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Alejandro Álvarez Situated: Subaltern Modernities and Modernisms that Subvert

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Abstract

Alejandro Álvarez's professional trajectory forces us to rethink the traditional modes of reading and writing the history of international law. Álvarez was central to the development of modern international law. He also happened to be a Latin American international lawyer. Should we interpret his work and life against the background of the intellectual and political history of Europe? Are the contexts that relate to the crisis of the European balance of power or the rise of nationalism the only ones that explain the emergence of a modern international legal discourse? This article situates Álvarez's scholarship within the intellectual, economic, and political history of Latin America. Interpreting Álvarez in the context of a genealogy of modernist Latin American thinkers illustrates the extent to which his work was part of a broader regional effort to appropriate European cultural artefacts in ways that granted them both a cosmopolitan and a distinctively Latin American character. Álvarez's modernism reinvented the meaning and uses of international law as a strategic foreign-policy tool in the interest of Latin American countries, a reinterpretation that contributed also to the construction of a Latin American identity and thought.

Key words

Alejandro Álvarez; centre and periphery; history of international law; Latin American international law; modernism

1. Introduction: central or peripheral, from here or afar? How to get a hold on Alejandro Álvarez

This article retrieves the work and life of Alejandro Álvarez, a Latin American international lawyer and legal intellectual of the first half of the twentieth century whose ideas and scholarship extended over the Americas, Europe, and beyond.[1] Pursuing this simple goal, however, has carried the exploration in unexpected directions. A reference to international law's major figures prompts memories of contributions, events, and contexts that bring to mind a familiar historical background on which

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1. For biographical information see M. Caracciolo Parra-Pérez, *Notice sur la vie et les travaux de Alejandro Álvarez (1868–1960) par Institute de France* (1962). To illustrate Álvarez's influence outside the Americas and Western Europe see, e.g., *Da lu jin dai fa lü si xiang xiao shi* (Chinese translation of *Une nouvelle conception des études juridiques et de la codification du droit civil*), selections, trans. Xiaoyue Fang and Menghe Tao, 1933); *Modern uluslararasi hukukun mucip sebepleri ve büyük prensipleri beyannamesi* (Turkish translation of *Exposé de motifs et déclaration des grands principes du droit international moderne*) trans. N. R. Erim and F. N. Berkol (1936).

the writing of history relies.[2] Álvarez's trajectory, on the other hand, is not only connected to the sites and events traditionally believed to have formed the substratum of the modern international legal tradition, but is also tied up with historical territories that are less familiar to the discipline of international law.[3] The trace of this unknown – Latin American – ground in Álvarez's work as well as in the position he came to enjoy within the tradition turns out to be problematic for the reading and writing of international law and its history.[4] Consider the following commentary:

> As a diplomat . . . , he occupied, from the beginning of his career, a post of observation, certainly of the international life of the Americas, but equally universal . . . In this way he appeared constantly astride the two worlds: the old and the new . . . This double orientation (American and European) will find finally its culmination and unity in the election of Alejandro Álvarez in 1946 as a judge of the International Court of Justice, where he remained until 1955.[5]

At first glance, the remark states the obvious: the discipline bestows its recognition on the international lawyer who achieves substantial professional influence. Impact is measured according to the benchmarks set out by the profession. In Álvarez's

2. See the regular symposium of the *European Journal of International Law* dedicated to the study of the major contributors to the European tradition in international law, including, among others, studies of Georges Scelle (Vol. 1, No. 1/2, 1990); Hersch Lauterpacht (Vol. 8, No. 2, 1997); or Charles de Visscher (Vol. 11, No. 4, 2000). US-American international lawyers, on the other hand, also pay homage to the most important international lawyers of their tradition. See e.g. F. R. Coudert, 'An Appreciation of James Brown Scott', (1943) 37 AJIL 559; O. Schachter, 'Philip Jessup's Life and Ideas', (1986) 80 AJIL 878; L. Damrosch, 'Oscar Schachter (1915–2003)', (2004) 98 AJIL 35; or the special issue on 'The Enduring Contributions of Thomas M. Franck', (2002–3) 35 *New York University Journal of International Law and Politics*. The international lawyers reviewed in these articles are generally situated in the cultural and political contexts of the world system's centres of power, where the history of international law is believed to unfold. See W. Grewe, *The Epochs of International Law*, trans. M. Byers (2000), for a description of the history of international law through successive periods, each defined by the dominance of a different international power.

3. Alejandro Álvarez was born in 1868 in Tulahué, a hacienda in the proximity of Ovalle, a small town in northern Chile. Álvarez's embedding in Latin American history is not limited to his Chilean origin, but includes the regional scope of his interests and the topics covered during his professional career. Álvarez worked for decades as legal adviser to the Chilean Ministry of Foreign Relations, intervening in many Pan-American Conferences (Mexico, 1901–2; Río de Janeiro, 1906; Buenos Aires, 1910; Santiago, 1923; Havana, 1928) in the context of which he participated in the attempts to codify American international law. On Álvarez's professional presence in Europe see R.-J. Dupuy, *Les Principes fondamentaux du droit international dans la doctrine de M. Alejandro Álvarez* (1958), and for his presence in the United States see note 196 *infra*. Few have written about Álvarez linking the European and Latin American professional settings; the most comprehensive study remains that by Dupuy.

4. Rather than confirming the idea that international law originated as the 'public law of Europe' and subsequently became universal, the introduction of non-European authors and events among the historical contexts that explain the development of modern international law challenges the belief in its European origin and universality, for authors like Álvarez point to alternative non-Eurocentric interpretations of those notions. In this regard, it is noteworthy that in spite of the passage of time, Álvarez still triggers allergic reactions in mainstream international lawyers. When addressing 'the role of the ASIL [American Society of International Law] in the further development of the existing college of international lawyers', Ian Brownlie, renowned British international lawyer and former president of the ASIL, lists, among the topics to consider, the 'need to reduce the fissiparous tendencies of different political groupings of states, tendencies that threaten the very existence of general international law'. Brownlie recalls Álvarez, who 'made substantial claims to the legitimacy of American international law, by which he meant a regional Latin-American law. In practice such regional tendencies prove insubstantial and small in extent. Latin-American special rules have in practice boiled down to issues relating to diplomatic asylum and *uti possidetis juris*. The latter principle has in practice been incorporated into general international law as a consequence of Organization of African Unity (OAU) practice and the jurisprudence of the International Court.' I. Brownlie, 'The President's Roundtable', (2001) *American Society International Law Proceedings* 13, at 13–14.

5. Dupuy, *supra* note 3, at 2–3.

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day, having a professional presence in France, writings in French, and a career culminating in an appointment to the International Court of Justice secured him a place in the discipline's universal history.[6] That is not all there is, however, for the excerpt conveys also a supplementary meaning: Álvarez had to become universal to achieve recognition. Being a mere observer of international life in the Latin American periphery was not the right being. Because it inhabits the universal, the discipline of international law confers recognition on the European publicist when the latter crosses a merely professional threshold – a career path successfully completed. Latin American international lawyers, on the contrary, seem to require the attainment of a 'European orientation', which signals the supersession of peripheralness, the acquisition of universality, the achievement of unity.

What if an international lawyer from the periphery succeeds, like Álvarez, in establishing himself at the profession's centres of power and prestige? How should we write about his work and scholarship? In relation to which milieu should we read his life and ideas? Would he basically be an international lawyer – full stop – or a culturally situated agent?

Commentators have usually avoided these questions by assuming that the historical events and contexts reputedly central to the development of the international legal system are also the frameworks within which the most significant aspects of the work and life of international lawyers should be found.[7] Furthermore, a correspondence is established between the locations of the contexts deemed to be central to the development of international law and the core of the international system as well as between the periphery of the international system and what is understood to be less influential in the history of international law.[8] Accordingly,

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6. For the idea of universal international law and its history as the expansion from a European starting point see for instance Heinhard Steiger: 'History of international law is at first the history of today's existing universal international law, as the common, reciprocative, in principle consensual law between sovereign states of equal standing. This law is of European origin. Its root lay in the 13th century AD. Therefore with this begins the subsequent effort to construct the epochs of this history.' H. Steiger, 'Vom Völkerrecht der Christenheit zum Weltbürgerrecht. Überlegungen zur Epochenbildung in der Völkerrechtsgeschichte', in P.-J. Heinig et al. (eds.), *Reich, Regionen und Europa in Mittelalter und Neuzeit Festschrift für Peter Moraw* (2000), at 171. Historicism is not an exclusive monopoly of international law but a general trait of modern Western discourses, imposing what Dipresh Chakrabarty has called a '"first in Europe, then elsewhere" structure'. See D. Chakrabarty, *Provincializing Europe. Postcolonial Thought and Historical Difference* (2000), 7.
7. See examples at note 2 *supra*.
8. I follow a world-system perspective in that I understand the international system to form a single economic and political entity – that is, a worldwide capitalist economy with a global division of labour and a set of rules and practices securing the coexistence of multiple political unities. Two types of actor – central and peripheral – might be distinguished according to the nature of the relationship they establish with and the position they occupy within the world system as well as from the point of view of their divergence of interests. Under unequal economic terms of exchange, the centre extracts the periphery's surplus value when capital- and technology-intensive goods of the former are traded for low capital- and technology-intensive products coming from the latter. Unequal power relations underlying the inter-state political system secure, perpetuate, and give legitimacy to the said exploitative economic exchange. See e.g. T. R. Shannon, *An Introduction to the World-System Perspective* (1989). To the extent that I try to explain Álvarez's modern international law in terms of historically contingent sociopolitical formations rooted both at the international and local levels, rather than in a facile deduction based on the location of Latin America and Álvarez in the centre/periphery configuration, my analysis is particularly influenced by dependency theory in the version advanced in F. H. Cardoso and E. Faletto, *Dependency and Development in Latin America*, trans. M. M. Uriquidi (1979). Thus Álvarez's ideas, the fate of his professional interventions as well as the meanings and uses of international law in Latin America, are not only defined by Latin America's political relationship with Europe and the United States but also shaped by intra-elite disputes regarding fundamental differences about the nature of that interaction.

following a distinction and hierarchical differentiation between central and peripheral settings, most renderings of Álvarez contextualize his ideas and professional practice with reference to the historic and cultural environment of Europe and leave a subsidiary role to the periphery, that is, to Latin America as a place of origin, as a propaedeutic that announces future – and real – accomplishments. Even interpretations of Álvarez's work that have given more weight to the Latin American milieu share a similar argumentative structure that distinguishes intellectual beginnings from professional culmination in correspondence with the distinction between periphery and centre.[9] Álvarez is either a European of Latin American origin or a Latin American who attained professional acclaim in Europe.[10]

Rather than following suit in terms of the available choices as to how to interpret and contextualize Alejandro Álvarez, I propose a distant rereading of his work and life, namely an interpretation that is neither central nor peripheral, but a rendition that is attentive to the historic specificity of contexts that have become central and peripheral.[11] Specifically, I interpret Álvarez against the backdrop of Latin American socioeconomic and cultural life projected in their mutually constitutive interaction with the world system, to argue that Álvarez's thinking is as much part of European legal culture (sociological jurisprudence) as expression of a distinctively Latin American cultural and political trend (modernism).[12]

What are the meanings obscured by an interpretation of Álvarez structured around the centre/periphery distinction? A rereading of Álvarez that exposes the disparate significance of his legacy in various sites would reveal not only international law's plurality of senses in time and space (something international lawyers have only slowly and partially learned to deal with) but also international law's heterogeneity inscribed in the selfsame person of the international lawyer.[13] Álvarez, I suggest, is both and at the same time here (in Europe) and afar (in Latin America) if one situates oneself in coincidence with the discipline's centre of authority, or, vice versa, there and here in Latin America, if one prefers to locate oneself at the assumed

9. E.g. E. Vio Grossi, *Homenaje al Profesor Doctor Alejandro Álvarez Jofré* (1993–4); F. Gamboa, *Alejandro Álvarez, su vida su obra* (1954).

10. 'The preceding words [describing Álvarez's professional achievements] synthesized the work of universal transcendence that Alejandro Álvarez has accomplished with his studies and publications about international law. He is no longer Chilean and [Latin] American but has stood out among the great thinkers of the world.' V. Figueroa, *Diccionario Histórico y Biográfico de Chile*, vol. I (1925), 411–12.

11. I borrow the idea of distant reading from Franco Moretti's method of interpreting world literature. In particular I make use of his method of mapping the production, travel, or influx of texts within a world literary system as an alternative to a close reading of texts belonging to a circumscribed canon. See F. Moretti, *Graphs, Maps and Trees: Abstract Models for a Literary History* (2005).

12. Latin America is not taken to express a geographic or analytic unit based on intrinsic cultural, social, or ethnic commonalties (because it does not exist as such) but as a discursive production, resulting from the interplay between local, regional, and global forces, that signifies a historical project of regional integration, partially constructed by international lawyers, as Álvarez's professional imprint attests. I am not unaware of the fact that the idea of a 'Latin' America is also and at the same time a construction from without, based on negative defining conditions and intended to create a manageable picture of the region. And I am also conscious of deep intraregional divergences and rivalries. See Laurence Whitehead for a positioning of Latin America as region in comparative perspective: *Latin America: A New Interpretation* (2006), introductory chapter.

13. On pluralism in international law see D. Kennedy, 'One, Two, Three, Many Legal Orders: Legal Pluralism and the Cosmopolitan Dream', unpublished paper, delivered at the International Law Association British Branch, March 2006.

fringes of international law's history and within the context from which Álvarez launched his attempt to fashion an alternative disciplinary site of enunciation that would renew the international legal tradition.

My central argument is that Álvarez, as revealed by a distant reading, evidences the constitution of the discourse of modern international law as part of the continuous configuration of the world system. This insight suggests, first, that the construction of modern international law has been a transnational project, produced and resisted from multifarious points of reference by European and non-European international lawyers alike.[14] In this regard, I maintain that Álvarez is central to the history of international law, for he participated in the configuration of the discipline's modern constellation of concepts, institutions, and practices. Second, this line of enquiry also acknowledges that international law is embedded in international as well as domestic power relations. Regarding the international realm, power relations account for the ways in which international lawyers efface the discipline's plural sources and significations when becoming conscious of international law's nature, functions, and history.[15] I argue that Álvarez's Latin American participation in the construction of modern international law is played down by making him either 'central and European' or 'Latin American and peripheral'. This homogenization of Álvarez responds to the conditions that international law's ideal of universality and unity imposes on the writing of history, thereby stabilizing the unsettling consequences that the admission of heterogeneity would generate.[16] Concerning the latter, the inclusion of fields that are either national or regional (and peripheral) furthers the proposition about the multiplication of international law's relevant contexts. Situating Álvarez in relation to Latin American as well as Chilean contexts eschews understandings of his career as utterly determined from without, by the above-mentioned dimension of international power relations, and as freestanding

14. I have chosen Álvarez as a case in point of the wider attempt to decentre international law. The trajectories of other non-European international lawyers of the early twentieth century may be equally useful for illuminating the historical processes that have constituted what we identify as a modern international law of European origin. My decentring international law by reading Álvarez as central to the development of modern international law and situated in the Latin American context understood as a particular articulation of world history draws inspiration from Chakrabarty's 'provincializing Europe'. Chakrabarty does not call for a rejection of modernity, but rather argues that 'provincializing Europe' entails not only showing the historically constructed character of the idea of Europe that works as a 'silent referent' in historical knowledge, making it possible to equate Europe with modernity, but also two additional moves, first, recognizing that 'Europe's acquisition of the adjective "modern" for itself is an integral part of the story of European imperialism within global history', and second, that this 'equating of a certain version of Europe with "modernity" is not the work of Europeans alone', Chakrabarty, *supra* note 6, at 23, 43 and *passim*. I have also followed other decentring projects in legal scholarship: see D. Kennedy, 'Two Globalizations of Law and Legal Thought: 1850–1968', (2003) 36 *Suffolk University Law Review* 631.

15. I explore the relationship between Manley Hudson and Alejandro Álvarez as an example of the interplay between international power relations and professional trajectories (see note 172, *infra*, and accompanying text). International lawyers' yearnings for unity do not simply reflect international power, but translate the need of authority within a political configuration that exists without transcendental validation. In terms of the history of international law, the substitution of the 'Law of Nations' by the emergence of a secular international law is parallel to the project of finding a unified point of view in a historical narration centred on a Westphalian narrative of origin.

16. On the historiographical operations involved in the making of history – that is, the relations between the place of writing, its discipline, and procedures and the construction of a written text – see M. de Certeau, *The Writing of History*, trans. T. Conley (1988).

within, as an illustrious representative of the region's legal tradition. It rather reveals the extent to which domestic elites disagreed about the definition of their own polities and their interaction with the projects of internationalism and Latin American regionalism. Here Álvarez appears as an accomplished legal intellectual who continuously called for the renewal of legal thinking while time and again losing disciplinary battles that, as part of broader shifts in politics and society, left him alternating between different professional roles – professor of law, international lawyer, diplomat – and areas of expertise – civil law, legal theory, international law – in order to secure a career and an income.

The unorthodox combination of intellectual sources with historic and cultural contexts that characterizes Álvarez's writing attests to the intersection of divergent historical temporalities in Latin America and the distinctively modernist attempt to subvert the region's marginal position. Latin American modernism represented a particular strategy to negotiate the region's participation in the constitution of the world system by clearing a space for a locus of speech capable of articulating a discourse at the same time regional and cosmopolitan, modern and Latin American.

The article proceeds in four sections that read different passages of Alejandro Álvarez's work and life: the first examining the historical context of late-nineteenth-century Chile, the second exploring Álvarez's formative period around the 1900s, the third looking at Álvarez's move to international law in the 1910s, and the fourth studying some of his professional interventions during the 1920s and 30s.[17] Rather than unfolding in a linear progression, each passage rereads Álvarez, emphasizing a different aspect of his trajectory. The first section briefly introduces the Latin American socioeconomic and cultural contexts of the second half of the nineteenth century that preceded Álvarez's generation. Once political independence was achieved, this period witnessed the progressive incorporation of Latin American states into the world economy, bringing about the social transformations commonly associated with modernization.[18] Álvarez came into being intellectually in dialogue with and in response to these changes that had put under stress the social formations inherited from the colonial period as well as those coming into existence during the early phase of nation-building. I suggest that Álvarez tried critically to revamp legal thinking in contradistinction to both the older naturalist framework and the emerging positivism. For lack of a better term I call this trend 'modernist', and I

17. I have left aside the period Álvarez served as a judge on the International Court of Justice, that he only joined at the age of 78. At this point in his career his thinking and scholarship were well established, providing an excellent opportunity to try out his doctrines and ideas. For specific analyses of Álvarez's ICJ tenure see W. Samore, 'The New International Law of Alejandro Álvarez', (1958) 52 AJIL 41, and A. T. Leonhard, 'Regional Particularism: The Views of the Latin American Judges on the International Court of Justice', (1967–8) 22 *University of Miami Law Review*.

18. The concept of modernization is typically used to describe the transition from a traditional, rural, and agricultural society to a secular, urban, industrial society, in a process of social and economic differentiation, specialization, and rationalization. I adopt this description and the categories it entails to explore the transformations experienced in nineteenth-century Latin America, noting Roberto Schwarz's caution that this use induces error but is at the same time indispensable: 'the system of historical categories shaped by European experience comes to function in a space with a *different but not alien* sociological conjunction in which those categories neither apply properly nor can help but be applied'. *Sequências Brasileiras* (1999), 95 (emphasis in the original), translated quotation taken from N. Larsen, *Determinations: Essays on Theory, Narrative and Nation in the Americas* (2001), 79.

draw parallels with similar developments in Latin American intellectual history to illustrate its nature. The purpose of the second section is to understand Álvarez's articulation of a modern legal discourse in early-twentieth-century Chile and the failure of his attempt to renew legal thinking and to penetrate Chilean elites, a defeat that explains his later professional shift from private to international law. Making a parallel with the poet Rubén Darío will help to examine the nature of Alejandro Álvarez's modernism: the effort to professionalize legal studies and update law to tackle the social problems resulting from modernization by means of appropriating French legal thought. The third section examines Álvarez's move to international law, showing how he worked out a modern international legal discourse using the theoretical insights he had previously developed in the field of private law. In coincidence with a regional intellectual trend represented by the works of the writers José Martí and José Enrique Rodó, I explain Álvarez's use of Latin Americanism as a discourse on which to base narration, critique, and renewal which characterized his moving into the field of international law. The last section continues studying the Latin American strategies to appropriate European cultural artefacts. By drawing a parallel with the painters Diego Rivera and Joaquín Torres García, I explore Álvarez's argumentative moves through which he managed to include Latin America within the universal legal tradition and at the same time assert the region's difference. Finally, I look into a specific professional intervention of Álvarez, namely his project of codification, to examine the ways in which the discipline writes its history.

The diagram on the following page charts the periods in Álvarez's trajectory that are investigated in this article (vertical columns) and their connection with Latin American intellectual history (horizontal rows), set between two timelines, the upper referring to the European history of international law and the lower presenting the Latin American history of international law.

2. Material and discursive reconfigurations in late-nineteenth-century Latin America: the rise of modernism following the fragmentation of the lettered city

The purpose of this section is to probe the historical environment that paved the way for the appearance of Álvarez as a Latin American legal intellectual. It succinctly situates the role of lawyers in Latin American societies in a larger historical span that enables the identification of a major discontinuity (around the last quarter of the nineteenth century) associated with the processes of modernization. Thus I start first with a brief characterization of the period before and after the break as regards Latin America in general. Then I describe how these transformations unfolded in Álvarez's particular Chilean context. By giving this general overview I announce many of the themes that receive deeper treatment in the subsequent sections of the article. In particular, I begin to lay out the case for presenting Álvarez as a modernist in terms of the nature of his response to the challenges that modernization had imposed on law and legal thinking and in analogy with similar moves undertaken within the intellectual history of Latin America.

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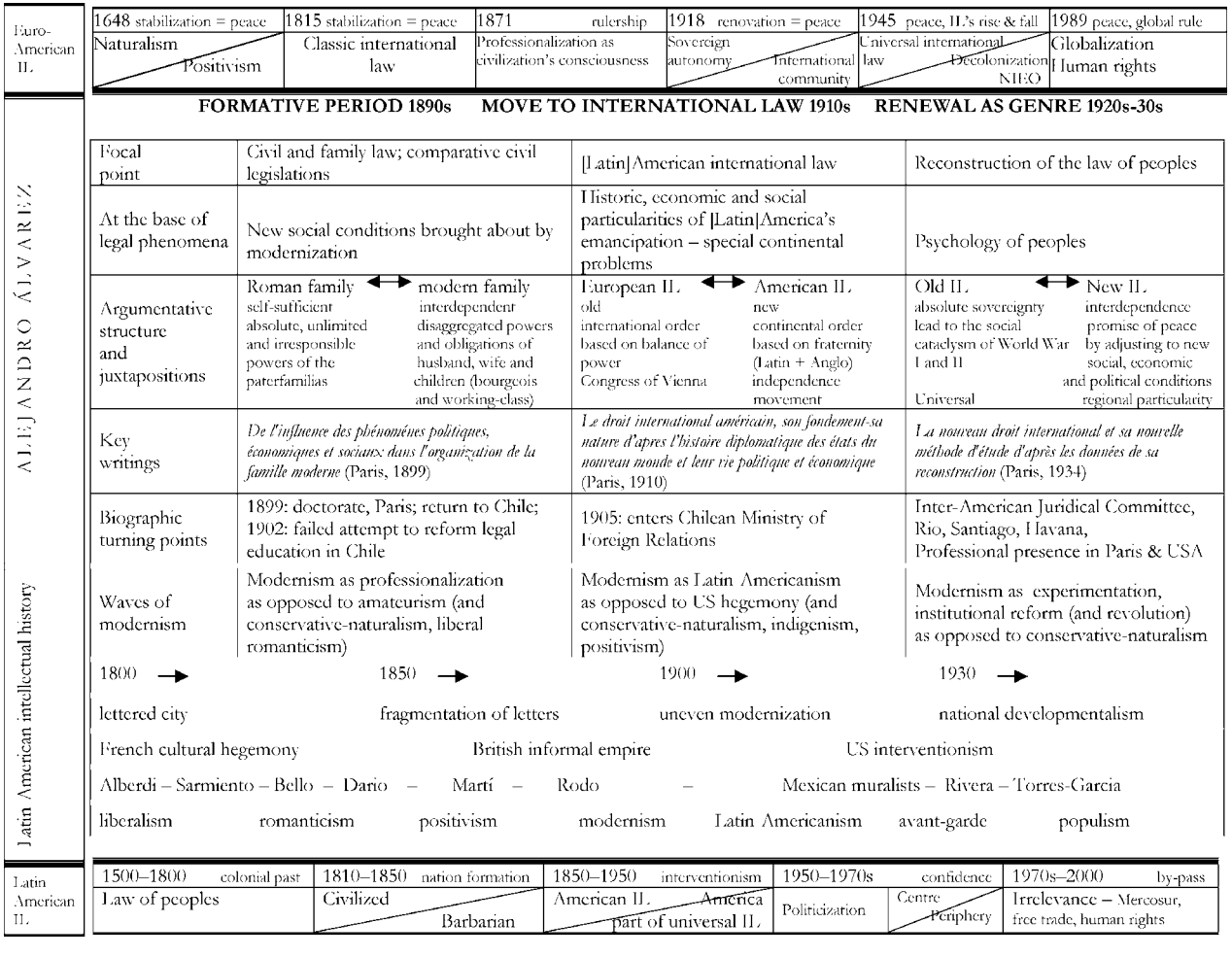

Periods of Álvarez's professional trajectory set against Latin American intellectual history, between two timelines representing Euro-American and Latin American international law

2.1. Lawyers in the lettered city

Legal as well as cultural studies have been fond of highlighting the role played by lawyers as *letrados* (lettered people) in Portuguese and Spanish America since colonial times and until at least mid-nineteenth-century independent Latin America.[19] As the conquest of the continent rapidly advanced throughout the sixteenth century, Spanish conquerors founded a network of cities that became the hubs from which the new territories were ruled and their inhabitants subjugated. These cities represented not only the centres of administrative power in the new political division of the continent, but also the intellectual centres, where a lettered class articulated the knowledge indispensable for sustaining the invention of the 'New World' and its subsumption as a possession of the Castilian or Portuguese crowns. Angel Rama has coined the term 'lettered city' to refer to this key function performed by the Latin American city and the lettered class.[20]

In the lettered city, lawyers were royal functionaries who not only had the task of extending the European *jus commune* to the American colonies and their inhabitants, thereby bringing lands and peoples under Spanish and Portuguese monarchic rule, but also, as *letrados*, had through their pens the mission of maintaining the archives, writing the colonial chronicles, designing the layouts of the recently founded cities, and naming their streets.[21] In addition to both their discursive and professional functions, lawyers also played a central role in giving stability to the colonial social order. Uribe's study of colonial and early postcolonial lawyers in the viceroyalty of New Grenada has shown the legal profession's role in a political order that was both patrimonial and legal-bureaucratic. The significant number of middling and high positions in colonial administration that were dispensed by the crown to lawyers secured for the latter and the family clans to which they belonged positions of political power and social prestige, rather than necessarily a direct source of economic income.[22]

During the first half of the nineteenth century, lawyers still belonged to the profession that represented the bulk of the lettered class and continued to perform their professional functions embedded in colonial social structures, in spite of the transformations brought about by political independence, declared during the 1810s and secured by the 1820s.[23] Lawyers surely had new roles to play in the postcolonial context. They actively participated in the emancipation movement, occupying key

19. E.g. R. Gonzalez Echeverría, *Myth and Archive: A Theory of Latin American Narrative* (1990); T. H. Donghi, 'The Colonial *Letrado* as a Revolutionary Intellectual: Deán Fuentes as Seen through His "Apuntamientos para una biografía"', in M. D. Szuchman and J. C. Brown (eds.), *Revolution and Restoration: The Rearrangement of Power in Argentina, 1776–1860* (1994); F. M. Villanueva, 'Letrados, consejeros y justicias', (1985) *Hispanic Review* 53, at 201–27; J. Malagon Barcelo, 'The Role of the Letrado in the Colonization of America', (1961) 18 (1) *The Americas* 1–7.
20. A. Rama, *The Lettered City*, trans. J. C. Chasteen (1996).
21. Ibid., ch. 2.
22. V. M. Uribe-Uran, *Honorable Lives. Lawyers, Family and Politics in Colombia, 1780–1850* (2000), 26.
23. For the purposes of the article I combine a study of both Spanish America and Brazil, in spite of the differences in the colonial rule of Spain and Portugal. For example, Napoleon's invasion of the Iberian peninsula in 1807 and the overthrow of Ferdinand VII gave Spanish American Creoles the opportunity to claim self-government and set up the independence movement. The Portuguese court, on the other hand, escaped to Brazil, inaugurating Portuguese and then independent monarchic rule on Brazilian soil.

posts as well as providing legal arguments for its justification. During the early postcolonial period lawyers devised the institutional forms of the newly arisen republics of Latin America.[24] However, since the social and economic structure of the new independent nations remained fairly untouched, the legal profession continued to play the same professional, discursive, and social functions, as lawyers, *letrados*, and members of family networks respectively. The centrality of lawyers as *letrados* was only challenged during the second half of the nineteenth century, when Latin American societies went through a new phase of modernization. Álvarez's professional coming into being is marked by the new meanings that law acquired as well as the new functions lawyers preformed at the end of the nineteenth century. His early professional involvements and writings represent a particular reflection on these transformations. Bearing in mind that this succinct description of the place of Latin American lawyers in colonial and early postcolonial sociopolitical structures is relevant to understanding the nature of the transformation of law in the second half of the nineteenth century, it will also turn out to be pertinent to my interpretation of Álvarez.[25]

2.2. The situation of lawyers after the fragmentation of the lettered class

Although doing so at differing paces, by the second half of the nineteenth century, most Latin American republics had achieved a minimum degree of political stability that was followed by the gradual formation of domestic markets, their integration to the world economy, and the entrance of foreign capital into the region.[26] The social transformations that ensued changed the position and function of lawyers in Latin American societies. An emerging division of labour gradually fragmented the lettered class. Although lawyers preserved their status within the elite, as primarily lawyer-politicians they progressively lost their monopoly over the production of ideas and political discourse. As legal practitioners, they gained an incipient new field of private practice serving the emerging class of merchant capitalists.

Assuming that the growing division of labour during the second half of the nineteenth century brought about a semi-autonomous legal sphere, research on the cultural environment of that period onwards has shown less interest in the parallels between law and letters. Legal historiography, on the other hand, has in general understood the early nineteenth-century formal legal transformations that followed the transition from colonial to independent rule as the main watershed that changed the meaning of law, rather than the processes of modernization.[27] Within cultural studies, however, Julio Ramos, among others, has argued that in Latin America modernization with respect to the social division of labour was

24. 'Now the task for the city of letters was to draft new laws, edicts, regulations, and above all, constitutions for emerging independent states.' Rama, *supra* note 20.
25. See section 3.3 *infra*.
26. 'A national administration and a national . . . army were crucial in building a state apparatus and transforming de facto power into de jure government; these processes were carried out at different periods and with varying degrees of similarity by Portales in Chile, Rosas in Argentina and the Regency in Brazil.' Cardoso and Faletto, *supra* note 8, at 67.
27. See, for instance, Rogelio Pérez-Perdomo, *Latin American Lawyers. A Historical Introduction* (2006).

particularly uneven.[28] Seen from the other side, that is from the perspective of the actors who split from the legal-*letrado* profession, their categorization as intellectuals appeared less because of the autonomization by depoliticization of the literary field than because literati began to articulate an aesthetic discourse independent of institutional functions (Dario's interior realm), yet in conflict with the post-independence liberal state and its project of modernization.[29] Thus the relative autonomy and the specific relationship of intellectuals with respect to both the legal-bureaucratic and cultural realms may well be reconsidered. In this regard, while it has been recognized that the emergence of modernist literature in the 1880s yielded a relatively autonomous field for criticism, cultural as well as legal studies have assumed that law constituted per se one of the spheres that, corresponding to the bureaucratic apparatus, remained impervious to criticism, that is, immune to the outgrowth of modernism and Latin Americanism.[30]

I contend that Álvarez's body of work in particular and in general the characteristically Latin Americanist discourse of international law that his scholarship inaugurated represents a modernist juridical consciousness in a post-fragmented sociopolitical context. Among traditional legal historians, the prevalent explanation regarding the transition from colonial to national law sustains a correspondence between the substitution of codes, namely national positive law, for *jus commune* and the emergence of a positivist and legalist culture attached to legal texts.[31] On the contrary, Álvarez's presence in early-twentieth-century legal history suggests that law did not linger as a dominion distinctively suited for legal positivism and formalism but has constituted itself as such throughout a series of professional and political battles in which legal discourse was stripped of its critical-modernist edges.[32] Hence I study the period of Latin American legal history in which Álvarez was an actor in parallel with the intellectual history of the region with the intention

28. The notion of uneven modernization in Ramos makes problematic the use of the European process of literary modernization as a basis for understanding modern literature in Latin America, for its emerging institutional base did not in itself provide for the autonomization of writing and the professionalization of the writer. I use this notion to avoid a reified understanding of lawyers' professional specialization and to explore their historically contingent positioning in between emerging social, economic, and political spheres. J. Ramos, *Divergent Modernities. Culture and Politics in Nineteenth-Century Latin America*, trans. J. D. Blanco (2001), 78–80 and *passim*.

29. G. Aching, *The Politics of Spanish American Modernismo. By Exquisite Design* (1997), argues for a political interpretation of *modernistas*' aesthetic detachment, in terms of an ambiguous dependence and resistance to the political projects of the Latin American ruling elites.

30. Consequently, pronouncements about Latin America's legalist culture are common, as the remarks by Mexican writer and intellectual Carlos Fuentes show: 'The Roman legalistic tradition is one of the strongest components in Latin American culture: from Cortés to Zapata, we only believe in what is written down and codified.' *New York Times*, Books, 6 April 1986, 34, quoted in Gonzalez Echeverría, *supra* note 19, at 1. More recent examples in cultural studies include, e.g., J. Larraín, *Identity and Modernity in Latin America* (2000), 196. Lawyers also share this diagnosis; see J. Esquirol, 'Continuing Fictions of Latin American Law', (2003) 55 *Florida Law Review* 41, for a study and critique of the perspectives that pose excessive formalism and the discrepancy between law and society as the defining characteristics of law in the region.

31. As regards the predominance of legalism in Chile since codification, see B. Bravo Lira, 'Estudios de Derecho y Cultura de Abogados en Chile: 1758–1998: Tras la huella del Ius Commune, la Codificación y la descodificación en el Nuevo Mundo', (1998) 85 *Revista de Estudios Histórico'Jurídicos*; C. Peña, 'Hacia una caracterización del Ethos Legal: De Nuevo sobre la Cultura Jurídica Chilena', CPU working paper, 1992; A. Squella Narducci, *Filosofía del Derecho* (2001), ch. 5, 'Sobre la Cultura Jurídica Chilena'.

32. See section 3.1 *infra*.

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of shedding light on the points at which law and legal discourse resurfaced, after the fragmentation of letters in a critical rather than apologetic and professionalizing mode. It is in this respect, and as a heuristic device, that intellectual stances and influences shared between law, art, and literature should be recognized, having been obscured after various defeats suffered by modernist lawyers and the fading away of modernist memories – in this case, the falling into oblivion of the work of Alejandro Álvarez in Chile and Latin America generally – by way of historiography's conventional confinement of legal phenomena within boundaries assumed to be given rather than historically produced.[33]

Building bridges between literature, law, and art helps to clarify the regional distinctiveness that the late-nineteenth-century emergence of modernism had as a constellation of discourses that reacted against a common historical problematique. The force of the intellectual traditions that had inspired emancipation and the formation of the Latin American states between the 1820s and 70s declined when their reign consolidated under governments that achieved political stabilization by centralizing power and under social formations that remained oligarchic.[34] Liberalism had succeeded in becoming the political ideology that provided the new nations with a political programme and an institutional framework, but by the 1870s it had turned into a unifying myth incapable of delivering guidance towards the achievement of economic and social progress.[35] The quest for revamping this intellectual tradition under the strain of new political tensions derived from economic stagnation and new external threats was surely not answered univocally. Traditional Catholic and Hispanic values never lost their appeal among conservative elites. A return to and strengthening of these values and the common cultural legacy that they embodied was always an available alternative with which to face

33. One would expect Alejandro Álvarez to be regarded and remembered by Latin Americans as one of their most prominent international lawyers. It is surprising to realize that the pivotal place granted to Álvarez in any depiction of the discipline between the first decades of the twentieth century and the 1970s has waned sharply in present-day accounts of international law in the region. Contemporary Latin American scholarship has either formalized Álvarez's oeuvre into a narrow list of decontextualized slogans – about the existence of a particularly (Latin) American international law – or simply forgotten his work. In other words, it seems hard to sustain in time the memory of an international lawyer whose impact has been circumscribed to historic and intellectual contexts only of marginal relevance to the discipline – even for the practitioner who inhabits them. I have explored elsewhere the changing significance of Álvarez in Latin American legal scholarship. See A. Becker Lorca, 'International Law in Latin America or Latin American International Law? Rise, Fall, and Retrieval of a Tradition of Legal Thinking and Political Imagination', (2006) 47 *Harvard Journal of International Law* 283. As regards the Chilean context see Pablo Ruiz-Tagle: 'In spite of having rendered important assistance to our country, as adviser to the Ministry of Foreign Relations and delegate to various international conferences, today his name has been virtually forgotten.' *Derecho, Justicia y Libertad. Ensayos de Derecho Chileno y Comparado* (2002), 59; C. Castro Ruiz: 'Even though it seems strange, Professor Alejandro Álvarez – member of the Institute of France, founder of the American Institute of International Law, an authority in this branch of the law – is not sufficiently known in Chile . . . as he is only too well known in the American and European universities and government of both continents.' Preface to Álvarez's *La reconstruccin del Derecho de gentes: el nuevo orden y la renovacin social* (1944), v.

34. Larraín has described the period of modernization that followed independence as oligarchic because of its restricted character; a consequence of de facto limitations in the adoption of liberal liberties and institutions, of the consolidation of an export economy limited to the production of raw materials, and of the political alliance between traditional landowners and export capitalists. Larraín, *supra* note 30, at 70–4.

35. C. Hale, 'Political Ideas and Ideologies in Latin America, 1870–1930', in L. Bethell (ed.), *Ideas and Ideologies in Twentieth-Century Latin America* (1996), 134.

social and institutional crisis.[36] In contrast to the conservative answer, the liberal heritage was reinvigorated by recourse to a new set of concepts associated with scientific knowledge rather than political ideals, namely the knowledge indispensable to pursue social and economic progress, an answer that marked the emergence of positivism. Modernism, on the contrary, became a third alternative position reacting against positivism without turning away from the liberal project of secularization and de-Hispanicization. Furthermore, modernist Latin American intellectuals were positioned not only between the two camps of conservative and positivist elites at home, but also in relation to their intellectual counterparts in Europe, before which they asserted cultural independence. It is this relational space that I try to grasp, where Latin American modernists sought an alternative mediation between the new and the old, the world and the region, the universal and the particular.

2.3. Modernism versus *modernismo*

Modernismo is the heuristic category used for describing the cultural context in relation to which I reread Álvarez.[37] Recent international legal historiography has tinkered with the idea of modernism and modern international law to describe a break between traditional or classic international law and a professionalized or scientific discipline of international law.[38] I will tell the same story of disciplinary

36. See F. Pike, *Hispanismo, 1898–1936. Spanish Conservatives and Liberals and their Relations with Spanish America* (1971).

37. The use of modernism as an interpretative category runs against the traditional operation of contextualization common in Latin American legal historiography, where political variables take precedence over social and cultural spheres. It is argued that law performs the functions ascribed to it by the political system and today by the global market; the history of law and legal culture is marked by the transition from the former to the latter. See Pérez-Perdomo, *supra* note 27, for this position as regards the region, and Bravo Lira, *supra* note 31, for Chile. Conversely, I understand law as a cultural artefact, constituted in its interconnection with the economic and political spheres. Setting Álvarez in the context of regional intellectual trends does not entail a reification of modernism for arrogating contextual stability and achieving explanatory certainty. On the contrary, modernism is a contested term with different connotations during different historical periods and settings. The heuristic gain is not obtained from an intrinsic advantage of the term, but from the debates that modernism allows to be visited, namely the analyses, common in cultural studies and literary criticism, which explore the mutually constitutive as well as embattled relationship between intellectual discourses and socioeconomic developments.

38. The geographic and historic location and the characterization of the break between the classic and modern international varies. Betsy Baker Röben ('The Method behind Bluntschli's "Modern" International Law', (2002) 4 *Journal of the History of International Law* 249) looks at the development of a new legal method that superseded the dichotomy between naturalism and positivism by proposing that legal ideas became binding norms when accepted by the common legal consciousness of the international community confirmed by a variety of practices of its members. Nathaniel Berman ('But the Alternative Is Despair: European Nationalism and the Modernist Renewal of International Law', (1992–3) 106 *Harvard Law Review* 1793) situates the break in the 1920s experimentation with innovative international legal forms and methods (minority treaties and international plebiscites) that express a new international law that coupled the autonomy of law with vital forces of European nationalism. David Kennedy ('The Move to Institutions', (1987) 8 *Cardozo Law Review* 841) has identified a discontinuity between public international law's preoccupation with its own ideas (the impact of doctrines on state practice) and the appearance of scholars focusing on the pragmatic management of international institutions and their functional, rather than ideal, relation to states (the League of Nations as the international legislature). Martti Koskenniemi (*From Apology to Utopia: The Structure of International Legal Argument* (1989) and *The Gentle Civilizer of Nations. The Rise and Fall of International Law 1870–1960* (2002)) situates the break in the nineteenth-century articulation of political liberalism in international law as an argumentative structure (and, specifically, the rise of modernism as a way to critique classical doctrines' apologetic or utopian subjectivity) and as a disciplinary sensibility (that understands international lawyers as the conscience–consciousness of the civilized world).

discontinuity as seen from the rearticulations effected in Latin America, namely prompted by *modernismo*.

European modernism has been characterized – in both art and international law – by the search for stylistic renewal to overcome representation through recourse to primitive imaginary and methodological experimentation.[39] In Latin America, however, the continuous quest for the recognition of its originality pushed modernist renewal in the direction of national and regional identity.[40] Rather than a critique of representation itself, *modernismo* intervened and renovated the available histories, traditions, and languages in which to root and express regional distinctiveness for the realization of a proper Latin American art/law.

In Latin America, modernization was *modernismo*'s condition of possibility. Throughout the last decades of the nineteenth century, the ascendance of aesthetic modernism was accompanied by the integration of the region into the world economy, social specialization, and the emergence of new antagonisms and forms of social conflict. Beginning with Rubén Darío's publication of *Azul* in 1888, *modernismo* was identified with a literary movement that reacted against the backwardness of the region's dominant artistic traditions in the face of epochal socioeconomic and cultural transformations; at the same time it pursued cultural independence from the modernization programme followed under the aegis of positivism, which was seen as vulgarly materialist. There was yet something beyond aesthetic experimentation in *modernismo* that made the movement regional not simply in the sense of its expansion throughout Latin America but in the sense of its commitment to regional unity.[41] It is in this sense that modernist trends in different areas, including literature, philosophy, and law, met at the crossroads of Latin Americanism.[42] It is for this reason that I read, for example, Álvarez's plea for the recognition of an American international law – that is, his well known assertion of regional particularity within international law, through the lenses of *modernismo*.

2.4. The Chilean context

How did the shift from the lettered city to its fragmentation, from colonial to oligarchic modernity, played out specifically in Álvarez's Chilean context? I simply outline here the main characteristics of the Chilean socioeconomic and cultural

39. N. Berman, 'Modernism, Nationalism, and the Rhetoric of Reconstruction', (1992) 4 *Yale Journal of Law and the Humanities* 351.
40. D. Ades, 'Modernism and the Search for Roots', in idem (ed.), *Art in Latin America: The Modern Era, 1820–1980* (1989), 125.
41. See note 136 *infra* and accompanying text.
42. As considered below, *Latinoamericanismo* was a political, intellectual, and artistic tendency that emerged at the turn of the twentieth century as a critique and reaction to (aesthetic) romanticism, (philosophic) positivism, and (economic) modernization once it was clear that scientific positivism did not delivered its promised path to progress and when new dangers of neocolonial intervention ensued. I contend that international legal thinking in the region joined the said trend in its specific effort to recuperate the unity of Spanish and Portuguese America (in its difference from Anglo-America) under a common, at the same time programmatic and paradigmatic, regionalist project. See J. Ramos, 'Hemispheric Domains: 1898 and the Origins of Latin Americanism', (2001) 10 (3) *Journal of Latin American Cultural Studies*; E. Devés, *El Pensamiento Latinoamericano en el siglo XX: entre la modernización y la identitdad, del Ariel de Rodó a la CEPAL (1900–1950)* (2000).

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environment in relation to which Álvarez developed a modernist response; this I examine in the third section of the article.

Álvarez's first publications date back to the last years of the nineteenth century, to a turning point in the development of legal thinking and scholarship as well as the adaptation of the legal profession to new functions opened up by socioeconomic modernization.[43] In the aftermath of the fragmentation of letters, not only lawyers but lettered people in general accommodated to new roles and areas of expertise to match the pressures of emerging social contexts. Modernism did not simply appear as an aesthetic style, but materialized within new social spaces – relatively autonomous from traditional holders of state or social power – to which a modernist voice could be harnessed. To explore the nature of these new locations and the modernist voice they hosted I go back to mid-nineteenth-century post-independence Chile, to compare the previous liberal-positivist constellation of ideas with the modernist renewal that surfaced at the end of that century in tandem with the rise and strengthening of the Chilean bourgeoisie.[44]

In conformity with the regional trend, the end of colonial rule in Chile was followed by the imperative of generating not only actual institutions but also new discourses and narratives and an imagery to sustain and give content to the new national project. When the consolidation of post-independence political structures came about around the 1830s, Chilean *letrados* found themselves in an enviable position. Having been able to maintain and recast their functions, lettered people gained intellectual tutelage over the production of sociopolitical meanings. Therefore, lawyers made material the departure that Chile as an independent republic had to make from colonial *jus commune* by drafting the new laws, codes, and constitutions, and, as continuing members of the lettered class, also had primary responsibility over the management of the broader body of liberal ideas, which construed law as one of the republic's pillars and gave self-sufficiency to the legal discourse.[45]

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43. See notes 85 and 97 *infra*.
44. Anglo-American and continental transformation of letters (understood as the general realm of classics, encompassing poetics as well as ethics, epics, or history) into literature (a specialized means of expression) run on a historical track that is different as compared with the Latin American trajectory. In the former sites, the nineteenth-century dissolution of letters operated through the division of labour along with the emergence of a Romantic aesthetic sensibility, utilitarian calculability, and individual rights, interconnecting individual artistic originality, subjectivity, and property. See G. Binder and R. Weisberg, *Literary Criticisms of Law* (2000), 7–15. These equivalences worked differently in Latin America. Romanticism was part of the liberal lettered intellectual's project of national building. Doris Sommer has explain this difference: 'As for the foundational bonds between this literature [national novels] and legislations, ties that seemed "unacknowledged" in Shelley's England, they were not secret in Latin America. One stunning acknowledgement is the page-long list, by the turn of the century, of Hispano-American writers who were also presidents of their countries. A comparable list for lesser offices might seem endless. And despite important parallels, North American writers who were establishing a national literature might assume a metapolitical posture, an apparently disinterested critique that was rare in the South. Latin Americans seemed more integrated into partisan struggles and less available for transcendent social criticism.' *Foundational Fictions: The National Romances of Latin America* (1991), 4. On the other hand, the appearance of literature as a specialized activity came with the turn to modernism, and rather than following utilitarianism, subjectivity, and property it entailed a critique of these notions.
45. In the period of post-colonial consolidation, rather than specialized professionals, lawyers also belonged to the lettered class. See E. Zimmermann, 'Law, Justice and State-Building in Nineteenth-Century Latin America', in idem (ed.), *Judicial Institutions in Nineteenth-Century Latin America* (1999). Their direct participation in the process of state formation blended neoclassicism (the commitment towards the rationalist project of

Andrés Bello was a paradigmatic *letrado* figure of post-independence Latin America.[46] He arrived in Chile in 1829, at a moment of political instability but when on the brink of a fairly long period of stabilization, when internecine struggles were put to a halt by the rise of an authoritarian government that pursued order and economic growth.[47] During the decades that followed, Bello was at the crossroads of the country's intellectual life.[48] Having inaugurated Americanist poetry with the publication of *Alocución a la Poesia* (1823), Bello was also the first who taught international law in post-independent Latin America, publishing his teaching materials in 1832.[49] Bello combined in his persona the neoclassical linguistic purist with the romantic Americanist poet, the liberal-secular educator and the positivist-utilitarian jurist – as well as the savvy politician who could hold on to his many posts.[50]

Following political stabilization in the three decades after the 1830s, Chile witnessed significant economic expansion that put the lettered class under increasing pressure. Export-led economic growth, brought about under capitalist relations between production and surplus accumulation, gradually emerged after the discovery and exploitation of new copper and silver mines and the domestic links these activities established with agriculture and livestock production that supplied the mining areas with food products, which in turn joined the export sector when an international market for cereal and flour opened up in the 1850s.[51] The institution of an entirely new legal framework accompanied these transformations, including the enactment, from the 1830s to the 1860s, of a series of laws establishing new instruments of payment, credit, and investment.[52]

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constituting Latin American republics based on classic ideals) with the romantic sensibility dominant at the time.

46. See I. Jaksić, *Andrés Bello: Scholarship and Nation-Building in Nineteenth-Century Latin America* (2001).
47. Political consolidation was achieved by the Conservative Party after the defeat of the Liberal faction in the civil strife of 1830, initiating what is known as the regime of Portales, a long-lasting period of conservative rule. See S. Collier, *Chile: The Making of a Republic, 1830–1865, Politics and Ideas* (2003).
48. Bello's own ideal of 'aristocratic liberalism' suited the authoritarian government of the epoch, for which he actively collaborated to become its main intellectual spokesman. A. Cussen, *Bello and Bolivar* (1991), 148. Bello was appointed under-secretary of foreign affairs in 1829 and was elected senator in 1837. However, he always remained active in the country's intellectual life, serving as the first rector of the University of Chile at its establishment in 1842, drafting (1840–55) the Chilean Civil Code, or, for example, intervening in a heated debate on the evolution of the Spanish language in independent Hispanic America. A. Bello, *Gramática de la lengua castellana destinada al uso de los americanos* (1847).
49. E. Gajardo Villarroel, *Reseña histórica de la Enseñanza superior en Chile y del estudio del Derecho de Gentes, antes y después de la Independencia* (1928). See also L. Obregón, 'Completing Civilization: Nineteenth Century *Criollo* Interventions in International Law', unpublished SJD dissertation, Harvard Law School, 2002 (on file with Harvard Law School Library).
50. Collier, *supra* note 47, at 13.
51. S. Collier and W. F. Sater, *A History of Chile. 1808–2002* (2004), 60–4; C. Cariola and O. Sunkel, *Un siglo de historia económica de Chile. 1830–1930* (1990); M. Zeitlin, *The Civil Wars in Chile, or the Bourgeois Revolutions that Never Were* (1984), 23–5.
52. A number of laws dealing with the minting of money were enacted between 1832 and 1860. A series of piecemeal regulation allowed insurance companies and brokerage firms, founded in the 1840s, to issue promissory notes, bills of exchange, bonds, and securities as well as collect debts. Moreover, the opening of the first stock exchange in 1840 and the establishment of commercial banks with Chilean capital (Edwards in 1846 and Arcos in 1849) that followed sustained economic growth was met by elites with the effort to have an up-to-date legal framework for commercial and financial activities. A law of joint-stock companies was enacted in 1854 and a bank law in 1860. In 1852 the Congress authorized the President to systematize existing economic legislation under a single commercial code, which came into force in 1865, abrogating previous colonial legislation (Ordenanza de Bilbao). See E. Cavieres, 'Anverso y reverso del Liberalismo en Chile, 1840–1930, (2001) 34 *Historia*, 39–66.

Economic expansion was followed by a downturn in the cycle during the 1870s caused by the fall in international prices of Chile's main exports: copper, silver, wheat, and flour. It was not until the War of the Pacific (1879–83), which resulted in Chile annexing Peruvian and Bolivian territory containing valuable nitrate deposits, that the economic depression was ended.[53] Victory in the war enhanced Chileans' sense of regional superiority and national pride; it also inaugurated a new cycle of export-led growth, accompanied by the deepening of the existing division of labour and social hierarchy. Increasing amounts of wealth in the hands of elites made possible the acquisition of luxury goods, attesting to the emergence of new opulent lifestyles in the political and commercial centres of Santiago and Valparaiso. The sense of ease brought about by increasing wealth also made the contact with European culture more fluid, bringing social 'refinement', the emergence of a market for cultural products, and a sense of up-to-dateness characteristic of the Chilean *belle époque*.[54] One of the most influential studies of Latin American literature recognized the particular place that lawyers occupied at this juncture:

> Prosperity, brought about by peace and the application of the principles of economic liberalism, had a distinct effect on intellectual life. A division of labor began. Men of the intellectual professions now tried to restrict themselves to their chosen task and gave up politics – the lawyers, as usual, less and later than the others. The helm of the state passed into the hands of mere politicians; nothing was gained by it, quite the contrary. The men of letters – literature not being really a profession, but an avocation – became journalists or teachers or both. Many still went to the universities to study law, but few practiced it. Some obtained diplomatic or consular posts.[55]

The economic and institutional changes that marked the gradual rise of capitalist production transformed the professional functions of lawyers, offering them a new field of private practice. However, as the quotation suggests, lawyers retained a broad spectrum of tasks and law still constituted a general professional springboard for entry into different economic activities. In other words, the full extent of this transformation can only be grasped through an examination of the relationship between the economic and political spheres, as fashioned by the resistance of landowners to the political challenge posed by the emerging bourgeoisie and the violent resolution of the conflict in favour of the former group in the civil wars of the 1850s and 1891.[56] Lawyers belonged to or supported both factions of the elite, and those who found themselves on the winning side reaped the benefits by becoming the brokers between the dominant political class and the chastened bourgeoisie.[57]

The outcome of the intra-elite struggles of the second half of the nineteenth century, in which the progressive segments of the dominant class were defeated in what Maurice Zeitlin has termed 'the bourgeoisie revolutions that never were', partially

53. Chile thus became the only country with exploitable reserves of nitrates; nitrate exports boosted internal agricultural production, imports, and commerce while offering the government a budget that was channelled towards public infrastructure and education.
54. See Rama, *intra* note 69, at 40.
55. P. Henríquez Ureña, *Literary Currents in Hispanic America* (1946), 161.
56. See Zeitlin, *supra* note 51.
57. See note 119 *infra* and accompanying text.

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explains Chile's path of socioeconomic and political development and, I would suggest, the role law played in them.[58] The economic upturn after the War of the Pacific strengthened the position of the Chilean government in capitalizing on the surplus obtained by the taxation of nitrate extraction into large-scale programmes of public infrastructure, education, and support to national manufacture, along with its intervention against monopolization of the nitrate industry and railways.[59] Law was not only one of the modes through which the government of Manuel Balmaceda tried to implement these policies while pursuing a 'revolution from above', but also itself became one of the battlefields, before the political conflict turned into civil war in 1891.[60] Balmaceda's effort to nationalize the nitrate industry, for instance, was followed by a long legal battle over its legality, in which the government faced strong opposition from a pool of prominent lawyers financed by British interests in nitrates.[61] On the other hand, political opposition leading to the justification of the civil war was framed in legal terms, as a conflict over institutional competences between presidential authoritarianism and the democratic attributes of parliament.[62]

After the civil war, Chile's participation in the world economy's division of labour gradually shifted to take a semi-peripheral position under the sway of the British informal empire.[63] Internally, control over capital and revenues remained in the hands of a small elite that managed to synthesize the interests of the older landowner

58. Zeitlin, *supra* note 51.

59. Alfredo Jocelyn-Holt Letelier argues that the challenges brought about by the social and economic transformations that had made Chilean society more complex and plural, were met by Balmaceda with a project of modernization led from above, that is, a step-by-step process that would not challenge the elite's hegemony. However, the dominant elites had to accept the reconfiguration of a strong state that would lead the process of national development by using the resources coming from nitrate exports. Instead, the ruling class saw in Balmaceda a despot who in turn defied the elites' own ideal of modernization, a trajectory that had produced a weak democratic state in the fight against authoritarianism. See Jocelyn-Holt Letelier, 'La crisis de 1891: civilización moderna versus modernidad desenfrenada', in L. Ortega (ed.), *La guerra civil de 1891, 100 años hoy* (1991), 30–3. See also Zeitlin, *supra* note 51, ch. 3.

60. The vast literature on the civil war of 1891 and the Balmaceda government is deeply divided along different ideological and methodological lines of interpretation. See Blakemore, 'The Chilean Revolution of 1891 and its Historiography', (1965) 45 *Hispanic American Historical Review* 425, reviewing the two main legal (constitutional) and economic strands of explanation. Bernardo Subercaseux has read the civil war in a plural key, looking at the cultural transformations that the conflict represented as a legal-political controversy, as a socioeconomic tension, as a conflict of castes, and as a clash of personalities. *Historia de las ideas y de la cultura en Chile, tomo II Fin de siglo: la época de Balmaceda* (1997), 19–36. The authors I have made use of follow a political-economic interpretation of the civil war, namely as a conflict between two factions of the dominant class that had opposing ideals of modernization. Whereas it is erroneous to conclude that Balmaceda's supporters were part of a national industrial bourgeoisie in a struggle with an alliance of Chilean bankers, miners, and merchants and British capital (see H. Kirsh, *Industrial Development in a Traditional Society. The Conflict of Entrepreneurship and Modernization in Chile* (1977), 105), Zeitlin has identified an intra-class division between nitrate capitalists and bankers who led the armed insurrection against Balmaceda on the one hand and Balmaceda's supporters, drawn from the copper-mining bourgeoisie, on the other. Zeitlin, *supra* note 51, at 188. However, I do not understand the legal conflict that preceded and justified the 'congressionalist' insurrection as a mere veneer covering underlying economic interests; rather I interpret it as one of the languages through which the conflict was expressed.

61. See H. Ramirez Necochea, *Blamaceda y la contrarevolucion de 1891* (1969), 75.

62. The main exponent of the legal interpretation is J. Heise González, *Historia de Chile: el período parlamentario, 1861–1925* (1974).

63. See T. Halperín Donghi, *Historia contemporánea de América Latina* (1983), 205, arguing that Chile inserted itself in the emerging international division of labour. On British influence in Latin America see R. Miller, 'Informal Empire in Latin America', in W. Roger Louis (ed.), *Oxford History of the British Empire.* Vol. V., *Historiography* (1999), 437–49.

class with the newer class of merchant and mining entrepreneurs, which coalesced into an oligarchic bourgeoisie.[64] Lawyers had been active in their participation in these transformations, serving as the link between foreign capital and the domestic sociopolitical structure, facilitating the penetration and replacement of Chilean capital by foreign investment.[65]

In sum, Chilean lawyers of the oligarchic bourgeois elite found themselves in a particularly privileged position to reap the benefits of the increasing division of labour, for they were able to monopolize the interstitial location between the economic and political spheres left by the civil wars. Lawyers of the elite were in a position to mediate conflicting interests and to use this to their advantage, becoming organic agents that strengthened the status quo.[66]

If these were the structural conditions to which lawyers of the dominant class adapted as well as contributing to their form, what caused Álvarez to set out on an alternative path? Why and how did he become a modernist legal intellectual? The next section tries to unravel this question. However, Álvarez's modernist thinking – effected at the moment of crisis in the liberal-positivist paradigm, under the claim of representing a break with the past in the face of new social conditions – came into being with the aid of the intellectual resources at hand, which connected him to the historical ground shared by his contemporaries, known as the generation of 1868.[67] The Chilean political and economic environment I have been describing produced a sense of social doubleness that in the intellectual realm expressed itself in the fusion of liberal and conservative ideas, a version of the typically Latin American combination of political ideas in resolute tension with actual social contexts.[68] This explains the extremely abstract form and style of many of the ideas professed by the

64. Kirsh maintains that industrialists did not emerge as a separate group from the rest of the elite and thus did not challenge traditional institutions: 'the conflict between the entrepreneurial bourgeoisie and the existing oligarchy, commonly believed to be inevitable in the industrialization of a nation, did not occur'. Kirsh, *supra* note 60, at 157. On the coalescence of the Chilean dominant class and its contradictions see M. Zeitlin and R. E. Ratcliff, *Landlords and Capitalists. The Dominant Class of Chile* (1988).

65. '[W]hen the powerful businessmen of the nitrate industry recruited lawyers among the high-profile figures of national politics, they did so with the purpose of counting with the services of distinguished members of the legal profession and also with the aim of establishing connections that secured the protection of their interests by interventions in the political and administrative spheres.' Ramirez Necochea, *supra* note 61, at 85–6; see list of lawyers at 75. After the defeat of Balmaceda, elite lawyers who participated in the 'congressionalist' camp filled the cadres of the judiciary and state.

66. Dezalay and Garth put it in this way: 'The legal-political world was built on extended families that were traceable to the old oligarchy. This family dimension meant that the legitimacy of the law was itself tied to the families behind the law, meaning, in turn, that this legitimacy also rested only lightly on specialized professional knowledge. One lawyer recounted the story of how professors in Chile would travel abroad, converse with a French professor, and then return to their farms to write a book based on the ideas they had learned on their travels.' Y. Dezalay and B. Garth, *The Internationalization of Palace Wars: Lawyers, Economists, and the Contest to Transform Latin American States* (2002), 202 (including note).

67. G. Feliú Cruz identifies their strong liberal heritage, scientific positivism, national pride, and initial acknowledgment of the social question. According to this author, because of their love of freedom most of the young lawyers sided against Balmaceda. Feliú Cruz, *Seis Claros Varones del la generación de 1868* (1968).

68. Subercaseux has explored this gap between social and ideological formations in the Chilean cultural life where on oligarchic bedrocks a bourgeois spirit developed. See B. Subercaseux, *Historia de las ideas y de la cultura en Chile*, Vol. I, *Sociedad y cultura liberal en el siglo XIX* (1997), 251. As to Latin America in general, Whitehead has suggested that the region suffers from an orientation towards 'modernity', experienced as the need to catch up with the latest version of the models adopted in what are believed to be the advanced centres of the world, models that are successively imported and assimilated in uneven and incomplete manners. Whitehead, *supra* note 12, ch. 1.

1868 generation and by Álvarez as well, allowing the superimposing of intellectual strata of various kinds, including liberal, positivist, and social thinking. In spite of this common ground, I propose to interpret Álvarez as a modernist.

3. Álvarez's formative period: a legal modernist after the fragmentation of letters (the 1900s)

Modernist cultural renewal and experimentation could thrive in particular environments that followed and were contingent on the advance of capitalist modernization. I showed in the previous section that the ensuing division of labour not only stripped the lettered class of the pedagogic, narrative, and ideological functions that provided their social significance, as a consequence producing professional politicians and lawyers, but also pressed poets into becoming journalists or teachers.[69] The reconfiguration of roles found artists tinkering with formal aesthetic experimentation that would disentangle art from the romantic-liberal thematic of the post-independence period in a way that connected it with modernist claims to advance art for art's sake, namely, a professional voice seeking recognition and distinction from amateurism. Literary critics have argued that the quest for literary purity did not simply mark a retreat from politics, but evidenced an effort to find social formations that would host an autonomous site for literature. In a sociopolitical context that left letters without a pragmatic purpose, material scarcity was met by literati through establishing alliances with the economic and political elites that reinstalled literary dependence and revealed the contours of an uneven modernization.[70]

The trajectory of the Nicaraguan poet Rubén Darío illustrates not only the socioeconomic transformations of late-nineteenth-century Latin America that displaced the lettered class from politics into the market and thus impelled professionalization, but also the changes that went beyond a mere reshuffling of occupations, namely the search for a distinctive and authoritative modernist voice.[71] In line with the work of literary critics, I suggest a parallel between Darío and Álvarez as regards the effort to find an authoritative and professional locus of speech harbouring a modernist voice that was politically engaged rather than detached from its social context.[72]

69. A. Rama, *Rubén Darío y el modernismo* (1985), 40. See generally Henríquez Ureña, *supra* note 55.
70. Ramos, *supra* note 28, at 55–8. 'More than a question of employment or professionalization and the commercialization of writing, the emergence of a negatively derived notion of "pure" literature that contrasted with the state function of letters was the result of a restructuring in the fabric of social communication.' parenthesis omitted. Ibid., at 55.
71. Rubén Darío (1867–1916), who proclaimed himself the first modernist poet, spent key years of his youth in Chile (1886–8), where he experienced the conversion from romanticism to modernism. Rama, *supra* note 69, at 81.
72. Interestingly, charges of depoliticization and social detachment have been levelled against both Darío and Álvarez. See Aching, *supra* note 29, for a description of and answer to the criticism of escapism directed against Darío and *modernistas* generally. Koskenniemi, on the other hand, is quite harsh with Álvarez when assessing his place on the French scene; see the conclusions of this article. Álvarez was just a year younger than Darío. Both were in Santiago at the same time and then met again at some of the Pan-American conferences.

3.1. The professional locus

Darío, who coined the term *modernismo*, experienced great changes in the few years he spent in Chile.[73] His arrival in 1886 coincided with the postwar economic upsurge prior to the short-lived bourgeois-democratic experiment brought to an end by the counterrevolution of 1891.[74] In an environment marked by the contradictions of an oligarchic social order that endured economic modernization, Darío sought to find socioeconomic recognition as a poet. In the process of finding a space for his literary voice, Darío departed from the post-romantic Hispanic pattern that characterized his work, moving towards the configuration of a modern and Frenchified literary style.[75] A key preoccupation of emerging literati was to secure an audience and a market for their work. Angel Rama recounts how Darío attacked amateurs, 'whose presence was a disturbance to the correct functioning of the literary market making it harder to achieve the secret ambition of everyone: the professionalization of the writer'.[76]

Similarly, Álvarez faced an analogous pursuit – though more than a decade after his literary counterparts – when returning to Chile after obtaining his doctoral degree in France.[77] In 1899 Álvarez's published dissertation was reviewed by an important lawyer, professor, and politician of his generation, who criticized the omission of 'sound philosophical principles'[78] in his analysis of family law: 'The criteria and fundamental notions of the constitution of all family lie in sound [*sana*] philosophy, in the immovable bases of private and public morality . . . Mr Álvarez . . . has but poorly visited the philosophy of law.'[79]

Álvarez's reply contrasts the 'old philosophy of law' of Huneeus, 'that tries to study the end and nature of men with no other help than the psychology of so-called right reason', with a 'new philosophy of law' emerging from the application of the 'inductive method' to the social sciences – out of which the sciences of comparative legislation, economy, and social legislation were developed – so that rather than treating men as an ideal entity it sees the many aspects of the human

73. In a series of articles published in the 1880s and 1890s Darío used the term to refer to the 'modern spirit of renovation that guided a group of writers and poets'. M. Henriquez Ureña, *Breve Historia del Modernismo* (1954), 159

74. See sources quoted in notes 59 and 60.

75. In opposition to the Hispanic heritage, Frenchness symbolized a universal cosmopolitanism that was seen by Latin Americans as including them in an epochal spiritual renovation. See Subercaseux, *supra* note 60, at 123.

76. Rama, *supra* note 69, at 81.

77. Álvarez had gained a diploma in political sciences at the École Libre des Sciences Politiques and in 1899 a doctorate in law at the University of Paris.

78. A. Álvarez, *De l'influence des phénoménes politiques, économiques & sociaux dans l'organisation de la famille moderne* (1899); A. Huneeus, 'Un nuevo libro sobre el derecho de familia', (1899) 3 *La Revista de Chile* 231. Huneeus was only two years younger than Álvarez; a member of a prestigious family, he was many times appointed as minister of foreign relations, judge, and ambassador. He also was a professor of natural law and a successful lawyer, who represented various foreign companies. Figueroa, *supra* note 10, at 487–8. Although Huneeus's political achievements were much greater than Álvarez's academic success, their rivalry was maintained across the years. For example, when in 1929 Álvarez delivered a speech to the Grotius Society in London, Huneeus attended in his diplomatic capacity since he was the Chilean ambassador to the United Kingdom, and addressed the audience criticizing Álvarez: 'The Chilean Minister expressed thanks on behalf of Señor Álvarez. He said that he did not feel that at present the main question was whether codification was possible or visible.' Op. cit. *infra* 196 (1929), 51. At that time, codification was Álvarez's main crusade.

79. Huneeus, *supra* note 78, 232.

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being, the tendencies and passions that make the individual appear as he or she actually is.[80] However, the substantive answer put forward by Álvarez was preceded by an intriguing opening paragraph: 'Without doubt, the manifold occupations that absorb the time of Mr. Huneeus have prevented him from assimilating the fundamental idea that my thesis develops from the beginning until its end'.[81]

Álvarez not only counters the criticism levelled against him but in so doing claims a space for professional scholarship before the lawyer-politician, who holds power and prestige but, precisely because of that, becomes an amateur as regards legal thinking.

The site of this debate reminds one of the pilgrimage of the modern writer in the search for a place in which to root his writing, attain social recognition, and have an income. During the post-independence epoch, journalism had been central for the publicist involved in the process of nation formation, which had for the Latin American *letrado* an additional pedagogic and civilizational component. Journalistic and literary genres were stylistically distinguishable but part of the same ideological function – a manifestation of the lettered city's civilizatory mission. Conversely, modern literature developed partially out of stylistic experimentation (undertaken in writing newspaper articles) and out of the distance letters (including both literature and journalism) asserted from its previous rationalizing functions, entering the realm of the political and ideological contests between intra-elite factions.[82]

In the same vein, once back in Santiago, Álvarez wrote profusely in *El Ferrocarril*, and also in *La Revista de Chile*, where the above exchange was published.[83] These journals were typical outlets of the fragmented lettered city, where the Chilean elite sought to reconstitute the production of knowledge and achieve modernist exposure, publishing, next to Álvarez, the Brazilian modernist writer Machado de Assis and studies of the Uruguayan José Enrique Rodó's influential *Ariel*, as well as other members of the local, American, and European intelligentsia.

The ways in which Álvarez sought to find a professional locus of speech left a permanent imprint on his style and trajectory; both were interrelated. The characteristically professional tone stems from the nature of the work published, namely legal briefs and scientific reports. Álvarez's participation as a rapporteur at various venues shows that his ideal voice went beyond journalism, revealing a continuous interest in the professionalization of legal sciences.[84] Journalism, combined with governmental or diplomatic posts, were partial solutions for the modernist writer in the quest for an income, as well as for the lawyer trying to bring about reform against the stream that was steering the legal profession closer to the role of mediator between politics and the market. Thus the Álvarez of the turn of the century is strenuously trying to take possession of a thematic and professional area that would

80. A. Álvarez, 'La Familia Moderna', (1899) 3 *La Revista de Chile* 333.
81. Ibid., at 333–4.
82. See Ramos, *supra* note 28, ch. 4.
83. See R. Vilches, 'Las revistas literarias del siglo XIX', (1941) 91 (Jul.–Dec.) *Revista Chilena de historia y geografia* 324–55 and ibid., (1942) 92 (Jan.–June), 117–59.
84. E.g. 'La incapacidad mental ante la medicina legal I ante los principios de la lejislación comparada', 1901. 'Temas de la sección de ciencias sociales del 1° congreso científico Panamericano', 1908.

enable him to unfold his reformism. Having taught comparative civil law and given lectures on social theory at the University of Chile, Álvarez wrote, among other things, about family law, legal medicine, philosophy of law, diplomatic history, and legal education.[85]

It is only in the later part of the first decade of the twentieth century that Álvarez devotes all his writing to international law, a specialization that conforms to his having secured a position as legal adviser at the Chilean Ministry of Foreign Relations.[86] Yet what needs to be explained is this specific resolution of the problem of professionalization which convincingly reveals a failure in the attempt to bring reformist thought to the Chilean legal academia as well as a failure to penetrate fully the local elite. Entering the foreign affairs ministry offered Álvarez the opportunity to keep his reformism as well as connections with Latin America and Europe – where Álvarez could maintain intellectual links, analogous to the modernist literati who could only defeat isolation and incomprehension by returning to Paris.[87]

Prior to 1905, Álvarez was fully involved in teaching and reforming legal education at the University of Chile.[88] The passing of the 1902 reform of the law curriculum not only turned out to be a pyrrhic victory but also left Álvarez without professional prospects in Chile.[89] In the sociopolitical context preceding the reform when legal thinking and education were in the hands of a lettered class, the law professor existed as an appendage to the general intellectual mission and professional positions held by the *letrado*. I argue that the outcome of the 1902 reform reveals a division of tasks that handed over legal thinking and education to lawyers whose primary occupation

85. See 'Conferencias en la Universidad de Chile en 1899–1900' (ms.); see sources quoted in notes 78, 80, 84, and 88. Fewer works covered international topics: *La tehorie de l'arbitrage permanent et le conflict de limites entre le Chili et la republique Argentine* (1898); *El plebiscito ante la historia diplomatica y ante los principios del derecho internacional* (1900).

86. In 1902 Álvarez was appointed as legal adviser to the Chilean delegation at the Second Pan-American Conference in Mexico. And in 1905 he obtained a permanent post. 'Today, February 21, 1905, the present book about commissions, consultations, etcetera of the Ministry of Foreign Relations concerning to my employment as lettered advisor is opened.' A. Álvarez, 'Libro De Encargos', at 1, in 'Anotaciones, asesorías, consultas y correspondencia de Alejandro Álvarez, 1902–1929', Vol 306 A, Archivo General Histórico del Ministerio de Relaciones Exteriores de la República de Chile.

87. *Supra* note 86, unnumbered page.

88. In 1901 Álvarez wrote a programmatic piece on legal reform, in which he states that 'the orientation that should be given to juridical and political studies is the one that accords with the spirit and intellectual needs of modern times.' 'La Reforma de los Estudios Juridicos i Politics', (1901) 6 *La Revista de Chile*, at 263.

89. In 1889 the government of Balmaceda presented a project to reform the law curriculum that was vigorously discussed among lawyer-intellectuals, resisted by opposition lawyers such as Letelier, and finally abandoned with the outbreak of civil war. The debate was published in 'Reforma de la enseñanza del derecho: trabajos publicados en "La Libertad electoral", Valentín Letelier, Eujenio M. Hostos i Julio Bañados Espinosa (1889). In the aftermath of the civil war, the rapid reappearance of a sense of social discontent made possible the recovery of the political imaginary associated with the Balmaceda project, in the context of which the idea of the reform of legal education was revisited. The reform passed in 1902, however, turned out to be a rhetorical compromise with the pre-civil war past, rather than a substantive change of course. On the failure of the reform see L. Galdames, *Valentín Letelier y su Obra* (1937), 175: 'The effectiveness of the reform, in the sense of giving a boost to the scientific study of law and politics, was very limited, not only because the chairs primarily called for to satisfy this aspiration were never created, but also because the professors whose chairs changed their subject matter, continued, in general, with the same old programs and methods. . . . One day our natural law professor said to his students: "Starting next year this course will be called philosophy of law, but do not imagine that something will be changing, the content will be the same, even though another label is added to the bottle".' See also V. M. Álvarez Álvarez, *La reforma de los estudios juridicos de 1902* (1955), 57.

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was defined within the realm of political action or private practice, rather than to professional legal intellectuals along the lines of Álvarez's proposal. The reform was not capable of breaking the socioeconomic pattern that impeded the emergence of professional legal intellectuals; Álvarez also failed, since he was left like everyone else in the search for alternative sources of income and professional prestige.

The fate of the 1902 reform was intertwined with that of the previous reformist effort put forward by the Balmaceda government in 1889; this had failed because it broadly coincided with the onset of civil war in 1891 and hence with the bringing to a halt of modernism and the delay in its reappearance in Chile.[90] The initial ill-fated stream of reform of legal education coincided with the defeat of its proponents in the civil war of 1891. Its final realization reflected the nature of the post-counterrevolutionary settlement that produced particularly uneven professional fields accounting for the lasting politicization of law professors.

Bearing in mind their organic relationship, three ideal-typical lawyer figures might be identified – all trying to keep hold over the production of legal consciousness.[91] As mentioned, the lawyer/politician still played a central role in the context of uneven modernization, commonly representing the conservative pole of the dominant class, closer to rural landowner values, natural law doctrine, and the re-evaluation of the Hispanic past. However, the main tension in the process of professionalization was felt between lawyers who reconfigured their functions in harmony with the emerging 'coalesced oligarchic-bourgeoisie' and lawyers who diverged by joining in modernist experimentation. I offer examples respectively of both strands, examining Luis Claro and Alejandro Álvarez.

Álvarez's articulation of a modernist voice is better grasped when contrasted with Claro. Luis Claro, who in 1880 had founded a law firm that became one of the most prestigious in the country, in 1898 published a widely read and influential civil law textbook.[92] Making available an authoritative explanation of the civil code with French doctrinal and jurisprudential backing fulfilled a pragmatic need of the legal profession and at the same time inaugurated in Chile the genre of the legal manual.[93] Claro's sober exposition of the civil code represented the Chilean version of Latin American classical legal consciousness, which supplemented French exegeses with

90. It is interesting to note that while the impact of the revolution on Chilean cultural life has been amply acknowledged (e.g. Subercaseux, *supra* note 60, at 37–46), the reform of 1902 has been interpreted as a continuation of the pre-civil war project and Letelier as being in the same camp as Álvarez (e.g. B. Bravo Lira, *La Universidad en la Historia de Chile. 1622–1992* (1992), 175–8). Moreover, the progressive reformist movement of the 1960s had in mind 1902. '[N]ow, in 1966, we intend to make a new and very important movement forward that, with justifiable pride, we can compare in significance with that of the 1902' (Eugenio Velasco, quoted in S. Löwenstein, *Lawyers, Legal Education and Development: An Examination on the Process Reform in Chile* (1970), 91.

91. See Antonio Gramsci on the relationship between social groups and the strata of intellectuals created in the process of constitution of those groups, which give them 'homogeneity and an awareness of its own function not only in the economic but also in the social and political fields'. *The Antonio Gramsci Reader. Selected Writings 1916–1935*, ed. D. Forgacs (2000), 301. On the use of legal consciousness in legal history see D. Kennedy, 'The Rise and Fall of Classical Legal Thought', unpublished MS, 1975 (reformatted 1998). 'The notion behind the concept of legal consciousness is that people can have in common something more influential than a checklist of facts, techniques and opinions. They can share premises about the salient aspects of the legal order that are so basic that actors rarely if ever bring them consciously to mind' (at 11).

92. L. Claro Solar, *Explicaciones de Derecho Civil y Comparado*, Vol. I, *De las Personas* (1898) (published serialized).

93. Most subsections start with a pragmatic question that is subsequently answered in the body of the text.

German *Begriffjurisprudenz*.[94] With this publication, Claro also inaugurated a professional configuration that combined the law-firm partner with the law professor, in which the prestige gained by the lawyer as professor is transferred to his private practice, simultaneously reinforcing his intellectual reputation, his capacity for mediation between business and politics, and his ability to reach favourable judicial decisions – advancing in a virtuous circle the overall reputation of the lawyer and his law firm.[95]

Though antipodean, Claro's classical legal consciousness and Álvarez's *modernismo* run parallel, for both attempted to reconfigure – in opposed ways – the role of lawyers in the face of modernization, that is, foregrounding different aspects or new functions opened up by economic modernization. Both Claro and Álvarez disentangled their analyses from natural law perspectives to adapt respectively to a perceived need for economic certainty or to the pressures of modern society.[96]

3.2. The modernist voice

Álvarez probably had Claro in mind when he welcomed the incorporation of conceptual jurisprudence, that is, 'the systematic method' as an improvement with respect to exegesis. In Álvarez's mind, though, this method had been complemented with 'juridical constructivism', in which 'juridical doctrine is constructed from all institutions, instead of studying them separately'.[97] Although at first sight the method of juridical construction appears merely to reshuffle the systematic method, the leap forward is clear when Álvarez shows how the method would work. A comprehensive perspective is not intended to organize the exposition of the civil code around underlying concepts and general principles or in the order of its articles, but directs lawyers' gaze at the whole body of legislation in which the code occupies equal standing with special social and labour legislation.[98] An inclusive institutional and doctrinal scope helps to disaggregate the different regulatory aspects of unitary legal concepts:

94. Diego Lopez Medina, in his path-breaking study of the reception of transnational jurisprudence in Latin America, has shown that Latin American legal classicism combined both exegesis and *Begriffsjurisprudenz*. See Lopez Medina, *Teoría Impura del Derecho* (2004), 160.
95. This configuration had a great impact on the legal profession: 'The influence of these lawyers was felt by the bar as well as by the judiciary. Their systematic organization of concepts embodied in Chilean private law seemed to reinforce the belief of the legal profession in the neutrality of the jurist, ensured by the rigorous exclusion of moral judgments in the analysis of the law. Hence, the conceptual elaboration of Chilean law by these lawyers legitimated even further the assumption that judges performed a technical role consisting of applying the law with no concern for the consequences to those affected by the rules.' H. Früling, 'Law in Society: Social Transformations and Crisis of Law in Chile 1830–1970', SJD dissertation, Harvard Law School, 1984, at 273.
96. Claro Solar sharply distinguishes between natural law and positive law (*supra* note 92, 3–4) and affirms, for example, 'But the law should not be confused with the rest of social sciences and most of all with morals' (ibid., at 1–2). Although when it comes to the definition of marriage and the discussion of divorce, Claro indicates that marriage is the fundamental base of the family and affirms its indissolubility that the law has recognized following the Catholic teachings, given that it has not found strong enough reasons to introduce a change that would have gone deeply against the religious ideas of the majority of the country (at 439). Note the difference with Álvarez, who was in favour of divorce.
97. Álvarez, 'La nueva tendencia en el studio del derecho civil', (1900) 4 *La Revista Chilena*, at 298.
98. See Lopez Medina, *supra* note 94, 165.

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> The type of property instituted by civil legislation is not one, as usually believed, and even less the one that has the characters of perpetuity, amplitude, and exclusivity of which Article 582 of the Civil Code speaks.[99]

The capacity to distinguish between alternative rules is not reduced to the explanatory level of textual analysis but depends on the recognition of alternative social impacts, the satisfaction of social needs, and the ability to grasp law's social existence:

> Law in its interior life, changing, tending to alter itself, and adapt to the new needs of modern life; transformations that are necessary to know, not only for understanding its mechanism and structure, but also to appreciate the degree to which those modifications satisfy social needs.[100]

Recalling these ideas shows Álvarez as precursor, contemporary, or follower – depending on how one tailors dates, birthplaces, and founding fathers – of (French) sociological jurisprudence.[101] The problem does not arise with the use of the label but when its usage bestows reality on an extremely circumscribed historical context. To identify Álvarez with sociological jurisprudence or anti-formalism might be heuristically fruitful only if one understands those categories as open enough to examine both their transnational and catachrestic character.[102] The point is that

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99. Álvarez, *supra* note 97, at 300. Note the impact that this argument might have had on the post-civil war Chilean oligarchic order.

100. Ibid. To fulfil the function of regulating society, law has to remain close to real life in order to respond to modern aspirations and the needs of all social classes. For Álvarez, these new imperatives that transform modern societies pushing for appropriate changes in civil legislation have a twofold nature – material and intellectual – and are classified in four different categories: economic, political, philosophical and religious, and social. In each of them there is old and new in addition to material and ideological (doctrinal) aspects. For example, economic solidarity (doctrinal) and the new needs and conditions of the working class (material) render individualism (doctrinal) and absolute property (material) ineffectual. The same argument is articulated in Álvarez, *supra* note 78.

101. An Álvarez-friendly interpretation would maintain that since he studied with Claude Bufnoir he belonged to the generation of innovators that around the year 1900 and, under the latter's influence, fleshed out the legal corollaries to the critique of individualism. François Geny published his foundational piece, *Method of Interpretation and Sources of Private Positive Law*, in 1899, the same year Álvarez had published his work on family law, *supra* note 78. In 1912, for example, when once writing about international law, Álvarez considered the idea of lacunae and ambiguities in international law, making use of the insights developed by Geny, Saleilles, and Lambert among others: *La codification du droit international – ses tendances, ses bases* (1912), 157–61. On the transnational character of this movement – 'the social' – see Kennedy, *supra* note 14. For a study centred in the French setting see M.-C. Belleau, 'The "Juristes Inquiets": Legal Classicism and Criticism in Early Twentieth Century France', (1997) *Utah Law Review* 379. My purpose has been to reinterpret the social trope in legal thinking in the light of Latin American intellectual history. For instance, Álvarez himself uses the language of the social conception of law: 'From the social point of view great progress has been made in America, where the legislation of almost all countries presents some common characteristics, one of which is precisely that social legislation tends to acquire an international American character,' op. cit. *infra* note 166, at 144. However, Álvarez internalizes 'the social' by footnoting this paragraph with a Latin American source (Chilean labour lawyer Moisés Poblete's *Evolución del derecho social en América* (Evolution of social law in Latin America) (1942)). What were the nature and conditions making possible Álvarez's Latin Americanization of 'the social'? What were the meaning, stakes, and consequences of this internalization through Poblete? Why did he choose a local source rather than acknowledging reception by a transnational author of European origin, such as Leon Duguit, whom he certainly knew, since both were jointly published in the continental legal history series, The Continental History series, Vol. 11, *The Progress of Continental Law in the 19th Century* (1907).

102. That is the capacity of these labels to acknowledge the 'misplacement of ideas', that is, the dissonance between concepts and referents produced by their superposition into non-central contexts – sociological jurisprudence in Álvarez's Latin America. R. Schwarz, *Misplaced Ideas: Essays on Brazilian Culture* (1992), 27. On catachresis see G. C. Spivak, *A Critique of Postcolonial Reason: Toward a History of the Vanishing Present* (1999).

these early writings prove wrong the idea that Álvarez merely brought to international law the insights that French sociological jurisprudence had developed before in civil or comparative law.[103] On the contrary, as shown above, Álvarez himself shifted from family law towards the field of international law, bringing with him the above-mentioned theoretical insights.

Recalling again the parallel with Darío might illustrate the sense in which Álvarez's development or appropriation of European legal methods is typical of Latin American modernism. Darío sets out to revamp poetry in Spanish by introducing French linguistic forms that in their strangeness created a productive unfamiliarity that became the Latin American aesthetic trait of modernism.[104] In the same vein, Álvarez does not simply call for the transplantation of European laws and methods for the sake of contemporariness; he rather seeks to introduce 'legal irritants' into Chilean law by articulating a modernist juridical consciousness as opposed to both the positivist and the naturalist local legal traditions.[105] Thus Álvarez makes the case for the study of comparative legislations as part of the new tendency in the study of civil law (similar to any other social jurist), but he adds a local twist that contains, in embryonic form, what will become a hallmark of his later scholarship, a strategy of inclusion and differentiation that demands, at the same time, the universality and distinctiveness of Latin America. On the one hand, Latin America shares with Europe the modern experience in both its material life and intellectual expressions.[106] However, the eruption of modern life in Latin America does not flatten its distinctiveness or give way to law's universal uniformity. Consequently, when arguing in favour of comparative law to study the social and legal transformations experienced by modern nations, Álvarez cautions against the belief that all countries have to adopt the same institutions.[107] Moreover, Álvarez performs what we would call today an anti-necessitarian critique, unambiguously confronting Darwinists who deem social institutions to obey laws of development that force

103. For this view see e.g. Koskenniemi's *Gentle Civilizer*: 'More than his future colleagues, however, Álvarez received his views from general developments in jurisprudence and was able to articulate them into a self-conscious progressivism'. *Supra* note 38, at 302.

104. On the role of foreign forms to produce unfamiliarity see V. Shklovsky, *Art as Technique, in Twentieth-Century Literary Theory: A Reader*, ed. K. Newton (1997).

105. G. Teubner has argued that foreign imports work as irritants; see 'Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences, (1998) 61 *Modern Law Review* 1.

106. 'Since 1815, the date of the Congress of Vienna, there is solidarism in Europe regarding its political and economic situation. Today solidarity is not only European but American', Álvarez, *supra* note 97, at 302. This idea, first exposed in relation to the development of private law in the Americas, is then repeated throughout Álvarez's international legal scholarship. For instance, Álvarez suggests in 1910 that international life among Latin American states is characterized by a new orientation in *American consciousness* that has continuously enlarged the sentiment of continental solidarity; from its nineteenth-century expressions, appreciated in the trend towards the formation of a confederation, to the twentieth-century expansion of solidarity to include the common study and solution of all the political and economic problems that are particular to the continent. Álvarez, *infra* note 127, at 241–3. Although there is a major change in the reinterpretation of 1910, the Congress of Vienna represents now the individualistic European balance of power vis-à-vis American continental solidarity.

107. 'When pointing at the tendency or orientation that comparative law provides to the national institutions, we do not want to say that this examination indicates any single type of institution that should be applied in any country, since that depends of the social status and the dominant ideas in that country at a given moment.' *Supra* note 97, at 309.

nations to follow successive stages of evolution.[108] For that reason, opposing natural law and advocating the introduction of social and political sciences to the study of law should not make us think of Álvarez as a positivist, both in the professionalizing sense discussed above when referring to Claro, and in the wider sense of the political consensus and shared ideology that were consolidated in late-nineteenth-century Latin America.[109]

3.3. Álvarez's legal *modernismo* and its failure

Notwithstanding the violent resolution, in the civil war of 1891, of economic, cultural, and political contradictions of the elite, a sense of malaise continued to permeate Chilean society. Among the progressive faction of the liberal elite, dissatisfaction emerged once it was clear that differences of estate long ago dissolved had resurfaced in the form of firmly entrenched disparities of wealth and social status, that economic development depended on the fluctuations of foreign capital and markets and that new, pressing social conditions imposed new challenges and answers. On the other hand, the weakening of rural values caused new frictions within the landowner–mining *mariage de convenance*, for the Frenchified and prosperous city was seen by rural Catholic morality as promoting decadence and extravagance.[110] Then again, the slow acknowledgement of the social question along with the emergence of working-class labour mobilization converged with a general exhaustion of the dominant liberal-positivist ideology.[111] At the turn of the century the liberal-positivist blend was endorsed by the whole spectrum of the governing elite, making it incapable of expressing and channelling political tensions.[112] Álvarez's interventions in the Chilean scene corresponded to one of the initial efforts aimed at revising and departing from the liberal-positivist credo without falling into conservative naturalism. Álvarez was not alone in his attempt, as my use of modernist literature to contextualize his work may suggest.[113] Other antipositivist ('spiritualist') intellectual trends reacting against positivism also pervaded the Chilean environment during the first decades of the twentieth century, the rise of Chilean philosophy constituting one of its expressions.[114] Unlike the lasting impact that these intellectual trends had in other fields, Álvarez's legal modernism had an uncertain future.[115]

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108. Ibid., at 339. See R. Mangabeira Unger, *False Necessity. Anti-necessitarian Social Theory in the Service of Radical Democracy* (1987).
109. Hale, *supra* note 35, at 148. In this respect, the absence of references to the ideas of Valentín Letelier (a leading lawyer and educator who among other things introduced positivist legal sociology in Chile) in Álvarez's own work is telling about his modernist opposition to positivism.
110. The conflict between liberals and conservatives resurfaced again after the civil war of 1891 around religious controversies. Subercaseux, *supra* note 60, at 155–63.
111. S. Grez Toso, *La 'Cuestión social' en Chile: ideas y debates precursores, 1804–1902* (1995).
112. Bernardo Subercaseux has argued that the triumph of economic liberalism entailed the defeat of political liberalism as an ideal for social change. *Supra* note 68, at 248.
113. I have mainly made reference to Darío for a study of the second period of literary modernism, that is after the departure of Darío and the end of the civil war of 1891. See J. M. Fein, *Modernism in Chilean Literature* (1965).
114. I. Jaksić, *Academic Rebels in Chile: The Role of Philosophy in Higher Education and Politics* (1989), 69–91. Among them, the philosopher Enrique Molina is an example of the links between 'spiritualism' and the revival of continental regionalism; see 'El nacionalismo y la solidaridad americana', (1925) 2 (2) *Atenea* 2.
115. See sources *supra* notes 33 and 89.

The sociopolitical causes that may explain Álvarez's failed attempt to bring in modernist legal thinking could shed light on his desire and inclination towards modernist experimentation.[116] A member of a traditional rural landowning family rooted in the transverse valleys of northern Chile, Álvarez neither belonged to the dominant landowner class of the central valley, nor was a member of the emerging mining and merchant bourgeois class that prospered in the north and then merged with the landowner class to constitute Chile's 'oligarchic bourgeoisie'.[117] Thus Álvarez was part of a traditional social group that neither participated in nor benefited from the political compromise that inaugurated the socioeconomic changes of the second half of the nineteenth century, losing the power held during colonial times to the political centralism of the capital and the new economic and commercial centres in the regions. Once in Santiago, Álvarez probably did not manage to penetrate the circles of the young of the elite.[118] Unlike most young lawyers of his generation Álvarez did not participate in the opposition to the Balmaceda government and did not benefit from the post-civil war political settlement.[119] While most of these lawyers accomplished much in an earlier stage of their careers, fulfilling the new professional functions opened up by the recent economic and political transformations, Álvarez, lacking social capital but with enough economic resources, spent an unusual amount of time in finishing an atypically long and thorough dissertation, which helped him to get a teaching position at the University of Chile, and then went abroad to become the first Chilean to get a doctorate in law at University of Paris.[120] Álvarez came back from Paris as an outsider without much to lose, politically and economically, and as such he was in a position to develop a critical – that is, modernist – response to modernization.

Álvarez was a modernist in the mode of Darío. In their respective fields the quest for professionalization aimed at intellectual autonomy – which eschewed politics

116. They might also explain Álvarez's obsessive craving for recognition of his views, ideas, and influence. This has been a common trait of Chilean intellectuals of mesocratic origin, who in spite of their intellectual achievements fail to achieve social recognition and political influence. Subercaseux offers this interpretation for understanding the egocentrism and resentment of the liberal intellectual José Victorino Lastarria. *Supra* note 68, at 233–40. Pike senses a degree of megalomania in Álvarez's fixation with his own influence. F. Pike, *Chile and the United States, 1880–1962* (1963), 404.

117. Alejandro Álvarez's father cultivated a hacienda in the transversal valleys of the north of Chile. McBride describes the social organization of labour of these lands as less hierarchical, since labour was supplied not by *inquilinos*, as in the central valley, but by wage labourers. 'The provinces of the north have an agrarian situation different from the that of the central region. The regime of the hacienda is less fixed upon it. There is no such clear stratification of society as in the central provinces. The social structure is simpler but more democratic.' See G. McBride, *Chile: Land and Society* (1936), 357–69.

118. Álvarez is absent from Darío's listing of his bohemian (but highly selective, including the president's son Pedro Balmaceda Toro) circle of friends, and was not a member of the group known as Ricardo Montaner Bello's young intellectuals. See respectively R. Darío, *Autobiografía* (1983 [1918]), and Feliu Cruz, *supra* note 67, at 62.

119. 'Álvarez continued his studies in law', Feliu Cruz, *supra* note 67, at 60 Arturo. Alessandri, on the other hand, who was an active participant in the opposition against Balmaceda and later became president (1920–5, 1932–8) under a liberal coalition, had bitter disputes with Álvarez, excluding him from the Chilean delegation to the Pan-American Conference in Montevideo in 1933.

120. This interpretation explains a common though puzzling statement about Álvarez: 'The beginnings of his career were dull and belated. Nothing about that student made him notable for his wit or for his dedication to his studies, the existence of the psychic materials that have elevated him to the exalted regions of human knowledge.' Figueroa, *supra* note 10, at 412. For similar statements see Gamboa, *supra* note 9, at 11, and Álvarez Álvarez, *supra* note 89, at 45.

but brought them close to the political.[121] When composing a poem or legal treatise, they reacted against liberal-romanticism and sought to renovate the tradition engaging in formal experimentation without turning into positivism. For Darío it meant the use of unexplored poetic metre or the introduction into Spanish of French linguistic turns avoiding realism; for Álvarez it meant the exploration of a form of writing that was just appearing among European legal scholars, that was not philosophy, history, or a black-letter textbook, yet turned away from sociological evolutionism.[122] In both cases it entailed the completion of the departure from the Hispanic tradition – initiated by the previous generations of post-independence liberal-romantic publicists – rather than the sheer and complete absorption of Frenchified forms. Interpreted against the backdrop of Latin American intellectual history, *modernismo* carries forward the non-assimilated aspects of romantic-liberalism into the new historical context, defined by the region's incorporation into the world economy and the resulting new phase of modernization, in a way that resonated with positivism's ideas of renovation, in spite of its avowed departure from it.[123] What breaks the line of continuity, however, is the modernists' aestheticism and spiritualism that rejected the positivists' materialism embodied in the individualist motto. Whereas Darío deploys his poetic irony to ridicule the new rich bourgeois,[124] Álvarez, on the other hand, indicts individualism:

> Individualism tends to disappear from legislation, by virtue of the growing association of interests, not only between workers and employers but also among all social classes, since trades, industry, and commerce demand greater co-operation. ... The fight is against atomistic individualism, the basis of modern codes, which has to disappear, because it brings the spirit of struggle and egoism that is a danger for the pacific and ordered advance of society.[125]

Literary *modernismo* was not a school but a broad historical movement that reflected the problematic character of the process of adaptation and assimilation into the new metropolitan centres of power and their cultural protocols. To overcome liberalism and positivism, renew the region's cultural tradition, and pursue a sweeping critique of individualism with the very same tools created and shaped by the social processes from which the problematique arose – modernization – conferred on modernism its specific character. Modernist intellectuals acknowledged the need and inevitability of appropriating the new European cultural forms, means, and

121. Modernists were the 'first to regard themselves as separated from the rest of society, and justify this isolation on the grounds that modern society was base and materialistic, ignorant of the true values which they, as seers and prophets, glimpsed.' J. Franco, *The Modern Culture of Latin America: Society and the Artist* (1970), 23.

122. For the main Chilean exponent of sociological empiricism in legal studies see V. Letelier, *Génesis del Derecho* (1967 [1918]).

123. Adam Sharman argues that modernism was a new sensibility that sustained the romantic project of regional differentiation and thus continued using positivist metaphors of evolutionism, such as race, in the same way as Álvarez was using it. 'Modernismo, positivismo y (des)herencia en el discurso de la historia literaria' in Richard Cardwell and Bernard McGuirk (eds.), *Qué es el modernismo? Nueva encuesta, nuevas lecturas* (1993).

124. For example, Darío's short stories: 'El rey burgues' (The bourgeois king) or 'La canción del oro' (The song of the gold) in *Prosas profanas y otros poemas* (1901).

125. Álvarez, *supra* note 97, at 335. Subsequently Álvarez transposes this line to international law: 'Up to the middle of the nineteenth century, international life was dominated by feelings and passions, especially by national egoism, prejudice of race, territorial aggrandizement, and by other similar selfish interests.' Álvarez, op. cit. *infra* note 196 (1929), 46.

instruments, yet they put them at the service of Latin American thinking.[126] At the turn of the twentieth century, when a wave of modernization dominated under the spell of positivism and scientific determinism, Álvarez pursued renewal, rejecting both the Hispanic past and (individualistic) modernization. I have suggested a reading of this strategy through the lens of modernism; the next section explores how modernism also brought Latin America back into view.

4. The move to international law: Latin Americanism and the politicization of aesthetics (*circa* 1910–20)

This section focuses on the period during which Alejandro Álvarez became an international lawyer. Rather than reciting again the widely known idea of (Latin) American international law, I ask why Álvarez subscribed to a Latin Americanist discourse while entering the field of international law. The revitalization of self-reflection and thinking about Latin America that took place at the turn of the twentieth century sheds light on Álvarez's regionalist repositioning. In particular, I explore the confluence of Álvarez's legal discourse with the Latin Americanism of José Martí and José Enrique Rodó. Two common traits are distinguishable: the retrieval of Latin America as the place where narration and renewal had to be entrenched and, along the way, the articulation of an alternative answer to the question of regional identity and originality.

The previous section argued that the first wave of modernism came to an end in Chile with the revolution of 1891 and only partially revived during the first years of the twentieth century at the time when the reform of legal education paradoxically foreclosed Álvarez's career as a civil law scholar. International law was for Álvarez a second choice. Álvarez started by writing legal briefs for the Chilean Ministry of Foreign Relations, but later he entered the academic field of international law, publishing a number of titles where he deployed, regarding the new subject, the insights he had previously developed in the realm of private law.[127] In his doctoral dissertation Álvarez had considered the family as a social entity and examined the influence it exerted on political, economic, and social phenomena. As regards its historical development, Álvarez distinguished between the traditional Roman family and the modern family, the former characterized by its economic self-sufficiency, and by the absolute and unlimited powers of the head of the household, not answerable to higher authority, the *paterfamilias*, as well as by his obligations in relation to his wife, children, and servants.[128] The modern family, according to Álvarez, is economically interdependent, since it emerged along with the changes caused by industrialization,

126. Cf. Rama, *supra* note 69, at 78.

127. During the first decade of the twentieth century. Álvarez wrote a number of minor pieces and legal briefs for the Ministry of Foreign Relations that paved the way for the publication in 1910 of his most relevant piece on the subject that also marked his debut as a renowned international lawyer. *Le droit international américain, son fondement-sa nature d'après l'histoire diplomatique des états du nouveau monde et leur vie politique et économique* (1910). This publication also runs parallel to the revisionist posture that characterized the sensibilities in most Latin American countries of an elite facing the first centenary of independence.

128. Álvarez, *supra* note 78, distinguishes between the Roman and the modern, the Frankish, the medieval, and transitional models of the family.

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the development of commerce, and colonization. The modern family is constituted by relations of rights and duties that are disaggregated between husband, wife, and children according to its social type, be it a legitimate or natural family, a bourgeois or a working-class family. This juridical conceptualization allowed Álvarez to base his understanding of law according to historical, sociopolitical, and economic conditions. Faced with a new topic, he could deploy the same analysis: international law depends on the influence that social, economic, and political phenomena exert on its development. These historical phenomena are different in Latin America, and moreover this regional distinctiveness fits into the historical evolution of international law. Where there was a traditional European international law based on the balance of power between absolute sovereigns, a new American international law has developed based on the continental fraternity initiated by the independence movement. To sum up, replace international by family and you get Álvarez's American international law.[129]

At the same time, the accomplishment of Álvarez's change of profession paralleled, and therefore may also be explained by, the wider shift in intellectual and literary circles that overcame the formalist perils of *modernismo* by rediscovering Latin America. Thus it is not solely the professional shift in the direction of international law that explains Álvarez's regionalist tenor (which at that time was rather unfamiliar in the discipline of international law), but the Latin American cultural environment that he assimilated and then moved forward through various institutional and professional initiatives.[130]

Álvarez was not in fact the one who coined the term 'American international law', but he gave it a modernist turn and put it into wide circulation by becoming the first Latin American international lawyer who, having penetrated the professional circuits of the centre, postulated America's regional distinctiveness within the international community.[131] What distinguishes Álvarez's use of the term from the previous generation of American writers who argued in favour of an American international law is the way in which distinctiveness is inscribed. Recalling, for a moment, the lettered city in its role of domesticating the rest of the rural world, one has also to keep in mind that, regarding the international realm, lettered people also tackled the complementary task of positioning the whole Latin American region on the enlightened side of the civilized/barbarian dichotomy that determined membership in the family of nations.[132] This first wave of Latin American authors succeeded as regards substantiating the recognition of the former Spanish and Portuguese colonies of America as international subjects and, more importantly, placing the region in the discipline's landscape. During the last decades of the nineteenth

129. Note the parallels in the titles of Álvarez's dissertation (*supra* note 78) and his publication of 1910 (*supra* note 127).

130. Álvarez co-founded the American Institute of International Law (1912), and was an active participant in the effort to codify American international law; see the next section, *infra*.

131. Before Álvarez, nineteenth-century liberal intellectuals such as Lastarria, Alberdi, Alcorta, Quesada, or Tudela used and promoted the expression 'American international law'. See my article, *supra* note 33. Álvarez was conscious of the previous tradition and of the differences between the previous and his own usage of the term. Álvarez, *La reconstrucción del Derecho de gentes: el nuevo orden y la renovación social* (1944), 76.

132. See Obregón's interpretation of Calvo, *supra* note 49.

century, however, these authors were criticized for not giving proper rank to certain rules of international law that either had an American origin or were exclusively in place in America.[133]

Nearly three decades later Álvarez resurrects the first challenges to universalism, though executing typically modernist moves: he dissolves (with reference to America) the civilized/barbarian distinction by revealing America's contribution to the development of international law as well as pointing at aspects in relation to which the New Continent superseded Europe; then he shows the region's distinctiveness that gives rise to those contributions. Therefore the uniqueness of an American international law, able to exert influence over European law, lies not merely in the nature of the rules applicable in the region, as previous authors had suggested, but in the singular historical, economic, and social conditions that those rules mark out – that is, 'American civilization'.[134]

Clearing up the question of civilization by collapsing the civilized/barbarian distinction gave Álvarez more room for asserting regional difference and originality. Being part of the same civilization, once independent, the former Spanish and Portuguese colonies in America could strive for their individual path of institutional development. United by common bonds of origin, regarded by Álvarez as bestowing a common psychology or consciousness, former Iberian colonies constituted the New World's Latin family of nations:

> [T]he former Spanish colonies of America were born simultaneously into political life, forming a family of states in which the pride of independence, the love of liberty and the spirit of fraternity, developed an implacable hatred towards all foreign domination, and eager striving for the formation of a political entity which would protect them against all attacks on their sovereignty and maintain peace among themselves. These aspirations and this hatred, manifestations of one and the same psychological law, and necessary products of the factors and the influences we have just noted, are the source out of which sprang the whole life and evolution of the Latin American peoples in this fundamental period of their history, and explain the attitude naturally assumed by them in the international community of nations.[135]

Pointing simply to the revisiting of the dispute about American international law begs the question of its *raison d'être*, for at a time when Latin America was rather absent from legal debates, Álvarez not only casts about for the psychology of the

133. Almacio Alcorta ((1883) 7 (June) *Nueva Revista de Buenos Aires*, at 422–3) criticized Calvo, who, 'dedicated exclusively to the study of international law, had been able to give to his work a more American unfolding, and as a fellow countryman we would say, more Argentinean . . . If his work has gained for him a name among distinguished publicists, fair is that this name reflects with benefits for these [Latin American] countries so little known in relation with their true importance, and so many times victims of the doctrines that the powerful have secured to establish in their benefit.' It is interesting to note here that within the context of the pre-fragmentation of letters, Alcorta sees full-time dedication to international law as a sort of civil sin. Calvo answered, 'These words entail a reproach that is not comprehensible for an Argentinean juristconsult who follows the world's scientific movement, precisely because the results obtained in that respect are superior to everything that might have been expected. Read the latest editions of Hefter, Sir R. Phillimore, Bluntshli, Fiore . . . and you will see that since then no single book of international law has been published in which Latin America has not occupied the rank that correspond to her among the cultivated nations. ((1883) 7 (Nov.) *Nueva revista de Buenos Aires*, at 632).

134. 'The states of America share the same civilization as the European peoples, yet they have developed under different conditions.' Álvarez, *supra* note 127, at 18. A similar idea is expressed by him, *supra* note 101, at 33.

135. A. Álvarez, 'Latin America and International Law', (1909) 3 AJIL 269, at 273–4.

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Latin race and ensuing legal expressions, but to fulfil this task he sets himself up to re-examine, from a regional perspective, the history of the emancipation movement in addition to the region's subsequent diplomatic history.

When, by the mid-nineteenth century, the founding figures of the emancipation movement failed in their attempt to institute a confederation of American states among the newly independent nations, the succeeding generation of liberal publicists put Bolívar's Latin Americanist dream on hold, while devoting all their energies to the consolidation of the nascent independent nations and the creation of the corresponding enlightened citizen.[136] Conversely, at the turn of the twentieth century, Latin America witnessed dramatic reconfigurations of hemispheric power relations when in 1898 Spain lost its last colonies to the United States, while the latter's influence stretched southwards, vividly materializing in plain interventions – the invention of the state of Panama and the building of the canal – or hegemonic impulses present, for instance, in the Pan-Americanist initiative. In the emerging image of the United States, reflecting a strong and rising power, Latin American intellectuals could see their own failure as well as find a stimulus to search for the causes of their misfortune and theoretical ground to launch renovation. An idealist revolt was conducted against positivist doctrines that had inspired economic, educational, and social policies of the last decades of the nineteenth century. Accordingly, the prolongation of purely formal experimentation – *à la* Darío – no longer seemed a plausible way in which to supersede positivism. Martí and Rodó embodied two types of response entailing the politicization of aesthetics.

José Martí played an important role in the redefinition of the intellectual and of his social place under the fragmenting drifts of late-nineteenth-century modernization. Exiled in New York during the 1880s while working as a correspondent for various Latin American newspapers, Martí found himself in the privileged position of being able to grasp the impact of modernization at the centre as well as to think of the dangers (and gains) for a Latin America that was going through similar developments, but under the increasing dominance of the United States.[137] Martí exemplifies the characteristically interstitial position that Latin Americanist intellectuals have occupied in mediating between the global and the local. By their localist stances, however, the Latin Americanist intellectual mediates by translating the global parlance into a vernacular that will be in consonance with both the cosmopolitan and the regional. Thus Martí's cry for 'Our America' – in opposition to Anglo-America – has to be read as a strategy rooted both in reclaiming an autochthonous

136. The re-emergence of Americanism, the regional sentiment that characterized the early period of post-independence, had to wait until the crisis of scientific positivism and the articulation of an idealist reaction of which modernism was part. Liberal governments, such as the Mexican Porfiriato or Roca in Argentina, having gained national political stability under the aegis of positivism, had no patience for regionalist attitudes that would challenge their central authority. See Hale, *supra* note 35.

137. Among the chronicles written by José Martí during the New York years, *Mother America* and *Our America* had an enormous imprint on Latin American intellectuals. The former was originally a welcome speech to the South American delegates to the first Pan-American conference in Washington. 'In our America there should be no Cain; our America is one. But the other America [United States] refused to sign the project that declared the elimination of conquest from American public law. Then embarrassed, [the US] agreed to eliminate it for twenty years.' *La Nacion*, 3 May 1890, quoted in A. Palacios, *La Comunidad Iberoamericana* (1959), p. 63.

America and its subaltern voices of indios, mestizos, and blacks, and also in the foreign forms, although translated. To bring 'Our America' back to praise her common roots and diversity, knowledge, and history, would unite the Latin American nations in the face of the United States' rising hegemonic power. At the same time, however, it would constitute a platform to renew the Latin American intellectual tradition itself, in a register that supersedes the civilized/barbarian dialectics that served as signifying grid for the nineteenth-century *letrados*.[138] The lettered city possessed a monopoly over what counts as civilization that marked it out from the countryside, but also distinguished modernity from tradition, knowledge from obscurantism. Martí sought an alternative and American knowledge that would simultaneously overcome the lettered people's claim to expertise and be modern without lapsing into traditionalism:

> If, in peoples composed of both cultured and uncultured elements, the cultured have not learned the art of governance, then the uncultured will govern, through their habit of attacking and resolving doubts with their hands. . . . How would these heads of state come out of universities, if there is no university in America that teaches the rudiments in the art of governance, or the analysis of the specific element of the American peoples? The youth come out into the world to make predictions with their Yankee or French 'specs', and they aspire to lead a people whom they did not know. . . . To know the country and to govern it in accordance with this understanding is the only way to liberate it from tyranny. The European university must give way to the American university. The history of America, from the Incas to the present, must be taught hands-on; even at the expense of the archons of Greece. Our own Greece is preferable to the Greece that is not ours.[139]

It is remarkable that Álvarez's three major works of the last century's first decade revolve around Latin America, marking a shift in interest and perspective that corresponded to the emerging intellectual tendency of the epoch. These texts might be read as belonging to an argumentative unity; they retrieve Latin America by going back to the history of its emancipation, providing privileged insight as to its identity (defined by regional fraternity) and economic and diplomatic history, and problems that furnished the element of an American international law. Hence the moment when Álvarez entered the field of international law turned out to be a crucial moment in his intellectual trajectory. The subject matter into which he was moving proved fitting for a Latin Americanist perspective, although the additional diplomatic post simultaneously obtained by Álvarez placed him in a crucial interstitial position. Thus Álvarez was able to locate his Americanism at the discipline's centre and framed it in its language and jargon, and in the process he managed to translate the universal language to form a regional vernacular. Similarly to Martí, Álvarez intervenes in the tradition of Latin American thinking overcoming the civilized/barbarian boundary,

138. The major and most influential exponent of the dichotomy between civilization and barbarism as the central dynamic in Latin American culture was D. F. Sarmiento, *Facundo, Civilization and Barbarism*, trans. K. Ross (2003 [1845]).
139. José Martí, *Our America*, trans. E. Randall (1977), 88.

as seen above, and redefining the search for American identity along lines that required an alternative knowledge.[140]

Álvarez sets out to fill the epistemological vacuum that prevents traditional international lawyers from understanding Latin America: 'American history, in particular that of the Latin nations, has not yet been written with scientific criteria.'[141] Comparable to Martí's creation of an alternative and authoritative locus of speech in contraposition to inner and outer regional voices, Álvarez argues that Europeans have misplaced the focus when studying the nature and ethnography of the New World because they lose sight of its 'sociability and civilization'.[142] Equally, he criticizes Latin American writers for having limited their task to the narration of events of the Latin American history, rather than unfolding its economic and social development, or for having reduced the scope of analysis to single countries in isolation rather than providing an account of the civilization of the Americas.[143]

In other words, by retrieving the historical particularity of 'American civilization', Álvarez achieved what at that point only Europeans and to some extent US-American international lawyers had been able to do, namely attribute universality to a historically contingent discourse of international law – rooted in Europe and its problems and interests. Likewise, Álvarez's highly contested universalization of the history, problems, and interests of the Americas sought not only to preserve but also to boast of her particularities.[144]

> We can conclude that an American civilization exists, that, in spite of being at the end the same European civilization, it has a mark that is its own, and that consequently distinguishes it from her. And this difference is not only ethnographic, but also international, constitutional, and economic.[145]

Typically, the move towards inclusion is accompanied by differentiation:

> American civilization was born and has developed under very diverse conditions than the one of the old continent.
>
> . . .
>
> None of the serious questions that still divide the European states disturbed their solidarity. They have lacked colonies, consequently are unaware of rivalries of that sort. They have not had race struggle or religious wars, nor dynastic disputes, nor the system of balance of power that provides a base of European international life. . . . Solidarity is essentially American and had its most bright manifestations in the fight of the Spanish colonies of this continent for their emancipation, founded in their community of origin and destiny.[146]

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140. 'Education at our universities . . . has been exclusively European, leaving aside its American character, that is, it has been shaped by the old world, without any preoccupation as to the special conditions and development of the new world, that require a tendency in this education to be in harmony with the conditions that distinguish us from Europe.' A. Álvarez, *Conferencia sobre Derecho Constitutional Americano* (1910), at 2.
141. A. Álvarez, *Rasgos generales de la historia diplomática de Chile (1810–1910): primera época de la emancipación* (1911), 15.
142. Álvarez, *supra* note 127, at 23.
143. Ibid, at 23–25, and *supra* note 141, at 15–29.
144. Álvarez's proposition raised opposition at times from Latin American, US-American and European international lawyers; see my exploration of these debates at *supra* note 33.
145. *Supra* note 141, at 30.
146. Ibid., at 24, 27, 57.

The genius of Martí and Álvarez lay in the fact that they did not simply propose a naive Americanism, understood as the quest of the hero who discovers truth in the midst of a sombre Sargasso Sea of sold-out Creoles, as so many facile portraits of Álvarez (and Martí) have suggested. What makes these authors interesting and part of an interrelated intellectual trend is their modernist construction of a Latin American identity. Overcoming the civilized/barbarian boundary did not mean the exaltation of a reified local identity (as *criollismo* or *indigenismo*) but the juxtaposition of the elements of the dichotomy.[147]

In contrast to Martí, however, the elements fused by Álvarez to configure his understanding of regional identity are defined by their Latin roots. José Enrique Rodó exemplifies this parallel strategy of cultural renovation that recasts the feelings of exhaustion and defeat in a search for a Euro-American identity. The idealist-aesthetic renewal put forward in *Ariel*, published in 1900, produced a lasting impact on Latin American intellectuals. Here, vulgarity, utilitarianism, and egalitarian mediocrity are equated with US Americanism and placed in opposition to the virtue, spirituality, and beauty embodied in a Europeanized Latin America – Caliban versus Ariel:

> While it is a necessary condition to progress, the development of specialization brings with it visible disadvantages, which are not limited to narrowing the horizon of individual intelligences and which inevitably falsify our concept of the world. . . . This disjunction . . . is as damaging to the *aesthetic* of the social structure as it is to its solidarity.[148]

Modernization, comprising its internal and international aspects – fragmentation and hegemony respectively – is met by Rodó with a call for the preservation of high culture which incarnates in a Euro-Latin tradition in American soil. The pursuit of beauty would provide not only a sense of wholeness in the face of fragmentation but also a sense of cultural superiority facing US economic and military dominance, thus a point of departure for seeking out originality and renovation. But at the same time, the Anglo and the Latin are complementary poles.[149] Rodó argues less against 'the spirit of Americanism' as such: 'I am well aware that we find our inspirations, our enlightenment, our teachings, in the example of the strong'.[150] Rather, Rodó worries about the disfiguring of the nation's personality by an extreme identification with a foreign model, what he calls US-mania (nordomania) shadowing Latin America's uniqueness. Moreover, according to Rodó's idealism, both poles are destined to complement each other in a mythical future, as in the past Sparta and Athens

147. 'The general conclusion that can be drawn is that international law, considered in its totality, has to be studied with a different conception from the one that has prevailed'. Álvarez, *supra* note 97, at 266. 'The solidarity of the American continent only aimed to repel the interference of Europe and not to isolate the hemisphere from the civilization of the Old World.' Álvarez, *supra* note 135, at 312.

148. J. E. Rodó, *Ariel*, trans. Sayers Peden (1988), 42–3 (emphasis in original).

149. 'What may perhaps be lacking in our collective character is a sharply defined "personality". But in lieu of an absolute distinct and autonomous particularity, we Latin Americans have a heritage of race, a great ethnic tradition, to maintain, a sacred place in the pages of history that depends upon us for its continuation. Cosmopolitanism, which we must respect as a compelling requisite in our formation, includes fidelity both to the past and to the formative role that the genius of our race must play in recasting the America of tomorrow.' Ibid., at 44.

150. Ibid., at 71.

supported the 'most genial and civilizing of cultures':

> America must continue to maintain the dualism of its original composition, which re-creates in history the classic myth of the two eagles released simultaneously from the two poles in order that each should reach the limits of its domain at the same moment. Genial and competitive diversity does not exclude but, rather, tolerates, and even in many aspects favors, solidarity. . . . [E]ventual harmony would not be based upon *unilateral imitation* . . . but upon a mutual exchange of influences, and the fortuitous fusion of the attributes that gave each its special glory.[151]

I suggest that Álvarez's ideas about American originality, the distinction between the Latin and Anglo-Saxon families of nations and their coexistence and complementary within Pan-Americanism, but more importantly his appropriation of the Monroe Doctrine as an international juridical principle, are better understood in the context of and as expressions of the strand of Latin Americanism that Rodó personifies.

Álvarez thinks that at the beginning of the nineteenth century the discipline of international law left behind the traditional division between three schools of thought (naturalist, positivist, and eclectic), giving way to a division between two legal traditions, the Anglo-Saxon and Continental schools of international law. This division stood firm, even though during the century the discipline split up into various nationally circumscribed schools defined by the support that each expressed for doctrines functional to the national interest of their respective states.[152] The promise of renovation that the nations of the Americas united under a Pan-American school of international law embodied resides precisely in the universality that results from its capacity to breach the gap between the two traditions. The Latin family belongs to the Continental school and the United States to the Anglo-Saxon school, yet in the Americas both schools share a set of doctrines peculiar to them together as a single unit.

The search for a Latin identity as a reaction to US-American hegemony, but equally the distinctive idealism, that disposed Álvarez to look for originality in the abstractions of constitutional organization and diplomatic history were common tropes among Latin American elites of the time:

> The similarity between all the nations of our continent and in particular between those of former Spanish-America is, from the political, institutional, and exterior point of view, such that since the period of emancipation it provides the general basis for an American and Hispanic-American constitutional law and international law. Only having studied and expounded the history of our continent from these three aspects will we be able to appreciate the *originality* of the New World, in relation to the formation and development of the nations that constitute it, and to value its contribution to the progress of universal civilization.[153]

In Álvarez's flirting with the Monroe Doctrine the complexity and problematic character of his *Latinoamericanismo* appears in full bloom as well as the elements

151. Ibid., at 73–4 (emphasis in original).
152. 'French, Italian, German, North American, Russian or Slavic and Japanese schools.' Álvarez (1929), *infra* note 196, at 44.
153. Álvarez, *supra* note 141, at 272 (emphasis added).

that set him apart from the streams explored above.[154] First, Álvarez performs on the doctrine a classic operation among sociolegal jurists. The Monroe Doctrine should be understood in a non-originalist manner, to express the needs of the whole continent and not simply of the US national interest, not because of the hermeneutical plasticity of the declaration, but because of the underlying sociological and historical environment of the Americas. Thus the social and historically defined rationale of the declaration exceeds the intention conferred on it by the United States. Second, Álvarez resignifies the doctrine while working out these sociohistoric conditions.

In Álvarez's mindset, as in Rodó's, the opposition between the Anglo and Latin families, that is, the antagonism between the United States and Latin America, calls for a resolution in a mythological future of unity in mutual complementation. Yet Álvarez's dissatisfaction with US foreign policy in Latin America, based on first-hand professional experience as well as on an awareness of its historical record of interventionism, makes him specially sensitive and wary of US diplomatic initiatives as regards the region, which brings him closer to Martí, arguing very much in his line that the 1889 Washington Conference marked the inception of US imperialism.[155] But, unlike Martí, Álvarez also sees US hegemony in the region as inevitable and fulfilling a benevolent role when, in a non-self-interested manner, the United States leads the region and protects it from external threats. Even more for Álvarez, the US policy of hegemony does not always function to the detriment of Latin American nations, when, for example, the United States intervenes to secure the internal order of a state affected by chaos and misgovernment.

The writings of Martí and Rodó exemplify the reaction of Latin American intellectuals in coping with the influence of the United States in the Americas. Álvarez's complex and contradictory stance towards the Monroe Doctrine not only participates in this tradition, but also reveals a passage of Latin American diplomatic history in which international law and institutions were devised to counterpoise US power; at the same time the formulation and use of these strategies brought to the surface intra-regional grievances among Latin American nations.[156]

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154. In his annual State of the Union address to Congress in 1823, the US president James Monroe declared that the western hemisphere was closed to future colonization and consequently any attempt by a European power to occupy or control any nation in the western hemisphere would be viewed as a hostile act against the United States. At the time of its proclamation, this statement of foreign policy, known as the 'Monroe Doctrine', expressed the United States' moral commitment against European colonialism. Subsequently, however, it came to be interpreted as asserting a special area of influence over Latin America, including, according to Roosevelt's corollary of 1904, the right to intervene in their domestic affairs. A. Álvarez, *The Monroe Doctrine: Its Importance in the International Life of the States of the New World* (1924).

155. *L'histoire diplomatique des Républiques Américaines et la Conférence de Mexico* (1902), 49, and *supra* note 127, ch. 5. As a legal adviser to the Chilean government Álvarez was sent to Washington in 1908 to work on an amicable resolution of the 'affair Alsop', a dispute between the Chilean state and Alsop Company (a Chilean corporation in which some US citizens were stakeholders) regarding claims of Alsop against Bolivia that originated in the territory ceded to Chile after the War of the Pacific. Álvarez worked with State Department solicitor James Brown Scott, reaching in 1909 an agreement that was not recognized by incoming Secretary of State Knox. For an extensive account of the affair see Pike, *supra* note 116, at 139–42.

156. For example, territorial disputes between Chile and Argentina in addition to controversies over disarmament were behind the Argentinean opposition to the Chilean initiative to codify 'American international law' (in the Pan-American Conference of 1923 in Santiago) that was seen by Argentinians as a Brazilian and Chilean alliance against their interests. For the Argentinian position against Álvarez see D. Antokoletz, *Tratado de Derecho Internacional Público* (1951), 59–60: 'It is very doubtful that the fundamental rights of states

Álvarez's particular interpretation of the idea of an 'American international law', as well as his initiative to codify international law in the Pan-American context, were the strategies he formulated to contain US hegemony.[157] Reinterpreting the Monroe Doctrine was part of the larger effort to make use of Pan-Americanism in a way that would press the United States to recognize, under the banner of 'American international law', the sovereign equality of all nations of the Americas and thus impose an obligation to refrain of intervening in the domestic affairs of other states. The United States firmly opposed the idea of an 'American international law' and Álvarez's projects of codification.[158] In the face of opposition Álvarez made use of his interstitial position between the Americas and Europe to pursue this objective. For instance, Álvarez argued for a greater participation of the League of Nations – meaning the involvement of European states – in the American process of codification. In Álvarez's mind, the spectre of European intervention in the western hemisphere would prompt US willingness to subscribe to the principles of 'American international law' in order to remove the European threat.[159]

In this section I have examined the overlap between the streams of modernism of writer-intellectuals Martí and Rodó and the legal intellectual Álvarez, suggesting that Álvarez's initial interventions in the field of international law might be better understood in the context of the Latin Americanist trend that spread over the region at the turn of the twentieth century. While positivism was worn out as an intellectual paradigm, those lawyers who did not retreat into natural law were left without a discursive substratum to give analytical depth to their legalism or to communicate with the larger intelligentsia. Conversely, Álvarez remained modernist. Specifically, his scholarship of this period might be described as modernist not only because he maintained the professional and innovative voice cultivated before entering the field of international law, but also because this entry is marked by a retrieval of Latin America. Rather than reifying a regional identity, Álvarez sought to invent, as regards the discipline of international law, a rhetoric of particularism, namely an alternative but authoritative voice that echoes a distinctively Latin American archive, a memory to invoke and legacy to transmit. Once this alternative disciplinary archive was installed, Álvarez could attach to it his own professional subjectivity, and operate on its basis for the rest of his long career.

(independence, juridical equality) have been of American origin and then incorporated into the universal international law.' See generally Pike, *supra* note 116, at 403. In the same vein, Chile had to wait until the resolution of the of the Tacna-Arica dispute with Peru, pending since the end of the War of the Pacific, to break its traditional regional isolationism and its opposition to the otherwise regionally accepted principle of compulsory arbitration. Pike, *supra* note 116, ch. 7.

157. For example, the idea of 'American international law' was used by Latin American diplomats to support the creation of an American Society of Nations, independent from the League as a way of establishing an intra-regional organization with competences that would have been larger than those of the Pan-American Union, a proposal that was opposed by the United States. Álvarez, *La Cinquième Conférence Panaméricaine et la Société des Nations* (1924).

158. Thus, at the Pan-American Conference of 1928 in Havana, Álvarez's project of a code of public international law was rejected due to US-American opposition. On the other hand there was agreement on Bustamante's code of private international law.

159. This interpretation is suggested by Pike, *supra* note 116, at 222–3.

5. Renewal as a modernist rhetoric and institutional experimentation (1920s–30s)

The previous sections situated Álvarez's thinking in connection to a Latin American canon of modernist authors who were involved in various of the many expressions of writing. I continue the effort of contextualization exploring the cultural environment of the decades of the 1920s and 30s, when the bulk of the modernist impulse broadens somewhat to include art in its various expressions. I pursue two objectives in this final section. First, I briefly examine the parallelism between art's revisiting of the question of regional identity and the vigorous efforts to codify international law taken up by Latin American governments and international lawyers. I specifically propose to understand Álvarez's unwearying call for renewal, and especially his use of the categories of 'race', 'psychology of peoples', or 'civilization' in parallel with tropes that were common in the Latin American modernisms of the period. Second, a cursory reference to the problem of interpreting the particularities of Latin American modernist art in comparison with its European versions prepares the ground for developing an account of the same type of difficulties in relation to Álvarez's work. Using the codification of international law as an example, I show how power relations within the discipline of international law efface the specificity of Álvarez's codification effort and why a situated analysis is necessary to understand the meaning of international law in its particular setting of articulation.

Before the 1920s literary modernism had no counterpart in the Latin American visual arts. Rupture with the naturalist and romantic pictorial traditions came at a moment when Latin American elites, who had always been looking to Europe for inspiration – even when trying to be original – felt that the advent of the First World War symbolized the exhaustion of European civilization.[160] Modernist Latin American intellectuals, who had been migrating to Paris for decades, but who came back to Latin America after the war, were much more willing to assimilate and depart from the European legacy, and to look within the Americas for inspiration.[161]

At this point, Latin American intellectuals' pilgrimage to Europe was much savvier. Once the civilized/barbarian barrier had been dissolved, Latin American artists did not simply seek exposure but also cultural exchange.[162] The fact that European modernist artists were in search of the irrational, the unconscious, and the primitive, for both questioning European bourgeois rationality and culture and renovating their academicist artistic tradition, gave Latin American artists the impression that Europe no longer offered all the answers, and at the same time that a space was opened to them as people closer to primitive forces. Regaining the primitive, however, created all sorts of problems for the Latin American artist. The representation of the primitive became difficult to sustain once it could not be denied that, with a

160. Oswald Spengler's *The Decline of the West* was a bestseller in Latin America. Franco, *supra* note 121, at 82, 118–19. Álvarez describes the First and Second World Wars as social cataclysms.

161. Franco, *supra* note 121, at 82.

162. David Craven presents a Spanish-American genealogy of modernism from Darío to Gaudí, Rivera, and Picasso, that had Barcelona's cultural milieu as the crucible of an anti-colonial and non-Eurocentric modernism. 'The Latin American Origins of "Alternative Modernism"', (1996) 36 (autumn) *Third Text* 29.

few exceptions, ethnic origin, class position, and cultural allegiances placed artists closer to Europe than to the primal cultures of Latin America. At the same time, modernist taste for experimentation and the new required a rejection of the historically available representations of the indigenous.

Particularities of Latin American modern art responded to the ways in which the critique of representation was synthesized, the juxtaposition of elements signifying old and new was carried out, and the relationship of modernists with the circles of power and politics was articulated. These three interconnected aspects also had a bearing on Álvarez's modernism of the 20s and 30s.

As regards representation, moving away from figurative art towards abstraction was not a necessary precondition for renewal. Diego Rivera, a paradigmatic figure of his generation, exemplifies the Latin American character that the problem of representation acquired in the art of the region.[163] Rivera was a cubist painter in Paris before returning to Mexico to join the post-revolutionary government's muralist programme, and his struggle was waged less against the Western tradition of painting as such than in opposition to its deployment in Latin America, in particular regarding the lack of a vernacular imaginary, given the force exerted by the romantic naturalist art of European painter-travellers.[164] In this context Rivera returned to figurative painting, committing himself to a socially and politically engaged art that depicts the America that had not been represented before. Rivera's solution, however, was equally distant from romantic naturalism as from passive enactments of indigenous America.[165] His imaginary evokes a distant and glorious past consisting of America's founding pre-Columbian cultures and the current presence of active, combative, and mobilized indigenous forces. Modernity, symbolized by the machine, engineering, and the domination of nature, is to be joined by the rural-indigenous forces embodying the forces of the earth in the construction of the Americas of the future.

At first the attachment to traditional media and figurative representation places Rivera at odds with the ideal of experimentation as defined by European vanguards. In the same vein, seen in retrospect, Álvarez's selection of what should be subject to renovation looks rather slender in comparison to the bulk of the international legal tradition that was retained.[166] Whereas Rivera used oil on a surface to paint America, Álvarez made use of the old law of peoples – including its conventional

163. Ibid., at 40–1.
164. Ades, *supra* note 40, *passim*.
165. E.g. Diego Rivera's 'Pan-American Unity Mural', currently at City College of San Francisco.
166. See *Le droit international nouveau dans ses rapports avec la vie actuelle des peuples* (1959). This publication goes beyond the three periods of Álvarez's trajectory analysed in this article. However, I make reference to it because it is partly a memoir, partly a massively detailed description of his talks and publications and comments on his work delivered by illustrious international lawyers, but mainly a comprehensive revision and development of his thinking based on the bulk of his oeuvre. Álvarez proposes the creation of three new sciences to investigate the life of people: (i) a science of the evolution of the life of peoples, chiefly from the international standpoint, that would show the unfolding and transformation and evolution of peoples; (ii) a science of the psychology of peoples, mainly from the international standpoint, that would grasp the mentality, sentiment, and immaterial factors of social life; and (iii) a science of the renovation of the basis of social life that would provide the insights to renovate political sciences and economics and create the science of law, a social science and an international science.

preoccupations, the dialectics between sovereign autonomy and war versus international community and peace – to give America a new signification, by showing that the autonomy–community opposition was harmonized on American soil by common bonds of fraternity.[167]

Nevertheless, the outcome was undoubtedly new. In Rivera the new element rested on style and image, in Álvarez innovation came with the recombination of materials to convey America's international legal distinctiveness. If American fraternity as opposed to the European balance of power was at the root of the particularity of the New World, its nature was not to be expressed in traditional legal sources deriving from the will of autonomous sovereign states, but in the psychology of the peoples of the Americas that fashioned a proper regional legal consciousness. In this sense, 'consciousness', 'race', and 'psychology' are the media that Álvarez's modern international law uses to compose an accurate picture of America.[168] Rather than a romantic expression of the spirit of the *Volk* – in the mood of the historical school – its modern character is affirmed by the constitutive juxtapositions between urban and rural, religious and secular, Anglo and Latin, native and European. In both Rivera and Álvarez the domestic juxtapositions are replicated in the continent as a whole, offering a new horizon for recombination and synthesis, converging in the Pan-American dream, which had acquired visual expression in Rivera. In Álvarez it materialized in various scientific and diplomatic meetings as well as codification projects submitted on the occasion of successive Pan-American conferences and meetings of the Committee of American Jurists in Rio de Janeiro, which had the task of drafting American codes of public and private international law.[169]

It might be paradoxical to describe as modernist cultural movements that confine renovation to the substitution of subject or style of representation without problematizing representation as such, or that propose to add new sciences to the study of the life of peoples, without questioning or even sanctioning a European definition of the yardstick used to define what constitutes a people.[170] However, this characterization might make sense if what are redeemed or rejected are understood as the products of a strategic allocation of universality and particularity, as a way to resolve the problem of originality and the anxieties of influence that have haunted generations of Latin American intellectuals. Modernist Latin Americans of this period were remarkably explicit about distinguishing between universal and particular as a strategy of assimilation and incorporation of influence. The Uruguayan constructivist painter Joaquín Torres García, for instance, articulated an answer that left an imprint on generations of artists and intellectuals. Once back in Latin America, troubled by the recurring urge to adapt to its context the aesthetic language apprehended in

167. See, e.g., ibid., part 1, section 1, ch. 7.
168. On the psychology of peoples see ibid., part 2, section 2, ch. 1.
169. The following publications were written by Álvarez on the occasion of different meetings: 1912, *supra* note 101; 1923, *infra* note 181; and 1927, *infra* note 188.
170. The Álvarez of 1959 has grown conventional in contrast to previous periods, which illustrates the general fatigue that Latin American modernism suffered by the middle of the century, before beginning a further round of renovation during the 1960s and 1970s.

Europe, Torres inaugurated a systematic answer to the problem of originality and influence. Torres's School of the South calls for the inversion of referents to found an autonomous Latin American artistic tradition:

> I have said School of the South: because, in fact, *our North looks South.* For us there must not be a North, except in opposition to the South . . . This correction was necessary; because of it we know where we are.[171]

The correlation between Torres and Álvarez runs deeper than the shared plea for an American school of art or international law. Torres disentangles abstraction – a distinctive trait of modernism – from Europe by declaring it to be universally embodied in geometrical forms and shapes. Universality was reconciled with particularity by giving pre-Columbian content to abstract geometric shapes. In this way Torres is equally distant from reified versions of American race as from European modernists who appropriated African art to oppose their academicist counterparts in Europe. Conversely, Torres's abstraction was meant to recover pre-Columbian symbolism to reveal the possibilities of an art that was able to express a new and autonomous vernacular identity. Álvarez, in turn, recovered the old nomenclature of the law of peoples to declare it universal, reconciling American international law with the European tradition by opening it to the region's particularities. Then again, following this strategy, both could ascribe the impulse of renewal within an American lineage without recourse to Europe. When Torres discovered abstract and bidimensional artefacts in pre-Columbian art he altered the chain of influences to place native civilizations as precursors of the 1930s avant-garde. The need for recovery implies an absence that performs a central argumentative role, for the historical gap between past and modernist present is explained by centuries of intellectual colonialism that has condemned art to foreign imitation. Álvarez, equally, placed the reconstructive gesture within the cultural tradition of the Americas. Although other international lawyers had tried similar appropriations rooted in the pre-Columbian past, Álvarez centred all renovation on the history of American emancipation. Álvarez might be seen in parallel not only with Rivera but also with Torres, because he shares with the latter the ability to fashion a legal discourse that was at the same time modern – universal – and rightly Latin American.

Having given a general idea of the Latin American intellectual environment of the 1920s and 30s, I now turn to examine Álvarez's professional involvement during this period. The Harvard law professor Manley Hudson wrote in 1923 to Alejandro Álvarez the following two short letters:

> Geneva, July 27th 1923. My Dear Dr Álvarez, I have just seen a copy of your very excellent work: 'La Codificación del Derecho Internacional en América.' I wonder if this has been translated into English. It seems to me it ought to be, if this has not been

171. Quoted by M. C. Ramirez, 'Inversions. The School of the South', in M. C. Ramírez and H. Olea et al. (eds.), *Inverted Utopias. Avant-Garde Art in Latin America* (2004), 73.

> done. It will be a great help to all of us. I am very anxious to get a copy for my own use and for the Harvard Library.[172]

> Geneva, September 11th 1923. My Dear Dr Álvarez, I'm very anxious to have all of the literature dealing with the codification of international law in South America, and I should be very grateful if you could supply me with any literature on this subject. I have been inspired to make this request by the statement in your letter to the President of the Assembly.[173]

In contrast to what this correspondence suggests, there is a shared belief in present-day international law that Álvarez was peripheral.[174] For example, when remembering the history of codification, we, international lawyers, might recall the 'Harvard Research in International Law' group that in 1927 and under the leadership of Hudson started a codification effort.[175] Moreover, the editorial politics of search engines and electronic data collection makes it extremely easy to type in 'codification AND international law' and retrieve Hudson's 'The Progressive Codification of International Law' published in the *American Journal of International Law*.[176] By reading this article we would learn, among other things, about the efforts to systematize the development of international law in the western hemisphere. In particular we would find out about the recommendation of the Third Conference of American States (held in Santiago, Chile, in 1923) to re-establish the Commission of Jurists that had met for the first time in Rio de Janeiro in 1912 and which would for that reason meet again in 1927 to codify 'American International Law'. We would also learn that the United States would be represented in the 1927 session by James Brown Scott and that the Pan-American Union sought the co-operation of the American Institute of International Law to draft a number of codification projects to be submitted to the meeting in Rio de Janeiro. Hudson also cautions us about the nature of the projects, for only 'few of them deal with matters of first importance, and some of them seem to be quite beyond the range of probable realization'.[177] It is less likely, however, that without recalling Hudson's request to Álvarez, revealed only by stumbling on his personal correspondence, the spectre of Álvarez in Hudson's writing would have been revealed to us.

La codification du droit international – ses tendances, ses bases (1912) was written by Álvarez on the occasion of the first meeting of the American Juridical Committee to support his proposal to elucidate the methods of codification as well as the

172. Manley O. Hudson Papers. Harvard Law School Library. Correspondence B. Period 2: 1919–44. MS Box 5, folder 5–23. Hudson is referring to Álvarez's *La codificación del derecho internacional en América: trabajos de la Tercera Comisión de la Asamblea de Jurisconsultos reunida en Santiago de Chile Santiago* (1923).
173. Handson Papers, *supra* note 172.
174. Leonhard has suggested that 'Lauterpacht, like many jurists from the United States and Britain, considers the Latin American international lawyers to belong to the Continental tradition. It is likely that any distinction between Continental and Latin American international jurisprudence is overlooked because there is a feeling that the contributions of Latin Americans to the study of international law are not significant enough to merit such a distinction'. Leonhard, *supra* note 17, at 677. H. Lauterpacht, *The Development of International Law by the International Court* (1958), 127–34, where, sustaining the claim that there has been no alignment of Anglo-Americans against Continentals in the ICJ, he subsumes Latin Americans under the latter.
175. R. P. Dhokalia, *The Codification of Public International Law* (1970), 68–71.
176. (1926) 20 AJIL 655.
177. Ibid., at 657.

distinction between universal and American international law, before quickly proceeding to vote on the content of concrete articles. Álvarez thus opposed the codification project presented by the Brazilian government and drafted by Epitacio Pessôa.[178] In the plenary session, Álvarez's book was recognized as an invaluable contribution (by the US delegate John Bassett Moore[179]) and sent by Álvarez as a gift to the Harvard Law Library.[180] It was under Álvarez's initiative that the Third Conference of American States held in Santiago in 1923 decided to re-establish the Commission of Jurists to continue the task of codifying 'American international law'. For that occasion Álvarez prepared another special report to support his position, namely the publication mentioned in Hudson's letter to Álvarez.[181]

All these texts extensively present the themes Hudson discussed in his article: codification as a means of systematically developing international law in the aftermath of war and social change. If we credit Hudson and thus think that these codification projects only dealt with matters of little importance or beyond possible realization, we might expect that the fact that they never became positive law responds to the poor quality of the drafts or the inadequacy of the Pan-American setting. It is therefore unlikely that we would look in the direction of power and politics to understand the fate of Álvarez's codification of 'American international law'. What would we find if we actually considered international power relations? What were the rules proposed by Álvarez in his codification projects that elicited strong resistance? For instance, the 1923 report included two projects of codification that Álvarez had presented to the American Institute of International Law in 1917 as well as a plan to codify international law that listed not only traditional subject matters, such as the sources of international law, but also new subjects to be included, such as international labour law, international administrative law, international trade law, and the international rights of individuals and associations. The codification projects contained articles recognizing the sovereign equality of all American nations as well as the duty not to interfere in the domestic or external affairs of other nations:

> **Project No. 2**
>
> **Project about the fundamental rights of the American Continent.**
>
> **Independence, liberty, equality and solidarity**
>
> *Article 1*
>
> The nations of America, recognizing the universality of international society and of its rules, declare, however, that they have the right – affirmed since their independence – to establish by common consent, the rules they consider advisable, in particular the

178. See *Projecto de Codigo de Direito Internacional Publico por Epitacio Pessôa* (1911).
179. Moore was US-American delegate to the Pan-American conferences, international law professor at Columbia University and later judge at the Permanent Court of International Justice.
180. See copy at Harvard Law School: 'Gift of Alexandre Álvarez', 'Hommage de l'Auteur'.
181. *La Codificación del Derecho Internacional en América* (1923). After the Santiago conference, Álvarez also published a scholarly piece specially tailored for an audience of international lawyers, '*Le nouveau droit international public et sa codification en Amerique*' (1924).

foundational bases on which American international society should lie, in accordance with their historical past, their needs and aspirations.

Article 5

No state may intervene in the internal or external affairs of an American state against its will. The sole lawful intervention is friendly and conciliatory action, without any character of coercion.

Furthermore, Álvarez was not only secretary-general of the American Institute of International Law, but also one of the drafters of the codification project that Hudson quotes, mentioning only Brown Scott and the Pan-American Union as publisher.[182] We can identify the imprint of Álvarez in this new set of codification projects by noting the distinction made between general and particular principles, rules, customs, practices, or usages; those that are particular are continental, regional, particular to a school, special, national, or rules of civilization. We can also note similarities between rules in both projects:

Project No. 8

Fundamental Rights of American Republics.

Article 1

The following principles are declared to constitute American Public Law and shall be applied and respected in America by all Nations:

1. The American Republics, equal before international law, have the rights inherent in complete independence, liberty, and sovereignty. Such rights can in no way be restricted to the profit of another Nation, even with the consent of the interested American republics.

. . .

4. No Nation has a right to intervene in the internal or foreign affairs of an American Republic against the will of that Republic. The sole lawful intervention is friendly and conciliatory action without any character of coercion.

The 1927 meeting went badly for Álvarez's codification projects, and the Pan-American Conference of 1928 in Havana shattered the effort of codifying 'American international law'. The staunch opposition of the United States to recognizing the international legal standing of a duty of non-interference in the affairs of the rest of the states of the Americas was predicated on the rights conferred on the United States by classical international law.[183]

182. *Codification of American International Law* (1925). The advisory committee of jurists that prepared the projects was composed of James Brown Scott, Alejandro Álvarez, Luis Anderson, Pierre Hudicourt, José Matos, Rodrigo Octavio, and Antonio Sánchez de Bustamante.

183. See J. Basset Moore, *A Digest of International Law* (1906), vol. 6, 247, for an account of the circumstances under which intervention was thought to be lawful. Pike, *supra* note 116, at 226, describes the stance adopted by US-American diplomats at the Pan-American conference in Havana: 'Charles Evens Hughes, head of the United Sates delegation, indicated that his country would never consider abandoning its rights of intervention, allegedly sanctioned under certain circumstances by international law as interpreted by leading authorities throughout the world.' 'From time to time there arises a situation most deplorable and regrettable in which sovereignty is not at work, in which for a time and within a limited sphere there is no possibility of performing the functions of sovereignty and independence. . .What are we to do when government breaks down and

In the face of Álvarez's defeat, I cannot resist the temptation of completing the list of works to which Álvarez might have drawn Hudson's attention following his request: *Une nouvelle conception des études juridiques et de la codification du droit civil*;[184] *La Conférence de Juristes de Río de Janeiro et la Codification du Droit International Américain*;[185] *Rapport-questionnaire et projets présentés à la deuxième session de l'Institut américain de droit international à la Havane*;[186] *Projet d'une Déclaration des Droits et Devoirs des Etats et des Nations – et Plan de la Codification du Droit International*;[187] *Considérations Générales sur la Codification du Droit International Américain*.[188] I am compelled to stop, however, for an uncanny feeling invades these final paragraphs.[189] On re-reading the invitation I received to contribute to this publication that ultimately gave me the courage to write about Álvarez, I am reminded that regardless of the number of interpretative manoeuvres of re-signification to which one subjects the discourse of international law, Latin American international lawyers continue to be peripheral:

> The *Leiden Journal of International Law* (LJIL) would like to invite contributions to the first of a proposed series of *festschriften* to appear in the LJIL, each of which will focus on the work of a leading international legal scholar from 'the periphery'.[190]

There is no historic necessity behind the peripheral location of Latin American lawyers; for this same reason I have put forward a situated account of the domestic and international forces that produce dependent and peripheral international lawyers.

American citizens are in danger of their lives? . . . Now it is a principle of international law that in such a case a government is fully justified in taking action – I would call it interposition of a temporary character.' Charles E. Hughes, Report of the Delegates of the Untied States of America to the Sixth International Conference of American States, Held at Havana, Cuba, January 16 to February 20, 1928, at 14. See also Charles E. Hughes, *Our Relations to the Nations of the Western Hemisphere* (1928), 81–3. The United States finally renounced any right of intervention in the Americas in a series of treaties signed during the 1930s. See S. Bemis, *The Latin American Policy of the United States. An Historical Interpretation* (1943), chs. 12–15.

184. Published in 1904 and translated into English in The Modern Legal Philosophy Series, The Science of the legal method (1917) and The Continental History series, The Progress of Continental law in the 19th century, by various authors (1918) at 3–64 and 151–262

185. *Revue Générale de Droit International Public*. Vol. XX, 1913.

186. The American Institute of International Law', Washington, Institut américain de droit international, 1917.

187. *Rapport. Unión Juridique Internationale Séances et Travaux*, vol. 2, *Novembre 1919* (1920).

188. Rio de Janeiro Imprensa Nacional 1927, which was written by Álvarez on the occasion of the mentioned meeting in Rio

189. S. Freud, *The Uncanny* (2003 [1919]). My familiarity with Latin America, which allowed the present contextualization of Álvarez's work, brings out a range of coincidences revealing a typically Latin American desire to be genuinely central in the face of the repressed realization of our peripheral condition. This article was initially written to fulfil the same degree and at the same law school where Hudson gained his SJD, roughly a century before me (and during the period when Álvarez presented a lecture on the renewal of international law), yet, obviously, under the guidance of a different supervisor, who happened to be the Manley Hudson Professor of Law.

190. http://www.ljil.leidenuniv.nl/index.php3?c=181 (last visited 1 November 2005), inverted commas in the original.

6. Conclusion: the plurality of meanings of Alejandro Álvarez

The picture I have offered of Alejandro Álvarez, situated against the background of the Latin American context, fits neither into the purely transnational idea of an 'invisible college of international lawyers',[191] nor into a narrative about the emergence of the modern international legal profession centred on Europe. As I cautioned before, this contextualization of Álvarez also avoids Latin Americanizing his ideas, that is, revealing their truthful meaning by means of a connection with the author's native cultural context. On the contrary, this representation highlights Álvarez's negotiation of his own location for the construction of an authoritative – cosmopolitan and Latin American – locus of speech. Writing in French about Latin American history,[192] in Spanish about European modern law and society,[193] in English about Latin American international law,[194] Álvarez constantly juxtaposes arguments, audiences, and theories embedded in conflicting cultural and geopolitical contexts. In Chile, Álvarez tried to revamp legal thinking by bringing in the latest insight from French sociolegal scholarship.[195] In relation to the Americas, he presented various initiatives to codify 'American international law'. In Europe Álvarez advocated the recognition of the contribution of the Americas to the development of international law and in 1921 he co-founded and then directed the Institut des hautes études internationales at the University of Paris. In the United States Álvarez co-founded the American Institute of International law in 1912 and between 1916 and 1918 he toured that country to promote the reconstruction of international law at various universities.[196] While arguing for the application of the methods of social sciences to the study of law he rejected empiricism; while trying to bring law closer to politics he brought politics closer to international ethical norms.[197] Álvarez's recombination of European legal materials for the constitution of a Latin American disciplinary voice stands as a 'vindication of juridical autonomy against the juridical

191. O. Schachter, 'The Invisible College of International Lawyers', (1977–8) 72 *Northwestern University Law Review* 217.
192. A. Álvarez, *L'histoire diplomatique des républiques americaines et la Conference de Mexico* (1902).
193. Álvarez, *supra* note 97.
194. Álvarez, *supra* note 135.
195. *Supra* note 89 and accompanying text.
196. In 1914 the Division of International Law of the Carnegie Endowment for International Peace organized a Conference of Teachers of International Law in connection with the annual meeting of the American Society of International Law. The purpose of the conference was to consider further steps in the development of the study of international law in American universities. Following the resolution adopted in the conference calling for the invitation of prominent experts in international law to lecture at US universities, Álvarez was entrusted by James Brown Scott, director of the Division of International law, with the task of delivering lectures during the academic years of 1916–17 and 1917–18. Among other universities, Álvarez lectured at California, Chicago, Columbia, Harvard, Iowa, Michigan, Minnesota, Princeton, Stanford, Tulane, and Yale. At Harvard Álvarez delivered three lectures in December 1916, at the time Manley Hudson was pursuing his SJD. See Álvarez, *International Law and Related Subjects from the Point of View of the American Continent. A Report on Lectures Delivered in the Universities of the United States, 1916–1918* (1922). An expanded version of the lectures was published in 1929: A. Álvarez, 'The New International Law', (1929) 15 *Transactions of the Grotius Society* 35.
197. See *La reconstrucción del Derecho de gentes: el nuevo orden y la renovación social* (1944), 31.

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absolutism of universal international law', articulating a discourse of 'juridical anti-colonialism'.[198]

I have suggested that a close reading of Álvarez's writings is not well suited to grasping the mentioned interplay between texts, contexts, and readers. Conversely, I have probed a series of overlaps among literary, intellectual, and legal modernisms in Latin America – in the works of Álvarez, Darío, Martí, Rodó, Rivera, and Torres – that expound a common rhetorical tactic. At moments, Álvarez pursues a strategy of differentiation and distancing from Europe, allowing a particularism that asserts special or preferential status to the Latin American region. At other times, claiming sameness in history or civilization, he places Latin America side by side with Europe, indirectly securing a pre-eminent place for the region. These tactics are rhetorical in that they conceal the final meaning, politics, and envisioned objectives regarding their articulation with respect to the Latin American context.[199] In this sense, Álvarez's modernism reinvented the meaning and uses of international law as a strategic foreign policy tool in the interest of Latin American countries, a reinterpretation that contributed also to the construction of a Latin American identity and thinking. Yet, recently, Martti Koskenniemi's thoughtful and influential research on the intellectual history of international law has been quite severe in its assessment of Álvarez's thinking and the use he made of his non-European voice to secure a place in French professional circles.[200] Koskenniemi is right; Álvarez strenuously fought for a place in Parisian diplomatic and academic circles, mostly pleasing his European colleagues with a cosmopolitan but unthreatening voice. An interpretation of Álvarez based on a close reading of his texts,[201] however, is less helpful in capturing the ways in which he sought to secure a position in Europe to gain sufficient intellectual and professional capital to mobilize in favour of Chile and Latin America, that is, in favour of the contexts that were of political and cultural significance to Álvarez.[202] In other words, although articulated in Europe, Álvarez's

198. Dupuy, *supra* note 3, at 12–13.

199. I have borrowed from literary studies this technique of interpreting cultural products of minority agents by identifying the signs that shutter meaning, rather than uncovering their formal, textual signification. See D. Sommer, *Proceed with Caution, when Engaged by Minority Writing in the Americas* (1999).

200. 'Using his non-European voice and his interest in a regional American law, he could pass as an innovator while ensuring ready acceptance by the mainstream. For the claim to renew legal doctrine because it has failed to reflect "social reality" is a deeply conservative technique that deflects criticism away from "reality" and those responsible for it. By directing his attack against an academic enemy that was largely a straw man, Álvarez remained unthreatening for the legal establishment and could be celebrated as a wonderful manifestation of the profession's liberality.' Koskenniemi, *Gentle Civilizer*, *supra* note 38, at 304.

201. 'Even a close reading indicates only two rather undramatic problems: formalism and Eurocentrism. In particular, Álvarez refrained from identifying his enemy. If law was based on interdependence, why did it now (and since the mid-nineteenth century) fail to reflect it? In the former case, Álvarez should have identified the political causes (or actors) that prohibited "life" from receiving an authentic expression in law. But the impression is that he always identified the problem with an obsolete legal doctrine – thus either inflating the importance of a marginal profession, or failing to indicate why one should be concerned.' Ibid., at 305.

202. It is worth noting that Alejandro Álvarez bequeathed to the University of Chile his personal library, his collection of medals (instructing them to be melted down and the resulting gold used as determined by the law school), and his watch, as well as the amount accumulated in his bank account, that had to be spent on the creation of a seminar on international law and on a prize for the best monograph on public international law written at an American university. He also instructed his remains to be cremated and returned to Chile. In 1960 Álvarez explained his intention in a letter addressed to the dean of the law school: 'What used to

international law achieved final signification in Latin America, according to the position that this specific sphere of practice established with domestic, transnational, and international relations at a specific historical point.[203]

The recognition of this patterned divergence illuminates sharply competing claims regarding the meanings of international legal practice at various locations at the core and periphery.[204] As to the international lawyers themselves, this insight reveals the imprint of the centre/periphery division in lawyers' disciplinary subjectivization or professional prestige, or in the delimitation of their realms of practice.[205] However, suspending an abstract model of central/peripheral oppression in favour of a historical and context-specific analysis that avoids the solidification and over-determination of the relationship which international lawyers establish with the sociocultural milieus of residence, allows one to grasp Álvarez's heterogeneity of meanings. It is neither that the effacement of the peripheral identity of the international lawyer at the centre should be reversed (that is, by Latin Americanizing Álvarez) nor is it that the centre/periphery distinction has been proven wrong (by assuming sameness). In contrast, the interpretative turn put forward here makes it possible to comprehend how Latin American international lawyers themselves, aiming at increasing the region's leverage in the international world, have deployed the dichotomy between universality and particularity at their convenience, or have strategically drawn the limits of the non-European world to dwell on its margins. Assuming, for the purpose of contextualization, that the region has a predetermined content, impedes an understanding of the roles that international lawyers played in the construction of the very same regionalist discourses that created Latin America. It also obscures Álvarez's negotiation of his own position,

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be my Alma Mater has always occupied a preferential place in my mind. Having been dedicated for many years, and almost exclusively, to the study of public international law, I have formed myself the conviction that the study of this discipline should be realized under bases different from the traditional ones. . . . By bequeathing my library and the mentioned valuables my purpose is to give life to an institution that strives to deepen and renew these studies and that offers a prize that encourages those who demonstrate their understanding of the relevance of the said studies.' Unclassified papers, Colección Alejandro Álvarez, Universidad de Chile.

203. I have mentioned above Álvarez's use of the League to oppose US hegemony in Latin America. Álvarez also used his professional position to advance Chilean interests in respect of conflicts with other Latin American countries. In 1920 Álvarez informed the Chilean minister of foreign affairs that French intellectuals would support Chile in the conflict with Peru about the realization of the plebiscite of Tacna and Arica as parallel to other plebiscites in Europe. Álvarez narrates his encounters with Lapradelle and Fauchille, editors of the *Revue Générale de Droit International Public*, and says that they asked him to write an article about plebiscites in the face of the new international law. Archivo Ministerio de Relaciones Exteriores, Vol. 823c, Legación de Francia. See also the long correspondence that Álvarez exchanged with the Colombian international lawyer Yepes, discussing the ways in which to advance Álvarez's ideas to support Chilean or Colombian foreign policies. Unclassified papers, Colección Alejandro Álvarez, Universidad de Chile.

204. For example, international law might be interpreted as having facilitated European colonial expansion and informal intervention on the one hand and, on the other, as having bestowed on Latin American states of the nineteenth century sovereign rights (but not to other regions of the periphery) that shielded them from direct foreign interference but not from economic domination.

205. On the one hand, international lawyers' double consciousness pulls their allegiances between the discipline and the local context. On the other hand, even when crossing the centre/periphery boundary the international lawyer redeploys the distinction. For example, we might think of the case brought by Nicaragua to the ICJ involving US paramilitary action in Central America as an intervention of US-American international lawyers to change domestic politics, rather than understanding it as an intervention of the Latin American discipline of international law.

his engagement with, belonging to, and moving back and forth between the two worlds.

Regional particularism, the most emphasized aspect of Álvarez's work, resurfaces in a distant reading, less as a trope truly embedded in the local than as a rhetoric of particularism to tackle the universal. Avoiding the narrative that allocates origin and consolidation in a linear trajectory from Latin America to Europe can help one identify Álvarez's engagements with the universal discipline of international law through a particularistic rhetoric, namely a purposive use of local distinctiveness. In spite of the time that has elapsed, Álvarez still unsettles international lawyers' self-confidence, for his trajectory speaks of events, contexts, and ideas that are unknown or unfamiliar to most international lawyers, yet are central to the development of modern international law. Whereas international lawyers have been asking for ages if 'international law is really law', Álvarez's legacy makes us consider a different question: is international law really international? Only after careful comparative research – capable not only of bringing in the incommensurable historical temporalities joined together by international law, but also of translating them into mutually constitutive differences – the discipline of international law may live up to its professed cosmopolitanism embodied in the adjective 'international'. To retrieve Álvarez might be a fertile starting point.