

Note for Agrarian Studies seminar: What follows can be considered an opening bid, a first position paper, on what will be a new book project, tentatively called *Greater America*. Its an attempt to integrate the history of the Americas, from the seventeenth to the twentieth century, around a strong argument concerning American Exceptionalism – with an emphasis on the role of what Latin American jurists called American International Law played in creating the modern multilateral system. I had hoped for this seminar to have more directly drawn out the implication for agrarian history, but time went fast and those implications remain implicit. They are, though, obvious, particularly as they relate to property rights (especially the Mexican Revolution’s challenge to international property law) and forced labor. Also, as the title of the essay suggests, the following reflects an interest in reviving a line of critical theory, influential in its way but somewhat cast aside, either by, on the one hand, a social history that hewed close to the ground or, on the other, by new critical theory that assumes a coherence and monolithic rationality to colonial or imperial knowledge and power. I don’t actually here cite Robert Drinnon’s *Facing West: The Metaphysics of Indian-Hating and Empire-Building*, but I crib from his title since his sweep and argument has been influential. I also rely on a number of his contemporaries, including Michael Rogin and William Appleman Williams, as well as Louis Hartz. These scholars, even if they are associated with categorizes often considered totalizing, such as empire, capitalism, or liberalism, grasped the fundamental instability of Americanism; the value of their approaches, whatever their excesses, are confirmed by the fact that they practically predicted the current crisis in US politics, with its mania irreducible to position or politics.

Facing South:

The Liberal Traditions in the Americas

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Very Rough Draft: Please do Not Cite

“America is therefore the land of the future, where, in the ages that lie before us, the burden of the World’s History shall reveal itself – perhaps in a contest between North and South America.”

-- Georg Wilhelm Friedrich Hegel, *The Philosophy of History*, 1831

“America was born free – man divided her”

--Los Tigres del Norte, “Somos más Americanos,” number one on Billboard’s Latin America chart, September 11, 2001.

Greater America

“Who has written on a Western Hemisphere scale,” Herbert Bolton asked in 1932, “the history of shipbuilding and commerce, mining, Christian missions, Indian policies, slavery and emancipation, constitutional development, arbitration, the effects of the Indian on European cultures, the rise of the common man . . . [who] has tried to state the

significance of the frontier in terms of the Americas?” Bolton raised the question in a presidential address of the American Historical Association, sketching out an “epic of greater America” by expanding Fredrick Jackson Turner’s “new history” over what today would be called a transnational frame (Bolton was a student and respectful critic of Turner). Four months before Franklin Delano Roosevelt’s first inauguration and more than a year before the Comintern’s call for a popular front against fascism, Bolton’s address was also notable for invoking the “rights for the common man” – an ideal which Bolton credited to the Mexican Revolution and hoped was beginning to “sound familiar to Anglo Americans.”¹ The Bolton Thesis – that European colonies and subsequent independent nations in the Americas share a unity of experiences (and, by implication, interests) – was praised, criticized, promptly ignored, and subject to periodical revivals.

The criticisms, many of them obvious, were expected. The revivals were generally unsatisfactory – at least in fulfilling the mandate Bolton envisioned: the dilution of nationalist historiography and the “presentation of American History as Western Hemisphere History.”² At the beginning of his essay, Bolton made what seems a commonsense comparison: “European history cannot be learned from books dealing alone with England, or France, or Germany, or Italy, or Russia; nor can American history be adequately presented if confined to Brazil, or Chile, or Mexico, or Canada, or the United States.” Such a comparative approach, as Louis Hartz noted three decades after Bolton, was rare in US historiography, playing “havoc,” as it did, on what Hartz

¹ The address, along with precursors and responses is found in Lewis Hanke, *Do the Americas Have a Common History? A Critique of the Bolton Theory* (New York: Alfred A. Knopf, 1964), pp. 99-100 for the quotation.

² Lewis Hanke, “Introduction,” *Do the Americas Have a Common History?*, p. 18. For revivals and general discussion, see Samuel Truett, “Epics of a Greater America: *Herbert Eugene Bolton's Quest for a Transnational American History*,” in *Interpreting Spanish Colonialism: Empires, Nations, and Legends*, Christopher Schmidt-Nowara and John Nieto-Philips, eds., Albuquerque: University of New Mexico Press, 2005.

described as the “shrinking of past horizons,” represented, on the one hand, by the nativist legacy of Turner and Charles Beard and, on the other, by the in-the-thickets narrowness of social history (Bolton titled a volume that contained a published version of his address, *The Wider Horizons of American History*). Yet, as Hartz argued, such comparative questions could still be limited by the provincialism they sought to transcend.³

In the case of Bolton, it’s easy to point out that imperial, balance-of-power Europe was different from the Americas; it is also easy to point out that Bolton’s universalism seems forced, presenting substantial disparities in power, interests, and experiences as variations on a theme that sets the US as the default standard. Such a critique is today associated with postcolonial studies, yet in 1939 Edmundo O’Gorman, a Mexican historian, drew from Hegel to provincialize Bolton’s (covert) Hegelianism: “by differentiating between a Saxon America and a Hispanic America yet conceiving them as a unified entity, Professor Bolton follows in Hegel’s footsteps. Obviously, differences do exist and there are ample reasons for insisting on the difference – one need not be a Hegelian to perceive such an elemental truth. But what is most interesting is that Hegel, as well as Bolton, sees the difference between the Americas in terms of degree, not of essence. Both of them speak of one America, establishing a principle of international differentiation: Hegel rates them according to their ‘primitivism.’ Bolton according to their ‘importance.’ Both have been influenced by a geographical hallucination. Everything is moving smoothly. . . .”⁴

³ “American Historiography and Comparative Analysis: Further Reflections,” *Comparative Studies in Society and History*, 5; 4 (July 1963): 365-377.

⁴ Edmundo O’Gorman, “Hegel y el moderno panamericanismo,” *Letras de México* 2, no. 8 (1939), translation from Hanke, *A Critique*. O’Gorman is referring to Hegel’s famous discussion of the Americas

Thus Bolton's emerging comparative cosmopolitanism laid out three conventional tracks which have guided much subsequent scholarship: a search for similarities; affirmation and inclusion; rebuke.⁵ Bolton though, in his passing attribution of the rights of the common man to the Mexican Revolution and his faith that such a value was migrating north, hinted at a way beyond these formulations to a more useful conceptualization of greater America, one which maintains the tension of difference within unity while at the same time grasps what is exceptional about the Americas.

The term American exceptionalism usually references two things: first, the fact or belief that the United States has been exempt from the kind of domestic class conflict that has afflicted the development other nations; second, the fact or belief that the United States has been able to project an unprecedented degree of global power free from the kind of direct colonialism and militarism that has defined previous empires.⁶ But in all

in his *Philosophy of History*, and seems to be drawing from an essay by José Ortega y Gasset, "Hegel y América" (translated by Luanne Buchanan and Michael Hoffheimer and published in *Clio* 25;1; 1995, 69-81), which attempts a "more rigorous, a more Hegelian interpretation" than Hegel's "literal meaning," which (for both O'Gorman and Ortega y Gasset) means using Hegel's emphasis on spirit and cultural development to criticize Hegel's environmental determinism.

⁵ Similarities: For Bolton, anticipating FDR's Good Neighbor Policy by a few months and trying to downplay what had yet to be called American exceptionalism, argued that the Americas shared a number of historical experiences, including: European colonialism; exploitation of Native Americans, Africans, and natural resources; social adaptations that resulted from such exploitations; a republican (except for imperial Brazil and, for a shorter time, Mexico), revolutionary heritage; urban-rural dependence; the influence of foreign capital and immigrants; points of geographic similarity (the Amazon compared to the Mississippi); Affirmation: "In the sixteenth century the intruders [English, French; Dutch] merely barked at the Spaniard's heels;" "Till near the end of the eighteenth century, not Boston, not New York, not Charleston, not Quebec but Mexico City was the metropolis of the entire Western Hemisphere;" Rebuke: "These mountain men were exemplars of manifest destiny. They wandered through Mexican lands, sometimes with but more generally without permission, unconscious of their character as unwelcome intruders, or arrogantly resentful of dark skinned people who spoke a foreign tongue and disputed the 'inalienable right of Americans to do as they pleased.'" But what Bolton called the "madness for conquest" was excoriated by abundant use of the passive voice, as in: "When the Republic of Texas was created. . . ." There is of course also a large and established body of scholarship attentive to differential cultural and economic power relations. See, in addition to works cited below, Emily Rosenberg, *Spreading the American Dream: American Economic and Cultural Expansion, 1890-1945*, New York: Hill and Wang, 1982, and *Financial Missionaries to the World: The Politics and Culture of Dollar Diplomacy, 1900-1930*, Cambridge: Harvard University Press, 1999.

⁶ See the sources cited in Michael Kammen, "The Problem of American Exceptionalism: A Reconsideration," *American Quarterly*, Vol. 45, No. 1 (Mar., 1993), pp. 1-43; For debates about American

the debates over what is and isn't distinct about the United States, little discussion has been paid to one variable that can, at least in relation to its global ascendancy, unambiguously be called unique: its relationship with Latin America.

“South America will be to North America,” the *North American Review* wrote in 1821 “what Asia and Africa are to Europe.”⁷ Not quite. Other capitalist world powers - France, Holland and Great Britain – tended to rule over culturally and religiously distinct peoples, in Africa, Asia, and the Middle East. The Anglo and Saxon settlers who colonized North America, by contrast, looked to Iberian America not as an epistemic 'other' but as competitor in a fight to define a set of nominally shared but actually contested ideas and political forms: Christianity, republicanism, liberalism, democracy, sovereignty, rights, and, above all, the very idea of America.

A comparative study could be done to assess if England's relation to its “Celtic fringe,” especially to Ireland and Scotland, produced a similar ideological competition that gave form and content to the latter British Empire.⁸ But in the Americas, extended space (“a hemisphere to itself,” as Thomas Jefferson put it) and time (running from the Elizabethan Black Legend to the neoliberal Washington Consensus) distilled European ideological conflicts and contradictions into purer essences, unprecedented in their generative force. After what Bolton described in singular form as the “American

Exceptionalism in international law prompted by George W. Bush's foreign policy, see Harold Hongju Koh, “On American Exceptionalism,” *Stanford Law Review*, Vol. 55, No. 5 (May, 2003), pp. 1479-1527. Cf. Sean Wilentz, “Against Exceptionalism: Class Consciousness and the American Labor Movement, 1790-1920,” *International Labor and Working Class History*, 26 (1984): 1-24; and Ian Tyrrell, “American Exceptionalism in an Age of International History,” *American Historical Review* 96:4 (1991): 1031-55.

⁷ Review of *Ensayo de la historia civil del Paraguay, Buenos-Ayres, y Tucuman, escrita por el doctor D. Gregorio Funes*, *The North American Review*, Volume 12, 1821, pp. 432-443; p. 435.

⁸ David Armitage, *The Ideological Origins of the British Empire*, Cambridge: Cambridge University Press, 2000; Jane H. Ohlmeyer, “A Laboratory for Empire?: Early Modern Ireland and English Imperialism,” *Ireland and the British Empire*, Kevin Kenny, ed., Oxford: Oxford University Press, 2004; John Mackenzie, “On Scotland and the Empire,” *International History Review*, 15; 4 (1993): 714-739.

Revolution” (which “lasted half a century” and “did not end at Yorktown”) the relationship between the US and the new nations of Spanish America developed a contentious ideological intimacy -- an ongoing “immanent critique” -- unmatched by other comparable hegemon-periphery relations, especially one that would jump scale from the regional to the global level.⁹ The content of the critique changed according to circumstance, but the genre remained consistent: the US has consistently attempted to contain what its captains thought to be the excesses of Latin American republicanism/liberalism; while Latin American nationalists have consistently pointed out the gap that separates US republican/democratic ideals from superpower actions.

Extending our Researches

The shortcomings of Louis Hartz’s 1955 *The Liberal Tradition in America* -- particularly its argument that what made the United States exceptional was its lack of feudalism -- are as well-rehearsed as criticisms of Bolton’s efforts to render US history unexceptional.¹⁰

⁹ “An immanent critique is one which ‘remains within’ what it criticizes. Whereas a ‘transcendent’ critique, a critique from outside, first establishes its own principles, and then uses them as a yardstick by which to criticize other theories, immanent critique starts out from the principles of the work under discussion itself. It uses the internal contradictions of a body of work to criticize that work on its own terms;” Simon Jarvis, *Adorno: A Critical Introduction*, New York: Routledge, 1998, p. 6.

¹⁰ Sean Wilentz, “Commentary: Uses of the Liberal Tradition: Comments on “Still Louis Hartz after All These Years,” *Perspectives on Politics*, 3;1 (2005): 117-120; Hartz, *The Liberal Tradition in America*, New York: Harcourt Brace, 1955, p. 3, attributes his argument to an inversion of Trotsky’s theory of combined and uneven development, tacitly acknowledging that his understanding of the concept “American exceptionalism” owes as much to Trotsky as it does to Tocqueville. The expression itself, not used by Hartz and not at the time of his writing in wide circulation, emerged from Marxist debates of the 1920s and 1930s associated either with Trotskyism (and, in the US, Jay Lovestone) or the popular front. It apparently was first elaborated in English in a report filed by Lovestone in 1927 to the Fifth Convention of the Communist Party USA. See *The Workers Monthly*, Volume 12, Issue 9 (1933), pp. 895-896. In 1929, Stalin gave three speeches exposing the “evils of factionalism and American exceptionalism,” published in 1934 by International Publishers as *Problems of Leninism*; See also Moissaye Joseph Olgin, *Trotskyism: Counter-Revolution in Disguise*, Workers Library, 1935, p. 79; and Max Lerner, *It is Later than You Think: The Need for a Militant Democracy*, Viking Press, 1938, p. 38 (A book Hartz, p. 280, strongly criticizes for denying the exceptional nature of the US and for “lumping American liberalism with European liberalism”). For one of the first uses in the US press, see “Medina Sees End of Red Trial New,” *New York Times*, August 23, 1949, where a judge uses it to question an African-American CP member on trial.

Yet those who consider Hartz a proponent of liberal consensus history miss the rampage that lies just below the surface of superficial accord, the easy way “innocence” yields to conformity and then slides into domestic repression. Nor does one have to accept Hartz’s explanation for this rampage – that US liberalism’s absolute “moral unanimity” blinded itself to itself, generating an “irrational,” or “mass Lockianism,” an “hysteria” founded on the repression of perceived threats “which no other nation in the West has really been able to understand” – to appreciate the prominence of Lockean individualism in formulations of American exceptionalism.¹¹ And by insisting on that exceptionalism, Hartz does help illustrate why it has been so difficult to write a history of greater America: in such histories, Latin America is either mobilized to contest or affirm claims to exceptionalism but rarely used to *explain* such exceptionalism.

Two decades later, the political theorist Michael Rogin built on Hartz argument in his study of Andrew Jackson, arguing that what gave US liberalism its cutting distinction is that it was forged not in a fight against feudalism or revolutionary socialism but against Native Americans.¹² Race violence, Rogin wrote, helped maintain, for a time, sectional

¹¹ Absent an *ancien régime* to fight against, with no aristocracy promoting the “virtues of a public spirited paternalism” nor a threatening socialist or proletarian movement offering alternatives for how to organize society, US liberalism, Hartz argued, was never compelled to move beyond its Lockean adolescence. Since all conflict, from the left or the right, took place within the “implicit moral limits of the liberal tradition,” reform movements inevitably expressed themselves with an unreflexive technocratic pragmatism (“It is only when you take your ethics for granted that all problems emerge as problems of technique”), which itself fed “on the Lockian settlement.” The result was a strange bit of “Hegelian magic,” whereby liberal reform *and* the “mass” or “irrational Lockianism” that is reform’s undoing has been one and the same thing. All the Progressive Louis Brandeis wanted to do was “smash trusts” and start “running the Lockian race all over again,” but this “pathetic hope” was “blasted with an outpouring of liberal irrationalism” (*Liberal Tradition*, p. 223). As to the New Deal, its defensive pragmatism meant its Lockian ethic (“a faith in property, a belief in class unity, a suspicion of too much state power, a hostility to the utopian mood”) was lost even to itself, leaving it vulnerable to its only “real American enemy:” the Right. It’s this self-ignorance, this “innocence,” that, according to Hartz, propels a perpetual cycle of regression, creating a liberalism that “forgets the context” in which it was created “and elevates its own fragmentary ethic into a psychic absolute” (Hartz, “American Historiography,” p. 365).

¹² Rogin, *Fathers and Children: Andrew Jackson and the Subjugation of the American Indian*, New Brunswick: Transaction Publishers, 2009 (originally published in 1975), p. 7; Hartz himself would point to a similar argument, in his 1964 edited *The Founding of New Societies: Studies in the History of the United*

unity and the expropriation of indigenous land capitalized the Jacksonian market revolution. But more important was the way extended Indian War, which began in full with the 1830 Removal Act, allowed Jacksonian nationalism to reconfigure patriarchy on a broader, abstract level, even as commercial expansion was disintegrating the actual productive family unit. The social and psychic dissolution generated by market relations was stemmed by projecting an ideal of a bounded, disciplined, self-restrained, reasoning and propertied male self against an enemy imagined to be wild, unbridled, property-less and unreasonable.¹³ Indians were identified as children, whites as fathers, and eliminationist war, later called genocide, analogized as ‘growing up.’ “Barbarism is to civilization,” Rogin quoted Francis Parkman’s 1855 *History of the Conspiracy of Pontiac*, “as childhood is to maturity.”

To illustrate the centrality of race in the formation of US nationalism, Rogin quoted James Madison admission that “next to the case of the black race within our

States, Latin America, South Africa, Canada, and Australia, New York: Harcourt, Brace & World, Inc., p. 95, which believed it “obvious that the violence in the external elimination of the Indian permitted a heightened degree of peace within the American community.” There are two non-exclusive ways to think about this permission. The first is that the domination associated with Lockean liberalism -- either as it was textually formulated or put into practice “in the wild woods and uncultivated waste of America” – related to Indian land dispossession, along with African chattel slavery and patriarchy, is not incidental or hypocritical but fundamental: the very idea of freedom based on one’s inalienable right to one’s labor and, by extension, one’s property, in this view, necessitated the idea (and practice) of unfreedom. The second is that the experiential violence involved in dispossessing Native Americans, controlling women, and subjugating Africans cemented ideological and psychological bonds. Cf. Uday Mehta, “Liberal Strategies of Exclusion,” *Politics and Society* 18 no.4 (1990):427-541, and Robert A. Williams, *The American Indian in Western Legal Thought: The Discourses of Conquest*, New York: Oxford University Press, 1992, pp. 246-248.

¹³ Rogin finds in Jackson’s Indian wars a perfect circle of cause and effect: “Jackson’s expropriation of Indian land, as general and President, contributed heavily to the speculative and entrepreneurial activities of his age. These activities, which Jacksonian politicians themselves promoted,” both accelerating the commercial relations that corroded republican virtue and patriarchal authority and creating the two “monsters that Jacksonian politics sought to slay:” the “mother” bank and the Indian problem. “Jacksonian Democracy,” Rogin wrote, “defined itself against enemies Jackson’s primitive accumulation helped bring into being;” *Fathers and Children*, pp. xxvii. Put another way, concrete violence hastened abstract violence, which was healed by more concrete violence, creating a perpetual feedback loop which, for Rogin, building on Hartz’s observations on the inability of US liberalism to evolve, helps explain the inescapability of race, and of the recurring tendency to racial demonization, in American culture.

bosom, that of the red on our borders is the problem most baffling to the policy of our country.” I’d like here to further extend Rogin’s extension of Hartz and add another color to the code that helps decipher American exceptionalism: the multi-hued brown to the south (and west).

The Madison quotation, from an 1826 correspondence discussing a published essay “concerning the Indians,” has been, following Rogin, frequently cited in much contemporary scholarship on race and US nationalism. But no one has noticed (at least according to Google Books) what comes next in the original text, where Madison suggests that the best way of “estimating the susceptibilities of the Indian character, and devising the treatment best suited to it” would be to study “the red race in the regions south of us.” The former president was aware of deliberations then taking place in Spanish America over the question of citizenship (the US Congress had by this point been debating for over a year if it would send delegates to Simón Bolívar’s Panama Congress, which convened later that year) and he thought the US could profit from learning more about how the new nations of America attended to the issue.¹⁴ “Examples have there been furnished,” Madison wrote of South American Indians, “of gradations from the most savage state to the advanced ones in Mexico and Peru.”

The descendents of these last, though retaining their physical features, are understood to constitute an integral part of the organized population. But we have not sufficiently extended our researches to their precise condition, political, legal, social, intellectual, moral; and with respect to the inferior tribes adjoining a white

¹⁴ Madison’s letter was composed in February, a few months before the ratification of the Bolivia’s republican constitution, which formally declared Indians and slaves to be citizens, and the opening of the Congress of Panama, which had on its agenda a discussion of how best to abolish slavery throughout the Americas.

population, or comprehended within its limits, their actual condition, and the policy influencing it, is still less known to us.¹⁵

Similarly, the *North American Review* essay, cited above, imagining future US relations with Spanish America -- written by the review's editor, Edward Everett, a professor of Greek literature at Harvard and Unitarian pastor -- engaged in an extensive discussion of how the new nations were incorporating "Indians civilized or un-reclaimed, in different degrees of mixed blood and of Africans and their descendants, or negroes and mulattoes." After listing various racial permutations recognized under Spanish colonialism – *mestizo*; *quarteroon*; *octavoons*; *puchuela* (this last, according to cited authority, "wholly white, and cannot be distinguished from the European") – Everett concluded that he couldn't "see upon what principles of human nature any high national spirit, or even any ordinary political concert can exist under such heterogeneous and odious confusions of Spanish bigotry and indolence, with savage barbarity and African stupidity."¹⁶ Spanish America, then, served as a similar role that Rogin attributes to race, allowing US policy makers and intellectuals to measure and outfit their own assumptions related to republican citizenship, governance, and international law – as well as the implicit ideas of property rights that underwrote these assumptions.

Even before Jamestown and the Puritan settlement of New England, the Elizabethan imagination was fired, and sharpened, in relation to Spain. In the Americas

¹⁵ *Letters and Other Writings of James Madison: 1816-1828*, vol 3, R. Worthington, 1884, p. 516; United States Congress, Abridgment of the Debates of Congress, from 1789 to 1856: March 13, 1826-Feb. 6, 1828; Volume 9, D. Appleton, 1858; Jeffrey Malanson, "The Congressional Debate over U.S. Participation in the Congress of Panama, 1825–1826: Washington's Farewell Address, Monroe's Doctrine, and the Fundamental Principles of U.S. Foreign Policy," *Diplomatic History*, 30:5 (2006): 813-838.

¹⁶ Review of *Ensayo de la historia civil del Paraguay, Buenos-Ayres, y Tucuman, escrita por el doctor D. Gregorio Funes*, *The North American Review*, Volume 12, 1821, pp. 432-443; p. 438.

that engagement grew in importance as other European empires were eventually forced off the New World field and secularized as Christian schism and the Black Legend gave way to the age of revolutions and republican contestation. From 1818 to 1848, territorial expansion into Florida, Spanish Louisiana, Texas, and Mexico (and projected expansion into the Caribbean) was intertwined, practically, legally, and ideologically, with the same “baffling” policy issues that vexed Madison concerning Native American elimination and the intensification of chattel slavery.¹⁷

Then came the Mexican War, which Rogin, elsewhere, defined as the “American 1848,” as the performing an ideological function inverse to what contemporaneous social revolutions did for Europe. There, class conflict exploded the embedded tension within political liberalism, between civil society and the state, private property and public virtue, bourgeois and citizen, to reveal the exploitation of daily life. In contrast, expansion and war allowed these tensions in the US to remain muted.¹⁸ The fallout from the Mexican War, by accelerating the sectional crisis leading to Civil War, did reveal the US’s own “social question;” yet only spasmodically so, as ongoing movement outward allowed for its continued deflection.¹⁹ Latin America, as I’ll argue below, has been something like

¹⁷ Brian Loveman’s forthcoming (June 2010) *No Higher Law: American Foreign Policy and the Western Hemisphere since 1776*, provides the most comprehensive account of how US hemispheric engagement shaped its foreign policy. In particular, the initial stretch of expansionist diplomacy, running through Florida, Spanish Louisiana, the Caribbean, Texas, and Mexico, gave shape to military tactics and justificatory maneuvers that would shape subsequent diplomacy. And in *Empire’s Workshop: The United States, Latin America, and the Rise of the New Imperialism* (Metropolitan 2005), I’ve argued that from the Good Neighbor Policy to Ronald Reagan’s Central American crusades in the 1980s, Washington’s policy toward its southern neighbors served as a synthesizer of domestic ideas and political interests, helping emerging governing coalitions to form a coherent worldview, often from a hodgepodge of potentially contradictory ideas.

¹⁸ *Subversive Genealogy: The Politics and Art of Herman Melville*, Berkeley: University of California Press, 1985, p. 20.

¹⁹ Merle Curti, “Young America,” *The American Historical Review*, Vol. 32, No. 1 (Oct., 1926), pp. 34-55, points out that it was after the Mexican War when what might be called exemplary exceptionalism – the idea that the US was a model to be emulated – began to transform into actionable exceptionalism, that is, interventionism.

the US's perpetual 1848; its seemingly chronic class and race conflict, as well as its distinct social rights and sovereignty tradition that arose out of that conflict, serving as the shadow side of a Lockean exceptionalism.²⁰

After the Civil War, Spanish America (which in the 1850s many white abolitionists and people of color took as an inspiration, since many countries had ended slavery decades earlier) had become seen by many as a place to naturally extend southern reconstruction.²¹ As early as 1820, Henry Clay predicted that “in relation to South America the people of the United States will occupy the same position as the people of New England do to the rest of the United States. Our enterprise, industry, and habits of economy, will give us the advantage in any competition which South American may sustain with us.”²² So Mexico, in the decades after Appomattox, became, as John Mason Hart has shown, Washington's and New York's first sustained nation-building project, an endeavor which would continue after 1898 in Cuba, Haiti, the Dominican Republic,

²⁰ See also Timothy Mason Roberts, *Distant Revolutions: 1848 and the Challenge to American Exceptionalism*, University of Virginia Press, 2009, which describes how US opinion makers, intellectuals and politicians measured and confirmed the correctness of the moderation of the US's revolutionary tradition in contrast to the violence provoked either by European revolutionaries who didn't know where to stop or *ancien régime* reactionaries who wouldn't yield. Latin America as played this role since its own independence wars were judged to be lacking moderation by the US founding fathers. Exactly a century after Europe's 1848, for example, the uprising in Bogotá, Colombia, following the murder of Jorge Gaitán, allowed for self-definition vis revolutionary excess elsewhere. “What Really Went on at Bogotá,” *Christian Science Monitor*, May 3, 1948, compares Gaitán to both Henry Wallace (“Señor Gaitán,” like Wallace, “constantly and vehemently told the masses that 16 years of Liberal administrations had not brought them what they could rightfully expect”) and Huey Long (whose “elimination did not provoke such destruction in Baton Rouge or New Orleans”); the writer blamed the riot on liberals who irresponsibly supported Gaitanismo, thus raising unrealizable expectations, and the “strong-arm reaction of the upper classes,” whose “islands of well-being look like bastilles to the undernourished workers.”

²¹ For Mexico as an imagined and real site of freedom for free people of color in New Orleans, see Mary Niall Mitchell, *Raising Freedom's Child: Black Children and Visions of the Future after Slavery*, New York: New York University Press, 2008; cf. Sarah Cornell, “Citizens of Nowhere: Fugitive Slaves in Mexico, 1833-1862,” in *Unshackled Spaces: Fugitives from Slavery and Maroon Communities in the Americas*, ed. Barbara Krauthamer, New Haven: Yale University Press, forthcoming.

²² Calvin Colton, ed. *The Works of Henry Clay*, vol. 5, Barnes & Burr, 1863, p. 485.

Nicaragua, and Panama.²³ And with the frontier closed, and the trope of maturity/immaturity that had been imposed on stateless, “property-less” Indians no longer made vital by war, Latin American nations became the new irresponsibles.²⁴ In the run-up to the 1919 Paris Peace conference, for example, one of Woodrow Wilson’s experts in the Latin American division of the State Department drafted a classification schema that ranked countries “as mature, immature or criminal” and comprised a series of tests “to determine whether they are yet read to be allowed to conduct their own affairs in a world to be governed by reason.” “How many Cubas are there?” the document wondered.²⁵

Yet where competition in the economic sphere was as one-sided as Clay imagined, Latin America proved to be much better matched in the ideological arena. It was easy to disparage (if not extinguish) the defeated Confederacy's manorialism and belief in white supremacy. Yet throughout the twentieth century, US diplomats and intellectuals found themselves in competition with Latin American nationalists, themselves honed in struggle against their own agrarian lords, over claims to who best represented the modern world.

Liberal Traditions in the Americas

“I hate the dons; I would delight to see Mexico reduced,” wrote Andrew Jackson, congealing two centuries of Black Legend thought to explain his involvement in Aaron

²³ John Mason Hart, *Empire and Revolution: The Americans in Mexico since the Civil War*. Berkeley, University of California Press. 2002.

²⁴ Cf. Mary A. Renda, *Taking Haiti: Military Occupation and the Culture of U.S. Imperialism, 1915-1940*, Chapel Hill: University of North Carolina, 2001, pp. 89-130; 333.

²⁵ Mark T. Gilderhus, *Pan American Visions: Woodrow Wilson in the Western Hemisphere, 1913-1921*, Tucson: University of Arizona, 1986, pp.134-135.

Burr's failed 1806 effort to break Mexico from Spain.²⁶ But just seven years later, Thomas Jefferson issued the first full expression, in the US at least, of what Arthur Whitaker has called the Western Hemisphere Idea, stating that the Americas have a common and "separate system of interests, which must not be subordinated to those of Europe."²⁷ Recently, comparative histories of the Americas have identified "ambivalence," rather than simple "Hispanophobia," as giving shape to the Black Legend, which would help to explain the seemingly easy progression from the kind of opinions expressed by Jackson to those of Jefferson. Anglo settlers from Jamestown to Plymouth Bay might have defined themselves against the cruel, avaricious, corrupt, decadent, superstitious, indolent papists. Yet they also admired their resolve and daring, the quick way they subjugated a continent and raised an empire. The "worthy Ferdinando Courtus," wrote John Smith, had "scarce three hundred Spaniards to conquer the great Citie of Mexico." "It would bee an historie of a large volume,' he wrote, to "recite the adventures of the Spaniards."²⁸

²⁶The first report from Jamestown in 1607 to London warned of the "devouring Spaniard" and "his ravenous hands;" further north, second-generation Puritan divines like Cotton Mather and Samuel Sewall were fairly obsessed with Mexico and the Spanish Caribbean. Sewall, one of the judges at the Salem Witch trials, remained convinced to the end of his life that "there was but one New-Jerusalem" and that was Mexico City, where everything "amiss is to be thorowly Reformed." Catching sight of a comet in the night sky, he imagined it striking the Spanish colonial metropolis and sparking a "revolution." "I have long prayed for Mexico," he wrote in his diary, "that God would open the Mexican fountain;" *Collections of the Massachusetts Historical Society*, Volume Two, Sixth Series, Boston: 1888, p. 181. For Jackson's quote, along with a remark by another participant in the conspiracy Spanish Louisiana was being "revolutionized;" see Henry Stephens Randall, *The life of Thomas Jefferson*, Volume 3, J. B. Lippincott, 1871, p. 181.

²⁷ *The Western Hemisphere Idea: Its Rise and Decline*, Ithaca: Cornell University Press, 1954.

²⁸ For "ambivalence" contrasted with "Hispanophobia," along with Smith's appreciation of the Spaniards, see Eric Griffin, "The Specter of Spain in John Smith's Colonial Writing," in John Wood Sweet and Robert Appelbaum, eds., *Envisioning an English Empire: Jamestown and the Making of the North Atlantic World*, University of Pennsylvania Press, 2005, pp 111; Jorge Cañizares-Esguerra, *Puritan Conquistadors: Iberianizing the Atlantic, 1500-1700*. Stanford: Stanford University Press, 2006, contests a too rigid medieval/modern divide that supposedly separated sixteenth-century Spanish colonists from seventeenth-century Anglos; both understood the New World to be enchanted, populated with satanic minions, and their mission providential. "Ambivalence" was often expressed by admiration. In the same cold New England February diary entry where Sewall elaborated what might have been the first instance of the Shock

Historians tend to locate the source of this “ambivalence” in imperial competition between Spain and England, intensified after US independence by the threat of European restoration, which led statesmen like Jefferson to imagine common cause with American nations despite his belief that centuries of Spanish rule “have enchained their mind, have kept them in the ignorance of children, and as incapable of self-government as children.”²⁹ “History,” Jefferson wrote, “furnishes no example of a priest-ridden people maintaining a free civil government.” But the ideological sources of this attraction/repulsion also need to be specified, and grounded in the social experience that distinguished Spanish and Anglo colonialism in the Americas: fundamentally, it comprised, by the time of the “American Revolution,” distinct republican and liberal traditions, each with discrete conceptions of citizenship, sovereignty, and international law.³⁰

Doctrine in America, he also mentioned, with a bit of envy, a rumor confirming Mexico City’s “magnificence:” it boasted “1500 Coaches drawn with Mules.” And nearly a century before Jefferson imagined sharing the hemisphere with independent Spanish America, an Anglo geographer, Daniel Coxe, hoped, once France was pushed out, Britain could share North America with Spain. “Perhaps I may not be in the wrong to suggest that the Spaniards will readily divide this country with us,” he wrote, “and surrender all their pretensions to whatsoever lie eastward of the Meschacebe” – that is, the Mississippi, which, Coxe thought, “nature seeming to have formed it [as a dividing line] almost purposefully for that end.” Reflecting the same kind of admiration identified in Smith and other Anglo colonists, Coxe held up Spain as an inspiration for what Britain could achieve on its half of North America: “Perhaps I maybe look’d upon as a visionary, who represents such advantages may accrue to a country not yet by us fully possess’d or Planted; But it will not seem so ridiculous, or incredulous to them, that consider the wonderful Progress the Spaniards made, who in little above thirty years after the discovery of the Empire of Mexico Conquered that, Peru, and part of Chile, from whence they bring immense treasures unto Old Spain. Their beginnings were ten times more contemptible and improbable” than would have predicted success; Daniel Coxe, *A description of the English Province of Carolina, by the Spaniards called Florida, and by the French La Louisiana; as also of the Great and Famous River Meschacebe or Missisipi*. . . . London, 1722, np.

²⁹ Bernard Mayo, *Jefferson Himself: The Personal Narrative of a Many-Sided American*, University of Virginia Press, 1998, p. 302.

³⁰ See Anthony Pagden’s discussion of John Dryden 1665 play, “The Indian Emperour, or the Conquest of Mexico by the Spaniards, being the Sequel of *The Indian Queen*,” “The Savage Critic: Some European Images of the Primitive,” *The Yearbook of English Studies*, Vol. 13 (1983), pp. 32-45, for an example of how pre-Lockean (or pre-*Second Treatise*) Anglo notions of natural rights were elaborated in relation to fictional accounts of the Spanish conquest of Mexico. See also Pagden’s *European Encounters with the New World: From Renaissance to Romanticism*, New Haven: Yale University Press, 1994.

By the time of their respective revolutions, both US and Spanish American independence politicians and intellectuals shared an aterritorial, natural-rights notion of sovereignty – rooted in the idea that the Americas represented a rejuvenating force in world history.³¹ But two key differences distinguished Spanish from Anglo republicanism.

First, in terms of domestic governance, Spanish Americans emphasized the active role of the state in promoting virtuous citizenship, an activism that contrasted with both Lockean ideas that privileged individual rights and Madisonian restraints that imagined the state serving primarily as a protective shield around an independent commercial civil society. In his study of Spanish imperialism and political theory, Anthony Pagden writes that Simón Bolívar appreciated the vitality of the kind of civil society that drove the federal expansion of the US but didn't believe the conditions for it existed in Spanish America.³² Republican liberty in Spanish America, thought Bolívar, could not be

³¹ Whitaker highlights Jefferson's phrase "America *has* a separate hemisphere" to make this point, with the use of the possessive *has* rather than the simple verb *is* creating a "personified" continent, endowing "America" with "supernatural" – that is, aterritorial, or supra-territorial – qualities; *The Western Hemisphere Idea*, p. 30; As to Spanish Americans, in his invitation to attend the 1826 Panama Congress, Simón Bolívar imagined the Central American isthmus as serving as the future capital of the world. He wrote: "It seems that if the world should have to choose its capital, the Isthmus of Panama would be selected for this grand destiny, located as it is in the center of the globe, having on one side Asia, and on the other Africa and Europe. . . . When, after a hundred centuries, posterity shall search for the origin of our public law, and shall remember the compacts that solidified its destiny, they will finger with respect the protocols of the Isthmus. In them they will find the plan of the first alliances that shall sketch the mark of our relations with the universe. What, then, shall be the Isthmus of Corinth compared with that of Panama?" Similar notions of exceptionalism ran through the writings of South American independence leaders, from Francisco de Miranda's 1793 "Letter to South Americans," the 1811 "Declaration of Rights of the People of Chile," and the Congress of the United Provinces Río de la Plata's 1816 "Manifiesto Directed to all Nations." Cf. Stewart Sutley, "The Revitalization of United States Aterritorial International Logic: The World before and After the 1989 Invasion of Panama," *Canadian Journal of Political Science*, 15:3 (September 1992): 435-462.

³² This distinction was highlighted in Edward Everett's 1821 *North American Review Essay*, underscoring the point that US independence intellectuals defined and measured their constituted society against Spanish America: "It must be remembered two, before any good omen is drawn from the analogy of our revolution, that political liberty or independence on a foreign government is distinct from social liberty, or the individual independence of the members, or the classes of society. It is this latter, which is the main element and substance of liberty; and without this, the question of independence of a foreign crown is one

cultivated by procedural institutions protecting inherent rights (much less property rights) but by a strong executive presiding over a moral state that would “make men good, and consequently happy.” The goal of constituted societies was, Bolívar wrote, to produce “the greatest possible sum of happiness, the greatest social security, and the highest degree of political stability.”³³ This distinction between Anglo and Spanish-American republicanism was summed up succinctly by Francisco de Miranda, during his 1784 tour of New England, when he asked Samuel Adams “how is it that in a democracy the foundation of which was virtue no position whatever was indicated for it, and on the contrary all the dignities and the power were given to property, which is precisely the poison of a similar republic?”³⁴

Some intellectual historians have identified the influence of the French-rights tradition in such a question, which envisioned the state promoting a series of positive rights, like education and welfare; others link early Spanish American republicanism to

of little moment We, in North America, succeeded in achieving our political independence, because we had already the social and civil liberty, which is its best foundation. But had the population of these colonies consisted of a corrupt and mixed race of various shades and sorts of men; had the feudal institutions, the seignories, and the services of the Gothic ages, divided the population into a wealthy aristocracy and a needy peasantry, not all of our provincial congresses, nor all the fleets and armies of Rochambeau and de Grasse [a reference to the essay's argument that the US should not provide military aid to Spanish republicans], could have made us independent: nor if they could, would the independence have been worth having.”

³³ Anthony Pagden, *Spanish Imperialism and the Political Imagination: Studies in European and Spanish-American Social and Political Theory 1513-1830*, New Haven: Yale University Press, 1998, 133-153; Bolívar: “If there is any just violence it is that which is employed in making men good, and in consequence, free.”

³⁴ Francisco de Miranda, *The New Democracy in America: Travels of Francisco de Miranda in the United States, 1783-84*, translated by Judson P. Wood; edited by John S. Ezell, Norman: University of Oklahoma Press, 1963, p. 163. Miranda didn't record Adams' response in his travel diary but his question opens to the very complicated issue of the distinction between what Benjamin Constant described, nearly contemporaneously, as the “liberty of the ancients compared with that of the moderns” and Isaiah Berlin, later, would call negative and positive liberty. In both the modern and negative category, the self-interest of private man exists, independently in civil society, in balance with the virtue of public citizen; in liberty's ancient and positive varieties, the former is subordinated to the latter. See Pagden, *Spanish Imperialism*, pp. 142-144; 151-153, as these categories relate to Bolívar's thought, which Pagden characterizes as a muddled amalgam of ancient and modern republicanism. For Karl Marx, the tension between citizen and bourgeois, state and civil society – what Rogin highlights in his discussion of the “American 1848” -- form the heart of capitalism's ideological contradiction. See “On the Jewish Question,” in *Writings of the Young Marx on Philosophy and Society*, translated by Loyd David Easton, Hackett Publishing, 1997.

Catholic monism, which imparted both a pessimistic and corporatist world view to the region's independence leaders who were "unable or unwilling to make a distinction between external conduct and the goods of the soul," as intellectual historian Glen Dealy wrote in 1968. The constitutions they produced, Dealy argued, reflected the "conviction that only the morally good man could be a good citizen They could not perceive politics as the satisfaction of interests in the style of Locke. Politics to them was the achievement of the common good. And this, in the tradition of Aquinas, had no automatic connection with private interest."³⁵

Whatever the philosophical origins of this distinction between Anglo Lockeanism and Hispanic Thomism, it was also deeply rooted in the social history that distinguished British from Spanish colonialism in the Americas as related to the subjugation of Native Americans. In the history of the former, the genocide was frontloaded, with the catastrophic violence of the conquest forcing a revitalization of pre-Lockean rational natural law theory – associated, indeed, primarily with Thomas Aquinas -- by sixteenth-century Spanish theologians and priests concerning the souls and minds of Indians.³⁶

³⁵ Over the last half century, this distinction between Spanish America's "monistic" republicanism and US liberalism tended to be depicted in wholly negative terms by US social scientists and historians, contributing to the large literature first on modernization and then on "transitions to democracy:" "Spanish Americas are still locked in a death-struggle with their past," concluded one such 1969 essay, "it is as if Spanish American have reversed the Hegelian dialectic and have moved from synthesis to antithesis to hypothesis;" Donald E. Worcester, "The Spanish American Past – Enemy of Change," *Journal of Inter-American Studies*, Vol. 11, No. 1 (Jan., 1969), pp. 66-75. p. 75. More recently, legal theorists have appreciated the influence of these constitutions on the development of both human rights and social rights. See Paolo G. Carozza, "From Conquest to Constitutions: Retrieving a Latin American Tradition of the Idea of Human Rights," *Human Rights Quarterly*, 25;2 (May 2003): 281-313. For the quote, see "Prolegomena on the Spanish American Political Tradition," *Hispanic American Historical Review*, 48: 1 (Feb 1968): 37-58, pp. 43-44. But for a rare essay arguing for the influence of Locke on Spanish American independence, see Hernán Rodríguez, "John Locke en el Rio de la Plata: presencia de su filosofía en el pensamiento animador de la Revolucion de Mayo" *Anuario del Instituto de Investigaciones Historicas* (Universidad Nacional del Litoral, Facultad de Filosofía, Letras y Ciencias de la Educación) 3 (1958):41-80.

³⁶ Martin van Gelderen, "Vitoria, Grotius and Human Rights: The Early Experience of Colonialism in Spanish and Dutch Political Thought," in Wolfgang Schmale, ed. *Human Rights and Cultural Diversity: Europe, Arabic-Islamic World, Africa, China*, Goldbach, Germany: Keip Publishers, 1993; Quentin Skinner, *The Foundations of Modern Political Thought: Volume 2: The Age of Reformation*, Cambridge:

These debates were followed by the creation of a highly centralized colonial state, in which Native Americans played a central role, as Madison put it, the “political, legal, social, intellectual, moral” and economic construction of Hispanic modernity. Race-based hierarchies, primarily enforced through economics and politics, continued after independence. Ideology too played a key role, as notions of progress, honor, and hygiene were used to marginalize large numbers of potential citizens. But, unlike the rigid, formally exclusive racialism at play in the US, race-thinking in Latin America both made possible imagined notions of, again drawing on Madisonian adjectives, “adjoining” or “comprehended” citizenship and produced powerful countervailing radical republican and democratic movements and ideologies, such as, for one example, the anti-racist nationalism of the Cuba’s late nineteenth-century independence movement.³⁷

In contrast, in Anglo North America, notwithstanding the race wars that accompanied initial settlement, sustained war against Native Americans was largely backloaded, taking place mostly and definitively in the nineteenth century. In Spanish America, debates about how best to turn Indians into citizens, however hypocritical and premised on cultural erasure, played a central role in the formation of nineteenth-century republican nationalism; in the US, eliminationism underwrote US nationalism.

Acknowledging the ideological centrality of frontier violence in generating and regenerating nationalism, Indians themselves were *relatively* peripheral to the Anglo

Cambridge University Press, 1978. pp. 135-182; Robert Williams, *The American Indian in Western Legal Thought: The Discourses of Conquest*, New York: Oxford University Press, 1992. See also Stuart B. Schwartz, *All Can Be Saved: Religious Tolerance and Salvation in the Iberian Atlantic World*, New Haven: Yale University Press, 2009, for the religious roots of pluralism and tolerance.

³⁷ See Peter Blanchard, “Pan Americanism and Slavery in the Era of Latin American Independence,” in *Beyond the Ideal: Pan Americanism in Inter-American Affairs*, David Sheinin, ed. (Westport: Praeger, 2000), for a survey of abolition and citizenship in the early decades of Spanish American independence. See Ada Ferrer, *Insurgent Cuba: Race, Nation, and Revolution, 1868-1898*, Chapel Hill: University of North Carolina Press, 1999, for the emergence of non-race based nationalism, rooted in revolutionary participation, during Cuba’s long war for independence.

colonial project, at least compared with the keystone role they played in Spanish colonialism.³⁸ As such, the kind of moral debates associated with Bartolomé de las Casas and the jurists and theologians associated with the Universidad de Salamanca were avoided. There was often outrage, and frequent calls for reform, yet the repression of Native Americans under British rule did not prompt the kind of wholesale legal and philosophical reflection it did in Spain. “To preach the Gospell to a nation conquered, and to set their soules at liberty, when we have brought their bodies to slaverie,” wrote London’s Council of Virginia in 1610, dismissive of the abstraction not the practice of the Spanish conquest, “Let the divines of Salamanca, discusse that question how the possessor of the west Indies first destroyed, and then instructed.”³⁹

Anglo violence against Native Americans did generate political debate and legal revision, but nearly exclusively in negative form – that is, how to justify it.⁴⁰ In the realm of domestic law, for instance, dispossession of Native Americans contributed to Lockean principles of property rights, which, once formulated, were then applied to further dispossession, contributing to the “Americanization of the law of real property.”⁴¹ In the

³⁸ To be clear, I’m not arguing that Native Americans were not economic, politically, or ideological important to Anglo colonialism. For the distinction I’m suggesting, compare Steve Stern’s *Peru’s Indian peoples and the Challenge of Spanish Conquest: Huamanga to 1640*, Madison: University of Wisconsin, 1993, to Richard White’s *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650-1815*, Cambridge: Cambridge University Press, 1991, two unintentionally complimentary studies which, if read together, provide a very useful framework for a comparative social history of the colonial-Native American relations in the Americas.

³⁹ Griffin, “The Specter of Spain in John Smith’s Colonial Writing,” p. 126.

⁴⁰ Robert Williams, *The American Indian in Western Legal Thought: The Discourses of Conquest*, New York: Oxford University Press, 1992. See Jill Lapore, *The Name of War: King Philip’s War and the Origins of American Identity*, New York: Knopf, 1998, pp. 158-167, for how early colonial war reshaped international norms. As to the objection of one dissenter against the practice of selling defeated Native Americans into slavery, Lapore writes that his “argument was essentially a moral protest and, in that regard, entirely singular.” (159). Cf. Patrick Griffin, *American Leviathan: Empire, Nation, and Revolutionary Frontier*, New York: Hill and Wang, 2007; Peter Silver, *Our Savage Neighbors: How Indian War Transformed Early America*, New York: Norton, 2007; and also the citations above on the importance of Indian dispossession to the creation of US property law.

⁴¹ Beyond indigenous dispossession’s importance to the formation of national ideology broadly conceived, scholars have linked expropriation, justified in explicitly Lockean terms well into the late nineteenth

arena of international politics, Andrew Jackson's Indians wars in Florida and Louisiana, as Brian Loveman demonstrates in his forthcoming, *No Higher Law*, created a set of diplomatic justifications for military interventions that would continue to be invoked to this day.⁴² In the intellectual sphere, both Thomas Jefferson and Simón Bolívar believed that they inherited their respective Indians problems from Old World colonialism. Yet it is one thing to advocate for a strong, virtuous state that could overcome the dead weight of Spain and transform Indians into citizens; and quite another to blame London for inciting Indians to "take up the hatchet against us" which "will oblige us now to pursue them to extermination."⁴³

The second, related, difference distinguishing Spanish from Anglo republicanism concerns international law. Spanish American republics were born into confederation, confirmed, at the time of independence, by a general acceptance of colonial

century, to the creation of US property law. The quote comes from legal theorist Howard Berman, who focuses on the Marshall court's key *Fletcher v. Peck* (1810) and *Johnson v. McIntosh* (1823) decisions in "The Concept of Aboriginal Rights in the Early History of the United States," *Buffalo Law Review* (27), 1978, 637-67. See also Stuart Banner, *How the Indians Lost their Land: Law and Power on the Frontier*, Harvard: Harvard University Press, 2005, p. 152; Tim Alan Garrison, *The Legal Ideology of Removal: The Southern Judiciary and the Sovereignty of Native American Nations*, Athens: University of Georgia Press, 2009, p. 94; See also Priscilla Wald, *Constituting Americans: Cultural Anxiety and Narrative Form*, Durham: Duke University Press, 1995, for an analysis that focuses on the ideological and practical dispossession of "appropriative liberalism" within the US legal system in relation to Native Americans. See also John Bulkley, "An Inquiry into the Right of the Aboriginal Natives to the Land in America," in Roger Wolcott, editor, *Poetical Meditations*, New London, 1726, which extensively cites Locke to argue that Indians can not enjoy property rights nor constitute a political society. As late as 1868, Buckley, as proxy for Locke, was being cited in debates over how to define property law in New York's constitution. See *Proceedings and debates of the Constitutional convention of the state of New York, held in 1867 and 1868 in the city of Albany*, volume 5, Weed, Parsons, 1868, p. 3446.

⁴² *No Higher Law: American Foreign Policy and the Western Hemisphere since 1776*, Chapel Hill: University of North Carolina Press, forthcoming.

⁴³ That Jefferson made these remarks in the same 1813 letter to Alexander Von Humboldt where he first enunciated the "Western Hemisphere Idea" illustrates how the realization of the New World and the break with the Old was imagined in relation to the destruction of Native Americans. And that Jefferson here likewise offsets republicanism against the "Anglo-mercantile cupidity" and "two-penny interest" which motivated the English to incite the Indians illustrates how Anglo New World virtue, absent a positivist vision of the kind Miranda discussions with Adams, was generated nearly exclusively in negative terms by the suppression of perceived enemies. Helmut de Terra, "Alexander von Humboldt's Correspondence with Jefferson, Madison, and Gallatin," *Proceedings of the American Philosophical Society*, Vol. 103, No. 6, (Dec. 15, 1959), pp. 783-806; pp793-794.

administrative borders as the limits of the new nation-states. The legal doctrine which formalized this acceptance -- *uti possidetis* – was unprecedented in the accepted international law of the time. The US, in contrast, was conceived into territorial expansion, a birthright it fully claimed and theorized, through the mutually supporting Lockean notions of dominion and property, which justified the drive into the “wild woods and uncultivated waste” of the west, and Madisonian ideas of federal expansion, meant to dilute the factional passions that arise from a civil society founded on those property rights.⁴⁴

What emerged, then, in Spanish America and the US were almost mirror-opposite principles when it came to governance and international law. In the former, by the early twentieth century, particularly after the 1910 Mexican Revolution, Thomist republicanism had evolved into a series of constitutions that sought to balance social and individual rights; whatever the negative consequences of efforts to institutionally enforce virtue (modernization theorists generally blame it for the region’s seemingly chronic reversion to instability, authoritarianism, and populism), legal theorists now credit Latin America with being one of the major contributors to social and economic rights enshrined in postwar international charters like the Universal Declaration of Human Rights.⁴⁵ Latin American jurists and diplomats advanced similar normative notions in the international sphere, particularly in their insistence that interdependence rather than realpolitik rivalry should form the basis of diplomacy. They believed that the Americas embodied, in the words of the Chilean legal theorist Alejandro Alvarez, “principles that were quite

⁴⁴ Cass Sunstein, “The Enlarged Republic – Then and Now,” *New York Review of Books*, March 26, 2009.

⁴⁵ See Paolo G. Carozza, “From Conquest to Constitutions: Retrieving a Latin American Tradition of the Idea of Human Rights,” *Human Rights Quarterly*, 25;2 (May 2003): 281-313; Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, New York: Random House, 2001.

opposed to those dominating the Old World, especially the *republican, constitutional, democratic, liberal and equal régime*,” which had given rise to a new kind of international law – what Alvarez called the Bolívar Doctrine – aspired to, if never quite realized, in a series of international conferences held by Spanish American countries throughout the nineteenth century.⁴⁶ Importantly though, despite this normative conception of international relations, Latin American nations, largely in response to an expansionist US but also continuing French and British maneuvers, increased their commitment to territorial sovereignty, as represented by *uti possidetis*.

Put crudely, Latin America advanced a *relative* ideal of individual rights, balanced against the common good, and an *absolute* ideal of national sovereignty.⁴⁷ In

⁴⁶ Alvarez, *The Monroe Doctrine*, p. 26. In addition to above discussions, the following is a partial list of Spanish American conferences (prior to the founding of the Pan American Union) and declarations that elaborated many of the norms that would be accepted as universal values – if not practices – in Paris:
1811: “Project of a Declaration of Rights of the People of Chile”
1826 Panama Congress: “Treaty of Union, League, and Perpetual Confederation”
1847-48 Congress of Lima: “Treaty of Confederation” between New Granada, Ecuador, Peru, Bolivia, and Chile”
1856 Santiago, Chile, Conference: “Continental Treaty,” signed by Chile, Ecuador, and Peru
1864-65 Congress of Lima: “Pact of Union and Defensive Alliance”

⁴⁷ There was of course a tension between the idea of multilateral interdependence and the defense of absolute sovereignty and nonintervention, which Latin American jurists tried to resolve by proposing the establishment of pan-American institutions that could mediate conflicts among American nations, as opposed to mandated arbitration at the Hague, which, they argued, was biased toward European and U.S. interests. A similar tension between normative ideals of democracy, of the kind that would inform the human-rights charters of the OAS and the UN, and the ideal of non-intervention was, and remains to this day, more nettlesome: the OAS has resisted pressure from Washington to invoke its new “Inter-American Democratic Charter” (which mandates the organization to promote democratic culture within member states and was adopted by the OAS on another history-heavy day, September 11, 2001) to censure US antagonists like Venezuela (but not US allies like Colombia). The tension is not new, and nor does it only afflict Latin America. As Louis Halle pointed out in his 1950 *Foreign Policy* essay “On a Certain Impatience with Latin America,” published under the byline Y: “The official inter-American system, now formalized in the Organization of American States and other agencies, has undertaken, like the United Nations, to define the rights of individuals as well as the rights of states. However, while it has made some provision for community enforcement of the latter rights, it has thus far confined itself to proclaiming human rights. Thus a government that is restricted by the community in its foreign undertakings is secure from community sanctions in the treatment it accords its own people, for this is a domestic matter in which an unqualified sovereignty is still the rule. The community has formulated applicable standards but has not provided for enforcing them. We in the United States may appreciate the difficulty of making any such provision when we consider the reluctance with which we ourselves would, for example, view the interposition of the American republics for the enfranchisement of the citizens of the District of Columbia.”

the US, the terms were flipped. Individual rights, as much as possible, were considered absolute while, increasingly after the Civil War, only a ‘morally good’ nation could be sovereign.⁴⁸ What was judged moral changed according to the circumstance: at times it meant the ability to exercise effective control of a population and territory; at other times it meant democratic or procedural legitimacy – with the best way to protect foreign private property serving as the independent variable determining which of these two criteria Washington applied. But in either case, what counted was that the US reserved the right, often invoking its own sense of exceptionalism, to be the judge. As Secretary of State Richard Olney put it in his 1895 extension of that doctrine, highlighted by Walter LaFeber as a key moment in the consolidation of the “new empire:” “The people of the United States have a vital interest in the cause of popular self-government . . . They have realized and exemplified its beneficent operation by a career unexampled in point of national greatness or individual felicity. They believe it to be for the healing of all nations, and that civilization must either advance or retrograde accordingly as its supremacy is extended or curtailed.”⁴⁹

The Sovereignty-Social Rights Complex, or, The Dialectics of the Monroe Doctrine

The history by which Latin America forced the US to accept the basic principles of this ‘sovereignty-social rights complex,’ what by the end of the nineteenth century Latin American jurists and diplomats had begun to call American International Law, is often

⁴⁸ William Appleman William, in *Contours of American History*, Cleveland: World Publishing Company, 1961, was one of the first to argue for a dependency between Lockean liberalism and expansion. Since Lockean liberalism distorts the relationship of the common good and individual interest (imagining the former to flow from the unleashing of the latter), it can only be maintained by constant outward motion.

⁴⁹ Department of State, *Papers Relating to the Foreign Relations of the United States*, Washington: GPO, 1896, p. 558.

narrated as a litany of outrages, of US freebooting, interventions, counterinsurgencies, gunboat and dollar diplomacy, and pre-cold war coups in Texas, Nicaragua, Mexico, Cuba, Puerto Rico, Panama, the Caribbean, and Central America. But threading through this narrative of territorial and economic expansion is a slow yet steady revision of the fundamentals of international law, which served both to restrain US power – in particular, contain its own ‘intervention-individual rights complex’ -- and to make the exercise of that power more effective.

Immediately following the 1823 proclamation of the Monroe Doctrine – which warned Europe against interfering in American affairs -- Spanish American jurists attempted to incorporate that doctrine within their emerging multilateral framework, including their antecedent affirmation of *uti possidetis*. In 1825, Brazil recognized the Monroe Doctrine; a year earlier, Colombia invoked the Doctrine, asking for Washington’s help against what it feared were designs by France and Spain on its territory; in 1826, Argentina likewise cited the Monroe Doctrine and asked for US aid in a conflict with Brazil, arguing that since Brazil was still tied to Portugal it constituted a European power. And in 1826, Bolívar invited the US to attend the Panama Congress to “proclaim” the Monroe Doctrine and to discuss how to abolish slavery.⁵⁰

The US refused specific requests for aid, and resisted all efforts by Spanish Americans to define the Monroe Doctrine as international law or to read the doctrine

⁵⁰ *The Monroe Doctrine: Its Importance in the International Life of the States of the New World*, New York: Oxford University Press, 1924, p. 13. Mexico convened international conferences in 1831, 1838, and 1840; Peru, fearing a threat of Spanish invasion, did so in 1847; Chile Ecuador and Peru, in the shadow of William Walker’s occupation of Nicaragua, signed the “Treaty of Union of American States in 1856; in 1864, Chile passed a law affirming Monroe Doctrine to protest Napoleon III’s occupation of Mexico; and Mexico’s Porfirio Díaz in 1896 proclaimed that an attack by a foreign power against one American state be an attack against all. See also Walter LaFeber, *The New Empire: An Interpretation of American Expansion, 1860-1898*, New York: 1998 [1963], pp. 242-283, for the importance of the Venezuela-British boundary dispute to international norms.

normatively, in a way, say, that would imply the end of American slavery.⁵¹ Through the nineteenth and early twentieth century, presidents, secretaries of state, and politicians would expand its interpretation in purely nationalist terms, to justify territorial expansion and unilateral policing.⁵² American exceptionalism aside, when it came to retaining the great-power right to intervene in the affairs of other nations to protect its interests, the US repeatedly deflected calls that it conform to what Latin Americans understood to be a specific “American” multilateralism: “I object to the term ‘American International Law,’” wrote US envoy William Henry Trescot, following 1889’s inaugural Pan-American Conference, where Latin American delegates passed a number of resolutions attempting to codify their ideas, including the adoption of regional “arbitration as a principle of American International Law for the settlement of the differences, disputes, or controversies that may arise between two or more” republics.⁵³ To this, Trescot issued a strongly worded minority report: “There can no more be an American international law than there can be an English, a German, or a Prussian international law. International law has an old and settled meaning. It is the common law of the civilized world, and was in active recognized and continuous force long before any of the now established American

⁵¹ Richard Drinnon, in “The Metaphysics of Empire-Building: American Imperialism in the Age of Jefferson and Monroe,” *The Massachusetts Review*, Vol. 16, No. 4 (Autumn, 1975), pp. 666-688, describes one of Washington’s first invocations of the Monroe Doctrine, to prevent Mexico from working with John Dunn Hunter to establishment a settlement of displaced Indians in then northern Mexico, leading to the creation of the opposite of an asylum of indigenous refugees: a slaver’s utopia, Texas. Drinnon uses this history to illustrate how the Monroe Doctrine was bound up with foreign expansion and domestic repression. See also Drinnon’s *The White Savage: The Case of John Dunn Hunter*, New York: Schocken Books: 1972.

⁵² For initial similarities between the Monroe Doctrine and the “Bolivar Doctrine,” as well as Washington’s subsequent expanded nationalist interpretation of the former, see Alvarez, *The Monroe Doctrine*, pp. 9; 16-17

⁵³ *Reports of Committees and Discussions Thereon: Patents and Trade-Marks; Extradition of Criminals; International American Monetary Union; International American Bank; International Law; Arbitration; Miscellaneous Business of the Conference*; Volume 2; Washington: GPO, 1890, p. 1079.

nations had an independent existence.”⁵⁴ “I can not concur,” Trescot said in a different dissent to a decision concerning the navigation of rivers, “in any resolution declaring their principles to be principles of American International Law.”⁵⁵

Still, Spanish American jurists -- even as regional nationalists began to talk about “two Americas,” separating their “Latin” America from rapacious, filibustering, war mongering, slave trading “Saxon” America -- persisted in their efforts to “mutualize” the Monroe Doctrine and have it recognized as international law.⁵⁶ This tension led Alvarez, a leading theorist of American International Law, in 1909 to make the Hegelian observation that the roots of twentieth-century multilateralism are to be found in Monroe’s nineteenth-century unilateralism. Alvarez understood the Doctrine as evolving in two distinct realms: politics, where Washington’s preponderant power allowed it to interpret the doctrine according to its own interests; and law, which while initially dependent on US unilateralism would eventually transcend that dependence and become international jurisprudence:

⁵⁴ *Reports and Recommendations, Together with the Messages of the President and the Letters of the Secretary of State Transmitting the Same to Congress*, Washington: GPO, 1890, p. 26. See the discussion in Samuel Flagg Bemis, *The Latin American Policy of the United States: An Historical Interpretation* (New York, 1943), p. 233.

⁵⁵ To the degree that US statesmen in the nineteenth and early twentieth century did call on the Monroe Doctrine to be entered into the “admitted canon of international law,” as Secretary of State James Olney did in the case of the Venezuela-British dispute, it was to confirm the US’s privilege and right to intervene “whenever what is done or proposed by any of the parties primarily concerned is a serious and direct menace to [the United States] own integrity, tranquility or welfare;” both quotations are in Lafeber, *The New Empire*, pp. 249; 261. For the Trescot dissent, see *Reports of Committees and Discussions Thereon*, p. 942.

⁵⁶ Most notably Argentine Minister of Foreign Relations Luis María Drago 1902 citation of the Doctrine to protest European interventions to collect debt, which did become standardized international law, albeit with US reservations. The “Drago Doctrine” was largely based on the earlier work of Drago’s colleague, Carlos Calvo, as elaborated in the 1868 *Derecho internacional teórico y práctico de Europa y América*; See Whitaker, *The Western Hemisphere Idea*, pp. 86-107.

On recognizing that solidarity of interests as to the continuance of their independence existed between the states of America, Monroe did not do more than serve as an echo of the sentiment that then predominated in all the republics. Therefore, whether the famous message of 1823 had been written or not, the principles contained in it would always have been sustained in the New World. In this sense, it may be said, and not without a certain amount of truth, that the Monroe Doctrine is neither *doctrine* nor *of Monroe*. But that which constitutes its undeniable merit and makes it famous, is that such an exact synthetic statement of the destinies of America should have been given thus early in the period of emancipation, by a people whose increasing power would not permit the rest of the world to regard that statement as merely utopian. It was this that enabled America, from the beginning of its independent life, to give to its foreign policies a safe norm instead of vague ideas then existent on these subjects. In this sense the Monroe Doctrine is *doctrine* and is *of Monroe*.⁵⁷

Alvarez believed the Monroe Doctrine to be a “a protest against the great international principles of law and practices in force in Europe when it made its appearance. This *Protestantism* in international law resembles Protestantism in religion; it has given birth

⁵⁷ Alvarez (1868—1960) was a Chilean delegate to the Permanent Court of Arbitration at the Hague and the League of Nations, judge on the International Court of Justice, author of hundreds of essays, many of them on pan-Americanism, and founder of the American Institute of International Law, affiliated with the Carnegie Endowment for International Peace. Considering his importance, analytical sophistication, and range of interests, very little has been written on him. But see the specially issue of the *Leiden Journal of International Law* (2006), 19:4, devoted to his work and legacy, which include the essays: Arnulf Becker Lorca, “Alejandro Álvarez Situated: Subaltern Modernities and Modernisms that Subvert;” Jorge Esquirol, “Alejandro Alvarez s Latin American Law: A Question of Identity;” Jorge Esquirol and Carl Landaur, “A Latin American in Paris: Alejandro Alvarez s Le droit international americain;” Liliana Obregan, “Noted for Dissent: The International Life of Alejandro Alvarez;” and Katharina Zobel, “Judge Alejandro Alvarez at the International Court of Justice (1946-1955): His Theory of a New International Law and Judicial Lawmaking.” Alvarez, “Latin America and International Law,” *American Journal of International Law*, 3:269-353 (April 1909), p. 311-312, for the quote.

to a complete system of international law and policy which has developed in the course of the nineteenth century and has exercised, and is called upon to exercise in still greater degree, an influence in the life of the nations of America (American international law).⁵⁸

But for American International Law to become universalized, he argued, “we must first of all do away with the term Monroe Doctrine, while preserving its ideas.”⁵⁹

This proved to be more difficult than Alvarez had hoped. Diplomatic norms and practices worked out within the western hemisphere did inspire much of what Woodrow Wilson wanted to accomplish in Paris in 1919. In his 1917 Peace without Victory senate speech, the US president proposed that:

nations should with one accord adopt the doctrine of President Monroe as the doctrine of the world: that no nation should seek to extend its polity over any other nation or people, but that every people should be left free to determine its own polity, its own way of development, unhindered, unthreatened, unafraid, the little along with the great and powerful. I am proposing that all nations henceforth avoid entangling alliances which would draw them into competitions of power; catch them in a net of intrigue and selfish rivalry and disturb their own affairs with influences from without. There is no entangling alliance in a concert of power. When all unite to act in the same sense and with the same purpose all

⁵⁸ Alvarez, *The Monroe Doctrine*, p. 27.

⁵⁹ The American particular would in fact soon become universalized by a similar adjectival omission. In late 1932, competition between Argentina and Washington over who would negotiate a peace between Paraguay and Bolivia in the 1928–1935 Chaco War spurred Argentina’s Foreign Minister Carlos Saavedra Lamas to invite the nations of the world to sign an “Anti-War Treaty on Non-Aggression and Conciliation,” which, Saavedra Lamas believed, would “doubtless mark a new step in the juridical evolution of the world.” Originally called the “South American Anti-War Treaty,” the official version – adopted in the 1933 Pan-American Conference in Montevideo, Uruguay, an important milestone on the transformation of American International Law into International Law – simply dropped the prefix, with a footnote explaining that the phrase was meant to express only the “source” of the treaty’s “inspiration,” and not to imply any regional specificity. Philip Jessup, “The Saavedra Lamas Anti-War Draft Treaty,” *American Journal of International Law* 27, no. 1 (January 1933): 109–114. The treaty is found in *Supplement to the American Journal of International Law: Official Documents* 28, no. 3 (July 1934): 79–84.

act in the common interest and are free to live their own lives under a common protection.

Here is a crystalline example of Alvarez's point that liberal internationalism was a synthesis of US power and Spanish American ideas, with Wilson taking the principles associated with the American International Law movement – non-aggression; arbitration; territorial sovereignty; mutual defense; and the belief that common interests (as opposed to “competitions of power”) should form the basis of international agreement -- and attributing them to the “timeless wisdom of the Founding Fathers.”⁶⁰ Latin America's importance in generating Wilsonian liberal internationalism is likewise indicated by the incorporation of the spirit of the doctrine *uti possidetis* into Article 10 of the League of Nations' Covenant, which pledged nations to “respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League.”⁶¹ And the League itself – Wilson's famous fourteenth point – was directly modeled on the Pan American Union conferences that the US had been participating in since 1889 and Spanish Americans had been convening since 1826. The Monroe Doctrine, wrote John Latané, a Johns Hopkins professor, diplomatic historian, and League supporter, is the “only principle on which the peace of the world can securely rest;” its “universal recognition” will guarantee “free states the right of self development” and will form the basis of a “world confederation.”⁶² The point here is not

⁶⁰ Mark T. Gilderhus, *Pan American Visions: Woodrow Wilson in the Western Hemisphere, 1913-1921*.

⁶¹ *Uti possidetis* would likewise be confirmed as an international norm by the Swiss Federal Council's 1922 ruling on a Colombia-Venezuela territorial dispute; See Brown, “The Swiss Decision in the Boundary Dispute between Colombia and Venezuela. *American Journal of International Law* 16, 3 (July 1922): 428-431.

⁶² Gilderhus, *Pan American Visions*, p. 137.

merely to credit Latin America's unacknowledged contribution to liberal internationalism but to reveal the region's role as the missing, mediating link in the process – which has long confounded critical scholars concerned with the endurance of American exceptionalism – in which the US presents its particular values as the world's values: “These are American principles, American policies,” Woodrow Wilson concluded his Peace Without Victory Speech, “and they are also the principles and policies of forward-looking men and women everywhere, of every modern nation, of every enlightened community. They are the principles of mankind and must prevail.”

Yet the final inclusion of a specific reference to the Monroe Doctrine in the League's charter, as recommended to Wilson by William Howard Taft, had less to do with “universalizing” the doctrine than winning the support of nationalist opponents in the US, who were afraid of losing regional privilege.⁶³ “Monroe reservation,” Taft wrote Wilson in March 1919, “would probably carry the treaty.”⁶⁴ Such a reservation (in

⁶³ Wilson gives a good indication of the quicksilver nature of the Monroe Doctrine when, speaking in Spokane, Washington, in September 1919 upon his return to the US, he admitted he attempted “while in Paris to define the Monroe Doctrine, and get it written into the document, but I will confide to you in confidence that when I tried to define it I found that it escaped analysis;” *Addresses of President Wilson*, Washington: GPO, 1919, p. 170. Discussions of the doctrine by US historians have without exception, as far as I know, ignored Alvarez's interpretation of its importance. Standard accounts of the Doctrine have seen it as largely defensive and negative in content, as a reaction to the threat posed by the Holy Roman and Russian empires; revisionist critics like William Appleman Williams argued that it had more positive content, seeing it as a proactive attempt to create an “American” mercantilism; a “system,” as Henry Clay put it in 1820, “of which we shall be the centre, and in which all South America will act with us.” Beyond these two positions, the Monroe Doctrine can be thought of as the first of many instances when debates about Spanish America, and the actions resulting from those debates, allowed a reconciliation of competing, contradictory ideas about what the correct foreign policy for the US should be, a way of bringing together foreign-policy positions as diverse as those represented by John Quincy Adams, Henry Clay, and James Monroe. That domestic appeals to the Monroe Doctrine were not able to secure Senate ratification of the League of Nations is an important exception that highlights the general rule: the inclusion of a specific reference to the doctrine in the League's charter did not mollify nationalists, who continued to insist that Article X voided US rights within the hemisphere and subordinated the US to a “super-government;” see David Jayne Hill, “The Betrayal of the Monroe Doctrine,” *North American Review*, November 1920, pp. 577-593; p. 578.

⁶⁴ See Charles Howard Ellis, *The Origin, Structure and Working of the League of Nations*, Lawbook Exchange, 2003. p. 92. For Wilson's quote, see Charles Chaney Hyde, *International Law Chiefly as Interpreted and Applied by the United States*, vol 1, Little, Brown, and Company, 1922, p. 97; for other

Article 21, affirming the continued validity of “regional understandings like the Monroe doctrine”) didn’t, of course, win over opponents. It did, though, anger Latin American delegates, who read the article as investing the US with “mandatory” powers within the Western hemisphere, similar those granted the UK in the Middle East.⁶⁵ Many of the delegates were already resentful of being marginalized from the conference proceedings. “I find that they have been left alone too much,” observed a State Department official, “and have been having Latin American Conferences among themselves.” They continued the conversation in subsequent Pan-American conferences, where they would persist in their demands that Washington concede what now had become the central point of American International Law: an acknowledgement of the absolute right of sovereignty of all nations, which by extension meant Washington – bogged down in a series of occupations and counterinsurgencies in the Caribbean -- renouncing the right of intervention.

If the discussion of the Monroe Doctrine at the Paris Peace Conference signaled the limits of Washington’s willingness to recognize territorial sovereignty as a universal norm – especially when it came to Latin America – the arrival of an uninvited guest, Alberto Pani, from Mexico, highlighted the US’s steadfast hostility to the region’s emerging social-rights regime. Pani was sent by Mexican president Venustiano Carranza to observe the peace conference, though Mexico, neutral during the war and thought to be

examples, see William Howard Taft, “The League of Nations,” *National Geographic*, v. 35; 1919; and John Latané, “The League of Nations and the Monroe Doctrine,” *The World’s Work*, vol. 37, Doubleday 1919. Alejandro Alvarez, “Latin America and International Law,” *American Journal of International Law*, 3:269-353 (April 1909), p. 311-312; see also *The Monroe Doctrine: Its Importance in the International Life of the States of the New World*, New York: Oxford University Press, 1924, p. 21, and *Le droit international américain, son fondement - sa nature d'après l'histoire diplomatique des états du Nouveau monde et leur vie politique et économique*, Paris: Pedone, 1910.

⁶⁵ This is also how London read Article 21, believing it would invest Washington with responsibility to enforce debt collection and ensure property rights in Latin America on behalf of Europeans; see British National Archives, “The Monroe Doctrine and the League of Nations,” **TK citation**.

pro-German, had not been invited to the talks. Relations between Mexico and the US, bad due to the latter's heavy-handed interventions in the latter's affairs, had grown worse with the ratification of Mexico's 1917 constitution – the world's first fully conceived social-democratic charter, which authorized the nationalization of land and mineral resources, including petroleum, in the name of the public interest, affirmed gender equality, pledged the state to provide health care and education, and guaranteed a wide range of labor rights. The constitution's Article 27, which clearly stated that 'private property' was a right granted by the state and not, per Locke, invested in individuals, was particularly troubling to many US political and economic leaders, who believed it represented a fundamental threat to international law, instituting a "system of property which denies all principles of justice."⁶⁶

The Paris Peace conference is often interpreted through the lens of the "Lenin v. Wilson" rivalry, but in many ways the 1910 Mexican Revolution, especially after the adoption of its 1917 constitution, offered a more subtle subversion of the interstate system, since it based its challenge to property rights within the terms of political liberalism, rather than rejecting those terms outright.⁶⁷ Carranza asked Pani, in Paris

⁶⁶ Ira Jewell Williams, "Confiscation of Private Property of Foreigners Under Color of a Changed Constitution," *Law Notes*, March 1919, pp. 230-234; p. 231, for the quote and the argument that the Mexican Constitution violated international legal norms..

⁶⁷ The precedents involved in codifying US property law are complex, and go beyond Locke to include the more "modern theory" that "public interest" could mitigate inalienable rights. Yet many legal theorists who accepted this principle still thought the Mexican constitution heretical: "There is a conflict between vested right and public interest which operates to alter from time to time the meaning of 'property' and to change, also, the meaning of 'police power.' Property rights are not inviolable when public interest is involved. The foundation of this principle lies in the fact that the individual holds property rights at the sufferance of society and that his holding is in the nature of a public trusteeship Mexico has recently attempted, within the spirit of this modern theory of property rights and police power, to conserve her oil and mineral resources by constitutional provision. In adopting the modern theory, she came into conflict with the rules of international law, which protect certain hard to define but nevertheless well-internationally recognized vested individual rights. An appreciation of this theory of property rights which is rapidly being adopted the world over, is necessary to a clear appreciation of the oil situation in Mexico as the Mexicans are strong contenders for this theory and as they justify their position by advancing it;" Raoul E.

with a team of lawyers, to defend Mexico against the claims of the National Association for the Protection of American Rights in Mexico and the Oil Producers Association, which were representing US interests that suffered destroyed or expropriated property during the revolution. They also were applying strong pressure on Wilson's administration to demand the revocation of the constitution and to take action that would lead to the overthrow of Carranza.⁶⁸ "We want Pan-Americanism and the Monroe Doctrine," said one hardliner, "in its true meaning."⁶⁹ But Carranza also went on the offensive, asking Pani to lobby to "have the ideas of the new Mexican constitution incorporated as a principle of international law."⁷⁰ That didn't happen. Yet in the years to come, similar social rights would be incorporated into every Latin American constitution, as well as Pan-American human rights charters, serving as a template for the

Desvernine, *Claims Against Mexico: A Brief Study of the International Law Applicable to Claims of Citizens of the United States and Other Countries for Losses Sustained in Mexico During the Revolution of the Last Decade*, New York: np. 1921, pp. 51-53.

⁶⁸ Gilderhus, *Pan American Visions*, pp. 146; 152-153; Back in Mexico, In Mexico, Carranza responded with a mix of concessions – postponing any serious attempt to implement Article 27 against US oil and other economic interests – and rhetoric, strongly criticizing the inclusion of the Monroe Doctrine in the League's charter as a pretext for intervention and offering his own Carranza Doctrine, an appreciation of an "Indo-Latino" America which foreshadowed Nicaragua's Augusto Sandino's elaboration in the early 1930s of a pan-Indo-Hispanism, a populist pan-Americanism that valorized dark-skinned, impoverished peasant culture that prevailed throughout Mesoamerica and much of South America. London's ambassador to Mexico, concerned with the loss of British property to the revolution, defined the Carranza Doctrine thus: a "desire to organize Latin-America in every way possible for opposition to American influence. . . a proposal to change diplomatic custom and practice entirely, declaring as its cardinal principle that no nation shall under any pretext for any reason interfere with the affairs of another. In brief he would remove all appeal of a foreigner in Mexico to his own government through diplomatic representation in case of alleged injustice or mistreatment;" British National Archives, FO 608/174 Folio 76: March 10, 1916; Another British diplomat summed up the mission of Pani and his "large staff" in Paris as to argue "(1) that no nation shall interfere with another country, even where property rights of its own citizens are concerned (2) That a Govt. by altering its constitution can legally take over any properties of which it has need;" British National Archives, FO 9479/127 Folio 163: February 24, 1919. Mexico didn't join the League of Nations until September 1931, and when it finally did, it reserved the right to not recognize Article 21, which affirmed the Monroe Doctrine. Philip Marshall Brown, "Mexico and the Monroe Doctrine," *The American Journal of International Law*, vol. 26, number 1 (1932): 117-121.

⁶⁹ Gilderhus, *Pan American Visions*, p. 147.

⁷⁰ See "To Oppose Alien Rights in Mexico," *New York Times*, January 23, 1919. The US Senate responded with an investigation and report calling on Washington to intervene to protect US property, including US-owned oil fields. Merrill Rippy, *Oil and the Mexican Revolution*, Leiden, Netherlands: Brill, 1972, pp. 157-158.

United Nations Declaration of Human Rights. Likewise, Article 27's definition of property would migrate into other Latin American charters and domestic law, serving as the central legal instrument of import-substitution developmentalism, of the kind associated with Raúl Prebisch and the UN's Comisión Económica para América Latina.

The US adamantly resisted Latin America's sovereignty-social rights complex, until, facing strong regional opposition to its Caribbean-basin militarism and a shortfall of power caused by the contraction of the Great Depression, it didn't. In retrospect, the extemporaneous agreement of Franklin Delano Roosevelt's Secretary of State, Cordell Hull, at the 1933 Montevideo Pan-American conference to Latin American demands that Washington give up its right to intervene in the foreign and domestic affairs of Latin American nations must be considered one of the most unambiguously successful foreign policy initiatives the US has ever undertaken. Facing militarists, fascists, and imperialists in Europe and Asia, "greater America" provided key economic and political shelter to the fledging New Deal coalition.⁷¹ For a moment, it seemed the US would, if not turn inward, than southward: in 1936, FDR, calling the Western Hemisphere a "happy valley" in a world of mountainous troubles, thought the ideal of the withered League of Nations could be revived in a "League of Americas."⁷²

⁷¹ Re-reading Lloyd Gardner's 1963 *Economic Aspects of New Deal Diplomacy* reminds how crucial reciprocal trade treaties with Latin America, largely made possible by Hull's 1933 decision to recognize the absolute sovereignty of individual nations, was to US recovery from the Great Depression, particularly to the consolidation of an export-focused, labor intensive, high-tech corporate power bloc that became the foundation of US's pre-war and postwar economic expansion. For this corporate bloc, see Thomas Ferguson, "Industrial Conflict and the Coming of the New Deal: The Triumph of Multinational Liberalism in America," in Steve Fraser and Gary Gerstle, *The Rise and Fall of the New Deal Order, 190-1980*, Princeton: Princeton University Press, 1989.

⁷² "New League of Americas is Proposed," *Christian Science Monitor*, April 13, 1936; See also "Roosevelt Decries Warfare," *Washington Post*, August 15, 1936, where FDR cited the Good Neighbor Policy as an example for the world. In the run-up to 1936's Inter-American Conference for the Maintenance of Peace, held in Buenos Aires and attended by Roosevelt, Latin American nations were still talking about the proposed League of the Americas as a "consolidation of the Monroe Doctrine." See British National Archives, Foreign Office 371/19785.

But the Good Neighbor Policy – a phrase that in much diplomatic history writing covers more than it reveals, presenting the US’s long-resisted submission to the terms of American International Law as a Washington initiative -- provided a template for a revived globalism, allowing for the construction of the four pillars of Washington’s post-WWII diplomacy: an acceptance of national sovereignty; a way of managing that acceptance through a new array of multilateral institutions and agreements; the recognition of social rights (including the right of developing countries to regulate foreign investment and property), which gave Washington an important moral weapon in the coming Cold War;⁷³ and a regional alliance system.⁷⁴ By 1943, Roosevelt was holding up the “illustration of the republics of this continent” as a model for postwar reconstruction. Though he took credit for overcoming “many times 21 different kinds of hate” to “sell the idea of peace and security among the American republics,” the inspiration could just as well be traced to Bolívar's 1826 call for the creation of a confederation of American nations.⁷⁵

Latin America’s containment of the US was historically consequential, leading to the creation of a multilateral order that allowed Washington to accumulate unprecedented global power. But it was always tentative and, in retrospect, short-lived. Through the early decades of the Cold War, Latin America continued to serve as the mirror in which

⁷³ Latin American jurists were largely responsible for the social rights adopted by the United Nations in December 1948 in its universal declaration – thus providing the “West” with a key moral instrument to fight the Cold War. A preview of these rights was adopted at the Bogotá conference in April 1948, with the OAS’s “American Declaration of the Rights and Duties of Man.”

⁷⁴ Both in the sense that the mutual-defense Rio Pact was a model for NATO and other regional-alliance treaties and that the relationship of the OAS to the UN was a model for how Washington could tack back and forth between “regional” and “universal” treaty obligations as needed. The Rio Pact itself had precedent in an 1864 defense alliance signed by a number of Latin American countries in Lima, in reaction to Napoleon III’s occupation of Mexico.

⁷⁵ Remarkably, Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations*, Princeton: Princeton University Press, 2009, makes not one mention of the key role Latin America, both conceptually and practically, played in the construction of the United Nations.

notions of proper and improper political behavior were groomed, helping to move Cold War liberalism away from Bolton's (and Henry Wallace's) "rise of the common man" popular-frontism back to Lockean and Madisonian restraints.⁷⁶ By the 1980s, with the ascendance of the New Right to governance in the US, Ronald Reagan was again invoking the Monroe Doctrine in its most interventionist form. And just as Latin America played a central role in the consolidation of multilateralism, the region – in Granada, Nicaragua, and Panama – would be where it was first rolled back, with the US again claiming the right to intervene unilaterally in the affairs of another country, not just defensively but because it deemed the quality of its sovereignty unworthy of recognition.⁷⁷

The 1989 invasion of Panama was a turning point in this process. Sounding a lot like Secretary of State Richard Olney in 1895, Luigi Einaudi, George H.W. Bush's ambassador to the Organization of American States, told twenty OAS representatives, who had just *unanimously* condemned the invasion, that the US acted because "today, we

⁷⁶ Greg Grandin, "The Three Faces of Containment in the Americas," in Robert McMahon, ed, *Cold War in the Third World*, New York: Oxford University Press, forthcoming; see also Mark Kleinman, *A World of Hope, A World of Fear: Henry A. Wallace, Reinhold Niebuhr, and American Liberalism*, Ohio State University Press, 2000.

⁷⁷ Granada: Having long leveraged the Organization of American States to skirt the universalism of the United Nations, Reagan's ambassador to the UN, Jeane Kirkpatrick, confronted with an increasingly critical OAS, cited treaty obligations to the Organization of Eastern Caribbean States to justify the 1983 invasion of Granada. Nicaragua: Legal scholar Eric Posner argues that the Reagan administration's refusal to abide by the International Court of Justice 1986 order that the US pay Nicaragua billions of dollars in reparations for mining its harbor and conducting an illegal war of aggression was a "watershed moment" in the US's relationship with the international community, one that George W. Bush's ambassador to the UN, John Bolton, cited as evidence for why the US should not support the new International Criminal Court. Eric Posner, "All Justice, Two, is Local," *New York Times*, December 30, 2004; John Bolton, "Courting Danger," *National Interest*, Winter 1998-1999; See also Anthony Amato, "Modifying U.S. Acceptance of the Compulsory Jurisdiction of the World Court," *American Journal of International Law* 1985; 79: 385, and Anthony D'Amato, "Trashing Customary International Law," *American Journal of International Law* 1987 81 (1): 101-105. Panama: In a recent interview in *Foreign Policy* (December 18, 2009), then US ambassador to the UN Thomas Pickering said Operation Just Cause paved the way for unilateral action in Iraq: "having used force in Panama, and in Grenada in 1983, there was a propensity in Washington to think that force could provide a result more rapidly, more effectively, more surgically than diplomacy;" the invasion's success meant "the notion that the international community had to be engaged ... was ignored."

are . . . living in historic times, a time when a great principle is spreading across the world like wild fire. That principle, as we all know, is the revolutionary idea that people, not governments, are sovereign.”⁷⁸ Concurrent with this dilution of sovereignty was an attempt to disentwine social and political rights. In the decade prior to the invasion of Panama, Ronald Reagan embraced the rhetoric of human rights in order to reinvest US military power with moral authority. Yet this embrace came with an important revision: “All too often,” said Richard Allen, Reagan’s National Security Advisor, in 1981, “we assume that everyone means the same thing by human rights.” Yet when the US talked about human rights, Allen stated, it meant strictly the defense of “life, liberty, and property” and not “economic and social rights.” The expansion of human rights into the social realm, he went on, constituted a “dilution and distortion of the original and proper meaning of human rights.”⁷⁹ That same year, Elliott Abrams, Reagan’s Assistant Secretary of State for Human Rights, drafted an influential memo, often cited as key in Reagan’s efforts to once again define the cold war as a righteous fight: after announcing that “our struggle is for political liberty” and in defense of “human rights,” Abrams nonetheless felt that the latter expression was too tainted by issues related to economic justice. He suggested a rebranding: “We should move away from ‘human rights’ as a

⁷⁸ Luigi Einaudi, “Remarks to Organization of American States” (December 22, 1989) reprinted in *Panama: A Just Cause* U.S. Dept. of State Current Policy Doc. no. 1240, 3. Many legal theorists not only disagreed with this interpretation of law but of history: “Einaudi’s reliance upon the democratic tide sweeping Eastern Europe totally misses the point and weakens the U.S. position. Once the Soviet Union withdrew military support, Eastern European governments, lacking popular support, quickly faltered. The lesson to be learned from Eastern Europe may be that governments lacking popular consent cannot continue to exist indefinitely. If the U.S. had learned this lesson, it would have realized that the Noriega government, lacking popular legitimacy, would have eventually witnessed its own undoing. Forcing democracy on a country cannot be justified as a lesson learned from Eastern Europe on the right side of history;” Alan Berman, “In Mitigation of Illegality: The U.S. Invasion of Panama,” *Kentucky Law Journal*, 1991, 79 pp. 735-797.

⁷⁹ Richard Allen, “For the Record.” *The Washington Post*, June 4, 1981.

term, and begin to speak of ‘political rights’ and ‘civil liberties.’ We can move on a name change at another time.”⁸⁰

Neoliberalism -- known in the US by the unintentionally apt Hartzian phrase, the Washington Consensus – needs, then, to be seen as more than an effort to impose economic structural adjustment; it was a project of moral adjustment centuries in the making. That bid, as events over the last decade in Latin America and the US have demonstrated, has failed. “A dialectical process,” to close with a quotation from Louis Hartz, is still “at work, evil eliciting the challenge of a conscious good, so that in difficult moments progress is made. The outcome of the battle between intensified ‘Americanism’ and new enlightenment is still an open question.”

⁸⁰ The full Abrams memo is included in the *Review of the 37th session and upcoming 38th session of the U.N. Commission on Human Rights: hearing before the Subcommittee on Human Rights and International Organizations of the Committee on Foreign Affairs, House of Representatives, Ninety-seventh Congress, first session, November 16, 1981*, Volumes 88-981, Washington: GPO, 1982, pp. 12-14. For Abrams’ authorship of the memo, see Aryeh Neier, *Taking Liberties: Four Decades in the Struggle for Human Rights*, New York: Public Affairs, 2003, pp. 185-186.

