

Contents

<i>List of Tables and Figures</i>	xxi
<i>List of Abbreviations</i>	xxiii

I. SUPRANATIONAL LEGAL TRANSPLANTS

1. Lessons from the Andean Tribunal of Justice: Thirty Years as a Legal Transplant	3
Comparing Staggered Twenty-Five-Year Periods of International Adjudication: The ECJ (1958–83) and the ATJ (1984–2007)	8
Lessons Learned from Studying the Andean Tribunal	13
A Roadmap of the Book	20
2. Transplanting the European Court of Justice to the Andes <i>with Osvaldo Saldías</i>	26
Transplanting, Emulating, or Appropriating: The Diffusion of Supranational Legal Institutions	29
Copying the ECJ: Creating the Andean Tribunal of Justice	35
Adapting the ECJ Model	40
Conclusion: Supranational Transplants—Lessons from the Andean Tribunal of Justice	44

II. LAW AND POLITICS IN THE ANDEAN TRIBUNAL OF JUSTICE

3. The Andean Tribunal of Justice and its Interlocutors: Understanding Litigation Patterns in the Andean Community	51
The Legal and Institutional Framework of the Andean Preliminary Ruling Mechanism	54
An Overview of Preliminary Reference Patterns in the Andes	55
Activating and Sustaining the Links Between National Courts and the ATJ	64
Domestic Intellectual Property Agencies as the Engine of Andean Preliminary References	74
Analyzing the Outlier Cases: A Review of Non-Intellectual Property Preliminary Rulings and Noncompliance Judgments	78
Broader Implications of the Differences Between the Andean and European Legal Systems	84
Conclusion: Energizing the ATJ's Interlocutors	88

4. The Divergent Jurisprudential Paths of the Andean Tribunal of Justice and the European Court of Justice	90
The ATJ Demands Less of Member States than Does the ECJ	92
Doctrinal Divergences Regarding the Relationship between Community Law and other International Law Obligations	103
Conclusion: Balancing Respect for Andean Law with Deference to National Actors	108
5. Islands of Effective International Adjudication: Constructing an Intellectual Property Rule of Law in the Andean Community <i>with M. Florencia Guertzovich</i>	111
The Legal and Institutional Framework of the Andean Community	113
Constructing an Effective IP Rule of Law in the Andean Community	120
Why Andean Litigation Has Not Spilled Over to Other Issue Areas	139
Conclusion: The Stability of the IP Rule-of-Law Island in Challenging Political Times	142
6. The Judicialization of Andean Politics: Cigarettes, Alcohol, and Economic Hard Times	145
The Andean Legal System Provides Multiple Access Points for Litigants to Challenge Regional and National Laws and Policies	147
Tobacco and Alcohol Litigation: Forcing Open National and Regional Markets	151
The ATJ and Mega-Politics: National Autonomy during Economic Hard Times	163
Conclusion: A Judicial Strategy to Navigate Fraught Political Terrains	169
7. The Authority of the Andean Tribunal of Justice in a Time of Regional Political Crisis	172
The ATJ in its Global and Regional Context	174
The Persistence of the ATJ's de facto Authority in the IP Island During the Crisis Period	180
The ATJ Beyond the IP Island During the Crisis Period: Changing de jure and de facto Authority	183
How the Andean Legal System Channels Responses to Systemic Noncompliance	192
Conclusion: Reflections on the Power of the ATJ in the Andean Legal System	194

III. RECONSIDERING INTERNATIONAL
ADJUDICATION IN EUROPE IN LIGHT OF
THE ANDEAN EXPERIENCE

8. Nature or Nurture? Judicial Lawmaking in the European Court of Justice and the Andean Tribunal of Justice	201
Theories of Expansionist Judicial Lawmaking by International Courts	203
Does Active Mean Activist? ECJ and ATJ Lawmaking Compared	207
Explaining the Divergent Supply of Expansionist Lawmaking	221
Conclusion: Expansive Judicial Lawmaking at the Interface of Regional Law and Politics	226
9. Jurist Advocacy Movements in Europe and the Andes	228
What is a Jurist Advocacy Movement?	230
Founding National Euro-law Associations: 1952–75	233
The Impact of Euro-Law Advocacy Movements on European Legal Integration	240
Legal Integration Without Jurist Advocacy Support: The Andean Tribunal of Justice	250
Conclusion: Do International Courts Need Jurist Advocacy Movements to Flourish?	258
10. Reconsidering What Makes International Courts Effective	261
Revisiting Toward a Theory of Effective Supranational Adjudication	262
Conclusion: Toward Effective International Adjudication in a Developing Country Context	280
<i>Appendix</i>	285
Citations to Decisions of the Andean Tribunal of Justice	285
Andean Community Interviews	285
European Community Interviews	287
Andean, European, and Multilateral Treaties and Secondary Legislation (<i>Decisiones</i>)	288
Statistical Studies of the Andean Tribunal	289
<i>Bibliography</i>	291
<i>Index</i>	303