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Between Civilisation and Barbarism: Creole interventions in international law

LILIANA OBREGÓN

ABSTRACT *This article argues that Latin American regionalism in international law is a direct consequence of a 'creole legal consciousness' meaning a shared basic assumption about the origins of law in the region (as coming from Europe through Roman law and Spanish law) as well as a belief in the uniqueness of an American (as in the continent) interpretation and development of that law. Those who participate of such a consciousness assume themselves as being part of the metropolitan centre (as descendants of Europeans), while at the same time challenging the centre with notions of their own regional uniqueness (as natives of America). Creole consciousness about international law was an instrument of nation and region building during the 19th century. This led to a discussion of the actual existence of a regional international law '[Latin] American international law' (derecho internacional Americano) in the first half of the 20th century. The article concludes with a look at how a regional perspective was also inherent in the construction of a human rights regime in the second half of the twentieth century.*

The term *Latin* America was coined during the second half of the 19th century out of the expanding ideas of 'Panlatinisme' promoted by the French and adopted by local patriots in an effort to criticise US and British (Anglo) imperial interventions in the region.[1] In consequence, several new proposals for a Confederation, Union or League of the *Latin* countries of America came forth.[2] A new cadre of international lawyers who were situated in the Parisian milieu, such as the renowned Carlos Calvo, helped to promote the notion of a *Latin* America, as well as the use of the term in reference to the special characteristics of international law for the region. The rediscovery of an American connection with its Latin roots in Europe was interpreted as a further argument for the advancing state of civilisation in the region, during a period when Darwinism and ideas of progress were highly influential.

At the beginning of the 20th century the Brazilian diplomat and professor of international law, Manoel Álvaro de Souza Sá Vianna (1860–1924), argued that 'Latin American International Law or American International Law does not and cannot exist'.[3] His book, *De la non existence d'un droit*

Liliana Obregón is in the International Law Programme, University of Los Andes, Cra 1E No 18A-70, Bogotá, Colombia. Email: lobregon@uniandes.edu.co.

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international americain, was presented at the Fifth Latin American Scientific Congress of 1912 in an effort to challenge the Chilean legal scholar Alejandro Álvarez's earlier proposals for a general recognition of the existence of an 'American International Law'.[4] Sá Vianna's intention was to put an end to the notion of a regional international law, arguing that problems common to the countries of Latin America or to the American continent did not and could not constitute a basis for an autonomous or separate sphere of international law. For Sá Vianna international law was based on principles, laws and rules observed by international society and not on common historical experiences among a group of countries, as Álvarez had argued.

The Sá Vianna – Álvarez debate is important because it brings forth the underlying story of a regional sensibility, or what I call a *Criollo consciousness* about international law that began in the early 19th century and, arguably, continues to this day. In the early 19th century Criollo lawyers and intellectuals received and articulated international law as part of their nation-building projects and their search for recognition and legitimate participation of the new states in the 'community of civilised nations'. The idea that there were particular regional problems of international law carried on well into the 20th century.

The discussion of Sá Vianna and Álvarez troubles the common assumption that the discourse of international law went unchallenged when received and appropriated by Latin American nations peripheral to European and US economic and political dominance.[5] Henry Wheaton, the renowned US international legal scholar of the 19th century, articulated the idea that Latin American internationalists merely appropriated European law and culture when he stated in 1845 that the sphere of European international law was simply extended by the accession of the 'new American nations that have sprung from the European stock'.[6] Even late into the 20th century many scholars of international law continued to present Latin Americans as having an unproblematic acceptance in international society during the 19th century because 'they shared common features: Catholicism, a sense of the same regional belonging, common economic interests . . . and a common language'.[7]

For Latin Americans the 19th century is determinant in their view of international law because it is the end of a period of more than three centuries of colonialism.[8] The 19th century began with the uprisings and manifestos for independence of the 19th century and ended with the Spanish – American war of 1898. Internationally, for Latin America, it was the century of the Monroe Doctrine, the American and Pan-American Congresses, US imperialism, European interventions and the admiration of French models of civilisation rather than the previous Anglo (England and the USA) ones. It was thus characterised by the shift of identities from 'Americans' during the first half of the 19th century to 'Latin Americans' in the second half. Nationally it was the era of different models of statehood and state consolidation, civil wars, *uti possidetis iuris*, *caudillismo*, the struggle over local interpretations of liberalism, the appropriation of indigenous lands, and the abolition of slavery. The 19th century for Latin

America was a long and turbulent one, both for its stories of foundational achievements as for the ones of oppression and resistance.

In the discipline's memory of the 19th century Latin American international lawyers are presented, if at all, as either faithful receptors and appropriators of laws and legal theory coming from Europe who adhered to the debates between positivism and naturalism,[9] or, more specifically, as Catholic followers of the Spanish School of Salamanca, as represented mainly by Francisco de Vitoria or Francisco Suárez.[10] A more originalist interpretation reads the 19th century internationalists as the founding fathers of a distinct and separate regional 'Latin American International Law' or even as the first advocates of a 'Third World approach to international law'. All these positions seem to place the first Latin American internationalists as either marginal observers of the field or, in the most optimistic view, as eccentric advocates of the new and weaker nations of a growing international community.

It is in this sense that the Latin American story is distanced from the traditional recounting of the 19th century as an era of excessive formalism and rigid notions of sovereignty, for which there is more to be forgotten than remembered.[11] In my reading the Latin American experience of international law departs from a Creole (or *Criollo* in Spanish) legal consciousness. This consciousness, which I will explain in more detail below, basically means that the region's elite often assume themselves as being part of the metropolitan centre (as descendants of Europeans) while at the same time challenging the centre with notions of their own regional uniqueness (as natives of America). They may be seen as peripheral or marginal actors but their diversity and differences are self-interpreted as advantages over a monolithic European view of the world. Nonetheless, they are also willing to create peripheral peoples from their own countries or out of other regions of the world. That is, in international law (as well as in other sites of cultural and intellectual production) they do not see themselves as mere appendixes of Europe or as the exotic other.

This perspective hopes to fill in a few gaps in the history of international law, which can be identified in four dominant approaches. The first gap appears in the general contemporary histories that treat the 19th century as a distant relic of the past in their effort to present a modern, forward-looking and progressive field where hands-on lawyers face pressing global issues. The second gap is present in the new histories that study international law in the 19th century but barely acknowledge the presence of Latin American publicists. The third gap is found in the histories of those Latin American writers who describe the tradition of a regional vision of international law, but read it as a facile story of progress that ends with the formation of the Organization of American States (OAS) and its institutions of international law such as the Inter-American System of Human Rights. Finally, a fourth gap is notorious in the current trend in international legal history that explores how European colonisation of the late 19th century played a role in the construction of international law.[12] Such a periodisation of the colonial era obscures the differences that shaped the colonial and postcolonial

experience of Latin America and leaves out (though not always intentionally) any references to the region. This is the reason, perhaps, why, in most of the Third World postcolonial (or anti-colonial) literature on international law, Latin American scholarship is conspicuously absent.[13] Other new general histories of the 19th century, most notably David Kennedy's and Martti Koskenniemi's, likewise make little reference to Latin American authors, although they have done much to provide a conceptual framework with which to make alternative readings of the century more substantial.[14]

Criollos as a social group

During the colonial period the legal and political elite was composed of Spanish and *Criollo* functionaries. '*Criollo*' was a term that began to be applied by the Spanish conquerors as early as the 16th century to designate a person born in America of Spanish parents.[15] *Criollos*, like other social groups during the colonial period, were defined in legal terms through separate jurisdictions, privileges and restrictions.[19] As Spanish Americans (*españoles americanos*) *Criollos* were part of a minority that had access to education, were landowners and belonged to the 'Republic of the Spanish' if other social conditions were met, such as honour, purity of blood, legitimacy of birth, connections, etc. *Criollos* were automatically esteemed worthier than the *castas* (mixed peoples), the Indians (who belonged to a separate and distinct legal and social sphere designated as the 'Republic of Indians'), and slaves or free blacks. However, the Spaniards viewed *Criollos* with suspicion, as impure or defective Europeans who were suspected of having mixed with the Native and African population a view that came to dominate the late colonial regime. Indeed, because of this conflictive and dialogic character of the *Criollo*'s identity it is constraining and misleading to describe the *Criollo* as a monolithic group or as a homogenous elite.[16] Because defining *Criollos* according to racial categories is confusing and misleading, I treat the *Criollo* as a social and legal class rather than as a strictly biological one.[17] Race was superficial and always dubious for the *Criollos* anyhow; honour, however, defined their position in society and was one of the main motivators for studying and practising law.[18]

I would also like to suggest the term of '*letrados*', translated as 'lettered men' or the 'literati', for those *Criollos* who studied in the universities of the Indies and who later entered the judicial elite.[20] By the end of the 17th century they occupied a preeminent position in the legal profession as professors of law and as functionaries of the colonial government. Nonetheless, based on political rather than strictly legal criteria (which emphasised the equality between Spaniards and Spanish Americans) Criollos were not allowed to hold certain posts (such as those of Viceroys, bishops or *oidores*[21]) or to have access to certain privileges in the colonial regime explicitly reserved for *peninsulares*—those functionaries born in Spain. Not surprisingly, these distinctions led *Criollo* literati to begin—as early as the 17th century—a political project of autonomy, a *patria*-building process that defined itself in opposition to Europeans by claiming a sense of 'Americaness', a project which

became more important towards the end of the 18th century as Bourbon reforms took place (reorganising political and economic administration, which further excluded *Criollo* interests and participation).[22]

These political projects cannot be taken to show a desire for complete independence from Spain. However, this social group found itself in the position to wrestle control from Spanish authorities at the beginning of the 19th century. In order to legitimate their class to power they presented themselves as Americans but at the same time they established differences from the African, Indian and *mestizo* populations. Furthermore, Criollos acknowledged their diversity (ethnic, geographical, social) in an ambivalent manner: they were proud of their differences from the Europeans and often saw diversity as a natural and social factor that gave them a superior and broader view over the world than the limited monologist European one. At the same time, however, such diversity marked a source of anguish and conflict, a mark that they feared and wanted to abolish. Despite its ambivalence this discourse is so powerful that, arguably, a great deal of the national and regional histories of the 19th century could be understood from this perspective.

Legal consciousness

In order to understand the positions taken by the Latin American publicists of international law it is useful to consider the concept of 'legal consciousness'. With 'consciousness', I have borrowed the definition and use of the term from Duncan Kennedy:

> Consciousness refers to the total contents of a mind, including images of the external world, images of the self, of emotions, goals and values and theories about the world and self. [Legal consciousness] is a only slightly more defined notion [than consciousness]. It refers to the particular form of consciousness that characterizes the legal profession as a social group, at a particular moment. The main peculiarity of this consciousness is that it contains a vast number of legal rules, arguments, and theories, a great deal of information about the institutional workings of the legal process and the constellation of ideals and goals current in the profession at a given moment.[23]

Nonetheless it is difficult to define a form of Latin American legal thought for the entire 19th century, since each country experienced different degrees of conceptualisation and sophistication of their legal apparatus during colonial times (for example, Lima, Mexico and a few other Viceroyalties had a greater degree of experience with law and legal matters). Each country acquired independence from Spain at different moments (as early as 1810 and as late as end of the century) and each consolidated its national laws and integrated its new legal system at different periods. Nevertheless, it is possible to identify certain characteristics that were born out of the long period of Spanish rule and which may help examine the reception and appropriation of international law by Latin Americans after independence.

Unlike the more traditional historical studies of law in Latin America, which present a radical break between colonial institutions and practices and

the independence era, recent studies have emphasised the prevalent continuities in the transition between the two periods.[24] The new literature, in fact, emphasizes that a study of the 19th century cannot be attempted without examining the colonial period and the period of independence. I take this insight to be important in outlining certain aspects of the colonial period that had been part of the legal consciousness of early lawyering in the independent nations.

Criollo legal consciousness

I use Kennedy's further definitions of the term much more loosely, as his analysis is concentrated in one country and during a relatively stable era in which he describes the 'rise and fall' of classical legal thought in the 19th century USA.[25] My study, by contrast, posits a *regional* consciousness across more than 19 countries and during an era of instability and social and political turmoil. Therefore, by a *Criollo* legal consciousness I can only mean a very limited set of shared discourses and practices across the elite group of lettered men concerning their explicit or implicit awareness of regional unity.

Undeniably Criollo legal consciousness of the post-independence period has its roots in the colonial era. Since the Indies was considered part of the patrimony of the Castilian crown, Castilian legislation was automatically applicable throughout the conquered areas. From the 15th to the 17th century the principal sources of law used to regulate the colonies were old Castilian codes.[26] However, when those laws were not applicable a judge could return to the local *fueros* (municipal charters). Finally, in the absence of an applicable royal law or a municipal *fuero*, judicial decisions could revert to the *Siete Partidas* (Seven Part Code), a 13th century Castilian compilation based mainly on Roman and canon law that transmitted the *ius commune* to Castilian law and, by derivation, to the New World. *Criollo* and peninsular jurists learned to adapt Castilian law and *ius commune* traditions to the circumstances they found in America, a process described as *derecho vulgar* (ie common, justice).[27]

Nonetheless, the coexistence of diverse cultural groups and the survival of local legal traditions, the complex mixture of peoples, the new social stratifications, the distance from the metropolis, the extensive territory, different forms of land management and economic exploitation posed many new legal issues that were not foreseeable by pre-conquest Castilian legislation. Such particularisms soon became evident to the Crown and, by 1614, New World distinctiveness was recognised officially. A royal order ruled that only laws specifically issued for the Indies were applicable.[28] In 1680 these laws were compiled into a new book of laws known as the *Recopilación de Indias* (Compilation for the Indies). Parallel to the new law a system of adjudication that also became distinctive of the Indies developed. The laws, together with the form of applied justice, became known as *derecho indiano*, meaning both the Laws and the Justice of the Indies.

The application of *derecho indiano* was based on the discretion of the magistrate or other government functionary with judicial power, who had to

balance his decisions based on the abstract categories of experience, knowledge and prudence. He could revert to the written law (as stated above), *doctrina* (commentaries of Castilian or foreign jurists on Roman, canon and royal law), custom (as local usage and long-standing practice) and *equidad* (or fairness, as defined by the satisfaction of the aggrieved party together with the well-being and harmony of the community).[29] Cases were considered individually and decisions were made based on the merits of the particular case, with whatever interpretation the magistrate would want to give to the guidelines mentioned above. This case-by-case decision making, not based on precedent, is generally referred to as *casuismo* (casuistry). The judge's ample discretion is known as *arbitrio judicial* (judicial will). *Arbitrio judicial* together with *casuismo*, as well as the authority given to local custom can be singled out as the basis of an extremely flexible system of legal administration. Because of its flexibility and because it was a distinctively American form of justice, it has also been called *derecho criollo* (*Criollo* law or justice). Thus, during Spanish rule, the *Criollo* literati developed a consciousness of their law as distinctly *American*, highly adaptable to local circumstances, though descending from an old tradition of Spanish and Roman sources.

The characteristic flexibility of the colonial legal system has been interpreted in two ways: one that I call a modern historicist view; and the other a *Criollo* historicist interpretation. The modern historicist view assumes these laws and the interpretive power that judges had to be 'fragmented into various jurisdictions, subject to various and contradictory interpretations, laden with the intolerable admission of privilege . . . not rationally ordered (codified and subject to hierarchies) [and] resistant to the principle of universality. The importance attributed to custom and the excessive discretion of judges created tremendous uncertainty and heterogeneity.'[30] The modern historicist view emphasises the arbitrariness, social stratification and unreliability of outcomes of the colonial administration of justice. It is the preponderant view of both 19th and 20th century legal historians.

Charles Cutter, on the other hand, who claims that the role of the *arbitrio judicial* has 'been largely misinterpreted as mere whimsy or capriciousness', has recently made a more *Criollo* historicist interpretation of judicial power during the colonial era.[31] Cutter argues that the malleability of the adjudication process allowed for the law to become a 'living, organic entity that the local population—citizens and administrators alike—might mould to meet situations peculiar to the region . . . [in which] locals played a significant role in shaping the legal culture of a particular region'.[32] Cutter points out that the system actually worked quite well in a 'logic of its own'. It allowed not only elites, but also many subalterns, to influence judicial practice and permitted magistrates to respond according to local sensibilities and popular values. Of course, the values and sensibilities were not those of contemporary Latin Americans, but Cutter emphasises that the vitality of *derecho vulgar* challenges the common perception of the system as corrupt, inefficient and unrelated to the everyday lives of common people.[33] I think that Cutter's view, though perhaps too benevolent, is more accurate. Its

emphasis on the flexibility and adaptability of the system presents us with one of the reasons why imperial domination was so stable for more than three centuries and it helps us understand how it guaranteed and perpetuated *Criollo* hegemony into the independence era.

In sum, the point that I want to make is not one of value, that is, I am not trying to present a judgment on the correctness of either interpretation of the judicial administration of the colonial period. What I want to emphasise, rather, is that both views make it evident that we are speaking of a distinct legal consciousness for the colonial period in which the system is characterised as flexible because of the high degree of judicial discretion permitted and its recognition of local custom. This is an important point to make about the 19th century, because there is ample evidence that independence from Spain did not mean the immediate emergence of a new national legislation or forms of interpretation and application of the law. In fact, many Spanish codes remained as legitimate sources of law well into the mid-19th century and for some countries even until the end of that century. Often new constitutions and laws recognised the applicability of pre-independence legislation.[34] In the meantime, heated debates, even civil wars, took place among the *Criollos* in the region over the new form that government should take, the type of constitution to be adopted, the structure of legal education and the organisation of a national system of law. Thus solid national traditions or professional identities only began to consolidate towards the end of the 19th century.

A creole legal consciousness continued into the 19th century as the premises by which the newly independent lawyers viewed the legal system were several: a sense of regional belonging based on the historical sharing of *derecho indiano*, as well as on Spanish law such as the *Siete Partidas*; a shared understanding that the common historical root was Roman law; a heritage from Europe that was moulded into something distinctively American; the practice of using disparate (and even foreign) sources to resolve local problems; a 'natural' role as lawmakers and law appliers over the rest of the population; and a characteristic ambivalence.

I suggest that a *Criollo* legal consciousness must be understood as both flexible and inclusive and as rigorous and prejudicial. These two features can be defined in formal terms. By 'flexible and inclusive', I refer to what was described above as the legal consciousness inherited from the era of Spanish rule, which can be summed up as the ambiguity of the *Criollo* and his permissive application of the law as applied to local circumstances.

The second form, 'rigorous and prejudicial', corresponds to a new theoretical stance that came strongly and widely into play in post-independence *Criollo* consciousness. This was the 'will to civilisation'. The concept of civilisation is modern,[35] only coming into use in the mid-18th century, and it was quickly popularised during the French Revolution.[36] In its French meaning it expresses the idea of progress and the possibility of human perfection. By the end of the 18th century, Europe was said to have 'an existing or finished civilisation' that was in expansion. As Norbert Elias stated in 1939, the 'concept of civilisation expresses the [national]

self-consciousness of the West'.[37] This consciousness was effectively received by the French-reading *Criollos*, who realised that if the civilisation of Europe was unified and perfected, theirs was left half-way or lacking after the end of the European (Spanish) presence in the region. Therefore, it was the *Criollos'* natural role to do everything to 'complete' and to achieve the civilisation that they presumed Europe had.[38] More than a result of colonisation, the *Criollos'* will to civilisation was self-imposed, one of the factors they thought to be fundamental for the recognition of Latin American nations as sovereign states and as members of the 'community of civilised nations', as well as for national and regional advancement. In addition, the US declaration of independence in 1776 and the Haitian Revolution of 1791, as well as the latter's declaration of independence in 1804 were two American events that shaped the initial direction of the will to civilise of the *Criollos* in the 19th century.[39]

The project of *completing civilisation* in Latin America thus began early in the 19th century,[40] and did not result from the force of Europe's civilising discourse used in its territorial expansion towards the end of that century.[41] In fact, by the mid-19th century the discourse of civilisation (and its complement, 'barbarism') had been completely appropriated, it had been 'creolised', adapted to local circumstances and mixed in with the popular culture. In 1845 the book entitled *Civilización y Barbarie; Vida de Facundo Quiroga* (Civilisation and Barbarism; Life of Facundo Quiroga),[42] written by one of the most influential intellectual and political leaders of the 19th century, Domingo Faustino Sarmiento, was published in Argentina and quickly became a bestseller among the reading population of the continent. After this text appeared, describing the Argentine struggle between the urban civilisation (Buenos Aires) and the barbarous *pampas* (plains or flatlands), the dichotomy civilisation/barbarism became the definitive axis through which the past and future of progress in Latin America would continue to be discussed for the entire century.[43]

More concretely, civilisation as part of the *Criollo* legal consciousness meant not only choices between one theory of law over another, between one form of government over another according to which models were conceived of as improving civilisation. It was also the idea that, through law and its application, barbarism could be eliminated from Latin American societies, or, at a minimum, be controlled. The ideal of civilisation would be in the new constitutions and would justify the new laws; it would privilege certain economic practices, religious choices, educational systems, and ideas about the racial composition of society.

The ambiguity of the *Criollo*, however, was represented in the variety of conflicting and contradictory choices about what were the best routes to complete civilisation. For example, some *Criollos* defended the British form of liberalism as progressive; others wanted to conserve Spanish morality and religion as the foundation for civilisation; while yet a third group argued that a combination of both ideals would be the best scenario.[44] Another example of *Criollo* ambiguity was the discussion over the curriculum of legal education, which, in the specific case of Colombia began with a polarized

debate over whether to continue teaching Jeremy Bentham's works or not after independence.[45] The division among Benthamites and their opposers became one of the foundational reasons for the nascent liberal and conservative parties, as well as a cause for taking different sides in the early civil wars of the 19th century. Another example would be that of Chile, where the debate was concentrated on whether to teach Roman law or not as a civilising basis for the new legal system.[46]

A third example of how the will to civilisation directed choices in Latin America was that of the ideal of a *civilización mestiza*, a civilisation that would privilege the further whitening of the population.[47] The path to this ideal differed from country to country, but it was legitimised through the law and legal process. In the Southern Cone it meant an intensive programme of attracting European immigrants and putting in place the laws that would provide them with incentives (such as land grants), as well as equal rights to those of native-born citizens. However, once immigrant groups became sizeable legal measures were enacted to keep them under control and to exalt local (American) cultures. In other countries where the Indian population constituted the majority, such as Mexico or Peru, immigration was likewise promoted, but there was also a tendency to identify a native civilisation with the grandiose past of the Aztecs or the Incas. Other steps taken in this direction throughout the continent were those of eugenics, abolishment of Indian communal lands (*resguardos*) under the banner of liberal individual property ownership, and enforcement of Spanish as the national language and therefore gradual elimination of local indigenous languages, etc. Therefore, civilisation is a powerful discourse that assigned political, cultural, moral and/or social virtues necessary for the progress of the modern nation-state.[48] The barbarous became its automatic but necessary opposite: the negation of those positive virtues.[49]

The *Criollos* did not perceive international law as coming from Europe, as a foreign and distant model, but rather as part of their own Spanish tradition which connected them not only to modern European international law but also to Roman law, the backbone of the law of nations (*jus gentium*) and therefore of 'civilisation'. Nonetheless, it was this ambivalence that marked the *Criollo*'s relationship towards the now more relevant discipline of international law. On the one hand, there was an important hegemonic international discourse that acted as the legitimator of the new countries before the so-called civilised nations of the world. On the other, the requirements to participate in that discourse were historically identified with European particularisms and thus seemed to exclude the *Criollo* at first. This paradox was constitutive of the development of a '(Latin) American International Law' (*derecho internacional Americano*) in the first half of the 20th century. International law provided the legal framework for a homogeneous nation state, an idea that was in turn undercut by internal cultural and political struggles. Many of the international debates and doctrines developed in the 19th century originated in the creation of nation-states, in the fear of new European conquerors and in the need to manage internal populations.[50]

International human rights and creole legal consciousness

As explained above, the creole consciousness about international law was evident as an instrument of nation *and* region building during the second half of the 19th century . This led to a discussion of the actual existence of a regional international law, namely '(Latin) American international law' (*derecho internacional Americano*) in the first half of the 20th century.[51] After the 1950s, as Arnulf Becker describes, the regionalism debate was exhausted and there followed a 'period of professional radicalization and fragmentation (1950s – 1970s)' which turned into the contemporary 'period of professional depoliticization and irrelevance of international law as a discourse for thinking the region (1970s – 2000s)'[52]. Throughout these periods Becker describes Latin American internationalists as generally participating in two camps of a professional discourse: the particularist who 'shared a Latin-Americanist, left-leaning, modernist, and secular identity' and the universalist who presents a 'a nationalist, conservative, traditionalist, and Catholic identity'. Although these two factions seem antagonistic they actually exemplify the two strands of creole legal consciousness: flexible and inclusive and rigorous and prejudicial.

A more concrete example of how the Latin American experience of international law plays out in contemporary issues is in the promotion of internationally recognised human rights. Human rights, along with the regionalist discourse itself, as well as the doctrine of non-intervention (to mention a few of the recognised Latin American traditions), are the result of the split that exists between the USA as the region's hegemon and Latin America.

Contemporary notions of individual rights are argued to have been a late 19th century and early 20th century preoccupation of Latin American lawyers – diplomats concerned about the fact that foreign powers would often intervene in the region, using the justification of protecting the rights of their citizens residing abroad. Thus, a claim for international recognition of equality of jurisdiction over nationals and aliens was part of the regional discourse for many decades. When the renowned Chilean jurist Alejandro Álvarez (1868 – 1960) began to theorise and promote the recognition of a 'Latin American international law' at the beginning of the 20th century, he also conceptualised the need for internationally recognised individual rights.[53] On the one hand, Álvarez believed that international law should reflect the particularities of a place. 'Law is a social and psychological phenomenon . . . The states of the New World create . . . a soul, a personality of their own and, from that fact, can give birth to specific institutions and principles of international law.' Thus the region could produce universal principles from its particular experiences. On the other hand, when it came to institutionalising this regionalist perspective, Álvarez understood that it was necessary to include, rather than antagonise, the USA in order to avoid furthering the separation between the region's hegemon and the Latin American states. As a result, he co-founded the American Institute of International Law (AIIL) with one of the most prestigious US internationalists of the time, James Brown Scott.

Using his position in the AIIL, Alvarez began promoting a text in 1916 on the fundamentals of a new international law—the 'Declaration of the Rights and Duties of Nations'—in which he included a section on the 'International Rights of the Individual'. This spelled out the individual liberties that should be recognised as inherent to any person living in any state, including the 'right to life, liberty, and property, without distinction of nationality, sex, race, language, or religion'. In fact, Alvarez claimed that he was the first to promote the rights of man internationally. Alvarez's declaration took hold and continued to be developed and discussed throughout the first half of the century, where different declarations and discussions at regional meetings included individual rights. In 1945 Alvarez presented a more solid 'Draft Declaration on International Rights and Duties of the Individual' to the Fourth Inter-American Lawyers conference in Santiago. By 1948 Latin American leaders had adopted the American Declaration of the Rights of Man, anticipating the Universal Declaration of Human Rights by several months. In fact, the delegates from Latin America were the largest single regional bloc at the San Francisco UN conference. They made sure that a final draft of the American Declaration was a major source for the drafters of the Universal Declaration, having many of its provisions make their way into the final UN document.

So, perhaps in addition to a humanitarian interest, Latin American leaders urged an international declaration of rights in order to secure a 'minimum standard of civilised justice' for aliens living abroad. As an international guarantee, this declaration would serve two purposes: Latin American nationals would enjoy equal standards of protection to foreigners in their own countries and the USA and European nations would have no excuse for intervention in the region.

If understood as Alvarez proposed it, a regionalist perspective that resulted from the interventionist intentions and practices of the more powerful nations and the claim to sovereignty of the peripheral nations of Latin America gradually evolved into universally applicable principles. Despite these post-World War II accomplishments, the issue of human rights became secondary in the region during the next two decades as Latin America became a privileged arena where the Cold War was played out. Authoritarian regimes flourished with the support of the USA, and the possibility of international human rights protection in Latin America shifted into the discourse of anti-communism. Therefore, instead of being a reason to avoid intervention, as envisioned in the pre-1950s support for an international bill of rights, Latin American governments feared that human rights would become an excuse for interventions from the communist bloc and then from the USA in the late 1970s, when a new human rights policy began to emerge. However, this perspective shifted in the mid-1980s and 1990s with the prevalence and consolidation of democratic transitions in the region. Once again, most Latin American governments began to support a national human rights agenda. It is during these past two decades that we see the Inter-American system of human rights protection develop substantively and politically, despite the continuing bad human rights records of several OAS

member states. Nonetheless, the political will to support this regional effort has strengthened. But the distance with the USA continues to exist. Although the USA routinely appeals to the concept of human rights in its foreign policy and is influential in the regional human rights institutions, it still has not ratified the American Convention on Human Rights (to name only one of the regional human rights treaties it has not ratified) and much less has accepted the jurisdiction of the Inter-American Court.

In conclusion, though Latin American regionalism in international law is no longer promoted as a school of thought it is not uncommon to encounter regionalist claims (especially in the human rights discourse) that continue to bring forth a creole legal consciousness.

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A revised version of Liliana Obregón, 'Completing civilization: Creole consciousness and international law in nineteenth century Latin America', due to appear in Anne Orford (ed), *International Law and its Others*, Cambridge University Press, forthcoming October 2006.

Notes

1 A Ardao, *Génesis de la idea y el nombre de América Latina*, Caracas: Centro de Estudios Latinoamericanos Romulo Gallegos, 1980; and M Rojas-Mix, *Los cien nombres de América: eso que descubrió Colón*, Barcelona: Lumen, 1991.

2 For the proposals for union, see F Bilbao, *Iniciativa de la América: idea de un congreso federal de las repúblicas*, Paris: Aubusson, 1856; JM Noboa, *La unión americana*, Guayaquil: Imp de Murillo por D Vergara, 1866; *Colección de ensayos i documentos relativos a la union i confederación de los pueblos hispano-americanos publicada a espensas de la 'sociedad de la Unión Americana de Chile',* Santiago: Imprenta chilena, 1862; and José María Torres Caicedo, *Unión latino-americana, pensamiento de Bolívar para formar una liga americana*. París: Rosa y Bouret, 1865.

3 MA de Souza Sá Vianna, *De la non existence d'un droit international americain: dissertation présentée au Congres scientifique Latino-Américain*, Rio de Janeiro: L Figueredo, 1912.

4 Alejandro Álvarez, 'Origen y desarrollo del derecho internacional Americano', in *Tercer Congreso Científico Latino Americano*, Rio de Janeiro, 1905; Álvarez, 'Le droit international Américain, son origine et son évolution', *Revue Générale de Driot International Public*, XIV, 1907; Álvarez, *American Problems in International Law*, New York: Baker, 1909; and Álvarez, *Le droit international americain: son fondement, sa nature: d'après l'histoire diplomatique des états du nouveau monde et leur vie politique et économique*, Paris: A Pedone, 1910.

5 Latin America has been traditionally identified by comparative legal scholars as a place where legal imports are borrowed and well received. See Jorge L Esquirol, 'Excessive legalism, lawlessness and other stories about Latin American law', Doctor of Juridical Science (SJD) dissertation, Harvard Law School, 2001; and Diego López-Medina, 'Comparative jurisprudence: reception and misreading of transnational legal theory in Latin America, SJD dissertation, Harvard Law School, 2001 published as *Teoría Impuradel Derecho*, Bogota: Temis, 2004.

6 Henry Wheaton, *History of the Law of Nations in Europe and America: From the Earliest Times to the Treaty of Washington*, New York: Gould, 1845.

7 Onuma Yasuaki, 'Japanese international law in the pre-war period—perspectives on the teaching and research of international law in prewar Japan, *Japanese Annual of International Law*, 43, 1986, p 29.

8 Depending on what countries are included in the geographical imaginary of *Latin* America, independence dates can range from as early as 1791 for Haiti to as late as 1898 for Cuba. If only the continental former Spanish colonies are included in the regional reference, these dates range roughly from 1810 to 1825.

9 See, for example, Joseph L Kunz, *Latin American Philosophy of Law in the Twentieth Century*, New York: Inter American Law Institute, 1950. For an analysis of the Latin American publicists as

either positivists or naturalists, or both (eclectics), see HB Jacobini, *A Study of the Philosophy of International Law as seen in the Works of Latin American Writers*, The Hague: Martinus Nijhoff, 1954.

10 On placing the Latin Americans of the 19th century as deriving from the Spanish Catholic tradition, see Manfred Lachs, *The Teacher in International Law: Teachings and Teaching*, Dordrecht: Martinus Nijhoff, 1987, p 85.

11 For a reading of how the 19th century is remembered and forgotten during the 20th century, see David Kennedy, 'International law and the nineteenth century: history of an illusion, *Quinnipiac Law Review*, 99, 1997, p 17. Other writers who have worked on alternative views of the 19th century with respect to international legal argument and its relation to liberal thought, colonisation, imperialism, etc. also generally refer to the end of the 19th century and do not include Latin America.

12 Antony Anghie, *Imperialism, Sovereignty and the Making of International Law*, Cambridge University Press, 2005; Annelise Riles, 'The view from the international plane: perspective and scale in the architecture of colonial international law', in Eve Darian Smith & Peter Fitzpatrick (eds), *Laws of the Postcolonial: Law, Meaning, and Violence*, Ann Arbour: University of Michigan Press, 1999.

13 Postcolonial, anti-colonial or Third World approaches to international legal scholarship are generally understood as being produced by citizens of African or Asian decolonised countries of the 20th century. Even in the 'Third world' literature on international law published in English, Latin American scholarship is notoriously absent. See for example, Antony Anghie and others (eds) *The Third World and International Order*, Leiden: Martinus Nijhoff, 2003.

14 Kennedy, 'International law and the nineteenth century'; Koskenniemi, From apology to Utopia: The Structure of International Legal Argument, Helsinki: Finish Lawyers Publishing Co, 1989; and Koskenniemi, The Gentle Civiliser of Nations: The rise and fall of International Law 1870–1960, Cambridge: Cambridge University Press, 2001.

15 I prefer to use the Spanish term '*Criollo*' in order not to become confused with the usage and understanding of the English or French term 'Creole' in Louisiana and in the Caribbean. In both of these regions, where a black presence has been central to the emergence of public political culture, Creole means free people of African descent. In most of Spanish America, with the possible exception of Cuba, the term *Criollo* posed a presumption of cultural and physical 'whiteness'. It is a deeply ambivalent and profoundly unstable social category, as it rested on assumptions of racial purity, despite the fact that by the 19th century *Criollos* were, in fact, largely misceginated. The original connotation was deliberately pejorative, as earlier versions of the term distinguished those slaves born in America from those born in Africa. For more on the characterisation of *Criollos* as a social class, see Elizabeth Anne Kuznesof, 'Ethnic and gender influences on ''Spanish'' Creole society in colonial Spanish America', *Colonial Latin American Review*, 4 (1), 1995; and Bernard Lavalle, *Las promesas ambiguas: ensayos sobre el criollismo colonial en los Andes*, Lima: Pontificia Universidad Católica, 1993.

16 For a recent collection of essays that explores the way in which the category of the *Criollo* was constituted during early colonial times, see José Antonio Mazzotti (ed), *Agencias criollas: la ambigüedad 'colonial' en las letras hispanoamericanas*, Pittsburgh: Instituto Internacional de Literatura Iberoamericana, 2000.

17 Precisely because ambiguity is characteristic of the *Criollo*, some scholars have suggested the term 'agency' rather than 'subject' as a marker of a certain political will within the public sphere. See the introduction to José Antonio Mazzotti's collection on different studies of *Criollo* agencies during the period of Spanish rule, in *ibid.*

18 On the importance of honour as a value for *Criollos* in general, and particularly for *Criollo* lawyers, see Victor M Uribe Urán, *Honorable Lives: Lawyers, Family, and Politics in Colombia 1789–1850*, Pittsburgh, PA: University of Pittsburgh Press, 2000.

19 Mazzotti, *Agencias criollas*. As Antony Anghie has argued, the Spanish jurist Francisco de Vitoria (1483–1546) addressed cultural difference to justify the impossibility of American Indian sovereignty, an argument that paved the legal path for Indians' subordinate status as subjects of the colonial state. See Antony Anghie, 'Francisco de Vitoria and the colonial origins of international law', *Social and Legal Studies*, 5 (3), 1996. The colonial system of *castas* (castes) ranked individuals hierarchically according to the amount of visible (skin colour), perceived (education, language, religion, culture) and acquired (through political or economic influence) European 'blood'. Thus *Castas* in the context of colonial Spanish America have a very different origin and meaning from the caste systems of India, for example. See Robert H Jackson, *Race, Caste, and Status: Indians in Colonial Spanish America*, Albuquerque, NM: University of New Mexico Press, 1999; and Patricia Seed, 'The social dimensions of race: Mexico City, 1753', *Hispanic American Historical Review* (Duke University Press), 62 (4), 1982. It was only towards the end of the 16th century that *mestizos* (people of mixed race) emerged as a separate category in the Americas. After some debate legal scholars and colonial administrators agreed that *mestizos* (as well as other individuals of mixed races, all classified as *castas*) though handicapped (or restricted in some respects—such as the ability to carry weapons, own horses or enter most schools to obtain legal or theological training), were members of the Spanish Republic and enjoyed all the

rights and obligations granted to white settlers. More important than race, however, the defining categories in the Latin American context for *Criollos* and *castas* were honour, legitimacy of birth, social status, economic and political power: differences that were legally, institutionally and socially enforced. Race was a determinant, however, for Indians and Blacks, who belonged to separate social and legal spheres. The French *Code Noir* (1685) and the Spanish Black Codes (1768 – 1842) throughout the Americas assured legal control over and punishment of Blacks, slaves and free. The Laws of the Indies and forms of rented or forced labour secured control over indigenous peoples.

20 The figure of the *letrado* or 'lettered' functionary (also meaning lawyer as well as someone cultivated in the humanities), was important during the colonial period and the 19th century. Ángel Rama in *The Lettered City* explains how the prestige of the written word in Latin America began with the foundational acts of Spanish colonisation. The territorial claims to land required written records as immediately as the first conquistadors arrived in the New World. Borrowing from Foucault, Rama says that in colonial Spanish America 'writing consolidated the political order by giving it elaborated cultural expression' and configured a future that erased the past, establishing 'the first cultural model of modernity'. Ángel Rama, *The Lettered City*, trans John Charles Chasteen, Durham, NC: Duke University Press, 1996. The construction of this written model was done by a cadre of *letrados* or 'lettered' functionaries who were involved in transmitting and responding to imperial orders. Rama designates the literati as 'intellectual producers who elaborate ideological messages, the designers of cultural models for public conformity . . . the restricted group of intellectual workers learned the mechanisms and vicissitudes of institutionalized power and learned, too, how to make irreplaceable institutions of themselves . . . their services in the manipulation of symbolic languages were indispensable . . . servants of power, in one sense, the letrados became masters of power, in another.' Their power certainly extended into the independence era and the 19th century. *Letrados* performed public or civic roles in city councils as well as developing new institutions for social interaction (cafes, academies, tertulias, etc) and established a permanent press at the end of the 18th century. See Victor M Uribe Urán, 'Colonial lawyers, republican lawyers and the administration of justice in Spanish America', in Eduardo Zimmerman (ed), *Judicial Institutions in Nineteenth Century Latin America*, London: Institute of Latin American Studies, University of London, 1999, pp 34, 36. Deference continued to be shown to those with intellectual merits proven through extensive writings in law, but also to essayists, poets, journalists, novelist and grammarians. The *letrado* had to show a superb mastery of the Spanish language but was also necessarily educated in Latin, and often read and wrote in French and English. Moreover, until the more recent importance given to technocrats, intellectuals as political leaders were well accepted in Latin America. Rama, *The Lettered City*, p 22. Cristina Rojas, in her recent book, uses the term 'literati' instead of lettered men or *letrados*. See Cristina Rojas, *Civilization and Violence: Regimes of Representation in Nineteenth-Century Colombia*, Minneapolis, MN: University of Minnesota Press, Borderlines, 2001. For a bibliography on the figure of the *letrado*, see Roberto González Echevarría, *Myth and Archive: A Theory of Latin American Narrative*, Cambridge: Cambridge University Press, 1990, p 193ff.

21 *Oidores* were judges who were part of one of the *Audiencias*, 'a governmental body with administrative and judicial functions, usually the highest level appellate body located in a geographic area governed by a viceroy or other royal official magistrates'. MC Mirow, 'Latin American legal history: some essential Spanish terms', *La Raza Law Journal*, 12 (1), p 12.

22 See David A Brading, *The First America: The Spanish Monarchy, Creole Patriots and the Liberal State 1492 – 1867*, Cambridge: Cambridge University Press, 1991; and Anthony Pagden, 'Identity formation in Spanish America', in Padgen (ed), *The Languages of Political Theory in Early Modern Europe*, Cambridge: Cambridge University Press, 1987.

23 Duncan Kennedy, Rise and Fall of Classical Legal Thought, Cambridge, 1975 (manuscript) available at www.duncankennedy.net, p 33. For a similarly useful concept, see the notion of 'legal habitus' as explained in Pierre Bourdieu 'The Force of Law: Toward a Sociology of the Juridical Field' *Hastings Law Journal*, 38, July 1987.

24 Some of these new approaches are included in Carlos Aguirre *et al* (eds), *Crime and Punishment in Latin America*, Durham, NC: Duke University Press, 2001; and Zimmerman, *Judicial Institutions in Nineteenth Century Latin America*.

25 Kennedy, 'Rise and Fall'.

26 These codes or compilations are the Ordenamiento de Alcalá (1348), restated in the Leyes de Toro (1505), the Nueva Recopilación de Castilla (1567) and the Novísima Recopilación de Castilla (1805).

27 Charles Cutter, 'The legal culture of Spanish America on the eve of independence', in Zimmerman, *Judicial Institutions in Nineteenth Century Latin America*, p 9.

28 *Ibid*, p 11.

29 I have taken these categories as conveniently simplified by *ibid*, pp 12 – 13.

30 Carlos Aguirre & Ricardo D Salvatore, 'Introduction', in Aguirre *et al*, *Crime and Punishment in Latin America*, p 3.

31 Cutter, 'The legal culture of Spanish America on the eve of independence', p 14.
32 *Ibid*.
33 *Ibid*, p 24.
34 See, for example, Osvaldo Barreneche, 'Criminal justice and state formation in early nineteenth-century Buenos Aires', in Crime and Punishment in Latin America, p 1.
35 A few contemporary studies of international law have made the connection between the civilising discourse and the discipline's parallel expansion; however, they have studied the concept of civilisation as being more influential towards the end of the 19th century in the European colonisation of Africa, Asia and the Pacific. See Anghie, 'Creating the nation state'; Gerrit W Gong, *The Standard of Civilisation in International Society*, Oxford: Clarendon Press, 1984; and Koskenniemi, The Gentle Civiliser of Nations.
36 The word 'civilisation' originates from the use of the French word civilité (civility) and poli (polished, refined, courteous, to emit prudent laws). For more about the etymology of the word, see Philippe Beneton, *Histoire de mots: culture et civilisation*, Paris: Presses de la Fondation Nationale des Sciences Politiques, Travaux et Recherches de Science Politique, 1975; Lucien Febvre *et al*, *Civilisation, le mot et l'idée*, Paris: Renaissance du livre, Première semaine internationale de synthèse, 1930; Reuel Anson Lochore, *History of the Idea of Civilisation in France (1830–70)*, Bonn: L Röhrscheid, 1935; and Jean Starobinski, 'The word civilisation', in Starobinski, *Blessings in Disguise, or, The Morality of Evil*, Boston, MA: Harvard University Press, 1993.
37 Norbert Elias, *The Civilizing Process: The History of Manners, State Formation and Civilisation*, Oxford: Blackwell, 1994, p 41.
38 Of course, this aspect of their consciousness was also ambivalent. Not all *Criollos* assumed European civilisation as perfected or as the ideal model. To give one example, Servando Teresa de Mier (1763–1827), one of the intellectual leaders of Mexican independence initiated in 1794 a life-long effort of furthering traditional themes of *Criollo* patriotism into the foundations of Mexican nationalism. De Mier's writings reversed European narratives, which presented themselves as civilised and Americans as barbaric. Through this strategy he sought to provide arguments for Mexican and American sovereignty. He invoked an autonomous American religiosity, by affirming that the religion professed by the Aztecs and, in general, all the ancient American peoples, shared a similarity of doctrines that pointed to a common Christian origin and did not need to look to Europe for that tradition. In order to challenge the barbarism and racial inferiority supposedly proven by the 'scientific' arguments of the Enlightenment, such as those found in the widely read entry on America (Amerique) in the *Encyclopédie Française*, De Mier wrote about the barbarism and racial characteristics of the peoples he encountered throughout his travels in Europe. He described the unhealthy climate in Europe, the poverty and bad living conditions, the dark skin colour, the deformed bodies, and the violent and cannibalistic tendencies and incorrect ways in which Europeans spoke Latin languages. De Mier wrote in one of his diaries: 'As for the cities, there are none in Europe that can compare to those of our America or of the United States. All of the former appear to have been founded by a people inimical to straight lines... Everyone journeys like a barbarian through a land of barbarians.' In Marseilles 'both the men and women have the same complexion as our Indians'. 'When entering Naples it is as though one was entering an Indian pueblo, for the people are the same color.' In Italy 'the common folk... are very talkative, rude, dirty and so cruel that when following the first invasion of the French in the days of the Republic... [they] took the decapitated body of each noble and deposited it in front of his residence, shouting for bread to be thrown out to them to eat with the corpse which they proceeded to devour.' In Spain De Mier reflects: 'I fancied that Madrid was a town full of people with hernias, but it is merely a town peopled by a degenerate race, for native-born Madrileños look like dwarfs... It is commonly said that the natives of Madrid are big-headed, runts, gabblers, broad in the beam, founders of rosary processions and second-generation jailbirds.' Mier, *The Memoirs of Fray Servando Teresa de Mier*, ed Susana Rotker, Oxford: Oxford University Press, 1998.
39 While US independence was a model for the *Criollos* during the first half of the 19th century, the success of the slave revolution that had taken place on the island of Saint Domingue in 1791 was a dreaded event that instilled the fear of similar slave uprisings on their haciendas. This fear was further disturbed by the Haitian declaration of independence in 1804. The blackness of the new nation did not fit notions of civilisation and statehood; it was not eligible for recognition of sovereignty by the community of the self-denominated 'civilised nations'. The revolution and its political implications were dismissed or, as one Haitian scholar notes, deemed a 'non-event'. Michel-Rolph Trouillot, 'An unthinkable history: the Haitian revolution as a non-event', in Trouillot, *Silencing the Past: Power and the Production of History*, Boston, MA: Beacon Press, 1995. An interesting counterpoint was provided by Rev James Theodore Holly, a US black nationalist who argued that Haiti's *de facto* sovereignty was the opportunity to prove 'the capacity of the Negro race for self-government and civilised progress'. Holly was convinced that 'if one powerful and civilised negro sovereignty can be developed to the summit of national grandeur in the West Indies, where the keys to the commerce of both hemispheres

can be held; this fact will solve all the questions respecting the negro, whether they be those of slavery, prejudice or proscription'. Holly was a delegate to the first National Emigration Convention in 1854 and travelled to Haiti in 1855 to negotiate an emigration treaty. Holly himself emigrated to Haiti in 1861 and remained there until his death. See Rev James Theodore Holly, *A Vindication of the Capacity of the Negro Race for Self-Government and Civilised Progress as Demonstrated by the Historical Events of the Haytian Revolution and the Subsequent Acts of that People since their National Independence*, New Haven, CT: African-American Printing Co, 1857.

40 Emphasis added. In 1823, while in England, Andrés Bello described his general project of 'completing civilisation' through a magazine in which he published selected texts for distribution as the basis for a foundational American literature. The purpose of his project was 'to examine different ways in which to make the arts and sciences progress in the new world, and the means to complete its civilisation; to make useful inventions known so that they may be adopted in new places, so that their industry, commerce and navigation may be perfected, so that new channels of communication may open, and they may broaden and facilitate the previous ones; to facilitate the seed of liberty in order to destroy the shameless worries with which it was fed since birth; to establish, through the indestructible basis of education, the cultivation of morality; to conserve the names and actions of those who appear in our history giving them a rightful place in the memory of time; that is the noble task, vast and difficult that the love for our patria has imposed on us . . . we shall thus adapt everything that, in our opinion, may be useful; and we shall speak the language of truth'. Cited in Barry L Velleman, *Andrés Bello y sus libros*, ed Fundación La Casa de Bello, Caracas: La Casa de Bello, 1995, pp 19–20.

41 See Koskenniemi, The Gentle Civiliser of Nations. Indeed, European expansion in the 19th century increased from the domination of 35% of the Earth's surface in 1800 to 84% of it in 1914.

42 The original and complete title is *Civilización i barbarie, Vida de Juan Facundo Quiroga. I aspecto físico, costumbres, i abitos de la República Arjentina*, Santiago, Impr del Progreso, 1845. Several editions followed the original one of 1845. There was also a French translation published in 1853 and an English version in 1868.

43 In his book *De la barbarie a la imaginación* (From Barbarism to Imagination) Moreno Durán emphasises that 'the "civilisation or barbarism" debate . . . is implicit and current in all of the Latin American cultural discussion . . . but the terms of the debate were never questioned . . . no one asked if . . . it responded to what are typically Latin American needs, and therefore, if it was legitimate to appropriate its tenants'. Rafael Humberto Moreno-Durán, *De la barbarie a la imaginación: la experiencia leída*, Bogotá: Tercer Mundo Editores, 1988, pp 24–25. For a study of the dichotomy of civilisation–barbarism in Latin America, see, among others, Roberto Fernández Retamar, *Calibán y otros ensayos: nuestra América y el mundo*, Havana: Editorial Arte y Literatura, 1979; Darcy Ribeiro *et al*, *The Americas and Civilization*, London: Allen and Unwin, 1971; and Julio César Salas, *Civilización y barbarie: estudios sociológicos americanos*, Caracas: Fundación Julio C Salas, 1998.

44 Fernando de Trazegnies, a contemporary Peruvian academic and politician, says that the main preoccupation of the *Criollo* elite was to 'liberate the individual without the excesses of equality, to facilitate modernization without altering the pseudo-aristocratic bases of power in society'. That is, modern *Criollos* wanted to take advantage of social transformation without losing control over the traditional sites of power. Fernando de Trazegnies Granda, *La idea de derecho en el Perú republicano del siglo XIX*, Lima: Pontificia Universidad Católica del Perú, 1992, p 221.

45 Julio Hoenigsberg, *Santander, el clero y Bentham; en el primer centenario de la muerte del héroe*, Bogotá: ABC, 1940; Luis Horacio López D, *Obra educativa—la querella Benthamista, 1748–1832*, Santafé de Bogotá: Fundación para la Conmemoración del Bicentenario del Natalicio y el Sesquicentenario de la Muerte del General Francisco de Paula Santander, 1993; Germán Marquinez Argote, *Benthamismo y antibenthamismo en Colombia*, Bogotá: Editorial El Buho, Colección Pensamiento colombiano, 1983; Ricardo Motta Vargas, *Jeremías Bentham en el origen del conservatismo y liberalismo: la polémica del siglo XIX—utilitarismo inglés y catolicismo en la formación del bipartidismo colombiano*, Santafé de Bogotá: Ecoe Ediciones, 1996.

46 See Hugo Hanisch Espíndola, *Andrés Bello y su obra en derecho romano*, Santiago: Ediciones del Consejo de Rectores de las Universidades Chilenas, 1983; and Sergio Martínez Baeza, *Bello, Infante y la enseñanza del derecho romano: una polémica histórica, 1834*, Bogotá: Secretaria Ejecutiva Permanente del Convenio Andrés Bello, 1981.

47 Rojas, *Civilization and Violence*.

48 The French term 'civilisation' appears with the intention of expressing the idea of progress and the perfectibility of humanity as a 'universal fact' and, with it, the trust that law and institutions will be able to mould the character of all men. Therefore civilisation was also understood as a unit of the human race, while at the same time the plural notion of civilisations signified the existence of other social groups in development but whose unity and perfection was synthesised only in European civilisation. The idea of civilisation as progress had Europe as its frame of reference; and barbarism, its opposing definer, was outside of Europe.

49 For example, Mariano Ospina Rodríguez, a Colombian president of the 19th century gave the following definition in an essay entitled 'La barbarie' of 1875: 'Civilisation is the degree of morality, knowledge and well being that a people enjoy; and being that barbarism is the reverse of civilisation, we can define it by saying that it is the degree of corruption, ignorance and misery in which the people are submersed. Civilisation and barbarism are always relative terms. Adam in paradise is the ideal of the civilised man. The savage, stupid antropófago is the type of the barbarian. Civilisation is affirmative, positive. Barbarism is negative.' Mariano Ospina Rodríguez, 'La barbarie', *La Sociedad*, 1875.
50 See Riles, 'The view from the international plane'.
51 For an analysis of the debates and their relationship to Latin America's intellectual history, see A Becker Lorca, 'Mestizo international law', unpublished SJD dissertation, Harvard Law School, 2005, pp 83–91.
52 A Becker Lorca, 'International law in Latin America or Latin American international law? Rise, fall, and retrieval of a tradition of legal thinking and political imagination, *Harvard International Law Journal*, 47 (1), 2006, pp 283–305.
53 For more on Alvarez see the special issue dedicated to his work in volume 19(29) 2006 of the Leiden Journal of International Law.