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SYMPOSIUM ON INTERNATIONAL LAWS PUBLIC AND PRIVATE

PRIVATE CITIZENS OF THE WORLD AND FRONTIER EXPANSION

*Filipe Antunes Madeira da Silva**

In her analysis of James Lorimer's *The Institutes of the Law of the Nations* (1883), Karen Knop called on public international lawyers to explore the potential of Lorimer's figure of the "private citizens of the world" to illuminate the position of the individual in international law.[1] She argued that focusing on the individual's private law dimension revealed hidden understandings and manifestations of the international. This focus, she observed, might even clarify the structural role that nonstate actors and their legal interactions play in shaping sovereign states and their relations.[2] This essay builds on Knop's insight to reflect on the role of actors involved in frontier expansion in international law. I examine the settlement of land deemed desert in South America at the turn of the nineteenth century, as private actors used law to incorporate new territories and resources into a capitalist order. Drawing on the work of Argentinian jurist Carlos Calvo, and analyzing specific cases of settlement in the Amazon, I explain how these actors and their legal practices participated in the consolidation of a territorial order of states. Following Knop's prompt, I explore how examining the role of individuals and their private allegiances sharpens our view of how international law exercises power and distributes resources around the world. Combined with efforts to decentralize the history of international law, Knop's private lens shows how individuals seeking to expand the capitalist frontier make international law, not only at the core, but also on the margins and in the interactions between the two.

Emigrant Settlers as Individuals in International Law

In a study on emigration and colonization submitted to an international geography congress in 1875, Carlos Calvo hinted at the significance of individuals in the process of frontier expansion in the nineteenth century. According to Calvo, modern emigration differed from previous forms of colonization because it was "no longer a national or governmental fact, but an individual and spontaneous act, determined by purely personal considerations."[3] Although it might still have a collective dimension, such a collective was made of "individuals who ha[d] voluntarily concurred in forming it."[4] Calvo believed that, since virtually all parts of the world had been occupied and colonization proper had ended, emigration had taken on a new dynamic. Emigration no longer resulted from

* *Universidad del Rosario, Bogotá, Colombia.* *All translations are the author's own.*

[1] Karen Knop, *Lorimer's Private Citizens of the World*, 27 Eur. J. Int'l L. 447 (2016).

[2] *See also* Karen Knop, *Gender and the Lost Private Side of International Law*, *in* History, Politics, Law: Thinking Through the International 357 (Annabel Brett, Martti Koskenniemi & Megan Donaldson eds., 2021).

[3] Charles Calvo, Etude sur l'émigration et la Colonisation: Réponse à la Première des Questions du Groupe V, Soumises au Congrès International des Sciences Géographiques de 1875 104 (1875).

[4] *Id.*

collective exile movements or discoveries, but was increasingly propelled by economic motives.[5] Colonial powers now used their resources to consolidate their possessions—"by improvements, by reforms, and, where empty spaces exist, by settlement and the importation of labor"—creating ever more incentives for "the lower classes of European societies" and "enterprising men, capitalists and speculators" to migrate in search of either property or profits from exploiting new land.[6]

Calvo's description of the emigrant individual, breaking away from his home state to pursue his private interests abroad and acquiring rights entitlements beyond nationality attached to his person or property, resonates strikingly with Knop's account of Lorimer's "private citizen of the world."[7] Knop described three figures of the individual, which, according to Lorimer, defined their status in international law. Individuals were both citizens of their states and citizens of the world. In the former instance, as public citizens, their standing in international law depended on their states. As citizens of the world, however, individuals could be both "citizens of humanity" under universal natural law and "private citizens of the world" as the result of "an amalgam of national private relations."[8] Consequently, an individual who temporarily lost the protection of his state—such as a prisoner of war—would still be protected as a citizen of the world, under both universal human rights and private rights conferred by states.[9] Private international law was crucial for the latter conception. What enabled the existence of the "private citizen of the world" was precisely the recognition granted by other states to a foreign person's private relations.[10] Thereby, individuals could enjoy a certain mobility and had rights that operated beyond national borders.[11]

Calvo also saw a private dimension of the individual in international law worthy of interest. With regard to emigrants, for example, he envisaged the existence of a right to emigrate increasingly recognized by states. Calvo's individuals had the right to expatriate, retaining their nationality or renouncing it and trying to obtain a new one more in line with their interests and beliefs.[12] However, their national belonging was not the only relevant factor in determining their personal status. Under private international law, their choice of residence or domicile led to specific rights and obligations that could at times overlap with their national ones. Thus, individual circumstances such as domicile, residence or exercise of industry, created a *sui generis* situation under national and international law that could "temporarily modify the national character [of an individual] without destroying it in an absolute and definitive manner."[13] As Calvo pointed out, while some publicists thought that domicile or residence could be assimilated to nationality in certain cases, it was more appropriate to view domicile as creating rights and obligations without necessarily altering nationality.[14]

Similarities between Lorimer's and Calvo's views on the status of individuals in international law are hardly surprising. Calvo was, like Lorimer, a founding member of the Institut de Droit International. As such, they shared a liberal cosmopolitan imagination that placed public and private international law—which they did not see as separate—as part of a common project for expanding civilization in the world.[15] As Knop observed, "private

[5] *Id.* at 103–04.
[6] *Id.* at 104–05.
[7] Knop, *supra* note 1.
[8] *Id.* at 450.
[9] *Id.* at 454.
[10] *Id.* at 455.
[11] *Id.* at 459.
[12] Carlos Calvo, 1 Dictionnaire de Droit International Public et Privé 290 (1885).
[13] Carlos Calvo, 2 Dictionnaire de Droit International Public et Privé 5 (1885).
[14] *Id.*
[15] Martti Koskenniemi, The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960 11–97 (2001).

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citizens of the world" were relevant to Lorimer because they embodied the private side of his famous theory on the recognition of states and spheres of humanity.[16] In her words, "recognition presumed that the recognized state had justly defined the private legal relations that came within its jurisdiction and, furthermore, had the will and ability to enforce those definitions."[17] Calvo also thought that the power of a state to enact its own civil and criminal legislation was a key element of sovereignty. On this basis, he distinguished states that were "absolutely free" from those that must "be regarded as placed in a situation of relative dependence" under the law of nations.[18] Domestic laws affecting the personal status of individuals were, therefore, indicators of a state's level of civilization.

The centrality of private rights in assessing a state's ability to meet the purported demands of civilization was salient to Calvo's study of emigration. He argued that the content of a given state's domestic laws was an important factor in determining the choice of destination of European emigrants. Such laws differed in the conditions they could offer foreigners by providing, for example, more or less liberal regimes for appropriating land, political rights, and more extensive guarantees for individuals and property.[19] Coming from a "country where settlement [had] lately taken on a remarkable development," Calvo used his work to highlight Argentina's exceptional position, the wealth of its territory, and the unique opportunities it offered to emigrants.[20] In Calvo's view, emigration was advantageous for the countries receiving emigrants, as it enabled these countries to complete their internal colonization.[21] The argument illustrates what Liliana Obregón has called a Creole legal consciousness, a set of legal ideas shared by Latin American elites in the nineteenth century reflecting a common legal identity and will to participate in the civilizing mission.[22] Creating appropriate legal conditions to attract emigrant settlers into the nation was necessary to consolidate the state. However, embracing immigration also required measures within the state addressing the status of foreigners and their local integration.[23] On the public side, it was common, for example, to grant nationality to emigrants' children born in America on a territorial basis. On the private side, recognizing individuals as "private citizens of the world" also required placing foreigners in a different sort of relation with the state.

Domestic Contracts, International, and Transnational Disputes

As Knop emphasized, Lorimer's "private citizens of the world"—though inconceivable today—draw valuable attention to the systemic impact of individuals and their private international relations.[24] In that respect, comparing the positions of Calvo and Lorimer can illustrate the contested nature of the boundaries between public and private and their practical structural outcomes.[25] One example involves attempts to curb the potential impact of emigrant's private international law relations on the receiving state's territorial sovereignty. The issue is apparent in Lorimer's hypothetical example of social and industrial annexation based on the Schleswig-Holstein dispute between Germany and Denmark. For Lorimer, the large-scale migration of German nationals into that region had created a continual conflict between "the formal political nationality of the individuals" and their "new

[16] Knop, *supra* note 1, at 457–59.

[17] *Id.* at 455.

[18] Carlos Calvo, Manuel de Droit International Public et Privé Conforme au Programme des Facultés de Droit 198 (1881).

[19] Calvo, *supra* note 3, at 107.

[20] *Id.* at 2.

[21] *Id.* at 222.

[22] Liliana Obregón, *Carlos Calvo y la Profesionalización del Derecho Internacional*, 3 LADI (2015).

[23] Liliana Obregón, *Between Civilisation and Barbarism: Creole Interventions in International Law*, 27 Third World Q. 815, 824 (2006).

[24] Knop, *supra* note 1, at 472–73.

[25] Horatia Muir Watt, *Private International Law Beyond the Schism*, 2 Transnat'l Legal Theory 347 (2011).

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domicile." As German nationals had "absorbed the state into which they had migrated," and a *de facto* transfer of sovereignty occurred, Germany's use of force to acquire the territory formally aimed at correcting an anomaly.[26] Through their mobility and choice of domicile, "private citizens of the world" could impact the political rights of states and reshape national territory.[27]

The legal effects of a conflict between an individual's nationality and his domicile were less evident in Calvo's work. Expatriated individuals contributed to state-building in their private capacity and because of their private interests. Thus, the presence of aliens did not legally threaten state sovereignty. On the contrary, these foreigners required state support since they were part of its territory and subject to its sovereign authority and jurisdiction.[28] This view was consistent with Calvo's emphasis on the role of immigrants in the expansion of civilization. Since state consolidation required foreign labor and capital, it was crucial to disentangle the private rights and obligations of foreign individuals from matters of nationality in order to prevent foreign states from intervening in domestic matters to protect the private interests of their nationals. Accordingly, while aliens enjoyed private rights, these rights did not place them in a condition of inequality with nationals. For example, foreigners had to submit their disputes with both nationals or other foreigners to local authorities as a matter of respect for the forum state's territorial sovereignty.[29]

In the context of colonization that Calvo was concerned with, legal disputes over the limits of the public and the private were indeed frequent, as the expansion of economic frontiers was intertwined with disputes over territorial sovereignty. A case involving a concession contract to lease vast areas of vacant land to establish river navigation in the Colombian Amazon in the early twentieth century provides an example. The contract was never concluded because of a public scandal surrounding the concession terms and suspicion of corruption;[30] nevertheless, the arguments used by various parties involved in the controversy illustrate the political economy of the public/private divide and the role of private actors in defining its boundaries. The scandal was triggered by Leopoldo Cajiao, a Colombian citizen, assigned to act as an intermediary to a French syndicate established by Colombian expatriates in Paris, Samper & Co. Cajiao brought the case to the attention of the press, because—in addition to having general reservations over the conditions of the transaction—he was particularly concerned that the concession jeopardized Colombian sovereignty. This risk derived from "the power to transfer the contract to a French syndicate," which, according to Cajiao, would "consummate the alienation of the territory."[31] Cajiao argued that, in the case of disputes, foreign states might intervene to protect the interests of their nationals, and eventually claim possession of Colombian territory through the private rights of their citizens.

Where Cajiao found reasons to fear loss of territory, Samper & Co. criticized the influence of the political passions of individuals inspired more by parochial spirit than true patriotism.[32] The draft contract indeed included an assignment clause authorizing the transfer of title (upon notice to the government) to any individual or company, but not to a foreign government. It also provided that claims or disputes should be adjudicated by Colombian courts under Colombian law, limiting access to diplomatic protection to cases of denial of justice.[33] Moreover, the syndicate emphasized, the practice of permitting rights of transfer of this sort to foreign companies was a

[26] James Lorimer, 2 The Institutes of the Law of Nations: A Treatise of the Jural Relations of Separate Political Communities 25–26 (1884).

[27] Knop, *supra* note 1, at 470–471.

[28] Calvo, *supra* note 3, at 228.

[29] Calvo, *supra* note 12, at 308.

[30] Simón Uribe, Frontier Road: Power, History, and the Everyday State in the Colombian Amazon 254–57 (2017).

[31] Leopoldo Cajiao, Arrendamiento o Venta del Territorio del Caquetá 16 (1900).

[32] R. Samper & Cía, El Territorio del Caquetá 3–4 (1900).

[33] Cajiao, *supra* note 31, at 14.

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standard business practice common in several South American states and European colonies in Africa. In none of these prior cases had such transfer rights given rise to territorial claims on the part of these companies. Property titles held by these companies over land and works gave their owners rights regardless of nationality, but the territorial state's authority and laws stood above the company's bylaws.[34] Financial groups, for example, established the companies through which they participated in the colonization of French colonies under different jurisdictions, depending on which jurisdiction offered the best conditions for incorporation. However, while the "English, Belgians and Germans [could] directly and actively interfere in the colonization of French territories" through anonymous companies, such interventions were not perceived as compromising French sovereignty over these colonies.[35] In addition, integrating foreigners into such a system of colonization was crucial to attracting large sums of capital, without which these lands could not be settled. Foreign individuals and companies thus contributed to settlement and reinforced sovereign claims over an area that—in the syndicate's view—would otherwise be at risk vis-à-vis the territorial ambitions of other states in the continent.[36]

A second example illustrates possible structural outcomes of concession contracts. A new concession granted by Colombia in 1905 concerned, again, the establishment of river navigation and settlements in exchange for leasing rights and permanent ownership over vast areas in virtually the same region. This contract included assignment and jurisdictional clauses on similar terms to the contract discussed above, allowing for the transfer of rights to foreign private individuals and assigning jurisdiction to Colombian courts under Colombian law.[37] Based on these conditions, a syndicate was incorporated under the laws of Maine in 1907 with a total capital of 7.5 million dollars to acquire and extract rubber and timber under the concession.[38] Almost immediately, shareholders in London started negotiating the sale of shares to Julio César Arana, a Peruvian businessman who enjoyed a de facto monopoly over rubber exploitation in the area and was seeking capital abroad to expand his business. The concession by the Colombian government would confer on him formal title and could easily be transferred, given the terms of its assignment clause. However, Arana was diverted from the business by the Peruvian government, which instead convinced him to incorporate an extraction company in London with sufficient capital to advance Peruvian territorial interests in the area. Notably, part of the concession concerned territory claimed by both Colombia and Peru, and granting title over it may have been a Colombian strategy to assert territorial rights. However, without Arana's support and faced with difficulties accessing the area, the concessionaires failed to exploit the concession, which expired a few years later.[39] For its part, Peru strengthened its territorial presence in the region, exercising jurisdiction almost exclusively through the newly incorporated English company.

Concluding Observations

Both cases above illustrate the role individuals—"in search of wealth and well-being"[40]—can play in international law through their private legal relations. They also point to the power to define private rights as simultaneously a crucial exercise of, and means of affirming, state sovereignty. Focusing on these dynamics provides a fuller picture of how international law exercises power and distributes resources in connection with the expansion of a

[34] R. Samper & Cía, *supra* note 32, at 5.

[35] *Id.* at 5–6.

[36] *Id.* at 7–8.

[37] Contrato Celebrado con los Sres. Cano, Cuello & Compañía [etc], Febrero 7, 1905, DO No. 12272 (Colom.).

[38] *To Exploit Colombian Rubber*, 36 India Rubber World 260 (May 1, 1907).

[39] Demetrio Salamanca Torres, 2 La Amazonia Colombiana: Estudio Geográfico, Histórico y Jurídico en Defensa del Derecho Territorial de Colombia 108–43 (1916).

[40] Calvo, *supra* note 3, at 3.

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capitalist economy. Whereas a vision centered on nationality would emphasize sovereign interests and strategies, focusing on Calvo's and Lorimer's legal conceptions of the individual opens a different perspective. A private lens shows the extent to which the expansion of international law's capitalist frontier also responded to the multiscale exercise of private power, by mobile individuals detached (or not) from their public belongings.

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