

Cambridge University Press

978-0-521-76338-7 - Mestizo International Law: A Global Intellectual

History 1842–1933

Arnulf Becker Lorca

Frontmatter

[More information](#)

Mestizo International Law

The development of international law is conventionally understood as a history in which the main characters (states and international lawyers) and events (wars and peace conferences) are European. Arnulf Becker Lorca demonstrates how non-Western states and lawyers appropriated nineteenth-century classical thinking in order to defend new and better rules governing non-Western states' international relations. By internalizing the standard of civilization, for example, they argued for the abrogation of unequal treaties. These appropriations contributed to the globalization of international law. With the rise of modern legal thinking and a stronger international community governed by law, peripheral lawyers seized the opportunity and used the new discourse and institutions, such as the League of Nations, to dissolve the standard of civilization and codify non-intervention and self-determination. These stories suggest that the history of our contemporary international legal order is not purely European; instead they suggest a history of a mestizo international law.

ARNULF BECKER LORCA is a visiting member of the International Relations Program at Brown University, Rhode Island, USA, and fellow at the Institute for Global Law and Policy at Harvard University. His research traces the global intellectual history of international law focusing on the role non-Western international lawyers have played in the construction of the international legal order between the second half of the nineteenth century and the first half of the twentieth century.

Cambridge University Press

978-0-521-76338-7 - Mestizo International Law: A Global Intellectual

History 1842–1933

Arnulf Becker Lorca

Frontmatter

[More information](#)

CAMBRIDGE STUDIES IN INTERNATIONAL AND COMPARATIVE LAW

Established in 1946, this series produces high quality scholarship in the fields of public and private international law and comparative law. Although these are distinct legal sub-disciplines, developments since 1946 confirm their interrelations.

Comparative law is increasingly used as a tool in the making of law at national, regional and international levels. Private international law is now often affected by international conventions, and the issues faced by classical conflicts rules are frequently dealt with by substantive harmonization of law under international auspices. Mixed international arbitrations, especially those involving state economic activity, raise mixed questions of public and private international law, while in many fields (such as the protection of human rights and democratic standards, investment guarantees and international criminal law) international and national systems interact. National constitutional arrangements relating to ‘foreign affairs’, and to the implementation of international norms, are a focus of attention.

The series welcomes works of a theoretical or interdisciplinary character, and those focusing on the new approaches to international or comparative law or conflicts of law. Studies of particular institutions or problems are equally welcome, as are translations of the best work published in other languages.

General Editors

James Crawford SC FBA

*Whewell Professor of International Law, Faculty of Law,
University of Cambridge*

John S. Bell FBA

Professor of Law, Faculty of Law, University of Cambridge

A list of books in the series can be found at the end of this volume.

Cambridge University Press

978-0-521-76338-7 - Mestizo International Law: A Global Intellectual

History 1842–1933

Arnulf Becker Lorca

Frontmatter

[More information](#)

Mestizo International Law

A Global Intellectual History 1842–1933

Arnulf Becker Lorca



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press
978-0-521-76338-7 - Mestizo International Law: A Global Intellectual
History 1842–1933
Arnulf Becker Lorca
Frontmatter
[More information](#)

CAMBRIDGE
UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9780521763387

© Arnulf Becker Lorca 2014

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2014

Printed in the United Kingdom by Clays, St Ives plc

A catalogue record for this publication is available from the British Library

Library of Congress Cataloging in Publication data

Becker Lorca, Arnulf, 1971– author.

Mestizo international law : a global intellectual history 1842–1933 / Arnulf Becker Lorca.

pages cm – (Cambridge studies in international and comparative law ; 115)

Based on author's dissertation (SJD – Harvard Law School), 2010.

ISBN 978-0-521-76338-7 (hardback)

1. International law – History. 2. Legal polycentricity. I. Title.

KZ1242.B42 2014

341.09'034 – dc23 2014032244

ISBN 978-0-521-76338-7 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Cambridge University Press

978-0-521-76338-7 - Mestizo International Law: A Global Intellectual

History 1842–1933

Arnulf Becker Lorca

Frontmatter

[More information](#)

para mis mestizos Milo, Benno y Melchor

Cambridge University Press

978-0-521-76338-7 - Mestizo International Law: A Global Intellectual

History 1842–1933

Arnulf Becker Lorca

Frontmatter

[More information](#)

Contents

| | | |
|---|---|---------|
| | <i>List of maps</i> | page xi |
| | <i>Acknowledgements</i> | xii |
| | Introduction | 1 |
| | Part I: <i>Mestizo</i> international law | 9 |
| 1 | Why a global intellectual history of international law? | 13 |
| | An intellectual history: ideas to change rules | 16 |
| | Seen from the peripheries | 18 |
| | A <i>mestizo</i> international law | 22 |
| | Between centre and periphery, between the international and the local | 24 |
| | The semi-peripheral finds an own voice and the core jurist becomes anxious: the debate about international law's origin | 30 |
| | A history of two semi-peripheral sensibilities | 36 |
| | Part II: Universal international law | 39 |
| 2 | Appropriating classical legal thought | 41 |
| | From geographical expansion to a universal international law | 43 |
| | Unequal regimes in nineteenth-century international law | 45 |
| | Semi-peripheral jurists | 49 |
| | The semi-peripheral appropriation of classical international law | 51 |

| | | |
|------|---|-----|
| viii | CONTENTS | |
| | A profession beyond the West | 52 |
| | Positivism | 55 |
| | Absolute sovereignty | 62 |
| | The standard of civilization | 65 |
| | A critique of the standard | 72 |
| 3 | The imposition and negotiation of rules: hybridity and functional equivalences | 76 |
| | Three types of international regimes | 76 |
| | The Ottoman capitulations | 79 |
| | The Chinese ‘treaty port system’ | 86 |
| | General treaties of peace, commerce and navigation in Latin America | 88 |
| | The Turkish, Chinese and Latin American regimes compared | 93 |
| 4 | The expansion of nineteenth-century international law as circulation | 98 |
| | Inclusion of newly independent states through recognition | 101 |
| | Western expansion through the forceful opening of weakened empires | 107 |
| | Japan | 108 |
| | China | 114 |
| | Inclusion in the ‘family of civilized nations’ through re-admission | 118 |
| | The Ottoman Empire | 120 |
| | Russia | 121 |
| | The expansion of international law as circulation | 128 |
| | The meaning of universality in public international law | 137 |
| | Part III: The fall of classical thought and the turn to modern international law | 141 |
| 5 | Sovereignty beyond the West: the end of classical international law | 143 |
| | The limits of sovereign autonomy: Luis Drago and the Venezuelan blockade of 1902 | 145 |
| | A right of intervention in the law of international claims | 149 |

Cambridge University Press

978-0-521-76338-7 - Mestizo International Law: A Global Intellectual

History 1842–1933

Arnulf Becker Lorca

Frontmatter

[More information](#)

CONTENTS ix

| | |
|--|------------|
| Limiting the scope of intervention: no use of force to collect public debt | 152 |
| The limits of sovereign equality: Ruy Barbosa at the Second Hague Conference of 1907 | 158 |
| A permanent international court | 160 |
| Absolute equality: a demand within classical international law | 164 |
| Japan between the revision of unequal treaties in the 1890s and the Paris Peace Conference of 1919 | 168 |
| Taxing perpetual leases: the limits of Japanese sovereignty | 171 |
| Paris Peace Conference of 1919: no racial equality in the League of Nations | 174 |
| The ‘arrogance’ of the newcomers | 178 |
| The Second Hague Conference: modern sovereignty | 179 |
| A new debate: the sovereign equality of semi-peripheral states | 181 |
| Equality versus inequality | 183 |
| Equality in a new international law | 187 |
| Formalism versus pragmatism | 189 |
| Absolute versus relative equality | 193 |
| The turn to modern international law in the semi-periphery | 197 |
| 6 Modern international law: good news for the semi-periphery? | 200 |
| The European affair and the rules for the semi-periphery | 203 |
| A critique of sovereignty with imperialistic overtones: Politis | 208 |
| Interdependence and social duties as new grounds for intervention: Lapradelle and Basdevant | 213 |
| Part IV: Modern international law | 221 |
| 7 Petitioning the international: a ‘pre-history’ of self-determination | 225 |
| Petitioning at the Peace Conference, Paris, 1919 | 227 |
| The reconstruction of international law in the semi-periphery | 232 |

Cambridge University Press

978-0-521-76338-7 - Mestizo International Law: A Global Intellectual

History 1842–1933

Arnulf Becker Lorca

Frontmatter

[More information](#)

| | | |
|---|---|-----|
| x | CONTENTS | |
| | Petitioning for self-government: from Paris to Geneva, from civilization to statehood | 237 |
| | ‘We have a civilization’ (rather than: ‘we have met the standard of civilization’) | 239 |
| | Change of circumstances: a new international order after the Great War | 244 |
| | Destabilizing the civilized/uncivilized divide | 251 |
| | After the defeat of self-determination, statehood | 258 |
| 8 | Circumventing self-determination: League membership and armed resistance | 263 |
| | Membership in the League of Nations | 264 |
| | Requesting admission at the First Assembly: independence, statehood and recognition | 270 |
| | Requesting admission after the First Assembly: Ethiopia and the Six Nations | 274 |
| | Acquiring statehood by force: the Syrian uprising and the French bombardment of Damascus | 287 |
| 9 | Codifying American international law: statehood and non-intervention | 305 |
| | Why to codify under modern international law? | 310 |
| | Codifiers at the centre and the semi-periphery: the ‘crisis of codification’ | 314 |
| | State responsibility: the Hague Conference again blocked by the semi-peripherals | 317 |
| | The Guerrero report | 318 |
| | The semi-peripheral challenge: Guerrero, Sipsom and Wu | 321 |
| | Codifying international law in the new world: the long road to Montevideo | 327 |
| | Pan-American codification | 334 |
| | Formal statehood and declaratory recognition | 337 |
| | Non-intervention | 341 |
| | Montevideo, 1933 | 349 |
| | Conclusion | 353 |
| | <i>Appendices</i> | 356 |
| | <i>Bibliography</i> | 363 |
| | <i>Index</i> | 387 |

Cambridge University Press

978-0-521-76338-7 - Mestizo International Law: A Global Intellectual

History 1842–1933

Arnulf Becker Lorca

Frontmatter

[More information](#)

Maps

| | |
|--|-----------------|
| Map 1: Treaties signed by Great Britain, 1648–1799 | <i>page</i> 357 |
| Map 2: Treaties signed by Great Britain, 1800–1899 | 358 |
| Map 3: Classical international lawyers mentioned in the book | 359 |
| Map 4: Modern international lawyers, diplomats, politicians and activists mentioned in the book | 360 |
| Map 5: Translations of Bluntschli (1856), Wheaton (1836), Martens (1882–3) and Calvo (1868) | 361 |
| Map 6: The expansion of international law in the treatises by Holland, Oppenheim and Westlake | 362 |

Cambridge University Press
978-0-521-76338-7 - Mestizo International Law: A Global Intellectual
History 1842–1933
Arnulf Becker Lorca
Frontmatter
[More information](#)

Acknowledgements

A book of this scope could only have been written with the help, advice and support of many friends and colleagues from around the world. Long time ago, back in Chile, I became interested in thinking about international lawyers as political actors. I thank Cecilia Medina and Amparo Menéndez-Carrión for that initial encouragement. This project developed first as a SJD dissertation at Harvard Law School. I thank the members of my thesis committee, Duncan Kennedy, Roberto Mangabeira Unger and Susan Silbey. My main supervisor was and continues to be a great source of inspiration: David Kennedy not only shaped the way I see international law, but also created at HLS a uniquely cosmopolitan environment without which adopting a global approach to the history of international law would have been impossible. At Harvard I was also extremely fortunate to use the international and foreign law collection at the law library before it was dismantled. I thank Stephen Wiles and all the staff at the library for allowing me to dig deep in the collection. In Cambridge MA, I also found a group of friends who listened to various versions of the stories recounted in this book: among others I thank Jane Bestor, Paulo Barrozo, Julieta Lemaitre, Roni Mann, Moria Paz, Carlos Portugal Gouvêa, Anna di Robilant, Hengameh Saberi, Alvaro Santos, Hani Sayed, Holger Spamann, Talha Syed, Philomila Tsoukala and Raef Zreik.

This project took shape as a book at King's College London. It was Susan Marks who first made me think about my disparate stories about non-Western international lawyers as a unified book. I thank Susan and my friends at King's: Christoph Kletzer, Federico Ortino and Lorenzo Zucca. I also benefited from London's vibrant international law scene. Among others I thank Matt Craven, Andrew Lang and Ralph Wilde.

The book was finished while teaching for the International Relations Program at Brown University. I thank Mark Blyth, Claudia Elliot and Anita

Cambridge University Press
978-0-521-76338-7 - Mestizo International Law: A Global Intellectual
History 1842–1933
Arnulf Becker Lorca
Frontmatter
[More information](#)

Nestor for their hospitality, Nathaniel Berman and Julio Ortega for enriching my understanding of global cultural trends and Richard Snyder for inviting me to present the Latin American stories in this book at Brown's Center for Latin American and Caribbean Studies. Thanks to Hannah Koenig for designing the maps. Teaching international law and a seminar based on this book to intellectually curious college students has been very gratifying. I thank my students for challenging me to improve the way I tell the different stories in the book.

A book on the intellectual history of international law would have been unthinkable without the paths opened by Toni Anghie and Martti Koskenniemi. I am grateful for their comments and support. I have been fortunate also to participate in Martti Koskenniemi's 'international law and empire working group' at the University of Helsinki. Presenting parts of the book in front of a fantastic group of intellectual historians and international law scholars was extremely useful.

I borrowed from Duncan Kennedy the idea that legal thought can be seen as a linguistic structure that has globalized in a classical and modern form. This heuristic provided a useful blueprint to explore a global history of international law. In some respects I was driven to this project in order to challenge Duncan's narrative in which legal thinking flows mainly from centre to periphery. I thank Duncan for the inspiration and the many lunches to report progress on the book.

Trying out hypotheses with historians interested in the history of international law was crucial to the development of the book. I am grateful to David Armitage, Benjamin Coates, Douglas Howland and Caroline Reeves for useful conversations. I thank Stacie Hanneman for organizing a panel at the 2102 Social Science Historical Association Conference where I presented parts of the book.

A shorter version of Part II of the book was published as 'Universal international law: histories of imposition and appropriation, 1850s–1900s', *Harvard International Law Journal*, 51 (2010), 475–552. Rein Müllerson, Bill Alford, Steve Harris and Karen Knop offered useful comments, as well as participants in presentations at the International Law Association British Branch–University College London international law seminar, King's College London School of Law staff seminar, Center for Transnational Legal Studies London Transnational Law Colloquium, Elizabeth Batelle Clark Legal History Colloquium at Boston University, and the Harvard-Stanford International Junior Faculty Forum. An earlier version of Chapter 5 was published as 'Sovereignty beyond the West: the end of classical international law', *Journal of the History of International Law*, 13 (2011), 7–73; I

Cambridge University Press
978-0-521-76338-7 - Mestizo International Law: A Global Intellectual
History 1842–1933
Arnulf Becker Lorca
Frontmatter
[More information](#)

xiv ACKNOWLEDGEMENTS

thank Douglas Howland and participants at the International Law and World Order Conference at Wisconsin-Milwaukee. A very short overview of Part III was published as ‘Petitioning the international: a prehistory of self-determination’, *European Journal of International Law*, 25 (2014), 497–523; I thank Anne Orford, Dino Kritsiotis, Mattias Kumm and participants at the second annual junior faculty forum for international law at the University of Nottingham.

As a member of a larger group of international law scholars gathering mostly around David Kennedy’s Institute for Global Law and Policy, I have been able to test and develop the ideas explored in the book. For years, every student or scholar of international law from the non-Western world that I encountered was subjected to a long list of questions about the first international lawyers of his or her country. I thank these countless students and scholars, since these informal conversations were fundamental to realize the global scope of international legal thought and practice.

In particular, conversations with Liliana Obregon, Jorge Esquirol and Rodrigo Gallindo enriched my understanding of international law in Latin America. Mekondjo Kaapanda introduced me to the Pan-African movement’s petitions. My understanding of Africa and Ethiopia also benefited from conversations with Rose Parfitt. Hani Sayed has always been willing to listen to my semi-peripheral stories; Hani and Michael Fakhri offered helpful context to understand Syria and Lebanon under the French mandate. My grasp of Japanese international lawyers benefited from conversations with Doug Howland, Sookyeon Huh and Koji Nishimoto. Conversations with Pasha Hsieh, Chen Li Chen and Stefan Kroll contributed to my understanding of international law in China. Paul McHugh introduced me to the Six Nations’ petitions.

While writing the book I had very useful conversations with Nathaniel Berman about Abd-del-Krim, with Mark Toufayan about Armenia, with Saptarishi Bandopadhyay about India, with Boris Mamlyuk about Russia, with Umut Özsü about the Ottoman Empire and with Stavros Gadinis and Thomas Skouteris about Greek international lawyers. Finally, many others gave me feedback on general questions of history and theory of international law. I thank Alan Nissel, Luigi Nuzzo, John Haskell, Justin Stein, Ignacio de la Rasilla, Akbar Rasulov and Mikhail Xifaras.

Finally, thanks to my boys Melchor, Benno and Milo for their love. And thanks to Anna: I counted on her influence, love and support at every stage of this long process. Without them there would be no book.