Chapter 2
Latinoamérica: Law, System and Tradition of a *Patria Grande*

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Summary: 1. The Conquest and evangelising of the New World. – 2. Common legal foundations. – 3. The *ayllus* as a means of safeguarding indigenous tradition. – 4. Latin American law within the framework of contemporary legal systems. – 5. Latin America and the dream of a *Patria Grande*.

1. The conquest and evangelization of the New World

The ideological premise of evangelization of the New World was put in place through *Inter Caetera* papal bull of 1493. From the very beginning, a completely different legal situation from the mercantile imperialism of the 19th Century was promoted. In fact, the New World and Iberian territories were conceptually placed on the same level, giving rise to a single Kingdom rather than many colonies (Levene 1951; Barrientos Grandon 2004).

The idea of a single Kingdom finds its basis in the history of law. By the end of the 15th century, Roman law as *ars boni et equi* (i.e. the art of 'know-

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ing what is good and just' according to the famous and well-known definition of Celsus) had shaped the law of the Iberian territories. It was possible also thanks to the activity of rereading and refining the sources of Roman law made by medieval scholars and, last but not least, by those of the 'second scholastic' (like Domingo de Soto, Francisco de Vitoria and Francisco Suárez). Thus, according to the legal tradition in force in the Iberian area and transplanted in the New World territories, the development of the law in the dual sense of '*ius civile*' – '*ius gentium*' (in view of the distinction between 'positive law' and 'customary law thought to be held in common by all nations') was connatural to the political and ideological ideas of the Crown of Castile (Schipani 1999).

There is another factor that seems worthy of specific mention. Iberian law has been historically open to comparison with other people and to legal pluralism. It should not be forgotten that Iberian law has long been interwoven with legal system and religion of Muslims, Jews and Christians. It is how to say that legal pluralism was one of the endogenous consequences of the stratification of peoples and civilizations of the Iberian area. The legal system of the New World has benefited from this situation, at least from a formal point of view (Losano 2000).

The legal-historical bibliography lacks specific attention to the comparison between the legal experiences of the Old World and the New World. The reasons for this gap are both ethnological and anthropological. It is difficult to imagine a full legal pluralism where the natives of the New World were mostly considered "*servi natura*" (slaves by nature) or "*simpliciter*" (simple-minded) and "*tardi et hebetes*" (slow and dumb). The crucial point of the question should not be seen in the alleged inferiority, hidden in the word "*indio*". In the history of Latin-American law the mentioned word does not designate a dogmatic category based on inferiority (Lanni 2011).

To better understand the development of the Latin American legal system, it is helpful to consider that the Conquest of the New World took place through a bipolar model. Firstly, it led to the distinction between the legal order of Spanish people and the legal order of the natives, each with its own set of rules and authorities. Secondly, it determined a hierarchy that, under the aegis of the sacred religion ('*sagrada religión*'), placed the former above the latter, i.e. the Iberian Roman law above the law of the indigenous peoples.

The indigenous peoples of pre-Columbian America had their own legal traditions, which were surpassed by the Castilian and Portuguese conquerors. The latter had to invent special legislation to regulate the legal relations inside and outside the New World territories. The complex of "ordinances" on "new discoveries and populations", as issued several times and collected by the

Recopilación de las leyes de Indias (1580), goes beyond the simple objective of administering justice. More correctly, I believe it should be framed within the framework of the legitimacy of the justice done by the Iberian conquerors.

In this regard, one must keep in mind the historical and cultural context of the time, which was oriented by a deep religiosity and a universalistic legal vision. For these reasons, the legitimacy of possession and its regulation was founded not only on the success of the sword but also on that of the values. The otherness of one's rights and even before one's religion and society were the premise for cultural homologation (the so-called whitewashing of the New World). The analysis of historical sources of law confirms this. For example, we learn from the *Inter Caetera* papal bull that "the Spanish kings could occupy new lands provided that another Christian king did not already own them before the day of the birth of our Lord Jesus Christ recently passed, in which begins the present year 1493". It is like saying: the "Conquest" was legitimized against the indigenous peoples of the New World, in the same way that the "Reconquista" was previously legitimized against Muslims (Cassi 2014).

2. Common legal foundations

To fully understand the formation and character of the Latin American legal system, it is first necessary to reflect on the law applied to the New World territories after the Conquest.

Civil law in the New World was formed, on the one hand, on the revisiting of Castilian and Portuguese law, on the other hand, on a direct relationship with the Roman sources of law. The law of the territories of the Conquest can be said to originate from the "*Siete Partidas*", which are the Roman law rewritten and revised from 1256 onwards. It was joined by the "*Nueva Recopilación de las Leyes de Castilla*" of 1567, as another legal system that slowly became stronger (Schipani 1999).

Not least, the law of the territories of the Conquest also originates from the law conceived explicitly for that geographical area through the aforementioned *Recopilación de las leyes de Indias*. This legal source is very prominent because from it officially emerges the problem of the legal nature and legitimacy of the acquisition of the New World territories by the Crown of Castile and Aragon, as well as the problem of the legal nature of the "*indios*" (Lanni 2011).

With specific regard to the legal experiences of Lusitanian origin, in Brazil there were the collections of Portuguese royal acts were: firstly, the

Ordenações Alfonsinas (1446); then, the *Ordenações Manuelinas* (1513) that, while preserving the structure of the previous legal work, established that in the event of a dispute *communis opinio* should be followed; finally, the *Ordenações Filipinas* (1603 supplemented, at least until the Pombaline reform and the consequent reform of the *Lei da Boa Razão*, by the opinions of Accursius and Baldo).

To fully understand the importance of historical sources of law, it is important to remember that in Brazil, the Portuguese legal system remained in force with the Declaration of Independence (1823); in fact, it was only replaced by the entry into force of the *Código Beviláqua* (1916). Moreover, the reworking of the legal system previously proposed by Augusto Teixeira de Freitas, through its *Consolidação das Leis Civis* (1858), had aroused a certain optimism.

In 1810 the struggles for Independence began. From 1820 to 1830, the dissolution of Iberian control in the New World took force: this was a fundamental decade, in which the political and social geography of present-day Latin America took root. The crumbling of Iberian power and the autonomy of the new Latin-American Countries determined the statehood of the law.

The history of modern private law codifications has not preserved any trace of the different private-law rules that the native of the New World considered necessary. The constitutions and civil codes of the post-independence republican period represent the historical turning point in the monopoly of the legal-systematic model of Justinian matrix.

It was a peculiar situation: the universalistic imprint of roman law prevailed over the rights of those who embodied cultures different from those of the fathers of Latin-American Independence and their successors. According to their desire for political independence and legal unification, Simón Bolívar, Antonio José de Sucre, José San Martín unwittingly homogenized the different cultures in the area, eliminating all forms of cultural – and thus also – legal pluralism.

It is obvious that the recognition of the rights of indigenous people would have relativized the legal system of the new Republics, which instead wanted to be, through the promulgation of civil codes and constitutions, an expression of the law of 'all', that is to say the law of old and new inhabitants. It is evident that custom suffered a decrease directly proportional to the progress of the written law. This set of rules and traditions, which for about three centuries supported the idea of law in balance according to its dual meaning (*ius civile - ius gentium*), was deconstructed by the law of the new republics.

At the time of the civil codes drafting, the tradition that offered ample space to indigenous law and its rules was not taken into account in any of the Latin American countries. Indigenous law was mostly relegated to the idea of a 'special right'; in other words, post-independence law was thought of as a right for all people, without distinction. The universalistic idea of law was also spread through the prestige of Roman law.

The Chilean codifier's statement on the consideration of Roman law as the common basis of Latin American law is famous: Andrés Bello believed that all those who looked up Roman law as foreign legislation were themselves foreigners "in our America". The acceptance of this approach in the Argentine Civil Code (1869) is even more significant, whose *notas* opened with an explicit reference: "*la ley romana dice*...." (the Roman law affirms). It is a *dixit* that supports and provides foundation to a legal codification that only partially is considered 'new' (Schipani 1999).

Comparative lawyers are not surprised by the consideration of an Italian scholar who found acceptance in Brazil during the fascism period, thanks to some friends (e.g. *amici operosi* as in Losano 2013): Tullio Ascarelli, having fully experienced, during his ten-year stay, the Brazilian culture and university life, understood, with significant intellectual sensitivity, that the most typical feature of Brazilian private law was the uninterrupted validity, until the codification of 1916, of the old Roman law, supplemented at the legislative level by the *Ordenações Filipinas* of 1613.

3. The *Ayllus* as a means of safeguarding the indigenous tradition

As far as law after the Conquest is concerned, some elements of identity remained alive. The concept of *Tierra Nueva* has been one of the most invoked to justify in the New World territories the adoption of solutions different from the Castilian ones (Urquijo 1976). Legal doctrine underlines the presence of a specific "*derecho indiano*" because it refers specifically to the West Indies. However, it is difficult to place the latter as a unitary or stand-alone interlocutor: it was characterized in turn by a plurality of differentiations, for example concerning peninsular Indian law (expressed in the traditional forms of Castilian law: laws, pragmatics, *provisiones*, *reales cedulas*), or Creole Indian law (described in the provisions of the local authorities or, not infrequently, through the predominance of customs and unwritten sources). In other words, the law that followed the Conquest was composed of a myriad of sources of law.

The role of these sources and, more generally, the role of Indian law in the shaping of the Latin American legal system has only been fully recovered in the legal literature in the recent decades. The turning point of the indigenous component, in the encounter-clash between the two great models of civilization, represents a crucial part of the legal-anthropological literature. The latter has been accompanied by studies appropriately placed in the history of law, in order to rethink the reference to passivity with which the indigenous component of the New World has been historically characterized.

Indeed, although the laws of the Crown aimed at building a unified territory by the force of Christianity and by the rationality of the Old World, the indigenous peoples of the New World not infrequently asked and obtained, through *pleitos* addressed to the Spanish courts, the authorization to create *poblaciones* among them. The situation was different only for those indigenous communities that were 'located' in the border areas of the Viceroyalties of the time, due to a thinly veiled purpose of control and political-economic advantage for the Conquerors (Nuzzo 2014).

The core structure of these agglomerations of localized indigenous people (and more often re-located by the European invaders to ensure support to the evangelization) was the *ayllu.* The *ayllu* has characterized the Andean society since pre-Columbian times. It is a social and political structure that follows a precise pattern: the set of *ayllus* gave rise to *markas*, which formed large *suyus*, the sum of which gave rise to the *Tawantisuyu*, the largest empire existing at the time of the New World's discovery.

Ayllu is a Quechua term, that also finds correspondence in other indigenous languages (such as Jatha for the Aymaras). It indicates the family and social basis of the indigenous cultures of the Andean area. The notion of *ayllu* is still in use. From a macro-comparative point of view, it avoids reducing the complexity of the human-collectivity-environment relationship to the conceptual opposition between 'individual property' and 'collective property', which is spread in Western legal thought. The presence of the term *ayllu* as signifier is uninterrupted, but its meaning has been affected by the historical stratifications concerning it. Indeed, the policy of the so-called '*reduciones*' manifested interest in the *ayllus*. Still, it produced alteration to the original idea, leading to a hybrid figure that ranks between the '*ayllu*' and the '*comunidad*' (Míguez Núñez 2003).

The recognition of the *ayllus* allowed the Spaniards to acknowledge the social reality pre-existing the Conquest and, then, to provide the same experience with the status of a subject of law, at least to legitimize the use and possession of land, as well as the adverse possession. On the

one hand, the *ayllu* is the cornerstone of the resistance to the complete Romanization of the indigenous rules from the social and legal point of view. On the other hand, the *ayllu* represents the route to the westernization of indigenous property and the rights associated with it.

Through the *ayllus* the indigenous peoples have been able to maintain part of their customs and traditions in relation to the use of the land, especially regarding: the community of goods; the prevalence of Pacha Mama's rights over those of individuals; the common use of water; the rule of markets; the court proceedings; the service of guide and transport in the *Caminos* (the so-called *Tamemes*); and, to a lesser extent, the criminal regime and the law of marriage and succession.

In short, through the *ayllu*s, indigenous peoples have been able to pass on part of their customs and traditions in relation to the land, that is, the Gordian knot of that right which in the 20th century was placed at the centre of the new Latin American constitutionalism.

4. Latin American law within the framework of contemporary legal systems

In the last decades of the 20th century, meaningful attention has been paid to Latin-American law by scholars who looked at legal traditions from a comparative perspective.

In the field of the systemology studies, the uncertainties put forward by René David more than half a century ago – as to whether or not there are specific characteristics of Latin American law that can be opposed to those of European law – can now be considered to have multiple answers.

Concerning the characteristic elements of the civil law system, within which Latin American law is often considered to be absorbed, specific peculiarities have gradually emerged thanks to the intense research of comparative law scholars. For example, attention has been paid to: the civil codes' identities of Latin America, having in mind the model-code par excellence, represented by the *Code Napoléon* (Schipani 1999; Carbone 2020); the common Ibero-American roots, the similar historical evolutions and the undeniable homogeneity of the contents, linked to the fact that the languages in use in the sub-continent are essentially two (Castán Vazquez 1969); the common legal tradition of the Latin-American Countries that has forged an interesting specificity (Gambaro and Sacco 1996).

From the historical-diachronic point of view, the topic of legal tradition can be considered as the crucial element through which Latin American law

has oriented the research on contemporary legal systems. The crucial role played by certain factors in the identification of Latin American law system has been emphasized, namely: the systematic unity of civil codes, the reference to the general principles of law, the supremacy of the person in civil law, the role of the single formants of law and, even before, the role of lawyers in the development of the legal system (Schipani 1996; Esborraz 2006 e 2007). The researches of those scholars who have developed the topic of Latin American law for the first time in Italian textbooks should be placed in the mentioned perspective; they have emphasized the strong historical and ideological value (Losano 2000), or even some of the emerging identities of Latin American countries, such as the democratization of the economic circuit and the setting up of an alternative modernity (Somma 2014), and not least the chthonic component as the bearer of new claims, such as the right of commons and the right to protect the *Pacha Mama* (Lanni 2011).

A fundamental contribution has come from the comparative public law research, in which an important Italian school of thought gained strength. Thanks to this: Latin American models of justice have been reclassified based on new taxonomic elements (such as, for example, the protected good, the ways of the access to justice, the type of control exercised); the numerous points of reference set out in the constitution for the (substantive and procedural) protection of the individual have been examined in depth; the new ideas of democracy and participation in the management of peoples' interests have been emphasized (as it emerges from the constitutions themselves); the ability to combine new and old models of constitutions has been highlighted (Pegoraro 2015). Some of these points have also been illustrated by scholars who have contributed to this volume.

Private law also emphasises interesting perspective. Latin American civil codes, and the legal dialogue they promoted in that area of the continent, underline to the comparative scholars the presence of a 'private law' that goes beyond the logic of 'national law'. The analysis of the Latin American civil codes suggests a range of elements for the supranational harmonization and unification of Private law, especially as regards the protection of the individual and the family, as well as contracts law and torts law. It is interesting to underline how the peculiarity and unity of the Latin American system can be found not only in the peculiarity and unity of the systematic approach received by Private law through civil codes and special laws. but also, and above all, in the legal system as a whole.

Useful in this regard is Sacco's theory on legal formants, i.e. the basis on which the legal order of a society develops. While it is true that doctrine,

jurisprudence and the legislator contribute to the adaptation of the legal system to the different demands of justice, it is equally true that this triad has a different value in the Latin American legal system. The reason is twofold: both because the single elements that make up the aforementioned triad do not enjoy the same operative impact, and because the framework of reference is shaped by operating rules that derive from the Roman *jurisprudentia* and from the indigenous *costumbre* (which in turn generate other legal formants). For this reason, wishing to use the legal formants theory within the Latin American legal experiences, we should refer more precisely to the role they play in that system (Lanni 2017).

In this perspective, the legal doctrine, which in Latin American countries is of greater importance than jurisprudence and the legislature, comes to the fore. In Latin America, legal doctrine assumes a normative value or, at least, a wider legal space than that commonly recognized to scholars in the civil law systems. In other words, Latin American doctrine influences the production of principles and rules, both by legislative and judicial means. In order to have an overall vision of the Latin American legal system, it is fundamental to refer to the positions taken by the Latin American doctrine on the study and developments of the several issues relating to private law.

In other legal experiences, e.g. those of Argentina and Brazil, legal thought not only shaped the model relating to the discipline itself, but also led the other legal formants towards the positions developed. This was the case for consumer liability in Argentina and for ultra-individual protection of consumer rights in Brazil (Lanni 2005).

In Latin America, the substantial cohesion of the legal culture, as well as, of course, the legal tradition, appears as the core of a legal system characterized by the supremacy of the doctoral opinion, which is at meantime science and source with respect to any expression of legality. Significant in this regard is the reference to what are considered the three great civil codes of Latin America (as products of the legal doctrine): Dalmacio Veléz Sarsfield, Augusto Teixeira de Freitas and Andrés Bello, who were responsible for the construction of the Civil Code of Argentina, Brazil, and Chile respectively. This approach has allowed the civil codes (and therefore the legal system) of the new Latin American Republics to remain far from the rationalist dogma of supremacy and all-inclusiveness civil code as an authoritative source (Schipani 1996).

Emblematic in this regard was the example offered by the Argentine Civil Code (1869-2015), which was composed, as already pointed out above, not only of rules expressed in articles, but also of doctrine and normative references referred to in footnotes. This approach has placed the Argentine civil code's

experience in close relationship with the Justinian compilation, and with the different codification experiences based on the Roman-Iberian tradition. Still today the new Argentine civil and commercial code of 2015, which has removed the logic and tradition of the *notas* from its text, cannot be considered detached from the comparison with the great Latin American codes. In fact, the same Commission in charge of drafting the code currently in force (Aida Kemelmajer de Carlucci, Ricardo Lorenzetti and Elena Highton de Nolasco) has stressed how the code itself is the result of constant comparison of the Argentine legal doctrine with that of other countries and, in particular, that of Italy.

The new 2015 Argentine Civil and Commercial Code addresses and incorporates several issues linked to the 1994 Constitution. Indeed, the recodification of Argentine civil law has not infrequently included the social demands already enshrined in the Constitution, as well as those developed in the analysis of legal science and full grown in the courts. Nevertheless, the recodification itself kept the code at the center of the legal system. In the context of the characteristics of the Latin American system, the analysis of the new Argentine code (but the discourse is also common to the new Brazilian civil code of 2013) emphasizes a constitutionalisation of civil law, but moreover the use of constitutional principles as selection criteria to determine which interests deserve specific protection by the legal system. The dialogue between constitutional law and civil law (and then the dialogue between new civil codes and new constitutions) is a feature element of Latin American system.

Last but not least, the topic of the indigenous peoples' rights has a specific role for the taxonomies of legal systems. It is an essential issue in order to rethink the legal dogma related to the resistance of the rights of the peoples themselves. The issue itself has been brought to the fore by the anthropological acquisitions as well as by the incorporation of these rights in the new constitutions. Through these features it is possible to overcome the Eurocentric thesis that led to deny (at least until the 1970s) the unity and specificity of the Latin American legal system (Lanni 2011).

From the study of the rights of the indigenous people of Latin America, and from the analysis of their recognition through the constitutions, emerges not only a set of rights for a limited part of the country, but also rights for a new epistemology of Latin American law as a whole, which goes beyond the trinomial People-Nation-State. The encounter with the indigenous component, particularly with holism as its typical trait, far from contextualizing the law in a lousy imitation of Western models, emphasizes a different way of conceiving it (Somma 2020).

A reflection on Latin American law can mean talking about the law of a '*Patria Grande*' or a '*Grande Patria*', capable of understanding and interpreting the multiplicity of the social and the different identities that represent it. This can be found in all those researches, not only exclusively legal, which focused on the principles and values that unite the community of people living between the Caribbean islands and the Patagonian area.

5. Latin America and the dream of a *Patria Grande*

At first, the legal area considered here has been identified as "*Mundus Novus*" for the obvious reasons related to the scientific knowledge in the 16th century. The idea of exploring the possible existence of a proper name, already in use in that part of the World, did not receive significant attention by the Conquerors because, in part, they were not yet aware of the area of reference and, in part, they did not want to leave room for earlier forms of identity and, therefore, synonymous of languages of peoples unaware of Christ.

Two definitions have been used to indicate the whole of that part of the World that was the object of the Castilian conquest at the hands of '*sagrada religión*': that of "*Indias Occidentales*" and that of "*Mundus Novus*". Today, these definitions have a historically dated value as an expression of a geographical-identifying matrix linked to the era of the related discoveries. On the other hand, two indigenous definitions, handed down from the indigenous tradition and, therefore, necessarily combined with the cultural baggage transmitted orally by the indigenous peoples, have returned to the fore today: *Abya Yala* and *Pacha Mama*.

"*Abya Yala*" is the name by which some indigenous peoples (particularly the *Tule-Kuna*, i.e. a Chibcha-speaking people living in Panama and western Colombia) designated the American continent. It means 'living land'. This name has become widespread in recent decades, in conjunction with political movements in favour of the recognition and autonomy of Latin America's indigenous peoples. Its election is due to the Aymara leader Takir Mamani, who urged the use and disclosure in all documents and declarations concerning indigenous peoples.

The definition of "Pacha Mama" is the most successful in the ethno-anthropological identification of the fragment of the universe in which indigenous peoples live. The expression *Pacha Mama* recurs in Latin American indigenous literature in tune with the tendencies of the current constitutions in which the emphasis is placed on the 'right to nature' and its 'right to reparation', as responses of 'environmental ethics' towards the needs of Nature. In this green meaning, the expression *Pacha Mama* denotes a value without territorial boundaries and,

therefore, more linked to Nature as a subject of law. In this regard, the references to the 2009 Preamble to the Bolivian constitution are particularly expressive, although in a context of strictly normative reflection: "[...] We inhabit this sacred Mother Earth [...] with the strength of our Pachamama, and thanks be to God" (Lanni 2011; Bagni 2013; Baldin 2014).

"*Abya Yala*" and "*Pacha Mama*" can be understood, beyond their possible or real toponyms, as expressions of reaction against the homologation of Latin American society to a lazy and careless lifestyle, indifferent to the knowledge of the other, impotent to the preservation of ecological balances and, last but not least, insensitive to the fulfillment of intergenerational obligations and the prevalence of the common good over the individual good. Certainly, the diffusion of these expressions has emphasized a form of brotherhood and closeness of interests between peoples who are detached from the logic of borders and the state. However, they have limited recognition in the panorama of legal systems' classifications.

In the legal bibliography, the countries of the New World are usually known by the name "America", which is variously followed or preceded, depending on the linguistic rules, by a plurality of adjectives (i.e. Ibero, South, Latin). Indeed, the name "America", which as geographical connotation dates back to a 1507 pamphlet (i.e. '*Cosmographiae introductio*') by which the German cosmographer Waldseemüller proposed a tribute to Amerigo Vespucci, so that it was extended to the entire continent from 1570 onwards. Subsequently, it stimulated the need for clarification in order to maintain its ability to identify a territory.

Referring to the use of the adjectives previously invoked to describe America as the object of Spanish Conquest, it has been (and still is) mainly spoken of "*Ispanoamérica*", "*Lusoamérica*", "*Iberoamérica*" and "*Sudamérica*". These definitions are ideologically oriented and semantically limited, if compared to the one currently most in use, namely "*Latinoamérica*" or "*Latin America*". The latter expressions, in fact, well describe a historically determined geographical and cultural area. At the same time, they evoke the idea of a set of common identities, a body of shared values and a hard core of common legal principles generally opposed to those of the other America, the Anglo-Saxon one, founded on common law and today more than ever on the idea of walls, where belonging to the narrow circle of the white Anglo-Saxon Protestant, as happens with many US families for generations, still has a social value.

Conversely, expressions referring to the linguistic and colonial matrix lack foundation. In fact, to speak of "*Ispanoamérica*" means to exclude Brazil, French Guiana, Surinam (former Dutch territory), Guyana (former

English colony), and many islands in the Caribbean, where no one spoke and speaks Spanish, nor was there the presence of that European colonial power. The same goes for the word "Lusoamérica", which describes the former Portuguese colonies in America, namely Brazil, a country that is 90 times larger than its former motherland and in which this name has not been very successful, for obvious reasons. Also the expression "*Iberoamérica*" maintains a colonial connotation, and is not appreciated, especially on that side of the Atlantic. However, it is broader, since the reference is addressed to the former possessions of the kingdoms of the Iberian Peninsula, and thus also includes Brazil, which was part of the Portuguese Empire until 1822.

The term "*Sudamérica*" is widespread, partly because it does not have the limitations associated to the above-mentioned expressions. Apart from the difficulties linked to correctly identifying the geographical area that divides the north from the south (the equator? or the Isthmus of Panama?), this expression has an erroneous ideological value, namely the north/south opposition (developed countries/underdeveloped countries). However, from the point of view of legal systems' classifications, it does not seem suitable to geographically capture the countries of Central America, such as Costa Rica or Panama, which are, like the former, part of the Latin American system.

"*América Latina*" or "*Latinoamérica*" seems the most suitable name. From a toponymic point of view, the semantic compromise also allows the Spanish Viceroyalty of the area, the former French colony of Haiti, as well as the area that in the past was Portuguese and the current French overseas territories (i.e. the Caribbean islands of Guadeloupe and Martinique and French Guiana). Only the non-Latin Caribbean islands (Jamaica and the Virgin Islands, Surinam, Guyana, and the Falkland Islands) are excluded from this perspective.

Furthermore, in line with an etymological point of view, the name "*América Latina*" should be considered as bearing a precise identity. It was coined by the Latin Americans and can be ascribed to the Dominican friar Francisco Muñoz del Monte, the Chileans Santiago Arcos and Francisco Bilbao and the Colombian José María Torres Caicedo, who used it from 1850 with a specific ideological content. The Latin character was no longer seen as a reflection of the interests associated to the colonial powers, but rather as a name coined by the inhabitants of the region themselves to emphasize a process of cultural and political qualification linked to 'being Latin'. According to a historical reflection, it has been pointed out that the term 'Latin' identifies not an ethno-linguistic datum and, therefore, a segment of the population, but a legal qualification, i.e. the status of 'Latin'. In addition, Latin Americans refer to "*América Latina*" with

the capital L, thus emphasizing the meaning not of an adjective but of a middle name (Schipani 2004).

It is also a name with a well-established historical tradition. The expression "*América Latina*" appeared in 1860, when general Walker wanted to build some military bases in the southernmost countries of the United States. For these reasons, the peoples of that area conceived, according to Simón Bolivar's thought, a Union of Republics to defend themselves, and gave themselves a name that would help delimit this unitary and political-legal identity (Ardao 1980). It should be stressed that the statement of Latinity and its difference with respect to Anglo-Saxon America, together with the idea of a culture based on common belonging, as well as the values of shared citizenship of the whole of peoples located south of the Rio Bravo (from Mexico to Argentina, including Brazil and the Caribbean Islands), have been the cornerstones of the historiographic and academic philosophical debate on Latin American identity.

Nor should it be forgotten that the universalist proposal of the *Libertadores*, the well-known Venezuelan Simón Bolivar, and the Cuban José Martí, was founded on the basis of Latin brotherhood; that is to say: the creation of a single Great Homeland, starting with the Republics that emerged after the wars of Independence against Spain. The proposal of the Colombian José Maria Torres Caicedo to build a "*Liga Latino-Américana"* was also based on it.

Concluding, the word "Latin" is unrelated to ethno-cultural elements. The people who have inhabited the New World since its discovery were not Latin, they were native or Iberian, and they were joined by many other peoples with the great migrations. The designation "Latin" has a political and legal meaning, as intentionally emphasized by the establishment of a Latin-American College in Rome (1858) in order to train the clergy, that would operate in that area, reinforcing the history and the spread of Latinity (Schipani 2004).

The union of Republics, known as "*Latinoamérica*" or "*América Latina*", today presents itself as a multifaceted and polysemic concept, bringing together legal, political, social and, last but not least, religious issues. Indeed, Latin America has been referred as *Patria Grande* (the concept has been taken up several times by John Paul II and now by Pope Francis) to evoke that political vision of integration that has been advocated by the *Libertadores* in the framework of a unification of the countries of that area, which could cope with the interference of the great political and economic powers, brought to the fore today by globalization, and thus avoid the "steamroller of injustice" that is linked to the prevalence of 'logic of market' over the 'logic of person'.

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