The Global Construction of International Law in the Nineteenth Century: The Case of Arbitration*

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The history of international law has been eurocentric, and properly so. That particular concatenation of state practice, political theory, religious and philosophical influences, diplomatic practices and events, and imperial engagements that has led to the dominance of our current global states system has been driven primarily from Europe, by Europe, and for Europe.[1] At the same time, the reconsideration of the history of international law over the past few decades has begun to integrate perspectives from outside of Europe, from individuals, cultures, and governments who were subjects of this aspect of European modernity over the past five hundred years, as well as from the ideas and practices of precontact cultures.

However, the impact of "hybrid" actors (both states and individuals), whose positions and actions within the context of European global expansion reflect a mix of their ancestry and extra-European interests, reinforce our understanding that the development of international law was more than simply "European" or "not." Indeed, as we map the

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[1] Whether and how a collection of polities and other groups and individuals *should* relate going forward (and whether those relations should be considered under a legal rubric) is quite another question, in which European history and norms are likely to play a less dominant role and for which other nomenclature is likely better suited.

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global flow of ideas during this period, we can usefully place these proposals and actions under the rubric of "informal empire," in other words, ways in which non-European polities of the nineteenth century operated within the European-driven global political and legal structure. They were also influenced by its culture through a wide variety of mechanisms and individuals. We cannot avoid seeing them as, to some degree, European, as they themselves often did. Regardless, we are not now constrained by their self-identification and we can learn from their interactions with European states and structures by teasing out some ways in which their "non-European-ness" was visible and, perhaps, influential. Some of these may be instances of "defensive modernism," others of aspirational modernism; but in either case, we need to look not just to their ancient traditions, but also to their practical concerns in the face of Western engagement.[2]

Over the past twenty years, a growing body of work on the history of international law has exploded the long-held understanding of international law as a purely European product designed to address intra-European problems. We have come to understand how, since the sixteenth century, European interaction with the wider world has distinctively colored the development of that body of thought, practice, and aspirations. This is true of the Spanish Dominican Vitoria, who pioneered the consideration of how states relate to each other in the context of the then-recent contact with the Americas, as well as the nineteenth-century consolidation of the raj, which led British theorists to new considerations of the nature of sovereignty. International law has been seen as "complicit" in the broader European imperial "project," in the case of preprinted treaties establishing protectorates in Africa and the establishment of extraterritorial jurisdiction in China and the Ottoman Empire.[3] Similarly, modern conceptions of global inclusion have led to some recognition of non-European traditions of thought and prac-

[2] For some recent discussions of this issue, see, e.g., Douglas Howland and Luise White, eds., *The State of Sovereignty* (Bloomington: Indiana University Press, 2009); Bardo Fassbender and Anne Peters, eds., *Oxford Handbook of the History of International Law* (Oxford: Oxford University Press, 2012); Liliana Obregon, "Completing Civilization: Creole Consciousness and International Law in Nineteenth-Century Latin America," in *International Law and Its Other*, ed. Anne Orford (Cambridge: Cambridge University Press, 2008), 247–64; Lauren Benton, *A Search for Sovereignty* (Cambridge: Cambridge University Press, 2010); and Martti Koskenniemi, "Histories of International Law: Dealing with Eurocentrism," *Rechtsgeschichte* 19 (2011): 152–76.

[3] Anthony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2005), 8. Saadia Touval, "Treaties, Borders, and the Partition of Africa," *Journal of African History* 7, no. 2 (1966): 281–82. Richard Horowitz, "International Law and State Transformation in China, Siam, and the Ottoman Empire during the Nineteenth Century," *Journal of World History* 15, no. 4 (2004): 445–86.

tice concerning the relationship between different polities, which predated their interaction with European expansion.[4] The very diversity of the perspectives applied has ensured a more complex understanding of the nature of international law. However, while the upshot of these efforts has been to demolish the claims of traditional European international law to moral superiority, objectivity, originality, and monopoly, they share a view of non-European actors as either primitive, isolated, or passive.[5] And while, by the nineteenth century, as Chakrabarty has shown, there was no real escape from European influence, there were aspects of international law wherein states outside of Europe initiated different practices and ideas that came to affect the development of that still-predominant European project of international law.[6]

Public international arbitration—including both arbitration agreements and arbitral decisions—was a central part of the development of nineteenth-century international law. Two aspects of the decisions of states to enter into arbitrations show that the contributions of the non-European states was significant both in concept and in practice, even if the product of a tangle of influences. The first is the tradition of international relations implicit in the treaty practice of Latin American states from their independence until their general admittance into the global legal community at the Second Hague Conference in 1907. The second is the ground-breaking set of treaties negotiated by an Englishman at the behest of the Kingdoms of Hawai'i and Siam in the 1860s.

Beyond their value as rare evidence of non-European-based initiatives in diplomatic history, these examples open new historiographical angles for international law. First, they move beyond a focus on the development of substantive legal doctrines to include the procedures and frameworks within which those doctrines were implemented. Such substantive doctrines (such as how to evaluate a contract claim or how to draw a boundary line) comprise only part of the story. Indeed, twentieth-century arguments favoring permanent international courts over arbitration were premised on a belief that arbitrators were often

[4] See, e.g., Charles Alexandrowicz, "International Law in India," *International and Comparative Law Quarterly*, 1, no. 3 (1952); Charles Alexandrowicz, "The Role of Treaties in the European-African Confrontation in the Nineteenth Century," in *African International Legal History*, ed. A. Mensah-Brown (New York: UNITAR, 1975); Hedley Bull and Adam Watson, eds., *The Expansion of International Society* (Oxford: Clarendon Press, 1984); T. O. Elias, *Africa and the Development of International Law* (Dordrecht: Martius Nijhoff, 1972).

[5] More recently, Arnulf Becker Lorca has seen such actors as more active in the development of international law; *Mestizo International Law* (Cambridge: Cambridge University Press, 2014).

[6] Dipesh Chakrabarty, *Provincializing Europe* (Princeton, N.J.: Princeton University Press, 2000).

biased, unjudicial, and unfamiliar with international legal doctrine. Second, entering into an arbitration, especially in the nineteenth century, was rare enough to be a deliberate state decision in favor of a dispute resolution mechanism that was beyond the diplomatic norm, but only to a limited degree. These examples show that by choosing when and how to commit substantive political relations with other states on specific issues to the quasi-legal context of arbitration, state practice (or diplomacy) has been an important factor in the development of international law, and that, apart from the usual reliance on treatise writers' combination of filtered analysis and aspirations, was often driven by the perceived benefits—either domestic or international—of invoking an apparent neutral, objective, and judicial process. In sum, we need to be mindful of the anachronistic (and perhaps discipline-driven) nature of the distinction between international law and international relations that has colored the history of each.[7]

The development of public international arbitration was an important aspect of the growth of both international law and diplomacy in the nineteenth century, in terms of legal formalization, governmentality, and juridicalization of relationships. Beginning with the Anglo-American Jay Treaty of 1794, there were more than one thousand instances of arbitration agreements entered into by the time of World War I.[8] They included bilateral and multilateral accords, as well as agreements to settle boundary disputes and commercial claims and to

[7] We can be grateful for the work and perspectives of traditional legal and diplomatic historians, even while we see the need to push more deeply into questions which decline to accept the formal framework of state power. See, e.g., Wilhelm G. Grewe, *The Epochs of International Law*, ed. and trans. Michael Byers (New York: De Gruyter, 2000); Richard Langhorne, "Arbitration: The First Phase, 1870–1914," in *Diplomacy and World Power: Studies in British Foreign Policy, 1890–1950*, ed. Michael Dockrill, Michael Lawrence, Brian McKercher, and James Cooper (Cambridge: Cambridge University Press, 1992); C. G. Roelofsen, "International Arbitration and Courts," in *Oxford Handbook of the History of International Law*, ed. Bardo Fassbender and Anne Peters (Oxford: Oxford University Press 2012), 145–69; and J. H. W. Verzijl, *International Law in Historical Perspective*, vol. 8 (Leyden: Sijthoff, 1967).

[8] This list, along with the statistical points noted below, was compiled primarily from the principal late nineteenth- and early twentieth-century arbitration studies, as supplemented by primary research and references to a variety of scattered agreements. The principal studies include: Helen M. Cory, *Compulsory Arbitration of International Disputes* (New York: Columbia University Press, 1932); W. Evans Darby, *International Tribunals*, 4th ed. (London: Peace Society, 1904); Henri La Fontaine, *Pasicrisie Internationale: Histoire documentaire des arbitrages intenationaux* (Paris: 1902); Christian L. Lange, *L'Arbitrage obligatoire en 1913* (Bruxelles: Misch & Thron, 1914); A. de La Pradelle and N. Politis, *Recueil des arbitrages internationaux* (Paris: Pedone, 1905); William R. Manning, *Arbitration Agreements among the American Nations* (New York: Oxford University Press, 1924); A. M. Stuyt, *Survey of International Arbitrations*, 3rd ed. (Hague: Nijhoff, 1939). A complete list is available from the author.

manage ongoing shared responsibilities and treaties establishing arbitration as the preferred method of handling dispute resolution between many countries. After-the-fact arbitration agreements (known as *compromis*) were by far the most numerous but were not novel in concept in the nineteenth century. They were noteworthy because their volume and frequency reflected the increasingly legalistic discourse of dispute resolution, which partially replaced the traditional reliance on politically driven diplomatic solutions or the resort to war. In addition, the use of compromissory clauses and general arbitration agreements (i.e. commitments to use arbitration to settle future disputes)—a much more significant signal of the nature of sovereignty and the states' system—was driven by non-European states, reflecting, in the Latin American case, a shared and cooperative sensibility about international relations different from that embedded in post-Vienna Europe.

The Latin American Initiative

In the history of nineteenth-century international law and diplomacy, Latin America has usually been seen, per George Canning, as but an adjunct to the great stories of great power politics in Europe or as the subject of American or British informal empire.[9] At the turn of the twentieth century, the Calvo and Drago doctrines marked the first distinctive substantive contributions to international law initiated by Latin Americans. However, in terms of the process and context of international law, specifically arbitration principles and practices, the countries of Latin America have loomed much larger in terms of their broad interpretation of the concept, the amount of intraregional activity, and agreements with the great powers, which manifested the latter's informal empires. While intersecting from time to time with European arbitration practice beginning in the middle of the century, Latin American arbitration was a major focal point by the end of the period, with the Venezuelan boundary dispute of the 1890s and the Venezuelan claims and revenue confrontation at the turn of the century being the most

[9] George Canning, "I Called the New World into Existence to Redress the Balance of the Old," Speech to the House of Commons, December 12, 1826, *Parliamentary Debates*, Commons, 2nd ser., 16:126–27, col. 397. For a general overview of Latin American diplomatic history, see Harold Davis et al., eds., *Latin American Diplomatic History: An Introduction*, (Baton Rouge: Louisiana State University Press, 1977). For a more detailed treatment of British informal empire, see Peter Cain and A. G. Hopkins, *British Imperialism, 1688–2000*, 2d ed. (London: Longman, 2002).

notable examples.[10] This increased prominence, likely leveraged by the United States as a phalanx to its own increased global role, was demonstrated by the inclusion of nineteen Latin American delegations to the Second Hague Conference in 1907, despite their exclusion (save Mexico) from the First. Overall, of the twenty Latin American states that existed before World War I, eighteen engaged in arbitrations, a higher ratio than any other region. They were parties to over 250 agreements to arbitrate specific cases, well over a third of the global total. Of these 75 were boundary disputes and 161 were cases involving property or commercial claims, over half the worldwide total.

A Different View of International Relations

Almost from the inception of independent Latin American states in the 1820s, the nature of their international relations has been markedly different from that typically associated with European models. Given the vast intercontinental differences in geography, history, economies, and domestic political structures, it would be surprising if it were otherwise.[11] Sharing a common Spanish heritage, these states felt an affinity that, while not as developed or formalized as what evolved to become the United States, colored their view of how they should interact. And political developments in Latin America were typically ignored or downplayed in Europe and the United States.[12] At the same time, Latin American elites also saw themselves as part of the enlightened republican tradition rooted in both the American and French Revolutions, a tradition that lent itself to the creation of a protoliberal view of international relations that included a concept of "American public law" not all that far from the "European public law" common in post-Vienna discussions.[13]

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[10] In 1896, under considerable pressure from the United States, Britain agreed to arbitrate a long-standing dispute with Venezuela conceding the latter's boundary with British Guiana. The 1903 agreement to arbitrate among Britain, Germany, Italy, and Venezuela concerning the latter's debts and payments to the former followed a naval blockade, maritime seizures, and the shelling of the Puerto Cabello. It led to one of the first cases heard in the Permanent Court of Arbitration at The Hague.

[11] While Brazil was certainly a participant in these activities, there are few signs of its distinctive views or initiatives until the twentieth century.

[12] There are three plausible reasons for this: (1) the view of this region from Europe and the United States as a shared periphery in a range of (mostly) informal empires, (2) the lack of domestic stability and the frequency of conflicts during the period, and (3) the absence of any developed theoretical underpinning.

[13] Greg Grandin, "The Liberal Traditions in the Americas: Rights, Sovereignty, and the Origins of Liberal Multilateralism," *American Historical Review* 117, no.1 (2012): 70.

However, in terms of treaty practice and the resolution of individual international disputes, Latin American states provided a different approach, which belies their traditional treatment as passive auxiliaries to the dominant powers from the north. Across the century, the number of Latin American arbitration agreements and the number of countries involved dramatically exceeded those in Europe. Moreover, the forward-looking nature of those agreements predated comparable European practice. Finally, their repeated commitment to arbitrate differences, while more honored in the breach than the observance, shows that the conception of the kind of relationship to which Latin American states aspired was some considerable distance from traditional European diplomatic mentalités. The lack of attention to Latin American practice is particularly notable given that its precedents met the goals of the peace movements in the United States, Britain, and Europe that were vocal but, until the end of the century, usually politically ineffective in their own countries. Moreover, we cannot attribute Latin American practice to the influence of British or American peace advocates, since the latter's proposals did not gain much coherence until the 1840s, nor much general circulation until the 1870s, well after Latin American templates were developed.

The first demonstration of this different approach can be seen as early as 1823 when Chile and Peru signed the first treaty in modern times that expressly provided for the arbitration of disputes arising from that agreement.[14] A similar "compromissory clause" was also included in the Bolivian-Peru agreement of 1831, a claims settlement agreement among Columbia, Ecuador, and Venezuela in 1838, and three Chilean "Commerce and Navigation" treaties with European powers in the 1850s.[15] Indeed, other than the Bowring treaties discussed in the next section, Latin American states were party to every compromissory clause agreement up through 1868. This anticipatory approach to dispute resolution—agreeing beforehand to arbitrate—was exactly what peace advocates in Britain and America were clamoring for during this period to no avail.[16]

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[14] Treaty between Chili and Peru, April 26, 1823, in W. R. Manning, *Arbitration Treaties among the American Nations: To the Close of the Year 1910* (New York: Oxford University Press, 1924), 4.

[15] Treaty between Boliva and Peru, November 8, 1831, in ibid., 10. Treaty between Columbia and Ecuador, November 16, 1838, in ibid., 12. Treaty between Chili and France, June 30, 1852, cited in Lange, *L'Arbitrage obligatoire*, 76. Treaty between Chili and the United Kingdom, October 4, 1854, ibid. Treaty between Chili and Sardinia, June 28, 1856, ibid.

[16] A review of the pamphlet and journal output of the principal British and American peace groups does not show that any attention was paid to these treaty developments.

Compromissory clauses were commitments to arbitrate on a relatively narrowly defined set of issues. Latin American states also pioneered making a comprehensive commitment to arbitrate. This type of agreement was a major focus of diplomatic discussion late in the century, especially between the United States and Great Britain. On a global basis, fifty-four such agreements were signed before the great Hague Conference of 1899 was convened. Of these, forty-eight were signed by Latin American states, beginning in 1829 by Columbia and Peru, and (again leaving the Bowring treaties to the side) the only such agreement in this group that was not between two Latin American states was an ill-fated 1883 pact between Italy and Abyssinia.[17] Of course, the frequency of these Latin American agreements seems uncomfortably correlated with the frequency of the wars and border clashes that marked that region up through the 1880s.[18] Still, it is also a testament that the diplomatic culture so doggedly stuck with at least the aspiration to the peaceful settlement of disputes.

This culture was deeply rooted, and it persevered despite the unsettled nature of the Latin American states system. It was closely linked with the combination of interests across local elites and military efforts that marked the independence era as an expression of commonality against Spain. In 1822, Bolivar himself called for Latin American states to cooperate to deal with the issues that the newly separated republics faced.[19] A congress convened in Panama in 1826, which included almost all the Spanish-speaking states and produced a "Treaty of Union, League, and Perpetual Confederation."[20] This was the first major attempt to unify the former colonial provinces, and it failed for a variety of reasons, with only Gran Columbia ratifying the agreement. There was a long list of later attempts at some sort of federation or union, some of which were effective for a limited period, others of which were still-born. Together with the arbitration agreements, they show a continuing effort on the part of leaders of different Latin American states at different times during the century to overcome the boundaries and regional rivalries that were the legacy of Spanish colonial administration as the

[17] Treaty between Columbia and Peru, in Manning, *Arbitration Treaties*, 9. Treaty between Italy and Shoa (Abyssinia), May 21, 1883, *Trattati etc. relativi all'Africa*, 1:62, reprinted in Edward Hertslet, *The Map of Africa by Treaty* (London: HMSO, 1894), 1:7 and in Clive Parry, ed., *The Consolidated Treaty Series* (Dobbs Ferry, N.Y.: Oceana, 1978), 162:114.

[18] Jorge I. Dominguez et al., *Boundary Disputes in Latin America* (Washington, D.C.: United States Institute of Peace, 2003), 21.

[19] G. de Quesada, *Arbitration in Latin America* (Rotterdam: Wyt, 1907), 2.

[20] Ibid., 5–7. Joseph Lockey, *Pan Americanism: Its Beginnings* (New York: Macmillan, 1920), 320–48.

foundation of establishing modern polities. It was this fraternal sense, I suggest, that underlay a willingness to commit to a peaceful solution of disputes between states, which, if not often honored in the event, at least expressed a sense of how states should seek to behave.

This principle was also manifested in the course of the arbitration of specific issues or *compromis* (although only occasionally were these the implementation of a general arbitration agreement). Latin American states were regular participants in arbitration agreements beginning in the 1820s, but primarily in an informal imperial context. Despite the broad and repeated commitments to arbitrate, there were only forty-one intraregional arbitrations before 1890 (out of over four hundred globally). It was in the period from 1890 to the beginning of the First World War that Latin American states became recognized as global players in international law in general and in terms of arbitration in particular. This was due to the momentum that had built up since 1873 for a more coherent and positivist approach to international law generally, as well as to the emergence of notable scholars of international law from this region.[21] The 1890 Pan American Conference was a landmark in this regard, as was these states' inclusion in the Second Hague Conference in 1907.[22] These projects were the product of eighty years of effort.

Latin American Arbitration in an Imperial Context

The idea that international law has been an important mechanism in the imperial tool box, not only as a means of expressing the rationale of the civilizing process, but also as a context of defensive modernization,

[21] On the nature of late nineteenth-century international law, see Martti Koskenniemi, *The Gentle Civilizer of Mankind: The Rise and Fall of International Law, 1870–1960* (Cambridge: Cambridge University Press, 2001). Carlos Calvo, an Argentine jurist, was a prolific and influential scholar of international law from the late 1860s through the 1890s. Writing in Spanish and French, he was the only non-European founder of the Institute of International Law in 1873.

[22] See Jorge L. Esquirol, "Latin America," in *Oxford Handbook of the History of International Law*, ed. Bardo Fassbender and Anne Peters (Oxford: Oxford University Press, 2012), 553–77; Arnulf Becker Lorca, "International Law in Latin America or Latin American International Law? Rise, Fall and Retreival of a Tradition of Legal Thinking and Political Imagination," *Harvard International Law Journal* 47, no.1 (2006): 283–305; Obregon, "Completing Civilization"; J. J. Quintana, "The Latin American Contribution to International Adjudication," *Netherlands International Law Review* (1992): 39; Manley O. Hudson, "The Central American Court of Justice," *American Journal of International Law* 26, no. 4 (1932): 759–86; Alejandro Alvarez, "Latin America and International Law," *American Journal of International Law* 3, no. 2 (1909): 269–353.

is not a new one.[23] European expressions of international law have also had to take into account the implications of exploration and competition, as well as the accommodation of alien or "barbarian" peoples into its evolving doctrines. However, political entities on the periphery have rarely been seen as innovators and actors in these stories. This section highlights the role of Latin American states in utilizing international law, and arbitration concepts and procedures in the course of their dealings with European and North American formal and informal empires.

Given the rich background in endorsing arbitration principles, it is not surprising that Latin American states sometimes sought arbitration as a means of resolving disputes with states outside the region. In fact, while the history of arbitration was traditionally presented mostly as the story of Anglo-American initiatives, it was the Mexicans who sought to add arbitration to the Treaty of Guadalupe-Hidalgo in 1848.[24] While Mexico and the United States had agreed to a boundary commission under an 1828 treaty, the 1848 agreement was the first time the United States became a party to a general arbitration agreement. Specifically, Article XXI provided:

> If unhappily any disagreement should hereafter arise between the Governments of the two republics [they] promise to each other that [if] they should not be enabled to come to an agreement, a resort shall not, on this account, be had to . . . hostility of any kind . . . until the Government of that which deems itself aggrieved shall have maturely considered . . . whether it would not be better that such difference should be settled by the arbitration of commissioners appointed on each side, or by that of a friendly nation. And should such course be proposed by either party, it shall be acceded to by the other.[25]

Indeed, as early as 1837, the Mexican government had proposed the use of arbitration to resolve a number of long-pending claims between

[23] See Anghie, *Imperialism, Sovereignty*. Bardo Fassbender and Anne Peters, "Introduction: Towards a Global History of International Law," in *Oxford Handbook of the History of International Law*, ed. Bardo Fassbender and Anne Peters (Oxford: Oxford University Press, 2012), 1–23.

[24] The claim that the provision was inspired by recent proposals made by the U.S. peace movement have been effectively debunked by Merle Curti, "Pacifist Propaganda and the Treaty of Guadaloupe Hidalgo," *American Historical Review* 33, no.3 (1928): 596–98. The treaty is in William M. Malloy, ed. *Treaties, Conventions, International Acts, Protocols and Agreements between The United States of America and Other Powers, 1776–1909*, 2 vols., published as U.S. Congress. Senate. 61st Cong., 2d sess., S. Doc. 357, 1910, 1107.

[25] Ibid., 1082.

the two countries.[26] In another case, following riots in Panama City in 1856, the United States claimed considerable reparations on behalf of its nationals. After some frustrating diplomatic discussions, the government of New Grenada authorized the resolution of this matter by arbitration early in 1857, and a treaty was signed later that year providing for a mixed commission and a Prussian umpire.[27] Finally, in one of the most famous arbitration proceedings of the pre–World War I period, it was Venezuela that repeatedly proposed arbitration as a solution to the long-simmering dispute with Great Britain over the boundary with British Guiana. The British initially rejected the proposal and the arbitration went forward only upon the jingoistic intervention of the United States in 1895–1896.[28] A few years later, after defaulting on debt to German, British, and Italian creditors, confronting with European warships seizing the Venezuelan Navy, lobbing shells at two coastal locations, and moving towards a blockade, and being faced with international confrontation in the streets of Caracas, Venezuela again appealed to an arbitral procedure.[29] The Venezuelan arbitration proposal, which was finally agreed to while the blockade was being enforced, resulted in a series of ten mixed commissions to hear the claims of the various European powers as well as the United

[26] Francisco Pizarro Martinez (Mexican minister to the United States) to John Forsyth (secretary of state) proposing "to commit to the judgment of a friendly power the decision upon those claims upon which they cannot come to a determination, provided the United States themselves agree to this" (December 23, 1837, National Archives Microfilm Publication M54, roll 2; Records of the Department of State, RG 59, College Park).

[27] The riots occurred on April 15, 1856. Herran (New Grenadan minister) to Cass (secretary of state), citing New Granadan statute of June 18, 1857; July 21, 1857, National Archives Microfilm Publication M51, roll 3; Records of the Department of State, RG 59, College Park. The U.S.-New Grenada Claims Convention of September 10, 1857, is at Malloy, *Treaties, Conventions*, 2:319.

[28] The Venezuelan government had proposed arbitration as early as 1881. De Rojas (Venezuelan minister to Paris) to Granville (British foreign secretary), February 21, 1881, FO420/170/217-8; U.K. National Archives, Kew. The complete story is well covered in A. E. Campbell, *Great Britain and the United States, 1895–1903* (London: Longmans, 1960); R. A. Humphreys, "Anglo-American Rivalries and the Venezuela Crisis of 1895," *Transactions of the Royal Historical Society*, 5th series (1967): 131–64; and in Henry James, *Richard Olney and His Public Service* (Boston: Houghton Mifflin, 1923). A similar case occurred between the Boer Republics and Great Britain in the wrangling that led up to the Boer War in 1899. Transvaal President Kruger repeatedly pressed for arbitration of a range of issues, which Britain repeatedly rejected. Thomas Pakenham, *The Boer War* (London: Abacus, 1992); and John Westlake, lecture on "The Transvaal War," November 9, 1899, reprinted in *Collected Papers of John Westlake on Public International Law*, ed. L. Oppenheim (Cambridge: Cambridge University Press, 1914), 429–30.

[29] Nancy Mitchell, "The Height of the German Challenge: The Venezuela Blockade," *Diplomatic History* 20, no. 2 (1996): 196–97.

States and Mexico.[30] Not only do these cases undermine the historiographical problem of seeing the metropoles as the sole drivers of the creation and utilization of international legal principles and methods, but they also illustrate an important aspect of the broader use of arbitration during this period—namely, that it was often the politically and militarily weaker state that invoked arbitration, since it had more to fear from further diplomatic pressure or the risk of war. Indeed, in the latter Venezuelan case, arbitration had finally fulfilled its promise as a tangible alternative to war.

But beyond this nominal success lies the question of why these states chose to offer arbitration rather than revive or extend normal diplomatic processes. I suggest that resort to this increasingly common discourse of quasi-judicialized and regularized (I am wary of calling it "legal") proceedings met the needs of both parties in ways that traditional diplomacy could not. First, from the perspective of the imperial powers, it enabled the extension of their procedural norms, which reinforced their property claims and capitalist modes in these informal peripheries.[31] Second, from the perspective of the Latin American states, it allowed the often weak and contested incumbent governments to point to an "objective" third party as the source of the (expected) adverse decision and thus reduce any local opposition, even while clothing themselves—domestically and internationally—in the robes of civilized and legalistic states. In this way, their embracing of international legal concepts and practices was a form of defensive modernization. [32]

Even the First Pan American Conference of 1890, usually seen as the product of U.S. hegemony, should, from the perspective of arbitra-

[30] These arbitral procedures were routine and effective. See Stuyt, *Survey of International Arbitrations*, 254–64. It was only a later dispute as to priority among the various claimants that resulted in one of the first cases to be heard in the then-new Permanent Court of Arbitration in 1903.

[31] Another example of this expansive mentality can be seen in the mixed commissions that the British established with several states to oversee the suppression of the slave trade. See Leslie Bethell, *The Abolition of the Brazilian Slave Trade: Britain, Brazil and the Slave Trade Question, 1807–1869* (Cambridge: Cambridge University Press, 1970); and Jenny Martinez, *Antislavery Courts and the Dawn of International Human Rights Law* (Oxford: Oxford University Press, 2012).

[32] While this characterization is some distance from twentieth-century debates about material modernization, it does give us a way of understanding Latin American lawyers and diplomats of the time who could not only align themselves with their Western elite counterparts, but could also use their adherence to international legal norms to demonstrate their states' comparability to Western "civilization," for both cultural and political reasons. See, e.g., Arnulf Becker Lorca, *Mestizo International Law* (Cambridge: Cambridge University Press, 2014): 94–97.

tion issues, be seen as the site of Latin American assertion of its own views and concerns. Under the leadership of Secretary of State James Blaine, the United States advanced a broad agenda that encompassed a customs union, commercial agreements, standardization and harmonization, and political doctrines. The United States also advanced a proposal for a hemispheric arbitration regime, including a commitment that all states agree in advance to arbitration. The Argentinian delegation, led by Manuel Quintana, preempted the U.S. proposal with one of their own, and a furious verbal battle ensued, following which the United States backed down and the conference finally approved a draft treaty that first allowed states to decline to enter into arbitration if necessary to protect their national honor or independence, and second negated U.S. attempts to have all hemispheric issues come before an arbitration tribunal based in Washington, along with other procedural and structural provisions that Latin American states reasonably viewed as skewed towards their northern neighbor.[33] This incident presents a curious case in which Latin American fear of U.S. domination trumped not only their own shared tradition in arbitration agreements, but also their interest in using a quasi-legal structure of arbitration to blunt the pressure of a more powerful adversary. Further, despite the fact that the treaty was ratified only by one state and therefore never went into force, it remained a potent model of a more limited arbitral scheme and one that we can see reflected in the "global" Hague Conference Agreement of 1899.

When we review the list of 139 specific property and commercial claims cases that were submitted to arbitration between Latin American states and those outside the region during the period from 1823 through 1914, what is most striking is that the Latin American states were the claimants in only a few of these cases. Even under those agreements that were denominated "mutual claims," typically few if any claims from Latin American nationals were presented. Frequently there is reference to domestic upheaval, civil war, or over-aggressive local officials as the cause of the damages alleged by the European (most commonly British or French) or American claimants. While this difference may be a product of the disparity in investment and local commercial presence, I suspect it is as much more reflective of the lack of confidence in local judicial processes in the Latin American states and the difficulties in securing actual compensation for losses that occurred in

[33] Thomas F. McGann, "Argentina at the First Pan American Conference," *Inter-American Economic Affairs* 1 (1947): 1.

a variety of circumstances. Further, relatively few of these claims were for ordinary commercial losses; in most cases they were based on actions (or omissions) of the Latin American governments, such as maritime seizure, breach of authorized monopoly or concession agreement, or failure to maintain the peace. For example, out of more than 160 pecuniary claims *compromis* involving Latin American states from independence through World War I, almost 90 percent involved a European power, the United States, or Japan. Thus, despite their cultural affinity for arbitration in principle, Latin American states used it relatively rarely among themselves.

Rather, we can see the regular use of arbitration procedures as a means of extending the reach of Western legal principles and, through the use of mixed commissions and (often) Western umpires, some sense of the judicial procedures that were common in the metropoles; in other words, claims arbitrations could serve as a variety of extraterritorial jurisdiction, at least on an ad hoc basis. From another perspective, however, they can be seen as means by which Latin American governments (often freshly installed following domestic upheaval) could separate themselves (in the eyes of both domestic elites and Western investors and merchants) from the alleged irregularities that occasioned the claims.[34] So, beyond any substantive principles of international law that may have arisen through these cases, the utilization of arbitration by Latin American states facilitated the integration of legal norms, the familiarization with international legal principles, and the discourse of juridical process.[35] This, in turn, colored the evolution of their sense of how states should relate to each other.

[34] This seems to have been the case from the outset, with British claims against Brazil and Buenos Aires leading to arbitration proceedings in 1829 and 1830, respectively, following the war between those two Latin American states. See Agreement between Great Britain and Brazil, relative to the Settlement of British Claims, signed May 5, 1829, British Foreign and State Papers 18 (1830–1831): 689–91; and Convention between Great Britain and Buenos Ayres, for the Settlement of British Claims, July 19, 1830, British Foreign and State Papers 18 (1830–1831): 685–90.

[35] See generally Becker Lorca, *Mestizo International Law*. This was reflected in the Calvo and Draco doctrines, advanced by Latin American states in the late nineteenth and early twentieth century, respectively, which sought to use substantive principles of international law to limit the use of Western political and military power in the collection of debts owed by Latin American states. The Drago Doctrine, in particular, sought to effectively require the use of arbitration in such circumstances. See William I. Hull, *The Two Hague Conferences and Their Contributions to International Law* [1908] (New York: Garland, 1972), 350–69.

Sir John Bowring: Hawai'i and Siam

Pre–World War I diplomacy is filled with stories of foreign nationals acting as diplomatic representatives of various states (not to mention generals and admirals). One of the more curious is the case of Sir John Bowring. Born into a provincial dissenting family in 1792, Bowring came to London in 1811 as a clerk for a local firm and pursued an often-successful commercial career.[36] Through a connection, he was introduced to Jeremy Bentham in 1820, with whom he became closely linked, eventually becoming the editor of Bentham's papers. He got involved in liberal politics and international affairs and was active in a variety of reform efforts.[37] He was also elected foreign secretary of the Peace Society in 1820, where he served for three years until he apparently felt uncomfortable with its absolute pacifist stance; nonetheless, he remained as an active member at least into the 1840s.[38] Financial problems led him to seek a government appointment, and he worked in several different positions under both Tory and Whig administrations in the 1820s and 1830s. After a variety of activities he entered Parliament in 1835, resigning in 1849 to become consul in Canton and eventually governor of Hong Kong in 1854, where he launched the Second Opium War.[39] While still in London, he was active in free trade groups, participated in the first international Peace Congress in 1843, and worked with several other peace groups in Britain and France.[40] It was as an MP that Bowring, inspired by the American William Jay's concept of including a general arbitration clause in treaties, was the first to propose to Parliament that Britain pursue such a policy.[41] Cobden referred to him as an "old friend."[42] So, we can already see that he was

[36] This biographical summary is drawn from F. Rosen, "John Bowring and the World of Jeremy Bentham," in *Sir John Bowring: Aspects of His Life and Career*, ed. Joyce Youings (Exeter: Devonshire Association, 1993), 13–28. See also Philip Bowring, *Free Trade's First Missionary: Sir John Bowring in Europe and Asia* (Hong Kong: Hong Kong University Press, 2014).

[37] His annotations of a copy of Bentham's study of international law show a familiarity with that field as well. See Bentham Papers, University College London Archives, Bentham/25/68–105.

[38] Stephen Conway, "John Bowring and the Nineteenth-Century Peace Movement," *Historical Research*, 64, no. 155 (1991): 346. He was apparently responsible for Bentham joining the organization as well; ibid., 354.

[39] Stephen Conway, "Bowring in Government Service," in *Sir John Bowring: Aspects of His Life and Career*, ed. Joyce Youings (Exeter: Devonshire Association, 1993), 31–33.

[40] Conway, "Bowring and Peace," 348.

[41] Merle Curti, *The American Peace Crusade, 1815–1860* (Durham, N.C.: Duke University Press, 1929), 190.

[42] Richard Cobden to Edgar Bowring (son), August 5, 1855, in *The Letters of Richard Cobden*, ed. Anthony Howe and Simon Morgan (Oxford: Oxford University Press, 2012), 3:144.

a person of some consequence and connection—a second-tier player, to be sure, but still a man who corresponded with Peel and Palmerston. While in Asia, he went to Siam and negotiated a treaty—later characterized as "unequal"—on Britain's behalf in 1855. Upon his return to Britain, he remained active in reform efforts domestically and traveled to France and Italy as an official representative of the Government to explore trade and commercial opportunities.

By the 1860s, he was relegated to the fringes of power. Nevertheless, it was a combination of these experiences—a strong liberal bent, engagement with the pro-arbitration peace movement, and diplomatic experience and contacts—that enabled Bowring to revive and implement his peace ideas—although in a somewhat surprising and circuitious manner. Acting as a diplomatic representative in Europe on behalf of several Pacific countries in the 1860s, he negotiated eight agreements containing similarly worded arbitration clauses, each of which included a commitment to seek third-party arbitration of any differences that could not be amicably negotiated by the signatories. His work was instrumental in spreading the scope and concept of arbitration as a general component of international relations from his early years in the peace movement, and in transforming it from generalized conception into practical application. He leveraged his position in an effort to bring, for the first time, the concept of general arbitration commitments to mainstream European diplomacy, beyond their usual appearance on a case-specific basis. Specifically, he represented the Kingdom of Hawai'i in negotiating a comprehensive treaties with Belgium (1862), Italy (1863), Spain (1863), and Switzerland (1864) in which each pair of countries agreed to third-party arbitration in principle if, "after having exhausted the means of a friendly and conciliatory discussion, they should not arrive at the conclusion that they mutually wish for."[43] A few years later, based on this experience and his connections from having represented Britain in Bangkok, he represented the Kingdom of Siam in a set of similar agreements with Belgium (1868), Italy (1868), Austria-Hungary (1869), and Sweden and Norway (1869).[44] Notably, unlike the 1863 model, the general arbitration

[43] Hawai'ian Islands–Belgium, Treaty of Amity, Commerce and Navigation, Brussels, October 14, 1862, Article 26, *British Foreign and State Papers* 52 (1861–1862): 521. Hawai'ian Islands–Italy, Treaty of Friendship, Commerce and Navigation, Paris, July 22, 1863, Article 24, *British Foreign and State Papers* 60 (1869–1870): 397. Hawai'ian Islands–Spain Treaty of Friendship, Commerce and Navigation, October 29, 1863, Article 24, *British Foreign and State Papers* 62 (1871–1872): 1004–12.

[44] Belgium-Siam Treaty of Friendship and Commerce, London, August 29, 1868, *British Foreign and State Papers* 59 (1868–1869): 405–417. Italy-Siam Treaty of Commerce and

clause in these later agreements contains an express commitment to be bound by the result of the third-party decision. These compulsory arbitration provisions were unique for the time (outside of Latin America) and remain the only examples of such provisions subscribed to by European countries prior to 1880.[45] In addition, these general arbitration commitments were part of broader commercial agreements. The Siamese-Belgian treaty also included a compromissory clause that was specific to individual merchandise import valuation issues, to be handled by the local consul and government official as a de facto appeal board from disputes between the importing merchant and the customs service with a further judicial umpire.[46]

Bowring came to this project through a long-standing, if somewhat obscure relationship with Robert Crichton Wyllie, a Scottish physician-turned-trader who, having made his fortune in Latin America in the 1830s, returned to London and moved in reform circles during 1830–1842.[47] It was there, most likely, that he established contact with Bowring. By 1845, Wyllie had arrived in Honolulu and become minister for foreign affairs for the Kingdom of Hawai'i, a post he was to occupy for the next twenty years.[48] Their paths had reconnected by 1859 when their letters reveal Wyllie's appreciation of Bowring's prior counsel over the course of their extensive correspondence.[49] Wyllie thereupon

Navigation, London, October 3, 1868, Article 27, *British Foreign and State Papers* 60 (1869–1879): 773. Austria-Hungary–Siam Treaty of Commerce, Bangkok, May 17, 1869, Article 26, *British Foreign and State Papers* 61 (1870–1871): 1308. This last agreement, while signed by senior members of the Thai government, was not signed by Bowring, but the language is clearly replicated from his earlier negotiations. Siam-Sweden and Norway Treaty of Friendship, Commerce and Navigation, May 18, 1868, Article 25, in United States Tariff Office, *Handbook of Commerical Treaties*, ed. Herman G. Bauer (Washington, D.C.: USGPO, 1922), 781; see also *British Foreign and State Papers* 69 (1877–1878): 1135–46. On Bowring's relationship with the Siamese government, see Bowring, *Free Trade's First Missionary*, and M. L. Manich Jumsai, *King Mongkut and Sir John Bowring* (Bangkok: Chalermnit, 1970).

[45] At which time the Italian-Roumanian Consular Agreement included a compromissory clause. Lange, *L'Arbitrage obligatoire*, 180. However, there are allusions to a 1870 Spanish-Uruguayan agreement to similar effect. H. Bellaire. "Etude historique sur les arbitrages dans les conflits internationaux," *Bulletin de la Societe des Amis de la paix* 5 (1872): 16; and London Peace Society, *Facts and Illustrations in Reference to War, Peace and International Arbitration* (1872), 48–49.

[46] See also London Peace Society, *Facts and Illustrations*, and John Bowring, *Autobiographical Recollections*, 27.

[47] James D. Raeside, "The Journals and Letter Books for R. C. Wyllie: A Minor Historical Mystery," *Hawaiian Journal of History* 18, no.1 (1984): 87.

[48] Albert Pierce Taylor, "Intrigues, Conspiracies and Accomplistments in the Era of Kamehameha IV and V and Robert C. Wyllie," *Papers of the Hawaiian Historical Society* 16 (1929): 16–18.

[49] Wyllie to Bowring, November 16, 1859, John Bowring Papers, Bancroft Library P-N 139, vol. 1. The Wyllie-Bowring correspondence had been going on for many years. Ralph

recruited Bowring to act as Hawai'i's "commercial plenipotentiary" in Europe to secure the island nation's relationships with the principal powers and help it maintain its independence in view of the competing imperialisms of Britain, France, and the United States.[50]

Wyllie's commission to Bowring included a draft of treaties that Wyllie hoped would be the basis of Bowring's negotiations. While the draft made no direct mention of arbitration per se, clearly Wyllie was alive to recent developments in European diplomacy. The draft of Article 2 of these projected treaties of friendship, commerce, and navigation included the following language:

> If any differences of any kind or on any ground whatever, hereafter arise between the two nations, peace and friendship shall not be interrupted between them, until all hopes of settling such differences amicably agreeably to the provisions consecrated in the Protocol of Paris dated 14 April 1856, shall have vanished.[51]

However, he may not have had the most sophisticated understanding of the Paris arrangements, over-reading the mediation protocol as a binding commitment of the powers to arbitration.[52] In fact, Wyllie later argued that Hawai'i's adherence to the provisions of the Treaty of Paris regarding privateers and neutral shipping should entitle it to invoke the protection that he inferred from this aspect of the Paris Protocol.[53] Nonetheless, regardless of the accuracy of Wyllie's reading of these Euro-

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S. Kuykendall, *The Hawaiian Kingdom 1854–74* (Honolulu: University of Hawai'i Press, 1953): 55.

[50] Wyllie to Bowring, January 19, 1860. John Bowring Papers, Bancroft Library P-N 139, Vol. 1. On April 25, Wyllie told Bowring "Our Sovereign believes that of all men in Europe, you are the best qualified to obtain the acquiescence of the British and French Governments, and, in one word, of all civilized and Phylanthropic [sic] Governments, in the Equal, just and uniform policy which He desires to pursue in His Own independent Government for the good of all Foreign nations and of His Own Subjects; and He hopes, that having the great advantage of being formally known to both Governments and being of great eminence for your knowledge and experience as a Statist and Statesman, as well as of great and universal benevolence, you will condescend to make the attempt."

[51] Wyllie to Bowring April 25, 1860, John Bowring Papers, Bancroft Library P-N 139, vol. 1. Prior Hawai'ian treaties contained no such provisions. See the Hawai'i- Sweden/Norway Treaty of April 5, 1855 and the Hawai'i-France treaty of October 27, 1857; copies enclosed in Lord John Russell (British foreign secretary) to Green (British consul in Honolulu), April 24, 1861, FO58/95/1, Foreign Office Papers, U.K. National Archives, Kew.

[52] In the course of setting the peace terms following the Crimean War, the representatives of the assembled great powers made an informal, nonbinding endorsement of mediation as a means of preventing future wars among themselves. See Winfried Baumgart, *The Peace of Paris 1856*, trans. A. P. Saab (Santa Barbara: ABC-Clio, 1981).

[53] Wyllie to Bowring, February 27, 1861, and March 8, 1862, John Bowring Papers, Bancroft Library P-N 139, vols. 1, 5.

pean developments, this initiative makes clear that the sentiment behind the insertion of arbitration provisions in the agreements negotiated by Bowring were not entirely the latter's creation, but rather were at least in part responsive to direction from Honolulu. Hawai'ian foreign policy goals in the 1850s were focused on securing a guaranteed neutrality with support from the key powers, Britain, France, and the United States through a "general political treaty," and particularly resolving some nagging issues with France.[54] It is likely that Wyllie's stance, whether in proposals based on the Paris Protocol or support for Bowring's arbitration language, was indicative of his desire to reduce the risk of precipitate action by the major powers—a justifiable fear in the era of Palmerston and Louis Napoleon and in light of later American annexation.

Bowring's principal targets for Hawai'ian agreements were thus France and Great Britain, but these proved tough nuts to crack.[55] Bowring then decided that he could make better progress on behalf of Hawai'i by establishing some precedents with less complex players. Thus, during a trip around the Continent in 1862, he wrote to Wyllie indicating a plan to secure a treaty with Belgium as a "stepping stone to more important resolutions elsewhere."[56] Two weeks later, in Brussels, he was clearly focused on negotiating an arbitration provision as a general means of dispute resolution not only as a valuable goal in itself, but also as an example that "can and ought be of great influence hereafter."[57] But he was concerned about Belgium's willingness to be the first European power to adopt a general arbitration agreement. Even after he had secured diplomatic agreement for such a clause, he was unsure as to whether the king would approve, noting "Belgium would I know in this case certainly follow the example of the Great Powers, but whether the King will have the courage to take the initiative remains to be seen."[58] But the King did agree and Bowring could move forward.[59] The agreement provided that

[54] Kuykendall, *The Hawaiian Kingdom*, 54–57. Bowring's attempt to secure individual commercial treaties was seen as a step towards that arrangement.

[55] Bowring's efforts with France were stifled by bureaucratic resistance within the Foreign Ministry, and his British negotiations were hampered by the fact that, since he was a British subject, the Foreign Office would not recognize him as the plenipotentiary of a foreign power; ibid.

[56] Bowring to Wyllie, September 8, 1862, John Bowring Papers, Bancroft Library P-N 139, vol. 5.

[57] Bowring to Wyllie, September 22, 1862, ibid.

[58] Bowring to Wyllie, September 30, 1862, ibid.

[59] Hawai'i-Belgium Treaty of Amity, Commerce and Navigation, Brussels, October 14, 1862. *Consol. Treat Series* 126:329–37, *British Foreign and State Papers* 52 (1861–1862): 521.

> if by a series of unfortunate circumstances, questions should arise between the Contracting Parties, which might cause an interruption of the friendly relations between them, and after having exhausted the means of friendly and conciliatory discussion, they should not arrive at the conclusion that they mutually wish for, the arbitration of a third Power, equally the friend of both parties, shall be invoked by common consent, in order by this means to avoid a definitive rupture."[60]

His progress was not as fast as he would have liked, however. While a few days later Bowring did secure a similar treaty with the Netherlands, the Dutch were unwilling to join the Belgians in terms of arbitration, and this treaty contained no comparable clause.[61] Bowring reported that "the Hollanders are rather proud of their maritime standing & their plenipotentiaries argued to me that they could not be expected having a considerable fleet to be the first to consent to the Treaty recognition of so important a principle."[62] They did informally agree to utilize arbitration, however, on a case-by-case basis.

Accomplishment of a further part of Bowring's main goal for the Hawai'ians was to take the rest of the decade. Bowring met with the envoys of Prussia and of Italy when he was in Paris to meet with Napoleon III and his foreign minister in November 1862. The treaty with the Italians was signed in the summer of 1863.[63] It contained arbitration language duplicating that which he had worked out with the Belgians. A few months later, his final treaty for Hawai'i, with Spain, also included the identical provision.[64] However, these agreements were not ratified until 1864 and 1870, respectively. Long-running discussions with the Swiss finally bore fruit in 1864 (with some variations in language).[65] And, despite Bowring's efforts in Paris and later in London, there were no such agreements with France or Britain. Wyllie's extensive and ultimately terminal illness in 1865 most likely put an end to the Hawai'ian sponsorship of arbitration and the goal of a general political arrangement died as well, but Bowring's efforts to promote arbitra-

[60] Ibid., Article 26.

[61] Hawai'i-Netherlands, Treaty of Amity, Commerce and Navigation, The Hague, October 16, 1862, *British Foreign and State Papers* 52 (1861–1862): 729.

[62] Bowring to Wyllie, October 17, 1862. John Bowring Papers, Bancroft Library P-N 139, vol. 5.

[63] Hawai'i-Italy, Treaty of Friendship, Commerce and Navigation, Paris, July 22, 1863, *British Foreign and State Papers* 60 (1869–1870): 397.

[64] Hawai'i-Spain, Treaty of Friendship, Commerce and Navigation, London, October 29, 1863, *British Foreign and State Papers* 62 (1871–1872): 1004–12.

[65] Hawai'i-Switzerland, Treaty of Friendship, Establishment, and Commerce, July 20, 1864. Bowring to Varigny (acting Hawai'ian foreign minister), December 1, 1867, enclosing the finally-ratified agreement, John Bowring Papers, Bancroft Library P-N 139, vol. 8.

tion continued. Building on his previous relationships and language, Bowring, now representing the King of Siam (with whom he had negotiated a treaty in 1855 on behalf of the British when he was governor of Hong Kong), secured similar, but not identical, general arbitration agreement language with Belgium and Italy in 1868.[66] He followed this up with another pair of similar agreements in 1869 with Austria-Hungary and with Sweden and Norway.[67]

However, regardless of the degree to which these proposals were born of Bowring's long association with the peace movement or the needs of a small and obscure state not to be overrun by European great power politics, it seems clear that Bowring held the goal of peaceful arbitration as an improved basis of international relations firmly in mind and was aware of the significance of his diplomatic initiative. He told French Foreign Minister Drouyn de Lhuys in November 1862 that he was aware that he was "asking much for a mighty power" to make such a commitment, "but the honor of [such a step] would be in proportion to the condescension," and its adoption by France would "form a memorable era in the annals of Diplomacy."[68] After a meeting at the Foreign Office in London in February 1863, Bowring reported that Russell was wary of arbitration commitments in general, but was willing to discuss the Hawai'ian proposal with his colleagues. Bowring argued that the British endorsement of the general arbitration approach "might be of the highest value in the political world," and he assured Wyllie that this approach would "contribute to the fame and permanency of your nation."[69]

Thus, we can see several important implications of Bowring's activities. First, this important step in the history of international arbitration

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[66] Treaty between Siam and Belgium, August 29, 1868, Lange, *L'Arbitrage obligatoire*, 270; Treaty between Siam and Italy, ibid. The Italian agreement also became the basis for comparable language in the Italian-Burmese Agreement of 1871, Vivian Ba, "Diplomatic Documents Relating to the Burmese-Italian Treaty of 1871," *Journal of the Burma Research Society* 53, no. 2 (1970): 15–54, as well as the treaty between Italy and Shoa (Abyssinia), May 21, 1883, *Trattati etc. relativi all'Africa*, 1:62, repr. Hertslet, *The Map of Africa by Treaty*, 1:7, and in Parry, *The Consolidated Treaty Series*, 114. "Should there ever rise between the Italian government and that of the Scioa any conflict that could not be resolved through amicable negotiations, such conflict shall be submitted to the arbitration of a neutral and friendly power chosen jointly by the two parties, or of a referee chosen by common consent. The sentence shall in any case be accepted and recognized by both parties" (trans. Piero Scaruffi).

[67] Treaty between Siam and Austria-Hungary, May 17, 1869, Lange, *L'Arbitrage obligatoire*, 270. Treaty between Siam and Sweden/Norway, United States Tariff Office, *Handbook of Commerical Treaties*.

[68] Bowring to Drouyn de Lhuys, November 25, 1862, John Bowring Papers, Bancroft Library P-N 139, vol. 5.

[69] Bowring to Wyllie, February 28, 1863, John Bowring Papers, Bancroft Library P-N 139, vol. 5.

was taken on behalf of two countries far from the center of European diplomacy. At least in the case of Hawai'i, this step was not merely the product of Bowring's long-standing engagement with the British peace movement, but also fit into the diplomatic agenda of that state on its own terms. The Kingdom of Hawai'i was anxious to keep the major European and American powers at arms' length. This meant equality of treatment and relationships, but also the use of a standing arbitration mechanism as a means to slow down any diplomatic dispute that might arise between Hawai'i and one of those powers, which was essential to enable Hawai'i to 'play-off' one power against the others.[70] Further, it is difficult to imagine that Bowring could have found one of the European powers to advance his agenda. In a sense, it was the very distance and relative weakness of his Hawai'ian client that created the space from which he could carry his initiative forward. Second, from a historiographical perspective, the landmark status of these agreements gained little notice from contemporary advocates of arbitration and international law as well as from later histories of the field.[71] Even though these agreements were signed by five different European powers, they were apparently considered outside the scope of the mainstream development of international law (which in the 1860s seems to have been confined to the great powers: principally, Britain, France, and Germany).

Conclusion

Several contributions to the development of arbitration as a means of international dispute resolution—a practical application of the emerging regime of international law—arose from outside "the West," at least as self-defined by Europeans (and the United States), during the later nineteenth century.[72] Latin American states pioneered the development of general arbitration agreements and compromissory clauses, and they also pushed the United States and Britain to engage in arbitration in a variety of cases, especially in "informal empire" contexts. In 1890

[70] The argument in favor of arbitration as a "cooling off" mechanism gained currency in the 1870s amid the more active public debate on the topic that characterized the last part of the century and was central to William Jennings Bryan's "Peace Commission" initiative, which gained attention and wide governmental endorsement just before World War I.

[71] For example, despite his long-term connection with the London Peace Society, Bowring's 1870 treaty on behalf of Hawai'i with Spain was referred to approvingly but without details or comment in its journal after it was signed. *Herald of Peace*, 11, no. 240, 5th n.s. (1870): 76. His other efforts were not reported at all.

[72] Even the sole significant Latin American international legal scholar of the nineteenth century, the Argentine Carlos Calvo, lived in Paris and wrote primarily in French.

Argentina championed a multilateral arbitration structure that was a model for the European powers at The Hague at the end of the century. Hawai'i and Siam, through John Bowring, brought general arbitration commitments to Europe in the 1860s, long before these "advanced, civilized" states would step up themselves to such commitments. The significance of this activity lies not in the specific procedures of arbitration, much less in the principles of substantive law that these tribunals applied. Rather, it is in the idea of a relationship between states guided by law, regularity, and objectivity, instead of military or diplomatic power. These precedents—in terms of both the quantity of specific cases and the principle of prior commitment to the peaceful resolution of disputes—brought familiarity and practicality to the discussions of arbitration that flourished late in the century and were reflected in European international legal discussions and diplomatic practice.

At one level, we might characterize these ideas and initiatives as just global echoes from Europe. But if our goal is to find out how the European project of international law changed as a result of its dealing with the wider world, then we cannot discount the modifying initiatives and innovations from places far from the Quai d'Orsay and the law officers of the British crown. These global developments arose from local concerns, the effects of distance, and the different conceptions of the relationship between political entities that grew out of them. The history of arbitration and dispute resolution would have been markedly different if it were entirely a European and North American affair. The long-term labors of the British and American peace movements to promote arbitration as the preferred method of resolving international disputes did not find success through moral awakening or the triumph of public opinion in increasingly democratic liberal regimes. The Bowring treaties were vehicles for pacific (in both senses of the term) states to advance their beliefs and interests in the context of Eurocentric diplomacy. Similarly, the Latin American tradition in which similarities and federation were as much a part of the discourse of international relationships as were independence and war, laid a real-world foundation for action based on both their long-term practice and the specific product of the 1890 Pan American Conference.

The arbitration agreement of the First Hague Conference in 1899 has been seen primarily as the offspring of Anglo-American peace and legal influences, born under the auspices of a Russian effort to neutralize Continental economic and military strength and despite the recalcitrance of an expansionary, state-oriented German Empire. But if we closely examine its genome, we will see DNA from countries and continents that were not invited to the christening.