

THE COLLUDING WORLDS OF THE LAWYER, THE SCHOLAR AND THE POLICYMAKER: A VIEW OF INTERNATIONAL LAW FROM LATIN AMERICA

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I. INTRODUCTION

Evolving from Professor Richard Bilder's seminal work on the U.S. State Department's Office of the Legal Adviser,² symposium participants presented a variety of viewpoints on the role of international lawyers in foreign policymaking in the United States, Europe and Australia.³ I wish to continue that inquiry from the perspective of my own study on the historical acceptance and construction of international law by Latin American lawyers.⁴ Despite the cosmopolitan idealism of international lawyers, this conference made evident that the internationalist anchors her personal project in relation to the place and time in

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² Richard B. Bilder, *The Office of the Legal Adviser: The State Department Lawyer and Foreign Affairs*, 56 AM. J. INT'L L. 633 (1962).

³ Symposium, *Speaking Law to Power: International Law and Foreign Policy*, University of Wisconsin-Madison (2004).

⁴ See Liliana Obregón, *Completing Civilization: Nineteenth Century Creole Interventions in International Law* (2002) (unpublished SJD dissertation, Harvard Law School) (on file with the Harvard Law School library). For a general study of the idea of reception and production of legal theory in Latin America see Diego E. López-Medina, *Comparative Jurisprudence: Reception and Misreading of Transnational Legal Theory in Latin America* (2001) (SJD dissertation, Harvard Law School) published in Spanish as DIEGO E. LÓPEZ MEDINA, *TEORÍA IMPURA DEL DERECHO: LA TRANSFORMACIÓN DE LA CULTURA JURÍDICA LATINOAMERICANA [IMPURE THEORY OF LAW: THE TRANSFORMATION OF LATIN AMERICAN LEGAL CULTURE]* (2004). Latin America in this context is composed of the nations pertaining to the former Spanish colonial empire.

which she is situated.⁵ The internationalist's view of the law as well as her relationship to the foreign policymaking establishment is "different in different places,"⁶ affecting her possibility of speaking Law to Power. I wish to briefly sketch that difference from a Latin American tradition of international law as well as from the professional sensibilities and personal experiences of contemporary international lawyers in Colombia.

In the first part of this essay, I will describe the influential role in foreign policy making and scholarship of Andrés Bello, Carlos Calvo and Alejandro Alvarez during the nineteenth and early twentieth centuries. In the second part of the essay, I will focus on the relationship between internationalists, scholars and foreign policy, according to the views of contemporary Colombian international lawyers and international relations scholars. Their experiences and opinions help to illustrate the professional sensibilities of late twentieth century internationalists in a peripheral country.⁷

I took into account the questions⁸ presented to us by the symposium organizers both as a guide for the historical presentation as well as for the interviews I conducted with Colombian lawyers and foreign policy analysts. Therefore, the conclusions of the third part of the essay are based on the symposium questions.

⁵ My interest in the intellectual history and the sociological perspective of the field stems from my work with David Kennedy as well as from his extensive writings with this perspective. See David Kennedy, *When Renewal Repeats: Thinking Against the Box*, 32 N.Y.U. J. INT'L L. & POL. 335 (2000); David Kennedy, *The Disciplines of International Law and Policy*, 12 LEIDEN J. INT'L L. 9 (1999).

⁶ Perhaps the main point applicable to my project that Kennedy makes evident is that "international law is different in different places." See Kennedy, *supra* note 5, at 17.

⁷ In this particular context I refer to a peripheral country as outside of the center of production of international law.

⁸ The questions presented were: How does international law affect policy, and policy affect the practice of international lawyers? How do international lawyers inside and outside government interact with policymakers? What channels of communication exist between those who teach international law in the academy and those who practice international law in various settings? How does the field of international law cope with the tension between theory and practice, legal commitment and realpolitik? What is the responsibility of the international lawyer within government when confronted with an apparent clash between policy and law? How do these issues affect the various roles played by international lawyers (judge, advisor, activist, academic)? How are these issues dealt with in different national political and legal cultures and traditions?

II. NINETEENTH AND EARLY TWENTIETH CENTURY INTERNATIONAL LAWYERS, FOREIGN POLICY AND SCHOLARSHIP

For the Latin American legal professional milieu, the relationship between practice, foreign policymaking and scholarship during the first century after independence was strategic and had a regional dimension.⁹ We can briefly look at this history through the works of Andrés Bello, Carlos Calvo and Alejandro Alvarez, three eminent Latin American internationalists who represent different periods of international law before 1960. Bello, Calvo and Alvarez are important not only because they are the most distinguished Latin American internationalists of their times but also because their relevance in the use and production of international law as an essential tool of foreign policy complicates an image of Latin Americans as only passive or peripheral actors of the discipline.

A. ANDRÉS BELLO'S FOUNDATIONAL INTERNATIONAL LAW: THE EARLY NINETEENTH CENTURY

Andrés Bello (1781-1865) is a foundational figure¹⁰ in several areas of law as well as in grammar, history, literature and poetry.¹¹ Bello lived nineteen years (1810-1829) in London where he practiced as counsel for the newly formed offices of foreign

⁹ The independence movements of most American nations from Spanish colonial rule begin around 1810 and end as late as 1898.

¹⁰ The legacy of Bello's nation-building project is extensive. His texts continue to be taught in schools and universities throughout Latin America. Scholars known as the *Bellistas* dedicate their careers to the meticulous study of Bello's life and works. The connection to nationalist projects is evident in the support and recognition that *Bellistas* have received from several governments (especially Colombia, Venezuela and Chile).

¹¹ The extent of Bello's writings is quite impressive with the most recent version of his complete works covering twenty six volumes. He has been portrayed as the first American humanist, as the father of American law, American civil society, American philosophy, and Spanish-American grammar. Iván Jaksic, author of the most recent biography on Bello, and one of the few written in English, points out that although there is an extensive amount of studies on almost every aspect of Bello's life and works, there is still much scholarly analysis to be done to understand the overall significance of his contributions. Indeed, most of Bello's work is studied in compartmentalized disciplinary divisions, and generally does not seek to understand the broader significance of a particular work to Bello's general project of nation-building or to other areas of his intellectual project or to its

affairs of Chile and Colombia. His studies of law, literature and culture were intrinsic to his perspective and practice of diplomacy and international law. While in London, Bello took on an intensive study of the European treatises on the law of nations as well as on the origins of Romance languages. Bello acknowledged that international law was a powerful tool that had to be applied for the survival of the new nations. He also concluded that the decline of Latin and its division into several languages represented a lesson in the intricate relation between nation-building and the rule of law and language.¹² For Bello, the correct use and preservation of the Spanish language, the promotion of an American¹³ culture, as well as the appropriation and production of law with a regional perspective were fundamental elements to his project of constructing a distinct and autonomous

historical context. IVÁN JAKSIC, ANDRÉS BELLO: SCHOLARSHIP AND NATION-BUILDING IN NINETEENTH-CENTURY LATIN AMERICA xv–xxii (2001).

¹² According to Jaksic, the connection to Bello's extensive range of scholarly interests and his promotion of certain subjects as part of his nation-building efforts were centred around his life-long study of Spain's national epic, the *Poema del Mio Cid*, written in the thirteenth century. *Id.* at 47–55, 210–19 (discussion of how the study of the *Poema* relates to Bello's other works). Bello traced the changes of spoken and written Spanish over several centuries in the poem, through original documents and sources he found in the library of the British Museum. His erudite study also included a reflection on the origins of legal practices in Spain, based on Roman legal procedures that appeared in the epic. Bello connected the collapse of the Spanish Empire with the fall of the Roman Empire and proposed that the essence of imperial decline was based on the fragmentation of a unifying language. Therefore, in Bello's philological perspective, Spanish America would resemble the European Middle Ages if its foundational language, Spanish, and corresponding cultural heritage was allowed to fragment as had happened during what Bello described as the "tenebrous period of the emergence of modern languages" and when "war and desolation destroyed Roman culture" and "so many centuries of barbarism followed the corruption of Latin." *Id.* at 53. One concrete way in which this linguistic unity could contribute to nationhood was by providing access to the best legal traditions.

¹³ During Bello's time 'American' meant pertaining to the continent (and not to the United States). Bello portrayed his Americanism in the publications he directed while in London such as the BIBLIOTECA AMERICANA (1823) and EL REPERTORIO AMERICANO (1826-1827). He was not the only one. *Criollo* (American born person of Spanish descent) leaders in London in the early nineteenth century constructed *América* as a single political unit, where the common goal was its independence and recognition. They proclaimed to be *Americanos* first, then citizens of their country second. See José Luis Salcedo-Bastardo, *Bello and the 'Symposiums' of Grafton Street*, in ANDRÉS BELLO: THE LONDON YEARS 57 (John Lynch ed., 1982); Pedro Grases, *Britain and Hispanic Liberalism 1800-1830*, in ANDRÉS BELLO: THE LONDON YEARS 83 (John Lynch ed., 1982).

region. He knew that all of this had to be done in the context of peripheral nations, but it was precisely in the appropriation of the old and the conversion to the new that his project showed its own strength and excitement:

Our Republic is certainly just been born to the political world; but it is also true that since the moment of her emancipation she can access all the intellectual heritage of the nations that preceded her, and all the flow of political and legislative wisdom of old Europe and all that North America, her first daughter, has added to this opulent heritage. . . .¹⁴

. . . .
All the peoples that have distinguished themselves on the world scene before us, have worked for us. . . The independence we acquired has put us in immediate contact with the more advanced and cultured nations; nations rich in knowledge, of which we can participate just by wanting to.¹⁵

It became clear to Bello that both language and the rule of law were essential to nation-building since these were the central elements to forming new cultural identities and thus the means of survival for the new nations.

When Bello returned to the American continent in 1829 as legal advisor to Chile's Ministry of Foreign Affairs, he began building upon his scholarly and applied project of nation and region-building.¹⁶ One of the first things he did upon arrival was to begin teaching international law. Three years later, in 1832, Bello published in Santiago de Chile *Principios del Derecho de Gentes* [Principles of the Law of Nations], the first treatise of international law written and published in the Americas as well as

¹⁴ HUGO HANISCH ESPÍNDOLA, ANDRÉS BELLO Y SU OBRA EN DERECHO ROMANO 169 (1983).

¹⁵ Biblioteca Virtual Miguel de Cervantes, La obra literaria en la acción poligráfica de Bello, at http://www.cervantesvirtual.com/bib_autor/Andresbello/obra5.shtml (last visited Dec. 5, 2004).

¹⁶ Bello's project has been described as one of ordering via three routes: "the ordering of thought via language, literature and philosophy; the ordering of national affairs via civil law, education and history; and the participation of the new nations in the world order. . . via international law and diplomacy." Iván Jaksic, *Introduction to ANDRÉS BELLO, SELECTED WRITINGS OF ANDRÉS BELLO* xxviii (Iván Jaksic ed., Frances M. López-Morillas, trans., 1997).

Bello's first publication in the continent. Of course, Bello wrote his treatise after extensively reading and studying international law from foreign texts, but he carefully selected and edited them into a text that he considered clear, comprehensive and directly applicable to the situation of the American republics. In the prologue of this first edition (there would be three), Bello claims he wrote the book so that young lawyers and diplomats of the new American States "may cultivate a science, that if before could be disregarded with impunity, is now of the utmost importance for the defense and vindication of our national rights."¹⁷ Bello's acknowledgement of the urgency of this knowledge is demonstrated by the book's publication before any of his works on Spanish grammar and other fields of law, for which he is most remembered.¹⁸

Bello's call was indeed heeded. Perhaps due to the respect that Bello had among the intellectual elites, the uniqueness of his work and its political urgency, the treatise quickly circulated and reprinted throughout the region.¹⁹ It became a necessary tool at most ministries of foreign affairs and was the incentive for the new international law courses that sprung up throughout Latin American law schools. In fact, several of these schools anticipated their European and United States counterparts in teaching

¹⁷ ANDRÉS BELLO, *PRINCIPIOS DE DERECHO DE JENTES IV* (1832).

¹⁸ His first works on Spanish grammar were published in 1835 and 1847 and his civil code for Chile was published in 1858. ANDRÉS BELLO, *PRINCIPIOS DE LA ORTOLOGIA Y MÉTRICA DE LA LENGUA CASTELLANA* (Santiago de Chile, Impr. de la Opinión, 1835); ANDRÉS BELLO, *GRAMÁTICA DE LA LENGUA CASTELLANA: DESTINADA AL USO DE LOS AMERICANOS* (Santiago de Chile, Impr. del Progreso, 1847); ANDRÉS BELLO, *CÓDIGO CIVIL DE LA REPÚBLICA DE CHILE* (Santiago de Chile, Impr. Chilena, 1858).

¹⁹ Though other Latin Americans published their own treatises and course books after Bello's first edition, Bello's text was the most re-printed and distributed in the nineteenth century. The first edition was printed in Santiago, Chile in 1832. For the second and third editions of 1844 and 1864 he changed the title to *PRINCIPIOS DE DERECHO INTERNACIONAL* [Principles of International Law]. The book was reprinted in Caracas in 1837, 1847 and 1851; Bogotá in 1839 and 1869; Paris in 1840, 1846, 1847, 1864, 1873, and 1882; Madrid in 1843 and 1883; Lima in 1844, and Valparaiso in 1844. In the twentieth century it was reprinted in Santiago in 1932, Buenos Aires in 1946, Caracas in 1954 and 1982, and Sucre in 1985. Only a part of the book has been translated into English and was printed in 1997. ANDRÉS BELLO, *SELECTED WRITINGS OF ANDRÉS BELLO* (Iván Jaksic ed., Frances M. López-Morillas, trans., 1997).

international law as an obligatory law school course with its own textbook.²⁰

Thus Bello's foundational project of international law was lived amidst the three-fold experience that constitutes the call of this symposium: as a scholar, policymaker and practitioner. During the early nineteenth century those roles were simultaneously compatible, allowing Bello's treatise to be influential in the foreign policy decisions of Chile as well as of other nations in the region. International law was not seen as a procedural or formal support for policy but as a substantive argument to combat what Bello criticized as inequalities of power and wealth in the international arena.²¹ Bello commented on the stronger nations' ability to ignore or make their own interpretations of international rules. Thus, he believed that promoting the knowledge and use of international law in the region would naturally lead the progress of international relations and that, with time, such inequalities would disappear.²² In the scope of his region-building project Bello anticipated the teaching and application of international law as key for the future survival of the new American nations. Therefore, he did not make a distinction between international law and foreign policy for the region. In Bello's view the foreign policy of the new nations had to strategically use the arguments

²⁰ International law was incorporated as part of the regular curriculum of national law schools in Colombia (1826), Venezuela (1827), and Chile (1832). ROGELIO PÉREZ PERDOMO, *LOS ABOGADOS EN AMÉRICA LATINA: UNA INTRODUCCIÓN HISTÓRICA* [Latin American Lawyers: A Historical Introduction] 76–80 (2004). In France, Germany and England, international law was taught as an independent course only until the second half of the nineteenth century. See MARTTI KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870-1960*, 30–34 (2001). The first university courses on international law in the United States were taught at Yale in 1846, Harvard in 1863 and Columbia University in 1865. By 1907, of the 81 law schools in the United States only 10 taught international law, a course that was considered a “luxury,” contrary to the general perception in Latin America of international law as a necessary and mandatory course of the law school curriculum. John M. Raymond & Barbara J. Frischholz, *Lawyers Who Established International Law in the United States, 1776-1914*, 76 *AM. J. INT'L L.* 802, 817 (1982).

²¹ BELLO, *supra* note 17, at 10.

²² Citing Sir William Blackstone's *COMMENTARIES*, Bello presumed that all “civilized” nations took international law to be an integral part of national law therefore international law would gradually equalize all nations that respected it. BELLO, *supra* note 17, at 8.

of international law because it was precisely this language that would guarantee the survival of new nations.²³

B. CARLOS CALVO'S PROFESSIONALIZATION OF INTERNATIONAL LAW: THE LATE NINETEENTH CENTURY

If Bello's work at the intersection of international law and foreign policy can be considered foundational, in the second half of the nineteenth century, the Argentine diplomat Carlos Calvo (1822 – 1906) represents the further professionalization of the field by Latin American lawyers during its classical period.²⁴

Calvo was among the first generation of Latin Americans born after independence.²⁵ Educated in Buenos Aires and Paris, his first influential readings on international law were the treatises written by Andrés Bello and Henry Wheaton.²⁶ Both books were essential to the beginning of his diplomatic career.

Calvo, like Bello, was adamant in using international law as the foundation for his work as a diplomat. Most significantly, during his term as a representative of the Paraguayan government, Calvo became famous in Europe and Latin America for requesting reparations from the British government for the "Canstatt Case" based on the legal opinions of recognized publicists of international law.²⁷ Indeed, Calvo put Power to the test of Law: the representative of a small country (Paraguay) had won

²³ Following the German historical school, Bello taught his readers that there could be differences in the *practice* of international law as determined by the relative correspondence to particular locations.

²⁴ The classical, or professional, period refers to parallel trends in legal thought that arose in the mid to late nineteenth century. MARTTI KOSKENNIEMI, FROM APOLOGY TO UTOPIA: THE STRUCTURE OF INTERNATIONAL LEGAL ARGUMENT 83–191 (1989).

²⁵ There are very few biographies about Calvo's life and works. For the most recent and complete one see EDUARDO RICARDO PÉREZ CALVO, VIDA Y TRABAJOS DE CARLOS CALVO [Life and Works of Carlos Calvo] (1996).

²⁶ HENRY WHEATON, HISTOIRE DES PROGRES DU DROIT DES GENS EN EUROPE, DEPUIS LA PAIX DE WESTPHALIE JUSQU'AU CONGRES DE VIENNE: AVEC UN PRECIS HISTORIQUE DU DROIT DES GENS EUROPEEN AVANT LA PAIX DE WESTPHALIE (Leipzig, F.A. Brockhaus 1841); HENRY WHEATON, ELEMENTS DU DROIT INTERNATIONAL (Leipzig, Brockhaus & Avenarius 1848); BELLO, *supra* note 17.

²⁷ Canstatt, a British citizen was imprisoned in the 1850s as a presumed conspirator in a plan to murder president López of Paraguay. The British government pressured the Paraguayan government to release Canstatt based only on the fact of his citizenship. As a consequence of the Paraguayan government's denial to free

over a powerful one (Great Britain) by diplomatic negotiation, arguing for the application of recognized principles of international law.²⁸

In 1864, Calvo resigned from his post in Paraguay and returned to Paris, where he continued to write and publish. In his works, Calvo incorporated the history of international law in Latin America into the treatises and dictionaries that he wrote for European consumption. He used Bello's book as a reference and guide to write his own 1868 treatise. He continued to cite and acknowledge Bello effusively in the following editions, to the point that he described him as Henry Wheaton's precursor.²⁹ As

him the British government broke relations. British ships detained President López's son as a counter action for not having freed Canstatt. Calvo, representing the Paraguayan government, had no luck dealing directly with the British government. He then contacted the most prominent jurists and political leaders of the time to give their opinion on the legal issues involved. The political and diplomatic pressure in favor of Calvo's arguments forced the British government to promise not to intervene in Paraguay and to state that the internal situation and the actions of the British officials had been personal and not based on British foreign policy. See CARLOS CALVO, QUESTION CANSTATT: DOCUMENTS OFFICIELS ÉCHANGÉS ENTRE LA LÉGATION DE LA RÉPUBLIQUE DU PARAGUAY ET LE GOUVERNEMENT DE SA MAJESTÉ BRITANNIQUE (Besançon, J. Jacquin 1861). Calvo would later publish a more complete description of the Canstatt case as CARLOS CALVO, UNA PÁGINA DE DERECHO INTERNACIONAL, O LA AMÉRICA DEL SUR ANTE LA CIENCIA DEL DERECHO DE GENTES MODERNO (Paris, A. Durand 1864), and would often refer to the case in other texts. A summary of the case appears in CARLOS CALVO, DERECHO INTERNACIONAL TEÓRICO Y PRÁCTICO DE EUROPA Y AMÉRICA 453–56 (Paris, D'Amyot 1868). For a contemporary interpretation of the historical relevance of the Canstatt case see PÉREZ CALVO, *supra* note 25, chs. VIII, IX and X.

²⁸ PÉREZ CALVO, *supra* note 25, at 126–27.

²⁹ CARLOS CALVO, LE DROIT INTERNATIONAL THÉORIQUE ET PRATIQUE, PRÉCÉDÉ D'UN EXPOSÉ HISTORIQUE DES PROGRÈS DE LA SCIENCE DU DROIT DES GENS 109–10 (Paris, Librairie nouvelle de Droit et de Jurisprudence 1896).

One of the most remarkable men that Latin America has produced is without a doubt Andrés Bello. . . Bello acquired a just reputation as a Statesman and as a writer. Science, philosophy, jurisprudence, and legislation: . . . he treated them all with superior talent. In 1832, Bello, taking advantage of the experience in international affairs. . . published. . . : *Principios de derecho de gentes* an elementary treatise, though such that in a restricted amount of space, he was able to resolve all of the main issues that are essential to the discipline. Bello is the first to have signalled the insufficiency of the principles presented in Vattel's work and to have tried to supplement them. We could consider him as the precursor of Wheaton, the American publicist who has recognized him in numerous cites. The rest of the authors, the most distinguished, are unanimous in speaking of Bello's work with much praise.

such, Calvo used his writing to strategically integrate the periphery into the center of international legal scholarship where he knew the power of the international law resided.

In fact, Calvo was one of the first publicists to give the region more conceptual force by using the term *Latin America* as a descriptor for the region.³⁰ For Calvo, it was important to distinguish the region as a counterforce to the imperial interventions of the United States which was not only taking over land to the south but also appropriating the name of the continent as its own. The use of the term *Latin America* helped distance the southern part of the continent from the United States by making a connection to a civilized past Roman law tradition and renewed inclination towards France as a political and cultural model for the region.³¹

Calvo was also writing at a moment when historicist interpretations of international law began to replace the notion of a universal natural law with that of a historically determined progress that each nation was to fulfill.³² Calvo was well aware that

Id.

³⁰ The term “Latin America” was coined in the 1850s after several U.S. interventions in Central America and the fear of U.S. imperialism through the doctrine of Manifest Destiny. It is not a coincidence that Calvo’s historical compilation of treaties is one of the first publications to use the term Latin America as a reference to the region. This semantic shift is significant because it reflects the political events of the time as well as the discussions among the Parisian exile and diplomatic community in which Calvo was an active participant. The Latin Americans in Paris had appropriated the idea of “pan-Latinism,” circulated by the French economist Michel Chevalier, a functionary of Napoleon III, based on the ethnic and cultural categories of early nineteenth century European historicism. Chevalier’s pan-Latinism was a way of counteracting the advancement of the “Anglo-Saxon race” over the “Latin race.” *Id.*

³¹ On the history of the term “Latin America” see *id.*

³² Calvo was well aware of the German historical school, represented by Friedrich Karl von Savigny (1779-1861). In fact, Bello had studied Savigny before Calvo and Bello made a translation of his work on Roman Law into Spanish as *INSTITUCIONES DE DERECHO ROMANO* (1843) to be used in teaching in the first years of law school. Calvo describes Savigny as:

the leader of the historical school of German jurists. Devoted to the study of Roman Law, he admirably follows its progress step by step from the middle ages to its influence in modern times. In all of the issues of the law of nations that he discusses, he is very attached to the historical precedents that an idea or principle is founded on. He gives as a basis to international law, the same principles that can be applied to the positive law of each nation. The progress of civilization founded on the Christian religion, has conducted us, according to him, to observe an analogue law in our relations

the historical school based its assumptions on European culture; he saw his role as one of documenting the progress and history of international law in Latin America, as well as incorporating its publications and cases into a general treatise. Despite his non-European origins, by the end of the century, Calvo was a well-recognized and cited publicist at the center of the Parisian milieu of international law as well as influential in the Latin American diplomatic community in Paris.³³

Though Calvo also saw international law as a strategic and necessary language of power and survival, his project differed from Bello's. Calvo wrote mainly for a European public and worked in the center of production of international law of the late nineteenth century: Paris.³⁴ Instead of educating Latin American lawyers and diplomats about international law so that they could defend their countries from foreign interventions, Calvo's

with all the nations of the world, whatever their religion may be and with the abstraction made of all reciprocity.

CARLOS CALVO, *DICIONNAIRE DE DROIT INTERNATIONAL PUBLIC ET PRIVÉ* 200 (1885).

³³ The most widely read and known text is Calvo's treatise *DERECHO INTERNACIONAL TEÓRICO Y PRÁCTICO DE EUROPA Y AMÉRICA* [Theoretical and Practical International Law of Europe and America], first published in 1868 in Spanish, and later published between 1870 and 1896 in an expanded second, third, fourth and fifth French edition as *LE DROIT INTERNATIONAL THÉORIQUE ET PRATIQUE, PRÉCÉDÉ D'UN EXPOSÉ HISTORIQUE DES PROGRÈS DE LA SCIENCE DU DROIT DES GENS*. The French edition of 1870 was abridged, translated and published in the United States by Edward Miner Gallaudet as *A MANUAL OF INTERNATIONAL LAW* (1892) and a few other editions were extracted and published elsewhere. The fourth French edition was translated into other languages, including Greek and Chinese. Calvo also separately published two dictionaries on international law in 1885 and six editions of a *MANUEL DE DROIT INTERNATIONAL PUBLIC ET PRIVÉ, CONFORME AU PROGRAMME DES FACULTÉS DE DROIT* [Manual of Public and Private International Law According to the Curriculum of the Law Schools] (Paris, A. Rousseau 1892) that was used as the official text for teaching international law in French law schools between 1881 and 1901.

³⁴ Calvo recognized his impact in a letter he wrote to a friend in 1877:

I am very satisfied because the second edition of my *DROIT INTERNATIONAL* has been totally sold out in less than four years, a fact that has called much attention in the intellectual world, because generally scientific works that are so voluminous and expensive take twenty years to sell. Almost all of the decisions of the British, German, French and Italian Admiralty Courts in the last years refer to my work.

PÉREZ CALVO, *supra* note 25, at 233.

main purpose was to educate European lawyers and governments about the progress of the Latin American nations. He was fully dedicated to all issues international and viewed the history of the nations in Latin America, as permanently connected to a foreign sphere of influence. At the same time, Calvo argued that the history and development of international law could not ignore the role Latin American nations had played and continued to play in its formation.

Since my first trip to Europe sixteen years ago . . . the ideas about South America have not changed. For Europe . . . they are still stationary between 1492 and 1810 that is during discovery and colonization, between the primitive and civilization, between ignorance and despotism.

Our independence has been, according to the motherland [Spain], our demise; and for the other European nations it has been a sign of our backwardness, to our discredit.

However, are these judgments true?

Are they supported by history, by the facts. . . ?

No: absolutely not. But it is the responsibility of any American with the heart in the right place to prove it, and to prove it in an undisputable way, with facts that will not leave any doubt in the spirit of the European reader.³⁵

Though Calvo, like Bello, recognized the use of international law as substantively necessary to support the foreign policy

³⁵ CARLOS CALVO, COLECCIÓN COMPLETA DE LOS TRATADOS, CONVENCIONES, CAPITULACIONES, ARMISTICIOS Y OTROS ACTOS DIPLOMÁTICOS: DE TODOS LOS ESTADOS DE LA AMÉRICA LATINA: COMPRENDIDOS ENTRE EL GOLFO DE MEJICO Y EL CABO DE HORNOS: DESDE EL AÑO DE 1493 HASTA NUESTROS DÍAS PRECEDIDOS DE UNA MEMORIA SOBRE EL ESTADO ACTUAL DE LA AMÉRICA, DE CUADROS ESTADÍSTICOS, DE UN DICCIONARIO DIPLOMÁTICO Y DE UNA NOTICIA HISTÓRICA SOBRE CADA UNO DE LOS TRATADOS MÁS IMPORTANTES ii-iii (Paris, A. Durand 1862). In a book that documents the Latin American independence movements, Calvo confirms his mission, "We have begun and continued this difficult work without other support or elements than that of our patriotism and what our persevering research has come up with. To rehabilitate in the eyes of civilized Europe our calumniated South America, was our mission then and it is our program today and to this noble purpose we have not doubted to dedicate ourselves with complete faith." 4 CARLOS CALVO, ANALES HISTÓRICOS DE LA REVOLUCIÓN DE LA AMÉRICA LATINA, ACOMPAÑADOS DE LOS DOCUMENTOS EN SU APOYO. DESDE EL AÑO 1808 HASTA EL RECONOCIMIENTO DE LA INDEPENDENCIA DE ESE EXTENSO CONTINENTE V (Paris, A. Durand, Garnier Hermanos, Mme Denne-Schmidt 1865).

of the Latin American nations, he acknowledged the weakness of relying solely on defensive arguments. It was important for Calvo that the Europeans (and North Americans) recognize the Latin Americans' capacity to speak Law to the center of Power by acknowledging their contributions to the production of international law.

C. ALEJANDRO ALVAREZ AND THE MODERNIZATION OF INTERNATIONAL LAW: THE EARLY TWENTIETH CENTURY

A third prominent Latin American internationalist is the Chilean scholar, diplomat, and judge of the International Court of Justice Alejandro Alvarez (1868-1960). Alvarez began his career towards the end of the nineteenth century as a civil lawyer and professor in Chile. He finished the nineteenth century in Paris where he studied and wrote his doctoral dissertation on family law.³⁶ While in France, Alvarez shifted his work to international law but continued to apply the theoretical tools he acquired from French sociological theory.³⁷

As the legal advisor to the Chilean Ministry of Foreign Affairs Alvarez published articles and books as early as 1905 promoting the recognition of an "American or Latin American International Law."³⁸ For Alvarez, international law should reflect the particularities of a place. "Law is a social and psychological phenomenon . . . The states of the New World create. . . a

³⁶ Alejandro Alvarez, *De l'influence des phenomenes politiques, économiques et sociaux sur l'organisation de la famille moderne* (1899) (unpublished Ph.D. dissertation, University of Paris) (on file with author).

³⁷ See Alejandro Alvarez, *Dominant Legal Ideas in the First Half of the Century After the French Revolution*, in *THE PROGRESS OF CONTINENTAL LAW IN THE NINETEENTH CENTURY* 3-30 (John Henry Wigmore et al. eds., 1918); Alejandro Alvarez, *Dominant Legal Ideas in the Second Half of the Century*, in *THE PROGRESS OF CONTINENTAL LAW IN THE NINETEENTH CENTURY*, *supra*, at 31-64.

³⁸ Alejandro Alvarez, *Origen y desarrollo del Derecho Internacional Americano*, in *TERCER CONGRESO CIENTÍFICO LATINO AMERICANO* (1905); Alejandro Alvarez, *Le Droit International Américain, son origine et son évolution*, in 14 *REVUE GÉNÉRALE DE DROIT INTERNATIONAL PUBLIC* 393 (Paul Fauchille ed., 1907); ALEJANDRO ALVAREZ, *AMERICAN PROBLEMS IN INTERNATIONAL LAW* (1909); ALEJANDRO ALVAREZ, *LE DROIT INTERNATIONAL AMÉRICAIN: SON FONDEMENT - SA NATURE: D'APRES L'HISTOIRE DIPLOMATIQUE DES ÉTATS DU NOUVEAU MONDE ET LEUR VIE POLITIQUE ET ÉCONOMIQUE* (1910). The usage of the term *Latin America* only began in the mid-nineteenth century but became more commonly used in the twentieth century. See *supra* note 30 and accompanying text.

soul, a personality of their own and, from that fact, can give birth to specific institutions and principles of international law.”³⁹

Of course, many other scholars in the region claimed that there could only be one universal international law. In contrast, Alvarez argued that he did not deny the universality of international law, but rather the need to recognize that the Latin American region could produce universal principles from its particular experiences. For example the principle of solidarity, which Alvarez claimed was a customary practice among Latin American nations should be recognized as a universal principle of international law, or in other words as part of a “new international law” that would take into account the development of such ideas.⁴⁰

Alvarez successfully promoted his ideas in books, articles, conferences, and his decisions as a judge of the International Court of Justice. They acquired a certain degree of acceptance and respectability. Like Bello and Calvo, Alvarez also thought that international law provided a substantive foundation for the defense of sovereignty and the interaction of Latin American nations with the rest of the world. His project took Calvo’s proposals one step further: instead of incorporating the accomplishments of Latin American publicists into the mainstream of international law, Alvarez proudly promoted the recognition of a unique development of international law in the region.

Alvarez’s work involved not only writing about a Latin American international law but also promoting its procedural recognition through codification projects, as well as its institutionalization through the founding of the American Institute of International Law (AIIL).⁴¹ These projects differed from those of Bello and Calvo. They acknowledged the growing hegemony of the United States in the region and trying to strategically include, rather than antagonize, the country that would direct most Latin American nations’ foreign policies in the twentieth century. The

³⁹ ALEJANDRO ALVAREZ, *LE DROIT INTERNATIONAL NOUVEAU DANS SES RAPPORTS AVEC LA VIE ACTUELLE DES PEUPLES* 99–100 (1959).

⁴⁰ *See generally* ALEJANDRO ALVAREZ, *THE NEW INTERNATIONAL LAW* (1930).

⁴¹ The American Institute of International Law was founded in 1912 and was based in Havana, Cuba. *See* INSTITUTE AMÉRICAIN DE DROIT INTERNATIONAL, I, FONDATION (1913).

AAIL, co-founded by the prestigious U.S. lawyer James Brown Scott, specifically took on the role of providing a more democratic control of foreign policies through the work of international law in the Americas.⁴² For Alvarez and Scott, international law was inherent to foreign policy and its social character, thus policies “should be adopted in strict accord with the duties as well as the rights of their countries, under the law of nations.”⁴³

Consequently, if international law in the region had its own “personality,” it meant that foreign policy, like international law, also had a “psychological character” that should take into account the region’s political, economic and social particularities.⁴⁴

Though Bello, Calvo and Alvarez’s perspectives were by no means radical, they recognized the discursive power of international law and its importance as a substantive and *a priori* value in foreign policy arguments in defense of regional interests. Their professional and academic work was not only influential in their countries and in the region, but they were also read and cited by the international law elite of their times. Teaching and writing on international law was part of their personal projects because it was an indispensable tool for speaking Law to Power.

III. LATE TWENTIETH CENTURY COLOMBIAN INTERNATIONAL LAWYERS

From the stories of Bello, Calvo and Alvarez it can be concluded that Latin American jurists of the nineteenth and first half of the twentieth century were influential at the center of international lawmaking and their foreign policy establishments. Nonetheless, since the 1960s the multiple and influential roles that individual lawyers played in the international relations of Latin

⁴² Kathryn Sikkink, *Reconceptualizing Sovereignty in the Americas: Historical Precursors and Current Practices*, 19 HOUS. J. INT’L L. 705, 719 (1997) (citing George A. Finch, *James Brown Scott, 1866-1943*, 38 AM. J. INT’L L. 183, 207 (1944)).

⁴³ Finch, *supra* note 42, at 207.

⁴⁴ Alvarez said that these characteristics could only be deduced by applying the method of observation used generally in the social sciences, but which had not been applied to the study of the law. This method would take into account the “social” character of law, which was for Alvarez, the greatest theoretical turn at the beginning of the twentieth century. See Alejandro Alvarez, *New Conception and New Bases of Legal Philosophy*, 13 ILL. L. REV. 25 (1919).

American nations has been invisible or irrelevant. After Alejandro Alvarez, no other Latin American internationalists have had such far-reaching regional acknowledgements or been able to effectively succeed in that dimension at the three roles discussed during this symposium.

To understand the diminishing ability of Latin American international lawyers to speak Law to Power, it may help to look at the role of international lawyers in policymaking and scholarship in contemporary Colombia. As in the general Latin American scenario, during the nineteenth and early twentieth centuries, Colombia also bred a few of its own international lawyers whose work and scholarship played an important part in the foreign policymaking of their time.⁴⁵ Though after the 1960's there are a few lawyers-turned-statesmen that played important roles in Colombia's international treaty making and institution building there are no publicists who had a consistent influence in the nation's foreign policymaking. Nonetheless, there are two narratives about the role of international lawyers in foreign policymaking in Colombia.

In the first story, international lawyers play an insignificant or non-existent role in the creation of foreign policy. Foreign policy is mainly determined by the hegemonic force of the United States, informed by current presidential whims or interests, the armed conflict and the structural inefficiencies of the Ministry of Foreign Affairs.⁴⁶ Since the 1920's, the United States has been officially recognized as a main determinant of Colombia's handling of her external affairs through the doctrine of *respice polum*.⁴⁷ In the 1960s, then-Foreign Affairs Minister (later president of Colombia), Alfonso López Michelsen restated the doctrine as that of *respice similia* in which Colombia's foreign policy

⁴⁵ José María Torres Caicedo and Manuel María Madieto for the nineteenth century and Antonio José Uribe and José María Yepes for the first half of the twentieth century.

⁴⁶ Arlene B. Tickner, *Colombia: US Subordinate, Autonomous Actor or Something in Between?*, in *LATIN AMERICAN AND CARIBBEAN FOREIGN POLICY* 165, 165–66 (Frank O. Mora & Jeanne A.K. Hey eds., 2003).

⁴⁷ Colombia's (traumatic) loss of Panama in 1903 evidenced her subordinate relation with the United States for the future. By the 1920's President Marco Fidel Suárez coined the doctrine of "respice polum", which meant that Colombia should accept its situation and officially orient its foreign policy towards the United States (the North or Polar Star). Suarez's doctrine recognized the reality

should take a more autonomous route and prioritize relations with similar countries, especially in Latin America.⁴⁸ Nonetheless, after the 1970's, this narrative emphasized that with the appearance of drug-trafficking and the intensification of the internal armed conflict, Colombia's foreign policy was once again inevitably tied to her relation with the United States despite temporary fluctuations towards her regional peers. In this story, there is a limited and submissive role for the international lawyer. Only Power speaks to Law.

In the second narrative, international lawyers dominate the foreign policy agenda. However, there are two sub-stories: one says that this dominance is positive and the other considers it a negative influence. Diplomatic histories often tell about a Colombian "Tradition" of international law as inherent to foreign policy that consists mainly in the country's respect for international rules as well as a prestigious role in the making of important international institutions and treaties.⁴⁹ The Colombian government, through its Ministry of Foreign Affairs, boasts about

of a past and future foreign policy that revolved around the region's hegemony: the United States. MARCO FIDEL SUÁREZ, *LOS SUEÑOS DE LUCIANO PULGAR* 167 (José J. Ortega Torres ed., 1966). Since Gerhard Drekonja's restatement of the doctrine in contemporary circumstances in 1983, the fluctuation of Colombia's relation with the U.S. vis a vis the issue of her autonomy is a common theme among foreign policy analysts. See GERHARD DREKONJA KORNAT, *RETOS DE LA POLÍTICA EXTERIOR COLOMBIANA* (1983); RODRIGO PARDO & JUAN G. TOKATLIAN, *POLÍTICA EXTERIOR COLOMBIANA: DE LA SUBORDINACIÓN A LA AUTONOMÍA?* (1988); MARTHA ARDILA, *CAMBIO DE NORTE? MOMENTOS CRÍTICOS DE LA POLÍTICA EXTERIOR COLOMBIANA* (1991); STEPHEN J. RANDALL, *COLOMBIA AND THE UNITED STATES: HEGEMONY AND INTERDEPENDENCE* (1992); Tickner, *supra* note 46.

⁴⁸ Tickner, *supra* note 46, at 171.

⁴⁹ I write Tradition with a capital "T" when referring to the Colombia because of the power that it has in Colombia as a discourse that argues that national foreign policy is historically coherent in following international law and participating in the creation of important international institutions. See, e.g., REPÚBLICA DE COLOMBIA MINISTERIO DE RELACIONES EXTERIORES, *ACTUAR EN EL MUNDO: LA POLÍTICA EXTERIOR COLOMBIANA FRENTE AL SIGLO XXI* (1993). International relations scholar and former Minister of Foreign Affairs Rodrigo Pardo reiterates the Tradition story in a recent chapter on foreign policy that is part of a book dedicated to narrating the positive aspects of Colombian political, economic and social affairs as a reaction to the general trend of pessimistic writing that exists on the country. See Rodrigo Pardo Garcia-Pena, *La política exterior*, in FORTALEZAS DE COLOMBIA 213 (Fernando Cepeda Ulloa ed., 2004).

her consistency in upholding and contributing to the development of international law when arguing a case for her moral, political and juridical leadership across the region.⁵⁰ In this story, Law converses nicely with Power and Power listens closely.

When the study of international relations as a new discipline began in Colombia in the early 1980's, the positive story of the lawyer's role in foreign policymaking was questioned.⁵¹ International relations scholars suggested that the excessive degree to which international law drives foreign policy was evident in the fact that 1) foreign policy was too "legalistic,"⁵² 2) there were "too many international lawyers,"⁵³ and that 3) scholarship on foreign policy written by international lawyers gave a limited perspective to Colombia's complex international relations.⁵⁴ Therefore, according to the international relations literature, Law was speaking excessively to Power.

With the two general narratives of irrelevance and predominance in mind, I interviewed three international lawyers (Felipe Piquero, Clara-Elena Reales, Alejandro Valencia-Villa), four international relations scholars (Diego Cardona, Fernando Cepeda-Ulloa, Arlene Tickner, Juan G. Tokatlian), a functionary of the Ministry of Foreign Affairs (Francisco Coy) and a former ambassador (who wished to remain anonymous) on how they

⁵⁰ See, e.g., Augusto Ramirez Ocampo, *Preámbulo* in COLOMBIA. MINISTERIO DE RELACIONES EXTERIORES (1986); Pardo, *supra* note 49, at 213.

⁵¹ The founding scholarship on international relations came from the Center for International Studies (CEI) of the University of Los Andes, which was the first academic institution in the country to dedicate its work to the study of Colombia's foreign policy and international relations. Several of the people interviewed for this article have worked for the CEI at some time (including the author).

⁵² "[C]onventional diplomacy by the Ministry of Foreign Relations has been characterized by the consistent application of the basic principles of international law, more than the satisfaction of specific political goals . . . [T]he strict application of juridical principles has at times led to political inconsistency." Tickner, *supra* note 46, at 167-68.

⁵³ PARDO & TOKATLIAN, *supra* note 47, at 65; Fernando Cepeda Ulloa, *Prólogo* [Prologue] to GABRIEL SILVA LUJAN, *POLITICA EXTERIOR ¿CONTINUIDAD O RUPTURA?* 15, 15 (1985).

⁵⁴ Though an initial definition of international relations subsumes international law under its coverage, the first Colombian theorists on the subject are very careful in distinguishing international law from international relations. See PARDO & TOKATLIAN, *supra* note 47, at 67.

saw the role of international lawyers in Colombia's foreign policy.

A. THE LEGAL ADVISORS OF THE MINISTRY OF FOREIGN AFFAIRS

Several of the interviewees agreed that the Colombian Ministry of Foreign Affairs is structurally inefficient, politically weak, responds to presidential power and does not define the country's foreign policy.⁵⁵ The crucial issues of foreign policy are in the hands of political and economic presidential advisors, not international lawyers.⁵⁶ Consequently, the international lawyers who work in the Ministry are irrelevant to foreign policymaking.

Since its independence in the early nineteenth century, Colombia has had a Foreign Affairs division in the government, first known as a Secretary of Foreign Affairs from 1821 to 1886 and since 1886 as a Ministry of Foreign Affairs.⁵⁷ During the twentieth century, the Ministry went through at least fifteen structural reforms. In this century it has already been restructured three times.⁵⁸ The constant changes in the Ministry are identified with a lack of a consistent foreign policy. International Relations scholar, Arlene Tickner, pointed out that the Ministry:

has not been the principal player in important aspects of the country's external affairs, primarily those related to Colombia's strategic interests, i.e., relations with the

⁵⁵ Written interviews with Arlene Tickner, Associate Professor of Political Science, University of Los Andes, Bogotá, and Assistant Professor of Political Science Universidad Nacional, Bogotá (Aug. 2004), and Juan Tokatlian, Director, Department of Political Science and International Relations, University of San Andrés, Buenos Aires, Argentina (May 2004).

⁵⁶ Written interviews with Diego Cardona, Research Professor, Center of Political and International Studies, University of El Rosario, Bogotá (Apr. 2004), Alejandro Valencia-Villa (Feb. 2004), and Juan Tokatlian, *supra* note 55.

⁵⁷ The Ministry has been reformed independently or as part of the Ministry of the Interior. See CONSUELO PEDRAZA GALLARDO, BIBLIOGRAFÍA DEL MINISTERIO DE RELACIONES EXTERIORES DE COLOMBIA Y ANTECEDENTES DE SU ORGANIZACIÓN Y FUNCIÓN 15-17 (1991).

⁵⁸ The latest restructuring took place under Decree 1295 (July 11, 2000), Decree 2105 (Oct. 8, 2001), and Decree 00110 (Jan. 21, 2004), available at <http://derechopublico.udenar.edu.co/CarreraDiploma.htm>, <http://www.presidencia.gov.co/decretoslinea/2004/enero/21/dec110210104.pdf> and http://portal.minrelext.gov.co/portal/webdriver.exe?Mlval=po_co_normas_regulaciones.html.

United States. In other words, while Colombia's formal diplomacy is characterized by adherence to international law, many aspects of its international relations are managed in an ad-hoc fashion in which international law plays a minor, if not irrelevant role.⁵⁹

One type of lawyer employed by the ministry is the thematic advisor, a specialized lawyer generally hired for a short term to cover a specific topic. The thematic advisor may signal the potential impact of certain agreements, be part of a treaty negotiation team, or write an agreement between Colombia and another nation. International lawyer Clara-Elena Reales, who has worked as a thematic advisor, described her job as somewhere in between a juggler and an acrobat.⁶⁰ The advisor juggles her role as international lawyer along with the presidential agenda, national politics, and pressure from the United States. Additionally, she must try to overcome the difficulties of working in a position that has no institutional memory or sense of continuity.⁶¹ This lack of historical memory and ad-hoc policymaking was also emphasized by former advisor Felipe Piquero, and by a former ambassador as characteristic of a deficient Ministry of Foreign Affairs.⁶² The thematic advisor sees international law as a necessary framework to foreign policymaking but is generally limited by internal and external institutions and politics. In this context, the thematic advisers seldom have a chance to speak Law to Power.

Other lawyers, headed by a Chief Officer, work in the Office of Legal Advice of the Ministry of Foreign Affairs, created in 1901.⁶³ This office has also gone through a number of structural changes. It has been a legal affairs office,⁶⁴ a legal department,⁶⁵

⁵⁹ Written interview with Arlene Tickner, *supra* note 55.

⁶⁰ Written interview with Clara Elena Reales (Feb. 2004).

⁶¹ *Id.*

⁶² Written interview with Felipe Piquero (Feb. 2004), and interview with Former Ambassador (anonymity requested) (Jan. 2004).

⁶³ I could not find any written material on this office except for the laws that constitute it or have restructured it. What I could learn from its working was from the interviews I did. The office does not provide public information on its work and, despite several months of e-mail and telephone requests for an interview, the Chief Officer made himself unavailable.

⁶⁴ From 1953 to 1954. CONSUELO PEDRAZA GALLARDO, BIBLIOGRAFÍA DEL MINISTERIO DE RELACIONES EXTERIORES DE COLOMBIA Y ANTECEDENTES DE SU ORGANIZACIÓN Y FUNCIÓN (1991).

and a legal division.⁶⁶ The most recent restructuring renamed the “Office of Legal Advice” and listed its main function as “to prepare studies and emit concepts” that pertain to technical and administrative aspects of public or private international law and its relation to national law.⁶⁷ Though the law prescribes twenty-two functions for the legal advisor, it does not provide her with any foreign policy advisory role.

The legal advisor’s job is best described as that of a technical supervisor. In fact, none of the interviewees mentioned this office as relevant to any aspect of foreign policy decision-making. The lawyers in this office are perceived as verifiers. Their role is to make sure that the international agreements that Colombia signs are done in accordance with international and national law. In fact, most of this technical work is the responsibility of one person, the Chief Officer. That it is an office *not* in charge of foreign policy is evident in the fact that the current Chief Officer has held the post for the past ten years, or through three presidential administrations, each of which have had very different foreign policy agendas. The lawyers of the Office of Legal Advice play purely administrative and technical roles, using international law as a necessary procedural tool for legitimating Colombia’s international actions. They never speak to Power; they only listen.

B. THE LITIGATING INTERNATIONAL LAWYER

The litigator is a third type of international lawyer who must follow a specific agenda and defend Colombia before the international community. This international lawyer litigates and counsels on the strategy of a case when Colombia is party to an international court proceeding. If the case is considered of lesser importance, such as those cases before the Inter-American Commission for Human Rights, the litigator usually is a functionary

⁶⁵ From 1960 to 1968. *Id.*

⁶⁶ In 1968 the status of the office went back up to that of a “division” with four sections under its control. The Diplomacy section which also had changed names and status throughout, but had more or less kept a regional division as undersections (Latin American, U.S. and Canada, Europe, Africa, Asia and Oceania) was changed to a “Foreign Policy” section. The legal division was again given new autonomy in 1990, only to drop back down again to the status of a subsecretariat office under the command of the Secretary General in 1991. *Id.*

⁶⁷ Decree 00110, art. 8 (Jan. 21, 2004), available at http://portal.minrelext.gov.co/portal/webdriver.exe?Mlval=po_co_normas_regulaciones.html.

of the Ministry of Foreign Affairs. If the case is considered critical, such as one that reaches the Inter-American Court of Human Rights, or a case before the International Court of Justice, an experienced lawyer is hired from outside the State.

The current case of *Nicaragua v. Colombia* before the International Court of Justice (ICJ), is an example of this situation. Foreign lawyers have been hired to defend Colombian interests because of the fear that national lawyers are inexperienced or unknowledgeable.⁶⁸ In this scenario, international law is seen as a language of expertise upheld by the institutional framework of the court, and which is understood as best handled by lawyer from Europe or the United States. The Colombian government often finds itself ill-prepared in these cases because, initially, not much attention was paid to them in the foreign policy agenda.

C. THE ACADEMIC

In Colombia, most of those who teach international law (or any other legal field) do so only as lecturers and not as full-time professors. Therefore, practitioners who have extensive professional experience but little postgraduate academic training write most of the international law literature. Some of the interviewees saw this as a limitation because the teaching and writing of such practitioners presents a specific expertise that has no profound analysis.⁶⁹ The work represents an “orthodox internationalism,” which is conservative and restrictive in proposing solutions to local problems.⁷⁰ Despite its shortcomings, this type of academic work may be the only one that foreign policymakers take into account in moments of crises, when an international law argument must be made.⁷¹

⁶⁸ Interview with the Former Ambassador (anonymity requested) (Jan. 2004). According to this source, a U.S. law firm has been hired as counsel for Colombia in the case before the ICJ.

⁶⁹ Written interviews with Clara Elena Reales, *supra* note 60, and Alejandro Valencia-Villa, *supra* note 56.

⁷⁰ Written interview with Alejandro Valencia-Villa, *supra* note 56. On the idea of how orthodox internationalism plays out in the Colombian peace process, see Jorge L. Esquirol, *Can International Law Help? An Analysis of the Colombian Peace Process*, 16 CONN. J. INT'L L. 23 (2000).

⁷¹ Written interview with Diego Cardona, *supra* note 56.

In general, there is little or no support for academic work and little controversy over international issues, which facilitates non-contested acceptance of government policies.⁷² Most academics are perceived as passive or submissive because they are too close to the revolving door that leads to Power.⁷³ The more critical, full time academics have no influence on policy and are often considered by Power as naïve or lacking realism.⁷⁴ Renowned international relations scholar Juan Tokatlian describes the particular moment of excessive concentration of presidential power as one of the causes in the distancing of academics to the process of decision making in foreign policy:

In times of imperial presidencies (like Menem's in Argentina or Uribe's in Colombia) the sense of concentration and abuse of power on behalf of the executive branch makes it difficult, if not impossible, to gesture a creative bridge between experts, practitioners, academics and politics. Paradoxically, these administrations believe they have increased the power and influence of their nation in the world, while in fact, our countries are weaker and more vulnerable to outside pressures today than they were twenty years ago.⁷⁵

D. THE ACTIVIST LAWYER

The activist international lawyer, working from outside the State, uses political pressure, the support of international networks and criticism through the language of international law to try to make the government conform its foreign policy to international legal standards. Of the international lawyers interviewed,

⁷² Written interviews with Arlene Tickner, *supra* note 55, Diego Cardona, *supra* note 56 and Juan Tokatlian, *supra* note 55.

⁷³ Written interviews with Arlene Tickner, *supra* note 55, and Diego Cardona, *supra* note 56.

⁷⁴ Written interviews with Fernando Cepeda, University Professor (Apr. 2004), Arlene Tickner, *supra* note 55, and Juan Tokatlian, *supra* note 55. Perhaps the only situation where academics may have somewhat of an influence is if they frequently appear on television and write editorials in EL TIEMPO, Colombia's main newspaper.

⁷⁵ Written interview with Juan Tokatlian, *supra* note 55.

the only one who felt that his work had some impact on the government's foreign policy agenda and on national laws and institutions was, surprisingly, the human rights lawyer, Alejandro Valencia-Villa.⁷⁶ Activist lawyers, like Valencia-Villa, have found that the State is most likely to make domestic structural and legal changes to protect human rights if she is pressured precisely on account of the Tradition. That is, if the State has argued that its foreign policy has been historically respectful of international law, the human rights defenders can call on the State to make sure that this means more than just ratifying treaties.

Nonetheless, Valencia-Villa clarified that the possible role those activist lawyers can play in Colombia's foreign policy is based on a personal relationship they may cultivate with decision-makers rather than on institutionalized access of human rights lawyers to the foreign policy establishment.⁷⁷ He also said that although the activist lawyer may pressure changes in policy, in the end *realpolitik* generally wins over arguments justified in terms of international law.⁷⁸

IV. CONCLUSIONS

Bello, Calvo and Alvarez were conscious of their roles as founders or promoters of a Latin American perspective on international law. For them, the practice of foreign policy was the application and upholding of the main principles of international law that took into account regional needs. As such, they were influential in the foreign policy establishment of their own countries and others in the region. Even though the fear of further interventions in the region and the growth of U.S. hegemony was an early preoccupation for all three, they continued to believe that Latin America was autonomous and that it was possible to design a foreign policy according to national and regional particularities. During their times, Law was indeed speaking to Power.

After the 1960's, due to consolidation of the United States' absolute hegemony in the region, the rise of international institutions, and the consequent deformatization of international law,

⁷⁶ Written interview with Alejandro Valencia-Villa, *supra* note 56.

⁷⁷ *Id.* Felipe Piquero made this same statement. Written interview with Felipe Piquero, *supra* note 62.

⁷⁸ Written interview with Alejandro Valencia-Villa, *supra* note 56.

the role of the individual international lawyer in foreign policy was greatly diminished. In addition, the writings of recognized publicists that had certain influence among the centers of power in the region and abroad became understood as only auxiliary sources with limited reach.⁷⁹ As a consequence, Latin American lawyers could speak Law to Power, while today's internationalists have to listen to Power in order to speak the Law. The Colombian situation is a case in point.

Although several of the contemporary Colombian lawyers and international relations scholars interviewed commented that there still exists a Tradition of international law that Colombia has followed in her foreign policymaking⁸⁰ the adherence to the law seems to be expressed more as a formality, a technical or instrumental support to foreign policy rather than as a substantive *a priori* principle to foreign policy as Bello, Calvo or Alvarez would have thought of. That is, those who pledge for the Tradition believe that in the end international law tailors Colombia's foreign policy despite some of their own frustrating experiences of trying to speak Law to Power. For example, Francisco Coy, who has worked in the Ministry of Foreign Affairs for many years, said that international law was the "ruling principle of foreign policy."⁸¹ Fernando Cepeda-Ulloa pointed out that both international lawyers and international relations scholars agreed that the Tradition exists and that it continues to be relevant.⁸² A recent, optimistic, article written by international relations scholar and former Minister of Foreign Affairs Rodrigo Pardo, reiterated and updated the coherence of the Tradition as a guarantee for Colombia's peaceful relations in the world. In addition, Pardo reminded us that the "greatest internationalists have been lawyers."⁸³

⁷⁹ Statute of the International Court of Justice, art. 38, 59 Stat. 1055 (1945), available at <http://www.icj-cij.org/icjwww/basicdocuments/basictext/basicstatute.htm>.

⁸⁰ Written interviews with Clara Elena Reales, *supra* note 60; Felipe Piquero, *supra* note 62; Fernando Cepeda, *supra* note 74; Juan G. Tokatlian, *supra* note 55; and Francisco Coy (Jan. 2004).

⁸¹ Written interview with Francisco Coy, *supra* note 80.

⁸² Written interview with Fernando Cepeda-Ulloa, *supra* note 74.

⁸³ However, the names that Pardo mentions to illustrate this point were important statesmen but did not write significant works on international law in the tradition of Bello, Calvo and Alvarez. In fact, most of them are dead and have not been

Perhaps not surprisingly, in Colombia, as in the other countries discussed during this symposium, the issue that put foreign policy agendas and international law-abiding traditions to the test was the recent U.S.-led war on Iraq. Colombia's support for the U.S. was highly controversial and was discussed in the media, Congress and academia.⁸⁴ Colombia's position was argued by President Uribe as congruous with his requests for international support for his administration's national policy against terrorism. Despite his nationalist rhetoric, Uribe requested that the Ministry of Foreign Affairs defend the position in the language of international law. Several Ministry defenders of the Tradition were hesitant with the initiative but the presidential perspective was non-debatable. In the end, Minister Carolina Barco publicly argued that Colombia's support was coherent with international law. She argued that U.N. Security Council Resolution 1441 from 2002 allowed for effective solutions if Iraq continued its non-compliance with U.N. demands.

For many internationalists, like Piquero and Coy, Colombia's position was a mistaken deviation from the Tradition.⁸⁵ For others, like Cepeda, the government's arguments were consistent with Colombia's previous support for other U.S.-led military initiatives—including the use of force against Iraq in 1990. A third perspective argued that Uribe's steadfast support for the U.S. as an ally in his war against terrorism—in as much as it exemplifies the Tradition—was consistent with the *respice polum* doctrine.

It is important to point out that at the individual level, the legal advisers do not feel that they can change or influence foreign policy to comply with international law; rather, they feel they are guardians of the Tradition. Indeed, the former legal advisers saw their roles as responsible for making sure that the Tradition continued despite whatever ethical difficulties they may have faced.

influential in the past thirty or forty years and one of them, Carlos Sanz de Santamaria, was not a lawyer but an engineer. See Pardo, *supra* note 49, at 214.

⁸⁴ *Id.* at 218.

⁸⁵ Written interviews with Felipe Piquero, *supra* note 62, and Francisco Coy, *supra* note 80. See also *Analistas dicen que Colombia quebró una tradición al respaldar ultimátum de E.U. contra Irak* [Analysts Say that Colombia Broke a Tradition when Backing the U.S. Ultimatum on Iraq], EL TIEMPO, Mar. 19, 2003, available at <http://www.angelfire.com/nb/17m/Colombia/colombiaquebro.html>.

International relations scholar Juan Tokatlian, though recognizing a Tradition, questioned its consistency and validity today even in the general Latin American scenario:

Between the end of the nineteenth century and the beginning of the twentieth, the majority of the leadership of Latin American states . . . acted in conjunction with international law and foreign policy. Diverse doctrines (Estrada, Drago, etc) that were born in the region reflected a very sophisticated understanding of world politics and of the spaces of legality that a smaller country should protect. Today, instead that has eroded and the region is but a passive spectator of the changes that have been occurring in the meaning of sovereignty, non-intervention, etc.⁸⁶

The former ambassador complemented Tokatlian's thought by saying outright that, contrary to the general story, no tradition had existed in Colombia because only an independent country can boast a tradition. When Colombia was independent from U.S. hegemony, it was too caught up in her own civil wars to actually develop any consistent foreign policy. When Colombia's civil wars ended at the beginning of the twentieth century she became dependent on the United States. This dependency has been accentuated with the rebirth of an internal conflict since the 1950's. Thus, for Tokatlian, it is impossible for Colombia to sustain a tradition of respect for and guidance from international law in her foreign policy.⁸⁷

In sum, what is relevant to the focus of this symposium is not the discussion of the existence of a tradition of foreign policy founded in international law, but how this discussion shows the limitations of the contemporary international lawyer in Colombia, and, in Latin America. On one hand, there was consistency among those interviewed to see the existence of the Tradition as a good a form, tool, framework or "guiding principle" that could sustain a better foreign policy. That is, most of the interviewees failed to comment that in the name of a tradition of respect for international law it was also possible to legitimize policies that

⁸⁶ Written interview with Juan G. Tokatlian, *supra* note 55.

⁸⁷ Interview with Former Ambassador (anonymity requested) (Jan. 2004).

were void of ethical responsibility.⁸⁸ To perceive that the lack of an institutionalized international law influence in foreign policy is the only problem, is to avoid the issue that there are also choices to be made when using international legal arguments. Since the language of international law can be used to legitimate internal or external policies, it is necessary that this dimension is recognized as having that power.

On the other hand, though Bello, Calvo, and Alvarez were possibly more aware of the power that the language of international law had and used it according to their own personal projects and to what they considered were the foreign policy needs and interests of their region, foreign policy making today in the Colombian example falls more in the hands of influential technocrats, politicians, businessmen and political scientists than of international lawyers.⁸⁹ International lawyers in Colombia and Latin America today do not or cannot succeed simultaneously as practitioners, scholars and policymakers. These worlds collude with the predominance of international institutions, the specialized technical language of international law, the United States hegemony in the region, and the political pragmatism and special interests behind the making of contemporary foreign policy.

⁸⁸ Juan Tokatlian, who is not a lawyer, pointed the ethical ambivalence of international legal arguments:

International law is a defensive resource of the *have-nots*; especially when the powerful – like the United States – not only try to evade the use of international law but rather try to elude in search of a more legitimate “new international law”: a law that looks towards legalizing the conditions of asymmetry and inequality in different environments.

Written interview with Juan Tokatlian, *supra* note 55.

⁸⁹ The irrelevance of international law and legal scholarship to the design of current foreign policy in Colombia is well illustrated in a conference that was, almost too coincidentally, held at the same time of this symposium at the University of Los Andes in Colombia. The title of the conference was “Colombia and the World: Challenges to Foreign Policy.” Organized by the Political Science department, its aim was to debate the most important themes of Colombia’s international agenda: defined as security, trade, human rights and international cooperation. The opening speakers were the Minister of Foreign Affairs, the president of the national trade association, and the director of an influential news magazine. The other panels included international relations scholars, the U.S. and French ambassadors and a CEO. No international lawyers were invited to speak.