BRILL

Spanish Yearbook of International Law XVII (2011–2012): 1–22

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History of the Historiography of Spanish Textbooks and Treatises on International Law of the 19th Century

Yolanda Gamarra Chopo*
Associate Professor of International law, Faculty of Law, University of Zaragoza (Spain)

ABSTRACT

The bibliography of Spanish international law textbooks is a good indicator of the evolution of the historiography of international law. Spanish historiography, with its own special features, was a recipient of the great debates concerning naturalism *v.* positivism and universalism *v.* particularism that flourished in European and American historiography in the nineteenth century. This study is articulated on four principal axes. The first states how the writings of the *philosophes* continued to dominate the way in which the subject was conceived in mid-nineteenth century Spain. Secondly, it explores the popularization and democratization of international law through the work of Concepción Arenal and the heterodox thought of Rafael María de Labra. Thirdly, it examines the first textbooks of international law with their distinct natural law bias, but imbued with certain positivist elements. These textbooks trawled sixteenth century

* Member of the Spanish Ministry of Innovation and Science Project DER2010–16350, "El pensamiento iusinternacionalista español del siglo XX. Historia del derecho internacional en España, Europa y América, 1914–1953". Member of the Research Group (S102) of the *Gobierno of Aragón* (Spain). An earlier version of this study was published under the title, "Historiography of International law Textbooks in Nineteenth Century Spain", *e-SLegal History Review*, vol. 16, 2013, pp. 1–30 (gamarra@unizar.es).

DOI: 10.1163/9789004264755_002

Spanish history, searching for the origins of international law and thus demonstrating the historical civilizing role of Spain, particularly in America. Fourthly, it considers the vision of *institutionist*, heterodox reformers and bourgeois liberals who proclaimed the universality of international law, not without some degree of ambivalence, and their defence of Spain as the object of civilization and also a civilizing subject. In conclusion, the article argues that the late development of textbooks was a consequence of the late institutionalization of the study of international law during the last decade of the nineteenth century. Nevertheless, the legacy of the nineteenth century survives in the most progressive of contemporary polemics for a new international law.

Keywords

Historiography, Textbooks, International Relations, International Law, Natural Law, Positivism, Sovereignty, Nation-States, History of Civilization, Empire, Religion

RÉSUMÉ

La bibliographie de manuels espagnols de droit international est un bon indicateur de l'évolution de l'historiographie de ce droit international. La doctrine espagnole, avec ses spécificités, a accueilli les grands débats autour du naturalisme / positivisme, ainsi que de l'universalisme / particularisme, très présents dans l'historiographie européenne et américaine du XIX° siècle. Cette étude s'articule selon quatre axes. En premier lieu, elle montre comment les écrits des philosophes ont continué à informer cette discipline tout au long du XIX° siècle en Espagne. Elle s'attache ensuite à la popularisation et la démocratisation du droit international à travers l'œuvre de Concepción Arenal et la pensée hétérodoxe de Rafael María de Labra. En troisième lieu, elle examine l'élaboration des premiers manuels de droit international, fortement marqués par la doctrine du droit naturel, mais imprégnés d'éléments positivistes. Ces premiers manuels explorent l'histoire d'Espagne au XVI° siècle afin d'identifier les origines du droit international et de démontrer ainsi le rôle civilisateur de l'Espagne, en particulier en Amérique. Dans une quatrième partie, cette étude porte sur l'apparition des premiers manuels rédigés par des institutionnalistes, des réformateurs hétérodoxes, des bourgeois libéraux qui proclament l'universalité du droit international, non sans ambiguïtés, et l'affirmation de l'Espagne à la fois comme objet et acteur de civilisation. En conclusion, l'article démontre que l'élaboration tardive de manuels est la conséquence de l'institutionnalisation tardive des études de droit international au cours de la dernière décennie du XIX° siècle. L'héritage de ce XIX° siècle survit néanmoins au cœur des polémiques et des bats qui tentent de définir un nouveau droit international.

Mots clés

Historiographie, Manuels, Relations internationales, Droit international, Droit Naturel, Positivisme, Souveraineté, Etats, Histoire de la civilisation, Empire, Religion

RESUMEN

La bibliografía de manuales de derecho internacional españoles es un buen indicador de la evolución de la historiografía del derecho internacional. La historiografía española, con sus propias particularidades, fue receptora de los grandes debates en torno a naturalismo *versus* positivismo, y universalismo *versus* particularismo que florecieron en la historiografía europea y americana del siglo XIX. Este estudio está articulado sobre cuatro ejes. Primero, trata de cómo los escritos de los filósofos continuaron informando la disciplina a mediados del siglo XIX en España. Segundo, explora la popularización y democratización del derecho internacional a través de la obra de Concepción Arenal, y el pensamiento heterodoxo de Rafael María de Labra. Tercero, examina la elaboración de los primeros manuales de derecho internacional de marcado carácter iusnaturalista, pero imbuidos de ciertos elementos positivistas. Estos primeros manuales rastrean en la historia española del siglo XVI para identificar los orígenes del derecho internacional y, así, demostrar el papel civilizador de España, en particular en América. Cuarto, explora la irrupción de los primeros manuales de institucionistas, reformadores heterodoxos, burgueses liberales que proclaman la universalidad del derecho internacional, con no pocas ambivalencias, y la defensa de España como objeto de civilización, así como de sujeto civilizador. En conclusión, el artículo argumenta que hay una tardía elaboración de manuales como consecuencia de la tardía institucionalización de los estudios de derecho internacional en la última década del siglo XIX. Sin embargo, el legado del siglo XIX sobrevive en los debates más vivos que tratan de diseñar un nuevo derecho internacional.

Palabras clave

Historiografía, Manuales, Relaciones Internacionales, Derecho internacional, Derecho Natural, Positivismo, Soberanía, Estados, Historia de la civilización, Imperio, Religión

I. PROLOGUE: THE TIME OF HISTORY

This article focuses on the history of the historiographies of Spanish international law textbooks at the turn of the nineteenth century – i.e. circa 1880–1900.[1] After the 1850's, which marked a turning point in the dawn of international studies,[2] the bibliography

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[1] In the framework of studies developed by Peter Macalister-Smith and Joachim Schwietzke, "Bibliography of the Textbooks and Comprehensive Treatises on Positive International Law of the 19th Century", *Journal of the History of International Law*, vol. 3, 2011, pp. 75–142, or Manuel Martínez Neira, *El estudio del Derecho. Libros de texto y planes de estudio en la Universidad contemporánea*, Madrid, Instituto Antonio de Nebrija de estudios sobre la Universidad, Universidad Carlos III-Editorial Dykinson, 2001.

[2] The Law of *Instrucción pública* of 17 July, 1857 (Law of Moyano) included the study of International law. See the article written by Ignacio de la Rasilla, "The Study of International law in the Spanish *Short* Nineteenth Century", *Chicago Kent Journal of International and Comparative Law*, vol. 2, 2013, pp. 122–150.

of books on international law substantially increased as a prelude to the publication of the first textbooks on international law in the 1880s and 1890s.

In 1883, the Spanish Ministry, Germán Gamazo, passed the law that saw the creation of the first chairs in international law.[3] From that moment there existed independent teaching of the subject, with its own courses and professors specialising exclusively in international law studies.[4] Until then, the study of international law, with its dual public and private dimension, ceased to be limited to doctorate courses and came to be considered separately from history and philosophy. In a parallel process to the creation of the first chairs, the handbooks on international law for educational purposes began to be published. These treatises, published in the 1880s were a continuation of the programmes and outlines drafted in previous decades both in terms of form and content. These first textbooks were characterised by dealing with both public and private international law equally. The aim follows the recovery of how authors in the nineteenth century conceived this branch of law in order to discover what was studied, why and with what purpose, considering the formation of the liberal jurist.

The tumultuous nineteenth century, with its foreign interventions – the hundred thousand sons of Saint Louis –, *coups d'état*, failure after failure of the liberal cause – failed constitutions-, social and economic crises, and the 1898 war widespread illiteracy and the search for Spanish identity, "a nation of nations" as defined by José María Jover Zamora,[5] explains why the country felt marginalized, isolated, and different from Europe, and gazed with varying degrees of enthusiasm towards America, the Mediterranean, Africa and Western Europe.[6] While it wanted to become part of an international society in a process of transformation, it also claimed to occupy the position it deserved thanks to its history, culture, resources and geo-strategic position. The recovery of the history of the historiography of international law is therefore a response to national interests, with a clear aim of contributing to the construction of the Spanish nation and to its incorporation into a Europe of civilized nations.[7]

Spanish authors, like those in the rest of America and Europe, were interested in establishing the genealogy of the concept of international law. In their search for origins and precedents, these Spanish authors looked back to the sixteenth century and identified

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[3] Royal Decree of 2 September 1883 (Law of Gamazo), *Gaceta,* de 6 de septiembre de 1883, pp. 653 et seq. See Manuel Martínez Neira, *El estudio del Derecho. Libros de texto y planes de estudio en la Universidad contemporánea, cit*., pp. 256–267.

[4] Mariano y José Luis Peset, "Las Universidades españolas del siglo XIX y las ciencias", 7 *Ayer* (1992), pp. 19 et seq., Idem, *La Universidad Española (siglos XVIII y XIX). Despotismo ilustrado y revolución liberal*, Madrid, Taurus, 1974; Antonio Álvarez de Morales, *Génesis de la Universidad española contemporánea*, Madrid, Instituto de Estudios Administrativos, 1972, or Manuel Martínez Neira, *El estudio del derecho: Libros de texto y planes de estudio en la Universidad contemporánea, cit.*

[5] José María Jover Zamora, "Caracteres de la política exterior de España en el siglo XIX", *Política, diplomacia y humanista popular*, Madrid, Turner, 1976, pp. 83–138, and *España en la política internacional. Siglos XVIII–XX*, Madrid, Marcial Pons, 1999.

[6] See José Álvarez Junco, *Mater dolorosa. La idea de España en el siglo XIX*, Madrid, Taurus, 2001.

[7] See Juan Antono Carrillo Salcedo, *El derecho internacional en perspectiva histórica*, Madrid, Tecnos, 1991, pp. 27 et seq.

Francisco de Vitoria as the founder of international law.[8] This witness was subsequently taken up by the later generation of internationalists to demonstrate the civilized nature of the Spanish people, and the civilizing effect of Spain, particularly in America.[9]

The rediscovery of the work of Francisco de Vitoria, Francisco Suarez and others authors of Salamanca School, together with the advance of the liberal cause, led to the resurgence of international law studies in Europe. Martti Koskenniemi has contextualized the re-emergence of Vitoria in a historical era in which "the early international lawyers were liberals who supported the turn to formal empire in order to protect the natives from the greed of colonial companies and ensure the orderly progress of the civilizing mission".[10] Liberal international lawyers emerging within the framework of the *Institut de Droit International* pointed to the Second Scholasticism of the University of Salamanca as representative of this.[11]

The nineteenth century is traditionally remembered in two ways: first, for the philosophical controversies between naturalism and positivism which, after the relative triumph of positivism, gave way to the more pragmatic discipline we know in this century, and second, as a classical period in which sovereignty and the State were consolidated as the fundamental doctrinal and philosophical underpinnings for international law, only to be eroded, rejected and replaced by twentieth century literature of international law.[12] In both cases, the nineteenth century legal order is a thing of the past and it has been the discipline's preoccupation from the early days of the League of Nations to keep it that way. As Johan Huizinga (1872–1945) once wrote, using a simile as accurate as it is evocative, historical transitions are not marked by mountain ranges that separate one landscape from another, rather they gradually merge into each other in the varying and constantly evolving remnants of two landscapes: that which is left behind and that which opens out to the future.[13]

My argument is that the nineteenth century can teach us that the modernism, pragmatism and progressivism of today's international law is more rhetorical effect than historical achievement, and more part of the internal dynamic of the field's development than artefact of a distant era. A historical study of the history of the historiography of international law textbooks provides an opportunity for us to approach in some measure

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8 Peter Haggenmacher, "La place de Francisco de Vitoria parmi les fondateurs du droit international", *Actualité de la pensé juridique de Francisco de Vitoria*, 1988, pp. 29 et seq.

9 See on this idea Yolanda Gamarra, "Rafael Altamira y Crevea (1866–1951). The International Judge as 'Gentle Civilizer'", *Journal of the History of International Law*, vol. 14, 2012, pp. 1–49.

10 Martti Koskenniemi, "Empire and International law: The Real Spanish Contribution", 61 *University of Toronto Law Journal*, 2011, p. 3.

11 In particular, Ernest Nys, "Les publicistes espagnols du XVI siécle et les droits des indiens", *Révue de droit international et de législation comparée* (1889): 532 and *Introduction in Francisco de Vitoria, De Indis et de Iure Belli Relections*, Classics of International Law, 1917.

12 David Kennedy, "International Law and the Nineteenth Century: History of an Illusion", *QLReview*, vol. 17, 1999, p. 101, and Martti Koskenniemi, "The Legacy of the Nineteenth Century", in David Armstrong (ed.), *Routledge Handbook of International Law*, New York, Routledge, 2009, pp. 141–153.

13 Johan Huizinga, *The Waning of the Middle Ages*, 1919, London, Penguin Books, translated in 1924.

the outstanding features of international law as a modern science and its increasing professionalization and internationalization.[14]

The aims, the methodology and the chosen form of presentation of this article is to continue to foster a line of study – critical approach – that could widen the retrospective gaze of Spanish international legal academia by means of an updated intra-disciplinary historiography of its evolution from the early nineteenth century.[15] The present overview of the modern bibliography of international law in nineteenth century Spain is, moreover, oriented to contribute to the new study of the national traditions of international law in Europe.[16] Indeed, the history of international law is a tool for "a critical and conscious moving of frontiers, not only between the national and the international (…) but also as regards, on a global level, the contents of basic concepts such as authority, power, order, law, and the state".[17]

A full history of international law historiography of the nineteenth century would require writing a history of international law proper. Of course, this is beyond the scope of this article. So I propose to begin with a sketch of textbooks and treatises on positive – public – international law of the nineteenth century. The study is articulated on four principal axes. The first states how the writings of the *philosophes* continued to dominate the way in which the subject was conceived. The contribution of the authors who published the first general textbooks that contained the foundations and principals of international law is studied. In this context, the precedent of Joaquín Marín y Mendoza is used to bring together a study of the body of international law for its teaching, as well as the influence of Latin America literature as essential for the emergence of international law textbooks. The second is an examination of how international law was approached by non-specialist jurists, including the achievements of Concepción Arenal or Rafael María de Labra. They were authors who wrote about the body of international law as amateurs. The third axis addresses the publication of the first treatises with their natural law bias but which were also imbued with certain positivist elements, trawling Spanish sixteenth century history to justify the civilizing nature of international law. The fourth considers the appearance of the first textbooks by heterodox reformers, in short, bourgeois liberals who proclaimed the universality of international law, though not without a certain ambivalence. In conclusion, the paper argues that the late involvement of Spanish international lawyers in writing textbooks is a consequence of the slow institutionalization of international law as a science during the last decades of

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[14] See Mattew Craven, Malgosia Fitzmaurice & Maria Vogiatzi (eds.) *Time, History and International Law*, Leiden & Boston, Martinus Nijhoff Publishers, 2007.

[15] As was pointed out by Yolanda Gamarra and Ignacio de la Rasilla (eds.), *Historia del pensamiento Iusinternacionalista Español del Siglo XX*, Cizur Menor (Pamplona) Thomson Reuters-Aranzadi, 2012, p. 23.

[16] Hence advancing the development of the field of comparative International law, see Martti Koskenniemi, "The Case for Comparative International Law", *Finnish Yearbook of International Law*, 2011, and Ignacio de la Rasilla, "The Case for Comparative International Law in Question – A Response to Martti Koskenniemi", *Finnish Yearbook of International Law*, 2012.

[17] Mislos Vec, "Universalization, Particularization, and Discrimination – European Perspectives on a Cultural History of 19th century International Law", *InterDisciplines* vol. 2, 2012, p. 81.

nineteenth century.[18] In conclusion, the legacy of the nineteenth century survives in the most progressive of contemporary polemics for a new international law.

II. INTERNATIONAL LAW AS HISTORICAL AND NATURAL LAW

International legal studies were in a precarious state in late eighteenth century Spain after Charles IV suppressed the teaching of Public Law, Natural Law and the Law of Peoples.[19] International law was mainly inspired and founded on natural law. In fact, the rules of natural law designed by authors like Hugo Grotius or Samuel von Pufendorf were transferred from the individual level to the level of nations.[20]

One of our scholars, Joaquín Marín y Mendoza (1721–1782), the first professor of Natural Law, expressed in his *Historia del Derecho Natural y de Gentes* (1776)[21] that international law derived from a discussion of the origins of human society in the natural state and restated the principles of natural independence, equality, and the balance of power under a utilitarian rhetoric adopted from Montesquieu, Hobbes, Puffendorf, Heineccio or Vattel.[22] Even with its uncertainties and inaccuracies, this work represents the exponent of a situation in which the author uses the diminished scholasticism in Spain in search of the construction of natural law and the law of peoples.[23]

In nineteenth century Spain, as in the rest of Europe, there was very little consciousness of international law as a discipline on its own, separate from philosophy, diplomacy or public and private law. International law was developed through the interventions of administrative and civil lawyers, legal historians, theologians, and philosophers.[24] Roman law, canon law and civil law were a great tradition in Spanish legal scholars and from them were implemented the study of international law.

Hence, until late in the second half of the century, international law received no general academic treatment in Spain separate from a discussion of natural law. Nor had international law enjoyed a separate existence in the law faculties. Indeed, international

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18 See Ignacio Peiró, "La Historiografía académica en la España del siglo XIX", *Memoria y Civilización. Anuario de Historia de la Universidad de Navarra*, vol. 1, 1998, pp. 165–196.

19 By the Royal Decree of 1794. See Manuel Martínez Neira, "¿Una supresión ficticia? Notas sobre la enseñanza del Derecho en el reinado de Carlos IV", *Anuario de Historia del Derecho español* 1998, pp. 523–544.

20 Luigi Nuzzo and Milos Vec, "The Birth of International Law as a Legal Discipline in the 19th Century", in Luigi Nuzzio and Milos Vec, *Constructing International law. The Birth of a Discipline*, Frankfurt/M., 2012, IX–XVI.

21 See more specific information in José Antonio Tomás Ortíz de la Torre, "L'établissement de l'enseignement officiel en Espagne du droit international. Note bicentenaire", 40 *Annuaire de l'association des auditeurs et anciens auditeurs de l'Académie de droit international de La Haye*, 1970, p. 122.

22 Joaquín Marín y Mendoza, *Historia del Derecho Natural y de Gente*s, Madrid, Instituto de Estudios Políticos, re-printed 1950, pp. 39 et seq.

23 Id. pp. 41 et seq.

24 In 1836, the University Reform Decree restored the official studies of natural law and the law of nations that had been excluded from the national curriculum since 1794. See García Arias, L., 'Historia de la doctrina hispánica de derecho internacional', *Addenda* to Arthur Nussbaum, *A concise history of the law of nations*, New York, 1947 (addenda undated), p. 497.

law fitted uneasily into the juristic atmosphere of the Spanish mid-century, dominated by the exegetic school that recognized no positive source beyond the Criminal Code (1812) or civil law.

Only a few specialized treatises of diplomatic and consular law or maritime law appeared in Spain before the 1880s. Spanish diplomats and courts were satisfied with general treatises written by foreigners, particularly those of Georg F. von Martens, *Tratado de diplomatica, o estado de relaciones de las potencias de Europa entre sí, y con los demás pueblos del globo* (1835) translated by Joaquín R. Campuzano, or Johann G. Heineccio, *Elementa Iuris Natura et Gentium* (1737) translated by Joaquín Marín y Mendoza. These translations are enormously valuable given that they show, on one hand, the growing national and linguistic diversification of international law; German, French, Italian and even Russian. On the other hand they indicate the inclusion of Spanish doctrine in the new systematic focus of international law led by the most important iusinternationalists of Europe.

Of significance in this process of independence of international law – from natural law and history of the law – was the compilation in the 1840s of Spanish agreements and treaties by Alejandro del Cantillo (1802–1845) entitled *Tratados, convenios y declaraciones de paz* (1700–1840) published in 1843.[25] To this should be added the work of Esteban de Ferrater y Janer (1812–1873), professor of civil law at the University of Barcelona, under the title *Código de Derecho internacional, osea, Colección metódica de los tratados de paz, amistad y comercio entre España y las demás naciones* (1846–7).[26] In this code, Ferrater presented a collection of treaties, divided by nations and split between three main headings: the organization of the relationships and interests of governments between themselves, the civil rights of citizens, and commercial interest; as well as a brief summary of the rules of international law or law of people, which without being written in the treaties was always seen as sanctioned by custom, and Spanish laws and provisions that referred to the diplomatic corps and to foreigners.[27]

Antonio Riquelme y Gómez (1801–1879), Head of Section at the Ministry of State, published *Elementos de Derecho Público Internacional con explicación de todas las reglas que, según los tratados, estipulaciones, leyes vigentes y costumbres constituyen el Derecho internacional español* in 1849,[28] completed with an *Apéndice al Derecho Internacional de España*.[29] This treatise was an exponent of the systematization and organization

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[25] Alejandro del Cantillo, *Tratados, convenios y declaraciones de paz* (1700–1840), Madrid, 1843.

[26] Esteban de Ferrater, *Código de derecho internacional, o sea, Colección metódica de los tratados de paz, amistad y comercio entre España y las demás naciones tomo primero*, Barcelona, Ramón Martín Indar, 1846, 558 pp.

[27] See Luis García Arias, 'Historia de la doctrina hispánica de derecho internacional', *Addenda* to Arthur Nussbaum, *A concise history of the law of nations*, New York, 1947 (addenda undated), *cit.*, p. 512.

[28] Antonio Riquelme y Gómez, *Elementos de Derecho Público Internacional con explicación de todas las reglas que, según los tratados, estipulaciones, leyes vigentes y costumbres, constituyen el derecho internacional español*, volume I, Madrid, Santiago Saunaque, 1849.

[29] "Apéndice al derecho internacional de España que contiene los tratados, leyes recopiladas, reales cédulas, pragmáticas, reales órdenes y otros documentos que se citan en el tomo primero de esta obra, por Don Antonio Riquelme, gentil hombre de Cámara de S. M. con ejercicio y Jefe de Sección del Ministerio de Estado", volume II, Madrid, Santiago Saunaque, Madrid, 1849.

characteristic of Spanish practice. Also, it includes a compilation of lectures from foreign textbooks. The first volume was dedicated to the elements of international law. These volume was divided into two books; one dedicated to public international law, what is called "political international law", and the second to private international law, known as "jurisdictional international law" – because it was derived from the "seigniorial jurisdiction of the states". The second volume was focused on the compilation of laws and other documents cited in the first volume.

In this work, with a clear positivist approach, Riquelme defines international law as a set of rules determining the relations between civilized nations governed by positive, customary and natural law. He classified these rules as political law – subdivided into general and maritime – and jurisdictional law – subdivided into civil and criminal. Some distinctive aspects could be highlighted: in particular the need to discuss and regulate an increasing range of matters of international concern became much stronger for Spain. The purpose of this book was to enrich Spanish legal literature, not with a great treatise but with a small handbook to alleviate the lack of an adequate text with which to begin the study of international law. It was a book that includes an organised explanation of the subject and includes both public and private international law. In the 1950s, he became recognized as the first Spanish author that systematically explained and completed a system of international law surpassing the *Código de Derecho Internacional* by Ferrater.[30]

The linguistic establishment of the term *derecho internacional* came from the Latin American Republics – undoubtedly because of the problems posed by independence. The first book on international law published in the American continent appeared in 1832 written by Andrés Bello, *Principios de Derecho de Gentes*.[31] An eclecticism regarding the dichotomy between natural law and positive law, although with a marked inclination for the latter, impregnates Bello's work.[32]

Like Bello, other Latin American authors such as Carlos Calvo (1824–1906), Carlos Ferreira (1872–1958), or Rafael Fernando Seijas (1822–1905) gradually aligned themselves with the rise of positivism. However, other authors remained closer to naturalism, as was the case with Gregorio Pérez Gomar (1834–1885), José Silva Santisteban (1825–1889), or José María Pando (1787–1840).[33] The Pando's work *Elementos del Derecho internacional* (1843) was the first book to contain in its title the term *derecho internacional*.[34] However, Pando's work was followed by accusations of plagiarism from Bello, who treated it as

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30 Miguel Ángel Otal Corvinos, "El sistema de derecho conflictual español en Riquelme", in VV.AA., *El derecho internacional privado español anterior al Código Civil de 1889*, Zaragoza, El Noticiero, 1958, p. 91.

31 Andrés Bello, *Principios de Derecho de Gentes*, Santiago de Chile, Opinion, 1832.

32 For the thought of Andrés Bello, see the study by Liliana Obregón Tarazona, "Construyendo la región americana: Andrés Bello y el Derecho internacional", in Yolanda Gamarra (coord.), *La idea de América en el pensamiento iusinternacionalista del siglo XXI,* Zaragoza, Institución Fernando el Católico, 2010, pp. 65 et seq.

33 According to HB Jacobini, *A Study of the Philosophy of International Law as Seen in Works of Latin American Writers*, Connecticut, Hyperion Press, 1979, pp. 39–50.

34 Arnulf Becker Lorca, "Universal International Law. Nineteenth-Century Histories of Imposition and Appropriation", *Harvard International Law Journal*, 2010, p. 475.

little other than a new edition of his own *Principios*. Both authors' works heralded the official academic status of the term "international law".

The gradual increasing of chairs on the Philosophy of law and History of international law led to a change in the approach to international legal studies through a slow transition towards a protracted juridification of the perspectives accompanying the formation of the liberal state. At the Central University of Madrid, Pedro Sabau y Larroya (1807–1879), professor of natural law and international law from 1846 till 1868, wrote a *Programa de derecho internacional, asignatura del año octavo de la Facultad de Jurisprudencia* in 1853.[35] His *Programa* contains a condensation of concepts, sources, principles and rules of public and private international law. As every author of a textbook or treatise on international law he decided on his presentation of the subject matter, both as a whole and in each branch of the law. In fact, his monograph offers a historical approach with a positivist view of international law.

It is of interest to note that international historical studies within the traditional area of Spanish foreign politics were implemented by the work of Facundo Goñi (1820–1882).[36] In 1848, Goñi held the chair of Philosophy and international law at the *Ateneo* in Madrid,[37] and published *Tratado de las Relaciones Exteriores de España: lecciones propunciadas en el Ateneo de Madrid*,[38] in which he collected his lectures as professor of international law given from 1845 to 1847. This treatise was presented as a reasoned and complete exposition of all the treaties and interests that governed the relations between Spain and each of the civilized nations both inside and outside Europe. Goñi's vision of Spanish foreign policy was euro-centric to the point of containing the seeds of the idea of progress through European unity.[39]

Many of Spanish books appearing under the title of international law confined their narrative to the international juridical framework indicated in their titles with numerous considerations of natural law or history of the law. These authors attempted to find a synthesis between natural law and positive law. An example of this genre is the work by Pedro López Sánchez (1831–1882), professor of natural law and international law at the Central University of Madrid, entitled *Elementos de Derecho internacional público, precedidos de una introducción a su estudio bajo los aspectos de su desarrollo histórico o positivo y de su teoría* (1866–1877), with a clear natural and historical law influence.[40]

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35 Pedro Sabau y Larroya, *Programa de derecho internacional, asignatura del año octavo de la Facultad de Jurisprudencia*, Madrid, Imprenta de Manuel Medina, 1853.

36 Goñi was the immediate precursor in the genealogy of international relations. See Celestino del Arenal, "La génesis de las relaciones internacionales como disciplina científica", *Revista de Estudios Internacionales*, 1981, vol. 4, pp. 858–860.

37 The first private chair in international law was established at the Ateneo of Madrid in 1844. Originally, it was intended for José María Ruíz López. However, in early 1845, his diplomatic appointment in Constantinople resulted in the nomination of Goñi.

38 Facundo Goñi, *Tratado de las Relaciones Exteriores de España: lecciones propunciadas en el Ateneo de Madrid*, Madrid, Establec. Tip. de Ramón Rodríguez de Rivera, 1848.

39 On the idea of Europe in the 19th Century, see Juan Francisco Siñériz y Trelles, *Constitución europea con cuya observación se evitarán las guerras civiles, las nacionales y las revoluciones, y con cuya sanción se consolidará una paz permanente en Europa*, Madrid, Imprenta del Colegio Nacional de Sordomudos, 1839.

40 Pedro López-Sánchez, *Elementos de Derecho internacional público precedidos de una introducción a su estudio bajo los aspectos de su desarrollo histórico o positivo y de su teoría (1866–1877)*,

López Sánchez's thought was influenced by Spanish Krausism or the so-called "peripherical krausism" as many other publicists or legal scholars in Spain.[41] As Pedro Sabau y Larroya's pupil, López Sánchez work was characterized by a socio-historical approach with a strong influence of Catholicism.

During the nineteenth century, international law became a legal science that was increasingly independent and professionalized. From the 1830s onwards, the preponderance of legal positivism would eliminate from amongst its defenders, the link that connected it to natural law. However, the iusnaturalist tradition or philosophical consideration of international law did not disappear because of this and continued to exert an influence that cannot be ignored.[42] In fact, parallel with the slow awakening of international natural law studies in Spain, the positivism was gaining ground at home and abroad. Before dealing with this development, it is necessary to study two figures that exerted a strong influence on the iusinternationalists at the turn of the century and on the modernization of the discipline.

III. MORALITY AND THE "IDEA OF HUMANITY"

Concepción del Arenal (1820–1893), an influential criminologist, sociologist and precursor of modern feminism, published her *Ensayo sobre el derecho de gentes* (1879).[43] The essay of Concepción Arenal was one of the outstanding endeavours in encouraging the awareness of international law among the public in the last years of the nineteenth century.

In this *Ensayo*, she attempted to give free rein to the ideas developed over a long time using the notions of the internationalists of the period closest to her intellectual concerns: August W. Heffter, Johann G. Bluntschli, Frederic von Martens, Johann Ludwig Kluber, Jeremy Bentham, Pasquale Fiore, or James Lorimer, resorting also to classic authors such as Hugo Grotius or Emerich Vattel, provoking reflection, argument and critical debate.[44] The identification and univerzalisation of the fundamentals of international law had attracted the attention of Concepción Arenal, and her reflections are contained in this book.[45]

Madrid, Imprenta de la Revista de Legislación, 1866–1877.

41 Roberto Albares Albares, "Aproximación al krausismo", in Ignacio Sotelo et al., *Cuatro Ensayos de historia de España* (Madrid, Editorial Cuadernos para el Diálogo, 1975). See also, Antonio Heredia Soriano, *Política docente y filosofía oficial en la España del siglo XIX. La era isabelina (1833–1868)*, Universidad de Salamanca, 1982.

42 See Antonio Truyol y Serra, *Historia del derecho internacional público* (spanish edition of Paloma García Picazo), Madrid, Tecnos, 1998, pp. 114 et seq.

43 In 1879, Concepción Arenal published her work *Ensayo sobre el derecho de gentes* with a preliminary study of Gumersindo de Azcárate and edited by the printer of the Revista de Legislación de Madrid. For this study, we refer to the edition of Concepción Arenal, *Ensayo sobre el derecho de gentes*, with an Introduction by G. de Azcárate, Madrid, Reus, 2002.

44 For the contribution of nineteenth century internationalists to the "civilization" debate, *vid.* Martti Koskenniemi, *The Gentle Civilizer of Nations. The Rise and Fall of International Law 1870–1960*, Cambridge, University Press, 2001.

45 See on the international legal thought of Conception Arenal, the work by Yolanda Gamarra, "Una visión humanista del derecho de gentes: Concepción Arenal", *Criaturas Saturnianas*, vol. 3, 2005, pp. 81–90.

Concepción Arenal thought influenced liberals such as Rafael Mª Labra y Cadrana (1840–1918), Gumersindo de Azcárate (1840–1917), Francisco Giner de los Ríos (1839–1915), Aniceto Sela y Sampil (1863–1935), Joaquín Fernández Prida (1863–1942) or Rafael Altamira y Crevea (1866–1951), among others, which through their work contributed to the modernization and professionalization of international law. She encouraged the study of international law in Spain and opened up relations with Europe. In particular, she discussed the isolated position of Spain in Europe, which was of such concern to authors in the first decades of the twentieth century. In her *Ensayo*, Arenal encapsulated a sense of morals and law consistent with nature and reason. She believed in humanity building itself, developing an enlightened conscience with a sense of justice. She conceived law as a useful instrument to achieve more *civilized* international relations: freedom, equality, progress and the "idea of humanity" before the law and the means to live with dignity were to be extended to the entire human race without differences in terms of race, religion, language or culture. These after all provide the base for the humanist revolution.

The lectures given by Concepción Arenal over many years provided enough material for her to write not only an erudite work supported by multitudinous notes, but also to make use of the work by distinguished internationalists such as Heffter, Bluntschli or Martens to give substance to her ideas and thoughts. Arenal was sufficiently sharp and skilful to classify this work as an "essay" and explain that she was neither a technical expert nor an expert in political or military strategies, but a legal thinker which sought to explain her theories on reason and nature to the general public. As the author acknowledged, the *Ensayo* was aimed at people with a certain degree of culture and education but without any knowledge of international law. They would be able to grasp the ideas in a condensed form in a short book. The work was not, therefore, intended only for lawyers, but for an educated public, given that she did not seek to argue points of law. She wanted to address the question of humanity in order to involve and cultivate her readership and extricate them from misery and wars. Concepción Arenal first worked to take the social sciences from the Academy and the professorial chairs and disseminate them to the public. The second step was to strive to reach the point where the public became the people. Only thus, "when the people understand certain truths can the truths be turned into facts".[46]

The idea of persuasion framed the guiding principles of the *Ensayo*. First, it attempted to give a succinct idea of the meaning of *derecho de gentes positivo* – the positive law of peoples –, both in times of peace and of war. A distinction was drawn between the *derecho de gentes* – law of peoples – and the *derecho de gentes positivo* – positive law of peoples-, without omitting the definition of the idea of "nation".[47]

Secondly, the *derecho de gentes* was defined as "justice in the relations between all persons, to whichever nation they belong" – referring to individuals. The origin of law lay in justice and anything that distanced itself from the idea of civilization could not

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[46] Concepción Arenal, *Ensayo sobre el derecho de gentes, cit.*: 17.
[47] Id., p. 5 et seq.

be considered as law.[48] The author did not believe it possible to consider war as originating laws because the origin of law was justice.

On the other hand, Arenal considered that the *derecho de gentes positivo* was "the set of laws, treaties, agreements, tacitly or expressly agreed principles and customs generally followed by civilized nations in their mutual relations, whether nation to nation, one nation to a citizen of another, or between citizens of different nations".[49] This law, the existence of which the author was defending, was international law and it was nothing less than this.[50] It should be remembered that there was a strong current of opinion, which refused to recognize the juridical character of this legal discipline. With the help of certain principles she defended its juridical value. Similarly, she explained the mutual relations between peoples and not just the governments of those peoples.[51] This humanist characteristic was present throughout her work.

Thirdly, she also addressed the law of peoples in history to ascertain whether or not it had made progress, and to what degree, and particularly what distinguished it from national law.[52]

Fourthly, she argued that justice should not be independent of what occurred on the other side of borders.[53] She maintained that internal justice and international justice were the product of the same historical medium.

Finally, she considered the similarities and differences between the individual and the collective people – the state – in terms of the means to establish law and, once the nature of the person or people was understood, to see which would endure or what they could offer to international justice.[54]

With Arenal, the great ideas that had dominated world history such as progress, freedom and the "idea of humanity" developed further in its criticism of the means and ends of war and in the idea of not causing unnecessary damage or suffering to the population, including the combatants, as stated in the Martens clause. She hopes that war should been extinct as an instrument of politics.

These principles were followed by Rafael María de Labra, one of the most important liberal authors involved in regenerating – and democratizing – Spain and promoting its integration in the international sphere. He was a great defender of freedom and equality of nations, and an important figure in the study of colonialism and leader of the Spanish anti-slavery movement[55] in the last third of the nineteenth century. In 1877, Labra had no hesitation in writing that, "if the scientific world has works of international law written in Spain, this is exclusively thanks to our Latin-American friends".[56] The new era of European imperialism certainly contributed to the redoubling of the

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48 Id., p. 19.
49 Id., p. 5.
50 Id., p. 6.
51 Id., p. 7.
52 Id., pp. 7 et seq.
53 Id., p. 7.
54 Id., p. 19.
55 Rafael María de Labra, *La abolición de la esclavitud en el orden económico*, Madrid, 1873.
56 Rafael María de Labra, *El Derecho internacional y los Estados Unidos de América*, Madrid, 1877.

efforts, which were linked with independence, for international integration on the part of semi-peripheral authors, thus to strengthen the workings of their own countries in a distinctly western understanding of civilization and its attributes.

Sometimes the focus of study was on Latin America for the furtherance of a political aim or a confederation ideal, such as that of Rafael Fernando Seijas in his work *El Derecho Internacional hispano-americano (público y privado)* (1884). Like other works from this period, this book aspired to bring together actions with a natural law significance from his country and, if possible, from all Latin America to provide a guide or source of consultation for dealing with European and other nations.

The awareness of the problems in Latin America and of colonialism generally developed to some extent in restoration Spain. The *Institución Libre de Enseñanza* – Free Institution of Education (ILE) – was founded in 1876 where the teaching of civil law, history of politics and international law was assigned to Rafael María de Labra. At the same time, Labra was the President (1876–1888) of the Spanish Abolitionist Society – founded in 1865. The activism of Labra in the parliament was decisive for the passing of the Abolition of Slavery Law of 22 March 1873, which included a financial provision to compensate the "legitimate rights" of the owners of slaves freed under the law. However, Labra continued fighting against the institution of tutelage, a new form of servitude suffered by the former slaves in Cuba that was abolished in 1887.[57]

It was the Spanish-American relationship that was the subject of the first conference on international law given by Labra at the ILE on 1 April 1877 under the title "Representation and influence of the United States of America in international law".[58] In his lecture, Labra lamented the ignoring of international legal studies in Spain, criticizing the peripherality of Spain and its continuing attachment to things, institutions, meanings and ideas that are completely out of step in relation to the world.[59]

He wrote as an idealistic scholar, emphasizing how one of the most important characteristics of the nineteenth century was the contribution of international law towards civilization, which he identified with equality, pluralism, liberty at the domestic level and religious freedom.[60] Labra also presented an idealistic anglophile representation of the British colonial model,[61] and even defended the Monroe doctrine[62] against those who criticized it as a veiled form of colonialism providing an excuse for American interventions and calming fears about the expansionist aims of the US in Cuba.[63]

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57 Roberto Mesa Garrido, Julio D. González Campos and Enrique Pecourt García, "Notas para la historia del pensamiento internacionalista español: algunos problemas coloniales del siglo XIX", *Revista española de derecho internacional*, 1965, vol. 18, pp. 380 et seq.

58 Rafael María de Labra, *De la representación e influencia de los Estados Unidos en el Derecho internacional, Conferencia dada en la Institución libre de Enseñanza el día 1 de abril de 1877*, Madrid, Imprenta de Aurelio J. Alaria, 1877.

59 Id., p. 6.

60 Id., p. 9.

61 Id., p. 13.

62 Id., p. 28.

63 Id., p. 38.

IV. INTERNATIONAL LAW AS THE SCIENCE OF THE LEGAL FORM

The great industrial revolution of the nineteenth century provided the means to accelerate the spread of western culture to the rest of the world,[64] culminating in the expansion of the original European system to the so-called "society of civilized states", governed by a Eurocentric conception of the history.[65] This was conditioned by the incorporation of the principles of western law to other non-European powers. Invoking these principles, the European states imposed colonization on continents such as Africa, including occupation and submission of the local populations, by virtue of a perceived insufficiency in the level of civilization of these populations in terms of western culture.

The international jurists were liberals who supported the shift to formal empire in order to protect the native peoples from the greed of colonial companies and to ensure order and success in the civilizing mission process. The implementation of these principles of international law resulted in the establishment of relations of hegemony and dependence between western culture – mainly European – and other cultures. James Lorimer described that situation in 1883 setting out his well-known triple division between civilized states, barbarous – or semi-civilized – states and savages – uncivilized – thus presenting a highly colonialist vision of international law.

The first specialized international law chairs were evidence of the incipient social role of international legal studies.[66] The definitive institutional initiative for the creation of several chairs of international law was the Royal Order of 2 September 1883, establishing public and private international law courses that had hitherto been confined to the Central University of Madrid. New chairs were created at the universities of Barcelona, Granada, Oviedo, Santiago de Compostela, Seville, Valencia, Valladolid and Zaragoza.[67] This led to the rise of a body of academicians which contributed to the professionalization of the discipline.[68]

International law studies were influenced by European initiatives such as the founding of the *Revue de droit international et de la législation comparée* (1869) by Gustave Rolin-Jaquemyns, Tobias Asser and John Westlake, and the establishment of the *Institut de Droit International* (1873).[69] In Spain, one ephemeral publication was the *Revista de*

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64 Antono Truyol y Serra, "L'expansion de la société internationale aux XIX^{e} et XX^{e} siécles", *Recueil des Cours*, 1965, vol. 116.

65 Martti Koskenniemi, "Histories of International law: Dealing with Eurocentrism", in Thomas Duke (ed.), *Rechts Geschichtes*, Heidelberg, Max-Planck-Institus für europäische Rechtsgeschichte, 2011.

66 See Antonio Quintano Ripollés, 'Cien Años de Derecho internacional', *Revista General de Legislación y Jurisprudencia*, 1953, pp. 134–172.

67 See García Arias, L., 'Historia de la doctrina hispánica de derecho internacional', *addenda* to Nussbaum, *cit.*, 497.

68 See *Escalafón General de lo catedráticos de las Universidades del Reino en 1º de enero de 1887*, Madrid, Imprenta del Colegio Nacional de Sordomudos y ciegos, 1887.

69 See Stefano Mannoni, *Potenza e ragione. La scienza del diritto internazionale nella crisi dell'equilibrio internazionale (1870–1914)*, Milano, Giuffré, 1999; Luigi Nuzzio, *Origini di una scienza. Diritto internazionale e colonialismo nel XIX secolo*, Krankfurt, Klostermann, 2012, and Ingo J. Hueck, "The Discipline of the History of International Law. New Trends and Methods on the History of International Law", *Journal of the History of Intenational Law*, 2001 (vol. 3), pp. 194–217.

Derecho internacional, Legislación y Jurisprudencias comparadas, with only one year of life, 1887/88, under the direction of Alejo García Moreno (1842–1913).[70] The contents of the first issue of the *Revista de Derecho Internacional: Legislación y Jurisprudencia comparadas* were divided into several sections providing an overall picture of the state of contemporary natural law studies in Spain.[71]

However, the *Revista General de Legislación y Jurisprudencia* (*RGLJ*) – which started in 1853 – carried articles on the law of the sea, the law of war, the right to freedom, American institutions, emancipation of colonies or international justice. Publicity was given to translations and editions of works on international law by foreign authors. Alejo Garcia Moreno, like many other Spanish *krausist* younger scholars, such as Joaquín Fernández Prida,[72] distinguished himself with an extensive output of translations of foreign works as in previous decades. Among others, the translations of Pasquale Fiore,[73] or Johann G. Bluntschli,[74] all of them translated with extensive annotations and appendices for the Spanish audience, were publicized in the *RGLJ*. These translations accompanied the parallel development of a national production of articles, textbooks and treatises on international law in the 80's and 90's.

Once again, Spanish doctrine shows its connections to European and American doctrine in the search for the modernization of the discipline, that is, towards international law inspired by socio-historical and political values. The new expression, "international law", coined by Jeremy Bentham in 1780 was becoming increasingly common, and after the French Revolution it better expressed the reality regulated by this legal system than the old "law of people". The new expression was accepted gradually and was used by Wheaton in the United States of America in *Elements of International law* (1836), Pando's work *Elementos del Derecho internacional* (1843), and later by Louis Renault in France, *Introduction à l'étude du Droit International* (1879).[75] In Spain, the new expression was popularized by Manuel Torres Campos, or Ramón Dalmau amongst others.[76]

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[70] The journal presented itself as being created for "the convenience and necessity (that) are evident for all that pertains to the prodigious development in the relations between nations in recent times, increasing in equal measure the interest and importance of International law and all that provides knowledge of the progress and legal advances that are occurring in all states".

[71] See on the contents of the publication Ignacio de la Rasilla, "The Study of International law in the Spanish *Short* Nineteenth Century", *cit*., pp. 139 and 140.

[72] Frederic von Martens, *Derecho internacional contemporáneo de las naciones civilizadas*, 2 vols., Saint-Petersburg, 1882–83; Spanish edition, *Tratado de Derecho internacional*, prologue and notes by J. Fernández Prida, 4 vols., Madrid (undated), vol. I, pp. 225–227.

[73] Pasquale Fiore, *Tratado de Derecho Internacional Público, aumentado con notas y un apéndice con los tratados entre España y las demás naciones*, by A. García Moreno, 2.a ed., 4 vols., Madrid, 1894–95, volumen I, Pasquale Fiore, *El Derecho internacional codificado*, Madrid, 1901, pp. 30–38.

[74] Johan G. Bluntschli, "Derecho público universal. Primera parte. Teoría General del Estado", Rec., *RGLJ*, 1880, vol. 28, p. 56.

[75] See in general the interesting work of Bando Fassender, Anne Peters, Simone Peter and Daniel Högger (eds.), *The Oxford Handbook of the History of International Law*, Oxford University Press, 2012.

[76] See Juan Antonio Carrillo Salcedo, *El derecho internacional en perspectiva histórica…., cit*., p. 28.

International law textbooks of a marked natural law character with positivist elements included the work of Manuel Torres Campos (1850–1918),[77] *Elementos de Derecho Internacional Público* (1890) and its subsequent editions. Torres Campos, professor of international law at the University of Granada in 1886,[78] considered in his book *Elementos* that international law was the least studied area of the law because of its imperfect character: only force without laws or tribunals put an end to conflicts.[79] In his view, the basis of international law was layed in international community, and each state was bound to the others through common rights and interests with which the state formed an organic body -organicist theory- while preserving its independence.[80] This concept led him to consider international law as that applicable to civilized nations, distancing him from the universalist conception of international law.[81] He felt that international law was the law applicable to civilized nations, pursuant to Lorimer's theory. The effect of the criterion of *civilization* led to a vision of international law with a discriminative purpose.

Also, Luis Gestoso Acosta (1855–1931), professor of international law at the University of Valencia, reflected his stance on natural law in *Resumen de Derecho Internacional público* (1894) and *Curso elemental de Derecho internacional público e Historia de los Tratados*, (1897).[82] In his *Curso elemental* considered natural law to be a source of international law in so far as it determines the nature and aims of states, the conditions enabling these to be brought together among the members of the society in question, and the fundamental or absolute laws that constitute their legal capacity.[83]

One of the academics who most contributed to the bibliographic development of international law in the Spanish language was Ramón de Dalmau y Olivart, Marquis of Olivart (1861–1928), professor of international law at the Central University of Madrid, as well as politician, and lawyer.[84] Dalmau initially concentrated his research in the area of civil law and roman law – the subject of his doctoral thesis in 1884 – both of them of great tradition in Spain. Then, he intervened into international law through several fields of research such as sources, succession of States, treaties, Statehood, League of Nations and the publication of several textbooks.

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77 Manuel Torres Campos, *Elementos de Derecho internacional público*, Madrid, Librería Fernando Fé, 1890, 2ª ed. 1904.

78 Antonio Álvarez de Morales, *Génesis de la Universidad española contemporánea*, Madrid, Instituto de Estudios Administrativos, 1972.

79 Manuel Torres Campos, *Elementos de Derecho internacional público, cit*. 32–33.

80 Id. at 66.

81 Id. at 53.

82 Luis Gestoso Acosta, *Resumen de Derecho internacional público*, Valencia, Federico Domenech, 1893, and *Curso elemental de Derecho internacional público e Historia de los Tratados*, Valencia, Federico Domenech, 1897.

83 Luis Gestoso Acosta, *Curso elemental de Derecho internacional público e Historia de los Tratados, cit*.

84 See Blanc Altemir, A., *El Marqués de Olivart y el derecho internacional (1861–1928): sociedad internacional y aportación científica*, Lérida, Universidad de Lérida, 1999.

Dalmau was one of the first Spanish Natural Law scholars to offer a general account of international law in his *Tratado de Derecho Internacional Público y Privado* (1886).[85] Among his many treatises are the four volumes of the *Tratado y Notas sobre Derecho Internacional Público* (1887),[86] which appeared in several editions until 1903–4.[87] He refused the Grocius classical division between the law of peace and the law of war and followed the Martens methodology. In fact, Dalmau was a supporter of adapting the system to the social/legal reality at any given historic time. The systematic ordering of this work influenced a generation of Spanish textbooks and filled a gap in the discipline.

Dalmau's conception of "international legal community" is part of a specific, singular ideological current defined by idealism and its strong nationalist character.[88] This conception brought him close to authors such as Wheaton, Dana, Kent, Pillet, Zitelmann, Bustamante or Donati. Thus, in the first editions of his treatises Dalmau expressly limited the domain of application of international law to European and Christian subjects. However, Dalmau left aside the absolute Christian-Eurocentricity of his conception of international law in the Appendix covering the period 1887–1899 in the third edition of his treatise. He replaced it with Lorimer's tripartite scheme of civilized, barbarous and savage, with the former being in Dalmau's words, the equivalent to "plain humanity". In the 1899 edition, Dalmau began to integrate certain states, such as Turkey and Japan, into the "international legal community" of "civilized humanity" that required "complete legal recognition". Alongside those who had raised themselves up the scale of civilization, there remained others, such as China, Siam and Morocco, which represented "barbarous humanity".[89]

His enduring contribution to the bibliographical development of international law found its first expression in his *Bibliographie du Droit International* (1905),[90] and his *Catalogue de ma Bibliothèque de Droit International et sciences auxiliares* (1908).[91] Dalmau's contribution also extended to the development of the field of Spanish foreign affairs through his compilation, between 1890 and 1902, of thirteen volumes of the *Spanish Collection of Treaties, Agreements and Documents* from 1814 to 1902.[92]

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85 Ramón Dalmau, Marquis of Olivart, *Manual de Derecho internacional público y privado*, Madrid, Librería de Fernando Fé, 1886.

86 Ramón Dalmau, Marquis of Olivart, *Tratado y Notas de Derecho internacional público*, Madrid, Imprenta de Manuel Murillo, 1887.

87 Ramón Dalmau, Marquis of Olivart, *Tratado de Derecho internacional público*, Madrid, Librería General de Victoriano Suárez 1903–4, 4 vols.

88 See Mariano Aguilar Navarro, *Lecciones de Derecho internacional privado*, Madrid, Artes Gráficas Clavileño, 1966, vol. I, p. 169.

89 Ramón Dalmau, Marquis of Olivart, *Tratado y notas de Derecho internacional público*, Madrid, Manuel Murillo, 1887–1890, p. 349.

90 Ramón Dalmau, Marquis of Olivart, *Bibliographie du Droit International* (Paris, 1905–10). *Bibliothèque du Droit International*, 3 fasc. Paris, A. Pedone, 1905.

91 Ramón Dalmau, Marquis of Olivart, *Catalogue de ma Bibliothèque de Droit International et sciences auxiliares*, Paris-Leipzig, 1908.

92 Ramón Dalmau, Marquis of Olivart, *Colección de tratados, convenios y documentos internacionales concluidos o ratificados por nuestros gobiernos con los Estados extranjeros desde el reinado de doña isabel II hasta nuestros días*, Madrid, El Progreso, 1902.

His last book was *El Derecho Internacional Público en los últimos veinticinco años* (1903–1927).[93] In this book, he included a chapter dedicated to the history of international law, and another to preliminary explanations where he analysed the concept and its sources, among other points.

Another of the theorists who contributed to a global overview of international law was Remigio Sánchez Covisa (…) who published *Derecho internacional público in* 1896.[94] The material in this book was adapted to the official syllabus of public international law at the Central University of Madrid and it was inspired by the lectures of Rafael Conde y Luque (1835–1921). Conde was professor of international law at the Central University of Madrid and author of a treatise on the *Concepto de Derecho Internacional* (1886). In *Derecho internacional público*, Sánchez-Covisa wrote that international law was not "true law" since it did not share the same origins as the other branches of the law, justifying this on the grounds that "the state is not apt to form society and be subject to law and because it contains no sanction".[95] However, the author considered that "the co-existence of states determines certain rules and maxims that are moral, pertain to an ethical order and are written in the conscience of man".[96] The tension between a naturalist approach and a positivist approach was in this book.

In the 1890s, Juan de Dios Trías y Giró (1861–1914), professor of international law at the University of Barcelona, published *Programa de las lecciones de Derecho internacional privado* (1895) and *Programa de las lecciones de derecho internacional público* (1897). In the years that followed, other textbooks appeared including those by Ángel Romanos, a military who wrote *Elementos de Derecho internacional Público* (1904) with the popularization intention of international law, in particular the law of war; Manuel Conrotte, *Manual de derecho Internacional para uso de Jefes y Oficiales del Ejército y Armada* (1910), and Manuel García Álvarez & A. García Pérez, *Derecho internacional público* (1909), the latter two books written for training in the armed forces.

The doctrine of international law in the nineteenth century, having developed in line with the development of positive international law and at a time when the Industrial Revolution guaranteed it technological, economic and military dominance and ultimately global domination, was less universalist than international law from the age of its founders in the sixteenth century. However, the internationalists of the nineteenth century and early twentieth century faced the challenge of the expansion of international society and demonstrated an adaptable perspective ranging from the restrictive positions of Wheaton, Heffter, Westlake, Lorimer and von Listz, to the more nuanced ones of Despagnet, and the more universalist positions of Phillimore, Fiore, Bluntschli and Bonfils.[97] We will deal with these universalist positions in the following section.

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93 Ramón Dalmau, Marquis of Olivart, *El Derecho internacional público, 1903–1927*, Madrid, 1927.
94 Remigio and Pedro Sánchez-Covisa y Azofra, *Derecho internacional público*, Madrid, Librería de Sánchez Covisa, 1896.
95 Id., p. 138.
96 Id., p. 240.
97 Antonio Truyol y Serra, *Historia de derecho internacional público… cit.*, p. 124.

V. A MODERN CONCEPTION OF INTERNATIONAL LAW

The influence of heterodox thought on international law can be seen in the work of Aniceto Sela Sampil.[98] He defended the universality of international law, with the one proviso that they considered that *civilized* nations those which shared a set of ideas about the law were the valid model for applying theirs principles.

Sela as professor of international law at the University of Oviedo wrote a *Manual de Derecho internacional* (1900),[99] which is almost like a pocketbook. He studied the relations of coexistence between states, including the problems deriving from territorial limits, the attribution of nationality to individuals and the defence of the rights of man, as well as pacifism and cases of resorting to war. He also addressed the definition, classification and declaration of laws of war, prohibited and permitted means, the rights of the invader and the country invaded, martial law, military tribunals, allies, neutral states, maritime blockades, contraband, visiting rights, treaties, armistices, surrender and peace.[100] This represented an extensive repertoire of problems with a common thread: condemning war and its consequences to build a more rational, harmonious and civilized world. This thought helped to reshape a modern international legal system.[101]

Sela organised his *Manual* around three central topics. First, he stated his *methodological* concern within the "positivist" viewpoint considering, in relation to the construction of the international system and in its teaching, the weight in practical terms of states in their reciprocal relations. He addressed both "realities" and "theory". This developed into an analysis of international relations marked by "the politics of force", and by the first manifestations of cooperation between states with common interests and subsequently integration within more advanced mechanisms of organization. The League of Nations was the leading example and model of the organization of society at an international level.

The second theme was the idea of international *cooperation* given the growing requirements of the State to cooperate and act with other states in its pursuits of its legal aims and as a result of its own inherent rights. The state could strive for perfection by associating itself with other "superior" states. This involved creating a current of collective solidarity – equivalent to interdependence between states – following the discourse developed by George Scelle. Influenced by the theory of Léon Duguit, the French international jurist Scelle designed a "new" international system in which the state ceased to occupy a central position. Individuals were the subjects of international

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98 On the life and work of Aniceto Sela Sampil see José Carlos Fernández Rozas y Paz Andrés Sáenz de Santa María, "La aportación de la Facultad de Derecho de la Universidad de Oviedo al progreso del derecho internacional", en J. M. Coronas González (coord.), *Historia de la Facultad de Derecho* (*1608–2008*), Oviedo, Servicio de Publicaciones de la Universidad de Oviedo, 2010, pp. 496 et seq.

99 Aniceto Sela Sampil, *Manual de Derecho internacional*, Barcelona, Sucesores de Manuel Soler, 1900. We have used an editon of 1911.

100 See Julio González Campos, Roberto Mesa, and Enrique Pecourt., "Notas para la historia del pensamiento internacionalista español: Aniceto Sela Sampil (1863–1935)", *Revista Española de Derecho Internacional*, XVII, vol. 4, 1964, pp. 561–583.

101 Following the study of Martti Koskenniemi, 'History of the Law of Nations World War I to World War II', *Encyclopedia of Public International Law*, vol. II, 1999, pp. 839 et seq.

law and a quasi-federal world order was constructed in which the League of Nations played the leading role in the international society. This theory of social harmony, anchored in a conception of the world based on the idea of progress, was shared by a wide-ranging group of Spanish authors of the period such as Fernández Prida, Salvador de Madariaga (1866–1978), Rafael Altamira or Antonio de Luna (1901–1967).[102] The period from 1907–1921 was characterised by an excessive optimism about the ability of states to overcome their difficulties under the aegis of the League of Nations. In the words of Antonio de Luna, it was a "soteriological" period of international law.[103]

The final theme was *pacifism* as an idea for guiding the interpretation of the conduct of states and being at the same time an element in the assessment of all the deficiencies involved in the international order. This was pacifism operating on two levels. First, there was the action of the state which accepted a system of *resolution of conflicts* to regulate the use of power, and aspired to limit its unlimited defence capacity and to humanize the rules governing its war operations – the Hague Conventions of 1899 and 1907. Second, this pacifism rested on the action of the individual who intervened in the foreign affairs of the state through a democratization of these affairs by means of parliamentary control as opposed to "secret diplomacy". During the interwar period, under the influence of pacifism, there was a change of attitude in international relations involving the substitution of *secret diplomacy* by open public diplomacy, illustrated by the meetings held at the League of Nations, and the obligation to publicize all the international treaties gathered within the League of Nations Covenant. This change materialized in practice in a new conception of the model of diplomacy and the adaptation of diplomats and politicians to this new conception.

In the view of Sela and the other authors around him, international law was essentially universal, not "European" and not "Christian" given that both adjectives tended to arbitrarily limit the field of international law. This perspective of the universality of international law meant that Sela held a broad conception of its subjects, and he rejected James Lorimer's division of international society into "civilized, barbarous and savage". This implied that any political institution should possess the capacity to achieve certain ends and should be able to be a subject of an international legal relationship – the case of the League of Nations. To be obligated subjects, groups of human beings should have the necessary means to comply with the objectives of the international order and to enjoy the freedom recognized all of them – catholic and non-catholic.[104]

Sela defended the legal equality of states, barely accepted at the time given the *imperialist* policy of the end of the nineteenth century and the first decades of the twentieth. This approach, however, had two somewhat perverse effects. First, it was not possible to demand from states that they comply with more obligations than

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[102] See Yolanda Gamarra, "Rafael Altamira y Crevea (1866–1951). The International Judge as 'Gentle Civilizer'", *cit.*, pp. 18 et seq. See also Juan Antonio Carrillo Salcedo, "Don Rafael Altamira, Magisterio español en la Corte Permanente de Justicia Internacional", in E.M. Vázquez Gómez, et al., *El arreglo pacífico de controversias internacionales*, Valencia, tirant lo blanch, 2013, pp. 30 et seq.

[103] Antonio Truyol y Serra, "Don Antonio de Luna y García (1901–1967)", *Revista Española de Derecho Internacional*, vol. XXI, 1968, p. 175.

[104] Aniceto Sela Sampil, *Manual de Derecho internacional, cit.*, p. 282.

were compatible with their organization or culture, and this implied rejecting the rule of an international standard of conduct, a factor in the intervention of economically developed states in the internal affairs of countries receiving capital. This was one of the characteristics of the bourgeois notion of international law in the nineteenth century. Secondly, the idea of "development" led to the idea of an international tutelage over less developed entities.

The refusal to recognize the "constitutive" character of the state was another feature. He, and other authors around him such as Altamira or Fernández Prida, also showed themselves to be against the phenomena of domination and colonial dependence, and adopted a position opposed to conquest as a legitimate way of acquiring territory, without excluding the possibility of intervention provided that it is collective, preferably within institutionalized frameworks. [105]

VI. EPILOGUE: AN ENCYCLOPAEDIC CONCEPTION

It is not difficult to see why international law could not be put on a professional footing during the first half of the nineteenth century. In Europe, the ascendant liberalism was radically activist and internationally organized within peace societies and federalist and pacifist movements. In Spain, the situation was marked by confusion resulting from the loss of the American colonies and the decadence of the monarchy. Turn to history is a response to national interests with a clear aim of contributing to construction of the Spanish nation.

International law textbooks were influenced by an encyclopaedic conception of international law, which attempted to combine, in parallel with the natural law slant of positivist analysis, the philosophy, the history and the politics of international law under the label of one discipline. No doubt, the legal unification marked the boom of the textbooks of international law in Spain in the late nineteenth century and the decades that followed. The legacy of the historiographical tradition of the nineteenth century was not only a *corpus* of heuristics and methodology, but also an appetite for new content: new content and new subjects. The internationalists of the early twentieth century devoted themselves to this.

It was in the late nineteenth century when international lawyers first became advocates of what they saw as the natural evolution of civilization, an advocacy which came to seem more urgent after 1918. If the nineteenth century's main disciplinary contribution was turning itself into a past related to its own theoretical and doctrinal practices, then the study of the historiography of the nineteenth century is the study of our own century's originalism – and the origins of that exceptionalism in the memory and the practice of progress narration. At the end of the day, the growing European historiography on the role of Vitoria in the genesis of the law of peoples found an echo in Spanish intellectual thought.

Reflecting on the history of historiography of international law textbooks may well serve us to reassess the functions of international law. The past, though partly expunged, is still at hand to be retrieved in the name of new professional initiatives.

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[105] Yolanda Gamarra, "Rafael Altamira y Crevea (1866–1951). The International Judge as 'Gentle Civilizer'", *cit.*, p. 20.