

Jorge L. Esquirol, *Ruling the Law: Legitimacy and Failure in Latin American Legal Systems*. Cambridge: Cambridge University Press, 2020. Figure, tables, acronyms, abbreviations, appendix, notes, bibliography, index, 302 pp.; hardcover \$110, ebook.

One of the most influential nineteenth-century law scholars, Rudolf von Ihering, critically stimulated lawyers of his time with a book titled *The Struggle for Law*. This contribution was not about the legal text or applying major abstract premises to specific cases (legal syllogism). His main point was that elites, workers, and other actors are involved in constant battles to advance laws and doctrines that would favor their interests—and quite often affect those of the rest. This struggle relates to legal interpretation as much as culture, identity, and ideas. A central site of this struggle is how we should think about legal systems and adjudication, both individually and comparatively. This last dimension of the struggle for law inspires Jorge Esquirol's *Ruling the Law: Legitimacy and Failure in Latin American Legal Systems*.

Esquirol's book builds on this line of scholarship, which, during the twentieth century, developed into legal realism and critical legal scholarship in the United States and is particularly relevant for those interested in Latin America and legal reform. Essentially, the author is worried about "Latin American global legal standing" and how people, particularly in Latin America and the United States, have come to think about Latin American legal systems the way they do (6).

Ruling the Law delves into different ways we think about Latin American legal systems, identifying how they are utilized to advance specific interests. The author shows us that the way Latin Americans and foreigners think about regional legal systems makes an essential difference for broader questions about social organization, conditions of opportunity, and emancipation, as well as for the outcome of specific legal proceedings. This includes cases concerning the enforcement of Latin American judicial decisions abroad or allegations of denial of justice. In the second half of the book, Esquirol shows us, through three case studies, that if people think that your laws are not good enough, then adjudicators can justify the application of international standards or negate the validity of your laws and judgments elsewhere. In a nutshell, your legal system may be treated as an infant, as someone who still needs to reach adulthood; in the meantime, others will teach you how to behave in a modern capitalist world.

Esquirol's main argument is that the thinking about Latin American legal systems oscillates between two modes of reasoning (or fictions): Europeanness and legal failure. The first relates to a widely shared perception that laws have a European pedigree in Latin America. They are justified because of this origin; not much else is needed; and they should be analyzed and implemented with due regard to this Europeanness. Esquirol ascribes this project to national elites—arguably, it goes back to colonial elites—who relied on this Europeanness to show the rest of the world how

civilized the countries were in the nineteenth century. This status implied that the newly independent states should be treated as full members of the international community. At the same time, these laws also consolidated the private rules and public institutions underpinning this elite power and its domination over indigenous peoples and nature. The latter were the main losers, as the legal system neither promoted a fair distribution of resources nor recognized their values and identity.

For national elites, this arrangement would be inexpensive unless they ever aimed to challenge European supremacy. Latin American laws will never be fully European, perhaps as national elites will never be truly European, either. The regional legal systems will always be already there—part of the European family—but not yet. In fact, it can be said that Latin American laws will always have to be more European than European laws themselves to maintain a pedigree that remains outside Latin America's laws and institutions. This situation puts European laws in a privileged position as a source of undisputed knowledge.

The second mode of reasoning, legal failure, also refers to an external mechanism of validation. Law and development scholarship is far from uniform, and authors see the relationship between legal systems and economic and social development in different ways. Yet essentially, this work starts from the premise that law and institutions should be examined depending on how efficacious or efficient they are (or not) to attain economic welfare and the rule of law. Following Max Weber and Douglass North, many of these authors find that liberal laws and institutions are the main criteria of analysis—the proper comparator. They presuppose that the laws of the Global North, the developed world, are better than those of the South; as we witness every day, the latter countries continue to do worse economically and institutionally.

Again, legal systems in Latin America are put in a challenging race here. Their legal success requires attaining a level of economic development that may be impossible to reach if it turns out that economic development in the North is the result of something other than liberal laws, or that liberal legal systems actually keep these countries underdeveloped. Economic historians have shown that Global North development is closely related to the colonial bounty and the use of less liberal and more locally embedded institutions (Pomeranz 2000; Chang 2002).

Making sophisticated use of the critical legal toolkit, Esquirol shows that Global North legal systems do not score that well as liberal legal systems, either. If we follow the same quantitative and qualitative criteria that routinely scrutinize Latin American laws, the outcome is that failure is ubiquitous. In one way or another, the problems identified in Latin America are also common to the United States or Europe; Esquirol rightly points out that they are typical of any liberal legal system.

Carefully examining Europeaness and legal failure in Latin America allows the author to criticize much of comparative law scholarship, legal reforms, and transplantation efforts. Rather than allegedly neutral or value-free development projects seeking to legitimize institutions or improve the legal system, these projects are means through which certain actors advance goals and values. Europeaness and legal failure make more sense when analyzed through this lens.

The book develops the argument in a quite general way, providing also three specific case studies (two of them US-focused). A meso-level is, then, something that calls for future attention and research. How Europeaness and legal failure are reproduced and daily resisted are some questions that may help continue the conversation. *Ruling the Law* does not prompt the reader to take up Palacios's *El nuevo derecho* (1920) or Novoa Monreal's *El derecho como obstáculo al cambio social* (1975), just to name two influential Latin American contributions of the 1920s and 1970s (or authors such as Ihering, who have been read by many generations of lawyers in Latin America). An interesting dimension that this literature adds to the arguments in *Ruling the Law* is that what Esquirol describes as a failure may not be so for national elites. After all, the region's inequality is the highest globally; taxation rates remain among the lowest; and elites continue to enjoy unchecked privileges. In exchange, they only have to accept their peripheral existence.

In the same vein, more could probably be said of Latin American attempts to renew or challenge the European and liberal canon. The Mexican revolutionary constitution is just one notable example and a central one, as it inspired the United Nations Charter of Economic Rights and Duties of States (CERDS). This project was supported by the Global South during the 1970s. Something quite unique about CERDS is that it aimed to organize the law based on states' rights and duties to those materially worse off. For a while, one could argue, Latin American law was at the vanguard. It would be interesting to know more about how the fictions identified by Esquirol relate to these proposals in Latin America and outside the region. Were they made within the European tradition? Or were they strategies to break away from this paradigm and the previous record of failures? These questions are significant today as indigenous communities and national legal systems—in Bolivia and Ecuador—have tried to merge notions such as *Buen Vivir* and *La Pachamama* with state laws of arguably a European origin. Latin America may be in the avant-garde again.

This discussion leads to questions about the relationship between Latin American attempts to emancipate and scholarship based in Europe and the United States. After reading *Ruling the Law*, one wonders how the Latin American avant-garde has been received in the center by “enemies” and “friends” alike. Although he was an economist, the case of Raúl Prebisch is helpful to illustrate what I mean here. He was strongly criticized by neoliberal economists, expectedly, but in one way or another, developmental economists worldwide are indebted to his work. Then again, his contributions are often downplayed in the North and limited to import substitution industrialization, a Latin American developmental policy that failed precisely as much as its legal systems, opening the gates for structural reform and the Washington Consensus. The truth is more nuanced. Prebisch favored export-driven development, too, and ECLAC in the mid-1960s was already advocating those policies. Amsden (2004) shows how relevant Prebisch was for the Asian tigers, and Margulis (2017) and others have carefully traced how many of his ideas, inexplicably undercited by development economists in the Global North, have shaped development thinking in the last decades.

The situation of the Latin American legal avant-garde may not be that different. To name one just case, Gros Espiell's work on international developmental law and the right to development is much less cited than other contributions, despite being one of the first and most comprehensive studies. The reasons for the lack of visibility of Latin American scholarship may be multiple: geopolitics, language, coloniality, epistemic communities; yet one senses it is part of the story in *Ruling the Law*, for it occludes the emergence of a strong and confident Latin American legal scholarship. Thanks to Esquirol's contribution, we have better tools to understand how we think about Latin American laws and the relationship between this thinking and the lack of sensitivity to the local context. From here, multiple options for research open up, including how Europeaness, legal failure, and Latin American emancipatory projects relate and represent each other in different places and contexts.

Nicolás M. Perrone
Universidad Andrés Bello

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Rafael Correa's ten-year presidency transformed Ecuadorian politics in multiple ways. Following a period of political instability, when three democratically elected presidents could not complete their terms, the successful rise of Correa was a surprise to many observers of Latin America. Fifteen years ago, Correa was a relatively unknown figure who came second in the first round of the presidential elections. By the time he left office, Correa had rewritten the constitution, won two landslide victories in presidential elections, and become one of Ecuador's longest-serving chief

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