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

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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—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. 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 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.