

## GOVERNANCE UNCOVERED EPISODE 63 TRANSCRIPT

### *Embedding Rights and Fighting Impunity: Citizen Legal Action in Colombia and Mexico*

Hello and welcome to Governance Uncovered, a podcast brought to you by the Governance and Local Development Institute. This podcast is supported by the Swedish Research Council.

In this episode, we'll talk to Whitney Taylor and Janice Gallagher about their respective books. The two books, which we'll hear more about in a second, look at citizens' legal understanding and capacity to make legal claims in Colombia and Mexico.

First, we'll hear from **Whitney Taylor**, Associate Professor of Political Science at San Francisco State University. Her book, *The Social Constitution: Embedding Social Rights Through Legal Mobilization*, came out with Cambridge University Press in 2023.

Ellen and Whitney discuss the book's concept of 'embedding' constitutional law to clarify how particular visions of law take root socially and legally. The conversation begins with the background of Colombia in the mid to late 1980s, marked by political instability, violence, and the emergence of a student movement that demanded a new constitution. This movement led to the creation of the 1991 Constitution, which introduced various rights and a new legal mechanism called the "Tutela." The Tutela allows Colombians to claim their constitutional rights without a lawyer and has become a widely used tool for addressing issues ranging from minor grievances to significant legal challenges. The interview also compares Colombia's experience with South Africa, highlighting how different judicial approaches have led to varying levels of constitutional embedding in these countries.

Whitney, thanks for joining us today to talk about the social constitution, which came out at Cambridge University Press in 2023. It's a great book, and it's really looking at what you call constitutional embedding, which will come to in the context of Colombia. So can you start just by situating the book for us, giving us a sense of Colombia and the politics within it, and then the questions it raised for your study?

Yeah. So first, thank you so much for having me. I'm really excited to be here. Yeah, to, to give you just a little background, I guess on the time period leading up to really where the the book starts, we're looking at the mid to late 1980s in Colombia where really there's a general sense that that things couldn't continue as they were the political system. We've been closed off non-representative for quite a while. At this point, we're in several decades into the armed conflict. There had been several attempts at constitutional reforms that were blocked either by the Supreme Court or by Congress and multiple presidential candidates had been assassinated. So in response to this, a student movement emerged and these students organized what they called the Septimo Paletta, which was like the 7th ballot. In addition to the six issues already on the books for the election, they invited the general population to bring a 7th ballot and demand a constitutional assembly to say yes to a new constitutional assembly. In which they would write a new constitution. The movement didn't fully articulate what that Constitution ought to look like, but they called for some kind of change or refounding of the state. And then what emerged after this constitutional assembly was a new constitution that included a long list of rights, including social and economic and cultural rights, new mechanisms with which citizens could actually make claims to these new rights, and then also a new constitutional court. And with the benefit of hindsight, one of the key mechanisms that emerged through this process. Was the Tutela and the book really tracks how the Tutela changed Colombian life. But importantly, this wasn't meant to be the center piece of these these reforms. It was really an unexpected development.

Whitney, before we go on, I'm actually going to ask you what the Tutela it is. So yes, can you just clarify what is the Tutela?

Yeah. So the Tutela is a legal procedure that allows Colombians to make claims to their constitutional rights without need of a lawyer, without having to pay. Essentially, the way it was written in the Constitution, was that this is a a new mechanism that would allow Colombians to make claims to their fundamental constitutional rights, which is a specific category of rights that loosely corresponds to civil and political rights, and all you have to do is either fill out paperwork and file it with the court or get a meeting with a judge somehow and say, here's this thing that happens. You don't even need to specifically name the right that you think was violated. Every judge in the country has to then investigate whether or not a rights violation occurred. So in terms of access mechanisms, this is unique globally. You don't need a lawyer. You don't need any kind of legal expertise in order to make these claims.

Then your fundamental question was how do you move from having these claims on paper to actually being utilized and understood by the by the citizens themselves, and the string of thinking about claim making that you're working on, Janice and Gabby are also working on, and especially in your element. So can you tell us a little bit about how you saw this process, I mean, how do we go from something that's simply on paper to actually seeing it actualized?

Yeah, and I should say one other thing about the that you tell it before I answer that question. Judges have 10 days in the first instance and 20 days if the first instance decision is appealed to investigate so often when we think about legal processes, the understanding is right that they're long, they're drawn out, it takes years, and that's not the case. The tutela how the Tutela came to take this life, where it was very much at the forefront of people's minds. A little bit of happenstance and then a little bit of maneuvering by both everyday citizens and the first few justices on the the Constitutional Court. So since we're experimenting right, they had heard a lot from both government sources, media and perhaps word of mouth, about the new constitution and new rights. And some people just experimented. Maybe this could work for me. Again, it doesn't cost anything other than your time.

What do they expect to get out of it? Can you give us an example and what somebody would hope to achieve?

Yeah. So I mean it, it sort of runs the gamut from relatively minor things like your neighbor is kind of loud and you want them to stop being loud. That's not necessarily a constitutional rights violation. And so most of the time, those kinds of claims would be denied, but people would still advance those kinds of claims to things like. I haven't been paid in months or I need access to this blood pressure medication and the insurance companies denying coverage for this. I can't afford it otherwise, what do I do there? Also have been lots of other kinds of claims and it's come to be used for any kind of right and ultimately almost any. Kind of social or political or interpersonal issue. That's been the the shift in the \$2.00. So in its initial configuration in the Constitution, it was limited to or called fundamental rights really against civil and political rights. But over time, judges expanded it. So even in the first sort of years of the Constitutional Court in 1990. To the court issues a a decision or reviewed a tutela claim and upheld the lower court judges denial of the request in fact was important about this case is the constitutional rights are now what judges say they are through the tutela procedure. It's not limited or we're not limited to the text of the Constitution. We can expand this to better fit people's needs as they change over time. And then citizens kept filing claims.

And so there's this feedback back and forth. So citizens ultimately legitimate, the court in some ways, right, because they they continue to file claims, they continue to really give the court power. And then the justices on the court respond positively. Not all the time, but enough, such that it further. Incentivizes claim making.

Is there checks on this? I mean in a sense you can imagine the positive feedback to them, which leads to a continued expansion of what are considered to be under the claims of, or the purview of, the constitutional courts or the courts themselves. Is there a limit to how far it expands?

I think there are. There are some practical limits, especially for lower court judges, so it's hard to stay on top of all of the changes because judges aren't necessarily experts in every facet of law normally, or judges specialized to some extent, or lawyer specialized to some extent. So you hear cases that have to do with criminal law or labor law, but the chalah opens everything up. And so there are some limits that are in terms of they're just, just don't know necessarily what they can imagine or what they can expand. Those limited, there were attempts by various political actors, especially under the the year rebate administration to limit the the jurisdiction of the Constitutional Court as well as the the total procedure, but those attempts were ultimately not successful, in part because of the popularity of the two of the Constitutional Court in comparison to with the other branches of government. Which we're seeing as still largely unresponsive.

What does that do for the ways in which people see the courts versus other branches of government? We also think often think of these as being kind of related, right, that we think of responsiveness, you know, kind of government responsiveness as affecting people's attitudes and legitimacy of governments or regimes, etc. When we're sort of seeing responsiveness by the courts, but not necessarily also by other aspects of government, how does that shape what people think?

Yeah. And I think I should also say one thing about quality. It's not necessarily that the courts are super popular. The Constitutional Court was and the Tutela, but the lower court, it's not so much lower court judges, depending on who you ask, the first response might be, well, they're all corrupt, right? There's that kind of narrative what I have that's true is a different story. But there there's this narrative out there that the rest of the judiciary is inefficient or otherwise slow, doesn't really do what you need that to do. And then, this issue of potential corruption as well. That the Constitutional court hasn't been able to avoid entirely. But even those folks who I spoke with, who would

say, oh, the courts are all corrupt, they're they're a mess. The justices is nonsense. But they but the two tell us different this question about what does this mean for government responsiveness. I think that the two tellers viewed it as Selma as separate. It's it's somehow not necessarily seen as like a government project even though it obviously is the to tell allows citizens or anyone in Colombia really to make a claim and then get an official response. They don't necessarily get what they want. Right. But there is some kind of interaction and that's something that we we investigate in the the claim making element right, because we're trying to understand these processes that aren't really defined by like at least not full positive feedback, but there's enough positive feedback or what we call ambivalent feedback where there's some positive some negative that people continue to go back to this process, whether it's because they think there's no alternative or whether it's because the issue is so important that you have to do something or because you see other people using this process right and and really you get just enough incentive to continue. But the question for us is like how long? It doesn't seem like a stable equilibrium there. So how long can this this go on? And that's an empirical question, but I guess I guess we'll see right where in the Colombia case where at 30 years.

Is it still as popular today as it was 20 years ago or 10 years ago?

I don't have a good public opinion data on that, so I can't answer exactly, but if I'm going to try to approximate it or triangulate it, if people are still using the 2nd, it drops a little bit and the the 1st I guess full year of COVID, but it's starting to pick back up and that's an imperfect measure of popularity, right? Because people were going out less. So they probably had fewer grievances in some ways or they weren't able to stand in line and file a claim. It does seem to have retained popularity or use in practice.

Did it require an expansion of judicial personnel? Or the other thing about it, right, is especially if you're expanding and peoples find more and more ways in which they can make claims or areas, they can make claims about. Then you can imagine a real expansion in terms of sort of just the need of personnel, particularly when you've promised within 10 days or within 20 days if there's an appeal. So did we see that taking place and has has it put any strain on government itself?

So this is one thing that that judges especially lower for judges will tell you if. You talk to. Them like we need judges who specialize them to tell them this should have been a policy change and. That hasn't happened yet. At different points in time over the last 30

years, there have been judges sort of added to different, I guess, jurisdictions to try to get through backlog and it's really backlog and other kinds of cases. We don't see a ton of backlog with two televisions, but we could imagine there might be a connection between deciding lots and lots of two teller cases and not getting through. The other traditional cases that that judges would be deciding, yeah. So I mean, that's one kind of reform that's been thrown out there. It's kind of interesting that these groups didn't form a coalition. And I don't think it makes sense to, but there is an interesting group of people having conversations about the kinds of reforms that might be useful for to tell a over time. On the one hand, we have. Of the rebate governments where he is at different points in time, trying to to push forward the possibility of having three or more consecutive terms in office right, and he that gets that gets stopped. But in the process he's also trying to limit the power of the courts. But then we have judges who by and large are positive about the two tella many of them, if not most, have bought into the idea that the two fellas. That exists that it's important that people are able to make lamps to their constitutional rights through this kind of procedure that really gives them direct access to a judge, but they're also saying, look, I mean this this process is not really sustainable for us. It's really hard. For us to continue to do our jobs well.

Does that create other sets of demands right? So this idea that you have judges and I would assume others who also say, OK, you know, citizens have the right to make claims and they doesn't necessarily have to be limited to the tella, right? They have also the imagination can be OK, well, they have rights to make other sets of claims as well. Do we see that kind of spillover?

I think I mostly seen it in the expansion of the tuton instead of it being limited to certain constitutional rights, it gets expanded to all constitutional rights, and then even beyond constitutional rights to any kind of problem might might happen in my life.

But not necessarily sort of seeking new venues or new ways to make claims?

I don't think so, but I guess I don't want to fully say no because there is social movement organizing one process that's happened in Colombia a couple of times. Is that constitutional court judges will lump together to tell the cases it will take 28 claims that all have to do with the the same rough prevents and then they pull them. Together and issue. The sort of collective decision. And when that's happened, also invited different social groups to come to the court and share expertise or perspective or or what have you that I guess has created a new venue in some ways, right. It's not exactly

participatory decision making, but it is bringing people into the court, which traditionally isn't done. Right, that's not what courts are or what they look like, and then that's that's come about in part because of the tutela or the way that judges have interacted with with Tutela claims.

That's fascinating, I mean the thinking about. In a sense about also what what the court can be right and how it could be a sort of a venue of or a catalyst as opposed to simply a place where decisions get made right, it's a little bit like thinking about the Constitution as not simply being the words that get put on a paper or that it goes from zero to meaningful in one day, but really thinking about that. Process which I think is what your your book really helps to illuminate in really exciting ways. I want to ask you a little bit about you. You also look at South Africa and I wanna bring South Africa in and ask you what you saw in South Africa as. Lending to your understanding, how does it? How does it challenge it and what what do we learn?

When I first conceptualized this project, the idea is going to be or was that it was going to be this comparison of these two countries that had both drafted new constitutions and that early to the 1990s. And so there's a a similar sort of inter or transnational understanding about what rights are and what it would mean to refund a state. And you would see very different. Patterns and claim making across the the two countries where we see a lot of housing rates claims relative to all other kinds of claims in South Africa and then health in in Colombia. And the project shifted in in lots of different ways, as I think always happens when people go to the field and and write their first book. But ultimately, what what South Africa adds to the study that, that that resulted. So it really shows that the process of of constitutional embedding isn't inevitable and that it can unfold differently in different contexts. And so if we're looking at the two different dimensions of constitutional abetting that that I describe, social versus legal. In Colombia, I think we we have both especially around the right to health, it's become firmly embedded in social fabric and also it's part of law. It's part of constitutional law, the right to health is now understood as a fundamental right, even though it doesn't fall in that chapter in the Constitution. In South Africa, I think we see a lot of legal embedding. Especially around the right to housing. Also some other rights and less social embedding. People have embraced these rights a little bit less and I think the other thing that's and I can should explain why as well. But I think the other thing that's sort of striking for. The is when I talk about Colombia, the development of the total or how the Tutela has developed over time is taken for granted. And so people sort of say well, claim making and by implication the position of the Constitution and the Constitutional Court in Colombia really comes down to having this legal mechanism that's unusually accessible. And I'm usually quick, but it wasn't meant to be, and that

part I think gets forgotten. There is no such development in South Africa, even though there are new, there's a new constitutional court that's created. There are lots of new Chapter 9 institutions that could facilitate access to claim making. And there's a direct access provision in the Constitution as well, where you can sort of bypass the rest of the lower levels of the legal system and go directly to the Constitutional Court. The South African Constitutional Court is really undercut the direct access provision and Jackie Dubard is shown this across a bunch of different pieces of research. But instead of expanding this procedure like Colombian, judges sit with the tala, South African judges really limit. And this has to do in part with their their legal ideology, their views on what the Constitution and what the Constitutional Court ought to be doing. They, they would say, no issues really ought to be ventilated. They should be really discussed in depth by lower courts. All achieves a fact should be resolved, and we should only be having it to settle new. Legal questions. That's a justifiable position, but it's very different ultimately. And in terms of it has very different consequences, I guess in terms of how people can make claims, the court and the kinds of claims they can make and. Ultimately, the role of the Constitution and the Constitutional Court in in social life, so if we only look to Colombia, something that wasn't inevitable, seems like it was. But when we add South Africa into the equation, right, we we see that different possibilities could have could have played out right. And then the South African experience is also I think important in its own right. This is the country that is facing at the time unique challenges that I think have become more common globally and so to understand sort of how they've tried to address the end of apartheid and rebuilding a social fabric and where they succeeded and where they failed. And again, I think it's important in its own.

Right, I'll push this comparison a little bit more because you mentioned that the judges themselves say, OK, this isn't the role of especially higher level courts to be dealing with more mundane issues. We saw of course in Colombia that, that they pick up arguably more mundane issues and then use that to kind of expand the power of the court. So there's a. Like you said, two very different strategies. How do we understand that?

I think some of that just comes down to the orientation of the first sets of justices, which is a little bit contingent. There's more to the story than just contingency.

I think no contingency doesn't matter, right? I mean, it's interesting because I can see you hesitating to say that, but there's a lot of things that are not necessarily so deterministic. And I think that when we when we face that especially points that seem to have a lot of downstream impact. As political scientists, I think we're often very uncomfortable saying, well, actually, you know, agency does matter and contingency does exist.



I do think a lot of it is contingent and there are some interesting similarities, I think, to the first courts and I'm not 100% sure what to make of them cause it. I think ultimately I may end up as I finish this answer just coming back to contingency. But in both of the the first courts, we have academic justices, we have people who are trained as lawyers but who weren't judges. Previously in South Africa, part of this has to do with the nature of the judiciary. Under apartheid and an attempt to really demonstrate that the judiciary would be different or it would be comprised of of people who looked different than it had looked before and who had different life experiences and different sort of ideologies. In Colombia, there's less of this need to sort of remake the judiciary. Yeah, there's still a a turn to including academic perspectives thing that that shifts beyond needing to remake the judiciary. The thing that shifts South Africa a little bit is the excitement around the the Mandela presidency, right? And this idea that the judiciary could work with the ANC, right? The executive and the legislative branches, and and that there would be a shared governance project. That idea was less present in Colombia, I think that idea in Colombia would be more like, well now our job is to really make sure that constitutional values are being protected right as the as the judiciary, right, as the the Constitutional Court. And in some ways it's assured governance project, right, because we are still part of the government, but it was less like we're really in this together we're building. Something. But even within the context of that idea, there's still some contingency in in terms of like, well, what does that actually look like? Where when do we see discretion or power or a little more leeway right to the executive or to Congress and say, like no, look, you guys can sort this out, we're going to take a step back here. We might say this is unconstitutional, but we're not going to tell you about a fix it or we are going to tell you how to fix it within these parameters. Ultimately, with some of the right to to housing cases, judges and death issuing decisions where they tell you the exact number of square. Years temporary alternative accommodation has to has to be that's pretty interventionist, but in other cases, judges took a a real step back and and didn't intervene.

That's fascinating, and it seems to me that there's a couple of questions that are left unanswered. Right. One is the why they take very different trajectories. I think is is an interesting question to to expand on the question that like you said, is also raised in the element about how stable or unstable are these kinds of relationships and what does it ultimately mean in the long run? Are there other questions that you feel like either you or others out there should look into that you feel are still unanswered?

I think there are some questions and if we were able to answer them and be able to better, I guess we're fine. This this idea of constitutional embedding. So what other mechanisms can drive it doesn't seem like legal claim making is the only mechanism. And if we look to the US context, the right to bear arms isn't something that's pushed by legal claim making yet it's it's deeply held for many Americans, right? It's understood to be both part of American nationhood and then for others. It's absolutely not. At least two groups that are probably more than two who have this very different understanding about this. Right. I think there's some unanswered questions about how. Different combinations of social illegality might occur in practice, and how that might affect, I guess, constitutional stability over time. Which then leads me to a question that might be preoccupying a lot of folks. Right now, wherever they are in the world, what happens when rights are unravelled or dislodged? What about judges aren't rights defenders but instead they undercut or limit rights? What possibilities are there in that context for mobilization? What they're within the formal legal sphere or outside of it? To what extent is legal claim making a form of like democratic participation, or does that, and by turning to the legal system that seems to be unjust, or that seems to be used for undemocratic ends, are you legitimating something that that you don't want to be legit?

All things that obviously, especially as I think both of us being from the US are very tough on their minds these days. That if you're to talk to policymakers or to advise anybody, even in development or elsewhere, what kinds of lessons do you take away from your work that you think others should pick up on? Or is it should be incorporated into programming?

Yeah. So let me, I guess start with a a Colombia specific policy implication and then I'll try to expand a little bit more broadly. What stands out to me, I guess, is, is that there were and still are a lot of unmet needs in people's everyday lives in Colombia and and the growth of the Tutela reflects that. I think there are public and private agencies that were not only unresponsive to people's needs but also. In some cases actively causing a direct harm, and the Tutela has become understood as may be the only response option in in some cases or the the best response option in other cases. If we sort of reframe this, we could think about it as well. They might be specific policy interventions that could displace the Tutela over time. For instance, better regulating the EPS's as such as the like health insurance companies. And so from the the big picture, it looks like the total is everything, but if we zoom in a little bit, we can imagine specific kinds of interventions that again not overnight, but over time might displace this and and the growth of the Tutela reflects real needs. If we focus on what those needs are, we might be better able to identify. Alternative kinds of policy driven.

Options a couple of other broader takeaways, it's pretty difficult to implement reform, so when something's entered the fabric of social life, so I think there's attempts to limit or or changed both the Constitutional Court and the Tutela, regardless of what the the actors real goals were, these were largely unsuccessful, or if not wholly unsuccessful in part because that you tell us. Become such a part of like everyday imaginaries, for for most Colombian. And I think this applies elsewhere too. Beyond that seemingly small changes, I think this that to tell is another example of this seemingly small changes can take on lives of their own and eclipse anything immeasurable at the time. Right. So this is the introduction of a legal mechanism meant to complement existing mechanisms, but it's become. The mechanism and then I think finally policy. Is that are designed to be universal, like constitutional rights still have differential effects for for subpopulations, one of the chapters of the book looks at folks living in a neighborhood called Aguablanca, and these are folks whose lives are difficult, but the difficulties of their lives are challenging. To put into legal terms, poverty doesn't always translate really well into rights claims. Yet it does make people's lives difficult, and so the introduction of the constitutional Rights Department to improve everyone's lives. And yet it's they're more tangible. Yes, for certain people and and whose problems I guess are. More legally legible.

Actually, that's an interesting place to consider and a good place in a sense to stop right because your first suggestion of thinking about what are the underlying needs and how can those be addressed? Right, meet your final one of thinking about those who are not able to necessarily address them to claims making. And so while that's that to tell is an important mechanism. Resting too much hope on that, and eliding other ways of addressing problems in itself. Can help to create inequalities and essentially create a different set of issues than those that's intended to solve. It's again really, really interesting work. Yeah. Thank you.

Thank you so much, thanks for having me.

Janice Gallagher is an associate professor of political science at Rutgers University-Newark. Her book, *Bootstrap Justice: The Search for Mexico's Disappeared*, came out with Oxford University Press in 2023.

In her book, Janice asks how people living in settings marked by normalized rights violations transform into rights-claiming and, ultimately, rights-bearing citizens. The book examines how victims and their families in Mexico have fought against impunity through grassroots efforts, even in the face of state inaction or collusion with organized

crime. Janice emphasizes the evolving nature of this struggle, highlighting how victims have had to become self-taught investigators and activists over time – a process she calls "bootstrap justice." The interview also touches on how the state's alliances with organized crime and political dynamics influence what citizens can achieve, providing examples of how victims have learned to navigate these complex relationships to push for justice. Finally, Ellen and Janice discuss broader implications for policymakers, suggesting that real change often comes from grassroots movements that challenge power structures.

So Janis, thank you for joining us today to talk about Bootstrap justice, which came out at Oxford University Press and actually has just received an honorable mention at the compared to politics APSA Section Award for 2024. So congratulations on that as well as on a really great book. And thank you for joining us to talk about this in this book. You're asking this question about human rights violations, how we think about impunity and citizens reactions to it. You look at, interestingly enough, both that the ways in which citizens learn, but also the ways in which sort of state alliances will shape and constrain us. So I want to start simply by making sure that we're all on the same page in terms of what impunity is and the kinds of context that you're looking at it.

Thank you so much, again, for having me and for the question. This was a long project in the making, right, I did this for more than 10 years and I started really laser focused on judicial outcomes. I thought that's something I can measure that's concrete. And it really evolved. In this book, I think about impunity and along. Lines of what? How the UN conceptualized it in 1997, which is really that it has four parts, right? So impunity is, of course, has to do with the state holding account lower in not holding perpetrators accountable for human rights abuses, but eroding impunity. Actually combating impunity. The state doesn't just have to judge the perpetrators of of the human rights violation, they also need to guarantee. Non repetition. They need to provide reparation for the victims and most importantly for the for the people that I was talking to, there's a right to truth, right. The victims of human rights abuses have a right to know what happened. And in the case of disappearance is. That is kind of the most salient, the most repeated demand is done this time. Where are they? Right. Where are the? Where are the people who who disappeared? So I'm thinking about, I use the the outcome of interest in the book is eroding impunity. To me. It's kind of if we think about impunity in Mexico really being kind of a 10 out of 10 on all of those things. There's no right to truth. There's no reparations. There's. No written non repetition and there's no justice how much? The the victims and their individual and collective actions been able to kind of push back, to move the needle on any of those four indicators. So that's really how I'm thinking about impunity. And I should say that's it's really inductively derived, right?

When I talked with victims about what was important to them and what justice meant and what are what they said, we're fighting against impunity, which is and have really been vernacularized in Mexico people. Talk about unity and pull it out of the way that we don't in the in in the US. That's what they said, right? They're they're like, yeah, OK. And Nancy famously, Nancy is one of the the three families that focus on said, you know, they they sentenced the perpetrator of my sons disappearance. But I want justice for given the guy who did this. But I want justice. I want to know where my son is. And so that for me really highlighted that thinking about impunity in this binary. It's justice. It doesn't work. It's kind of more faithful to their experience than what they're. Thinking about and, I think what we should be thinking about is academics and policymakers is a more holistic understanding of impunity.

That's fascinating. And like you alluded to, it was a very long study, right? And one reason it seems that the outcome of interest if we want to put it that way shifted over time was because you also follow people very closely. You engaged very closely in the ways in which they were trying to make claims than the state and trying to find out what happened. You talk about people engaging in the investigations themselves, going undercover to do so. So it's incredibly fascinating work. And what I think is important about it is over the course of this study, things changed, right? So of course you couldn't do it in the year or two years, and the shift in the outcome, you didn't even see it in a year or two years. So it's a really great example of the importance of recognizing that any one point in time, we sort of see a snapshot of what's taking place. But some things actually just really do take a longer period of time to to fully sort of realize them.

No, thank you. Thanks so much for saying that and recognizing it wasn't just, I mean there was some, some of it is my fault. So if it took that long. But yeah, for me the ground was shifting. I think I happened to start doing this research before really disappearance is that before we would say that there was a crisis of disappearances, right when I started, that wasn't even clear that that was what was happening. We knew that there was an uptick in violence. But we didn't know that kind of what would spur mobilization and what would be kind of the most well known and internationally visible human rights violation that was happening would be would just, would disappearances. So even the kind of the, the naming and formation of that. It's conceptually what was happening. Wasn't there when I started right, much less the the outcomes. And I think for the people I was struggling with that their process of sophistication and kind of learning what's happening and mirrored my own all thought right these like that 2013 Human Rights Watch quote that says these participatory investigations, the fact that you have the victims sitting down with the state that's really going to be a model. That's the way we get through this. And we all. Hoped that that would be actually. The case

three, five years passed and we don't see or a real shift in judicial outcomes. We don't see a shift in how many disappearances are happening. And so that's, I think it was a really gradual and continually tragic in many ways, realization the questions, the outcomes that we were interested were were different.

You mentioned this the ways in which there's also agency, right, that people are learning, you're learning, but also those who are working with are learning a lot and you call this bootstrap justice. I'm going to read back to you your quote that you wrote that I found really just really beautiful because you say bootstrap justice then expresses both the seemingly ludicrous idea that it is possible for a person to manifest. Justice, through force of will and without state involvement, and it also honors the initiative and ingenuity of families forced to create their own versions of justice in the face of incapable and unwilling institutions. It's a great combination of the agency and the learning on the one hand, and also this question about that. You're going to bring in a second. How? How the sort of state, institutional structures and alliances? Matters. Can you start with the ways in which people conceptualize and view justice itself, right. You talk about sort of the relationships with the law, and then how they can learn over this period of time.

Yeah. So again, thank you for circling back to the title and kind of to the conceptualization of the book. I think around that quote, I also talked about, especially in the US context, we think. About Will we talk about people pulling themselves by their bootstrap? There's a willing, there's a willing ignorance around the structural barriers to people doing that. Right. And I think that's an important part of it as well. Is that so I want to talk about how the individuals do this, but I also want to talk about there's an invisible isolation of the of the states role in kind of creating the conditions. In which people have to pull themselves up by their bootstraps. And that's I wanted to be really clear about that as well that that is wrong and we need to be talking about the state responsibility and the state collusion and creating these conditions in about 2011 as when I met with the people who are featured in the book as well as and began to be involved in. We were all going in cold, right? These are people I think, unlike other other contexts where we have lots of disappearances, these were largely apolitical victims. Who were, you know, in families that didn't have a history of political consciousness and and the activism for most of them, they they had never been to a a a protest before. They had never thought about themselves. As activists, as people who would engage with actively engage with the state in any way. And So what I saw and what they wanted to talk about after 10 years of being involved, when we struggle as are like, I'm unrecognizable. And I think one of the I I begin one of the chapters with each of them talking about voice. Right with each of them talking about before I started doing this. I

didn't talk for me. It was really interesting that we heard that across the classes like the social. Places that that these people were coming from so so Lucia talks about her life being a Disneyland before the disappearance of her son and she was a homemaker and she was kind of very had accepted that her husband kind of had the voice had the agency in her home and she married kind of how she leaves the home she becomes the person who is going back and forth with state officials talking to the during. General talking to presidential candidates and figuring out a way to interact. To them, point, Carlos talks about he was really isolated, even though his first impetus was to go talk to state officials, he felt really alone in terms of actually being able to connect with other people who had happened to. And I, Nancy, perhaps the most dramatically right, as a single mom has been given a really raw deal in life in a lot of ways, and felt really timid. They understood herself as somebody who was timid and could only cry. This happened for me to see her, I and I. I took her testimony when she came to the to movement for peace in 2012, I believe, and literally she she couldn't speak and to see her become somebody who is the motivating force behind a sitting outside of the attorney General's office which leads to the creation of a new investigatory unit. So. To me, I. I wanted because I saw these transformations in them and other people that I knew. I knew that. That was a huge part of the story that we don't talk about enough, right, that the the actual transformation of these people, we think it's, it's amazing to me. We think in social movement. Studies. Still really at the collective level and and not exactly as people as widgets, but a little bit right. We think about people like ohh they joined the movement and then the movement does this rather than for me, really underspecified. Was like, who are these people? And a person, Nancy in 2012 is a really different Nancy than in 2022 and we've. Haven't thought enough about how does she go from crying feet to incredibly effective and poised and worldly Nancy, right? When is that transformation like? And what are the the processes and mechanisms that actually go on to to take these people from this to this? And then how do their collectives change? Right. So as each of these people are going through these processes, how does that change what the social movement does and the decisions that collectives are making when you have people who have all been involved for a really long time and who are socializing, as I talked about? Adults. Right. This woman who came into the activism much later, right? She comes in in 2020 and for me it was such a stark. It was a really interesting conversation with her that she comes in and she's like, ohh, so I learned that here's the six things you do right when when you begin to be an activist, you have you should, you know, look for a meeting and then you should have a sit in and then you go looking for the person. Them both alive and then you look for them on the land as well. That fact that there was kind of a. Script that script emerged. Because of the processes that I'm talking about with the other families, right that have been out this for 10 years. So for me that was a really. Important thing to. Really feature in the book is to to have us stop thinking about people as nameless as as people, as kind of just fitting into going into a social movement and then like magic happens and they become they become

social movement actors. I wanted to really kind of unpack that and give that space because I think that's kind of theoretically important as well as just. I don't think we gain a real true understanding of these processes without without focusing on that. So that's kind of that was the decision and I think that's why it's important.

And of course. You're taking this and you're putting it still within this context of a broader, essentially a broader structural context, right? Really thinking about the extent to which we get, as you put it and alliances within the state between judicial officials and politicians or members of competing political parties, for instance, as well as between. State officials and members of organized crimes and drug trafficking organization. Options and so can you help us to kind of situate the agency and the learning and the activism that you're talking about within these different alliances and contexts, and how that's then influencing what people believe they can do and how they engage?

Yeah, 100%. That was the trickiest part of the book. I mean trying to show how that growing sophistication translates into. The changing actions of the collective, so maybe a couple examples to bring that home. I think Lucia articulated it really well. So I was talking to her about in 2017, which is right before our elections are happening about what the focus was that year. And she told me so right now is a really important time to be in contact with state officials, the state officials, kind of the bosses. Know that they're on the way out, so she's really conscious of exam. Exactly what, where we are in the election cycle and she's like, so the bosses are going to go. And so if we've done a good job at sensitizing any of these lower level officials, right? If we've awakened them to our cause, this is the time because right now their bosses are thinking about what's next. These lower level officials kind of like mom and dad are away. Right. So they can do what they want to do. And she says, so if we've actually awakened them, if we've made them allies, if we've brought them away from cynicism and into being allies with us because we have this change this big, we know this change is coming, they might actually be able to make those phone calls that before they wouldn't have made, they might be able to ask different questions, right. They're a little more structurally flexible to actually pursue justice in our case. And then she says. And you know, if that doesn't work, then the day after the election, the day when we have kind of new officials coming in, what I know now is that they don't change their cell phone numbers. I thought, which I thought was fascinating. So she knows that the new person replacing the higher ups. He or she's going to come in in that first day and they're going to have that same cell phone in their hand. And so Lucy is like, my goal is to be the first person who calls them and says, hi, I am Lucio Laka. My son has disappeared. And when are we gonna talk about that? How is this gonna be a priority for you? And understanding is, again, that's



just that little piece of knowledge. Right. And plugging that into her understanding of how the state works, I thought was really illustrative and a bigger picture, I think. In terms of the shifting nature of relationships with organized crime with the state, I think that's that is more that's fraught a fraud because reasons right in terms of the security situation, Tamaulipas, which I think is a place that we know very little about. I always to the kind of mentioned the States name it is to me by far the worst state in Mexico in terms of there is no press because that it is too dangerous to operate. You've had and the systematic extermination of of the police of public officials. It's just a really, really difficult place. What was amazing in researching this book was to hear. How aware the victims collectives were of the movement of the cartel, so that just in terms of their navigating their daily lives, kind of communicating with each other about what was happening, the cartels were here last night. They were fighting here. So today we're going to try to meet with the state official, which means we can't meet with them in this place because we know that there was violence. Sounds like. But we know two towns. Over things have been come for a while, so just understanding what's happening in terms of the day-to-day violence and figuring out how to navigate some of these searching forward was really impactful. So I think that's kind of reveals some of the ways that those alliances are.

And also how those, yeah, those alliances between the state and criminal actors are relevant as well as understanding who the state officials are and thinking about how you can influence it. Right. And navigate and use it, which is I think the the absolute critical point because it's not just, OK, there's a political opportunity structure or the ways in which it's sort of a structural perspective on it. But it really is an identic idea of of how do they navigate these and how do they use them and how do they think about the kind of forecasting? It's it's wonderful.

One more with Nancy. I brought Nancy to the US when I launched my book. She actually brought the Ministerio Publico, the public prosecutor who was in charge of her case. She brought him with her to the US and because she said whatever we do in this case, now we do together. And this is Nancy, who before totally avoided the state, and she's nurtured those relationships with with the collective actions they took. But. With really, she had a major leadership role of kind of getting the state to recognize victims as worthy interlocutors and then opening to the door to them. And she says she when they opened the door, she pushed her whole collect. Through and then using those relationships to navigate an international trip. And now she has regular meetings with them and feels really that they're working as a team. Those relationships to me, were so were so impactful that this is especially given where she came from, of being kind of scared of the state and avoiding of the state, which is again why I decided to use this

language of legal consciousness, right, I think. Kind of because I saw such a dramatic transformation and how each of them were relating to state actors and how the relationships over time really transformed what they were able to do with the state.

So tell me, what do you think are the both the court and theoretical advances I think are actually very, very clear. If I'm a policymaker, if I'm interested in development, or I'm interested in human rights, what are the lessons that I should take away from this?

I'm coming from really a really a strong human rights background that I worked in human rights think a lot of times we concentrate as policy makers, as activists and even as academics on getting the policy right. Well, what is the exact language? What's kind of best practice in Intel? National treaty bodies and in their national law in terms of codifying enforced disappearance and and disappearance has been in a precise way, and I think those things are important. But I think oftentimes we focus on those to the exclusion of focusing on politics and power. And I know that's that's a very general statement. And what I mean by that specifically is really thinking about. When we actually look at the types of hard policy outcomes and when we go back to that definition of impunity, when we seen kind of how do we measure whether we've had? Movement along that. For me, the reason I wrote this book in this way is because the individuals and the and the small victims collectives. Now there's over 200 in Mexico. They're the ones who've. Really moved the. Needle the only cases where we see indictments where we actually see some judicial progress is in cases that have been constantly accompanied by these groups. That kind of big advances in terms of reparations and non. Repetition also came from legislation drafted within the victims movement. So when we think about those really important outcomes that are important to the international community that are important to policymakers, and we actually do process tracing about how those changes and those tragically insufficient but important. Advances have happened. They happen because of this mobilization. So to me it should humble us as policymakers and think there's really a limit to what passing very well written. Very well thought out laws can do, and we need to think about policy in the context of power in the context of who's actually challenging. So about 8090%. Of of these. Cases are in state level courts, right? Not in the federal system. What do politics and power look like on the ground? What are the incentives for the local investigators to register cases of disappearance, which there's resistance to doing that? If you say it's a disappearance, it rings bells that if you say that it is a missing person or somebody illegally deprived of their liberty, it rings bells that those registration of cases don't. So there's still a resistance to even registering disappearances. Understanding that where you can pass all the laws you want, but unless you figure out how to change the incentives and or the personnel of the state

officials processing those cases, it's dead in the water. Like 2017 article is called the Last Mile Problem. Mexico has like lovely. Jurisprudence now. Around these serious human rights violations, but unless you connect it with the people who are taking those chaos, taking those complaints of disappearances and making decisions about, are they going to investigate that case? Are they going to indict perpetrators then? It doesn't make a difference, right? It doesn't make a difference on the ground. What makes a difference on the ground are these kind of bottom up. Processes that are led by these people who've been most affected by it, and I think so. To me, it's redirecting our energy there. That's not a clean. Answer I wanted this book to be about the beautiful constitutional court reading decision. I wanted it to be about like the power of tans of transnational advocacy networks. And it's not about that. And I wish it was. I wish that those to me kind of simpler, more cohesive top down processes were moving the needle and they're not, unfortunately. One of the one of the takeaways, because it's a harder job to support these bottom up processes, but I think it's worth it. That's if we're interested in moving the needle. We have to look at actually what's working on. The ground. So how do we support those processes? I talk in the conclusion like and it's not as simple as throwing money at it. It is like we need resources, but they have to be smart resources. We create problems when we just throw money at the problem. So it's really saying deep breaths. Let's keep making sure that the national level laws are where they need to be, that we're we're that we're passing the jurisprudence that's necessary, but we need to be attuned to these very local level interactions that are really determining the fate of these cases.

That's a great place to end, not an easy place, but a great place to end. And again, I want to just thank you for joining us and and discussing your book and congratulations.

Thank you so much.

We hope that you found this episode interesting. You can find information about where to access Whitney and Janice's books in the description below. Next month, we'll hear from Gabi Kruks-Wisner, who has co-written an Element on claim-making with Whitney and Janice. So make sure to listen again next month!