

A Latin American in Paris: Alejandro Álvarez's *Le droit international américain*

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Abstract

This article, focusing on Alejandro Álvarez's *Le droit international américain* (1910), locates Álvarez in his second home, Paris, within the French sociological/historical school of 'solidarist' legal thought. Álvarez's book provides a heroic image of Latin America developing its own regional international law away from the decadent forces of Europe and making significant contributions to international law generally. To tell his story, Álvarez also highlights the dark side of his native continent, in part to sell Álvarez as a practitioner of a bold method. Álvarez adopts racial hierarchy as part of his explanatory model, displaying the tendency of Latin Americans of Spanish descent to identify with and distance themselves from the metropole while separating themselves from the 'other'. And despite the progressive manifesto rhetoric of the book and its claims for the Latin American role, the substance of Álvarez's international law was ultimately fairly domesticated for his French audience.

Key words

Alejandro Álvarez; French solidarism; international legal theory; Latin America; narrative

I. INTRODUCTION

A large crowd gathered on 5 June 1908 in the grand amphitheatre of the *École libre des sciences politiques* in Paris to hear Louis Renault and Léon Bourgeois speak on the results of the two Hague Peace Conferences. Renault was the main speaker for the session and Bourgeois served as its chair, but was also ready to go on at length, as is clear from the transcripts. Renault, professor of law at the University of Paris, was one of the key figures at the second Hague Peace Conference, and has been described by Martti Koskenniemi as its 'unofficial legal adviser'.¹ Bourgeois, senator, and former president of the Council of Ministers, who had led the French government in the mid-1890s, headed the delegation to both the Hague Conferences. We are told, in fact, that he turned down a request to form a new government in Paris in order to head the French delegation to the first Hague Peace Conference in 1899.² Renault explained to his audience that he wanted to tell them about the work of the two Hague Conferences as a 'simple witness'; he then made a self-mocking pun, stating

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1. Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870–1960* (2002), 284.

2. *Ibid.*, at 285.

that he wanted to disengage from the role of ‘an occasional diplomat, which is not to say a second-hand diplomat [*diplomate d’occasion*]’ – and here the published version of the text indicates in parentheses, as it does throughout the transcript of both Renault and Bourgeois’s speeches, ‘laughter’.³ Obviously, this was a congenial, welcoming crowd ready to show its appreciation for two returning heroes. And Bourgeois would end the session on a note of immense optimism:

We are given an amazing spectacle, gentlemen, the image of law rising all of a sudden amidst armed forces and, you can be certain, confronting even the most powerful of armies with a force even more powerful, that of the will of the civilized world.⁴

I have begun with Renault and Bourgeois in the Parisian lecture hall because my subject, the Chilean international lawyer Alejandro Álvarez, made Paris one of his homes. As a diplomat for Chile and also a significant participant at The Hague, Álvarez had studied law with Renault in Paris in the late 1890s. He spent more and more of his time in Paris until he would be mostly stationed there in the 1920s, and most of his books were published by a Parisian publishing house under the first name ‘Alexandre’ rather than Alejandro. Thus, as I focus on one of his earliest works, *Le droit international américain*, I should like to point not only to its emphasis on Latin America, but also to the French context of its appearance in 1910 in Paris under the name Alexandre Álvarez.⁵

In this article I not only locate Álvarez in Paris, but specifically situate him as a Chilean lawyer amid the French sociological/historical school of legal and, most importantly for us, international legal thought headed by Louis Renault and Antoine Pillet. I shall begin with the rhetoric of modernism with which Álvarez opens *Le droit international américain*, trying to set off a modern sociology against a tired classicism. His method, I shall explain, drew from the Comtean, perhaps more accurately post-Comtean, sociology so important to the academic environments of both Paris and Santiago. But Álvarez was writing directly within the context of the ‘solidarist’ movement in French politics and thought that is the context of the ‘cluster’ of scholars led by Renault and Pillet. And perhaps some of the characteristics of this Parisian environment were overdetermined by certain parallel characteristics of Chilean intellectual culture.

Le droit international américain displays a heroic vision of a western hemisphere, but primarily Latin America, that developed its own regional international law away from the decadent forces of Europe, an international law that in its progressivism ultimately made significant contributions to international law writ large. I shall turn to argue in this article that in order to tell his story, Álvarez creates a narrative that also highlights the dark side of his native continent, in part to sell himself as

3. ‘Conférence de M. Louis Renault’, in L. Renault, *L’oeuvre de la Haye, 1899 et 1907, Conférence faite à l’Ecole libre des sciences politiques* (1908), 3.

4. ‘Quel spectacle nous donne, messieurs, cette image du droit se levant tout à coup au milieu des armées, et soyez-en sûrs, s’imposant à la force militaire la plus puissante, grâce au soutien d’une force plus puissante encore, à la volonté du monde civilisé’. *Ibid.*, at 36. All translations are by the author.

5. A. Álvarez, *Le droit international américain: son fondement – sa nature d’après l’histoire diplomatique des états du nouveau monde et leur vie politique et économique* (1910), 1. Note that the volume bears the publication date of 1910 but states that the printing was done in November 1909.

the bold historical sociologist practising the method of his teachers. His narrative is also immensely hierarchical, indeed explicitly adopting racial hierarchy. Ultimately, Álvarez's book reflects his 'criollo consciousness', that effort of Latin Americans of Spanish descent at simultaneously identifying with and distancing from the metropole – in his case, as increasingly for other Latin Americans, Paris – while creating distance as a criollo from the other strata of his native continent. *Le droit international américain* reads as a manifesto not only for the intellectual style of solidarism but also for the importance of Latin America within the larger development of international law.⁶ Yet, as I shall conclude, despite his progressive rhetoric, Álvarez is articulating an international law that is ultimately rather familiar to the legal scholars who wrote alongside him in Paris and sat in the auditorium in June 1908 to hear Bourgeois and Renault; in a sense, he has written with an avant-gardist, modernist rhetoric an ultimately domesticated message.

2. A MODERN TEMPER

Álvarez opens *Le droit international américain* with a peculiar sentence: 'International law has languished or remained, up to the last few years, one of the least honoured or reputable branches of political science.'⁷ This opening sentence is interesting in part because of the clear identification of international law as a subset of political science – and I shall return to that. But it is particularly interesting because of the challenge to international law's prestige. It is, of course, a common opening move among writers to begin a book by recording a sense of loss or declension out of which the narrative of the book will be propelled, usually by the force of a type of authorial heroism. But international legal writing has a particular tradition of opening with a sense of challenge or an expression of modesty for the discipline itself, often suggesting that somehow the true establishment of international law is off somewhere in the future or, more recently, somehow already located in the past.⁸ And it has been a particularly common move to open with the challenge as to whether there is any such thing as international law in the first place, beginning with John Austin's assertion that international law is not law as such because there is no force commanding the compliance of states as there is within a state.⁹ Henry Wheaton similarly began his *Elements of International Law* – and I have chosen Wheaton because of his importance to Latin American jurists¹⁰ – with a statement

6. I shall be elaborating on the theme of 'criollo consciousness' in international law identified by Lilita Obregón in her dissertation, 'Completing Civilization: Nineteenth Century *Criollo* Interventions in International Law', SJD dissertation, Harvard Law School, 2002, at 105.

7. 'Le droit international est resté, jusqu'à ces dernières années, l'une des branches le moins en honneur de la science politique.' Álvarez, *supra* note 5, at 1.

8. Think for example of the word 'fall' in the subtitle 'The Rise and Fall of International Law' of Koskenniemi, *supra* note 1.

9. John Austin, *The Province of Jurisprudence Determined* (1995 [1832]), 124.

10. It is worth noting that the Argentine international lawyer Carlos Calvo produced a two-volume translation of Wheaton's *History of the Law of Nations in Europe and America*: E. Wheaton, *Historia de los progresos del derecho de gentes, en Europa y en América*, trans. Carlos Calvo (1861).

that ‘There is no legislative or juridical authority, recognized by all nations, which determines the law that regulates the reciprocal relations of States.’¹¹

This is international law’s challenge and the common cause of its lack of confidence. But this lack of confidence is not the predicament Álvarez identifies. Rather, he is worried about a loss of prestige that international law has suffered at the hands of the very practitioners of the discipline, the writers of international law texts. ‘This sort of discredit’, he inveighs, ‘has resulted largely from the sharp differences between the principles identified by publicists for this part of law and the practices followed by various nations.’¹² In essence, he worries about the wayward expressions of international legal publicists.

Álvarez has conveyed a lot in these two opening sentences. In the theorist/state-practice opposition, he has come down firmly on the side of state practice. And on his savaging of the ‘publicists’ he turns quickly to criticize them for not taking sufficient account of the ‘profound transformations of society, especially in the nineteenth century’ and instead ‘conserving their predecessors’ conceptions as to the origin, the nature, and the extent of international law’.¹³ Here Álvarez is marshalling standard tropes to identify an outmoded discipline caught in an orthodox routine as he talks about the publicists’ ‘conserving their predecessors’ conceptions’. And a few pages later, after an abbreviated history of international law, he will repeat almost the same formulation: ‘Unfortunately, the modern publicists have not sufficiently taken into account the transformations of international society or the influence of the phenomena we have just described.’¹⁴ Theirs is a static, natural law vision of international law. They believe, Álvarez tells us, in the ‘universality of all of the principles of international law’ and do not sufficiently appreciate its evolution.¹⁵ As he explains, they are ‘[i]mbued with what one might call a classical spirit’ and affirm each of the elements of their international legal system in the belief that ‘the international community could not exist without them’.¹⁶ They are, it seems, unable to explain the actual ‘variation of numerous rules’¹⁷ that coexist in the world.

In response to this legal classicism, Álvarez speaks of the ‘emancipation of the political sciences from juridical criteria’.¹⁸ Two decades after the publication of *Le droit international américain*, Álvarez asserted in a lecture to the Grotius Society in

11. H. Wheaton, *Elements of International Law*, ed. G. Grafton Wilson (1936 [1836]), based on R. H. Dana’s edn (1866), 3.

12. ‘Cette sorte de discrédit provient, en grande partie, de la différence très marquée entre les principes que les publicistes attribuent à cette partie du droit et les pratiques suivies par les divers pays’. Álvarez, *supra* note 5, at 1.

13. ‘Le motif principal du désaccord tient à ce que les auteurs modernes, ne tenant pas suffisamment compte des profondes transformations de la société, surtout au XIXe siècle, ont conservé la même conception de leurs devanciers sur l’origine, la nature et l’extension des règles du droit international’. *Ibid.*

14. ‘Malheureusement les publicistes modernes n’ont pas assez tenu compte des transformations de la société internationale, ni de l’influence des phénomènes que nous venons d’indiquer’. *Ibid.*, at 7.

15. ‘[U]niversalité de tous les principes du droit international’. *Ibid.*, at 8.

16. ‘Imbus de ce que l’on appelle esprit classique, ils acceptent toutes ces données, croyant que sans elles, la communauté internationale ne pourrait exister’. *Ibid.*

17. ‘[L]a variation des nombreuses règles’. *Ibid.*

18. ‘[L]’emancipation des sciences politiques du critère juridique’. *Ibid.* It is worth comparing the legal classicism derided by Álvarez with the American legal classicism described by W. M. Wiecek in *The Lost World of Classical Legal Thought: Law and Ideology in America, 1886–1937* (1998).

London, 'Up to the present day, International Law has been considered an exclusively juridical science, on a par with civil law, and having the same characteristics.'¹⁹ Indeed, he argued, 'Everything outside juridical rules, notably the acts of the Governments or the other aspects of the life of nations, was considered to be foreign to the Law of Nations and was studied separately in courses having no connection with it.'²⁰ Álvarez was aiming his attack at unnamed foes, with the suggestion, of course, that these purveyors of juridical formalism represented the orthodoxy that almost entirely filled the landscape of French international law teaching. It is true that Lassa Oppenheim, in his article on 'The Science of International Law' for the second issue of the *American Journal of International Law* (AJIL) in 1907, observed of the attackers of his positivism, also unnamed foes, 'Most French and Romanic and also some British and American jurists will stigmatize my standpoint as "unscientific", for they consider it inferior work to collect the "crude" real rules of international law without regard to the "higher" rules of the law of nature.'²¹ Never mind that the French law faculties had increasingly added teaching positions in the social sciences within the law faculties themselves.²² The significant point here is the tenor of an anti-formalist, anti-classicist rhetoric that Álvarez shared with Oppenheim.

If we return to Álvarez's assertion that the 'modern publicists' of international law did not sufficiently take account of the 'profound transformations of society, especially in the nineteenth century', it is worth underscoring the word 'society'. In *Le droit international américain* Álvarez alternates relatively interchangeably between various references to the 'international community', 'international society', 'society of nations', and 'modern international life'. There is something telling, however, in the first such reference on the first page of his book where Álvarez refers simply to 'society' without modifying it by 'international'. That is not, I think, accidental. Rather, I see Álvarez attempting to highlight the focus of his international law study on society and the fact that social change constitutes the main variable in international legal development. To that point, Álvarez takes most of a page to list the various factors that have taken international society in what he calls a 'new direction'. There he includes everything from the birth of new states to the multiplication of the means of communication, from economic growth to the 'ceaseless' growth of democracy, and the refinement of moral aspirations – but he finally ends his list on an intellectual plane with the 'new orientation of philosophy characterized by the

19. A. Álvarez, 'The New International Law', (1930) 15 *Transactions of the Grotius Society* 35; read before the Grotius Society on 16 April 1929.

20. *Ibid.*, at 35–6.

21. L. Oppenheim, 'The Science of International Law: Its Task and Method,' (1907) 1 AJIL 314, at 330.

22. According to Fritz Ringer, 'The number of law faculty positions in the social sciences and related disciplines advanced from 85 in 1865 to 198 in 1919'. F. Ringer, *Fields of Knowledge: French Academic Culture in Comparative Perspective, 1890–1920* (1992), 282. In part, as Ringer tells us, this is because of the broad educational goals of students in French law programmes: 'Roughly half of the French law students sought the *licence* in law as a kind of generalist degree, without intending to enter the legal professions. From the late nineteenth century on, moreover, the French law faculties offered courses, as well as a doctorate, in economic, social, and political studies, so that the high enrollments per age group in the French law faculties of the early twentieth century were due in part to the expansion of the social sciences as a field of study within those faculties'. *Ibid.*, at 53.

fall of metaphysics and the predominance of the method of observation'.²³ Here he is clearly announcing the victory of scientific method.

3. ÁLVAREZ AND THE SOCIOLOGICAL TURN

The forces listed by Álvarez as moving international society are quite varied, a range of social, political, economic, and ideological forces. All of these would, for him, come under a larger 'social' umbrella. Although Álvarez is hardly precise here – and I shall return to that – he is, I think, adopting a Durkheimian instinct of identifying sociological investigation as covering the range of the social sciences rather than a specifically designated area of human activity. As Terry Nichols Clark has explained in his study of the social sciences in France, 'For Durkheim, sociology neither claimed a subject matter separate from the individual social sciences, nor did it approach the same subject matter with a distinctive methodology; sociology comprised the "system" or the "corpus" of the individual social sciences.'²⁴ The 'social', for Álvarez, similarly covers a range of human thought and activity.

Álvarez's catalogue of forces is long, with none seemingly privileged over the others. But I should like to return to the last item in his list, the change he identifies in the 'method of observation'. This emphasis on the 'method of observation' is the heritage of the positivism growing out of the philosophy of Auguste Comte, with his focus on empiricism and comparison. By positivism here I am not referencing the legal positivism that focused on the state-centred determination of the rules of international law, the positivist pole of the positivism vs. natural law opposition that has so often been the obsessional debate among international lawyers,²⁵ but rather the scientific philosophy of Comte. Álvarez derived a heavy imprint of Comtean method through both his Latin American and French cultural environments. Comtean positivism is repeatedly identified as a key stage in the development of Latin American cultural and intellectual production. The historian Edwin Williamson, for example, has identified a stage characterized by a liberal ideology that was 'derived from the positivism of the French philosopher Auguste Comte' and committed to a 'scientific method as the only means to truth: by observation and experiment it was possible to arrive at a knowledge of the facts and the basic laws of nature and society'.²⁶

In his study of the Latin American philosophy of law in the twentieth century, Josef Kunz describes the late-nineteenth-century background at the start of his book as entirely Comtean, and devotes a chapter to the 'predominance of Auguste

23. '[L]a nouvelle orientation de la philosophie caractérisée par le discrédit de la métaphysique et la prédominance de la méthode d'observation'. Álvarez, *supra* note 5, at 6.

24. T. Nichols Clark, *Prophets and Patrons: The French University and the Emergence of the Social Sciences* (1973), 170.

25. In the specific Latin American context, H. B. Jacobini, in his study of international legal theory in Latin America, describes its development almost entirely as a struggle between positivists and naturalists, identifies nineteenth- and twentieth-century Latin American international lawyers as positivists, naturalists, or eclectic; and spends a good deal of time describing the European positivist, naturalist, and eclectic background before he even crosses the Atlantic to begin the Latin American story. H. B. Jacobini, *A Study of the Philosophy of International Law as Seen in Works of Latin American Writers* (1954).

26. E. Williamson, *The Penguin History of Latin America* (1992), 298–9.

Comte'.²⁷ According to Kunz, the 'real ruler of Latin-American philosophy in the later part of the nineteenth century was Auguste Comte'.²⁸ As he develops his sketch of legal philosophy in Latin America, that influence extends into the twentieth century through the mediation of scholars in the Comtean tradition, among whom he numbers the French republican sociologists Émile Littré (a direct follower of Comte) and Émile Durkheim. In Kunz's narrative, the move away from a Comtean philosophy of law and the development of various neo-Kantian, Thomistic, and Bergsonian schools did not take place until after the First World War. At the time Álvarez was writing and publishing *Le droit international américain*, legal philosophy in Latin America, as described by Kunz, was dominated by Comteanism. Indeed, one finds the same impression in the specific Chilean context. Iván Jaksic, in his study of philosophy in Chile, characterizes the period stretching from 1870 to 1920 with an unambiguous chapter title, 'The Era of Positivism'.²⁹ In Jaksic's account, explaining that Chilean positivism was perhaps more Comtean than the positivisms of other Latin American countries, he asserts that 'Chilean positivists were selective in their adoption of Comtean views, their main source of inspiration', and, for example, they emphasized evolutionism less than positivists in other Latin American countries.³⁰ Jaksic argues that from the '1860s until its demise in the 1910s, Chilean positivism was guided by a strong anticlerical inspiration'.³¹ Essentially, Comte was used to attack the Church and the role it played in Chilean education.

We often see a similar depiction of Comtean positivism in France. It was not by chance, nor was it an after-the-fact, flight-of-the-owl-of-Minerva event that, as Terry Nichols Clark tells us, the 'further triumph of positivist ideas was symbolized in 1903 at the unveiling of a statue of Auguste Comte, conspicuously placed in the Place de la Sorbonne'.³² In France, Comte's followers had splintered into several subgroups, such as the group forming around Frédéric Le Play and another forming around Pierre Laffitte, each with their own institutional setting. We are sometimes told in the French context that the direct tie to Comte had become somewhat attenuated and that the second-generation positivists were absorbed with an anti-clerical attack on the metaphysics of the Church. I would argue, however, that it was Comte's methodology that had a greater impact, if somewhat revamped, stripped of its determinism, and expanded in causative elements beyond the purely social, so that, for example, Émile Littré might complain about Comte's ignoring psychology, morals, and political economy.³³ Indeed, the various elements caught up in Littré's expanded causative net look very much like Álvarez's laundry list of causative factors acting on international society.

27. J. L. Kunz, *Latin-American Philosophy of Law in the Twentieth Century* (1950), 3–16.

28. *Ibid.*, at 4.

29. I. Jaksic, 'The Era of Positivism: 1870–1920,' in Jaksic, *Academic Rebels in Chile: The Role of Philosophy in Higher Education and Politics* (1989), 41–66.

30. *Ibid.*, at 65.

31. *Ibid.*

32. Clark, *supra* note 24, at 103.

33. J. A. Scott, *Republican Ideas and the Liberal Tradition in France, 1870–1914* (1966), 91. Scott also states, 'When in the 1870s Darwinian evolutionism became dominant in France, the eclipse of the positivist theory of social development was assured. Littré nevertheless retained and applied till the end of his life the essential and most fruitful elements of the positivist *method*.' *Ibid.* (emphasis in original).

If the variety of causative elements identified by Álvarez extended over a broad range, each of the individual elements was also extremely vaguely articulated. This was particularly the case with Álvarez's numerous references to 'psychology' in an environment where there was an immense growth of social psychology, including the appearance of Gustave Le Bon's anxious study of crowd psychology and crowd upheavals in 1895.³⁴ In 'The New International Law' of 1930, which repeats many of the themes of *Le droit international américain*, Álvarez spoke of the coming into being of 'a new psychology, a new mentality, a new ideology, the fruit of new circumstances and environment, as well as of new political, philosophical and social concepts'.³⁵ This is little more than a bouillabaisse. In this sentence from 1930 it is difficult to know where psychology starts and mentality ends, and where mentality starts and ideology ends. Álvarez has thrown together the whole range of human thought and feeling, and I think it also reflects the causal net of *Le droit international américain*. The various references to 'psychology' in *Le droit international américain* do not relate to any precise social scientific definition of psychology, so that, for example, he will speak of the 'international political psychology of countries', which he then explains is 'their ideas, their aspirations and the necessities of their politics, as well as the ways in which they identify the best means for obtaining satisfaction'.³⁶ Álvarez had taken a sociological turn, but it was one that entertained a wide range of causation. As I shall suggest in the next section, we would best look for the focus of his analysis of international society in his adoption of solidarist principles.

4. SOLIDARITY IN INTERNATIONAL LAW

In his discussion of the international mentality, Álvarez talked about international 'solidarity', as, for example, when he complained that the modern publicists tended to view international relations solely in the context of the absolute independence of states rather than understanding their 'increasing solidarity or their interdependence'.³⁷ The seemingly fleeting references to 'solidarity' were hardly a chance choice of words, for, as Fritz Ringer tells us in his study of French academic culture from 1870 to 1920, solidarity 'was something like the official ideology of the Radical Republic'.³⁸ And John Scott tells us similarly: 'It not only became a quasi-official republican philosophy but it deeply affected thought and teaching on many social subjects'.³⁹ It was, in fact, so close to an official philosophy of the Radical Republican government in France that the government sponsored an international congress of social education as part of the *Exposition universelle* of 1900 to promote

34. G. Le Bon, *The Crowd: A Study of the Popular Mind* (2002 [1895]).

35. Álvarez, *supra* note 19, at 37.

36. '[L]a psychologie politique internationale des pays qui y ont pris part, c'est-à-dire leurs idées, leurs aspirations et les nécessités de leur politique et les moyens qu'ils estimèrent les meilleurs pour leur donner satisfaction.' Álvarez, *supra* note 5, at 46.

37. '... leur croissante solidarité ou de leur interdépendance'. *Ibid.*, at 7.

38. Ringer, *supra* note 22, at 210.

39. Scott, *supra* note 33, at 159.

solidarism.⁴⁰ And members of René Waldeck-Rousseau's cabinet played a part in the event on the Champ de Mars, including the French minister of education, Édouard Millerand, who chaired the congress's first session. And Léon Bourgeois, a figure already familiar from his sharing the stage with Louis Renault at the École libre des sciences politiques, was appointed president of the congress and given the honour of delivering addresses to both open and close the congress.⁴¹

The philosopher Alfred Fouillée may be identified, as John Scott has done, as the 'founder of French solidarist philosophy',⁴² and the philosopher Henri Marion wrote an early influential text, *Treatise on Moral Solidarity*, published in 1880.⁴³ Nevertheless, the key figure in the growth of solidarism was indeed Léon Bourgeois. In 1897 he published a small book entitled simply *Solidarité*.⁴⁴ Martti Koskenniemi in his *Gentle Civilizer of Nations* has described solidarism as essentially advocating 'a third way between retreating *laissez-faire* liberalism and ascendant socialism, emphasizing the duties that citizens owed to each other and suggested far-reaching social legislation to deal with the consequences of the great depression of 1873–1895'.⁴⁵ In that characterization I would emphasize the third way rather than the far-reaching social legislation. As John Scott has explained, and very much in the context of Léon Bourgeois, 'The aim of *solidarité* was not social equality, the abolition of capitalism, and the inauguration of socialism. *Solidarité* stressed the necessity of maintaining the existing bases of society, of making only those social concessions that would avert the danger of revolution.'⁴⁶ It is, I think, appropriate to view the relative conservatism of Bourgeois's philosophy, and, in fact, the Radical Republican governments of the first decade of the twentieth century did not push through much in the way of social legislation. This was, ultimately, a party dominated by a provincial middle class with a strong attachment to the centrality of private property and with little taste for social reform.⁴⁷ As one of its internal critics from the left wing of the party complained in 1906, 'It is a contradiction that the people should be at once sovereign and downtrodden.'⁴⁸

In the context of Álvarez, I should like to point also to parallel developments in Chilean politics, where there was also a Radical Republican party (deriving its name from that of the French party) which was generally in the mix of liberal government coalitions. And none of those various liberal parliaments seemed to produce much in the way of social legislation. Indeed, as Simon Collier and William Slater have noted in their history of Chile, 'Up until 1914 the Parliamentary governments passed just

40. *Ibid.*, at 179; see also W. R. Keylor, *Academy and Community: The Foundation of the French Historical Profession* (1975), 166.

41. Scott, *supra* note 33, at 180. Scott tells us as well that the famous historian Charles Seignobos and the sociologist Émile Durkheim, both of whom will be referred to later, participated in the event.

42. *Ibid.*, at 159.

43. *Ibid.*, at 79.

44. In the preface to his slim volume, Bourgeois refers to the appearance of the word 'solidarité' in the discourse of political writers, but it is essentially a neologism: 'Le mot de *solidarité* n'est entré que depuis peu d'années dans le vocabulaire politique'. L. Bourgeois, *Solidarité* (1998 [1897]), 11.

45. Koskenniemi, *supra* note 1, at 285.

46. Scott, *supra* note 33, at 176.

47. A. Sedgwick, *The Third French Republic* (1968), at 78. Indeed, Sedgwick tells us, 'the nation under the Third Republic was safely in the hands of the *petit propriétaire*'. *Ibid.*

48. *Ibid.*

two laws dealing with social issues', and, as they further explain, neither of those two laws was very ambitious in scope.⁴⁹ In part, the Chilean tendency reflected the heritage of Latin American liberalism, which derived from an independence movement that did not alter the basic structure of society.⁵⁰ Nevertheless, in both France and Chile, as it turns out, the clerical/anti-clerical divide seemed finally to separate the parties much more than differences in their social legislative agenda. These parallel developments took place in quite different political cultures, but the parallels do suggest some resonance for Alejandro Álvarez.

One of the key elements of solidarism was that it was explicitly not statist in perspective. That was true of Bourgeois, whose solidarism was not intended to enhance state power.⁵¹ It was true of Durkheim, who focused on social rather than political interdependence.⁵² And it was particularly true of one of the leading French legal theorists, Léon Duguit. Duguit would write that 'we have spontaneously organised the institutions of the modern state simply to give a positive sanction to these obligations [on the government]. Sociological jurisprudence has sought to determine the facts from which they are derived. Personally, it seems to me clear that its real basis is social interdependence.'⁵³ In essence, the state's obligations under public or administrative law were driven by the force of social interdependence. Basically, for Duguit, the state was an instrument of society, not vice versa. It is, then, this non-statist sociology that can be discerned in Álvarez's sociological jurisprudence.

5. ÁLVAREZ'S AMELIORATIVE NARRATIVE OF INTERNATIONAL LIFE

When Álvarez applied the solidarist approach to international law, the groundwork had been laid by the various figures already referred to above, including Antoine Pillet. Pillet, who was prominently cited in Álvarez's *Le droit international américain*, asserted that international law was an outgrowth of international society, which

49. S. Collier and W. F. Slater, *A History of Chile, 1808–2002* (2004), 195.

50. As Edwin Williamson describes independence in Latin America, 'This transformation had come about without a comparable revolution in the economy or in society: no new classes had risen to power and the oligarchic structures of the colonial period remained unchanged. Latin America was still composed of aristocratic societies of whites employing a mass of variously coerced non-white labour in agrarian or mining economies which exported primary products in return for manufactures or luxury goods. In this important respect the *ancien régime* had not disappeared, rather the monarchical state that had allowed it to function effectively had broken down'. Williamson, *supra* note 26, at 233. Álvarez himself makes a very similar point, stating, 'The principal political leaders of Latin America created an emancipation movement that was solely *political* and not *social*, like the French Revolution, because it did not involve the destruction of an 'Ancien Régime,' but only severing the tie of subjection that connected the colonies to the Metropole' (Les principaux hommes politiques de l'Amérique latine se rendirent compte que le caractère du mouvement d'émancipation était *politique* seulement, et non *social* comme celui de la Révolution française, car il ne s'agissait pas de détruire un 'Ancien Régime', mais seulement de rompre le lien de subjection qui liait les colonies à la Métropole). Álvarez, *supra* note 5, at 33.

51. John Scott explains that 'Bourgeois vehemently repudiated the idea that social legislation would in any way necessarily strengthen the power of the state or introduce state socialism as practiced in Germany. He rejected the notion that the state should interfere in economic life to the extent of controlling or regulating the productive process or the employer–labor relationship. . . . He wished to reduce the state to the position of a mere subordinate agency set up to carry out decisions made by society and embodied in positive law'. Scott, *supra* note 33, at 177.

52. Ringer, *supra* note 22, at 210.

53. L. Duguit, *Law in the Modern State*, trans. F. and H. Laski (1919), 42–3.

in turn was characterized by 'interdependence, the social law of our era'.⁵⁴ Álvarez will refer to interdependence on multiple levels. For him, 'All the factors that have exercised such an influence on the internal law of each country have also made themselves felt within international law.'⁵⁵ If we return to his list of factors in the development of international society, it is quite clear that he is describing social, political, and cultural *progress* with his marshalling of words such as 'perfection', 'progress', 'ascendance', 'prodigious development', and even 'ceaseless'. His is clearly a progressive story, and central to his narrative is an increase in democracy. 'Finally', he asserts, 'the influence of public opinion has moved increasingly in the direction of rapport among states and increasingly imprints a democratic and humanitarian aspect on the laws by which they are to be governed.'⁵⁶

If Álvarez's is an ameliorative narrative, he has levelled an attack, as I mentioned earlier, against a legal classicism that had envisioned international law as immutable and unchanging, and he would continue to level the same attack through the decades.⁵⁷ In his view, there should be no separation between international law and diplomatic history, which for him 'are in reality no more than two phases of the same science'.⁵⁸ As he would later articulate the same point in 1929, 'the study of history, more particularly during the nineteenth century, provides us with great lessons as to the future orientation of this science in its relation to International Law'.⁵⁹ Álvarez's method is part of the expansion of a historical international law that was, in turn, part of the expansion of a historical approach within numerous disciplines in France. This was a development, as Fritz Ringer has described, in which 'philosophy and literature became history'.⁶⁰ And it was one in which Charles Seignobos spearheaded the new history in France with the publication of *Introduction to Historical Studies* co-authored with Charles-Victor Langlois in 1898 and his 1901 lectures on *The Historical Method Applied to the Social Sciences*.⁶¹ These were significant rounds in the fight over the soul of French education and scholarship, and Seignobos was the key figure in the historical turn away from the French classical temperament.⁶² There would

54. A. Pillet, 'Recherches sur les droits fondamentaux des états dans l'ordre des rapports internationaux et sur la solution des conflits qu'ils font naître', (1898) 5 RGDI 66, at 89, quoted in Koskeniemi, *supra* note 1, at 282.

55. 'Tous ces facteurs, outre qu'ils ont exercé sur le droit interne de chaque État une influence considérable qui s'est fait sentir sur le droit international'. Álvarez, *supra* note 5, at 6.

56. 'Enfin l'influence de l'opinion publique est de plus en plus grande sur la direction des rapports des États et imprime une tendance plus démocratique et plus humanitaire aux règles qui doivent les régir'. *Ibid.*, at 7.

57. For example, in his talk to the Grotius Society in 1929, he asserted, 'International life must be placed in time, for history is a source of information as well as the first cause of many events or relationships between nations; many of these can only be explained with reference to history, which exerts a great influence on the present life of the nations'. Álvarez, *supra* note 19, at 41.

58. '[N]e sont en réalité que deux phases d'une même science'. Álvarez, *supra* note 5, at 10.

59. Álvarez, *supra* note 19, at 46.

60. Ringer, *supra* note 22, at 240.

61. *Ibid.*, at 265–66.

62. It is interesting in our context to note that after Seignobos developed his new history with Charles-Victor Langlois, moving away from the classical predilections of the French academy, he then sparred with the Durkheimians over the essence of social science. Seignobos argued, according to Fritz Ringer, that the 'social sciences are inevitably to some degree retrospective' and 'social scientists have to learn the critical methods of the new history'. Ringer, *supra* note 22, at 271. It is important, however, to note that Durkheim himself by the end of the 1890s had warmed to the importance of history and the link to sociology. Kaylor, *supra* note 40, at 168.

be numerous rearguard actions, particularly during the First World War, when the 'moderns' began to lose ground in the quarrel with the 'ancients',⁶³ but the historians of Seignobos's stripe were clearly in an ascendant avant-garde in the first decade of the twentieth century.

Álvarez, along with others adopting a historical approach to international legal scholarship, would use a historical narrative to describe a trajectory of international progress. As Thomas Skouteris observed of the progressive narrative of the Greek international lawyer Stelios Seferiades, progress itself was 'not an essence but a narrative'.⁶⁴ And Álvarez used the narrative also to suggest geographical movement. Indeed, he asserted that international law was initially created for a very specific European past with a homogeneous Christian society.⁶⁵ But, he asserted, 'today the field of the international community is significantly enlarged; it comprises beyond the countries of Europe five other groups of civilized countries that, although they have the same civilization at their base, have developed in a different direction'.⁶⁶ Basically, Álvarez's sociological, historical approach allowed him to discern variety in international legal development so that there could be the separate 'American international law' of his title and so that he could identify a European/American polarity.

As I have mentioned, Álvarez's history is also solidarist and therefore not statist. If Álvarez criticized the proponents of natural law, what might be described as his positivism is not a statist positivism, which is to say that his positivism, along with that of the other champions of international solidarism, did not play into the same state power and state voluntarism traditionally seen as an integral element of the nineteenth-century positivist tradition. Tony Anghie, one of the leading figures of Third World approaches to international law (TWAIL), in *Imperialism, Sovereignty and the Making of International Law* has carefully worked through 'the relationship between positivism and colonialism'.⁶⁷ According to Anghie, European positivism envisioned a sovereign European state over against non-sovereign, non-European entities. This was complicated, he explains, by a need to allow for the enforceability of certain treaties, so that non-European entities were given enough of the character of subjecthood in international law to provide for a certain level of treaty-making ability: 'The non-European states thus existed in a sort of twilight world; lacking personality, they were nevertheless capable of entering into certain treaties and were

63. This is a running theme of Martha Hanna's book, *The Mobilization of Intellect: French Scholars during the Great War* (1996), particularly in her chapter on 'The Classicist Revival', where she describes the return to classical studies and to French classicism, explaining that '[w]hen the theaters reopened in early 1915, the French classical tradition of Racine and Corneille, almost ignored in peacetime, came to dominate the Parisian stage'. Ibid., at 143. And Latin studies emphasized 'the familiar classicism of *Latinité*: rooted more in Rome than in ancient Greece, it eschewed egalitarian universalism of republican classicism for the orderly, hierarchical universalism of Catholicism'. Ibid., at 166. But Hanna's narrative is only the continuing story of the debates over French education and the place of classicism (in both senses) in Ringer's *Fields of Knowledge*, *supra* note 22.

64. Thomas Skouteris, 'The Vocabulary of Progress in Interwar International Law: An Intellectual Portrait of Stelios Seferiades', (2005) 16 EJIL 823, at 824.

65. Álvarez, *supra* note 5, at 261.

66. 'Aujourd'hui le champ de la communauté internationale s'est considérablement élargi; il comprend, outre les pays de l'Europe, cinq autres groupes de pays civilisés qui, bien qu'ayant la même civilisation à leur base, se sont développés de façon différente'. Álvarez, *supra* note 5, at 262.

67. A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2005), 33.

to that extent members of international law.⁶⁸ In this analysis, Anghie is talking about the likes of John Westlake and W. E. Hall and focusing his attention very much on the Anglo-American tradition. But the legal positivism described by Anghie was not needed to arrive at similar distinctions. As Martti Koskenniemi points out, the non-statism of Antoine Pillet and other solidarist international lawyers hardly prevented them from distinguishing between a European world and a non-European world in terms of their 'idea of State functions'.⁶⁹ One hardly needed a strong form of sovereignty theory in order to establish a divide between participants and non-participants in international law.

As I have mentioned above, Álvarez talks of 'civilized countries' and we will return to that in the context of his geographical variation of international legal regimes. But I should like to dwell for a moment on Tony Anghie's thesis that 'colonialism was central to the constitution of international law in that many of the basic doctrines of international law . . . were forged out of the attempt to create a legal system that could account for the relations between the European and non-European worlds in the colonial confrontation'.⁷⁰ Anghie is extremely convincing on the instrumentality of international legal principles in the colonial enterprise. But after explaining how the natural law theories of the sixteenth-century Dominican Francisco de Victoria or the eighteenth-century thinker Emmerich de Vattel derived their frameworks from the colonial encounter, it is difficult to see why European society needed to invent positivism – had not natural law theory served the same instrumental purposes?

Álvarez's *Le droit international américain* depicts a world of increasing interdependence. As we have learned, his is an ameliorative story of democratization, liberalization, increased economic exchange, and accelerating means of communication. Álvarez's language is suggestive of a flattened world and an egalitarian ethos, but finally his narrative of amelioration is a narrative of the civilizing process. And as with all visions of a civilizing process, humankind is arrayed along the continuum from uncivilized to civilized, and civilization becomes a sign of distinction that, ultimately, locates its 'roots' in 'European expansion, starting in the fifteenth century'.⁷¹ There was no need, then, to adopt the strong state positivism identified by Anghie as the key mode of *fin-de-siècle* international legal writing. Under the play of diversity, the additional pole of Latin American innovation in Álvarez's narrative, the move towards triangulation with the United States and Europe, and even a multivalent world – themes I shall investigate in the next section – there remains the binary underlay of the civilizing process.

6. CONTINENTAL DIVIDES

The historically oriented international legal philosophy that Álvarez developed mainly in the French academic environment allowed him, as I have suggested, to assert the existence of diverse international legal regimes. Álvarez tells us that

68. *Ibid.*, at 76.

69. Koskenniemi, *supra* note 1, at 282 n. 67.

70. Anghie, *supra* note 67, at 3.

71. B. Mazlish, *Civilization and Its Contents* (2004), 8.

International law was born and developed in Europe for conditions then existing and derived from the European spirit; it applied only to the European countries of Christian civilization. In this sense, 'international law', 'European international law' and 'universal international law' were synonyms.⁷²

As mentioned earlier, the field was enlarged by five other groups of civilized countries. The international law created in and for Europe was then subject to change. Specifically, a number of rules of international law formed in a European context 'necessarily underwent change in the other geographical regions where the problems were presented in a different fashion'.⁷³

Álvarez assures us that this should not concern us: 'The existence of this divergence of international laws is far from destroying the universal international community of nations, as one might be tempted to believe at first thought.'⁷⁴ As he would insist, 'There is no use or necessity requiring that international legal rules have to be universal.'⁷⁵ Álvarez is, however, never very precise on why the divergence of international legal regimes does not undercut the force of global international law. He does not, for example, lay out a theory of international federalism, or even sketch out the mechanics of an international pluralism. Rather, he points to the global diversity of societies and histories as the source of divergence in international law, and then in order to posit a sort of reconvergence he will point – as I shall suggest – mainly to the doctrines that international law writ large has learned from the international law developed on the American continent.

If Álvarez's historical and sociologically functionalist method allowed him to posit a special 'American international law', we need to ask what 'America' means here. At the end of his book he will split out 'continental' from 'Latin American' solidarities:

Until the last third of the nineteenth century, continental solidarity relates specifically to the declaration of the Monroe Doctrine and its amplifications. Latin American solidarity, founded on a community of shared origins, evidences on its side a tendency towards the formation of confederation of a more or less general nature, and shows that the Latin American nations in their law and in certain international acts consider themselves sisters.⁷⁶

When Álvarez refers, as he does a few pages later, to 'pan-Americanism', he means to include the United States. And when he refers to 'continental' ideas or 'continental'

72. 'Le droit international est né et s'est développé en Europe; fait pour les situations qui existaient, il est le résultat du génie européen; il n'était applicable qu'aux pays européens de civilisation chrétienne. Dans ce sens, les expressions "Droit international", "Droit international européen" et "Droit international universel" étaient synonymes.' Álvarez, *supra* note 5, at 261–2.

73. 'Beaucoup d'entre elles, nées pour des situations européennes ont dû nécessairement subir des déformations dans les autres régions, où les problèmes se posent de façon différente'. *Ibid.*, at 262.

74. 'L'existence de ces divers Droits internationaux sont loin de détruire la communauté universelle des Nations, comme à première vue, on serait tenté de le croire'. *Ibid.*, at 264.

75. 'Il n'y a aucune utilité ni aucune nécessité à ce que les règles du Droit international soient universelles'. *Ibid.*

76. 'Jusqu'au dernier tiers du XIXe siècle la solidarité continentale s'est reportée uniquement aux déclarations contenues dans la doctrine de Monroë et ses amplifications. La solidarité latino-américaine, fondée sur la communauté d'origine, tendait à son tour à former une confédération plus ou moins générale, et à montrer que les nations latines d'Amérique dans leurs lois ou certains actes internationaux se considéraient comme soeurs'. *Ibid.*, at 243.

international law, he means to include the entire western hemisphere, and it is important to note that he devoted his entire fifth chapter to the impact of the United States on the continent.⁷⁷ But mostly this book is about the international law of Latin American states. Later, such as in his 'New International Law' of 1930, there is more ambiguity as to how much the United States is part of his 'new' or 'American' international law,⁷⁸ but there is little of such ambiguity in *Le droit international américain*. Despite a good deal of discussion of the entire hemisphere, it is clear that we are talking principally about Latin America.

Despite this shift in what he means by 'American', there is a strong sense of continuity in Álvarez's writing. Martti Koskenniemi describes Álvarez as making the same basic argument in 'virtually unchanging terms' from his book on international legal codification in 1912 (two years after the publication of *Le droit international américain*) until his expanded *New International Law* published in 1959.⁷⁹ Indeed, Álvarez is given to self-plagiarism, replicating sentences and passages, using passages from a French publication and translating them for a different, English publication. And he is so convinced of his own continuity that right in the middle of his *New International Law* of 1934 – not in the notes but directly in his text – he lists his earlier publications, starting with *Le droit international américain*.⁸⁰ That is a strange, self-conscious gesture, but it serves to underscore his view that he has been basically pursuing the same project over the decades. Nevertheless, there are a number of significant changes in Álvarez's views and his narrative strategy, and among them we can identify the transformation in what he means by 'American' international law. As I have suggested, in *Le droit international américain* in 1910, Álvarez really means to focus on the shared international law of the Latin American states.⁸¹

In his *Le nouveau droit international* of 1934 – a book that is very schematic and almost without footnotes – Álvarez sketches a three-part development of international law periodized into segments: up to the middle of the nineteenth century, from the middle of the nineteenth century until the First World War, and finally a contemporary period.⁸² But in *Le nouveau droit international* the development of an *American* international law is not periodized as it is in *Le droit international américain*, where he devotes a chapter to each of three successive periods of American international legal development. The first period stretches from the liberation of the Latin American states until the last third of the nineteenth century. This period was marked by two forms of solidarity – first, with the United States in establishing the independence

77. 'Politique des États-Unis sur le continent américain. – Doctrine de Monroe. – Politique d'hégémonie. – Politique d'impérialisme.'

78. Note that in his 'New International Law' talk at the Grotius Society, he talked about the need to 'Americanise' the sciences of international law and international relations by taking 'into consideration the doctrines, the practices and the problems of the New World', and here he states specifically that he means 'not only the great Northern Republic but all the nations of the continent'. Álvarez, *supra* note 19, at 38–9.

79. Koskenniemi, *supra* note 1, at 304.

80. A. Álvarez, *Le nouveau droit international et sa nouvelle méthode d'étude d'après les données de sa reconstruction* (1934), 58–9.

81. There are other major moves in Álvarez. For example, in his Grotius lecture he spends a good deal more time talking about the future direction or 'reconstruction' of international law as a pursuit of the 'ought' than he did in *Le droit international américain*.

82. Álvarez, *supra* note 80, at 15.

of the western hemisphere from Europe, and second, among the Latin American states themselves in forming a ‘large family of nations’.⁸³ The second period, which ends in 1889 with the meeting of the first Pan-American Conference, is marked by a resurrection of close ties to Europe, while relations with the United States are complicated by a move towards a ‘politics of hegemony’ by the United States.⁸⁴ The third period, a period in which Álvarez describes a growth in the internal stability of Latin America, is marked by a ‘love of peace’ and a ‘desire to strengthen three ties, that with Europe, that with the United States, and among the Latin American countries themselves’.⁸⁵ These chapters allow Álvarez to work through a progression in which the Latin American states from their distinct foundational situation interact on a different level with Europe, the United States, and each other. And that brings Álvarez to the larger narrative, the one that will appear in the more schematic *Le nouveau droit international*, to a point where he can sum up the principles and rules that represent the impact of ‘the entry of the New World into the community of nations’.⁸⁶

Álvarez, in his standard enumerating mode, provides a list of ten such principles and rules that represent the Latin American contribution, but some bulge out into multiple related elements, and some of the ten receive no elaboration. It makes sense, then, to focus where he focused, particularly on the first, where he describes the creation of states that adopted regimes – along with the United States – that were republican and democratic.⁸⁷ That, of course, reflects the creation of their municipal constitutions, but the impact externally and consequently on international law is an assertion by Latin American states of their right to acquire independence; a distancing from the political systems of Europe; a right not to become the objects of European intervention; a right to territorial integrity; a firm statement that the western hemisphere could not be colonized; and a confidence that the western hemisphere did not have the character of *res nullius*.⁸⁸ Second, Álvarez asserts equality among all of the American states, and here he means the Latin American states, so that – and this is aimed at his French audience – ‘international equality and fraternity in their practical manifestation are also American in origin, because they were practised in an era when in Europe one confused equality with the virtue of the “balance of powers”, and when fraternity did not exist’.⁸⁹ The third contains a laundry list of Latin American conventions on the liberty of the sea, the liberty of commerce, the abolition of the slave trade, respect for the rights of individuals, the establishment of the rights of neutral states, the recognition of the exception in the commerce in contraband of the recognition that a neutral flag protects enemy

83. ‘[U]ne grande famille de nations’. Álvarez, *supra* note 5, at 19.

84. ‘[U]ne politique d’hégémonie’. *Ibid.*, at 20.

85. ‘Elle se caractérise par l’amour de la paix et par le désir de fortifier un triple lien d’intérêts: avec l’Europe, avec les États-Unis et entre eux-mêmes.’ *Ibid.*

86. ‘[D]e l’entrée du Nouveau Monde dans la communauté des nations’. *Ibid.*, at 252.

87. *Ibid.*

88. *Ibid.*, at 253.

89. ‘Ainsi donc l’égalité et la fraternité internationales sont aussi d’origine américaine dans leur réalisation pratique, car elles furent pratiquées à une époque où, en Europe, on méconnaissait l’égalité en vertu du “système de l’équilibre”, et où la fraternité n’existait pas.’ *Ibid.*

commerce, and the rule that a blockade must be effective in order to be recognized internationally.⁹⁰ Again, he is quick to tell us that three of the principles that were adopted in a Latin American convention in 1848 were recognized by the European powers only with the conduct-of-warfare provisions of the Treaty of Paris in 1856.

Álvarez – writing right after the Second Hague Peace Conference – then goes on to talk about the adoption of general and permanent treaties of arbitration. He explains that there are certain areas of international law in the western hemisphere that relate only to the western hemisphere, what he describes as *sui generis* elements of American international law. And those include the special role of US hegemony as well as the conditions and rules surrounding the nationalization of immigrants, which vary from the European model. This latter subject, nationalization within American law, provides the subject of the second ‘part’ of *Le droit international américain*, a reprint of an article from 1907 that departs enough from the basic narrative of *Le droit international américain* that it really forms a sort of extended appendix.⁹¹ But, for the most part, the *sui generis* elements of American international law are the exception, and the laws developed in the ‘American continent’ would become generally applicable.

As we see here, except in the case of arbitration, where Álvarez depicts a ‘reciprocal influence’ between Europe and America, his overall narrative is one of American leadership and contribution. And we should remember in the context of Álvarez’s claim for Latin American international leadership that his book was published in Paris by the same publishing house in the shadow of the Panthéon in the rue Soufflot that published – and still publishes – the *Revue générale de droit international public* (RGDIP). This is not a minor coincidence, and we remember that the second part of Álvarez’s book was reprinted from his article published in the RGDIP in 1907, and it was only one of several articles he published in the review starting in the late 1890s. As we have learned from Terry Nichols Clark’s dissection of the social sciences in the Third Republic, academic ‘clusters’ formed around powerful chaired patrons, and each cluster, it seemed, had its own journal. Thus, for example, the Le Playests around the Comtean Frédéric Le Play ‘were formally united in the Société d’économie sociale and published a journal, *La réforme sociale*, as well as a series of books’,⁹² and for his cluster the sociologist René Worms ‘created several professional structures – the Institut International de Sociologie, *Revue internationale de sociologie*, Société de Sociologie de Paris’.⁹³ Throughout his study Clark describes a large range of clusters and their politics, both academic and national, but through it all we are to understand the basic premise of the patron-centred clusters with a ‘dependence on a single patron for as much as a lifetime’.⁹⁴ Thus, when Álvarez announces the appearance of a ‘new school’ in the introduction of *Le droit international américain*, it is not a surprise that his professor from the 1890s appears in the footnote: ‘One could consider as the head of this new school M. Louis Renault, the eminent professor of

90. *Ibid.*, at 254.

91. Part II bears the title ‘La nationalité dans le droit international américain’.

92. Clark, *supra* note 24, at 96.

93. *Ibid.*, at 97.

94. *Ibid.*, at 82.

the University of Paris'.⁹⁵ And Álvarez would go on to say, very much along the lines Clark describes, 'To this school belong the principals [he is, of course, also thinking at least of Pillet] and the young French publicists; their works mark a new era in the study and application of international law.'⁹⁶

Álvarez is clearly espousing his cluster's method, and he does so in order to add to the international prestige of Latin America in a context where French international lawyers were confident of the French leadership of international law. One can think here of the self-congratulatory atmosphere of the lecture hall at the *École libre des sciences politiques* with which I began, as well as the satisfaction that could be shown by French international lawyers with the fact that France, only in the company of Russia, had signed all the conventions issued by the Second Hague Conference.⁹⁷ In this environment of French self-satisfaction,⁹⁸ Álvarez is proposing Latin American leadership and describing a Latin America that had to incubate international legal principals on its own continent away from the backward forces of European politics. International affairs in Europe were dominated by power politics – even their ventures in Latin America during the nineteenth century were, Álvarez explains, motivated as much by 'reasons of equilibrium as by motives of humanity or religion'.⁹⁹ For Álvarez, Europe represents politics as against Latin America's principles.

7. A PARISIAN IN LATIN AMERICA

We should remember that Álvarez's deployment of a Latin American international law emerged only a few decades after the coining of the term 'Latin America', which represented an adoption of mid-nineteenth-century French notions of *panlatinisme*.¹⁰⁰ The term tied Latin America to France as Paris increasingly became its cultural metropole, a transition that had begun as early as the late eighteenth century.¹⁰¹ France increasingly through the nineteenth century became a magnet for the Latin American – and Chilean – upper class. As John Rector explains, 'French acculturation became a rite of passage for upper-class youth.'¹⁰² And there was a commonly told myth that when the Chilean civil war ended Manuel Balmaceda's

95. 'On peut considérer comme le chef de cette nouvelle école M. Louis Renault, l'éminent professeur de l'Université de Paris.' Álvarez, *supra* note 5, at 8–9.

96. 'A cette école appartiennent les principaux et jeunes publicistes français; leurs travaux marquent une ère nouvelle dans l'étude et l'application du droit international.' *Ibid.*, at 9, n. 1.

97. Koskenniemi, *supra* note 1, at 284.

98. Of course, many nations saw themselves at the forefront of international law. One can read, for example, the first number of the *AJIL* in 1907 to see numerous references to an unquestioned leadership of the United States in the development of international arbitration.

99. '[T]ant pour des raisons d'équilibre que pour des motifs d'humanité ou de religion.' Álvarez, *supra* note 5, at 101.

100. Obregón, *supra* note 6, at 105.

101. Edwin Williamson sees the transition of cultural leadership moving from Spain to France as early as the late eighteenth century: 'By the end of the eighteenth century France had largely replaced Spain as the cultural lodestar of Latin America, and French-inspired neo-classical styles and tastes had succeeded the Iberian baroque traditions that had held sway since the early seventeenth century'. Williamson, *supra* note 26, at 286–7.

102. J. Rector, *History of Chile* (2005), 91.

rule in 1891, the Chileans in Paris were unable to secure a ballroom large enough for the celebration.¹⁰³ In addition to the Latin American social interest in the Parisian *beau monde*, Latin American writers developed a genre of essays written about their experiences in Paris.¹⁰⁴ And, as I have suggested throughout, Paris became the metropole for Latin American scholars and lawyers. But the term 'Latin America' was adopted not only to signal a close association with French culture but also because the term set Latin America off from the United States in response to US incursions to its south.¹⁰⁵

Among international lawyers, the term 'Latin America' was adopted very early in its currency by the important Argentine international lawyer Carlos Calvo, who tended, like Álvarez, to publish his international legal works in French and whose professional centre of gravity was Paris.¹⁰⁶ Turning back to Álvarez, there is an unquestionable Latinness to *Le droit international américain*, the book published under the name Alexandre Álvarez and written in the methodological framework of a new historically oriented international legal cluster around Renault and Pillet. Nevertheless, he adopted this French mode to write about the special contribution of his native continent. We cannot forget that the clear point of his book was to identify the *Americanness* of Latin American international legal development. In essence, Álvarez was narrating the story of an American exceptionalism in international legal development.

In this context, I should like to introduce the study by Lilita Obregón of nineteenth-century Latin American interventions in international law. Her study focuses on Andres Bello – the founder of the University of Chile, the author of the legal codes of several Latin American nations including Chile, literary critic, historian, and, central to us, international lawyer – and on Carlos Calvo – diplomat, historian, and international lawyer, author of the Calvo Doctrine articulating as legal principle the illegality of European states' use of force against Latin American states to collect debts. Obregón reads Bello and Calvo in the context of what she calls a '*criollo* (or *créole*) consciousness', which she defines as 'an assertion of regional uniqueness that is complemented by the understanding that they are also inheritors and participants of a broader European cultural and intellectual tradition'.¹⁰⁷ Embedded in this *criollo* outlook is a good deal of ambivalence, and there is also another bite. As Obregón writes, '*Criollos* (those born in the Americas of Spanish descent) understood themselves as members of the *civilized* world and were therefore willing to see in others the absence of the requirements for civilization.'¹⁰⁸ In other words, they defined themselves against uncivilized others, the result of the civilizing process I referred to earlier. Here I should like to clarify that Alejandro's advertisement for Latin America in *Le droit international américain* was hardly all

103. Collier and Slater, *supra* note 49, at 173.

104. In addition to the famous Latin American writers, Ruben Darío and Simon Marti, Edwin Williamson tells us that the Guatemalan writer Enrique Gómez Carrillo wrote in this genre, the *crónica*, through three decades in Paris. Williamson, *supra* note 26, at 304.

105. Obregón, *supra* note 6, at 105.

106. *Ibid.*,

107. *Ibid.*, at v.

108. *Ibid.* (emphasis in original).

advertisement – even if he revealed an occasional tendency to exempt Chile. Thus, for example, before embarking on a list of civil wars and insurrections that had erupted in recent Latin American history, he asserted, ‘The civil wars and insurrection movements are always a result of personal ambition rather than defence of principle.’¹⁰⁹ In a footnote, however, Álvarez carefully noted that the ‘motive for the civil war that took place in Chile in 1891, the last of only three civil wars that broke out in the country, expressed a principle of constitutional law’.¹¹⁰ In essence, the number of Chilean civil wars was limited to three, a number familiar to his French readers with their revolutions of 1830, 1848, and 1870, and the motives were assuredly pure. Similarly, when Álvarez described the panoply of dictatorship, *caudillismo*, and civil war that plagued Latin American history, he inserted another convenient footnote to the effect that ‘Chile is the only country in South America which has not been the constant victim of these revolutionary movements.’¹¹¹

If Obregón has described the underlying criollo consciousness in Bello and Calvo, Álvarez is very explicit in expressing own his criollo consciousness and particularly explicit about the criollo role in the development of Latin American society. He tells us that the Latin American milieu ‘created several institutions that are essentially Creole, and in which the metropole had no part’.¹¹² And this comes towards the end of a long depiction of the social development of Latin America in which race plays an important role, beginning with the assertion that ‘[t]he geographical and ethnic constitution of the American colonies and the economic and social milieus in which these new societies were born were very different from the European world considered in the same epoch’.¹¹³ He goes on to explain how in the ‘Ancient World’ – by which he meant the European past – ‘populated only by the white race, with all the varieties that constitute it, civilization was the fruit of that race’s own genius’.¹¹⁴ By comparison, he will tell us, everything on the American continent was different. He then goes on at length about the racial composition of the western hemisphere and the various blends of the three racial populations creating new mixtures, but he is also quite explicit about identifying the creoles as a ‘distinct social class’.¹¹⁵

If the racial hierarchies of these paragraphs are not already apparent, Álvarez is very explicit later in his book about the varying degrees of success among the Latin

109. ‘Les guerres civiles ou mouvements insurrectionnels ont toujours pour cause principale les ambitions personnelles plutôt que la défense des principes.’ Álvarez, *supra* note 5, at 193.

110. ‘Le motif de la guerre civile qui eut lieu en 1891 au Chili, la dernière des trios seules guerres civiles qui ont éclaté dans ce pays, fut un principe de Droit constitutionnel.’ *Ibid.*, at 193 n. 1.

111. ‘Le Chili est l’unique pays de l’Amérique du Sud qui n’a pas été victime de ces constants mouvements révolutionnaires.’ *Ibid.*, at 42 n. 2.

112. ‘[L]e milieu donna naissance à quelques institutions essentiellement créoles, et dans la formation desquelles la métropole n’eut aucune part’. *Ibid.*, at 28.

113. ‘La constitution géographique et ethnique des colonies américaines et les milieux économiques et sociaux dans lesquels ces sociétés nouvelles ont pris naissance, étaient très différents du monde européen considéré dans la même époque’. *Ibid.*, at 25.

114. ‘Dans l’Ancien Monde, en effet, que peuple la seule race blanche, avec toutes les variétés qui la constituent, la civilisation était le fruit du propre génie de cette race’. *Ibid.*

115. And Álvarez makes very clear the role that elite criollos played in Latin American emancipation: ‘At the commencement of the 19th century, in 1810, the elite of the créole element of almost all the Hispanic-American colonies drew the other Creoles into the emancipation movement’ (Au commencement du XIXe siècle, en 1810, l’élite de l’élément créole de presque toutes les colonies hispano-américaines entraîna les autres créoles dans le mouvement d’émancipation). *Ibid.*, at 28.

American countries in terms of their political stability and how that success was largely driven by race and climate. The success of the South American states of Argentina, Chile, Brazil, and Uruguay, he thought, could be compared with the relative lack of political stability of the other Latin American states, including Haiti and the Dominican Republic, which were characterized by more tropical conditions and 'small proportion of the purely white race'.¹¹⁶ Álvarez set off Argentina, Brazil, Chile, and Uruguay from the rest of Latin American 'from the point of view of progress', and stated that these four countries comprise three-quarters of the entire South American population and nineteen-twentieths of Latin America's white race.¹¹⁷

As I have mentioned, Obregón argues that the criollo consciousness evidences a clear need to identify a civilization of which it is a part. In this context, Álvarez also stresses the importance of remembering that 'American civilization derives from the same sources as the European'. But that consciousness is also driven by a need to identify those lacking in civilization. And here Álvarez's hierarchies do not merely identify a racial lattice-work through Latin American society, for that lattice-work refers not only to Latin America. One of the interesting aspects of his book – and his other writings – is the relative invisibility of Asia and Africa. Towards the end of part I of *Le droit international américain*, Álvarez states that '[i]f there exists an American international law, an Asian law, and an African law, there is a sharp contrast between the first and the other two'.¹¹⁸ Álvarez explains that the reason for the relative unimportance of Asia and Africa in international law is that they are not composed primarily of independent states.¹¹⁹ But more importantly, as he expresses throughout the book, it is Europe and America that truly derive from the same source.

8. CONTINENTAL DRIFT

I should like now to reflect on Álvarez's messages to his French-speaking readership, essentially the audience sitting in the lecture hall at the École libre des sciences politiques listening to Louis Renault and Léon Bourgeois, as well as the Latin American intellectual elite, for whom French was the lingua franca. The explicit messages of Álvarez's book are obvious, but there is also messaging using exoticism to depict his native continent. One thinks, for example, about his list of the racial blends, 'les *mêtis*, les *mulâtres* et les *Zambo* – mestizo, mulatto and Zambo'.¹²⁰ But this exoticism,

116. '[P]ar la faible proportion de sa race blanche pure'. Ibid., at 187.

117. '[D]ix-neuf vingtièmes de la race blanche'. Ibid. See also Álvarez's footnote in which he talks about the advantages of the United States with its population in its great majority 'of pure white blood' (de sang blanc pur) and talks about the Latin American states 'occupying mostly the tropical zone' (occupant surtout la zone tropicale). Ibid., at 41 n. 1.

118. 'S'il existe un Droit international américain, un Droit asiatique et un Droit africain, la différence entre le premier et les deux autres est bien marquée'. Ibid., at 263. Álvarez also uses as examples for the different problems among the continents a set of schematic examples: 'For example: the neutral state in Europe, hegemony in America, slavery in Africa and the open-door system, regime of capitulations, and foreign concessions in Asia' (Par exemple: État neutre en Europe; hégémonie, en Amérique; esclavage, en Afrique; système de la porte ouverte, régime des capitulations, concessions étrangères, en Asie). Ibid., at 262.

119. Ibid., at 263.

120. Ibid., at 26.

which draws from a long history of erotic cultural tropes both in Latin America and France,¹²¹ along with the image of the violent frontier, were not simply for effect. Or rather, they were deployed to emphasize the sociological specificity of Álvarez's historical narrative by underscoring the uniqueness of the Latin American environment he is describing. It is a way of bolstering his authority as a practitioner of the French sociological/historical method of the Renault/Pillet cluster and, consequently, the authority of his narrative.

I have mentioned Álvarez's marshalling of Latin American specificity in terms of the political turmoil of civil wars and *caudillismo*, and the suggestion that the turmoil is specifically Latin American even if, thankfully, Chile has suffered less. But it is useful to remember that France during its third republic had its own form of potential *caudillo* in the form of the reactionary general Georges Ernest Boulanger, who was on the verge of a coup d'état in 1889, just a few short years before Álvarez's arrival in Paris as a student. During his years studying with Renault, the academic world was convulsed by the Dreyfus affair – which has been described as 'cutting France in two'.¹²² Indeed, the various faculties fell on the two sides of the Dreyfusard/anti-Dreyfusard divide, with historians, sociologists, and philosophers typically in the Dreyfusard camp, many quite active especially among the faculty at the *École normale supérieure*.¹²³ Faculty members in the professional schools, particularly in the law faculties (Koskenniemi tells us, in fact, that Bourgeois was a moderate anti-Dreyfusard), and teachers of classical literature tended to occupy the anti-Dreyfusard camp on the right.¹²⁴ Emotions ran extremely high from the explosion of public focus on the case of Captain Dreyfus in 1898 well into the next decade. Indeed, things heated up, with frequent unrest in the faculties of law and medicine.¹²⁵ And in 1908, the year before Álvarez completed the text of *Le droit international américain*, the Thalamas affair, in which right-wing Action française mobs, reacting to a teacher who spoke of the hallucinations of Joan of Arc, fought battles with the Paris police in the streets for eleven Wednesdays in a row and ultimately ejected Thalamas and forced Alfred Croisset, the Sorbonne's dean of letters, to attend classes escorted by police.¹²⁶ The French academy during the Dreyfus affair and the years before the First World War was an immensely contested,

121. In the Latin American context, Edwin Williamson describes a nineteenth-century tradition of books in which 'Love across racial or social boundaries was the quintessential theme', and if he describes the novels of Manoel de Macedo as works 'about star-crossed lovers of different social and racial backgrounds', that characterizes many of the plot-lines of the nineteenth-century Latin American novel. Williamson, *supra* note 26, at 295, 297.

122. '... comme on l'a souvent dit, "coupé la France en deux". P. Ory and J.-F. Sirinelli, *Les Intellectuels en France: de l'affaire Dreyfus à nos jours* (1992), 13; it is, of course, standard fare for Ory and Sirinelli to see the Dreyfus affair as a starting point in their narrative.

123. Ringer, *supra* note 22, at 221; on the faculty at the *École normale supérieure*, see R. J. Smith, *The Ecole Normale Supérieure and the Third Republic* (1982), particularly the activities at the Latin quarter bookshop, the Librairie Bellais, opened by Charles Péguy.

124. Ringer, *supra* note 22, at 221; on Bourgeois, Koskenniemi tells us that 'Bourgeois became one of the few anti-Dreyfusards among the Radicals, less out of antisemitism than fear of the consequences of the affair on republicanism generally', Koskenniemi, *supra* note 1, at 291.

125. Ringer, *supra* note 22, at 247.

126. On the Thalamas affair, see Clark, *supra* note 24, at 16; Hanna, *supra* note 63, at 43; Ory and Sirinelli, *supra* note 122, at 56–7.

and often violent, environment, so it is interesting to see Álvarez providing exactly the portrait of violence and turmoil in Latin America that his French readers would expect.

As I have mentioned, Álvarez refers throughout his book to 'psychology', but it is a reference to psychology without specificity,¹²⁷ much like J. L. Brierly referring throughout his *Law of Nations* to 'facts' without providing examples of such facts.¹²⁸ There is, then, in *Le droit international américain* an oscillation between the specificity of racial composition as well as the mounting evidence of political instability and civil war in Latin America, and the vague, ultimately empty references to psychology, which allows Álvarez's reader to fill in the blanks, to infer a depth and specificity to the empty psychological references in *Le droit international américain*.

If Álvarez used race on the specific side of that balance sheet, he was ultimately not too specific – he did not bring attention to the racial strife and bloodshed that characterizes Latin American history.¹²⁹ That very absence, the unhighlighted racial strife, is, I would argue, of a piece with his criollo consciousness. And that consciousness ultimately expressed a form of hybridity in which Álvarez was a participant/non-participant in both Latin American and European culture. But Álvarez was also engaged in a form of triangulation in his narrative, a triangulation among Latin America, Europe, and the United States. This triangulation he in fact makes quite literal, asserting that the Southern cone nations are equidistant between Europe and the United States – 'Ils sont tous à peu près à la même distance des États-Unis et de l'Europe.'¹³⁰ And Álvarez – along with other Latin American cultural figures – is adopting France as the metropole in a sort of Freudian 'family romance', fantasizing a different family line for Latin America in a book published under the name Alexandre Álvarez.

What, then, is Álvarez doing with international law, and is he changing *its* family lines? One of the common traits of international law writing is the adoption of a temporal mode. International law is often written as history. International law texts, particularly in the Anglo-American tradition but also in others, literally begin with a history of international law, sometimes quite abbreviated in form but often extensive.¹³¹ History is so important to international law writing that it is no surprise that Carlos Calvo chose to translate Wheaton's *History of the Law of Nations in Europe and America* rather than his *Elements of International Law*. There is a historical

127. H. B. Jacobini also notes in his study of the philosophy of international law in Latin America that Álvarez characterizes the feeling of solidarity among Latin American states 'alternately [using the] terms sentimentality, mentality, spirit, and psychology', although Jacobini does not see this as reflecting any vagueness in Álvarez's conceptualization. Jacobini, *supra* note 25, at 126.

128. C. Landauer, 'J. L. Brierly and the Modernization of International Law', (1993) 25 *Vanderbilt Journal of Transnational Law* 881, at 899.

129. Edwin Williamson, for example, provides a description of the ongoing racial violence between Indians and whites in Latin America. Williamson, *supra* note 26, at 246. And one can think specifically of the various Chilean wars on the Mapuche well into the 1880s that should clearly be part of Álvarez's frame of reference.

130. Álvarez, *supra* note 5, at 187.

131. It is interesting that in one of the key examples of the Anglo-American treatises rejecting the historical introduction, Ian Brownlie's *Principles of Public International Law*, Brownlie made a decision to run a footnote directly from his section titles, so that in the footnote for 'Sources of the Law' Brownlie lists thirteen texts addressing sources of law; thus the history of his text is bracketed. I. Brownlie, *Principles of Public International Law* (1990), 1.

consciousness to much legal writing, but international legal writers have special reasons to turn to temporal narrative, and that is their effort to overcome insecurities about the status of international law as law that is binding. Their answer to the present lowly state of international law is to deflect attention to the future or to the past. Often, the answer to the Austin-fed anxiety or the general anxiety about the weakness of international law is to suggest that international law is at a 'primitive' stage and will develop in time along the lines that municipal law has already done. This strategy, based on the evolutionary faith of a nineteenth-century historicism and evolutionary legal anthropology (Henry Sumner Maine, for example) is an important trope of international legal writing. J. L. Brierly, for example, in his *Law of Nations* projects an international law that will follow the trajectory of municipal law.¹³² Hans Kelsen stated quite flatly in *Law and Peace* that '[i]n its technical aspects, general international law is primitive law. This is called self-help.'¹³³ The assumption was that international law had a long road ahead. And Lassa Oppenheim looked to the distant future:

No one of the present generation of international jurists will live when the codification of international law will be taken in hand. And when it becomes an actuality, all our present books will lose their value and will go mouldy on the shelves of the libraries through not being read.¹³⁴

There are also twentieth-century international legal writers in the wake of the institutionalization of international law who bemoaned the decline of international legal doctrine and, like Hersch Lauterpacht, Alf Ross, or again Hans Kelsen, pointed to the loss of a true juridical/legal solution to international problems as a result of the move to the overly political solutions of the League of Nations and then the United Nations.¹³⁵ In this mode, the subtitle of Martti Koskenniemi's *The Gentle Civilizer of Nations* is *The Rise and Fall of International Law 1870–1960*, because Koskenniemi tells a story of declension in which international law is transformed after the Second World War – with Hans Morgenthau as the central figure – into realist international relations. Notably, Hans Kelsen was able to combine the two narrative deflections and refer to the 'primitive' stage of international law while providing a declension tale of the loss of international legal doctrine in the same text.

In the context of the overwhelmingly temporal mode of international legal writing, Álvarez's dramatic move was to combine temporal and geographic moves, the narrative swing across the Atlantic and back. But as radical as the insertion of Latin America as a critical participant in the development of international law was,

132. J. L. Brierly, *Law of Nations. An Introduction to the International Law of Peace* (1928), 50; see discussion in Landauer, *supra* note 128, at 912–13.

133. Hans Kelsen, *Law and Peace* (1942), 71. In *Peace Through Law* he made basically the same argument: 'We have good reason to believe that international law – that is, the law of inter-State community, completely decentralized and dominated by the principle of self-help develops the same way as the primitive law of the pre-State community'. H. Kelsen, *Peace Through Law* (2000 [1943]), 22.

134. Oppenheim, *supra* note 21, at 356.

135. See C. Landauer, 'Antinomies of the United Nations: Hans Kelsen and Alf Ross on the Charter', (2003) 14 *EJIL* 767.

Álvarez's international law was hardly foreign to the audience in the grand amphitheatre of the *École libre des sciences politiques*. His talk of democracy and liberal values might have posed a challenge to central and east European monarchies but not to the denizens of the Third Republic. Indeed, as Álvarez points out, many of the nineteenth-century Latin American innovations in the law of war and neutrality were adopted by the signatories of the Treaty of Paris in 1856.¹³⁶ In the political atmosphere of Third Republic Paris, Álvarez's international law was ultimately quite domestic. If he was retelling the narrative of international law, its trajectory was no different from that envisioned by Léon Bourgeois or Louis Renault. Despite the manifesto tone of Álvarez's writing and his willingness to correct the errors of others,¹³⁷ *Le droit international américain* does not suggest a dramatic rupture in international legal thinking, but rather a sort of continental drift in which the continents clearly look as if they could easily fit back together.

136. And we should remember that the French contribution was also part of his narrative. See, for example, his discussion of the French Revolution or, finally, the intellectual force of France – 'l'influence de l'Europe, et notamment de la France, à laquelle ils étaient liés par leur culture intellectuelle et par un commerce florissant'. Álvarez, *supra* note 5, at 35.

137. In Part II of *Le droit international américain*, the reprinted essay on nationalization in American law, Álvarez points to the 'confusion' by too many writers of nationalization and citizenship, and he also wants to add precision by going through an analysis of nationalization in the internal law of states, in private international law, and in public international law, with the impact of occupation of territory as the only real issue for public international law.