

or may not be said to contribute to international law-making. International lawyers should all respond to the book's call for future research. We urgently need an international legal theory that accounts for (all) international institutions and their practice.

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Juan Pablo Scarfi. ***The Hidden History of International Law in the Americas: Empire and Legal Networks***. Oxford: Oxford University Press, 2017. Pp. 239. £64. ISBN: 9780190622343.

Juan Pablo Scarfi's *The Hidden History of International Law in the Americas* is part dual legal biography of James Brown Scott and Alejandro Alvarez, part institutional history of the American Institute of International Law (AIIL) – the organization they created with the financial support of the Carnegie Endowment for International Peace (CEIP) – and part exploration of 'American international law', a set of ideas principally set forth by Scott and Alvarez through the AIIL. These ideas justified US imperialism and interventionism in the Americas (particularly in Cuba) as part of a larger pan-American project that spanned from the late 19th century into the 1930s, and they became operational through 'legal and diplomatic networks of hegemonic interactions in the Americas' that were facilitated by the AIIL (at xviii). It is to this network and particularly to the 'unveiling' of American international law's underlying 'ethnocentric, elitist, missionary, and hegemonic' beliefs and 'civilizing imperial aspirations' that the title's adjective 'hidden' refers (at 188).

Scarfi's story, though, begins with the focus not on Scott and Alvarez or the AIIL but, rather, on Elihu Root. Root and the pan-Americanism he promoted sought to maintain and extend US economic leadership in the Americas. A hegemony based on consent, founded on notions of 'shared hemispheric histories, institutions, and ideals' and codified by rules, pan-Americanism promoted continental solidarity, the international rule of law, the peaceful settlement of disputes through judicial mechanisms, sovereign equality and the codification of international law (at 3, 21). As secretary of state, Root (who as secretary of war had previously drafted much of what would be called the Platt Amendment) advocated these beliefs during his 1906 tour of South America and particularly at the third Pan-American Conference in Rio de Janeiro. That same year, the American Society of International Law was founded, with Root as its inaugural president and Scott as a founder. By 1910, so too was the CEIP, also with Root (now a US senator) as its first president and with Scott (who had previously served as solicitor to Root at the Department of State) as general secretary and director of the International Law Division.

The year before, Scott and Alvarez, a Chilean lawyer and foreign ministry adviser, had met. Alvarez had independently already begun to think explicitly about an American international law, distinctive from the European version. (The term itself originated in 1844 with Juan Bautista Alberdi, though it seems without much consequence at the time.) Alvarez would publish his ideas as a 1909 article in the *American Journal of International Law*, of which Scott was editor-in-chief, and, the following year, as a book, *Le droit international américain: Son fondement, sa nature*.¹ Together in 1911, Scott and Alvarez proposed to Root the establishment of the AIIL, a western hemisphere counterpart to the Institut de droit international. The organization

¹ A. Alvarez, *Le droit international américain: Son fondement, sa nature* (1910).

would come into existence the following year. According to its constitution, the AAIL's purposes included 'giv[ing] precision to the general principles of international law ... in conformity with the solidarity, which unites the members of the society of civilized nations ... especially, the bonds between the American peoples'; 'study[ing] questions of international law, particularly questions of an American character, and to endeavor to solve them ... [if necessary by] creating new principles adapted to the special needs of the American Continent' and 'increase[ing] the sentiment of fraternity among the Republics of the American Continent' (at 193). The AAIL's goal then was to establish and disseminate American international law to 'support and legitimize imperial and missionary projects' (at xx), and it would accomplish that goal in practice through AAIL meetings (the first of which, funded by the CEIP, took place in 1915–1916 in Washington, DC) and networks of lawyers, diplomats and national international law societies throughout the Americas.

For its originators, the adjective 'American' in American international law was US-centric. Although, according to its proponents, there was a 'pan-American sameness' among American states stemming from 'a common origin of emancipated colonies,' which, in turn, led to 'common characteristics that distinguished them from European, including support for the limitation of state power and the protection of the natural rights of the individuals', American international law, to them, arose out of US law and the US legal system (at 50–51). Further, the USA had a special role in protecting American states from foreign interference as well as from pernicious state interference in the rights of individuals, a role that was at least tacitly recognized in American international law by the conspicuous absence of any acknowledgement of the principle of non-intervention in the AAIL's first meetings. Both Scott and Alvarez though were explicit about the status and content of non-interference and the Monroe Doctrine. As Alvarez explained at the AAIL's second official meeting in Havana in 1917, while non-intervention was a 'basic rule [regulating] the relations among states within the Americas', it was subject to three important exceptions: consent; the collection of a public debt when the debtor state acted in bad faith and the protection of the life and property of a state's nationals (at 54). As Scarfi points out, these exceptions exculpated the many US forcible and otherwise coercive actions in the Caribbean and Central America that took place during the first decades of the 20th century.

In the years following World War I, the AAIL achieved its greatest influence when, at the request of the Governing Board of the Pan-American Union following the fifth Pan-American Conference at Santiago de Chile in 1923, it began work on a series of projects for the codification of both public and private international law. Among the many proposed drafts and texts, Scarfi focuses on the arguments regarding the principles of non-intervention and sovereignty and particularly the views of Scott, Alvarez, Víctor Manuel Maúrtua and Carlos Saavedra Lamas. These issues would be debated in multiple fora through the 1920s—at AAIL meetings, the gathering of the Rio de Janeiro Commission of Jurists in 1927 and, ultimately, the sixth Pan-American Conference at Havana in 1928, where the USA was able to prevent the adoption of a principle of absolute non-intervention.

The US approach to Latin American relations shifted significantly with the advent of the Roosevelt administration. By 1933–1934, the good neighbour policy disclaiming interventionism, which was already in the offing during the Hoover presidency, was in and the Platt Amendment was out. Fought over for years in the AAIL and pan-American meetings, the principles of absolute non-intervention and sovereign equality were adopted without US resistance at the seventh Pan-American Conference in Montevideo in 1933. As Scarfi explains, it was Saavedra Lamas, the promoter of the Anti-War Treaty of Non-Aggression and Conciliation, who led the push among the Latin American delegates for the recognition of these principles without

caveats.² In this new context and continuing through the 1930s, the AAIL as an institution and as a generator and promoter of legal ideas became increasingly outdated and irrelevant. After all, the AAIL had 'adopted a missionary, civilizing, and imperial approach to international law and peace' in which the Platt Amendment did not violate state autonomy or independence (at 159). For the AAIL, 'the idea American international law and its codification ... encompassed the promotion of ... Pan-Americanism, US legal and political values, and the international rule of law as gentle civilizers of nations for the Americas' (at 159). Saavedra Lamas's approach, in contrast, 'redefined regional and hemispheric peace along the lines of proclaiming the principles of absolute nonintervention, state recognition, and sovereign equality and autonomy, integrating through a pluralist approach regional and universalist concerns and approaches to world peace' (at 160). The switch in approach appeared in the shift in usage from 'pan-Americanism' to 'inter-Americanism'. Not surprisingly it was under the rubric of the latter that significant multilateral cooperation took place in the Americas through the 1930s. Also not surprisingly, the AAIL would lay mostly dormant from 1933 until it ceased operations in 1943, holding only occasional formal meetings in 1938 and 1940. Scott had retired by then, and so it was left to Alvarez and others to cling to the AAIL's notion of a missionary American international law in the organization's final days.

In the AAIL and the project of American international law, Scarfi sees 'a transition from Pan-Americanism to inter-Americanism ... from a US-led and hierarchical approach to international organization to a more institutionalized, multilateral, and less vertical, though still US-led, Inter-American System' (at 175). The AAIL facilitated this transition, he argues, because it contained 'two opposing impulses [personified by Scott and Alvarez respectively]: ... US hemispheric hegemony and the progressive turn to inter-American multilateralism' (at 175). The main ideas promoted by the AAIL – that 'the Americas were a hemisphere of peace and justice, governed by republican and democratic traditions and the principles of continental cooperation and solidarity, advocating and promoting the legal settlement of international disputes' and that 'such principles and traditions of the Western Hemisphere were unique and even exemplary for the construction of a new international law of the future, which could in turn contribute to the progressive reformulation and modernization of the European law of nations' – had brought together a network of lawyers and diplomats throughout the Americas (at 176). Further, the AAIL as an organization 'provided technical assistance to the Pan-American Union and the periodic Pan-American conferences' and, as such, was a 'hemispheric space of interactions that helped significantly to legitimize and maintain a US-led version of pan-Americanism, for it was instrumental in mediating between the US Department of State, the Pan-American Union, and the Latin American legal elites' (at 177). Despite its irrelevance subsequent to the Montevideo conference, Scarfi finds the AAIL's legacy throughout the post-World War II international legal and institutional landscape in the Americas: in the American Declaration of the Rights and Duties of Man; the Inter-American Commission of Human Rights and the Inter-American Court of Human Rights.³ But, he notes, American international law's legacy can also be seen in post-war US global imperialism, for which US-Latin American relations during the first decades of the 20th century had served as a workshop (at 180).⁴

The Hidden History of International Law contributes to recent and forthcoming studies by Paolo Amorosa, Arnulf Becker Lorca, Benjamin Allen Coates, and Liliana Obregón, among others,

² Anti-War Treaty of Non-Aggression and Conciliation 1933, OASTS no. 16.

³ American Declaration of the Rights and Duties of Man, Doc. OAS/Ser.L/V/1.4 Rev. 9 (2003).

⁴ Cf. G. Grandin, *Empire's Workshop: Latin America, the United States, and the Rise of the New Imperialism* (2007).

that focus or touch upon aspects of late 19th- and early 20th-century international law in the Americas and some of the high-level personages involved.⁵ It also tracks contemporary tendencies in the historiography of international law – the turn to ‘history and theory’ and the focus on the imperial and colonial origins of international law. Indeed, Scarfi forthrightly claims that the ‘the history of international law may well be regarded as the intellectual history of legal ideas in international relations’ (at xx). While this assertion is decidedly debatable, Scarfi keeps to his word by focusing on a select group of jurists from across the hemisphere, their relationships and their ideas. And certainly his detailed engagement with that limited cast of characters, within the confines of the AAIL, has value and provides insights into the fleeting project of American international law.

It is not quite enough though. Leaving the merits of the ‘history-and-theory’ approach as a general matter aside, *Hidden History* is not its best exemplar. Occasionally desultory and repetitive, Scarfi makes prodigious claims regarding the AAIL’s influence, yet, in its very limited life, it is difficult to see precisely what the organization accomplished at scale or what long-term contributions it made. Indeed, on the issue of non-intervention (which lay at the heart of American international law), Scott and Alvarez and their allies failed at the critical moment. Why? Even after being immersed in the recitations of the arguments, and the recapitulations of the back and forths between the major players at numerous international gatherings, the reader is ill-equipped to answer this question. Focused so much on the ideas promoted by a small group of individuals who had ties to one institution, the book does not provide enough context to allow any conclusions about why certain views won out over others when they did. What was the power of these ideas? How influential were the networks (about which we learn precious little)? What was the AAIL’s precise relationship with the US Department of State? How did hegemony work? It is difficult to say. Scarfi provides only brief forays into the domestic legal, political and diplomatic scenes of even the most important countries in the region. Why did the AAIL garner backing when it did, both within the USA and elsewhere in the Americas? What made the American international law project attractive, to what groups did it have value and why did its influence eventually wane? Did the support for American international law cross partisan or other divides in the USA, where its main proponents were products of the Republican Party? Why did it gain relevance in some countries and with some individuals, and why did others resist it, propose international law counter-narratives and work through alternative networks? We get only glimpses of the possible answers. Reading *Hidden History* makes the reader want more.

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⁵ P. Amorosa, ‘The American Project and the Politics of History: James Brown Scott and the Origins of International Law’ (2018) (PhD dissertation on file at the University of Helsinki); A. Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842–1933* (2014); B.A. Coates, *Legalist Empire: International Law and American Foreign Relations in the Early Twentieth Century* (2016); L. Obregón, *Creole Interventions in International Law: Andrés Bello, Carlos Calvo and Alejandro Álvarez (1830–1960)* (forthcoming).