{essays in history}

The Annual Journal produced by the Corcoran Department of History at the University of Virginia

Imperial International Law: Elihu Root and the Legalist Approach to American Empire

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Volume 46 (2013)

University of Oklahoma

Introduction: A Culture in Law

Elihu Root, United States secretary of state between 1905 and 1909, deployed a new legalist approach to foreign policy with Latin America in order to settle contentious relations while maintaining American political and cultural influence in the region. By deconstructing Root's public policy statements during his 1906 summer tour of Latin America and their reception by Latin American diplomats, this article reveals the cultural origins and ramifications of American foreign policy in Latin America during the first decade of the twentieth century. Exploring how Root drew upon a shared European-American imperial legal discourse, I argue that a nineteenth-century positivist understanding of the community of civilized nations laid the intellectual and cultural foundations for early twentieth-century international law. Indeed, Root's vision of international law, drawn in part from European theorists and articulated at length in his 1906 tour, emphasized transnational cooperation and peaceful arbitration over military conflict in order to deliver the fruits of empire without bloodshed. This legal vision, based upon European definitions of "civilization," was vigorously contested, modified, and occasionally appropriated by Latin American diplomats. Nonetheless, by establishing objective standards for civilized national behavior, Root in fact clarified the terms of exclusion for those nations who could not—or would not—adhere to his Euro-centric model, and ultimately he provided legal justification for foreign intervention in Latin America.

According to a voluminous scholarly literature, President Theodore Roosevelt dominated the American diplomatic landscape during his presidency, and his foreign policy has long attracted the attention of diplomatic historians.[1] While working as Roosevelt's secretary of state, Root helped to invent an international rule of law to govern U.S.-Latin American relations; yet, this aspect of Root's tenure as secretary has been far less studied.[2]Broadly speaking, Root sought to create an inter-American identity, akin to what Benedict Anderson more recently has called an "imagined community."[3] As secretary of state, Root used both the authority of his office and public speaking opportunities in Latin America to create an inter-American imagined community supportive of U.S. objectives. He pursued this transnational identity through consensus in legal principles defined by cultural constructions existing within the

United States and articulated through a progressive political point of view. Root's legal principles represented a conscious effort to improve the international system by using law as a unifying institution that promoted self-control and moral discipline in the form of careful fiscal planning, responsible governance, and the peaceful negotiation of international conflict.

Nonetheless, these seemingly magnanimous efforts also were transparently self-serving to U.S. interests, as they sought to provide to the United States the benefits of overseas empire without the expense of military occupation.[4] Root's legal thought established objective standards of national behavior, and in doing so identified cultural practices that would exclude a nation from the community of the civilized and, therefore, those rights accorded to civilized nations under international law. Once removed from international law's protection, according to Root, a nation lost its sovereignty and could be subject to paternal oversight or direct intervention by the United States. Consequently, while Root advocated for an international legal regime based upon equality and mutual cooperation, he effectively promoted a form of legal empire based upon vast inequalities of power originating from European conceptions of racial superiority.

As this article suggests, Root's international legal vision not only legitimized American diplomatic and military intervention in Latin America; it also promoted an agenda for political and economic management under U.S. leadership.[5] Root deeply lamented the instability, class and racial conflict, and revolutions that characterized much of Latin American politics at the turn of the twentieth century. In contrast to the United States' eighteenth-century political revolution, the landmark revolutions of the twentieth century – from Mexico, to China, to Vietnam, to Cuba – generated demands for agrarian reform, economic leveling, and far-reaching social change.[6] These kinds of revolutions not only ran contrary to Root's vision of civilized nationhood; they posed a direct threat to American economic and political interests. Root designed his international legal doctrine to uphold a model of economic change that Emily S. Rosenberg has called "liberal developmentalism."[7] Based upon the tenants of market capitalism, private investment and private trade promised a means by

which to achieve economic growth, stifle revolutionary discontent, and safeguard American interests.

Scholars have not fully probed the power of culture, as embodied in law, as a tool of empire and hegemony.[8] However, a nation's laws provide one of the clearest articulations of a society's culture and values. The law defines those who may fully participate in a nation's society and politics, thereby identifying those individuals and groups whom that society values, while it simultaneously moves to exclude others through a determination of legal inequality. Those qualifications may include race, ethnicity, citizenship, age, criminality, property ownership, wealth, gender, or religious or political affiliation. The law reveals the value a society places on human life and freedom in the face of criminal behavior, the place and worth of the arts and of education within a society, its views of itself and of its history, its views on religion and religion's place within public and private life, and the significance that a society places on war and self-defense. Furthermore, the law exposes societies' attitudes toward other nations and their citizens.[9]

Because law is the official pronouncement of the state with respect to the conduct of social, political, and business affairs, the study of international law in historical terms blends avenues of inquiry. It involves the analysis of cultural constructions then-existing, while also considering the intent and consequences for the state's official adoption, deployment, and execution of those cultural expressions and identities. The law both produces and reflects culture, embodying at all times the fluid and often contradictory popular and governmental discourses that underlie social hierarchies. The study of foreign relations in the context of law, and international law specifically, thus becomes a study of cultures meeting in unique spaces of interaction. A nation's participation within an international legal order or its use of policies justified with legal reasoning becomes an outward expression of internal cultural conversations. International legal institutions have provided a forum, or a negotiating space, where two or more cultures meet, often in highly asymmetrical power relationships, to forge and contest the meaning of "law" as it applies to social, diplomatic, and economic interactions.[10]

While law is a projection of a society's or a nation's culture, it is still created by institutions of the state or is sponsored by the state. A study of the history of American foreign relations within the context of

international law, therefore, offers the opportunity to engage elements of diplomatic history and cultural history in order to identify the factors and motivations affecting transnational relationships. By analyzing American foreign policy through the lens of Root's legal thought, this article demonstrates the importance of ideology and culture in diplomacy. It moves beyond those firm boundaries of methodology separating analytical models based on the study of power politics and realism from those employing cultural analysis outside the formal policy apparatus.

Elihu Root: Public and Private Lawyer, Architect of Empire

With the death of Theodore Roosevelt's secretary of state, John Hay, in 1905, the president called upon his old friend and former secretary of war, Elihu Root, to serve as Hay's successor. Root would take a considerable pay cut to leave his New York law practice and resume government work, and Roosevelt had doubted his friend would take the job. Much to the president's relief, Root accepted the offer without much prodding, likely because of his strong, personal relationship with Roosevelt and Hay, but also because Root desired to engage in meaningful work in Washington.[11] The secretary did not intend to make a big splash upon arriving in Washington for his post. Indeed, the new head of the State Department approached his role in foreign affairs much like he did the practice of law: seeking agreement and compromise rather than provoking discord, and behaving civilly rather than seeking grand victories at the expense of others. He sought to maintain stability and consistency in relationships rather than provoke new crises. This emphasis on cooperation, stability, and consensus foreshadowed the international legal vision that he crafted during his years as America's chief diplomat.[12]

Having been in constant contact with Roosevelt since leaving the War Department in 1904, Root returned to public office well aware of the state of international affairs and the objectives of the Roosevelt administration. When Elihu Root took over at State, the Monroe Doctrine and the defense of the Panama Canal Zone guided U.S. foreign policy for the Western Hemisphere.[13] As articulated by President James Monroe in his annual address to Congress in 1823, the Doctrine declared that the United States would treat any military intervention in Latin America by a European power as a threat to U.S. security. Aimed at the

conservative monarchs of the Holy Alliance who opposed Latin America's multiple independence movements against Spain, Monroe's dictum also sought to soothe European sensibilities by pledging to remain aloof from upheavals in the Old World and to remain neutral with respect to the existing colonies in the Americas.[14]

Washington approached the control and defense of the Panama Canal Zone in the context of Monroe's Doctrine. Control over the area meant control over shipping and naval routes that the administration deemed essential to the United States. The debts of Latin American governments to European bankers and political instability within Latin American countries threatened to invite foreign intervention and upend what the United States considered an area vital to its strategic and economic interests. European bankers saw Latin America as offering prime capital investment opportunities. Lenders took advantage of the newly-formed governments' need for cash and exacted punishing interest rates on substantial loans, which were then sold off in pieces on the secondary bond market. American interests were further undermined by the chronic instability of the region's newly-formed governments, which often were plagued by mismanagement, civil wars, and military coups in the decades immediately following independence. Such a turnover in regimes interfered with the repayment of these loans, as new governments would repudiate national debts or force a renegotiation with powerless lenders.[15]

European creditors could not force settlements of their loans until they successfully lobbied their own governments to forcibly collect the debts. The Roosevelt administration did not want to deny the Europeans' rightful demands for repayment of debt, but it also did not want to encourage European policies of conquest in the hemisphere as part of that debt collection.[16] American policy makers and military strategists consequently determined that the potential for European military intervention in Latin America posed a serious threat to American interests in the region. In order to avoid this scenario, the Roosevelt administration reasoned that the American policymakers must create and maintain fiscal and political stability within strategically important nations in Latin America, particularly those bordering the proposed Panama Canal. As a result, policy makers considered American

intervention in places like Cuba and the Dominican Republic a necessity to ensure security around the Canal Zone.[17]

The Monroe Doctrine provided the Roosevelt administration with a diplomatic and international legal tradition through which it could assert a right to intervene in the hemisphere in the event of a Latin American debt default. President Roosevelt not only embraced the Monroe Doctrine, in 1904 he extended its reach through the so-called Roosevelt Corollary which declared that the United States had the authority to take preemptive action in any Latin American nation in order to correct administrative and fiscal deficiencies.[18] Though aggressive and bellicose, Roosevelt did not necessarily advocate expansion by military force.[19] In fact, the president insisted that in dealings with Latin American nations, war or direct intervention should be a last resort in resolving conflicts with problematic governments. According to Roosevelt, such actions were necessary out of the sense of duty to maintain "order and civilization."[20] Roosevelt and American policy makers understood the problems inherent in following an interventionist foreign policy to its logical end. Certainly, the administration could accomplish its objectives through a sustained military presence throughout South America, Central America, and the Caribbean, but the United States did not have the fiscal-military capability or the desire to do so. Creating regional stability and reliable regimes by means other than military force seemed more logical and appealing to the administration. Implementing this policy fell to Elihu Root as secretary of state, who, in fact, had helped Roosevelt craft the Roosevelt Corollary.[21]

In addition to its key strategic geopolitical position from an American policy perspective, Latin America had developed significant purchasing power that was coveted by U.S. industry. Americans needed markets for their goods, and those markets would emerge in durable, dependable consumer nations who subscribed to American ideals of democracy and free-market capitalism.[22] Poor public opinion toward the United States within Latin America, however, as well as pervasive racism coming from Washington and market competition with European powers, proved to be major obstacles to penetrating Latin American markets. Since the mid-nineteenth century, American policy makers had determined that opening these markets to American products would fuel economic

growth, and provide a market for surplus goods produced by an American economy humming along so efficiently that it was feared to be running out of consumers.[23]

Secretary Root believed that for American foreign policy to promote both military and economic security, the administration had to cultivate a favorable public opinion in Latin America while helping to create conditions whereby Latin American governments could achieve and maintain political stability.[24] The administration determined that the best method for attaining this goal, and thus maintaining hegemonic control in the hemisphere, would be to support and encourage strong, friendly regimes that could take on the job of maintaining order, and that appreciated the importance of fulfilling international obligations themselves without U.S. intervention.[25] To do this, Root relied on what he knew: the law. As secretary of state, Elihu Root articulated progressive legal principles suffused with popular conceptions of race, gender, and class in order to create a hemispheric culture and identity. This culturally-bound legalist approach to foreign policy furthered the American empire-building project by transferring American cultural expectations onto the populations of Latin America under the auspices of unity and international equality. The secretary, in effect, set standards for political and institutional behavior while also establishing U.S. intervention as a legal and legitimate, if not necessary, consequence for failure to live up the legalized standards.

Imperial International Law

Understanding the imperial origins of early twentieth-century international law is critical to fully grasping the implications of Elihu Root's legalist approach to Latin America. As Antony Anghie has explained, modern international law arose in connection with the civilizing mission advanced by the great powers of the nineteenth century. European legal thought, according to Anghie, divided the world into two groups: the advanced civilizations of Europe and North America, and the uncivilized societies inhabiting colonized regions. International law, and those who advocated global legal doctrines and structures, continually highlighted the differences that existed between the civilized and the uncivilized world and sought to define a universal system into which the uncivilized might be integrated. Only when these non-European civilizations adopted European institutions and

international law would their sovereignty, and all its concomitant rights, be acknowledged by the international community.[26]

The guiding hand of legal positivism, defined by Anghie as a legal theory that nations "are the principal actors of international law and they are bound only by that to which they have consented," was the intellectual pillar for the emerging international legal system. Legal positivism addressed the question of how to create a legal order among sovereign states. The answer came from limiting the number of participants in the international legal order.[27] Lawyers and policy makers of the nineteenth century, acting pursuant to this dominant positivist legal theory, denied the exercise of sovereignty to allegedly uncivilized societies, maintaining that they had no legal standing. In order to obtain legal standing—to gain recognition among the community of civilized nations—a society necessarily had to adopt European institutions and customs, what Anghie called "the racialization of law by delimiting the notion of law to very specific European institutions."[28] Consequently, universally applied legal principles did not equate to universal equality among states.

European colonial powers denied countries sovereignty because those societies lacked essential characteristics necessary to join the community of civilized nations. Christianity ranked first and foremost among those characteristics, which in itself created a cultural identity among European nations and the United States. Furthermore, claiming a cultural heritage in Roman antiquity, these civilized nations created common legal systems to pursue justice through the scientific study of law and philosophy. These nations also demanded monogamous marriage; they claimed to protect the rights and virtues of women; they valued their reputations within the community of nations; and they respected the importance of individuals' reputations within society. Moreover, these nations protected the private property of both citizens and foreigners, while providing mechanisms for citizens and foreigners to enforce their rights under the law equally.[29]By establishing these prerequisites for inclusion in the international legal order, the European powers forced all nations to aspire to certain cultural and political standards and to eschew their unique identities in favor of European cultural norms.[30]

John Westlake was particularly representative of this nineteenth-century school of imperial legal thought.[31] Westlake won election to British Parliament in 1885, served from 1888 to 1908 as professor of international law at Cambridge University, and published his *Chapters on the Principles of International Law* in 1894.[32] He also represented Great Britain at the International Court of Arbitration at The Hague from 1900 to 1906. Westlake contributed significantly to crafting and articulating conceptions of culture in international relations and international law in the context of expanding British imperial power.

Westlake defined international law as "the body of rules prevailing between states. It may also be described as the body of rules governing the relations of a state to all outside it, whether other states or private persons not its own subjects."[33] In referring to the rules among states, he believed that "states form a society, the members of which claim from each other the observance of certain lines of conduct, capable of being expressed in general terms as rules, and hold themselves justified in mutually compelling such observance, by force if necessary."[34] Crucially, he argued that law and society were inseparable and that inclusion within the society of nations constituted a prerequisite for gaining international legal status. In no uncertain terms, Westlake identified all European states as being members of the society of civilized nations. He also included all the countries of the Americas within this society, understanding that "on becoming independent" they "inherited the international law of Europe," but not through their own choice. Indeed, "[n]o new state, arising from the dismemberment of an old one within the geographical limits of our international society, has the option of giving or refusing its consent to the international law of that society."[35]

For Westlake, European civilization produced the society of states from which the international legal order emerged, and the obligations and privileges that derived from international law existed only for those individuals who were citizens of European or European-derived civilizations. In terms of international relations within the structure of international law, he argued that nations possessed equal rights and equal obligations regardless of their relative size or power, but that these rights and obligations applied only to sovereign states within the society of civilized nations and to natural persons interacting with those sovereign

states.[36] Consequently, international law denied those rights and obligations to states or people existing outside the society of civilized nations. International law existed only "for the purpose of regulating the mutual conduct of its members," whether they individually agreed to those rules of conduct or not.[37]

Ultimately, the question of civilization could be determined by whether a nation's government allowed citizens of Europe or the United States to carry on their normal lives, defended state territory and boundaries, and secured the rights of native populations. Indeed, facilitating the ease of physical movement and monetary investment for Europeans across the globe dictated the rules of international law.[38] According to Westlake, if a state could not meet these basic requirements of good governance, the European powers would fill the perceived void and create a government that could do so. As Westlake's writings show, an ideologically and culturally-bound international law emerged in the nineteenth century that justified, and perhaps even required, colonial expansion. No nation or society could hope to meet the requirements of civilization unless that nation or society renounced its indigenous culture and adopted in wholesale fashion the institutions of Europe.

The intellectual framework established by lawyers and scholars like John Westlake underpinned international law as it evolved in the late nineteenth and early twentieth centuries. It also overlapped with the cultural outlook and foreign policy orientation that Secretary of State Elihu Root applied to inter-American relations. Much like Westlake, Root understood the world through the prism of legal positivism and believed that universal scientific principles of law, as defined by European and American officials and consented to by all civilized nations, governed relations among states. Through Root's foreign policy initiatives, these legal precepts were applied to American relations with Latin America.[39]

American Legal Empire

As secretary of state and as a lawyer, Elihu Root advocated for peaceful regimes that respected the rights and obligations of the society of civilized nations, and he furthered the conceptions of international law proposed by Westlake and other European thinkers in the context of U.S. foreign policy. While acknowledging the sovereignty of all civilized

nations, Root insisted on swift intervention and retribution for those nations who failed to live up to their obligations or, worse yet, whose misdeeds removed them from membership in the society of civilized nations. Having briefly introduced Root and established the context for relations with Latin America, this section will examine the personal, historical, and cultural factors that informed the secretary's vision of hemispheric relations and animated U.S. policy toward Latin America. Drawing upon Root's public addresses in Latin America and correspondence with Roosevelt and with other U.S. diplomats, I show that Root furthered American interests in the region by employing cultural constructions that had developed alongside imperial international law.

Much like Westlake and other European lawyers of the nineteenth century, Root used domestic cultural and political norms to generate supposedly universal rules applicable to international relations, and especially inter-American relations. He called for the protection of private property, the peaceful resolution of disputes, and the defense of the rights of citizens. Root also admired societies that enabled citizens of Europe and the United States to prosper culturally and financially without the assistance or intervention of home governments. He elevated the timely repayment of national debts, the acceptance of international arbitration, the safeguarding of foreign investment, and the welcoming of European immigration as policies particularly appropriate for Latin American states that aspired to advanced civilizational status.

Root's fullest articulation of his policy for Latin America developed in his public conversations with regional leaders during his 1906 trip to South America. The Third International American Conference in Rio de Janeiro provided the initial venue for these discussions. Root sought most of all to repair the past damage done to hemispheric ties by unilateral U.S. blustering and military intervention and President Roosevelt's penchant for wielding the big stick across the region. Nonetheless, the secretary intended to do so without entirely surrendering U.S. prerogatives as outlined in the Monroe Doctrine and expanded in the Roosevelt Corollary. Root clearly considered imperial international law, tweaked to fit the American experience, as a much-preferred tool of U.S. hegemony.

The United States had hosted the first International American Conference in Washington in 1889 in order to promote U.S. economic interests in Latin America. Pan-Americanism was the pet project of Republican Secretary of State James G. Blaine in the 1880s as business, military, and political leaders pressed for a more forceful American international presence. Mexico City hosted the Second International American Conference in 1901 and 1902, at which the participant states resolved to schedule a third conference to meet within five years.[40] The third conference, held in Rio de Janeiro, served as an initial forum for Root to articulate the centerpiece of his Latin American policy: a process of inter-American rapprochement guided by the precepts of imperial international law. He would use the conference and his trip through South America to build relationships, trust, and cooperation while continually making his pitch for Latin Americans to embrace an international legal system based upon European cultural values. He incessantly promoted the idea that international rights were accorded to those who fulfilled their international obligations and who entrusted the resolution of claims and disputes to international courts of arbitration.

Root's instructions to his fellow U.S. delegatesconstituted a clear, high-level articulation of U.S.-Latin American policy and strategy for the conference.[41] They would also guide Root and the delegation through the South-American tour that followed the Rio de Janeiro gathering.[42] Secretary Root instructed the delegates that this conference should not be used as "an agency for compulsion or a tribunal for adjudication." He did not want nations to negotiate treaties or sit in judgment of one another or to take up controversial or divisive issues. Rather, the conference should allow nations to find common ground and consider issues upon which little difference of opinion existed. Root wanted consensus and cooperation. Much like his general approach to foreign policy, he did not pursue "any striking or spectacular final results." The secretary, instead, prioritized issues that appeared to be of minimal significance and which garnered only modest publicity. Rather than sweeping, decisive resolutions, he looked for areas of broad agreement and common ground.[43]

These instructions were not meant to minimize the importance of this conference but simply to indicate the trust-building that characterized Root's foreign policy objectives. Secretary Root believed that, when taken

all together, these occasions for reaching common ground represented small steps in a progression toward "the acceptance of ideals the full realization of which may be postponed to a distant future." Indeed, "[a]ll progress toward the complete reign of justice and peace among nations," the secretary observed, "is accomplished by long and patient effort and by many successive steps." Root believed that he needed time to sell his and the United States' vision of a world order governed by law and cultural universalism and that this sales pitch would be most effective if made patiently, with no expectations or pressure for immediate success.

With this goal in mind, Root used his influence to dictate the agenda of the conference, hoping to provide an orderly program while limiting the possibility for controversy. He wanted the delegates from the United States to stick to the issues on the agenda, issues upon which there was already some degree of consensus, and to make sure the conference did the same. These issues included establishing a bureau of American republics in order to expand Pan-American efforts; simplifying customs and consular laws; creating conventions related to copyrights, patents and trademarks; and drafting agreements regarding naturalization laws and sanitation and quarantine regulations. Root also urged his delegates to support any measures that promoted U.S. commerce in the region, especially a Pan-American railway.[44] Following this script, the Third International American Conference avoided the hard questions of compulsory arbitration and how the region would approach forcible debt collection by European creditors, passing these matters on to the larger international conference scheduled for 1907 at The Hague.[45]

Beyond guiding American strategy for negotiations, Root also traveled to the conference in South America and addressed the delegates in person, an unprecedented move in 1906 for a sitting secretary of state. He followed his appearance with a goodwill tour of the continent, hoping that such a trip would help ease regional distrust of the United States.[46] Organizers had planned for the conference in Rio to begin in late July of 1906.[47] Root began his trip at the same time with a stop in Brazil, visiting local officials before addressing the representatives in a special session of the conference.

Despite having two solid months of travel and public appearances planned, the secretary prepared only one speech before he arrived in

Brazil, which he delivered to the conference delegates on July 31, 1906. In this speech, Root intended to create a roadmap upon which he and the U.S. delegation would rebuild relations with the region, emphasizing the importance of mutual obligations as the basis for inter-American relations. By doing this, Root effectively displaced the prevailing transnational dialogue, which placed behavioral expectations solely upon the Latin Americans. Root would make many speeches throughout his trip, but the conference address highlighted his over-arching purpose: to identify the positivist legal and cultural frameworks requisite to accomplish hemispheric cooperation and progress under U.S. leadership. His speech won him enormous praise and admiration, not least of which came from the delegates and from heads of state whom he would later meet.[48]

Root began his address by invoking the concept of "civilization." Placing himself and his audience on par as citizens of the "civilization of America," he advanced a notion of shared culture and imagined community. In keeping with the assumptions of legal positivism, he held out U.S.-style electoral democracy as a cornerstone for civilizational status across the Americas. Root lectured that democracy came through struggle and did not come naturally or easily, that democracy must be learned through accumulated experience, and that nations aspiring to democratic self-government should seek mentorship from more advanced states – a clear reference to the special leadership role he envisioned for the United States. He then enumerated the prerequisites for a stable democracy within civilization, including "respect for law; obedience to the lawful expressions of the public will; [and] consideration for the opinions and interests of others equally entitled to a voice in the state."[49]

The secretary explained the path toward democracy in evolutionary terms, describing it as a slow but steady advance "toward more perfect popular self-government," similar to the United States' political trajectory. He implied, not so subtly, that the absence of democratic institutions signaled either regression or a failure to progress along a proper evolutionary path. He also implied that some nations were not so advanced as others and that less mature nations must learn from their more progressive neighbors. The secretary then praised Latin American nations for their remarkable progress toward democracy, stating that

"[n]owhere in the world has this progress been more marked than in Latin America," and he traced Latin America's transition from fighting with native populations and racial conflicts to civil war, to the establishment of governments now prepared to abide by the rule of law. These new governments, Root hoped, would ensure "[p]roperty is protected and the fruits of enterprise are secure," while also defending "individual liberty," all of which were critical characteristics of civilized nationhood within imperial international legal thought.[50]

Root followed this by addressing the potential for misdeeds in the world's eyes and their attendant consequences using language and concepts strikingly similar to those developed during the previous century and articulated by John Westlake. Arguing that nations, much like men, should be judged under an ethical code , Root insisted that they must conform to that code or suffer the negative judgment of other civilized nations. Furthermore, he declared that "[a] people whose minds are not open to the lessons of the world's progress, whose spirits are not stirred by the aspirations and the achievements of humanity struggling the world over for liberty and justice, must be left behind by civilization in its steady and beneficent advance." In essence, Root told the delegates to either adhere to this ethical code or be left behind by civilization. Though he did not address the consequences of exclusion from the international community of civilized nations in this speech, both Root and Westlake had been quite clear on this issue. Indeed, legal positivism denied the benefits of private trade and investment to renegade societies, and, more seriously, mandated political and military intervention when necessary to protect foreign property and citizens.[51]

Having made his address and offered his advice on governance, the secretary let the business of the conference continue without him as he made his way to Uruguay in early August 1906. On August 10, Root spoke on the subject of the Monroe Doctrine before an audience that included José Romeu, minister of foreign affairs for Uruguay. Romeu introduced Root to the audience and expressed his gratitude for the secretary of state's visit and his admiration for the United States. Characterizing the Monroe Doctrine as a guarantor of Uruguay's sovereignty, he praised that "chivalrous declaration which President Monroe launched upon the world, [and which] contributed efficaciously to assure the stability of the growing republic" of Uruguay. Alluding to the efforts to Europeanize

society then taking place throughout South America, the Minister emphasized the importance of close ties with European nations and the importance of immigration from Europe to the nations in the Americas.[52] "Italy, Germany, and Spain send to America a valuable contingent of their emigration," he noted, but he also acknowledged that the future of Latin American nations hinged on continued positive relations with the United States.[53]

In response, Secretary Root thanked Romeu for the welcome and agreed that the Monroe Doctrine had helped to provide the autonomy necessary for Latin American nations to develop their own governments. He called the Doctrine "an assertion to the world of the competency of Latin Americans to govern themselves." Likewise, he echoed his host's strong support for European immigration and reassured his audience that unity with the United States need not come at the sacrifice of cultural heritage. "[T]here is nothing in the growing friendship between our countries which imperils the interests of those countries in the Old World from which we have drawn our languages, our traditions, and the bases of our customs and laws."[54] Nonetheless, Root distinguished between Latin America's ties to Europe and its ties with the United States. Harkening back to the Monroe Doctrine's assertion of two separate spheres—the older European world and the rising Americas—the secretary rhapsodized on the New World's penchant for the art of self-government. Emphasizing the importance of law and order and invoking the common bond of religion, the secretary declared that the relationship among American nations was based on "advancing the rule of order, of justice, of humanity, and of the Christianity which makes for prosperity and happiness of all mankind."[55]

Speaking at the Athenaeum in Montevideo, Uruguay, on August 12, 1906, Root brought his focus back to the importance of international law in establishing stability within foreign affairs. He argued against those who considered international movements and organizations "idle dreams," and he referred to internationalization as a next step in the progress of man and of civilization. In addition, Root declared that the strength of moral opinion had begun to replace the use of force in conflict resolution and the management of international affairs. Calling the progress slow but unstoppable, he expressed confidence that each act in furtherance of international justice, though seemingly small, represented

a substantial step in advancing humanity further along its path of progress.[56] While the secretary's professions of international community might be read as what Akira Iriye has identified as an emerging twentieth-century "cultural internationalism," or an espousal of open-ended cultural pluralism, they in fact arose from a carefully circumscribed Euro-centric cultural dialogue.[57] Indeed, nineteenth- and early twentieth-century scholars, policy makers, and legal practitioners did not advocate for a society or world in which all cultures were valued equally. Nor did Root intend to create a unifying movement of true equality and inclusion. Rather, as already has been shown, the "opinion of the world" actually referred to Europe, the United States, and those countries who had sufficiently adopted European institutions so as to be considered civilized nations.

While speaking to a mostly American audience in Argentina on August 16, 1906, the secretary of state augmented this vision with a prescription for U.S.-guided economic advancement. Root described the progression of the United States from a debtor nation to the status of creditor nation. After paying off its debts and benefitting from foreign investment, the United States had created surplus capital to develop its own resources. Free from the shackles of debt, the United States engaged markets overseas to invest its own capital and reached the pinnacle of the development cycle. The United States looked to South America to manage its vast resources similarly: to foster an atmosphere conducive to private foreign investment, promote free trade, welcome productive newcomers as immigrants, and to studiously attend to its debts.[58]

Root's U.S.-centric vision of an American civilization based on international law did not go unchallenged. Indeed, August 17, 1906 brought a unique opportunity for Luis Drago of Argentina, perhaps the region's most outspoken critic of dollar diplomacy and the forcible collection of debts, to engage in public dialogue with the secretary. Drago introduced Root at this particular gathering and publically thanked the United States for its support of Argentina since its independence. He then openly questioned the practice of forcible collection of debts by European nations, a practice that he warned threatened the very survival of debt-ridden Latin American governments. The United States should not view "the impropriety of the forcible collection of public debts by European nations," he asserted, simply as "an abstract principle of

academic value or as a legal rule of universal application outside of this continent." Rather, for Drago, the collection of debts by force amounted to "conquest, disguised under the mask of financial intervention—conduct that was clearly in violation of U.S. policy since the dawning of Latin American independence." Appropriating U.S. policy principles and diplomatic language, the Argentine diplomat cleverly framed Latin America's opposition to the forcible collection of debts as an affirmation of the Monroe Doctrine and its prohibition of armed conquest and re-colonization in the Americas.[59]

Root's response to Drago exposed the limits of inter-American cooperation inherent in his legal framework. He reiterated Washington's respect for Latin American sovereignty and its opposition to forcible debt collection in theory. But he also emphasized that while the international community was evolving in the direction of non-intervention, the practice would die a slow death. Such conduct would dissipate "perhaps not today nor tomorrow, but through the slow and certain process of the future, the world will come to the same opinion."[60] For the moment, the secretary declared himself "an advocate of arbitration; of mediation; of all the measures that tend toward bringing reasonable and cool judgment to take the place of war," but turned the discussion on its head by placing primary responsibility for avoiding conflict on the shoulders of the Latin American people. Most significantly, he reaffirmed the need for nations and their people to respect the rights of others, "which lie[s] at the basis of peace of the world."[61] The secretary wanted the people of Argentina and of the other Latin American nations to fulfill their obligations as members of a society of civilized nations. Doing so would render Drago's rejoinder moot.

In broader policy terms, Root dismissed the idea of extending the Monroe Doctrine and Roosevelt Corollary to demand a stop to all forcible collections of debt because he wanted claims submitted to binding arbitration or some alternative means of peaceful resolution. He would not reject entirely the claims of the Europeans, which would have been the practical effect of incorporating Drago's position into U.S. policy, because that would have meant rejecting a pillar of international law as he and the Roosevelt administration understood it. Nations must

respect their obligations and maintain stable, reliable institutions or risk intervention by other civilized nations.

As the secretary's trip neared its close, he adopted an increasingly didactic tone. At an address in Peru in mid-September, Root lectured that Peru had a moral obligation to the international community to pursue domestic reforms and to ensure justice within its borders. To that end, Root stated that "[a]ll international law and international justice depended upon national law and national justice. No assemblage of nations can be expected to establish and maintain any higher standard in their dealings with one another than that which each maintains within its own borders." Similarly, justice and civilization within the community of nations depended on the character and level of civilization of each participant nation within the community.[62] Root then challenged his audience, and all of Latin America, to support efforts to create international institutions that would peacefully resolve conflict, to educate their citizens about the benefits of international arbitration, and to inculcate a popular appreciation for local court systems. He further asked his audience to affirm the "sacredness of the exercise of the judicial function of arbitration," describing arbitration as the preferred means of preventing war in the face of real, contested national differences, and to "seek victories of peace rather than the glories of war; to regard more highly an act of justice and generosity than even an act of courage or an act of heroism." In doing so, he advised, Latin Americans would be joining a united effort toward peace and respect for human rights and justice.[63]

Soaring rhetoric notwithstanding, the truth of the matter was that the international legal system Root advocated philosophically and practically favored creditor nations and put debtor nations at a disadvantage. Root's formula, in fact, meant that Latin America's disputes with Europe over outstanding debts would be mediated by courts of arbitration pursuant to established international law. Latin America, in turn, would be required to abide by the decisions of courts that historically favored creditors' rights. The court at The Hague, for example, had already proved that it supported creditors' rights to collect in 1904 when it ruled in favor of England and Germany in a conflict arising from their forcible collection of debts in Venezuela.[64] Indeed, the international system that Root and his European counterparts wished to establish had little to

do with equality and everything to do with maintaining power. Despite the lop-sided distribution of power in the hemisphere, however, officials in Latin America also sought to engage in this international legal discourse, ensuring that the limits of American empire would always be contested.

Negotiation and Contestation

In mid-September 1906, Secretary Root reported to President Theodore Roosevelt that his trip had been a success: he had been well-received throughout his tour; he had successfully promoted American interests; and he had given assistance to friends of the administration in South America.[65] Nonetheless, the ideological conflict revealed the month before between Root and Drago with respect to the forcible collection of debts did not disappear. Indeed, it remerged in 1907 at the international conference of nations at The Hague as Latin American nations rejected an American proposal for expanding arbitration to include the mandatory submission of all debt claims as a prerequisite to military intervention. Led by Luis Drago, the Latin American delegates advocated legal principles that respected the national sovereignty of all states and that acknowledged the unique, local cultural attributes that could influence domestic politics. Fully aware that the U.S. proposal would sanction military intervention, the Latin Americans roundly rejected Root's culturally-bound, legal positivism. Advancing a free-market position, they insisted that private investment always carried inherent risk, a risk that should not be mitigated by the state's military muscle.[66]

Following custom within the conference, Argentina ultimately voted to accept the convention of compulsory arbitration of financial claims as proposed by the United States, but did so with significant reservations that rendered the application of the convention useless. Speaking for Argentina, Drago rejected the right of nations to use force to compel payment on contract debts to their private citizens unless and until those foreign citizens exhausted their remedies through the local court system. He further rejected the notion that public loans through bonds could ever give foreign nations a right to intervene. Indeed, bonds should "in no case give rise to military aggression or the material occupation of the soil of American nations."[67]

Following Drago's lead, other Latin Americans expressed their concerns with U.S. proposals. The delegations of Paraguay, Nicaragua, Colombia, and El Salvador, for example, voted with the same reservations as that of the Argentine delegation. Peru, too, agreed to accept the convention but insisted that the convention did not apply to those contracts with foreign citizens in which the contract explicitly stated that disputes would be resolved within the courts of the nation in question. Gil Fortoul of Venezuela stated that his delegation rejected the wording of the convention and declined to participate in the vote. The Guatemalan delegation expressed reservations similar to those of the other Latin American states, but, out of a desire for unity with its neighbors, backed the Argentine reservations as articulated by Drago, while Ecuador and Uruguay reaffirmed their own reservations.[68]

As a follow-up to this startling assertion of independence by the Latin American states, Luis Drago articulated his own vision of international law in the *American Journal of International Law*.[69] In a 1907 article he affirmed the positions taken by Latin American nations at The Hague and argued that the independence and sovereignty of Latin American states should be valued more than the debts owed to speculators from Europe. Under international law, he insisted, local rules and procedures governed cases involving contracts and crimes, and local remedies had to be exhausted before appeal could be permitted to international forums. Only in cases involving "flagrant injustices" would intervention be appropriate because such injustices would, according to Drago, be a violation of international law. Displaying his own Western European and international law credentials, Drago cited British Prime Minister Lord Salisbury's argument that no nation can or should expect all other nations in the world to use the same judicial system or standards of review for enforcing the law. He used this authority to effectively refute Root's advocacy for universal law and culture.[70]

Addressing states' sovereignty in the context of forcible debt collection, Drago argued that there existed no competent courts – and none could ever exist – within which a creditor could bring claims arising from foreign loans. Directly challenging Root's vision of international law, Drago stated that "[s]overeignty is a historic fact and may be studied in each of the phases of its long and slow evolution, but it has attributes and prerogatives which may not be disregarded without danger to the

stability of social institutions." The Argentine statesman further supported his argument with reference to the American Declaration of Independence, stating that nations and their citizens possess "inalienable rights, inherent in their nature, among which is the right to grow and develop independently and without hindrance." Therefore international law, according to Drago, commanded respect for national sovereignty and the unique characteristics of local peoples. Ultimately, a sovereign's actions could not be questioned nor was intervention permissible unless a sovereign consented to jurisdiction. And, as was demonstrated at The Hague, Argentina did not consent as the United States had hoped.[71]

Drago rejected outright the ethnocentric assumptions that undergirded both European colonialism and Root's legalism. He dismissed the arguments that South America consisted of "degenerate races without the capacity for government" who should give way to the civilized nations of the world. For Drago, militarism enacted in the name of Social Darwinism was an anachronism ill-suited to the regulation of an increasingly complex and interconnected world.[72] Nonetheless, the Argentinian did not fully reject the tenants of Social Darwinism per se. As an elite of European descent in a multi-cultural and multi-racial society, he too respected established hierarchies. Indeed, he relied upon Latin America's Christian heritage to make the case that the region had progressed on a path toward greater equality with its European forbearers. At the same time, he reaffirmed Europe's status as a leader of the civilized world. Drago, however, parted ways with European and U.S. diplomats by challenging them to help the less civilized peoples of the world as peaceful mentors rather than as gunboat interlopers. One nation could not sit in judgment of the relative civilization of another nation because there could always be a third nation with greater strength, civilization, and culture who could then impose its will on both lesser nations simply because of relative strength. "Theories of violence, of struggle for existence, and of survival of the fittest may thus wound on the rebound the very persons who proclaim them," the Argentinian warned. "In the din of the universal conflict in which they desire to involve us, there may arise new social groups superior or stronger and capable of applying the rule of iron to the conquerors of yesterday."[73]

Though declining to completely shift the prevailing discourse about the international legal order, Luis Drago's outspoken criticism represented a

real and significant challenge to U.S. policies and Root's international legal vision. Influenced by imperial international legal thinkers of the nineteenth century, Root's brand of international law and its role in foreign policy sanctioned and rationalized intervention in Latin America. Drago certainly recognized this fact. Though ostensibly advocating equality and justice, Root's legalist approach in fact perpetuated a global system of racial hierarchies created to advance the interests of the major powers, and particularly the United States. Ironically, by advancing this particular brand of international law in order to maintain a Euro- and American-centric cultural construct, Root also created a framework for contesting empire within Latin America. Not only did officials like Drago ultimately adopt Root's international legal system in order to fight U.S. hegemony, they incorporated its legal principles to maintain and legitimize their own independence within the international legal order.[74]

Conclusion

This is a limited case study in the development of international law in the modern era of U.S. foreign relations; the scope of the argument and evidence does not explicitly address the current state of international law or of U.S. foreign policy. Nonetheless, it is noteworthy that during the twentieth and twenty-first centuries, international legal and political institutions strongly supported by the United States and other industrialized Western nations advocated goals similar to those expressed by Root. Indeed, legal scholar and historian Francis Boyle has found important connections between these historical eras, arguing that the work of Elihu Root in the early twentieth century supported the creation of the world order formed in the aftermath of World War II by American legalists like Dean Acheson. Furthermore, Boyle found "a remarkable degree of continuity and congruence between the world order model of these 1898-1922 legalist founders and the world order model of the 1945 legalist creators." Boyle, in fact, claimed "that throughout the twentieth century, the U.S. government has attempted to create a 'regime' of international law and organizations in the Western hemisphere that would consolidate, advance, and legitimate its hegemonic position in the region."[75]

Understood in the context of Boyle's more sweeping study, the arguments presented in this article raise the question of to what degree

Root's culturally-bound legalism had long-lasting implications for law and foreign policy. As Root discovered at The Hague in 1907, the cultural origins of foreign policy guide reactions and negotiations within transnational relationships. In fact, those origins determine the very nature and purpose of relationships and create a baseline understanding from which a foreign policy emerges. Despite his stated goal of a hemisphere unified through law and peace, Root could not escape Westlake's international law or his own worldview. Attempting to build relationships based upon a framework of racial and cultural hierarchies created for the purpose of colonial domination did not foster a feeling of mutual cooperation or trust. Rather, American policies and the cultural constructions underpinning those policies only worked to perpetuate systems, both internationally and domestically, of racial and ethnic inequality.

At the same time, Root underestimated Latin American agency. The imperial imaginary that he helped to invent downplayed the limits to U.S. cultural, as well as military and diplomatic, power. Indeed, Root's ideas on economic development, race, nationhood, and international law were appropriated, tweaked, and at times reshaped by Latin Americans like Drago who sought to modernize and to resist—or at least negotiate—U.S. hegemony. This last point resonates with the state of Latin American development today. Just as social democracies in Brazil, Uruguay, and Bolivia have in many ways become fully integrated into the global economic system, they also continue to find innovative ways to assert their independence, to stray from the U.S. free trade formula, and on a few occasions to defy the dictates of the International Monetary Fund. The game of cat and mouse that defines contemporary U.S.-Latin American relations is by no means a new one, but owes much to Elihu Root and his contemporaries.

[1] See, *e.g.*, William Henry Harbaugh, *The Life and Times of Theodore Roosevelt* (London: Oxford University Press, 1961); Morton Keller, *Theodore Roosevelt; A Profile* (New York: Hill and Wang, 1967); Frederick W. Marks, *Velvet On Iron: The Diplomacy of Theodore Roosevelt* (Lincoln: University of Nebraska Press, 1979); Richard Collin, *Theodore Roosevelt's Caribbean: The Panama Canal, The*

Monroe Doctrine, and the Latin American Context (Baton Rouge: Louisiana State University Press, 1990)

[2] While several important works have addressed Root's life and political career, none have provided a cultural analysis of Root's policy making. No treatment of Elihu Root can ignore Philip C. Jessup's two-volume biography of Root, published in 1938. Jessup began his work during Root's lifetime, and he therefore had unique access to his subject. Jessup offered a surprising level of criticism considering its publication date and the author's twenty-two year relationship with his Root and Root's colleagues. Philip C. Jessup, *Elihu Root* (New York: Dodd, Mead & Company, 1938) Richard Leopold published *Elihu Root and the Conservative Tradition* in 1954, in which Leopold interpreted Root's political philosophy as inherently conservative in both domestic and international affairs. Richard W. Leopold, *Elihu Root and the Conservative Tradition* (Boston: Little, Brown and Company, 1954). William Everett Kane, a lawyer himself, addressed Elihu Root's politics from the perspective of international law. His treatment of Root, however, is solidly positioned as diplomatic history, and involves a close examination of politics and policymaking without deep analysis of the cultural context that shaped Root's worldview. William Everett Kane, *Civil Strife in Latin America: A Legal History of U.S. Involvement*(Baltimore: The Johns Hopkins University Press, 1972).

[3] Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism, New Edition* (London: Verso, 2006).

[4] Michael McGerr, *A Fierce Discontent: The Rise and Fall of the Progressive Movement in America* (New York: Free Press, 2003), 79-117.

[5] This article therefore supports and extends the growing scholarly literature on U.S.-sponsored "development" and "modernization." See, *e.g.*, Michael E. Latham, *The Right Kind of Revolution: Modernization, Development, and U.S. Foreign Policy from the Cold War to the Present* (Ithaca, NY: Cornell University Press, 2011); Nick Cullather, *The Hungry World: America's Cold War Battle Against Poverty in Asia* (Cambridge, MA: Harvard University Press, 2010); David C. Engerman, "West Meets East: The Center for International Studies and Indian Economic Development," in *Staging Growth: Modernization, Development, and the Global Cold War*, eds. David C. Engerman, Nils

Gilman, Mark H. Haefele, and Michael E. Latham (Amherst, MA: University of Massachusetts Press, 2003), 200-223; David Ekbladh, *The Great American Mission: Modernization and the Construction of an American World Order* (Princeton, NJ: Princeton University Press, 2011).

[6] John Mason Hart, *Empire and Revolution: The Americans in Mexico Since the Civil War*(Berkeley, CA: University of California Press, 2002), 271-305; John King Fairbank, *The Great Chinese Revolution: 1800-1985* (New York: Harpers & Row, Publishers, 1986), 273-95; Mark Philip Bradley, *Imagining Vietnam: The Making of Postcolonial Vietnam, 1919-1950* (Chapel Hill, NC: The University of North Carolina Press, 2000), 32-36; Louis A. Pérez, Jr., *Cuba: Between Reform and Revolution* (New York: Oxford University Press, 1988), 337-81.

[7] Emily S. Rosenberg, *Financial Missionaries to the World: The Politics and Culture of Dollar Diplomacy, 1900-1930* (Cambridge: Harvard University Press, 1999), 1-9.

[8] In his early Cold War classic, *American Diplomacy*, diplomat-scholar and realist George F. Kennan delivered a critique of the U.S. penchant for moralism and legalism in the conduct of foreign policy, a weakness, according to Kennan, that handicapped America's navigation of the world of power politics. George F. Kennan, *American Diplomacy: Expanded Edition* (Chicago: The University of Chicago Press, 1984), 67-69. Robert E. Hannigan challenged Kennan's assessment while continuing his focus on diplomatic history. He noted the significance of international law within the Roosevelt administration's foreign policy and its role facilitating emergence of the United States as a world power. Robert E. Hannigan, *The New World Power: American Foreign Policy, 1898-1917* (Philadelphia: University of Pennsylvania Press, 2002), xiii. While Kennan and Hannigan provided clear articulations of opposing interpretations of law's place within U.S. foreign policy, other scholars have explored the topic to lesser extents or with a different focus. In *Seeking World Order: The United States and International Organization to 1920,* Warren F. Kuehl analyzed the positions advocated by various internationalist groups within the United States. His book did not examine the impact of universally applied legal principles or any cultural foundation behind the development of international law and organizations. He chose instead to trace the intellectual and political development of these organizations. Warren F. Kuehl, *Seeking World*

Order: The United States and International Organization to 1920 (Nashville: Vanderbilt University Press, 1969). Francis Boyle also has investigated the legalist tradition's influence on international relations, connecting early legalists like Root to those of the post-World War II era and today. Francis Anthony Boyle, *Foundations of World Order: The Legalist Approach to International Relations (1898-1922)* (Durham: Duke University Press, 1999).

[9] Some examples of cultural legal studies include Gary Peller, "Cultural Imperialism, White Anxiety, and the Ideological Realignment of *Brown*, in *Law, and Culture: Reflections on Brown Vs. Board of Education*, ed. Austin Sarat (New York: Oxford University Press, 1997), 190-200; Arlene J. Diaz, *Female Citizens, Patriarchs, and the Law in Venezuela, 1786-1904*; and Oscar G. Chase and Jerome Bruner, *Law, Culture and Ritual: Disputing Systems in Cross-Cultural Context* (New York: New York University Press, 2005).

[10] See Mary Louise Pratt, *Imperial Eyes: Travel Writing and Transculturation* (London: Routledge, 1992). In this book, Pratt coined the term "contact zone" to refer to "the space in which peoples geographically and historically separated come into contact with each other and establish ongoing relations, usually involving conditions of coercion, radical inequality, and intractable conflict." Pratt, 7. Here, I deploy this useful concept, positing that the arena of international law was a cultural "contact zone."

[11] Theodore to William Howard Taft, July 3, 1904, in *The Letters of Theodore Roosevelt,* vol. 4, ed. Elting E. Morrison (Cambridge: Harvard University Press, 1951), 1260 (hereafter *LTR*); Theodore Roosevelt to Henry Cabot Lodge, *LTR,* vol. 4, 1271.

[12] Leopold, *Elihu Root and the Conservative Tradition,* 50-51.

[13] Kane, *Civil Strife in Latin America*, 73.

[14] James Monroe, *Message from the President of the United States to Both Houses of Congress at the Commencement of the First Session of the Eighteenth Congress, Dec. 2, 1823*, 18th Cong., 1st sess., 1823, serial set vol. 89, sess. vol. 1; Jay Sexton, *The Monroe Doctrine: Empire and Nation in Nineteenth-Century America* (New York: Hill and Wang, 2011), 52-53, 60.

[15] Hannigan, *The New World Power*, 29, 64-66.

[16] Collin, *Theodore Roosevelt's Caribbean*, 84-86.

[17] Boyle, *Foundations of World Order*, 87-91.

[18] 58th Congress (3rd Session/Dec. 6, 1904), 19; Theodore Roosevelt to Elihu Root, May 20, 1904, in *LTR*, vol. 4, 801; Sexton, *The Monroe Doctrine,* 229.

[19] Mark T. Gilderhus, *The Second Century: U.S.-Latin American Relations Since 1889*(Wilmington, DE: Scholarly Resources, 2000), 24.

[20] Theodore Roosevelt to William Bayard Hale, February 26, 1904, in *LTR*, vol. 4, 740.

[21] Hannigan, *The New World Power,* 34.

[22] Joseph A. Fry, "In Search of an Orderly World: U.S. Imperialism, 1898-1912," in *Modern American Diplomacy,* eds. John M. Carroll and George C. Herring (Wilmington, DE: Scholarly Resources Inc., 1984), 3.

[23] Matthew Frye Jacobson, *Barbarian Virtues: The United States Encounters Foreign Peoples at Home and Abroad, 1876-1917* (New York: Hill and Wang, 2000), 20-22.

[24] Fry, "In Search of an Orderly World," 4.

[25] Hannigan, *The New World Power,* 35.

[26] Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, UK: Cambridge University Press, 2004), 3-5.

[27] *Ibid.*, 32-33. Beginning with English legal scholar John Austin in the mid-nineteenth century, lawyers and academics have debated whether international law was actually "law." Austin held that so-called international law was merely an imperfect social standard among nations that lacked a sovereign authority to compel obedience. Legal positivism served as the guiding legal theory of those who defended the compulsory nature of international law. See Henry Sumner Maine, *International Law; A Series of Lectures Delivered Before the University of Cambridge, 1887* (New York: H. Holt and Company, 1888);

Francis Wharton, *Commentaries on Law, Embracing Chapters on The Nature, The Source, and The History of Law; on International Law, Public and Private; and on Constitutional and Statutory Law* (Philadelphia: Kay & Brother, Law Booksellers, Publishers, and Importers, 1884); Theodore Dwight Woolsey, *Introduction to the Study of International Law*, 6th ed.(New York: Charles Scribner's Sons, 1891).

[28] Anghie, *Imperialism, Sovereignty and the Making of International Law*, 54-55.

[29] Woolsey, *Introduction to the Study of International Law,* 6-17; John Westlake, *Chapters on the Principles of International Law* (Cambridge: Cambridge University Press, 1894), 101-106.

[30] Anghie, *Imperialism, Sovereignty, and the Making of International Law*, 59, 84-87, 108.

[31] See also Maine, *International Law*; Wharton, *Commentaries on Law, Embracing Chapters on The Nature, The Source, and The History of Law; on International Law, Public and Private; and on Constitutional and Statutory Law*; Woolsey, *Introduction to the Study of International Law*.

[32] Westlake, *Chapters on the Principles of International Law.*

[33] *Ibid.*, 1.

[34] *Ibid.*, 2.

[35] *Ibid.*, 81-82.

[36] *Ibid.*, 86.

[37] *Ibid.*, 136.

[38] *Ibid.*, 141-43.

[39] Elihu Root, "The Sanction of International Law: Presidential Address at the Second Annual Meeting of the American Society of International Law, Washington, April 24, 1908," in *Addresses on International Subjects*, ed. Robert Bacon and James Brown Scott (Cambridge: Harvard University Press, 1916), 25-30.

[40] Elihu Root, "The Secretary of State to the Delegates of the United States to the Third International Conference of American States," June 18, 1906, *Foreign Relations of the United States, 1906* (Washington, D.C., U.S. Government Printing Office, 1909), Pt 2: 1566-76 (hereafter *FRUS*); Boyle, *Foundations of World Order*, 104-05.

[41] The U.S. delegates to the conference were Andrew J. Montague of Virginia, Dr. Paul S. Reinsch of Wisconsin, Charles Ray Dean, H. Fletcher Neigbors, and Frank L. Joannini, who acted as translator. Robert Bacon, "The Acting Secretary of State to the Brazilian Ambassador," May 23, 1906, *FRUS, 1906*, Pt. 2: 1566.

[42] Elihu Root to Theodore Roosevelt, July 3, 1906, Reel 65, Theodore Roosevelt Papers, Library of Congress, Manuscript Division, Washington, D.C.

[43] Elihu Root, "The Secretary of State to the Delegates of the United States to the Third International Conference of American States," June 18, 1906, *FRUS, 1906*, Pt. 2: 1566-67.

[44] *Ibid.*, 1567-72.

[45] Jessup, *Elihu Root*, 1:482.

[46] The secretary was gratified by the large crowds that regularly turned out to greet him. Hannigan, *The New World Power,* 67.

[47] Joaquim Nabuco, "The Brazilian Ambassador to the Secretary of State," April 25, 1906, *FRUS, 1906*, Pt. 2: 1565.

[48] Jessup, *Elihu Root,*1:479-80.

[49] Root, "Speech of the Sectary of State: Honorary President of the Conference," in *Latin America and the United States,* 6-11.

[50] *Ibid.*, 6-8.

[51] *Ibid.*, 8.

[52] For a thorough analysis of the Europeanization taking place throughout much of Latin America at the time, see George Reid Andrews, *Afro-Latin America 1800-2000* (New York: Oxford University Press, 2004), 117-51.

[53] José Romeu, "Speech of His Excellency José Romeu, Minister for Foreign Affairs," in *Latin America and the United States*, 55-58.

[54] Elihu Root, "Reply of Root to the speech of His Excellency José Romeu, Minister for Foreign Affairs" in *Latin America and the United States*, 58-59.

[55] *Ibid.*, 58-60.

[56] Elihu Root, "Reply of Root to the Speech of Doctor Zorrilla de San Martin at the Breakfast by the Reception Committee, in the Atheneum at Montevideo," in *Latin America and the United States,* 70-71.

[57] Akira Iriye, *Cultural Internationalism and World Order* (Baltimore: Johns Hopkins University Press, 1997).

[58] Elihu Root, "Reply of Root to the Speech of Mr. Francis B. Purdie at St. George's Hall," in *Latin America and the United States*, 90-93.

[59] Luis Drago, "Speech of Dr. Luis M. Drago," in *Latin America and the United States,* 93-97.

[60] Elihu Root, "Reply of Root to the Speech of Dr. Luis M. Drago," in *Latin America and the United States*, 98.

[61] *Ibid.*, 102.

[62] Elihu Root, "Reply of Root to Speech of His Excellency Javier Prado y Ugarteche," in *Latin America and the United States*, 142.

[63] *Ibid.*, 143-44.

[64] "Arbitration of the Preferential Treatment of Claims Against Venezuela," *FRUS, 1904*: 505-519.

[65] Elihu Root to Theodore Roosevelt, September 15,1906, Theodore Roosevelt Papers, Library of Congress, Manuscript Division, Washington, D.C.

[66] Luis M. Drago, "Senor Luis M. Drago, Minister of Foreign Relations of the Argentine Republic, to Senor Martin Garcia Merou, Minster of the Argentine Republic to the United States," *FRUS, 1902,* 1-5.

[67] *The Proceedings of the Hague Peace Conferences: The Conference of 1907,* vol. 1 (New York: Oxford University Press, 1920), 330-31.

[68] *Ibid.*, 331-32.

[69] Luis M Drago, "State Loans in Their Relation to International Policy," in *The American Journal of International Law*, vol. 1, No. 3 (Jul. 1907), 692-726.

[70] *Ibid.*, 693-96.

[71] *Ibid.*, 697-701.

[72] *Ibid.*, 706-08.

[73] *Ibid.*

[74] *The Reports to the Hague Conferences of 1899 and 1907,* ed. by James Brown Scott. (Oxford: The Clarendon Press, 1917), 489-99.

[75] *Ibid.*, 87.

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