

Camilo Barcia Trelles on Francisco de Vitoria: At the Crossroads of Carl Schmitt's Grossraum and James Brown Scott's 'Modern International Law'

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Abstract

Carl Schmitt's The Nomos of the Earth in the International Law of the Jus Publicum Europaeum (1950) undertook a re-interpretation of the modern origins of the discipline of international law, placing Vitoria at its pivot, as the Spanish international law professor Camilo Barcia Trelles (1888–1977) had done before. Barcia's work had a strong influence on some of the seminal pieces on international law and geopolitics that Schmitt wrote in the period from 1941 to 1950. This was the case for Schmitt's historical mythology of the opposition between sea and earth and its juridical consequence, his doctrine of the Grossraum, which had as its basis Barcia's account of the Monroe Doctrine, and also of Schmitt's critique of the 'discrimination of war' formalized in the Kellogg–Briand Pact. According to Barcia, the exclusion of European powers from the American continent by the United States as a rising hegemon was transformed – thanks to its domination of the sea – into the global reach of a world police power. Barcia did not agree with Brown Scott's transformation of international law through American liberal internationalism into 'modern international law'. While Brown Scott and Schmitt were competing for two opposing vernaculars of the discipline in search for a new definition and to shape it, Barcia was instrumental in the opposed efforts of these two apparently very dissimilar representatives of international law by ushering Vitoria into their service.

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1 Land and Sea and the New *Raum*

In a letter written on 16 August 1941 to his preferred interlocutor, Ernst Jünger, Carl Schmitt (1888–1985) anguishes over one of his two current obsessions, the other one being the Monroe Doctrine: ‘The subject “land and sea” will not let go of me anymore’ (‘Das Thema “Land und Meer” lässt mich nicht mehr los’).¹ Some months before, living in Berlin not far from the place where crucial decisions on the further development of the war were being taken, but now hiding as an outcast from the Nazi regime, Schmitt had published the article ‘The Sea against the Land’ in the journal *Das Reich*. This piece, which was also translated into French and Italian, anticipated the third chapter of his small booklet *Land und Meer*, which was published the following year, 1942.² This ‘tale, told to my daughter, Anima’ was Schmitt’s attempt to elevate his interpretation of international law and the whole of human history onto a mythical stage. Both human history and international law were imagined as being driven by the confrontation between thalassocracies and geocracies, maritime and terrestrial powers.

According to Schmitt’s narrative, the fight between great powers grounded on continental earth against ones whose empires had their origins in a maritime expansion projected into history and politics the struggle between the biblical-mythical figures of Behemoth and Leviathan. Schmitt’s real-world targets in that crucial year were Great Britain and the United States, and Admiral Alfred Mahan, the main inspirational (and adversarial) source of Schmitt’s musings on the fatal historical destiny of the land power Germany. The only alternative to the unlimited expansion of global power through the domination of the Atlantic and the Pacific by the Anglo-Saxon thalassocracies was the doctrine of spheres of influence with its prohibition of intervention by third powers (‘*Grossräume mit Interventionsverbot für raumfremde Mächten*’). Schmitt elaborated this position in publications in various law journals controlled by Nazi officials which appeared in the years 1939 to 1943. To a large extent they read like a *Mittleuropä* version of the Monroe Doctrine.³

In that same year, 1942, and before the invasion of Normandy took place and the war expanded into the Pacific, the Spanish international law professor Camilo Barcia Trelles (1888–1977) had given a series of lectures on *El mar como factor de protagonismo en la política internacional* [*The Sea as a Protagonist in International Politics*] at the Spanish Naval School in the small coastal town of Marín on the southwest coast of

¹ Ernst Jünger-Carl Schmitt, *Briefe 1930–1983* (1999), at 124. He also wrote ‘The great captain Alfred Mahan has been my only conversation partner for months’ (*ibid.* at 124).

² C. Schmitt, *Land und Meer. Eine weltgeschichtliche Betrachtung* (9th ed., 2018).

³ Schmitt, ‘Völkerrechtliche Grossraumordnung mit Interventionsverbot für raumfremde Mächte. E in Beitrag zum Reichsbegriff im Völkerrecht’, in C. Schmitt, *Staat, Grossraum, Nomos: Arbeiten aus den Jahren 1916–1969* (G. Maschke ed., Duncker & Humblot, 1995) 269; Schmitt, ‘Raum und Grossraum im Völkerrecht’ in *Ibid.*, 234. On the reception of these writings and their use by Hitler, see the extensive references and commentaries by the editor of the collection of the essays, *ibid.*, at 262–268, 341–371. On the complexities of the interactions between Schmitt’s concept of *Grossraum*, his *Reichsbegriff* and National Socialist theories of *Völkerrecht*, see F. Blindow, *Carl Schmitts Reichsordnung. Strategie für einen europäischen Grossraum* (1999); M. Schmoekel, *Die Grossraumtheorie. Ein Beitrag zur Geschichte der Völkerrechtswissenschaft im Dritten Reich* (1994).

Galicia.⁴ Following his usual method, Barcia Trelles went back to the theoretical principles he had developed in his earlier writings and later applied to the study of the international politics of the day. He always saw international law as being inextricably linked to international relations. Since his early years, he had been particularly fascinated by what he formulated as the United States's ambivalent ascendancy to imperial power and its permanent oscillation between isolationism and interventionism, an inherent tension in US conduct of its external affairs, resolved in favour of interventionism, according to Barcia Trelles, only with the establishment of the Atlantic Pact in August 1941.⁵

The study of US politics constituted one of Barcia's leading academic interests throughout his life, along with the interpretation of the teachings of Spanish classics, first and foremost Francisco de Vitoria, followed by Francisco Suárez and Fernando Vázquez de Menchaca.⁶

Barcia Trelles was of the generation that has been called the *silver age* of Spanish internationalists, who had been profoundly marked by the defeat of Spain in the Spanish–American war in Cuba in 1898, the loss of the Philippines in the Pacific and of the other remnants of the former colonial Empire and years later by the revival of cultural and historical ties with the Latin American countries.⁷

The renewed attention to the Spanish classics of international law was certainly prompted by earlier rediscoveries made by Ernest Nys and other international lawyers led by the revival of natural law in the late 19th century.⁸ But as far as Spanish international lawyers were concerned, this renewed attention was further motivated by their ambition to put Spain back in the spotlight in European international legal science.⁹ The unencumbered Spanish contribution to the foundations of the law of nations, the desire to secure Spain's position in international law and international politics after the collective crisis of 1898 and Hispano-Americanism were the three pillars in an effort led by the new representatives of the legal profession in Spain. They set the stage for a strict internationalism – already evidenced in their earlier support

⁴ Barcia Trelles, 'El mar como factor de protagonismo en la política internacional', in C. Barcia Trelles, *Estudios de política internacional y derecho de gentes* (1948) 437.

⁵ Barcia Trelles, 'Origen, evolución y destino del aislacionismo norteamericano', in C. Barcia Trelles, *Estudios de política internacional y derecho de gentes*, *supra* note 4, at 220, 237; 'The Atlantic Charter', 14 August 1941, *The Yearbook of the United Nations*, 1946–47, 2.

⁶ C. Barcia Trelles, *La política exterior norteamericana de la postguerra* (1924); C. Barcia Trelles, *Francisco de Vitoria et l'école moderne du droit international* (1928); C. Barcia Trelles, *Les theologiens espagnols du XVIIe siècle et l'école moderne du droit international: Francisco Suárez* (1934); C. Barcia Trelles, *Ferdinand Vázquez de Menchaca* (1946).

⁷ De la Rasilla, 'El amanecer ius-internacionalista estadounidense en el crepúsculo imperial de España (1870–1936)', in Y. Gamarra and I. de la Rasilla (eds), *Historia del pensamiento iusinternacionalista español del siglo XX* (2012) 109, at 146.

⁸ E. Nys, *Les origines de droit international* (1894); E. Nys, *Les droits des Indiens et les publicistes espagnols* (1890); J. Lorimer, *The Institutes of the Law of Nations; A Treatise of the Jural Relations of Separate Political Communities*, (1883).

⁹ De la Rasilla, 'Francisco de Vitoria's Unexpected Transformations and Reinterpretations for International Law', 15 *International Community Law Review* (2013) 287; de la Rasilla, *In the Shadow of Vitoria: A History of International Law in Spain (1770–1953)* (2017).

for the Kellogg–Briand Pact – championed by Spanish constitutionalists and politicians who became the towering figures in the Second Spanish Republic (1931–1936), something that Barcia Trelles, as an international relations realist, considered ‘too platonic’.¹⁰

Nonetheless, a characteristic of Barcia’s academic style was that he transcended the immediacy of current events and lent them a deeper meaning based on long-term ‘historical constellations’, but stopping short of a mythological (or even eschatological) reconstruction *à la* Schmitt. Quoting Schmitt, and also German geopolitical authors like Friedrich Ratzel, Karl Haushoffer and Wolf Siewert, Barcia emphasized his main arguments. He had first set them out in *La política exterior norteamericana de la postguerra* [*The Foreign Policy of the United States after the War*] (1924) and in *El imperialismo del petróleo y la paz mundial* [*The Imperialism of Oil and World Peace*] (1925) and later developed them in his main works, *Doctrina de Monroe y cooperación internacional* [*The Monroe Doctrine and International Cooperation*] (1931) and *El Pacto del Atlántico (La tierra y el mar frente a frente)* [*The Atlantic Pact (Land and Sea Face to Face)*] (1950), which dealt with the consequences of the domination of the seas and the new global vision brought about by naval powers (first Great Britain and then the United States), which were able to establish new concepts of empire, of international law and of the instruments of war and peace.

The decisive battles fought with the aim of achieving international domination were sea battles, affirmed Barcia. Then, as now, the one country that dominated the seas would, if not completely control the globe, certainly have a decisive influence worldwide. Freedom of the seas was attainable, added Barcia – quoting Wolf Siewert – only by whoever reigned over them. The spatially unlimited vision of the vast seas led to great endeavours and it also favoured ambitions for absolute and exclusive power.¹¹

2 Barcia Trelles and Carl Schmitt: The Discovery of International Law

The dialogue between Carl Schmitt and Camilo Barcia Trelles – who were born the same year, 1888 – lasted until Barcia’s last days in 1977. Schmitt adopted Barcia’s central thesis that the discovery of the New World by the Spaniards had brought a new qualitative dimension to history, politics, *jus gentium* and the relations between peoples and individuals at large. The magnitude of the discovery of an entire New World had completely transformed perceptions of humanity¹² and conceptions of

¹⁰ Gamarra and de la Rasilla, *supra* note 7, at 207; General Treaty for Renunciation of War as an Instrument of National Policy, 27 August 1928, 94 LNTS 57 (hereinafter ‘Kellogg–Briand Pact’). See also 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), at 102–107.

¹¹ Barcia Trelles, *Estudios de política internacional y derecho de gentes*, *supra* note 4, at 8.

¹² This is one of the central themes in A. Pagden, *The Fall of Natural Man: The American Indian and the Origins of Comparative Ethnology* (1982).

war and peace. It had inverted the traditional pre-eminence of land over sea, and the prevalence of theology and moral philosophy over law and the economic realm. From then onwards, according to Schmitt's powerful – and factually broadly manipulated¹³ – narrative in *The Nomos of the Earth in Jus Publicum Europaeum*, the later triumph of the Anglo-Saxon thalassocracies over the landlocked German Reich was pre-ordained. The answer of the self-styled 'Christian Epimetheus' to the global challenge of the British and the Americans, following the sequence of Versailles, Weimar and Geneva, would in the darkest hours of the war be the *Grossraum* theory. And once any doubts about Germany losing the war had dissipated, the sad song of the defeated, *The Nomos of the Earth*, would be sung 'before the altar of jurisprudence'.¹⁴ This central piece in Schmitt's international legal oeuvre not only expounded a nostalgic (and adversarial) historical perspective on Europe's centrality in the world being displaced after four centuries by US power, but it also enshrined a philosophical reflection on the emergence of a 'new *Raum*', a spatial revolution taking place beyond the limits of land and sea, which called for a new 'nomos' of the world and hinted at a new 'orientation'

¹³ See Elden, 'Reading Schmitt Geopolitically: Nomos, Territory and Grossraum', in S. Legg (ed.), *Spatiality, Sovereignty and Carl Schmitt: Geographies of the Nomos* (2011) 91; Teschke, 'Carl Schmitt's Concepts of War: A Categorical Failure', in J. Meierhenrich and O. Simmons (eds), *The Oxford Handbook of Carl Schmitt* (2016) 367; T. Duve, 'Spatial Perceptions, Juridical Practices, and Early International Legal Thought Around 1500', in S. Kadelbach, T. Kleinlein and D. Roth-Isigkeit (eds), *System, Order and International Law: The Early History of International Legal Thought from Machiavelli to Hegel* (2017) 418, at 441, quoting Elden, *supra*, at 97: 'Without taking previous practices into account, as in other fields a "frustrating lack of detail and textual specificity to his arguments", he created a teleological and political-theological interpretation of the history of political thought'. But see Koskenniemi, 'Carl Schmitt and International Law', in Meierhenrich and Simmons, *supra*, at 607:

A realism [Schmitt's] that views law as a concrete order is not really novel or automatically against constructive work in international institutions . . . It is rather the case that work in international law has involved such strong *moral* commitment to the field's inherited rules, principles and institutions that casting a cold and analytical eye on it has become very difficult.

The broader context of Koskenniemi's interpretation can be found in Koskenniemi, 'International Law as Political Theology: How to Read *Nomos der Erde*?', 11 *Constellations* (2004) 492. On the ambivalence of Schmitt's rhetoric, see Stirck, 'Carl Schmitt's Enemy and the Rhetoric of Anti-Interventionism', 8 *European Legacy: Towards New Paradigms* (2003) 21. On his aporias, see Bernstein, 'The Aporias of Carl Schmitt', 18 *Constellations* (2011) 403.

¹⁴ Schmitt, 'Author's Foreword', in C. Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum* (G. Ulmen trans., Telos Press Publishing, 2006) 37. (hereinafter 'Schmitt, *The Nomos*'); originally published as Schmitt, 'Vorwort', in C. Schmitt, *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum* (2nd ed., 1974), 5. The book is a collection of essays grouped in three parts: 'The Appropriation of the New World'; 'The *Jus Publicum Europaeum*'; and 'The Question of a New Nomos of the Earth'. The book's main tenet is that there is a connection, and correlation, between law and territory, a dependence of any legal order on a concrete terrestrial existence. In his foreword, Schmitt wrote: 'The traditional Eurocentric order of international law is foundering today. This order arose from a legendary and unforeseen discovery of a new world, from an unrepeatable historical event' ('Author's Foreword', *supra*, at 39).

(*Verortung*) of war and peace, of the defining lines of law and order.¹⁵ *The Nomos of the Earth* also contained a re-interpretation of the modern origins of the discipline of international law, placing Vitoria – as Barcia had done – at its pivot.

Here, as on so many other occasions, Schmitt generously borrowed from others in order to construe his antagonistic position against the intellectual origins of American imperialism, Wilsonism and the ‘historical execution’ of *jus publicum europaeum* by the United States, with its alleged doctrines of *justus hostis* and ‘non-incrimination of war’. Many pages of *The Nomos*, as well as Schmitt’s other essays of the period, read like a transcript of Barcia’s detailed analysis and his extensive prior research on the sea as a protagonist of international law, on Vitoria and the Salamanca School, the Versailles Treaty, the Monroe Doctrine and the ambivalent consequences of American imperialism.¹⁶

Before his reinvigorated interest in international law in the 1940s, Schmitt was quite aware of Barcia Trelles and his work on Spanish international law classics, the founding of the Francisco de Vitoria Association and Barcia’s fruitful collaboration with James Brown Scott.¹⁷ Starting in the late 1910s and throughout his life, Schmitt was a very alert observer of Spanish culture, politics and its legal representatives, and he had begun to develop a network of acquaintances and correspondents in Spain that would grow substantially over the years. This made Spain the country which gave the strongest reception to his work and with which he entertained the closest relationship.¹⁸

¹⁵ On the relevance of Schmitt’s reflections to current debates about the sources and methods of global power, see Specter, ‘Grossraum and Geopolitics: Resituating Schmitt in an Atlantic Context’, 53 *History and Theory: Studies in the Philosophy of History* (2017) 398; Derman, ‘Carl Schmitt on Land and Sea’, 37 *Journal of the History of European Ideas* (2011) 181. See M. Arvidsson, L. Brännström and P. Minkinen (eds), *The Contemporary Relevance of Carl Schmitt: Law, Politics, Theology* (2016), underlining the enduring influence of Schmitt’s theory of *Nomos* in contemporary discussions on the nature of world order in the 21st century. For the use of *Grossraum* as a basis for a contemporary critique of neoliberalism, see Gattini, ‘Sense and Quasisense of Schmitt’s Grossraum Theory in International Law: A Rejoinder to Carty’s “Carl Schmitt’s Critique of Liberal International Legal Order”’, 17 *Leiden Journal of International Law* (2002) 53; Carty, ‘Carl Schmitt’s Critique of Liberal International Legal Order Between 1933 and 1945’, 14 *Leiden Journal of International Law* (2001) 25; L. Odysseos and F. Petito (eds), *The International Political Thought of Carl Schmitt: Terror, Liberal War and the Crisis of Global Order* (2007). For a critique of this literature, see Chandler, ‘The Revival of Carl Schmitt in International Relations: The Last Refuge of Critical Theorists?’, 37 *Millennium: Journal of International Studies* (2008) 27. On the geopolitical meaning of ‘space’ and imperialism, see C. Minca and R. Rowan (eds), *On Schmitt and Space* (2016).

¹⁶ It is revealing that Barcia Trelles is the only international lawyer explicitly mentioned in the ‘Author’s Foreword’ to *The Nomos*, *supra* note 14: ‘As a jurist, I agree with Camilo Barcia Trelles, an important scholar of contemporary international law who has also dealt with the theme of land and sea’. Later in the book, he refers to Barcia: ‘As early as 1925, in a lecture in Salamanca, Barcia Trelles hailed Vitoria as a precursor even of the Monroe Doctrine (America for the Americans)’ (Schmitt, *The Nomos*, *supra* note 14, at 118 n.26; emphasis added). In ‘Völkerrechtliche Grossraumordnung mit Interventionsverbot für raumfremde Mächte’, *supra* note 3, at 280 n.27, 281 n.30, Schmitt also repeatedly quotes from the French version of Barcia’s book (published in 1930) on the Monroe Doctrine as the best (anticipatory) exponent of his *Grossraum* theory.

¹⁷ See Schmitt, *The Nomos*, *supra* note 14, at 118 n.26: ‘In 1928, in the same city (Valladolid) in which Barcia Trelles’ book on Vitoria as the founder of modern international law appeared . . . [James Brown] Scott delivered a lecture on the Spanish origins of modern international law’.

¹⁸ J. M. Beneyto, *Politische Theologie als politische Theorie: Eine Untersuchung zur Rechts- und Staatstheorie Carl Schmitts und zu ihrer Wirkungsgeschichte in Spanien* (1983), at 20–61; M. Saralegui, *Carl Schmitt pensador español* (2016). For a detailed analysis of Schmitt’s intellectual debts to one of his main sources, the Spanish political theorist and politician Juan Donoso Cortés (1809–1853), who went from political liberalism to a radical critique of it, see J. M. Beneyto, *Apokalypse der Moderne: Die Diktaturtheorie von Donoso Cortés* (1988).

A decisive link in the relationship between Schmitt and Barcia Trelles was established through the mediation of the Romanist political theorist Álvaro d'Ors (1915–2004), the son of the celebrated writer and cultural critic Eugenio d'Ors (1881–1954), whom Schmitt had befriended in 1929 and who, on the pages of his *Glosario*, had frequently referred enthusiastically to Schmitt's publications and original insights.¹⁹ Although Schmitt had long known of Álvaro d'Ors through his father, the first encounter between the two took place in the city of Granada in 1944 on the occasion of a lecture that Schmitt gave on 'Vitoria and His Fame'.²⁰ At the time, Schmitt was busy mounting an attack against Brown Scott's re-appropriation of Vitoria and the American transformation of *jus gentium*, which later would be transposed into the central chapters of *The Nomos*, while d'Ors, who was a Catholic traditionalist with a penchant for political theology and legitimacy 'from above', undoubtedly provided a welcome companion, with a common critical evaluation of the last period of the war and the fatal consequences of American liberal interventionism for the destinies of 'European jurisprudence' and eschatological *Grossraum* theories.

That same year, 1944, Álvaro d'Ors took a post at the University of Santiago de Compostela, where he would teach through 1961, before definitively settling at the Catholic University of Navarre in Pamplona in northern Spain. Over the years, Santiago de Compostela was to become a very important place in the lives of Schmitt, Barcia Trelles and Álvaro d'Ors. In the first letter in the voluminous correspondence between d'Ors and Schmitt, where Barcia is mentioned as one of the *catedráticos* (chair holders) at the Compostela University, d'Ors refers to him as somebody already not unfamiliar to Schmitt, a renowned internationalist and enthusiastic follower of Vitoria, 'too much attached to the facts for my own pleasure', in the words of d'Ors.²¹ Schmitt's answer from his intellectual refuge in Plettenberg, Westphalia came some days later and was full of praise for Barcia Trelles, for his expertise on Vitoria, on the Monroe Doctrine and the American passage from isolationism to interventionism and on the relevance of his insights in the then in preparation *The Nomos of the Earth*.²²

In a letter some months later, dated 28 October 1949, Schmitt expressed his 'infinite thanks' to 'Don Álvaro' for having made possible his personal acquaintance with Barcia Trelles. Here again he expressed what had been his anticipation and then great admiration for the lectures that Barcia Trelles (from now on 'Don Camilo') had given on the Salamanca School at the Montevideo University in Uruguay during the month of June 1948, which were now appearing together with Schmitt's own essay on Vitoria in a Spanish international law journal.²³ During those years and in the decades to come, d'Ors would become one of Schmitt's closest interlocutors, and Santiago

¹⁹ E. d'Ors, *Glosario Completo: Nuevo Glosario. Novísimo Glosario*, 8 vols (1947), vol. 2, at 525–530, 701, 947–948, 1018; vol. 3, at 146, 535, 785.

²⁰ Quoted in M. Herrero (ed.), *Carl Schmitt und Álvaro d'Ors: Briefwechsel* (2004), at 60–62.

²¹ *Ibid.*, at 70.

²² Herrero, *supra* note 20, at 73.

²³ *Ibid.*, at 88. Barcia's lectures in Montevideo were published in C. Barcia Trelles, *Interpretación del hecho americano por la España universitaria del siglo XVI* (1949).

de Compostela (for Schmitt also in the sense of Spain at large) a kind of spiritual home. Schmitt travelled to Santiago frequently and conducted extensive conversations with the main representatives of the academic community there, and in particular with d'Ors, Barcia Trelles, Legaz y Lecambra (who became Rector of the University and also a regular conversation partner) and others. The differences in the doctrinal positions of these learned men with the theses that Schmitt eloquently and passionately sustained now and again could be substantial, but all of them – according to their own personal accounts – much enjoyed the discussions.²⁴

In one of these journeys to Santiago de Compostela, Schmitt's only daughter, *Ánima*, who was accompanying him, met the law historian Alfonso Otero, a former student of both Álvaro d'Ors and Barcia Trelles, and married him in 1959. From that year and until 1979, Carl Schmitt's visits to the growing family in Santiago de Compostela became more frequent, particularly on the occasion of family celebrations such as Christmas. It was common for him to get together with his friends from the academic community for long discussions on topics of common interest, and Barcia Trelles was among the main guests.²⁵ The personal and academic friendship between Schmitt and Barcia Trelles ('Don Carlos' and 'Don Camilo') was manifested in the exchange of publications and essays that each of them wrote for the collections of learned articles (*Festschriften*) respectively published in their honour in 1959 and 1970.²⁶

In summary, there are three main topics which had substantial impacts on some of the seminal works that Schmitt wrote in the period from 1941 to 1950 and on which Barcia Trelles had relevant influence.

First, as he explicitly remarked in his brief 'Author's Foreword' to *The Nomos*, 'the concept of sea-appropriation has the stamp of a jurist, not of a geopolitician',²⁷ meaning not Harold Mackinder or Karl Haushofer, both of whom Schmitt also refers to, but Camilo Barcia Trelles. Schmitt's historical mythology of the opposition between sea and earth and its juridical consequence, the centrality of space (*Raum*) as the ultimate foundation of law, finds its origin in Barcia's early essays on the domination of the seas and the territorial conquest of the New World. 'Jurists', Schmitt further adds, 'have not learned their science of matter and soil, reality and territoriality, from geographers'. Schmitt's intellectual debt to Barcia Trelles on these questions would spur

²⁴ On the mutual influences between Schmitt and d'Ors and Legaz y Lecambra, and between Schmitt and a number of other Spanish intellectuals of the time, see Beneyto, *Politische Theologie als politische Theorie*, *supra* note 18, at 25–61.

²⁵ Herrero, *supra* note 20, at 9–10, in the 'Vorwort' written by Schmitt's granddaughter Dusanka Otero Schmitt, in which she recalls her recollections of the innumerable meetings and long conversations at her parents' house in Santiago de Compostela of Carl Schmitt, Álvaro d'Ors, Camilo Barcia Trelles and the other intellectual friends.

²⁶ Schmitt, 'Gespräch über den neuen Raum', in *Estudios de Derecho Internacional. Homenaje al Profesor Camilo Barcia Trelles* (1958) 263, published also in C. Schmitt, *Staat, Grossraum, Nomos*, *supra* note 3; Barcia Trelles, 'Johnson, de Gaulle und die augenblickliche Krise der NATO', in H. Barion (ed.), *Epirrhosis: Festgabe für Carl Schmitt*, 2 vols (1968) 357.

²⁷ Schmitt, *The Nomos*, *supra* note 14, at 38.

him to contribute a 'Gespräch über den neuen Raum' ['Dialogue on New Space'] to the *Studies* devoted to Barcia on the occasion of his academic jubilee.²⁸

Second, Schmitt's doctrine of the *Grossraum* was also heavily indebted to Barcia Trelles, and specifically his account of the Monroe Doctrine. Schmitt followed Barcia's frequently stated opinion that all the arguments that the United States had used to justify its actions at the turn of the 20th century, both in foreign policy and in international law, were contained in embryo in the Monroe Doctrine.²⁹ Schmitt considered that not only had the United States formulated this doctrine but it had compelled the entire world to subscribe to it, even though its content was obscure, ambiguous and often contradictory, and the United States had reserved the right to interpret its meaning.³⁰

As it was for Barcia, the League of Nations was also a case in point for Schmitt, because in matters concerning Europe, the United States could remain officially absent but could also be effectively present, in particular thanks to Latin American states, like Cuba, Panama and Guatemala, which were members of the League and dependent on the United States.³¹

For Schmitt, the development of a 'new world order' was confronted with the alternative between *Grossraum* and universalism, raised by the United States – as Barcia had analysed at length – by abandoning the purely defensive principle of the Monroe Doctrine and embarking on imperialist expansion. The first and most successful application of the *Grossraum* principle in international law had been the Monroe Doctrine, which was 'conceived to be spatially global in a modern sense'.³²

²⁸ There, Barcia Trelles is addressed as 'our revered friend Don Camilo, who [on the confrontation between land and sea] has done such ground-breaking international law thinking', and the conversation between the three interlocutors, which is the content of Schmitt's contribution, concludes with the appeal 'Let us ask now our friend *and teacher* [Lehrer] Don Camilo, who among us is right!': see Schmitt, 'Gespräch über den neuen Raum', *supra* note 26, at 552, 569 (emphasis added, translated by author).

²⁹ This is the underlying argument in C. Barcia Trelles's *Doctrina de Monroe y cooperación internacional* (1931), a work that he had written in Washington between December 1928 and August 1929 on a fellowship at the Carnegie Endowment and under the auspices of its director of international law, James Brown Scott. The last sentences of this book summarize Barcia's main contention:

Therefore, we consider antithetical not only these expressions, Monroe doctrine and international solidarity, but also equally those two expressions, Monroe doctrine and American solidarity. The doctrine was formulated for opposing the menaces of intervention; one century later, it wants to be used for justifying consummated interventions. There is no clearer inversion of the terms of the question. (Ibid., at 738) (translated by author)

³⁰ Schmitt, 'Völkerrechtliche Formen des modernen Imperialismus' [1932], in C. Schmitt, *Positionen und Begriffe im Kampf mit Weimar-Genf-Versailles 1923–1939* (1940) 162, at 168.

³¹ *Ibid.*, at 169; Barcia Trelles, *supra* note 29. Furthermore, Schmitt's detailed discussion of Article 21 of the Covenant of the League of Nations, 28 June 1919, 225 CTS 188, shows quite a number of implicit cross-references. See Barcia Trelles, *supra* note 29, at 209; Schmitt, 'Völkerrechtliche Formen des modernen Imperialismus', *supra* note 30, at 168, 175.

³² Schmoekkel, *supra* note 3, at 28. See also W. Hooker, *Carl Schmitt's International Thought: Order and Orientation* (2009).

This was also the core of Barcia's early analysis of the development of US foreign policy as oscillating between the original, isolationist interpretation of the Monroe Doctrine (the exclusion of foreign powers from the American continent) and its interventionist globalizing expansionism. Schmitt took advantage of Barcia's interpretation for the purposes of his *Grossraum* theory by advocating the principle of the exclusion of third powers embodied in the Monroe Doctrine and applying it to other historical situations and other friend–enemy groupings. In order to support a similar role for Germany in central and eastern Europe in the 1940s, he was very keen to learn from what the 'important [Spanish] scholar of contemporary international law' Camilo Barcia Trelles had written since the 1920s on the evolution of the Monroe Doctrine and on the 'spatial' implications of the discovery of a New World for *jus gentium*.

Third, in Schmitt's crucial critique of the 'discrimination of war' formalized in the Kellogg–Briand Pact it is not difficult to hear the arguments and counter-arguments (in the characteristic and somewhat baroque neo-scholastic style that Barcia used in his idiosyncratic writing) on the anti-war movement that he developed at length.³³ However, here Barcia's position was clearly contrary to Schmitt's. He continued to rely firmly on Vitoria's limitations of war, acknowledging its sheer reality and the need for its humanization, while rejecting Schmitt's theory of *justus hostis* as constituting the plight of *jus publicum Europaeum*. He did not resort to the pacifist demonization of war, either, which in his eyes could easily facilitate the unrestricted use of power in the name of humanitarian interventionism.³⁴

3 In the Shadow of Vitoria: The Fight for the Legacy of a Founding Father

Quite significantly, in 1946, the second time that Barcia Trelles devoted a monograph to his revered founding father of *jus gentium*, his tone had become acrimonious towards those who 'force and twist the arguments to come to the artificial conclusion that Francisco de Vitoria with his own authentic and immutable theories would play a brilliant role in these uncertain days of the UN defined by vetoes and votes'.³⁵ He found that even if there was 'an honest intent' behind the abusive manipulation of Vitoria's words, 'making [him] state what he had never said, nor affirmed nor could have thought', this conduct was 'unjustly and reprehensibly diminishing the stature

³³ Barcia Trelles, *supra* note 29, at 463–595.

³⁴ Schmitt also expressed indebtedness to Barcia in relation to the discussion of 'the confrontation between the contemporary fronts of the Free World and the Communist Bloc': see Schmitt, 'Die geschichtliche Struktur des heutigen Welt-Gegensatzes von Ost und West: Bemerkungen zu Ernst Jüngers Schrift: *Der Gordische Knoten*' (1955), reprinted in Schmitt, *Staat, Grossraum, Nomos*, *supra* note 3, at 529. Here Schmitt explicitly mentions Barcia Trelles's *El Pacto del Atlántico (La tierra y el mar frente a frente)* (1950). A related reference to the 'globale Spannung' (global tension) existing in the world since the Atlantic Pact is made in Schmitt, 'Gespräch über den neuen Raum', *supra* note 26, at 557.

³⁵ Barcia Trelles, 'Francisco de Vitoria en 1946', in C. Barcia Trelles, *Estudios de Política internacional y derecho de gentes*, *supra* note 4, at 11, 14 (translated by author).

of the one who was supposed to be exalted'.³⁶ Barcia's intention was to avoid the contextualisation of Vitoria's doctrines and his freezing into the past, into his own times. Neither did he want to leave him in the hands of the ideological 're-appropriators' of the day. In Barcia Trelles's idealized interpretation of Vitoria there was a permanent moral vision based on objective universal norms, the unity of the world, human solidarity, limited and legitimate justifications for waging war, exercise of justice and respect for the vanquished.

Accordingly, for Barcia, Vitoria bequeathed three permanent principles to the world: (i) equality and solidarity of nations; (ii) a supra-national community based on objective moral rules which are also positive obligations; and (iii) principles of justice applied to the inevitable reality of war through the prevention and avoidance of conflict, humane conduct of war and non-vindictive treatment of the defeated. The legal consequences of these principles were non-intervention, the right to free communication and trade (*ius communicationis*) and the restriction of warfare exclusively to the purposes of remedying of the wrong suffered. Quoting Vitoria's 'On Civil Power', Barcia summarized his reading of Vitoria's teachings by affirming that the community of peoples and nations has the power to dictate norms which are valid worldwide thanks to *ius gentium*, and there is no country that can think of itself an exception to these norms, because they are given by 'an authority which extends over the entire world'.³⁷

Nonetheless, those permanent, universal norms had to be applied to concrete historical and political situations, as Vitoria had done. This was the mission of the 16th-century theologian acting as a moralist, paving the way for a similar mission to be carried out by (international) legal scholars in the 20th century. Barcia's own position in the wake of World War II led him, following in Vitoria's footsteps, to harshly criticize the United Nations system of (five) permanent members of an imbalanced Security Council with veto powers, its dependence on US interests and the deployment of the atomic bomb in Hiroshima and Nagasaki, together with the treatment of the defeated Germans as inherently contrary to those Vitorian principles of material justice.³⁸

Barcia Trelles had taken a similar stance against the 'justice of the victors' after the Versailles Treaty, while at the same time emphasizing the positive new avenues opened to international cooperation and the restraining of war that the League of Nations had advocated after the Great War. By 1946, Barcia's long-standing opposition to US interventionism in the Americas had grown into a fundamental hostility to the United States' policy of expansionism, the ultimate goal of which, as he saw it, was an unlimited domination of the globe. As he did in the past after the publication of his first major works, Barcia Trelles continued to see himself as an 'apolitical' seeker of justice in a world increasingly dominated by sheer power. In his intellectual journey, he regarded Francisco de Vitoria not just as a figure of the past, or somebody who could

³⁶ *Ibid.*, at 14 (translated by author).

³⁷ *Ibid.*, at 31.

³⁸ *Ibid.*, at 32–34. For a contemporary collection of essays on Vitoria which discuss his relevance today, see Beneyto and Corti Varela, *supra* note 10.

be used to justify ‘modern international law’, but as a bright light illuminating the future, as a ‘founding father’ embodying the ideal doctrine to which the international community should aspire.

Along his self-defined ‘pure’ scholarly path, Barcia met another international lawyer who was also aspiring to the legacy of Vitoria and who felt he could gain from association with Barcia: James Brown Scott.

The very close relationship and mutual influence between Barcia Trelles and James Brown Scott – the figure towering over the inception of ‘modern international law’,³⁹ the founder of the American Society of International Law and of the *American Journal of International Law* and the main legal officer at the State Department before joining the leadership of the Carnegie Endowment for International Peace – deserves a closer look against the background of Barcia’s dialogue with Schmitt.

In 1926, Barcia Trelles started a campaign for the revival of the Salamanca School in light of its contributions to international law. In the summer, Brown Scott, as usual staying in Europe, received copies of the lectures on Vitoria given by Barcia Trelles earlier that year in Salamanca on the occasion of a Dutch delegation celebrating Francisco de Vitoria.⁴⁰ He was very impressed, and decided to write to Barcia, praising him for his account of Vitoria’s role in the rise of modern international law and telling him that they shared similar ideas. As proof of this, he wrote that he had just dedicated an entire course at Georgetown to the founders of international law, with a particular interest in Vitoria and the discovery of the New World.

Scott had planned to connect Vitoria with the pan-American programme he was running at the American Institute of International Law, the overall intention of which was to make US policies more palatable to Latin American tastes. The main

³⁹ I put a new spin on the phrase ‘modern international law’ used by James Brown Scott, and apply it to Scott’s own efforts at grounding liberal internationalism in the re-utilization of Vitoria. On the broad influence and activities of James Brown Scott as a central figure in the establishment of ‘modern international law’ in the first half of the 20th century, there is an increasingly large literature. A most comprehensive study on Scott’s career is B. Coates, ‘Transatlantic Advocates: American International Law and U.S. Foreign Relations, 1898–1919’ (2010) (Ph.D. thesis on file at Columbia University); B. Coates, *Legalist Empire* (2016). See also J. P. Scarfi, *The Hidden History of International Law in the Americas: Empire and Legal Networks* (2017); C. R. Rossi, *Broken Chain of Being, James Brown Scott and the Origins of Modern International Law* (1998); R. D. Nurnberger, ‘James Brown Scott: Peace Through Justice’ (1975) (Ph.D. thesis on file at Georgetown University, Washington, D.C.); Landauer, ‘The Ambivalences of Power: Launching the American Journal of International Law in an Era of Empire and Globalisation’, 20 *Leiden Journal of International Law* (2007) 325; M. W. Janis, *America and the Law of Nations 1776–1939* (2010) at 144–157; more broadly, H. Shinohara, *US International Lawyers in the Interwar Years: A Forgotten Crusade* (2012); F. L. Kirgis, *The American Society of International Law’s First Century, 1906–2006* (2006). For the relationship between Camilo Barcia Trelles and James Brown Scott, see Scarfi, ‘Camilo Barcia Trelles on the Meaning of the Monroe Doctrine and the Legacy of Vitoria in the Americas’, 31 *EJIL* (2020) 1463.

⁴⁰ Paolo Amorosa provides a detailed account of the encounter between Barcia Trelles and Brown Scott and their common mission to revive interest in Vitoria and the Salamanca School in his doctoral thesis. See P. Amorosa, ‘The American Project and the Politics of History: James Brown Scott and the Origins of International Law’ (2018) (Ph.D. thesis on file at the University of Helsinki, Finland), at 161–168, 178–188, now in book form: P. Amorosa, *Rewriting the History of the Law of Nations: How James Brown Scott Made Francisco de Vitoria the Founder of International Law* (2019).

tools for achieving this objective included codification of American international law through pan-American institutions and the establishment of American branches of the Francisco de Vitoria Association, similar to the one that Barcia had promoted in Spain.⁴¹ For decades to come, these two international lawyers would work towards reviving Vitoria and other Spanish scholars from the 16th and 17th centuries with a view to grounding anew the discipline of international law. Although they would develop quite a number of joint efforts in this undertaking, their ultimate objectives were substantially different.

4 On the Spanish Origins of the Monroe Doctrine and Two Versions of Pan-Americanism

After their first contact through correspondence, Barcia organized Brown Scott's visit to Spain in November 1928, which started a collaboration and an intense epistolary exchange that would continue until the death of the latter in June 1943.

Both were pursuing their own versions of internationalism as a means of furthering their nationalistic ambitions: to recover a past grandeur in the case of the Spaniard, and to aggrandize the United States in the case of the American. Papering over their differences, and based on a close personal affinity and mutual respect,⁴² Brown Scott and Barcia Trelles worked together for nearly two decades in their common endeavour to establish the primacy of Vitoria over Grotius as the founding father of the law of nations, and thus to frame the discovery of America, not the European wars of religion, as the key event in the narrative of the inception of the modern law of nations. As Scott would say, international law had fallen into the hands of the Dutchman like a 'ripened fruit'. Scott's decision in his mid-30s to devote the rest of his life to the Spanish origins of international law reflects his intention to set an agenda for the discipline that would favour the United States as the leading power on the global stage. Grounding the origins of international law in the discovery of the American continent, rather than tracing its European roots, was therefore decisive for the development of *jus gentium* under the cloak of 'modern international law'.

We might speculate on Barcia's intentions, who was obviously not unaware of the aims of his intellectual and professional fellow traveller. It is clear that throughout his life Barcia was at the same time fascinated and repelled by United States policies. A consistently staunch critic of US imperialism and US interventionism in the Americas, he had been won over by the cordial treatment he had received in North America and the generosity of his American friends. He also felt that, intellectually, the main challenge

⁴¹ *Ibid.*, at 187.

⁴² Barcia expressed sincere gratitude to Brown Scott and maintained an affectionate collegial relationship with him until his death. He dedicated his book on Francisco de Vitoria to him (see Barcia Trelles, *Francisco de Vitoria et l'école moderne du droit international*, *supra* note 6), and wrote his obituaries in a number of publications.

for an international lawyer of his generation was to try to understand and explain US behaviour. He analysed it historically and from the perspectives of geopolitics and international relations. The ascendancy of the United States had been a product of the faith in the country's manifest destiny and the supplanting of 'decaying' Spain as a world power. As the rising hegemon, the United States was able to manipulate to its own benefit not only 'historical constellations' but also such principles as those originally enshrined in the Monroe Doctrine and *jus gentium*. Thus, the exclusion of European powers from the American continent was transformed – thanks to the domination of the sea – into the global reach of a world police power.

According to Barcia's oft-repeated account, it was possible to trace the origins of the Monroe Doctrine back to the formal decree issued by Emperor Charles V in 1519, which bound the American Indian territories to the Spanish Crown and established their perpetual inalienability.⁴³ Thus, the American Indian territories belonged to Spain not as colonies that could be carved into pieces or ceded in exchange for compensation. In a sense they were 'more Spain' than the metropole itself, because of the commitment to their 'inalienability'. The binding force of this commitment spawned subsequent pacts by the Spanish Crown (like the Treaty of Madrid of 13 January 1750 between Ferdinand VI of Spain and John V of Portugal), establishing not only the inviolability of inter-American borders but also the permanent neutrality of the Americas. Barcia emphasized that the Spanish project in the 'Indies' was essentially different from British and European imperialisms of the 19th century or United States' imperialism in the 20th. Inasmuch as Vitoria's universalism had been morally driven and based on the equality of human beings and nations and on Christian solidarity, from the very beginning the Spanish Crown had integrated the American Indian territories and peoples as belonging to the same community as mainland Spaniards. Barcia wanted to make a clear distinction between the alleged 'civilizing' mission of the Europeans which materialized in the colonial scramble for Africa and in the 'open door' policy in Asia, with all its destructive consequences, and the Spanish imperial endeavours in the 16th century, which had to be understood in their own context. This was clearly demonstrated, he argued, by Vitoria's teachings and by the moral re-primations of the Salamanca theologians against the colonists and the authorities, including the Emperor himself.

Using the technical terms of pre-modern international law, Barcia contended that the 19th-century European powers, instead of abiding by Vitoria's rejection of the traditional titles for the acquisition of colonial territories, had relied on the power-driven principle of effective occupation. The United States expounded the principle of effectivity in order to justify its own version of imperial interventionism, particularly in the Americas.⁴⁴

Therefore, Barcia might have trusted that it was possible to go along with Scott's 'honest intent' and eventually hope to influence the course of his liberal,

⁴³ C. Barcia Trelles, *supra* note 29, at 25–28.

⁴⁴ C. Barcia Trelles, *Francisco de Vitoria, fundador del Derecho internacional moderno* (1928), at 54–61; originally published in French as C. Barcia Trelles, *Francisco de Vitoria et l'école moderne*, *supra* note 6.

pan-American, internationalist enterprises. He was thankful for the opportunity to collaborate together on what he thought could help to develop international cooperation and channel 'modern international law' into the Vitorian programme, which he had tried to formulate anew. This did not prevent him, on some specific questions, such as the establishment of a Permanent Court of Justice, from expressing his opposing views. He could not share Scott's expectations that the Court at The Hague would act in the international realm as an outgrowth of the jurisprudence of the US Supreme Court.

Obviously, Barcia had his own agenda, which basically coincided with the development of a Hispanic or Ibero-American stream of international law, again drawing Spain and Portugal closer to the Latin American Republics and thus allowing the deep Spanish roots of the universal principles of the law of nations to shine, an objective which he sometimes formulated as part of the Spanish 'spiritual' mission in the world.⁴⁵ Scott, for his part, took advantage of Vitoria's teachings in those areas which fitted his personal goals in relation to the development of the profession. This concerned, among other things, his struggle for an international judiciary; his understanding of sovereignty as a means of fostering cooperation and interdependence between countries; his positioning in favour of citizenship grounded *ex jure soli*; and his interpretation of Vitoria's idea of *jus communicationis* as a legal obligation in favour of unencumbered global commercial relations. But he also agreed on the larger goal of emphasizing the Spanish, and specifically Salamancan, origins of the discipline.

5 Conclusion

James Brown Scott wrote to Barcia Trelles that Spain for him was 'the Holy Land of international law', and from the very start of their relationship he thanked Barcia for his account of Vitoria's centrality in the birth of modern international law.⁴⁶ In *The Nomos of the Earth*, Carl Schmitt considered that Barcia Trelles had provided 'the strongest breakthrough for the world at large regarding Francisco de Vitoria'.⁴⁷ Tellingly enough, in this seminal book on international law, Schmitt devoted more space to discussing Vitoria than any other theorist writing on the law of nations. Schmitt used his robust re-appropriation and re-interpretation of Vitoria's thought as a polemical response to the liberal internationalism of Brown Scott. While pushing Brown Scott's reading of Vitoria as a liberal internationalist *avant la lettre* to the limits, he forcefully linked the Salamanca theologian to the conceptual origins of the Treaty of Versailles, the Kellogg–Briand Pact and even the Nuremberg Charter.⁴⁸ Schmitt looked beyond the common bonds between Brown Scott and Barcia Trelles,

⁴⁵ Barcia Trelles, *Francisco de Vitoria, fundador del Derecho internacional moderno*, *supra* note 44, at 9–12.

⁴⁶ Amorosa, 'The American Project and the Politics of History', *supra* note 40, at 178–179.

⁴⁷ Schmitt, *The Nomos*, *supra* note 14, at 118.

⁴⁸ Smeltzer, 'On the Use and Abuse of Francisco de Vitoria: James Brown Scott and Carl Schmitt', 20 *Journal of the History of International Law* (2018) 345; Charter of Nuremberg International Military Tribunal, 8 August 1945, UN DOC A/CN. 415 (1949).

and re-directed all his argumentative weapons against Scott, identifying him – in a classic Schmittian friend-and-foe dialectic – as the ideological enemy to bring down. Barcia stood between the two, and identified himself with the ‘purist’ Vitoria as the ultimate defender not only of the origins of the law of nations but also of a future more attuned to Vitoria’s high morals.

James Brown Scott and Carl Schmitt were competing for two opposing vernaculars of the discipline in the search for a new definition and shaping of international politics. In the wake of the global expansion of Monroism, they continued to rely on the strong aura that Vitoria’s language, concepts and imagery exerted on the construction of international law. Barcia was instrumental to both James Brown Scott and Carl Schmitt in the opposed efforts of these two apparently very dissimilar representatives of the discipline by ushering Vitoria into their service. Barcia’s strong influence on these seminal representatives of the European tradition of *jus publicum europaeum* and the transformation of international law through American liberal internationalism deserves to be rescued from oblivion.