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Sanity in International Relations: An Experience in Therapeutic Jurisprudence

Roberto P. Aponte Toro

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ARTICLE

SANITY IN INTERNATIONAL RELATIONS: AN EXPERIENCE IN THERAPEUTIC JURISPRUDENCE

ROBERTO P. APONTE TORO*

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* Professor of Law, University of Puerto Rico School of Law. The author thanks his colleagues at the U.P.R. School of Law, in particular José J. Alvarez, David Wexler, Efrén Rivera, Michael Whipple and Dean Antonio García Padilla for reading earlier drafts of this Article. The author also thanks his research assistants, Irmánilis González and Eduardo Ortiz, for their support. This Article was originally presented at the International Conference on Therapeutic Jurisprudence held in Winchester, England, in July, 1998. The author assumes full responsibility for the ideas expressed here which are my own.

I. INTRODUCTION

Therapeutic jurisprudence is defined as "the study of the role of the law as a therapeutic agent"¹ and "the use of social science to study the extent to which a legal rule or practice promotes the psychological or physical well-being of the people it affects."²

Through this open-ended definition, the main spokesmen of therapeutic jurisprudence have unlocked the doors of a very broad field of inquiry. Although initially associated with the mental health law area, the new movement is no longer constrained to that area.³

From the beginning, therapeutic jurisprudence has received contributions from fields such as philosophy, criminology, and others⁴ and is emerging as a strong interdisciplinary movement that widens the classical ways of looking at law's impact.⁵ In a short time, therapeutic jurisprudence has attracted legal scholars from the United States, Canada, the United Kingdom and Australia, and already there are indications of some interest in the field in Latin America.⁶

Recently, new directions of inquiry have generated scholarship in areas such as personal injury, labor arbitration,

1. LAW IN A THERAPEUTIC KEY xvii (David B. Wexler & Bruce J. Winick, eds. 1996).

2. *Id.* (quoting Christopher Slobogin).

3. "Although it uses the tools of the mental health disciplines, as a field of inquiry therapeutic jurisprudence is by no means confined narrowly to mental health law. Nor is it a law/psychology or a law/mental health smorgasbord." *Id.* Professor Winick has published an analysis of the field of mental health law from the perspective of Therapeutic Jurisprudence. See BRUCE J. WINICK, THERAPEUTIC JURISPRUDENCE APPLIED: ESSAYS ON MENTAL HEALTH LAW (1997).

4. See LAW IN A THERAPEUTIC KEY, *supra* note 1, at xviii.

5. See *id.*

6. In 1993, Professor Wexler published his first article on Therapeutic Jurisprudence written in Spanish in a Colombian law review. See David B. Wexler, *Nuevas Direcciones en la Jurisprudencia Terapéutica: La Doctrina de la Ley Sobre Salud Mental Fuera de su Contexto Convencional*, 85 UNIVERSITAS 319 (Nov. 1993). Wexler has also offered a number of conferences on the subject in Puerto Rico, and regularly teaches a course devoted to the subject at the University of Puerto Rico Law School (U.P.R.). Wexler is now permanently dividing his time between the University of Arizona and U.P.R. At U.P.R. he is directing the newly formed International Network on Therapeutic Jurisprudence. U.P.R.'s law journal, *Revista Jurídica U.P.R.*, has launched the Therapeutic Jurisprudence Forum as a regular feature of this journal. And, Professor María Jiménez, Interim Director of the U.P.R. School of Law Legal Aid Law Clinic, reports that the Therapeutic Jurisprudence model is being incorporated as part of the pedagogical model in a number of sections of the Clinic.

contracts, and commercial law.⁷ The outer borders of the field, therefore, are moving further outward. Yet, they still fall within the domestic domain.

As is often the case in the emergence of a new school or paradigm, it engages people with different degrees of interest ranging from the most total conviction to those simply curious about it.⁸ This essay is more a product of the latter strain than of the former. Rather than an attempt to bring home a conviction, this essay intends to lay out a perspective as to how the therapeutic jurisprudence approach may be used in the context of international law.

The definition of therapeutic jurisprudence is definitely broad enough to contemplate issues related to international law. No one will contend that political sociology and political psychology, relied upon here, are not part of the relevant social sciences world contemplated by those in the field, with ample literature and academic research to their credit.⁹ International law, on the other hand, encompasses both the rules as well as the practices included in his definition. They may appear under the robes of treaties, conventions, and resolutions—consensual expressions of legal rules and principles.¹⁰

7. See *LAW IN A THERAPEUTIC KEY*, *supra* note 1, at xix.

8. See THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* 24 (3d ed. 1996). I classify myself as aspirant to the mop-up role described by Professor Kuhn: Few people who are not actually practitioners of a mature science realize how much mop-up work of this sort a paradigm leaves to be done or quite how fascinating such work can prove in the execution. And these points need to be understood. Moping-up operations are what engage most scientists throughout their careers. They constitute what I am here calling normal science. . . Instead, normal-scientific research is directed to the articulation of those phenomena and theories that the paradigm already supplies.

Id.

9. See ACCIÓN Y DISCURSO-PROBLEMAS DE PSICOLOGÍA POLÍTICA EN AMÉRICA LATINA (Maritza Montero ed., 1991); MARITZA MONTERO, *IDEOLOGÍA, ALIENACIÓN E IDENTIDAD NACIONAL: UNA APROXIMACIÓN PSICOSOCIAL AL SER VENEZOLANO* (2d ed. 1987); *PSICOLOGÍA POLÍTICA LATINOAMERICANA* (Maritza Montero ed., 1987).

10. "In terms of much international law theory, international agreements are thought to be legally binding because they have been concluded by sovereign states consenting to be bound." MARK W. JANIS, *AN INTRODUCTION TO INTERNATIONAL LAW*, 10 (1988). According to Professor Rebecca Wallace:

International Law is not imposed on states—there is no international legislature. The international legal system is decentralized and founded essentially on consensus. International Law is made primarily in one of two ways: through the practice of states (customary international law) and through agreements entered into by state (treaties).

REBECCA M.M. WALLACE, *INTERNATIONAL LAW: A STUDENT INTRODUCTION* 3 (1986).

International customary law is also an important source of international rulemaking and constitutes evidence of a generalized practice.¹¹ Custom¹² is nothing less than the embodiment of a consensus over that "practice" which, according to international law principles, is characterized by a psychological sense of obligation, an *opinio juris* on the part of the party subjected to its normative prescriptions.¹³ So, at least at first blush, international law fits nicely into the therapeutic jurisprudence framework of analysis. Life, however, is seldom so simple.

11. It is generally agreed that article 38 of the Statute of the International Court of Justice itemizes the principal sources of International Law. It reads as follows:

1. The court whose function is to decide in accordance with International Law such disputes as are submitted to it, shall apply:

a. International conventions, whether general or particular, establishing rules expressly recognized by the contesting states.

b. International custom, as evidence of a general practice accepted as law.

c. The general principles of law recognized by civilized nations.

d. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

Statute of the International Court of Justice, as annexed to the Charter of the United Nations, *opened for signature* June 26, 1945, 59 STAT. 1031, 1060 (entered into force Oct. 31, 1945).

12. Anthony D'Amato probably will object somewhat to the liberties taken regarding the consensual nature of custom. According to D'Amato:

Similarly, states do not consent to the specific rules of customary law, but only to the "metarule" of customary law formation. There are many proofs of this proposition. For example, customary rules immediately bind new states who come into existence in the international system, yet no state coming into existence has ever, in the history of international law, announced its non-consent to some of the norms of international law.

Anthony D'Amato, *Sources of General International Law*, in INTERNATIONAL LAW ANTHOLOGY 51 (Anthony D'Amato, ed., 1994) (discussing the nature of customary law and the binding authority of treaties).

13. For a critical discussion of the concept of custom, and in particular of the genesis and development of the psychological element in the evolution of Customary Law, see ANTHONY D'AMATO, THE CONCEPT OF CUSTOM IN INTERNATIONAL LAW (1971). For our purposes, it is just enough to say that *opinio juris* refers to that sense of obligation on the part of the party, which explains much better his or her conduct, than a mere sense of deference, etiquette, or graciousness.

A most provocative article¹⁴ raised a number of concerns over attempts by internationalists to apply categories used to describe the conduct of individuals to a state or nation:

How, then, can the state "know" when it has acted wisely or well? If except by fictional extension there is no such thing as a "national will", then the moral and motivational similarities presumed to exist between nations and persons when, say, both are thought to be just or to engage in just interactions, are a vague illusion.¹⁵

The limitations exposed by this passage, if true, do represent serious roadblocks in any attempt to assume interchangeability between the nature of the domestic interaction between legal rules and individuals, and between international rules and states. Anyone attempting to use the therapeutic jurisprudence perspective to work on international law issues has to be aware of those potential limitations.

This essay is not an attempt to face up to and discard all of the interesting and pertinent issues which have been brought to the fore, with some of which we may concur.¹⁶ Rather, this essay

14. Virginia Black, *Why Nations Find it Hard to be Good to Each Other*, 4 VERA LEX 7, 7-9 (1983-84). Ms. Black traces what she calls the doctrine of "transferable virtue" to Plato and Grotius:

This doctrine of transferable virtue, transferring "up" to a complex organ from a less complex organ—from persons' interactions to nations' interactions—may find its philosophic origin in Plato who thought justice in the state was the same as justice in the person, only on a grander scale. . . .

....

The error of reasoning may be more modern than Plato. Certainly errors of equivocal transfer abound; and nowhere do they abound more abundantly than in our thinking about the state. They may indeed find their modern origin in Grotius who overlooked the important difference between traits and relations common to all people (*ius gentium*), and relations that disparate groups of peoples can have with one another *as groups*. He took those to be the same, using *ius gentium* indiscriminately for both. We have to try to see where the false predication lies in presumed person-to-state correspondence, so as not to analogize from the simple or sensory referent (what persons do) to an obscure abstraction like the state. Thinking that any actions persons can take, nations also can take can be a dangerous metaphor. . . .

Id. at 7.

15. *Id.* at 8.

16. In all justice to Ms. Black, she really does not object to all possible instances of so called "transferability."

Like persons, however, nations enjoy a certain character or state of being. They can be thought of as free or tyrannous. They can enjoy what we recognize as independence or prosperity. Because nations enjoy

reflects on the positive or negative effects that the operation of international rules and policies may have over the complex and multifaceted well being of "states." States have different levels of reality in my discourse. They have a collective and corporate sphere, but they are run by individuals and groups.

I am in no way attaching to the figure of the state human characteristics, nor creating expectations as to its conduct based on such attachment. However, I do understand that states and nations emerge from individuals and groups, and are run by them.¹⁷ In many ways those individuals and groups engage in conduct which may be an expression of learned psychological or mental models,¹⁸ and which, at the same time, may provoke in others, such as foreign leaders or negotiators, predictable psychological reactions.

The extent to which international rules have state leaders in mind or, to the contrary, address their commands toward the abstract figure of the state, is for me an important question which must be studied in the future. How effective and efficient international rules are in affecting one or the other is also a

independence or rights of autonomy in that it is unjust to invoke them or to meddle in their affairs, they can, like persons, respect each other. They can be regarded as moral and legal equals provided a context explains what this means and what implications it conveys. In the United Nations, for example, and for the purpose of voting members, nations are considered moral and legal equals.

Id. at 9.

17. Ms. Black herself accepts that the state is "an obscure abstraction." *Id.* at 8. She also had no problem recognizing that individuals are shaped by social influences: Social norms and moral and religious teachings educate them. Law guides them. . . . When these influences exert themselves upon persons' unitary mind and feeling, the product can, in rough measure be known. Because persons, being free, can respond intelligently in light of those influences in a kind of self-creating spiral, they themselves can use, evaluate, modify, or even disregard the effects upon them of social influences. Reciprocal adaptation results between individuals and the social environment. Since regular reciprocal adaptation reinforces customs, regularities, and rules, interpersonal expectations become habituated. This makes for civil order. Under these conditions of internal accord, personal virtue develops and the moral actions of individuals can emerge.

Id.

18. On Mental models, and their effect, see Charlotte Roberts, *Reinventing Relationships: Leverage for Dissolving Barriers to Collaboration*, in PETER M. SENGE ET AL., *THE FIFTH DISCIPLINE FIELD BOOK: STRATEGIES AND TOOLS FOR BUILDING A LEARNING ORGANIZATION* 69-74 (1994).

matter of great importance in our field.¹⁹ Thus, those questions will be addressed preliminarily in this essay.

Part II of this essay examines, within the context of therapeutic jurisprudence, a recent international incident between the United States and Mexico which came about as a result of U.S. efforts to combat drug trade in the region. Part III explores the effects that devalued self-images experienced by some Latin American countries' populations have on those states' international relations. Part IV poses a number of questions stemming from the interaction between self-image soft spots and sovereignty concerns in the context of commitments regarding international cooperation. It also examines some of the arguments for and against the use of direct intervention, such as Operation Casablanca, to combat the drug trade. Part V offers reasons why individual self-image governs state action. Using the results of a therapeutic jurisprudence analysis, this essay concludes that international law principles, coupled with devalued self-images prevalent in some Latin American countries, may continue to inhibit cooperation efforts between the United States and Mexico.

19. "Most studies of international relations characterize the international system as anarchic in nature, in which there is no common government or formal governance structure among states." William J. Aceves, *Institutionalist Theory and International Legal Scholarship*, 12 AM. U. J. INT'L L. & POLY 227, 236 (1997). It is difficult to talk about efficiency as to such a system and the rules it produces. Most of the work done on efficiency has been in the context of institution theory. We find that most of it has "states" in mind, although one is able to perceive that the importance of studying individuals and their role has been acknowledged. In effect, all Prisoner's Dilemma contributions to international relations theory, regarding cooperative activities between states, are based on the predicted conduct of individuals. See on that the following comment by Aceves:

The Tit-for-Tat strategy requires an individual to cooperate in the first round of interaction and match an opponent's moves in subsequent rounds. If an opponent cooperates, Tit-for-Tat strategy rewards the action by cooperating in the next round. If the opponent defects, however, Tit-for-Tat strategy punishes the defection in the next round. In the iterated Prisoner's Dilemma, therefore, the long-term benefits of cooperation outweigh the short-term benefits of defection. According to Axelrod, "[a]s long as the interaction is not iterated, cooperation is very difficult. That is why an important way to promote cooperation is to arrange that the same two individuals will meet each other again, be able to recognize each other from the past, and to recall how the other has behaved until now. This continuing interaction is what makes it possible for cooperation based on reciprocity to be stable.

Id. at 240 (citations omitted) (emphasis added).

II. THE THERAPEUTICS OF OPERATION CASABLANCA

A current international incident sets the stage for our discussion. The incident involves sovereignty and territorial integrity claims by Mexico in response to U.S. extraterritorial actions, taken to combat the illicit drug trade.²⁰

That countries exercise sovereign authority within their borders, and that they may expect other countries to respect their territorial integrity, seems by now to be fundamental norms of international law. In this instance, Mexico, a country which shares with the United States both a common physical border as well as a special economic and political arrangement, feels that those principles apparently have been recently compromised.

As is generally known, no other issues have been more contentious in the historical relations between the United States and Mexico than national sovereignty and territorial integrity. In the bilateral relation between the United States and Mexico, there have been more than a few confrontations throughout the nineteenth and twentieth centuries. As a direct result of such confrontations, Mexico ended up losing almost half of its national territory.²¹ More recently, during the twentieth century, one can discern a growing consensus in unilateral violations of international borders, as well as interventionist actions within other states.

It has been in the last few years that previously distant relations between the United States and Mexico have changed. Relations have improved, to such an extent that today Mexico and the United States have put in place a free trade area, one which also includes Canada.²² Still, mutual suspicion abounds.

During recent years, one of the major U.S. concerns regarding Mexico has been the alleged drug flow through the Mexican border.²³ As part of its anti-narcotic activities, U.S. drug

20. See Dan Van Natta Jr., *U.S. Indicts 26 Mexican Bankers in Laundering of Drug Funds*, N.Y. TIMES, May 19, 1998, at A6, available in 1998 WL 541222; Rich Oppel, *Intervention Not Isolation*, AUSTIN AM.-STATESMAN, May 31, 1998 at H3, available in 1998 WL 3612201; Tim Golden, *U.S. Drug Sting Riles Mexico, Imperiling Future Cooperation*, N.Y. TIMES, June 11, 1998, at A1, available in 1998 WL 5400330.

21. See OCTAVIO PAZ, *EL LABERINTO DE LA SOLEDAD* 124 (1961).

22. See North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., 32 I.L.M. 289.

23. On U.S. concerns regarding Mexico's drug flow, see *Mexico: Measures to Combat Money Laundering, 1997: Hearing Before the House Comm. On Banking and Financial*

enforcement authorities implemented a sting operation, referred to as Operation Casablanca, in Mexico to expose a substantial money laundering operation.²⁴ Partly due to the fact that sting operations are outlawed in Mexico, Mexicans in general reacted negatively to the operation. Sensitive to the public outcry, Mexican authorities first argued that they were never informed of the operation. However, it soon became clear that U.S. agents had informed top Mexican bureaucrats of the operation, but that Mexico never gave its final approval.

This international controversy provides a context within which to analyze findings by Latin American scholars on devalued national identity.²⁵ We will also consider Mexican responses to that incident, which were based on sovereignty and territorial integrity considerations, as well as the rationale behind the United States drug enforcement policies.

The literature in the correctional law and mental health law fields often shows that the intervention of an existent domestic law or procedural rule may in the long run end up being more damaging than helpful.²⁶ The following Parts inquire as to whether similar damaging effects may be encountered in the dynamics taking place in the interaction between an international principle, state policy or rule, and a state.

Services (May 15, 1997) (prepared testimony of Jonathan Winer, Deputy Assistant Secretary of the U.S. Department of State) *available in* Federal News Service [hereinafter Winer testimony].

24. See Van Natta Jr., *supra* note 20.

25. See sources cited *supra* note 9. Admittedly, most of the data of those studies was gathered in the 1970's and 1980's and some of the data regarding those findings may be subject to diverse interpretation according to the particular social research school involved. Still my perception is that not too many people will question the general picture they project.

26. See DAVID B. WEXLER, *THERAPEUTIC JURISPRUDENCE: THE LAW AS A THERAPEUTIC AGENT* 3-20 (1990). It is important to note that some Therapeutic Jurisprudence analysis may end up making arguments favoring less interventionism and paternalism on the part of public agencies or legal agents, in order to permit the natural psychotherapeutic process to run its course. In other situations, however, the therapeutic process may be found to require more intervention—for example, when forcing a juvenile to pay a price for his/her actions. Because Therapeutic Jurisprudence is a movement emerging in the boom years of law and economics, some people may find parallels between the two movements. In our case we want to make clear that, in the abstract, we do not necessarily share some of the law and economic concerns over state interventionism.

III. LATIN AMERICANS: THE SYNDROME OF AN UNDERVALUED SELF-IDENTITY

Dr. Maritza Montero, a professor at the School of Psychology of the Central University in Venezuela, having performed a thorough examination of Latin American psychological literature produced in the previous two decades, reached the following conclusions regarding self-image in Latin America:

Latin Americans share similar traditions regarding independence: between 1808 to 1899, there were liberation wars from Mexico to Argentina. Past glories are a recurring theme in all of these countries, as well as the idea that the glories of the XIX century will never be repeated; that men of the stature of the founding fathers have not been born again, and that people today should look back to find inspiration in the big accomplishments of the past century, in order to overcome all the wrong brought about by the corrupt governments which have succeeded; all of those are recurrent themes both of intellectuals and politicians.²⁷

One of the pioneering works in this area was a study done in the mid-1950s in Mexico by a group of researchers led by Guillermo Dávila.²⁸ The group wanted to study the image that Mexican children had of North Americans. The research group concluded with a finding that Dr. Montero has found repeated in many other later studies: an overvaluation of North Americans as compared to how Latin Americans evaluate their own national groups. According to Dr. Montero, further studies in Venezuela, more than a decade later, produced similar results.

Again, in 1968, we find another work in which Constancio De Castro Aguirre, explored national stereotypes in a Latin American group. The group whose stereotypes were measured, felt that Germans, Russians, North Americans, and Jews, fall within the same category, one identified by such characteristics as having scientific orientation, and being ambitious, materialist, perseverant and hard working. Chinese, and again Jews, Africans, and Russians (Group 2), were seen as arrogant, and superstitious. Group 3, grouped together Spaniards, Italians,

27. *PSICOLOGÍA POLÍTICA LATINOAMERICANA*, *supra*, note 9, at 25 (author's translation).

28. *See id.* at 25.

Latin Americans, and Portuguese (all Latin countries), which were considered talkative, religious and artistic. North Americans and British (Group 4) share the following attributes: methodics, pragmatists and ambitious. Finally, the French and Italians (Group 5), were seen as frivolous, courteous, artistic and sensual.²⁹

A follow up study by José Miguel Salazar, also done in Venezuela, found a similar sense of under-valuation of their own stereotypes in comparison with other national groups.³⁰ Salazar believes that this forms part of a certain ideological framework in which the United States represents the preferred pole. In his opinion those ideological preferences are based on the following perceptions:

- 1) Greater value is given by the sample to the notion of progress;
- 2) The U.S. culture is considered superior;
- 3) The U.S. is seen as in better compliance with the rule of law; and,
- 4) The U.S. is seen as a much better organized society.³¹

Although those four factors are given preference in that ideological scheme, less importance is given to elements or values such as liberty, natural beauties, democracy, or wealth.

The studies we have mentioned represent a line of research which Dr. Montero refers to as the "nationalistic" approach. It is probably the most persistent school of social psychology in Latin America, apparently owing its popularity to the fact that its research activity did not look as an immediate threat to any regime in the region, right or left.³²

The so-called "nationalistic school" has at times been closely associated with an effort to define the underlying element from which ties of nationality could be built: the concept of social identity. Dr. Montero points out that "social identity is a daily

29. *Id.* at 25 (author's translation).

30. *Id.* at 26.

31. Mr. Salazar has used those four elements as the elements which define what he calls U.S.A. Dependence Ideology (in Spanish IDUSA). *See id.* at 27-28. As a result of her investigations, Dr. Montero concludes that "both groups evaluate themselves in the first place as "indolent." Laziness appears as a recurrent trait in their self-perceptions, being present in almost all research done in this field." *Id.* at 27.

32. *See id.* at 29.

construction, in which from preexisting materials, certain angles are perfected, at the same time that new bases are added for further development. Everything changes and everything remains the same.³³

The same happens with individual identity. Regarding individual identity, Montero quotes Pierre Tap, who describes it as:

a dynamic system of axiological feelings and representations through which the social act, individual or collective, provides orientation to its conduct, organizes its projects, builds up its history, tries to solve its own contradictions, and overcome its conflicts, based on diverse determinations related to his living conditions, to the power relations in which he is implicated, in constant relations to other social actors, without which he could not define itself nor even recognize himself.³⁴

In her view, social or collective identity could, of course, be both positive and negative. When it is negative, it becomes:

for minority or exploited groups the positive image of the dominant group in two forms: as an ideal model as well as an inaccessible one, establishing in that way an asymmetrical comparison, whose inequality brings into the limelight and reiterates, through disequilibrium, the negative aspects of its own social identity, producing in that way its own devaluation.³⁵

This devalued self-image is a relevant factor in the Mexicans' interpretation of the policies of foreign countries regarding Mexico, and it affects the reactions of the Mexican government, which in turn affects international relations.

IV. SOVEREIGNTY, U.S. DRUG POLICIES AND MEXICAN NATIONAL SELF-IDENTITY

Using this rich undercurrent of scholarship on Latin Americans' self-image, my interest is to observe how certain international rules, policies, and principles interact with that psychosocial environment. In regard to other areas—domestic juvenile laws, for instance—a similar analysis has been made

33. *Id.* at 165-66 (author's translation).

34. *Id.* at 165 (author's translation).

35. *Id.* (author's translation).

and is quite eloquent.³⁶ From a therapeutic perspective we may raise a number of questions. To what extent are some United States narcotic policies and initiatives in Latin America forcing on those states a stereotype as drug providers which subjects them to greater demonization than the consumer stereotype of the so-called "demand countries?" By labeling Latin American countries as drug providers, have we quashed all eventual possibilities of real mutual cooperation regarding the issue? To what extent does the recent "demonization" of Mexico as an illicit drug trade haven make that country a national security risk for the United States, thus limiting whatever serious international rights claims the former will have on sovereignty grounds? To what extent is there a real chance of establishing truly viable cooperation schemes between Mexico and the United States in this matter when the U.S. government has made evident in this instance, through its own unilateral actions, that it does not consider reliable, not only the Mexican bureaucracy as such, but even Mexican President Ernesto Zedillo himself?³⁷ If such is the U.S. perception of Mexico and Mexicans, should not it be predicted that Mexicans will end up acting as expected by others, i.e. non-cooperative, non-respectful of international obligations, non-reliable?

36. For examples of the use of Therapeutic Jurisprudence heuristics in the Juvenile Law context, see Allison R. Shiff & David B. Wexler, *Teen Court: A Therapeutic Jurisprudence Perspective*, in LAW IN A THERAPEUTIC KEY, *supra* note 1, at 287.

37. Mexico's President Ernesto Zedillo was angered that the United States did not inform him of the indictment and arrests that occurred in U.S. soil. See Oppel, *supra* note 20. Mexican bankers were enticed to travel to the United States. See Golden, *supra* note 20 ("Nearly five years after Mexico and the United States forged a partnership under the North American Free Trade Agreement, the furor has underscored the resilience of Mexico's nationalist sensitivities on law enforcement and the United States Government's stubborn mistrust of Mexico's criminal-justice apparatus.").

The facts about the amount of information that Mexicans authorities were provided in advance are not clear. Mexican leaders such as President Zedillo and Minister Rosario Green originally claimed no knowledge. See Susan Ferriss, *Mexico Says it May Have Known About U.S. Sting*, AUSTIN AM.-STATESMAN, June 5, 1998, at A5, available in WL 3611094. Later, the Mexican government recognized that there was a meeting in 1996 with the deputy attorney general of international affairs. See *id.* Mexican sources denied however that there was then any request for help, nor that an investigation was under way. See *Id.*

That the United States did not follow expected diplomatic channels is evident in the following statement made by United States Secretary of State Madeleine Albright: "I do not wish to interfere with your law-enforcement work, but I do believe we need to do a better job of coordination." Golden, *supra* note 20, at A10 (quoting a letter from United States Secretary of State, Madeleine Albright, to United States Treasury Secretary, Robert Rubin).

Again, let us restate our assessment of what really has been going on. Recently the United States has sought a number of bilateral and multilateral illicit narcotics initiatives. Mexicans seem to have responded by accepting them reluctantly. Mexican leaders have officially consented, "knowing" that they will formally share most of the load regarding implementation, because the real drug war will be played out mostly on Mexico's own streets, and will affect significant domestic economic interests.³⁸ Acceptance, in this case, is subject to psychological, non-articulated reservations by Mexicans. Based on the data on Mexicans' self-image discussed above, should anyone expect its police authorities to execute their obligations according to American standards? Do Mexicans in effect believe that Americans expect from them such compliance?³⁹

Recent U.S. actions are, from the point of view of a good pedagogy, flawed. They will not be of assistance in establishing

38. See Winer testimony, *supra* note 23. Winer presented the following data to Congress:

Moreover, public outrage and momentum for drug control in Mexico is building, even after President Clinton's certification decision. A public opinion poll by the U.S. Information Agency published this month reveals that 50 percent of Mexicans say their country should cooperate even more on drug control with the U.S., 45 percent of the population approves of U.S. counterdrug policies in Latin America and more than 60 [sic] of the respondents believe that the U.S. and Mexico have an equal interest in combating drugs.

See id. These data should be taken cautiously when used in the context of our discussion. First, the data originates from a poll conducted by the U.S. Information Agency, which is not a neutral party. Second, the numbers indicate that support is clearly not overwhelming. Fifty percent of the people seem to be saying that there should *not* be more cooperation. Fifty-five percent may *not* support U.S. drug policies in Latin America. Moreover, the sixty percent of people that believe the United States and Mexico have an equal interest in combating drugs may also believe that both parties should be equally and jointly involved in counter-drug operations.

39. When one follows the information which has come to light regarding the incident, the only possible conclusion is that both answers to the questions must be in the negative. In 1996, a U.S. agent informed Mexico's deputy attorney general for international affairs of the operation. *See* Ferriss, *supra* note 37. According to the U.S. version of events, the United States had asked for Mexican help but never received a response. *See id.* In addition, Mexico did nothing to impede the action taken. Thus, it is clear that Mexican functionaries were ready to look the other way while the United States violated Mexican laws. In effect, Mexico's inaction was their way of cooperating. However, public opinion against the action pressured Mexican leaders to openly criticize the action, despite the fact that they originally cooperated with the United States. At this point, a second version of events emerged as Mexicans alleged that they were not informed of the action. *See id.* Later, a third version of events emerged where Mexicans claimed that they were only informally notified that the United States discovered the money-laundering scheme. *See id.*

the psychological preconditions for cooperation between the two countries. To make things worse, those policies have not been established over a *tabula rasa*. Still in the air in Mexico are the memories of recent cases, such as *Alvarez-Machain*, where the U.S. Drug Enforcement Agency left aside the mechanisms negotiated by the two countries in a bilateral extradition treaty, substituted it with raw and primitive forceful abduction of a Mexican citizen in Mexican territory, and the Supreme Court of the United States, by not condemning it, ended up condoning the action.⁴⁰

The policy decisions just described, and the normativity which is emerging from them, are probably self-defeating. They certainly are in the long run, to the extent to which they keep nurturing, in Mexico and within Mexicans, the psychological syndrome of dependency; a self-referential reiteration of their national inferiority, immaturity and non-reliability.⁴¹

An ideal U.S. illegal drug trade strategy is not something easy to articulate, much less to implement. We are not referring here to the old debates between interdiction and medicalization or liberalization as solutions to the problem.⁴² Rather, the difficulties we refer to involve that sense of frustration which U.S. policy-makers feel when many commitments assumed by "cooperating" countries are often poorly implemented or not implemented at all. Many times nothing could be done to correct those violations of international commitments, due to sovereignty claims. The temptation for the United States, particularly regarding a country so close to the U.S. border as Mexico, is to avoid Mexican-elected officials and bureaucracy and make things happen through direct intervention inside Mexico. However, that alternative may only be effective in the very short term. Of course, the United States may decide to invade the country and

40. *United States v. Alvarez-Machain*, 504 U.S. 655 (1992).

41. In that way, dependency as a phenomenon reaches an alienation process which transforms its subjects, not only into receptors but also, also into actors in those processes. It is not enough for dependency to be externally imposed, it needs to be internalized by those subject to its effects. See PSICOLOGÍA POLÍTICA LATINOAMERICANA, *supra* note 9, at 191.

42. For an interesting analysis of that discussion, see Juan R. Torruella, *One Judge's Attempt at a Rational Discussion on the So-Called War on Drugs*, 66 REVISTA JURÍDICA, UNIVERSIDAD DE PUERTO RICO 1 (1996). For a defense of the decriminalization position, see A WISER COURSE: ENDING DRUG PROHIBITION: A REPORT OF THE SPECIAL COMMITTEE ON DRUGS AND THE LAW OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK (1994).

take over. But, in the long run such a strategy will only serve to validate the extent to which Mexicans should feel less and less capable of taking care of themselves and of their business.⁴³

Of course, therapeutic jurisprudence analysis merely raises questions (empirical and normative) and provides a lens for looking at the law; it does not itself provide the answers. In fact, an opposite view, also within the therapeutic jurisprudence framework, may look as follows:

1) That sovereignty and territorial integrity concerns are being used by Mexico as medieval city walls, not to protect acceptable interests, but to the contrary. Mexico is internally paralyzed by corruption, generated to a great extent by narcotic syndicates. Mr. Zedillo himself has publicly denounced the high social costs imposed on Mexico by those operations.⁴⁴

2) That coercion, through direct intervention, may be the only way to force Mexicans to go through an internal healing process, one which, if things are to improve, they eventually would have to go through anyway.

Those who argue this view will insist that sovereignty and territorial integrity are not absolutes. Mexican "claims" must be balanced by U.S. sovereignty and territorial integrity claims, under the veil of national security considerations. Under this view, illicit drug trade is the greatest security risk the United States now faces. According to this argument, Mexican society is still internally repressed. Some segments of the bourgeoisie, particularly the modern ones, need the assistance of an external push to break the internal hold of the corrupt elements which are highly influential within Mexico.

An argument such as the one made above is often heard in defense of humanitarian intervention actions.⁴⁵ It is based on the

43. Latin America has seen many examples of such interventions in the past. In the last few years most of those actions have been taken as short-term measures. In the future, the United States must weigh the extent to which recent "good will" gains through policies and agreements such as the North American Free Trade Agreement and the 1995 financial package will be negatively affected by interventions such as the one involved in Operation Casablanca. See EFE, *Mexico Lamenta E.U. Legitime Acciones Encubiertas en Países*, SAN JUAN STAR, June 24, 1998 at 29.

44. Zedillo has been quoted saying that the country's drug cartels are a "cancer" eating at Mexican institutions. See Winer testimony, *supra* note 23.

45. For an argument in those terms based on human rights considerations, see Anthony D'Amato, *The Invasion of Panama was a Lawful Response to Tyranny*, 84 AM. U. J. INT'L L. & POL'Y 516 (1990). For a viewpoint in opposition to the invasion, see Tom J.

premise that sovereignty and territorial integrity are two international principles which, when claimed by the Mexican elite, only serve to block any potential external agent that may ignite the "therapeutic process" which is needed inside Mexico.

Whatever value the argument may have in other instances, and we are sure there may have been at least some cases in which it may have held true, the history of external intervention in Mexico does not seem to show permanent benefits. In effect, the external push may provide the internal elite with an excuse to cut all international cooperation, an action which will be justified in this instance by a transparently documented violation of Mexico's sovereignty. Those actions will feed the undervaluation syndrome. They will serve to reaffirm historical fears.

In addition, proponents of direct intervention must keep in mind that illicit drug trade targets are very elusive. One example of the difficulty in combating the drug trade is the U.S. invasion of Panama to capture General Noriega, a known drug trafficker. One of the goals of the invasion was to curtail illicit drug trade. However, this goal remains unmet. Government reports have shown that, even with a sympathetic regime in place, drug trade through Panama, if any, has increased since the U.S. invasion.⁴⁶

The concepts of sovereignty, self-image and international cooperation are interdependent and must be considered in the decisions made regarding direct intervention.

Farer, *Panama: Beyond the Charter Paradigm*, 84 AM. U. J. INT'L L. & POL'Y 503 (1990), and Ved P. Nanda, *The Validity of United States Intervention in Panama under International Law*, 84 AM. U. J. INT'L L. & POL'Y 494 (1990).

46. See United States: Drug Czar Warns Countries May Lose U.S. Trade, INTER PRESS SERVICE, Feb. 14, 1995, available in 1995 WL 2258806. See also Silvio Hernández, *Panama-Politics: Church Urges Investigation of U.S. Invasion*, INTER PRESS SERVICE, Dec. 21, 1993, available in 1993 WL 2531669 ("But drug traffic has increased in Panama by about 350 percent in the past four years, and reports from the U.S. Drug Enforcement Agency said money laundering in the country has tripled since the fall of Noriega."). Similarly, in 1991, the Chicago Tribune reported, "[b]ut the current volume of drug traffic now exceeds that under Noriega. A July 1991 report by the General Accounting Office concludes drug trafficking in Panama 'may have doubled' and that money laundering—depositing illicit profits from trafficking in secret accounts in legitimate banks—has 'flourished.'" See Kenneth E. Sharpe, *U.S. Losing the Drug War in Panama*, CHI. TRIB., Dec. 19, 1991, at 31, available in WL 9438752.

V. INDIVIDUAL SELF-IMAGE AND THE STATE

Individual self-image governs state action because government bureaucracies are run by people, either individual human beings or groups. No one has ever "seen" a state, or "talked" to a state; although we may have felt the bites of some of the policies which individuals and groups, claiming the authority of the State, have devised. Of course, those individuals could not totally extricate what they are, how they evolved into their actual psychic make up, from the immediate social culture in which they were raised.⁴⁷ Those social experiences have probably influenced the degree of self-assuredness they may project on their performance on actual political roles. It is always interesting to observe the extent to which, with some variations, one finds similar leadership traditions reproduced inside a

47. The Personality and Culture School, representative of a very important trend in social research, will support this view. Other schools are less sympathetic to it. While differences between schools exist, those differences, although important, do not negate our argument here.

As indicated in note 17, Virginia Black will not necessarily disagree with us on this. Some of the Latin American social psychology researchers which we have studied establish a distinction between two groups of investigators. The first group, social researchers from the Personality and Culture School, such as Benedict, Margaret Mead and others, is described as externally oriented (try to describe from the outside what objectively differentiates a group from others). A second group is classified as "subjectivists." They are more interested on observing how a group looks at itself. One of the researchers, Mr. José Miguel Salazar, believes that the second current is more important for any type of political action.

Yet, neither of the two groups will neglect the role of culture on personality formation. Rather, the differences between them will be found in the extent to which each individual will be looked at as a passive or active ingredient in the process. See José Miguel Salazar, *El Latinoamericanismo Como Una Idea Política*, in *PSICOLOGÍA POLÍTICA LATINOAMERICANA*, *supra* note 9, at 203.

Salazar makes the following interesting assertion which is relevant to our analysis:

Expressed in mathematical terms; if my belief in terms of my Venezuelaness (my perception as a typical Venezuelan) has a certitude level of 60; and I believe that Venezuelans are lazy, and I also believe that, with a certitude of 60; by mathematical logic I must perceive that I am "lazy" myself in 36 (which is not a very high probability), if there are no other inferential ties which extend the chain. That may explain data obtained where the group image is different to the individual's own self image. It is important to remember the difference which exists between the image the individual has of the group and of himself. Probably the last one is more important to a broader number of behaviors; yet, the first could be more relevant to certain types of social conduct.

See *id.* at 210 (author's translation).

particular political culture.⁴⁸ In their final call, state policies are nothing more than human products, carved out from those cultural materials. Those rules and policies, in the process of being articulated and interpreted, gain of course a specificity, a degree of autonomy, and a distance from their creators.⁴⁹ The same applies in the case of the state. But it is not that there is always a gulf between the individual, the group, and the state. On the contrary, one develops from, and at the same time envelops the other.

In the process of finally working through our original hypothesis, one may reply: "But, wait. In the domestic field we have looked at the therapeutic process in the context of direct relations between the law and an individual. In effect, most of our scholarship has focused on how that process may be aided or distorted by law as an external (but domestic) intervening variable. But, in the international context, who is the individual? Where is the therapist?"

In answering that question, we must recognize that therapy often involves a number of "therapists" acting in concert. First of all, let us agree that the traditional Freudian model of therapy and healing is no longer exclusive, nor is it limited today to dual, or bilateral interactions.⁵⁰ Today we talk about family therapy, group therapy, support groups, and even religious or evangelical therapy. In some of those instances, religious leaders, politicians, and preachers of all sorts, using psychological cues, try to influence and change the life of audiences through the media.⁵¹ It is all about emotions, messages, receptors, and

48. For an outdated, but still important contribution to the literature on political culture, see GABRIEL A. ALMOND & SIDNEY VERBA, *THE CIVIC CULTURE: POLITICAL ATTITUDES AND DEMOCRACY IN FIVE NATIONS* (1965). For a quite recent commentary on a work analyzing Eastern European political culture, see Janusz Bugajski, *Communism is dead. Now what? One scholar's reply*, WASH. TIMES, May 17, 1998, at B8. R.P. Anand offers the closest argument to our discussion here. See R.P. ANAND, *CULTURAL FACTORS IN INTERNATIONAL RELATIONS* (1981). For a more contemporaneous view, see ROBERT D. PUTNAM, *MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN MODERN ITALY* (1993).

49. For an interesting discussion of the issue, see ROGER COTTERRELL, *THE SOCIOLOGY OF LAW: AN INTRODUCTION* 298-303 (2d ed. 1992). For a debate by law and economic proponents over the autonomy of law, see Steven L. Schwarcz, *Introduction: Is Law an Autonomous Discipline?*, 21 HARV. J.L. & PUB. POL'Y 85 (1997).

50. On psychosocial treatment, see *THE PSYCHOTHERAPY HANDBOOK* (Richie Herink ed., 1980). Herink identifies several hundred categories of psychosocial treatment. See *id.*

51. For a negative view of these developments from a religious perspective, see Rick Du Brow, *Restoring Faith in the New TV Pulpit*, L.A. TIMES, Feb. 8, 1992, at F1, available

reactions. Each one of those actors is working out with their audience a discourse regarding prevalent norms, regulations, and acceptable, as well as ideal conduct. In that framework, psychoanalytical therapists are substituted, and the transference process is somewhat altered.⁵² Whatever the loss to the specialists, the reality is that often the people reached through these methods feel reinvigorated and redirected toward what they consider fulfilling activities.

In fact, what we often witness in many of the domestic therapeutic environments where individuals are coerced toward therapeutic processes are encounters in non-traditional settings.⁵³ Thus, even as to individuals in the domestic plane, the therapeutic process today may have many different meanings. Once one moves into the international arena, one finds that, given the wide impact of the media, public functionaries, as well as diplomats, are generally unable to isolate themselves from the influences of preachers, religious leaders, pop culture figures, and well known reporters.⁵⁴ Those bureaucrats and diplomats embody what we refer to as "the state."

In effect, one should not shy away from considering negotiation, arbitration, and mediation, often-prevalent mechanisms in the solution of international conflicts, as

in WL 2953621. Du Brow reports:

For the past few decades, flamboyant evangelists have been the dominant TV face of religion to a new generation. Miracle healers and money-seeking preachers—even those who have been discredited—represent a lasting image of religion to many TV viewers who may not attend a church or synagogue or remember when things were different.

Id.

52. Transference is defined as:

the process whereby the patient transfers his feelings about other people who are very important to him on to the ANALYST. It is regarded as a normal, if not essential, part of the analytic process. The analyst, by refusing to play the ROLE assigned him, can show the patient what he is doing and help him uncover the importance of the original person.

DAVID STATT, *DICTIONARY OF PSYCHOLOGY* 125 (1982).

53. See *THE PSYCHOTHERAPY HANDBOOK*, *supra* note 50. As an example, see JAY HALEY, *LEAVING HOME: THE THERAPY OF DISTURBED YOUNG PEOPLE* (1980).

54. Republicans in the United States used to bring to their political conventions religious leaders such as Billy Graham and pop culture figures such as Frank Sinatra, Charlton Heston and Sammy Davis, Jr. Similarly, during his campaign, President Clinton incorporated many well known Hollywood names, as well as people in the performing arts and African-American Baptist Churches leaders. Clinton has also enjoyed, until recently, excellent and close relations with the press. In all of those cases, the religious, and "pop culture" figures, as well as the reporters, have eventually become close presidential confidants.

"therapeutic" processes. Open discussions, as well as academic and political critiques of international policies or rules, frequently help state leaders to reflect over their own values and actions. These discussions, in an open society, may provide for transference and internal self-analysis. Having to submit an issue to neutral arbitrators may also provide a space for a type of therapeutic dialogue. That is also the case with the use of mediators, even though their goals, technique and placement of emotions may be different to the ones of a psychotherapist,⁵⁵ they may offer a party the chance to take corrective actions, make intimate confessions of wrongdoing, at times without having to compromise publicly longstanding principles.

While this is happening in the field of international diplomacy, in other areas of international law political and academic elites codify their own particular interpretation of the rules. Those interpretations are promoted as "the rules" through journals, books, music, videos, microfiches, audiotapes, electronic transmissions, and television interviews and programs. In the case of the United States, we may point to the Restatement of Public International Law as one example, but we may also include Sunday and evening talk shows in television and radio, some of which are geared particularly to politicians and diplomatic personnel, but which may also educate the layman on those issues. The process of reflection over those rules, although ethnocentrically skewed, involves an element of transference within the community involved.

Politicians know that they are expected to obey international rules and policies; or that past practice or court cases may mean that deviation is permitted.⁵⁶ No "state" reaches such a

55. On the therapeutic value of arbitration in the domestic context, see Roger I. Abrams, et al., *Arbitral Therapy*, in *LAW IN A THERAPEUTIC KEY*, *supra* note 1, at 499. For a perspective denying similarities between mediation and psychotherapy, see Joan B. Kelly, *Mediation and Psychotherapy: Distinguishing the Differences*, *MEDIATION Q.*, Sept. 1983, at 33-44.

56. The United States Constitution provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. CONST. art VI, § 2.

As early as 1784, the United States Supreme Court recognized that an infraction of the Law of Nations violated the law of Pennsylvania. See *Respublica v. De*

conclusion, only individuals do. Leaders may feel in some instances more constrained to do things in their role as state representatives, than they will feel constrained as individuals. There may not be direct interchangeability between one role and the other in those situations. But, it works both ways. In other instances the same individual, backed by the authority of the state, may feel freer to act in one direction as state representative than he or she would ever feel as an individual.

When one looks, for example, at the recent conflict regarding Operation Casablanca, one observes the unraveling of a dynamic closely similar to a therapeutic episode, under the supervision of the domestic and international press corps and under the repressed but watchful eye of Mexican public opinion. When U.S. functionaries announced the operation, there was initial praise for it on the part of Mexican officials.⁵⁷ As they suddenly had to face internal elite reactions, they reevaluated and condemned it, denying, at the same time, any wrongdoing on their part, i.e., no authorization of the operation, no knowledge of the operation, no violation on their part of their own laws. They claimed a clear violation of Mexican sovereignty by U.S. authorities. As of today the same leadership has had to admit that they had been informed about the operation in advance, but that U.S. requests of assistance and the specifics of the operation were never clear. Transference is taking place.

The traditional "victim role," expressing a mental model which is a result of history and of the dependency syndrome, is being displayed.⁵⁸ Without in any way justifying past and

Longchamps, 1 U.S. (1 Dall.) 120 (1784). The binding authority of international law was again recognized by the Supreme Court in 1900: "International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination." *The Paquete Habana*, 175 U.S. 677 (1900). For a discussion regarding the authority of the President of the United States to violate international law, see LOUIS HENKIN, ET AL., *INTERNATIONAL LAW: CASES AND MATERIALS* 175-78 (3d ed. 1993).

57. On Mexican officials original reaction, see Golden, *supra* note 20, at A10. Although senior Mexican officials had initially praised the operation after its disclosure, they said they did so after having been told that none of the undercover work had been carried out on Mexican soil. See *id.*

58. One of the first studies on Latin American fatalism found that envy, mutual suspicion as to their counterpart motives, pessimism and fatalism. See Ignacio Martín-Baró, *El Latino Indolente: Carácter Ideológico del Fatalismo Latinoamericano*, in *PSICOLOGÍA POLÍTICA LATINOAMERICANA*, *supra* note 9, at 141 (author's translation). For another perspective, made from Chile during Pinochet's dictatorship, see Elizabeth Lira, et al., *Subjetividad y Represión Política: Intervenciones Terapéuticas*, in *PSICOLOGÍA*

present violations of Mexican sovereignty and territorial integrity by the United States, we may ask ourselves the extent to which Mexico victim's role may end up acting as a "provocation" in the same sense in which "victimology" has found "collaboration" of the victim with the violent spiral, within domestic relations. All of those involved already know the script. At the end, no one expects that this will not be repeated. Mexico did not cooperate to the extent "expected," but nobody was "really" expecting anything. Despite the fact that the United States likely anticipated Mexico's noncompliance, it went ahead unilaterally anyway. After those events, for the time being, no one should expect full cooperation by Mexico, although not all cooperation will be suspended.⁵⁹ In the end, the United States should not really be concerned about it, because very soon the cycle will be replayed. Of course, something very important is lost in the process. The legal rule, if any, is being "established" through diffuse, non-transparent and informal practices. Internationally recognized principles are not observed. Domestic Mexican leadership is again projected as pusillanimous, which serves to validate the "weaknesses" previously identified as part of Mexican national self-identity. The episode will serve to further justify future non-reliability on the part of the Mexicans and distrust by the United States.

A final commentary is in order. We have presented in this article one of the playgrounds where international therapeutic

POLÍTICA LATINOAMERICANA, *supra* note 9, at 317 (finding that dictatorships devalue an individual's self-image to the point where the individual is unable to appropriate their own experience). Using these findings we may be able to compose a victim's mental model, overtly expressed in Mexican functionaries' reaction to Operation Casablanca: "no knowledge, no authorization, no violation of our laws on our part."

From a different angle we may observe the extent in which the concept "victimology" may contribute to future analysis of international relations, in particular as it refers to longstanding, repetitive conflicts between two unequal countries. For example, Wexler has found that, in the United States, "major studies support the assertion that victims often contribute to, precipitate, or even provoke the acts of violence directed against them." David B. Wexler, *Patients, Therapists, and Third Parties: The Victimological Virtues of Tarasoff*, in WEXLER, *supra* note 26, at 215. Ideologically, I do have reservations about the concept. Ideology, however, would not stop me from acknowledging that such types of interactions do exist. What we should avoid is simply blaming it on the victim alone.

59. After condemning Operation Casablanca, Attorney General Jorge Madrazo Cuellar indicated that Mexico would continue to cooperate with the United States in the operation. See Julia Preston, *Operation Casablanca: Nation Angered Over U.S. Sting*, N.Y. TIMES N. SERV., May 22, 1998, available in Novedades Editores, InfoLatina, S.A. de C.V.

encounters are being played. The encounters generally do not take place in an intimate office or on neutral grounds. There is not an objective neutral figure channeling the encounters, like in the traditional psychotherapeutic model; although, at times, mediators may play that role. On the other hand, it is not, as some people sometimes seem to argue, that today there is only one source of power and decision. As hegemon, U.S. leaders may pressure in one direction, yet there is still capacity on the part of the relevant other, at a price, not to cooperate, to protest, to react, to divert the pull; or as we hypothesize in the Mexican case, to mimic cooperation, but delay it happening.

VI. CONCLUSION

Therapeutic jurisprudence analysis provides legal scholars with an instrument to analyze the extent to which legal normativity may promote or harm "the physical or psychological well being of the people it affects." As could be expected, scholars in mental health law and related disciplines, were the first to become aware of its potential. A major thrust of the research was devoted to the analysis of how on occasions a normative command, or an action on the part of legal agents, only served to obstruct the normal dynamics of the therapeutic process. Another line of research was concerned with the extent to which legal activity which had individual autonomy and self-reliance as a goal, frequently ended up creating the opposite effect.

Of course, from a critical point of view, there may be many questionable theoretical assumptions in the framework of the analysis of therapeutic jurisprudence. We might raise questions as to its assumptions relative to what represents the "psychological well-being" of the people affected. We may even raise doubts as to the potential "effects" of legal intervention, from the point of view of law as a discourse.⁶⁰ We may have

60. For a short discussion of the extent to which a law's specificity is compromised in Western legal systems by an articulation of particular elements (one of which we refer to as legal discourse), see Efrén Rivera-Ramos, *The Legal Construction of American Colonialism: An Inquiry into the Constitutive Force of Law* 34 (1996) (unpublished Ph.D. thesis, University College London). Rivera-Ramos states:

law is a type of social practice whose main (though not exclusive) operative medium is discourse. Among other things, this means that the legal text is a central ingredient of the legal world and that argumentation about texts is a vital feature of legal practice. Legal discourse, however, is a special kind of discourse. Its principal attributes are its pretenses of impersonality,

future occasion to enter into those areas, which have not been the subject of our attention in this article.

My only purpose in writing this essay was to see the extent to which therapeutic jurisprudence analysis, as it has been applied in the domestic sphere, may be used in the international context to evaluate the interaction between rules and conduct at the international domain. To explore this issue, I, first of all, examined data gathered in various political-psychology, as well as social psychology, studies regarding Latin Americans self-image. I centered on what has been named the nationalist school. From those studies I believe we have obtained a useful, still tentative or preliminary sketch of certain personality traits which seem to repeat themselves at least some Latin American countries.

To engage in this analysis I assumed, for heuristic purposes, the validity of those findings. Using them as data, I proceeded to hypothesize that the interaction between, on one-hand U.S. foreign policies regarding illegal narcotics, the international law principles of sovereignty and territorial integrity, and Latin American countries devalued self-images, may draw U.S.-Mexican cooperation to self-defeat. This essay hypothesizes and raises relevant questions which policy-makers, particularly in the United States, may have to face.

There is evidence that this hypothesis seems to be logically consistent and to hold some water. At least formally, U.S. policy-makers feel themselves to be in a bind. In the short run, any attempt to gain cooperation on an equal footing in the field of illegal drug trade will find formally cooperative, but very distrustful and poorly committed Mexican authorities, at the other end of the bargain. Any attempt at going around them and executing direct extraterritorial policies will first find direct public opposition of the Mexican authorities, who also will find occasion to use those incidents as useful bargaining tools in future negotiations,⁶¹ with no guarantee of successful long-term

generality, and neutrality, which provide the foundation for its claim of formal rationality. Furthermore, because of the axiological/normative nature of law, legal discourse is cast in the language of justification.

Id. at 35 (citations omitted).

61. Anthony D'Amato argues that as a result of the spillovers left by the Alvarez-Machain case, the U.S. has ended up paying a cost:

[Mexico] has exacted stiff concessions from the United States in the NAFTA

results for Americans. What is worse, the concept of reliability, which the United States formally says it expects from the Mexicans, will remain absent, to the extent that the contrary perception has been validated by U.S. unilateral actions.

negotiation by complaining about the U.S. insult to Mexico in abducting one of its nationals and then having the highest court in the United States say it was O.K. to do so.

The government of the U.S. has had to promise to Mexico that there will be no more abductions. From now on Mexico has good reason to distrust any interpretation of any agreement with the United States that is presented to the U.S. Supreme Court for interpretation. Mexico has good reason to distrust the Supreme Court itself.

INTERNATIONAL LAW ANTHOLOGY, *supra* note 12, at 408.