

SYMPOSIUM ON LATIN AMERICAN INTERNATIONAL LAW

POPULISM'S ANTAGONISM TO INTERNATIONAL LAW: LESSONS FROM LATIN AMERICA

*Marcela Prieto Rudolph**

International legal scholarship often assumes that populists will have an antagonistic relationship with international law.¹ But a view from Latin America, where populism has been an object of study since the early twentieth century, tells a more complex story: populist leaders have engaged in multilateralism, promoted regional unity, and attempted to create international institutions. And populists as well as non-populists have resisted international institutions. This essay questions the assumption that populists have an antagonistic relationship with international law, and argues that this assumption lacks robust empirical support and is theoretically underdeveloped. Latin America is a particularly significant site for challenging this assumption, given the prominent role of the executive in foreign relations² and the rich intellectual history regarding populism itself. The essay concludes by stressing the need for developing a theoretical framework for the study of populism and international law, which international legal scholarship currently lacks. Such a framework should be less Euro-centric and less normatively biased: it should not assume that resistance to international law is always without merit. And it should also allow us to identify what is *distinctively* populist about populism's relation with international law and which aspects are mediated by populism's host ideologies.

Populism

Populism is a heavily contested term, but the ideational approach to populism has become predominant, especially in political science. The ideational approach posits that populism is a “thin-centered ideology” with certain distinctive elements. It is a thin-centered ideology because it has limited programmatic scope and almost always appears attached to other, thick(er) ideologies (i.e., “host ideologies”).³ This explains why populism can be left- or right-wing, nationalist or cosmopolitan. Populism's distinctive elements are a moralistic or Manichean opposition between the elite and the people, on account of which the people are considered homogeneous and pure, and the

* *Assistant Professor of Law, USC Gould School of Law, Los Angeles, California, United States; Adjunct Professor, Universidad Adolfo Ibáñez, Santiago, Chile.*

¹ See Alejandro Rodiles, *Is There a “Populist” International Law (in Latin America)?*, 49 NETH. Y.B. INT'L L. 69 (2019).

² Alexandra Huneus, *Courts Resisting Courts: Lessons from the Inter-American Court's Struggle to Enforce Human Rights*, 44 CORNELL INT'L L.J. 493 (2011).

³ Cas Mudde & Cristóbal Rovira Kaltwasser, *Studying Populism in Comparative Perspective: Reflections on the Contemporary and Future Research Agenda*, 51 COMP. POL. STUD. 1667 (2018).

elite are considered corrupt and self-serving.⁴ Populism also contends that politics should be an expression of the people's general will, which the populist claims to exclusively embody.⁵

Because this approach focuses on ideas, the latter's impact or effects on, say, democracy or international law, are left to empirical study.⁶ The approach is well-suited for this: it sets clear definitional boundaries, allows for the construction of categories, "travels" well across countries, and can be applied at different levels of analysis.⁷

The View from Latin America

Populism's assumed antagonism to international law is often understood as hostility to multilateralism,⁸ international institutions,⁹ and solidarity—or as the embrace of nationalism.¹⁰ The underlying idea is that populism's anti-pluralism and Manichean opposition between the people and the elites will result in resistance to international law and its institutions, which are perceived as impositions of technocratic elites. Yet, there is no robust empirical support for these assumptions.

Populist leaders do engage in multilateralism. Venezuela, for example, has shown interest in developing country networks such as the G77 in the United Nations and the Non-Aligned Movement, among other initiatives.¹¹ Former President Hugo Chávez also supported the merging of Mercosur and the Andean Community into the Union of South American Nations (UNASUR) and proposed the creation of the Bank of the South ("Banco del Sur") to replace the International Monetary Fund for Latin America.¹² Argentina's Juan Domingo Perón promoted a Cold War doctrine of equidistance to the major powers, based on efforts of regional integration; Mexico's Luis Echeverría became the major force behind the New International Economic Order; and Bolivia's Evo Morales has advanced an emerging global law of nature.¹³ Even Brazilian President Jair Bolsonaro's foreign policy, which is based on anti-globalism and anti-communism,¹⁴ is not anti-multilateralism. Its third pillar—religious nationalism—seeks to construct an alternative, ethno-pluralist, and "God-centered" international order, and has engaged in some conservative-religious international alliances.¹⁵ Further, a study of foreign policies pursued by far-right populist governments shows that they cooperate with each other and with ideologically opposed governments, and that they are active participants in global affairs.¹⁶

⁴ *Id.*

⁵ Cas Mudde & Cristóbal Rovira Kaltwasser, *Populism and (Liberal) Democracy: A Framework for Analysis*, in [POPULISM IN EUROPE AND THE AMERICAS: THREAT OR CORRECTIVE FOR DEMOCRACY](#) 8–9 (Cas Mudde & Cristóbal Rovira Kaltwasser eds., 2012).

⁶ Kirk A. Hawkins & Cristóbal Rovira Kaltwasser, *Introduction: The Ideational Approach*, in [THE IDEATIONAL APPROACH TO POPULISM: CONCEPT, THEORY, AND ANALYSIS](#) (Kirk A. Hawkins, Ryan E. Carlin, Levente Littvay & Cristóbal Rovira Kaltwasser eds., 2018).

⁷ Cas Mudde, *Populism: An Ideational Approach*, in [OXFORD HANDBOOK OF POPULISM](#) 34 (Cristóbal Rovira Kaltwasser, Paul Taggart, Paulina Ochoa & Pierre Ostiguy eds., 2017).

⁸ See, e.g., Lea Ina Schneider, *The Concept of International Law in an Era of Populism*, 7 IALS STUDENT L. REV. 28 (2020).

⁹ See, e.g., Eric A. Posner, *Liberal Internationalism and the Populist Backlash*, 49 ARIZ. ST. L.J. 795 (2017).

¹⁰ See, e.g., Heike Krieger, *Populist Governments and International Law*, 30 EJIL 971 (2019).

¹¹ BARRY CANNON, [HUGO CHÁVEZ AND THE BOLIVARIAN REVOLUTION: POPULISM AND DEMOCRACY IN A GLOBALISED AGE](#) 182 (2009).

¹² Iñaki Sagarzazu & Cameron G. Thies, *The Foreign Policy Rhetoric of Populism: Chávez, Oil, and Anti-Imperialism*, 72 POL. RES. Q. 205, 207 (2019).

¹³ [Rodiles](#), *supra* note 1.

¹⁴ Guilherme Stolle Paixão e Casarões & Déborah Barros Leal Farias, [Brazilian Foreign Policy Under Jair Bolsonaro: Far-right Populism and the Rejection of the Liberal International Order](#), CAMBRIDGE REV. INT'L AFF. 1 (2021).

¹⁵ *Id.* at 14.

¹⁶ See, e.g., Feliciano De Sá Guimarães & Irma Dutra De Oliveira E Silva, [Far-Right Populism and Foreign Policy Identity: Jair Bolsonaro's Ultra-Conservatism and the New Politics of Alignment](#), 97 INT'L AFF. 345, 349–50 (2021).

Regarding international institutions, populism's claim to exclusively representing the people might translate into skepticism toward these institutions, and, particularly, toward those that undercut political representation and accountability of national authorities.¹⁷ Empirically, both populists and non-populists have resisted international institutions,¹⁸ which suggests that this is not a distinctively populist phenomenon, but one that is mediated by populism's host ideologies. Indeed, in the case of Latin American left-wing populists—who are also anti-imperialist and anti-United States—attacks against international institutions (and other actors) have focused on those that are perceived as the guardians of neoliberalism in the region: the United States, the International Monetary Fund, and the World Bank.¹⁹

The “backlash” against the inter-American human rights system is not a uniquely populist phenomenon either.²⁰ Venezuela denounced the American Convention on Human Rights in 2012, and Ecuador and Bolivia have argued that the Organization of American States (OAS) is compromised by U.S. influence.²¹ But the declaration delivered in 2019 to the executive secretary of the Inter-American Commission on Human Rights by the permanent representatives of Argentina, Brazil, Colombia, Chile, and Paraguay, did not only come from populist leaders.²² Moreover, data reveals that it is national courts, more than the executive, that fail to comply with the Inter-American Court's rulings.²³

Regarding nationalism and solidarity, populism is not always nationalist,²⁴ or against international solidarity. Chávez's diplomacy furthered the move toward South American unity and Latin American and Caribbean unity, and so have other leftwing populists in the region.²⁵ Some populist leaders have even constructed the people in a way that transcends borders, a phenomenon some scholars refer to as “transnational populism.”²⁶

Examples from Latin America include ALBA, the “Bolivarian Alliance for the Peoples of our America,”²⁷ a multinational alliance founded by Fidel Castro and Hugo Chávez, which encourages cooperation and reciprocity.²⁸ ALBA claims to represent not just the Latin American people, but people from all over the world—and, particularly, the people of the Global South—who are called to unite to end capitalism, save

¹⁷ Angelos Chrysosgelos, *Populism in Foreign Policy*, in [OXFORD RESEARCH ENCYCLOPEDIA OF POLITICS](#) (2017).

¹⁸ See, e.g., Mikael Rask Madsen, Pola Cebulak & Micha Wiebusch, [Backlash Against International Courts: Explaining the Forms and Patterns of Resistance to International Courts](#), 14 INT'L J. L. CONTEXT 197 (2018).

¹⁹ Cristóbal Rovira Kaltwasser, *Explaining the Emergence of Populism in Europe and the Americas*, in [THE PROMISE AND PERILS OF POPULISM: GLOBAL PERSPECTIVES](#) 189, 207 (Carlos de la Torre ed., 2015); Carlos De la Torre, [Populism and the Politics of the Extraordinary in Latin America](#), 21 J. POL. IDEOLOGIES 121, 124–25 (2016).

²⁰ See Jorge Contesse, [Resisting the Inter-American Human Rights System](#), 44 YALE J. INT'L L. 179 (2019).

²¹ Alexandra Huneeus, [Venezuela's Exit from the Inter-American Court](#), ICONNECT (Oct. 15, 2012).

²² Amnistía Internacional, [Américas: Sistema Interamericano constituye una garantía fundamental para la vigencia de los derechos humanos en la región](#) (Apr. 24, 2019).

²³ [Huneeus](#), *supra* note 2.

²⁴ See, e.g., Benjamin De Cleen, *Populism and Nationalism*, [OXFORD HANDBOOK OF POPULISM](#), *supra* note 7.

²⁵ [CANNON](#), *supra* note 11, at 188.

²⁶ Benjamin Moffitt, [Transnational Populism? Representative Claims, Media and the Difficulty of Constructing a Transnational “People”](#), 24 JAVNOST-THE PUBLIC 409 (2017); Benjamin De Cleen, Benjamin Moffitt, Panos Panayotu & Yannis Stavarakakis, [The Potentials and Difficulties of Transnational Populism: The Case of the Democracy in Europe Movement 2025 \(DiEM25\)](#), 68 POL. STUD. 146, 153 (2020).

²⁷ ALBA, [What Is the ALBA](#).

²⁸ [CANNON](#), *supra* note 11, at 188.

humanity, and save planet Earth.²⁹ ALBA's construction of the people is mediated by the ideology of *Americanismo*, which emphasizes anti-imperialism and supposes a fraternal identity between the inhabitants of Latin America.³⁰

Populism and International Law

These examples suggest that the assumptions about populism's embrace of nationalism and hostility to multilateralism, international institutions, and solidarity lack robust empirical support. "Antagonism to international law" is often conceptualized in terms of these assumptions. Yet, this conceptualization, and the underlying theoretical framework, should be revised, both methodologically and substantively.

Understanding the relationship between populism and international law is methodologically challenging: international law is a fragmented regime, and populists vary in their definition of the people.³¹ As a result, this relationship is likely to be mediated by the host ideologies to which populism attaches.³² This requires empirical confirmation, but it has proved to be true in the study of foreign policy and populism.³³ It would also explain the great variance we have seen in populists' approaches to international law.

Substantively, the assumption is underdeveloped. First, it requires a proper account of what resistance or antagonism to international law entails. Anti-multilateralism, for example, does not really denote a position against—or for—international law: that will depend on the goals pursued through multilateralism and how those goals relate to international law. Non-compliance is an obvious alternative, but the least studied in the context of populism, perhaps because both compliance and non-compliance with international law are pervasive across both populist and non-populist governments. They are also likely to be mediated by the host ideologies.

Resistance to international institutions is perhaps a better candidate, but treaty renunciation and withdrawal from institutions are permitted by international law under certain circumstances. Further, some instances of resistance seem mediated by the host ideologies and are not clearly antagonistic to international law. For example, Venezuelan leaders viewed the OAS as an obstacle to the Bolivarian revolution, and Chávez referred to it and the Inter-American Commission on Human Rights as "a mafia," but Venezuela had also been setting up parallel institutions to serve as alternatives to the OAS.³⁴ Thus, these populists' opposition to the inter-American system seems mediated by their anti-imperialism and *Americanismo*, rather than by a general opposition to the authority of international institutions. The latter is hard to square with Venezuela's praise of, and promised cooperation with, the Human Rights Council.³⁵ And even if these promises are insincere, they are not necessarily insincere because of populism, but may stem from illiberalism or authoritarianism.³⁶

²⁹ Laura M. Henderson, *The Democratic Potential of Transnational Populism*, in [EUROPEAN POPULISM AND HUMAN RIGHTS](#) 134 (Jure Vidmar ed., 2020); [Moffitt](#), *supra* note 26, at 412.

³⁰ Cristóbal Rovira Kaltwasser, *Latin American Populism: Some Conceptual and Normative Lessons*, 21 *CONSTELLATIONS* 494 (2014).

³¹ Marcela Prieto Rudolph, *Populist Governments and International Law: A Reply to Heike Krieger*, 30 *EJIL* 997 (2019).

³² *Id.* Regarding foreign policy, see Bertjan Verbeek & Andrej Zaslove, *Populism and Foreign Policy*, in [OXFORD HANDBOOK OF POPULISM](#), *supra* note 7.

³³ See, e.g., Daniel F. Wajner, *Exploring the Foreign Policies of Populist Governments: (Latin) America First*, 24 *J. INT'L RELATIONS & DEV.* 651 (2021).

³⁴ Ximena Soley & Silvia Steininger, *Parting Ways or Lashing Back? Withdrawals, Backlash and the Inter-American Court of Human Rights*, 14 *INT'L J. L. CONTEXT* 237, 251 (2018).

³⁵ See [Notice of Denunciation, Minister of Popular Power for Foreign Affairs of the Bolivarian Republic of Venezuela, Letter from Nicolás Maduro Moros to José Miguel Insulza, Secretary General, Organization of American States](#) (Sept. 6, 2012).

³⁶ See, e.g., David Landau, *Abusive Constitutionalism*, 47 *U.C. DAVIS L. REV.* 189 (2013).

Attempts to modify or create international institutions—like the ones discussed before—might qualify as antagonistic to the status quo, but they do not necessarily denote antagonism to international law itself. Of course, attempts at reform might signal discontent with certain areas of international law or some of its values, and in that way we might describe them as “antagonistic” to current international law. But, alternatively, we might want to conceptualize “antagonism” to international law in a way that allows us to distinguish between attempts at reform that challenge the existence or the foundations of international law and other, minor, reforms. Most importantly, the evaluation of attempts at reform that challenge the status quo is an independent and substantive question about what international law should be like and what values it should pursue. A proper conceptualization of “antagonism to international law” should be careful to keep these questions separate.

A second issue concerns the underlying rationale for assuming populism’s antagonism to international law. The ideational approach, which focuses partly on populism’s claim to exclusively representing the people, helps us understand populism’s ambivalent relationship with (liberal) democracy.³⁷ However, on its face, it does not say anything about the relationship between populism and international law. Some international legal scholars suggest that, due to international law’s slim democratic credentials, populists will regard international law as a creation and imposition of the elites.³⁸ Erik Voeten, for example, argues that populism offers an ideology to challenge the authority of international courts, because the latter fail to reflect the will of the people.³⁹ This assumption has at least two problems.

First, populism is best understood in relation to democracy. Its claim of exclusively representing the people entails a particular understanding of democratic representation, inconsistent with majoritarianism and procedural democracy.⁴⁰ But there is nothing distinctively populist about the critique of international law or international institutions as not representing the will of the people. International law is in fact not democratically created, nor is it created exclusively by democratic states. Thus, the democratic critique is available to every actor with some commitment to democracy, and has in fact been consistently raised by Third World Approaches to International Law (TWAAIL) scholars and others.⁴¹

It is important to appropriately respond to, and channel, these democratic critiques,⁴² which are not necessarily antagonistic to international law. In fact, some of the democratic critiques raised by populism might have emancipatory potential regarding international law. Whether that is the case must be determined empirically and is likely to depend on the host ideology and the precise form the critique takes.

Second, populism’s claim of exclusively representing the people does not translate well to the international sphere. Unless populists are willing to make claims amounting to world domination, they seem forced to accommodate some pluralism at the international level, where the claim of exclusively representing the people is far less plausible than in the domestic setting. In fact, populists acting internationally do not claim to exclusively represent humanity. As we saw, they engage globally, build alliances, and some of them even favor a multipolar world. For example, the main objective of Venezuelan foreign policy under Chávez was to move from perceived U.S. domination to a multipolar world, based on regional blocs.⁴³ The goal of creating a multipolar world, in particular,

³⁷ [Mudde & Rovira Kaltwasser](#), *supra* note 5, at 4.

³⁸ *See, e.g.,* [Posner](#), *supra* note 9.

³⁹ ERIK VOETEN, [IDEOLOGY AND INTERNATIONAL INSTITUTIONS](#) 156 (2021).

⁴⁰ Paulina Ochoa Espejo, *Populism and the Idea of the People*, in [OXFORD HANDBOOK OF POPULISM](#), *supra* note 7.

⁴¹ Christine Schwöbel-Patel, [Populism, International Law and the End of Keep Calm and Carry On Lawyering](#), 49 NETH. Y.B. INT’L L. 97, 113 (2019).

⁴² *Id.* at 99.

⁴³ [CANNON](#), *supra* note 11, at 178.

seems inconsistent with populism's supposed anti-pluralism, which disfavors multiple centers of power and the politics of compromise and consensus.⁴⁴

Conclusion

The assumption about populism's antagonism to international law is theoretically underdeveloped and lacks robust empirical support. As international legal scholars, we should develop a less normatively biased framework for studying populism and international law—a framework that helps us identify what is *distinctively* populist about populism's relation with international law,⁴⁵ and what aspects are mediated by the host ideologies.

Latin America provides a good starting point. It has a rich history of populist leaders, both left-wing—e.g., Venezuela's Hugo Chávez—and right-wing—e.g., Brazil's Jair Bolsonaro. Further, the executive in Latin America has a prominent role in foreign relations,⁴⁶ which might facilitate studying the impact of populist leaders on international law.

A proper theoretical framework is important for empirically studying and normatively evaluating populism—to know what aspects of it to channel and resist, and how, we must first conceptualize its relation to international law properly.

⁴⁴ Cas Mudde & Cristóbal Rovira Kaltwasser, *Exclusionary vs. Inclusionary Populism: Comparing Contemporary Europe and Latin America*, 48 *GOV'T & OPPOSITION* 147, 152 (2013).

⁴⁵ Regarding populism and foreign policy, see [Chryssogelos](#), *supra* note 17.

⁴⁶ [Huneus](#), *supra* note 2.