



# THIRD WORLD STATEHOOD BEFORE THE ‘THIRD WORLD’: IMPERIALISM, SOVEREIGNTY, AND THE MAKING OF LATIN AMERICA

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**Abstract:** *Engaging BS Chimni’s claim that the genealogies of colonial capitalism are vital to uncovering the substantive realities that animate formalistic conceptions of jurisdiction, I argue that the independence of Latin America forms an important, yet under-theorised, site for articulating these genealogies. This is especially significant given the general lack of materialist analysis of this history in both Latin American International Law (LAIL) and Third World Approaches to International Law (TWAIL). Filling this lacuna, I argue that while Latin American polities emerged as bounded territorial states, their recognition as such must be understood in relation to how Europe and the United States hosted new forms of imperial expansion at the same time. This forms the basis for a new account of how Latin American colonisation, independence, and enmeshment within the capitalist world-system provide ample opportunity to reimagine the operation of jurisdiction and territoriality in the history of international law.*

## I. INTRODUCTION

In his characteristic blend of theoretical sophistication, analytical clarity, and steadfast emancipatory commitment, BS Chimni has once again enhanced critical international legal consciousness through confronting the all-pervasive, yet under-scrutinised, matter of ‘jurisdiction’ through a Third World Approaches to International Law (‘TWAIL’) perspective.<sup>1</sup> Central to his analysis is the way in which mainstream framings of states’ assertions of jurisdiction — uncontroversial within territorial boundaries yet ‘extraordinary’ when applied extraterritorially — serve to affirm a vast array of intersecting hierarchies and maldistributions.<sup>2</sup> Relatedly, Chimni lambasts, amongst other things, the formalistic/positivistic/state-centric understandings of jurisdiction as stunting consciousness of how power is asserted through informal means and by non-state actors, especially corporations (past and present).<sup>3</sup> This, he argues, enables dominant modalities of international legalism to exclude the social scientific insights that would reveal the greater truths

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<sup>1</sup> BS Chimni, ‘The International Law of Jurisdiction: A TWAIL Perspective’ (2022) 35 *Leiden Journal of International Law* 29.

<sup>2</sup> *ibid* 37.

<sup>3</sup> *ibid* 36.

of jurisdiction's distributional consequences.<sup>4</sup> While Chimni rightly turns our attention to genealogies of colonial capitalism as revealing that which mainstream narratives exclude,<sup>5</sup> this raises the question of what genealogies still require greater attention within the consciousness of the international lawyers who seek to advance Chimni's project?

In this piece, I argue that one such genealogy that would contribute immensely to Chimni's project, but requires substantially more theorisation by critical international lawyers, is the material co-evolution of international law and the emergence of Latin American statehood in the first half of the nineteenth century. In Part I, I examine how points developed through the analytical registers of Latin American International Law ('LAIL') and Third World Approaches to International Law ('TWAAIL') can be integrated when developing a materialist account of the emergence of Latin American statehood within the broader historical evolution of international law. Applying this frame, Part II then contrasts the differentiated Iberian and English colonisation of the respective southern and northern portions of the Americas as a means of theorising the uneven development of this general region. Finally, Part III accounts for the rise of independent polities in Latin America in the context of multilayered global institutional and ideological competition in the early nineteenth century. Careful attention to this birthing crucible provides a lens into the formative patterns of debt, dependency, intervention, and counter-hegemonic assertion that continue to define the condition of Third World statehood.

## **II. MATERIALIST ANALYSIS BETWEEN LAIL AND TWAAIL**

When considering the lack of focus on the materiality of Latin American independence amongst critical international lawyers, the dearth of focus is arguably formed through lacunae in both LAIL and TWAAIL scholarship. Amongst scholars of LAIL, while there have been elaborate efforts to showcase Latin America's unique contributions to the international legal field, such analyses have largely focused on intellectual and cultural contexts as opposed to the material conditions that might explain these contributions.<sup>6</sup> Thus, accounts of LAIL share a limitation common to numerous studies where the critique of imperial domination far outpaces the structural understanding of imperial systems.<sup>7</sup> However, there is no reason why LAIL's valuable insights cannot be synthesized with the elaborate and

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<sup>4</sup> *ibid* 33.

<sup>5</sup> According to Chimni '...since many of the first modern states were imperial states the exercise of extra-territorial jurisdiction was seen as the natural extension of territorial jurisdiction.' *ibid* 37.

<sup>6</sup> Arnulf Becker Lorca, 'International Law in Latin America or Latin American International Law — Rise, Fall, and Retrieval of a Tradition of Legal Thinking and Political Imagination' (2006) 47 *Harvard International Law Journal* 283; Liliana Obregón, 'Between Civilisation and Barbarism: Creole Interventions in International Law' (2006) 27 *Third World Quarterly* 815; Liliana Obregón, 'Latin American International Law' in David Armstrong (ed), *Routledge Handbook of International Law* (Routledge 2009); Juan Pablo Scarfi, 'Globalizing the Latin American Legal Field: Continental and Regional Approaches to the International Legal Order in Latin America' (2018) 61 *Revista Brasileira de Política Internacional* 1.

<sup>7</sup> Onur Ulas Ince, *Colonial Capitalism and the Dilemmas of Liberalism* (OUP 2018) 13.

innovative tradition of theorising the materiality of Latin America's place within the greater world-system<sup>8</sup>. These discourses have yet to be substantially engaged by international lawyers.<sup>9</sup>

By contrast, TWAIL scholars have been substantially more engaged with historical materialism and/or the Marxist tradition<sup>10</sup> – Chimni being highly prominent in this regard.<sup>11</sup> However, while materialist scholars within TWAIL's broad tradition have produced important analyses on how international law, through varied doctrines of 'semi-sovereignty', furthered capitalist expansion by making recognition and inclusion contingent upon the reproduction of capitalist social relations, their studies have largely focused on locations in Asia, Africa, and the peripheries of Europe.<sup>12</sup> The one Western Hemispheric location to be subject to similar analysis is Haiti<sup>13</sup> – itself a unique case-study in the greater context of the Americas, especially considering its distinct struggles for international recognition.<sup>14</sup> In contrast to these cases, Latin America requires an analysis of how marginalisation came to coexist with, and was arguably the result of, the recognition of full

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<sup>8</sup> Eduardo Galeano, *Open Veins of Latin America: Five Centuries of the Pillage of a Continent* (Serpent's Tail 2009). Such materialist approaches have been more common in international relations, see e.g., Pedro Salgado, 'Agency and Geopolitics: Brazilian Formal Independence and the Problem of Eurocentrism in International Historical Sociology' (2020) 33 *Cambridge Review of International Affairs* 432.

<sup>9</sup> For an effort to further this engagement see Luis Eslava, 'The Developmental State: Independence, Dependency and the History of the South' in Phillip Dann and Jochen von Bernstorff (eds) *The Battle for International Law: South-North Perspectives on the Decolonization Era* (CUP 2019).

<sup>10</sup> This is highly understandable given how the contexts that gave rise to proto formulations of LAAL were very different from those that gave rise to proto formulations of TWAIL. Marxist influences were far more prominent in the latter, see Teresa Davis, 'The Ricardian State: Carlos Calvo and Latin America's Ambivalent Origin Story for the Age of Decolonization' (2020) 23 *Journal of the History of International Law* 32.

<sup>11</sup> See BS Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (CUP 2017).

<sup>12</sup> See Akbar Rasulov, 'Central Asia and the Globalisation of the Contemporary Legal Consciousness' (2014) 25 *Law and Critique* 163; Umut Özsü, 'From the 'Semi-Civilized State' to the 'Emerging Market': Remarks on the International Legal History of the Semi-Periphery' in John Haskell and Ugo Mattei (eds), *Research Handbook on Political Economy and Law* (Edward Elgar 2015) 246; Ntina Tzouvala, 'These Ancient Arenas of Racial Struggles': International Law and the Balkans, 1878–1949' 29 (2014) *European Journal of International Law* 1149; Ntina Tzouvala, 'And the laws are rude, ... crude and uncertain': Extraterritoriality and the Emergence of Territorialisated Statehood in Siam' in Daniel Margolis et al. (eds), *The Extraterritoriality of Law: History, Theory, Politics* (Routledge 2019) 134; Rose Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance* (CUP 2019).

<sup>13</sup> Robert Knox, 'Valuing Race? Stretched Marxism and the Logic of Imperialism' (2016) 4 *London Review of International Law* 81, 112-125; Liliana Obregón, 'Empire, Racial Capitalism and International Law: The Case of Manumitted Haiti and the Recognition Debt' (2018) 31 *Leiden Journal of International Law* 597.

<sup>14</sup> On the impact of Haiti's non-recognition by the US see Charles Wesley, 'The Struggle for the Recognition of Haiti and Liberia as Independent Republics' (1917) 2 *Journal of Negro History* 369. Relatedly, Haiti was infamously excluded from the Monroe Doctrine and its proclamation against European recovery of lost colonies in the Western Hemisphere, see Robbie Shilliam, 'What the Haitian Revolution Might Tell Us about Development, Security, and the Politics of Race' (2008) 50 *Comparative Studies in Society and History* 778, 800.

sovereignty in the region. As such, Latin American independence provides ample opportunity for synthesizing TWAIL with materialist accounts of international law that view formal equality, as opposed to hierarchy, as the true medium through which the international order exists as a medium of domination at the level of form.<sup>15</sup>

Accounting for this seeming contradiction requires focus upon the distinct character of Latin American independence relative to other key events in the 'Age of Revolutions', namely the American and French Revolutions. While the US and France, not to mention other European powers, emerged from these revolutionary upheavals as new or reinvented territorially expansive empires,<sup>16</sup> this imperial path was unavailable to (or at least comparatively limited) when it came to Latin America.<sup>17</sup> Independent Latin American polities ultimately emerged from this period of revolutionary upheaval as territorially bounded sovereign states subject to pressure from these same empires and their extraterritorial legal assertions. As such, their distinctive approach to issues of jurisdiction and territoriality relative to the US and Europe reflected the reality that they were bounded as opposed to expansive socio-political forms, and thus developed approaches to legal argument that reflected this uneven reality. As the process of postwar decolonisation devastated the legitimacy of formal imperialism, international lawyers gained a newfound confidence in casting the bounded sovereign state, as opposed to the colonial empire, as international law's retrospectively presumed 'true' subject – and creating the conditions upon which a substantively empty view of jurisdiction was to become hegemonic. This recasting effectively excluded not only imperial legacies but also highly important Latin American contributions to the very idea of a state-centric global order premised on sovereign equality and non-intervention.<sup>18</sup> This requires an account of how Latin American states came to exist in this form in the first instance, especially in relation to the greater structural and transnational parameters that led to this outcome.

Towards this end, it is helpful to centre the issue of how 'popular will' came to challenge dynasty as a basis for domestic legitimacy under international law in the context of the greater historic transition from feudal to capitalist political economy.<sup>19</sup>

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<sup>15</sup> See e.g., China Miéville, *Between Equal Rights: A Marxist Theory of International Law* (Brill 2005). While such perspectives have been critiqued for paying insufficient attention to race hierarchy, prospects for synthesis do exist. Knox (n 13) 98-112.

<sup>16</sup> Josep Fradera, *The Imperial Nation: Citizens and Subjects in the British, French, Spanish, and American Empires* (Princeton University Press 2018) 22-73.

<sup>17</sup> Here an interesting case-study is the post-independence Brazilian Empire, see Gabriel Paquette, *Imperial Portugal in the Age of Atlantic Revolutions: The Luso-Brazilian World, c.1770–1850* (CUP 2013).

<sup>18</sup> Ironically, despite attempting to build a regional order premised on non-intervention, Latin American contributions were marginalised by a general disavowal of international legal regionalism following the Second World War due to its association with fascist expansionism, see Arnulf Becker Lorca, 'Eurocentrism in the History of International Law', in Anne Peters and Bardo Fassbender (eds.), *The Oxford Handbook of the History of International Law* (OUP 2012) 1034, 1039.

<sup>19</sup> Eric Loefflad, 'Popular Will and International Law: The Expansion of Capitalism, the Question of Legitimate Authority and the Universalisation of the Nation-State' (PhD Thesis, University of Kent 2019).

A stark way to appreciate the weight of this shift is to focus on how these differing modes of sovereignty generated fundamentally different approaches to jurisdiction and territorial imagination. Under feudal orders of dynastic legitimacy, a polity's assertion of jurisdiction was tied to the person of a monarch thus leading to infamously complex configurations where, according to traditions and customs, jurisdiction occurred through divided and layered patchworks that defied rational delineation.<sup>20</sup> Present conceptual divides between 'public'/'private', as well as 'political'/'economic', make little sense when applied to this order of dynastic legitimacy and its presumption of sovereign jurisdiction as personal jurisdiction. By contrast, modern post-feudal conceptions of sovereignty are defined by the presence of a rational depersonalised 'public' state form holding absolute undivided jurisdiction over a spatially-bounded political sphere that coexists alongside, yet is ideologically separated from, the transcendent sphere of private interests that constitutes the global economy.<sup>21</sup> In other words, jurisdictional modernity can be called the stark division of the world between the respective spheres of 'imperium' defined by a logic of territory and 'dominium' defined by a logic of property.<sup>22</sup>

### III. UNEVEN DEVELOPMENT BETWEEN TWO MODELS OF COLONISATION

How then did sovereignty become depersonalised and jurisdiction gain its modern character? Relatedly, what legal justification did European overseas expansion and innovation contribute to this transition? In addressing these questions, as Jordan Branch has shown, a great challenge to feudal conceptions of sovereignty occurred through early modern European overseas colonization, especially in the Western Hemisphere.<sup>23</sup> It was here that formulations of sweeping jurisdictional claims on the basis of spatial boundaries compensated for the lack of actual knowledge of the territories being claimed.<sup>24</sup> This set the stage for profound questions of sovereign legitimacy and international order when settler populations within these territories declared their independence from monarchs in the name

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<sup>20</sup> On the importance of these divided and overlapping patterns of sovereignty as vital to matters of international legal personification, see Ben Holland, *The Moral Person of the State: Pufendorf, Sovereignty, and Composite Polities* (CUP 2017). The lingering of such personality conceptions provided (and continues to provide) no shortage of conceptual challenges the liberal pluralist notion of political legitimacy gained prominence, see David Runciman, *Pluralism and the Personality of the State* (CUP 1997).

<sup>21</sup> Justin Rosenberg, *The Empire of Civil Society: A Critique of the Realist Theory of International Relations* (Verso 1994).

<sup>22</sup> Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (Harvard University Press 2017) 10. On the early modern debate on these antiquarian concepts, see Anthony Pagden, *Lords of All the World: Ideologies of Empire in Spain, Britain, and France c.1500-c.1800* (Yale University Press 1995) 11-28.

<sup>23</sup> Jordan Branch, "'Colonial Reflection' and Territoriality: The Peripheral Origins of Sovereign Statehood' (2010) 18 *European Journal of International Relations* 277, 283-285.

<sup>24</sup> *ibid* 284. On the epistemic upheaval this 'New World' encounter caused in the conception of the 'Old World' state see Jennifer Beard, *The Political Economy of Desire: International Law, Development, and the Nation-State* (Routledge 2007) 89-123.

of 'popular will' – as evidenced by *de facto* territorial control, a distinctly modern triumph of fact over norm. With independence occurring first in North America before spreading southward, both US and Latin American political thinkers approached pressing political questions in highly analogous ways.<sup>25</sup> However, especially when considering future Latin American contributions to the global imagination of jurisdiction, this intellectual congruence needs to be understood in relation to the vast material divergences that defined Latin America in relation to the US. Here it must be noted that the Spanish (and Portuguese) colonization of the Americas — infamously inaugurated in 1492 — took place according to feudal logics in a manner that, albeit in a transformative capacity, maintained indigenous institutions to a far greater extent. After all, Spain in this timeframe was not a modern state, but an aspiring 'universal monarchy' where sovereignty was vested in the holder of a crown whose jurisdictional claims defied modern conceptions of bounded territoriality.<sup>26</sup>

Against the material backdrop that upholds these modes of authority, in the Western portions of Early Modern Continental Europe, the consolidation of the power of these universality-desiring absolutist monarchs led to a pronounced class conflict within the nobility that defined the feudal order that came to dominate Europe after the fall of the Roman Empire.<sup>27</sup> A distinct manifestation of this absolutist-nobility conflict can be observed in the question of colonial land tenure. According to Alexander Anievas and Kerem Niscancioglu, rather than grant conquistadors absolute title as feudal lords (and increase the power of the nobility against the monarch), the king maintained ownership in a manner that co-opted (and vastly increased the brutality of) the tributary practices of indigenous orders, especially the vanquished Andean and Mesoamerican Empires.<sup>28</sup> This extractive synthesis formed the foundation for Latin America's infamous *latifundia* system whereby a highly Europeanised elite dominated vast agricultural plantations sustained by variably coerced forms of labour provided by indigenous, African, and mixed race peoples.<sup>29</sup>

However, in North America, especially after the English (British post-1707) prevailed over their varied European competitors, patterns of colonisation differed in a manner shaped immensely by developments that were uniquely English. While the extent to which developments elsewhere in the world informed this shift is

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<sup>25</sup> See Joshua Simon, *The Ideology of Creole Revolution: Imperialism and Independence in American and Latin American Political Thought* (CUP 2017).

<sup>26</sup> 'At its height, the Spanish crown claimed the entire Iberian Peninsula, Sicily, parts of Italy, France, and the Germanies, Flanders and the Netherlands, parts of North Africa, islands in the Mediterranean and off the west coast of Africa, as well as the Americas, islands in the Pacific, the Philippines, and parts of India.' Jamie Rodriguez O, 'The Emancipation of Spanish America' 105 *American Historical Review* (2000) 131, 133.

<sup>27</sup> See Benno Teschke, *The Myth of 1648: Class, Geopolitics, and the Making of Modern International Relations* (Verso 2003) 151-193.

<sup>28</sup> Alexander Anievas and Kerem Niscancioglu, *How the West Came to Rule: The Geopolitical Origins of Capitalism* (Pluto Press 2015) 129-134.

<sup>29</sup> *ibid*; see also Lisa Lowe, *The Intimacies of Four Continents* (Duke University Press 2015)

debatable, a strong case can be made that England is where capitalist social relations first comprehensively appeared.<sup>30</sup> Set against the backdrop of seventeenth century political upheaval as well as agricultural innovation and new individualistic modes of property ownership, noble landowners reconciled interests with the monarchy, peasants dispossessed by land enclosures formed a dependant class of wage earners, and, through bureaucratic depersonalisation, a modern state challenged the feudal limits of personalised sovereignty.<sup>31</sup> This transformation is highly important in relation to English colonialism in that those dispossessed by enclosure provided a labour surplus that could be absorbed into the maritime industry and settlement ventures.<sup>32</sup> Moreover, the role of ideological innovation cannot be discounted. In mobilizing their relative latecomer status to condemn Spanish violence, the English cast their empire, and the jurisdictional claims sustaining it, through a discourse of liberty and virtue unseen since antiquity.<sup>33</sup> As a matter of jurisdictional innovation towards this end, the legal abstraction of 'property' allowed the English to depict their overseas claims as peaceful rights of occupancy in a manner opposed to Spanish conquistadors who claimed, not simply a right to dominate land, but also wealth in the form of plunder and people in the form of slaves.<sup>34</sup>

In a manner that spoke directly to jurisdictional controversies, the resulting North American settler community proved highly adept at claiming property in relation to English discourses of liberty under the common law by asserting that a minimum core of liberties, namely property rights, accompanied free-born English subjects wherever they settled.<sup>35</sup> In the North American debates on monarchical jurisdiction, in direct contrast to the Iberian Viceroyalties to their south, claims to land tenure were increasingly stripped of their feudal logics in a manner that grounded ownership rights as derived from the fact of 'improvement'.<sup>36</sup> Yet, as another contrast to the colonies of the Spaniards, these capitalist property-based mass settler colonization projects did not rely on the appropriation of indigenous labour/social relations and, as such, accelerated the destruction of indigenous peoples and societies whose presence was deemed an unnecessary danger to settler life.<sup>37</sup> The claims enabled by property were highly relevant in this process

<sup>30</sup> On this development within the greater scheme of imperial competition, see Maia Pal, *Jurisdictional Accumulation: An Early Modern History of Law, Empires, and Capital* (CUP 2021).

<sup>31</sup> Teschke (n 27) 250-252.

<sup>32</sup> Alexander Anievas and Kerem Niscancioglu (n 28) 151-152.

<sup>33</sup> David Armitage, *The Ideological Origins of the British Empire* (CUP 2000) 8.

<sup>34</sup> Ken MacMillan, 'Benign and Benevolent Conquest? The Ideology of Elizabethan Atlantic Expansion Revisited' (2011) 9 *Early American Studies* 32, 42-44.

<sup>35</sup> Daniel Hulsebosch, 'The Ancient Constitution and the Expanding Empire: Sir Edward Coke's British Jurisprudence' (2003) 21 *Law and History Review* 439, 466-468.

<sup>36</sup> William Vance, 'The Quest for Tenure in the United States' (1923) 33 *Yale Law Journal* 248. On the Lockean concept of land 'improvement' as it was animated by his theory of money, see Ince, (n 7) 38-73. On the ways in which this logic of property shaped the logic of borders/territory, see Kerry Goettlich, 'The Colonial Origins of Modern Territoriality: Property Surveying in the Thirteen Colonies' (2022) 116 *American Political Science Review* 911.

<sup>37</sup> For a theory of the pathologies of capitalist agriculture in settler colonial contexts, see Mohamed Adhikari, 'Invariably Genocide? When Hunter-Gatherers and Commercial Stock Farmers Clash' (2017) 7 *Settler Colonial Studies* 192.

of dispossession due in great part to the development of forcible eviction as a guarantee to land-backed credit arrangements (i.e., 'mortgages') that exploited the difference between English and indigenous conceptions of land ownership.<sup>38</sup> This perpetual acquisition of property in land is what motivated the uniquely American conception of republican self-rule.<sup>39</sup> Here, as Aziz Rana has shown, it was Britain's effective closure of settler frontier expansion (and thus presumptively endless property acquisition) in 1763 that ultimately led to the successful settler revolt of 1776 now widely known as the 'American Revolution.'<sup>40</sup> This set the stage for the US to vastly expand westward as a capitalist settler empire by means of its distinct material and ideological practices of self-legitimising 'commercial conquest.'<sup>41</sup>

#### **IV. ON THE BIRTH OF LATIN AMERICAN STATEHOOD AND AFTER**

In addition to its very different patterns of social relations, to an even greater extent than the American Revolution, the stirrings of independence claims in early nineteenth century Latin America were formed at the intersection of contentious imperial rivalries in the greater world. While the racially-mixed compositions of many Latin American societies played a profound role in their proclaimed difference from Europe (and the US for that matter),<sup>42</sup> racially-conscious radicalism and anti-imperialism was starkly limited as shown by the example of Haiti where efforts to radically reconfigure social relations drew the ire of imperial powers who maintained devastating influence through relations of commerce and indebtedness.<sup>43</sup> Moreover, Latin American independence movements must be placed in the context of the contemporary geopolitical contentions that were centred in (but extended far beyond) a European system transformed by the Napoleonic Wars and their aftermath.<sup>44</sup> With Napoleon's conquest of Spain, the ousting of King Ferdinand VII, and instillation of Napoleon's brother Joseph on the throne, questions of legitimate rule were raised throughout Latin America<sup>45</sup> — especially in relation to the anti-Napoleonic rebels' 1812 Constitution of Cadiz which, amongst other

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<sup>38</sup> K-Sue Park, 'Money, Mortgages, and the Conquest of America' (2016) 41 *Law & Social Inquiry* 1006.

<sup>39</sup> See Adam Dahl, *Empire of the People: Settler Colonialism and the Foundations of Modern Democratic Thought* (University Press of Kansas 2017).

<sup>40</sup> Aziz Rana, *The Two Faces of American Freedom* (Harvard University Press 2010) 67-68.

<sup>41</sup> Adam Dahl, 'Commercial Conquest: Empire and Property in the Early US republic' (2016) 5 *American Political Thought* 421.

<sup>42</sup> This was especially true in the Mesoamerican Viceroyalty of New Spain, see Colin MacLachlan and Jaime Rodríguez O, *The Forging of the Cosmic Race: A Reinterpretation of Colonial Mexico* (University of California Press 1980).

<sup>43</sup> See Knox, (n 13), 119-120.

<sup>44</sup> On these greater contexts, see Alexander Mikaberidze, *The Napoleonic Wars: A Global History* (OUP 2020).

<sup>45</sup> Originally loyal to the *Junta Central* in Seville dedicated to affirming the legitimacy of Ferdinand, many liberal Latin Americans soon formed their own *juntas* that claimed to represent the people directly in the absence of a monarch. Mikulas Fabry, *Recognizing States: International Society and the Establishment of New States Since 1776* (OUP 2010) 51.

things, granted a new panoply of rights to the New World subjects of the Spanish crown.<sup>46</sup> However, as the greater (extra-Spanish) anti-Napoleonic alliance restored Ferdinand, who eventually abandoned the Constitution and reimposed absolutism, aggrieved Latin Americans began formulating autonomy claims on the grounds that this reimposition grossly violated their rights as Spanish subjects.<sup>47</sup>

These claims spoke directly to a number of tensions within the post-Napoleonic Concert of Europe system convened in 1815 dominated by the great powers of Austria, Russia, Prussia, Britain, and, after 1818, France.<sup>48</sup> With the feudal dynastic empires of Austria, Russia, and Prussia forming a 'Holy Alliance' committed to an interventionist agenda of suppressing popular revolution in the name of order, the question was raised as to what support they should, or could, provide Ferdinand in confronting his rebellious New World subjects.<sup>49</sup> In stark contrast, Britain, the great capitalist empire, was more concerned with developing commercial links (with creole elites in Spanish America identified as high-value partners towards this end) and were thus weary of how feudalistic intervention might disrupt these processes.<sup>50</sup> These interests contributed immensely to Britain's international legal position that the faction which achieved durable *de facto* territorial control was the faction that was appropriately recognised as the legitimate sovereign.<sup>51</sup> Plotting a separate path from both Holy Alliance interventionism and British non-interventionism, France's great designs on the region concerned the creation of monarchic lineages in Latin America that would empower its own royal family.<sup>52</sup> Then there was the US where the judgment of Latin American societies was outweighed by disdain for Old World great power politics, thus leading to the infamous 1823 Monroe Doctrine and its condemnation of new European attempts to claim colonies in the Western Hemisphere.<sup>53</sup> Despite this variable maelstrom of differing conceptions of sovereign legitimacy, while the subject of immense controversy, it was the equation

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<sup>46</sup> See M.C. Mirow, 'Pre-Constitutional Law and Constitutions: Spanish Colonial Law and the Constitution of Cadiz' (2013) 12 Washington University Global Studies Law Review 313.

<sup>47</sup> See Jamie Rodriguez O, *'We Are Now the True Spaniards': Sovereignty, Revolution, Independence, and the Emergence of the Federal Republic of Mexico, 1808–1824* (Stanford University Press 2012).

<sup>48</sup> See George Lawson, 'Ordering Europe: The Legalised Hegemony of the Concert of Europe' in Daniel Green (ed), *The Two Worlds of Nineteenth Century International Relations: The Bifurcated Century* (Routledge 2019) 101.

<sup>49</sup> See Ulrike Schmieder, 'Spain and Spanish America in the System of the Holy Alliance: The Importance of Interconnected Historical Events on the Congresses of the Holy Alliance' (2015) 38 Review 147.

<sup>50</sup> John Lynch, 'British Policy and Spanish America, 1783-1808' (1969) 1 Journal of Latin American Studies 1, 7-8.

<sup>51</sup> Inge Van Hulle, 'Britain's Recognition of the Spanish American Republics: The Gap Between Theory and Practice in International Law (1810-1900)' (2014) 82 Legal History Review 284, 293-300.

<sup>52</sup> Rafe Blaufarb, 'The Western Question: The Geopolitics of Latin American Independence' (2007) 112 American Historical Review 742, 749.

<sup>53</sup> Jay Sexton, *The Monroe Doctrine: Empire and Nation in Nineteenth Century America* (Hill and Wang 2011)

of *de facto* authority with sovereign legitimacy that ultimately prevailed as even Spain came to tacitly recognise Latin American independence on this basis in 1836.<sup>54</sup>

By maintaining consciousness of this backdrop of intersecting pressures, we are well positioned to theorise how it was that the emergence of modern Latin American statehood contributed to the mainstream consciousness of jurisdictional modernity. As Jeppe Mulich has shown, even when Latin American states became independent, they nevertheless maintained the features of layered and divided sovereignty indicative of the region's distinct synthesis of indigenous and European feudal modes of social relations.<sup>55</sup> However, this created a structural issue as the most influential external supporters of Latin American independence were the capitalist powers of the UK and US. With this support came the expectation that Latin American states would conform to the logics of capital accumulation, especially as they were presumed by the modern nation-state, despite the entrenchment of non-capitalist institutions in the region. This was all especially important given that post-independence Latin American states were in a dire situation where, without the options present in the US or Europe when it came to accumulating wealth via presumptively endless colonial expansion, leaders faced pressure to appeal to existing moneyed interests on highly disadvantageous terms. In Frank Griffith Dawson's account of this capitalist reality:

Shielding economic interests from foreign penetration was of secondary concern to the nation-builders. Indeed, foreign loans, investment, and immigration were eagerly sought by the new states. To encourage alien interest, the new constitutions promised foreigners equality of treatment with nationals...Between 1824-25, British investors placed over £17,000,000 in Latin American governmental bonds. In the same period at least 46 joint stock companies with a total capitalization of £35,000,000 were formed in England to carry out operations in Latin America. Mining engineers from Birmingham and New York flocked to the newly liberated states and colonization companies began negotiations with various Latin American governments. Unfortunately, it was soon apparent that despite the good intentions of the new states, enthusiasm alone was insufficient to remedy the inability of their political, economic and social infrastructures to generate sufficient income or internal security to satisfy European expectations.<sup>56</sup>

It is not difficult to see how this context of high-value foreign interest infusion coupled with structural crises regarding state-capacity (the rectification of which being perpetually stunted by external pressures), led to numerous justifications

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<sup>54</sup> At this point it was clear Spain could not mount a successful retaking of its lost colonies, see Hulle (n 60) 302-303.

<sup>55</sup> Jeppe Mulich, 'Empire and Violence: Continuity in the Age of Revolution' 32 *Political Power and Social Theory* (2017) 181.

<sup>56</sup> Frank Griffith Dawson, 'Contributions of Lesser Developed Nations to International Law: The Latin American Experience' (1981) 13 *Case Western Reserve Journal of International Law* 37, 45-46.

for intervention — especially as they concerned the guarantee of commercial interests/expectations.<sup>57</sup> It is here where we can grasp the material basis behind the presumption of jurisdictional modernity that the state must be presumed to possess supreme authority within its borders and any assertion of extra-territorial jurisdiction must, by its nature, be consigned to the realm of the extraordinary.<sup>58</sup> While certainly a fiction, invoking this shield of jurisdictional argument was arguably essential for the survival of sovereign entities existing on the peripheries of a profoundly unequal world-system ultimately held together by jurisdictional assertions. After all, Latin American jurists seeking to adapt existing international legal principle had no illusions that any possible exception to a general ban on intervention, however slight or reasonable it might appear, would be exploited to the extreme in its application to Latin America.<sup>59</sup> On this basis, the minimalistic definition of the state codified in the Montevideo Convention could itself be viewed as the crowning achievement of Latin American, and other ‘semi-peripheral’ jurists, in its presentation of standard that, in its simplicity bereft of substance, left minimal room for perversion.<sup>60</sup>

## V. CONCLUSION

Despite this, it can still be argued that, in attempting to define statehood and jurisdiction on their own terms, these Latin American jurists nevertheless legitimised an exploitative process of ‘international legal reproduction’ that enabled the sovereign state form to continue fortifying hierarchies both within and between societies.<sup>61</sup> Valid as this critique may be, it can also be argued that such uniquely Latin American endeavours exposed existing limits in their configuration of a new

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<sup>57</sup> As ‘civilisational’ logics became entrenched in this era, depictions of this instability were deeply racialised, see Carsten-Andreas Schulz, ‘Civilisation, Barbarism and the Making of Latin America’s Place in 19th-Century International Society’ (2014) 42 *Millennium* 837, 852. On social ‘whitening’ via European immigration as a response, see also Liliana Obregón, ‘Completing Civilization: Creole Consciousness and International Law in Nineteenth-Century Latin America’ in Anne Orford (ed), *International Law and Its Others* (CUP 2008) 247.

<sup>58</sup> Amos Hershey, ‘The Calvo and Drago Doctrines’ (1907) 1 *American Journal of International Law* 26.

<sup>59</sup> For varied studies, see Julius Irizzary y Puente, ‘Doctrines of Recognition and Intervention in Latin America’ (1954) 28 *Tulane Law Review* 313; Ann Van Wynen Thomas and AJ Thomas, *Non-Intervention. The Law and Its Import in the Americas* (Southern Methodist University Press 1956); Frank Griffith Dawson, ‘The Influence of Andres Bello on Latin-American Perceptions of Non-Intervention and State Responsibility’ (1987) 57 *British Yearbook of International Law* 253; Juan Pablo Scarfi, ‘The Latin American Politics of International Law: Latin American Countries’ Engagements with International Law and their Contradictory Impact on the Liberal International Order’ (2022) 35 *Cambridge Review of International Affairs* 662.

<sup>60</sup> Arnulf Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842–1933* (CUP 2015) 8.

<sup>61</sup> Parfitt, (n 12). This was especially prevalent in how Latin American states, namely in relation to indigenous communities, practiced ‘anti-imperial imperialism’, see Greg Grandin, ‘The Liberal Traditions in the Americas: Rights, Sovereignty, and the Origins of Liberal Multilateralism’ (2012) 117 *American Historical Review* 68, 71; see also Carsten-Andreas Schulz, ‘Territorial Sovereignty and the End of Inter-Cultural Diplomacy along the ‘Southern Frontier’ (2018) 25 *European Journal of International Relations* 878.

category and purpose of the state via the 'developmental state' where legitimacy is derived by its challenged to inherited structural marginalization.<sup>62</sup> At various points in history, assertion stemming from this tradition have vastly elevated the radical horizons in international legal thinking. This was true at the turn of the century, when Alejandro Álvarez pioneered counter-hegemonic regionalism by declaring the existence of 'Latin American International Law'.<sup>63</sup> It was true in the context of the Mexican Revolution, where the expropriation of foreign-owned property questioned international law's 'public/private' boundary in a manner that influenced the Russian Revolution and postwar decolonisation.<sup>64</sup> It was true when the rise of the uniquely Latin America-focused insights of 'Dependency Theory' provided a basis for challenging the inequality perpetuating legal and institutional mechanisms in the name of a 'New International Economic Order'.<sup>65</sup> It was also true in the dawning of the new millennium, when Latin American thinkers and activists led the way in challenging the neoliberal 'Washington Consensus' that came to dominate the institutions of international economic law.<sup>66</sup> Greater consciousness of the deep material foundations of such assertions certainly has much potential when enriching the new pathways to theorising jurisdiction that Chimni has so eloquently pioneered.

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<sup>62</sup> Eslava, (n 9). However, 'development' can mean many things, see Richard Peet and Elaine Hartwick, *Theories of Development: Contentions, Arguments, Alternatives* (3rd edn, Guilford Press 2015).

<sup>63</sup> Alejandro Álvarez, 'Latin America and International Law' (1909) 3 *American Journal of International Law* 269.

<sup>64</sup> See Daria Davitti, '1917 and Its Implications for the Law of Expropriation' in Kathryn Greenman et al. (eds), *Revolutions in International Law: The Legacies of 1917* (CUP 2021) 291.

<sup>65</sup> Giovanni Arrighi, 'Global Inequalities and the Legacy of Dependency Theory' (2002) 5 *Radical Philosophy Review* 75; Christy Thronton, *Revolution in Development: Mexico and the Governance of the Global Economy* (University of California Press 2021).

<sup>66</sup> Andrew Lange, *World Trade Law after Neoliberalism: Reimagining the Global Economic Order* (OUP 2011). On perhaps the most comprehensive array of alternatives developed in this Latin American context, see Helen Jaffe, *We Are Cuba! How a Revolutionary People have Survived in a Post-Soviet World* (Yale University Press 2020).