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INTERNATIONAL THOUGHT AND THE MAKING OF THE CANON

## Francisco de Vitoria and the (geo)politics of canonization in Spain/America\*

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### Abstract

While the founder of international law was long considered to be Hugo Grotius, attempts were made in the late 1920s and early 1930s to dethrone him in favour of the Spanish theologian Francisco de Vitoria. This took place as the professionalization of the field of international law was reaching its golden age both in Europe and the Americas. Leading this case were the prominent US jurist James Brown Scott, one of the founders of the American Society of International Law, and the Spanish jurist Camilo Barcia Trelles. But why did they decide to revive Vitoria then, and why would they couch him specifically as the founder of international law? This article focuses on the intellectual history of the canonization of Vitoria in the context of the formation and consolidation of a continental Pan-American ideal and network of American international law in the Americas. Particular attention is paid to the American Institute of International Law, presided by Scott, and the formation of a Spanish Americanist cultural tradition in Spain. The latter deeply influenced Barcia, who developed a profound interest in Latin American questions, notably around the Monroe Doctrine. The article argues that these geopolitical Pan-American and Spanish-Americanist anxieties of re-unifying the Americas and Spain/America strongly influenced the depiction of Vitoria as a new founding father of international law and allowed Scott and Barcia to elevate themselves as Vitoria's heirs.

**Keywords:** Camilo Barcia Trelles; canon; Francisco de Vitoria; geopolitics; James Brown Scott

### 1. Introduction

Since the late nineteenth century, the professionalization of international law in Europe and later in the US and Latin America stimulated a growing interest in the origins of international law, its history and its founding fathers. These disciplinary interests in the origins of the discipline in the age of imperial competition were complemented and informed by geopolitical and imperial motivations. In recent years, thanks to the so-called 'historical turn' in international law, a number of scholars have devoted a great deal of attention to the imperial and civilizing mission informing the professionalization and institutionalization of the discipline in this specific context.<sup>1</sup> Within this

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<sup>1</sup>Two important foundational studies are M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870-1960* (2001) and A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2005). On US imperialism and the history of international law see B. A. Coates, *Legalist Empire: International Law and American Foreign Relations in the Early Twentieth Century* (2016); J. P. Scarfi, *The Hidden History of International Law in the Americas: Empire and Legal Networks* (2017).

new wave of historical studies of international law and international relations, some scholars have turned their attention to founding figures, such as Francisco de Vitoria and Hugo Grotius, their legacy and how they were assimilated within the canon of these disciplines.<sup>2</sup> However, the imperial and geopolitical motivations that informed the construction of these disciplinary canons and its intellectual foundations have tended to be overlooked.

This article explores the debates over the origins of international law in the early twentieth century and the recovery and appropriation of the work and legacy of Francisco de Vitoria as the founder of international law by James Brown Scott and Camilo Barcia Trelles. It concentrates on two interconnected dimensions involved in this process: (i) the *geopolitical disciplinary* factors informing these operations of recovery and appropriation and the *temporal* preoccupations for situating Vitoria within a genealogy in order to understand either the past, the present or the future of the discipline; (ii) the *spatial* concerns underlying the geopolitical anxieties shaping the recovery, usages and (re)invention of Vitoria. As will be shown throughout the article, these two dimensions shaped the recovery of Vitoria in Spain, the United States of America and Latin American countries. The Spanish-American War of 1898, the emergence of the US as an informal empire in Latin America alongside the rise of Pan Americanism, as well as the final decline and dissolution of the Spanish empire and the emergence of its policy of Spanish Americanism, redefined the imperial aspirations and roles of Spain and the US in the Americas and eventually shaped Scott and Barcia's approaches to Vitoria.

The article argues that the depiction of Vitoria as a new founding father of international law allowed Scott and Barcia to elevate themselves as Vitoria's heirs. This process of appropriation and recovery of the work of Vitoria was influenced by imperial and cultural spatial Pan-American and Spanish-Americanist anxieties of re-unifying the Americas and Spain/America. However, even though Barcia and Scott forged a close professional friendship and maintained certain common interpretative grounds in their common quest of proclaiming Vitoria in the late 1920s and early 1930s the founder of international law, their legal sensibilities were sharply different, and thus they made different temporal usages and projections of Vitoria. While Barcia projected his faith in the past and regarded Vitoria's lessons as a perennial source of value and had no expectations of evolution for the future of international law, Scott maintained a strong faith in the evolution and progress of international law and thus regarded Vitoria as a prophet of international law who was able to envision and even foresee its future.

Barcia and Scott regarded Vitoria not only as the founder of international law, but also as a classic within the discipline. As Argentine writer Jorge Luis Borges has observed, 'a classic is not a book that has necessarily this or that merit; it is a book that different generations of men [and women], urged by a diverse set of reasons, read with previous fervour and mysterious loyalty'.<sup>3</sup> Scott and Barcia oscillated situating Vitoria as a classic between the past and the future, because they were both convinced that Vitoria's lessons were still meaningful and would continue to be so for the discipline of international law.

As will be shown throughout the article, Scott and Barcia's canonical appropriations of Vitoria were rooted in opposing imperial and geopolitical visions, that is, specific political and geographical representations of the world and Spain/America.<sup>4</sup> Scott situated Vitoria within a Pan-American legal tradition and a US-led and hemispheric notion of American international law, encompassing the US and Latin America, while Barcia sought to position Vitoria as the intellectual founder of a Spanish American legal tradition, which connected Spain and Spanish (Latin)

<sup>2</sup>See P. Amorosa, *Rewriting the History of the Law of Nations: How James Brown Scott Made Francisco de Vitoria the Founder of International Law* (2019); I. de la Rasilla, *In the Shadow of Vitoria. A History of International Law in Spain, 1770-1953* (2017); M. Koskenniemi, 'Empire and International Law: The Real Spanish Contribution', (2011) 61 *University of Toronto Law Journal* 1; E. Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics* (2002).

<sup>3</sup>J. L. Borges, 'Sobre los clásicos', in Borges, *Otras inquisiciones* (1997), at 292.

<sup>4</sup>For a critical and flexible approach to geopolitics see K. Dodds, *Global Geopolitics: A Critical Introduction* (2005).

America. As I have shown elsewhere, Scott's depiction and appropriation of Vitoria as the founder of international law proved to be a central feature within the institutionalization of international law in the Americas under US imperial hemispheric leadership, and it was indeed a bit ironic that a US jurist sought to teach Spanish American jurists of the importance of a classic Spanish American figure.<sup>5</sup> This article also draws on more recent explorations of Barcia's approach to Vitoria and thus reinserts the important and forgotten role played by the Spanish Americanist legal tradition, particularly Barcia, in the revival of Vitoria through a rather different approach to that of Scott, but with a shared common interest.<sup>6</sup> As such, this article offers a much broader geopolitical analysis of the important role played by the contrasting imperial anxieties and controversies of Scott and Barcia over the appropriation of Vitoria, which shaped in turn the institutionalization of international law not only in the US and Latin America,<sup>7</sup> but also in Spain and Spanish America.

The article is divided into four subsequent sections. Section 2 contextualizes the disciplinary institutionalization of international law in Spain, the US and Latin America, situating the geopolitics involved in the recovery of Vitoria in the age of imperial competition between great powers and the specific context of the 1920s and 1930s. Section 3 sketches the different geopolitical motivations and legal ideas that prompted Scott in the US and Barcia in Spain to reposition Vitoria as the founder of the discipline. It focuses on the depiction of Vitoria as the founder of international law, as proposed by Barcia and Scott, and how they situated its legacy in a general timeline in relation to the past, present, and future of the discipline. As will be shown, while Scott was optimistic about the lessons that could be drawn from Vitoria for the future of the discipline, Barcia adopted a Romantic and nostalgic interpretation of Vitoria's contribution and regarded it as a treasure to be rescued from a golden age of the Spanish past. Section 4 examines the continental Pan American and transatlantic Spanish American debates over the meaning and scope of the Monroe Doctrine and their geopolitical implications. While Scott considered Vitoria as an inspirational figure for forging a continental tradition of American international law and co-operation for the Americas and advocated in certain occasions the Pan Americanization of the Monroe Doctrine as a central tenet of this tradition, Barcia regarded Vitoria above all as a Spanish American precedent of the original foundations of the Monroe Doctrine, the ideal of non-intervention. The conclusion draws some lessons from this case study on the intellectual history of the recovery and revival of Vitoria and the importance of geopolitical disciplinary, temporal and spatial motivations undelaying the construction and legitimation of a disciplinary canon in international law and international relations.

## 2. A new canon of international law in Spain/America in context: The decline of the Spanish Empire, the rise of US Informal Empire and the professionalization of international law

The Spanish-American War of 1898 marked the final decline of the Spanish empire and its colonial and political hegemony in Latin America, and at the same time the rise of the US as an informal empire in the region. This momentum is often regarded as a turning point in the emergence of the US as a new empire in competition with the European powers, including Spain.<sup>8</sup> In fact, the outcomes of the Spanish-American War led to the independence of Puerto Rico, the Philippines and Cuba from Spain and their occupation and incorporation under US formal and informal empire and sphere of influence and the institutionalization of the Platt

<sup>5</sup>J. P. Scarfi, *El imperio de la ley: James Brown Scott y la construcción de un orden jurídico interamericano* (2014), 181–207.

<sup>6</sup>J. P. Scarfi, 'Camilo Barcia Trelles on the Meaning of the Monroe Doctrine and the Legacy of Vitoria in the Americas', (2020) 31 *EJIL* 1463.

<sup>7</sup>See Scarfi, *supra* note 1; Scarfi, *supra* note 5.

<sup>8</sup>W. LaFeber, *The New Empire: An Interpretation of American Expansion, 1860-1898* (1963), 242–83.

Amendment, which gave the US the right to intervene on a regular basis in Cuba until 1934.<sup>9</sup> These transformations were complemented by a broader process of displacement of European powers from the Americas and the formal recognition of US leadership on the continent by these very same European powers, especially Great Britain. Indeed, the British-Venezuelan boundary dispute over British Guiana in 1895–1896 created a window of opportunity for the US to displace Great Britain from the Americas. Great Britain accepted US conditions to submit the dispute over an arbitral commission and US Secretary of State Richard Olney invoked the Monroe Doctrine to assert US hegemony and control over the Western Hemisphere.<sup>10</sup> Olney famously affirmed: “Today the United States is practically sovereign on this continent.”<sup>11</sup> The consolidation of US formal and informal hegemony over Puerto Rico, Cuba and the Philippines reinforced US leadership on the continent and the sense of loss and decline in Spanish political and cultural leadership over Latin America at the turn of the century.

The revival and recovery of the work of Francisco de Vitoria a few decades later in the 1920s was certainly informed by the different geopolitical anxieties that began to arise after the Spanish-American War, which prompted a significant redefinition of US and Spanish policies towards Latin America. Such policies were to be consolidated in the early decades of the twentieth century. Indeed, the global momentum of 1898 generated incentives for the institutionalization of the US-led policy of Pan-Americanism and the emergence in Spain of the cultural foreign policy of Spanish Americanism. These two opposing geopolitical visions were only translated into concrete policies towards Latin America in the first two decades of the twentieth century when the institutionalization of the discipline of international law took shape in Spain, the US and the Americas. In other words, Pan-Americanism and Spanish-Americanism played a central role, as will be shown in more detail, in the inception and institutionalization of international law in these two countries and also in Latin America at large.

Pan Americanism and Spanish Americanism underwent a renewal at the turn of the century in Spain, the US and Latin America, but while the former was the product of US ascendancy in Latin America, the latter adopted a defensive character in an attempt on the part of Spain to preserve and modernize its cultural influence in Latin America after losing the last remains of its colonies and political hegemony in Puerto Rico, Cuba and the Philippines. On the one hand, Pan-Americanism emerged in the 1880s under the leadership of Secretary of State James Blaine as a US-led policy of economic, political, legal and cultural co-operation towards Latin America and it has been rightly regarded as ‘the friendly face of US dominance in the hemisphere’.<sup>12</sup> In the context of economic and political competition among the European powers over Asia and Africa in the 1880s and 1890s, Blaine regarded this situation as a threat to US investment and leadership in Latin America.<sup>13</sup> On the other hand, the dispossession of the Spanish colonies in the Caribbean and the subsequent dissolution of the Spanish monarchy contributed to the formation and adoption of a series of cultural policies in Spain towards Latin America that were associated to the cultural policy of Spanish Americanism. This culturally oriented foreign policy gained popularity and resonance in the 1900s and 1910s. One of its most notable architects was the Spanish historian and jurist Rafael Altamira and the Spanish Americanists at the University of Oviedo who strove to further disseminate Spanish culture in Latin America in the early 1920s.<sup>14</sup>

<sup>9</sup>L. Pérez, *Cuba under the Platt Amendment, 1902–1934* (1986).

<sup>10</sup>J. Smith, *Illusions of Conflict: Anglo-American Diplomacy toward Latin America, 1895–1896* (1979), 205–9.

<sup>11</sup>Olney to Bayard, July 20, 1895: *Papers relating to the Foreign Relations of the United States*, 1895, I, 545–62, quoted in J. Sexton, *The Monroe Doctrine: Empire and Nation in Nineteenth-Century America* (2011), 203.

<sup>12</sup>D. Sheinin, ‘Rethinking Pan Americanism: An Introduction’, in D. Sheinin (ed.), *Beyond the Ideal: Pan Americanism in Inter-American Affairs* (2000), 1, at 1.

<sup>13</sup>R. Freeman Smith, ‘Latin America, the United States and the European Powers, 1830–1930’, in L. Bethell (ed.), *The Cambridge History of Latin America*, vol. 4, c. 1870–1930 (1986), 83; D. Healy, *James G. Blaine and Latin America* (2001), 252–3.

<sup>14</sup>R. Altamira, *España y el programa americanista* (1917).

The Spanish Americanist policy of cultural co-operation was based on two premises. First, it was imperative to recover the influence over former colonies that Spain had lost in Spanish America following the First Spanish Republic and help Spain to overcome the crisis of the Spanish-American War of 1898. Second, it was also essential to project Spanish cultural influences and its traditions throughout Latin America in order to moderate the effects of US expansionism in the region.<sup>15</sup>

The institutionalization of international law in the US and the Americas was shaped by the renovation of Pan Americanism and the rise of US hegemony in the Americas. A geopolitical anxiety of forging a Pan-American US-led approach to international law motivated the creation of continental ideals and new disciplinary institutions of international law in the Americas. Secretary of State Elihu Root and his legal advisor Scott were central protagonists in the inception of a US-led approach to international law in the Americas. They were founding members of the American Society of International Law (ASIL), created in 1906, and they occupied executive positions within the Carnegie Endowment for International Peace (CEIP) since its creation in 1910. Root, and especially Scott, believed that US legal and political values and traditions, such as the US Declaration of Independence, the US Supreme Court of Justice and the Monroe Doctrine, and even the US institutional experience of the ASIL, were ideal models for forging continental Pan-American legal institutions, such as the American Institute of International Law (AIIL).<sup>16</sup> When in 1906, Root visited a number of South American countries in the context of the Third Pan American Conference held in Rio de Janeiro, the Pan-American movement experienced a renewal. Root's engagement with South American countries and his successful effort to gain seats for the Latin America delegations in the forthcoming Second Hague Conference generated a wave of Pan American enthusiasm in South America.<sup>17</sup> An important Chilean jurist, Alejandro Álvarez, was particularly receptive of this renovation to the extent that he became a devoted advocate of Pan Americanism and promoted a continental approach to what he termed American international law.<sup>18</sup> Álvarez redefined the US unilateral Monroe Doctrine as a founding hemispheric and multilateral principle of American international law.<sup>19</sup> These ideas generated enthusiasm in Scott and under the intellectual inspiration of Álvarez regarding the existence of a specific continental approach to American international law, they joined together and promoted the creation of the AIIL. The AIIL was inspired in a US-led Pan-American approach to international law, as advocated by Scott and Root and modelled on the previous experience of the ASIL, and it sought to co-ordinate the work of all the societies of international law of the Americas, promoting their creation in each of the countries of the continent. Funded by the CEIP and closely attached to the Pan-American Union and the Pan-American movement, the AIIL, under the leadership of Scott and based on some of the ideas of Álvarez, played a fundamental role in the institutionalization of a Pan American US-led approach to international law in the Americas between 1912 and the 1930s.<sup>20</sup> Scott's interest in the work of Vitoria as a founder of

<sup>15</sup>I. Sepulveda, *El sueño de la Madre Patria: Hispanoamericanismo y nacionalismo* (2005), 142–51.

<sup>16</sup>Scarfi, *supra* note 1, at 1–58.

<sup>17</sup>*Ibid.*, at 19–30.

<sup>18</sup>A. Becker Lorca, 'Alejandro Álvarez Situated: Subaltern Modernities and Modernisms that Subvert', (2006) 19 LJIL 879; J. L. Esquirol, 'Alejandro Álvarez's Latin American Law: A Question of Identity', (2006) 19 LJIL 931; C. Launder, 'A Latin American in Paris: Alejandro Álvarez's *Le droit international américain*', (2006) 19 LJIL 957; L. Obregón, 'Noted for Dissent: The International Life of Alejandro Álvarez', (2006) 19 LJIL 983; K. Zobel, 'Judge Alejandro Álvarez at the International Court of Justice (1946–1955): His Theory of a "New International Law" and Judicial Lawmaking', (2006) 19 LJIL 1017.

<sup>19</sup>A. Álvarez, 'Latin America and International Law', (1909) 3 AJIL 269; Álvarez, *Le droit international américain: son fondement, sa nature* (1910), 125–84. See also J. P. Scarfi, 'In the Name of the Americas: The Pan-American Redefinition of the Monroe Doctrine and the Emerging Language of American International Law in the Western Hemisphere, 1898–1933', (2016) 40 *Diplomatic History* 189.

<sup>20</sup>On the historical trajectory of the AIIL see Scarfi, *supra* note 1.

international law emerged out in the 1920s and 1930s from the US-led approach to American international law and Pan-Americanism he promoted through the AIIL.

Yet Scott manifested an interest in the history of international law as early as 1906, right at the time when the ASIL was founded, but it was only in the 1930s, when he was a well-established jurist and president of the ASIL and the AIIL that he regarded Vitoria as the founder of international law. Back in 1906, at a time when the ASIL was to be founded and Root redefined the Pan-American movement along the lines of continental solidarity and co-operation, Scott envisioned the idea of publishing a book series to establish a canon for the discipline of international law and contribute to popularizing it through a book series devoted to the *Classics of International Law*. Eventually the series was published under Scott's editorial co-ordination in 1909 and was sponsored by the CEIP, as was to be the case of the AIIL. Scott believed that the study of the past had to be at the service of the progressive evolution and growth of international law. Even when focusing on the study of the past and the classics of the discipline, his legal mind-set was projected towards the future, and this became clear in his initial plans for the series. In his letter proposal, Scott stated:

Believing, as I do, that international law is a growth just as truly as our Constitution is a growth, and realizing the difficulty of obtaining these various sources, it seems to me that the Carnegie Institution would perform a great service should it publish the texts of the predecessors in such shape and form that they might be placed in public libraries and in universities and colleges. This would perhaps not popularize international law, but it would bring the sources of international law to the people, at least to that section of the people that desires to investigate scientifically the origin of international law.<sup>21</sup>

By contrast, the institutionalization and consolidation of the discipline of international law in Spain was marked by a rather defensive and reactive attitude towards Spanish America, which led in turn to the formation of the Spanish Americanist approach. Rafael Altamira and the jurists grouped around the University of Oviedo were leading promoters of this defensive cultural policy and also advocated a historical approach to legal studies. Altamira began to advocate Spanish rapprochement to Latin America as early as in the aftermath of the Spanish-American War, emphasizing Spanish stagnation and reactionary political attitude and the need to renovate Spanish progress and cultural energy by reorienting its policies towards the old colonies of Spanish America.<sup>22</sup> Barcia graduated as a lawyer at the University of Oviedo in 1909 and thus was influenced by Altamira's Spanish Americanist and historical approach to law. These approaches influenced Barcia and the first generation of professional international lawyers in Spain more broadly.<sup>23</sup> By 1911–1913, Barcia went on to work with the Belgian historian of international law Ernest Nys and was influenced by the high esteem and scholarly attention that he devoted to the Salamanca School and Vitoria in his historical investigations on the origins of the discipline. It was in 1917 that Altamira launched officially the culturally oriented foreign policy devoted to promoting Spanish Americanism. In the 1910s and early 1920s, Barcia began to publish extensively on Spanish Americanist themes, such as the nature of the Monroe Doctrine and US imperialism and its oil industry, advocating a progressive and even anti-imperialist approach to such political, legal and economic questions.<sup>24</sup> By the time he took up the chair of International Law at the University of Valladolid in 1920, he founded the 'Section of Americanist studies'.

<sup>21</sup>J. Brown Scott (ed.), 'The Classics of International Law', Editorial Comment, (1909) 3 AJIL 701, at 703.

<sup>22</sup>R. Altamira, *Cuestiones hispano-americanas* (1900). See also Sepulveda, *supra* note 15.

<sup>23</sup>De la Rasilla, *supra* note 2, at 89–153.

<sup>24</sup>C. Barcia Trelles, *Significación originaria de la doctrina de Monroe* (1916); C. Barcia Trelles, *El imperialismo del petróleo y la paz mundial* (1925).

### 3. Vitoria and the futures past of international law: Common origins for contending US and Spanish geopolitical and legal designs

Barcia and Scott were not the first international lawyers to propose Vitoria as a founding father of the discipline and promote at the same time a revival of the natural law tradition. Since the late nineteenth century a growing interest in the natural law tradition to moderate the limitations of the positivist method prompted a number of scholars and practitioners in Europe to advocate a new moral and legal understanding of the international community as a foundational principle to justify the binding force of international law and its subsequent obligations. These doctrinal transformations were also informed by the imperial European expansion over Africa and Asia. In this context, Vitoria became eventually a central reference for revisiting the historical evolution of the discipline. In fact, Ernest Nys (1851–1920) played a central role in the advancement of the first professional historical studies of the School of Salamanca and the work of Vitoria, focusing on their contributions to the consolidation of the discipline.<sup>25</sup> By 1911–1913, Barcia spent two years in Belgium, working with Nys and thus was influenced by his investigations on the origins of international law, the Salamanca School and the contribution of Vitoria. At the same time, Scott was perfectly aware of the importance of the work by Nys on Vitoria since the 1910s to the extent that he invited him to write the introduction of Vitoria's *De Indis*, published in 1917 in the series sponsored by the CEIP he himself co-ordinated as general editor on the *Classics of International Law*.<sup>26</sup> Scott and Barcia not only were familiar with these important debates in Europe, but they also became increasingly more engaged from the late 1920s with the scholarship focusing on the contributions of the School of Salamanca, as they began to shape themselves the renaissance of Vitoria.<sup>27</sup> For instance, Scott was also cognizant by 1928 of the work of the German scholar Joseph Muller, who regarded Vitoria as 'the father of the science of international law'.<sup>28</sup>

When Scott discovered Vitoria as a foundational legal figure in the discipline in the late 1920s, he was aware of the work of Nys and Muller, but was also deeply inspired by Barcia's understanding of Vitoria's contribution to the origins of the modern law of nations.<sup>29</sup> In his encounter with the work of Vitoria through the writings of Barcia, Scott saw an opportunity to connect and enrich his own Pan-American legal vision and his approach to American international law with a renovated historical interest on the Spanish origins of international law.<sup>30</sup> At the same time, Barcia was captivated by the fact that a US jurist was convinced that the origins of international law were above all Spanish and Catholic.<sup>31</sup> There was also a contextual coincidence, for they both contributed to what might be termed as the early twentieth century revival of Vitoria in the late 1920s and 1930s. For shortly after Barcia was invited to deliver a lecture on Vitoria at the Hague Academy of International Law in 1927, Scott delivered a series of lectures at the University of Salamanca in the context of the inauguration of the Francisco de Vitoria Chair in 1928 and was also honoured as 'doctor honoris causa'.<sup>32</sup> Barcia's lecture was published later in 1928 as a book under the title of *Francisco de Vitoria, Founder of Modern International Law* as the third volume of 'Section of

<sup>25</sup>E. Nys, *Les droits des indiens et les publicistes espagnoles* (1890); E. Nys, *Les origines du droit international* (1894); Koskenniemi, *supra* note 1, at 160; Koskenniemi, *supra* note 2, at 4.

<sup>26</sup>Brown Scott, *supra* note 21, at 701. E. Nys, 'Introduction', in F. de Vitoria, *De Indis et de Iure Belli Relectiones* (1917).

<sup>27</sup>By 1928, Scott reported Barcia's pioneering initiative of creating the 'Asociación Francisco de Vitoria' in Spain in 1926, as well as new scholarship and publications on the work and legacy of Vitoria. See J. Brown Scott, 'Asociación Francisco de Vitoria', (1928) 22 AJIL 136.

<sup>28</sup>*Ibid.*, at 139.

<sup>29</sup>See Scarfi, *supra* note 5, at 181–207.

<sup>30</sup>See Amorosa, *supra* note 2, at 162.

<sup>31</sup>C. Barcia Trelles, 'Prólogo', in J. Brown Scott, *El origen español del derecho internacional moderno* (1928), xviii.

<sup>32</sup>*Ibid.*, at vi.

Americanist studies'.<sup>33</sup> From May 1928 to August 1929, Barcia was invited as the first European Visiting Professor of the CEIP in Washington, in which context he prepared a study on the Monroe Doctrine. This study led to a second lecture at The Hague Academy of International Law, and eventually to a book on the *Monroe Doctrine and International Cooperation* (1930).<sup>34</sup>

Scott's lectures at Salamanca in 1928 were published in Spanish by the University of Valladolid press and as part of the 'Section of Americanist studies', including a prologue by Barcia.<sup>35</sup> In the prologue, like Scott, Barcia associated the incorporation of the New World into the sovereignty of Spain with the emergence of a new legal conception of international justice, as formulated by Vitoria. Moreover, they both interpreted American international law and the projects for continental codification advanced by the AAIL in the 1920s and 1930s through the prism of Vitoria, associating the 'right to migrate' and travel defended by Vitoria, what he termed *jus perigrinandi*, as an anticipation of some important principles of American international law advanced by the AAIL.<sup>36</sup> Barcia affirmed:

Scott observes exactly that that principle of Vitoria [Vitoria's notion of *ius perigrinandi*] could be today included in what the illustrious north-American professor terms American international law, even when Scott is cautious to add that Vitoria goes even further in his conceptions with respect to the actual constructors of American international law.<sup>37</sup>

By 1932, in the context of the 400<sup>th</sup> anniversary of *De Indis*, Scott contributed to the creation of the *Vitoria-Suarez International Association* and Barcia joined this initiative as another founding member. At this point, the sense of a mutual understanding between Scott and Barcia in their common quest for the renaissance of Vitoria as the founder of international law reached its highest point.<sup>38</sup> More importantly, although Latin American jurists and politicians had been long familiar with the work of Vitoria and the School of Salamanca to the extent that they revived and made use of it in the context of the revolutions of independence to question the legitimacy of the power of Spanish monarchy over the indigenous populations and the settlements established in the Americas,<sup>39</sup> Scott's engagement with Vitoria prompted a number of Latin American jurists involved in the US-led Pan-American legal initiatives of the AAIL, including Álvarez (Chile), José Matos (Guatemala), and Simón Planas-Suarez (Venezuela), to join him also as founding members, in the project for the creation of the *Vitoria-Suarez International Association*.<sup>40</sup> In other words, Scott's work on Vitoria and his Pan American legal initiatives through the AAIL

<sup>33</sup>C. Barcia Trelles, 'Francisco de Vitoria et l'École moderne du Droit international', (1927) 17 *Recueil des cours de l'Académie de droit international de La Haye* 133; C. Barcia Trelles, *Francisco de Vitoria, fundador del derecho internacional moderno* (1928).

<sup>34</sup>C. Barcia Trelles, 'La doctrine de Monroe dans son développement historique particulièrement en ce qui concerne les relations interaméricaines', (1930) 32 *Recueil des cours de l'Académie de droit international de La Haye* 397; C. Barcia Trelles, *Doctrina de Monroe y cooperación internacional* (1930).

<sup>35</sup>J. Brown Scott, *El origen español del derecho internacional moderno* (1928).

<sup>36</sup>See Barcia Trelles, *supra* note 31, at xx. On Vitoria's notion of *jus perigrinandi* see A. Pagden, *Spanish Imperialism and the Political Imagination* (1990), at 21.

<sup>37</sup>See Barcia Trelles, *ibid.*, at xx.

<sup>38</sup>Association Internationale Vitoria-Suarez, 'Statuts approuvés par l'Assemblée Générale constitutive, tenue à Oslo, le 17 août 1932,' (1932), at 1, James Brown Scott Papers, Washington D.C., Lauinger Library, Georgetown University, Box 62, folder 1.

<sup>39</sup>On Latin American usages of the School of Salamanca and the Spanish political and legal tradition, particularly Vitoria and Suárez, in the context of the revolutions of independence, see T. Halperin Donghi, *Tradición política española e ideología revolucionaria de Mayo* (1985), 19–43, 93–120; R. A. Humphreys and J. Lynch (eds.), *The Origins of Latin American Revolutions, 1808-1826* (1965), 9–10; E. Williamson, *The Penguin History of Latin America* (2009), 64–5. For a masterful and concise analysis of the international legal contributions of Vitoria and Suárez see A. Brett, 'Francisco de Vitoria (1483–1546) and Francisco Suárez (1548–1617)', in B. Fassbender and A. Peters (eds.), *The Oxford Handbook of the History of International Law* (2012), 1086.

<sup>40</sup>Association Internationale Vitoria-Suarez, *supra* note 38, at 8.



contributed to revitalizing Latin American interest in Vitoria, Francisco Suárez, and the School of Salamanca and especially in the broader quest for the recovery of Vitoria as the founder of the law of nations. A few years later, Scott was to publish his influential book, *The Spanish Origin of International Law: Francisco de Vitoria and his Law of Nations* (1934), as part of the *Classics of International Law Series*. The important repercussions and positive reviews of Scott's book contributed to consolidating the recovery of Vitoria and eventually to canonize him as the founder of the law of nations, and these were to have a special impact among the Latin American jurists involved in the AILL. Interestingly, the Cuban jurist Antonio Sánchez de Bustamante, who was a close friend of Scott and a leading member of the executive committee of the AILL, wrote a highly positive review of the book, and he went as far as to affirm, in Scott's similar vein, that many of the resolutions of the Pan American conferences could be defended with similar arguments to those originally advanced by Vitoria.<sup>41</sup> Scott's book and initiatives regarding Vitoria prompted and stimulated thus a number of Latin American jurists within the circles of Pan Americanism and the AILL, including Bustamante, Álvarez, Matos, and Planas-Suarez to regard Vitoria not only as a founder of international law, but also as a foundational figure of the contemporary Latin American legal tradition in its current Pan American version. In short, they engaged with and followed Scott in promoting the recovery of Vitoria as both a founder of the law of nations and a foundational precedent of the ideal of Pan America. Scott's book became associated with the renaissance of Vitoria, more than Barcia's contribution and previous Latin American usages of the School of Salamanca, despite the fact that Barcia anticipated Scott in situating Vitoria as the founder of international law. According to Carl Schmitt, Scott, more than any other jurist worldwide, 'dedicated himself to becoming the official exponent of Vitoria's fame'.<sup>42</sup>

All in all, the recovery of Vitoria as the founder of international law by Barcia and Scott responded to different disciplinary institutionalizations and contextual orientations in the field of international law in Spain and the US. The friendship and dialogue between Barcia and Scott, whom the former considered his master, made possible that these two foremost jurists with different legal sensibilities and educated in opposing cultural and disciplinary legal traditions could join together in the common quest of promoting the renaissance and fame of Vitoria in the 1920s and 1930s. The geopolitical and disciplinary motivations were different and so were their projections towards the work and legacy of Vitoria. While Scott's engagement with Vitoria, as will be shown in the following section, adopted a optimistic approach oriented to excavate the past as a way to project and envision the future of international law, Barcia's fixation with Vitoria was certainly nostalgic and even Romantic, as he felt at ease somehow submerged in the past to rescue a lost legal and intellectual treasure from Spain's imperial golden age.

From when they began their quest for the renaissance of Vitoria in the late 1920s, both Scott and Barcia were convinced that the Dominican theologian was the true 'creator', rather than the 'precursor', of international law.<sup>43</sup> This distinction sought to dethrone Hugo Grotius as the founder of international law and invert the terms, for those who regarded Grotius as the founder father tended to consider those who belong to the School of Salamanca, including Vitoria, as mere precursors. Both Scott and Barcia agreed in that the origins of international law were Spanish and Catholic, and they had to be traced back to the work of Vitoria, whose legacy encompassed Spain and the Americas at large. According to Scott and Barcia, Vitoria was the founder of international law and a jurist especially concerned with the destiny of Spain/America. Both Spanish American international law and continental American international law were geopolitical legal visions inspired in the legacy of Vitoria and they could legitimately claim to be inheritors of the spirit

<sup>41</sup>A. Sánchez de Bustamante, 'Review of James Brown Scott, *The Spanish Origin of International Law: Francisco de Vitoria and his Law of Nations*', (1934) 34 *Columbia Law Review* 1165.

<sup>42</sup>C. Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum* (2003), 118.

<sup>43</sup>See Barcia Trelles, *supra* note 31, at xxiii.

of Vitoria. The agreement on the Spanish origins of international law and the role of Vitoria as its founder father were common shared grounds about the past.

These legal and geopolitical visions and designs responded in Barcia and Scott to different and even opposing anxieties, as they emerged from Spanish and US disciplinary approaches to Vitoria. To some extent, Barcia and Scott sought to institutionalize the discipline of international law with the idea in mind of setting up its origins and historical foundations in a similar point in time, namely sixteenth century Spain. The excavation of the past and the work of Vitoria could pave the way and provide a window to envision different futures for the discipline. While Scott's approach to Vitoria was certainly projected towards envisioning US-centric liberal internationalist designs for the international law of the future, where the US was destined to remain a hemispheric hegemon in the Americas and potentially become a global world power, Barcia's insight into the past was rather nostalgic and celebratory of the old achievements and the intellectual and legal fruits of the Spanish empire, notably the international legal thought of Vitoria, and its lasting impact in Latin American legal and political culture in the nineteenth and twentieth centuries.

In his 1927 lecture on Vitoria delivered at The Hague Academy, Barcia proposed a Romantic and rather nostalgic interpretation of Vitoria, for he connected the contribution of the Spanish theologian not only to origins of the law of nations, but also to the roots of Spanish American legal and political culture, that is, a time when the Americas became closely inter-connected to Spain through imperial occupation and colonial rule. Vitoria gave birth to and discovered a new conception of international law as a result of a broader process of the discovery and conquest of America. These could all be regarded as achievements of the Spanish empire in its golden age. In a classic study on Romanticism, Philippe Lacoue-Labarthe and Jean-Luc Nancy have affirmed that the Romantic tradition was driven by a quest to overcome the binary divisions of history by reintroducing the classic world into the modern one, that is, the restoration of a lost 'golden age' as part of a search for total unity.<sup>44</sup> This sense of a lost 'golden age' and the search for a unified vision of the Americas makes Barcia a late exponent of a Romantic tradition. According to Barcia, once Great Britain consolidated its position on the east coast of North America and the Americas were divided between the Anglo-Saxon and the Spanish, the intellectual essence of a common law of nations for the Americas lost its original meaning. The Romantic impulse of returning to the golden age of Vitoria, a time when the Americas were a single unified entity with a common law of nations, allowed Barcia to envision alternative forms of reconciliation in the past for understanding the dilemmas of the present.

Barcia regarded Vitoria and the Spanish professors of the sixteenth century as devoted to 'the cult of truth', which gave them an 'eternal' character in 'human life' and 'immortal profile'.<sup>45</sup> He contrasted these attributes of Vitoria as a moralist to the rather mundane character of Hugo Grotius. Barcia believed that the principles Vitoria forged proved to have an eternal validation. By contrast, the work of Grotius dealt with international questions in connection to concrete 'realities' and 'international rivalries', for he was above all a 'diplomat'.<sup>46</sup> Vitoria's work was primarily concerned with a new and unique phenomenon that was not present in the work of Grotius: the Spanish occupation of the New World and the rights of the 'American Indians'. As such, Vitoria questioned the legitimacy of the universal authority of the Emperor and thus the practice of imperialism as such. As a moralist, rather than a jurist, Vitoria was immortal and epitomized 'anti-imperialist redemption', whereas Sepulveda justified on juridical grounds the rights of the Spanish empire over the 'American Indians' and their territories. Vitoria

<sup>44</sup>P. Lacoue-Labarthe and J. L. Nancy, *The Literary Absolute: The Theory of Literature in German Romanticism* (1988), 10–11. On the Romantic approach to international law see S. Neff, 'A Short History of International Law', in M. D. Evans (ed.), *International Law* (2003), 31.

<sup>45</sup>C. Barcia Trelles, 'Francisco de Vitoria et l'École moderne du Droit international', (1927) 17 *Recueil des cours de l'Académie de droit international de La Haye* 133, at 115.

<sup>46</sup>*Ibid.*, at 117.

defended, according to Barcia, a robust notion of sovereignty and condemned interventions.<sup>47</sup> This anti-imperialist moral attitude rendered Vitoria and his ideas a perennial treasure of the past with long lasting resonances in the present. According to Barcia's view of Vitoria, the lessons of the Spanish theologian could be traced back to a specific context of the past, but their fruits were destined to be perennial.

Yet Barcia's Romantic interpretation of Vitoria as a moralist with an anti-imperialist and anti-interventionist attitude was neither abstract nor idealist, but essentially nostalgic of the past glory of imperial Spain, and critical of the contemporary US regular interventions in Latin America. By the late 1920s and early 1930s, Barcia regarded 'the plague of interventions', in particular US interventions, as 'the evil of the Americas'.<sup>48</sup> In the view of Barcia, as Vitoria was the intellectual progenitor of a Spanish American legal and political tradition, his successors could only come from the Southern and Spanish side of the Western Hemisphere. These were thinkers and statesman such as Simón Bolívar and José Martí. Indeed, Barcia portrayed Bolívar as an authentic successor of Vitoria, since he was a defender of 'confederative Hispanic-American unity'.<sup>49</sup> Barcia thus portrayed Vitoria as the founder of a broader Spanish American anti-imperialist and anti-interventionist legal tradition, which had its inheritors in both Spain and Latin America, that is, Spanish American culture. For this reason, Vitoria's law of nations could never be a precedent of 'American international law', the continental ideal advocated by Álvarez, Scott and the AILL and rooted in a US-led understanding of the Western Hemisphere, and it was instead a precedent of what Barcia defined as 'Ibero-American international law'.<sup>50</sup> As has been shown, the central tenet of American international law, as defined by Álvarez, was the Monroe Doctrine as a continental and multilateral principle for the Americas. By contrast, the foundations of Ibero-American international law could be found in Vitoria's work and legacy. Barcia believed that the glorious past of Vitoria and Spain in the sixteenth century was still meaningful for the Americas in the 1920s, for Vitoria's legacy was providential for Spanish Americanist legal culture. He thus concluded categorically his study on Vitoria as follows:

Vitoria writes about the Americas and for the Americas, for the Americas of today, composed of sovereign and independent republics . . . Our brothers of the Americas should pose their vision on 16<sup>th</sup> century-Spain, a time of qualitative greatness, if they want to construct their international legal vision on the basis of a glorious tradition.<sup>51</sup>

Unlike Barcia, Scott adopted a liberal internationalist optimistic and futurist approach to the ideas and lessons of the Dominican theologian. Scott regarded Vitoria above all as a liberal internationalist prophet of the international law of the future, that is, of international legal organizations and institutions of global governance, such as the League of Nations and the Court of International Justice, and even the US Declaration of Independence, Woodrow Wilson's Fourteenth Points and also Franklin Delano Roosevelt's Good Neighbour Policy. He went as far as to associate Vitoria's notion of *jus gentium* with the US Declaration of Independence, for he affirmed: 'perhaps the American reader would not be averse to a phrase from the Declaration of Independence, which is a classic statement of the Victorian law for human beings – "life, liberty and the pursuit of happiness"'.<sup>52</sup> Moreover, Scott regarded Vitoria as an intellectual prophet of Wilson's Fourteenth Point, since he stated: 'we come now to a second series of proofs, culminating (with apologies to the late President Wilson) in what might be called Vitoria's fourteenth point'.<sup>53</sup> Scott presented

<sup>47</sup>*Ibid.*, at 142.

<sup>48</sup>C. Barcia Trelles, *Doctrina de Monroe y cooperación internacional* (1931), at 699.

<sup>49</sup>*Ibid.*, at 160.

<sup>50</sup>See Barcia Trelles, *supra* note 45, at 129.

<sup>51</sup>*Ibid.*, at 331.

<sup>52</sup>J. Brown Scott, *The Spanish Origins of International Law: Francisco de Vitoria and his Law of Nations* (1934), at 140.

<sup>53</sup>*Ibid.*, at 142.

Vitoria as an intellectual anticipation and epitome of a US-centric vision of liberal internationalism, as formulated in classic US declarations and contemporary policies, before both liberalism and internationalism existed, at least as they were conceived in the eighteenth and twentieth centuries within US legal and foreign policy circles. As such, Vitoria was ahead of his time and even ahead of all times. Scott stated: 'I have wondered why it is that Francisco de Vitoria was so liberal that even in our day his views seem ahead of the times.'<sup>54</sup> According to Scott, the legacy of Vitoria was destined to be providential because Vitoria's liberal legal vision was moving towards evolution and progress in a world that was also 'leaning towards liberalism' and 'it is only the writings of liberals that survive'.<sup>55</sup> Before US-led liberal internationalism and American international law were formulated and promoted by jurists such as Scott and Álvarez, so Scott argued, Vitoria was able to envision and foresee these ideals: 'Vitoria was a liberal. He could not help being a liberal. He was an internationalist by inheritance. And because he was both, his international law was a liberal law of nations.'<sup>56</sup> Unlike Barcia, Scott regarded Vitoria above all as a jurist, rather than a moralist, but one possessing the skills of prophecy and futurism. All in all, Scott associated Vitoria to both US classic and contemporary political and legal traditions, as well as liberalism and liberal internationalist ideals and institutions, especially those closely tied to US Wilsonian visions and designs for international organization, such as the League of Nations and the Permanent Court of International Justice.

In the view of Scott, Vitoria was a prophet of the law of nations of the future, because he proposed a wider notion of the law of nations that encompassed a broad ideal of humanity, rather than Christianity, and providential progress. Scott considered himself and all his contemporaries committed to the effort of institutionalizing the discipline and practice of international law as the natural successors of Vitoria's legacy, but the beneficiaries of such an anticipatory and futurist legacy were all human beings, including those who are still waiting to be born. Therefore, Vitoria was able to anticipate and foresee the creation of institutions such as the League of Nations and the Permanent Court of International Justice, 'established but a decade ago – so Scott affirmed – upon the initiative of the successors of Vitoria's aborigines, is the culmination of the phase of his system of international law'.<sup>57</sup> Scott concluded his study on the Spanish origins of international law reaffirming that Vitoria was at the very same time the founder of international law and a prophet of its future. He thus stated that Vitoria 'was not merely the founder of the modern law of nations, but the prophet of the newer law of nations'.<sup>58</sup>

As a President of the AIIL and a jurist deeply engaged with the Pan-American movement, Scott regarded the wide-ranging liberal internationalist and humanitarian vision of Vitoria also as a culmination of the US-led approach to American international law, as promoted by the AIIL and the Pan-American Union, and the ideals of inter-American diplomacy, as formulated by Franklin D. Roosevelt.<sup>59</sup> In the late 1930s, in the context of a series of conferences he delivered at the University of San Marcos in Peru, following the 8<sup>th</sup> Pan American Conference (1938), he traced a connection between Vitoria and the Good Neighbour Policy, originally formulated in 1933 by Roosevelt as a multilateral engagement with Latin America.<sup>60</sup> The Good Neighbour Policy is often associated to the formal US commitment to the principle of non-intervention and multilateralism in inter-American affairs. Scott regarded the Good Neighbour Policy as a culmination of the principles of peace, friendship and international co-operation originally advanced by Vitoria. Vitoria's moral and legal lessons anticipated, so Scott argued, the Good Neighbour Policy and a number of other principles that emerged from the declarations of the

<sup>54</sup>Ibid., at 275.

<sup>55</sup>Ibid., at 280.

<sup>56</sup>Ibid., at 280.

<sup>57</sup>Ibid., at 282.

<sup>58</sup>Ibid., at 288.

<sup>59</sup>See Scarfi, *supra* note 5.

<sup>60</sup>J. Brown Scott, *Conferencias del presidente del Instituto Americano de Derecho Internacional* (1938).

AAIL, such as the Declaration of the Rights and Duties of Nations, elaborated by Scott in 1915 and the Pan American Conferences.<sup>61</sup> He also opposed Vitoria to Hugo Grotius, who did not possess the gift of being a prophet, but rather of someone who drew heavily on Vitoria and the Spanish scholastics. The work of Grotius, according to Scott, 'had as its basis the writings of the Spanish scholastics', since 'the most important factors above all that have been proposed by Grotius within the field of international law consist in his own adoption and proclamation of the international doctrines of the Spanish scholastics'.<sup>62</sup> Finally, in his lectures, Scott paid special attention to Vitoria's emphasis on the binding nature of the law of nations and the consequences underlying the violation of its principles and legal commitments of reciprocity. When presented by Scott to a Latin American audience engaged in the Pan American movement and the tradition of American international law, Vitoria's warnings about the violations of the law of nations could have implications for the future of international law and inter-American relations. Through Vitoria's notion of the law of nations, Scott warned Latin American nations, particularly their jurists and diplomats, not to violate the law of nations and thus avoid committing 'mortal crimes' within the Americas and beyond:

The law of nations does not have the force merely of pacts or agreements between men, but has the validity of a positive enactment. The whole world, which is in a sense a commonwealth, has the power to enact laws, which are just and convenient to all men; and these make up the law of nations. From this it follows that those who break the law of nations, whether in peace or in war, are committing mortal crimes, at any rate in the case of the graver transgressions such as violating the immunity of ambassadors. No kingdom may choose to ignore this law of nations, because it has the sanction of the whole world.<sup>63</sup>

#### 4. Vitoria and the spatial meaning and scope of the Monroe Doctrine: From Spanish America to Pan America

Scott and Barcia maintained geopolitical approaches to Vitoria that were also grounded on complementary spatial anxieties about the meaning and scope of the Monroe Doctrine. In the early twentieth century, following the emergence of the Roosevelt Corollary of the Monroe Doctrine and Drago's redefinition of the doctrine as a continental principle, a series of hemispheric and global reinterpretations of the Monroe Doctrine emerged in the US and Latin America. This led to Pan-American, as well as anti-imperialist critical interpretations of the Monroe Doctrine in the Americas.<sup>64</sup> These debates were to inform the legal ideas of Scott and Barcia, and their approaches to Vitoria. As will be shown in this section, while Scott maintained an ambivalent understanding of the Monroe Doctrine as a President of the AAIL and legal advisor of the US Department of State, in the context of his visit to Washington in 1928 as a CEIP European Visiting Professor, Barcia prepared a study on the historical trajectory of the Monroe Doctrine, tracing an explicit connection with Vitoria. It is no coincidence that it was then in that context that they both initiated a common quest for promoting the renaissance of the work of Vitoria. These shared endeavour around the cult of Vitoria were to inform and shape their new geopolitical understandings of the Monroe Doctrine, especially that of Barcia.

Barcia proposed a Spanish Americanist understanding of the Monroe Doctrine and traced a connection between the intellectual origins and prehistory of the Monroe Doctrine and the work

<sup>61</sup>*Ibid.*, at 145–78.

<sup>62</sup>*Ibid.*, at 99, 145.

<sup>63</sup>See Vitoria, *Political Writings*, ed. A. Pagden and J. Lawrance (1991), at 40. See also Scott, *supra* note 52, at 22.

<sup>64</sup>On these redefinitions of the Monroe Doctrine see Scarfi, *supra* note 19; J. P. Scarfi, 'Denaturalizing the Monroe Doctrine: The rise of Latin American legal anti-imperialism in the face of the modern US and hemispheric redefinition of the Monroe Doctrine', (2020) 33 *LJIL* 541.

of Vitoria. Indeed, he traced back Vitoria's scepticism regarding Spanish sovereignty and its rights of property over the Americas as an intellectual and legal precedent of the Monroe Doctrine.<sup>65</sup> In its original formulation of 1823, the Monroe Doctrine emerged as a US unilateral declaration setting up limitations to European interventions and intrusions on the Western Hemisphere. It was thus an anti-interventionist and anti-colonial doctrine. At the same time, as long as it regarded any European interventions in the Americas as a threat to US national interests, it entailed a proclamation of US paternalism and supremacy over Latin America, as if the former was the protector of the whole continent.<sup>66</sup> US President James Polk later in the 1840s applied it as an expansionist and even an imperial principle over the Americas. As such, the Monroe Doctrine could be regarded as a manifestation of US 'imperial anti-colonialism'.<sup>67</sup> Barcia regarded the anti-colonial component of the Monroe Doctrine, in particular the idea that the Americas were not a political and colonial subject for the Spanish monarchy and European powers and thus they were not *res nullius*, as a notion originally addressed by Vitoria's law of nations. Indeed, according to Barcia, this idea was at the very same time universal and Spanish Americanist in Vitoria's original formulation. In other words, Spanish-Americanism and Spanish-American international law predated not only Pan-Americanism and American international law, but also any other alternative notion of Americanism broadly understood. By 1823, according to Barcia, Monroe appropriated a principle created by Vitoria, but made of it a US unilateral, transient and selfish doctrine. The US Monroe Doctrine in its 1823 formula introduced above all divisions and tensions within the Americas, in the view of Barcia. Unlike Vitoria, the Monroe Doctrine was opposed to any ideal of international or hemispheric co-operation.<sup>68</sup> 'Vitoria focuses on the problem of America objectively', whereas 'Monroe sustained a circumstantial thesis'.<sup>69</sup>

Barcia's Spanish-American understanding of the intellectual roots of the Monroe Doctrine was much closer to the anti-imperialist critiques of the doctrine proposed by Latin American figures than to any Pan-American redefinitions of it, as they emerged in the 1910s and 1920s. For Barcia went as far as to associate Vitoria, as has been already shown, with ideals of 'anti-imperialist redemption'. As long as Spain and Spanish America maintained common cultural and linguistic traditions and were unified in the sixteenth century, Latin American anti-imperialist and anti-interventionist jurists, intellectuals and politicians were the natural Spanish-American successors of the tradition initiated by Vitoria. Yet while the golden age of Vitoria represented the Americas as a unified continent connected to Spain, the enunciation of the US Monroe Doctrine in 1823 gave birth to a cultural division between the two Americas, Latin (Spanish) America and the US and their respective legal and political traditions. This tension did not manifest itself until Britain established an outpost in North America, and after the nations of the Western Hemisphere gained their independence from both Spain and Great Britain. Since the aftermath of the independence of the South and North American republics, according to Barcia, 'it would be no longer possible to refer to the history of America' as a unit, 'but to the history of two diverse Americas that haplessly sought to engage in dialogue and work together, since neither their psychologies nor their aspirations proved compatible'.<sup>70</sup> By rendering Vitoria's original universal notion of the law of nations unilateral in the nineteenth century, the Monroe Doctrine generated an irreversible division between the two Americas, dissolving the continental unity that began with the Spanish 'discovery' of America.

The Spanish American intellectual genealogy of the Monroe Doctrine, as proposed by Barcia, contrasted sharply with the ideas of Alejandro Álvarez, Scott's partner and co-founder of the AILL.

<sup>65</sup>For an excellent contextual analysis of Vitoria's scepticism with Spanish sovereignty and the limits of its property rights over the American Indians see A. Pagden, *Spanish Imperialism and the Political Imagination* (1990), 13–36.

<sup>66</sup>See Sexton, *supra* note 11, at 47–84.

<sup>67</sup>See W. A. Williams, *The Tragedy of American Diplomacy* (2009), 18–57; Sexton, *ibid.*, at 5–8.

<sup>68</sup>See Barcia Trelles, *supra* note 48, at 13, 24.

<sup>69</sup>*Ibid.*, at 23.

<sup>70</sup>*Ibid.*, at 37–8.

While Álvarez regarded the Monroe Doctrine as a foundational principle of American international law, Barcia sought to dismantle this Pan American tradition by offering an alternative genealogy for what he defined instead as Spanish American or Ibero-American international law tracing its origins in the work of Vitoria. Although some core notions of the Monroe Doctrine were anticipated by Vitoria, the latter had less commonality with the former than with its Latin American critics. Bolívar, Martí and other Latin American jurists, such as Isidro Fabela and Emilio Roig de Leuchsenring, were much closer to the anti-interventionist regional ideals and those of Vitoria than to any unilateral US doctrine. These two latter figures regarded the Monroe Doctrine as an elastic and ambivalent principle that allowed the US to intervene in Latin America and create a state of exception, promoting interventionism and Pan Americanism in the name of the very same principle.<sup>71</sup> As a result, all these Latin American statesman, jurists and intellectuals were intellectually connected to Barcia through Vitoria. And Barcia himself was a Spanish successor, rather than a Latin American one, of a much broader Spanish American legal tradition, whose founder was Vitoria.

Scott, by contrast, was captivated by the idea of Álvarez according to which the origins of the ideal of American international law had its intellectual grounds in the Monroe Doctrine. For Scott promoted the institutionalization of this ideal as the main architect and promoter of the AILL. As has been already shown, Álvarez proposed a Pan American and multilateral redefinition of the Monroe Doctrine and regarded it as a proper principle of American international law. Although Scott maintained a US-led and ethnocentric legal approach, he engaged with the multilateral approach of Álvarez. Indeed, in the context of the first institutional meeting of the AILL held in 1915 in Washington, Scott drew on and cited the Pan American version of the Monroe Doctrine advocated by Álvarez and presented it as a broader hemispheric legal principle based on Western Hemisphere ideals and practices of ‘continental solidarity’. Citing Álvarez and translating him into English, Scott affirmed:

The proclamation of the Monroe Doctrine came to the aid and strengthened the sentiment [of continental solidarity], combining in a happy formula the ideas of the American nations concerning their right to preserve their independence and to oppose the attempts of the European states to oppress, to conquer, or to colonize any part of their territory.<sup>72</sup>

A few years later, in the context of the centenary of the Monroe Doctrine, Scott commissioned Álvarez through the CEIP to prepare and edit a volume on the Monroe Doctrine, focusing on ‘its importance in the international life of the states of the New World’.<sup>73</sup> The volume included a prologue by Scott, where he affirmed that the ‘book is a service alike to North America, Central America and South America’, and that such a volume, including US and Latin American views on the doctrine, could only be prepared by Álvarez, who was an authentic ‘friend of all the Americas’.<sup>74</sup>

At the same time, like most US politicians and jurists working as legal advisors for the US Department of State, Scott proved to have a certain official resistance to promote the redefinition of an original US national doctrine as a broader multilateral Pan-American principle of international law for the Americas. Therefore, he oscillated between a nationalist political and a Pan-American legal approach to the Monroe Doctrine and ended up promoting these two opposing versions. Similarly, he regarded it alternatively as a principle of international law

<sup>71</sup>See Scarfi, *supra* note 64; J. P. Scarfi, ‘Mexican Revolutionary Constituencies and the Latin American Critique of US Intervention’, in A. Orford et al. (eds.), *Revolutions in International Law: The Legacies of 1917* (2021), 218.

<sup>72</sup>A. Álvarez, *La diplomacia de Chile durante la emancipación y la sociedad internacional americana* (1910), at 66–7, cited in J. Brown Scott, *The American Institute of International Law: Its Declaration of Rights and Duties of Nations* (1916), at 42.

<sup>73</sup>A. Álvarez, *The Monroe Doctrine: Its importance in the international life of the states of the New World* (1924).

<sup>74</sup>J. Brown Scott, ‘Preface’, in A. Álvarez, *The Monroe Doctrine: Its importance in the international life of the states of the New World* (1924), at vi.

and in certain occasions as one that ‘had no basis in international law’, as he affirmed in an address he delivered at the University of Michigan in 1932, right at the time when he was deeply involved in his cult of Vitoria as the founder of international law.<sup>75</sup>

Since the US was an informal empire in ascendance, Scott’s appropriation of Vitoria had more concrete geopolitical effects than that of Barcia, at least for Cuba and Pan America. In the context of the preparations for a 400-year anniversary of Vitoria’s delivery of *De Indis* (1532), Scott proposed to celebrate it twice as part of the annual meeting of the *Institut de Droit International*, once in Salamanca, where Vitoria’s lectures were originally delivered, and also another time in Havana. One might wonder why celebrate it also at Havana and whether there were any strategic or geopolitical reasons for the US Department of State or the AAIL to organize celebrations in Spain and Cuba. Scott confessed that there were clear geopolitical reasons, and these were connected to a specific political and geographical representation of the origins of the modern world and modern international law. Scott believed that it was worth celebrating the anniversary in Havana, Cuba, because it was the city where Columbus landed in his first arrival to America in 1492. He thus affirmed: ‘On October 28, he landed upon Cuba, the first of the future American Republics to be touched by Columbus on the first of his western voyages.’<sup>76</sup> There was a more concrete important geopolitical motivation to celebrate this in Cuba connected to the future of the AAIL and Pan Americanism. Under Scott’s initiative and on the basis of a series of resolutions adopted at the Sixth Pan American Conference (1928) held in Havana, Cuba’s President Gerardo Machado approved a decree in March 1929 for an ambitious project of creating a Pan American Academy of International Law in Cuba and a Palace of Justice for the AAIL, similar to the one established at The Hague, centralizing and institutionalizing in Cuba all the activities of the AAIL.<sup>77</sup> The future of (American) international law conceived by Álvarez in the abstract wonderland of Pan America was envisioned and relocated then by Scott in the concrete land of Cuba. Therefore, Havana was to become the new city centre of Pan America, a strategic and geopolitical point of contact between the (Spanish) past roots and the future of (American) international law, that is, between Vitoria, American international law and Pan America. Vitoria’s roots and legacy made it possible to reconcile in the twentieth century three contradictory legal traditions from Spain, the US, and Latin America, connecting the emerging US-led Pan-American legal imagination of Scott and the AAIL with the classic Spanish legal tradition.

Moreover, thanks to Scott’s concrete and successful appropriation, Vitoria proved to become especially meaningful in the 1930s for the geopolitical and legal imagination of the US in the Americas as the leading promoter of Pan-Americanism, as well as an emerging global power. In the context of the Seventh Pan American Conference (1933) held in Montevideo, it was established with unanimity, under Scott’s initiative, that the bust of Vitoria, which was located in the University of Salamanca, where the Dominican theologian famously imparted his lectures, be relocated in the official offices of the Pan American Union in Washington.<sup>78</sup> Therefore, in the 1930s Vitoria’s legacy migrated from Spain and Spanish America to Pan America.

<sup>75</sup>J. Hepp, ‘James Brown Scott and the Rise of Public International Law’, (2008) 7 *Journal of Gilded Age and Progressive Era* 151, at 175.

<sup>76</sup>J. Brown Scott, ‘The Discovery of America and its Influence on International Law; The Fourth Hundredth Anniversary of Francisco de Vitoria’s Disquisitions “De Indis” of 1532’, address delivered at Catholic University, 25 February 1929, James Brown Scott Papers, Washington DC, Lauinger Library, Georgetown University, box 62, folder 10, 1, at 3.

<sup>77</sup>Decree of the President of Cuba Establishing a Palace of the American Institute of International Law at La Habana’, *Gaceta Oficial*, March 1929, Carnegie Endowment for International Peace, *Year Book for 1929* (1929), at 197–8.

<sup>78</sup>J. Brown Scott, ‘The Seventh International Conference of American States’, (1934) 28 *AJIL* 219, at 229–30. This resolution was fulfilled 30 years later in October 1963.



## 5. Conclusion

This article has examined the recovery and eventually the final canonization of Vitoria as the founder of international law in the context of the modern institutionalization of the discipline in the 1920s and 1930s in Spain, the US and Latin America. It has proposed two interconnected dimensions for understanding the specific case of the recovery of Vitoria by Barcia and Scott, and the geopolitics of canonization involved in this process more broadly. These dimensions encompass disciplinary geopolitical factors and temporal anxieties, as well as spatial motivations.

Firstly, the article has illustrated that for understanding the recovery and canonization of Vitoria, it is worth examining the *geopolitical disciplinary* anxieties and imperial policies, as they emerged in Spain, the US and the Americas, that prompted Barcia and Scott to advocate a shared quest for promoting Vitoria as the founding father of the discipline. Secondly, the article has sketched the *temporal geopolitical* anxieties that allowed Scott and Barcia to propose different US-led liberal internationalist, and Spanish Americanist Romantic and nostalgic interpretations of Vitoria, situating his legacy alternatively in the past and the future. Thirdly, the recovery and canonization of Vitoria was also informed by opposing Pan American and Spanish American *spatial* motivations of re-unifying the US and Latin America, and Spain and Spanish America on the basis of different interpretations of the Monroe Doctrine. Although Barcia and Scott shared some common interpretative grounds, they promoted different appropriations of Vitoria, which were inspired in opposing legal and geopolitical sensibilities regarding the nature and scope of the Monroe Doctrine.

Finally, Scott's canonization of Vitoria was hegemonic and as such widely acknowledged by the international legal community, whereas that of Barcia has tended to be overlooked, for it was essentially nostalgic and thus anti-hegemonic. Indeed, Scott's appropriation of Vitoria proved to be more concrete and effective than that of Barcia, since it was in tone with the geopolitical transformations that allowed the US to become a new emerging hemispheric hegemon and a future global power, just when the so-called age of empire was coming to an end.