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ARTICLE

Looking Forward Through and Beyond the Western Classics of International Law

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Abstract

The study of the Western classics of international law with Francisco de Vitoria and Hugo Grotius at its core is the foundational stone on which the whole edifice of today's ever-expanding history of international law was built upon. The article provides a gateway to Vitoria and Grotius's significance for international law and its history by providing a tenfold list of attributes of what makes a classic of international law. It then examines the rise to pre-eminence of the study of the classics of international law and surveys the main methodological responses addressed to correcting the historiographical blind spots and large gaps in legal history that the privileging of these Western "great men" have triggered. The conclusion recaps the importance of looking forward through, but also beyond, the deeply West-centric and male-dominated intellectual canon of international law in an international order the centre of gravity of which is inexorably moving eastwards.

Keywords: Vitoria; Grotius; history of international law; classics of international law; Brown Scott

> "*The classic defines itself by surviving*"
>
> — J. M. Coetzee, *What is a Classic? A Lecture* (1993)

Considered by David Armitage "the earliest historical canon of works of international thought",[1] *The Classics of International Law* is a collection published under the auspices of the Carnegie Endowment for International Peace between 1911 and 1950. It features twenty-two works in forty volumes, for the most part original Latin editions with English translations, written by fifteen Western classic authors.[2] The selection criteria employed by the lifetime general editor of *The Classics*, James Brown Scott (1866–1943), gravitated around the, by then, largely unquestioned status of Hugo Grotius as the crowned "founding father of international law".[3] From this ensued, in the view of Scott –

[1] David ARMITAGE, *Foundations of Modern International Thought* (Cambridge: Cambridge University Press, 2013) at 26.

[2] These authors were Giovanni da Legnano, Francisco Vitoria, Balthasar Ayala, Pierino Belli, Francisco Suarez, Alberico Gentili, Hugo Grotius, Samuel Rachel, Richard Zouche, Cornelius van Bynkershoek, Johann Wolfgang Textor, Samuel von Pufendorf, Christian von Wolff, Emer de Vattel, and Henry Wheaton. James Brown SCOTT, ed., *The Classics of International Law* (Washington, DC: Carnegie Institution of Washington, 1911–1950).

[3] Martine Julia VAN ITTERSUM, "Hugo Grotius: The Making of a Founding Father of International Law" in Anne ORFORD and Florian HOFFMANN, eds., *The Oxford Handbook of the Theory of International Law* (Oxford: Oxford University Press, 2016), 82 at 82.

who was one of the original founders in 1906 and later president of the American Society of International Law (ASIL) – a corresponding need to make the opuses of Grotius's lesser known predecessors and his most influential successors widely accessible in unabridged form, in most cases for the first time in the English language.[4] Scott's intellectual canon of international law was unabashedly Eurocentric and, of course, "historically constituted" in the sense that "what made those works and authors 'classic' can be retraced to [...] identifiable historical forces and within a specific historical context".[5] This notwithstanding, Scott's *The Classics* collection has remained extremely influential in framing the historical and intellectual international law research agenda and also, to a great extent, that of other related disciplines ever since.

Discussions on classic authors, on what makes a particular work or author a "classic",[6] the distinguishing features of a classic, and the factors that underlie the making and reinvention of a classic over time are a *locus classicus* across different disciplines that include international law. Part of the reason why literary critics, scholars, and scientists in the social and natural sciences have often pondered on the classics in their domain of knowledge lies in that the classic has become transmuted into a didactic archetype handed on to incoming generations for them to become intellectually socialized within the established tradition of their field.[7] However, all intellectual and scientific traditions, including international law, are also dynamic in the sense that they are continually renovated. This is how they make space for new ideas, methodologies, political causes, alternative sensitivities, and, of course, new scientific paradigms. This is also why the critical debunking of a classic (or, occasionally, more nuancedly of the intellectual myth formed around the classic over time) may often be found interspersed with the postulation of new or alternative "classics-to-be": the (old) classic is dead, long live the (new) classic!

While Sainte-Beuve's observation that what is a classic is "a delicate question, to which somewhat diverse solutions might be given according to times and seasons"[8] remains as true today as it was in the mid-nineteenth century, two classics of international law stand out as classics among the classics in the discipline. Hugo Grotius (1583–1645) is still today synonymous with international law and its intellectual history both within and far beyond the Western world. Grotius's growth into a historical intellectual icon of international law owes volumes to the ample radiation of the so-called "Grotian tradition of international law".[9] This has been reinterpreted multiple times, and often in the process altogether "reinvented",[10] by international law scholars, and by scholars working in adjacent research traditions. On the other hand, the status as a global classic of international law by Francisco de Vitoria (c 1483–1546) largely derives from his two highly influential *relectiones* in which he seminally organized Spain's legitimate and illegitimate claims for entitlement to American lands and discussed just and unjust wars in 1539, and the fact that he was the presiding figure of the neo-Thomist school of moral and legal theologians

[4] Paolo AMOROSA, *Rewriting the History of the Law of Nations: How James Brown Scott Made Francisco de Vitoria the Founder of International Law* (Oxford: Oxford University Press, 2019).

[5] J. M. COETZEE, "What is a Classic?" (1993) 5 Current Writing 7 at 19.

[6] The term "classic" is used throughout the article as a synonym of "classic author".

[7] See, for example, Charles Augustin SAINTE-BEUVE, "Qu'est-ce qu'un Classique? [What Is a Classic?]" *Causeries du lundi Volume 3* (1850); Charles Augustin SAINTE-BEUVE, "What Is a Classic?" in Charles W. ELIOT, ed., *The Harvard Classics Volume 32: Literary and Philosophical Essays (French, German, and Italian)* (New York: PF Collier & Son Company, 1909); Harold BLOOM, *The Western Canon: The Books and School of the Ages* (New York: Harcourt Brace, 1994).

[8] Sainte-Beuve, *supra* note 8.

[9] Hersch LAUTERPACHT, "The Grotian Tradition in International Law" (1946) 23 British Yearbook of International Law 1.

[10] Eric HOBSBAWN and Terence RANGER, eds., *The Invention of Tradition* (Cambridge: Cambridge University Press, 1983).

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that came to be known as the "School of Salamanca".[11] Vitoria is particularly well known across the Catholic university milieu of Europe and the Americas, and especially so all over Latin America.[12] But Vitoria is also an intellectual household name among erudite circles across other geographical regions, including Asia, in spite of them having been – often forcefully – acculturated to international law during the hegemonic intellectual dominance of the Anglo-American international law tradition which Grotius would end up symbolizing.[13]

Vitoria and Grotius are the twin intellectual pillars of the two key aetiological myths (that is a myth for the origin of things),[14] as represented by the discovery and colonization of America and the Peace of Westphalia, respectively, in the subsequently globalized European tradition of international law. As such, both of them are generally appraised as foundational exponents of the power of what Martti Koskenniemi has called the "history of the legal imagination" in the shaping of the modern world.[15] Grotius and Vitoria are still today often evoked in passing without true knowledge of their doctrines, and in dissociation from the context of their times. However, their long-staying influence on successive generations of international lawyers makes a certain degree of familiarity with their work helpful in approaching some fundamental concepts of the contemporary international legal order – including, among others, sovereign equality or the notion of the international community – and how they came to be what they are. Moreover, both Vitoria and Grotius – as well as other Western classic authors – still remain very much alive in academic debates across the burgeoning field of the history of international law. This is currently further expanding towards a global history of international legal thought and practice beyond the epistemological Eurocentrism and, not less, the male-centeredness that Vitoria and Grotius at the heart of narratives of origin of Western international law have come to epitomize.[16]

In Section I, Vitoria and Grotius are taken as references from whom a tenfold list of attributes of what makes a "global" classic of international law is distilled.[17] The proposed ten distinguishing features of the "global" classics of international law are that: they have been used as lenses to address a larger historical theme; their prominent position in the intellectual canon and as landmark in the historical periodization of international law; their broad interdisciplinary appeal; the fact that they have become a shortcut for intellectual traditions of thinking about the international; that they have become identified as the first expounders of international legal ideas and doctrines; and also that they have been turned into an intellectual symbol of cultural patriotism over time. Moreover, the distinguishing traits of Vitoria and Grotius as classics of international law include: the multiple interpretations and reinterpretations to which their oeuvre have been subjected; their hegemonically induced universal appeal; the more recent diachronic use to which their works have been put to contextually investigate episodes of the history of

[11] Luciano PEREÑA, "La tesis de la paz dinámica" in Luciano PEREÑA, ed., *Corpus Hispanorum de Pace*, vol VI (Madrid: Consejo Superior de Investigaciones Científicas, 1981), 29 at 65.

[12] Juan Pablo SCARFI, "Camilo Barcia Trelles on the Meaning of the Monroe Doctrine and the Legacy of Vitoria in the Americas" (2020) 31 European Journal of International Law 1463.

[13] Van Ittersum, *supra* note 3.

[14] Stephane BEAULAC, *The Power of Language in the Making of International Law, The Word Sovereignty in Bodin and Vattel and the Myth of Westphalia* (Leiden: Martinus Nijhoff, 2004).

[15] Martti KOSKENNIEMI, *To the Uttermost Parts of the Earth: Legal Imagination and International Power 1300–1870* (Cambridge: Cambridge University Press, 2021) at 1.

[16] See, forthcoming, Randall LESAFFER, ed., *The Cambridge History of International Law* (Cambridge: Cambridge University Press, 2023–2030).

[17] This ten-fold list is loosely inspired by Italo CALVINO's (1986) fourteen-fold list of attributes of a classic in his "Why Read the Classics?" *The New York Review of Books* (9 October 1986), online: The New York Review <https://www.nybooks.com/articles/1986/10/09/why-read-the-classics/>.

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international law from the nineteenth century up to the present; and last, but not least, the semi-industrial quantity of academic commentary they have attracted over time.

Section II then proceeds by examining the historiographical origins of the rise to pre-eminence of the study of the classics of international law surveying its cyclical recurrence in the works of international legal historians. It also examines some of the main methodological responses addressed at correcting the historiographical blind spots and large gaps in international legal history that the privileging of the historical contributions of these Western "great men" have triggered over time, such as the development of histories of international law from non-Western regions including Asia. Included among these gaps and blind spots are also the multiple untold (hi)stories of international law and a myriad of lesser-known authors who have been left forgotten in the classics' overgrown shadows, such as women and non-Western authors, under conditions of Western cultural hegemony. The conclusion recaps the main findings of the article and stresses the importance of identifying innovative ways in which to look forward through, but also beyond, the deeply Eurocentric and male-dominated canon of the classics of international law towards a more inclusive global history of international law.

I. What Makes A Global Classic of International Law?

A. The Classic as Lenses to Address a Larger Historical Theme

Taking Grotius and Vitoria as benchmarks for the status of global international law classics, their first common feature is that their works have been widely used as a way to address larger historical themes and as lenses to look through at events and processes unleashed in the times in which their intellectual works are embedded. Indeed, Grotius's *De iure belli ac pacis* (On the Law of War and Peace) (1625) has been widely used to illuminate the new international order of the modern voluntary law of nations between equal and sovereign European nation-states at the time of the disintegration of the medieval *res publica Christiana*, prompted by the Peace of Westphalia in 1648. This association has been occasionally taken to the extreme, such as in Wight emphasizing that "the prestige of Westphalia was buttressed by that of Grotius, whose reputation as father of international law was due to a work prompted by the same general war that Westphalia ended".[18] Some of Grotius's earlier works, in particular *De iuris praedae* (On the Law of Prize and Booty) (1604/1605) and *De mare liberum* (On the Freedom of the Seas) (1609), which he wrote as a counsel to the Dutch East Asia Company, have also been used as a window into the role that *ius gentium* (Law of Nations) played in colonial legal argumentations in the epoch of Dutch imperialism and its struggle for spheres of influence and expansion in Asia with the British and the Portuguese.[19]

The sixteenth century *prima* Spanish professor of theology of the University of Salamanca, and Dominican friar, Francisco de Vitoria, offers another textbook illustration of this pattern in which landmark historical events and the work of a classic author become intermingled. Although Vitoria addressed questions touching on *ius gentium* in several works, his two *relectiones*, *De indis noviter inventis* (On the Recently-Discovered Indians) and *De indis sive de iure belli hispanorum in barbaros* (On the Indies, or the Law Governing the Spaniards' War with the Barbarians), both from 1539, illustrate the new role of *ius naturae et gentium* in tackling the moral, legal, and practical dilemmas that emerged in the wake of the discovery, conquest, and management by Europeans of the *novus orbis*. These *relectiones*, which, as Koskenniemi notes, have traditionally been seen

[18] Martin WIGHT, *International Theory: The Three Traditions* (Leicester: Leicester University Press, 1991) at 113.
[19] C. H. ALEXANDROWICZ, *The Law of Nations in Global History* (Oxford: Oxford University Press, 2017).

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as "critical of the conduct of the *Conquista* and actively propagated domestic and universal laws to control and direct its course",[20] established Vitoria's reputation as a seminal representative of a humanitarian international legal sensibility towards conquered peoples in the wake of the favourable appraisal some early members of the *Institut de Droit International* gave to them in the late nineteenth century.[21] Subsequent generations of modern international lawyers, including international human rights lawyers,[22] would see and claim such a pioneering Vitorian tradition of speaking an early form of *ius naturae et gentium* to imperial power as their own. However, this interpretation of Vitoria's significance for international law would, in time, as we shall see later, become challenged by post-colonial international law scholars.[23]

B. The Classic's Prominent Place in the Intellectual Canon and the Periodization of International Law

The second feature distinguishing Vitoria and Grotius as classics of international law is the pre-eminent place their works occupy in the historical canon of international law and, by extension, in its intellectual periodization. Both Grotius and Vitoria have been used as intellectual gateways to context shifting events in the history of the international order. This is so in the case of Grotius on account of the association of his *De iure belli ac pacis* (1625), the significance of which has retrospectively been attributed to the Peace of Westphalia as the "mythical birth date of the modern European system of equal sovereign states", or otherwise as a "crystallizing moment for the intellectual transition from a natural law dominated world-view towards an increasing role for voluntary law and to the use of the language of law and legality in anchoring the balance of power in inter-state relations".[24] Vitoria's fame, in turn, hinges on his two famous *relectiones*, in which he addressed Spanish rights to American lands in the wake of what Carl Schmitt called "the basic event in the history of European international law"[25] since it was from it that the "traditional Eurocentric order of international law" itself arose.[26]

These associations have, in turn, fostered the status of both Grotius and Vitoria as focal points of the historical intellectual canon of international law as well as milestones in a dominantly Eurocentric periodization of the discipline. This is traditionally ordered in Western-centric temporal boxes, often framed by diplomatic conferences and international treaties such as the Congress of Vienna (1815), The Treaty of Versailles (1919), and the Conference of San Francisco (1945).[27] Furthermore, the centrality of Vitoria and Grotius in the Western intellectual canon and the periodization of international law and, by

[20] Martti KOSKENNIEMI, "Empire and International Law: The Real Spanish Contribution" (2011) 61 University of Toronto Law Journal 1 at 4.

[21] Andrew FITZMAURICE, "The Problem of Eurocentrism in the Thought of Francisco de Vitoria" in José María BENEYTO and Justo Corti VARELA, eds., *At the Origins of Modernity: Francisco de Vitoria and the Discovery of International Law* (Cham: Springer, 2017), 77.

[22] See for example, Robert John S. J. ARAUJO, "Our Debt to de Vitoria: A Catholic Foundation of Human Rights" (2011–2012) 10 Ave Maria Law Review 313.

[23] Antony ANGHIE, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2005).

[24] Ignacio DE LA RASILLA, "The History of International Law 1550–1700" *Oxford Bibliographies in International Law* (22 February 2018), online: Oxford Bibliographies <https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0036.xml>.

[25] Carl SCHMITT, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum* (New York: Telos Press, 2003) at 83. Originally published as Carl SCHMITT, *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum* (Berlin: Duncker & Humblot, 1950).

[26] *Ibid*, at 39.

[27] Oliver DIGGELMANN, "The Periodization of the History of International Law" in Bardo FASSBENDER and Anne PETERS, eds., *The Oxford Handbook of the History of International Law* (Oxford: Oxford University Press, 2012), 997.

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extension, in the narratives passed down with them, also accounts for them having become foci in alternative intellectual periodization of the discipline with an emphasis on the perspectives this time of those subjected to Western imperial events and colonial processes.[28]

C. The Classic's Broad Interdisciplinary Appeal

The third related distinguishing feature of a classic of international law that Vitoria and Grotius epitomize is the classics' broad interdisciplinary appeal. While both Grotius and Vitoria occupy seminal positions in the intellectual historical canon of international law, their classic status in the discipline has been further buttressed by their remarkable historical standing across different legal fields due to their contributions to natural law and in the historical intellectual canons of other disciplines. Indeed, both Grotius and Vitoria feature in the curriculum of international relations in its embedded relation with the history of political thought,[29] political theory,[30] human rights,[31] global history,[32] legal philosophy and history,[33] and many other areas of the social sciences.[34] Martin Wight, a central figure in the English School of International Relations, interpreted what he termed "Grotianism" (or "rationalism") as one of the three traditions of Western international theory underlying nearly all international political thought. This tripartite typology was completed with Machiavelli and Hobbes as emblems of the tradition of "realism" and then Kant (but also Mazzini) as representatives of the "Kantian tradition" (or "revolutionism").[35]

The interdisciplinary appeal of Vitoria and Grotius is partly due to the fact that both of them wrote on subject matters which, arguably, fit squarely within the scope of many other intellectual disciplinary traditions. However, interdisciplinary migration can also be considered an offspring of what Koskenniemi calls "the way legal authority migrates between different disciplines"[36] and the great intellectual influence that comes in its wake. Indeed, as Brett, Donaldson, and Koskenniemi note, "it is difficult to find a major figure in the history of European political thought who would not have attempted to say something about how authority emerges, or is justified and critiqued in the world beyond the single polity";[37] and, one may add, who in order to do so has not contemplated Vitoria and Grotius as valuable sources of reference and inspiration.

D. The Classic as a Flag-Bearer of an Intellectual Tradition

Connected to Vitoria and Grotius's broad interdisciplinary appeal, their fourth common characteristic is that they have become historical flag bearers of an ever-reinterpreted

[28] Ignacio DE LA RASILLA, "The Problem of Periodization in the History of International Law" (2019) 37 Law and History Review 275.

[29] Chris BROWN, Terry NARDIN, and Nicholas RENGGER, eds., *International Relations in Political Thought: Texts from the Ancient Greeks to the First World War* (Cambridge: Cambridge University Press, 2002).

[30] Anthony PAGDEN and Jeremy LAWRANCE, eds., *Vitoria: Political Writings* (Cambridge: Cambridge University Press, 1991).

[31] Ramón SORIANO, *Historia Tematica de los Derechos Humanos* (Madrid: Editorial Mad, 2009).

[32] Armitage, *supra* note 1.

[33] Thomas DUVE, José Luis EGÍO, and Christiane BIRR, eds., *The School of Salamanca: A Case of Global Knowledge Production* (Leiden: Brill, 2021).

[34] Randall LESAFFER and Janne E. NIJMAN, eds., *The Cambridge Companion to Hugo Grotius* (Cambridge: Cambridge University Press, 2021).

[35] Wight, *supra* note 18.

[36] Koskenniemi, *supra* note 15 at 5.

[37] Annabel BRETT, Megan DONALDSON, and Martti KOSKENNIEMI, "Introduction" in Annabel BRETT, Megan DONALDSON, and Martti KOSKENNIEMI, eds., *History, Politics, Law: Thinking Through the International* (Cambridge: Cambridge University Press, 2021), 1 at 1.

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(and partly ever-reinvented) intellectual tradition in international law. Indeed, both Grotius and Vitoria are paradigmatic in the sense that their works have grown to be commonly regarded as embodiments of a conceptual world view underlying the theories and methodology of international law. In this context, the epithet "Grotian" is understood as an intellectual crossroad between natural law and positivism in a state-centred international system and, as such, it is often classically opposed to the conceptual world view of international legal positivism. This, which is traditionally retraced to the formulations of Emer de Vattel (1714–1767) in his highly influential *Le droit des gens* (1758), does not recognize any legal or axiological superior authority over the always retractable expression of state sovereign consent, whether in its tacit (custom) or explicit (treaty) forms, as a source of international legal obligations.[38]

This conventional characterization of what the epithet "Grotian" broadly stands for owes volumes to the interpretation that Hersch Lauterpacht (1897–1960), a judge on the bench of the International Court of Justice (1955–1960) and a long-standing holder of the Whewell Chair of International Law at Cambridge, gave what he termed the "Grotian tradition in international law"[39] on the third centenary of Grotius death in the aftermath of the Second World War. Lauterpacht's reinterpretation of the "Grotian tradition", which he divided into eleven tenets, proceeded by making Grotius an emblem of the international rule of law, and even an early predecessor of international human rights law, which was a nascent international legal regime[40] to which Lauterpacht was seminally contributing at the time of his writing.[41] Over time, international lawyers have widely adopted Lauterpacht's broadly (re)updated "Grotian tradition"[42] – which Lauterpacht deemed had provided "international law with unprecedented dignity and authority by making it part not only of a general system of jurisprudence but also of a universal moral code"[43] as a shortcut for the main features of a liberal international order. The most apparent consequence is that the epithet "Grotian" has been applied as an identifier of authority to many contemporary international legal doctrines of which Grotius is interpreted as being (even if vaguely) associated with.[44] It has also been used to conjugate the moniker of "Grotian moments", on which a certain strand of international legal literature has also emerged, to describe "rapid crystallisations of new rules and doctrines of customary international law".[45]

Meanwhile, Vitoria, who stood up to the excesses of his own country's imperialism has, over time, become a symbol of a humanist universal natural law tradition. This tradition of international legal thought, can be retraced back to Vitoria and to other members of the School of Salamanca such as Francisco de Suarez, who, according to Lauterpacht, laid the "foundations of the jurisprudential treatment of the problem of the international community as a whole".[46] Over time, it has also been associated with contemporary

[38] Emmanuelle JOUANNET, *Vattel and the Emergence of Classic International Law* (Oxford: Hart, 2009).

[39] Lauterpacht, *supra* note 9.

[40] *Ibid*., at 51.

[41] Hersch LAUTERPACHT, *An International Bill of the Rights of Man* (New York: Columbia University Press, 1945).

[42] Ignacio DE LA RASILLA, "Grotian Revivals in the History and Theory of International Law" in Randall LESAFFER and Janne E. NIJMAN, eds., *The Cambridge Companion to Hugo Grotius* (Cambridge: Cambridge University Press, 2021), 578.

[43] Lauterpacht, *supra* note 9 at 51.

[44] See for example, John T. PARRY, "What is the Grotian Tradition in International Law?" (2014) 35 University of Pennsylvania Journal of International Law 299.

[45] See, more recently, Tom SPARKS and Mark SOMOS, "Grotian Moments: An Introduction" (2021) 42 *Grotiana* 179, introducing a symposium on the concept of "Grotian moments".

[46] Hersch LAUTERPACHT, *The Function of Law in the International Community* (Oxford: Oxford University Press, 1933) at 91.

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legal doctrines upholding community interests through international law, including *erga omnes* obligations and the norms of *ius cogens,* also known as peremptory norms of international law.[47]

E. The Classic as a First Expounder of International Legal Theories or Doctrines

A fifth related characteristic of the global classics of international law is, indeed, that of having been identified as authors of the often first recalled formulation of one or more international legal theories or doctrines. That the classics' ideas and formulations have migrated across time and space and, in doing so, have become a substratum of further legal discussions and adaptations is reminiscent of the feeling of *déjà vu* one often experiences with the works of classics across all fields of knowledge. Italo Calvino, himself, evoked it as one of the criteria identifying a classic when he noted that "[a] classic is a book which even when we read it for the first time gives the sense of re-reading something we have read before."[48] This association of the classics of international law as the first expounders of a theory or doctrine has, moreover, been regularly buttressed by the uses contemporary authors make of them. In his mid-1980s study of "primitive international legal scholarship", David Kennedy evoked this form of what we may call juridical presentism in remarking that "many contemporary authors use historic texts either to demonstrate that the author's contemporary vision is fully present, if in a nascent form, or that modern doctrinal and systemic developments are foreshadowed in the historical texts".[49]

An archetypal illustration of juridical presentism is provided by Vitoria's oft quoted first elaboration of the relevance of the notion of the "international community" in international law in his *relectio De potestate civili* of 1528. In it, Vitoria associated *ius gentium* with the notion of *totus orbis* (the whole world). This, Vitoria argued, "in a certain manner is a republic" (*qui aliquo modo est una respublica*) and as such "has the power to enact laws which are just and convenient to all men; and these make up the law of nations" (*potestate ferendi leges aequast et convenientes omnibus, quales sunt in iure gentium*). This classic formulation underlies multiple international legal theorizations of the "international community" as an international lawmaking entity of sorts and, by extension, of related international legal concepts. The international community orientation of international law, with its stressing of a minimum public international order undergirded by legal concepts, gained further credentials after the First World War with the establishment of the League of Nations, when most of the fundamental international legal doctrines and their system of legal sources were established. Although interrupted by the Cold War, a similar liberal "globalist" orientation would again take hold in the early post-Cold War period with the rise of revamped international constitutionalist perspectives undergirded by notions such that those of global law and global governance with their stress on interdependence as the backbone of a legal "international community" informed by cosmopolitan notions of justice.[50] These notions have been often retraced to the intellectual foundations provided by Vitoria and the School of Salamanca.[51]

Grotius's treatment of the *ius ad bellum* and the *ius in bello* as well as his writings on just war have been also deemed extremely influential in providing a framework for ulterior

[47] See for example, Antonio GÓMEZ ROBLEDO, "Le ius cogens international: sa genèse, sa nature, ses fonctions" (1981) 172 Collected Courses of The Hague Academy of International Law 2, at 23–5.

[48] Calvino, *supra* note 17.

[49] David W. KENNEDY, "Primitive Legal Scholarship" (1986) 27 Harvard International Law Journal 1 at 2.

[50] Jan KLABBERS, Anna PETERS, and Geir ULFSTEIN, *The Constitutionalization of International Law* (Oxford: Oxford University Press, 2009).

[51] See for example, Rafael DOMINGO and John WITTE, Jr., eds., *Christianity and Global Law* (London and New York: Routledge, 2020).

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international normative developments. These writings are often remarked to underlie the regulation of the use of force in the United Nations (UN) Charter or the laws of war in the Geneva Conventions.[52] Similarly influential, it has often been remarked, is Grotius's contribution to the early seventeenth century debate on the high seas as a space beyond the jurisdictional control of any sovereign state. Indeed, references to Grotius's *mare liberum,* with its defence of the right of every state to freely navigate it and to engage in trade with other nations (against restrictive conceptions of "*mare clausum*" like those later articulated by Serafim de Freitas or John Selden in the so-called "battle of the books" over the dominion of the seas in the seventeenth century)[53] can, often, be found in relation to, for instance, the contemporary comprehensive regulation provided by the UN Convention of the Law of the Sea in 1982.

F. The Classic's Ambivalent Relation with Cultural Patriotism

The sixth characteristic that the cases of Vitoria and Grotius have in common is the role played by cultural patriotism in both the making and the upholding of the classic status of a particular author and in promoting his/her national institutionalization over time. Although this may often be overlooked by the global reputation a classic has gained over time, a classic never comes from nowhere. Instead, underlying the rise of a classic there is more often than not a sustained national effort claiming the classic's intellectual prowess as an iconic representative of the nation, which takes pride by association. Both Grotius, the so-called "miracle of Holland", and Vitoria stand apart in this respect from any other classic of international law. Fuelled since the early days by the support of Dutch institutions and academics,[54] the reputation of the "born nearby" Grotius has done marvels to establish The Hague as "the world-capital of international law".[55] The founding of national and international associations and foundations[56] and specialized research centres bearing Grotius's name[57] has followed a trend built on Grotius's reputation since the early days of convening The Hague Peace Conferences of 1899 and 1907. This was followed by the early selection of The Hague as the site for the Peace Palace[58] (hosting the Permanent Court of Arbitration and the Permanent Court of International Justice (later superseded by the International Court of Justice) and The Hague Academy of International Law[59] (since 1923) up to the most recent proliferation of international tribunals sitting there, including the International Criminal Court. Likewise, Spanish institutions and academics have also strongly backed the reputation of Vitoria and the School of Salamanca in innumerable publications, with the

[52] Peter HAGGENMACHER, *Grotius et la doctrine de la guerre juste* (Paris: Presses Universitaires de France, 1983).

[53] Mónica BRITO VIEIRA, "Mare Liberum vs. Mare Clausum: Grotius, Freitas, and Selden's Debate on Dominion Over the Sea" (2003) 64 Journal of the History of Ideas 361.

[54] Cornelis VAN VOLLENHOVEN, *De Drie Treden van het Volkenrecht* (Uitgever: Martinus Nijhoff, 1918).

[55] Van Ittersum, *supra* note 3.

[56] For example, the Grotiana foundation, with a journal specifically devoted to Grotius's themes, online: <https://grotiana.eu>.

[57] For example, the Grotius Centre for International Legal Studies at Leiden University: Leiden University, "Grotius Centre", online: Universiteit Leiden <https://www.universiteitleiden.nl/en/law/institute-of-public-law/grotius-centre>.

[58] This was built with funds from the Carnegie institution, later the Carnegie Endowment for International Peace, of which J. B. Scott, the series-editor of *The Classics*, became a highly influential figure. See Amorosa, *supra* note 4.

[59] The Hague Academy of International Law was also initially bankrolled by J. B. Scott through the Carnegie Endowment. See Amorosa, *supra* note 4.

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establishment of national[60] and international[61] associations bearing the name of Vitoria and also homonymous yearbooks,[62] by erecting public statues, setting up research centres, and even by giving his name to universities.[63] In both cases, this nationalistic instrumentalization and glorification of the classics is not without dark sides. In Grotius's case, the Dutch "cultural patriotism" regarding him is not devoid of an ironic twist since Grotius, who was condemned to death by the Dutch authorities,[64] lived, moreover, half his life as an exile forbidden from returning to his home country.[65] Similarly, in Spain, Francoist international lawyers went as far as using Vitorian doctrines to justify the *coup d'etat* against the Spanish Second Republic that initiated the Spanish Civil War (1936–1939), and later, in its aftermath, made Vitoria and the School of Salamanca stand as a nationalist and intellectually regressive symbol of Franco's national-Catholicist dictatorial regime for almost forty years.[66]

G. The Multiple Interpretations and Reinterpretations of the Classic

The seventh characteristic of Vitoria and Grotius as classics of international law is that their work has been interpreted and reinterpreted multiple times. Schmitt hinted at this feature in his *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, noting that "the history of how Vitoria's arguments have been used in international law from the 16th century until now offers striking examples of unexpected transformations and reinterpretations".[67] He further suggested that "Vitoria's reputation has its own history and requires special treatment".[68] Indeed, presentism, broadly understood among historians as "a term of abuse conventionally deployed to describe an interpretation of history that is biased towards and coloured by present-day concerns, preoccupations and values"[69] recurs around Grotius's and Vitoria's opuses. These have become objects of different interpretations and reinterpretations in the light of different strategic circumstances, and the rise and fall of political ideologies and trends in international legal thought over time. An illustration is provided by J. B. Scott, who became a highly influential champion of Vitoria following in the footsteps of the "contest over the founding fathers of international law" which, partly pervaded by nationalist and religious prejudices (namely, the Protestant Grotius versus the Catholic Vitoria), had unfolded

[60] For instance, the Asociacion Francisco de Vitoria established in 1926. See for example, Ignacio DE LA RASILLA, "Francisco de Vitoria's Unexpected Transformations and Reinterpretations for International Law" (2013) 15 International Community Law Review 287.

[61] Association Internationale Vitoria-Suarez, ed., *Vitoria y Suarez: Contribution des théologiens au droit international moderne* (Paris: A. Pedone, 1939).

[62] For a recent analysis Julia BÜHNER, "Histories Hidden in the Shadow: Vitoria and the International Ostracism of Francoist Spain" (2020) 22 Journal of the History of International Law 421.

[63] For example, Universidad Francisco de Vitoria in Madrid (est 1993): http://www.ufvinternational.com/en/.

[64] A sentence that was then commuted to life imprisonment in the Loevestein Castle prison, from which Grotius, furthermore, famously escaped inside a book chest in 1621, an event which was even celebrated in its fourth centenary in 2021. See for example, Otto VERVAART, "Grotius Through Students' Eyes" (11 October 2021), online: Rechtsgeschiedenis Blog <https://rechtsgeschiedenis.wordpress.com/tag/hugo-grotius/>.

[65] Martine VAN ITTERSUM, *Profit and Principle: Hugo Grotius, Natural Rights Theories and the Rise of Dutch Power in the East Indies (1595–1615)* (Leiden: Brill, 2006).

[66] Ignacio DE LA RASILLA, *In the Shadow of Vitoria: A History of International Law in Spain 1770–1953* (Leiden: Brill, 2017).

[67] Schmitt, *supra* note 25 at 125.

[68] *Ibid*., at 115.

[69] David ARMITAGE, "In Defence of Presentism" in Darrin M. MCMAHON, ed., *History and Human Flourishing* (Oxford: Oxford University Press, 2022, forthcoming), online: Harvard University <https://scholar.harvard.edu/armitage/publications/defense-presentism>.

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since the late nineteenth century. Scott, for whom Grotius was a "populariser in the best sense of the word" and, therefore, "a member of the Vitorian or, as it is more usually termed, the Spanish school",[70] also saw in Vitoria's reputation a vehicle, as Juan Pablo Scarfi notes, for "a dominant Pan-American liberal international and imperial legal approach based on US legal and political values, which shaped the emergence of international law as a modern discipline in Latin America and the US".[71]

The most recent illustration of this recurrent tendency in international law writing is a "post-colonial" critical reading of Vitoria, which proposes to substitute his long-established late nineteenth-century classical representation as a humanist critic of Empire with an opposite depiction of him as a legitimizer of the Spanish *conquista*. According to the highly influential reading by Antony Anghie, Vitoria should be seen as an early precursor of a juridical mode of discourse which was subsequently pursued by imperialist projects up to the present day. Indeed, for Anghie, Vitoria's work may "be read as a particularly insidious justification of conquest precisely because it is presented in the language of liberality and even equality".[72] Anghie's recent stress that "international law was created out of the unique issues generated by the encounter between the Spanish and the Indians"[73] (a perspective that, although writing from a completely opposite ideological position, Schmitt had put forward in 1950) has, furthermore, contributed, as mentioned earlier, to setting Vitoria as an intellectual landmark in a post-colonial periodization of the history of international law. Such alternative post-colonial meta-periodization of the history of international law includes other post-colonial landmarks such as the regimes of colonial unequal treaties; the Berlin Conference; the mandate system in the Covenant of the League of Nations; and the conference of non-aligned countries in Bandung.[74]

Anghie's widely-commented reinterpretation of Vitoria's significance for international law has been criticized for being a revisionist anachronistic reading of the spirit of Vitoria's intentions in the context of his times.[75] These critical reactions have, in turn, fostered new methodological debates among historians, legal historians, and critical international law scholars on the relationship between history and international law and the proper role, and limitations, of contextual methods in fully capturing it.[76] These recent historiographical debates epitomize the classics of international law's almost inexhaustible potential as gravitational poles for an ever-renovating industry of academic commentary. Indeed, Grotius himself, many of whose most famous works were written in the context provided by his role as a counsel to the Dutch East India Company, has not been free from post-colonial polemics over his work. Today, Grotius's long-established position as the crowned founding "father of international law" is instead being replaced with that of the "godfather of Dutch imperialism".[77]

[70] James Brown SCOTT, *The Spanish Origin of International Law: Francisco de Vitoria and His Law of Nations* (Oxford: Clarendon Press, 1934) at 10a.

[71] Juan Pablo SCARFI, "The Latin American Politics of International Law: Latin American Countries' Engagements with International Law and Their Contradictory Impact on the Liberal International Order" (article forthcoming, 2022) *Cambridge Review of International Affairs,* at 2, online: Taylor Francis <https://doi.org/10.1080/09557571.2021.1920887>.

[72] Anghie, *supra* note 23 at 28.

[73] Anghie, *supra* note 23 at 15.

[74] De la Rasilla, *supra* note 42. See also Luis ESLAVA, Michael FAKHRI, and Vasuki NESIAH, eds., *Bandung, Global History, and International Law: Critical Pasts and Pending Futures* (Cambridge: Cambridge University Press, 2017).

[75] See for example, Georg CAVALLAR, "Vitoria, Grotius, Pufendorf, Wolff and Vattel: Accomplices of European Colonialism and Exploitation or True Cosmopolitans?" (2008) 10 Journal of the History of International Law 181.

[76] Martti KOSKENNIEMI, "Vitoria and Us: Thoughts on Critical Histories of International Law" (2014) 22 *Rechtsgeschichte* 119; Anne ORFORD, *International Law and the Politics of History* (Cambridge: Cambridge University Press, 2021).

[77] Van Ittersum, *supra* note 3 at 99.

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H. The Classic's *Hegemonically Induced Universality*

The eighth characteristic of a classic of international law is its universality or, if preferred, its "great staying power across both time and space".[78] However, unlike the great classics of literature, the universalization of Grotius and Vitoria has not only hinged on their works' intellectual quality or even solely on the fact that they "focus on matters of great importance, identifying fundamental human problems and providing some sort of guidance for dealing with them".[79] By contrast, the elevation of a classic has had much to do in international law with its canonical position in the dominant Western tradition of international law and its corresponding export as part of the parochialization of the latter in the wake of different waves of Western imperialism and colonization around the globe. In this context, the reception of a Western classic may even be part of a process of "strategic appropriation" of international law by peripheral and semi-peripheral international law elites. This phenomenon, which has been illustrated *in extenso* by Arnulf Becker Lorca, from the aftermath of the independence of the Latin-American republics onwards,[80] relapses, for instance, in the case of Chinese translations of international law textbooks produced in the nineteenth century to argue against "unequal treaties".[81] This notwithstanding, this type of reception also remains a symptom of constrained "acculturation" to the tenets of the international legal tradition embodied by hegemonic powers.

I. The Diachronic Uses of the Classic

A ninth and more recent feature of the global classics of international law is that they have become vehicles for the study of the history of international law itself in different times and periods. Indeed, the accrued genealogy of interpretations and reinterpretations of the classics over time has in turn nurtured a parallel array of new investigations into the lives, times, and works of those who contributed to the classics' modern fame in international law and the historical, legal, biographical, and professional context underlying these rereadings and reinterpretations. It is, perhaps, the most enduring testament to the status of a classic as a classic when it becomes a sort of Ariadne's thread in the study of altogether different historical periods. One of those times was, as noted above, the interwar period, when the establishment of the League of Nations, as the first permanent international organization of universal character, and the parallel efforts to tame the excesses of the absolute sovereignty conceptions underlying the horrors of the Second World War largely contributed to a revival of the natural law tradition among international legal theorists. The latter, in turn, fostered a trend of interwar presentist reinterpretations of both Grotius[82] and Vitoria,[83] and later, as a

[78] Richard J. SMITH, *The I Ching: A Biography (Lives of Great Religious Books)* (Princeton, NJ: Princeton University Press, 2012) at 5.

[79] *Ibid*.

[80] Arnulf BECKER LORCA, *Mestizo International Law: A Global Intellectual History 1842–1933* (Cambridge: Cambridge University Press, 2015).

[81] See for example, Maria Adele CARRAI, *Sovereignty in China: A Genealogy of a Concept since 1840* (Cambridge: Cambridge University Press, 2019). Also, Anne PETERS, "Treaties, Unequal" *Max Planck Encyclopaedia of Public International Law* (February 2018), online: Oxford Public International Law <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1495>.

[82] Van Vollenhoven, *supra* note 54.

[83] Camilo BARCIA TRELLES, "Francisco de Vitoria et l'école moderne du droit international" (1927) 17 Collected Courses of The Hague Academy of International Law 109; James Brown SCOTT, *The Catholic Conception of International Law: Francisco de Vitoria, Founder of the Modern Law of Nations; Francisco Suárez, Founder of the Modern Philosophy of Law in General and in Particular of the Law of Nations: A Critical Examination and a Justified Appreciation* (Washington, DC: Georgetown University Press, 1934).

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coda,[84] or even as a reaction[85] to some of those reinterpretations, other rereadings of both in the immediate aftermath of the Second World War. These "Grotian" and "Vitorian" revivals[86] are themselves constitutive building blocks of the construction of a classic and as such they are increasingly studied in their own detailed contextual terms with specific attention to the works, lives, and times of their protagonists.[87] Some of these authors, as in the cases of Schmitt and Lauterpacht, are even now considered modern classics of the discipline. It is also thanks to the use of historical diachronic perspectives that both Grotius and Vitoria have also indirectly provided new lenses through which to look diachronically into the historical development of national traditions of international law at different times.[88]

J. The Classic as a Generator of an Industry of Academic Commentary

The tenth and more obvious feature ensuing from all the previous characteristics that one can distil from the cases of Vitoria and Grotius as prototypical global classics of international law is that the classics generate an industry of academic commentary around them. From the sixteenth and seventeenth centuries to the present day, there is, indeed, an extremely vast body of literature about the opuses of Grotius and Vitoria (both of which squarely fit Horatius's "classical" definition of a classic work as "*est vetus atque probus, centum qui perfecit annos*" (it is old and serious what traverses a hundred years)) and, by extension, their lives and times. Even within the narrow confines of international legal scholarship, multiple editions of their works and translations into numerous languages, research monographs, edited volumes, innumerable journal articles, and book chapters – and also, of course, several Hague Academy courses have been specifically dedicated to them, with new additions to the large literature on both of them appearing every year.[89] If to these one adds the presence of Vitoria and Grotius in all international law textbooks across all major languages, and the overall number of variously accumulated citations, their "impact factor" may be said to be simply *off the charts*.

II. In and Beyond The Overgrown Shadow of the Western Classics

In his "What is a Classic?", in which Nobel Prize winner Coetzee critically revisits a homonymous lecture delivered by another Nobel Prize winner, T. S. Eliot in 1944, Coetzee notes that "the classic defines itself by surviving".[90] As Section I has shown, the conditions for the survival of Vitoria and Grotius have been largely constituted by an international legal academia which has for the most part of its existence operated under conditions of

[84] Lauterpacht, *supra* note 9.

[85] Schmitt, *supra* note 25.

[86] Ignacio DE LA RASILLA "The Three Revivals of Francisco de Vitoria in the History of International Law" in José María BENEYTO, ed., *Empire, Humanism and Rights. Collected Essays on Francisco de Vitoria* (Cham: Springer Nature 2022), 73. Also, De la Rasilla, *supra* note 42.

[87] Amorosa, *supra* note 4.

[88] Van Ittersum, *supra* note 65; De la Rasilla, *supra* note 66.

[89] See for example, Lesaffer and Nijman (2021), *supra* note 34; José María BENEYTO, ed., *Empire, Humanism and Rights. Collected Essays on Francisco de Vitoria* (Cham: Springer Nature 2022); Sparks and Somos, *supra* note 45; Koskenniemi, *supra* note 15. For recent bibliographical overviews, see: Pablo Antonio FERNÁNDEZ-SÁNCHEZ, "Spanish School of International Law (c. 16th and 17th Centuries)" *Oxford Bibliographies in International Law* (6 February 2017), online: Oxford Bibliographies <https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0082.xml>; John HASKELL, "Hugo Grotius" *Oxford Bibliographies in International Law* (30 August 2016), online: Oxford Bibliographies <https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0139.xml>.

[90] Coetzee, *supra* note 5 at 19.

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Western political, economic, and cultural hegemony. Moreover, that the memory of the "classic" never ceases to stay alive in the background and occasionally in the foreground of contemporary debates about the international legal order comes at a cost. Vitoria and Grotius have shown a portentous ability not just to survive, but to thrive as source of reference and inspiration, and also by prompting new investigations and debates in the works of multiple international law scholars hundreds of years after their deaths. However, the large attention devoted to them has also indirectly contributed to methodological biases, intellectual historiographical blind spots, and, more broadly, large gaps in the study of the practice and of the sociological dimensions of the history of international law. While the more recent application of diachronic lenses to the uses, misuses, and abuses of Vitoria and Grotius has fostered the writing of hitherto untold (hi)stories in international law, multiple more international legal (hi)stories remain untold, and a myriad of historical characters forgotten and neglected in Vitoria's and Grotius' overgrown shadows to this day.

This Section offers a brief historiographical overview of how the study of history of international law has been inextricably intermingled with the study of its Western classics since, at least, the founding of the *Institut de Droit International* in 1873, up to the most recent contributions to the literature including in fine Koskenniemi's *To the Uttermost Parts of the Earth*.[91] The reiterative and overlapping study of the classics of international law has also long framed the international legal historical imagination in Western-centric terms and, in doing so, has arguably limited its possibilities. This Section highlights the main methodological responses addressed to problematize the international lawyer's long-standing focus on the Western classics through, among others, the production of histories of international law across non-Western regions, including Asia.

Although the investigation of the history of international law has a minor history of its own, with earlier works since the late eighteenth century[92] and throughout the nineteenth century,[93] its relevance as a minor genre in international legal scholarship only increased in the wake of the academic professionalization of the discipline in the last third of the nineteenth century. A bird's-eye view of the rise in the study of the Western classics, with Vitoria and Grotius as its most famed representatives, its relative fall, and its more recent contemporary revival in the wake of the so-labelled "turn to history in international law",[94] thus conventionally begins with the establishment of the first chairs in international law in Western Europe and the Americas. This is also the time of the launch of the first scientific journals devoted to their study, starting with *Revue de droit international et de législation comparée* in 1869,[95] and the broadly conterminous founding of the first international law epistemological associations.[96] These institutional developments, in turn, prompted seminal

[91] Koskenniemi, *supra* note 15.

[92] See for example, Joaquín MARÍN Y MENDOZA, *Historia del Derecho Natural y de Gentes* (Madrid: Manuel Martín, 1776); D.H.L. VON OMPTEDA, *Litteratur des gesammten sowohl natürlichen als positiven Völkerrechts* (Regensburg: Montags Erben, 1785); G.F. VON MARTENS, *Summary of the Law of Nations: Founded on the Treaties and Customs of the Modern Nations of Europe* (Philadelphia: Thomas Bradford, 1795). In English, Robert P. WARD, *An Enquiry into the Foundation and History of the Law of Nations in Europe, From the Time of the Greeks and Romans, to the Age of Grotius* (Dublin: P. Wogan, P. Byrne, W. Jones, and J. Rice, 1795).

[93] See for example, H. WHEATON, *Histoire du progrès des droits de gens depuis la Paix de Westphalie jusqu'au congrès de Vienne* (Leipzig: Brokhaus, 1841); C. Kaltenborn VON STACHAU, *Vorläufer des Hugo Grotius auf dem Gebiete des ius naturae et gentium* (Leipzig: G Mayer, 1848).

[94] Thomas SKOUTERIS, "The Turn to History in International Law" *Oxford Bibliographies in International Law* (27 June 2017), online: Oxford Bibliographies <https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0154.xml>.

[95] Ignacio DE LA RASILLA, "A Very Short History of International Law Journals (1869–2018)" (2018) 29 European Journal of International Law 137.

[96] Martti KOSKENNIEMI, *The Gentle Civilizer of Nations: The Rise and Fall of International Law (1870–1960)* (Cambridge: Cambridge University Press, 2001).

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investigations into the historical and intellectual origins and development of international law up to that time.[97] These explorations were often intermingled with discussions on the question, to whom should the intellectual "fatherhood" of international law be attributed to. Conceived in 1906, the collection of the "Classics of International Law", which followed in the wake of several works devoted to the founding fathers,[98] and, in particular, the pioneering contributions of Ernest Nys,[99] was itself an offspring of these early efforts to provide a "disciplinary history for international law". This naturally unfolded, according to Jean d'Aspremont, as "a conscious way to confirm the maturity and respectability, identity and scientificity of the field, entrench it in a tradition and make it universal".[100]

In parallel with the forty year long process of publishing *The Classics* (1911–1950) and partly spurred by it, some of the fundamental theoretical debates of the interwar period were, as already seen in Section I, deeply informed by new readings of classic authors featured in the collection. For instance, one of the theoretical answers that emerged during the period to the enigma of squaring the circle of an international legal order among sovereign equals was the doctrine of "monism", "according to which international treaties would be superior to national laws and the validity of the latter would derive from the international legal order".[101] This idea can be retraced back through a genealogy of natural law intellectual precursors, including Christian Wolff's *civitas maxima*,[102] to Vitoria's oft-quoted statement that "no kingdom may choose to ignore this law of nations" (*regno nolle teneri iure gentium*) "because it has the sanction of the whole world" (*est enim latum totius orbis auctoritate*). Meanwhile, other interwar authors such as Scott and Camilo Barcia Trelles saw in the doctrines of Vitoria and other representatives of the School of Salamanca all the elements *in nuce* of a liberal "modern international law": from international free trade right up to the principle of collective intervention in the name of international solidarity.[103] The figure of Grotius, the third centenary of whose *De iure belli ac pacis* was celebrated with great pomp and intellectual fanfare in 1925, also saw many influential efforts to render him as a model and an "apostle for peace" during the interwar period which saw a revival of "natural law" doctrines to uphold the binding force of international obligations.[104]

However, these interwar foundational theoretical debates, which were both informed by, and further promoted the study of, a traditional Western idealist historiography of international law focused on the intellectual constructions of the "great men" of bygone eras, went on to recede and to give place to a more functional-oriented jurisprudence in the aftermath of the Second World War. The traditional historiography of international law then began to be challenged and complemented with a more realist historiographical strand focused on state practice and a more explicit acknowledgement of the influence of "great power" politics in the development of theoretical international legal constructions.

[97] For example, Carlos CALVO, *Le droit international théorique et pratique précédé d'un exposé historique des progrès de la science du droit des gens* (Paris: A. Rousseau, 1887–1896).

[98] J. BARTHÉLEMY, "Francois de Vitoria" in Antoine PILLET, ed., *Les fondateurs du droit international* (Paris: V. Giard & E. Brière, 1904), 1.

[99] For example, Ernest NYS, *Les origines de droit international* (Bruxelles: A Castaigne, 1894).

[100] Jean D'ASPREMONT, "Critical Histories of International Law and the Repression of Disciplinary Imagination" (2019) 7 London Review of International Law 89 at 98–99.

[101] Martti KOSKENNIEMI, "Carl Schmitt and International Law" in Jens MEIERHENRICH and Oliver SIMONS, eds., *The Oxford Handbook of Carl Schmitt* (Oxford: Oxford University Press, 2017), 592 at 599.

[102] Peter LANGFORD and Ian BRYAN, "From Wolff to Kelsen: The Transformation of the Notion of *Civitas Maxima*" in Peter LANGFORD, Ian BRYAN, and John MCGARRY, eds., *Hans Kelsen and the Natural Law Tradition* (Leiden/Boston: Brill, 2019), 161.

[103] Barcia Trelles, *supra* note 83.

[104] Van Vollenhoven, *supra* note 54.

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Illustrative of this new realist tradition in the field of the history of international law, which was by then still only incipiently cultivated in systematic terms, is Arthur Nussbaum's *A Concise History of the Law of Nations*,[105] which integrated the historical evolution of international law into a periodization of Western history, and Wilhelm Grewe's vast *The Epochs of International Law*.[106] In particular, Grewe's influential history of international law positioned itself as an explicit reaction against the previous "idealist intellectual" historiography which had, in Grewe's view, become, lost in "an abstract history of theory" because it had overlooked the "close connection between legal theory and state practice" and the "concrete political and sociological background" to the theories of its most noted writers.[107] Instead, Grewe put the stress on the need to reappraise the interwoven development of international law and "inter-state relations" which, he noted, had been previously "regarded as a bare array of facts to be grasped and systematized by way of a theoretically-derived, abstract intellectual method".[108] Grewe did so by dividing the history of international law into epochs defined by the succession of hegemonic powers to which international legal history was ultimately epiphenomenal.

However, even if at the dawn of the Cold War, the Western classics began to be more specifically framed in the context of the historical structures and power struggles of their times, they were in no manner absent from Nussbaum and Grewe's works, nor did they stop becoming co-opted as both inspiring figures of the past and as lenses through which to examine contemporary developments. Such a "presentist" approach to Grotius is apparent, as mentioned in Section I, in Lauterpacht's re-interpretation of the "Grotian" tradition of international law in the early aftermath of the horrors of the Second World War.[109] Similarly, and consonant with the central role that Schmitt attributed to locating the "intellectual place of the present in the process of history"[110] was, also, the great attention he devoted to the pivotal role of Vitoria in his *The Nomos of the Earth*. Indeed, for Schmitt, Vitoria was the crucial intellectual figure associated to the "legendary and unforeseen discovery of a new world" which in his view was "the basic event in the history of European international law" both "in terms of legal history and legal philosophy"[111] since it enabled "the land-appropriation of a new world".[112] It is from this constitutive matrix that, according to Schmitt, arose the "traditional Eurocentric order of International law",[113] that he saw "foundering" alongside "the old nomos of the earth"[114] and the dissolution of the *ius publicum europaeum* (public law of Europe) in the aftermath of the Second World War. Schmitt's hyper-Eurocentric, crudely exclusionary, and, at its heart, defiantly nostalgic interpretation of, as Koskenniemi notes,

[105] Arthur NUSSBAUM, *A Concise History of the Law of Nations*, 2nd ed. (New York: Macmillan, 1954).

[106] Wilhelm G. GREWE, *Epochen des Völkerrechtsgeschichte* (Baden-Baden: Nomos, 1984), (Michael BYERS, tr., *The Epochs of International Law* (Berlin: De Gruyter, 2000). Originally completed in 1944, the core of the book's main findings and methodology was presented in abridged form in academic journals and later also privately distributed to some libraries. However, the manuscript version was only published in an updated second edition in 1984. Its updated English version is from 2000.

[107] *Ibid*., at 2.

[108] *Ibid*.

[109] Lauterpacht, *supra* note 9.

[110] Jens MEIERHENRICH and Oliver SIMONS, "'A Fanatic of Order in an Epoch of Confusing Turmoil': The Political, Legal, and Cultural Thought of Carl Schmitt" in Jens MEIERHENRICH and Oliver SIMONS, eds., *The Oxford Handbook of Carl Schmitt* (Oxford: Oxford University Press, 2017), 3 at 4.

[111] Schmitt, *supra* note 25 at 83.

[112] *Ibid*., at 83

[113] *Ibid*., at 39.

[114] *Ibid*., at 39. According to Schmitt, "The Greek word for the first measure of all subsequent measures, for the first land-appropriation understood as the first partition and classification of space, for the primeval division and distribution, is nomos": *ibid*, at 67.

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"Europe's overseas empire as foundational for international law, especially to the extent that this resulted in a spatial order— a *nomos*— that consolidated Europe's global overlordship",[115] that fostered even more so Vitoria's prestige among erudite international legal scholarly circles.

Emerging soon thereafter, in the early 1960s, but at the antipodes of Schmitt's geopolitically inspired reading of Vitoria, was the gradual rise of "world history". This field of historical study, which is often retraced in modern historiographical terms to the seminal work of William McNeill in 1963,[116] greatly benefitted from the "new historiographical momentum unleashed by decolonization in the 1950s, 1960s and 1970s."[117] The study of international law beyond the Western world had been already incipiently studied by Latin-American authors in the nineteenth century[118] and the early twentieth century.[119] And also in the early twentieth century in the case of Japan;[120] in the 1920s, in some works penned by Indian scholars;[121] and in the 1930s by Ahmed Rechid's study of the remote origins of international law in Islam.[122] However, in spite of these and other peripheral precedents, the bulk of the study of the history of international law remained mainly Eurocentric in orientation throughout the interwar and the early post-Second World War periods.[123] Partly initiated on the shoulders of the prestige of the Western classics (notably Grotius, as seen the early works of Charles H. Alexandrowicz,[124] who also founded *The Grotian Society* in India in 1960, to "promote the revival of the much-neglected history of the law of nations"),[125] the decolonization processes in these regions saw a new generation of international law scholars[126] devoting renewed attention to the history of the law of nations in Asia[127] and Africa.[128] There are many cultural and historical differences between and within each of the regions these authors professed to represent. However, their common focus on pre-colonial historical traditions and the contribution

[115] Koskenniemi, *supra* note 101 at 594.

[116] William H. MCNEILL, *The Rise of the West: A History of the Human Community* (Chicago: University of Chicago Press, 1963).

[117] Ignacio DE LA RASILLA, *International Law and History: Modern Interfaces* (Cambridge: Cambridge University Press, 2021) at 165.

[118] Carlos CALVO, *Una página de Derecho internacional: la América del Sur ante la ciencia del Derecho de gentes moderno* (Paris: A. Durand, 1864).

[119] Alejandro ÁLVAREZ, *Le droit international Américain: son fondement, sa nature: d'après l'histoire diplomatique des états du nouveau monde et leur vie politique et économique* (Paris: A. Pedone, 1910).

[120] TAKAHASHI Susumu, "Le droit international dans l'histoire du Japon" (1901) 3 Revue de droit international et de la législation comparée 188.

[121] See for example, Pramathanath BANDYOPADHYAY, *International Law and Custom in Ancient India* (Calcutta: University of Calcutta Press, 1920). See more references in Carl LANDAUER, "Passage from India: Nagendra Singh's India and International Law" (2016) 56 Indian Journal of International Law 265.

[122] Ahmed RECHID, "L'Islam et le droit des gens" (1937) 60 Collected Courses of The Hague Academy of International Law 371.

[123] De la Rasilla, *supra* note 117 at 152: providing a survey of The Hague Academy courses devoted to the history of international law in the interwar period.

[124] Alexandrowicz, *supra* note 19.

[125] Charles H. ALEXANDROWICZ, "The Grotian Society" (1967) 61 *American Journal of International Law* 1058.

[126] Including, for example, Ram Prakash Anand, Nagendra Singh, S. P. Sinha, J. J. G. Syatauw, Taslim O. Elias, Georges Abi-Saab, Mohammed Bedjaoui, or Christopher Gregory Weeramantry. See for example, works by Nagendra SINGH, *India and International Law* (Delhi: S. Chand, 1969). Ram P. ANAND, *Origin and Development of the Law of the Sea: History of International Law Revisited* (Leiden: Martinus Nijhoff, 1983). See recently Carl LANDAUER, "Taslim Olawale Elias: From British Colonial Law to Modern International Law" in Jochen VON BERNSTORFF and Philipp DANN, eds., *The Battle for International Law: South-North Perspectives on the Decolonization Era* (Oxford: Oxford University Press, 2019).

[127] Also, for example, Charles H. ALEXANDROWICZ, "The Afro-Asian World and the Law of Nations (Historical Aspects)" (1968) 123 Collected Courses of The Hague Academy of International Law 117.

[128] For example, T. O. ELIAS, *Africa and the Development of International Law* (Leiden: A.W. Sijthoff, 1972).

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of their regions to the historical development of international law[129] was largely animated by similar contemporary concerns arising from the new status of the former colonies as newly independent countries.[130] Meanwhile, in the wake of the rise of "world history", some European scholars also engaged an early turn towards a more globalized history of international law in both a geographical and a temporal sense in the 1960s, 1970s, and 1980s. This is, in particular, apparent in the works of Austrian and German authors such as Stephan Verosta[131] and Wolfgang Preiser, who went beyond the traditional Eurocentric and state-centric conception of international law of Westphalian pedigree. Inspired instead by the axiom "*ubi societas inter potestates, ubi ius gentium*" (wherever there is an inter-polity society, there is international law) they went, *inter alia,* to unearth in the process the historical practices of ancient extra-European cultures.[132]

Although this time emerging from – and largely remaining within – the Eurocentric historiographical core, Koskenniemi's *The Gentle Civilizer of Nations*[133] became in 2001 a particularly influential milestone in moving the historiography of international law away from the long shadow of the Western classics. Koskenniemi's work, which is part of an earlier wave of critical and post-colonial international legal historiography that emerged from within the Critical Legal Studies (CLS) movement in the late 1980s and 1990s,[134] did so by contributing to resituate the modern origins of international law as arising from the new "*esprit d'internationalité*" which informed and was further reinforced by the process of gradual academic professionalization of the study of international law in the late nineteenth century.[135] Koskenniemi's focus on the "men of 1873" and their European successors (in particular those in Germany, France, and Britain) went on, furthermore, to contribute to prompting a (still) ever-expanding broad research agenda on intellectual and sociological developments in the modern discipline of international law since the late nineteenth century, both in Europe and, by ricochet, in the semi-periphery and periphery of the Western world.[136]

The last twenty years have seen an exponential rise in the hitherto rather neglected cultivation of international legal history and, in its wake, the birth of a modern historiography.[137] This has followed in the footsteps of *The Gentle Civilizer* and the parallel quest of a post-colonial international legal historiography to minimize the epistemological

[129] For example, Chirakaikaran Joseph CHACKO, "India's Contribution to the Field of International Law Concepts" (1958) 93 Collected Courses of The Hague Academy of International Law 121.

[130] This accounts for the centrality in their work of reassertions of the post-colonial states' "hard-won prize of sovereignty", through their defence of certain international legal doctrines such as the principle of "self-determination of peoples", the "right to development", the "prohibition of racial discrimination", "sovereign control over natural resources", the "new international economic order", or NIEO and discussions on the principle of *uti possidetis iuris*. See for example, Georges ABI-SAAB, "The Newly Independent States and the Rules of International Law: An Outline' (1962) 8 Howard Law Journal 95.

[131] Stephan VEROSTA, "Regionen und Perioden der Geschichte des Völkerrechts" (1979) 30 Osterreichische Zeitschrift für Offentliches Recht und Volkerrecht 1.

[132] W. PREISER, *Frühe völkerrechtliche Ordnungen der aussereuropäischen Welt: Ein Beitrag zur Geschichte des Völkerrechts* (Wiesbaden: Steiner, 1976).

[133] Koskenniemi, *supra* note 96.

[134] With contributions among others by David Kennedy, Nathaniel Berman, Antony Anghie and others. See for example, Nathaniel BERMAN, "'But the Alternative Is Despair': European Nationalism and the Modernist Renewal of International Law" (1993) 106 Harvard Law Review 1792. On this early critical trend, see further, for example, De la Rasilla, *supra* note 117 at 115.

[135] Koskenniemi, *supra* note 96.

[136] Becker Lorca, *supra* note 80.

[137] See for example, Lesaffer, *supra* note 16. Martti KOSKENNIEMI, "A History of International Law Histories" in Bardo FASSBENDER and Anne PETERS, eds., *The Oxford Handbook of the History of International Law* (Oxford: Oxford University Press, 2012), 943.

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Eurocentrism of the field, all while critically examining the influence of "imperialism" and colonial practices in the historical shaping of international law. However, far from evanescing from the works of international law historians in the wake of what is often known as the "turn to history" among international lawyers,[138] the Western classics of international law, from Alberico Gentili[139] to Emer de Vattel[140] and others to, of course, Vitoria and Grotius, who received an even larger renewed attention. This re-engaging of the Western classics underlies the post-colonial revisionist historical readings we saw in Section I of the works of Vitoria and Grotius and of other Western classics up to the intellectual constructions of some of the founders of the *Institut de Droit International.* Included among the latter is, for instance, the Scottish academic, James Lorimer, author of the influential division of humanity "into three zones or concentric zones: civilized humanity, barbarous humanity and savage humanity", each of which deserved, in his view, a separate juridical treatment under the international law of "civilized nations" in the late nineteenth century.[141]

In the past two decades, historiographical attempts at decentring the Western-centrism of the history of international law and its doctrines have, furthermore, expanded with many contributions from Asian,[142] African,[143] and Latin-American authors,[144] often, albeit not only, writing under the programmatic banner of "Third World Approaches to International Law" or TWAIL.[145] Their contributions have, among other things, largely fostered the rediscovery of intellectual representatives from the non-Western world, who, as a consequence, are increasingly joining their Western counterparts in a new global intellectual canon of international law. These new writings from the historical periphery and the semi-periphery[146] have largely contributed to the exponential rise in the hitherto rather neglected cultivation of international legal history. In doing so, they have been further benefitting from the influence of a broader interdisciplinary move towards "global history".[147] With its focus on connections, encounters of, and interactions between different historical actors, this methodological orientation has extended from the most remote origins of international law across all geographical regions. In the early 2010s, the voluminous *The Oxford Handbook of the History of International Law* marked a notable academic development, representing in the words of its editors, "a first step

[138] Skouteris, *supra* note 94.

[139] Valentina VADI, *War and Peace: Alberico Gentili and the Early Modern Law of Nations* (Leiden: Martinus Nijhoff, 2020).

[140] Walter RECH, *Enemies of Mankind: Vattel's Theory of Collective Security* (Leiden: Martinus Nijhoff, 2013).

[141] James LORIMER, *The Institutes of the Law of Nations: A Treatise of the Jural Relations of Separate Political Communities* (London/Edinburgh: W. Blackwood and Sons, 1883). See, further, Stephen TIERNEY and Neil WALKER, "Through a Glass, Darkly: Reflections on James Lorimer's International Law" (2016) 27 European Journal of International Law 409.

[142] See for example, Onuma YASUAKI, "When Was the Law of International Society Born? - An Inquiry of the History of International Law from an Intercivilizational Perspective" (2000) 2 Journal of the History of International Law 1; B.S. CHIMNI, *International Law and World Order: A Critique of Contemporary Approaches*, 2nd ed. (Cambridge: Cambridge University Press, 2017).

[143] See for example, James Thuo GATHII, "Africa" in Bardo FASSBENDER and Anne PETERS, eds., *The Oxford Handbook of the History of International Law* (Oxford: Oxford University Press, 2012), 407. See for example, Mamadou HEBIÉ, *Souveraineté territoriale par traité: Une étude des accords entre puissances coloniales et entités politiques locales* (Paris: Presses Universitaires de France, 2015).

[144] For example, Liliana OBREGON, "Noted for Dissent: The International Life of Alejandro Álvarez" (2006) 19 Leiden Journal of International Law 983.

[145] For example, George R. B. GALINDO, "Splitting TWAIL?" (2016) 33 Windsor Yearbook Book of Access to Justice 37.

[146] For example, Liliana OBREGÓN, "Peripheral Histories of International Law" (2019) 15 Annual Review of Law and Social Science 437.

[147] Sebastian CONRAD, *What Is Global History?* (Princeton, NJ: Princeton University Press, 2017).

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towards a global history of international law" with the aim of leaving the "well-worn paths" of the "Eurocentric story of international law".[148] However, even far more ambitious as representative of this new globalist comprehensive orientation is *The Cambridge History of International Law*: a multi-authored thirteen programmed volumes' collection that explicitly "builds on the recent turn to a global, pluralist and inclusive history of international law"[149] in its aspiration "to encompass any historically significant tradition or system of the legal organization of inter- and trans-polity relations" since antiquity.[150]

The move towards a global history of the discipline of international law has been further reinforced by an interdisciplinary turn towards the history of international law among global historians,[151] intellectual historians, historians of political thought,[152] historians of international relations,[153] and legal historians.[154] This has prompted, furthermore, new methodological debates between the representatives of these disciplinary research traditions and international lawyers.[155] As a result of this interdisciplinary pollination, as Simpson notes, "there is now a new, probably more systematic, certainly more self-conscious, discipline-wide orientation towards thinking about historical method"[156] among those engaging the history of international law. Moreover, the "turn" to the history of international law has also contributed to further expanding the historical intellectual canon of international law in interdisciplinary terms towards "classics" from political theory, economics, political economy, history, and philosophy.[157] This emerging interdisciplinary historical intellectual canon of international law, where classics from other disciplines sit alongside the likes of Vitoria, Grotius, Gentili, and Vattel, furthermore mirrors the more interdisciplinary orientation that international law as a field of research and practice has been experiencing over the last decades.[158] Crowning these developments is, finally, the more recent flourishing of research on the most obvious "Cinderella-like" research area in the history of international law in a field that has devoted such an industrial quantity of writings to the founding "fathers" of international law since the late nineteenth century: the history of women in international law. This has found inspiration in previous efforts made by legal historians, historians, and historians of international relations in their own disciplines.[159] Although still in its relative

[148] Bardo FASSBENDER and Anne PETERS, "Introduction: Towards a Global History of International Law" in Bardo FASSBENDER and Anne PETERS, eds., *The Oxford Handbook of the History of International Law* (Oxford: Oxford University Press, 2012), 1 at 2.

[149] Lesaffer, *supra* note 16 (General Outline of series proposal (on file with the author), at 1.

[150] *Ibid.*, at 6.

[151] Lauren BENTON and Lisa FORD, *Rage for Order: The British Empire and the Origins of International Law, 1800–1850* (Cambridge, MA: Harvard University Press, 2016).

[152] Armitage, *supra* note 1; Brett, Donaldson, and Koskenniemi, *supra* note 37.

[153] Jennifer PITTS, *Boundaries of the International: Law and Empire* (Cambridge, MA: Harvard University Press, 2018).

[154] Miloš VEC and Luigi NUZZO, eds., *Constructing International Law: The Birth of a Discipline* (Frankfurt am Main: Vittorio Klostermann, 2012).

[155] Orford, *supra* note 76.

[156] Gerry SIMPSON, "After Method: International Law and the Problems of History" in Annabel BRETT, Megan DONALDSON, and Martti KOSKENNIEMI, eds., *History, Politics, Law: Thinking Through the International* (Cambridge: Cambridge University Press, 2021), 96 at 96.

[157] Martti KOSKENNIEMI, "Law of Nations and the "Conflict of the Faculties"" (2018) 8 History of the Present 4.

[158] See for example, Andrea BIANCHI, *International Law Theories: An Inquiry into Different Ways of Thinking* (Oxford: Oxford University Press, 2016).

[159] Patricia OWENS and Katharina RIETZLER, *Women's International Thought: A New History* (Cambridge: Cambridge University Press, 2021).

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infancy,[160] the emerging body of scholarship addressing women's contributions to international law in a historical perspective holds the promise to reduce the traditional invisibility of women as protagonists and agents in international legal history.

Koskenniemi himself presented his recent *To the Uttermost Parts of the Earth* as an "extended response" to the question of "how to think about earlier times—but what about Vitoria, Grotius and Vattel, theories of the just war and the Peace of Westphalia?"[161] This, in turn, justifies concluding this historiographical bird's-eye perspective of how the study of history of international law has grown intermixed with the study of the classics of international law and efforts to look through and beyond them since, at least, the founding of the *Institut de Droit International* in 1873, with a reference to it. Koskenniemi's book is partly built on the contextual realist methodological orientation espoused, as seen above, by Grewe. It is also informed by modern efforts to extend the intellectual canon of the discipline in interdisciplinary terms.[162] However, Koskenniemi also revisits the majority of authors of Scott's *The Classics of International Law* – by including and paying particular attention to Vitoria, the School of Salamanca, and Grotius – in the intellectual and political context of their times. This method is put in the service of the "book's central theme", which is "the legal articulation of European power, especially as it is projected abroad"[163] from the 1300s to the late nineteenth century. In this sense, Koskenniemi's last major contribution to the history of international law, with its "principal concern, and underlying motivation" characterized as that of working out "how it is that we have come to have the experience of the present that we have"[164] is also, perhaps, the greatest contemporary illustration of the highly resilient nature of the ever-reproduced Western tradition of looking forward through the classics of international law.[165]

III. Conclusion

The study of the Western classics of international law with Vitoria and Grotius at their core is the seminal historiographical cornerstone upon which the burgeoning field of the history of international law rests. The ten-fold list of entrenched features that – as Section I examined – Vitoria and Grotius share as the prototypical global "classics" of international law account for the fact that they have become transmission belts for

[160] See for example, Janne E. Nijman, "Marked Absences: Locating Gender and Race in International Legal History" (2020) 31 European Journal of International Law 1025; Immi TALLGREN, ed., *Portraits of Women in International Law: New Names and Forgotten Faces?* (Oxford: Oxford University Press, 2022).

[161] Koskenniemi, *supra* note 15 at 1.

[162] Taking its cue from the Kantian idea of the "contest of faculties". *Ibid.*, at 8.

[163] Martti KOSKENNIEMI, "'Stuck in Salamanca': A Response" (2021) 32 European Journal of International Law 1043 at 1044.

[164] Koskenniemi, *supra* note 15 at 12.

[165] In this sense, it is relevant to highlight the unprecedented extraordinary academic attention that Koskenniemi's *To the Uttermost Parts of the Earth* (Koskenniemi, *supra* note 15) has received immediately after – and, even before – its publication. By the time of writing, within barely four months since its publication, a three-book review symposia, containing thirty-three scholarly commentaries on Koskenniemi's book plus three responses by the author and another separate book review had already been published. See in order of appearance, Völkerrechtsblog, "Symposium on Martti Koskenniemi's *To the Uttermost Parts of the Earth: Legal Imagination and International Power 1300–1870*" (August 2021), online: Völkerrechtsblog <https://voelkerrechtsblog.org/symposium/to-the-uttermost-parts-of-the-earth/>, as well as the introductions to the respective book review symposia by Nehal BHUTA, "'Let us suppose that universals do not exist': *Bricoleur* and *Bricolage* in Martti Koskenniemi's *To the Uttermost Parts of the Earth*" (2021) 32 European Journal of International Law 943; Thomas DUVE, "'This is not a history of international law': A Brief Introduction into the Debate on Martti Koskenniemi's *To the Uttermost Parts of the Earth*" (2021) 29 Rechtsgeschichte – Legal History 258. Also, Jean D'ASPREMONT, "Legal Imagination and the Thinking of the Impossible" (2021) Leiden Journal of International Law (First View) 1.

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passing on a Western intellectual disciplinary tradition into which incoming generations of international lawyers around the globe, including those across the Asian region, have been and continue to be socialized. Those features evidence the entangled conditions for the survival of the Western classics and amount to the "life jacket" of the Western-dominated historical past of international law in the "oceanic" future of the most global of all legal disciplines.

For the last one hundred fifty years, at least, the study of international law and its history has been inextricably intermingled with efforts to look forward through the Western "classics" of international law to address the foundational issues of what Lauterpacht called "the vanishing point of law",[166] and also its contemporary phenomena. In spite of the many historiographical reactions and correctives – which Section II has shown – that the traditional focus on the Western classics has experienced since the Second World War, one should not underestimate the still dominant preference among Western international lawyers for singling out European male jurists as their – only worth-remembering – intellectual ancestors.[167]

The extensive study that the Western classics of international law have engendered over time has been accompanied by much-racialized bigotry (with the interest of Schmitt – the so-called "crown jurist of the Third Reich" – for Francisco de Vitoria remaining a particularly noteworthy example) and, moreover, much violence has indeed been committed in the shadow of their ever-celebrated idealism. Generations of international lawyers have reread the classics of international law in the light of their projects, visions, and different political aspirations for international law. Others, however, have revisited them in their search for an opening to criticise those very same projects and what went dramatically awry about them. Indeed, historiographical efforts building on the canonical status and prestige of the Western classics have also provided the conditions for international legal historians to look diachronically through the Western classics of international law in innovative ways in order to "contribute to the intellectual genealogy of empire and other vocabularies still used in the present".[168] Moreover, the use of diachronic lenses has also helped international legal historians to increasingly come to terms with the uses, abuses, and some of the dark sides interwoven in the making of a global interdisciplinary classic of international law over time.

Yet, and perhaps even more decisively, the efforts to look forward through the Western classics of international law have also laid the foundation to look beyond them. This historiographical move beyond the "West", which is common to several disciplines,[169] and

[166] Hersch LAUTERPACHT, "The Problem of the Revision of the Law of War" (1952) 29 British Yearbook of International Law 360 at 382.

[167] An illustration of this traditional tendency is that the already mentioned *The Oxford Handbook of the History of International Law* (Fassbender and Peters, *supra* note 148) which was presented in 2012 by its two eminent German co-editors as a contribution to the "global history" of international law roughly up to the Second World War, ignored African, Asian, Latin-American and female authors almost altogether in the twenty-three short bio-intellectual "portraits" section included in it. Indeed, the eighth century author Muhammad al-Shaybani, who, in fact, only became known to Western erudite legal historians under the title of "the Islamic Grotius", and Bertha von Suttner, who was the first woman to receive the Nobel Peace Prize in 1905, remain the only concessions to racial, gender, and geographical diversity in the section devoted to providing an intellectual gallery of eminent international law scholars contained in the multi-authored volume that was awarded the certificate of merit of the American Society of International Law "in a specialized area of international law" in 2014. Of the other twenty-one "portraits" of Western authors, perhaps unsurprisingly nine of them are among the thirteen in the same period covered in Scott's *The Classics*, which chronologically ends with Henry Wheaton on account of his *Elements of International Law* of 1832 (Scott, *supra* note 2).

[168] Fitzmaurice, *supra* note 21 at 88.

[169] Barry BUZAN and Amitav ACHARYA, *Re-imagining International Relations: World Orders in the Thought and Practice of Indian, Chinese, and Islamic Civilizations* (Cambridge: Cambridge University Press, 2022).

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towards global historical inclusiveness and memory, channels modern efforts to provide an all-embracing image of the cultural, ideological, and intellectual heritage behind today's highly diverse and interdependent international community of peoples and states. To the extent that those participating in this enterprise act are animated by a desire, in the words of Kennedy, to "write history to change the world pragmatically, strategically, responsibly",[170] this growing historiography of the "rest" in international law, to which Asia has still much to contribute,[171] has the potential of nurturing the flourishing of new unbridled forms of "legal imagination" attuned to the myriad of pressing challenges of a global international order the economic and demographic centre of which is inexorably moving eastwards in the twenty-first century.

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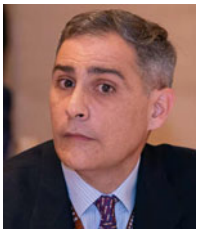

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[170] David KENNEDY, "The Context for Context: International Legal History in Struggle" in Annabel BRETT, Megan DONALDSON, and Martti KOSKENNIEMI, eds., *History, Politics, Law: Thinking Through the International* (Cambridge: Cambridge University Press, 2021), 69 at 73.

[171] See Antony ANGHIE, "Asia in the History and Theory of International Law" in Simon CHESTERMAN, Hisashi OWADA, and Ben SAUL, eds., *The Oxford Handbook of International Law in Asia and the Pacific* (Oxford: Oxford University Press, 2019), 68.

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