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16 The Latin American and Caribbean legal traditions

Repositioning Latin America and the Caribbean on the contemporary maps of comparative law

Diego López-Medina

16.1 The contemporary limits of Latin America and the Caribbean as a legal space

The states and jurisdictions south of the Rio Bravo (alternatively known as the 'Rio Grande' in the United States) form a very large historical, cultural, economic, and geographic region usually known as 'Latin America'. Geographically speaking, these states encompass, with some exceptions that culturally belong to 'Anglo-America', the south-western corner of North America where a territorially diminished Mexico serves as regional borderline with the United States; most of the Central American isthmus and South America; and, finally, some island states and island colonies that sit within the waters of the Caribbean basin. By 2005, around 543 million people lived in this area of the world.[1] It has recently become fashionable to say that the next decade, even the next century, will belong to Latin America. For pundits on the left the region stands as the remaining chance in the world for true pluralism, alternative democratic experiments, and sustainable development;[2] with almost equal enthusiasm, businessmen and economic analysts on the right see in the region an expanding middle class that, with its entry into consumerism, will fuel global markets.[3]

Due to demographic and economic pressures, however, around 30 million Latin Americans have migrated towards the economically central regions

[1] According to the Earth Institute at Columbia University, http://sedac.ciesin.columbia.edu/gpw/index.jsp.

[2] Ó. Guardiola-Rivera, *What if Latin America Ruled the World? How the South Will Take the North Into the 22nd Century* (London: Bloomsbury, 2010).

[3] Thus the opinion of the president of the Inter-American Development Bank, Luis Alberto Moreno, in an interview published by *El Tiempo*, Bogotá, 17 January 2011: 'This is Latin America's decade', www.eltiempo.com/economia/internacional/ARTICULO-WEB-NEW_NOTA_INTERIOR-8786694.html.

of the world (mainly to the United States and western Europe).[4] In their backpacks and suitcases they have not taken with them their laws as have, for example, immigrants of Muslim persuasion. In their new milieus, Latin Americans have had to learn the trappings and requirements of what many take to be a more demanding and rigorous rule of law than the one they used to know in their homelands: many of them turn into disempowered 'illegal aliens', for example, who stick almost neurotically to the legal speed limit for fear that, if caught, they will not only be issued with a ticket but perhaps also deported. In situations of disempowerment and cultural disorientation, then, compliance with the law (i.e., how to become the all-important 'law-abiding person' or better, perhaps, the 'authority-obeying' individual of US culture) demands pervasive attention to detail and even to appearance.[5] For a Latin American living in the First World, the concept of 'jaywalking' becomes legally and culturally meaningful for the first time. On the other hand, the political empowerment of 'citizenship' generates familiarity, even some capacity to defy the state in the face of legal threats: the meaning and construction of 'speeding' or 'jaywalking' are better known (and perhaps better dealt with in case of non-compliance) by the citizen than by the illegal immigrant. In an infamous statement, a New York oligarch reportedly announced, undaunted by prosecution, that 'only the little people pay taxes'.[6] Illegal aliens are usually counted among the little people.

The states, laws, and institutions of Latin America were slowly and unevenly formed under the influences of the different colonial administrations that were established throughout the sixteenth, seventeenth and eighteenth centuries. Quite early the Treaty of Tordesillas of 1494 purported to divide the 'new' continent between the Spanish and Portuguese crowns that, as a consequence, became the dominant territorial powers of the region. Today it is difficult to deny that when people all over the world refer to Latin America they are implicitly talking about Hispanic and/or Luso America: taken together they form what we might call, more precisely, 'Iberian America'.

[4] 'El costado multimillonario de la inmigración latinoamericana', *El Clarín*, Buenos Aires, 30 September 2007, www.clarin.com/diario/2007/09/30/elmundo/i-02215.htm.

[5] See the controversy about the deportation policy and practices enforced in the town of Irving, Texas: 'Irving Mayor Defends Increased Deportations', *Dallas Morning News*, 21 September 2007, www.dallasnews.com/sharedcontent/dws/dn/latestnews/stories/092207dnmetirving.367bf3e.html); 'Texas Mayor Caught in Deportation Furor', *New York Times*, 4 April 2009, www.nytimes.com/2009/04/05/us/05immig.html.

[6] 'Helmsley's Dog Gets $12 Million in Will', Associated Press, 29 August 2007, www.washingtonpost.com/wp-dyn/content/article/2007/08/29/AR2007082900491.html

The expression 'Latin America', however, was originally coined in the nineteenth century by intellectuals who were poised to counter the evil and overpowering influence of 'Saxon America': in a 1856 poem written by José-María Torres[7] describing the cultural and political opposition between the Latin and the Saxon Americas, the United States is depicted as having rejected the natural political brotherhood that had united it since the revolutionary wars with the South American republics,[8] projecting only 'egotism, thirst for gold and hypocritical piety'. The poet reminiscences bitterly about what are still historical milestones of evil intervention in the region: the invasion of northern Mexico by the United States[9] and the infamous manoeuvres of

[7] José Maria Torres-Caicedo, 'Las dos Américas', *El Correo de Ultramar*, Paris, 15 February 1857.

[8] This proximity between the two Americas was strongly felt, for example, among the first generation of *criollos* who fought for independence from Spain between 1808 and 1815. The Philadelphia Constitution was a beacon of ordered liberty. In a preface to its first translation and publication in the *Nuevo Reino de Granada* in 1812, Miguel de Pombo was ecstatic: 'The Constitution of the United States is a form of government which is essentially good: she has caused the happiness of our brothers in the North; and will do so the same with ours if we imitate her virtues and adopt her principles'. Later, in that same piece: 'Washington and Franklyn would happily live among us if we adopted the precious treasure of the Constitution of the North' (author's translations). M. de Pombo, 'Discurso sobre los principios y ventajas del sistema federativo', in de Pombo, *La propuesta federal*, ed. V. Azuero (Bogotá: Universidad Nacional de Colombia, 2010). A similar fervour for the Philadelphia experiment was being displayed in Santiago by the first ideologues of national Chilean consolidation. Camilo Henríquez, in *La Aurora de Chile*, stated (referring to the United States), 'We all love the Constitution that has made its Nation the refuge of liberty and of all harassed humankind'. C. Henríquez, 'Datos históricos sobre Estados Unidos', 2nd part, in La Aurora de Chile, no. 13, 7 May 1812 (author's translation). J. Pinto Vallejos, 'El pueblo soberano? Modelo estadounidense y ficción democratica en los álbores de la República de Chile', in F. Purcell and A. Riquelme (eds.), *Ampliando miradas: Chile y su historia en un tiempo global* (Santiago: Universidad Católica de Chile, 2009), 73–94.

[9] From 1846 to 1848 the United States invaded Mexico in order to expand its territories beyond the border of Texas. Originally a colony of Spain and a region of Mexico, and later an independent republic, Texas officially became part of the United States in 1846. To consolidate its presence further in the south-west, the United States annexed the territories of Alta California and New Mexico. During the war, US forces advanced well into the Mexican heartland, occupying the territories of New Mexico, Alta California, Baja California, Coahuila, Veracruz, Puebla, and even Mexico City. The war came to an end with the Treaty of Guadalupe Hidalgo, which recognized the independence of Texas, established the international border at the Rio Grande, or Rio Bravo and completed the annexation through the fiction of a 'sale' of the territories of Alta California and New Mexico to the United States in exchange for $15,000,000. Mexicans of today do not completely forget the old affront. In the laundry list of US interventions in the region, it appears alongside several episodes in Cuba, the Dominican Republic, and, of course, Puerto Rico. Stories of covert intervention do exist in the history of most countries of Central America, the Caribbean, and, perhaps less overtly, in the larger nations of South America. These interventions remain alive in political

Walker in Honduras[10] to control one of the dismissively christened 'banana republics'. In the light of those events, the poet concluded that 'the race of the Latin America / in front has the Saxon race,/ mortal enemy that already threatens/ to destroy its freedom'. But this imagined 'Latin' America was, in reality, a reference to the old concept of 'Latinity' to which the powerful France of the day laid claim. According to intellectual historians, the 'Latin America' of the nineteenth century was, in reality, a geopolitical and intellectual artifact that sought to affirm the leadership of France among the southern countries of Europe and their former overseas colonies. And, certainly, one of the things that South Americans sought to acquire from the French civilizing experience was the social construction of *legalité* as paradigm for its own legal and political infrastructure.

In the same poem of 1856 this aspiration appears clearly: 'the rule of law [gobiernos de derecho] will reign/ slave to the Law, the citizen/ perfect sovereign of his own acts/ Reason will rule his actions'. This original purpose of the label 'Latin' America, however, has practically disappeared in contemporary use: the modern 'Latin America' refers almost exclusively to the Iberian America south of the Rio Grande, excluding thus the project of Torres and other Francophiles of like mind. The Latin American connection with France, however, has remained to this day on the maps of comparative law that are still current in the discipline.[11] In those maps people still firmly depict Latin America as part of the so-called 'civil law' family. In this dominant rendition, then, 'Latin America' is certainly an autonomous geographic 'place' that, nonetheless, 'belongs' genetically to a network of legal structures: the so-called 'civil law'. More precisely, it belongs to the cluster of legal institutions

memory and use through well-known works of literature: thus, for example, the almost incendiary collection of short stories by Guatemalan Nobel-laureate Miguel Ángel Asturias under the title 'Week-end in Guatemala', or the play 'I Took Panama', reminiscing about the loss of Panama in 1903 at the hands of US interests, by the Colombian writer Jorge Alí Triana.

[10] In that same laundry list of US affronts to Latin American patriotism nobody ranks higher than US filibuster William Walker. Walker initiated various campaigns with privately financed armies to invade Nicaragua and Honduras. In Nicaragua he even managed to be elected as president of the country in 1856. After many comings and goings, Walker was executed by the Honduran army in 1860.

[11] It appears, of course, in the traditional comparative textbooks that purport to give a genetic sense of the legal families. More recently, the same idea reappears in the literature that discusses the importance of 'legal origins' to the levels of economic prosperity in different parts of the world. The French affiliation of Latin America, in this case, becomes a liability, for it impedes the growth of dynamic financial markets. This argument appears in R. La Porta, F. Lopez-de-Silanes, A. Shleifer, and R. W. Vishny, 'Law and Finance', (1998) 106 *Journal of Political Economy* 1113.

and rules that sprang into being after the French Revolution and its very long shadow of influence over the local legal imagination during the nineteenth and the first half of the twentieth centuries. On traditional and current maps of comparative law, then, 'Latin American law' ends up being the basic legal structure of the Iberian republics of the Americas that replicates the general direction, style, methodology, and ideology of the post-revolutionary law of republican France.

Besides the participation of Spain, Portugal, and France, there are other exporters of law that have created durable channels and ties of influence with the region: the metropolises of England and Holland, of course, remain central to the understanding of the modern law of their colonies or former colonies (under the many legal forms that the latter relation may take). Their participation in a political and economic community of the Caribbean is well known; therein, at least, these other powers balance out and even outdo the Spanish cultural, economic, and political presence. On terra firma, on the other hand, the non-Iberian presence is quite marginal, close to invisible; for example, the Guatemalan official map does not, to this day, accept the strange presence of Belize[12] or 'British Honduras' as it is still called in Guatemala, in an effort to avoid its international recognition; likewise, the three Guyanas, west of Venezuela, seem to be territories[13] from a whole different continent with little political or cultural contact with the rest of South America. Ask a South American where Suriname is located and you will probably receive a blank stare as an answer. These examples of political exclusion and difference are important for understanding how law works at the regional level.

[12] Belize is a Central American country bordering Mexico and Guatemala. The first European conquerors who came to these territories were the Spanish in the sixteenth century. But, unlike the rest of Central America, Belize fell early under British influence. The history, in very broad brushstrokes, goes like this: Spanish authorities did not clearly mark (or govern, for that matter) the southern boundary of the Yucatán peninsula, allowing English pirates to seek refuge on the coast of this territory. English woodcutters and their slaves populated the coast in the seventeenth century. However, it was only in 1798 that a British colony was formally established when the British defeated the Spanish in the battle of St. George's Caye; in 1840 it was given the name 'British Honduras'. Guatemala signed a treaty with England for the devolution of these lands which became ineffective, however, when Belize achieved political independence. While Guatemala certainly recognized Belize's independence in 1993, official maps and public discourse inside the country still show clear signs of unhealed wounds.

[13] Two of them, Suriname and Guyana, are in fact sovereign states with their own conflicted history of neocolonialism. French Guiana, on the other hand, is still a colonial territory, tellingly known in French as a *département d'outre-mer*.

The cultural and linguistic distance between the Iberian and non-Iberian colonies is quite important from a legal point of view: there is no common Latin American and Caribbean legal tradition despite the geographical proximity. The former Spanish colonies in the Caribbean (Cuba, the Dominican Republic, and even Puerto Rico[14]) take part in a common legal dialogue with continental Iberian America and, moreover, with continental Europe; they base their legal origin and culture on a common bedrock of Spanish and also, much more importantly, broader European influences. An important part of the official ideology of the newly independent states of Latin America was to abandon the colonial law of Castile and to embrace, in its place, liberal, enlightened, and progressive European law, usually from France, Germany, Italy or, notice the irony, from the liberalized Spain of the second half of the nineteenth century. Spanish law at this time, in turn, was more indebted to liberal European institutions than to medieval Castilian law. Modern law in Latin America, therefore, remained somewhat connected to Spain, but rather to the new Spain that was rejecting its own traditional laws, costumes, and systems of governance to become a modern and liberal state.

By contrast, the English Caribbean followed quite closely the institutional and legal imprint of the common law, with no significant proximity to Iberian America. Furthermore, the English Caribbean followed a Burkean understanding of institutional history, denying any significant break in the law between the pre-colonial and the independent periods, between *old* and *new* law. Finally, the French and Dutch Caribbean, mostly still under colonial rule, developed the law directly with and through their metropolises, although republican France (starting with the public law of its own revolution) claims to be, through widespread ideological influence, the *modern* formative force behind all Latin American law and institutions. French political liberalism is still the main component of the remnants of Latin American legal Francophilia.

These boundaries of intellectual influence work quite surprisingly: just think of the immense amount of cultural and legal dialogue that there is, to this day, between the Dominican Republic and Cuba (despite a huge ideological schism of many years); meanwhile, and despite sharing the same

[14] The Puerto Rican adaptation of the US adversarial system of criminal procedure was chosen, by the US government, as a model to be followed in its quest to get many Latin American countries to reform their systems of criminal procedure in a wave of reforms that has spanned the region in the wake of the security challenges caused by drug trafficking and other forms of organized transnational crime in the region.

basic legal codes from the nineteenth century (well, sharing the same island!), there is no significant legal exchange between the neighbouring Dominican Republic and Haiti: when asked about it, a Dominican lawyer will describe her own legal system as structurally 'French', but, no, never, 'Haitian'!

These impressionistic views are not offered in judgement on the dignity or worth of any of these countries: they give, however, a good mental map of how lawyers imagine and think of their regional neighbourhood. These schematic maps express clear, if implicit, regional hierarchies: Latin American law (meaning, again, the Hispanic and Portuguese traditions) is imperial within its own domain (but weak and subordinated on the global map). The non-Hispanic Caribbean functions as an internal periphery in political and legal terms. This is, of course, a legal and political map coloured by chauvinism and ignorance, as this piece is written by a Colombian legal scholar. The map, then, cannot be real. Rather, and this is its only use, it is a snapshot of generalized perceptions in the minds of Latin American lawyers. The work of describing a Latin American and Caribbean legal tradition is, perforce, almost impossible. One could attempt the enterprise and even enlist the political arguments why these two vastly divergent legal traditions should be harmonized, but the final result would be mostly prescriptive, with little descriptive worth.

One could say, for example, that Latin America and the Caribbean have enough political and commercial convergences to largely justify the construction of harmonized or even uniform legal and institutional structures – for example, a common Inter-American Court of Human Rights where the basic dignity and fundamental rights of the American citizens are enshrined and protected; or a common commercial organization (CARICOM) that would strengthen commercial exchange between and the economic growth of Caribbean countries. But within these organizations the legal traditions of Iberian and non-Iberian countries really function more as an obstacle to the rapprochement of the serious interests being negotiated or considered there.

An example might be useful: the author of this chapter had the privilege of serving as an ad hoc judge of the Inter-American Court of Human Rights, sitting next to the recently appointed Jamaican judge. Making sense together of the proceedings was extremely stimulating for the both of us: however, our common background and interest in human rights was not strong enough to overcome the marked differences in juridical style which the Jamaican judge immediately recognized in this heavily 'Latin American' environment. Please remember, to start with, that the Court sits in San José,

Costa Rica. I tried to serve, to the best of my abilities, as a comparative interpreter of what was going on: the cultural meaning and purpose of a 'hearing', of 'evidence', of 'judging', of 'legal interpretation', of 'fundamental right', of 'indemnity', of 'wrong', and a long etcetera was split between background assumptions coming from my 'European continental law' and her 'common law' background (in the Jamaican judge's categorization), whatever the meaning these placeholders could carry. We quickly surmised that there were 'functional' similarities between our understanding of what a 'hearing' was and what it served for; but this well-intended functional cosmopolitanism was not enough to reduce the technical and ideological schisms that the two traditions formed, again and again, in this high-pressured environment. Our common commitment to human rights discourse and practice was not as potent as the ideological force of our 'background' traditions. I think this is a good description of what happens most of the time when Iberian and non-Iberian lawyers talk about the law in concrete situations. Interactions (institutional, commercial, etc., etc.) between Iberian lawyers are much more frequent and they rest on shared assumptions about the law; contacts between Iberian and, for example, English Caribbean lawyers are less frequent and they go on despite a marked sense of legal and cultural difference.

The same cultural distance is not quite apparent in dialogues between the Hispanic and Brazilian legal cultures, despite evident linguistic differences. Brazilians and Hispanic American lawyers do share a rather common map of legal influences, institutions, and ideologies. Their conversations, at a certain *abstract* level, show a common ground in history, in legal theory, in bibliographical references, and in institutional and political values and commitments. These common transnational, regional references are the *space* within which one can talk about a 'Latin American' legal tradition. This space, however, does not come from pre-Columbian or colonial times. In fact, it was explicitly structured with the purpose of *excluding* the disturbing presence of traditional indigenous and colonial laws. Only recently some reconstructive projects of the 'indigenous legal tradition' have reappeared that intend to salvage, at least at a highly abstract constitutional level, the impact of non-European, pre-Columbian laws and political values as tokens, for now, of multiculturalism.[15] These projects, however, do not bear much

[15] R. Yrigoyen, *Pautas de Coordinación entre el Derecho Indígena y el Derecho Estatal* (Guatemala: Fundación Myrna Mack, 1999). The best example in this direction comes from

promise of impacting everyday law and transactions. Some Latin American legal historians have also argued extensively in favour of a view of law that recognizes the influence that Castilian and Portuguese colonial law and practice continue to have, at some deep level, on the modern law of the region. Whatever the merits of this historical interpretation, however, it remains extremely marginal in the ideology of lawyers.[16] The truth seems to be, on the contrary, twofold: first, that Latin Americans of the nineteenth century distanced themselves from Spanish and Portuguese law to give priority to the powerhouses of European Law, mainly France, Germany, and Italy, with some minor attention being paid to the modern law of Belgium, Spain,

the Bolivian Constitution of 2009, whose preamble is worth citing in part: 'From time immemorial mountains rose, rivers flowed and lakes formed. Our Amazonia, our Chaco, our high plateaux were covered with plants and flowers. We populated this sacred Mother Earth with different faces, and we understood the plurality of all things and our diversity as individuals and as cultures. We thus created our peoples, and never knew racism until we were subjected to it during the terrible times of colonialism. We, the Bolivian people, of plural composition, from the depths of its history, inspired by past struggles, in the indigenous anticolonial rising, in the independence, in the popular struggles of liberation, in the manifestations of indigenous, social, and union organizations, in the conflicts over water, in the struggle for land and territory, and in the memory of our martyrs, constitute a new State' (author's translation).

[16] Several concrete examples may be used to illustrate this general tendency (indeed, an inbred prejudice) of the legal historian to heighten the influence of the laws and institutions of pre-independent Latin America: in the first place, the local civil law is said, as in Europe, to come straight from Roman law. Latin American universities and scholars, however, never fully participated in the creation and transformation of the European *ius commune*. Despite efforts to see the national civil law as an extension of the European *ius commune* (e.g. in L. Muñoz, *Derecho romano comparado con el derecho colombiano* (Bogotá: Temis, 2007)), it is a fact that there remains a political and academic gap between the two traditions. Latin Americans had a late and insecure start within the Roman law tradition; at about the time for the *criollos* to construct the national laws of the independent republics (*derechos patrios*), the project of codification and legal positivism and statism had completely undermined the Romanist project of legality. Roman law was indeed widely taught in a scholarly manner, but Latin America never ranked high in the scholarly network that produced the swansong of that tradition in the nineteenth century. See F. Betancourt, *La recepción del derecho romano en Colombia (saec. XVII)* (Seville: Universidad de Sevilla, 2007). In another disciplinary area, Professor Malagón has tried to prove that the central concepts of administrative law do not come from French influences and doctrines, as is widely believed. Instead, according to Malagón, they still come directly from Spanish colonial administrative practice. The thesis thus impugns the idea of massive French transplants of administrative law. The evidence offered, although interesting, remains elusive and subtle. The legal remnants of the past, said to be decisive in contemporary law, end up in the margins of the working doctrines of the present, and rather as institutional ghosts coming out of the 'legal unconscious'. M. Malagón, *Vivir en policía: una contralectura de los orígenes del derecho administrativo colombiano* (Bogotá: Universidad Externado, 2007).

and Portugal. Second, whenever influence came from Spain or Portugal in the late nineteenth century it was through the liberal codes and rules that these countries were fashioning to modernize and liberalize their own late-medieval legal traditions.

The contemporary 'Latin American' tradition was forged during the nineteenth century, when a renewed 'European legal space' was created, of course, in the old Continent. In the same nineteenth century, the law and institutions of the new Latin American republics linked themselves to this web of juridical books, doctrines, ideologies, and histories to form, in time, what we might call the 'Euro-Latin American legal space'. This is not simply the same European *ius commune* created by Romanistic culture in the thirteenth century. While it may be easier for Europeans to see a historical continuity between the 'Roman Law tradition' and the formation of the European legal science and space of the nineteenth century,[17] that way of looking at things makes less sense for Latin Americans. The European *ius commune* that spanned the thirteenth to the eighteenth centuries was not extensively used in Latin America: legal contact, since the 'discovery', was established only spasmodically if it ever really occurred; local customary practices remained central to communities that were hardly reached and poorly tended by the colonial institutions of law and adjudication; the practicalities of government in the Americas demanded direct action through royal law and executive command, not the application of the scholarly tradition of Roman law; therefore the Spanish metropolis relied mainly on national laws and institutions and, furthermore, in a specialized body of rules, the *derecho indiano*, which was in itself exceptional vis-à-vis the ordinary law of Castile. Finally, the *ius commune* was a scholarly tradition that was not amply received or used in everyday law due to obvious shortcomings and lack of investment in the academic or administrative networks of *ultramar*.

French and German scholars began in the second half of the nineteenth century to form a common space for the production and sharing of legal science, ideas, and institutions. For them, back in Europe, this legal space was a re-creation of the supranational construction of the *ius commune* that

[17] As presented, for example, in a long and distinguished tradition of scholarship: P. Stein, *Roman Law in European History* (Cambridge University Press, 1999); J. H. Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (Palo Alto: Stanford University Press, 1969); G. Wesenberg and G. Wesener, *Historia del derecho privado modern en Alemania y Europa* (Valladolid: Lex Nova, 1998).

had occurred since the latter Middle Ages. It was a 'modern' *ius commune* as it was in fact called. For Latin Americans, on the other hand, this was probably the first instance when they could participate in a highly cosmopolitan and supranational idea of law, but for more practical and urgent purposes. Non-European jurists (in Latin America, but also elsewhere) began to participate also in this open space: in 1898, Luis Claro Solar, the foremost Chilean jurist of the turn of the century, was able to make a list of the leading countries of this transnational space, as witnessed from the remote southern town of Santiago (now turned into a veritable 'global city'[18]): Germany, France, and Belgium. He wrote, perhaps for the first time, a treatise on the Chilean Civil Code that made extensive use of comparative materials from these European countries.[19] Foreign doctrine became quite prestigious and widely used: when reading these books, there seems to be a seamless web of doctrine between the *Précis* of Baudry-Lacantinerie[20] in Paris and Claro's *Explicaciones*. Looking with attention at these developments, Latin American legal reformers and scholars voluntarily threw themselves into this intellectual web of transnational doctrine with the purpose of building up and consolidating their own national legal systems. Nation-building demanded legal institutions, but the respite during which to implement them came only half a century later, after the drums of war had definitely ceased in the region. Theirs was a target of opportunity: in charge, as they were, of the establishment and strengthening of the legal institutions of the young republics of America, they saw in this pool of legal science the materials, tools, and resources (a veritable legal quarry) that might be deployed in their own endeavours. This Euro-Latin American space was being consolidated by the end of the nineteenth century; it was stable and clearly dominant during the twentieth; and, finally, it is still powerful, but not without challenges, in the dynamic map of the law of our times.

To conceptualize with some level of precision this networked space, it is perhaps advisable to use the expression 'Euro-Latin American legal space'. With this expression we try to capture the formation of European legal science from the point of view of Latin American legal elites who partook of that project, used their resources in the creation of the legal infrastructure of their own countries and, at the end, had to endure the strictures and

[18] S. Sassen, *The Global City* (Princeton University Press, 2001).

[19] L. Claro Solar, *Explicaciones de Derecho Civil chileno y comparado* (Santiago: Establecimiento Poligráfico Roma, 1898).

[20] G. Baudry-Lacantinerie, *Précis de Droit Civil*, 3 vols. (Paris: Larose, 1882–4).

hierarchies that the network imposed on them. We must also direct our attention to the derivative network of dialogue that in time was formed in Latin America: there is to this day a regional dialogue of legal science with very active local influences and transplants in which, for example, the original French *cassation*, to this day, has been interpreted and understood in El Salvador through the doctrine and case law expounded by the Colombian Supreme Court. In time, and this is fundamental to notice, the derivative regional dialogue became much more fluid and dynamic than the original exchanges with liberal European law. The amount of material that circulates inside Latin America is huge and, in many examples, constitutes the autonomous reworking and retooling of concepts original to the European space: think, for example, of the amazing importance for contemporary constitutional law of the concept of 'Estado Social de Derecho' that is genetically linked to the political idea of the German 'Sozialrechtsstaat', but which has also been transformed to serve new and important uses endogenous to Latin America. With it, Latin Americans have massively reshaped their political and constitutional rhetoric, have enhanced the role of fundamental social rights in adjudication and have reshuffled, not necessarily for the better, the redistribution of social entitlements in contexts of dire scarcity.

For the comparative lawyer of today, then, it is necessary to explain the structure, the channels, and the functions of this Euro-Latin American legal space, a story that in general has remained absent from the standard recounting of the so-called 'civil law tradition'. The 'civil law tradition', as it has usually been constructed,[21] is a misleading concept on several counts relating to Latin America: the civil law tradition tells the history of European legal science and of its influence, and this is, at a certain level, irreproachable. But this rendition obscures the precise ways in which the dialogue of the law happens at a regional level, obscures the fact that this regional dialogue is not marginal but, rather, central, that it certainly goes on with chunks and pieces of European legal *science*, but that these chunks and pieces have been widely transformed by many other legal influences and local political purposes; and, finally, it obscures the fact that all of this interaction, borrowing, and common influence happens, not

[21] In the disciplinary textbooks, for example, of R. David, *Major Legal Systems of the World Today: An Introduction to the Comparative Study of the Law* (London: Stevens, 1985); K. Zweigert and H. Kötz, *Introduction to Comparative Law*, trans. T. Weir, 3rd rev. edn (Oxford: Clarendon; New York: Oxford University Press, 1998).

in the reconstructed Latin of antiquity (after all, the supposed lingua franca of the civil law), but in the modern Spanish (and Portuguese) of today.

Finally, what might be the purpose of studying this *espacio jurídico euro-latinoamericano* in an introduction to regional comparative law? As with almost all other endeavours in general comparative law, the purpose of these introductory macro-comparisons is powerful but limited: the description of the *espacio jurídico euro-latinoamericano* will give readers a sense of the background legal conversations that local Latin American lawyers have when they interact in transnational spaces in the conduct of both public and private businesses. It is as if we were peeking at the preliminary and perfunctory chit-chat that creates recognition and accreditation between lawyers of different countries when they share common disciplinary stories about the law. This background knowledge feels like an abstract common language: powerful enough to distinguish between insiders or outsiders (certainly a *gringo* lawyer is an outsider), but not powerful enough to draft the contract or the lawsuit in all its technical legal detail. This is why, for example, an Argentinean lawyer in a US-based law firm can coordinate the due diligence for projects all over Latin America. She can speak the regional language. But each jurisdiction has its own national dialect that cannot be wholly cracked open through background knowledge extracted from the *espacio*. Linguistic structures will continually provide arguments to limit and circumscribe the local force of the dialect; and vice versa. The *espacio*, however, will not teach you to speak the dialect convincingly. This description, perhaps, could also work to explain the dialogue between an English and a US lawyer or between Muslim scholars in Africa staring at each other across the divide between the Shāfi'ī and the Mālikī *madhhabs* or schools. It would be interesting to make comparisons of how strong these languages remain within each tradition. I shall hazard a bold and purely speculative assessment based on personal experience: I would say that the language of the *espacio euro-latinoamericano* exerts today a stronger disciplining and harmonizing force than can the 'common law' in an Atlantic conversation between US and English legal workers; it even exerts a stronger force than the 'civil law' familiarity between, say, a Honduran and a French lawyer today. However, I would not be able to say how it feels, from an internal point of view, in a conversation between Muslim jurists.

But this Euro-Latin American space has also been impacted by other influences, mainly the slow, reluctant, but now powerful, invasion of US

law and, more importantly, jurisprudence. Although the region has been culturally Americanized throughout the twentieth century, many claimed that this process was neither possible nor desirable in the law, where genetic affiliation to Europe had created some sort of niche of immunity. This, of course, is not true: the global weight of the United States has created forces that pull, in Latin America and elsewhere, towards that legal model. Although the subject would necessitate a volume in itself, the Americanization of Latin American law can be told in broad-brush outline: first, the incandescence of French prestige started to lose its brightness, while mistrust of the Saxon America faded in memory as the twentieth century began to unfold. Another writer, Marco Fidel Suárez, foretold in his 1925 'Dreams of Luciano Pulgar' the ascendant role of the United States: 'It is time for the Americanization, as we, progressive citizens, call the impulse coming from America, that is, the United States, which will transform this island'.[22] For intellectuals at the dawn of the twentieth century, the US experience was of great interest: more administration, more business, less politics, less ideology; the US experience was depicted by many as the real doorway to practical economic modernity out and away from that thick and highly volatile political modernity that French ideology had brought into the region as an escape from the irreducible confrontation between political liberalism and Catholic conservatism that had stifled the growth of these forsaken countries.

The second fundamental element was that, at some point during the thirties, the United States began to see that it could actually export its law and, in consequence, began aggressively to do so. New statutory and regulatory law, mainly regarding banks and finance, were demanded by many Latin American countries. The regulations were, in turn, easily translatable to the general doctrines of obligations or administrative law that constituted the scientific core of the European legal tradition. The American statutes created 'obligations' or defined 'banking contracts' or demanded 'administrative acts' or granted 'jurisdiction'. All these notions were interpreted and applied with the thicker theories and conceptual ways of thinking that the Euro-Latin space had already formed. Latin doctrine and case law already had well-formed theories of obligations, contracts, administrative acts, or jurisdiction that were used, in turn, to interpret systematically new regulatory ideas coming from the United States. These general theories spoke the

[22] M. Fidel Suárez, *Sueños de Luciano Pulgar* (Bogotá: Minerva, 1940) (author's translation).

European legal language, but with clear local accents and dialects:[23] upon them, furthermore, one could lay down many regulatory or policy strategies brought from other 'families' of the law. In this way, Latin America soon proved that the apparently irreducible distance that existed between the common and the civil law families was not real. Rapprochement was possible, but in particular fields and without bringing to the table the harder, culturally embedded differences that exist in the core, structural doctrines of 'obligation', 'contract', 'administrative act', or judicial structure and ideology. When Édouard Lambert[24] declared in Egypt, throwing his arms in the air in despair, that the French and the English could not establish a real legal dialogue of mutual adaptation and accommodation, he was not taking into account the more modest Latin American path to 'Americanization': the transplant of American statutory law into civil general structures, not the creation, overly ambitious to this day, of common basic doctrines of private law. This modest path was, in fact, the real point of contact that the common law and civil law traditions began to have in the region. The strategy was not, at the end, that modest: it served to Americanize local law at growing speed and in very many different areas. Today, in a deeper and riskier gamble, Latin America has taken up the adversarial trial system to try to fix its own problems with expanding criminality. The change has not yet impacted the general theory of process, much less the general theory of crime. On the contrary, the general theories of process and crime still serve the purpose of understanding the adversarial system, thus creating a strange mixture of Euro-Latin concepts and American practices. These changes, nonetheless, have brought new expectations to the field of criminal procedure with its attendant importance in the political life of Latin American countries.

Later US law has become something more than simply a repository of statutory ideas and quick fixes: pushed to a brutal generalization, one could say that US law and jurisprudence represent today, in Latin America, the general idea according to which law is a purposeful instrument of governance

[23] It is extremely common for European jurists to notice misunderstandings of general theories as they are applied in Latin America. They can also be understood as useful 'transformations'. The first attitude demands repentance and submission to orthodoxy; the second discusses the consequences of the adaptation. D. López-Medina, *Teoría impura del derecho: la transformación de la cultura jurídica latinoamericana* (Bogotá: Legis, 2004).

[24] É. Lambert, *Conception générale, définition, méthode et histoire du droit comparé. Le droit comparé et l'enseignement du droit. Congrès Internationale de Droit Comparé, tenù á Paris du 31 Juillet au 4 Août 1900. Procès verbaux des séances et documents*, vol. 1 (Paris: LGDJ, 1905), 26–61.

that implements policy in the areas that it regulates. US legal science is the place from which Latin America extracts the bits and pieces of 'policy analysis' that seem to counter and balance the 'doctrinal and conceptual analysis' that stems from the classical European tradition. This is the continuous message of contemporary American jurisprudence, under the guise of either economic analysis or critical legal studies. Even a neo-conceptualist like Ronald Dworkin has been read in like fashion: his books show a heightened sensibility for the role that policy analysis plays in legal thinking, at least when compared with French legalism or European conceptualism.

16.2 The place of Latin America in the hierarchies of comparative law

I shall finish with some remarks about the politics of comparative law: the language spoken in the Euro–Latin American legal space ranks low in the hierarchies of traditional comparative law. There are at least two main reasons for this: in first place, it is usually supposed that Latin American law is merely an 'affiliated' legal family that depends heavily on European law, mainly of the so-called French variety. The master architect of legal families, René David, described Latin America in the following terms:

> The laws of the twenty nations of Latin America belong, with no argument, to the Western legal system, and particularly to the French group of that system. The conception of the world that they purport to actualize is typically that of western Europe. Found in them is the same adhesion to the principles of Christian morality, liberal democracy and the capitalist structure of society. In all those states, besides, one can find Codes that are very similar, both in content and form, to the European Codes, and particularly the French as far as private law is concerned ... The similarity is so great that one can state with complete certainty: the best way that a jurist has of becoming familiar with the bulk of the laws of Latin America is, without doubt, by resorting to extracting from Europe, and especially from France, the knowledge of the general principles that dominate in all those legal systems and the methods that allow one to study and to understand them.[25]

The language spoken, according to David, seems to be French. He might accept that there are local dialects, but the general language is unmistakably

[25] R. David, *Tratado de derecho civil comparado. Introducción al estudio de los derechos extranjeros y al método comparativo* (Madrid: Editorial Revista de Derecho Privado, 1953), 251–2 (author's translation).

French. For David, then, Latin American not only has a *droit franchophile*, but a veritable *droit francophone*. My thesis in this chapter will be to say that the *espacio jurídico euro-latinoamericano* indeed has had at some point strong ties with France; but, on the other hand, it is not particularly helpful to say or believe, without more specification, that Latin American law is today a legal or political extension of *francophonie*. This belief gives excessive weight to the influence of the French codification and its attached principle of *legalité*. French jurists know this quite clearly, for they understand that the cultural projects of *francophonie* and *francophilie* apply to their former colonies in Africa in a sense that has probably never been the case in Latin America. David perhaps misrepresented and exaggerated the type of tie that linked French and Latin American law. Latin America has undoubtedly participated in the European space, but the borrowed doctrines and laws have been heavily appropriated and reinterpreted for multiple different purposes. Latin America is not part of the civil law family anymore, if such conceptual abstraction still holds any validity; and certainly it is not part of the *francophilie*.

However, the real, structural point that remains in David's conception is political: Latin American countries possess affiliated and secondary laws, the deployment and use of which are less successful and credible. Highly legalistic as Latin Americans are, the rule of law in Latin America remains of poor quality, their apprehension of doctrine incomplete and parasitic, and the real efficacy of their institutions marginal and discriminatory. In comparative law exchanges, then, little attention is paid to the development and recent state of Latin American law. Their proposals, in political settings, suffer from lack of respect and power; academically, likewise, the comparative interest in Latin American law remains marginal. Legal Latin Americanists suffer from an acute case of the 'Cinderella complex' within a discipline that has its own deep-seated issues of self-esteem. In the light of these doubts, can we offer some final arguments to try to reposition Latin American law in the context of the contemporary maps of comparative law?

First of all, the *espacio jurídico latinoamericano* has become quite polycentric. There is no single site of legal production that has a marked leadership in the region. Latin Americans have always been curious and adventurous in the broad markets of comparative law: they confer prestige and status to the legal doctrines and forms of many states and regions. They have used, by direct or indirect import, the laws of many European states (such as France, Spain, Portugal, Germany, Italy, and Belgium); they now also take advice on different matters from ideas, institutions, or doctrines

from the United States and other so-called 'common law' traditions, really taking their cue not from the 'common law' part but rather from modern statutory and regulatory law whenever it seems feasible for internal needs and purposes; they have paid heed to the legal innovations and political projects proposed by multilateral agencies in the context of, for example, protecting human rights or foreign investment; finally, and most importantly, Latin Americans have an increasingly active circulation of legal ideas and experiences among themselves. Latin American legal culture and behaviour has been certainly an open, receptive, docile, and, at times, almost submissive social enterprise. Each characterization is partially true, but each suggests a different appreciation of the phenomenon.

Second, I want to argue that the secondary position, esteem, and respectability of Latin America in comparative studies is in itself a political artifact, a long-term prejudice that is easily reiterated but seldom and inefficaciously criticized. Witness, for example, the laws and institutions of Aruba and their positioning in the strategic maps of comparative law: in a famous recent case, the *Holloway* case, the pressure exerted on Aruban authorities to find those behind the disappearance of a young American woman moved them to seek active support from Dutch criminal investigators. This was a move to counter the widespread idea, at least put forward in the US press, that local institutions of criminal investigation were inept at best, if not outright corrupt. Aruba was being depicted as a tourist paradise, but mired in institutional corruption.[26] This may or may not be a fact, of course. The important point is that Latin and Caribbean legal systems are routinely perceived as such. This perception, in turn, seems to be embedded in the way in which the discipline of comparative law perceives and positions the region in its maps. That perception, of course, is not innocent: it certainly strengthens the position of whoever advances the criticism by undermining the credibility of local institutions and opening ways for legal or other types of intervention. Thus it is common to believe, with or without evidence, that there is some sort of deficiency in the quality of the law and legal institutions of Latin America and the Caribbean.

The criticism that other nations violate the 'rule of law' is, in many instances, a remark that some can throw at others as a consequence of their superior geopolitical power or as a projection of the confidence that one's

[26] D. Holloway, R. S. Good, and L. Garrison, *Aruba: The Tragic Untold Story of Natalee Holloway and Corruption in Paradise* (Nashville: Thomas Nelson, 2006).

own legal system functions better or more efficiently than the other's. Geopolitical power, then, is part of the hierarchy of comparative law that position and, to some extent, prefigure quite negatively the expectations that many hold about the workings of law in Latin America and the Caribbean. The archetypical depiction of this sense of legal superiority (and the resentment that it generates in Latin America) is shown in structural prejudices that surface, from time to time, in the world's press: thus the presence of Dutch authority was sought by the Aruban authorities to give support and credence to the local investigation in the Holloway case; it was certainly more difficult to criticize the legal institutions and proceedings of a 'First World' country. A credible 'rule of law' was replacing the unstable and fragile 'unrule of law' of Aruba.[27] But the affront to local pride did not pass unheeded: Aruban journals reported that on 5 July 2005 some islanders demanded 'respect [for] our Dutch law' in the face of protracted accusations of inefficacy and corruption by the Holloway family and the governor of the state of Alabama, where the family resided.[28]

Similar accusations have been made in many other cases. The Brazilian legal system was seen as incapable of offering criminal due process to American pilots charged with criminal offences after a mid-air collision in 2006.[29] The Colombian criminal and prison system was depicted by the

[27] C. J. Williams, 'As Missing Teen Case Cools, Aruba Turns Against Family', *Seattle Times*, 9 June 2007, http://seattletimes.nwsource.com/html/nationworld/2003741183_aruba09.html.

[28] Holloway's mother retracted her opinion of the Aruban legal system and accepted that it worked according to well-known juridical principles: 'I would like to apologize to the Aruban people and to the Aruban authorities if I or my family offended you in any way. I realize that the Aruban legal system abides by the presumption of innocence and I want to reassure everyone that I do respect the Aruban legal system.' CNN.com, 'Missing Teen's Mom Apologizes for Comments: Statement "Fueled by Despair"', http://edition.cnn.com/2005/LAW/07/08/missing.aruba/.

[29] On 8 December 2009, two US pilots of a private jet were charged in Brazil for causing a mid-air collision that killed 154 people. The pilots were detained in Brazil after the small jet they were flying collided with a Gol Airlines Boeing 737–800 at 37,000 ft over the Amazon jungle on 29 September 2006. Despite sustaining damage, the private aircraft was landed safely at a military air base. Brazilian federal police charged the pilots with 'endangering air safety'. The Brazilian investigation found out that the private jet's transponder was switched off at the time of the collision. The American investigation, on the other hand, faulted the Brazilian air control system. The criminal case of negligence continues in Brazil against the two US pilots. O Globo, 'Mais duas testimunhas devem depor sobre acidente com voo 1907 da Gol, http://oglobo.globo.com/cidades/mat/2010/08/17/mais-duas-testemunhas-devem-depor-sobre-acidente-com-voo-1907-da-gol-917413627.asp.

European Court of Human Rights as incapable of receiving in extradition an Israeli citizen sentenced to jail for training paramilitaries in the 1980s without violating his fundamental human rights under the European Charter; in the Court's decision, the main evidence for this mistrust was a press statement by Vice-President Francisco Santos, in which he wished that the so-called trainer of the right-wing paramilitary militia would 'rot in jail'.[30] The remark was intended to showcase before the international community of Human Rights the will of the Colombian government to put a stop to their violation. The strategy, however, backfired miserably for his statement was interpreted in Strasbourg not as zeal to combat the far right paramilitary, but rather as disregard for the rule of law that would imperil the life and integrity of an Israeli citizen. Finally, in an example that shows quite explicitly the symbolic effect of asymmetrical perceptions about the 'rule of law' in the world maps of comparative law, the US television show *Dateline* broadcast an exposé under the title 'Enemies at the Gate', in which an undercover journalist, by using a 'broker' with corrupt 'high-level contacts', was able to obtain legitimate Peruvian and Venezuelan passports that would pose serious threats to the US immigration system if used by terrorists or other dangerous individuals. The contacts in Lima also offered to provide the undercover journalist with a legitimate visa to enter the United States. Why not, then, try and get this as well? At this point, however, the journalist's zeal was diminished in the light of legal concerns: 'Because the situation raised concerns about a potential threat to US national security, NBC News approached US government officials in several agencies.

The US government, on the other hand, refused a petition by the families of the victims to withdraw flying licences of the pilots. O Globo, 'Governo dos EUA nega pedido de cassaçao de brevê de pilotos emvolvidos em accidente da Gol', 5 May 2010, http://oglobo.globo.com/cidades/mat/2010/05/05/governo-dos-eua-nega-pedido-de-cassacao-de-breve-de-pilotos-envolvidos-em-acidente-da-gol-916505568.asp. The confrontation between jurisdictions continues.

[30] European Court of Human Rights, *Klein v. Russia*, 1 April 2010. According to the Court (Para. 54), 'Furthermore, turning to the applicant's personal situation, the Court observes that the applicant fears that he would be singled out as a target of ill-treatment when in Colombia because Vice-President Santos reportedly stated that the applicant should "rot in jail". It considers that, regrettably, it is unable to assess fully the nature of the statement and the connotations it might have had in the original language, i.e. Spanish, since the applicant has not indicated the source of the information concerning the statement in question. However, it appears that the statement expressing the wish of a high-ranking executive official to have a convicted prisoner "rot in jail" may be regarded as an indication that the person in question runs a serious risk of being subjected to ill-treatment while in detention.'

Officials said that if [the journalist] were to file the visa application under a false identity, even for a news story intended to expose weaknesses in the system, it would violate US law.'[31] Needless to say, the irregular acquisition of passports was also a violation of Peruvian law. By this fallacious construct the Peruvian system looks corrupt while the American is saved, at the last minute, not by its efficacy (which remained to be tested), but by corporate risk aversion.

This embedded prejudice is not only projected on to Latin America; it is a way of characterizing other legal systems in order to generate not a description of their functioning but rather a valuation of their merit. It is not a general and unbiased macro-comparison of the 'spirit' of Latin American law: it is the beginning, already, of public and private negotiations in which compromise clauses or New York jurisdiction is required (and is many times imposed) in the light of the perceived judicial inefficiency of Argentina; it is the inducement to apply universal criminal jurisdiction by Italian, Spanish and Dutch judges in Peru, Guatemala, and Suriname; it is the prejudice that allows many to think that reports about positive Latin American law count only as anthropological information, not as alternatives in the urgent issues of today's law. This strategy, this comparative positioning in the maps of law, is naturally and frequently used against African countries: when a Spanish air crew was detained in N'Djamena in November 2007 for trafficking children out of Chad to be adopted in France under the auspices of the French charity l'Arche de Zoé, alarmed Spanish and French public opinion (and their governments) focused on the dire conditions of the prison system, not on the crime itself. (Despite the group's claim that the children were orphans from Darfur who were being taken to be fostered in France, most of the children were found to be Chadian, and to have at least one living parent or guardian.) The Chadian legal system was criticized as being incapable of trying the Europeans; if punishment were to be meted out, it would have to be functionally adapted to European laws and, of course, executed there.[32] This criticism missed its mark: it undervalued the substantive legal interests of Chad's law and government. A Chadian minister had to come before the press to announce that 'not everything is allowed in our country', referring

[31] Richard Greenberg, Adam Ciralsky, and Stone Phillips, 'Enemies at the Gate', www.msnbc.msn.com/id/22419963/.

[32] 'París pedirá a Chad el traslado de los miembros de El Arca de Zoé', *La Vanguardia*, Madrid, 27 December 2007, www.lavanguardia.es/lv24h/20071227/53421060886.html

to the fact that the children had to be legally adopted, not just physically removed, even if out of saintly concern.[33]

This disciplining mechanism is also applied to First World countries, but not in the structural manner that is embedded in the maps of comparative law for Latin America or Africa. The Chadian prison of the Arche de Zoé case is known by locals as 'Guantánamo'.[34] The known failures and imperfections of US law and institutions, however, are presented case by case against a backdrop of general systemic confidence. However, self-confidence is hard to come by in Latin America; the price for gaining trust is higher and must be paid by offering concessions and advantages, despite the goals and purposes of internal law: that self-doubting attitude has been somewhat internalized by Latin Americans to the point that many believe that foreign law is, in fact, some sort of super law that performs the functions that it is supposed to carry out very well. In those fabled institutions of the 'First World', the law is applied impartially and rigorously by serious and unpolluted 'law enforcement' agents: the difference from institutions at home is so stark that it is not only quantitative but almost qualitative. In real rule-of-law countries no impunity seems to exist. The immigrants know it: speed limits do function in the United States, but not in Colombia. What they do not know is that the forcefulness of the law is related to their social, political, and legal position, not by a miraculous eye of God that actually catches every single violation of the law in the United States, but not in Latin America. If they were respected citizens, in fact, they would find a milder, more negotiable law, a more flexible and docile instrument, not the peremptory rules that they take to be the staple of truly functioning legal systems. With more rights, in fact, they would find that the rule of law would be somewhat murkier, more amenable to their own capacity to negotiate it and change it, just as it happens, well, at home! Could it be, paradoxically, that contrary to standard accounts the legal systems in Latin America and the Caribbean are reasonably functional, or at least as generally functional as those of the 'First World'? This could be

[33] 'La gente cree que en África está todo permitido', *El País*, Madrid, 31 October 2007, www.elpais.com/articulo/internacional/gente/cree/Africa/todo/permitido/elpepiint/20071031elpepiint_2/Tes

[34] 'El Guantánamo de Yamena, la mejor opción posible', *El País*, Madrid, 4 November 2007, www.elpais.com/articulo/internacional/Guantanamo/Yamena/mejor/opcion/posible/elpepuint/20071104elpepiint_5/Tes

investigated by comparatists only if they shed the inbred prejudices that still lurk in their maps. I would say that Latin American legal culture precisely demands this!

Further reading

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