
The Cradle of International Law: Camilo Barcia Trelles on Francisco de Vitoria at The Hague (1927)

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Abstract

In 1926, James Brown Scott invited the Spanish international lawyer Camilo Barcia Trelles to lecture at the 1927 Hague Academy of International Law on the contribution of the Spanish internationalists of the 16th century to the development of international law. With his lecture series on Francisco de Vitoria, Barcia Trelles fulfilled the hopes Scott had of enlisting an ally in his crusade to the Spanish origins of international law. Through their respective writings, the two international lawyers from both sides of the Atlantic co-produced the myth which situates the oldest roots of the 'science of international law' with Vitoria and the School of Salamanca and which has to this day largely obscured the contribution of late-medieval jurisprudence. This article analyses the methodological and intellectual moves Barcia Trelles made to construe Vitoria as the original founder of international law and detach him from his medieval sources.

To the internationalist, the classroom is not merely that of Francisco de Vitoria; it is the cradle of international law.

J. B. Scott¹

1 Introduction

When, in September 1926, James Brown Scott picked up his pen to invite Camilo Barcia Trelles to lecture at the 1927 session of The Hague Academy of International Law on Francisco de Vitoria (c.1480–1546), he did so with apparent confidence that

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¹ J. B. Scott, *The Spanish Origin of International Law: Francisco de Vitoria and his Law of Nations* (1934), at 75.

he was enlisting an ally in his fight to promote the Spanish theologian as the founder of international law. Scott acted at the suggestion of the Cuban international lawyer Antonio Sánchez Bustamante y Sirvén (1865–1951), a judge at the Permanent Court of International Justice and a supporter of Scott's endeavours to promote an American approach to international law.² In his letter, which he wrote as a member of the Curatorium of The Hague Academy, Scott left Barcia Trelles little room to doubt his brief. While Bustamante had proposed that Barcia Trelles should lecture on the 'predecessors of Grotius', Scott suggested that the series would carry the title 'The Spanish publicists of the 16th century and modern international law'. According to him, it was 'your Vitoria who has successors', implying that he rather than Grotius should be the pivot in the historical narrative of the history of international law.³

With his Hague lectures on Vitoria, and his subsequent lectures on two other representatives of the Spanish internationalists, Francisco Suárez (1548–1617) and Fernando Vázquez de Menchaca (1512–1569), Camilo Barcia Trelles made a contribution to giving Vitoria and the School of Salamanca a place at the origins of the intellectual history of international law that was second to none but Scott himself. After a brief foray into Scott's Spanish origins programme and the background for his reaching out to Barcia Trelles (Section 2), the core Section 3 offers an analysis of Barcia Trelles's methodological strategy to frame his argument about Vitoria as the intellectual trailblazer for modern international law. The final section draws a comparison between the approaches of Scott and Barcia Trelles, and comments on the influence of Barcia Trelles's Hague lectures.

2 Scott, Barcia Trelles and Vitoria

At the time of his writing, James Brown Scott (1866–1943)⁴ had only recently committed himself to what would become a crusade to establish Vitoria and the Spanish internationalists of the 16th and early 17th centuries – up to Francisco Suárez (1548–1617) – as the true founders of international law. Scott's first serious venture into the more remote history of international law dated back to the early 1910s, when he had launched the idea of bringing out a collection of classic texts with English translations. Although Vitoria's work figured among these pre-Grotians,⁵ he had not yet been singled out by Scott as the lead founder of international law. Scott's first serious effort at studying the Spanish internationalists of the 16th and 17th centuries was a series of lectures held at the University of Georgetown in the early spring of 1926.

² J. P. Scarfi, *The Hidden History of International Law in the Americas: Empire and Legal Networks* (2017), at 119–131.

³ Letter from J. B. Scott to Barcia Trelles, 9 September 1926, Georgetown University Archival Resources, Washington, DC, James Brown Scott papers, box 1, folder 5 (hereinafter 'James Brown Scott Papers'). All translations in this article are the author's, unless otherwise indicated.

⁴ On the career of Scott, see G. A. Finch, *Adventures in Internationalism: A Biography of James Brown Scott* (2012); C. R. Rossi, *Broken Chain of Being: James Brown Scott and the Origins of International Law* (1998).

⁵ The volume of Vitoria's work was published in 1917, with an introduction by Ernest Nys: *De Indis et de Iure Belli Relectiones, Being Parts of Relectiones Theologicae XII by Franciscus de Vitoria, Primary Professor of Sacred Theology in the University of Salamanca* (Classics of International Law, 1917).

The purpose of Scott's Spanish origins programme was to dethrone Hugo Grotius (1583–1645) as the alleged 'father of international law' and thus shift the context of international law's emergence between the European wars of religion – the Thirty Years War (1618–1648) – and the discovery of America and the Spanish conquests there. Scott's Spanish origins programme had three major intellectual thrusts. Firstly, Scott considered international law as a progressive force for peace, whose strength could be buttressed by the codification of positive, or 'objective', rules sanctioned by an international adjudicator. Secondly, the American hemisphere, under the benign leadership of the United States, was home to a distinct body of international law that ought to serve as an example to the world, much as the United States served as its example. Thirdly, Scott saw international law, as any law, as the fruit of a long historical process, which merited study in order to understand the current state of international law and the best way of advancing its cause. Much under the influence of Friedrich Carl von Savigny (1779–1861) and the Historical School, and like many mainstream lawyers and legal historians from around the turn of the 20th century, Scott focused on the ideas of leading 'jurists' combining theoretical abstraction and practical application.⁶

By the fall of 1926, Camilo Barcia Trelles (1888–1977) had become a well-established international legal scholar in Spain.⁷ His international credentials as a student of Vitoria were, however, close to non-existent. All Scott had to go by was the knowledge that Barcia Trelles was involved in the plan to found an *Asociación Francisco de Vitoria* in Spain⁸ and two lectures Barcia Trelles had given in April 1926 at the University of Salamanca on the occasion of the 400th anniversary of Vitoria's appointment to that university, published in a local newspaper from Salamanca, *El Adelanto*.⁹

Barcia Trelles was a former student of the Belgian international lawyer Ernest Nys (1851–1920) at Brussels from 1911 to 1913. Nys had been the first among major

⁶ On Scott's so-called 'Spanish origins' programme, see P. Amorosa, *Rewriting the History of the Law of Nations: How James Brown Scott Made Francisco de Vitoria the Founder of International Law* (2019), at 127–185. On the role of intellectual history in the historical narrative of the Historical School and later legal historians acting under its influence, see Avenarius, 'Verwissenschaftlichung als sinnhafter Kern der Rezeption: Eine Konsequenz aus Wieackers rechtshistoriker Hermeneutik', in O. Behrends and E. Schumann (eds), *Franz Wieacker: Historiker des modernen Privatrechts* (2010) 119.

⁷ For Barcia Trelles's biography, see de la Rasilla, 'Camilo Barcia Trelles in and beyond Vitoria's Shadow (1888–1977)', 31 *European Journal of International Law (EJIL)* (2020) 1433; de la Muela, 'Perfiles humanos y científicos del profesor Barcia Trelles', in *Estudios de derecho internacional: Homenaje al Profesor Camilo Barcia Trelles* (1958) 15.

⁸ Scott, 'Asociación Francisco de Vitoria', 22 *American Journal of International Law* (1936) 136.

⁹ Scott had obtained a copy of the relevant issues of *El Adelanto*, dated 20, 21, 22 and 23 April 1926, which included the lectures of Barcia Trelles. See specifically 'La primera conferencia de Camilo Barcia, sobre las elecciones del Maestro Vitoria', *El Adelanto* (21 April 1926) 1 (hereinafter 'La primera conferencia') and 'La comisión holandesa y nuestro ministro de Instrucción en Salamanca. La segunda conferencia de Camilo Barcia', *El Adelanto* (22 April 1926) 4. See also Amorosa, *supra* note 6, at 140–146 and 161–162; Gamarra, 'On the Spanish Founding Father of Modern International Law: Camilo Barcia Trelles (1888–1977)', in J. M. Beneyto and J. Corti Varela (eds), *At the Origins of Modernity: Francisco de Vitoria and the Discovery of International Law* (2017) 95, at 103–104; I. de la Rasilla del Moral, *In the Shadow of Vitoria. A History of International Law in Spain (1770–1953)* (2018), at 196–205.

writers on international law from the 19th century to acknowledge Francisco de Vitoria's place in the history of international law. Earlier scholars, such as Carl von Kaltenborn (1817–1866) who had studied the so-called precursors of Grotius, made no mention of Vitoria.¹⁰

For his lectures at Salamanca, and at The Hague the following year, Barcia Trelles could draw from a revived interest in Vitoria in recent Spanish scholarship.¹¹ To a Spanish legal scholar, such as Barcia Trelles, the idea that Vitoria stood at the origins of international law was far from new; nor did he need Scott to remind him of it. The idea had already been advanced by the leading Spanish legal historian Eduardo de Hinojosa y Naveros (1852–1919).¹² Apart from the Salamanca lectures in *El Adelanto* and some programmatic contributions on the topicality of Vitoria's thought to the liberal Madrid-based journal *La Libertad*, Barcia Trelles had not published any work on Vitoria.¹³ He felt the need to justify why he was chosen to speak on Vitoria at Salamanca. He referenced the request by Salvador de Madariaga (1886–1978), the then-Spanish representative to the League of Nations, to aid with some articles on Vitoria, as well as a series of lectures he had given himself on the famous debate between Bartolomé de Las Casas (1484–1566) and Juan Ginés de Sepúlveda (1494–1573) about the conquest of the so-called Indians at the Americanist section at the university of Valladolid.¹⁴

James Brown Scott apparently found nothing in the two Salamanca lectures to dissuade him from the idea that inviting Barcia Trelles to The Hague would help to further the cause of Vitoria and the 16th- and early 17th-century Spanish internationalists. Barcia Trelles entitled his lectures 'The Iberian Origins of International Law' ('Los orígenes ibéricos del Derecho internacional'). His intention was not just to include Francisco Suárez, a native of Castile who taught for most of his career at Coimbra in Portugal. By extending the title of his lectures to cover the whole Iberian peninsula, Barcia Trelles wanted to associate them with the Spanish government's programme to strengthen the historic bonds with Latin America, which was often covered by the adjective Ibero-American.¹⁵ In his first Salamanca lecture, Barcia Trelles made clear that he endeavoured to explore the contribution of Vitoria to the 'ennoblement of international relations, while placing him in the context of the Ibero-American problem'. He thus referred both to the fact that Vitoria's work in international law was carried

¹⁰ C. von Kaltenborn, *Die Vorläufer des Hugo Grotius auf dem Gebiete des Ius naturae et gentium sowie der Politik im Reformationszeitalter* (1848); E. Nys, *Les origines du droit international* (1894); E. Nys, *Le droit des gens et les anciens jurisconsultes espagnols* (1914). On Vitoria in the historiography of 19th- and 20th-century international law, see Muldoon, 'The Contribution of Medieval Canon Lawyers to the Formation of International Law', 28 *Traditio* (1972) 483, esp. at 483–485.

¹¹ Gamarra, *supra* note 9, at 99–100.

¹² de Hinojosa y Naveros, 'Francisco de Vitoria y sus escritos jurídicos', in E. de Hinojosa y Naveros, *Discursos leídos ante la Real Academia de la Historia en la recepción pública de D. Eduardo Hinojosa, el día 10 de marzo 1889* (1889); de la Rasilla, 'El estudio del derecho internacional en el corto siglo XIX español', 21 *Rechtsgeschichte* (2013) 48, at 61.

¹³ E.g. C. Barcia Trelles, 'Sociedad Francisco de Vitoria', *La Libertad* (5 May 1926) 1.

¹⁴ Barcia Trelles, 'La primera conferencia', *supra* note 9.

¹⁵ De la Rasilla, *supra* note 9, at 154–223, esp. at 157–158 and 169.

out in the context of the discovery of America and to his own desire to foster a ‘spiritual closeness’ between the two worlds across the Atlantic.¹⁶

Barcia Trelles’s series of lectures at The Hague Academy of International Law in the summer of 1927 was in fact a much-expanded version of the argument he had outlined at Salamanca and in *La Libertad*. Absent access to his original lecture notes, it is impossible to determine how much redrafting Barcia Trelles did for the final publication in the *Recueil des Cours*.¹⁷ However, it is relevant to note that, in parallel, Barcia Trelles was working on the Spanish translation of Scott’s first major study of Vitoria, which was based on Scott’s lectures at the University of Georgetown, and to which he contributed an extensive prologue.¹⁸ The suggestion of a synergy between the final drafting of Scott’s book and Barcia Trelles’s Hague lectures gains further support from a comparative reading.

3 Barcia Trelles at The Hague: The Strategy of Historical Reconstruction

Already in the very first pages of his Hague lectures, Camilo Barcia Trelles assured his audience and the readership of international lawyers that his aim was not an anti-quarian study of Vitoria or, as he put it, an exercise in nostalgia. His was a search for ‘motives and the encouragement to reaffirm our belief and hopes for better days’.¹⁹ As the title of his work, ‘Francisco de Vitoria and the Modern School of International Law’ (‘Francisco de Vitoria et l’école moderne de droit international’), suggested, Barcia Trelles embarked on an exploration of the deepest roots of modern international law. Although Vitoria wrote at a time of Spanish expansionism and imperialism, he transcended this context because of his great moral capacity – ‘spiritual’ rather than ‘material’ greatness – and his love for truth, which Barcia Trelles called timeless and of continued relevance to international law.

Barcia Trelles promised to read Vitoria’s thought in the light of modern international law, as it was emerging after World War I. In fact, the reading served Barcia Trelles’s own ideal of modern international law while advancing the view that this modern international law had its roots with Spanish intellectuals writing in the context of the forging of an Ibero-American world. Turning to a discussion of Vitoria’s thought, Barcia Trelles unabashedly stated that Vitoria’s work carried the ‘germs’ of

¹⁶ Barcia Trelles, ‘La primera conferencia’, *supra* note 9.

¹⁷ Barcia Trelles, ‘Francisco de Vitoria et l’école moderne du droit international’, 17 *Recueil des cours de l’Académie de droit international (RCADI)* (1927) 109. Also published as C. Barcia Trelles, *Francisco de Vitoria: Fundador del derecho internacional moderno* (1928).

¹⁸ For the original lectures, see James Brown Scott papers, *supra* note 3, box 64; J. B. Scott, *The Spanish Origin of International Law. Lectures on Francisco de Vitoria (1480–1546) and Francisco Suarez (1548–1617)* (1928); translated into Spanish as J. B. Scott, *El origen español del derecho internacional moderno* (University of Valladolid, 1928); Barcia Trelles, ‘Prologo’, in Scott, *El origen español del derecho internacional moderno*, *supra*, at v.

¹⁹ Barcia Trelles, ‘Francisco de Vitoria’, *supra* note 17, at 113–114.

a ‘just and new vision of international relations’, which particularly deserved to be studied at a time when the American republics were ‘laying the basis for an international work of codification’. He insisted, therefore, that one should not speak of American international law, but of Ibero-American international law.²⁰ He thereby admitted to be promoting the Spanish government’s programme of rebuilding Spain’s standing in the international arena by strengthening the country’s ties with Latin America – a programme that was of particular significance under the dictatorship of General Miguel Primo de Ribera (1870–1930) from 1923 to 1930. By implication, he thus distanced himself from Scott’s US-centric vision.²¹

Barcia Trelles’s treatise focused on seven major ideas of Vitoria, which, it argued, were relevant to the development of present-day international law: The Dominican friar’s rejection of the universal authority of pope and emperor was instrumental to the conceptions (i) of the international community as a community of sovereign states and (ii) of the law of nations as a law regulating relations between states (*ius inter gentes*). At the same time, (iii) the sovereignty of states was limited by their duties of solidarity and cooperation, which even stretched to intervention by the international community in case of grave violations. (iv) Vitoria’s theory of natural rights of communication and trade foreshadowed the existence of objective international rights as the basic laws of the international community, which ultimately served the interest and good of the people. (v) These rights of communication and trade were an endorsement for the freedom of the seas. (vi) Vitoria was also commended for having recognized the sovereignty rights of American Indian populations, in opposition to the 19th-century application of the doctrine of *res nullius* to indigenous lands and the practice of treaties of cession. Barcia Trelles saw him as a distant precursor to the recent introduction of the League of Nations’ mandate system. (vii) Finally, Vitoria’s version of the just-war doctrine, which not only restricted recourse to war but also counselled moderation in war and peace process, was celebrated as an example for the League of Nations and states worldwide.

In order to advance his particular reading of Vitoria and present him as the generator of a set of timeless ideas and principles that showed the way forward for international law, Barcia Trelles needed to make a number of methodological choices. In the following pages, his reconstruction of Vitoria is analysed from the perspective of his historiographical strategy and its inherent biases.

Like Nys, Scott and later international lawyers, Barcia Trelles focused on the Vitoria of only two of his lectures: those on the Indies and on war, both delivered in 1539.²² He largely ignored the other *relecciones*, or public lectures,²³ which had been included

²⁰ *Ibid.* at 128–129.

²¹ De la Rasilla, *supra* note 9, at 154–223.

²² In his later major work on Vitoria from 1934, Scott would cover more lectures by Vitoria, but the focus remained squarely with the lectures on the Indies and war, see J. B. Scott, *The Spanish Origin of International Law. Francisco de Vitoria and his Law of Nations* (1934).

²³ F. de Vitoria, *Relecciones theologicae* (1557). For an English translation, see de Vitoria, ‘On the American Indians’, in A. Pagden and J. Lawrance (eds.), *Vitoria: Political Writings* (1991) 231 and de Vitoria, ‘On the Law of War’, in Pagden and Lawrance, *ibid.* at 293.

in the oldest, posthumously published collection of Vitoria's lectures from 1557.²⁴ This allowed Barcia Trelles to set aside the wider context of Vitoria's theological views. Barcia Trelles' Hague lectures, in addition to a biographical chapter for which its author mainly borrowed from Spanish historians from the Dominican order,²⁵ were a combination of extensive paraphrasing of Vitoria's two lectures and a running commentary on their currency and importance. Here, Barcia Trelles and Scott adopted a similar approach.

While realizing that Vitoria was a professor of theology lecturing at Spain's foremost theology faculty, Barcia Trelles treated him as one would a learned jurist. Much like Scott, Barcia Trelles proved to be deeply influenced by Savigny's views. For Savigny, the historic progress of law was, and ought to be, the labour of learned jurists, whose main task it was to disclose and articulate the basic principles, conceptions and institutions of law, while keeping closely in touch with legal practice.²⁶ Barcia Trelles insisted, time and again, that Vitoria did not get lost in useless abstractions and theories – as, it seemed according to Barcia Trelles, previous Thomist scholastics had done – but applied himself to international relations and law in the context of the concrete, practical problem of the Spanish conquests in the New World. Barcia Trelles also used Vitoria's casuistic approach to ward off Grotius's criticism that his treatment of the laws of war and peace was unsystematic.²⁷

This 'juristic' approach to Vitoria did not hinder Barcia Trelles from acknowledging that Vitoria was a theologian, lecturing to theology students. However, he minimized the significance of Vitoria's theology background to cast him as a defender of timeless, universal morality. Barcia Trelles often referred to what he labelled the spiritual dimension of Vitoria's intellectual project. He used this term to insist on the intellectual independence Vitoria showed in the face of the imperialist ambitions of Charles V's (1500–1558) Spanish monarchy, and contrasted Vitoria's search for 'justice' and 'truth' with the 'legists' – civil lawyers – kowtowing to the 'materialist' – imperialist – agendas of the court. In contrast to the Protestant Scott's increasing insistence on the Catholicism of Vitoria and the other Spanish internationalists, in view of eliciting the papacy's support for international adjudication, Barcia Trelles refrained from using Vitoria to underscore Catholic origins of international law.²⁸ For Barcia Trelles, Catholicism was a natural part of the Iberian context, rather than a point of contestation or a strategy of promotion. Barcia Trelles's portrayal of Vitoria as a

²⁴ Barcia Trelles makes a single reference to Vitoria's lecture *De potestate civili*, which is key to understanding Vitoria's rejection of universal papal authority in the secular sphere. Nys also made a reference to this text in *Le droit des gens et les anciens jurisconsultes espagnols*, *supra* note 10, at 553. For a translation, see Vitoria, 'On Civil Power', in Pagden and Lawrance, *supra* note 23, at 1.

²⁵ L. G. Alonso Getino, *El Maestro Fr. de Vitoria* (1914).

²⁶ E. K. von Savigny, *Of the Vocation of Our Age for Legislation and Jurisprudence* [1814] (The Lawbook Exchange, 2002), at 30.

²⁷ H. Grotius, *De Iure Belli ac Pacis libri tres* (1625), Prolegomena paragraph 37; Barcia Trelles, *supra* note 17, at 238.

²⁸ J. B. Scott, *The Catholic Conception of International Law: Francisco de Vitoria, Founder of the Modern Law of Nations*. Francisco Suárez, *Founder of the Modern Philosophy of Law in General and in Particular of the Law of Nations* (1934); Amorosa, *supra* note 6, at 186–244.

legal and moral thinker who applied himself to the articulation of legal doctrine to concrete cases was the basis for the two following claims about the Dominican friar's achievement.

The central plank in Barcia Trelles's reconstruction of Vitoria's thought was his claim that Vitoria's legal system was a system of what he termed 'objective international law'. This entailed that Vitoria, from a high moral ground and an understanding of objective justice, charted the natural principles and rules of justice that governed and constrained the behaviour of states. These rules and principles were inherent in the existence of the international community of states, whose higher purpose was to uphold them. In Barcia Trelles's words, 'there exists a right of society and communication which is natural. This right emanates from the constitution of the world itself'.²⁹

To bridge the gap between Vitoria's law of nature and modern, objective international law in the sense of a set of enforceable rights and obligations, Barcia Trelles had largely to erase the theological dimension of Vitoria's thought. This was as much true of Vitoria's conception of the law of nations, which derived from natural law and could only be called positive in the Thomist sense. This meant that the law of nations was processed by human reason and appeared through, but was not constituted by, the consent of 'the major part of the world'.³⁰

As a professor of theology, Francisco de Vitoria's territory was first and foremost that of the spiritual dimension and the internal forum; that is the relations between God and humans as mediated by the Church and its officials, primarily through the confessional. It was to the *forum internum* of the conscience that the moral theologian, as well as the canon lawyer, applied themselves, managing the cycle of sin and absolution for the sake of each individual soul's eternal fate. Vitoria's discussions on law extended, however, into the *forum externum* – or relations among humans.

Over the late middle ages (12th to 15th centuries), canon law had expanded from the internal forum to the external forum of human relations, mainly through the dogma that absolution of sin could be attained only if the harm done to another human being was repaired. This idea drove the church and ecclesiastical courts to claim jurisdiction of a wide array of secular relations and cases.³¹ Vitoria referred to this tradition at the beginning of his lectures on the Indies, when he wrote that for the case of the American Indians, 'since this is a case of conscience, it is the business of the priests, that is to say of the church, to pass sentence upon it'.³²

²⁹ Barcia Trelles, *supra* note 17, at 196.

³⁰ T. Aquinas, *Summa Theologiae*, I-II q. 91, a. 3 and I-II q. 95, a. 4; de Vitoria, *supra* note 23, at 280–281, section 3.1.4; Kadelbach, 'Mission und Eroberung bei Vitoria: Über die Entstehung des Völkerrechts aus der Theologie', in K. Bunge, A. Spindler and A. Wagner (eds), *Die Normativität des Rechts bei Francisco de Vitoria / The Normativity of Law According to Francisco de Vitoria* (2011) 289; Scattola, 'Die Systematik des Natur- und Völkerrechts bei Francisco de Vitoria', in Bunge, Spindler and Wagner, *supra*, at 351.

³¹ *Novit Ille* (1204), X. 2.1.13; Clarke, 'Western Canon Law in the Central and Later Middle Ages', in H. Pihlajamäki, M. D. Dubber and M. Godfrey (eds), *The Oxford Handbook of European Legal History* (2018) 265, at 279–284.

³² de Vitoria, 'On the American Indians', *supra* note 23, Introduction paragraph 3, at 238.

Vitoria brought the discussions on the conquest of the Indies and war also into the sphere of human relations – and relations between peoples or polities (*ius inter gentes*) – by treating these issues as questions of natural law. To him, this was the law to apply to relations between peoples of different religions, such as the Christians and the inhabitants of the Indies. Although natural law was common to all humankind, as a theologian Vitoria saw its primary relevance in the fact that it emanated from divine creation. Vitoria's main concern was the implications of the violation of natural law for the individual soul. His quest in studying natural law was to help Christians distinguish between permissible and sinful behaviour. The same went for the law of nations, which ultimately derived from natural law. In addition to questioning what was illegal or illicit under different categories of laws – divine law, natural law, the law of nations, canon law, etc. – and thus might be damnable to the soul, Vitoria, in the tradition of Thomas Aquinas (c. 1225–1274) also questioned what was virtuous or charitable – under the law of the Gospel – and might bring one's soul closer to salvation.³³

While natural law might be universal and apply to all peoples in the external forum, Vitoria's purpose was to warn his Christian audience of the consequences to their eternal souls of violating this law. In other words, Vitoria's legal categorization applied to different spheres – the internal and external forum – with different consequences. Barcia Trelles took quite a leap when he threw Vitoria's fine-tuned categorizations of laws and morality onto one great heap and treated his 'laws' as a set of 'objective international laws', conferring mutually enforceable subjective rights and obligations on nations of the world. Although Vitoria's lectures may have made some steps in this direction, it took later neo-scholastic thinkers, and ultimately Grotius, to achieve a mature theory of secular natural, enforceable subjective rights.³⁴

Barcia Trelles repeatedly underscored the innovative nature and originality of Vitoria's thought in order to elevate him as the remote founder of international law. Barcia Trelles did not completely ignore the dependence of Vitoria on writers and doctrines of late-medieval theology, Roman law and canon law, and at times even overtly acknowledged it. This, however, did not stop Barcia Trelles from calling Vitoria an innovator, arguing for Vitoria's originality because he was first to align these doctrines with the case of the American Indians.³⁵ Thus, in the final analysis, Barcia Trelles's argumentation for the Ibero-American origins of modern international law was circular: international law was rooted in the Ibero-American encounter because Vitoria invented international law in this context, and he was original because he applied late-medieval doctrines to this encounter.

Two examples of Barcia Trelles's overstatement of Vitoria's originality illustrate the point. Barcia Trelles repeatedly applauded the theologian of Salamanca for having dispensed with late-medieval claims of the universal authority of the papacy in secular affairs. However, Vitoria toed the line of mainstream canon law doctrine, such as those

³³ G. M. Reichberg, *Thomas Aquinas on War and Peace* (2017), at 17–66.

³⁴ P. Haggenschmacker, 'Droits subjectifs et système juridique chez Grotius', in L. Foisneau (ed.), *Politique, droit et théologie chez Bodin, Grotius et Hobbes* (1997) 73; Koskenniemi, 'Imagining the Rule of Law: Rereading the Grotian Tradition', 30 *EJIL* (2019) 17.

³⁵ Barcia Trelles, *supra* note 17, at 331.

articulated by Pope Innocent IV (1243–1254), about the instrumental extension of the pope’s spiritual authority into the secular realm, more than Barcia Trelles seemed to realize.³⁶ Barcia Trelles insisted upon the contribution Vitoria made through his reading of the doctrine of just war, which not only limited the right of sovereigns to resort to war in order to seek retribution for prior injury, but also restricted them to seeking proportional retribution, and possibly a measure of punishment, in wartime and in the peace-making process. Although Vitoria’s exposition of these ideas at the end of his lecture on war was indeed exceptionally straightforward and explicit, he offered little more than a variant of the just war doctrines, as articulated and debated by late-medieval canon lawyers, theologians and civilians. Vitoria’s understanding of war as a preserve of sovereigns drew on the lawyer-pope Innocent IV (1243–1254) and Thomas Aquinas, albeit they operated under a different understanding of what it entailed.³⁷

Lastly, Barcia Trelles did not argue his foundational myth in terms of a continuous development of international law from Vitoria to his own time, but presented it as a cycle of invention–oblivion–rediscovery. It was Vitoria’s genius to discern the germs of a communitarian and humane international law, but this achievement was then lost and forgotten for the better part of four centuries. Now, with international law’s communitarian turn under the aegis of the League of Nations, similar ideas to those of Vitoria were emerging, and thus a renewed exploration of the work of the theologian of Salamanca was in order. This cyclic understanding matched the one propagated by the Dutch lawyer Cornelius van Vollenhoven (1874–1933) about Grotius.³⁸

4 Conclusion: The Resonance of the Hague Lectures in Debates on the Origins of International Law

The invitation to lecture at the 1927 Hague Academy of International Law was a boon for Barcia Trelles. It gave him an international exposure which he had not enjoyed before, and surely enhanced his standing in the Spanish legal academia.³⁹ Barcia Trelles’s performance was successful, and he was invited again for an unprecedented total run of four lecture series. In addition to the lecture series on Vitoria, Barcia Trelles taught on the Monroe Doctrine, on Francisco Suárez and on Fernando Vázquez de Menchaca at The Hague. The approach and the methodologies used in the latter two series stayed close to those of his first, although in the Suárez lectures Barcia

³⁶ Barcia Trelles, *supra* note 17, at 170–180; de Vitoria, *supra* note 23, at 284, section 3.2.9; Muldoon, ‘A Canonistic Contribution to the Formation of International Law’, 28 *The Jurist* (1968) 265.

³⁷ P. Haggemacher, *Grotius et la doctrine de la guerre juste* (1983), at 253–278; Reichberg, *supra* note 33, at 7–8, 121–122, 141–172; F. H. Russell, *The Just War in the Middle Ages* (1975).

³⁸ C. van Vollenhoven, *The Three Stages of the Law of Nations* (1912). Barcia Trelles did not list this work in his bibliography, but he did list another work which held the same reasoning: see van Vollenhoven, ‘Grotius and Geneva’, 6 *Bibliotheca Visseriana Dissertationum Ius Internationale Illustrantium* (1926) 5, at 34–44.

³⁹ Barcia Trelles, ‘La Academia de Derecho Internacional de la Haya: impresiones de un testigo’, *Universidad: Revista de cultura y vida universitaria* (1927) 5.

Trelles devoted far more attention to late-medieval scholarship in order to situate Suárez's understanding of the concept of *ius gentium* within the textual traditions of ancient Roman law and medieval scholarship. The thrust of the lectures on Vázquez de Menchaca was to establish him as one of the first articulators, in the slipstream of Vitoria, of the doctrine of the freedom of the seas.⁴⁰

Barcia Trelles fulfilled Scott's hopes of finding an ally in his quest to promote Vitoria as the founder of international law. With regard to their methods and interpretations of Vitoria's thought and its relevance to modern international law, Scott and Barcia Trelles sailed close to one another. Both international lawyers identified Vitoria as paving the way for a conception of international law that had in recent years gained traction in world affairs. From their reading of Vitoria's lectures on the Indies and war, they gleaned a body of ideas and institutions that pre-figured the 20th-century communitarian turn in international law, which, according to them, was pioneered by the New World. Paramount among these ideas was the definition of international law as a law between sovereign states, the postulation of an international community and of objective international law that transcended, and constrained, the free arbiter of states in the service of humanity. Part of this overlap stemmed from the fact that Barcia Trelles and Scott both wrote their first publications on Vitoria in 1927–1928, when they were in close touch and even collaboration with one another. It cannot be assessed who led the way, as both men independently identified Vitoria as the founder of international law. Before he learned about Barcia Trelles's Salamanca lectures, Scott had already given a series of lectures on the Spanish internationalists at Georgetown.⁴¹ However, it was clear that the interest in 16th-century Spanish internationalists, which flourished in the mid-1920s in Spanish political and academic circles of which Barcia Trelles was a part, served to enhance Scott's interest in the question of the Spanish origins.

If Barcia Trelles shared Scott's 'Spanish origins' programme, he broke ranks with his American sponsor on the programme's implications of 'American origins'. As Juan Pablo Scarfi expounds in his contribution to this Symposium, Barcia Trelles did not share Scott's vision of a pan-American liberal community of states under the moral leadership of the United States. Barcia Trelles's own Americanist programme was to disclose the deep historic connections between Spain and the Latin American community of states, and thus ultimately reinforce the Spanish, and by extension European, origins of modern international law. In this, as Scarfi suggests, Barcia Trelles did not want to avoid the nostalgia of Spain's past glories.⁴² This last theme, and the

⁴⁰ Barcia Trelles, 'La doctrine the Monroë dans son développement historique particulièrement en ce qui concerne les relations interaméricaines', 32 *RCADI* (1930) 391; Barcia Trelles, 'Francisco Suarez (1548–1617) (Les théologiens espagnols du XVIe siècle et l'école moderne du droit international)', 43 *RCADI* (1933) 385, at 422–438, largely based on A. Vanderpol, *La doctrine scolastique du droit de la guerre* (1925); Barcia Trelles, 'Fernando Vazquez de Menchaca (1512–1569)', 67 *RCADI* (1939) 433.

⁴¹ Amorosa, *supra* note 6, at 154–160.

⁴² Scarfi, 'Camilo Barcia Trelles on the Meaning of the Monroe Doctrine and the Legacy of Vitoria in the Americas', 31 *EJIL* (2020) 1463.

ultra-Catholic overtones of Spanish nationalism, would gain a far stronger presence in the scant writings of Barcia Trelles on Vitoria and the neo-scholastics in the later phases of his career under the Franco regime, as well as in the writings of some of his students and colleagues.⁴³

Barcia Trelles's 'Europeanist' programme did not hamper the impact of his Hague lectures among international lawyers. According to José María Beneyto, it gave Carl Schmitt (1888–1985) ammunition to construct a historical vision of European international law that countered the liberal-universalist agenda of the Anglo-American powers and buttressed his *Grossraum* theory.⁴⁴ For many international lawyers, European and others, the differences of opinion between Scott and Barcia Trelles about the nature and provenance of the American system, and the relative roles of the United States and Spain therein, were of secondary importance. They did not prevent Barcia Trelles's Hague lecture from becoming, much like Scott's books, a classical point of reference for international lawyers exploring the beginnings of the 'science of international law'. Although Scott and Barcia Trelles ultimately failed to supplant Grotius with Vitoria as the foremost founder of international law in the mainstream historiography of international law, they did succeed in fixing Vitoria's lectures as the first among the canonical texts in the accepted genealogy of international law. The myth of the Spanish origins of international law, of which Scott and Barcia Trelles were the two leading co-producers, limited the purview of the historiography of European and Western international law to its final 500 years and cast a deep shadow over the medieval contribution. With the Spanish origins myth comes the suggestion that Spanish internationalists, who rehearsed much of medieval scholarship, served Grotius as a conduit for late-medieval thought, but this is too narrow a trail. Scott's and Barcia Trelles's rereading of Aquinas and other late-medieval theologians, as well as civilians and canonists, did not exhaust in any way the crucial impact of 12th- to 15th-century legal scholarship on the doctrinal tradition of international law. For Grotius, the medieval glossators, commentators and canonists remained a much more important and frequently quoted source than Vitoria or the other Spanish internationalists. If Scott and Barcia Trelles deserve credit for extending the scope of international law's history beyond Grotius to Vitoria, this came at the price of obscuring the role of late-medieval legal scholarship and cutting off international law's historiography from the potential benefits of a vibrant legal-historical scholarship on the *ius commune*.⁴⁵

⁴³ Barcia Trelles, 'Fra Francisco de Vitoria y la Carta orgánica de San Francisco', in *Fray Francisco de Vitoria, fundador del Derecho internacional modern 1546–1946* (1946) 91; de la Rasilla, *supra* note 7.

⁴⁴ Beneyto, 'Camilo Barcia Trelles on Francisco de Vitoria – At the Crossroads of Carl Schmitt's *Grossraum* and James Brown Scott's "Modern International Law"', 31 *EJIL* (2020) 1477.

⁴⁵ Haggemacher, *supra* note 37; R. Lesaffer, 'International Law and Diplomacy', in G. Martell (ed.), *Encyclopedia of Diplomacy* (2018), available at <https://bit.ly/37u3AMK>. About 40% of the jurists Grotius cited were medieval; for annotations on Grotius' sources, see H. Grotius, *De Iure Belli ac Pacis libri tres*, ed. R. Feenstra and C. E. Persenaire (Scientia Verlag, 1993).