AHR Forum

The Liberal Traditions in the Americas: Rights, Sovereignty, and the Origins of Liberal Multilateralism

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> America is therefore the land of the future, where, in the ages that lie before us, the burden of the World's History shall reveal itself—perhaps in a contest between North and South America.
>
> G. W. F. Hegel, 1857

> Somos más Americanos/We are more American.
>
> Los Tigres del Norte, 2001

"WHO HAS WRITTEN ON A WESTERN HEMISPHERE scale," Herbert Bolton asked in 1932, "the history of shipbuilding and commerce, mining, Christian missions, Indian policies, slavery and emancipation, constitutional development, arbitration, the effects of the Indian on European cultures, the rise of the common man . . . Who has tried to state the significance of the frontier in terms of the Americas?" Bolton, a student of Frederick Jackson Turner, raised the question in his presidential address to the American Historical Association, hoping to prompt an innovative approach to American studies, one that would take the so-called New History movement associated with Turner—organized around the sociology of migration, institutions, ideas, and property relations—and stretch it over a transnational frame. Bolton started his address by making what seems a commonsense comparison, noting that if European history could not be understood by studying England, France, or Germany alone, then "Greater America" could not be "adequately presented if confined to Brazil, or Chile, or Mexico, or Canada, or the United States."[1]

This effort to dilute nationalist historiography by depicting "American History as Western Hemisphere History" holds up well against the scholarly provincialism

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[1] Herbert E. Bolton, "AHA Presidential Address: The Epic of Greater America," December 28, 1932, *American Historical Review* 38, no. 3 (April 1933): 448–474, http://www.historians.org/info/aha_history/hebolton.htm; Lewis Hanke, ed., *Do the Americas Have a Common History? A Critique of the Bolton Theory* (New York, 1964).

of Bolton's day. Yet his belief that the Western Hemisphere shared a unity of republican and anticolonial experiences and, by implication, interests led him to posit a homologous relationship between the nations of Greater America and those of Greater Europe that did not exist. America was different from half-monarchical, largely illiberal, balance-of-power Europe. More importantly, the United States' emergence as a new kind of hegemon, able to project its power and influence free from the burdens of direct territorial or administrative rule, prevented Bolton, and many who followed, from seeing a more useful comparison: between the United States' relationship with Latin America and Europe's with its colonial possessions. As a result, more recently, as intellectual historians (including Jennifer Pitts and Andrew Fitzmaurice in this *AHR* Forum) have considered the links between liberalism and empire, the United States and its dealings with Latin America have largely been ignored.

In all the debates over what is and is not distinct about the United States—in terms of national identity, political institutions, domestic history, and foreign policy—little attention has been paid to one variable that can, at least in relation to its global ascendance, unambiguously be called unique: its relationship with Latin America.[2] "South America will be to North America," the *North American Review* wrote in 1821, "what Asia and Africa are to Europe."[3] Not quite. Other liberal capitalist world powers—France, Holland, and Great Britain—tended, at their apex, to rule over culturally and religiously distinct peoples in Africa, Asia, and the Middle East. The settlers who colonized North America, by contrast, looked to Iberian America not as an epistemic "other" but as a competitor in a fight to define a set of nominally shared but actually contested ideas and political forms: Christianity, republicanism, liberalism, democracy, sovereignty, rights, and above all the very idea of America. After the republican revolutions of the late eighteenth and early nineteenth centuries, the relationship between the United States and the new nations of Spanish America developed a contentious ideological and legal intimacy—an ongoing "immanent critique"—unmatched by other comparable hegemon-periphery relations, especially one that would jump scale from the regional to the global level. England's relation to its "Celtic fringe," especially to Ireland and Scotland, produced a somewhat similar dynamic that gave form and content, in terms of law, justifying ideologies, and administration, to the British Empire.[4] But in the Americas, extended space ("a hemisphere to itself," as Thomas Jefferson once put it) and time (running from Elizabethan anti-Hispanism of the seventeenth century to the neoliberal Washington Consensus of the twentieth) allowed the rivalry to play out on an unprecedented scale.

[2] Michael Kammen, "The Problem of American Exceptionalism: A Reconsideration," *American Quarterly* 45, no. 1 (March 1993): 1–43; Sean Wilentz, "Against Exceptionalism: Class Consciousness and the American Labor Movement, 1790–1920," *International Labor and Working Class History* 26 (Fall 1984): 1–24; Ian Tyrrell, "American Exceptionalism in an Age of International History," *American Historical Review* 96, no. 4 (October 1991): 1031–1055; Eric Foner, "Why Is There No Socialism in the United States?" *History Workshop Journal* 17 (Spring 1984): 57–80.

[3] Edward Everett, review of Gregorio Funes, *Ensayo de la historia civil del Paraguay, Buenos-Ayres, y Tucuman*, *North American Review* 12 (1821): 432–443, here 435. For Everett's authorship of this review, see Arthur P. Whitaker, *The United States and the Independence of Latin America, 1800–1830* (Baltimore 1941), 334.

[4] Cf. David Armitage, *The Ideological Origins of the British Empire* (Cambridge, 2000).

Out of this antagonism emerged a normative ideal of republican America. The origins and endurance of the United States' sense of moral purpose, distinct from the utilitarian, positive-law expositions of international diplomacy that took shape in nineteenth-century Europe, have long been the subject of scholarly inquiry. In 1820, Jefferson imagined a future when "our strength will permit us to give the law of our hemisphere," marked by "the meridian of the mid-Atlantic," which would serve as "the line of demarcation between war and peace, on this side of which no act of hostility should be committed, and the lion and the lamb lie down in peace together."[5] Rarely, however, have scholars considered that it was South and Central America that would give substance to Jefferson's vision, through the elaboration of what the region's legal theorists and statesmen would by the early twentieth century come to call American international law—a remarkable body of jurisprudence made even more so by the way it is overlooked by intellectual historians concerned with charting out the transnational origins of liberal multilateralism.[6]

Independence leaders and jurists in the new Spanish-American nations (Brazil remained tied to Portugal through the transference of the monarchy to Rio de Janeiro and therefore did not become a republic until 1889) also believed that the Americas represented a rejuvenating world-historical force. But over time, there emerged a growing divergence over how to define the two constitutive elements of this moral and political power: individual rights and sovereignty. Put crudely, Spanish Americans and Brazilians came to hold individual rights relative to the establishment of the public common good and territorial sovereignty as absolute. In the United States, the terms were reversed; U.S. politicians defined individual rights as inherent and inalienable, and qualified state sovereignty on responsible public administration that could protect those rights.

The distinction between these related but antagonistic rights traditions is intentionally schematic. The evolution of the political culture of the United States comprises, of course, "multiple traditions"—some egalitarian, others not, some individualizing, others hierarchal—with each influenced by a diverse array of social and intellectual sources.[7] Many of these traditions, *à la* Bolton, can be found throughout the Americas, North, Central, and South, and include artisan and workingmen's associations, trade unions, urban life, civic republican sentiment, abolitionism, migration, Christian and secular reform movements, family and gender relations, labor regimes, and "ascriptive forms" of racial and national identity.[8] One source of national policy that is specific, at least in its degree of importance, to the United States—nineteenth-century western settlement and land entitlements—highlights

[5] *The Jeffersonian Cyclopedia: A Comprehensive Collection of the Views of Thomas Jefferson Classified and Arranged in Alphabetical Order under Nine Thousand Titles Relating to Government, Politics, Law, Education, Political Economy, Finance, Science, Art, Literature, Religious Freedom, Morals, Etc.* (New York, 1900), 699.

[6] See Erez Manela, *The Wilsonian Moment: Self-Determination and the International Origins of Anticolonial Nationalism* (New York, 2007); Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton, N.J., 2006); Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, 2010). But see Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London, 2006), especially 49–68, for an appreciation of the innovation of Latin American nationalism.

[7] Rogers Smith, "Beyond Tocqueville, Myrdal, and Hartz: The Multiple Traditions in America," *American Political Science Review* 87, no. 3 (1993): 549–566.

[8] Ibid., 550.

the generative tension between ideology and practice: the "free-born sons of America," as Andrew Jackson described the American ideal in his 1812 war cry, owed their existence to a strong, structuring, and increasingly militarized state.[9] Similarly, many of the Latin American jurists who in the late nineteenth century would weave together diverse legal arguments into an overarching theory of absolute sovereignty—used to contest what was described as an expansionist, Indian-killing, warmongering United States—were citizens of governments doing the exact same thing. The region's most prominent liberal legal theorists were from countries—Chile, Argentina, Brazil, and Mexico—then consolidating control over their own hinterlands, engaged in wars to subdue or exterminate remaining Native American groups. These nations elaborated their own "anti-imperialist imperialism," a civilizing mission that, by providing a rhetorically favorable contrast with U.S. Indian policy, helped divert attention away from their own violence against native peoples, such as the Yaqui and Apache in northern Mexico or the Mapuche in Patagonia.[10] It turns out that the United States' "imperial anticolonialism," to use William Appleman Williams's description of the nation's motivational creed, was not so unique. But over time, this deflection produced very distinct ways of reconciling what Pitts, Fitzmaurice, and other scholars have identified as the elemental tension within liberalism between universalism and difference.[11]

The argument that the United States was able to displace through expansion the problems that slavery and inequality presented to republican virtue and universalism is not new.[12] But placing it in the broader perspective of Greater America—that is, considered in relation to other republican and liberal traditions in the Americas—allows for reconsideration. The region that would eventually become known as Latin America also had to reconcile race and class to republicanism/liberalism.[13] In contrast to the United States, however, its independence leaders and theorists inherited a colonial system of legal and theological thought that consciously organized "difference," understood primarily in racial and class terms, into administrative and

[9] Laura Jensen, *Patriots, Settlers, and the Origins of American Social Policy* (Cambridge, 2003). For another use of the term "free-born sons of America," to help white Missourians, "upon whose birth the genius of liberty smiled," resist the tyranny of federal efforts to restrict slavery, see Jennifer Louise Turner, "From Savagery to Slavery: Upper Louisiana and the American Nation" (Ph.D. diss., University of Wisconsin, Madison, 2008), 315; quotation by Senator Freeman Walker of Georgia, January 18, 1820, in U.S. Senate, *Annals of Congress*, 16th Cong., 1st sess., 175.

[10] Tracy Devine Guzmán, "Our Indians in Our America: Anti-Imperialist Imperialism and the Construction of Brazilian Modernity," *Latin American Research Review* 45, no. 3 (2010): 35–62.

[11] Uday Singh Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (Chicago, 1999); Sankar Muthu, *Enlightenment against Empire* (Princeton, N.J., 2003).

[12] See William Appleman Williams, *The Contours of American History* (1961; repr., New York, 2011); Michael Paul Rogin, *Fathers and Children: Andrew Jackson and the Subjugation of the American Indian* (New York, 1975). Louis Hartz did not base his arguments concerning the primacy of Lockean liberalism in the U.S. on race violence, but did think it "obvious that the violence in the external elimination of the Indian permitted a heightened degree of peace within the American community"; Hartz, *The Founding of New Societies: Studies in the History of the United States, Latin America, South Africa, Canada, and Australia* (New York, 1964), 95.

[13] Historians distinguish between republicanism and liberalism, particularly related to formulations of the "common good." For the sake of highlighting the comparison I am drawing between U.S. and Latin American political culture, this essay will follow scholars who stress their overlap and similarities. See Daniel Walker Howe, *Making the American Self: Jonathan Edwards to Abraham Lincoln* (New York, 2009), 10–13; Stephen Macedo, *Liberal Virtues: Citizenship, Virtue, and Community in Liberal Constitutionalism* (Princeton, N.J., 1987).

juridical structures. And unlike the United States, these new nations at their inception had to deal with the rights and interests of other nations at their borders. As a result, the region's intellectuals, jurists, and politicians were confronted with the problem of difference both within and without their new nation-states. In response, they bridged the chasm separating their universalizing ideal of "America" from their territorial fundamentalism by laying out the legal foundation of multilateral cooperation. Based on principles of non-aggression, international arbitration, and economic justice, they developed a sovereignty–social rights complex, as I call it, that would revolutionize the interstate system.

Latin America's success in helping to socialize hemispheric liberalism and diplomacy success was short-lived. It was, nonetheless, consequential, for it allowed Washington to develop ways to project its authority and influence in a new interstate system defined not by empires but by nominally free and sovereign nations. This served the United States well, for although its expansionist–individual rights complex, as it could be described, was effective in propelling territorial enlargement and accumulating capital in the nineteenth century, it was too volatile a nationalism to underpin the kind of global power it would become in the twentieth century. One historical moment that focuses the distinction between these two rights complexes is the post–World War I Paris Peace Conference and, especially, debates that took place before and after the conference over the meaning of the Monroe Doctrine. That 1823 doctrine is often presented as a succinct statement of U.S. interests, interpreted over the years to justify successive interventions in Latin America: Europe, keep out. But a closer look reveals irreconcilable assumptions embedded in the injunction. There was a tension between, on the one hand, the particular interests of an ascending world power and, on the other, a justification of policy based on universal New World moralism. "Few persons can define it," wrote the doctrine's preeminent historian, Dexter Perkins, "but that does not matter. One does not have to analyze in order to believe."[14] Even Woodrow Wilson, on the stump after the Versailles Conference to sell the League of Nations to the U.S. public, admitted that "while . . . in Paris" he had attempted to pin down the meaning of the Monroe Doctrine, but to no avail. "I will confide to you in confidence," he said, "that when I tried to define it I found that it escaped analysis."[15] The same has been said about American exceptionalism, and in both instances what has been missing from a fuller consideration is Latin America.

Spanish-American independence leaders and intellectuals came to stress to a greater extent, compared with the social minima of U.S. political thought, the active role of the state in promoting virtuous citizenship. Simón Bolívar, as Anthony Pagden writes, appreciated the vitality of the kind of civil society that drove the federal expansion of the United States but did not believe that the conditions for

[14] Quoted in Jay Sexton, *The Monroe Doctrine: Empire and Nation in Nineteenth-Century America* (New York, 2011), 243.

[15] Woodrow Wilson, *Addresses of President Wilson* (Washington, D.C., 1919), 170.

it existed in Spanish America.[16] After centuries of colonialism that had left the region divided between a subjugated majority and an oligarchic elite, it would take more than the unleashing of individual interest to generate republican virtue. It would take a strong executive presiding over a moral state that would "make men good, and consequently happy." The goal of constituted societies was, Bolívar wrote, to produce "the greatest possible sum of happiness, the greatest social security, and the highest degree of political stability."[17] There was a kind of republican Thomism on display in many of the region's post-independence constitutions, a mix of ideas drawn from classical republicanism, Catholic monism, particularly the theology associated with Saint Thomas Aquinas, and more modern influences, including the work of Jean-Jacques Rousseau, Benjamin Constant, and Thomas Hobbes.[18] These intellectual traditions downplayed the separation between private interests and the public good and discouraged the idea, central to the Lockeanism prominent in the United States, that the individual pursuit of the former would generate the latter.

Whatever the philosophical origins of this distinction between Anglo and Hispanic republicanism, it was deeply rooted in the social history that distinguished British from Spanish colonialism in the Americas as related to the subjugation of Native Americans and Africans. Under Spanish rule, the genocide of Native Americans was frontloaded; the violence of the conquest, which within a century resulted in a demographic collapse of upwards of 90 percent of the pre-Columbian populations—by some estimates, tens of millions of people—forced a revitalization of rational natural-law theory. Even as this catastrophe was taking place, Spanish polemicists, jurists, and theologians, notably Bartolomé de las Casas, Francisco de Vitoria, and the scholars affiliated with the Universidad de Salamanca, questioned previous divine justifications, developed over centuries against Islam and initially applied to the conquest of the New World, to make war, dispossess, enslave, and rule. Historians still parse whether the "law of nations" that emerged out of this debate was based on positive or natural law, but the questions raised—concerning the equality of human beings, the source of individual rights, the nature of political sovereignty—set the terms of what would become international law.[19] Vitoria, in particular, raised the bar of universalism high when, as Annabel Brett writes, he defined the law of nations as "a law neither between individual men, nor between sovereign states, but between all human beings as forming one community: '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.' "[20]

But this emerging "juridical unity," in Brett's words, evolved alongside a colonial

[16] Anthony Pagden, *Spanish Imperialism and the Political Imagination: Studies in European and Spanish-American Social and Political Theory, 1513–1830* (New Haven, Conn., 1998), 133–153.

[17] Ibid., 146.

[18] Cf. Glen Dealy, "Prolegomena on the Spanish American Political Tradition," *Hispanic American Historical Review* 48, no. 1 (February 1968): 37–58; David Bushnell and Lester D. Langley, eds., *Simón Bolívar: Essays on the Life and Legacy of the Liberator* (Lanham, Md., 2008).

[19] Annabel S. Brett, *Changes of State: Nature and the Limits of the City in Early Modern Natural Law* (Princeton, N.J., 2011), 13.

[20] Ibid. See also James Brown Scott, *The Spanish Origin of International Law: Francisco de Vitoria and His Law of Nations* (Oxford, 1934); Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge, 2005); Robert A. Williams, Jr., *The American Indian in Western Legal Thought: The Discourses of Conquest* (New York, 1992).

state that consciously justified itself through the administration of difference, creating a corporate hierarchy that assigned distinct obligations and privileges to specific groups, understood largely, though not exclusively, in racial terms. There was a great disparity in the administrative reach of the early Habsburg and then later Bourbon imperial states, yet from the very inception of Spanish colonialism, Native Americans, and then African slaves, *qua* Native Americans and African slaves, played key roles in the construction of Hispanic modernity. Coerced Indians and enslaved Africans were of course essential to the extraction of silver and gold, in effect the primary producers of one of the world's first truly universal standards. They were also the focal point in the creation of a bureaucratic, legal, philosophical, and religious system that, however much it was based on brute exploitation, was forced for more than three centuries to deal with difference. The tension was sustaining, creating absorptive bureaucratic channels of redress. But it was ultimately unsustainable: colonial universalism could be subdivided only so many times by a potentially infinite list of legal and vernacular caste identities—*mestizo, pardo, moreno, negro, de color, mulato, amarillo, trigueño, negro, jabao, indio, prieto, zambo, quinterón, tentenelaire, saltapatrás, tercerón, cuarterón, negro libre, negro pardo, negro ladino, negro bozal, negro criollo*, and so on—before dissolving into meaninglessness.

This history yielded, by the end of the eighteenth century, a republicanism that was more inclusive than its counterpart in the United States, in the sense that its advocates were products of a colonial regime that for centuries had openly acknowledged the problem that racial difference posed to its universalism; and also more activist, in that they envisioned a strong state as needed to transcend that regime. There existed a large distance between the broad expressions of humanism and equality that found their way into independence constitutions, many of which abolished distinctions based on race, and the reality of ongoing exploitation. Debates about how best to turn Indians and Africans into citizens, or how to end slavery, were often hypocritical and premised on cultural erasure. After independence, race-based hierarchies, primarily enforced through economics, politics, and gender ideologies, continued. Notions of progress, honor, and hygiene were also used to exclude large numbers of Native Americans, peoples of African descent, and women from the protections and rights afforded to citizens. In many countries, an activist understanding of republican virtue gave way in the late nineteenth century to authoritarian liberalism or positivism, which tilted decidedly more to progress and order than to liberty and equality, a forebear of twentieth-century civilian and military dictatorships.

But unlike the rigid, formally exclusive racialism that came to reign in the United States, race thinking in Latin America could produce powerful countervailing democratic movements and ideologies, often manifested in the collective militancy that the region has become famous for: from the prolonged, violent wars of independence, fought by armies made up of peasants, manumitted slaves, and free people of color, to the radical anti-racism of Cuba's late-nineteenth-century thirty-year war against Spain, on to the Mexican Revolution and its celebration of the *mestizo* as a national archetype.[21] In the nineteenth century, mobilization could express itself in

[21] Ada Ferrer, *Insurgent Cuba: Race, Nation, and Revolution, 1868–1898* (Chapel Hill, N.C., 1999); Peter Blanchard, *Under the Flags of Freedom: Slave Soldiers and the Wars of Independence in Spanish*

the idiom of what social historians of Mexico, Peru, Guatemala, Colombia, and elsewhere in Latin America call "popular liberalism" or "popular republicanism."[22] In the twentieth, it took the form of agrarianism, populism, nationalism, and different forms of socialism.

In Latin America, it was not primarily the extension of market relations and wage labor that brought forth the sense of self and self-interest that elsewhere is identified as underwriting liberalism. The extreme concentrations of economic and political power that stoked the pessimism of Bolívar were real; the spread of export capitalism led in many areas to a retrenchment and fortification of extra-economic hierarchy and privilege. In a number of countries, well after the formal abolition of slavery, generalized forms of coerced labor based on debt and vagrancy laws existed into the twentieth century. It was, rather, intense conflict that often drove forward the liberalization of society—and, in turn, the socialization of liberalism.[23]

Latin America in the twentieth century would become famous for its revolutionaries; less acknowledged is the region's contribution to global social democracy, with its jurists and politicians codifying both in country-specific constitutions and in international charters a slate of economic rights. The 1917 Mexican constitution was the world's first fully conceived social-democratic charter, predating similar documents in Europe and India, enshrining the right to organize unions, the right to work, a minimum wage, equal pay for men and women, welfare, education, and health care. In subsequent years, similar rights were reaffirmed in the constitutions of nearly all Latin American nations, and in 1948 by the United Nations. Cuba, Chile, and the Organization of American States provided drafts for the final version of the UN Declaration of Human Rights. The Jesuit-educated Chilean socialist (and lifelong friend of Salvador Allende) Hernán Santa Cruz, who worked with Eleanor Roosevelt on the declaration's drafting committee, was the most forceful advocate for including in the declaration the right to work, to organize labor unions, to enjoy rest, leisure time, and adequate pay, and to have access to food, clothing, housing, health care, and education. The Dominican Republic insisted on treating men and women as equals, and Mexico had the phrase "without any limitation due to race, nationality or religion" inserted into the declaration's guarantee of the "right to marry."[24]

South America (Pittsburgh, 2008). See also Blanchard, "Pan Americanism and Slavery in the Era of Latin American Independence," in David Sheinin, ed., *Beyond the Ideal: Pan Americanism in Inter-American Affairs* (Westport, Conn., 2000), 9–18, for a survey of abolition and citizenship in the early decades of Spanish-American independence.

[22] Cf. James E. Sanders, *Contentious Republicans: Popular Politics, Race, and Class in Nineteenth-Century Colombia* (Durham, N.C., 2004); and Florencia E. Mallon, *Peasant and Nation: The Making of Postcolonial Mexico and Peru* (Berkeley, Calif., 1995).

[23] See Greg Grandin, *The Last Colonial Massacre: Latin America in the Cold War* (Chicago, 2004), for an argument that emphasizes mass collective politics, rather than the spread of commercial society, as an important venue of individuation in Latin America. Cf. Charles W. Bergquist, *Labor and the Course of American Democracy: US History in Latin American Perspective* (London, 1996).

[24] In 1948, the same year Mexico added this clause to the "right to marry" section of the Universal Declaration, the California Supreme Court struck down an anti-miscegenation law that had prevented Andrea Pérez, the U.S.-born daughter of Mexican migrants considered white, and Sylvester Davis, an African American man, from marrying. See Mark Brilliant, *The Color of America Has Changed: How Racial Diversity Shaped Civil Rights Reform in California, 1941–1978* (Oxford, 2010), 106–114. Cf. Paolo G. Carozza, "From Conquest to Constitutions: Retrieving a Latin American Tradition of the Idea of Human Rights," *Human Rights Quarterly* 25, no. 2 (May 2003): 281–313; Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York, 2001).

Central to the achievement of these social rights was the consolidation of a definition of property according to its public utility. Like the more activist, state-centered republicanism to which it was related, what Latin American jurists would by the 1960s commonly call the "social function of property" could be traced to both older, colonial Catholic notions of a just society and more recent expressions of nineteenth-century positivism.[25] As such, the ideal enjoyed widespread support across the political spectrum. The ability of the state to regulate property was seen by politicians of all stripes as necessary to create a modern nation, needed either to capture surplus value in order to distribute a "social wage" in the form of health care, education, and social security, or to intervene more actively in the economy, enacting agrarian reform, nationalizing industry, and taxing certain sectors, so as to stimulate manufacturing and industry. As with social rights more generally, the idea was elaborated first and most fully in Mexico's 1917 constitution, in Article 27, which stated that "all land and water within national territory is originally owned by the nation, which has the right to transfer this ownership to individuals." By 1980, the constitutions of Colombia, Brazil, Argentina, El Salvador, Venezuela, Paraguay, Honduras, Haiti, Panama, and Bolivia, among other countries, limited property rights according to their "social function," as did Nicaragua's Sandinista charter of 1987. So too did Guatemala's 1945 constitution (but not the 1956 edition adopted after the 1954 CIA coup). Even Chile's new 1980 charter, ratified by the government of Augusto Pinochet and supposedly modeled on the principles set forth in Friedrich von Hayek's 1960 *Constitution for Liberty*, identified property as a social utility and assigned to the state "absolute dominion" over the nation's hydrocarbon and mineral wealth.

In Anglo North America, an almost exact opposite history unfolded. Native Americans themselves were *relatively* peripheral to the Anglo colonial project, at least as compared with the foundational role they played in Spanish colonialism.[26] Thus, the kinds of moral debates that took place following the Spanish conquest were avoided. Periodic conflict against Native Americans was justified by, and helped further define, legal arguments concerning "just war." Episodes of extreme violence, including the near- and total extermination of specific indigenous groups, often did provoke outrage and calls for reform, such as John Eliot's passionate outcry against the "mass enslavement" of the Algonquin.[27] Yet the repression of Native Americans under

[25] Charles Johnson, "Two Mexicos," *Atlantic Monthly* 126 (1920): 703–709, provides a summary of the conflict that this article provoked in the United States. He writes: "the old legal doctrine of the Crown's title to all the land has been rephrased in Article 27, to meet modern Republican conditions" (704). See Stephen Haber, Armando Razo, and Noel Maurer, *The Politics of Property Rights: Political Instability, Credible Commitments, and Economic Growth in Mexico, 1876–1929* (Cambridge, 2003), 1, for the creation of a more modern, though "selectively enforced," property rights regime during Mexico's long liberal dictatorship of Porfirio Díaz (1876–1911), which the 1917 constitution largely abolished.

[26] I am not arguing that Native Americans were not economically, politically, or ideologically important to Anglo colonialism; for the distinction I am suggesting, compare Steve J. Stern's *Peru's Indian Peoples and the Challenge of Spanish Conquest: Huamanga to 1640* (Madison, Wis., 1993) to Richard White's *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650–1815* (Cambridge, 1991).

[27] See Jill Lepore, *The Name of War: King Philip's War and the Origins of American Identity* (New York, 1998), 158–167, for how early colonial war reshaped international norms.

British rule did not prompt the kind of wholesale legal and philosophical reflection that it did in Spain.

In fact, as Andrew Fitzmaurice has argued, the English quietly but deliberately defined their colonial project against that reflection.[28] In 1607–1608, the Council of the Virginia Company debated whether to issue a document to justify their actions in the New World. Records reveal a keen appreciation of the problems that Salamanca's "Casuists" and "Confessors" had (once they rejected treating Native Americans as "Naturally slaues") with applying natural-law doctrine to justify both sovereignty and property. Spanish logic, they felt, was "indeterminable" and "incoherent," and after "50 yeares," the Spanish king's "fryars" could reasonably justify political authority, but not the dispossession of Native American property. The Virginia Council therefore opted to avoid the question altogether: aware that they would be held "not only comparatiuely to be as good as ye Spaniards . . . but absolutely to be good agaynst ye Naturall people," members of the council decided that it would be "better to abstayne from this vnnecessary way of prouication, and reserue ourselues to ye defensiue part."[29] Here, then, is a remarkably clear example of how imperial competition generated a slippery form of universalism, one that, in contrast to Spanish colonialism, denies, consciously at first but then habitually, its own contradictions. "Let the divines of Salamanca," wrote the council three years later, "discusse that question how the possessor of the west Indies first destroied, and then instructed."[30]

Hypocritical, inconsistent, and ineffectual in stemming abuse, Spanish "Casuists," along with their republican successors, nonetheless laid the groundwork for a universalism that acknowledged the problem of difference, which in the twentieth century seeded Latin America's strong social-democratic tradition. Their late-coming Anglo counterparts put in place something quite different. Fitzmaurice has noted how the evolution of the primal deflection of the concerns of the Salamanca School resulted in an almost perfect inversion of the "moral force" of natural-law theory, with English philosophers and colonists using it not to temper dispossession but to justify it. "Rather than recognizing that Indians lived in civil society," Fitzmaurice writes, the English "needed to start describing Native Americans as devoid of society, closer in this respect to animals than to humans."[31] The liberal tradition that emerged from these justifications was complex and had many different political ex-

[28] Andrew Fitzmaurice, "Moral Uncertainty in the Dispossession of Native Americans," in Peter C. Mancall, ed., *The Atlantic World and Virginia, 1550–1624* (Chapel Hill, N.C., 2007), 399. See also Anthony Pagden, "The Savage Critic: Some European Images of the Primitive," *Yearbook of English Studies* 13 (1983): 32–45, for how English ideas of natural rights were formed in relation to depictions of the Spanish conquest of Mexico. Comparative historians of the colonial Americas have recently identified "ambivalence," rather than simple "Hispanophobia," as the organizing principle of the Black Legend. See Eric Griffin, "The Specter of Spain in John Smith's Colonial Writing," in John Wood Sweet and Robert Appelbaum, eds., *Envisioning an English Empire: Jamestown and the Making of the North Atlantic World* (Philadelphia, 2005), 111–134; Jorge Cañizares-Esguerra, *Puritan Conquistadors: Iberianizing the Atlantic, 1550–1700* (Stanford, Calif., 2006); J. H. Elliott, *Empires of the Atlantic World: Britain and Spain in America, 1492–1830* (New Haven, Conn., 2006); Ken MacMillan, *Sovereignty and Possession in the English New World: The Legal Foundations of Empire, 1576–1640* (Cambridge, 2006).

[29] The Thomas Jefferson Papers, Series 8: Virginia Records Manuscripts, 1606–1737, ed. Susan Myra Kingsbury, Records of the Virginia Company, 1606–1626, vol. III: Miscellaneous Records, "A Justification for Planting Virginia," 2–3, http://hdl.loc.gov/loc.mss/mtj.mtjbib026605. See also Armitage, *The Ideological Origins of the British Empire*, 93.

[30] Griffin, "The Specter of Spain in John Smith's Colonial Writing," 126.

[31] Fitzmaurice, "Moral Uncertainty in the Dispossession of Native Americans," 399.

pressions, but at least one strong current of it came by the mid-nineteenth century to link rights to individualism, individualism to freedom, freedom to expansion, and expansion to war and dispossession.[32]

In the centuries that followed the Council of the Virginia Company debate, Anglo colonialists and then republicans continued the tradition of defining their political ideas in relation to Spanish America. By the 1820s, the region's prolonged wars of independence were providing an aging generation of founding fathers a chance to reflect on the meaning of their own revolution. Some were generous in making the comparison.[33] In 1826, for example, James Madison wrote that he thought the United States could learn from "regions south of us," particularly as they addressed the problems of having "inferior tribes adjoining a white population." If Spanish Americans achieved success in instituting "comprehended" citizenship, it might provide answers for how the United States could deal with its own "baffling" racial problems: "the black race within our bosom" and "the red on our borders."[34] Others, such as Edward Everett, a professor of Greek literature at Harvard and a Unitarian pastor, were less ecumenical. In an 1821 essay, he took the opportunity provided by a Spanish-American request for help against Spain to abstract the United States from the rest of the Americas, defining the U.S. against the region's "corrupt and mixed race of various shades and sorts." Spanish America, for Everett, reflected back what was singular about the United States. Its feudal institutions, seignories, and population divided into a "wealthy aristocracy and a needy peasantry" had more in common with Europe than with the United States, and its seemingly interminable, property- and people-destroying revolutions offered a close-to-home warning of the risks of a republicanism taken too far, a dangerous migration of the ideas of the French Revolution to New World soil. "Before any good omen is drawn from the analogy of our revolution," Everett wrote, decades before the idea of American exceptionalism was formulated and over a century before the phrase itself was coined, it must be remembered that "political liberty . . . is distinct from social liberty." If one did not have the latter—by which he meant a constituted civil society of free, rights-bearing individuals, which characterized British America even before its break from the metropolis—then "the question of independence of a foreign crown is one of little moment."[35]

Bound up with the issue of citizenship and rights was the question of sovereignty. The United States was born expanding, a fact that its early leaders and intellectuals

[32] Throughout the nineteenth century, ongoing expropriation of Native American property contributed to the "Americanization of the law of real property," as legal scholar Howard Berman writes in his discussion of the Marshall Court's key *Fletcher v. Peck* (1810) and *Johnson v. McIntosh* (1823) decisions; Berman, "The Concept of Aboriginal Rights in the Early History of the United States," *Buffalo Law Review* 27 (Fall 1978): 637–667. See also Stuart Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Cambridge, 2005), 152; Tim Alan Garrison, *The Legal Ideology of Removal: The Southern Judiciary and the Sovereignty of Native American Nations* (Athens, Ga., 2009), 94; Patrick Griffin, *American Leviathan: Empire, Nation, and Revolutionary Frontier* (New York, 2007).

[33] Caitlin Fitz, "Our Sister Republics: The United States in an Age of American Revolutions" (Ph.D. diss., Yale University, 2010), charts the evolution of popular perceptions of Spanish-American independence in the U.S., from celebratory to suspicious.

[34] *Letters and Other Writings of James Madison*, 4 vols. (New York, 1884), vol. 3: *1816–1828*, 516.

[35] Everett, review of *Ensayo de la historia civil del Paraguay, Buenos-Ayres, y Tucuman*, 435.

were fully aware of and theorized. Lockean notions of dominion justified the drive into the "wild woods and uncultivated waste" of the West and consolidated notions of property rights, while Madisonian ideas of federal expansion were offered as a way to dilute the factional passions that arise from a civil society founded on those property rights.[36] Native Americans, of course, bore the brunt of this push west, but the growing body of case law concerning their sovereignty offered legal principles too contradictory and inconsistent to be translated into diplomatic norms. It was Spain and Spanish America, fully recognized despite their oft-commented-on shortcomings as political societies, that taught the United States how to be, legally speaking, in the world. Territorial expansion into Spanish Florida, Louisiana, Texas, and Mexico (and projected expansion into the Caribbean) produced, as the historian Brian Loveman has detailed, a set of diplomatic justifications, legal arguments, and military strategies that continue to define U.S. foreign policy to this day.[37]

In *Empire's Workshop*, I argued for Latin America's importance in shaping the ideas, tactics, and constituencies of the United States' two great twentieth-century governing coalitions, the New Deal under FDR and the New Right under Ronald Reagan.[38] The argument could be extended back even further into the nineteenth century. President James Monroe's 1823 declaration that all of the Americas were off limits to European intervention was the first of many instances when debates about Spanish America, and the actions resulting from those debates, allowed a reconciliation of competing sectional interests and ideas concerning domestic and foreign policy. As the culmination of Henry Clay's "American System"—a broad, tariff-based vision of how the Western Hemisphere should be organized, with a developing U.S. economy at its center, counterpoised against Great Britain—the Monroe Doctrine helped synthesize positions as diverse as those represented by Clay, John Quincy Adams, and James Monroe.

In reaction, the rising Jacksonians built on the kind of race-based exceptionalism expressed by Everett to attack Clay and his American System; the extended congressional debate over whether the United States should attend Simón Bolívar's 1826 Panama Conference, which Adams, Clay, and others saw as an opportunity to put the system into place, allowed many of the pro-slavery future founders of Jackson's Democratic Party to focus their criticism and build their coalition. In particular, the conference's proposed agenda—which included the establishment of diplomatic re-

[36] Intellectual historians continue to debate the degree to which Locke's original writings justified or questioned empire. Earlier scholarship stressed the former; while more recent thinking corrects some overstatements, the justification for dispossession and colonization remains strong in his writings. See James Tully, *An Approach to Political Philosophy: Locke in Contexts* (Cambridge, 1993). A revision by David Armitage, "John Locke: Theorist of Empire?," will appear in Sankar Muthu, ed., *Empire and Modern Political Thought* (Cambridge, forthcoming August 2012). The application of interpretations of Lockean ideas was less ambiguous. For instance, the Connecticut reverend John Bulkley based his 1726 argument in favor of indigenous dispossession "entirely on John Locke"; Tully, *An Approach to Political Philosophy*, 166. As late as 1868, Bulkley, as proxy for Locke, was being cited in debates over how to define property law in New York's constitution. See *Proceedings and Debates of the Constitutional Convention of the State of New York, Held in 1867 and 1868 in the City of Albany*, 5 vols. (Albany, N.Y., 1868), 5: 3446. See Cass R. Sunstein, "The Enlarged Republic—Then and Now," *New York Review of Books*, March 26, 2009, for Madisonian ideas of federal expansion.

[37] Brian Loveman, *No Higher Law: American Foreign Policy and the Western Hemisphere since 1776* (Chapel Hill, N.C., 2010).

[38] Greg Grandin, *Empire's Workshop: Latin America, the United States, and the Rise of the New Imperialism* (New York, 2005).

lations with Haiti and "consideration of the means to be adopted for the entire abolition of the African slave trade"—tightened the loose associations in the minds of pro-slavery politicians between Spanish-American independence (fought by armies made up of a considerable number of people of color), the Haitian Revolution, and abolition.[39] As Jay Sexton has written, members of this "nascent Jacksonian coalition" (among them three men—Jackson, Martin Van Buren, and James Polk—who would go on to win the presidency) used the debate to exploit "racist conceptions of Latin Americans as a means of bringing together their constituencies in the North and South."[40] Where Clay and Thomas Jefferson before him had begun to speak of a single, unified "America," with shared interests different from those of old Europe, these early Jacksonians, according to Sexton's close reading of the congressional minutes, began to stress, not for the first time but with particular weight, *South* America as distinct from *North*. This slicing of America in two made it into Webster's 1828 *American Dictionary*, which divorced north from south at the Darien Gap in Panama, and took place, it should be noted, decades before Spanish Americans began to talk of "two Americas," one "Latin," the other "Anglo-Saxon."[41]

Spanish America did more than provide ideological focus for the new Jacksonian coalition. It also provided land—through the annexation of Texas and territory seized after the war with Mexico—for the push west, which not only deferred the crisis of slavery but allowed for a satisfaction of demands generated by the potentially volatile mix of natural law, civic republicanism, and an expanded franchise. Following the Mexican-American War, the United States' exemplary exceptionalism—the idea that the republic could serve as a model to be emulated but would largely restrain itself from imposing that model on other nations—began to transform into what might be called actionable exceptionalism, that is, direct intervention to remake the politics and economics of other nations.[42]

But expansion also accelerated the sectional crisis, and the run-up to the Civil War is the one period in which Latin America could not reconcile the United States: the Confederacy looked south to build an "empire of slavery," while many people of color and white abolitionists took inspiration from Spanish America, where countries such as Chile, Colombia, and Mexico had ended slavery decades earlier.[43] After the Civil War, Spanish America had begun to be seen by many as a place to naturally extend southern reconstruction, to build the "New Latin America" along with the "New South." And so Mexico, in the decades after Appomattox, became, as the historian John Mason Hart has argued, Washington's and New York's first sustained effort to restructure a nation's economy and politics along liberal capitalist lines, an

[39] "Mission to the Congress at Panama," in *American State Papers: Documents, Legislative and Executive, of the Congress of the United States*, pt. 1, vol. 5 (Washington, D.C., 1858), 860.

[40] Sexton, *The Monroe Doctrine*, 80.

[41] Aims McGuinness, "Searching for 'Latin America': Race and Sovereignty in the Americas in the 1850s," in Nancy P. Appelbaum, Anne S. Macpherson, and Karin Alejandra Rosemblatt, eds., *Race and Nation in Modern Latin America* (Chapel Hill, N.C., 2003), 97–102.

[42] Merle Curti, "Young America," *American Historical Review* 32, no. 1 (October 1926): 34–55.

[43] Robert E. May, *The Southern Dream of a Caribbean Empire, 1854–1861* (Baton Rouge, La., 1973). For Mexico as an imagined and real site of freedom for free people of color in New Orleans, see Mary Niall Mitchell, *Raising Freedom's Child: Black Children and Visions of the Future after Slavery* (New York, 2008); and Sarah Cornell, "Citizens of Nowhere: Fugitive Slaves in Mexico, 1833–1862," in Barbara Krauthamer, ed., *Unshackled Spaces: Fugitives from Slavery and Maroon Communities in the Americas* (New Haven, Conn., forthcoming).

FIGURE 1: An unknown photographer rendered this allegory of a free Cuba reconciling North and South. Ca. 1898.

endeavor that would continue after 1898 in Cuba, Haiti, the Dominican Republic, Nicaragua, and Panama.[44]

In the drive west, Native Americans were often cast as "children," incapable of forming the rational political society that justified both sovereignty and dominion.[45] After the frontier closed and the trope of maturity/immaturity that had long been

[44] John Mason Hart, *Empire and Revolution: The Americans in Mexico since the Civil War* (Berkeley, Calif., 2002).

[45] Rogin, *Fathers and Children*.

imposed on these supposedly stateless, property-less peoples was no longer made vital by war, Latin American nations became the new irresponsibles.[46] Prior to the 1919 Paris Peace Conference, for instance, one of Woodrow Wilson's experts in the Latin American Division of the State Department drafted a classification schema that seemed to have been inspired directly by John Locke's *Second Treatise of Government*. Using his experience dealing with Latin America, he ranked countries "as mature, immature or criminal" and came up with a series of tests "to determine whether they are yet ready to be allowed to conduct their own affairs in a world to be governed by reason." "How many Cubas are there?" the document wondered.[47]

Embedded in such questions is the principle that only a morally responsible nation could be sovereign. What was judged moral changed according to the circumstance: at times it meant the ability to exercise effective control of a population and territory; at other times it meant democratic or procedural legitimacy—with the best way to protect foreign private property serving as the variable determining which of these two standards Washington applied. But in either case, what counted was that the United States reserved the right, often invoking its own sense of exceptionalism, to be the judge.

In marked contrast, Spanish-American republics were conceived into confederation, nations among nations, confirmed at the time of independence by a general acceptance of colonial administrative borders as the limits of the new republics. In a series of post-independence treaties, conferences, constitutions, and declarations, regional diplomats and jurists revitalized the doctrine of *uti possidetis*, or "as you possess," which under Roman law had referred to the control of territory at the end of a conflict. They were not the first to apply the standard to the process of decolonization; the United States had done so earlier, during its revolution, in an effort to reach a settlement with Great Britain. Yet it was in South and Central America, where foreign ministries throughout the nineteenth century repeatedly invoked what they had taken to calling "uti possidetis of 1810" to insist that no part of the Americas lacked sovereignty, that the "principle developed into a rule."[48]

Despite these legal affirmations, much of the region was in fact outside of administrative control (including large swaths of the Amazon, the coastal islands, Patagonia, and northern Mexico), and border lines were vague and contested; valuable resources such as rubber and oil were found on one side or the other, leading to more than a century of episodic conflict and occasional full-scale wars, from the 1825 confrontation between Brazil and Argentina over Montevideo to the Chaco War

[46] Cf. Mary A. Renda, *Taking Haiti: Military Occupation and the Culture of U.S. Imperialism, 1915–1940* (Chapel Hill, N.C., 2001), 89–130, here 333.

[47] Mark T. Gilderhus, *Pan American Visions: Woodrow Wilson in the Western Hemisphere, 1913–1921* (Tucson, Ariz., 1986), 134–135.

[48] Mikulas Fabry, *Recognizing States: International Society and the Establishment of New States since 1776* (New York, 2010), 66. For an example of "uti possidetis of 1810," see *Informe del secretario de relaciones exteriores de la Nueva Granada al congreso constitucional de 1850* (Bogota, 1850), 5–19. For the importance of Latin America in reviving *uti possidetis*, see Fabry, *Recognizing States*, 66–77; Suzanne Lalonde, *Determining Boundaries in a Conflicted World: The Role of "Uti Possidetis"* (Montreal, 2002), 24–60; Sharon Korman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (New York, 1996), 234–245. For the complexities of notions and applications of "imperial sovereignty," see Lauren A. Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge, 2009). See also Jeremy Adelman, *Sovereignty and Revolution in the Iberian Atlantic* (Princeton, N.J., 2006).

between Paraguay and Bolivia in the 1930s. Yet every diplomatic effort to resolve these disputes appealed to *uti possidetis*, which solidified the legitimacy of the principle and led to its acceptance despite conflicting interpretations.[49] (Brazil tended to emphasize *uti possidetis de facto*, which stressed effective possession; Spanish America defended *uti possidetis juris*, which invested legitimate possession in Spanish royal decrees.) By the early 1900s, the doctrine had become the foundational principle of what Latin American jurists called American international law, based on the ideal of non-aggression, interdependence, and solidarity rather than on realpolitik rivalry.

In the United States, an ideal of individual natural rights immediately harmonized with and reinforced a definition of sovereignty conditioned on the protection of those rights. In Latin America, the link between a "common good" notion of citizenship and a "common good" vision of territorial sovereignty was at first formalistic, more of an analogy than mutually constitutive: individuals, like nations, exist not in isolation but in harmony, bound together as equals by mutual needs and limitations. But over time there developed a more dependent relationship. Efforts to institutionalize social rights entailed state intervention in the economy, which often provoked domestic and foreign interests to retaliate. Coups executed or supported by the U.S. in Guatemala in 1954, Brazil in 1964, and Chile in 1973 are among the most well-known examples of such retaliation, though there are many other examples; between 1898 and 1994, according to historian John Coatsworth, Washington had "intervened successfully to change governments in Latin America a total of at least 41 times."[50] In turn, nationalists, social democrats, populists, and socialists came to see social rights and sovereignty as mutually constitutive. It would take a fortified executive with control over both the physical and the social space of the nation to realize the Bolivarian dream of achieving the "greatest possible sum of happiness, the greatest social security." Theorists of American international law, such as the Chilean Alejandro Alvarez, were aware that there was a tension between their almost positive-law ideal of territorial fundamentalism and their normative notions of justice: what right did an unjust ruler or aggressive nation have to sovereignty?[51] As an answer, they held up multilateral arbitration as a solution. Still, confronted with an expansionist United States, and plagued by their own interstate skirmishes, Latin American nations by the early twentieth century had deepened their commitment to *soberanía absoluta*.

[49] "I am going to insist one more time," an Ecuadorian envoy told his Peruvian counterpart at an 1889 Quito conference convened to determine the Amazonian border separating their two countries, "that the only line that can possibly serve as a basis for agreement is that of *uti possidetis* of 1810." Ministerio de Relaciones Exteriores, Peru, *Memorias y documentos diplomáticos sobre la negociación del tratado de límites entre Perú y el Ecuador* (Lima, 1892), 389.

[50] John H. Coatsworth, "United States Interventions: What For?" *ReVista*, Spring/Summer 2005, 6–9, http://www.drclas.harvard.edu/publications/revistaonline/spring-summer-2005/united-states-interventions.

[51] Alvarez (1868–1960) was a Chilean delegate to the Permanent Court of Arbitration at the Hague and the League of Nations; a judge on the International Court of Justice; the author of hundreds of essays, many of them on pan-Americanism; and the founder of the American Institute of International Law, affiliated with the Carnegie Endowment for International Peace. Despite his analytical sophistication and range of interests, very little has been written on him. But see *Leiden Journal of International Law* 19, no. 4 (2006), a special issue devoted to his work and legacy.

THE HISTORY OF UNITED STATES–LATIN AMERICAN relations in the late nineteenth and twentieth centuries is often narrated as a litany of outrages, of U.S. freebooting, interventions, counterinsurgencies, gunboat and dollar diplomacy, and pre–Cold War coups in Texas, Nicaragua, Mexico, Cuba, Puerto Rico, Panama, the Caribbean, and Central America. But threading through this narrative of territorial and economic expansion is a slow yet steady revision of the fundamentals of international law.

A good place to chart this revision is in the competing interpretations of the Monroe Doctrine. Rarely discussed in all the considerable scholarship on the doctrine is the fact that Spanish-American diplomats and politicians did not object to Monroe's declaration that all of the Americas were off limits to European intervention. Rather, they understood its prohibition against recolonization as an affiliate and affirmation of their antecedent *uti possidetis*, and moved to incorporate the Monroe Doctrine into their emerging multilateral framework.[52] In 1824, Colombia invoked the doctrine, asking for Washington's help against what it feared were designs on its territory by France and Spain. A year later, both Brazil and Argentina appealed to the doctrine in their dispute over Montevideo, with Argentina pointing out that since Brazil was still tied to Portugal, it therefore constituted a European power. And in 1826, Simón Bolívar invited the United States to attend the Panama Congress to "proclaim" the Monroe Doctrine and discuss how to abolish slavery.[53]

Washington refused these specific requests for aid and resisted all efforts by Spanish Americans to define the Monroe Doctrine as international law or to read the doctrine normatively, in a way, say, that would imply the end of American slavery or suggest a revision in diplomatic protocol.[54] Through the nineteenth and the early twentieth century, presidents, secretaries of state, and politicians would broaden its interpretation in purely nationalist terms, to justify territorial expansion and unilateral policing, most famously by Theodore Roosevelt with his 1904 corollary to the doctrine.[55] American exceptionalism aside, when it came to retaining the great-power right to intervene in the affairs of other nations to protect its interests, Washington envoys steadily deflected calls for the United States to conform to what Latin Americans understood to be a specific "American" jurisprudence: after Latin Americans at the 1889 inaugural Pan-American Conference passed a number of resolutions attempting to standardize their ideas, including the adoption of arbitration to settle regional disputes as a "principle of American International Law," the U.S.

[52] For instance, a Colombian diplomat, considering the history of border disputes between his country and Peru, wrote in 1893 that "what is called, for example, the Monroe Doctrine, is simply the application of the principle of national sovereignty to the republics of this continent." Mariano H. Cornejo and Felipe de Osma, *Memoria del Perú en el arbitraje sobre sus límites con el Ecuador*, vol. 7: *Apéndices á la Memoria del Perú* (Madrid, 1906), 121.

[53] Alejandro Alvarez, *The Monroe Doctrine: Its Importance in the International Life of the States of the New World* (New York, 1924), 13.

[54] Richard Drinnon, in "The Metaphysics of Empire-Building: American Imperialism in the Age of Jefferson and Monroe," *Massachusetts Review* 16, no. 4 (Autumn 1975): 666–688, describes one of Washington's first invocations of the Monroe Doctrine, to prevent Mexico from working with John Dunn Hunter to settle displaced Indians in what was then northern Mexico, leading to the creation of the opposite of an asylum of indigenous refugees: a slaver's utopia, Texas.

[55] See the special issue dedicated to interpretations of the Monroe Doctrine and U.S.–Latin American relations, *Proceedings of the American Society of International Law at Its Eighth Annual Meeting Held at Washington, D. C., April 22–25, 1914* (Washington, D.C., 1914).

delegate to the conference, William Henry Trescot, explicitly rejected the term. "There can," he said, "no more be an American international law than there can be an English, a German, or a Prussian international law"; there was just "international law," whose "old and settled meaning" was defined "long before any of the now established American nations had an independent existence."[56] When U.S. statesmen did call for the Monroe Doctrine to be entered into the "admitted canon of international law," it was to confirm their regional authority and right to intervene, as Secretary of State James Olney did in 1895 in the case of a dispute between Venezuela and Great Britain.[57]

Rather than seize on the growing rift between the United States and Latin America as a marker of hypocrisy or betrayal of the "American" idea, as many Latin American intellectuals did, the Chilean jurist Alejandro Alvarez in 1909 developed an almost Hegelian argument that the roots of twentieth-century multilateralism are to be found in Monroe's nineteenth-century unilateralism.[58] Alvarez believed the Monroe Doctrine to be evolving in two distinct but dialectally related realms: *politics*, where Washington's preponderant power allowed it to interpret the doctrine according to its own interests; and *law*, which, while initially dependent on U.S. unilateralism, would eventually transcend that dependence and become international jurisprudence:

On recognizing that solidarity of interests as to the continuance of their independence existed between the states of America, Monroe did not do more than serve as an echo of the sentiment that then predominated in all the republics. Therefore, whether the famous message of 1823 had been written or not, the principles contained in it would always have been sustained in the New World. In this sense, it may be said, and not without a certain amount of truth, that the Monroe Doctrine is neither *doctrine* nor *of Monroe*.

But that which constitutes its undeniable merit and makes it famous, is that such an exact synthetic statement of the destinies of America should have been given thus early in the period of emancipation, by a people whose increasing power would not permit the rest of the world to regard that statement as merely utopian. It was this that enabled America, from the very beginning of independent life, to give to its foreign policies a safe norm instead of the vague

[56] "Minority Report on Claims and Diplomatic Intervention from the Delegate from the United States," in International American Conference, *Reports and Recommendations Concerning a Uniform Code of International Law*, 51st Cong., 1st Sess., Sen. Ex. Doc. 183 (Washington, D.C., 1890), 26, in *Reports and Recommendations, Together with the Messages of the President and the Letters of the Secretary of State Transmitting the Same to Congress* (Washington, 1890); *Reports of Committees and Discussions Thereon*, vol. 2: *Patents and Trade-Marks; Extradition of Criminals; International American Monetary Union; International American Bank; International Law; Arbitration; Miscellaneous Business of the Conference* (Washington, D.C., 1890), 1079.

[57] Walter LaFeber, *The New Empire: An Interpretation of American Expansion, 1860–1898* (1963; repr., Ithaca, N.Y., 1998), 242–283. Likewise, Argentine minister of foreign relations Luis María Drago's 1902 citation of the doctrine to protest European interventions to collect debt did become international law, albeit with U.S. reservations. The "Drago Doctrine" was based largely on the earlier work of Drago's colleague Carlos Calvo, as elaborated in his *Derecho internacional teórico y práctico de Europa y América* (Paris, 1868); see Arthur P. Whitaker, *The Western Hemisphere Idea: Its Rise and Decline* (Ithaca, N.Y., 1954), 86–107.

[58] For discussions of how U.S. expansion generated among Latin American intellectuals a more oppositional notion of "America," a "Latin" America contrasted against a "Saxon" one, see Greg Grandin, "Your Americanism and Mine: Americanism and Anti-Americanism in the Americas," *American Historical Review* 111, no. 4 (October 2006): 1042–1066.

ideas then existent on these subjects. In this sense the Monroe Doctrine is *doctrine* and is *of Monroe*.[59]

The hard shell of U.S. unilateralism, Alvarez thought, had served its historical purpose and was now opening to reveal the ideal of multilateralism, which had, by the early twentieth century, gestated from the "merely utopian" into a global necessity.

Prior to the Paris Peace Talks in 1919, Woodrow Wilson often admitted that norms and practices worked out within the Western Hemisphere—non-aggression, arbitration, territorial sovereignty, mutual defense, and the belief that common interests (as opposed to "competitions of power") should form the basis of international agreement—were the source of what he hoped to accomplish at war's end.[60] Latin America's importance in generating Wilsonian liberal internationalism is likewise revealed by the incorporation of the spirit of the doctrine of *uti possidetis* into Article 10 of the League of Nations Covenant, which pledged nations to "respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League." And the League itself—Wilson's famous fourteenth point—was directly modeled on the Pan American conferences that the United States had been participating in since 1889 and Spanish Americans had been convening since Bolívar's 1826 Panama Congress. "Bolívar dreamt of a League of Nations," Brazilian ambassador Manoel de Oliveira Lima said in 1920. "We call it a dream because the hour had not yet struck for the realization of such a lofty ideal—but when he attempted it, he did not relegate even Haiti to a black place."[61]

The League's final charter did include a specific reference to the Monroe Doctrine. Yet this had less to do with "universalizing" the doctrine than with trying to appease nationalists in the Senate, who were afraid of losing hemispheric privilege.[62] Article 21, which affirmed the continued validity of "regional understandings like the Monroe doctrine," did not win over opponents in the U.S. And it alienated supporters in Latin America, who read the article as investing the U.S. with "mandatory" powers within the Western Hemisphere, similar to those granted to Great Britain in the Middle East.[63] During the conference, many of the Latin American delegates had grown resentful of their marginalization. "I find that they have been left alone too much," observed one State Department official, "and have been having Latin American Conferences among themselves," an unwittingly apt description of dip-

[59] Alejandro Alvarez, "Latin America and International Law," *American Journal of International Law* 3, no. 2 (April 1909): 269–353, here 311–312; emphasis in the original.

[60] Gilderhus, *Pan American Visions*, 134–136.

[61] M. de Oliveira Lima, "Pan Americanism and the League of Nations," *Hispanic American Historical Review* 4, no. 2 (May 1921): 239–247, here 241.

[62] See Charles Howard Ellis, *The Origin, Structure and Working of the League of Nations* (Boston, 1929), 92; Charles Cheney Hyde, *International Law Chiefly as Interpreted and Applied by the United States*, 2 vols. (Boston, 1922), 1: 97; John H. Latané, "The League of Nations and the Monroe Doctrine," in *The World's Work: A History of Our Time*, vol. 37: *November, 1918 to April, 1919* (New York, 1919), 441–444.

[63] This is also how London read Article 21, believing that it would invest Washington with responsibility to enforce debt collection and ensure property rights in Latin America on behalf of Europeans; see The National Archives, Kew, UK [hereafter TNA], "The Monroe Doctrine and the League of Nations," Foreign Office [hereafter FO] 608/174. Mexico did not join the League until 1931, with the condition that "she has never recognized the regional understanding mentioned in Article 21"; Philip Marshall Brown, "Mexico and the Monroe Doctrine," *American Journal of International Law* 26, no. 1 (1932): 117–121, here 117.

lomats and jurists representing a region of the world that indeed held one international meeting after another leading to the elaboration of American international law. They continued the conversation in subsequent Pan-American conferences, insisting that Washington concede what now had become the overriding demand of that law: an acknowledgment of the absolute right of sovereignty of all nations. In practical terms, this meant one thing: Washington—then bogged down in a series of occupations and counterinsurgencies in the Caribbean—would have to renounce the right of intervention, which it refused to do through the 1920s.

If the discussion of the Monroe Doctrine at the Paris Peace Conference signaled the limits of Washington's willingness to recognize territorial sovereignty as a universal norm—especially when it came to Latin America—the arrival of an uninvited guest, Alberto Pani from Mexico, highlighted its steadfast hostility to the region's emerging social-rights regime. Pani was sent by Mexican president Venustiano Carranza to observe the peace conference, even though Mexico, neutral during the war and thought to be pro-German, had not been invited to the talks. Relations between Mexico and the United States were bad because of the latter's heavy-handed interventions in the former's affairs, including a number of military incursions. They had grown worse with the ratification of Mexico's 1917 constitution. The evolution of U.S. property law is complex; by the early twentieth century, it had also incorporated the idea that public interest could mitigate inalienable rights. Yet many legal theorists who accepted this principle still viewed the Mexican constitution as heretical for explicitly stating that private property is a privilege conceded by the government. And many feared that the Mexican constitution, if legitimated, would lead other countries to a similar conclusion, thus threatening "certain hard to define but nevertheless well-internationally recognized vested individual rights."[64]

The Carranza government in Paris, through its agent Pani and his team of lawyers, defended Mexico against the claims of the National Association for the Protection of American Rights in Mexico and the Oil Producers' Association, which were representing U.S. interests that had suffered destroyed or expropriated property during the revolution. These owner associations were applying pressure on Wilson to demand the revocation of the constitution and to take action that would lead to the overthrow of Carranza.[65] "We want Pan-Americanism and the Monroe Doctrine," said one hardliner, apparently attuned to the divergent meanings of rights and

[64] Raoul E. Desvernine, *Claims against Mexico: A Brief Study of the International Law Applicable to Claims of Citizens of the United States and Other Countries for Losses Sustained in Mexico during the Revolution of the Last Decade* (New York, 1921), 51–53; Ira Jewell Williams, "Confiscation of Private Property of Foreigners under Color of a Changed Constitution," *American Bar Association Journal* 5, no. 1 (1919): 152–162.

[65] Gilderhus, *Pan American Visions*, 146, 152–153. Back in Mexico, Carranza responded with a mix of concessions—postponing any serious attempt to implement Article 27 against U.S. oil and other economic interests—and rhetoric, strongly criticizing the inclusion of the Monroe Doctrine in the League's charter as a pretext for intervention and offering his own "Carranza Doctrine," which London's ambassador to Mexico, concerned with the loss of British property to the revolution, defined as a "desire to organize Latin-America in every way possible for opposition to American influence . . . a proposal to change diplomatic custom and practice entirely, declaring as its cardinal principle that no nation shall under any pretext for any reason interfere with the affairs of another"; TNA, FO 608/174, Folio 76: March 10, 1916.

sovereignty outlined above, "in its true meaning."[66] But Carranza also went on the offensive. He instructed Pani to lobby the conference delegates to adopt the principle of absolute non-intervention and "the ideas of the new Mexican constitution" as international law.[67]

That did not happen. But Mexico's efforts do allow for an interpretation of the Paris Peace Conference outside the "Lenin vs. Wilson" rivalry, that is, as a conflict between Soviet Marxism and Wilsonian liberalism. By seizing U.S. land and oil but justifying the seizure not as a rejection of modern liberal notions of property rights but as their extension and fulfillment, Mexican revolutionaries in a way carried out a subtle and arguably more effective subversion of international law than did their Russian counterparts. Not only would other nations adopt the social rights enshrined in the Mexican constitution, but Article 27's definition of property did migrate into Latin American law, serving as the central legal instrument of import-substitution developmentalism, of the kind associated with Raúl Prebisch and the UN's Comisión Económica para América Latina.

The United States adamantly resisted Latin America's sovereignty–social rights complex, until, facing strong regional opposition to its Caribbean-basin militarism and a shortfall of power caused by the contraction of the Great Depression, it didn't. In retrospect, the extemporaneous agreement of Franklin Delano Roosevelt's secretary of state, Cordell Hull, at the 1933 Montevideo Pan-American Conference to Latin American demands that Washington recognize the absolute sovereignty of American nations must be considered one of the most unambiguously successful foreign-policy initiatives the United States has ever undertaken. Facing militarists, fascists, and imperialists in Europe and Asia, Washington was able to use the goodwill generated by its renunciation of the right to intervention to regroup in Latin America.[68] Over time, what became known as the Good Neighbor Policy provided a blueprint for a revived globalism; it established in the Western Hemisphere what eventually became the four pillars of Washington's postwar global diplomacy: an acceptance of national sovereignty; a way of managing that acceptance through a new array of multilateral institutions and agreements; the recognition of social rights, including the right of developing countries to regulate foreign investment and property (which gave Washington an important moral weapon in the looming Cold War); and a regional alliance system.[69]

Latin America's containment of the United States' intervention–individual rights complex was historically consequential, leading to the creation of a multilateral order that allowed Washington to accumulate unprecedented global power. But it was

[66] Gilderhus, *Pan American Visions*, 147.

[67] See "To Oppose Alien Rights in Mexico," *New York Times*, January 23, 1919. A British diplomat summed up the mission of Pani and his "large staff" in Paris as to argue "(1) that no nation shall interfere with another country, even where property rights of its own citizens are concerned (2) That a Govt. by altering its constitution can legally take over any properties of which it has need"; TNA, FO 9479/127, Folio 163: February 24, 1919. The U.S. Senate responded with an investigation and report calling on Washington to intervene to protect U.S. property, including U.S.-owned oil fields. Merrill Rippy, *Oil and the Mexican Revolution* (Leiden, 1972), 157–158.

[68] Lloyd C. Gardner, *Economic Aspects of New Deal Diplomacy* (New York, 1964).

[69] See Grandin, *Empire's Workshop*, 33–39, for a fuller discussion.

often begrudged. During his 1950 tour of Latin America, George Kennan, the man most closely associated with the policy more commonly understood as "containment," that is, of the Soviet Union, described the taxes that U.S. oil companies paid to the Venezuelan government as "a sort of ransom to the theory of state sovereignty and the principle of non-intervention which we had consented to adopt."[70] And in retrospect, it was short-lived. By the 1980s, with the ascendance of the New Right to governance in the U.S., President Ronald Reagan was again invoking the Monroe Doctrine, in the words of that hardliner at the Versailles Conference, in "its true meaning," in its most interventionist form.[71] And just as Latin America played a central role in the consolidation of multilateralism, the region would be where it was first rolled back.

The United States had "intervened" in Latin American affairs through the whole of the Cold War, but it did so in a way that did not undercut the diplomatic principles of multilateralism. The CIA's successful 1954 Guatemalan coup and its botched 1961 Bay of Pigs invasion, for example, were covert and therefore violations of sovereignty. But they did not entail a direct legal challenge to the idea of sovereignty. In fact, these interventions confirmed the principle, formally, at least, since Washington sought and received the Organization of American States' sanction to isolate Guatemala and Cuba diplomatically. The OAS likewise endorsed, with some dissent, Lyndon Baines Johnson's 1965 invasion of the Dominican Republic.

But starting in the 1980s, Reagan's actions in Central America and the Caribbean did rewrite the terms of law and diplomacy. The war against the Sandinistas in Nicaragua, for example, was largely meant to be secret. But in response to the 1986 International Court of Justice ruling that the United States must pay Nicaragua billions of dollars for mining its harbor and conducting an illegal war of aggression, Washington opted to withdraw from the court's jurisdiction. Legal scholar Eric Posner argues that that was a "watershed moment" in the United States' relationship with the international community, one that George W. Bush's ambassador to the UN, John Bolton, cited as evidence for why the U.S. should not abide by other multilateral obligations.[72]

The 1991 invasion of Panama was another turning point, described in 2009 by Thomas Pickering, U.S. ambassador to the United Nations at the time, as paving the way for 2003's unilateral war in Iraq.[73] Like most military actions, this one, coming

[70] "Diary Notes of Trip to South America," George F. Kennan Papers, Box 232, Folder 1, entry for February 28, 1950, Mudd Manuscript Library, Princeton University.

[71] Grandin, *Empire's Workshop*, 121–158.

[72] Eric A. Posner, "All Justice, Too, Is Local," *New York Times*, December 30, 2004, http://www.nytimes.com/2004/12/30/opinion/30posner.html; John R. Bolton, "Courting Danger," *National Interest*, Winter 1998–1999, http://nationalinterest.org/article/courting-danger-633; see also Anthony D'Amato, "Modifying U.S. Acceptance of the Compulsory Jurisdiction of the World Court," *American Journal of International Law* 79, no. 2 (April 1985): 385–405; and D'Amato, "Trashing Customary International Law," *American Journal of International Law* 81, no. 1 (January 1987): 101–105. The 1983 invasion of Grenada was likewise an important step in expanding the scope of unilateralism. Throughout the Cold War, an ability to move back and forth between the OAS and the UN gave Washington room to maneuver regionally while still adhering to the principles of global multilateralism. But in 1983, confronted with an increasingly hostile OAS, Jeane Kirkpatrick, Reagan's ambassador to the UN, opted for subdivision, citing treaty obligations to the minuscule Organization of Eastern Caribbean States to justify the landing of Marines in Grenada; Stuart Malawer, "Reagan's Law and Foreign Policy, 1981–1987: The Reagan Corollary of International Law," *Harvard International Law Journal* 29, no. 1 (1988): 85–109.

[73] *Foreign Policy*, December 18, 2009.

just over a month after the fall of the Berlin Wall, was justified by a hierarchy of rationales. But high on the list, and unique in its prominence, was the goal of installing democracy in Panama. It therefore had a transformative effect on international law, one that was immediately recognized by all Latin American nations, including close U.S. allies such as Augusto Pinochet's Chile.[74] The OAS, in an emergency session, opposed the invasion by a 20 to 1 vote. In response, Luigi Einaudi, the U.S. ambassador to the Organization of American States, gave a speech that explicitly reclaimed for the United States the right to intervene in the affairs of another country, not just defensively, but because it deemed the quality of its sovereignty unworthy of recognition. "Today, we are . . . living in historic times: a time when a great principle is spreading across the world like wildfire. That principle, as we all know, is the revolutionary idea that people, not governments, are sovereign."[75]

Concurrent with this dilution of the ideal of territorial sovereignty was an attempt to disentwine social and political rights. In the decade prior to the invasion of Panama, Reagan embraced the rhetoric of human rights in order to reinvest U.S. military power with moral authority. Yet this embrace came with an important caveat: "All too often," wrote Richard Allen, the president's national security advisor, in 1981, "we assume that everyone means the same thing by human rights." When the United States talked about human rights, Allen stated, it meant only the defense of "life, liberty, and property" and not "economic and social rights." The expansion of human rights into the social realm, he went on, constituted a "dilution and distortion of the original and proper meaning of human rights."[76] That same year, Elliott Abrams, who soon would be appointed Reagan's assistant secretary of state for human rights, drafted an influential memo, often cited as key in Reagan's efforts to define the Cold War as a righteous fight: after announcing that "our struggle is for political liberty" and in defense of "human rights," Abrams nonetheless felt that the latter expression was too tainted by issues related to economic justice. He suggested a rebranding: "We should move away from 'human rights' as a term, and begin to speak of 'individual rights,' 'political rights' and 'civil liberties.' We can move on a name change at another time."[77]

[74] "U.S. Denounced by Nations Touchy about Intervention," *New York Times*, December 21, 1989.

[75] Luigi Einaudi, "Remarks to the Organization of American States," December 22, 1989, reprinted in U.S. Department of State, *Panama: A Just Cause* (Washington, D.C., 1990). By "historic times," Einaudi was referring to the fall of the Berlin Wall, which he used to justify weakening of the idea of absolute sovereignty. The Mexican writer Carlos Fuentes drew a different lesson from that event, writing that U.S. politicians "refuse to let go of their 'sphere of influence'—Central America and the Caribbean—claiming the right to intervene in the internal affairs of a sovereign nation and dictate the terms of that nation's political life. In other words: the process of perestroika underway in Europe is not matched by an American perestroika"; in Alberto Novoa, "The Last Word: Comments on the US Invasion of Panama," *Revista Envío* 103 (February 1990), http://www.envio.org.ni/articulo/2585. Many legal theorists likewise disagreed with Einaudi's interpretation of history; see Alan Berman, "In Mitigation of Illegality: The U.S. Invasion of Panama," *Kentucky Law Journal* 79, no. 4 (1991): 735–797.

[76] Richard Allen, "For the Record," *Washington Post*, June 4, 1981.

[77] "Memo on Human Rights," in *Historic Documents of 1981* (Washington, D.C., 1982), 779–786, http://library.cqpress.com/historicdocuments/hsdc81-0000110851. For Abrams's authorship of this memo, which was circulated out of the office of Deputy Secretary of State William Clark and Under Secretary for Management Richard Kennedy after Reagan's first nomination for this position, Ernest W. Lefever, was rejected by the Senate, see Aryeh Neier, *Taking Liberties: Four Decades in the Struggle*

THERE IS A STRAY COMMENT IN Herbert Bolton's "Greater America" address in which he credits the Mexican Revolution with giving rise to "rights for the common man," a reference to its guarantees of health care, welfare, education, land, and collective bargaining. Bolton's tribute captured what he believed to be the historical direction of Greater America, toward a conceptualization of democracy as social democracy. "Mexico for Mexicans, rights for the common man, and education for the common people," he said, are "slogans which sound familiar to Anglo-Americans."[78] In the years that followed, New Deal domestic politics and diplomacy did align the United States as closely as it ever would be to Latin American conceptions of social citizenship and sovereignty. Subsequent history, however, beginning during the late Cold War and quickening afterward, has been marked not by convergence but by divergence, suggesting that Bolton's remarks should be read not as an illustration of a movement toward unity, as he meant them, but as an opening to thinking about the history of Greater America as an ideological contest, an ongoing rivalry to define its exceptionalism.

for Human Rights (New York, 2003), 185–186; and Kathryn Sikkink, *Mixed Signals: U.S. Human Rights Policy and Latin America* (Ithaca, N.Y., 2004) 156–157.

[78] Bolton, "AHA Presidential Address: The Epic of Greater America."

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