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Revolution in Latin American Criminal Procedure: Diffusion of Legal Ideas from the Periphery

Over the last 15 years, 14 Latin American countries and a substantial number of Latin American provinces and states have introduced new criminal procedure codes. These reforms are, arguably, the deepest transformation that Latin American criminal procedures have undergone in nearly two centuries. This article shows how a network of Latin American lawyers who worked on the drafting and implementation of the new codes played a crucial role in this wave of reforms. This network of Latin American legal entrepreneurs—that this article characterizes as a Southern activist expert network—proposed the new criminal procedure codes to solve problems such as lack of due process and transparency and inefficiency, and framed the reforms as a conversion from inquisitorial to accusatorial criminal procedures.

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The key to the success of these legal entrepreneurs was their ability to convince both international and domestic actors that adopting the new criminal procedure codes would work toward meeting the goals of the many actors. As more Latin American countries adopted new criminal procedure codes, the legal entrepreneurs' reference to a regional trend also contributed to the spread of the reforms, as it generated a kind of peer pressure on actors in countries that had not yet introduced reforms, contributing to a code cascade effect.

A detailed history of this wave of Latin American criminal procedure reforms has not been told and this article fills this void. In addition, this article aims to contribute to the literature on legal transplants and the diffusion of legal rules, norms, and policies throughout the world in general, and in Latin America in particular. An original feature of this wave of criminal procedure reforms is that its model of the diffusion of ideas differs from the models presented in existing literature. This literature has analyzed how rules, norms and policies normally diffuse either from the center to the periphery—i.e., from developed to developing countries, from the north to the south, or from the west to the east; or as a result of the domestic dynamics of the adopting countries. In contrast, in the case of what this article calls diffusion from the periphery—rules, norms, and policies diffuse from peripheral countries to either central countries or to other peripheral countries. The wave of criminal procedure reforms is a case of diffusion from the periphery because the Latin American lawyers of the Southern activist expert network were the intellectual authors and crucial advocates of the reforms. In this sense, this reform wave is not merely a counter example to the existing models but forms the basis for a new theoretical model that this article introduces.

INTRODUCTION

Criminal procedure reforms have mushroomed in Latin America. Over the last 15 years, 14 Latin American countries and a substantial number of Latin American provinces and states have introduced new criminal procedure codes. These reforms are, arguably, the deepest transformation that Latin American criminal procedure has undergone in nearly two centuries. Although the reforms have not been exactly the same among the different jurisdictions, they have all been described by reformers in similar terms, namely, as a move from an inquisitorial to an accusatorial or adversarial system.

As such, the reforms share many characteristics, including the introduction of oral, public trials; the introduction and/or strengthening of the office of the prosecutor; and the decision to put the prosecutor instead of the judge in charge of pretrial investigation. Other changes include giving defendants more rights at the police and pretrial phases; introducing the principle of prosecutorial discretion; al-

lowing for plea bargaining and alternative dispute resolution mechanisms; and expanding the victim's role and protection during the criminal process.

Based on 62 in-depth interviews with participants in these reforms—see the methodological appendix for a detailed description of the questions asked and methodology used—and drawing on secondary literature as well as legal and policy-related documents, this article will show how a network of Latin American lawyers who worked on the drafting and implementation of the new codes played a crucial role in this wave of reforms. This network of Latin American legal entrepreneurs proposed the new criminal procedure codes to solve problems such as lack of due process, insufficient transparency and inefficiency, and framed the reforms as a conversion from inquisitorial to accusatorial criminal procedures.

The key to the success of these legal entrepreneurs was their ability to convince both international and domestic actors that adopting the new criminal codes would work toward meeting the goals of the many different actors. The United States Agency for International Development (USAID) as well as other international agencies and banks were looking for ways to strengthen Latin American legal systems to foster economic development and democracy. The group of Latin American legal entrepreneurs persuaded them that the adoption of new codes would contribute to these goals.

The network of Latin American legal entrepreneurs also convinced Latin American domestic institutional actors and politicians from across the political spectrum that the reforms would deliver more due process, efficiency, and transparency to the criminal justice system. As more Latin American countries adopted new criminal procedure codes, the legal entrepreneurs' reference to a regional trend also contributed to the spread of the reforms, as it generated a kind of peer pressure on actors in countries that had not yet introduced reforms, contributing to a cascade effect.

With its description and analysis of this wave of criminal procedure reforms, this article aims at contributing to two different bodies of literature. The first is the literature on comparative criminal procedure and Latin American law. A detailed story of this wave of Latin American criminal procedure reforms has not been told and this article fills this void.[1]

1. There have been analyses, mostly in Spanish, on the Latin American criminal procedure reforms, but they have concentrated on describing the content of the legislative and institutional changes, justifying the need for the reforms, or assessing the success or failure of the reforms. *See, e.g.*, LAS REFORMAS PROCESALES PENALES EN AMÉRICA LATINA (Julio B.J. Maier et al. eds., 2000); JOSÉ MARÍA RICO, JUSTICIA PENAL Y TRANSICIÓN DEMOCRÁTICA EN AMÉRICA LATINA (1997); Cristián Riego, *Informe comparativo: Proyecto "Seguimiento de los procesos de reforma judicial en América Latina* (2005), *available at* http://www.cejamericas.org/doc/proyectos/inf_comp.pdf. There

It also contributes to the literature on legal transplants and the diffusion of legal rules, norms, and policies throughout the world, in general, and in Latin America in particular. This literature has analyzed which type of actors may be agents of change throughout multiple countries and how ideas tend to diffuse from central to peripheral countries. This particular wave of criminal procedure reforms in Latin America is significant because it has two features that do not fit into the existing theoretical categories.

First, the Latin American network that pushed for the reforms does not fit any of the three main network types—advocacy networks/social movements, transnational governmental networks, and epistemic communities—described in the existing literature. Instead, the Latin American lawyers worked as both experts and activists for these reforms without serving any broader social movement. This article will refer to this type of network as an *activist expert network*, or more specifically, given that the leaders have been Latin American actors, as a *Southern activist expert network.*

The second original feature of this reform wave is that the diffusion of ideas differs from the models presented in existing literature. This literature has analyzed how rules, norms, and policies normally diffuse either from the center to the periphery—i.e., from developed to developing countries, from the north to the south or from the west to the east; or as a result of the domestic dynamics of the adopting countries. In contrast, in the case of what this article calls *diffusion from the periphery*, rules, norms, and policies spread from peripheral countries to either central countries or to other peripheral countries. In this sense, the wave of Latin American criminal procedure reforms is not merely a counter example to the existing models but forms the basis for a new theoretical model that this article introduces.

This article is organized in three parts. Section I articulates the concept of *diffusion from the periphery* and explains subtypes of this phenomenon as well as why and how it takes place. Section II places the criminal procedure reforms within the history of Latin American criminal procedure, describes the intellectual origins and content of the reforms, and explains the main factors behind the reform wave.

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have also been studies on a few individual countries that this article will cite later. However, no study has attempted to explain why and how this wave of reforms happened throughout Latin America and who the main international, transnational, and domestic actors behind them have been. The only two partial exceptions that I am aware of are ALBERTO M. BINDER & JORGE OBANDO, DE LAS "REPÚBLICAS AÉREAS" AL ESTADO DE DERECHO (2004); and Mauricio Duce & Rogelio Pérez Perdomo, *Citizen Security and Reform of the Criminal Justice System in Latin America*, in CRIME AND VIOLENCE IN LATIN AMERICA: CITIZEN SECURITY, DEMOCRACY, AND THE STATE 69 (Hugo Früling & Joseph Tulchin eds., 2003), though these two works are incomplete in their coverage. The first work does not analyze these issues in a systematic way, and the second is very brief. In addition, these two studies omit the role of some of the central actors in this reform wave such as the transnational network of Latin American lawyers.

Section II also explains the concept of an *activist expert network* and describes how it differs from the three main existing theoretical network categories. Section III explains how the reforms can be seen as a case of *diffusion from the periphery* and it rebuts a number of challenges to this characterization.

Before we start, a short terminological note is in order. The terms "inquisitorial" and "accusatorial" have been used for many purposes and with multiple meanings.[2] In order to avoid cumbersome clarifications throughout the article, I adopt the use of the Latin American criminal procedure reformers. "Accusatorial" will thus refer to criminal procedures that are oral and public; distinguish between investigatory and adjudicatory functions; and provide the prosecutor, the victim, and the defendant with a number of mechanisms to terminate the case without going to trial. This model also includes broad defendant's rights and lay adjudicators and allows the victim to play a larger role in criminal proceedings. "Inquisitorial" refers to criminal procedures that present the opposite features.

I. DIFFUSION FROM THE PERIPHERY

Most accounts and theories concerned with legal transplants emphasize two different ways in which diffusion may occur.[3]

The first set of accounts and theories emphasize not geographical directionality but common issues, processes, and incentives that states and domestic actors face and that may lead them to adopt similar rules, norms, and policies. These theories propose different mechanisms by which this type of diffusion may transpire. Evolutionary theory, functionalism, and international relations liberal theory emphasize the idea that states may adopt similar rules, norms, and policies in response to similar problems, political and social processes, or external stimuli.[4] Rational choice analyses of domestic politics argue that rules, norms, and policies may diffuse among

2. On the different ways in which the terms "accusatorial" (or "adversarial") and "inquisitorial" can be used, see Máximo Langer, *La Dicotomía Acusatorio-Inquisitivo y la Importación de Mecanismos Procesales de la Tradición Jurídica Anglo-Sajona*, *in* PROCEDIMIENTO ABREVIADO 97 (Julio Maier & Alberto Bovino eds., 2001). On the best way to define the terms "adversarial" and "inquisitorial" in order to capture the current differences between the criminal procedures of common and civil law, see Máximo Langer, *The Rise of Managerial Judging in International Criminal Law*, 53 AM. J. COMP. L. 835, 838-47 (2005).

3. For other classifications of legal transplants, see, e.g., Jonathan M. Miller, *A Typology of Legal Transplants: Using Sociology, Legal History and Argentine Examples to Explain the Transplant Process*, 51 AM. J. COMP. L. 839 (2003).

4. *See, e.g.*, ANNE-MARIE SLAUGHTER, A NEW WORLD ORDER (2004); B.S. Markesinis, *Learning from Europe and Learning in Europe*, *in* THE GRADUAL CONVERGENCE: FOREIGN IDEAS, FOREIGN INFLUENCES, AND ENGLISH LAW ON THE EVE OF THE 21ST CENTURY 1, 30 (Basil S. Markesinis ed., 1994); Ugo Mattei, *Efficiency in Legal Transplants: An Essay in Comparative Law and Economics*, 14 INT'L REV. L. & ECON. 3 (1994).

states if they benefit the interests of powerful groups within each country.[5] The notion of chance in legal transplants analyses—i.e., the notion that a number of contingent elements may or may not fortuitously align to produce a legal transplant—highlights the possibility that diffusion may happen by a relatively random process.[6]

A second group of accounts and theories emphasizes geographical directionality and points out that rules, norms, and policies diffuse from central countries to other central or peripheral countries.[7] Again, different theories emphasize different causes and mechanisms through which these processes of diffusion occur. Neo-realist international relations and international law rational choice analyses point out that central states may impose rules, norms, and policies on other states through force, threats, and other incentives as a way to advance their material self-interest.[8] Neo-Marxist analyses suggest that diffusion may occur through the pressures of international capital on both central and peripheral countries and through the expansion of world capitalism.[9]

According to institutional sociology, international relations constructivism, post-colonial analysis, and legal transplants analysis based on the notion of prestige, diffusion occurs when peripheral countries emulate the rules, norms, and policies of central countries.[10] Neo-Bourdieusian analysis emphasizes that ideas diffuse

5. *See, e.g.*, Jodi Finkel, *Judicial Reform as Insurance Policy: Mexico in the 1990s*, 47 LATIN AM. POL. & SOC'Y 87 (2005); Jodi Finkel, *Judicial Reform in Argentina: How Electoral Incentives Shape Institutional Change*, 39 LATIN AM. RES. REV. 56 (2004); Ran Hirschl, *The Political Origins of the New Constitutionalism*, 11 IND. J. GLOBAL LEGAL STUD. 71 (2004).

6. *See, e.g.*, Alan Watson, *Aspects of Reception of Law*, 44 AM. J. COMP. L. 335, 339-41 (1996).

7. *See, e.g.*, Duncan Kennedy, *Three Globalizations of Law & Legal Thought: 1850-2000*, *in* THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL 19 (David M. Trubek & Alvaro Santos eds., 2006).

8. *See, e.g.*, STEPHEN KRASNER, SOVEREIGNTY: ORGANIZED HYPOCRISY (1999); Richard Steinberg, *The Transformation of European Trading States*, *in* THE STATE AFTER STATISM: NEW STATE ACTIVITIES IN THE AGE OF LIBERALIZATION (Jonah D. Levy ed., 2006); Andrew T. Guzman, *A Compliance-Based Theory of International Law*, 90 CAL. L. REV. 1823 (2002). In the case of legal reforms in Latin America, a number of critics have argued that the United States has imposed its own institutions on Latin American countries through such mechanisms. *See, e.g.*, JAMES A. GARDNER, LEGAL IMPERIALISM: AMERICAN LAWYERS AND FOREIGN AID IN LATIN AMERICA (1980).

9. *See, e.g.*, IMMANUEL WALLERSTEIN, THE MODERN WORLD-SYSTEM I: CAPITALIST AGRICULTURE AND THE ORIGINS OF THE EUROPEAN WORLD-ECONOMY IN THE SIXTEENTH CENTURY (1974); IMMANUEL WALLERSTEIN, THE MODERN WORLD-SYSTEM II: MERCANTILISM AND THE CONSOLIDATION OF THE EUROPEAN WORLD-ECONOMY, 1600–1750 (1980); Ugo Mattei, *A Theory of Imperial Law: A Study on U.S. Hegemony and the Latin Resistance*, 10 IND. J. GLOBAL LEGAL STUD. 383 (2003).

10. *See, e.g.*, W. RICHARD SCOTT ET AL., INSTITUTIONAL ENVIRONMENTS AND ORGANIZATIONS: STRUCTURAL COMPLEXITY AND INDIVIDUALISM (1994); Martha Finnemore, *Norms, Culture, and World Politics: Insights from Sociology's Institutionalism*, 50 INT'L ORG. 325, 331-34 (1996) (book review); Alison Brysk et al., *After Empire: National Identity and Post-Colonial Families of Nations*, 8 EUR. J. INT'L REL. 267 (2002); Gianmaria Ajani, *By Chance and Prestige: Legal Transplants in Russia and Eastern*

from central to other central or peripheral countries when those ideas serve the interests of the elites in each type of country.[11] Finally, network analysis highlights that ideas may spread from central to peripheral countries because central countries have more resources to take the first step in one direction that may have path dependence or network effects on other countries.[12]

Whatever the reasons and mechanisms for diffusion, this set of geographical directionality analyses emphasize a process of diffusion that can be represented as follows in Figure 1.

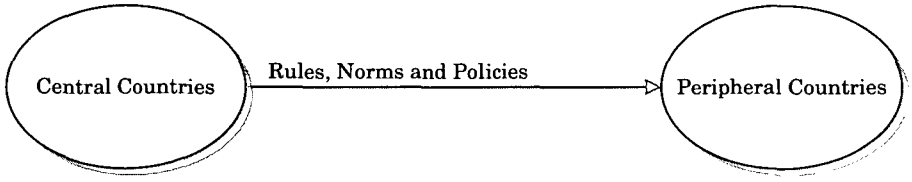

Figure 1. Diffusion of Rules, Norms and Policies from Central to Peripheral Countries

Under this model, central countries may influence each other in the adoption of rules, norms, and policies as well as compete between themselves to influence peripheral countries. However, peripheral countries and their actors are limited to being recipients of the rules, norms, and policies that are produced and spread from central countries.[13] As a result, what happens in peripheral countries is only relevant for understanding what particular shape the diffused rules, norms, and policies take there, not for understanding the process of global or regional diffusion.[14]

Europe, 43 AM. J. COMP. L. 93 (1995). In the case of Latin America, a number of scholars have pointed out how identification with a certain reference group of States or foreign actors has played a role in the diffusion of legal ideas in the region. *See, e.g.*, Jorge L. Esquirol, *The Fictions of Latin American Law (Part I)*, 1997 UTAH L. REV. 425 (1997).

11. *See, e.g.*, YVES DEZALAY & BRYANT G. GARTH, THE INTERNATIONALIZATION OF PALACE WARS (2002); Loïc Wacquant, *Penal Truth Comes to Europe: Think Tanks and the 'Washington Consensus' on Crime and Punishment*, in CRIME, TRUTH AND JUSTICE: OFFICIAL INQUIRY, DISCOURSE, KNOWLEDGE 161 (George Gilligan & John Pratt eds., 2004).

12. *See, e.g.*, Kal Raustiala, *The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law*, 43 VA. J. INT'L L. 1 (2002).

13. On the distinction between fields of production and fields of reception, see Pierre Bourdieu, *The Social Conditions of the International Circulation of Ideas*, *in* BOURDIEU: A CRITICAL READER 221 (Richard Shusterman ed., 1999). For a theory of reception, see Máximo Langer, *From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure*, 45 HARV. INT'L L.J. 1 (2004) [hereinafter Langer, *Legal Translations*].

14. *See, e.g.*, DIEGO LÓPEZ-MEDINA, TEORÍA IMPURA DEL DERECHO (2004); Amr Shalakany, *Between Identity and Redistribution: Sanhuri, Genealogy and the Will to Islamise*, 8 ISLAMIC L. & SOC'Y 203 (2001).

Figure 2 offers a more nuanced example of how this kind of diffusion—that this article calls *diffusion from the center*—may occur.[15]

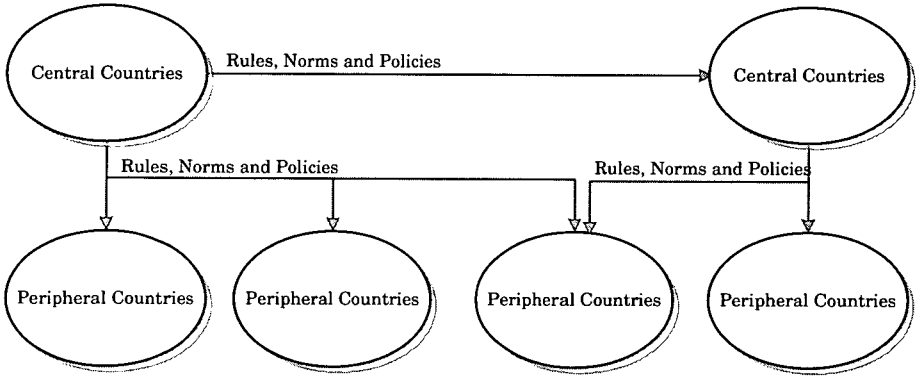

Figure 2. Diffusion of Rules, Norms and Policies from Central Countries

In contrast to the two models presented above, this article identifies a third model that I call "diffusion from the periphery." Under this model, actors in peripheral or semi-peripheral countries articulate and have a crucial role in the diffusion of rules, norms, and policies to other central or peripheral countries.[16] As a result, in contrast to the other two models, the history and social reality of peripheral countries becomes relevant to explaining not only the domestic reception but also the regional and global diffusion of rules, norms, and policies.

Diffusion from the periphery may transpire in different forms and may be facilitated by many factors that vary depending on the case-study under analysis. Possible contributing factors include common problems, common political and social processes, and common external shocks. Contributing factors may also include external imposition, pressures, and incentives; emulation; benefits that the reforms may bring to international, transnational, and domestic elites; campaigns by transnational networks; and so on. Since many of these factors also play a role in the other two models of diffusion, the insights of the theories and accounts cited at the beginning of this section provide theoretical tools also for the study of *diffusion from the periphery*.

15. For examples of accounts that provide a pattern of diffusion resembling the one presented in Figure 2, see, e.g., PETER ANDREAS & ETHAN NADELMANN, POLICING THE GLOBE (2006); DEZELAY & GARTH, *supra* note 11; Steinberg, *supra* note 8.

16. It is important to distinguish between peripheral and semi-peripheral countries in order to conceptualize the inequalities and differences that exist between developing, southern, and eastern countries. These differences may be important in explaining the processes of *diffusion from the periphery*.

Nevertheless, the conceptualization and study of *diffusion from the periphery* as a distinct diffusion type are important for at least three reasons. First, *diffusion from the periphery* has to be kept in mind as a hypothesis or set of hypotheses that can be tested while studying diffusion processes. Second, its study can give insights into how rules, norms, and policies diffuse in certain regions of the world, especially those that do not contain any central countries, such as Africa, Latin America, and the Middle East. Third, the possibility that diffusion may be initiated in peripheral and semi-peripheral countries means that studying these types of countries enhances understanding of our globalized world.

The geographical directionality of this process of diffusion may occur in different ways. The two most important geographical directions of diffusion for the purposes of this article are what I call *horizontal or semi-horizontal diffusion from the periphery* and *triangular diffusion from the periphery.*

In the case of *horizontal or semi-horizontal diffusion from the periphery*, rules, norms, and policies diffuse from actors in peripheral or semi-peripheral countries to other peripheral or semi-peripheral countries without any substantial participation of actors from central countries.[17] In this case, the diffusion process may be represented as follows in Figure 3.

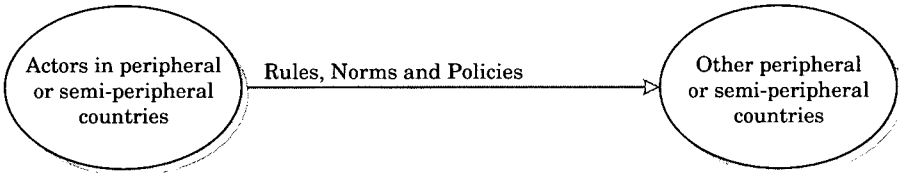

Figure 3. Horizontal or Semi-horizontal Diffusion from the Periphery

In the case of *triangular diffusion from the periphery*, actors in peripheral countries are the intellectual authors and play a crucial role in the diffusion of rules, norms, and policies to other peripheral countries, but actors from central countries also play a crucial role in

17. Even if the literature on diffusion and legal transplants has not conceptualized *diffusion from the periphery* as a model of diffusion until now, cases of *horizontal or semi-horizontal diffusion from the periphery* are not unknown. *See, e.g.*, Bernardino Bravo Lira, *Difusión del Código Civil de Bello en los Países de Derecho Castellano y Portugués*, *in* ANDRÉS BELLO Y EL DERECHO LATINOAMERICANO 343 (Rafael Di Prisco & José Ramos eds., 1987) (describing the influence of the Bello Code on the civil codes of several Latin American countries); Raúl L. Madrid, *Ideas, Economic Pressures, and Pension Privatization*, 47 LATIN AM. POL. & SOC'Y, June 2005, at 23 (explaining how the Chilean model of pension privatization diffused to other Latin American countries irrespective of the participation of actors from central countries).

the process of diffusion.[18] Typically, actors from peripheral countries establish alliances with actors from central countries by convincing them of a reform's virtues. Actors from central countries then bring their advocacy, pressure, and resources to other peripheral or semi-peripheral countries to advance the reforms. In this case, the process of diffusion may be represented as follows:

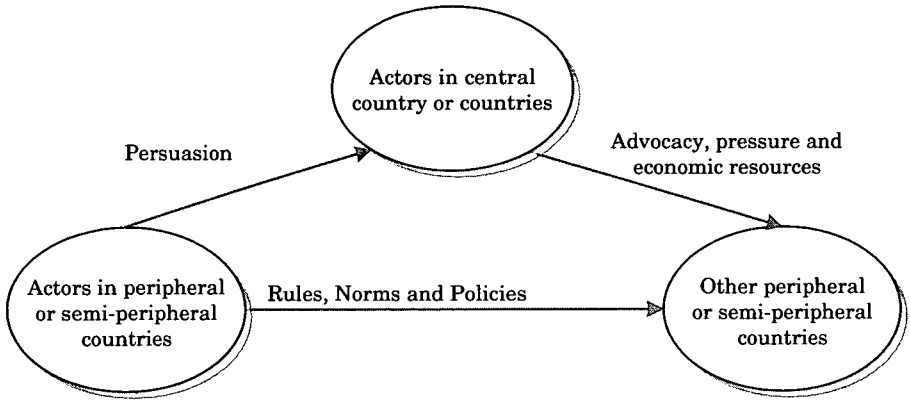

Figure 4. Triangular Diffusion from the Periphery

This article will show that the wave of criminal procedure reforms in Latin America combines cases of *horizontal* or *semi-horizontal diffusion from the periphery* with cases of *triangular diffusion from the periphery.*

18. For examples of *triangular diffusion from the periphery*, see ALISON BRYSK, FROM TRIBAL VILLAGE TO GLOBAL VILLAGE: INDIAN RIGHTS AND INTERNATIONAL RELATIONS IN LATIN AMERICA (2000) (describing how the Indian rights movement in Latin America has used international law and alliances with international actors to change agendas, discourse and rules through out the region); Madrid, *supra* note 17 (explaining that Chile was first in trying pension privatization, but the World Bank had an important role in diffusing the idea to other countries in Latin America and Central and Eastern Europe); Ron Pagnucco, *The Transnational Strategies of the Service for Peace and Justice in Latin America*, *in* TRANSNATIONAL SOCIAL MOVEMENTS AND GLOBAL POLITICS 123 (Jackie Smith et al. eds., 1997) (describing how the Service for Peace and Justice, a Latin American transnational social movement organization, allied with international actors in order to advance its human rights crusades in Latin America). Keck and Sikkink have articulated the concept of the *boomerang pattern of influence* in which domestic non-governmental organizations (NGOs) bypass their state and directly search out international allies to try to bring pressure on their state. *See* MARGARET E. KECK & KATHRYN SIKKINK, ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS 12-13 (1998). The difference between the *boomerang pattern of influence* and *triangular diffusion from the periphery* is that while the former captures strategies that local actors may use to advance their local agendas, the latter captures processes of diffusion between two or more countries.

III. The Wave of Criminal Procedure Codes in Latin America

A. *The Latin American Inquisitorial Codes*

The main criminal procedure legislation for the Spanish Americas during the colonial period was *Las Siete Partidas*, which consisted of seven books covering multiple legal areas.[19] Completed in 1265 during the reign of Alfonso I, Book III regulated procedural issues.[20] As most of the Latin American states became independent between the 1810s and the 1830s, the discussion of which types of constitutions and laws to adopt became central to the state- and nation-building processes.[21] In the case of criminal procedure, this discussion centered partly on whether to join the wave of 19th-century European criminal procedure reforms, or rather to adapt the Spanish models that had prevailed during the colonial period to the states' new political realities.

At the beginning of the 19th century, continental Europe began a series of deep criminal procedure reforms. In 1808, Napoleon introduced his *Code d'instruction criminelle* which moved France away from the inquisitorial model represented by the *Ordonnance criminelle* of 1670 and translated a number of ideas from the English model of criminal procedure to a civil law jurisdiction.[22] Following the continental European inquisitorial tradition, the *Code d'instruction criminelle* established a secret and written pretrial investigation under which the defendant had very limited rights. However, inspired by the English model, the *Code* also incorporated an oral and public trial before a jury.[23]

The *Code d'instruction criminelle* was described as a mixed model because it included an inquisitorial pretrial phase and an accusatorial trial phase.[24] Its ideas spread all over Europe—including Spain—during the 19th century,[25] and members of the Latin Ameri-

19. *See, e.g.*, JULIO B. J. MAIER, I DERECHO PROCESAL PENAL 329, 333 (2d ed. 1996) [hereinafter MAIER, DERECHO].

20. For a recent edition in English, see 3 LAS SIETE PARTIDAS (Samuel Parsons Scott & Robert I. Burns eds., Samuel Parsons Scott trans., 2000).

21. *See, e.g.*, KENNETH KARST & KEITH ROSENN, LAW AND DEVELOPMENT IN LATIN AMERICA (1975); MATTHEW C. MIROW, A HISTORY OF PRIVATE LAW AND INSTITUTIONS IN SPANISH AMERICA (2004); Roberto Gargarella, *Towards a Typology of Latin American Constitutionalism, 1810-60*, LATIN AM. RES. REV., June 2004, at 141.

22. *See, e.g.*, ADHEMAR ESMEIN, HISTOIRE DE LA PROCÉDURE CRIMINELLE EN FRANCE (1882); JEAN-PIERRE ROYER, HISTOIRE DE LA JUSTICE EN FRANCE, DE LA MONARCHIE ABSOLUE À LA RÉPUBLIQUE (3d ed. 2001). On the notion of conceptualizing this type of process as a process of translation, see Langer, *Legal Translations*, *supra* note 13.

23. *See, e.g.*, ESMEIN, *supra* note 22; ROYER, *supra* note 22.

24. *See, e.g.*, RENÉ GARRAUD, TRAITÉ THÉORIQUE ET PRATIQUE D'INSTRUCTION CRIMINELLE ET DE PROCÉDURE PÉNALE 10-22 (1907).

25. *See, e.g.*, ESMEIN, *supra* note 22; ROYER, *supra* note 22.

can elite were familiar with them.[26] Latin American elites were also familiar with Edward Livingston's draft code for the State of Louisiana, which combined elements from civil and common law and included a trial by jury as well.[27] In addition, some Latin American jurists also paid attention to Anglo-American sources.[28]

Even though several Latin American political actors advocated adopting one of these mixed models, most countries in the region ultimately rejected them. Latin American elites rejected the more liberal codes mainly because they deeply distrusted and disliked the jury as well as oral and public trials, believing that their populations were not ready for them.[29] Instead, the criminal procedures that the young, independent Latin American republics adopted generally followed the inquisitorial model (created by the Catholic Church and absolutist monarchies) that had prevailed in continental Europe and the Portuguese and Spanish Americas between the 13th and 19th centuries.[30] The new codes deviated from the original inquisitorial codes by refusing to authorize torture to obtain confessions[31] and by limiting the system of legal proofs.[32] Nevertheless, the main features of a typical Latin American criminal procedure code followed the inquisitorial model.

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26. *See, e.g.*, Jorge Montt, *Mensaje del Código de Procedimiento Penal, Santiago, 31 de Diciembre de 1894*, *in* CÓDIGO DE PROCEDIMIENTO PENAL DE LA REPÚBLICA DE CHILE 4 (1957) (describing the European tendencies in this area). The Chilean Code of 1906 applied in that country until the 2000s.

27. On Guatemala's adoption of the Livingston Code between 1836 and 1838, see Daniele Pompejano, *Jurisdicciones y Poder Politico: Guatemala entre Liberales y Conservadores*, *in* DINÁMICAS DE ANTIGUO RÉGIMEN Y ORDEN CONSTITUCIONAL: REPRESENTACIÓN, JUSTICIA Y ADMINISTRACIÓN EN IBEROAMÉRICA 397 (Marco Bellingeri ed., 2000); David Vela, *Vida, Pasión y Muerte de los Códigos de Livingston*, *in* V REVISTA DE LA FACULTAD DE CIENCIAS JURÍDICAS Y SOCIALES DE GUATEMALA 160 (1943).

28. For instance, the Argentinean Constitution of 1853 mentions the establishment of trial by jury three times (arts. 24, 67.11 & 102). In 1871, the Argentine Congress created a commission of two jurists, Florentino González and Victorino de la Plaza, to draft a bill establishing and regulating the jury, and another bill on criminal procedure for the federal system. The two jurists presented their drafts (which were inspired by U.S. law) to the Argentine Congress on Apr., 24, 1873, but neither bill passed. *See, e.g.*, MAIER, DERECHO, *supra* note 19, at 403-05.

29. *See, e.g.*, Andrés D'Alessio, *The Function of the Prosecution in the Transition to Democracy in Latin America*, *in* TRANSITION TO DEMOCRACY IN LATIN AMERICA: THE ROLE OF THE JUDICIARY 187 (Irwin P. Stotzky ed., 1993); Montt, *supra* note 26, at 4-5; Vela, *supra* note 27.

30. On the development of the inquisitorial criminal procedure model in continental Europe, see MAIER, DERECHO, *supra* note 19, at 288-328.

31. On the disappearance of legal torture in continental Europe, see JOHN LANGBEIN, TORTURE AND THE LAW OF PROOF (1977); Mirjan Damaška, *The Death of Legal Torture*, 87 YALE L.J. 860 (1978).

32. For remnants of the system of legal proof in Latin American codes, see, e.g., ARGENTINE CRIMINAL PROCEDURE CODE OF 1888 [ARG. CRIM. PROC. COD. 1888] arts. 306 & 316; CHILEAN CRIMINAL PROCEDURE CODE OF 1906 [CHILE CRIM. PROC. COD. 1906], arts. 459, 484, & 485-88. The Code of 1888 applied in Argentine until 1992.

First, the criminal process was divided into two main stages, the pretrial investigation phase (usually called *sumario* or *instrucción*), and the verdict and sentencing phase (usually called *plenario* or *juicio*).[33] Both phases were written.[34] In fact, the backbone of this process was a dossier (*expediente*) that the police and investigating judge compiled. This dossier documented all procedural activity from the very beginning of the proceedings, including the documentary evidence (testimonies, expert testimonies, searches, seizures, and so on) that the judge would evaluate in the verdict phase.[35]

Second, under these inquisitorial codes, a judge was in charge of the pretrial investigation.[36] Thus, the judge performed an investigatory and prosecutorial role as well as an adjudicatory one.[37] The pretrial investigation was very inquisitorial in nature; it was kept secret from the defendant and his attorney, at least until a certain predetermined point;[38] and the rights of the defendant were very limited. For instance, he did not have the right to be present during the production of evidence[39] or to be appraised of the charges against him before he was interrogated by the pretrial investigation judge.[40] Moreover, with limited exceptions, pretrial detention of the defendant was obligatory.[41]

There was also no charging discretion, meaning that in theory, every time the police or judge knew about a possible offense, they had

33. *See, e.g.*, Montt, *supra* note 26, at 8 (describing how Book II of the Chilean code of 1906 distinguished between these two phases).

34. The inquisitorial codes usually established that the evidence should be produced in a public hearing during the verdict phase. *See, e.g.*, CHILE CRIM. PROC. COD. 1906 art. 454. However, the courts often did not have courtrooms to hold such public hearings and would take evidence in the same way at the pretrial investigation and verdict phases. I base this observation on my practical experience with the criminal justice system of the city of Buenos Aires, Argentina. I have heard similar descriptions from practitioners in other Latin American countries such as Colombia and Guatemala.

35. On the written dossier in the Chilean Code of 1906, see arts. 76-77 & 117; in the Argentine Criminal Procedure Code of 1888, *see, e.g.*, MAIER, DERECHO, *supra* note 19, at 411.

36. On the Argentine Criminal Procedure Code of 1888 on this issue, see, e.g., MAIER, DERECHO, *supra* note 19, at 409.

37. This meant that the judge could investigate by her own motion whether there was an offense for which the defendant was criminally responsible. At the same time, she could also issue warrants, order forfeitures and the pretrial detention of the defendant. *See, e.g.*, CHILE CRIM. PROC. COD 1906 arts. 156-83 & 255.

38. *See, e.g.*, CHILE CRIM. PROC. COD. 1906 arts. 78-80; ARG. CRIM. PROC. COD. 1888 art. 180. This last article was later changed to state that after a initial period of secrecy, the defendant had access to the investigation. However, judges could renew or extend, without limit, this initial period of secrecy. *See* MAIER, DERECHO, *supra* note 19, at 411.

39. *See, e.g.*, Interview #33 (describing this phenomenon in Honduras before the criminal procedure reform).

40. *See, e.g.*, ARG. CRIM. PROC. COD. 1888 art. 255.

41. *See, e.g.*, MAIER, DERECHO, *supra* note 19, at 410-11.

to initiate criminal proceedings regardless of the seriousness of the crime and other characteristics of the case.[42]

Finally, the same judge was in charge of both the pretrial investigation and verdict phases.[43] The verdict phase was more accusatorial in nature. For example, in a number of jurisdictions, there was a designated prosecutor who had to issue an indictment against the defendant. Also at this stage the defendant and his attorney had full access to the written dossier (*expediente*) and could request the production of evidence.[44] Nevertheless, this verdict phase was still very inquisitorial, since it was predominantly written, de facto secret from the public[45] and it did not include a jury. Furthermore, the verdict judge could adjudicate the case based on evidence included in the written dossier that had been gathered in a non-adversarial way during the pretrial investigation phase.[46]

During the 19th and early 20th centuries, most countries in the region adopted a model of criminal procedure roughly along these lines.[47] For instance, Argentina passed a new criminal procedure code for its federal system based on this model in 1888; Chile adopted it with its Code of 1906; Guatemala with its Codes of 1877 and 1898; Paraguay with its Code of 1890; and Peru with its Code of 1862.[48]

B. The Current Wave of Accusatorial Codes

During the 20th century, many Latin American countries amended their original codes and even passed new ones. However, almost none of them changed the basic inquisitorial structure of crim-

42. *See, e.g.*, CHILE CRIM. PROC. CODE 1906 arts. 23-24, 28, & 36.

43. Regarding the Chilean Criminal Procedure Code of 1906, see Montt, *supra* note 26, at 5-7 (this Code has not been able to separate the roles of the investigation and adjudication judge). In the case of the Argentine Criminal Procedure Code of 1888, this merging of roles occurred in the federal courts for all kinds of criminal cases. However, in the courts of the city of Buenos Aires—which were regulated by the same code—there were two different judges in charge of the pretrial investigation and adjudication phases. *See, e.g.*, MAIER, DERECHO, *supra* note 19, at 409.

44. *See, e.g.*, Chile Crim. Proc. Cod. 1906 arts. 424-97.

45. Art. 479 of the Argentine Criminal Procedure Code of 1888 specified that in the adjudication phase the evidence would be produced in a public hearing. But since the whole procedure was written, the production of evidence was not actually accessible to the citizenry. *See, e.g.*, MAIER, DERECHO, *supra* note 19, at 411.

46. *See, e.g.*, MAIER, DERECHO, *supra* note 19, at 409; CHILE CRIM. PROC. COD. 1906 art. 449.

47. Jurisdictions not following this model included Cuba, which stayed under Spanish control until the end of the 19th century and adopted the accusatorial ideas of the Spanish legislation of 1882; the Dominican Republic, which adopted the ideas of the French *Code d'instruction criminelle* of 1808; and Brazil, which was influenced by Portugal. *See* Eberhard Struensee & Julio Maier, *Introducción*, *in* LAS REFORMAS PROCESALES PENALES EN AMÉRICA LATINA 22 (Julio B. J. Maier et al. eds., 2000).

48. *See, e.g.*, Mauricio Duce, Criminal Procedure Reform and the Ministerio Público: Towards the Construction of a New Criminal Justice in Latin America 12, 16 (1993) (unpublished Juridical Science Masters thesis, Stanford Law School) (on file with the author).

inal procedure described in the previous section. All this changed, however, during the last 15 years, when 14 Latin American countries and a number of Latin American province and state jurisdictions replaced their inquisitorial codes with accusatorial ones.

Table 1 summarizes the pattern of code adoption among Latin American countries during this period.

TABLE 1. ADOPTION OF ACCUSATORIAL CRIMINAL PROCEDURE CODES IN LATIN AMERICA (1991-2006)

Country	Introduction of new accusatorial code within the last 15 years?	Year of adoption of new accusatorial code
Argentina	Yes in the federal system and also some provinces	Federal system (1991); province of Cordoba (1992); province of Buenos Aires (1997); and other provinces
Bolivia	Yes	1999
Brazil	No	
Chile	Yes	2000
Colombia	Yes	2004
Costa Rica	Yes	1996
Cuba	No	
Dominican Republic	Yes	2002
Ecuador	Yes	2000
El Salvador	Yes	1997
Guatemala	Yes	1992
Honduras	Yes	1999
Mexico	Not in the federal system, but in some States	Oaxaca (2006); Chihuahua (2006)
Nicaragua	Yes	2001
Panama	No	
Paraguay	Yes	1998
Peru	Yes	2004
Uruguay	No	
Venezuela	Yes	1998

Sources: Criminal Procedure Codes and Reports of the Justice Studies Center of the Americas on Individual Countries

What can explain this wave of code reforms sharing accusatorial traits? The development is a complex phenomenon that necessarily involves multiple causes. However, one set of factors that has contributed to this wave of reforms is a number of problems that became

important in the 1980s and 1990s, opening policy windows for reform.[49]

First, transitions to democracy in many Latin American countries during the 1980s and 1990s, and the increasing recognition of human rights beginning in the 1970s, contributed to the perception among domestic actors that due process standards were too low.[50] To demonstrate the laxity of existing due process standards and to bolster their arguments for criminal procedure reform, network members presented definitions of due process, showed that a high percentage of incarcerated individuals had not been criminally convicted, and argued that the pretrial detention period was unreasonably long.[51]

A second issue of increasing concern in Latin America, especially in the 1990s, was the rising level of crime, whether real or perceived. Available data indicated that crime levels in Latin America surpassed those of nearly all other world regions, and that crime rates increased in Latin America from the 1980s until the mid-1990s.[52] Public concern about crime has risen substantially or remained steady in a number of Latin American countries even after the mid-

49. On the concept of the opened policy window, see JOHN W. KINGDON, AGENDAS, ALTERNATIVES, AND PUBLIC POLICIES 203 (2d ed. 1997) ("[An] open policy window is an opportunity for advocates to push their pet solutions or push attention to their special problems.").

50. *See, e.g.*, Struensee & Maier, *supra* note 47, at 17 (the passing of the new codes in Latin America aimed at developing criminal laws respectful of the rule of law). On transitions to democracy in Latin America, see, e.g., TRANSITIONS FROM AUTHORITARIAN RULE (Guillermo O'Donnell et al. eds., 1986); FAULT LINES OF DEMOCRACY IN POST-TRANSITION LATIN AMERICA (Felipe Agüero & Jeffrey Stark eds., 1998). On the increasing importance of human rights in Latin America since the 1970s, see, e.g., CECILIA MEDINA QUIROGA, THE BATTLE OF HUMAN RIGHTS: GROSS, SYSTEMATIC VIOLATIONS AND THE INTER-AMERICAN SYSTEM (1988); Stephen C. Ropp & Kathryn Sikkink, *International Norms and Domestic Politics in Chile and Guatemala*, *in* THE POWER OF HUMAN RIGHTS 172 (Thomas Risse et al. eds., 1999).

51. *See, e.g.*, MAIER, DERECHO, *supra* note 19, at 405-12 & 469-733 (giving content to constitutional and human rights related to criminal procedure); ELÍAS CARRANZA ET AL., EL PRESO SIN CONDENA EN AMÉRICA LATINA Y EL CARIBE: ESTUDIO COMPARATIVO, ESTADÍSTICO Y LEGAL DE TREINTA PAÍSES, Y PROPUESTAS PARA REDUCIR EL FENÓMENO (1983); Elías Carranza Lucero, *Estado Actual de la Prisión Preventiva en América Latina y Comparación con los Países de Europa*, 26 JUECES PARA LA DEMOCRACIA 81 (1996). *See also* Interview #19 (the network pretty much defined not only the solution, but also the problem).

52. *See, e.g.*, John Bailey & Lucía Dammert, *Public Security and Police Reform in the Americas*, *in* PUBLIC SECURITY AND POLICE REFORM IN THE AMERICAS 8-9 (John Bailey & Lucía Dammert eds., 2006); Lisa Bhansali & Christina Biebesheimer, *Measuring the Impact of Criminal Justice Reform in Latin America*, *in* PROMOTING THE RULE OF LAW ABROAD 305 (Thomas Carothers ed., 2006); Laura Chinchilla, *Experiences with Citizen Participation in Crime Prevention in Central America*, *in* CRIME AND VIOLENCE IN LATIN AMERICA: CITIZEN SECURITY, DEMOCRACY, AND THE STATE 93 (Hugo Frühling et al. eds., 2003) 205, 208-09; Andrew Morrison et al., *The Violent Americas: Risk Factors, Consequences, and Policy Implications of Social and Domestic Violence*, *in id.* 93; Catalina Smulovitz, *Citizen Insecurity and Fear: Public and Private Responses*, *in id.* 125. The actual crime rates for most of the region seem to have declined in the second half of the 1990s, but not in all countries.

1990s.[53] This concern placed the efficiency of the criminal justice system on the agenda of many Latin American governments and provided opportunities for reformers proposing the adoption of accusatorial codes.[54]

The wave of democratization taking place throughout the region during the 1980s and 1990s, and the increasing interest of international institutions in the relationship between economic development and the rule of law, brought two other related issues to prominence, namely corruption and lack of accountability among administrators of justice.[55] These problems combined to create an environment ripe for procedural reform.[56]

Yet, even though these problems provide a good starting point for explaining this wave of criminal procedure reforms, it is important to note that they alone cannot explain the decision to replace inquisitorial codes with accusatorial ones, nor even the presentation of accusatorial codes as a potential solution. There are many other possible ways to solve these problems and it is unclear whether adopting accusatorial criminal procedure codes was the best or most efficient solution.

In order to explain why 14 Latin American countries thought that the replacement of inquisitorial codes for more accusatorial ones would help solve these problems, it will be necessary to explore who proposed and drafted the procedural reforms, why they did it, and why international and domestic actors supported them. We will divide our analysis into three historical periods: 1939 to 1980, 1980 to early-1990s, and early-1990s to 2006.

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53. Edgardo Alberto Amaya, *Security Policies in El Salvador, 1992-2002*, *in* BAILEY & DAMMERT, *supra* note 52, at 132, 137 (despite victimization rates showing a decline in crime in El Salvador since 1994, there has been a persistent perception of insecurity that remains); Smulovitz, *supra* note 52, at 125 (in Argentina, society's concern about crime has increased substantially since Apr. 1997, making it one of the nation's three top concerns).

54. *See, e.g.*, ALBERTO BINDER, *Perspectivas de la Reforma Procesal Penal en América Latina*, *in* JUSTICIA PENAL Y ESTADO DE DERECHO 201, 209 (1993) (the inquisitorial criminal procedure is totally inefficient in fighting against modern criminality) [hereinafter Binder, *Perspectivas*]; Alberto Binder, *Proceso penal y desarrollo institucional. La justicia penal a las puertas del siglo XXI*, *in id.* 171 (the inquisitorial system generates a slow and bureucratic administration of criminal justice that hinders the ability to investigate crime).

55. *See, e.g.*, FUNDACION MYRNA MACK, CORRUPCIÓN EN LA ADMINISTRACIÓN DE JUSTICIA (1993); SUSAN ROSE-ACKERMAN, CORRUPTION AND GOVERNMENT (1999); FIGHTING CORRUPTION IN DEVELOPING COUNTRIES: STRATEGIES AND ANALYSIS (Bertram I. Spector ed., 2005).

56. *See, e.g.*, Binder, *Perspectivas*, *supra* note 54, 222-23 (the legitimacy of the judges and the administration of justice require the accountability of criminal trials); Luis Enrique Oberto G., *Sobre la Reforma Procesal Penal de Venezuela en el Marco de la Convención Interamericana contra la Corrupción*, *in* EDGARDO BUSCAGLIA ET AL., LA LUCHA INTERNACIONAL CONTRA LA CORRUPCIÓN Y SUS REPERCUSIONES EN VENEZUELA 65 (1998); 11 REVISTA SISTEMAS JUDICIALES: JUSTICIA Y CORRUPCIÓN (2006).

C. *First Period: 1939-1980*

1. The Distant Intellectual Origins of the Network and the Limits of Early Reform Attempts: The Cordoba School of Criminal Procedure and the "Modern Codes"

As mentioned above, almost none of the Latin American jurisdictions moved away from the basic inquisitorial model of criminal procedure until the wave of reforms that is the focus of this article. One set of remarkable exceptions originated in the Criminal Procedure Code of 1939 of the province of Cordoba, Argentina.[57]

Argentina is a federal system, with each of its provinces having its own code of criminal procedure. In 1937, the then-governor of Cordoba, Amadeo Sabattini of the Radical party, appointed a commission to draft a new criminal procedure code for the province. The commission was made up of two liberal professors from the National University of Cordoba: Alfredo Vélez Mariconde and Sebastián Soler.[58]

The main sources for their new draft were the Italian Criminal Procedure Codes of 1913 and 1930.[59] As sophisticated jurists, Vélez Mariconde and Soler did not simply mimic these sources; rather they were careful to critically examine these sources' ideas and translate them into political and legal principles that met their standards and fit Cordoba's reality.[60] The new Code contained many accusatorial aspects, such as establishing public, oral trials;[61] giving more rights to the defendant during the pretrial phase;[62] and placing the prosecu-

57. A few other jurisdictions also adopted more accusatorial codes during the 20th century. They included Peru with its code of 1940, Brazil with its code of 1941, and Panama with its code of 1986. But none of these codes influenced the wave of criminal procedure reforms that are the subject of this article and this is why we will concentrate on the Cordoba code of 1939.

58. *See Decreto de Designacion de la Comision Redactora,* Cordoba, enero 19 de 1937, *in* PROVINCIA DE CORDOBA, CODIGO DE PROCEDIMIENTO PENAL LEY 3831, at 17 (Edicion Oficial 1941). Governor Sabattini had appointed a third jurist, Ernesto S. Peña, to be a member of the commission, but he was unable to participate due to other commitments. *See Nota de la Comision,* Córdoba, Noviembre 27 de 1937, *in id.* at 19 [hereinafter *Nota*].

59. *See* PROVINCIA DE CORDOBA. CODIGO DE PROCEDIMIENTO PENAL, *Exposicion de Motivos*, *in id.* at 25-98 [hereinafter *Motivos*]. The Italian Criminal Procedure Code of 1930 was lauded for its legislative technique, but based its content on Fascist ideology, whereas the 1913 Code was seen as being more liberal. The Cordoba Code adopted the legislative technique of the 1930 Italian Code while basing its substantial content on ideas from the 1913 Code. *See, e.g.,* MAIER, DERECHO, *supra* note 19, at 416.

60. To gain a sense of the legal sophistication of Vélez Mariconde and Soler, it suffices to read the introduction to the Code, which is over 70 pages. *See Motivos*, *supra* note 59, at 25-98.

61. *See* PROVINCIA DE CORDOBA. CODIGO DE PROCEDIMIENTO PENAL (1939), art. 382 *et seq.*

62. *See id.* at arts. 68, 99-109, 173.3-174, 211-14, 247-49, & 325-26.

tor in charge of the pretrial investigation of non-serious offenses.[63] Nevertheless, the Cordoba Code still contained many inquisitorial aspects. It excluded lay adjudicators,[64] embraced the rule of compulsory prosecution,[65] and kept the judge in charge of pretrial investigations for serious offenses.[66] Finally, pretrial investigations remained written and secret until the defendant's testimony before the judge.[67]

Vélez Mariconde and Soler presented the Cordoba Code as a modernization project, arguing that the old inquisitorial codes had been outdated from their inception because they did not match the democratic and liberal aspirations of the Argentine Constitution and did not follow 19th-century Continental trends towards more accusatorial codes.[68] As a result of this stated goal of modernization, the Cordoba Code of 1939 and its derivatives are known as the "modern codes."[69]

Vélez Mariconde was a professor at the law school of the University of Cordoba, and possibly the most prestigious Argentine criminal procedure scholar of his generation. Since the University of Cordoba's law school was the main law school outside of Buenos Aires, it drew students from many different Argentine provinces, which helped spread knowledge of the Cordoba Code throughout Argentina.[70]

During the 1950s and 1970s, the Cordoba Code became a model for several other Argentine provinces, with some of the provinces even hiring Vélez Mariconde to draft their legislation.[71] The provinces of Santiago del Estero (1941), San Luis (1947), Jujuy (1950), La Rioja (1950), Mendoza (1950), Catamarca (1959), Salta (1961), San

63. *See id.* at art. 64, 197, & 311-24 (for offenses with a maximum penalty of two years of imprisonment, the prosecutor will be in charge of the pretrial investigation). This reform aimed to increase the efficiency of the criminal justice system in dealing with non-serious offenses. *See Motivos*, *supra* note 59, at 60-61.

64. Vélez Mariconde and Soler did not include any kind of lay participation in the trial court because they apparently distrusted the jury. *See Motivos*, *supra* note 59, at 41, 70, & 85.

65. *See Motivos*, *supra* note 59, at 37; PROVINCIA DE CORDOBA, CODIGO DE PROCEDIMIENTO PENAL (1939), art. 5.

66. *See id.* at arts. 25 & 203-96.

67. *See id.* at arts. 138 & 213.

68. *See Nota, supra* note 58, at 19 (the new criminal procedure code responds to the liberal postulates of the constitution); *Motivos*, *supra* note 59, at 25 (the Argentine inquisitorial codes followed a Spanish criminal procedure code that Spain itself had already abandoned).

69. *See, e.g.*, MAIER, DERECHO, *supra* note 19, at 422.

70. Interview #54.

71. Vélez Mariconde drafted the criminal procedure codes for the provinces of Corrientes and Mendoza. *See, e.g.*, MAIER, DERECHO, *supra* note 19, at 421.

Juan (1961), La Pampa (1964), Entre Ríos (1969), Corrientes (1971), and Chaco (1971) all adopted "modern codes."[72]

After the Iberian American Institute of Procedural Law's Fifth Conference identified the Cordoba Code of 1939 as the model to be followed for a model criminal procedure code for the region, Costa Rica adopted a new criminal procedure code in 1973 based on the Code.[73] Vélez Mariconde and Clariá Olmedo, another member of the Cordoba school of criminal procedure, participated in its drafting.[74]

Yet, despite the endorsement by the Institute, the Code did not spread any further throughout Argentina or Latin America. There were several reasons for this. First, between the 1950s and 1970s, Argentina and a good part of Latin America were politically unstable, with weak civilian administrations being constantly replaced by authoritarian military governments. As a result, some attempts at code reform never succeeded.[75] The military regimes were not concerned about human rights, due process, or government transparency. Furthermore, crime was not a major social concern, and military governments, which generally dealt with crimes such as political violence by circumventing the law, had little motivation to reform criminal procedure codes.[76]

Finally, aside from insufficient concern about due process, crime rates, and transparency to open policy windows for code reforms, there was also not yet any well-established network of criminal procedure reformers outside of academic circles, nor any support from international development agencies or international banks to promote reform.

72. *See, e.g.*, Ricardo Levene (h.), *Prologo*, *in* C. VÁZQUEZ IRUBUBIETA & R. A. CASTRO, I PROCEDIMIENTO PENAL MIXTO 11 (1968); MAIER, DERECHO, *supra* note 19, at 421.

73. *See, e.g.*, MAIER, DERECHO, *supra* note 19, at 424. For an overview on the historical background of this reform, see LINN A. HAMMERGREN, THE POLITICS OF JUSTICE AND JUSTICE REFORM IN LATIN AMERICA 219-23 (1998).

74. Interviews #35 & #62.

75. For instance, Arturo Frondizi's civilian administration that had asked Vélez Mariconde to draft a federal criminal procedure code for Argentina only stayed in power for three years (1959-62) before being ousted by a military coup. Between 1928 and 1983, military coups ousted all democratically elected governments in Argentina before the end of their constitutional terms—with the exception of General Juan Domingo Perón's first term in 1946-52.

76. *See, e.g.*, CONADEP, NUNCA MÁS (1984); THE COMMISSION ON THE TRUTH FOR EL SALVADOR, FROM MADNESS TO HOPE: THE 12-YEAR WAR IN EL SALVADOR (1993), *available in English at* http://www.usip.org/library/tc/doc/reports/el_salvador/tc_es_03151993_toc.html; OFICINA DE DERECHOS HUMANOS DEL ARZOBISPADO DE GUATEMALA, GUATEMALA: NUNCA MÁS (1998); UNITED NATIONS, INFORME DE LA COMISIÓN DE ESCLARECIMIENTO HISTÓRICO (1999).

D. *Second Period: 1980-Early 1990s*

1. The Recent Intellectual Origins of the Network: The Criminal Procedure Code Draft of 1986

After the Argentinean military left power at the end of 1983, a newly elected civilian president, Raúl Alfonsín, entered office. The Alfonsín administration introduced a number of important legal reforms, such as the legalization of divorce, and initiated a study on which institutional reforms the country needed as part of its transition to democracy.[77] For advice regarding the administration of criminal justice, officials turned to Julio B.J. Maier, a law professor at the University of Buenos Aires who had also been a judge in the city and who embraced the principles of political liberalism.[78]

Maier had studied under Vélez Mariconde at the University of Cordoba and had completed graduate studies in Germany.[79] In his opinion, one of the main problems with the administration of criminal justice in Argentina's federal system was the inquisitorial nature of its criminal procedure code.[80] He found that the code not only lacked sufficient due process protections, but was also inefficient, unreliable, and non-transparent.[81] His criticisms of the inquisitorial model partially relied on Vélez Mariconde's analysis, but went much further, as this article analyzes in detail below. In addition, while Vélez Mariconde had seen the due process problems of the inquisitorial model only as violations of the Argentine Constitution, Maier framed these problems as violations both of the Argentine Constitution and of international and regional human rights declarations and treaties.[82]

Like Vélez Mariconde, Maier proposed drafting a more accusatorial criminal procedure code as a solution to these problems.[83] Maier's Draft of 1986, as the project is known, mentions the Cordoba Code of 1939 as its main source.[84] However, the other major source was the German criminal procedure code *Strafprozessordnung*

77. *See, e.g.*, CONSEJO PARA LA CONSOLIDACION DE LA DEMOCRACIA, REFORMA CONSTITUCIONAL: DICTAMEN PRELIMINAR DEL CONSEJO PARA LA CONSOLIDACIÓN DE LA DEMOCRACIA (1986).

78. Mirna Goransky, *El derecho penal que he vivido. Entrevista al Profesor Julio B.J. Maier*, *in* ESTUDIOS SOBRE JUSTICIA PENAL. HOMENAJE AL PROFESOR JULIO B. J. MAIER 977, 992 (David Baigún et al., 2005); Interviews #26 and #54.

79. *See* Fundación Konex, http://www.fundacionkonex.org/premios/curriculum.asp?ID=2808 (last visited June 7, 2007).

80. *See, e.g.*, PROYECTO DE CÓDIGO PROCESAL PENAL DE LA NACIÓN, *Exposición de Motivos*, at 651-55 (1988) [hereinafter *Exposición*].

81. *Id.* at 654-55.

82. *Id.* at 653.

83. *Id.* at 654-55.

84. *Id.* at 668. In fact, Maier presented the Draft of 1986 as a continuation of the reform process that the modern codes had begun. *Id.* at 652. Maier also drew from other Argentinean modern codes; two drafted codes that were never enacted; French, Italian and Spanish criminal procedure codes; and Anglo-American ideas. *Id.* at 668-69.

(StPO) which contained many of the main ideas for his project.[85] Maier did not simply duplicate the ideas presented in his sources; rather he was careful to critically examine them and translate them into political and legal principles that met his standards and fit Argentina's reality.[86]

Maier criticized five aspects of the inquisitorial code and proposed solutions for each of them. First, Maier criticized the Code of 1888's adjudicatory phase—in which a single professional judge adjudicated the case by reading the evidence gathered in the written dossier—as arbitrary, unreliable, inefficient, and non-transparent.[87] Like Vélez Mariconde, Maier thought that the solution to these problems was establishing oral, public trials. Unlike Vélez Mariconde, however, Maier advocated lay participation in the trial court as a means of improving the criminal justice administration's public accountability.[88] Yet instead of adopting the Anglo-American model of trial by jury, Maier's Draft followed the German system of a mixed court composed of lay people and professional judges.[89]

The second criticism of the inquisitorial Argentine Code of 1888 was that it provided insufficient rights to defendants during the pretrial phase. According to Maier, keeping the pretrial investigation secret and the defendant ignorant of the charge(s) against him violated rights guaranteed by the Argentine Constitution and international human rights treaties, such as the defendant's right to defense and the right against compulsory self-incrimination.[90] Drawing from the Cordoba Code and the German StPO, the Draft of 1986 expanded the defendant's rights during the pretrial phase by establishing: 1) the right to know the charges and the evidence held against him before being interrogated by the court; 2) the right to withhold testi-

85. Interview #26.

86. On the idea of legal translation, see Langer, *Legal Translations*, *supra* note 13.

87. *See, e.g.*, MAIER, DERECHO, *supra* note 19, at 410-11, 586-87, & 645-46.

88. ANTEPROYECTO DE LEY ORGÁNICA PARA LA JUSTICIA PENAL Y EL MINISTERIO PÚBLICO 15 (1988) [hereinafter ANTEPROYECTO]. Maier also maintained that since the Argentine Constitution mentions trial by jury three times, lay participation was actually constitutionally required. *See, e.g.*, *Exposición*, *supra* note 80, at 653; ANTEPROYECTO at 15-16.

89. *See, e.g.*, MAIER, DERECHO, *supra* note 19, at 428-29. Since Maier wanted to ensure that the majority of the court had legal training but were not professional judges, he cleverly designed a court composed of five members: two permanent judges, two lay people, and a lawyer. *See* ANTEPROYECTO, *supra* note 88, arts. 30, 71 & 81. Furthermore, in order to preserve the impartiality of the trial decision-makers, the Draft of 1986 departed from the Cordoba Code and the German StPO by prohibiting judges who had made decisions on a case during the pretrial investigation from serving as trial judges in the same case. *See* PROYECTO DE CÓDIGO PROCESAL PENAL DE LA NACIÓN (1986), art. 22 [hereinafter DRAFT]. In addition, partially inspired by Anglo-American ideas, the Draft of 1986 gave the trial court a less active role in the interrogation of witnesses, and allowed the court to decide on the verdict and assign sentencing in two different hearings. *Id.* at art. 287.

90. *See, e.g.*, MAIER, DERECHO, *supra* note 19, at 579.

mony without negative implications; 3) the right to seek legal advice before giving testimony; 4) the right to an appointed attorney; and 5) the right to request the gathering of evidence.[91] Maier's Draft also went one step further than the Cordoba Code and the StPO by prohibiting police interrogation of a suspect.[92]

Maier's third criticism of the inquisitorial code also applied to the modern codes, as he objected to the policy of automatic pretrial detention for all crimes that did not allow for a suspended sentence.[93] In the Draft of 1986, Maier partially borrowed from the StPO by proposing that a defendant could be held in pretrial detention only to prevent him from fleeing or tampering with evidence.[94] Motivated by Maier's interpretation of the presumption of innocence, this Draft provision protected defendants' rights to a greater extent even than comparable provisions from the StPO.[95]

Maier's fourth criticism regarded the role of the pretrial investigation judge and also applied to both the inquisitorial and Cordoba codes.[96] According to Maier, both codes asked pretrial investigation judges to perform the psychologically impossible task of zealously investigating a case while remaining dispassionate and impartial while adjudicating interlocutory decisions.[97] According to Maier, this dual role was problematic because it violated due process and affected the quality of many investigations.[98] A judge who took his role as a protector of defendants' constitutional rights seriously would have trouble serving as a zealous investigator—and vice versa.[99] In order to address these problems, the Draft of 1986 put the prosecutor in

91. *See* DRAFT, *supra* note 89, at art. 41. Based on the StPO § 136a, the Draft also rendered any information obtained in violation of any of the provisions regulating statement and testimony by the defendant inadmissible, even if the defendant had consented to waive his protections under the provision. *Id.* at art. 52.

92. *Id.* at art. 48. The basis for this prohibition was the extensive use of torture by the police and military government in Argentina during times of military rule. Maier did not cite any source for this provision. But his idea probably was ensuring that police had no incentive to use torture against detainees.

93. *See* II JULIO B. J. MAIER, II LA ORDENANZA PROCESAL PENAL ALEMANA 77-80 (1982). On the regulation of this issue in the Cordoba Code of 1939, see ALFREDO VÉLEZ MARICONDE, EL PROYECTO DE CÓDIGO DE PROCEDIMIENTO PENAL PARA LA PROVINCIA DE CÓRDOBA (1939), art. 345.

94. *See* DRAFT, *supra* note 89, at art. 202.2.

95. *Id.* at art. 202 (mentioning StPO § 112 as its source). Unlike in § 112a of the StPO, which establishes the risk of a defendant committing certain crimes as sufficient grounds for pretrial detention, Maier concluded that the presumption of innocence only permitted the pretrial detention of a defendant when there was a risk of flight or of tampering with evidence. *See* JULIO B. J. MAIER, SOBRE LA LIBERTAD DEL IMPUTADO (1981). This is why he discarded dangerousness as a justification for pretrial detentions and did not include StPO § 112a in the Draft of 1986.

96. Recall that in the Cordoba Code, the prosecutor was in charge of the pretrial investigation only in minor cases.

97. *See Exposición*, *supra* note 80, at 660-61.

98. *Id.* at 659-61.

99. *Id.* at 659 (the good inquisitor kills the good judge and the good judge removes the good inquisitor).

charge of the pretrial investigation[100] and limited the judge's role to making adjudicatory decisions during the pretrial phase.[101] Following the German criminal procedure model and that of other civil law jurisdictions[102]—rather than the American model—the Draft of 1986 viewed the prosecutor as an impartial official who had to look for both incriminating and exculpatory evidence,[103] and disclose all evidence to the defense unless that would compromise the investigation.[104] The prosecutor was also obligated to gather relevant evidence for the defense if requested to do so.[105]

Finally, Maier criticized both the Code of 1888 and the Cordoba Code as lacking the flexibility necessary for an efficient criminal justice system. The rule of compulsory prosecution did not allow investigating officials to concentrate on important cases and dismiss less serious ones. In addition, Maier thought that requiring a trial to adjudicate every minor offense was an unnecessary waste of resources.[106] As a result, the Draft of 1986 included a number of mechanisms designed to relieve the criminal justice system of minor cases and allow cases to be processed more quickly. Inspired again by the German StPO—instead of the U.S.' principle of almost unlimited prosecutorial discretion—the Draft employed the opportunity principle,[107] provided for the use of diversion mechanisms,[108] and contained a plea-bargaining-like mechanism for minor offenses.[109]

Like Vélez Mariconde had done with the Cordoba code, Maier presented the Draft of 1986 as a modernization project, adopting

100. *Id.* at 661, art. 68.

101. *Id.* at 661.

102. *See id.* at 661, and the sources cited by the DRAFT for arts. 68 & 232.

103. *See* DRAFT, *supra* note 89, at arts. 69, 232 & 250.

104. *Id. at* art. 255.

105. *Id* at art. 256. Since the Draft of 1986 gave a more prominent role to prosecutors, Maier also drafted a statute regulating the office of the prosecutor. He thought that the system would become more efficient not only by distinguishing more clearly between prosecutorial and adjudicatory roles, but also by creating a powerful office of the prosecutor that would have flexibility in assigning cases to prosecutors, allow for prosecutorial specialization in the investigation of certain crimes, and serve as a shield against political interference. *See* ANTEPROYECTO, *supra* note 88.

106. *See Exposición*, *supra* note 80, at 669.

107. According to this principle, in certain cases explicitly specified by statute, the prosecutor could dismiss the charges with the agreement of the court even if the offense had been committed. *See* DRAFT, *supra* note 89, at art. 230.

108. After the defendant testified during the pretrial phase, the court could order the suspension of the prosecution provided that the defendant meets a specific set of conditions. *Id.* at art. 231. Although the Draft did not cite any source for this mechanism, it was probably inspired by the Anglo-American system, given that the mechanism is referred to by the English term "probation." *See Exposición*, *supra* note 80, at 669.

109. If after issuing the indictment, the prosecutor and the defendant agreed on the use of this mechanism, the court could convict the defendant without holding a trial. The sources for this mechanism were the StPO, the Italian Code of 1930, and the codes of the provinces of Buenos Aires and Cordoba. *See* DRAFT, *supra* note 89, at arts. 371-73.

Vélez Mariconde's argument that the federal criminal procedure code was based on an outdated model that had been long abandoned in Europe.[110] However, Maier also thought of the Draft of 1986 as a tool for the democratization and political transformation of the criminal justice system.[111]

The Alfonsín administration presented the Draft of 1986 to the Argentine Congress in 1987. The Draft generated an academic and public debate in Argentina that shifted the focus from comparing inquisitorial codes with modern codes to comparing modern codes with the Draft.[112] The debate went beyond the opposition between the Peronist and the Radical parties. In fact, a number of liberal Peronists supported the ideas in the Draft.[113]

In the end, the Argentine Congress did not enact the Draft of 1986. By 1987, the Alfonsin administration had started to lose political momentum and never managed to regain it.[114] After the Menem administration took office in 1989, a new federal criminal procedure code was finally passed in 1991.[115] It was based on the modern codes, but also incorporated a number of ideas from the Draft of 1986.[116]

In addition, between 1991 and 1992, the province of Cordoba adopted a new criminal procedure code based on the Draft of 1986.[117] The main supporter of the new code was José Cafferata Nores, Cordoba's Minister of Justice, who was a member of the Cordoba school of criminal procedure and had been a member of a commission working on the Draft of 1986.[118]

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110. *See, e.g.*, *Exposición*, *supra* note 80, at 651 (the Code of 1888 left the country's criminal procedure a century out of date and is culturally outdated), 654 (the Code of 1888 is against universal practice).

111. *Id.* at 652 (this draft aims at rescuing the republican system in the administration of criminal justice); Interview #26 (for Maier and his group, the project of reforming the administration of criminal justice had a strong political dimension).

112. *See, e.g.*, HACIA UNA NUEVA JUSTICIA PENAL (Consejo para la Consolidación de la Democracia ed., 1989). One of the main critics of the Draft was Ricardo Levene, a former judicial protégé of Domingo Perón. Levene criticized the Draft of 1986, and proposed the adoption of a modern code instead. *See* Interviews #26 & #54.

113. Goransky, *supra* note 78, at 992-93 (describing the support of Carlos Arslanián and Joaquín Da Rocha for the Draft of 1986).

114. *See, e.g.*, Maier, Derecho, *supra* note 19, at 432.

115. Levene drafted this Code. Levene had also followed the model of the modern codes when he drafted the 1960 Criminal Procedure Code for the province of La Pampa. However, he had done a conservative reading of the codes that increased police powers and removed the prosecutor from investigations for minor offenses. Interview #26.

116. For instance, the Code of 1991 gave the preliminary investigation judge the power to delegate the pretrial investigation to the prosecutor, and prohibited police from interrogating a suspect. *See* CÓD. PEN. [Arg.] arts. 196 & 184. Later reforms to the Code of 1991 also incorporated ideas that the Draft of 1986 had included such as diversion mechanisms and plea bargaining. *See, e.g.*, CÓD PEN. [Arg.] arts. 293 & 431.

117. *See* Province of Cordoba, Argentina, Ley 8123 (passed on Dec. 5, 1991; published on Jan. 16, 1992).

118. Goransky, *supra* note 78, at 992; Interview #26.

2. The Draft of 1986 Goes Regional: The Model Criminal Procedure Code for Iberian America and the Drafting of the Guatemalan Code

The Iberian American Institute of Procedural Law was created in 1957 to bring together procedural law scholars from Latin America, Portugal, and Spain.[119] The first president of the Institute, Niceto Alcalá Zamora y Castillo—a Spanish criminal procedure scholar who was in exile in Argentina and Mexico during the Franco regime[120]—suggested that creating a model criminal procedure code for Iberian-American countries should be one of the Institute's main projects.[121] The Institute argued that drafting this model code would contribute to Latin American economic and political integration necessary in an era in which the world was moving towards regionalization.[122]

Alcalá Zamora wanted the Cordoba Code of 1939 to be the main source for the model criminal procedure code because it was "the best in the Americas and one of the best in the world."[123] It was therefore not surprising that in 1967, the Institute designated Vélez Mariconde and Clariá Olmedo to begin to work on the project.[124] In 1978, at the sixth Conference of the Iberian American Institute in Venezuela, Clariá Olmedo presented the Bases for a Model Code (Vélez Mariconde had passed away) that included almost a full code.[125]

At the same conference, the Institute designated a commission of jurists to continue working on the project and appointed Maier as a member of it. Maier took Clariá Olmedo's Bases as one of the sources for his work on the Model Code. But other sources, such as the Cordoda Code of 1939 and the StPO, were more influential on his work. Maier presented the first 100 articles for the Model Code at the next conference in Guatemala, in 1981, but then withdrew from this project for several years.[126] Upon finishing the Draft of 1986, Maier continued work on the Model Code with Brazilian professor

119. *See* Historia del Instituto Iberoamericano de Derecho Procesal, http://www.iidp.org/index.cgi?wid_seccion=3&wid_item=8 (last visited June 7, 2007). The membership of the Institute can be viewed at http://www.iidp.org/index.cgi?wAccion=personas&wParam=miembros&wid_seccion=4&wid_grupo_news=0.

120. *See Palabras del doctor Fix-Zamudio en la ceremonia luctuosa, in* REFORMA PROCESAL. ESTUDIOS EN MEMORIA DE NICETO ALCALÁ-ZAMORA Y CASTILLO 9 (1987).

121. *See Breve Historia del Código Modelo, in* CÓDIGO PROCESAL PENAL MODELO PARA IBEROAMÉRICA 7 (1989) [hereinafter *Breve Historia*].

122. *See La Integración Americana, Hacia la Integración Institucional. Tratados, Organismos, Tribunales, Códigos Modelos, in* INSTITUTO IBEROAMERICANO DE DERECHO PROCESAL, EL CÓDIGO PROCESAL CIVIL MODELO PARA IBEROAMERICA (1988).

123. Alcalá Zamora thought that the Cordoba code of 1939 was particularly good because it had wisely integrated the spirit of the Spanish criminal procedure code and the technique of the German and Italian criminal procedure codes. *See* MAIER, DERECHO, *supra* note 19, at 417.

124. *See Breve Historia*, *supra* note 121, at 7-8.

125. *See Breve Historia*, *supra* note 121, at 8.

126. Interview #54; Goransky, *supra* note 78, at 991.

Ada Pellegrini Grinover.[127] In 1988, at the 11th Conference of the Institute in Brazil, Maier presented the completed Model Criminal Procedure Code for Iberian America, which the Institute approved.[128]

The Model Criminal Procedure Code followed the same structure and presented the same ideas as the Draft of 1986, mostly verbatim. The only significant difference was the inclusion of a few alternate versions of specific regulations, designed to allow different countries to choose solutions appropriate to their needs. The issues dealt within these regulations included the scope of the victim's participation as a private prosecutor during the trial process,[129] the possibility for non-profit organizations to act as private prosecutors in cases affecting collective interests,[130] and the question of whether to allow either mixed trial courts or juries composed exclusively of lay individuals.[131]

The ideas contained in the Draft of 1986 spread regionally also through Maier's work in Guatemala. At the end of the 1980s, Maier had been hired by the United Nations Centre for Human Rights to report on and make recommendations concerning criminal justice and human rights in Guatemala.[132] After two months in Guatemala, Maier concluded that the country's inquisitorial code created significant problems in the administration of criminal justice, and once again recommended the enactment of a more accusatorial code.[133]

In Guatemala, military governments had left formal power in 1986. Open elections had taken place, and the civilian administration of the Christian Democrat Vinicio Cerezo was in power at the time. Edmundo Vásquez Martínez, a prestigious jurist specializing in commercial and constitutional law, agreed with Maier's analysis.[134] An advocate of political liberalism like

127. Goransky, *supra* note 78, at 991; *Breve Historia*, *supra* note 121, at 8-9.

128. *Breve Historia*, *supra* note 121, at 8–9; Julio B. J. Maier, Historia Breve del Código Procesal Penal Modelo para Iberoamérica 3 (on file with the author).

129. *See* CÓDIGO PROCESAL PENAL MODELO PARA IBEROAMÉRICA, note to art. 78 (including the possibility that the victim could be given more procedural powers than in the Draft of 1986, and that any citizen may be a private prosecutor in the criminal process).

130. *Id. at* note to art. 78.

131. *Id. at* Appendix II.

132. *See* Goransky, *supra* note 78, at 993.

133. Interview #26 (Maier criticized the Guatemalan criminal justice system for having the same flaws as the Argentine criminal justice system); Alberto M. Binder & Julio B. J. Maier, *Conclusión del Proyecto Base. Entrega Oficial al Organismo Judicial*, *in* NUEVA LEGISLACION PROCESAL PENAL: JUICIO ORAL 155 (1992–93). For an analysis that explains the main inquisitorial features of the Guatemalan code of 1973, see Luis Rodolfo Ramírez & Miguel Ángel Urbina, *Guatemala*, *in* LAS REFORMAS PROCESAL PENALES EN AMÉRICA LATINA 456-65 (Julio B. J. Maier et al. eds., 2000).

134. *See* Interviews #26, #38, #44, & #50. Even though Vásquez Martínez was not a criminal procedure scholar, he had drafted a criminal procedure code for Guatemala in 1986 with Hugo González Cervantes. This draft was based on Clariá Olmedo's Bases for a Model Code. Vásquez Martínez and González Cervantes' draft did not become law. *See* Binder & Maier, *supra* note 133, at 11-12.

Maier,[135] Vásquez Martínez had been appointed judge and president of the Guatemalan Supreme Court to strengthen the independence of the judiciary.[136] He invited Maier to Guatemala to help develop ways to reform Guatemala's justice system.[137] At the end of the 1980s, Maier brought Alberto Binder, an Argentine lawyer who had assisted Maier during the drafting of the Model Code and the Draft of 1986, to help him work on a new criminal procedure code for Guatemala.[138]

The transition to democracy in Argentina and Guatemala opened political and institutional spaces for liberals like Maier and Vásquez Martínez[139] who had always believed in the rule of law. Historically, in most Latin American countries, both the right—which embraced military governments and the U.S. national security doctrine during the Cold War—and the left—which embraced political violence as a way to take power—had underestimated and dismissed the ideals of democracy and the rule of law.[140]

For the right, the rule of law had been a bothersome and unnecessary restraint on its ability to maintain unequal economic relations and to crush political opposition.[141] For the left, deeply influenced by Marxism, law was merely a superstructure, not an ideal worth pursuing.[142]

With the transition to democracy, part of the left rediscovered the importance of the ideals of free elections and the rule of law. Years before the end of the Cold War, this part of the Latin American left responded to the horrors of the political violence and state terrorism that had occurred during the 1970s and early 1980s by renouncing political violence as a means to acquire power instead embracing

135. *See* Interviews #26, #39 & #44.

136. Interviews #39 & #50 (describing the opening of political room for judicial independence in Guatemala at that time, and Vásquez Martínez's demands for judicial independence). On the measures that Guatemala took to increase judicial independence and the extent to which they have succeeded, see Rachael Sieder, *Renegotiating 'Law and Order': Judicial Reform and Citizen Responses in Post-War Guatemala*, *in* 10 DEMOCRATIZATION 137, at 145-47 (2003).

137. Interview #44; Goransky, *supra* note 78, at 993.

138. Goransky, *supra* note 78, at 992-93.

139. Interview #26 (one of the intellectual engines of the criminal procedure reforms came from political liberals who wanted to build institutions and make deals with social democratic administrations).

140. U.S. national security doctrine during the Cold War established containment and elimination of communist influence as a priority for Latin America. For more on this doctrine, see, e.g., Stephen J. Randall, *Ideology, National Security, and the Corporate State: The Historiography of U.S.-Latin American Relations*, LATIN AM. RES. REV, Vol. 27 No. 1, at. 205 (1992).

141. *See, e.g.*, THOMAS CAROTHERS, IN THE NAME OF DEMOCRACY: U.S. POLICY TOWARD LATIN AMERICA IN THE REAGAN YEARS 14 (1991) (describing how for much of the 20th century, El Salvador was dominated by a reactionary economic oligarchy allied with a brutal, repressive military).

142. *See, e.g.*, Interview #23 (explaining this phenomenon in Chile); HUGH COLLINS, MARXISM AND LAW (1996).

open elections, public deliberation, and the rule of law.[143] For Binder, as a person with this type of political trajectory, working on accusatorial criminal procedure codes became a way to put these new ideals into practice.[144]

Binder came from a Jesuit educational background and had studied at the University of Buenos Aires. He was a member of the Catholic Left and embraced liberation theology, both intellectually and politically.[145] For him, working on an accusatorial criminal procedure code was a way to improve the conditions of the lower classes. An accusatorial code would give defendants, typically of the lower end of the social hierarchy, more rights against arbitrary treatment and punishment by police, prosecutors, and judges.[146] Moreover, Binder expected that the new codes would make the criminal justice system more effective at prosecuting and punishing the misconduct of the powerful.[147]

The ideas that Maier, Binder, and the Model Code espoused thus became attractive for some Guatemalans on the left.[148] In addition, the transition to democracy and the end of the Cold War convinced some members of the Latin American right that military rule with its attendant violations of human rights was no longer an attractive political option. Strengthening institutions and improving economic performance became the goals for some members of this political camp.[149] Since the Model Code promised at the same time due pro-

143. For examples of intellectuals working within this political trajectory, see, e.g., CAMINOS DE LA DEMOCRACIA EN AMÉRICA LATINA (Fernando Claudin & Ludolfo Paramio eds., 1984); and ENSAYOS SOBRE LA TRANSICIÓN DEMOCRÁTICA EN ARGENTINA (José Nun & Juan Carlos Portantiero eds., 1987).

144. Interview #26 (without the debate within the Latin American left during the early 1980s about the need to incorporate the democratic question to any project of social transformation, Binder and other members of the activist expert network would have not become interested in criminal procedure reforms).

145. Interview #26. Latin American liberation theology is a school of thought and theology engaged in a struggle for rights for the poor and the oppressed. One of its foundational texts was written by the Peruvian priest, GUSTAVO GUTIÉRREZ, A THEOLOGY OF LIBERATION (1971). For overviews on this theological school, see, e.g., Harvie M. Conn, *Theologies of Liberation: An Overview*, *in* TENSIONS IN CONTEMPORARY THEOLOGY 637 (Stanley N. Gundry & Alan F. Johnson eds., 1979); PAUL E. SIGMUND, LIBERATION THEOLOGY AT THE CROSSROADS (1990).

146. *See* Interview #31 (quoting Binder saying in a conference in Chile that the criminal justice system was a "shredder of poor meat"). Within Binder's intellectual milieu in Buenos Aires, critical criminology was a school of thought that emphasized the role of the criminal justice system in dealing with the lower classes. For a representative volume on critical criminology, see EL PENSAMIENTO CRIMINOLÓGICO: UN ANÁLISIS CRÍTICO (Roberto Bergalli et al. eds., 1983).

147. *See* Binder, *Perspectivas*, *supra* note 54, at 209.

148. *See* Interviews #28 & #39 (describing how people from the Guatemalan left found Binder's ideas attractive).

149. The evolution of the ideology of the Argentine intellectual and journalist Mariano Grondona is representative of this phenomenon. He was supportive of military regimes but during the 1980s discovered political liberalism and its potential role for economic development. *See* Mariano Grondona's books LOS PENSADORES DE LA

cess, efficiency, and transparency, some right-wing politicians and policy-makers also found its ideas attractive.[150]

On March 23, 1989, Maier and Binder presented their criminal procedure code draft, based heavily on the Model Code and Draft of 1986, to Vásquez Martínez.[151] With the support of USAID, this draft code was then revised by a Guatemalan technical commission directed by Alberto Herrarte, a liberal criminal professor, and César Barrientos, a left-wing lawyer, who had been in exile during military rule.[152] In the Guatemalan Congress, Arturo Soto Aguirre, a legislator on the right-wing, was the main supporter of the new code.[153] In 1992, the Guatemalan Congress passed the new Guatemalan Criminal Procedure Code, effective July 1994.[154]

3. USAID's Return to Legal Reform in Latin America

The last three subsections have explained the role played by the combination of various problems in criminal justice administration and an environment of democratizing political processes in opening windows for policy reform, as well as why Julio Maier, Alberto Binder, and other Latin American lawyers proposed replacing inquisitorial codes with accusatorial codes as a solution. In the 1980s, a number of actors from the United States also started working in the criminal justice area in Latin America and played a crucial role in the spread of these reforms.

In 1961, U.S. President John F. Kennedy launched the Alliance for Progress and established USAID.[155] Within the context of the Cold War, the geopolitical goal of the Alliance for Progress and USAID was to foster economic development in order to reduce the risk that communist and left wing groups would take power in devel-

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LIBERTAD (1986); VALUES AND DEVELOPMENT (1988); TOWARD A THEORY OF DEVELOPMENT (1990); EL POSLIBERALISMO (1993); and LA CORRUPCIÓN (1993).

150. Interview #26 (the criminal procedure reforms became an attractive project for the modernizing right).

151. *See* Binder & Maier, *supra* note 133, at 153 & 12.

152. *See* Interviews #39, #45, & #48; U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT, GUATEMALA: ACTION PLAN, FY 1994-FY 1995. For César Barrientos' own account of the criminal procedure reform process in Guatemala and Latin America, see CÉSAR CRISÓSTOMO BARRIENTOS PELLECER, PODER JUDICIAL Y ESTADO DE DERECHO 197-249 (2001).

153. *See* Interviews #39 (a number of representatives in the Guatemalan Congress with connections to the bank sector had a clear idea that Guatemala needed the rule of law in order to progress. Arturo Soto Aguirre, president of the congressional committee on legislation and constitutional issues, was the most important among them); #48 & #50. Soto Aguirre was a representative of the Frente Republicano Guatemalteco, a right-wing party. Interview #28.

154. *See* Ramírez & Urbina, *supra* note 133, at 467.

155. *See* USAID History, http://www.usaid.gov/about_usaid/usaidhist.html (last visited June 7, 2007).

oping countries.[156] Between the second half of the 1960s and the first half of the 1970s, USAID had two programs focusing on legal reform in Latin America.[157]

By the middle of the 1970s, USAID had shut down both programs. First, a number of scholars and officials of the Ford Foundation accused the legal education reforms of being ethnocentric and imperialist because they imposed U.S. models on the region. Second, the security forces and policy makers trained through the programs often went to work for authoritarian military regimes, with some trainees going so far as to persecute the local allies of USAID and the Ford Foundation. Finally, it was unclear whether the reforms had produced any results.[158]

Over the following decade, USAID did not do any substantial work in the area of law.[159] Then, in the 1980s, the guerrilla group *Frente Nacional de Liberación Farabundo Martí* (FNLM) began to militarily overpower the local government in El Salvador. The Reagan administration and human rights organizations in the U.S. both became concerned about the situation, albeit for different reasons. The Reagan administration wanted to provide the Salvadoran government with military aid to help combat the guerrilla group and counter the spread of communism in the region.[160] High profile cases such as the murder of four American churchwomen by members of the Salvadoran military in December 1980 received significant media coverage in the U.S., and drew more attention to the state of human rights in El Salvador and Latin America.[161]

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156. *See, e.g.*, Carothers, *supra* note 141, at 1-2, 197; Howard J. Wiarda, *Did the Alliance Lose its Way, or Were its Assumptions All Wrong from the Beginning and Are Those Assumptions Still with Us*, *in* THE ALLIANCE FOR PROGRESS: A RETROSPECTIVE (L. Ronald Scheman ed., 1988).

157. The first program, funded by USAID and the Ford foundation, mainly supported changes in Latin American legal education as well as research on Latin American legal systems. A group of elite American law schools and liberal law professors led the reforms. *See* John Henry Merryman, *Law and Development Memoirs I: The Chilean Law Program*, 48 AM. J. COMP. L. 481 (2000). The second program on "Public Security" focused on training law enforcement officials. Interview #5.

158. *See, e.g.*, Interview #24 (explaining that USAID did not want to work with the police after that experience); Hugo Frühling, *From Dictatorship to Democracy: Law and Social Change in the Andean Region and the Southern Cone of South America*, *in* MANY ROADS TO JUSTICE: THE LAW-RELATED WORK OF FORD FOUNDATION GRANTEES AROUND THE WORLD (Mary McClimont & Stephen Golub eds., 2000); GARDNER, *supra* note 8; David M. Trubek & Marc Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, 4 WIS. L. REV. 1062 (1974).

159. *See* CAROTHERS, *supra* note 141, at 199.

160. *Id.* at 16, 20-21.

161. *Id.* at 21-22. Other high profile cases in El Salvador that gained American attention included the 1980 murder of Archbishop Romero and the 1981 Sheraton murders, where the director of the Salvadoran land reform program and two AFL-CIO officials serving as advisors were murdered. *Id.* at 210.

When the Reagan administration requested funding to provide military aid to the Salvadoran government, members of the U.S. Congress expressed their concern about human rights.[162] It became obvious to the Reagan administration that a broader approach addressing the concerns of different constituencies was necessary.[163] Reagan appointed the National Bipartisan Commission on Central America to formulate policy for the entire Central American region. The Commission recommended a combination of increased military assistance, economic assistance, and support for democratization.[164]

The high profile murders by the Salvadoran military also garnered the attention of State Department officials, who thought the best way to investigate and prosecute the murders was to help El Salvador improve its judicial system.[165] In 1983, the State Department created an interagency working group on the administration of justice in Latin America and the Caribbean. Deputy Assistant Secretary of State for Inter-American Affairs James Michel, a lawyer and career diplomat, was put in charge of the new agency.[166] The group decided to work not only in El Salvador but in the rest of Latin America as well. From the beginning, the group was conceived as a long-term, region-wide democracy development program.[167]

Taking the criticisms articulated against the U.S. legal reform programs in Latin America during the 1960s and 1970s seriously, Michel required his staff to read those criticisms. Michel developed a number of principles for the program that included allowing the countries to improve their judicial systems on their own terms instead of imposing U.S. models, and supporting existing local institutions instead of creating new ones.[168]

Since the main concern of the Reagan administration and other U.S. constituencies was El Salvador, a judicial reform project for that country was launched in 1984. USAID was the implementing agency of the program, working closely with a number of State Department officials. The El Salvador Judicial Reform Project included a number of short-term measures, such as the creation of a special investigative unit and forensic team, designed to improve the investigation of high

162. *Id.* at 20-27.

163. *Id.* at 27-30.

164. *Id.* at 28-29. Henry Kissinger, who had been a key player in U.S. support for Latin American military coups and governments during the Nixon administration, headed the commission.

165. Interview #5.

166. *See* CAROTHERS, *supra* note 141, at 211.

167. *Id.* at 211.

168. *See id.* at 211; Interview #2. The other two principles were focusing on concrete, practical goals that had a clear link to the overall development objectives, and providing judicial assistance only to elected civilian governments.

profile cases. Long-term projects included the creation of a law reform commission and judicial training program.[169]

After lobbying by Michel and other officials, Congress provided additional funding for judicial assistance.[170] In 1985, USAID created an administration of justice office in its Latin America and Caribbean bureau and started to provide assistance to other countries in the region, including Bolivia, Colombia, Costa Rica, the Dominican Republic, Guatemala, Honduras, Panama, and Peru. This assistance included training courses for judges, prosecutors, other legal personnel, and police officers; technical assistance for case management, legal databases, and law libraries; and the provision of materials and supplies for the judiciary. Some of this training and technical assistance was provided by a small U.N. office, the Institute for the Prevention of Crime and Treatment of the Offender (ILANUD), supported by USAID.[171]

Thus, U.S.-sponsored judicial reform programs expanded throughout Latin America during the second half of the 1980s.[172] The programs originated in El Salvador due to domestic politics, and the geopolitical needs and agenda of the Reagan administration. Their spread to other countries, however, seems to have been the result of a different process spearheaded by Michel and other mid- and low-level officials in the State Department and USAID.[173]

In the second half of the 1980s, officials from USAID met with Julio Maier and Alberto Binder.[174] The two Latin American lawyers criticized the USAID programs for providing increased resources to Latin American criminal justice systems without changing a principal structural flaw—the systems' use of inquisitorial criminal proce-

169. *See* CAROTHERS, *supra* note 156, at 211-12.

170. Interview #2.

171. *See* CAROTHERS, *supra* note 141, at 212-15.

172. For early assessments of these USAID administration of justice programs, see José E. Alvarez, *Promoting the "Rule of Law" in Latin America: Problems and Perspectives*, 25 GEO. WASH. J. INT'L L. & ECON. 281 (1991); Harry Blair and Gary Hansen, *Weighing in on the Scales of Justice*, *in* USAID PROGRAMS AND OPERATIONS ASSESSMENT REPORT NO. 7 (1994).

173. As Carothers explains in his study of the Reagan policies on Latin American democratization, the expansion of the administration of justice programs—together with most of the other democratization programs—from El Salvador to other Latin American countries was not the result of high-level policy directives. Rather, the expansion resulted from the efforts of "an informal group of mid- and low-level officials who happened to have an interest in the idea." *See id.* at 216. *See* also Interview #3 (giving a similar description by someone who was directly involved in those early efforts).

174. *See, e.g.*, Interviews #3 (in the late 1980s or early 1990s, Binder was noticed by USAID officials) & #5 (people from Michel's group knew the Argentines and someone from the administration of justice program went to Argentina for the first time in 1986 or 1987, and Maier then came to the U.S. on an international visitor program).

dure models.[175] Before expending more resources, USAID officials needed to work on replacing the inquisitorial systems with accusatorial ones.[176]

Members of USAID found Maier and Binder's diagnosis attractive for a number of reasons. First, USAID was eager for ideas, since it was unsure whether its work in Latin America was producing any significant results.[177] Second, a number of USAID members found Maier and Binder's diagnosis to be intrinsically persuasive.[178] Third, Maier and Binder were Latin American jurists making their own diagnosis and proposals for Latin American criminal justice systems; thus nobody could accuse USAID of imposing the U.S. model.[179] Fourth, although Maier and Binder were not advocating the adoption of a U.S. model of criminal procedure (recall that the Draft of 1986 and the Model Code were inspired principally by the Cordoba Code of 1939 and the German StPO), ideas such as a clear distinction between prosecutorial and adjudicatory functions, oral and public trials, and prosecutorial discretion and flexibility resonated well with U.S. understandings of criminal procedure.[180]

This does not mean that both groups immediately worked well together. First, for Binder, working with the Americans was a delicate issue, given his own left-wing sensibilities, which had been honed in a region distrustful of American help and fearful of American imperialism.[181] Furthermore, Binder did not want to simply be a technical consultant for the reforms, since for him, criminal procedure reforms were part of the greater political project of democratizing the region. He wanted to have a substantial say in the actual content of the reforms.[182]

USAID members, in turn, were initially unsure about whether they could trust Maier and Binder. Some USAID members did not

175. *See, e.g.*, Binder, *Perspectivas*, *supra* note 54, at 211-15 (spending more resources on the current model would only improve the administration of a fundamentally flawed criminal justice model).

176. *See, e.g.*, Interviews #3 & #26.

177. For an analysis of USAID's legal reform efforts in El Salvador during the 1980s, see MARGARET POPKIN, PEACE WITHOUT JUSTICE (2000).

178. Interview #3 (describing how Binder's presentation at a conference made a huge impression on an USAID official serving as an interviewee, and explaining how from there on the USAID program throughout Central America became much more focused on criminal procedure codes).

179. *See* Interview #2 (asking what can be wrong with adopting from a model that was created from a Latin American perspective); #3 (Binder gave USAID officials permission internally to do oral adversarial reforms because he explained why this had to be done and why it was not the U.S. imposing its own system in Central America); #31 (the USAID group had concerns about being respectful of local legal culture).

180. Interview #3 (Binder's proposals sounded more American to USAID officials because they were "oral accusatory").

181. Interviews #26 & #31.

182. Interview #26 (describing these initial tensions between Binder's group and USAID).

like Binder's desire to be an active protagonist in the reform process. Others thought that Maier and Binder were too narrowly focused on code reform and lacked a broader perspective.[183]

Yet, after overcoming their mutual distrust, the groups established a close alliance, with the goal of replacing the inquisitorial criminal procedure codes with more accusatorial ones. Michel supported this process when he became USAID Assistant Administrator for Latin America and the Caribbean in 1990 and then Acting Administrator.[184] In addition, a good number of USAID officials working on rule of law programs in specific countries (including Carl Cira and Gail Lecce) also supported this project.[185] By the first half of the 1990s, replacing inquisitorial criminal procedure codes was part of most, if not all, USAID country mission portfolios in Latin America.[186]

E. Third Period: Early 1990s-2006

1. The Consolidation of the Southern Activist Expert Network, the Addition of other International Institutions, and the Two Models of United States Participation in Legal Reform Abroad

Alberto Binder and Julio Maier were not the only Latin American actors pushing for accusatorial codes in Latin America. During the 1980s and 1990s, an important criminal procedure network arose in the region. The work of this network has been a significant factor in the spread of accusatorial codes. The members of this network have been Latin American actors working within the criminal justice system, including defense attorneys, prosecutors, judges, professors, students, legislators, consultants, advisors, executive officials, and officials of international agencies.

The relationship between network members consists of their common involvement in advocating the adoption of accusatorial codes as a solution to the problems of due process, inefficiency, and lack of accountability in inquisitorial Latin American criminal justice systems.[187] Network members are legal entrepreneurs who invest part of their economic, political, and/or symbolic resources in their advocacy efforts and recognize each other as accusatorial code reformers.

183. Interviews #5 (describing officials of USAID and the State Department articulating this criticism to Binder and his group) & #26.

184. Interview #24.

185. Interviews #3, #5, #26 & #31.

186. Interview #31.

187. Defining what kind of relationship network members have is important because this is what defines the network as such. *See, e.g.*, JOHN SCOTT, SOCIAL NETWORK ANALYSIS 3 (the methods appropriate to relational data are those of network analysis, whereby the relations are treated as expressing the linkages which run between agents); SLAUGHTER, *supra* note 4, at 14 (a network is a pattern of regular and purposive relations).

This network does not fit into any of the three main existing network categories.[188] It is not a transnational governmental network because most of its members have not been public officials.[189] It is not an epistemic community because lawyers do not qualify as scientists under Peter Haas' classic definition.[190] Since network members have shared principled beliefs about the need to democratize the administration of criminal justice in Latin America and pushed for the replacement of inquisitorial codes because of those beliefs, the network does present elements of an advocacy network and of a transnational social movement.[191] But since all members are experts, the last two categories do not fully apply either.

Given that it is thus a hybrid between an expert and an advocacy network or social movement, this article will refer to it as an *activist expert network.* In this kind of network, experts use the legitimacy and access that their expertise gives them in order to advance their own principled beliefs without serving any broader social movement. Since the network leaders are from Latin America, this article will conceptualize this group as a *Southern activist expert network.*

During the 1990s, its members furthered network growth by organizing conferences, creating advocacy and research centers, generating work opportunities, and increasing awareness of network activities through publications and lectures. At the same time, other international institutions joined the work that USAID had started in the 1980s and supported criminal procedure reforms and the work of the *Southern activist expert network* throughout Latin America. These institutions have included the Inter-American Development Bank (IDB), the German Society for Technical Cooperation (GTZ), the Konrad Adenauer Foundation, the Spanish Agency for Interna-

188. This network certainly fits into Heclo's concept of an *issue network,* defined as "a shared-knowledge group having to do with some aspect . . . of public policy." *See* Hugh Heclo, *Issue Networks and the Executive Establishment, in* THE NEW AMERICAN POLITICAL SYSTEM 87, 103 (Anthony King ed., 1979). However, this concept is overinclusive and a more precise category is necessary for characterizing networks such as the Latin American criminal procedure one.

189. On transnational governmental networks, see SLAUGHTER, *supra* note 4.

190. According to Peter Haas, one of the defining features of epistemic communities is that their members have shared causal beliefs that are derived from their analysis of practices contributing to a central set of problems in their domain. *See Introduction: Epistemic Communities and International Policy Coordination, in* 46 INT'L ORG. 1, 3 (1992). The network of Latin American lawyers does not fit into the concept of an epistemic community because it does not present this defining feature. Latin American lawyers' and legal scholars' expertise is about their knowledge of positive law and their ability to make normative claims, not causal ones. Maier has acknowledged this by saying "I am not an empiricist." Interview #31.

191. On advocacy networks, see KECK & SIKKINK, *supra* note 18, at 1 (transnational advocacy networks are distinguishable largely by the centrality of principled ideas or values in motivating their formation). On social movements, see, e.g., CHARLES TILLY, SOCIAL MOVEMENTS, 1768-2004 (2004) (social movements are a series of contentious performances, displays, and campaigns by which ordinary people make collective claims on others).

tional Cooperation (AECI), and the United Nations Program for Development (UNDP).[192] More support from international aid agencies and banks also contributed to the reform wave and provided funding for network travel and activities, enabling a number of members to make a living out of their advocacy work.

We can distinguish different types of network members. At the center of the network are those that other network members consider the most important reformers.[193] During most of the 1990s, at least four individuals were at the center or close to the center of the network, each of them for different reasons: Julio Maier (for activities described in previous subsections), Alberto Binder, Justice Luis Paulino Mora Mora, and Jorge Obando.

Binder became the most important network member in the 1990s partly because he participated in drafting code reforms in most jurisdictions of the region.[194] He also tirelessly traveled all over Latin America lobbying for accusatorial reforms,[195] served as the main Latin American interlocutor for a number of USAID officials,[196] founded a network of criminal justice research and consulting centers with links to civil society,[197] and trained people all over Latin America on criminal procedure and criminal law. Binder also created a number of specialized publications,[198] and was the most important transnational strategist of the network, giving advice to local reformers about code drafting and dealing with local legislatures.[199]

192. Interviews #8, #9, #15, #26, #41, & #47. For descriptions of the work on judicial reform by the IDB and other international agencies and banks, see, e.g., JUSTICE DELAYED 117-54 (Edmundo Jarquín & Fernando Carrillo eds., 1998); RULE OF LAW IN LATIN AMERICA: THE INTERNATIONAL PROMOTION OF JUDICIAL REFORM (Pilar Domingo & Rachel Seider eds., 2001). The World Bank has not done any substantial direct work in the area of criminal justice because it has seen criminal justice as a political issue. *See* Interview #20.

193. Heclo, *supra* note 188, at 107.

194. Binder participated in the drafting of criminal procedure codes or advised code drafters in at least the following countries: Bolivia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Paraguay, and Venezuela. For interviews describing this work by Binder in specific jurisdictions, see, e.g., Interview #6 (El Salvador), #26 (Venezuela), #31 (Bolivia), #33 (Honduras), #35 (Costa Rica), #39 (Guatemala), & #50 (Dominican Republic); LUIS SALAS, *Paraguay's Reform of Criminal Procedure: A Major USAID Achievement* (2002), *available at* http://www.usaid.org.py/democracia/archivos/Penal%20Reform%20Assesment%20by%20Salas.doc (Paraguay).

195. Interview #33 (Binder has promoted this idea of reform very effectively in many places).

196. Interview #5 (the relationship between Binder and Carl Cira was part of the replication of codes).

197. For a list of network institutions, see Instituto de Estudios Comparados en Ciencias Penales y Sociales, http://www.inecip.org/index.php?option=content&task=view&id=55 (last visited June 5, 2007).

198. They include the journals PENA Y ESTADO and REVISTA SISTEMAS JUDICIALES (co-edited with CEJA). *See* Instituto de Esutodios Comparados en Ciencias Penales y Sociales, http://www.inecip.org/index.php?option=com_content&task=section&id=9&Itemid=33 (last visited June 7, 2007).

199. Interviews #6, #26 & #47.

Justice Mora Mora, a former Minister of Justice and the current President of the Supreme Court of Costa Rica, was also at the center of the network during the 1990s.[200] He has been consulted on several criminal procedure reforms,[201] has participated in research projects, and has given lectures all over Latin America.[202] In the 1980s, Mora Mora became very interested in the work that Julio Maier and his group were doing in Argentina, leading to the creation of an alliance between Argentines and Costa Ricans based on issues of criminal procedure reform.[203] As a Costa Rican Supreme Court Justice, his unqualified support of accusatorial code reforms has been very valuable in providing credibility for the agenda.[204]

Jorge Obando, another person close to the center of the network during the 1990s, is a Costa Rican lawyer who has had 11 years of experience with USAID. In 1990, he came to El Salvador to head the office of Checchi, the USAID contractor for judicial reform. From that position, he brought in many Latin American lawyers to work in El Salvador and created a training center there.[205] This enlarged and consolidated the criminal procedure network. However, Obando's main contribution was his understanding of international aid. It enabled the reformers to adapt to the modus operandi of USAID and its contractors such as Checchi, DPK, and Florida International University, and to make better use of resources from international agencies.[206]

There are three additional salient features characterizing this *Southern activist expert network*. First, while this article has mentioned some of the most significant members of the criminal procedure network, it is important to keep in mind that the network has had many more members—at least several hundred—and that it works in a decentralized way. Figure 5 represents the main network members and groups and the patterns of influence between them.

200. His curriculum vitae is available at http://www.poder-judicial.go.cr/transparencia/rendiciondecuentas/luispaulino/II%20vitae.htm (last visited June 5, 2007) [hereinafter *curriculum*].

201. Mora Mora participated in the drafting of the Costa Rican Criminal Procedure Code of 1996, gave advice to the judicial reform commissions of El Salvador, Panama, and Paraguay, and was a consultant for the DPK program on the administration of justice in Venezuela.

202. *See curriculum*, *supra* note 200.

203. *See* Interviews #26 (Mora Mora has been one of the leaders of the reform process and one of the first that became interested in the work of the Argentine group when he was Minister of Justice in Costa Rica) & #62.

204. Interview #6. For similar reasons, former Justice Daniel González Álvarez, another Justice of the Supreme Court of Costa Rica, was also at the center of the network.

205. *See* POPKIN, *supra* note 177, at 78.

206. *See* Interview #26.

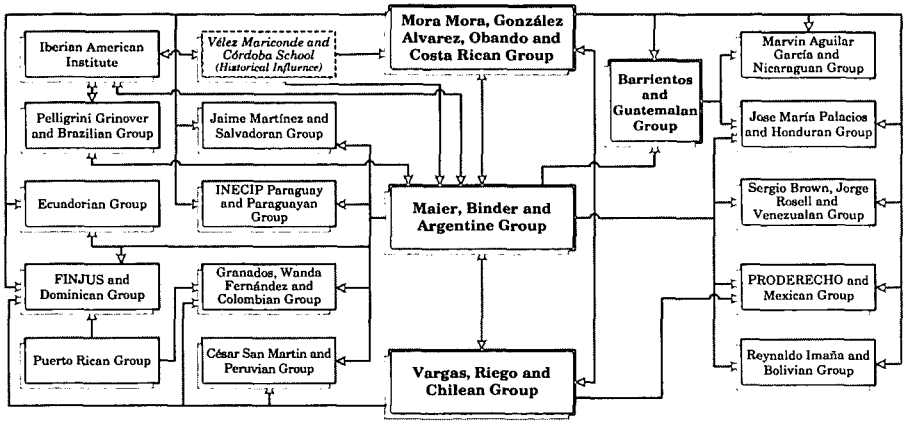

Figure 5. Patterns of Influence between Main Network Members and Groups

Second, the network is dynamic, not only because of its size and strength, but also because the positions of its members have changed over time. For instance, Maier—who started losing interest in the reform project in the second half of the 1990s[207]—and Obando—who left his position at Checchi, are no longer at the network center. In the meantime, Cristián Riego and Juan Enrique Vargas, two Chilean lawyers, have moved to the center. After contacting Maier and Binder during the early 1990s and finding their arguments persuasive, Riego and Vargas focused mostly on developing an accusatorial code for Chile.[208] In the late 1990s, the Justice Studies Center of the Americas (CEJA, for its initials in Spanish) was established in Santiago, Chile, in response to an idea by a number of U.S. officials for the creation of a supportive and evaluative organization for judicial reforms.[209] CEJA operates under the umbrella of the Organization of American States (OAS), has received funding from a multiplicity of sources (including USAID), and has led evaluations of criminal procedure reforms all over the region. CEJA organizes conferences and training programs, issues publications, and works in areas beyond criminal procedure.[210] As leaders of the most visible and well-funded

207. Maier always had a more scholarly rather than reform-oriented inclination, and he gradually lost interest in participating as a reformer in Latin America.

208. Interviews #23 & #25.

209. *See* Interviews #5 (referring to a State Department official and a former USAID official as the co-godmothers of CEJA); #23; #24 (explaining how there was an opportunity to create CEJA because a person working in the White House wanted to come up with a rule-of-law initiative for the first summit of the Americas); & #62.

210. Interview #23.

institution in the area, Riego and Vargas have become two of the most important reformers in the region.[211]

The third point worth emphasizing is that the network is not homogeneous. Even if all its members agree that inquisitorial criminal procedures are arbitrary, inefficient, and nontransparent, and that an accusatorial code is one solution to these problems, they often disagree on which aspects of the accusatorial system to adopt. For instance, while the Model Code and a substantial number of the new codes have been mainly inspired by a civil law reading of the term "accusatorial," a number of reformers—including Barrientos, Jaime Granados of Colombia, and Riego—have more recently pushed for a reading substantially inspired by Anglo-American models.[212]

In addition, while the Model Code is still influential, other civil law legislation (such as the Italian code and a number of regional codes) have also played a role. In fact, within the region, network members talk about various models, including the Chilean model and Costa Rican model, and discuss what constitutes best practices.[213]

In order to provide a better sense of the criminal procedure network, it is also helpful to mention its main opponents and critics. We can distinguish between four types. First, various local actors in individual countries, mostly from the bar and academia, have defended the inquisitorial codes or supported less accusatorial ones; they have been mainly motivated by a cultural or corporativist defense of the status quo.[214] Second, as crime has become a more political issue in many Latin American countries, some local politicians and the police have attacked some of the codes—especially after their enactment—as being too due-process oriented.[215] Third, at the international

211. Vargas is the Executive Director and Riego is the Research Director of CEJA. Centro de Estudios de Justicia de las Américas, http://www.cejamericas.org/ (last visited June 5, 2007).

212. *See* Interviews #23 (explaining that Jaime Granados was influenced by Anglo-American ideas because he studied in Puerto Rico); *id.* (explaining how Cristian Riego and other Chilean drafters incorporated adversarial public hearings in the pretrial phase and direct and cross examination in the trial phase, both inspired by Anglo-American models); & #39 (describing Cesar Barrientos' praise of the Anglo-American system and his call for a criminal procedure with trial by jury without a formalized pretrial phase).

213. *See, e.g.*, Interview #61 (describing the influence of the Chilean model on the Peruvian reform). CEJA has played an important role in fostering the discussion of best practices with its evaluation of criminal procedure reforms in the region. *See, e.g.*, Riego, *supra* note 1.

214. *See, e.g.*, Interviews #23 (describing the resistance of the ministry of interior and a group of legal scholars and judges to the reform in Chile); #33 (describing this kind of opposition in Honduras); #34 & #36 (the dean of the Universidad Externado had drafted the previous code, and its faculty opposed the Colombian reform); #38, #44 & #48 (describing the opposition by Hernán Hurtado Aguilar, author of the Guatemalan Criminal Procedure Code of 1973, to the introduction of a more accusatorial code in Guatemala); and #60 (describing this phenomenon in the Ecuadorian reform).

215. For descriptions of this phenomenon in specific countries, see Interviews #45 (Bolivia); #23 (Chile); #46 (Guatemala); & #61 (Peru); ANGELINA SNODGRASS GODOY,

level, a number of officials from USAID and other international institutions have criticized the network for putting too much emphasis on passing accusatorial codes, for having too much faith in the power of law to change behavior, and for pushing certain specific code provisions.[216] Finally, the U.S. Department of Justice (DOJ) has been very critical of the network and USAID.[217] The DOJ has not opposed replacing inquisitorial codes with accusatorial ones.[218] However, the DOJ has cared less about passing entirely new codes, pushed for accusatorial reforms inspired by the U.S. model, and claimed that the reforms have been too due process-oriented, hindering the DOJ's efforts to fight transnational crime.[219]

The DOJ became involved in the process of criminal procedure reform in 1993 when the Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) started to train prosecutors and other legal actors throughout Latin America.[220] During the 1990s, the DOJ pushed for a more active role in the reform process, arguing that as lawyers with practical experience, they had more knowledge of criminal justice issues than USAID and its contractors.[221] The DOJ has also argued that more departmental participation in the reform process would enable it to network with Latin American prosecutors and other legal actors, which would be helpful in fighting crime that reaches the United States.[222]

POPULAR INJUSTICE 59-60 (2006) (Venezuela); POPKIN, *supra* note 177, at 191 & 219-41 (El Salvador).

216. Interviews #5 & #19. Linn Hammergren, former USAID official and current official of the World Bank, has been the most important representative of this position.

217. *See* Interviews #4 (describing the DOJ's dissatisfaction with the reforms for several years); #5 (the DOJ is complaining bitterly against USAID); & #12 (criticizing USAID's work in Paraguay).

218. Interview #21 (OPDAT has worked in Latin America reforming inquisitorial systems).

219. *See, e.g.*, Interviews #1 (describing the DOJ's criticism that the Paraguayan criminal procedure code has too many obstacles to prosecution); #12 (criticizing the work of Binder for being overprotective of the defendant); #14 (criticizing the Bolivian criminal procedure code regulation on electronic surveillance); & #42 (describing OPDAT's claim that they know what they do because they have more experience, and creation of a manual for the Bolivian prosecutors based on the American model).

220. Interview #21. Since the DOJ does not get any foreign-affairs money, OPDAT has received its funding from either USAID or the State Department. Interview #12. But as tensions between the DOJ and USAID arose and continued over time, OPDAT has been receiving more funding from the State Department (mainly from the Bureau of International Narcotics and Law Enforcement Affairs (INL)) than from USAID. Interview #21. The International Criminal Investigative Training Assistant Program (ICITAP) is another subsection within the DOJ that has done extensive work in Latin America since 1986. Interviews #11 & #21. However, its work has been concentrated on police training and support rather than on code reforms.

221. Interviews #12; #14 (explaining that the DOJ uses practitioners, not contractors, for criminal procedure drafting and training); #21, #27 & #42 (explaining that the DOJ believes that they have to provide technical assistance related to criminal justice since they have that expertise).

222. Interviews #21 & #27.

Some interviewees have described this struggle between the DOJ and USAID as a typical Washington, D.C. turf war between two agencies fighting for economic resources.[223] While this may be true, the struggle between the DOJ and USAID reflects a deeper divide, reflecting two different conceptions of why the U.S. has been involved in legal reform in Latin America and how it should pursue its goals.

While USAID has a developmentalist approach to legal reform, with the goal of building institutions to strengthen Latin American democracies and economies over the long term, the DOJ's goal is to eliminate or reduce criminal activities that originate in Latin American countries and subsequently reach the United States.[224] This means that while USAID balances the U.S. geopolitical interest of having a more stable Latin America against the goal of lending help motivated purely by altruistic sentiments, the DOJ balances between a realist position that fights Latin American crime exclusively to protect U.S. interests against a liberal position claiming that fighting these types of crimes is in the best interests of not only the U.S. but also of Latin American countries.[225]

These differences translate into the U.S. pushing for different types of reforms depending on which agency has more influence over a particular project. USAID officials tend to be more aware and respectful of cultural differences, while the DOJ officials tend to have less understanding of unfamiliar legal reforms and practices, may tend to be heavy-handed, and want the same crime-fighting tools that they use in the U.S. to be available in Latin America.[226]

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223. *See, e.g.*, Interview #20 (describing bureaucratic tension between different U.S. agencies involved in legal reform abroad).

224. *See* Interviews #20 (describing the main substantive tension between U.S. agencies working on legal reform abroad as a tension between people who were interested in law enforcement and those who had a larger commitment to long-term law reform); #21 (the DOJ determines its priorities among countries by looking at the crime in the U.S. that originates abroad); #24 (presenting the contrast between the DOJ and USAID as the alternative between law enforcement and exporting the U.S. system, on the one hand, to the development of the indigenous justice system and letting the foreign country select it, on the other); #30 (the DOJ's goal is not development); & #31 (while the DOJ has been looking for immediate results, USAID has been looking for medium- and long-term results).

225. I use the terms realist and liberal here in the sense of international relations theory. *See* Interviews #12 (the goal of OPDAT's programs is building the foreign country's capacity to handle its own crime); #21 (the goal of the DOJ's work is to help the country develop the capacity to deal with its domestic crime problems, and to help the country be a better partner to its neighbors and the United States); & #33 (the DOJ tended to mix U.S. foreign policy objectives with criminal justice).

226. *See, e.g.*, Interviews #3 (the DOJ legal advisors tend to be very young and lack international experience); #12 (electronic surveillance, wiretapping, and undercover agents are the things that we are trying to get them to adopt because they are modern-day); #24 (it was very difficult to imbue the DOJ officials with the vision that the reason they were going overseas was not to export the U.S. model, but rather to let the country decide the type of justice they wanted to have. The DOJ officials were explicitly exporting the U.S. criminal procedure code); #29 (the DOJ's style is not suggesting but requiring); & #33 (the DOJ people had a level of arrogance and heavy-

Since USAID has worked in this area longer than the DOJ, and since the DOJ is really only interested in those Latin American countries where criminal activity originates that reaches the U.S., USAID's approach has been the most influential on accusatorial reforms. In recent years, however, the DOJ's participation has become more important. For instance, in Honduras, the DOJ criticized and opposed, without success, the criminal procedure code that USAID supported.[227] In Colombia, the DOJ helped draft the code.[228] In Paraguay, the DOJ has tried to introduce reforms to the accusatorial code already passed with USAID support.[229]

2. Code Cascade, the Incentives of Domestic Actors and the Adaptability and Technical Character of the Reforms

So far, this article has explained who the main transnational and international legal actors pushing for reforms have been. But how were members of local legal communities as well as the legislatures of these 14 different countries persuaded to pass an accusatorial criminal procedure code, and what incentives did domestic actors have to support these reforms? Though a full answer to this question would require a detailed case study about each reform, a number of common features are apparent.

First, in all 14 countries, USAID, other international actors, and network members organized conferences, seminars, and training programs, and released publications to explain to local leaders and members of the legal community the need to replace inquisitorial codes with more accusatorial ones.[230] In addition to arguing for the accusatorial codes, network speakers emphasized that the reform process was a regional trend, with parallels in Italy, Germany, and Portugal.[231] This reference to a regional trend was especially effective, as

handedness that was not effective). In response to the criticism that they have been imposing U.S. models, the DOJ officials respond that this may have been the case in the past but that they are now working with international standards. *See, e.g.*, Interviews #12 (USAID was right that the DOJ pushed the U.S. model on everybody and was very insensitive culturally, but this has changed and international standards are now the DOJ's opening bid) & #27 (the DOJ does not impose U.S. models but works with international standards).

227. Interviews #3 & #33 (explaining the DOJ's resistance to the new criminal procedure code and how this resistance was neutralized); & #4 (explaining that the DOJ proposed amendments to the Honduran code).

228. *See infra* note 249.

229. Interview #12.

230. *See, e.g.*, Interview #42 (describing the process in Bolivia).

231. Italy and Portugal adopted more accusatorial criminal procedure codes in 1988 and 1987, respectively. Though the drafters of the Model Criminal Procedure Code for Iberian America did not use these codes as sources, later reformers and code drafters have taken these Italian and Portuguese codes into consideration. *See, e.g.*, Interview #62 (describing the influence of the Italian and Portuguese codes on the Costa Rican reform).

it generated a kind of peer pressure on actors in countries that had not yet introduced reforms, and thus contributed to a code cascade effect.[232]

Second, in all these places, network members and international actors found at least one local person with political influence to advocate and to provide political support for these reforms.[233] Then, USAID and/or other network members helped by lobbying local legislatures and other key players.[234] These individuals of influence were sometimes already members of the network—such as Mora Mora in Costa Rica and Vásquez Martínez in Guatemala. More often, however, they were outside individuals who found the network members' arguments convincing and politically attractive—and, at least in some cases, were motivated by a desire to advance their careers.[235] For instance, in Bolivia, the main reform supporter was René Blattmann, the minister of justice; in Chile, Soledad Alvear, minister

232. There is evidence that supports this code cascade effect among Latin American countries. First, a number of my interviewees mentioned self-esteem and peer-pressure as explanations for the wave of reforms. *See, e.g.*, Interviews #5 (explaining that a peer-group process influenced the reforms in Peru; Peruvians said that they needed to join the trend in this area); #6 (Costa Rica and the Argentine province of Cordoba adopted new criminal procedure codes in the 1990s more for a need "to have the latest" than out of any conviction of a need for change); #13 (describing peer pressure and desire not to be left behind other countries as motivating criminal procedure reform); #33 (explaining how Hondurans did not want to be the only country in Central America without reforms, especially since all their brothers and sisters were modernizing their criminal justice systems); #49 (a lot of Latin American countries had introduced accusatorial codes and Colombia could not stay behind); & #60 (the regional trend was "the new fashion" and favored the reform process in Ecuador). Second, later reforms mentioned the regional tendency as a justification for the reforms. *See, e.g.*, COMISIÓN REDACTORA DEL NUEVO CÓDIGO DE PROCEDIMIENTO PENAL DE BOLIVIA, EXPOSICIÓN DE MOTIVOS, *available at* http://www.ncppenalbo-gtz.org/exposicion.htm (this project is inscribed within the Latin American trend towards the modernization of administration of criminal justice initiated by the Model Criminal Procedure Code for Iberian America). Third, most of the later reforms paid more attention to Latin American accusatorial codes than to Anglo-American and continental European ones. *See, e.g.*, Interviews #33 (what has happened in Latin America is that people copied everything from each other, since it is very hard to write a criminal procedure code from scratch); & #35. Fourth, there is no temporal lag between the Latin American criminal procedure reforms that speaks against this code cascade effect. On the concept of cascades, see Martha Finnemore & Kathryn Sikkink, *International Norm Dynamics and Political Change,* 52 INTERNATIONAL ORGANIZATION 887, 902-04 (1998); Cass R. Sunstein, *Social Norms and Social Roles,* 96 COLUM. L. REV. 903 (1996) (norm cascades occur when there are rapid shifts in norms).

233. *See, e.g.*, Interview #3 (USAID never worked independently; there were always local actors supporting the reforms).

234. *See, e.g.*, Interviews #3 (explaining USAID's lobbying work in the Honduran Congress); & #26 (explaining how network members worked with legislatures across Latin America).

235. *See* Interviews #19 (Edmundo Vasquez was less solving a problem than trying to stake a claim as a reformer and grand jurist*); id.* (Rene Hernandez Valiente was trying to become Supreme Court Justice President in El Salvador and used the code, and Binder and Obando, for this); & #23 (for Miss Alvear, the criminal procedure reform was a great political catapult, positioning her to become chief of Lagos' campaign in Chile).

of justice and later secretary of state; in Colombia, Luis Camilo Osorio, the attorney general; in El Salvador, René Hernández Valiente, minister of justice and later Supreme Court Justice; in Paraguay, Luis Escobar Paella, the attorney general; and in Venezuela, Luis Enrique Oberto, an influential legislator.[236] In some countries, such as Chile and the Dominican Republic, NGOs such as the Fundación Paz Ciudadana and FINJUS also gave substantial political support to the reform process.[237]

Another factor explaining the spread of accusatorial reforms was the adaptability of the new codes to meet multiple, even contradictory, demands. The political supporters of the reforms often had different political orientations. For example, while Soledad Alvear in Chile served in the center-left administrations of Eduardo Frei and Ricardo Lagos; in Bolivia, René Blatmann served in the center-right administration of Gonzalo Sánchez Losada. Furthermore, the political supporters also had different priorities regarding which problems the accusatorial reforms should address. Mora Mora wanted to reduce the percentage of people incarcerated without a conviction;[238] Osorio wanted to improve the efficiency of the criminal justice system;[239] and Oberto wanted to reduce corruption in the judiciary.[240]

Network members were able to present accusatorial code reforms as a way to deal with all these demands, making the reforms attractive to political actors from different political viewpoints. The adaptable nature of these reforms also made them attractive to international actors who justified their participation in the reforms as a way to foster economic, political, and institutional development in the region.

A final factor that explains why legislatures all over Latin America passed accusatorial codes is that they considered them to be mostly technical reforms.[241] Even if the *Southern activist expert network* conceived the reforms as a political project for the democratization of the administration of criminal justice in Latin America, the reformers generally presented themselves as legal experts with a technical solution to a set of social problems. Code drafting is indeed a complex task that generally requires specialized legal expertise.

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236. *See*, respectively, Interviews #31; #23; #36, & #49; POPKIN, *supra* note 177, at 219; SALAS, *supra* note 194, at 6; Interviews #22 & #26.

237. *See*, respectively, Interviews #23 & #50.

238. Interview #35 (length of pretrial detention was one of the main reasons for Costa Rican reform).

239. *See, e.g.*, Interview #36 (Uribe's administration supported the accusatorial reform because it thought it fit well within its discourse of strengthening the prosecution of crime).

240. Interview #26 (corruption was one of the main reasons for the Venezuelan reform); Oberto, *supra* note 56.

241. Interview #26.

The representation of the reforms as mere technical changes, combined with strong political support, made it easier for the projects to make it through the three-step legislative reform process. First, a technical commission drafts the actual code. Depending on the country, this commission has a more or less pluralistic composition in terms of the institutions involved—e.g., representatives of the ministry of justice, the supreme court, the office of the prosecutor, and so on—and in terms of the types of substantive positions represented for the drafting of the code.[242]

Once this technical commission ends its work, it presents the product to specialized committees within the legislature, such as the legislation, criminal justice, or administration of justice committees.[243] Network members and their political supporters then have to persuade the specialized committees that the codes are needed, and discuss any concerns the committees may have.[244] Once the specialized committees approve the draft, the bill is sent to the plenary session of the legislature.[245] But given the technical character of the reforms, their adaptability to meet multiple demands, and the political support they received, most legislatures approved the reforms without much heated debate or deep divisions.[246]

III. ANALYSIS

A. *The Wave of Criminal Procedure Reforms as Diffusion from the Periphery*

This article has explained the main factors that account for the spread of accusatorial criminal procedure codes throughout Latin

242. *See, e.g.*, Interviews #3 (describing technical commission in Honduras); #23 (noting that technical commission was called a forum in Chile); #36 (describing the inter-institutional commission in Colombia); & #49 (describing how commissions were created in Colombia and the Dominican Republic). In some countries, there have been two commissions, one more political and one more technical, to work on the different aspects of the reform process. *See, e.g.*, Interview #35 (explaining that there were two different commissions in Costa Rica).

243. *See, e.g.*, Interview #33 (describing this process in Honduras).

244. *See, e.g.*, Interviews #3 (explaining that USAID paid for a series of meetings with the relevant Congressional committee to work through the Honduran draft code article by article); #23 (describing the long process of discussing the draft code with various legislative committees in Chile); & #39 & #44 (describing multiple changes to Maier and Binder's draft code required by Guatemalan legislators).

245. Interview #26.

246. *See, e.g.*, Interviews #5 (saying that once the committee from the Venezuelan Congress was satisfied with the code, the issue was going to be pushed through Congress with no debate); #26; #33 (explaining that the two major parties in Honduras voted for the reform); #35 (the Costa Rican Legislative Assembly approved the code almost unanimously, with great support from the different Costa Rican political forces); #45 (there was a consensus among political parties in the Colombian Congress to approve the reform because the head of the office of the prosecutor supported it); & #50 (explaining that the main opposition to the new code in Guatemala did not come from Congress but from academic circles).

America. This wave of accusatorial criminal procedure reforms is a case of *diffusion from the periphery* because the Latin American lawyers of this *Southern activist expert network* were the intellectual authors and crucial advocates of the reforms. They proposed the replacement of accusatorial codes for inquisitorial ones as a solution to a number of problems, participated in the drafting of the codes and in their implementation, and advocated for the reforms all over the region and before USAID and other international actors.

We can represent the wave of criminal procedure reforms in Latin America as follows in Figure 6.

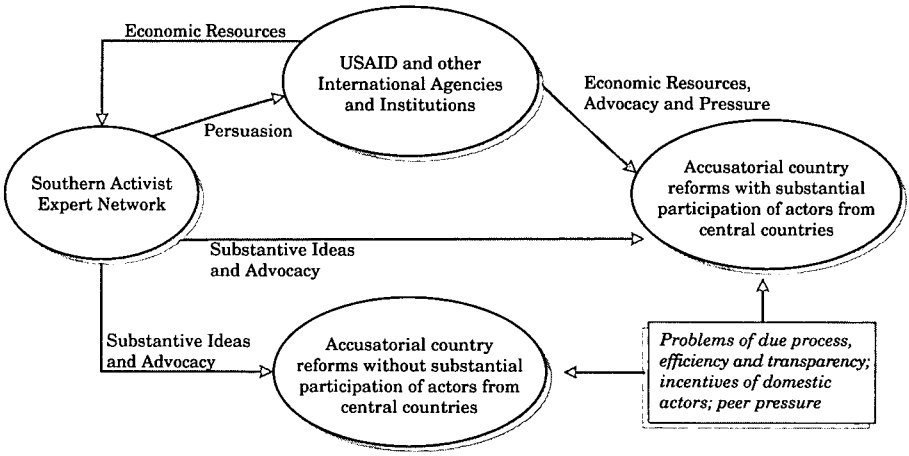

Figure 6. Wave of Latin American Criminal Procedure Reforms (1991-2006)

Some of the reforms—such as those in Argentina, Chile, and Costa Rica—occurred without substantial participation by actors from central countries.[247] These are cases of *horizontal* or *semi-horizontal diffusion from the periphery.* In other reforms—such as the projects in Bolivia, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, and Venezuela—the *Southern activist expert network* played a crucial role, but the reforms occurred with substantial participation by other actors from central countries that contributed economic resources and advo-

247. *See, e.g.*, Interviews #3 (USAID did not participate in the Costa Rican criminal procedure reform and did not even have a mission in that country at that time); #35 (the Costa Rican reform was internally driven and economically sustained with internal resources; afterwards, the banks, especially the IDB, supported the reform through loans); #5 (the U.S. was not involved in the reforms in Argentina); & #23 (explaining in detail how the Chilean process was internally driven in terms of both its content and economic support).

cacy, such as the United States, Germany, and Spain.[248] These are cases of *triangular diffusion from the periphery.*[249]

This description is consistent with the data we have regarding which countries have and have not adopted new accusatorial codes. First, based on this article's hypothesis, one would predict that countries failing to acknowledge the real or perceived inefficiency and lack of due process and transparency of their criminal justice systems would not have adopted new codes. The fact that Cuba is one of the countries that has not adopted a new code confirms this prediction.[250] The limited success that the modern codes had in spreading throughout Argentina and Latin America between the 1940s and 1970s is also consistent with this prediction because military governments were not concerned about due process or transparency, and crime was not a major social concern at that time.[251] This also helps explain why Mexico has not adopted accusatorial codes until recently, given that Mexico started transitioning to democracy later than the rest of Latin America.[252]

Second, one would expect that countries without significant network presence, or countries which did not find the network's arguments persuasive, would also be less likely to adopt reforms. Again,

248. *See, e.g.*, Interviews #4 (describing USAID's support of the legislative commission that worked on the Honduran code); #5 (mentioning that the U.S. has been very involved in the reforms in Bolivia, Ecuador, El Salvador, and Nicaragua); #24 (saying that USAID had a lot to do with the Salvadoran criminal procedure code); #32 (explaining that Barrientos worked as a USAID consultant and was an important promoter of the reforms in Honduras and Nicaragua); #42 (describing as crucial the role of USAID in the Bolivian reform); & #50 (describing USAID's role in the reforms in Dominican Republic). The Guatemalan reform started as a case of *horizontal or semi-horizontal diffusion from the periphery.* Interview #2 (the Guatemalan reform was done internally without consulting with anyone from the United States). But later in the process, USAID supported the work of Barrientos who revised the drafted code before its legislative approval. *See supra* note 152, and accompanying text.

249. A few of these cases—such as Colombia, Honduras, and Paraguay—present elements of *diffusion from the center* to the extent that actors from central countries participated in drafting the codes. But even these reforms present more elements of *triangular diffusion from the periphery* given that the role of actors from the periphery was substantially more important in code drafting than that of actors from central countries. On Colombia, see Interviews #36 (two OPDAT officials introduced a number of changes to the regulation of pretrial investigations and expressed their approval of the discovery regulation that Jaime Granados and his group had drafted); & #34 & #36 (Jaime Granados and his group had the leading role in drafting the Colombian Criminal Procedure Code). On Honduras, see Interview #33 (although a U.S. state prosecutor and Spanish judge discussed the Honduran draft with the relevant legislative committee, the original drafting of the Honduran code was done by three Hondurans with Binder's involvement). On Paraguay, see Interviews #26 & #47 (the German jurist Schöne influenced the regulations of the Paraguayan code concerning the victim's procedural powers); SALAS, *supra* note 194 (explaining that while USAID had an important role in the Paraguayan reform, Paraguayans primarily led this reform effort, albeit with substantial Argentinean influence).

250. Interview #62.

251. *Id.*

252. Interview #26.

this is consistent with the fact that Panama, Uruguay, and (until recently) Mexico have not adopted accusatorial codes.[253] It is also consistent with the fact that three out of the five countries that have not adopted accusatorial codes—Brazil, Cuba, and Panama—already had some of the network's recommended procedural features in place, thus having less reason to be persuaded by other aspects of the network's arguments.[254] Finally, given that the code cascade effect relies on regional peer pressure, it makes sense that four out of the five countries who have not adopted accusatorial codes—Brazil, Cuba, Uruguay, and (until recently) Mexico—are the countries that have traditionally paid the least attention to regional trends.[255]

B. *Three Potential Challenges to this Article's Hypothesis and why they Fail*

Now that the picture is complete, let us consider three potential challenges to this article's characterization of the wave of criminal procedure reforms as a case of *diffusion from the periphery*. This sub-

253. *Id.* (in Panama, members of the legal profession led the initial attempts at reform, and were not willing to seriously struggle to pass the reforms); *id.* and Interview #47 (in Uruguay, not enough people have been committed to the reforms); *id.* (in Mexico there was limited knowledge about the regional reform process). However, since 2000, enacting accusatorial codes has become part of Mexico's agenda. The Fox administration presented an accusatorial code draft to the Mexican Congress in 2003, and USAID and network members are now working on accusatorial reforms all over the country. Interviews #33, #51, & #52.

254. Brazil had already incorporated some accusatorial reforms in its Criminal Procedure Code of 1941. *See* Ada Pellegrini Grinover, *Influência do Código de Processo Penal Modelo para Ibero-América na Legislaçâo Latino-Americana: Convergencias e Dissonancias com os Sistemas Italiano e Brasileiro*, *in* 13 JORNADAS IBEROAMERICANAS DE DERECHO PROCESAL 541 (1993). This has made it more difficult to advocate the passage of a whole new accusatorial code as a solution to the problems of inefficiency and lack of due process and transparency. Brazilians also think of their Congress as being among the most cumbersome in the region when it comes to passing legislation. These reasons—combined with the limited attention Brazil pays to Latin American trends—explain why Ada Pellegrini Grinover and her group have pushed for partial reforms to the Code of 1941, instead of lobbying for a completely new code. *See* Interview #53. Recall that Cuba stayed under Spanish control until 1898 and thus incorporated the ideas of the Spanish Criminal Procedure Code of 1882, including the establishment of oral and public trials. This has made Cuba feel that it is ahead of the rest of Latin America and has made it more difficult to advocate passing an entirely new accusatorial code. *See* Interview #47. Similarly, due to the Criminal Procedure Code of 1986, Panama is one of the few countries in the region that already has oral and public criminal trials where the prosecution is in charge of the pretrial investigation. But since the prosecutor also plays an adjudicatory role during the pretrial investigation, reformers are currently pushing for the introduction of a new code that takes these adjudicatory powers away from prosecutors. *See* Interviews #47 & #57.

255. *See, e.g.*, #19 (Brazil does not look to the region or to anyone else for its judicial reform plans); #26 (referring to this phenomenon in Uruguay); #47 (Cuba and Mexico do not have a dialogue or have only a limited dialogue with Latin America); #51 (Mexico looks north, not south); and #55 (the argument that there is a Latin American criminal procedure trend and that Uruguay is behind does not have political resonance in Uruguay).

section will refer to these challenges as the *functionalist challenge*, *the North-South emulation challenge*, and *the external imposition challenge*.

The Functionalist Challenge. According to a strictly functionalist perspective, the role of the network of Latin American jurists is irrelevant and/or superfluous because the actual driver of the criminal procedure reforms is the presence of problems such as rising crime rates and insufficient respect for human rights, or even simply the sociopolitical landscape of increased democratization of the region, economic liberalization, and the ending of the Cold War. In other words, for a functionalist, reforms would have taken place even without network involvement because reforms were either the only possible, or at least the best, response to the problems and the sociopolitical situation.[256] However, this criticism does not hold, since as mentioned above, there are many other possible ways of dealing with the problems and sociopolitical processes, and there is no indication that adopting accusatorial codes was necessarily the best response.[257]

For example, in terms of dealing with rising crime rates, others solutions could have involved increasing the number of police, reducing resource inequality in the population, or keeping demographic growth under control. At least some of these measures could potentially have resulted in a greater reduction of crime.[258] Even if we limit ourselves to procedural reforms, it is highly doubtful that central tenets of the accusatorial reforms such as the expansion of defendants' rights and liberal regulation of pretrial detention are the most effective way to address the issue of rising crime rates.

Similarly, in trying to improve compliance with human rights standards, there are ways aside from adopting accusatorial codes to deal with the issue. Many of the countries could simply have kept their inquisitorial systems and instituted partial reforms to pretrial detention practices and enhancements of defendants' rights. There was no need for a complete overhaul of the criminal procedure code to allow for accusatorial characteristics such as oral trials, plea bargaining, or pretrial investigation conducted by the prosecutor.[259]

256. I am thankful to Andrew Guzman for emphasizing this point to me.

257. An evaluation of the reforms' effects is beyond the scope of this article, but reports thus far have been mixed. *See, e.g.*, Riego, *supra* note 1.

258. *See, e.g.*, John J. Donohue III & Steven D. Levitt, *The Impact of Legalized Abortion on Crime*, 116 Q. J. ECON. 379 (2002); Kenneth C. Land et al., *Structural Covariates of Homicide Rates: Are There Any Invariances Across Time and Social Space?*, 95 AM. J. SOC. 922 (1990); Steven Levitt, *Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six that Do Not*, 18 J. ECON. PERSP. 163 (2004); Scott J. South & Steven F. Messner, *Crime and Demography: Multiple Linkages, Reciprocal Relations*, 26 ANN. REV. SOC. 83 (2000).

259. In fact, the bodies of the Inter-American system on human rights have not interpreted the regional human rights treaties as requiring oral trials or the elimination of the pretrial investigation judge. So, there was room for experimenting with

Finally, as history demonstrates, the adoption of accusatorial codes is by no means necessary to accommodate trends such as democratization or economic liberalization. For example, Argentina, Chile, Colombia, Uruguay, and Venezuela had long periods of democratic experimentation sometimes paired with measures to increase economic liberalization during the 19th and 20th centuries without abandoning their inquisitorial codes.[260]

This is not to say of course, that problems with justice administration and human rights or democratization processes did not contribute to the wave of Latin American code reforms. As explained throughout this article, these are all aspects that helped open policy windows for the *Southern activist expert network*'s success. The point is that the method by which the Latin American region has dealt with these issues—adopting accusatorial codes—is not the only possible or even necessarily best response to these problems and processes.

The North-South Emulation Challenge. A second challenge to this article's characterization of reform wave as an example of *diffusion from the periphery* is that the idea to replace inquisitorial codes with accusatorial ones was not actually indigenous, but rather the result of a North-South emulation process, whereby Latin American actors identified with the U.S. or Europe.

This challenge does not hold either. For one thing, had identification with the U.S. played a large role in these reforms, U.S. criminal procedure would have been the main model for the reforms, which, as detailed throughout this article, was not the case. Furthermore, Latin American actors admired certain aspects of the U.S. model for substantive reasons, not because they simply wanted to emulate American practices. For example, Binder currently admires the American idea of having oral, public hearings during the pretrial phase, rather than following the system of written dossiers that the Model Code still allows, but he does so for the potential democratizing aspects of having such hearings, not because he wants Latin American hearings to be just like U.S. American ones.[261]

There is more evidence that identification with continental European countries and their legal systems influenced the reforms. As this article has explained, the German criminal procedure code was a large influence on the Model Code, with later reformed codes drawing upon German, Italian, Portuguese, and Spanish codes.[262] In addi-

partial reforms to the pre-existing inquisitorial system. Uruguay is an example of such experimentation. *See* Interview #55.

260. For an overview of the economic liberalization in Latin America between 1880 and 1930, see THOMAS E. SKIDMORE & PETER H. SMITH, MODERN LATIN AMERICA 42-62 (5th ed. 2001).

261. Interview #26.

262. *See* Interview #33.

tion, Vélez Mariconde and Maier both presented their accusatorial codes as modernization projects intended to help Latin America catch up with Continental trends.[263]

However, the North-South emulation challenge still fails even in the case of continental Europe, since, as this article has shown regarding the Model Code, the Latin American drafters were careful to examine different European codes critically, and chose to adapt only those ideas that they felt best met the needs of Latin America's social and political reality. Furthermore, the reformers selected broadly from among codes of different European jurisdictions, a practice that is inconsistent with an emulation process that would involve blind copying from one specific code. For instance, while in Germany the prosecutor is in charge of the pre-trial investigation, in France and Spain a judge is still in charge of pre-trial investigation in serious cases. But the network pushed for pretrial investigations conducted by the prosecutor because they considered it a better way to prosecute crime and protect defendant's rights.

Some of the reformers also have ambivalent relationships with Continental codes, with influential players such as Binder and Barrientos (who have both participated in drafting numerous codes) actively rejecting the Model Code and the German StPO because they were still too inquisitorial.[264] There are also a number of Latin American criminal procedure reforms, such as the very strong emphasis on alternative dispute resolution mechanisms and victim participation in the criminal process, that find no parallel in either Europe or the United States—a fact that is also inconsistent with a North-South emulation model.[265]

Finally, North-South emulation also has not been a substantial factor in opening policy windows for code adoption. As we have seen with the example of the modern codes, the contemporary Latin American criminal procedure network was not the first to propose replacing inquisitorial codes with more accusatorial ones and to argue that continental Europe had abandoned an inquisitorial approach long ago. If the Latin American political class and legal profession had been convinced by these arguments, one would expect that the reform movement of the Cordoba Code of 1939 and the modern codes would have gone further. But it did not. In other words, continental European countries have been experimenting with accusatorial codes at least since 1808. But Latin American countries did not adopt them until the 1990s. This temporal lag speaks against a strong identification with continental Europe—or, for that matter, with the United

263. *See, e.g.*, *supra* notes 68, 69 & 110, and accompanying text.
264. *See* Interviews #26 & #39.
265. *See, e.g.*, DOMINICAN CRIM. PROC. COD. (2002), arts. 2, 27, 29, 31-32, 33, 35-36, 37-39, 40, 50, 52, 84, 85-87, 118-25, 267-72, 282-83, 286-87, 296, 300-02, 318, 323, 331, 359-62, & 396.

States, which presented an accusatorial system even before continental Europe did—as a substantial driving force for the reforms.[266]

The External Imposition Challenge. A third potential challenge to the characterization of the wave of criminal procedure reforms as an example of *diffusion from the periphery* is the argument that this article has underestimated the role of actors from central countries. This challenge can take two different forms.

First, one could argue that the current reform wave is actually an example of *diffusion from the center*, since USAID and other international actors contributed to network formation and expansion throughout Latin America. However, given that the network had already been actively spreading its ideas through vehicles such as the Cordoba school of procedure, the Iberian American Institute of Procedural Law, the Draft of 1986, and the Model Code well before USAID and other international actors became interested in Latin American criminal procedure reform, this challenge can be quickly dismissed. Even if it is true that support from USAID and other international agencies were crucial to network expansion, these agencies only got involved because they believed in the network members' arguments. In this sense, the involvement of the international actors is not a challenge to the idea of *diffusion from the periphery* at all; rather, it is a perfect example of the subtype *triangular diffusion from the periphery*.

The second form that the challenge of external imposition could take is the suggestion that interviewing individuals who have actually participated in the reforms may not be the best way to obtain an impartial account of the reforms because there is a significant risk of self-reporting bias. This is a serious issue that I have pondered throughout the interviewing process. However, the methodological index shows I have been careful to minimize the effect of self-reporting bias by interviewing different, competing groups of people, including those who were not sympathetic to U.S. interests in the region, as well as those who had an incentive to overemphasize the role that U.S. actors played in the reforms. Not one single interviewee challenged the basic outline of the reform process depicted in this article. The second reason why this challenge does not hold up is that I have also relied on data from other documentation and secondary literature in forming and testing my hypothesis, and none of these infor-

266. This temporal lag could be explained if Latin American elites did not know about these tendencies. But this article has indicated that Latin American elites knew about the accusatorial tendencies in Europe in the XIX Century and decided not to follow them for substantive reasons. One could also explain the temporal lag if the Latin American legal elites more strongly identified with continental Europe in the 1990s than in the XIX Century. But we have no evidence that this is the case.

mation sources support the idea that the U.S. or other central countries secretly drove the Latin American reforms.[267]

IV. Conclusion

With its analysis of the contemporary wave of criminal procedure reforms in Latin America, this article has made three contributions. First, it has reviewed the evolution of Latin American criminal procedure from the 19th century until today, described the intellectual origins and ideas behind the ongoing reform process, and explained why and how these reforms have spread throughout Latin America. Given that explaining why 14 Latin American countries adopted similar criminal procedure codes over the last 15 years is in itself an important and complex question to explore, this article has left the question of how these reforms have worked in practice for a future study.

Second, this article has shown that the network of Latin American lawyers behind this wave of reforms does not fit into any of the three main existing categories of networks. This article has characterized this group of Latin American lawyers as a *Southern activist expert network.*

Third, this article has articulated the concept of *diffusion from the periphery* and has shown how this wave of criminal procedure reforms fits into the concept. Some of the Latin American criminal procedure reforms are cases of *horizontal* or *semi-horizontal diffusion from the periphery* while other reforms are cases of *triangular diffusion from the periphery.*

In these ways, this article has contributed to the theorization of the diffusion of rules, norms, and policies throughout Latin America in particular and the world more generally. The concept of *diffusion from the periphery* and the characterization of the wave of criminal procedure reforms as an example opens up important questions: How frequent is *diffusion from the periphery* in comparison to *diffusion from the center*? Under what conditions does *diffusion from the periphery* take place? Are the economic, political, and cultural inequalities between different peripheral or semi-peripheral countries relevant to this type of diffusion? When and why are actors from central countries receptive to ideas coming from the periphery? What is the role of *diffusion from the periphery* in regional processes of diffusion in Latin America and elsewhere?

While the example of the Latin American criminal procedure codes may suggest answers to all these questions, it is not possible to provide convincing answers based on a single case study. Rather,

267. For instance, had U.S. actors been behind the diagnosis and drafting of most the reforms, one would expect a larger use of U.S. criminal procedure models in code drafting. But, as already detailed, this has not been the case.

this case study suggests avenues for future research as well as hypotheses to be tested after identifying more examples of this type of diffusion.

METHODOLOGICAL APPENDIX

I conducted 62 in-depth interviews for this project. Twenty-seven interviews were conducted in person in Washington, D.C., between May and June 2006. One interview was conducted in person in Buenos Aires, Argentina, in January 2007. The rest of the interviews were conducted by phone between April 2006 and June 2007 with people in various cities in Afghanistan, Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Spain, Uruguay, the United States, and Venezuela. The interviews lasted between half an hour to four-and-a-half hours. In some cases, I interviewed the same person more than once. I count each of these cases as a single interview and list all the dates on which each of these prolonged interviews took place.

I promised anonymity to my interviewees. In order to protect their identities, I indicate only their position or institutional affiliation at the time of the interview. In cases where revealing the position of the interviewee would reveal her identity, I use a more generic term to refer to her position (e.g., Ecuadorian lawyer). Table 2 numbers the interviews, and lists interview dates and interviewee positions:

TABLE 2. DATES OF INTERVIEWS AND POSITIONS OF INTERVIEWEES

Interview #	Position or Institutional Affiliation at Time of Interview	Date(s) of Interview
1	USAID	4/26/06
2	American independent consultant	5/22/06
3	Former USAID official	5/22/06
4	USAID	5/22/06
5	U.S. State Department	5/23/06
6	National Center for State Courts	5/23/06; 5/31/06
7	Carnegie Endowment for International Peace	5/24/06
8	IDB	5/24/06
9	IDB	5/24/06
10	Checchi & Co. Consulting	5/25/06
11	DOJ	5/26/06
12	DOJ	5/26/06
13	World Bank	5/30/06
14	DOJ	5/30/06
15	IDB	5/30/06
16	U.S. Department of State	5/31/06

17	National Center for State Courts	5/31/06
18	DOJ	5/31/06
19	World Bank	6/4/06; 4/12/07; 4/16/07
20	Open Society	6/5/06
21	DOJ	6/5/06; 6/7/06
22	Venezuelan law professor	6/5/06
23	CEJA	6/6/06
24	National Center for State Courts	6/6/06
25	CEJA	6/7/06
26	Argentine lawyer	6/7/06; 6/8/06; 11/13/06; 6/4/07
27	DOJ	6/7/06
28	Institute of Comparative Studies in Criminal Sciences of Guatemala	6/7/06
29	U.S. Department of State	6/20/06
30	DPK Consulting	6/22/06
31	Florida International University	6/23/06; 7/6/06
32	USAID	6/26/06
33	American independent consultant	7/3/06
34	Colombian lawyer	7/5/06
35	Costa Rican independent consultant	7/6/06
36	CEJA	7/7/06
37	USAID	7/10/06
38	Guatemalan law professor	7/10/06
39	USAID	7/11/06; 5/26/07
40	IDB	7/11/06
41	GTZ	7/17/06
42	Bolivian independent consultant	7/20/06
43	American independent consultant	7/24/06
44	Guatemalan judge	7/31/06
45	Checchi & Co. Consulting	8/2/06
46	Guatemalan lawyer	8/8/06
47	UNDP	8/15/06; 2/26/07; 5/17/07
48	Guatemalan judge	10/27/06
49	Colombian independent consultant	10/30/06
50	Guatemalan independent consultant	10/30/06
51	American independent consultant	11/6/06
52	PRODERECHO (Mexico)	11/10/06
53	Brazilian law professor	11/14/06
54	Argentine judge	1/3/07; 1/4/07
55	Former Uruguayan judge	2/23/07

56	Uruguayan independent consultant	2/23/07
57	Panamanian independent consultant	3/13/07
58	Peruvian academic	5/17/07
59	PROJUSTICIA (Ecuador)	5/21/07
60	PROJUSTICIA (Ecuador)	5/21/07
61	Justicia Viva (Peru)	5/22/07
62	Costa Rican judge	6/03/07

Since there is no directory of criminal procedure reformers, I used the snowball sampling technique to identify my interviewees. In order to reduce the risk of selection bias, I chose as seeds two individuals who do not cooperate with each other and come from different networks—one from the Latin American criminal procedure network, the other from the U.S.-based international aid community located in Washington, D.C. As the snowball grew, I continued to select and interview subjects until I reached a minimum quota of interviewees knowledgeable about the main international institutions involved in the reform process and the criminal procedure situation in the 19 different Latin American countries that are the object of this study.

In order to reduce the risk of self-reporting bias, I interviewed people from competing groups and institutions. Whenever I found inconsistent information, I relied on information that was 1) provided by interviewees with direct knowledge about the issue; 2) supported by the majority of interviewees; or 3) provided by interviewees that did not have an interest in the representation of the issue. I also checked the information that my interviewees provided against relevant documents and secondary literature.

My interviewees came from three different groups. The first group included subjects with direct knowledge about the work of one or more international institutions involved in criminal procedure reforms in Latin America. These institutions include USAID, GTZ, the Foundation Konrad Adenauer, the U.S. Department of Justice, the U.S. Department of State, the Inter-American Development Bank, the World Bank, the National Center for State Courts, the Justice Studies Center of the Americas, and the United Nations Program for Development.

My questions to this group of subjects included questions about the background of the interviewee; which international institutions they had direct knowledge of; how they acquired such knowledge; whether the institution in question was involved in criminal procedure reforms; which countries the institution became involved; when, why, and how it got involved; how the institution has worked in this area; what the organizational structure of the institution is; what sections of the institution work in this area; and what other interna-

tional institutions have worked on criminal procedure reforms in Latin America. I call this first group "people with knowledge about institutional issues."

The second group included individuals with direct knowledge about the criminal procedure situation in one or more Latin American countries. My questions to this group included questions about the background of the interviewee; which Latin American criminal procedures they have direct knowledge of; how they acquired such knowledge; whether accusatorial code projects were presented in the countries in question; why and by whom the reform was started; who their main supporters and opponents have been; how the process of code drafting took place and who participated in the process; which international institutions have been involved in the reform process; and how the legislative process operated. I call this second group "people with knowledge about country issues."

Finally, the third group contained subjects who were knowledgeable about both institutional and country issues. Table 3 summarizes information about the 62 interviewees:

TABLE 3. THREE TYPES OF INTERVIEWEES

Type of Interviewee	Number
People with Knowledge about Institutional Issues	8
People with Knowledge about Country Issues	20
People with Knowledge about Institutional and Country Issues	34
Total	62

Table 4 summarizes how many of my interviewees have direct knowledge about each of the 19 countries in my sample. Since a number of my interviewees have direct knowledge about more than one country in the region, the total number is higher than 62.

TABLE 4. NUMBER OF INTERVIEWEES WHO SPOKE ABOUT EACH COUNTRY BASED ON DIRECT KNOWLEDGE

Country	Number of Interviewees
Argentina	4
Bolivia	14
Brazil	5
Chile	11
Colombia	20
Costa Rica	9
Cuba	3
Dominican Republic	7
Ecuador	11
El Salvador	11
Guatemala	19
Honduras	6
Mexico	10
Nicaragua	6
Panama	7
Paraguay	5
Peru	7
Uruguay	7
Venezuela	8