> By doing so, we obtained a more complete image of the courts' influence on this social media platform (Figure 3 below).

Figure 3 shows that a number of courts had a considerable level of influence on Twitter during the observed time period: those of Brazil, Colombia, Mexico, Peru, Argentina, and Ecuador. These are followed by some courts with medium influence: those of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Chile, Uruguay, Honduras, and Paraguay. Finally, the courts with little influence on Twitter are those of Panama, Bolivia, Nicaragua. When contrasting the data of influence with that of intensity of use (Figure 1), we see that some of the courts with the lowest values in the indicator of influence were the most active: Panama, Honduras, and Paraguay.

<sup>5</sup> Detailed information on the creation of this indicator can be found in the Annex.

**Figure 3. Comparison of the Twitter Influence Indicator Values**



Source: Authors’ own compilation.

Note: Nicaragua has a value of 0, because its account was inactive (without publications) during the observation period.

**Table 2. Influence on YouTube<sup>6</sup>**

Clicks (Influence)	
42,168,246	Brazil
>1,000,000	Argentina
>100,000	Chile, Colombia, Costa Rica, Nicaragua, Paraguay, Peru
>50,000	Dominican Republic, El Salvador, Guatemala, Mexico
>10,000	Bolivia, Honduras, Panama
>1,000	Ecuador, Uruguay

Source: www.socialblade.com and accounts on YouTube.

Note: Clicks on the videos uploaded until 22 November 2019.

To assess the influence of courts on YouTube, we used the number of clicks for each account. Each YouTube account records the number of followers and indicates clicks or views of the videos. Using followers as an indicator of influence is less convincing than using video clicks,

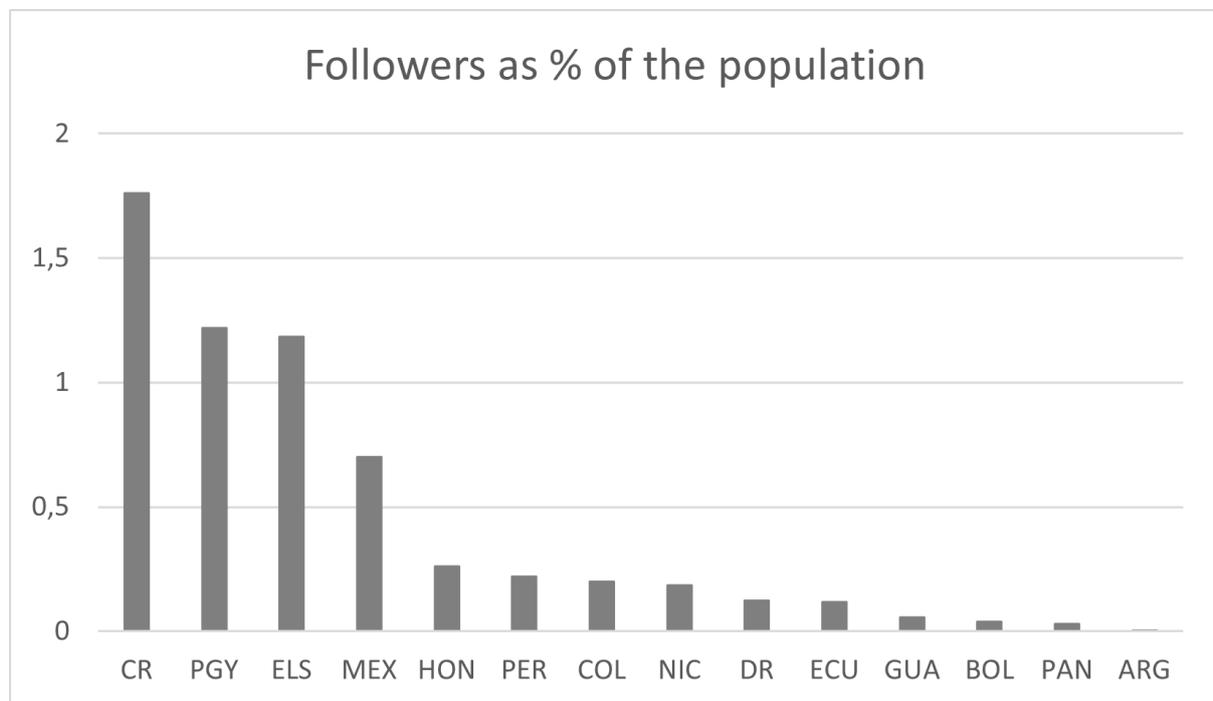
6 For the comparison of YouTube accounts, the special case of the Supreme Court of Mexico must be considered. Until recently, the Supreme Court was represented by the very influential account of the whole judiciary, “Justicia TV,” which boasted more than 1,940,000 clicks (November 2019). However, since 15 February 2019, this court has had its own YouTube channel and has not accumulated a large number of views since then (71,000 as of November 2019). As we are concerned with the state of intensity and influence on social media platforms, we used the data from the new account of the Mexican Supreme Court. The Twitter and Facebook accounts also belong solely to the Mexican Supreme Court.

because being a follower does not automatically imply that these people are attentive to the content of the account. For this reason, we decided to rely on clicks (Table 2 above).<sup>7</sup>

The table shows that the Brazilian Federal Supreme Court stands out for both its intensity of use and its influence on this social media platform. In general, though, a medium to high level of influence is observed for many courts in the region.

Finally, due to the restrictions of access to Facebook data, it is difficult to analyse the accounts on this social media platform in more detail – for example, the number of likes for each publication. Hence, we used the percentage of followers as percentage of the total population as an indicator for the influence of a court on that platform (Figure 4).

**Figure 4. Influence on Facebook**



Source: Authors' own compilation.

The figure shows a comparatively high degree of influence of the courts of Costa Rica, Paraguay, El Salvador, and Mexico.

### 3.3 The Content of Social Media Publications by Courts

While researching to prepare this article, we delineated three types of publications, each related to one of the incentives that courts have to use social media, as presented in Section 2. First, there were publications whose content was informational – that is, they simply served to

<sup>7</sup> Although, there is also a caveat: users can delete their own videos, which reduces the number of clicks that we can see. But we noticed that only the courts with a high number of videos – and clicks – on their accounts have deleted some of their videos. Consequently, that does not alter the obtained results.

inform the public about judicial decisions or court events related to a specific case, such as a public hearing. One example is the following tweet by the Chilean Constitutional Tribunal: “#AudienciaPúblicaTC. Norma del Código Sanitario que prohíbe instalación de consultas médicas o de tecnólogos médicos en establecimientos de óptica: lineamientos y orden de exposiciones para el jueves 4 de julio: <https://t.co/HrAK5Fs9to>” (“Norm of the Health Code that prohibits the installation of medical consultations or medical technologists in establishments of opticianry: guidelines and order of exhibitions for Thursday, July 4: [...]”; 3 July 2019)

Second, there were publications whose content was designed to educate audiences about their rights and how to use them, or that explained the functions and work of the court. The Mexican Supreme Court, for instance, has a video programme on YouTube with the title “Ya lo dijo la Corte” (“The Court has spoken”). This programme explains basic rights and court decisions in simple language. Another example from the same court is the following tweet: “Conoce el origen de las palabras en latín que se usan en los textos jurídicos: Hoy en #DeLaRaízAlDerecho: Jurisperito” (“Get to know the origin of the Latin words used in legal texts: Today in #DeLaRaízAlDerecho: Jurisperito”; 11 November 2019)

Third, there were publications with self-promotional content that presented the court and its activities in a positive way. These publications might aim to improve a court’s public image; for instance, we found information about judges participating in social activities with children or with poor people. In our view, the analysis of the different types of publications can indicate what kind of problem a court is trying to deal with through its digital activism. If a court publishes more informational or educational material, it is trying to counter public ignorance regarding its institution and its tasks. If a court is more dedicated to creating a positive image, it is probably facing problems around its reputation. Although this article does not delve into the content, the first steps towards understanding court behaviour in social media are taken in the next section, where the role of each court vis-à-vis these media is classified.

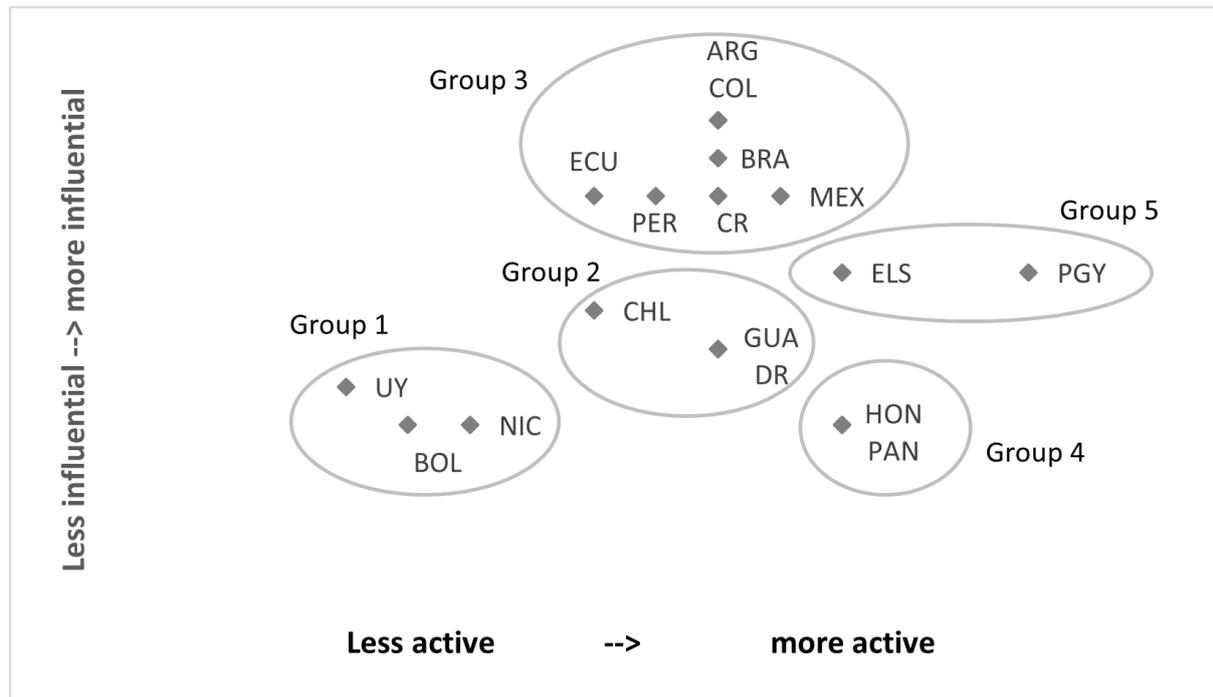
#### 4 The Role of Courts in Social Media

In this section, we combine the results from the analyses of the intensity of use of the three social media platforms with their influence on these, as explored in the previous section. To achieve this, we created two general indicators that gather the information presented above for each dimension.<sup>8</sup> Technically, each indicator can take a value between 0 and 3. Figure 5 shows the combination of both, which allows us to classify the courts into five groups, according to the role they have played in these platforms. By doing so, we are able to better evaluate the importance of social media for each court and the effectiveness of their social media strategies.

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8 Detailed information on the creation of these indicators can be found in the Annex.

**Figure 5. Intensity of Use and Influence of Latin American Courts in Social Media from a Comparative Perspective**



Source: Authors' own elaboration.

For the analysis, we refer to the types of court behaviour in relation to social media as developed in Section 2.4: 1) a very active and highly influential court, 2) a less active but highly influential court, 3) a very active but less influential court, and 4) a court that is not very active and that has a low level of influence. Figure 5 shows several groupings of courts, one of which demonstrates low-intensity social media use and low levels of influence. This group includes the courts of Bolivia, Nicaragua, and Uruguay. Since these courts do not dedicate much effort to the maintenance of their accounts, they do not seem to have developed specific strategies for the use of social media, nor do they have a great degree of influence in those platforms. A second grouping, of moderately active and moderately influential courts, is comprised of the courts of Chile, Guatemala, and the Dominican Republic. These courts show more interest than the previous ones in using social media and also display some ability to gain followers. The group does not fit well into the expected types, but it seems that the courts in this group have begun to develop a certain strategy in their use of these media.

Third, there is a larger group made up of moderately active and moderately to highly influential courts: those of Argentina, Brazil, Colombia, Costa Rica, Ecuador, Mexico, and Peru. This group is located between our types 1 and 2 – that is, these courts have developed a successful social media strategy: their efforts have resulted in a larger and more attentive audience.

Fourth, the figure indicates two courts that are very active but have low levels of influence: those of Honduras and Panama. Fifth, there are two very active courts with medium influence,

those of El Salvador and Paraguay. These two groups, which correspond to the third type envisaged, include courts highly motivated to use social networks but whose communication strategies have not proven effective.

The indicators of intensity and influence show differences between the courts of the region, which allows us to challenge the idea of a single form of activism of the Latin American courts in social media: the expressions of hyper-transparency or media populism that the literature associates with the cases in the region are in need of nuance. In fact, while the most cited courts are the most influential, they are not the most active. They make a differentiated use of social media, knowing that some platforms allow them to communicate more successfully with their audiences than others – such as the Brazilian Federal Supreme Court with YouTube. These most cited courts interact with the public in a strategic way (Staton, 2010), for instance, by focusing on certain salient cases and by carefully evaluating the effect that the shared information might have on their audience and, consequently, on their institutional legitimacy.

It is also worth bearing in mind that for these influential courts, using social networks is just one way to go public. To better understand their strategies, a holistic perspective should be used that includes other participation and transparency mechanisms used by courts, such as, for instance, public hearings that allow for the participation of civil society organisations or other stakeholders in salient cases. Another important observation emerges from Figure 5 when observing the courts with low levels of influence: The non-influential courts are not placed together but are distributed among groups 1 and 4, displaying very different levels of activity. Except for the Uruguayan Supreme Court, these courts face reputational problems. As these cases indicate, the relationship between the reputation of courts, their composition, and the use of social media needs to be better explored.

#### 4.1 Social Media and Trust in the Judiciary

A situation of low institutional legitimacy or the intention to maintain a certain acquired level of legitimacy have been mentioned as possible reasons for the extensive use of social media. To investigate these reasons, we decided to explore whether there is any relationship between the level of trust in the judiciaries of the region and the activism of the courts in social media. As a starting point, the current level of public confidence in Latin American courts is considered. There is no specific information on levels of trust in the highest courts; consequently, we understand the level of trust in the judiciary in general as a tentative approximation (Latino-barómetro Corporation, 2018).<sup>9</sup> Of course, trust is not equivalent to institutional legitimacy (Driscoll and Nelson, 2018); rather, it is a short-term and specific measure of support. In any case, this measure serves to capture the level of support for the judiciary at the present time. In most Latin American countries, confidence in the judiciary is very low: approximately 70

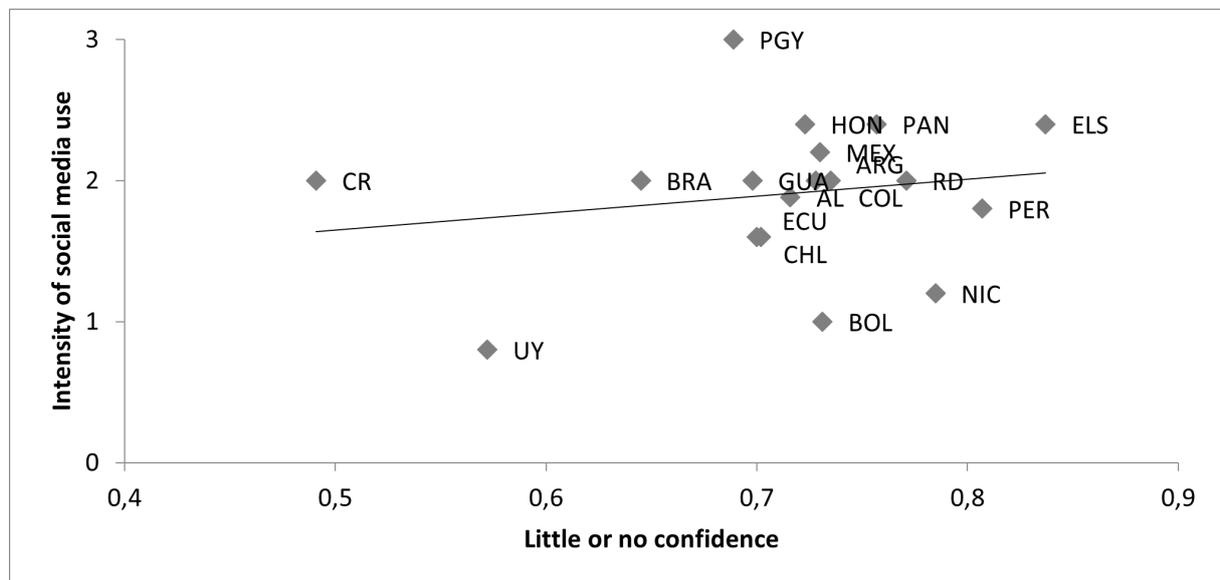
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9 The survey distinguishes between four options: a lot of confidence; some confidence; little confidence; no confidence.

per cent of respondents have “little confidence” or “no confidence” in the institution in their respective countries. The judiciary in Costa Rica enjoys the highest level of confidence in the region, with 49 per cent of interviewees responding they had “a lot of confidence” or “some confidence.” There are extremely low levels of confidence in the high courts of El Salvador and Peru, with more than 80 per cent reporting having “little or no confidence.”

Although mistrust is widespread, there is some variation between the courts; therefore, we considered the relationship between trust in the judiciary and intensity of use of social media worth exploring. We assumed that at a higher level of mistrust, the incentives for the courts to open more to the public would also be high. In Figure 6, the x-axis indicates confidence – higher values indicate higher levels of mistrust – and the y-axis represents the intensity levels as calculated above.

**Figure 6. Mistrust in the Judiciary in Latin America and Intensity of the Use of Social Media**



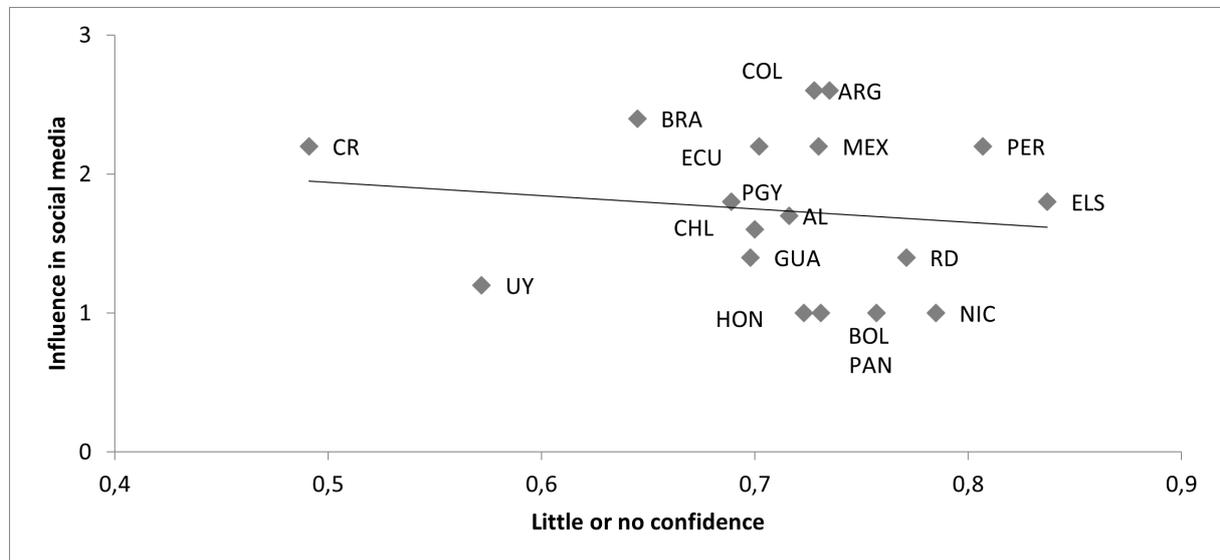
*Source:* Data on trust in the judiciary comes from Latinobarómetro Corporation (2018); data on the intensity of the use of social networks: authors’ own compilation.

The trend line shows a slight inclination in the sense of a positive association between mistrust and intensity. In other words, for the sample of 17 countries in the chosen period, we observe more activity by the courts that we assume would be more concerned with their legitimacy. In some ways, this contradicts our initial expectation that all courts have similar incentives to be active on social media. However, the tendency is not very strong, suggesting that this point should be explored more carefully in the future.

Further, it can be assumed that courts that enjoy greater legitimacy have a greater influence on social media than those with less legitimacy, because they are better known or because their work is more relevant for the public. Figure 7 below explores the relationship between the two

factors – the x-axis again indicates levels of confidence, while the y-axis shows the data of our indicator of influence on social media.

**Figure 7. Mistrust in the Judiciary in Latin America and Influence in Social Networks**



*Source:* Data on trust in the judiciary comes from Latinobarómetro Corporation (2018); data on influence on social media: authors' own compilation.

The trend line indicates a slight decrease that confirms the assumption presented here: In our sample, courts that enjoy a higher degree of institutional legitimacy tend to have a greater influence on social media. This means that social media mirror in some way the status of courts in terms of public opinion.

#### 4.2 A High-Intensity User: The Case of the Paraguayan Supreme Court

Although lack of trust in the judiciary is an important motivation for the use of social media by courts, this is not the only possible reason, as explained in Section 2. The example of the Paraguayan Supreme Court illustrates which factors those may be. Paraguay stands out in the region for its low level of judicial reputation – the perception of corruption of judges and magistrates is over 60 per cent, franking just above Ecuador and the Dominican Republic (Corporación Latinobarómetro, 2018).

There is a link between the negative image of the Paraguayan Supreme Court and its intensive use of social media: our analysis in Section 3 shows that this court stands out for its comparatively high number of publications and posts on Twitter, Facebook, and YouTube, even for live plenary sessions broadcast. The court's level of influence in these social media networks is not the highest within our sample, but it is considerable. The social media behaviour of the Paraguayan Supreme Court may be a reaction to a flagging judicial reputation, but other factors may also play a role. In fact, the Paraguayan case shows that both the pursuit of public support through strategic self-promotion and the ideal of transparency in information

could help explain the court's activism on social media. On the one hand, the court needs the support of the public to gain independence from political power. Since the "pulverization of the Supreme Court" in 2003, when six judges of the court were removed by impeachment or resigned in the face of such a trial, it has been perceived by the public as subordinate to the particular interests of influential political groups (Llanos, et al., 2016). In this sense, social media are a means, among others, to generate support that strengthens the court's position in relation to the elected branches.

On the other hand, apart from arguments that support a behaviour of strategic self-promotion by the court, we observed an ideational change that has taken place within the Supreme Court. Shortly after their appointment in October 2018, new judges Manuel Ramírez and Eugenio Jiménez promoted the live broadcast of plenary sessions on "Tv Justicia," the court's YouTube channel,<sup>10</sup> which began transmission on 20 November 2018.<sup>11</sup> A conflict between longer-serving judges and the newly appointed ones indicates the relevance of ideational factors at the court: In 2019, Ramírez and Jiménez also advocated for the online transmission of the sessions of the three individual chambers of the court. Judge Bareiro, a member of the court since 2010, acted against these initiatives through a complaint of unconstitutionality, although she later withdrew it.<sup>12</sup> The disagreement between new and old judges about the transparency of the Paraguayan Supreme Court in the sessions of the individual chambers shows that these ideational factors are relevant with regard to courts' engagement with social media and that these deserve a more in-depth analysis. In summary, the brief example of the Paraguayan Supreme Court serves to illustrate that both types of incentive – strategic and ideational – are important to understanding the social media behaviour of the highest courts.

## 5 Conclusion

Several Latin American courts are very active on social networks, even when compared to some of the most recognised courts in the world. The study presented in these pages is just the starting point of a field with great potential for future research. With our classification of courts based on the indicators of intensity of their presence and their influence in social media, we have shown that some courts' use of such media is highly effective, while others invest a lot of effort but are less effective or show a much lower level of activism with a lower level of influence. These observations allow us to conclude that there are differences in the behaviour of the courts in the region. Although this is an exploratory study, the analysis indicates the importance of the level of trust in the judiciary as a driver of behaviour on social media. It also

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10 Marcia Ferreira (22 October 2018).

11 Sesiones son públicas (26 November 2018).

12 Bareiro de Mónica desiste de inconstitucionalidad (23 July 2019). Since October 2019, several sessions of the Constitutional Chamber and the Civil and Commercial Chamber have been transmitted via Tv Justicia and YouTube.

shows the limitations of some court strategies in the use of social media: not all courts that use them with high levels of intensity obtain the influence they seek.

In the future, we need to explore more deeply the content of the publications. As mentioned, the courts make three types of publications on social media: informational, educational, and self-promotional. Including analysis of this content could help us to better understand the motives behind a given court's activities on social media. For instance, in the initial months of the COVID-19 prevention measures, many courts published almost daily photos of judges or judicial staff working with protective masks or via videoconference – that is, showing that their institutions continue to serve citizens despite the crisis. This could be interpreted as self-promotional behaviour.

Future research should also explore the audiences that courts are trying to reach through social media and the consequences of courts' extensive use of such. Regarding the latter, some authors mention possible challenges resulting from a high level of transparency. One of the most visible results is from a study of televised sessions: In the cases of the Brazilian Federal Supreme Court and the Mexican Supreme Court, collegiality suffered in televised sessions compared to non-televised sessions (Ingram, 2017, p. 71; Pou-Giménez, 2017). In front of the public, it seems to be more difficult for the judges to leave their starting positions. Future investigations may allow us to delve into the effects of the new information policies of the Latin American courts.

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## Annex

Table 1. Social Media Accounts of Latin American Constitutional and Supreme Courts

Country	Court	Account name	Tag	No. of followers	Date of creation
Argentina	Corte Suprema de Justicia de la Nación de Argentina	Facebook	@csjn.arg*	1,938	21.06.2018
		Twitter	@cijudicial	79,034	28.07.2009
		YouTube	Centro de Información Judicial	18,700	17.01.2011
Bolivia	Tribunal Constitucional Plurinacional de Bolivia	Facebook	Tribunal Constitucional Plurinacional de Bolivia	11,812	02.05.2018
		Twitter	@TCP_bolivia	334	21.08.2019
		YouTube	Tribunal Constitucional Plurinacional de Bolivia	499	03.11.2015
Brazil	Supremo Tribunal Federal	Facebook	-	-	-
		Twitter	@STF_oficial	2,115,172	23.08.2009
		YouTube	STF	338,000	16.11.2005
Chile	Tribunal Constitucional	Facebook	-	-	-
		Twitter	@TRIBCONST_CHILE	14,429	11.09.2014
		YouTube	Tribunal Constitucional de Chile <sup>13</sup>	-	15.06.2010
Colombia	Corte Constitucional	Facebook	@corteconstitucionaldecolombia	119,810	11.02.2011
		Twitter	@CCConstitucional	444,352	02.06.2010
		YouTube	Corte Constitucional	8,500	30.05.2012
Costa Rica	Corte Suprema de Justicia	Facebook	@PoderJudicialCR	101,026	05.08.2011
		Twitter	@PoderJudicialCR	47,036	05.08.2011
		YouTube	Canal Judicial Costa Rica	2,140	15.11.2010
Dominican Republic	Tribunal Constitucional	Facebook	@TCDOMINICANO	13,407	03.02.2012
		Twitter	@TribunalConstRD	75,574	29.11.2011
		YouTube	Tribunal Constitucional	1,700	19.02.2012
Ecuador	Corte Constitucional del Ecuador	Facebook	Corte Constitucional del Ecuador	29,703	19.01.2015
		Twitter	@CorteConstEcu	78,866	09.11.2010
		YouTube	Corte Constitucional del Ecuador	948	10.02.2010
El Salvador	Corte Suprema de Justicia	Facebook	@CorteSupremaJusticiaSv	84,863	19.05.2010
		Twitter	@CorteSupremaSV	158,987	09.12.2010
		YouTube	CorteSupremaSV	822	07.11.2013
Guatemala	Corte de Constitucionalidad	Facebook	Corte de Constitucionalidad de Guatemala*	10,362	31.07.2011
		Twitter	@CC_Guatemala	56,620	04.10.2016
		YouTube	Corte de Constitucionalidad de Guatemala	942	26.11.2016
Honduras	Corte Suprema de Justicia	Facebook	@PJdeHonduras	29,805	13.02.2013
		Twitter	@PJdeHonduras	29,687	13.02.2013
		YouTube	PJ deHonduras	352	09.05.2013
Mexico	Suprema Corte de Justicia de la Nación	Facebook	@SCJNMexico	992,058	17.06.2016
		Twitter	@SCJN	595,191	06.10.2009
		YouTube	Suprema Corte de Justicia de la Nación	18,400	15.02.2019
Nicaragua	Corte Suprema de Justicia	Facebook	Complejo Judicial Central Managua	13,643	01.02.2013
		Twitter	@CSJni	932	29.06.2012
		YouTube	Complejo Judicial Central Managua	831	30.09.2010
Panama	Corte Suprema de Justicia	Facebook	@OJudicialPanama	2,073	23.10.2018
		Twitter	@OJudicialPanama	17,029	19.04.2011
		YouTube	OJudicialPanama	356	25.08.2016
Paraguay	Corte Suprema de Justicia	Facebook	@PoderJudicialPY	96,281	30.09.2011
		Twitter	@PoderJudicialPY	61,461	29.07.2009
		YouTube	Tv Justicia Paraguay	2,496	08.01.2016
Peru	Tribunal Constitucional del Peru	Facebook	@tribunalconstitucionaldelperu	98,991	05.07.2011
		Twitter	@TC_Peru	249,620	21.03.2011

13 The account is set as private: consequently, it does not indicate the number of followers.

Country	Court	Account name	Tag	No. of followers	Date of creation
		YouTube	Tribunal Constitucional del Peru	7,660	10.07.2015
Uruguay	Suprema Corte de Justicia	Facebook	-	-	-
		Twitter	@PJudicialUY	7,917	26.02.2016
		YouTube	Poder Judicial UY	232	10.11.2015
		Facebook	-		
Germany	Bundesverfassungsgericht	Twitter	@BVerfG	37,107	08.06.2015
		YouTube	-		
		Facebook	-		
United Kingdom	Supreme Court	Twitter	@UKSupremeCourt	266,301	03.10.2011
		YouTube	UKSupremeCourt	12,700	23.11.2012
		Facebook	-		
United States	Supreme Court	Twitter	@USSupremeCourt	183,955	05.12.2008
		YouTube	-		
		Facebook	-		

Source: [www.socialblade.com](http://www.socialblade.com) and Facebook pages, 4 June 2020.

Note: \* account inactive (no posts).

### Construction of the Twitter Influence Indicator

The elements of the indicator and thresholds for classifications are as follows:

- 1) Followers of the account as a percentage of the country's total population (World Bank, 2018)

thresholds: high  $\geq 0.6\%$  > medium  $\geq 0.3\%$  > low

- 2) Number of likes per tweet

thresholds: high  $\geq 10$  > medium  $\geq 4$  > low

- 3) Number of retweets per tweet

thresholds: high  $\geq 10$  > medium  $\geq 4$  > low

For each element, the following values are assigned: high = 3, medium = 2, low = 1.

The thresholds were constructed inductively considering the observed distribution of values among the Latin American courts. They also reflect the comparison with the performance of the Twitter accounts of other courts (Germany, United Kingdom, United States).

### Construction of the Indicator of Intensity of the Use of Social Media

This indicator was constructed based on the three elements considered to compare the intensity of the use of the three social media platforms:

- 1) Average number of tweets per day over a period of one year (21 November 2018 to 20 November 2019)

Thresholds: high  $\geq 4$  > medium  $\geq 1$  > low

- 2) Number of videos uploaded on YouTube (until 22 November 2019)

Thresholds: high  $\geq 500$  > medium  $\geq 100$  > low

- 3) Average number of posts on Facebook over a four-week period (30 October to 26 November 2019)

Thresholds: high  $\geq 4$  > medium  $\geq 1$  > low

These limits also reflect the observed distribution of values. For each item, the following values are assigned: high = 3, medium = 2, low = 1. If no activity has been registered on the account (as in the cases of the Facebook accounts of the Argentinean and Guatemalan high courts), the court is assigned a "0" for this platform. For the calculation of the indicator of social media activism, the following weighting was used: both of our indicators for Twitter and YouTube correspond to 40 per cent, while our Facebook indicator was allotted 20 per cent due to its limited explanatory power.

### **Construction of the Indicator of Influence on Social Networks**

To construct this indicator, first, the Twitter indicator was adapted: values 9, 8, and 7 received the value 3; values 6, 5, and 4 received value 2, and values 3, 2, and 1 received value 1. Then, YouTube and Facebook clicks were used as measures of influence on these platforms. YouTube influence was classified as high (value = 3), when the account accumulated 500,000 or more clicks, medium (value = 2) for clicks between 100,000 and 499,999, and low (value = 1) for fewer than 100,000 clicks. To measure the influence of the courts on Facebook, we used the number of followers on the platform as a percentage of the country's population (World Bank, 2018) with the following thresholds: high  $\geq 0.6\%$  > medium  $\geq 0.3\%$  > low. Each dimension takes into account the performance of each court on each platform with values from 0 to 3.

Subsequently, we created an indicator that captures the influence of the given court's accounts on the three social networks. To build this indicator, values from 0 to 3 were assigned for the level of influence on each platform, and the same weight was used to construct the intensity indicator: the value of the Twitter indicator and YouTube measure contributed to the general indicator at a rate of 40 per cent each, while Facebook was assigned only 20 per cent.

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