

## Article

# The Study of International Law in the Spanish *Short* Nineteenth Century (1808-1898)

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*Si hubo un tiempo en que pensar o esperar, fue soñar o creer,  
hoy esperar es pensar. Pensemos y esperemos.*  
Concepción del Arenal, *Ensayo sobre el Derecho de Gentes*  
(1879)

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### Introduction: The First Professorships of International Law in Europe

The last remnants of an Empire, just a few islands in the Caribbean Sea and others scattered in the Pacific Ocean, that had been deprived of its ultra-marine jewel after the independence of the Latin-American Republics, did not infuse the study of international law in Spain with much vitality during the early nineteenth century. Nevertheless, it was in Spain where the teaching of international law (termed as such) first emerged in Europe. Because of the work of Martti Koskenniemi, it is widely acknowledged today that the consciousness (and teaching) of international law as *a discipline of its own* in European universities was a development that largely took place in the third part of the nineteenth century.<sup>1</sup> Oxford and Cambridge established the first chairs in international law in England in 1859 and 1866, respectively.<sup>2</sup> Although a professorship in international law was established in Paris in 1829,<sup>3</sup> “only in 1889 was international law introduced at French universities as a compulsory subject with an examination.”<sup>4</sup> In Holland, an 1876 law prescribed the teaching of international law in state universities. In Belgium, the University of Brussels introduced the study of international law only in 1884.<sup>5</sup> Two years before the creation of the modern Italian state, Augusto Pierantoni devoted a long work to retracing the history of international law in Italy, hence fostering its study in universities as part of the enterprise of building a national identity.<sup>6</sup> In the United States, the first courses in international law were taught in 1846 at Yale and in 1863 at Columbia,

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<sup>1</sup> MARTTI KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW, 1870-1960* 12 (Cambridge University Press 1st ed. 2001).

<sup>2</sup> *Id.* at 33.

<sup>3</sup> Koskenniemi notes that an international law professorship was established in Paris in 1829 although “the courses given by its holders had been more about diplomatic history than diplomatic law.” *Id.* at 31.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> AUGUSTO PIERANTONI, *STORIA DEGLI STUDI DEL DIRITTO INTERNAZIONALE IN ITALIA* (Kessinger Publishing Company 1869).

as well as Harvard, where the Bemis Chair in International Law was established in 1898.

However, the fact remains that the first professorships in international law (*eo nomine*) emerged in Spain in the early 1840s at the end of the First Carlist war. The First Carlist War, from 1833 to 1840, was a military confrontation over the succession of Fernando VII. Regent Cristina's camp allied with a Praetorian-type of liberalism, the 19th century liberal ideology which was supported by the military class, and confronted the alliance between the throne and the altar, embodied by the infant Carlos, brother of the late absolutist Spanish ruler. The realignment of Spain with the European concert and its gradual renewal of diplomatic ties with the new Latin American Republics beginning in the mid-1830s were the immediate twin causes of the early awakening of international law in Spain.

The first Spanish professorships in international law were created in the wake of the establishment of chairs in international law in post-independence Latin America and the crowning of Ignacio de Herrera Vergara as the world's first ever chair-holder in the discipline. After more than 300 years of Spanish rule, the sovereign independence of the American territories in the 1820s signaled the true beginning of a new stage in the history of international law. For Andrés Bello, a dominant scholar in the field in the first half of the nineteenth century in Latin America, "the appropriation and production of law with a regional perspective were fundamental elements to [the] project of constructing a distinct and autonomous region."<sup>7</sup> This, in turn, was believed to help safeguard the incipient nation-building processes in the new Republics. This early development of international law in the post-independence Latin American Republics undoubtedly spurred a parallel rise in the teaching of the new discipline in their former metropolis.

The historiographical study of modern international law remains the Cinderella of international legal studies in Spain; in other words, it has not become the princess yet, and it will probably never become so. After the end of the Spanish Civil War, a few reconstructions were inspired by the extreme National-Catholicism of the 1940s and 1950s.<sup>8</sup> Later, in the early 1960s,<sup>9</sup> there was a short-

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<sup>7</sup> Liliana Obregón, *The Colluding Worlds of the Lawyer, the Scholar and the Policymaker: A View of International Law from Latin America*, 23 WIS. INT'L. L.J. 145, 148 (2005).

<sup>8</sup> See LUIS GARCÍA ARIAS, *HISTORIA DE LA DOCTRINA HISPÁNICA DEL DERECHO INTERNACIONAL*, ADICIONES A LA *HISTORIA DEL DERECHO INTERNACIONAL*, DE ARTHUR NUSSBAUM 185 (1949).

<sup>9</sup> See Julio González Campos, Roberto Mesa, and Enrique Percourt, *Notas para la historia del pensamiento internacionalista español: Aniceto Sela Sampil (1863-1935)*, 17 REVISTA ESPAÑOLA DE DERECHO INTERNACIONAL [REDI] 561-583 (1984). A contextual historical analysis of this phase may be found in Ignacio De la Rasilla, *The Zero Years of Spanish International Law*, in *LES DOCTRINES INTERNACIONALISTES DURANT LES ANNÉES DU COMMUNISME RÉEL EN EUROPE*, (Emmanuelle Jouannet and Iulia Motoc eds., Société de législation comparée 2012).

lived project to reconstruct the pre-1936 period. This attempt to “reflect the new premises and the partially different problems and methodologies of new Spanish ‘legal realism’<sup>10</sup> paid some attention to intra-disciplinary historiography from a new standpoint. It was not until the Spanish transition to democracy in the late 1970s that some rare contributions,<sup>11</sup> which appreciated the “beating topicality”<sup>12</sup> of the issue, addressed the field from within Spanish international law academia; however, these efforts were short-lived.

Only very recently, partly in the wake of the Spanish Historical Memory Law of 2007, have these preliminary works begun to be discussed and extended; yet today a staggering lacuna remains.<sup>13</sup> If the history of international law in twentieth century Spain remains a great *terra incognita*, the historical evolution of the study of international law in the short Spanish nineteenth century (1808-1898) is an even more barren historiographical field. The aim of this work is to continue to foster a line of study that widens the retrospective gaze of Spanish international legal academia through an updated, intra-disciplinary historiography of its evolution from the early nineteenth century.<sup>14</sup> This overview of the modern origins of the discipline in nineteenth century Spain is, moreover, oriented to contribute to the new study of the national traditions of international law in Europe, thereby advancing the development of the field of comparative international law.<sup>15</sup> Today, with “the restoration of global history to university and school curricula in humanities and the social sciences,” global historians know well that “the comparative method looks set to dominate the field for years to come.”<sup>16</sup>

Part I of this work surveys the establishment of the first chairs of international law in Europe in the early 1840s against the background of the independence of the Latin American Republics. This section also relates the development of Spanish international law

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<sup>10</sup> Mariano Aguilar Navarro, *Tareas de la doctrina española de Derecho internacional público*, REVISTA ESPAÑOLA DE DERECHO INTERNACIONAL [REDI] 501, 502 (1964).

<sup>11</sup> In particular, CELESTINO DEL ARENAL, LA TEORÍA DE LAS RELACIONES INTERNACIONALES EN ESPAÑA (1979); Celestino del Arenal, *El estudio de las relaciones internacionales en la España del siglo XIX*, 163 REVISTA DE POLÍTICA INTERNACIONAL 1, 7-45 (1979).

<sup>12</sup> Remiro Brotons, *El discreto encanto – y desencanto – de la Revista Española del Derecho Internacional (1948-1978)*, in 1 ESTUDIOS DE DERECHO INTERNACIONAL. HOMENAJE AL PROFESSOR A. MIAJA DE LA MUELA 123 (1979).

<sup>13</sup> 1 HISTORIA DEL PENSAMIENTO IUSINTERNACIONALISTA ESPAÑOL DEL SIGLO XX (Yolanda Gamarra & Ignacio De la Rasilla eds., Thomson Reuters 2012).

<sup>14</sup> Ignacio de la Rasilla del Moral, *A propósito del giro historiográfico en Derecho Internacional*, in LA IDEA DE AMÉRICA EN EL PENSAMIENTO IUS-INTERNACIONALISTA DEL SIGLO XXI 33 (2010) (Sp.). This intra-disciplinary historiography could also help to bridge a lacuna in the Spanish historiography of international relations. See Pereira Castañares, *De la historia diplomática a las historias de las relaciones internacionales: algo más que un cambio de término*, in 7 HISTORIA CONTEMPORÁNEA 155-182 (1992) (Sp.).

<sup>15</sup> Martti Koskeniemi, *The Case for Comparative International Law*, FINNISH Y.B. INT'L L. 1 (2011).

<sup>16</sup> Patrick O'Brien, *Historiographical Traditions and Modern Imperatives for the Restoration of Global History*, J. OF GLOBAL HIST. 1, 6-7 (2006).

production during the first half of the nineteenth century. Part II follows the evolution of international legal studies in Spain until the year 1883, when seven universities outside Madrid established chairs in both public and private international law. Part III reviews the first, albeit short-lived, specialized international law journal established in Spain, and examines how the professionalization reform of 1883 fostered Spanish production in the field. This part also examines the rediscovery of the Salamanca School in both Spain and Europe in the last third of the nineteenth century. Finally, the impact that the revived interest in Francisco de Vitoria had in providing Spanish international law academia with a quasi-national identity leads to some conclusions on its lasting legacy to the study of international law in the cradle of the first Empire in history on which the sun never set.

### I. International Law in Spain Before and After the Independence of the Latin American Republics

International legal studies were in a precarious state in late eighteenth century Spain after a Royal Decree by Carlos IV in 1794 suppressed the teaching of public law, natural law, and the law of peoples.<sup>17</sup> King Carlos III established these studies by a Royal Decree of 1770. The first chair-holder in these areas of law was Joaquin Marin y Mendoza, who published *History of Natural Law and the Law of Peoples* in Madrid in 1776,<sup>18</sup> which stands among the first books on the history of international law. The rationale behind the suppressive 1794 Decree was the legislators' fear of revolutionary contagion from the association of the law of peoples with the 'pernicious' effects of natural law doctrines in the Spanish national intellectual mindset:

Some wise and jealous men, ecclesiastic and secular, have been and are of the opinion that the chairs of natural law and of peoples established in some universities, in the Estudios Reales de San Isidro, and in the Seminar of the Noblemen are highly dangerous, and more so in the present circumstances. Even if their aims were judged useful at the time when they were created, experience has shown that they bring with them the almost unavoidable risk that youth, imbued with principles that are contrary to our constitutions, could draw pernicious consequences which can spread

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<sup>17</sup> Derecho Público, Natural y de Gentes, vid.; Ortíz de la Torre, *L'établissement de l'enseignement officiel en Espagne du droit international*; 40 ANNUAIRE DE L'ASSOCIATION DES AUDITEURS ET ANCIENS AUDITEURS DE L'ACADÉMIE DE DROIT INTERNATIONAL DE LA HAYE 122, 128 (1970).

<sup>18</sup> JOAQUÍN MARÍN Y MENDOZA, *HISTORIA DEL DERECHO NATURAL Y DE GENTES* (1776).

and produce an upheaval in the way of thinking of the nation.<sup>19</sup>

Thus, like the baby thrown out with the bath water, the study of the law of peoples shared the fate of natural law<sup>20</sup> due to the perceived ideological threat that its continued study posed to the pillars of Spain's enlightened despotism. This situation continued for the next twenty-five years.

International legal studies did not benefit from the War of Independence against the Napoleonic invasion, or from the reiterated political pronouncements and cyclical political crises that spread to the Latin American colonies during this period. The state of affairs was compounded by a return to the absolutist rule of Fernando VII after Cadiz's Constituent Assembly produced what became the first Spanish Constitution in 1812, despite its slavish and confessional overtones. Only during the brief Liberal Triennium (1820-1823) that reinstated the 1812 Constitution did the Spanish Congress temporarily restore the study of natural law and the law of peoples, pursuant to a Decree of Congress of August 6, 1820. This period produced translations of works by foreign authors, including Emeric de Vattel's *Le droit des gens* [*The Law of Peoples* or *Jus Gentium*] in 1821,<sup>21</sup> and the Spanish translation of Gérard Rayneval's *Institutions du droit de la nature et des gens* [*Institutions of Natural Law and The Law of Peoples*] in 1820.<sup>22</sup> The work in which Bentham coined the term "international law" was translated into Spanish following E. Dumont's 1802 French translation, and was commented on in Spanish by Ramón Salas in 1822.<sup>23</sup> At this time, Bentham himself was writing *Three Tracts Relative to Spanish and Portuguese Affairs* (1821) and *Letters on the Proposed Penal Code* (1822). The Liberal Triennium, which coincided with the swan song of the Spanish Empire in Latin America, came to an end with the invasion of the "One Hundred Thousand Sons of Saint Louis" under the auspices of the Quadruple Alliance. The following period, which later liberal historiography retrospectively termed the "ominous decade" (1823-1833), culminated with the restored absolutist rule of Fernando VII, under whom the study of natural law and the law of peoples was again discontinued.

After the death of Fernando VII, international studies gradually came back to the fore. Important signposts during María Cristina's Regency marked the gradual adaptation of Spain to a new international

<sup>19</sup> Archivo Histórico Nacional, Consejos, 1794, 5420-5443.

<sup>20</sup> For a detailed account, see Manuel Martínez Neira, *¿Una supresión ficticia? Notas sobre la enseñanza del Derecho en el reinado de Carlos IV*, 68 ANUARIO DE HISTORIA DEL DERECHO ESPAÑOL 532-44 (1998).

<sup>21</sup> EMERIC DE VATTEL, EL DERECHO DE GENTES (M. Pascual Fernandez trans., 1820) (1832).

<sup>22</sup> M.R. GÉRARD DE RAYNEVAL, INSTITUCIONES DE DERECHO NATURAL Y DE GENTES (M. Antonio López, trans., 1821).

<sup>23</sup> JEREMY BENTHAM, TRATADOS DE LEGISLACIÓN CIVIL Y PENAL. (Ramón Salas, trans., 1822).

framework. For example, the signing of the Treaty of the Quadruple Alliance on April 22, 1834, led to the recognition of the independence of the former American colonies; and the law of December 4, 1836, led to the beginning of normalization of relationships between Spain and the new Republics.<sup>24</sup> The ratification of a treaty with Mexico on November 14, 1837 started a process that extended through the nineteenth century which included the signing of various treaties with the new Republics. In 1836, a university reform decree officially restored the study of natural law and the law of peoples in Spain. This period coincided with a series of translations of foreign works. Joaquín Rodrigo Campuzano wrote a prologue to Georg Friedrich von Martens' *Tratado de diplomática, o estado de relaciones de las potencias de Europa entre sí, y con los demás pueblos del globo* [*Treatise on Diplomacy, or the State of Relations Among the Powers of Europe, and With Other Nations of the World*] which was published in 1835.<sup>25</sup> This was followed by translations of Juan Teófilo Heinecio's works under the title *Elementos de Derecho natural y de gentes* [*Elements of Natural Law and the Law of Peoples*] in 1837, and F.B. de Felice's *Lecciones de Derecho natural y de gentes* [*Lessons of Natural Law and the Law of Peoples*] in 1841.<sup>26</sup> The first works bearing the new title of *derecho internacional* [*international law*] emerged during the period of the liberal military regency of General Espartero from 1840 to 1843, which followed the victory of the Regent Cristina in the first of the three civil wars that raged in Spain throughout the nineteenth century. By 1842, the study of natural law, the law of peoples, and the treaties and diplomatic relations of Spain was required for obtaining the degree of Doctor of Laws.

During the first years of liberal conservative dominium enshrined by Queen Isabel II's 1845 Spanish Constitution, a key driving force for the linguistic establishment of the term *derecho internacional* came from the infant Latin American Republics. In fact, the cultivation of modern international law originated across the Atlantic, in the struggling new republics, where Bentham's works played a dominant intellectual role in the formation of Latin America's liberal political ideology. Teaching under the term coined by Bentham was first mandated in Colombia in 1826, then in Venezuela in 1827, and in Chile in 1832.<sup>27</sup> In a decree of November 8, 1825, Francisco de

<sup>24</sup> See Pereira Castañares, *España y Latino-América, Un siglo de relaciones (1836-1936)*, 28 MÉLANGES DE LA CASA DE VELÁZQUEZ [MCV] 97 (1992).

<sup>25</sup> JORGE FEDERICO MARTENS, *TRATADO DE DIPLOMÁTICA, O ESTADO DE RELACIONES DE LAS POTENCIAS DE EUROPA ENTRE SÍ, Y CON LOS DEMÁS PUEBLOS DEL GLOBO* (Joaquín Rodrigo Campuzano trans., 1835).

<sup>26</sup> J. GOTTLIEB HEINECIO, *ELEMENTOS DE DERECHO NATURAL Y DE GENTES* (1837); B. DE FELICE, *LECCIONES DE DERECHO NATURAL Y DE GENTES* (1841).

<sup>27</sup> ROGELIO PÉREZ PERDOMO, *LOS ABOGADOS EN AMÉRICA LATINA: UNA INTRODUCCIÓN HISTÓRICA* 74-80 (2004).

Paula Santander ordered Colombian chair-holders to teach the principles of legislation, Bentham's principles, and public international law following Emer de Vattel. In 1827, the Universidad Central of Bogotá established the first chairs of international law. Vicente Azuero Plata became the chair holder of Principles of Universal Legislation. Ignacio de Herrera Vergara became the chair holder of International Law against the convulsive background of post-independence Latin America, where, after 300 years of Spanish rule, the uses of the new international law were being invoked by all sides of the new political map, through revolutions and civil wars.

The first book on international law published on the American continent appeared in 1832. Andrés Bello's *Principios de Derecho de Gentes [Principles of the Law of Peoples]*<sup>28</sup> defined the law of peoples or international law as "the collection of laws and general rules of conduct that nations must observe among themselves for their safety and common well-being."<sup>29</sup> Conscious of the service that Bello was providing to the cause of emancipation and national identity in America, he expressly indicated in his prologue that the object of his work was to be of "use to the youth of the new American states in the cultivation of a science that, if it could not previously be studied with impunity, is now of the highest importance for the defense and vindication of our national laws."<sup>30</sup> In Bello's opinion,<sup>31</sup> the foreign policy of the new nations had to strategically use the arguments of international law because only that language could guarantee their survival.<sup>32</sup> An eclecticism regarding the dichotomy between natural law and positive law, although with a marked preference for the latter, impregnated Bello's work throughout its three editions of 1832, 1844, and 1864. The 1844 corrected and augmented second edition adopted in its title the modern terminology of *Principios de Derecho de Derecho Internacional [Principles of International Law]*.<sup>33</sup>

Like Bello, other Latin-American authors of the nineteenth century, such as Carlos Calvo, Carlos Ferreira, Rafael Fernando Seijas, and José H. Ramírez,<sup>34</sup> gradually aligned themselves with the nineteenth century rise of positivism despite never completely losing the naturalist elements in their works. This reached its climax during the age of imperialism, late in the century. This was also an age of

<sup>28</sup> ANDRÉS BELLO, PRINCIPIOS DE DERECHO DE GENTES (1832).

<sup>29</sup> *Id.* at 6.

<sup>30</sup> Liliana Obregón Tarazona, *Construyendo la región americana: Andrés Bello y el Derecho internacional*, in LA IDEA DE AMERICA EN EL PENSAMIENTO IUSINTERNACIONALISTA DEL SIGLO XXI 65, 82 (2010).

<sup>31</sup> Ignacio de la Rasilla del Moral, *La alianza entre la civilización y el Derecho internacional entre Escila y Caribdis (O de la brevísima historia de un anacronismo jurídico)*, in EL DISCURSO CIVILIZADOR EN DERECHO INTERNACIONAL. CINCO ESTUDIOS Y TRES COMENTARIOS 41-60 (2011).

<sup>32</sup> Tarazona, *supra* note 30.

<sup>33</sup> ANDRÉS BELLO, PRINCIPIOS DE DERECHO INTERNACIONAL (2d ed. 1844).

<sup>34</sup> H.J. JACOBINI, A STUDY OF THE PHILOSOPHY OF INTERNATIONAL LAW AS SEEN IN WORKS OF LATIN AMERICAN WRITERS 39-50 (Hyperion Press 1954).



consolidation of national identity for numerous European nations, in which international law was put to service in the process of national construction. The positivist tendency was gradually realized in a system of sources of international law – international treaties, international customs, general principles, and the doctrines of the more prominent *jus-publicists*. The development was aided by communication systems and international commerce, was favored by the relative stability of the European system of states, and materialized in a multiplication of internal legislation regarding international affairs, international treaties, and the development of international arbitration as a method of peaceful dispute settlement. Other authors, who nonetheless fit into the dominant frame of the eclecticism of the times in Latin America, remained closer to naturalism. These authors included scholars such as G. Pérez Gomar, J. Silva Santisteban,<sup>35</sup> and – of direct interest to our story – José María de Pando. Pando's work, *Elementos del Derecho Internacional* [*Elements of International Law*],<sup>36</sup> which opened to subscriptions in 1838 and was published posthumously in 1843, was the first book to contain in its title the term *derecho internacional* [*international law*].

Born in Lima in 1787, José María de Pando became the Spanish ambassador to Rome in 1812, to The Netherlands in 1815, and Spanish Secretary of State in 1823, during the Liberal Triennium. He would later become Minister of Foreign Affairs of Peru, where he wrote his *Epistle to Prospero*, dedicated to Simón Bolívar, before returning to Madrid as Honorary Consul in the Spanish state. Although Pando's work was almost immediately followed by accusations of plagiarism from Bello,<sup>37</sup> who treated it as little more than a new edition of his own *Principios* and subsequently initiated a long dispute over the matter,<sup>38</sup> both authors' works heralded the official academic status of the term "international law" in Spain. Half a century after being coined in Bentham's work, the term entered the General Plan of Studies of 17 September 1845 (also known as the Pidal Plan). In this Plan, which represented a leap forward in the process of centralizing Spanish education, international law became one of the subjects that was required to obtain the degree of Doctor in Laws, and also a compulsory, year-long subject of study to obtain the degree of Doctor in Jurisprudence. The Pidal Plan "served as a point of modernization for the teaching of law in Spain, and specifically for studies to obtain a doctoral degree, with the prescription of a new doctoral thesis more in

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<sup>35</sup> *Id.* at 58-67.

<sup>36</sup> 3382 GACETA DE MADRID, Dec. 18, 1843, at 4.

<sup>37</sup> Andrés Bello, EL ARAUCANO, Aug. 29, 1845.

<sup>38</sup> MIGUEL LUIS AMUNÁTEGUI, VIDA DE DON ANDRÉS BELLO 358-362 (1882).

accordance with the needs of original research.”<sup>39</sup> The Plan also established the first official chair of international law in Spain. This was assigned to the Professor of Philosophy from the University of Valladolid, Lorenzo Arrazola (1795-1873), who was a former Minister of Justice from 1838 to 1840 and later briefly served as President of the Spanish Council of Ministers in 1864.

Although the term “international law” only entered the official Spanish curriculum in 1845 through the Pidal Plan, there were at least three instances of teaching international law in Spain before that date where the term was used. Madrid’s Athenaeum established the first private chair of international law in 1844. This chair was originally awarded to José María Ruiz López, but his appointment to a diplomatic position in Constantinople in early 1845 left the position open for Facundo Goñi – a lawyer, politician, and diplomat who later served as Spanish Ambassador to the United States from 1867 to 1868. Goñi’s *Tratado de las Relaciones Exteriores de España* [*Treatise on Spanish Foreign Relations*] of 1848 gathered together his lessons as “chairholder of international law” in the Madrid Athenaeum from 1845 to 1847. He presented the lectures as a “reasoned and complete exposition of all the treaties and interests that determine Spain’s relations with each of the civilized nations inside and outside Europe.”<sup>40</sup> This work is considered the first in Spain to trespass on the traditional confines of diplomatic history and its immediate precursor in the genealogy of international relations - the historiography of international treaties.<sup>41</sup> Goñi has been credited with the introduction of the term “international relations” to Spanish academia. This term, according to del Arenal, came in the wake of a series of international historical studies and “replaced the term ‘diplomatic history’ much earlier than in other European states.”<sup>42</sup> Goñi, who authored extensive scholarly output,<sup>43</sup> was also a proponent of the Spanish colonialist policy in North Africa. Writing in 1848, Goñi argued that this continent “should soon be invaded by European colonization”<sup>44</sup> – a European civilization that should, moreover, according to Goñi, also strive for European unity.

A decree of December 29, 1842 by General Espartero served as the second step toward establishing international law in Spain. From

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<sup>39</sup> Aurora Miguel Alonso and Alberto Raya Rienda, *La colección de tesis doctorales de derecho de la universidad central, 1869-1883*, CUADERNOS DEL INSTITUTO ANTONIO DE NEBRIJA [CIAN] 13, 55-56 (2010).

<sup>40</sup> FACUNDO GOÑI, *TRATADO DE LAS RELACIONES EXTERIORES DE ESPAÑA* 2 (1848).

<sup>41</sup> Celestino del Arenal, *La génesis de las relaciones internacionales como disciplina científica*, 4 REVISTA DE ESTUDIOS INTERNACIONALES 849, 858-60 (1981) (Sp.).

<sup>42</sup> Pereira Castañares, *De la historia diplomática a la historia de las relaciones internacionales: algo más que un cambio de término*, 7 HISTORIA CONTEMPORÁNEA 155, 169 (1992) (Sp.).

<sup>43</sup> Facundo Goñi, *De la filosofía de la historia y sus principales escuelas*, 5 REVISTA ESPAÑOLA DE AMBOS MUNDOS (Sp.), Mar. 1854, at 613-615.

<sup>44</sup> GOÑI, *supra* note 40, at 145.

1840 to 1843, Espartero was the Regent of Spain; he later established international law as part of the curriculum at the short-lived Special School of Administration (1843 to 1845).<sup>45</sup> The teaching of the subject was divided into two courses and charged to José Posada Herrera and Eugenio Moreno López, who became the first chair-holders in Spain to officially lecture on international law in 1843. Additionally, Isaac Núñez de Arenas was made professor-in-charge of the first course of the Special School of Administration from 1844 to 1845. Finally, in January 1845, after the Athenaeum of Madrid's private chairs in international law were established, but before the Plan Pidal was passed, the *Academia Matritense de Jurisprudencia y Legislación* [the Madrid Academy of Jurisprudence and Legislation] also established the subject of international law in its teaching. The course of international law was assigned to Manuel Leandro Matienzo.<sup>46</sup>

The widespread inclusion of the term in works by Spanish authors illustrates how fashionable international law became in the intellectual milieu of the early 1840s Spain. This points towards a gradual shift of focus in the study in the international realm. In Spain, as well as elsewhere in the European continent, a slow transition towards a complementary and gradual juridification of the external perspective accompanied the domestic formation of the liberal state. A hallmark of this process was the production, in Spanish, of works that were at least nominally *jus-internationalist* during the 1840s.<sup>47</sup> Works recompiling international agreements and Spanish foreign treaties, such as the early ones published by Alejandro del Cantillo in 1843,<sup>48</sup> jumped on the bandwagon of the new terminology and were soon announced under the heading of “international law.”

Proof of this transition can be found in Esteban de Ferrater's *Código de Derecho internacional, o sea, Colección metódica de los tratados de paz, amistad y comercio entre España y las demás naciones* [Code of International Law, or, Methodical Collection of Treaties of Peace, Friendship, and Commerce between Spain and Other Nations], published in 1846.<sup>49</sup> In this collection, Ferrater uses the expression “or what is the same” (“o sea”) to link the terms “Code of International

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<sup>45</sup> LA GACETA DE MADRID, Jan. 2, 1843, at 2-3.

<sup>46</sup> The reconstruction of the 1840s here has greatly benefited thanks to the project *Filosofía en Español* by Gustavo Bueno Sánchez, which is available in Spanish at <http://www.filosofia.org/ave/002/b038.htm>.

<sup>47</sup> It goes almost without saying that this complementarity of vision, which naturally remains at the heart of the constitutive tension, is the source of all the normative anxieties and all (both informed and not so informed) debates in international law up to this day.

<sup>48</sup> ALEJANDRO DEL CANTILLO, *TRATADOS, CONVENIOS Y DECLARACIONES DE PAZ (1700-1840)* (1843).

<sup>49</sup> ESTEBAN DE FERRATER, *CÓDIGO DE DERECHO INTERNACIONAL, O SEA, COLECCIÓN METÓDICA DE LOS TRATADOS DE PAZ, AMISTAD Y COMERCIO ENTRE ESPAÑA Y LAS DEMÁS NACIONES TOMO PRIMERO* (D. Ramón Martín Indar, 1846).

Law” and its synonym in the standard of the time: “Methodical Collection of Treaties of Peace, Friendship and Commerce between Spain and Other Nations.” Nonetheless, this terminological galvanization soon evolved with *Elementos de Derecho Público Internacional con explicación de todas las reglas que, según los tratados, estipulaciones, leyes vigentes y costumbres constituyen el Derecho internacional español* [*Elements of Public International Law with Explanation of All the Rules That, According to Treaties, Stipulations, Current Laws and Customs, Constitute Spanish International Law*] by Antonio Riquelme.<sup>50</sup> The work by Riquelme [*Apéndice al Derecho Internacional de España*], who was then the chief legal advisor in the Ministry of State, included an appendix on the international law of Spain.<sup>51</sup> Riquelme’s opus is symptomatic of an effort to systematize and order Spanish foreign affairs law under the new terminology. Riquelme defines international law as the “the ensemble of rules that determine the relationships between civilized nations under positive, customary and natural law.”<sup>52</sup> These rules are in turn classified as political law and jurisdictional law. Political law is further subdivided into general and maritime law, and jurisdictional law into civil and criminal law. As a coda to these developments – in the academic curriculum, in the establishment of chairs, and in the emerging development of an independent production – the term international law was included in the Dictionary of the Royal Spanish Academy in 1852, defined as “the law that refers to the franchises or immunities that are reciprocally established.”<sup>53</sup>

## II. From the 1850s to the First “Professional” Generation of 1883

The study of international law as a subject in Spain benefited from the series of centralizing university educational reforms that, as we have seen, pivoted around the Pidal Plan of 1845. These reforms flowed naturally into the Moyano Law of 1857 and became the frontispiece of the liberal construction of the Spanish university system. The Moyano Law introduced novelties for legal education, including the division of law schools into three sections – laws, canons, and administration – with a whole heading in the new laws section devoted to the inclusion of selected textbooks published by the government every three years.

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<sup>50</sup> ANTONIO RIQUELME, *ELEMENTOS DE DERECHO PÚBLICO INTERNACIONAL* (Santiago Saunaque ed., 1849).

<sup>51</sup> *Id.* at 200.

<sup>52</sup> *Id.* at 2.

<sup>53</sup> Dictionary of the Royal Spanish Academy (Real Academia Español 1852).

However, despite the comparatively early emergence of international legal studies in Spain, subsequent decades saw a period of drought of Spanish works in the field. Due to the gradual rise of positivism, Spanish authors adapted their contents to the rising prestige of the term. They did so, however, without shying away from *jus-naturalist* considerations or historical-political extensions, including sketches of the nature of international relations, in which Spanish foreign strategic interests were the key focus of attention. In 1856, Eusebio Alonso y Pesquera<sup>54</sup> continued along the path begun by Goñi's 1848 *Treatise on Spanish Foreign Relations*. Eustaquio Toledano's *History of Treaties, Agreements and Declarations of Commerce Between Spain and the Other Great Powers*<sup>55</sup> of 1858 followed in the footsteps of an earlier Spanish history of treaties and diplomatic documents by Alejandro del Cantillo from 1843.

Latin America in the 1860s saw a series of foreign prestige-seeking military interventions by Spain. These included Spanish collaboration with France and Great Britain in the Mexican expedition of 1861 to 1862, a Spanish war against Peru and Chile from 1863 to 1866, and the brief reincorporation of the Dominican Republic as a territory of Spain from 1861 to 1865. Showing a marked *jus-naturalist* influence, Pedro López Sánchez published *Elementos de Derecho internacional público, precedidos de una introducción a su estudio bajo los aspectos de su desarrollo histórico o positivo y de su teoría* [*Elements of International Public Law, Preceded by an Introduction to its Study on Aspects of its Historical or Positivistic Development and its Theory*] in 1866.<sup>56</sup> Deeply influenced by the Catholic positions of Taparelli d'Azeglio's writings in the 1840s, López Sánchez tried to shed light on the international community's state of crisis, which resulted from class struggle and socialism in his study of the historical-political development of international law and international relations. This strong Catholic influence was balanced by the methodological influence of François Laurent's *Histoire du droit des gens et des relations internationales* [*History of the Law of Peoples and of International Relations*] written in 1851. Although López Sánchez states that he was "in absolute disagreement with the author's appreciations on Catholicism,"<sup>57</sup> he relied on Laurent's method<sup>58</sup> for his own understanding that "for every science the study of history is useful

<sup>54</sup> EUSEBIO ALONSO Y PESQUERA, *HISTORIA DE LAS RELACIONES INTERNACIONALES DE ESPAÑA* (1856).

<sup>55</sup> EUSTAQUIO TOLEDANO, *HISTORIA DE LOS TRATADOS, CONVENIOS Y DECLARACIONES DE COMERCIO ENTRE ESPAÑA Y LAS DEMÁS POTENCIAS* (1858).

<sup>56</sup> PEDRO LÓPEZ-SÁNCHEZ, *ELEMENTOS DE DERECHO INTERNACIONAL PÚBLICO PRECEDIDOS DE UNA INTRODUCCIÓN A SU ESTUDIO BAJO LOS ASPECTOS DE SU DESARROLLO HISTÓRICO O POSITIVO Y DE SU TEORÍA*, (Imprenta de la Revista de Legislación 1866).

<sup>57</sup> LÓPEZ-SÁNCHEZ, *supra* note 56, at 2.

<sup>58</sup> Del Arenal, *supra* note 13, at 30.

and all sciences must know their own history.”<sup>59</sup> López Sánchez explained the title of this work in the following manner:

[I]t is our purpose with this title to manifest, with scientific grounding, that it is not from mere curiosity, but it is a superior reason of method that obliges us that before the study of the science of international law, we expose the history of the various relationships between the peoples, preceded by the significance that in every science the study of law has.<sup>60</sup>

According to del Arenal, the slow extension of Spanish internationalist studies under the banner of international law also absorbed the independent study of international relations in Spain, despite its early emergence in Goñi's work.<sup>61</sup> These studies became trapped between the development of diplomatic history and the modern prestige gained by the label “international law.”

A further manifestation of this all-encompassing tendency was the revival of the *Secunda Scholastica* brought about by the rise in prestige of the work of the Dominican friar and Prima Professor of Sacred Theology at the University of Salamanca, Francisco de Vitoria (1483-1547). By the 1860s, the late Francisco de Vitoria's work gained international ground in the framework of what P. Haggemacher has described as the “tournament of the putative founders of international law.”<sup>62</sup> Vitoria had, until then, been understood “during the first part of the nineteenth century . . . for most, as a simple name that some evoked without having a true knowledge of his thought;”<sup>63</sup> instead, Hugo Grotius was known as “the founder of the discipline and, in principle, its only founder.”<sup>64</sup> According to Haggemacher, it was not “until 1860 that one witness[ed] the slow emergence in prestige of Vitoria in the internationalist milieu in search of the childhood of the discipline.”<sup>65</sup> In 1862, François Eugène Cauchy concluded that Spain “ha[d] served as the cradle of the science of the law of nations,”<sup>66</sup> but it was thanks to the “discovery in 1864 of *De Jure Praedae*, that the

<sup>59</sup> LÓPEZ-SÁNCHEZ, *supra* note 56, at 35.

<sup>60</sup> *Id.* at 1. Del Arenal believes López Sánchez's work demonstrates the clear perception of Spanish academia because it shows that “international law is not merely a formal structure, but [also] a socio-historical structure.”

<sup>61</sup> Del Arenal, *supra* note 13, at 35.

<sup>62</sup> Peter Haggemacher, *La place de Francisco de Vitoria parmi les fondateurs du droit international*, in ACTUALITÉ DE LA PENSÉE JURIDIQUE DE FRANCISCO DE VITORIA 29 (1988).

<sup>63</sup> *Id.* at 29.

<sup>64</sup> *Id.* at 28.

<sup>65</sup> *Id.* at 30.

<sup>66</sup> EUGÈNE CAUCHY, LE DROIT MARITIME INTERNATIONAL CONSIDÉRÉ DANS SES ORIGINES ET DANS SES RAPPORTS AVEC LE PROGRÈS DE LA CIVILISATION 33 (Guillaumin 1862).

decisive influence of the Spanish scholars, and especially of Vitoria, over the thought of the Dutch jurist-consult became evident.”<sup>67</sup>

These early glimpses of Vitoria in the 1860s found further relevance in the restoration of the monarchy in Spain in 1874, which was the “most stable political structure erected by Spanish liberalism during the nineteenth century.”<sup>68</sup> This political stability also benefitted the growing hegemony of international law etiquette in Spanish academia. Anchored in the 1876 Constitution and in the peaceful turn of political parties, it is in the framework of what Carr termed the “efficient replacement of the mechanisms of military rebellion”<sup>69</sup> that the definitive academic professionalization of the discipline took place in Spain following the Royal Order of September 2, 1883.

Still, by 1877, Spanish authors such as Rafael María de Labra did not hesitate to conclude that “if the scientific world possesses works of international law written in Spain, this is exclusively due to our Latin American friends.”<sup>70</sup> It is probable that this contemporary development of works by Latin American authors helped convince Carl Schmitt in his study on the dissolution of *Jus Publicum Europaeum* that early in the second half of the nineteenth century, Europe and America “were confounded in the image of a Western European civilization.”<sup>71</sup> Among this internationalist production was the work of Carlos Calvo, a key representative of what Obregón has defined as “a Creole legal consciousness of the region’s elite by which they often assumed themselves to be part of the metropolitan center (as descendants of Europeans) while at the same time challenging the center with notions of their own regional uniqueness (as natives of America).”<sup>72</sup> Pradier-Fodère, who published *Traité de droit international public européen et américain* [*Treaty of International European and American Public Law*] in 1885, mirrored the example set by Calvo in his book *Derecho Internacional teórico y práctico de Europa y América* [*Theoretic and Practical International Law of Europe and America*].

The new era of European imperialism in the third quarter of the nineteenth century contributed to the development of more of this post-independence, international self-integrationist effort from semi-peripheral authors aiming to reinforce their engraining in an “understanding distinctively Western of civilization and its

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<sup>67</sup> Haggemacher, *supra* note 62, at 31.

<sup>68</sup> RAYMOND CARR, *ESPAÑA 1808-1936* 336 (1970).

<sup>69</sup> *Id.* at 344.

<sup>70</sup> RAFAEL MARÍA DE LABRA, *EL DERECHO INTERNACIONAL Y LOS ESTADOS UNIDOS DE AMÉRICA* 12 (A.J. Alaria 1877).

<sup>71</sup> CARL SCHMITT, *LE NOMOS DE LA TERRE DANS LE DROIT DES GENS DU IUS PUBLICUM EUROPAEUM* [THE NOMOS OF THE EARTH IN THE INTERNATIONAL LAW OF *JUS PUBLICUM EUROPAEUM*] (1950).

<sup>72</sup> Liliana Obregón, *Between Civilization and Barbarism: Creole Interventions in International Law*, 27 *THIRD WORLD QUARTERLY* 5, 815, 817 (2006).

attributes.”<sup>73</sup> The latter was seen as a buffer against both European neo-colonialists and Anglo-American imperialist impulses. On some occasions, the study focused on the Latin American political project and confederative ideal, with works such as Rafael Fernando Seijas’ *El Derecho Internacional Hispano-Americano Público y Privado* [*Hispanic-American International Public and Private Law*], written in 1884. Like other works of the period, this one tried to create a melting-pot of actions with *jus-internationalist* significance from Seijas’s homeland of Venezuela, and attempted to gather all of Latin America together to act as a consultative guide or source for dealing with European and other nations.<sup>74</sup> This concept, retrospectively termed “particularist universalism”<sup>75</sup> by Becker Lorca, found a successor in Alejandro Álvarez, the precursor of a new international law who theorized and promoted the recognition of Latin American international law in the early twentieth century.<sup>76</sup>

This consciousness of American problems and colonialism developed in Spain after the onset of the Spanish Restoration period. In 1876, the Free Institution of Teaching (“ILE”) was founded, headed by Francisco Giner de los Ríos<sup>77</sup> and under the philosophical auspices of Karl Krause who was brought to Spain by Julian Sanz del Río. Against the background of the political quarrel between religious absolutism and scientific positivism enshrined in the so-called “second university question,”<sup>78</sup> and the abandonment of university chairs by a generation of progressive thinkers, the new Institution channelled a particular Krause-positivist orientation that became known as “institutionism.”<sup>79</sup> Its pedagogical creed positively influenced the development of international legal studies in Spain in the late nineteenth century:

The professor has no other criterion than his own conscience; study no other method than that which is dictated by reason; truth, no other system than that born out of nature; thought, no other school than free research; scientific life, in sum, no other guide, no other principle than an inquiry alien to any spirit of exclusivism, to any narrow sense of sect.<sup>80</sup>

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<sup>73</sup> *Id.* at 817.

<sup>74</sup> H.J. JACOBINI, *supra* note 34, at 39, 45.

<sup>75</sup> Arnulf Becker Lorca, *Universal International Law: Nineteenth-Century Histories of Imposition and Appropriation*, 51 HARV. INT’L L.J. 475, 478 (2010).

<sup>76</sup> ALEJANDRO ALVAREZ, *LE DROIT INTERNATIONAL AMÉRICAIN* (1910).

<sup>77</sup> *See* FRANCISCO GINER DE LOS RÍOS, *ENSAYOS* (1969).

<sup>78</sup> *See e.g.* VICENTE CACHO VIÚ, *LA INSTITUCIÓN LIBRE DE ENSEÑANZA, ORÍGENES Y ETAPA UNIVERSITARIA, 1860-1881* (1962).

<sup>79</sup> The most representative work of early Spanish Krausism was the translation by Julian Sanz del Río of Christian FRIEDRICH KRAUSE, *EL IDEAL DE LA HUMANIDAD PARA LA VIDA* (1860).

<sup>80</sup> *Memoria de 1877*, I BOLETÍN DE LA INSTITUCIÓN LIBRE DE ENSEÑANZA 21 (1877).



Rafael María de Labra, the most representative scholar of the study of colonialism and head of the anti-slavery movement, taught the first courses in international law at the Free Institution of Teaching in the last third of the nineteenth century in Spain.<sup>81</sup> Labra was the President of the Spanish Abolitionist Society from 1876 to 1888, a Society founded in 1865. Labra's membership in the Spanish Congress played a large part in the passage on March 22, 1873 of the Abolishment of Slavery law, which included a provision that financially compensated slave owners affected by the measure for their legitimate rights. Despite this legislative victory, Labra continued fighting against the *parrainage*, a new institution of serfdom for previous slaves in Cuba, which was not abolished until 1887. However, the Royal Decree of July 6, 1860 kept alive the semi-slavery conditions of hired Asian workers until the Spanish-American War of 1898.

The anti-slavery cause colored the first conference on international law given by Labra at the Free Institution of Teaching on April 1, 1887. In his conference, entitled "Representation and Influence of the United States of America in International Law,"<sup>82</sup> Labra decried the abandonment of international legal studies in Spain, criticized Spain's parochialism, and chastised Spain's tendency "to remain anchored in things, institutions, meanings and ideas that are completely out of touch with the world."<sup>83</sup> Labra wrote as an apologist of international law and highlighted international law's most important feature of the nineteenth century: its contribution to progress and civilization, which Labra understood to mean freedom both on the domestic plane and the religious plane.<sup>84</sup>

In his conference, Labra tried to depict this concept through a sweetened image of the United States and by quoting, among others, Kent, Lawrence, Lieber, Wheaton and Story – the U.S.'s main *jus-internationalists*. Labra is credited with various contributions to international legal institutions in the United States, such as "reform of the colonial regime, the principle of non-intervention, the freedom of the seas, the extension of the circle of nations, the development of international law, the specification of the duties of neutral states, and the effectiveness of unwritten international law."<sup>85</sup> For Labra, who presented an idealist, anglophilic representation of the British colonial

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<sup>81</sup> See e.g., RAFAEL MARÍA DE LABRA, LA ABOLICIÓN DE LA ESCLAVITUD EN EL ORDEN ECONÓMICO 15 (J. Noguera 1873).

<sup>82</sup> RAFAEL MARÍA DE LABRA, EL DERECHO INTERNACIONAL Y LOS ESTADOS UNIDOS DE AMÉRICA (1877).

<sup>83</sup> *Id.* at 6.

<sup>84</sup> *Id.* at 9.

<sup>85</sup> *Id.* at 37.

model<sup>86</sup> and defended the Monroe Doctrine<sup>87</sup> as a veiled form of colonialism against those who criticized it, thereby implicitly excusing foreign interventions and appeasing the fears of American expansionism in Cuba,<sup>88</sup> the United States was “the country par excellence of the nineteenth century.”<sup>89</sup> It was nothing less than “a true source of despair for reactionary people and the shame of pessimists.”<sup>90</sup>

During the early Spanish Restoration, another small milestone in the history of international law was the publication of *Ensayo del derecho de gentes* [Essay on the Rights of People] in 1879 by Concepción del Arenal (1820-1893), an influential criminal law expert, sociologist, and precursor of feminism. This work remains one of the most remarkable efforts to popularize international law because, according to del Arenal, “only when the people understand certain truths may these [truths] become facts.”<sup>91</sup> Del Arenal’s work also connotes a declaration of faith for the progress of international law:

The law of peoples was not and cannot be coactions, but harmony: it exists to the extent that high-minded feelings, exact ideas, well understood interests concur with it; not by virtue of its armed force, which more often than not serves to trample on it. The facts that remain without being analyzed are often thrown like mountains to bury intelligence and hope under their mole, and because something has not been yet, it is concluded that it will never be; but history is a master not a tyrant; its law is not fatality, and its lessons teach that the progress of law, slow in other epochs, is fast in ours, and it will be more and more so, because when reason has been able to untie the knots that chained it, it falls upon mankind as weights do with an accelerated movement: we should trust its triumph.<sup>92</sup>

After the publication of del Arenal’s work, the study of international law received a definitive boost through the Royal Order of September 2, 1883. It extended courses on public international law and private international law to seven other Spanish universities: Barcelona, Oviedo, Santiago de Compostela, Seville, Valencia, Valladolid and Zaragoza; before the Royal Order, international law courses were only taught in the Central University of Madrid.

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<sup>86</sup> *Id.* at 13.

<sup>87</sup> *Id.* at 28.

<sup>88</sup> *Id.* at 23.

<sup>89</sup> *Id.* at 9.

<sup>90</sup> *Id.* at 38.

<sup>91</sup> CONCEPCIÓN DEL ARENAL, ENSAYO SOBRE EL DERECHO DE GENTES 68-69 (1879).

<sup>92</sup> *Id.*

### III. The First Professional Generation and the Return of Vitoria

The launch of Spain's first specialized international law journal provided evidence of the incipient social role of international legal studies following the spread of its teaching in Spanish universities. In 1887, following the footsteps of the founding of 1869's *Revue de droit international et de la législation comparée* [*Review of International Law and Comparative Legislation*] and the *Institut de Droit International* [*Institute of International Law*] of 1873, Alejo García Montero created the *Revista de Derecho Internacional, Legislación y Jurisprudencia Comparadas* [*Magazine of International Law, Legislation, and Comparative Jurisprudence*], published briefly from 1887 to 1888. The editorial of its first issue highlighted:

The convenience and need which are clear to anyone who has focused his attention on the greatest developments known in recent times in relations among peoples, that are increasing in the same proportion as the interest and the importance of international law and of everything that helps the knowledge of progress and the legal movement taking place in every state.<sup>93</sup>

García Montero and his group of editorial collaborators divided the first volume into various sections; a survey of this first volume shows the comparative law spirit that animated this ephemeral editorial enterprise. The first of these various sections was a "Doctrinal Section," which aimed to "contain articles of private or public international law and comparative legislation."<sup>94</sup> The inaugural issue included a work by Pasquale Fiore on the "International Effect of the Sentences of the Courts,"<sup>95</sup> and another by the future Spanish judge of the Permanent Court of Justice, Rafael Altamira,<sup>96</sup> entitled "The Communal Organization of all States."<sup>97</sup> Altamira examined the field of collective property and found that "the studies of comparative

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<sup>93</sup> REVISTA DE DERECHO INTERNACIONAL, LEGISLACIÓN Y JURISPRUDENCIA COMPARADAS 1 (José Góngora Álvarez 1887).

<sup>94</sup> *Id.* at 1.

<sup>95</sup> *Id.* at 2-26.

<sup>96</sup> Yolanda Gamarra, *Rafael Altamira Crevea: The International Judge as "Gentle Civilizer"*, 14 J. HIS. INT'L L. 1 (2012).

<sup>97</sup> Rafael Altamira, *La Organización comunal de todos los Estados*, 1 REVISTA DE DERECHO INTERNACIONAL, LEGISLACIÓN Y JURISPRUDENCIA COMPARADAS 27, 39 (1887).

legislation and legal customs can give the most beneficial results,”<sup>98</sup> and cast light on the controversial series of disentailments of church property and communal lands that took place in Spain throughout the second part of the nineteenth century.

The second section, entitled “International Political Chronicle,” announced that it would give account of “great topical questions of the present, or that could emerge in the future, among the diverse states.”<sup>99</sup> The third section, entitled “Legislative Chronicle,” included “[i]nternational treaties and ratified or sanctioned legal dispositions from different states, especially Spanish, Portuguese and American nations that could affect this area in future years.”<sup>100</sup> The first issue of this section contained, among other things, the texts of an 1887 treaty between Spain and the Oriental Republic of Uruguay on the extradition of criminals, the text of the law for the protection of submarine cables, and the convention on literary protection signed in Colombia in 1885.

The fourth section of the journal was a repertory of international case law, including notice “of commercial case law that could have this (international) character or interest foreign people.”<sup>101</sup> The editors chose to report on decisions such as one that spoke on the legal capacity of American married women to take part in judicial proceedings before Spanish courts; another report related to injuries to foreign princes; and yet another was a report on a series of excerpts from decisions with an international foreign element from courts in France, Belgium, Germany, England, Denmark, Egypt, the United States, Italy, and the Netherlands. The fifth section, “Review of the Professional Press,” aimed to give “account, with greater or lesser extension, depending on their importance for the object of our interest, of the most notable works that become published in our discipline.”<sup>102</sup> The journal’s contents rounded out with a miscellany of news, bibliographies, and bibliographical announcements.

Like many other Spanish scholars of this period, Alejo García Montero, the founder of this first, ephemeral, scientific Spanish publication on international law, distinguished himself with an extensive output of foreign works translations. One of the most characteristic features of the 1880s is the proliferation of translation of works of international law, complete with extensive original annotations and appendices by Spanish authors. Among these works were Paquale Fiore’s *Tratado de Derecho Internacional Público*

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<sup>98</sup> Rafael Altamira, *La Organización comunal de todos los Estados*, 1 REVISTA DE DERECHO INTERNACIONAL, LEGISLACIÓN Y JURISPRUDENCIA COMPARADAS 27, 39 (1887).

<sup>99</sup> REVISTA DE DERECHO INTERNACIONAL, LEGISLACIÓN Y JURISPRUDENCIA COMPARADAS 1, 1 (1887).

<sup>100</sup> *Id.* at 1.

<sup>101</sup> *Id.* at 2.

<sup>102</sup> *Id.* at 2.

[*Treatise of International Public Law*],<sup>103</sup> J. G. Bluntschli's *Derecho Universal Público* [*Public Universal Law*], and four volumes by Fiodor Martens published as *Tratado de Derecho Internacional* [*Treatise of International Law*].<sup>104</sup> These translations accompanied the parallel development of a national production of articles, manuals, and treatises on international law in the 1880s and 1890s. Among the treatises on international law are such works as *Elementos de derecho internacional public* [*Elements of Public International Law*] written in 1890 by M. Torres Campos,<sup>105</sup> and its successive editions, the *Resumen de derecho internacional público* [*Summary of Public International Law*] written in 1894; and *Curso elemental de derecho internacional público* [*Elemental Course of Public International Law*] and *Historia de los tratados* [*History of Treaties*] written in 1897 by Luis Gestoso Acosta.<sup>106</sup> Other relevant treatises are those by Remigio Sánchez Covisa, *Derecho Internacional Público* [*Public International Law*], written in 1896,<sup>107</sup> and on private international law by J. Fernández Prida, such as *Derecho Internacional Privado* [*Private International Law*], published in 1896.

One of the authors who contributed to this post-1883 bibliographical development in Spanish was Ramón Dalmau, the Marquis of Olivart (1861-1928). This occasional professor of international law at the University of Madrid, well-travelled activist, and erudite liberal conservative scholar stands as a paradigmatic example of the academic international lawyer in the late nineteenth century. Dalmau was initially oriented to the study of civil and Roman law tradition, to which he consecrated his doctoral thesis in 1884. His work on the concept of "possession"<sup>108</sup> received a eulogy from Rudolf von Jhering,<sup>109</sup> and enabled him to enter the Spanish Royal Academy of Moral and Political Sciences in 1885.

However, his initial interest in private law soon gave way to international law, to which Dalmau devoted almost his entire attention and writings for four decades. He became one of Spain's most notable authors of the first professional generation of academic international

<sup>103</sup> See e.g., PASQUALE FIORE, *TRATADO DE DERECHO INTERNACIONAL PÚBLICO* 30-38 (2d ed. 1901) (Aumentado con notas y un apéndice con los tratados entre España y las demás naciones por A. García Moreno).

<sup>104</sup> See e.g., FEDERICO DE MARTENS, *DERECHO INTERNACIONAL CONTEMPORÁNEO DE LAS NACIONES CIVILIZADAS* 225-227 (J. Fernández Prida ed. 1883).

<sup>105</sup> MANUEL TORRES CAMPOS, *ELEMENTOS DE DERECHO INTERNACIONAL PÚBLICO* (1890).

<sup>106</sup> LUIS GESTOSO ACOSTA, *RESUMEN DE DERECHO INTERNACIONAL PÚBLICO* (1894); LUIS GESTOSO ACOSTA, *CURSO ELEMENTAL DE DERECHO INTERNACIONAL PÚBLICO E HISTORIA DE LOS TRATADOS* (1897).

<sup>107</sup> REMIGIO SÁNCHEZ COVISA, *DERECHO INTERNACIONAL PÚBLICO* (1896).

<sup>108</sup> RAMÓN DALMAU DE OLIVART, *LA POSESIÓN: APUNTES Y FRAGMENTOS DE UNA NUEVA TEORÍA POSESORIA. NOCIÓN EN EL DERECHO ABSTRACTO. ETIMOLOGÍA, CARÁCTER JURÍDICO, BASE DE SU PROTECCIÓN* (1884).

<sup>109</sup> Letter from Jhering to Ramón Dalmau de Olivart (Nov. 28, 1884).

lawyers. He was among the first to offer a general treatment of the field in Spanish with his work *Tratado de Derecho Internacional Público y Privado* [*Treatise of Public International Law*],<sup>110</sup> published in 1886. Highly representative of his many other works is his *Tratado y Notas sobre Derecho Internacional Público* [*Treatise and Notes on Public International Law*],<sup>111</sup> published in 1887, which went through several editions until 1903 to 1904. The systematic ordering in this textbook influenced a generation of Spanish manuals in the field and filled a lacuna in the Spanish discipline.

Dalmau's re-editions of *Tratado* showed constant dedication to the evolution of the discipline during the 40 years of his natural law-oriented contributions to the study of international law. Indeed, for the Marquis of Olivart, international law was "the knowledge of the natural law of the society of states based on the rule of law, and its recognition by those states in positive law."<sup>112</sup> When "understood subjectively," international law became "that part of public law that determines the relationships among states; that is why it can be called external public law."<sup>113</sup>

The different editions of his treatise allow us to follow some of the doctrinal developments that the discipline went through before the end of the nineteenth century. Thus, in the first editions of his treatise, Dalmau expressly limited the application of international law to European and Christian subjects; indeed, for the Marquis, "with those peoples who do not belong to the European and Christian legal community, it is merely possible to apply natural law . . . besides, this is the universal international law by definition."<sup>114</sup> The Marquis' conception of the "international legal community" brought him close to authors such as Henry Wheaton, who he listed as among his favorites in the U.S., along with Dana and Kent.<sup>115</sup> However, the Marquis left out the absolute Christian-Euro-centricity of his international law conception in the Appendix, covering the 1887 to 1899 periods in the third edition of his treatise. Instead, he replaced it with James Lorimer's tripartite scheme of civilized, barbarous, and savage, with the former being, in Dalmau's words, the equivalent to "plain humanity."<sup>116</sup>

In the 1899 edition, Dalmau began to integrate certain states like Turkey and Japan into the "international legal community" of "civilized humanity," which he thought required "complete legal recognition."<sup>117</sup> In Dalmau's view, states like China, Siam, and

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<sup>110</sup> MARQUÈS D'OLIVART, MANUAL DE DERECHO INTERNACIONAL PÚBLICO Y PRIVADO (1886).

<sup>111</sup> MARQUÈS D'OLIVART, TRATADO Y NOTAS DE DERECHO INTERNACIONAL PÚBLICO (1887).

<sup>112</sup> *Id.* at 95.

<sup>113</sup> *Id.* at 71-72.

<sup>114</sup> *Id.* at 72.

<sup>115</sup> ANTONIO BLANC ALTEMIR, EL MARQUÈS D'OLIVART I EL DRET INTERNACIONAL (1861-1928): SOCIETAT INTERNACIONAL I APORTACIÓ CIENTÍFICA 127 (2000).

<sup>116</sup> MARQUÈS DE OLIVART, TRATADO Y NOTAS DE DERECHO INTERNACIONAL PÚBLICO 349 (1899).

<sup>117</sup> *Id.* at 349.

Morocco, represented “barbarous humanity,” for which the “observance of natural law and positive law through reciprocity and according to what is expressly stated in treaties” was sufficient.<sup>118</sup> As for the third category of peoples, they had to confine themselves within the “strict application of the principles of natural law.”<sup>119</sup>

In the appendix to the third edition, the Marquis also echoed the spirit of the times by including the title “Perpetual Peace: Disarmament and the International Tribunal.”<sup>120</sup> Dalmau remained skeptical to the ultimate eradication of war and peaceful settlement of disputes because, in his view, “war is not . . . the law of force; on the contrary, it represents the force of law, its guarantee and its ultimate defence.”<sup>121</sup> His viewpoint on war remained, even after he considered the plans for a European state proposed by Lorimer and Blüntschi, and despite being a supporter of international arbitration.<sup>122</sup> This acknowledgment led Dalmau to reflect that “[p]erpetual peace is a state of affairs that the peoples can never attain but they must, nevertheless, approach it indefinitely.”<sup>123</sup> Dalmau also offered some insights on the didactic approaches of the time to international law, which he thought were limited to general works, collections of treaties, monographs, and diaries.<sup>124</sup> No trace of the case-method approach to international law, which by then was gaining advocates in the U.S., can be found.

The Marquis de Olivart’s contribution also extended to the development of the field of Spanish foreign affairs through his recompilation, between 1890 and 1902, of 13 volumes entitled *Spanish Collection of Treaties, Agreements and Documents from 1814 to 1902*.<sup>125</sup> He was an Associate Member of the *Institut de Droit International* [Institute of International Law] in 1888, eventually becoming its Vice President, and had an enduring contribution to the bibliographical development of the field found in his *Catalogue of a Library of International Law and Auxiliary Sciences*, published in 1899. Although Olivart was never a “professional” academic of international law, he carried out his work in the shadow of the educational reform of 1883.

The extension of academic chairs of both public and private international law to seven Spanish universities outside Madrid led to what one may term, following Martti Koskenniemi’s study of other

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<sup>118</sup> *Id.* at 350.

<sup>119</sup> *Id.* at 352.

<sup>120</sup> MARQUÉS DE OLIVART, *supra* note 116, at 350.

<sup>121</sup> *Id.* at 351.

<sup>122</sup> BLANC ALTEMIR, *supra* note 115, at 128.

<sup>123</sup> MARQUÉS DE OLIVART, *supra* note 116, at 32.

<sup>124</sup> *Id.* at 89.

<sup>125</sup> MARQUÉS DE OLIVART, COLECCIÓN DE TRATADOS, CONVENIOS Y DOCUMENTOS INTERNACIONALES CONCLUIDOS O RATIFICADOS POR NUESTROS GOBIERNOS CON LOS ESTADOS EXTRANJEROS DESDE EL REINADO DE DOÑA ISABEL II HASTA NUESTROS DÍAS (1902).

European traditions,<sup>126</sup> the first generation professional Spanish international legal scholar. The works produced by the 1883 Spanish generation of international lawyers were characterized as a combination of socio-historical perspective and positive law from a *jus-naturalist* perspective. The revival of the Salamanca School also contributed to this *jus-naturalist* tendency. In 1884, Torres Campos wrote: “[i]nternational law (which was initiated by our ancient writers Vitoria, Soto, Suárez and Ayala, who anticipated the authors of European treatises) is today in almost complete oblivion. It is the legal branch that has been least studied.”<sup>127</sup>

The “revival” of the Salamanca School served somewhat as a compensatory refuge for what del Arenal terms the “little scientific relevance that, in general, Spanish international legal thought had until the end of the nineteenth century.”<sup>128</sup> The unearthing of the School in this particular period provided Spanish international legal scholarship with deep, quasi-national identity traits. For Haggemacher, “it is the moment of the famous original 1874 lesson given by Thomas E. Holland in Oxford on Alberico Gentili where one can retrace what we could call the battle of the founders of the law of peoples.”<sup>129</sup> Erns Nys was the leading voice in the Vitorian cause during this period, and he highlighted the importance of Spaniards from the sixteenth century in the same year as the tricentenary of Grotius: 1883. Nys did not think “there could be anything that [could] be compared in the history of law to the short pages that compose the double dissertation of *De Indis* by Francisco de Vitoria.”<sup>130</sup>

This growing European historiographical focus on the role of Francisco de Vitoria in the genesis of the law of peoples found an echo in the intellectually eclectic Spain of *tertulias* and the political-philosophical debates in *Athenea* and literary-philosophical gazettes. It is possible to characterize this environment with reference to four broad intellectual camps. First, there were the traditionalist-integrists and Catholic ultramontists (believers in the infallibility of the Pope), and

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<sup>126</sup> Koskenniemi, *supra* note 15. See De La Rasilla, *Reseña de Martti Koskenniemi*, 6 REVISTA ELECTRÓNICA DE ESTUDIOS INTERNACIONALES, 1-13 (2008) (reviewing MARTTI KOSKENNIEMI, THE GENTLE CIVILIZER OF NATIONS, THE RISE AND FALL OF INTERNATIONAL LAW, 1870-1960 (2002)).

<sup>127</sup> MANUEL TORRES CAMPOS, NOCIONES DE BIBLIOGRAFÍA Y LITERATURA JURÍDICA DE ESPAÑA 135 (Ancha de San Bernardo 1884).

<sup>128</sup> Celestino del Arenal, *El estudio de las relaciones internacionales en la España del siglo XIX*, 163 REVISTA DE POLÍTICA INTERNACIONAL 1, 19 (1979).

<sup>129</sup> Haggemacher, *supra* note 62, at 27-29.

<sup>130</sup> Ernest Nys, Review of S. de Freitas, *Justification de la domination portugaise en Asie*, in 15 REVUE DE DROIT INTERNATIONAL ET DE LÉGISLATION COMPARÉ 198 (1883). See also Ernest Nys, *Les publicistes espagnols du XVI siècle et les droit des indiens*, 21 RÉVUE DE DROIT INTERNATIONAL ET DE LÉGISLATION COMPARÉE 532 (1889); Ernest Nys, *Le droit des gens et les anciens jurisconsultes espagnols* (1914) (extrait) in L'ESPAGNE ET LA FORMATION DU DROIT DES GENS MODERNE 57, 66-82 (G. van Hecke ed., 1988); ERNEST NYS, INTRODUCTION IN FRANCISCO DE VITORIA, DE INDIS ET DE IURE BELLI RELECTIONES, CLASSICS OF INTERNATIONAL LAW (1917).



the neo-Thomists, such as Alejandro Pidal y Mon. Alongside this group were Catholic thinkers, such as Gumersindo Valverde and Marcelino Menéndez Pelayo, with their insistence that a Spanish renaissance would only be possible if it were in keeping with Spain's Catholic roots. On the liberal wing, there were Krausists, influenced by Hegelian idealism through Sanz del Río. After the failure of the Revolutionary Sexenio (1868-1974), this influence would diverge into several orientations, including the Krausist-positivism of *Institucionismo* after the creation of the Free Institution of Teaching in 1876. Finally, the "first school of Madrid"<sup>131</sup> included early neo-Kantian scholars like José del Perojo (1850-1908), who became the founder of *Revista Contemporánea* [Contemporary Magazine] in 1875 and was the first translator of Kant's *Theory of Pure Reason* in 1883, as well as Manuel de Revilla. The school fit within the modernist and Europeanist trends that highlighted the weight of religious intolerance and political despotism on Spanish progress.

The Spanish contributions to the rediscovery of the School of Salamanca benefited in part from the Dominican order in Spain, which included the work of religious authors such as Alonso Getino, Beltrán de Heredia and Teófilo Urdániz, Ramón Hernández-Martín, as well as secular authors.<sup>132</sup> This scholastic revival took place parallel to the evolution of the process of codification in Spain (the Commercial Code of 1885 and the Civil Code of 1889) during the apogee of the German Historical School. The works by Eduardo de Hinojosa y Naveros (1852-1919) are of special interest in this framework. He is considered the father of modern Spanish legal historiography.<sup>133</sup> Hinojosa's entry speech to the Royal Academy of History in 1889 took as its subject matter the Dominican Fray Francisco de Vitoria.

Two main elements can be highlighted in Hinojosa's analysis: "[t]he influence the Spanish philosophers and theologians of earlier centuries had on the public law of their country and, singularly, on

<sup>131</sup> Fernando Hérmeda de Blas, *La primera escuela de Madrid*, LECCIONES DEL CURSO "CINCUENTA AÑOS DE ORTEGA Y GASSET (1955-2005)", available at <http://www.ahf-filosofia.es/biblio/docs/cursoortega.htm>.

<sup>132</sup> Other authors include Álvarez de los Corrales, Bravo Murillo, Pérez de Gomar, López Sánchez, Marqués de Villaurrutia, Ceferino González, Conde y Luque, Hinojosa, Menéndez y Pelayo, Fernández Prida, Abad y Cavia Alonso Getino.

<sup>133</sup> In 1880, Hinojosa was the author of *HISTORIA DEL DERECHO ROMANO SEGÚN LAS MÁS RECIENTES INVESTIGACIONES* and, in 1887, of the first volume of *LA HISTORIA DEL DERECHO ESPAÑOL*, which went back to the Visigothic period. Other works by Hinojosa include *EL DERECHO EN EL POEMA DEL CID*; *LA PRIVACIÓN DE SEPULTURA A LOS EUDORES*; *LA PAYESIA DE REMENSA EN CATALUÑA*; *ORIGEN DEL RÉGIMEN MUNICIPAL EN LEÓN Y CASTILLA*; and *EL RÉGIMEN SEÑORIAL Y LA CUESTIÓN AGRARIA EN CATALUÑA DURANTE LA EDAD MEDIA*. See also *EDUARDO DE HINOJOSA Y NAVEROS*, *BOLETÍN DE LA REAL ACADEMIA ESPAÑOLA*, 296-306 (Año VI, Tomo VI, Junio de 1919) and Juan Pérez de Guzmán y Gallo, *Excmo. Sr. D. Eduardo de Hinojosa y Naveros*, 74 *BOLETÍN DE LA REAL ACADEMIA DE LA HISTORIA* T. LXXIV – Con VI – Lam I, 531-534.

penal law.”<sup>134</sup> First, it is apparent that Hinojosa wanted to highlight the methodological renovation that was owed to Vitoria by the neo-Thomist genealogy of Spanish Catholic traditionalist thought. There is an insistence on the importance of Vitoria in the genesis of the modern law of peoples *vis-à-vis* the works of foreign authors,<sup>135</sup> such as Gentili or Grotius. Hinojosa was adamant in highlighting the fact that it was unfair to conclude that the constitution of international law as an autonomous science dated back to the works of Gentili and Grotius.

For Hinojosa, neither Gentili nor Grotius can be understood without Vitoria, Suárez, and Ayala, in the same manner that the Spanish contributions cannot be understood without the enormous task carried out in earlier centuries by scholastic theologians, particularly Saint Thomas, and by the canonist and civilists under the influence of Roman law.<sup>136</sup> Hinojosa advanced a future research agenda, which he considered a “complement of the present *Memoria*,”<sup>137</sup> with an aim at examining the influence that Spanish philosophers and theologians had on the public law of their motherland, and particularly on its penal law. This agenda would be “circumscribed to expose to study the influence that they had in the scientific development of political law and European international law through reception of the doctrines in the works of foreign authors, especially those of Gentili, Grotius and Conring.”<sup>138</sup> According to Hinojosa, the “study of this influence is bound to constitute one of the most interesting chapters in the history of Spanish science; but this work does not yet exist.”<sup>139</sup>

Hinojosa also criticized foreign authors such as James Lorimer, highlighting the fact that the “concept of international law of Suarez, which was qualified as grandiose by Heffter, is none other than a development of that formulated by Vitoria.”<sup>140</sup> “This is an affiliation,” wrote Hinojosa, “that no one has, to my knowledge, stopped to pay attention to until now because the text by Vitoria alluded to is not in the *Relecciones De Indis*, consulted by the authors of international law, but

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<sup>134</sup> EDUARDO DE HINOJOSA Y NAVEROS, DE LA INFLUENCIA QUE TUVIERON EN EL DERECHO PÚBLICO DE SU PATRIA, Y SINGULARMENTE EN EL DERECHO PENAL, LOS FILÓSOFOS Y TEÓLOGOS ESPAÑOLES ANTERIORES A NUESTRO SIGLO, 1 (1890). Eduardo de Hinojosa y Naveros, Discurso de Entrada en la Real Academia de la Historia. Memoria premiada por la Academia de Ciencias morales y políticas en el concurso del año 1889, Madrid (Tipografía de los Huérfanos, 1890, 186).

<sup>135</sup> *Id.* at 195-196. Hinojosa mentions Mackintosh, Pradier Foderé, Holland, De Giorgi, Gierke, Holtzendorf and a series of contemporary German scholars.

<sup>136</sup> *Id.* at 193.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.* at 194.

<sup>139</sup> *Id.* at 193. “Circunscrita á exponer, en armonía con la influencia que tuvieron en el derecho público de su patria y singularmente en el derecho penal los filósofos y teólogos españoles anteriores á nuestro siglo, sería el estudio de la que ejercieron en el desenvolvimiento científico del derecho político é internacional europeo, mediante la recepción de sus doctrinas en las obras de los escritores extranjeros, sobre todo en las de Gentili, Grocio y Conring. La reseña de esta influencia constituirá seguramente uno de los más interesantes capítulos de la historia de la ciencia española. Aún ahora, sin que este trabajo exista.”

<sup>140</sup> *Id.* at 193.

in the *De Potestate Civili*.<sup>141</sup> Hinojosa also highlighted Vitoria's preeminent role as an essential part of the merits of *De legibus et Deo legislatore* by Suarez, the "Eximius Doctor" of Catholics, whom their Protestant adversaries called *Papa Metaphysicorum et Anchora Papistaruni*.

The second aspect worth noting is how Hinojosa's work is fully conscious of the parallelisms between the "question of the title that authorized the Spanish Kings to conquer the world,"<sup>142</sup> and the immediate thematic interest of the topic for international lawyers in the age of imperialism of European powers in the nineteenth century. The "question that has also worried international law authors of our time and age without them achieving until now a definitive and uniform solution" is with regard to the rules governing the relationship between civilized and uncivilized peoples transitioning from an informal empire of European private companies, to the formal imperialism of European states, which require a renewed legitimacy.<sup>143</sup> Hinojosa pointed to this when he noted:

When thinking whether the civilized peoples can use force to oblige savage peoples to open their borders and their ports to foreign relations, while some resolve the question negatively, founding their views on the assertion that between civilized peoples and barbarian ones, there is no link of community, and there cannot be mutual duties and rights, others, such as our theologians, resolved it in a contrary sense, recommending no recourse to violence if it not motivated by the conduct of the savages.<sup>144</sup>

Marcelino Menéndez Pelayo (1856-1912), who was the greatest exponent of the nationalist school in Spanish historiography and had already written about Vitoria in the 1870s, answered Hinojosa's 1899 entry speech to the Academy of Moral and Political Sciences.<sup>145</sup> Menéndez Pelayo's speech highlighted Vitoria's role in fostering a purist Spanish tradition built upon Catholicism and praised "Spain, the evangelizer of half of the world; Spain, the hammer of heretics, the light of Trento, the sword of the Pope; Spain, the cradle of Saint

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<sup>141</sup> *Id.* at 193.

<sup>142</sup> *Id.* at 187.

<sup>143</sup> HINOJOSA, *supra* note 134, at 188.

<sup>144</sup> *See id.* (referring, among others, to CHARLES SALOMON, *DE L'OCCUPATION DES TERRITOIRES SANS MAÎTRE* (Paris, A. Giard, 1889) who examines the theories of Vitoria on the topic through a close and exact analysis of *Relecciones de Indis*).

<sup>145</sup> MENÉNDEZ PELAYO, *DISCURSO LEÍDO ANTE LA ACADEMIA DE LA HISTORIA* 85-89 (1879).

Ignacio. Such is our greatness and our glory: we do not have any other.”<sup>146</sup>

### Conclusion

Marti Koskenniemi has retrospectively contextualized the revival of Vitoria in an age in which “the early international lawyers were liberals who supported the turn to formal empire in order to protect the natives from the greed of colonial companies and ensure the orderly progress of the civilizing mission.”<sup>147</sup> For Koskenniemi, the move from informal imperialism to formal empire was grounded on a counterpoint-like “rigorous critique of the Spanish Empire,”<sup>148</sup> and the emergent liberal *jus-internationalists* surged around the *Institut de Droit International* postulated, as representatives of what “they could associate themselves with,”<sup>149</sup> the tradition of the *Secunda Scolastica* of the University of Salamanca. This European Vitorian revival in the field of international law, aided by Ernest Nys, who has been termed the “first historian of the profession”<sup>150</sup> by Koskenniemi, can be further framed, according to Kunz, by the development of the 1870 legal-philosophical level as a consolidation of the neo-Kantian reaction against sociological positivism. The Catholic tradition of international law benefited from Leo XIII’s encyclical “*Aeterni Patris*” of 1879, neo-Thomist philosophy, and natural law; the latter was fostered in the Hispanic world, in American Catholic faculties, and in the great European faculties of law, such as those in Paris, Milan, Leuven, and Friburg.<sup>151</sup> It is this second face of Vitorian revival, free from practical deliberation on the form that liberal imperialism could take in that age, that influenced a semi-peripheral Western power like Spain. By then, Spain was irremissibly advancing toward the Spanish-American War of 1898 and the definitive loss of its overseas colonies in the Americas and South Asia by the hands of the new American Empire.

After the earlier limited development of international law, the revival of the Salamanca School further spurred a conception of international law as a holistic science of international relations in late nineteenth century Spain. The encyclopedic perspective of the field that Spain, orphan of external ambitions, embraced is epitomized in

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<sup>146</sup> *Id.* at 87; CARR, *supra* note 68, at 343 (noting that years later, during the Spanish Civil War and the Franco period, some would describe Menéndez Pelayo as the “lay saint of the Spanish Phalanx”); see also de la Rasilla, *The Fascist Mimesis of Spanish International Law and Its Vitorian Aftermath, 1939-1953*, 14 J. HIST. INT’L L. 2 (2012).

<sup>147</sup> Koskenniemi, *Empire and International Law: The Real Spanish Contribution*, 61 U. TORONTO L. J. 1, 3 (2011).

<sup>148</sup> *Id.* at 4.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> Joseph Stunz, *Natural Law Thinking in the Modern Science of International Law*, 55 AM. J. INT’L L., 953 (1961).

authors such as Gestoso Acosta.<sup>152</sup> Spanish *jus internationalists* attempted to integrate the philosophy of international law - “the investigation into the existence, foundations and ends of international society”<sup>153</sup> - together with the history of international law, and the politics of international law, wrapping it up in an international legal positivist analysis with a strong *jus-naturalist* bias. Ultimately, the riveting nature of an all-encompassing science of international law, which Spanish authors understood as a socio-historical structure, was the legacy of the misery and greatness of the School of Salamanca’s revival in the late nineteenth century for the study of international law in Spain, the cradle of the first empire in history where the sun forever shone upon one or another part of its dominions.

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<sup>152</sup> LUIS GESTOSO ACOSTA, CURSO ELEMENTAL DE DERECHO INTERNACIONAL PÚBLICO E HISTORIA DE LOS TRATADOS (1897).

<sup>153</sup> *Id.* at 185.

