

DERECHO INTERNACIONAL, RELIGION E IMPERIO

ZARAGOZA

14 DECEMBER  
2012



**Universidad**  
Zaragoza



fundación  
**Manuel Giménez Abad**  
de Estudios Parlamentarios y del Estado Autonómico



Durante siglos, el Derecho internacional ha sido utilizado para justificar, civilizar y, en ocasiones, limitar las ambiciones imperiales de poderosos actores internacionales. Sin embargo, muchos de los pensadores que, en la actualidad, son considerados como los fundadores de una concepción liberal del Derecho internacional – desde Francisco de Vitoria y Francisco Suárez o Emer de Vattel – desarrollaron doctrinas y teorías que contribuyeron a la expansión imperial de sus naciones y, con ella, a la extensión de un credo religioso cristiano a través del mundo. Incluso en el siglo XX y, tal vez, en la actualidad, la influencia global europea y estadounidense ha oscilado entre momentos de imperio “formal” e “informal” en cuya construcción el Derecho y el pensamiento jurídico internacionales continúan desempeñando, acaso, un papel decisivo. Estas jornadas de estudio han sido concebidas con el fin de brindar la ocasión a especialistas foráneos de entablar un dialogo iusinternacionalista e historiográfico con iuspublicistas e historiadores en España en torno a los frutos del proyecto DER2010-16350: *El pensamiento internacionalista español en el siglo XX. Historia del Derecho Internacional en España, Europa y Latino-América (1914-1953)*

\*\*\*\*\*

For centuries, international law has been used to justify, civilize and, on occasion, to constrain the imperial ambitions of powerful international actors. However, many of the thinkers who are still considered the founders of a liberal conception of international law – ranging from Francisco de Vitoria and Francisco Suarez or Emer de Vattel – developed theories and doctrines which contributed to the imperial expansion of their nations and, with it, to the extension of a Christian religious creed in all four corners of the Earth. Even in the 20<sup>th</sup> century and, perhaps, also nowadays, the Western influence has oscillated between moments of formal and informal empire in the background of which international law and international legal thought continue, perhaps, to play a determining role. This workshop, which will be held at the historical University of Zaragoza (f.1474), has been designed to allow foreign specialists the opportunity to entertain a legal and historical dialogue with Spanish international legal scholars and historians around the fruits of the project “Spanish International Legal Thought in the 20th Century. History of International Law in Spain, Europe and Latin-America (1914-1953)”



## PROGRAMA

9.00. **Bienvenida y Presentación** en el Espacio Paraninfo de la Universidad de Zaragoza  
– Yolanda Gamarra & Ignacio de la Rasilla

9.30-11.30

### **PANEL I: NUEVAS HISTORIOGRAFIA(S) DEL DERECHO INTERNACIONAL**

**Presentación:** Yolanda Gamarra (International Law, University of Zaragoza)

#### **Ponentes**

Matthew Craven (SOAS, London) “*International legal histories and their history*”

Thomas Skouteris (Law, Cairo) “*What is Critical Legal Historiography Good for?*”

John Haskell (Law, MC Law) “*The Meaning of Christian Conceptions of Time and History within International Law: Liberal and Marxist Perspectives*”

Javier Gonzalez Vega (International Law, University of Oviedo) “*To a dry elm...The University of Seville and the quiet Revolution of Spanish doctrine of International law in the Francoist era*”

11.30-12.00 – **Pausa Café**

12.00-12.30

### **DEBATE: NUEVAS HISTORIOGRAFÍA(S) DEL DERECHO INTERNACIONAL**

12.30-13.30

### **PANEL II: HISTORIA DEL IMPERIO Y DERECHO INTERNACIONAL**

**Presentación.** José Tudela Aranda (Secretario General de la Fundación Manuel Giménez Abad)

## **Ponentes**

Ben Chigara (Brunel University, London) *“The Social legacy of Empire: Human Rights as an Instrument of Recovery?”*

Arnulf Becker Lorca (International Relations, Brown) *“Semi-peripheral Cosmopolitanism during the Interwar: a Style of Resistance”*

Yolanda Gamarra (International Law, Universidad of Zaragoza) *“Spiritual “Re-Imagination” of Spanish Empire: Dealing with peripheral nationalisms”*

13.30-14.00

## **DEBATE: HISTORIA DEL IMPERIO Y DERECHO INTERNACIONAL**

14.00-16.00 - Almuerzo

16.00-17.30

## **PANEL III: DERECHO INTERNACIONAL Y RELIGIÓN**

**Presentación:** Jaime Sanaú Villarroya (Economy, University of Zaragoza)

## **Ponentes**

Carmen Márquez Carrasco (International Law, University of Sevilla) *“The impact of Protestant Reformation on the Emergence of Modern State and the Westphalian Legal Order”*

Ilias Bantekas (Brunel Law School, London) *“Jews and Christians in 1st Century AD Rome: A Testimony on the Treatment of Religious Minorities”*

Ignacio Forcada, (International Law, Universidad of Castilla-La Mancha) *“La influencia de la religión católica en la doctrina internacionalista española del período de entreguerras (1918-1939)”*

17.30-18.00

## **DEBATE: DERECHO INTERNACIONAL Y RELIGIÓN**

18.00 – 18.15 Pausa

18:15-19.45

#### **PANEL IV: VITORIA Y LOS ESTÁNDARES CRISTIANOS DE CIVILIZACIÓN**

**Presentación:** María Elósegui Itxaso (Philosophy of Law, University of Zaragoza)

##### **Ponentes**

Andraz Zidar (International Law, BIICL London) “Who decides on the Standard of civilization in Vitoria’s International Law?”

Luigi Nuzzo (Legal History, Unisalento) “Rethinking the Western Legal Discourse. Vitoria and the Standards of civilization”

Ignacio de la Rasilla (Brunel Law School, London) “Why is Vitoria as Hip as the iPad in International Legal Studies Today?”

19.45-20.15

#### **DEBATE: VITORIA Y EL ESTÁNDAR DE CIVILIZACIÓN**

**20.15 – Conclusiones:** Ignacio de la Rasilla

**20:30 - Clausura**



Acción Complementaria: DER2011-15576-E, “Derecho internacional, Religión e Imperio”.

Proyecto de Investigación: DER2010-16350, "El pensamiento iusinternacionalista español en el siglo XX. Historia del derecho internacional en España, Europa y América, 1914-1953"



**Universidad**  
**Zaragoza**

Actividad organizada en el marco de la Actividad Académica Complementaria de la Universidad de Zaragoza (Código 81130),  
“Gobernanza Global y Derecho internacional”

## PAPER ABSTRACTS

### NEW HISTORIOGRAPHIES IN INTERNATIONAL LAW

**Matthew Craven (SOAS, London)**

*“International legal histories and their history”*

This paper reflects upon the historic specificity of the emergence of a tradition of writing about the history of international law. To engage with the history of international legal historiography is to prompt certain questions: how is it, we to understand the character of that historiography? What kinds of truth-claims are being put in place? What forms of intervention are imagined for it? It is argued that a differentiation between materialist and idealist histories (or between two different forms of ideology) may usefully supplement the emergent ‘presentist’ analysis.

**Thomas Skouteris (Law - American University Cairo)**

*“What is Critical Legal Historiography Good for?”*

The work consists of two parts. An introductory section frames a typology of techniques and politics of critical legal historiography in the context of the recent 'turn to history'. The second part asks 'why critical history today' and identifies some of the strengths and limitations of the critical historiographical genre.

**John Haskell (Law, MC Law)**

*“The Meaning of Christian Conceptions of Time and History within International Law: Liberal and Marxist Perspectives”*

Though Christianity may be mobilized by Marxist and Liberal theories of international law, their interpretations differ radically. This paper will explore three key differences regarding their treatment of Christianity within international law, which in turn, stem from a more fundamental disagreement about the nature of history and time. The hypothesis of this paper is that a (structural) Marxist perspective – particularly drawing upon the work of Louis Althusser, Alain Badiou, and Stanislas Breton, as well as others like Roland Boer, Alberto Toscano, Slavoj Žižek, and our own Akbar Rasulov actually – offers an important corrective to liberal models of international legal theory in relation to Christianity (and more generally, religion). First, the paper analyzes the distinction between conceptions of time/history within a Christian orientation (which liberalism closely follows) and a Marxist perspective, which offers a decisively different vision of living in the world. From this basis, the paper turns to address two themes concerning Christianity within a liberal approach to international law – ‘Secularism and Human Dignity’ and ‘Tolerance and Subjectivities’ – that is followed by a Marxist response, which provide both a critique and an alternative. This presentation is part of a paper that is still being developed, and the specific organization of the paper may develop by the time of the conference.



### **Javier Gonzalez Vega (International Law, University of Oviedo)**

*“To a dry elm... The University of Seville and the quiet Revolution of Spanish doctrine of International law in the Francoist era”*

After the Spanish Civil War, the Exile, the Cleansing (*Depuración*) of Academic teaching staff of Universities, and the self-censorship of some authors inflict a serious blow to the Spanish doctrine of international law. However, in the 50's from the peripheral University of Seville Professor M. Aguilar Navarro started with the decisive support of his disciples a “quiet revolutionary” process through which, with a strong political commitment to peace and freedom, new approaches in teaching and research, and new methodological tools were developed, running in sharp contrast to the prevailing doctrine, and lead finally to a major renewal of the public and private international law studies in our country.

## **INTERNATIONAL LAW AND EMPIRE**

### **Ben Chigara (Brunel Law School, London)**

*“The Social legacy of Empire: Human Rights as an Instrument of Recovery?”*

This paper examines the challenges confronting efforts to combat discrimination that is traceable to the incidental social consequences of colonial practices such as *asimilado* by the Portuguese, *apartheid* by the Dutch and separatism by the British. Discrimination now heads the United Nations' list of foremost concerns for peace and security on the one hand, and social justice and human rights on the other. Only recently proscribed under modern international law, the practice of colonialism had perfected the art of blatant 'Empire-building' under tranquil disguises of Western States. However, continued interaction of numerous incidental social consequences of colonialism have over time created, and continue to weave, a complex web of challenges with capacities both to severely undermine efforts to combat discrimination of individuals across the spectrum of prejudices listed in the Durban Declaration and Programme of Action 2001. The essay recommends a universal systematic pedagogic intervention over an initial period of ten years, punctuated by periodic review periods that evaluate the significance of the interventions and if necessary, recommend adjustments to be made to ensure success of the educational campaign against ignorance and colonial stereotypes sponsored discrimination.

### **Arnulf Becker Lorca (International Relations, Brown)**

*“Semi-peripheral Cosmopolitanism during the Interwar: a Style of Resistance”*

This paper explores the historical trajectory of self-determination during the first half of the 20th century, looking at the intellectual history of international law from the perspective of semi-peripheral nations, in particular peoples that have used international law in the fight for political independence. The paper explores how non-Western politicians, lawyers and activists dissolved the nineteenth century standard of civilization, before the right to self-determination came into being (during the second post-World War era) and after the failure, in Versailles, to apply the principle self-determination beyond the West.

The paper argues that after the failed attempt by non-Western peoples to get their demands for self-determination heard at the Paris Peace Conference, semi-peripheral international lawyers abandoned classical international law and continued pursuing the quest for autonomy and equality in the language of modern international law. Exploring the ideas and professional trajectories of a number of semi-peripheral scholars, the paper shows that, on the one hand, they dissociated the demand for autonomy and equality from classical international law, mainly through the dissolution of the standard of civilization, and on the other hand, they rooted this demand within modern international law, both and at the same time internationalizing and nationalizing the acquisition of sovereignty.

### **Yolanda Gamarra (International Law, University of Zaragoza)**

#### *“Spiritual “Re-Imagination” of Spanish Empire: Dealing with peripheral nationalisms”*

This paper examines the Catholic principles implemented by Spanish international lawyers in the Latin American post-imperial context during the first decades of the 20<sup>th</sup> Century. The idea of creating a Hispanic-American identity can be included within the nationalist movements, though with the peculiarity of responding to a transnational movement. With the *change in the public spirit of Europe*, in the words of Mosse, Spanish authors drew up projects to “revitalize” the role of Spain by exploiting its “glorious past” to restore credit and to adapt to the modern age, that is to say the standards of European civilisation. In this framework, the Victorian tradition was revived in two ways. First, attempts were made to recover influence in the former Empire through initiatives conceived to repair relations with Spain’s former American colonies a century after independence (through the *Comunidad Iberoamericana de Naciones*, *Americanism* or other such expressions). Secondly, the Catholic principles of a civilized society were prominent in the thinking of Spanish international lawyers, including concepts such as arbitrage, co-operation, universalism, the just war, or justice. The study focuses on three central themes. First, it deals with the influence of nationalism on the policy of strengthening links between Spain and Latin America. In this respect, the proposals (by one hand) of Rafael M<sup>a</sup> de Labra, Rafael Altamira, Camilo Barcia Trelles and Joaquín Fernández Prada, or (by the other hand) Fernando Ortiz and Alejandro Álvarez were among the most significant of the day. Secondly, it discusses from the perspective of the *regenerationist* project the recovery of relations with the former colonies by means of cultural and educational agreements. Thirdly, it examines the moral responsibility felt by Spain as a mediator in the peaceful solution of Latin-American conflicts. It is concluded that the various initiatives attempted to promote collective ideals to be shared on both sides of the Atlantic in order to create a supranational identity, an *imagined community*, which would revitalise Spain. The country would perform the role of spiritual guide, thus recovering the prestige that it should never have lost.

## INTERNATIONAL LAW AND RELIGION

**Ignacio Forcada, (International Law, Universidad de Castilla-La Mancha)**

*“The influence of Catholic Religion in the Spanish International Law Doctrine of the Interwar Period (1918-1939)”*

Starting with the political and cultural context of those momentous years in the history of Spain, Professor Forcada traces the life and work of the international lawyers of that time to discover how the Catholic worldview was integrated into their professional work. Given the variety of approaches to Catholicism, the work of Professor Forcada makes a distinction between the international lawyers who ascribed themselves to Catholic traditionalism and ended up in the orbit of the Francisco de Vitoria Association and those international lawyers who took a more liberal approach to Catholicism and participated in the magazine *Cruz y Raya*, and in the creation of the Spanish Group of the Catholic Union of International Studies (UCEI). Beyond the differences between them, Professor Forcada underlines the commitment of both groups with natural law and their faith in the emerging modern bourgeois scientism. In the final part of his contribution, Professor Forcada analyzes the possible influence that these precursors may have had in the current doctrine of international law.

**Ilias Bantekas (Brunel Law School, London)**

*“Jews and Christians in 1st Century AD Rome: A Testimony on the Treatment of Religious Minorities”*

Our knowledge of the attitude of 1st century Christians is derived largely from the letters of Paul which to a large degree follow the teachings in the four Gospels. The central focus is on faith and for the lawyer the interesting point is the obedience to Roman rule and order even to the point of death. It was common for some time to attribute the various Roman purges against Christians to barbarity or an attempt to cleanse the Empire from elements that did not strictly abide by its customs, but this view is not shared by church historians and those researching the first 3 centuries of Christianity. The principal reason for the purges, which to a large degree explains the Roman attitude towards religious freedom, was based on their usurpation of privileges enjoyed exclusively by the Jews. The evidence suggests that although Romans generally discouraged non-politheism this was in order to entrench their social values, rather than to impose a particular form of religion

**Carmen Márquez Carrasco (Int. Law, University of Seville, Spain)**

*“The impact of Protestant Reformation on the Emergence of Modern State and the Westphalian Legal Order”*

This paper seeks to examine the impact of Protestant Reformation on the emergence of Modern States and the Westphalian legal order. Between the 14th and 16th centuries the crisis of Imperial and Pontifical universalism (the medieval Christianitas) were conducive to a new European international reality defined by the prominence of modern States, the plurality of sovereign entities, and 'of European State system' configuration. To many authors, the first time that juridical equality between states was

solemnly stated was in the aftermath of the Thirty Years' War (1618-1648), in the Westphalia Peace Treaties, representing the beginning of modern international society established in a system of states. The modern state emerges with the Westphalia Peace Treaties, documents that are therefore to be seen as the "birth certificate" of the modern sovereignty nation-state, base of the "founding moment" of the international political system. During that historical period a religious fact, the Protestant Reformation, had an enormous influence in societal transformation. The Protestant movement helped to consolidate the power of the sovereign princes since in the places where the Roman Church was losing its control, the care and spread of the new religious idea remained in the hands of civil authorities. The Reformation contributed to the separation between the religious and the political community and thereby it laid the bases for the existence of a public law, national and international. Protestantism would also form part of the foundation of the modern international society as a contributing factor to the rise and development of capitalism.

## VITORIA AND THE STANDARDS OF CIVILIZATION

**Andraz Zidar (International Law, BIICL London)**

*"Who Decides on the Standard of Civilization in Vitoria's International Law?"*

Ernest Nys characterized Vitoria's work on international law as full of the spirit of humanity and charity. And indeed, in all his works and especially in *De Indis* we find plenty of references to universal values which should apply to all peoples and individuals, irrespective of their origin. Under universal laws of nature there is no major difference between Indians and Europeans and they both enjoy liberty and equality. Indians are, however, more primitive but in legal terms this is not an argument which could empower Spanish colonizers to subjugate them, with a pretext to civilize them. In *De Indis* Vitoria explicitly declines claims that the Spanish have the right to colonization. Indians are legal and factual owners of their possessions and cannot be stripped off of that title. And although they are unbelievers and many of their rituals go against laws of 'nature' that is not a reason for the Spanish to intervene on that account. However, Vitoria's universal concept of natural law includes rights such as the right to travel and trade, the right to communication (i.e. quest for gold) and the right to propagate Christianity. This creates a number of possible imperial encounters between the natives and the colonizers. In this design there is already a trace of Spanish superiority over the native peoples of America. Spanish colonizers are the ones who have monopoly over what constitutes natural law and, consequently, humanity. Vitoria hints to this when he allows for the intervention of the Spanish if the principles of humanity would be in danger. This right of 'humanitarian intervention' is conceived in peaceful terms; however, Vitoria allows for its transformation into violence if the Indians would meet that intervention with resistance. This is a perverse point in Vitoria's thought since he supplies reasons for a conflict (*casus belli*) and makes a presumption that Indians would resort to the use of force if agitated by the Spanish 'peaceful' intrusion. The whole argument is reminiscent of Carl Schmitt's saying that whoever invokes humanity wants to cheat. It also demonstrates a clear perception of the Spanish colonizers as the dominant people with a task to fulfill the civilizing mission. Vitoria's other work *De Iure Belli*, which has to be read in conjunction with *De Indis*, sheds even more light on double standards inherent in Vitoria's thought. There, Vitoria describes the decision-making process in triggering the just war. He delegates this power to one person only –the Prince – who can proclaim a war on the basis of his assessment of reasons deriving from natural law. Again, Schmitt's authoritarian model of decisionism applies as the perfect theoretical model of transition from abstract proclamations to concrete actions. The one who has power is the one who decides who is civilized and who needs to be civilized, that is, subjugated to serve interests of the one in power. In the end Vitoria's legal thought reveals itself to be circular in nature, relegating the assessment of universal values to the sphere of power politics. It is thus

fair to conclude that Vitoria's thought, rather than enunciating the spirit of humanity, served as justification for the Spanish colonial conquests on the Standard of civilization in Vitoria's International Law?"

### **Luigi Nuzzo (Legal History, Unisalento)**

#### ***"Rethinking the Western Legal Discourse. Vitoria and the Standards of civilization"***

Included by Carl von Kaltenborn between the forerunners of the modern international law, Francisco de Vitoria began to receive the attention of international lawyers from the early years of the twentieth century. The rediscovery of Vitoria, however, did not lead to a correct analysis of his theory and the theologian of Salamanca has been considered the first modern international lawyer, one of the fathers of the League of Nations, a model for the Catholic doctrine that after the second world War II defended the necessity to return to natural law. But also, more recently, he has been identified as the first responsible of the colonial dimension of modern international law. On the contrary, claiming the Ćuntopicality, of Vitoria and taking as the starting point the ideological interpretation of his theory offered by Carl Schmitt in *Der Nomos der Erde*, I intend to make visible, through the filter of Vitoria, the pre-modernity of modern international law. This means, on the one hand, to reconstruct the Christian dimension of international law by revealing the paradox of a discipline that claimed the overcoming of the victorian *respublica Christiana*, but that, at the same time, still had in Christianity the foundation of the international community and of the positivity of international law. On the other hand this means also to verify how the pre-modern persistences have influenced the relationships with the non-Christian and non-civilized world.

### **Ignacio de la Rasilla (Brunel Law School, London)**

#### ***"Why is Vitoria as Hip as the iPad in International Legal Studies Today?" (Aka: "Francisco de Vitoria's Unexpected Transformations and Reinterpretations for International Law")***

The figure and the works of Francisco de Vitoria, the so-called father of international law, have fascinated generations of non-Spanish international legal scholars – both past and present. These range from classic figures as diverse as the founder of the American Society of International Law, James Brown Scott, or the Crown Jurist of the Third Reich, Carl Schmitt, to the post-colonial approaches to international law proposed by Antony Anghie or the most recent inquiries of Martti Koskeniemi on the private law underpinnings which, for the universal ordering of international relations, were contained in the work of the Spanish Scholastics of the Sixteenth century. A review of some of the legacies of Vitoria present in international legal scholarship today accompanies, in the first part of this work, a retrospective gaze at the first third of the Twentieth century in order to examine how the role played by the founder of the American Society of International Law, James Brown Scott, as the editor of *The Classics of International Law*, and his scholarly writings, contributed to (re)establish Francisco de Vitoria as the father of international law in the inter-war years. The second part provides, in its turn, a genealogy of the critical front of today's Vitorian revival in international law. Special attention is, then, paid to some of the intellectual building-blocks and programmatic tenets which, since the late-1990s, have inspired a Third World Approaches to International Law's (TWAIL) anti-imperial narrative of the international legal order along with a TWAIL's re-interpretation and re-contextualization of the works of the Sixteenth century Prima professor of Sacred Theology at the University of Salamanca. The conclusion reflects on the lasting legacy of the Spanish Classics in the American tradition of international law in the Twentieth century.