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Mónica García-Salmones Rovira *

More is More in the Hidden History of International Law in the Americas

* Erik Castrén Institute of International Law and Human Rights, University of Helsinki,
monica.garcia@helsinki.fi

luzes sobre a circulação de cultura e de poder através do Atlântico.

Empire's End, tanto pela excelência individual dos capítulos que o integram quanto pela afinidade de seu conjunto, é uma ótima contribuição historiográfica. Não obstante, a relativização das emancipações políticas como marcos definidores, embora seja analiticamente estimulante, tem, no livro, o duplo efeito de rebaixar o relevo histórico das independências e de tornar singulares os múltiplos tempos do império espanhol e de seu colapso. Embora os capítulos sejam eivados de discussões sobre relações de poder, prepondera uma concepção culturalista de império que não discerne a

natureza das relações da Espanha com os países de língua castelhana independentes na primeira metade do século XIX daquelas estabelecidas com regiões como Cuba e Porto Rico, que permaneceram colônias. Ademais, a hiperbólica imagem do poderio espanhol pintada na frase inicial não é desafiada pelo conjunto da obra, que não problematiza a inserção do país no quadro mais amplo das disputas imperiais. Como construir uma perspectiva transnacional que desconsidera, por exemplo, as pressões econômicas e diplomáticas exercidas pelo Império Britânico?



Mónica García-Salmones Rovira

More is More in the Hidden History of International Law in the Americas*

»In the beginning all the World was *America*« reads the iconic opening of § 49 in John Locke's *Second Treatise of Government*. Beyond mentioning »America«, Locke's theory and the story told by Juan Pablo Scarfi in *The Hidden History of International Law in the Americas* share an unsettling resemblance. The expansion of international law and the deepening of legal techniques for the purposes of US hegemony in the American hemisphere, the invasion of politics by the language of science, the double standard, one of real military and monetary interventions, and another of (usually) suave diplomatic correspondence about the advantages of pan-Americanism, all are part and parcel of *The Hidden History*. Moreover, around the mid-20th century the pattern extended around the entire globe. Therefore, as Scarfi elegantly suggests, the interventions in Latin America by the newly established US empire in the early 20th century had the nature of laboratory experiments. In the end,

all the world was *America* again, but with a good number more of international organizations, institutions devoted to the scientific study of international law, and international legal norms and principles. This image, of course, simplifies tremendously the complex history of the past century. However, it summarizes the message of Scarfi's book.

The Hidden History belongs to a new wave of scholarship on the development and history of international law on the American continent in the early 20th century. It also connects with growing interest in the figure of James Brown Scott (Liliana Obregón, Arnulf Becker Lorca, Paolo Amorosa, Joshua Smetzler, Mónica García-Salmones). Scarfi presents his own approach to the history of international law in America as an exercise of »intellectual history« and a contribution to »the history of US-Latin American relations« (xvii). He traces »legal networks«, which amounted

* JUAN PABLO SCARFI, *The Hidden History of International Law in the Americas. Empire and Legal Networks*, Oxford: Oxford University Press 2017, 239 p., ISBN 978-0-19-062234-3

to a project for the scientific development of international law undertaken by the American Institute of International Law (AIIL), over a period of four decades (xxi). What at the outset seems to be the study of a dull institution for the scientific study of law, the AIIL, soon captures the reader's attention, and it becomes apparent why Scarfi wisely chose the seemingly obscure AIIL. Elihu Root and especially James Brown Scott undertook the enterprise of »civilizing Latin America« through the AIIL's extension of US exceptionalism. To do so, they collaborated closely with a number of Latin American international lawyers, such as Alejandro Álvarez, Antonio Sánchez de Bustamante y Sirvén, and Víctor Manuel Maúrtua. All of this was facilitated by the extremely generous patronage of the Carnegie Endowment for International Peace (CEIP). Martti Koskenniemi's inspiration is visible in Scarfi's appraisal that »American international law and Pan-Americanism were »gentle civilizers« of US hegemony in the Americas« (xix).

The author describes the »legal missionary overtones« of the AIIL and of its promoters, including the visit of Elihu Root – »the main architect of the so-called Platt Amendment« – to South America and the overwhelmingly warm reception that he received there, meeting »almost all their presidents and ministers of foreign affairs« (24). According to Scarfi, divergent goals were pursued by the same means, namely the AIIL: promoting US hegemony in the North, and moderation of US hegemony in the South. Evidently, compromise was needed. Scarfi argues that it was Álvarez who, after being charmed into becoming part of a »transnational legal elite«, teaching and publishing in the best US institutions from 1916 to 1918 on the core issue of the right of intervention, »neither confronted nor sought to oppose Scott's optimistic and controversial interpretation of the Platt Amendment and the right of US interventions as civilizing principles« (56–57). But *The Hidden History* also pays attention to the increasing distrust of the Monroe doctrine's transformation and expansion among jurists based in Mexico, Argentina, Peru, and Cuba.

The activities of the AIIL crystallized in the impetus for codification, operating now more openly as a »hemispheric legal network of hegemonic interactions« in support of US-led political and legal projects (88). Through this process, the civilizing AIIL and pan-American international law were increasingly distinct from a universally

oriented, pluralistic law founded in the international community. The AIIL's codification was pragmatic, ethnocentric, elitist, and technocratic, while its scientific orientation was regressive. In that vein, already in the early 1920s Álvarez's ideas, more doctrinal and idealistic, were consistently downplayed, as in the Rio de Janeiro Commission of jurists (1927). Scott sought new collaborators among those more connected with the elites and dictators, such as Bustamante in Cuba and Maúrtua in Peru. Perhaps this is related to the fact that, in relation to previous years, the number of inter-American multilateral treaties increased dramatically in 1928 and 1929. Matters dealt with in the new treaties ranged from the rights and duties of states in the event of civil strife, to arbitration, conciliation, and the protection of trademarks.

The first reality check for Scott occurred when Nicholas Murray Butler, then president of the CEIP, resisted opening a Latin American branch of the CEIP in Havana in 1929 (136). Not without some irony, Butler had a greater sense than Scott of the displeasure with which the South American nations observed the Havana project. This incident evidenced another phase in the different styles of Scott and Álvarez. While the latter, the idealist, proposed a gradual and slow process for pan-Americanism, the pragmatic Scott could be utopian. Around the Montevideo conference of 1933 the tide turned dramatically. The Argentinian politician Saavedra Lamas managed to pass »The Anti-War Treaty« that »popularized the idea that interventions and territorial acquisitions were incompatible with the preservation of peace«, advocating absolute non-intervention (161). Thus, the USA lost its battle for legal intervention. But Scarfi also reports that the USA supported the treaty in exchange for Argentina's rejection of the Mexican proposal for an extended general moratorium on foreign debt (155). Indeed, the Mexican Secretary of Foreign Affairs, J. M. Puig Casauranc, decried in his speech in Montevideo »the perverted legal forms« that were causing a »life of misery« and »economic depression« across the continent. However, in spite of Puig Casauranc's confrontation with the US Secretary of State, Cordell Hull, and with Saavedra Lamas, the moratorium was not discussed in Montevideo. Hindsight changes the appearance of that omission and the secret pact between Hull and Saavedra Lamas, which are discussed also by Robert King and Leandro Ariel Morgensfeld. In comparison to Mexico's idea that

the South American countries should join forces to negotiate a moratorium of the public debt, which was already immense, Saavedra Lamas's emphasis on territorial conquest seemed outdated. The incident reconfirms the complexity of the political stakes. Events precipitated and the US change of heart towards the Good Neighbor policy in the early 1930s and, soon, the shift to a »geopolitical and globalist« rather than hemispheric policy led to the AAIL's disappearance in 1942. Still, Scarfi concludes his book by pointing to the legacy of the AAIL in the Inter-American Court of Human Rights and in institutions such as the Organization of American States. Therefore, many questions are raised and some remain open. An important one that lingers in this reader's mind is about how all this enterprising lawyering of Root and Scott was perceived in Washington. Moreover, a few years later, the entire AAIL business appeared to have been forgotten in subsequent developments, and one wonders what could be the reason for that oblivion. After the Charter of Bogotá (1948), for instance, the period of the AAIL is substantially neglected in the work of Joseph L. Kunz, editor of the *American Journal of International Law*.

Scarfi has produced a thorough study of the life of the AAIL. Faithful to its method of focusing on institutions and legal ideas, the book generally downplays the persona of its main protagonists: Root, Scott, Álvarez, and Saavedra Lamas. The result is sometimes stark: coldness verging on Machiavellism in the North Americans, and South Americans appearing slightly naïve by comparison. This statement is not merely critique. Indeed, this

feature piques the curiosity even more, especially about Scott. *Who* was that man? Did he believe in his pan-American project? Whence did he draw his prodigious energy for international lawyering and promoting legal institutions around the world? Arnulf Becker Lorca has devoted several studies to Alejandro Álvarez, the mysterious Chilean international lawyer, who lived far away in Paris. Becker Lorca offers quite a different perspective of Álvarez and of Latin American international law, one at once strategic and significant. The fact is that both authors highlight different aspects of the same period. Scarfi concentrates on the US hegemonic legal machinery of pan-American international law, and Becker Lorca on the push of the periphery in Eurocentric international law. With all the obvious limitations of a culinary analogy, the reader could do nothing better than matching *The Hidden History* with Becker's *Mestizo Law* as a good wine. Both books complement each other well, confirming, once again, the classic disciplinary division between international law and international relations. To be sure, Scarfi's is a book *of* international relations *on* international law. The result is quite an achievement and reveals what is at stake for global politics and global law when certain »scholarly« institutes for the scientific study of international law are established. From the perspective of a Europe-based international lawyer, the greatest virtue of the book is to help overcome the fear of deeper immersion in the hidden history of international law in the Americas. ■