

LEGAL EMPIRE: INTERNATIONAL LAW AND CULTURE IN
U.S.-LATIN AMERICAN RELATIONS

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by
ERIK A. MOORE

B.A., Truman State University, 2001
J.D., University of Missouri – Kansas City, 2004

Kansas City, Missouri
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Erik A. Moore, Candidate for the Master of Arts Degree

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ABSTRACT

During the first decade of the twentieth century, U.S. Secretary of State, Elihu Root, used international law as mode of contact and communication in which he could persuasively present U.S. cultural values in terms of social, political, and economic expectations as a way of creating change within Latin American societies. This represented a less intrusive and seemingly more respectful way of exerting influence in the region all for the purpose of addressing Washington's concerns with national security and economic stability. Though the United States, as expressed by Root, articulated certain moral and ethical principles of conduct in foreign relations and invited Latin America to adopt those principles, the true focus and concern within international law from the U.S. perspective was creating a world in which U.S. political and economic interests could thrive.

As adopted and deployed by Elihu Root, international law projected certain cultural constructions that defined America's understanding of civilization, which had the effect of creating more rigid boundaries of separation among nations. America's definition and application of civilization to foreign affairs installed further support for intervention by the

United States when Latin American nations did not satisfy the cultural expectations of the United States. Constructions of gender and race within international law laid a foundation for scientific and political inequality among nations while also establishing basic expectations for behavior. Root's civilization expected nations to act with manly strength and self-mastery in all things, especially in resolving disputes and satisfying financial obligations. Failure to meet those preconditions to civilization signified an uncivilized and racially inferior nation in need of the civilizing paternalism of the United States.

The legal discourse within international law that Root stimulated produced mixed responses and results. Politicians like Luis Drago of Argentina communicated within the legal forum to assert an independent Latin American identity under the law. Yet this same ruling class of elites to which Drago belonged communicated their support for those legal principles articulated by Secretary Root when that ruling class could advance their domestic programs of economic development and policies based on racial superiority.

APPROVAL PAGE

The faculty listed below, appointed by the Dean of the College of Arts and Sciences, have examined the thesis titled “Legal Empire: International Law and Culture in U.S.-Latin American Relations,” presented by Erik A. Moore, candidate for the Master of Arts degree, and certify that in their opinion it is worthy of acceptance.

Supervisory Committee

Dennis Merrill, Ph.D., Committee Chair
Department of History

John Herron, Ph.D.
Department of History

Viviana Grieco, Ph.D.
Department of History

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INTRODUCTION: A CULTURE IN LAW

A nation's laws provide one of the clearest articulations of a society's culture and of its values. The law defines those qualifications of a full participant within a nation's society and politics, thereby identifying those individuals and groups whom that society values while it consciously moves to exclude others through a determination of a legal inequality or a difference in value. Those qualifications could include race, ethnicity, citizenship, age, criminality, property ownership, wealth, gender, or religious or political affiliation. Furthermore, the law reveals the value a society puts on human life and freedom in the face of predetermined criminal behavior, the place and worth of the arts and of education within a society, its views of itself and of its history, its views on religion and religion's place within public and private life, and the significance that a society places on war and self-defense. Furthermore, the law exposes societies' attitudes toward other nations and their citizens.¹

¹ Examples of studies of culture in law include Gary Peller, "Cultural Imperialism, White Anxiety, and the Ideological Realignment of *Brown*," in *Law, and Culture: Reflections on Brown Vs. Board of Education*, ed. Austin Sarat (New York: Oxford University Press, 1997), 190-200 (looked at constructions of race in American society as expressions of, and reactions to, law and court decisions like *Brown v. Board of Education*); Arlene J. Diaz, *Female Citizens, Patriarchs, and the Law in Venezuela, 1786-1904* (Lincoln, NE: University of Nebraska Press, 2004) (analyzed gender roles and citizenship within Venezuelan society through court cases); Oscar G. Chase and Jerome Bruner, *Law, Culture and Ritual: Disputing Systems in Cross-*

Because the law is the official pronouncement of the state with respect to the conduct of social, political, and business affairs, the study of the law in historical terms is an analysis that blends avenues of inquiry. It involves the study of cultural constructions then-existing and affecting change in society while also considering the intent and consequences for the state's official adoption, deployment, and execution of those cultural expressions and identities. The law both produces and reflects culture, embodying at all times the fluid, and often contradictory, popular, and governmental discourses that underlie social hierarchies.

The study of foreign relations in the context of law, international law specifically, thus becomes a study of cultures meeting in unique spaces of interaction. A nation's participation within an international legal order or its use of policies justified with purported legal reasoning founded on that nation's domestic law and legal institutions becomes an outward expression of internal cultural conversations. International legal institutions have provided a forum, or a negotiating space, where two or more cultures meet, often in highly asymmetrical power relationships, to forge and contest the meaning of "law" as it applies to social, diplomatic, and economic interactions.² In a legal sense, when nation "A" fails to follow expectations or prescribed rules of conduct as understood in law by nation "B", nation "A" assumes the role of the unlawful, the violator, even the criminal. Consequently, what may be stipulated as being the most rational and peaceful way of resolving disputes,

Cultural Context (New York: New York University Press, 2005) (examined how dispute resolution is an expression and manifestation of a society's culture).

² This thesis builds upon a concept identified and labeled by Mary Louise Pratt in her book *Imperial Eyes: Travel Writing and Transculturation* (London: Routledge, 1992). In this book she coined the term "contact zone" when referring to "the space in which peoples geographically and historically separated come into contact with each other and establish ongoing relations, usually involving conditions of coercion, radical inequality, and intractable conflict." (7) While Pratt used this term in her study of travel and the resulting cultural interactions, the concept transcends specific topics of inquiry within transnational relations. The cultural "contact zone" is applied in this thesis in the study of international law.

when deployed with rigid formality creates instability in transnational relations and barriers to common understanding by virtue of its very existence.

While law is a projection of a society's or a nation's culture, it is still driven and created through institutions of the state or is sponsored by the state. A study of the history of U.S. foreign relations within the context of international law, therefore, offers the opportunity to engage elements of diplomatic history and cultural history in an analysis of factors and motivations affecting transnational relationships. By doing so, this thesis shows the importance of ideology and culture within foreign policy. It moves beyond those firm boundaries of methodology separating analytical models based on the study of power politics and realism from those employing cultural analysis outside the formal policy apparatus. By deconstructing public legal conversations held between lawyer and U.S. Secretary of State Elihu Root and his Latin American counterparts, this thesis applies a very narrow focus to its analysis, honing in on a span of roughly five years, 1904 to 1909, through which it develops a cultural portrait of official U.S. attitudes and policies toward Latin America.

According to a voluminous scholarly literature, President Theodore Roosevelt dominated the American diplomatic landscape during these years. The energetic commander-in-chief insisted that only a "big stick," and the persuasive power of the U.S. military, could assure U.S. hegemony over the strategically important region of the Caribbean and Latin America. Roosevelt exerted U.S. control over Cuba and Puerto Rico, deployed naval forces to ensure Panama's independence from Colombia in 1901 in order to acquire a U.S. Canal Zone, and he pronounced the famous "Roosevelt Corollary" to the Monroe Doctrine in 1904 that proclaimed a U.S. police power in the Caribbean. The

following year Roosevelt sent U.S. marines to occupy the Dominican Republic and established financial supervision over the Dominican government. In keeping with his upper-class patriarchal experience, he preached that it was the “manly duty” of the United States to exercise an international police power in the Caribbean and to spread the benefits of Anglo-Saxon civilization to inferior states populated by people of color.³

While the “Rough Rider” president has long attracted the attention of diplomatic historians, and has more recently drawn analysis from historians of U.S. culture, the work of Roosevelt’s Secretary of State Elihu Root, in inventing an international rule of law to govern U.S.-Latin American relations, has been far less studied.⁴ This thesis describes and analyzes Elihu Root’s vision of international law, drawn in part from nineteenth century British and European theorists, that emphasized transnational cooperation and peaceful arbitration over militarism and diplomatic conflict. It probes the ways in which Root and his contemporaries sought to define a legalist international tradition that elevated European and U.S. legal culture over the practices of other nations and peoples. For Root, laws governing the collection of international debts, the management of national finances, protection of private property, economic development, and the resolution of border disputes promised to enhance the United States’ growing interests in the hemisphere. In his private correspondence and his public meetings with Latin American officials, Root sought to articulate a body of law that

³ A sampling of works in the Roosevelt literature includes; William Henry Harbaugh, *The Life and Times of Theodore Roosevelt* (London: Oxford University Press, 1961); Morton Keller, *Theodore Roosevelt; A Profile* (New York: Hill and Wang, 1967); Frederick W. Marks, *Velvet On Iron: The Diplomacy of Theodore Roosevelt* (Lincoln, NE: University of Nebraska Press, 1979); Richard Collin, *Theodore Roosevelt's Caribbean: The Panama Canal, The Monroe Doctrine, and the Latin American Context* (Baton Rouge, LA: Louisiana State University Press, 1990).

⁴ Foremost among the cultural historians addressing Theodore Roosevelt’s policies is Gail Bederman with her book *Manliness & Civilization: A Cultural History of Gender and Race in the United States, 1880-1917* (Chicago: The University of Chicago Press, 1995).

would grant legitimacy to the hemispheric rights and privileges accorded to the U.S. pursuant to his and Roosevelt's interpretation of the Monroe Doctrine, render European military intervention in hemispheric affairs illegal, and codify the conditions under which U.S. unilateral intervention might proceed. Most striking, the legalist tradition to which Root adhered conformed with popular cultural constructions of class, race, gender, and religion in the United States that relegated mixed racial and ethnic populations in Latin America to subordinate status in the hemispheric civilizational hierarchy.

Broadly speaking, Root intended to create an inter-American identity, something similar to what Benedict Anderson referred to as an "imagined community." In his study of the development of nationalism, Anderson introduced the concept of imagined communities and argued that language and cultural commonalities led people to develop connections and community in ways that extended beyond traditional conceptions of space. People who would never meet or even know of each other's existence could rally around a commonly perceived identity derived from understood common traits or experiences. He referred to these associations as imagined because they formed across relatively great distances and, consequently, in people's imaginations. They were not a product of physical proximity, thus the imagined community redefined human association and society by uniting large numbers of people under a common cause, which, in Anderson's study, was nationalism.⁵

The concept of "imagined community" can be applied more broadly for understanding transnational relations. As U.S. Secretary of State, Root used his office and public speaking opportunities throughout Latin America to create an inter-American imagined community supportive of U.S. objectives. He pursued this transnational identity

⁵ Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, New Edition (London: Verso, 2006).

through consensus in legal principles defined by cultural constructions existing within the U.S. and articulated through a progressive political point of view. Root's legal principles represented a conscious effort to make a better world through a unifying institution of law that promoted self-control and moral discipline in the form of careful fiscal planning, responsible governance, and the peaceful negotiation of international conflict. Yet these seemingly magnanimous efforts were transparently self-serving to U.S. interests and, to a certain extent, the interests of the ruling elite in Latin America.⁶

This study is presented as a cultural biography of Elihu Root. While several important works have covered Root's life and political career, none have applied cultural analysis to an understanding of his policy making. No treatment of Elihu Root can ignore the two-volume biography published by Philip C. Jessup in 1938. Jessup began his work during Root's lifetime, so he had a unique access to his subject that was reflected and cited in his books. Jessup's work offered a surprising level of criticism considering its publication date and the author's relationship with his subject and his subject's colleagues. However, it lacked the benefit of time for reflection on history and access to sources that later historians possessed.⁷ Richard Leopold had such time and access, publishing *Elihu Root and the Conservative Tradition* in 1954, in which Leopold interpreted Root's political philosophy as being one of conservatism in both domestic and international affairs.⁸ William Everett Kane, a lawyer himself, addressed Elihu Root's politics from the perspective of international law.

⁶ Michael McGerr, *A Fierce Discontent: The Rise and Fall of the Progressive Movement in America* (New York: Free Press, 2003), 79-117.

⁷ In the "Forward" of his biography *Elihu Root*, Jessup noted that he had known Root for twenty-two years and had known him "rather intimately" for the nine years prior to the publication. While trying to remain impartial in his writing, Jessup acknowledged that "my feeling for him is one not only of admiration but of affection...." (Philip C. Jessup, *Elihu Root* (New York: Dodd, Mead & Company, 1938), 1:v).

⁸ Richard W. Leopold, *Elihu Root and the Conservative Tradition* (Boston: Little, Brown and Company, 1954).

His treatment of Root, however, is solidly positioned as diplomatic history, a close examination of politics and policymaking without deep analysis of the cultural context and discourses that shaped Root's worldview.⁹

There also exists a developed historiography addressing, in various degrees, international law within foreign relations of the United States. The diplomat-scholar George F. Kennan stands out as the founder of the realist school of U.S. diplomatic history and an astute analyst of the legalist tradition in U.S. foreign policy. In his early Cold War classic, *American Diplomacy*, Kennan delivered a critique of the U.S. penchant for moralism and legalism in the conduct of foreign policy, a weakness, according to Kennan, that handicapped America's navigation of the world of power politics. The Wilsonian attempt to incorporate U.S. legal concepts onto the world stage via the League of Nations represented, to Kennan, the quintessential American propensity for naiveté. Though the U.S. rejected the Treaty of Versailles, the treaty nonetheless destroyed the historic European balance of power by attempting to punish Germany and eliminate its capacity to wage war. In place of the traditional balance of power, the peacemakers at Versailles adopted Wilson's League of Nations, which Wilson intended to ensure stability through goodwill, cooperation, and collective security within the community. However, Kennan argued that the League, founded upon such legalist principles, was ill-equipped to deal with the social and political turmoil resulting from Europe's loss of equilibrium in a total victory over Germany and Austria-Hungary. According to Kennan, Europe did not necessarily need idealistic legalist principles. Europe needed counterweights in power to those forces that tore at European

⁹ William Everett Kane, *Civil Strife in Latin America: A Legal History of U.S. Involvement* (Baltimore: The Johns Hopkins University Press, 1972).

society in the 1930s, and the League of Nations simply did not have the muscle or influence to take on that role.¹⁰

Scholars have taken issue with Kennan's conclusions. Most recently, Robert E. Hannigan, in his book, *The New World Power: American Foreign Policy, 1898-1917*, acknowledged the significance of international law within U.S. foreign relations of the Roosevelt administration while attempting to explain the emergence of the United States as a world power. Rather than dismissing "legalism" as an element of American exceptionalism ill-suited to the rough and tumble reality of world politics, Hannigan explained how Washington's fondness for international legal prescriptions arose in the context of the Progressive Era and facilitated a governmental drive toward global power. He argued that the United States sought to control underdeveloped nations, like those in Latin America, by creating a legal framework within which each nation accepted responsibility for financial and political obligations. Hannigan concluded that if any nation failed to meet those obligations, such failure justified the U.S. in taking unilateral action of enforcement through intervention. Consistent with this legalist approach to empire, the United States used the Monroe Doctrine to forcefully defend its domination over the Western Hemisphere and ensure obedience of the international legal code. In addition, where the U.S. could not reasonably use force to defend its interests, Hannigan argued that it sought to foster cooperative efforts to nullify those threats. This approach to foreign policy ultimately led to institutions like the League of Nations.¹¹ While Hannigan correctly identified international

¹⁰ George F. Kennan, *American Diplomacy: Expanded Edition* (Chicago: The University of Chicago Press, 1984), 67-69.

¹¹ Robert E. Hannigan, *The New World Power: American Foreign Policy, 1898-1917* (Philadelphia: University of Pennsylvania Press, 2002), xiii.

law as a tool of U.S. empire, and explained the strong connections between political progressivism and U.S. expansion at the turn of the twentieth century, like Kennan he did not explore international legal norms as products of cultural production. Neither Kennan nor Hannigan fully probed the power of culture as a tool of empire and hegemony.¹²

To illuminate the power of culture in international law and Elihu Root's role in forging inter-American legal structures and identity, this thesis draws on the growing literature dubbed "the cultural turn," which explores the many ways cultural constructions and cultural interactions have shaped U.S. foreign relations, especially the U.S. hemispheric empire. Two works in particular are invaluable to this study. Emily S. Rosenberg's book, *Financial Missionaries to the World: The Politics and Culture of Dollar Diplomacy, 1900-1930*, examined the part that officials and bankers of the United States played in bringing developing, unstable countries into the global marketplace. Through the practice of dollar diplomacy, Washington worked with and supported bankers who provided loans to Latin American nations in exchange for some level of control over national fiscal affairs. Rosenberg argued that dollar diplomacy arose from cultural constructions of gender and race within the U.S. that defined economics and finance as professional and manly sciences and elevated white Anglo-Saxon societies as advanced practitioners of nation-building and civilization. These cultural constructs of superiority legitimized U.S. intervention and

¹² While Kennan and Hannigan provided clear articulations of opposing interpretations of law's place within U.S. foreign policy, other scholars have explored the topic to lesser extents or with a different focus. In *Seeking World Order: The United States and International Organization to 1920*, Warren F. Kuehl analyzed the positions advocated by various internationalist groups within the United States. His book did not examine the impact of universally applied legal principles or any cultural foundation behind the development of international law and organizations, choosing, instead, to trace the intellectual and political development of international organizations. (Warren F. Kuehl, *Seeking World Order: The United States and International Organization to 1920* (Nashville: Vanderbilt University Press, 1969)) Also, Francis Boyle, in *Foundations of World Order: The Legalist Approach to International Relations*, investigated the impact the legalist tradition within international relations in a sweeping work of history that encompassed much of the twentieth century. He drew connections between the early legalists like Root to those of the post-World War II era and today. (Francis Anthony Boyle, *Foundations of World Order: The Legalist Approach to International Relations (1898-1922)* (Durham: Duke University Press, 1999))

financial control over debtor nations in Latin America deemed lacking in the manly qualities of discipline and self-control. In addition, Rosenberg argued that dollar diplomacy offered a less costly method of empire, avoiding military occupation.¹³ Gail Bederman, in her book *Manliness & Civilization: A Cultural History of Gender and Race in the United States, 1880-1917*, studied Theodore Roosevelt's policies through the prism of feminist theory and gender analysis. Bederman argued that U.S. foreign policy of the Roosevelt administration originated out of a culture of white male supremacy. Men like Roosevelt lived out an ethos of spreading white civilization to the inferior peoples of the world that took shape in Latin America as financial, political, and military interventions.¹⁴

Similar to Rosenberg's argument with respect to dollar diplomacy, this thesis argues that Elihu Root deployed legal doctrines in foreign relations with the intent of delivering to the U.S. the fruits of empire without the expense and mess of military occupation. Root's legal code, based on European notions of empire and racial hierarchies, defined proper behavior in domestic and international affairs for civilized nations based on the premise of equality under the law and a universal culture. Yet, by establishing standards of national behavior, he in fact clarified the terms of exclusion for those nations who could not live up to the European model, identifying behavior and cultural practices that would eliminate a nation from the community of the civilized and those rights accorded under international law. Once removed from international law's coverage, according to Root, a nation lost rights of sovereignty and could be the subject of paternal oversight, or intervention, by the United States. Through this process, the United States would bring the uncivilized back to

¹³ Emily S. Rosenberg, *Financial Missionaries to the World: The Politics and Culture of Dollar Diplomacy, 1900-1930* (Cambridge, MA: Harvard University Press, 1999), 3.

¹⁴ Bederman, *Manliness & Civilization*.

civilization. Consequently, while Root professed an international legal regime and transnational identity based on equality under the law and mutual cooperation, he effectively advocated a form of legal empire based on vast inequalities of power originating from European conceptions of racial superiority.

This thesis also engages the growing scholarly literature on U.S.-sponsored “development” and “modernization.” Root’s international legal vision not only legitimized U.S. diplomatic and military intervention in Latin America, it also set forth an agenda for political and economic management under U.S. leadership. Root lamented deeply the climate of instability, class and racial conflict, and revolution that characterized much of Latin American politics at the turn of the twentieth century. In contrast to the United States’ eighteenth century political revolution, the landmark revolutions of the twentieth century – from Mexico, to China, to Vietnam, and back to Cuba – generated demands for agrarian reform, economic leveling, and far-reaching social reforms.¹⁵ These revolutions not only ran contrary to Root’s vision of civilized, manly nationhood, they posed a direct threat to growing U.S. economic and political interests. Root’s international legal doctrine was designed to uphold a model of economic change that Emily S. Rosenberg has called “liberal developmentalism.” Based on the tenants of market capitalism, private investment and private trade promised a means by which to achieve economic growth, stifle revolutionary discontent, and safeguard U.S. interests. This prescribed method of development, I argue, foreshadowed still more ambitious U.S. efforts to spur “modernization” in the Cold War era,

¹⁵ Hart, *Empire and Revolution*, 271-305; John King Fairbank, *The Great Chinese Revolution: 1800-1985* (New York: Harpers & Row, Publishers, 1986), 273-95; Mark Philip Bradley, *Imagining Vietnam: The Making of Postcolonial Vietnam, 1919-1950* (Chapel Hill, NC: The University of North Carolina Press, 2000), 32-36; Louis A. Pérez, Jr., *Cuba: Between Reform and Revolution* (New York: Oxford University Press, 1988), 337-81.

including the 1960s Alliance for Progress in Latin America, efforts that have in recent years been studied by historians Michael Latham, Nick Cullather, David Engermann, and most recently David Ekbladh.¹⁶

Latin Americans also participated in this dialogue concerning international law. Practitioners of the cultural turn have defined culture as a fluid, multi-directional conversation that takes place not just within the national domain but also between nations and societies.¹⁷ Thus, the participation of Latin Americans in the discourse, in spite of the lop-sided distribution of power in the hemisphere, is another important concern of this study and reflects the fluidity and multi-layered nature of empire as points of negotiation and resistance were identified and exploited.¹⁸ Argentine statesman, Luis Drago, provided a prominent counter-point to Root's advocacy for a universal legal system and symbolized the kind of agency that Latin American officials might assert through the reception, contestation, and/or adoption of cultural constructions within international law.¹⁹ Drago

¹⁶ Michael E. Latham, *The Right Kind of Revolution: Modernization, Development, and U.S. Foreign Policy from the Cold War to the Present* (Ithaca, NY: Cornell University Press, 2011); Nick Cullather, *The Hungry World: America's Cold War Battle Against Poverty in Asia* (Cambridge, MA: Harvard University Press, 2010); David C. Engerman, "West Meets East: The Center for International Studies and Indian Economic Development," in *Staging Growth: Modernization, Development, and the Global Cold War*, eds. David C. Engerman, Nils Gilman, Mark H. Haefele, and Michael E. Latham (Amherst, MA: University of Massachusetts Press, 2003), 200-223; David Ekbladh, *The Great American Mission: Modernization and the Construction of an American World Order* (Princeton, NJ: Princeton University Press, 2011).

¹⁷ Emily S. Rosenberg, "Turning to Culture," in *Close Encounters of Empire: Writing the Cultural History of U.S.-Latin American Relations*, eds. Gilbert M. Joseph, Catherine C. Legrand, and Ricardo D. Salvatore (Durham, NC: Duke University Press, 1998), 510; Bradley, *Imagining Vietnam & America*, 7-8; Paul A. Kramer, *The Blood of Government: Race, Empire, the United States, & the Philippines* (Chapel Hill, NC: The University of North Carolina Press, 2006), 2-3.

¹⁸ Dennis Merrill, *Negotiating Paradise: U.S. Tourism and Empire in Twentieth-Century Latin America* (Chapel Hill, NC: University of North Carolina Press, 2009), 9.

¹⁹ Gilbert M. Joseph referred to this as "encounter" or "engagement," the process through which people of different nations and cultures interacted in empire's contact zones for purposes of cooperation or understanding but on terms of unequal power and with conflicting interests. (Gilbert M. Joseph, "Close Encounters: Toward a New Cultural History of U.S.-Latin American Relations," in *Close Encounters of Empire: Writing the Cultural*

rejected the conditions placed on Latin American sovereignty and, instead, stressed the importance of the community supporting each nation as it aspired to its full potential within civilization. He engaged Root and North American culture with seemingly equal ability and weight to his arguments, yet he could never do so on terms of equal power. U.S. power would dominate the field. Even so, Drago and his Latin American colleagues used the tools of negotiation created by international law to assert their independence from Washington. Interestingly, they even embraced certain aspects of the imagined community developed by Root in applying principles from international law to the domestic realm in order to maintain their own power.

This project seeks to blend the related, though separate, tracts in the historiography mentioned above into an analysis of high-level policy determinations by officials like Secretary Elihu Root. These decisions incorporated culture within diplomacy. As much as this work is one of legal history, diplomatic history, and cultural history, it is also an exercise in intellectual history that looks at the development of ideas transmitted publically across the Americas. When Root spoke, he intended on influencing a continent, or at least influencing those who could influence a continent. Therefore, this project relies heavily on the public statements by Root and his counterparts in Latin America while the argument is further supported by Root's personal papers, the papers from Theodore Roosevelt's presidential collection, and Roosevelt's personal letters. Bolstered by the use of cultural analysis of this public discourse involving Root, this thesis addresses certain broad questions: In what ways did Root's legalism facilitate and legitimize U.S. economic and strategic objectives in Latin America? To what extent was international law a cultural

History of U.S.-Latin American Relations, eds. Gilbert M. Joseph, Catherine C. Legrand, and Ricardo D. Salvatore (Durham, NC: Duke University Press, 1998), 5-9.)

construction in itself that attached meaning and identity to behavior so as to enable Washington to advance its imperial reach across the hemisphere? How successful were Latin American officials, such as Drago, in blunting official U.S. power and appropriating legalisms in order to resist or contest the imperial power? To what extent did Latin American officials accept the transnational identity promoted by Root and the United States and incorporate those legal principles in their domestic politics?

To address these questions, chapter one will begin the analysis by setting the stage. An introduction of Elihu Root establishes his credentials as one of the most influential men in the United States at the turn of the century, and, according to Theodore Roosevelt, one of the most influential men in the world. This fact is essential to the general argument of the paper. Without the acknowledged authority and influence of Root, his public addresses are rendered meaningless for the purpose of study. As it were, the man rose through the ranks of the New York bar to serve as Secretary of War and Secretary of State while also serving Roosevelt as one of his most trusted advisers. When Elihu Root spoke, the world listened.

Also essential to the story is the state of world affairs. The United States at the turn of the century had emerged as a global power with colonies in the Caribbean and the Pacific. Its most vital interests, however, lay south of the Rio Grande with the acquisition of the Panama Canal Zone, a colony and military bases in Puerto Rico, the naval base at Guantánamo, and a growing foreign trade and private investment. Fearful of European designs on the region, Washington officials considered U.S. security and economic interests in the context of the Monroe Doctrine, the long-standing U.S. foreign policy, originating with President James Monroe in 1823, that declared Latin America closed to any further

European colonization or political interference.²⁰ Root's elevation to Secretary of State placed him as a primary stakeholder in these matters, and, as this chapter establishes, international law served as a strategic tool in dealing with these issues.

Having established the context for developing policy through international law, chapter two establishes international law of the early twentieth century, as deployed by Secretary Root, as a product of nineteenth century experiences in European empire. This clarification of heritage is significant because it explains how European ideology and cultural constructions of race, gender, and nationhood formed the foundation of international law of the early twentieth century. Root's international legal standards created expectations for property ownership, debt collection, lawful immigration, conflict resolution, and the like which set hierarchical benchmarks separating civilized societies from the primitive world. It associated law and order with Anglo-Saxon political and economic traditions, social stability with the patriarchal family unit, and material progress with capitalist, free enterprise. Furthermore, with international law established as a preferred space for negotiation within empire, Luis Drago of Argentina spoke for much of Latin America in rejecting many of those ideas offered by Root that would set conditions upon a nation's sovereignty. While chapter one introduces Root and his world, chapter two introduces international law as it existed within Root's world.

With the major players introduced, chapter three provides crucial detail and definition to international law and those cultural constructions that underpinned Root's foreign policy. Relying on cultural theory, chapter three deconstructs more deeply the cultural constructions of class, race, gender, religion, and nation that shaped Root's

²⁰ Jay Sexton, *The Monroe Doctrine: Empire and Nation in Nineteenth-Century America* (New York: Hill and Wang, 2011), 3.

worldview and defined his hierarchical benchmarks. Root argued that these benchmarks distinguished the civilized from the primitive societies. Furthermore, chapter three reveals the reception and acceptance of this identity of civilization by the Latin American elite. Relating more to European culture than the culture of their own nation, those elites engaged in a process of whitening the population by encouraging European immigration and by eradicating African and indigenous culture. Such a process served the interests of those in power by securing and legitimizing authority over those perceived lesser races, and the whitening endeared Latin American regimes to governments like the United States that outwardly professed policies based on white, male superiority. Latin American diplomats and government officials publically offered their support for the policies advocated by the Root and the U.S. in order to benefit from further economic development and to maintain domestic racial authority. However, Latin American officials were still selective in what legal principles they appropriated as their own, rejecting those doctrines that justified the paternalism and intervention of powerful nations like the United States. Chapter three further supports the argument that international law served as a space of negotiation and contestation of empire in which the terms of relationships among states were in flux and subject to reinterpretation and reimagining by the many actors involved.

What emerges from the analysis is an institution of international law deployed by the United States for the stated purpose of creating international equality and peace, international expectations of behavior, and a universal culture of mutual respect. However, this thesis exposes international law as a method for creating conditions of inequality, both internationally and domestically, based on beliefs in human social evolution. Those nations, or people, who showed themselves as being different and unable to satisfy certain cultural

standards set through international law were deemed beyond the reach of the legal system and the legal system beyond their reach. Consequently, supposed rights existing within international law were, in fact, terms subject to negotiation and reinterpretation.

International law legitimized, in fact legalized, culturally-based inequality among nations.

CHAPTER ONE: ROUTES TO EMPIRE

INTRODUCTION

The United States emerged from the nineteenth century with designs on establishing itself as a global power in terms of military might, territorial expanse, and economic influence. These goals naturally placed the U.S. at odds with the interests of other nations who either had no desire to be dominated by the United States or who had plans to extend their own influence across the globe. Consequently, the United States faced unique challenges created by its pursuit of strategic and economic interests that forced policy makers in Washington to reevaluate their approach to foreign relations and their level of engagement with regions around the world, including Latin America. The importance of Latin America in terms of ensuring U.S. national security and financial growth pushed the U.S. to develop innovative methods for engagement for the purpose of protecting the national interest. The United States used military intervention in various circumstances to further its objectives, but it did not have the ability nor the inclination to militarily impose its will on the whole of South and Central America. Through the efforts of officials like

Secretary of State Elihu Root, the United States deployed informal methods of empire to assert and maintain dominance within the hemisphere.

This chapter examines Elihu Root's legal background and his transition to international public service. It emphasizes that Root entered government service during the William McKinley and Theodore Roosevelt administrations at a time when Washington officials sought to extend U.S. hegemony across Latin America, but recoiled from the political and financial costs of full-scale militarism and colonization. This chapter also explains how Root came to oversee a new policy called "dollar diplomacy." As historian Emily S. Rosenberg has explained, dollar diplomacy relied on U.S. bankers and professional economists to assume management of state finances in several Caribbean and Central American nations.¹ The initiative helped to keep European creditors at bay, countered a perceived danger of European military intervention in the Americas, and did so without formal territorial acquisition. Root's legal background, his experience as McKinley's and Roosevelt's Secretary of War, and his coordination of Washington's dollar diplomacy profoundly shaped his articulation of international law and legalism that helped to further advance U.S. hegemonic designs in Latin America, which is the subject of discussion in the second chapter of this thesis.

ELIHU ROOT: PRIVATE AND PUBLIC LAWYER, ARCHITECT OF EMPIRE

Early in his life, Elihu Root did not appear destined for great statesmanship, or even public office. He did not come from a wealthy or well-known family, but he did put his heart and soul into his chosen profession in the law, which propelled him to the top of the New

¹ Rosenberg, *Financial Missionaries to the World*, 1-9.

York bar. By the time he left private practice in 1899, at the age of fifty-four, to serve as Secretary of War in President William McKinley's cabinet, Root's client base included national corporations and major railroad companies. Practicing law provided Root with great professional satisfaction, and he had no intention of seeking public office unless the opportunity came on his own terms. He refused to have his professional focus and success clouded by the distractions of politics and public life, and before he would consider public office, Root required that the job have some connection to the practice of law or his role as an attorney. He found such an identity in an 1883 appointment by President Chester Arthur to serve as U.S. District Attorney in New York, a position in which Root would serve until resigning in 1885 to return to private practice.²

When McKinley requested that Root serve as Secretary of War, Root initially wanted to decline, confessing that he knew nothing of war or the military. However, his lack of knowledge or experience did not interest McKinley. The President wanted a man with the skills and mind of a lawyer to manage the affairs of the islands of Cuba, Puerto Rico and the Philippines, all newly acquired from the war with Spain and suffering from institutional mismanagement. Crafted this way, Root could not refuse the President's request. "Of course I had then, on the instant, to determine what kind of lawyer I wished to be, and there was but one answer to make," Root recalled in a 1914 speech. "[S]o I went to perform a lawyer's duty upon the call of the greatest of all our clients, the Government of our country." Root

² Jessup, *Elihu Root*, 1:71-137.

could maintain his self-image as an attorney while satisfying an obligation to serve his country.³

As an administrator and advisor, Root was second to none. President McKinley, and later President Theodore Roosevelt, regarded Root as one of the most able and loyal cabinet members. He served without personal ambition for future office and applied the skills and attention to detail and organization he acquired through his legal practice.⁴ Furthermore, Root embodied the civilizing and expansionist mission prevalent within the progressive politics of the United States at the time. He believed that the United States had the ability and the obligation to go forth and rule people throughout the world for the betterment of the uncivilized and for the whole of mankind. In 1904, he stated that “[w]e, of America, have discovered that we, too, possess the supreme governing capacity, capacity not merely to govern ourselves at home, but that great power that in all ages has made the difference between the great and the small nations, the capacity to govern *men* (italics added) wherever they may be found.”⁵ This ethos of the manly Anglo-Saxon American exceptionalism guided his policy making with respect to the United States’ new territorial holdings and legitimized those currents of racial superiority motivating his relations with Latin America.

In his capacity as Secretary of War, Root developed colonial policies for Puerto Rico, Cuba and the Philippines, and he drafted substantial portions of the Foraker Act, which ended military rule in Puerto Rico. Cuba represented the model for Root’s nation-

³ Elihu Root. “Address Before the New York County Lawyers Association, New York City, March 13, 1915,” in *Addresses on Government and Citizenship*, eds. Robert Bacon and James Brown Scott (Freeport, NY: Books for Libraries Series, 1969), 504; Leopold, *Elihu Root and the Conservative Tradition*, 23-24.

⁴ Leopold, *Elihu Root and the Conservative Tradition*, 24-25.

⁵ Elihu Root. “Tribute to Theodore Roosevelt: Address at a Banquet in Honor of the Secretary of War, Union League Club, New York, February 3, 1904,” in *Miscellaneous Addresses*, eds. Robert Bacon and James Brown Scott (Cambridge, MA: Harvard University Press, 1917), 220.

building, and he believed that “all over Central and South America men are looking at Cuba and seeing what Spanish Americans can do when they have once learned the lesson of American freedom, ordered by law.”⁶ He worked with General Leonard Wood to plan out Cuba's constitutional convention and ensured that the convention adopted the controversial Platt Amendment. Fulfilling his own vision of how Cuba should be governed within broader U.S. foreign policy in the Caribbean, in accordance with his reading of the Monroe Doctrine, the Platt Amendment gave Washington veto power over Cuban treaty-making, restricted Cuba's ability to borrow money from Europeans, legitimized future U.S. military interventions, and secured a U.S. naval base at Guantánamo. In correspondence with General Wood, Root stated that the Platt Amendment “is the [Monroe] Doctrine itself as international principle.”⁷ Interpreted this way, Root gave legal effect, through the Platt Amendment, to an interventionist application of the Monroe Doctrine in Cuba.

With respect to the Philippines, Root presided over the recruiting, training, equipping and transport of a new army authorized by the U.S. Congress to quell the indigenous insurrection against U.S. occupation on the islands that had existed for some six months before Root took office.⁸ The intentions of the McKinley administration required such a military campaign to ensure proper instruction of the Philippine people in self-governance and personal freedom. In extolling the virtues of the fighting and the occupation of the Philippines, Root stated that “in the Philippines, where they knew not law – for there was no rule of law in the Philippines – where the poor, little brown men had never heard of aught

⁶ Ibid., 221.

⁷ Sexton, *The Monroe Doctrine*, 218.

⁸ Leopold, *Elihu Root and the Conservative Tradition*, 31-34.

but arbitrary power, they are beginning to learn what liberty means,” because, according to Root, “[t]hey never knew what it [liberty] meant.” When the people of the Philippines “raised the cry of independence,” something for which they seemingly were fighting with the U.S. to achieve, the Filipinos did not know what that meant either. The Philippine people needed to learn, and the United States would provide the instruction.⁹ Root’s war in the Philippines cost nearly 200,000 lives, most of them Philippine civilians and, once the uprising had been defeated, Root worked with William H. Taft and Presidents McKinley and Roosevelt to develop a Philippine policy and a civil administration to instruct the Filipinos in the elusive concept of liberty, an administration that Taft would eventually lead.¹⁰

As he had intended upon taking office, and much to the disappointment of Theodore Roosevelt, who succeeded McKinley to the presidency in 1901, Root retired from the War Department and returned to private practice in 1904. The decision led to a lucrative, albeit short-lived, detour from public life.¹¹ As one of the most prominent attorneys in New York, the former Secretary of War earned about \$100,000 per year, but he would not stay out of politics for long. With the death of Roosevelt’s Secretary of State, John Hay, in 1905, the President called on his old friend to return to Washington and serve as Hay’s successor. Root would take a considerable pay cut to work for the government again, yet he accepted Roosevelt’s offer without much prodding, likely because of strong, personal relationships

⁹ Root, “Tribute to Theodore Roosevelt: Address at a Banquet in Honor of the Secretary of War, Union League Club, New York, February 3, 1904,” in *Miscellaneous Addresses*, 221.

¹⁰ Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (New York: Cambridge University Press, 2005), 281; Leopold, *Elihu Root and the Conservative Tradition*, 35-38.

¹¹ While Root served as Secretary of War, Roosevelt had written to his son, Theodore, Jr., that “Root is I think the biggest cabinet minister now in any government in the civilized world.” (Theodore Roosevelt to Theodore Roosevelt, Jr., March 1, 1903, in *The Letters of Theodore Roosevelt*, vol. 3, ed. Elting E. Morrison (Cambridge, MA: Harvard University Press, 1951), 437 (hereafter *LTR*, with appropriate volume and page numbers).)

with the President and the deceased Hay and because of Root's desire to resume the meaningful work in Washington.¹² Roosevelt had doubted his friend would take the job and found great relief when he did.¹³ The President had taken the lead in the management of foreign policy matters for years. Despite his great admiration and affection for Hay, Roosevelt had little confidence in the Secretary's effectiveness in foreign relations.¹⁴

Elihu Root did not intend on making a big splash upon arriving in Washington. He worked to maintain harmony and keep the gears of politics and executive administration running smoothly. The new head of the State Department approached his role in foreign affairs much like he did the practice of law, to seek agreement and compromise rather than provoke discord, to be reasonable rather than seek grand victories at another's expense. He sought to maintain stability and consistency in relationships rather than provoke new crises. This emphasis on cooperation, stability, and consensus foreshadowed the international legal vision that he crafted during his years as America's chief diplomat.¹⁵

Root maintained a cordial, balanced relationship with his president, moderating the impulsive chief with his restraint and discipline, one of the few men in public office capable of such an influence.¹⁶ Historian Richard Leopold noted that Root's close, trusting relationship with Roosevelt likely came from the subtlety and reserve with which Root operated in public life and his apparent lack of political ambition and the willingness, if not

¹² Leopold, *Elihu Root and the Conservative Tradition*, 47.

¹³ Theodore to William Howard Taft, July 3, 1904, in *LTR*, vol. 4, 1260 ; Theodore Roosevelt to Henry Cabot Lodge, in *LTR*, vol. 4, p. 1271.

¹⁴ Theodore Roosevelt to Henry Cabot Lodge, in *LTR*, vol. 4, p. 1271.

¹⁵ Leopold, *Elihu Root and the Conservative Tradition*, 50-51.

¹⁶ To his credit, Roosevelt was well aware of these differences in personality and appreciated the value of Root's perspective in his cabinet. (Theodore Roosevelt to Theodore Roosevelt, Jr., Feb. 6, 1904, in *LTR*, vol. 3, 717)

the desire, to operate in Roosevelt's shadow.¹⁷ In 1907, when speaking of Root in a letter to Andrew Carnegie, Roosevelt stated that "no man has in keener or more practical fashion, or with a nobler disinterestedness of purpose, used the national power to further what I believe to be the national purpose of bringing nearer the day when the peace of righteousness, the peace of justice, shall obtain among nations."¹⁸

Having been in constant contact with Roosevelt since leaving the War Department, Root returned to public office well aware of the state of international affairs, the challenges in which the U.S. found itself, and the objectives of the Roosevelt administration.

STRATEGIC INTERESTS IN LATIN AMERICA

In 1904, when Root took over at State, the Monroe Doctrine and the defense of the newly-acquired Panama Canal Zone, site of the future strategic inter-oceanic waterway, guided U.S. foreign policy for the Western Hemisphere.¹⁹ As articulated by President James Monroe in his annual address to Congress in 1823, the Doctrine declared that the United States would treat any military intervention in Latin America by a European power as a threat to U.S. security. Aimed at the conservative monarchs of the Holy Alliance who opposed Latin America's multiple independence movements against Spain, Monroe's dictum also sought to soothe European sensibilities by pledging to remain aloof from upheavals in the Old World and to remain neutral with respect to the existing colonies in the

¹⁷ Theodore Roosevelt to Theodore Roosevelt, Jr., Feb. 6, 1904, in *LTR*, vol. 3, 717; Leopold, *Elihu Root and the Conservative Tradition*, 48-51.

¹⁸ Theodore Roosevelt to Andrew Carnegie, April 5, 1907, in *LTR*, vol. 5, 638 .

¹⁹ Kane, *Civil Strife in Latin America*, 73.

Americas.²⁰ Monroe's message to Congress appeared bold, considering the relative strength of the U.S. military in 1823. However, on its face, Monroe's address did not obligate the United States to any specific course of action or response to an apparent violation. President Monroe only stated what Europeans could not do. Furthermore, as historian Jay Sexton pointed out, the United States did not actually need the muscle for an expanded, if not aggressive, engagement in the hemisphere. The British fleet filled that role nicely. The United States, in addition to the nations of Latin America, relied on the strength of British sea power to deter European intrigue in the region. Because the British maintained significant financial interests in the region, maintaining an equally significant military presence to defend its position against other European rivals proved essential.²¹ Simón Bolívar, alluding to the perceived threat of intervention by the Holy Allies of France, Austria, Russia, and Prussia, stated that "[t]he whole of America together is not equal to a British fleet; the entire Holy Alliance is powerless against her liberal principles combined with immense resources."²² Not until the late nineteenth century did the U.S. have the capacity and inclination to assert greater authority in the region and take on a more activist foreign policy in defending its interests in the name of the Monroe Doctrine. The British actually expected and welcomed this move by the Americans as London scaled down its military presence in the region.²³

²⁰ James Monroe, *Message from the President of the United States to Both Houses of Congress at the Commencement of the First Session of the Eighteenth Congress, Dec. 2, 1823*, 18th Cong., 1st sess., 1823, serial set vol. 89, sess. vol. 1; Sexton, *The Monroe Doctrine*, 60.

²¹ Sexton, *The Monroe Doctrine*, 52-53.

²² Quoted in Sexton, *The Monroe Doctrine*, 69.

²³ Mark T. Gilderhus, *The Second Century: U.S.-Latin American Relations Since 1889* (Wilmington, DE: Scholarly Resources, 2000), 4; Sexton, *The Monroe Doctrine*, 237-38.

Washington approached the control and defense of the Panama Canal Zone in the context of the Monroe Doctrine. Control over the area meant control over vital shipping and naval routes that the administration deemed essential to the United States.²⁴ The debts of Latin American governments to European bankers and political instability within the Latin American countries threatened to upend what the United States deemed an area vital to its strategic and economic interests. European bankers, beginning with financial houses in London, saw Latin America as offering prime opportunities for investment of capital. Lenders took advantage of the newly-formed governments' need for cash and exacted punishing interest rates on massive loans, which were then sold off in pieces on the secondary bond market. U.S. interests were further undermined by the chronic instability of the region's newly-formed governments which were often plagued by mismanagement, civil wars, and military coups in the decades immediately following independence. Such a turnover in regimes interfered with the repayment of these loans, as new governments would repudiate the national debt or force a renegotiation with powerless lenders.²⁵

European creditors could not force settlements of their loans until they successfully lobbied their own governments to get involved and forcibly collect the debts. In 1901, England led a coalition of creditor nations on behalf of their respective citizens to threaten military action against Guatemala if the government continued to stall in repayment of debts to creditors. Rather than risk the European coalition taking control of its customs houses, Guatemala agreed to pay the claims. U.S. Secretary of State John Hay declined to take part in the matter on either side's behalf. The Guatemalan government understood that it could

²⁴ Hannigan, *The New World Power*, 29.

²⁵ *Ibid.*, 64-66.

not hide behind the diplomatic shield of the United States and decided to pay up. Hay's inaction in the matter reflected the precarious position in which the U.S. found itself in these cases of debt collection. The Roosevelt administration did not want to deny the Europeans' rightful demands of repayment of debt, but it also did not want to encourage European policies of conquest in the hemisphere as part of that debt collection. For the Europeans, the coalition's success in Guatemala established precedent. In the wake of Washington's indifference, European governments now had the formula of using military intervention to successfully negotiate debt claims of their nationals.²⁶

Hay may have expressed no interest in participating in or preventing the Guatemala collation, but U.S. policy makers and military strategists later determined that this European practice of military intervention posed a serious threat to U.S. interests in the region. No one knew what a European power would do should it militarily intervene in an indebted Latin American state. Would it retreat once settlement of debts had been reached, or would it maintain a military and/or political presence in that nation and region? In order to avoid questions like these becoming more than just hypotheticals, the Roosevelt administration reasoned that the U.S. must create and maintain fiscal and political stability within strategically important nations in Latin American, particularly those affecting routes to and from the proposed Panama Canal. As a result, U.S. policy makers considered intervention in places like Cuba and the Dominican Republic a necessity to insure security around the Canal Zone.²⁷

²⁶ Collin, *Theodore Roosevelt's Caribbean*, 84-86.

²⁷ Boyle, *Foundations of World Order*, 87-91.

The Monroe Doctrine provided the Roosevelt administration with a diplomatic and international legal tradition through which it could assert a U.S. right and obligation to intervene in the hemisphere in the event of a Latin American debt default. President Roosevelt not only embraced the Monroe Doctrine, in 1904 he extended its reach through the Roosevelt Corollary by declaring that the U.S. had the right to preemptive action through intervention in any nation of Latin America in order to correct administrative and fiscal deficiencies.²⁸ Though aggressive and bellicose, Roosevelt did not necessarily advocate expansion by military force.²⁹ In fact, the president insisted that in dealings with the Latin American nations, he did not seek national glory or expansion of territory and believed that war or intervention should be a last resort to resolving conflicts with problematic governments. According to Roosevelt, such actions were necessary out of the sense of duty to maintain “order and civilization.”³⁰

The nightmare scenario of European intrusion into the hemisphere through debt collection nearly came to pass in Venezuela in 1902, causing a chain reaction of events that influenced future U.S. engagement in the region. Beginning with the government of Guzman Blanco, Venezuelan regimes engaged in a pattern of borrowing more than they could pay back in order to support their hold on power and to further develop the nation’s infrastructure and economy. By the time Cipriano Castro took power in 1899, the South American nation amassed an enormous foreign debt that amounted to five times its annual income at the time. The size of the indebtedness disturbed European creditors, but the

²⁸ 58th Congress (3rd Session/Dec. 6, 1904), 19; Theodore Roosevelt to Elihu Root, May 20, 1904, in *LTR*, vol. 4, p. 801; Sexton, *The Monroe Doctrine*, 229.

²⁹ Gilderhus, *The Second Century*, 24.

³⁰ Theodore Roosevelt to William Bayard Hale, February 26, 1904, in *LTR*, vol. 4, p. 740.

behavior of the Venezuelan leader truly exacerbated the situation into the full-blown international crises. Historian Richard H. Collin noted that Castro “went out of his way to insult European diplomats, destroy foreign property, and humiliate foreign nationals as the debt increased and the domestic and foreign crises deepened.” As a result, Germany and England, with the support of Italy, engaged in a joint action for, among other reasons, securing payment on debts owed to their respective citizens. The economic claims against Venezuela by the Europeans were secondary to other commercial and diplomatic offenses, yet the economic claims stood out most prominently when all the claims were merged together to form the basis for military action against Venezuela.³¹

The Roosevelt administration initially appreciated European prodding of Venezuela and did nothing to resolve or prevent the debt collection maneuvers, but the administration quickly reversed course after the creditor nations sank several Venezuelan ships and bombarded coastal forts as part of the blockade of Venezuelan ports. Suddenly, the debt collection presented the impermissible threat of military conquest, and, therefore, violated the Monroe Doctrine and U.S. security in the hemisphere.³² Roosevelt was convinced that a peaceful resolution to the conflict was essential to avoiding unacceptable political complications with the Europeans in South America and violations of the Monroe Doctrine. Analysis by U.S. military officials supported his contentions. Having played out the possible scenarios of a combined English-German military operation against Venezuela to collect debts, a U.S. Navy report concluded that Venezuela would fight back, convincing the Germans to escalate their conduct to that of a full scale war that would feature German

³¹ Collin, *Theodore Roosevelt's Caribbean*, 77-92.

³² Sexton, *The Monroe Doctrine*, 225-226.

occupation and fortification of Venezuelan ports. Should an escalated German operation come to pass, Germany would force Venezuela to not only payback the original debts, but also to pay for the costs of fighting and for port expenses. These demands would lock Venezuela into a state of perpetual indebtedness to the Germans and under complete German political and military control. In light of this assessment, the U.S. matched German preparedness and put itself in a position to intervene if necessary in order to protect its interests and maintain the relative peace in the region.³³

As feared in Washington, Venezuela did not back down to the Europeans, and, on December 9, 1902, the fighting began and ran into an almost immediate stalemate. Under such circumstances, the likelihood for one of the European powers to seize territory rather than goods, cash, or equipment rose to an unacceptable level in the eyes of the U.S. government. London and Berlin realized that their lack of immediate military success raised the prospect of a retaliatory naval intervention from the anxious Americans, so both governments sought a face-saving way to back down. Disagreements within the alliance over how to further prosecute the fighting contributed to the perception of futility in the operation.³⁴ Yet the crises in Venezuela remained, and its consequences for the region and its resolution were of singular importance to Roosevelt.³⁵ In late December 1902, the administration scored a diplomatic success by convincing England and Germany to pursue

³³ Theodore Roosevelt to Albert Shaw, December 26, 1902, in *LTR*, vol. 3, 397; Collin, *Theodore Roosevelt's Caribbean*, 92-93.

³⁴ Collin, *Theodore Roosevelt's Caribbean*, 94-97; Hannigan, *The New World Power*, 29-31.

³⁵ Theodore Roosevelt to William Howard Taft, December 26, 1902, in *LTR*, vol. 3, 399.

their claims against Venezuela through the Court of International Arbitration at The Hague.³⁶

The negotiation and arbitration of the Venezuelan crisis served as quite an arduous episode in U.S. foreign relations, an experience in which the U.S. government learned how problematic it would be to subject U.S. national security to unpredictable, if not unreasonable, world leaders negotiating for peace in arbitration. German and Venezuelan leaders, whose objectives were, at best, self-serving or, at worst, openly hostile to those of the United States, frustrated Roosevelt and led him to question the value of a process publically promoted the U.S. government. Germany repeatedly delayed lifting its blockade of Venezuelan ports and remained hostile toward the Venezuelans during what were supposed to be peaceful negotiations to reach a settlement of the debt claims.³⁷ Furthermore, despite England and Germany's continued respect for U.S. interests and the Monroe Doctrine, Roosevelt disliked leaving the future of the Monroe Doctrine in the hands of a Hague tribunal. Roosevelt's demand for arbitration of the crises notwithstanding, the president reserved the right to disregard the authority of The Hague should it rule in a way inconsistent with U.S. interests in the hemisphere.³⁸

In the interest of preserving the Monroe Doctrine and America's right to act unilaterally, Roosevelt even turned down a German offer for joint administration of Venezuelan finances. German diplomats proposed to Roosevelt that a "syndicate" supported

³⁶ Theodore Roosevelt to Albert Shaw, December 26, 1902, in *LTR*, vol. 3, 396-397; Theodore Roosevelt to Grover Cleveland December 26, 1902, in *LTR*, vol. 3, 398; Theodore Roosevelt to William Howard Taft, December 26, 1902, in *LTR*, vol. 3, 399; Theodore Roosevelt to Theodore Roosevelt, Jr., February 1, 1903, in *LTR*, vol. 3, 415.

³⁷ Theodore Roosevelt to Theodore Roosevelt, Jr. February 9, 1903, in *LTR*, vol. 3, 423; Collin, *Theodore Roosevelt's Caribbean*, 102-121.

³⁸ Theodore Roosevelt to Albert Shaw, December 26, 1902, in *LTR*, vol. 3, 396-397.

by the European powers and the U.S. take control of Venezuelan financial affairs, a move that Berlin believed would end the constant civil war in that country, would assure the payment of Venezuela's debts, and alleviate the sensitive issue of debt collection by force. More devoted to U.S. interests and the Monroe Doctrine than Venezuelan peace, Roosevelt rejected the German proposal.³⁹

The ruling handed down at The Hague did not necessarily support the Monroe Doctrine either, yet it did not cede territory or influence outright to the Europeans. The court upheld the claims against Venezuela, and it gave a preference to those powers that used force to collect their debt over those who did not use force. Consequently, those nations who did not engage in the forcible collection of debt in Venezuela had to fend for themselves in regulating credit and debt collection. In this instance, as argued by William Everett Kane, international law elevated politically destabilizing violence, and the threat of violence, over peaceful negotiation.⁴⁰

The Venezuelan affair demonstrated to the Roosevelt administration that it needed greater influence over the circumstances in which Latin American conflicts arose and the processes by which nations resolved their disputes. Others agreed. British Prime Minister Arthur Balfour called on the U.S. to take a more proactive role in policing the Western Hemisphere to ensure peace and stability prevailed. A self-serving foreign policy in its own right, England would benefit from greater U.S. involvement in the region because it would keep England's rivals like Germany at bay. The British also maintained extensive private investment in the region that depended on a stable economic and political environment.

³⁹ Theodore Roosevelt to John Hay, March 13, 1903, in *LTR*, vol. 3, 446.

⁴⁰ Kane, *Civil Strife in Latin America*, 223.

Furthermore, Balfour's request matched England's draw down of its naval forces from the Caribbean to meet increasing demands elsewhere in its empire.⁴¹

Such geopolitical realities led Roosevelt to announce his Corollary to the Monroe Doctrine. The famous Corollary asserted that the United States wished to promote stable, prosperous states in Latin America that could live up to their political and financial obligations. Roosevelt declared that "wrongdoing, or an impotence which results in a general loosening of the ties of civilized society may finally require intervention by some civilized nation, and in the Western Hemisphere the United States cannot ignore this duty."⁴² Though President Monroe communicated a message addressing what Europeans could not do in the Western Hemisphere, Roosevelt effectively inverted the doctrine to legitimize direct U.S. intervention in the region. The president's language, moreover, which contrasted debtor nation "impotence" with the United States' civilizing influence belied Victorian cultural construct that associated self-restraint and social stability with Anglo-Saxon manliness.⁴³

Taken aback by Washington's claim to civilizing authority, Luis Drago, Minister of Foreign Affairs for Argentina, argued against Roosevelt's extension of the Monroe Doctrine in article published in the *American Journal of International Law*.⁴⁴ Drago claimed the Corollary amounted to a policy of imperialism through which Washington intended to bring

⁴¹ Collin, *Theodore Roosevelt's Caribbean*, 121-122.

⁴² James Monroe, *Message from the President of the United States to Both Houses of Congress at the Commencement of the First Session of the Eighteenth Congress, Dec. 2, 1823*, 18th Cong., 1st sess., 1823, serial set vol. 89, sess. vol. 1.; Theodore Roosevelt to Elihu Root, May 20, 1904, in *LTR*, vol. 4, 801; Hannigan, *The New World Power*, 31.

⁴³ Sexton, *The Monroe Doctrine*, 216-17; Bederman, *Manliness & Civilization*, 23

⁴⁴ Luis M Drago, "State Loans in Their Relation to International Policy," in *The American Journal of International Law*, vol. 1, No. 3 (Jul. 1907) p. 692-726.

Latin America into its sphere of influence. The Argentine statesman declared that the U.S. had no right to assume the role of an international police force and debt collector for Europe. The Monroe Doctrine, Drago reminded his audience, had in fact been issued in defense of the sovereignty of Latin American republics.⁴⁵ Drago, concerned about his own nation's standing as a perpetual debtor nation, promulgated his own doctrine of foreign policy in 1902 that proposed regional cooperation rather than unilateral intervention. In what became known as the Drago Doctrine, he proposed that all nations of the Western Hemisphere stand together in opposition to the practice of forcible collection debt by foreign powers. Though the Doctrine gained significant notoriety, it had no success in influencing U.S. foreign policy.⁴⁶

Still, Drago's challenge to Washington signaled that the extension of U.S. power southward might become a daunting task. At the turn of the century, Latin America maintained closer cultural ties to Europe. These connections only strengthened as South and Central American nations welcomed in a steady flow of European immigrants pursuant to national projects to Europeanize, or whiten, their populations. Many Latin American governments were led by Creole elites who shunned the Indian and mestizo segments of their population and who hoped that a whitening of the labor class would help spur social and economic progress and either drive out the inferior races or breed them out of existence. Latin American elites were also historically prone to not trust the intentions of the United States. Europe's strong hold over prized Latin American markets also concerned policy makers in Washington. The Roosevelt Corollary and its sanction of U.S. military

⁴⁵ Drago, "State Loans in Their Relation to International Policy," 721-22; Boyle, *Foundations of World Order*, 89.

⁴⁶ Hannigan, *The New World Power*, 63-65.

intervention could not in and of themselves meet these obstacles. Indeed, administration officials recoiled from the prospect of costly permanent or long-term military occupations throughout the region. They also reasoned that military intervention was likely to foster an “us versus them” attitude toward the United States throughout Latin America.⁴⁷

Creating regional stability and reliable regimes by means other than military force seemed most logical and most appealing.⁴⁸ Consequently, the United States sought ways to influence affairs within Latin America short of military intervention while not passively relying on international courts of arbitration to settle matters in dispute. The task of inventing and implementing a suitable policy fell to Elihu Root as Secretary of State, who, in fact, had helped craft the Roosevelt Corollary. Root sought to address the sources of international conflict which he believed traceable to the fragility of domestic Latin American institutions, social organization, and culture. His objective was to devise means by which the U.S. government might foster a shared set of standards and behaviors with its Latin American neighbors. In this regard, the former corporate lawyer developed and articulated a body of legal discourse and interpretation to sanction pronouncements of unilateral action such as the Monroe Doctrine and the Roosevelt Corollary. More than a bludgeon to force Latin American compliance, Root also intended for these legal principles to form the foundation for an inter-American identity around which the ruling class of the hemisphere could rally and encourage political behavior in Latin America conducive to U.S. interests. In short, Root envisioned the establishment of a non-territorial, informal, U.S.

⁴⁷ Andrews, *Afro-Latin America 1800-2000*, 135-42; Hannigan, *The New World Power*, 53-54.

⁴⁸ Hannigan, *The New World Power*, 34; Kane, *Civil Strife in Latin America*, 223.

empire, based on a shared respect for private property, the promotion of private investment and trade, and the timely payment of debts – all underpinned by U.S. legal principles.

ECONOMIC INTERESTS IN LATIN AMERICA

U.S. economic interests were woven in tightly with its military interests, as both represented significant factors influencing relations with Latin America. Much like the policies formed in the interest of national security, the United States championed prescriptions for financial management and economic development designed to create environments in Latin America favorable for U.S. business and investment interests. Yet just as Roosevelt's Corollary legitimized U.S. military intervention by rendering unstable Latin American governments "impotent" and less civilized, Washington's economic agenda similarly portrayed Latin American states as financially irresponsible and infantile. Elihu Root oversaw the practice of dollar diplomacy that intended to professionalize and modernize Latin American monetary management in conformity to the manly science of economics practiced in the United States.

Historian Emily S. Rosenberg has explained how the U.S. ideology of "liberal-developmentalism" proposed a supposedly universal path to economic modernization. Liberal-developmentalism posited a faith in private free enterprise, open access to trade and investment, the promotion of a free flow of information and culture, and a growing acceptance of government regulation to maximize the efficiency of private economies. U.S. officials, including Root, subscribed to these tenants of thought and assumed that with an infusion of foreign investment, a trained immigrant labor force, and internal, or externally imposed, financial discipline, Latin American states would achieve North American-inspired

economic prosperity, pay their foreign debts, and that the era of military intervention would fade into the past. All of this promised to benefit U.S. private capital and peacefully extend U.S. political and cultural influence throughout the hemisphere.⁴⁹

Giving effect to these policies of liberal-developmentalism and selling Latin America as a locale conducive to safe and reliable investment opportunities for U.S. businesses did not come easy. By the first decades of the twentieth century, American banks were heavily invested in Western European nations, Canada, Australia, and Japan, all of which investors held as sound, stable economies and governments worthy of American capital. Politically unstable states in Latin America, by contrast, did not stand out as a magnet for investment. To combat the risk to U.S. capital, the United States employed dollar diplomacy, a practice that featured a collaborative effort by public officials in Washington and private U.S. bankers to provide loans to insolvent Latin American states in exchange for some level of U.S. supervision of national fiscal affairs. Theodore Roosevelt first implemented dollar diplomacy, while Presidents Taft and Wilson continued the practice in various forms during their administrations. Rosenberg has argued that because Americans viewed economics as a science and a manly endeavor, they believed that sending male bankers and financial advisers to Latin American nations would not only bolster ailing economies, but also instill in debtor states a greater appreciation for civilized financial and political practices.⁵⁰

Alongside of liberal-developmentalism and dollar diplomacy, professional-managerial discourses at the turn of the century further underpinned the growing U.S.

⁴⁹ Emily S. Rosenberg, *Spreading the American Dream: American Economic and Cultural Expansion, 1890-1945* (New York: Hill and Wang, 1982), 7.

⁵⁰ Rosenberg, *Financial Missionaries to the World*, 1-4.

informal empire in Latin America. Placed under the supervision of U.S. financial experts, the region's economies would churn out raw materials and foodstuffs for export to the United States, and provide markets for mass produced U.S. manufactured goods. Professionally supervised Latin American economies thus promised to soften economic cycles caused by overproduction in the domestic U.S. economy and simultaneously extend the nation's economic influence abroad. Business leaders seeking safe, profitable foreign investment all advocated this form of regulated international capitalism.⁵¹ As historian Greg Grandin has explained, the belief in the special "dynamism of American capitalism" combined with Anglo-Saxon racialism generated a potent brew of American exceptionalism that legitimized U.S. hemispheric hegemony while sustaining the conviction that the United States, unlike its European counterparts, spurned imperial projects.⁵²

To address the immediate needs of the perceived overproduction in industry, the United States looked to places like South America and Asia as emerging markets where imported U.S. goods and services would yield a civilizing impact while supporting the growing American economy. Historian Matthew Frye Jacobson argued that Americans equated civilization to consumerism and the desire for American goods. Indeed, turn-of-the-century foreign policy intellectuals, such as Alfred Thayer Mahan and Brooks Adams, maintained that overseas consumption and security of U.S. maritime trade ranked as national security priorities. Brooks Adams even described the competition for markets as a Darwinian struggle to survive.⁵³

⁵¹ Ibid., 8-9.

⁵² Greg Grandin, *Empire's Workshop: Latin America, The United States, and the Rise of the New Imperialism* (New York: Metropolitan Books, Henry Holt and Company, LLC, 2006), 17

⁵³ Matthew Frye Jacobson, *Barbarian Virtues: The United States Encounters Foreign Peoples at Home and Abroad, 1876-1917* (New York: Hill and Wang, 2000), 17-24.

The flow of U.S. investment into Mexico immediately following the Civil War arguably constituted the first salvo in the creation of a U.S. market empire in Latin America. Partnering with a friendly, reliable government, U.S. businesses and individuals invested heavily in the Mexican economy to the point that U.S. investors owned more than eighty percent of Mexico's mining industry and large percentages of other industries. According to John Mason Hart, "[b]y 1900 the American financiers dominated the Mexican economy."⁵⁴ Applying these experiences to rest of the hemisphere, U.S. investors and industry spread billions of dollars throughout Latin America by the end of the nineteenth century. The Guggenheims, the Rockefellers, J.P. Morgan, Charles Schwab, among other titans of Wall Street finance and industry, all played significant roles in directing the region's natural resources and influencing the economies of Latin American nations.⁵⁵

By the first decade of the twentieth century, the business community of the United States and the U.S. government saw the whole of Latin America as its own backyard and a prized source of raw materials and untapped markets for consumption.⁵⁶ According to historian Robert Hannigan, "Washington's aspirations were to dominate the development of this continent commercially, to shape the political future of the region, and, ideally, to organize South America as a bloc behind the U.S. in world affairs."⁵⁷ Understood in this context, the Roosevelt Corollary represented more than just a policy meant to protect the

⁵⁴ John Mason Hart, *Empire and Revolution: The Americans in Mexico Since the Civil War* (Berkeley, CA: University of California Press, 2002), 105.

⁵⁵ Hart, *Empire and Revolution*, 105-156. As historian Greg Grandin noted, by "1911, Americans owned most of Mexico's oil industry, which had become the world's third-largest petroleum supplier, and had established operations in Venezuela, Bolivia, Peru, and Brazil." (Grandin, *Empire's Workshop*, 16-17)

⁵⁶ Jacobson, *Barbarian Virtues*, 34-41.

⁵⁷ Hannigan, 51.

Panama Canal region through unilateral U.S. intervention. The Corollary provided the justification for the U.S. to involve itself in the domestic affairs of Latin American countries and to shape their trading, banking, and consumptive patterns.⁵⁸

Still, U.S. officials gauged that the Corollary and the prospect of U.S. militarism would not be sufficient to extend economic and cultural hegemony. No one was more cognizant of the need for a shared consciousness of purpose with Latin American leaders than the lawyer Elihu Root. Speaking in Kansas City, Missouri, in 1906 before the Trans-Mississippi Commercial Congress and several high-ranking Latin American, the Secretary of State delivered one the clearest and most forceful arguments at the time for the purposeful engagement by U.S. business in Latin America and the need for government support of that engagement.⁵⁹

In accordance with the precepts of liberal-developmentalism, Secretary Root offered the United States as the hemispheric model for dynamic capitalism, nation-building, and economic development. Speaking in sweeping terms, he argued that all energies of production and labor by the United States throughout its history had been devoted to internal progress and industry. The growing nation sought out and absorbed capital and supplies from around the world for development of production, financial, and political capacity. Root declared, “[w]e have been drawing on the resources of the world in capital and in labor to aid us in our work. We have gathered strength from every rich and powerful nation and expended it upon these home undertakings; into them we have poured hundreds of millions of money attracted from the investors of Europe.” Through this process of hoarding foreign

⁵⁸ Jacobson, *Barbarian Virtues*, 46.

⁵⁹ John Barnett to Elihu Root, Nov. 17, 1906, in Box 44, Elihu Root Papers, Manuscript Division, Library of Congress, Washington, D.C.

investment and encouraging massive immigration for the purpose of internal development, the United States grew strong and stable foundations for democracy and free markets. By the close of the nineteenth century, he reasoned that the country had advanced from debtor nation to creditor nation. The time had arrived, Root intoned, for the nation to apply its industrial and financial resources beyond its borders “to find opportunity for the profitable use of our surplus capital, foreign markets for our manufactures, foreign mines to be developed, foreign bridges and railroads and public works to be built, foreign rivers to be turned into electric power and light.”⁶⁰

The secretary found the timing of this transition fortuitous. He argued that the emergence of the United States paralleled a transition experienced in South America as those nations emerged from “the stage of militarism into the stage of industrialism.” Emulating the United States, the southern republics stood ready to establish stable governments, enact laws to respect property rights and assure legal justice, and to seek foreign investment and markets for economic development. The United States, which according to Root provided only 12.6% of Latin America’s imports, could, and should, provide needed foreign trade and investment. The continent’s purchasing power, the secretary observed, showed special promise as thousands more immigrants, not dissimilar from the European melting pot that had transformed the United States, streamed into the continent each year.⁶¹

⁶⁰ Elihu Root, “Address Before the Trans-Mississippi Commercial Congress, Kansas City, Missouri,” in *Latin America and the United States: Addresses by Elihu Root*, eds. Robert Bacon and James Brown Scott (Cambridge: Harvard University Press, 1917), 245-247.

⁶¹ *Ibid.*, 247-250.

Striking an overt ethnocentric stance, Root encouraged cultural as well as economic partnership between the southern republics and the United States. According to Root, South America needed the people of the United States to make productive use of its natural resources because the Latin American people did not necessarily measure up to the task. The secretary offered that “the South American is polite, refined, cultivated, fond of literature and of expression and of the graces and charms of life, while the North American is strenuous, intense, utilitarian. Where we accumulate, they spend.” Whereas restless North Americans could not sit satisfied with the current status of their lives and work, he continued, Latin Americans “have less of the inventive faculty which strives continually to increase the productive power of man and lower the cost of manufacture.”⁶² Cultural constructions of race are discussed in detail in chapter three of this thesis. It is enough to state here that not only did the United States subscribe to a particular theory of national development derived from its own political and economic experiences, but also a belief in its racial and cultural superiority.

To advance its cultural mission, the secretary called on American industry and commerce to resist simply dictating terms of relationships but to openly engage South Americans. He suggested operatives dealing in the region learn the Spanish and Portuguese languages, make efforts to understand the culture with which they were dealing, and adapt products to the desires of Latin Americans rather than forcing consumption of standardized American products. Root also called attention to the disastrous state of shipping and travel between the U.S. and South America, stating that the best way to travel to the South America was from New York by way of Europe. Travelers preferred crossing the Atlantic

⁶² Ibid., 250.

Ocean twice to a direct route because of the poor accommodations and the rarity that U.S. ships would even make the trip. In addition, the secretary promoted pending legislation before Congress that would help improve shipping and transportation between the two continents and put the U.S. on more equal footing with their European competitors. Those European competitors had their shipping costs subsidized by their respective governments.⁶³

Taking his case beyond the borders of the United States, in 1906 Root travelled to Brazil to advocate for increased U.S. market share, evidencing just how strong his government supported expanding U.S. business interests in the region. He reminded his Brazilian audience that the U.S. had bought \$99,000,000 worth of goods from their country in the previous fiscal year while Brazil purchased only \$11,000,000 worth of goods from the U.S. He stated that “I should like to see the trade more even; I should like to see the prosperity of Brazil so increase that the purchasing power of Brazil will grow; and I should like to see the activity of that purchasing power turned towards the markets of the North American republic.” To gain such partnerships, Root believed that people of both nations had to find common understanding and respect for each other. Using his own countrymen as the example, Root offered that “[o]ur people will buy more coffee and more sugar and more rubber from the people they know, from the various trading concerns that they know about, than they will from strangers. Mutual knowledge cannot exist without mutual respect.”⁶⁴

These statements by Root revealed a two-sided approach to hemispheric relations. While Root tried to develop within his own country a better appreciation of the unique Latin American cultures and languages to better facilitate their entry into those markets, he

⁶³ Ibid., 254-269.

⁶⁴ Elihu Root, “Reply of Root to Speech of Doctor Rezende,” in *Latin America and the United States*, 42-43.

expected Brazil to naturally look to the United States as a trading partner rather than the nations of Europe. Root closed his presentation with a flourish, promising to return to the United States to report that “laborers of the world,” or European immigrants, may find prosperity and homes in Brazil, that capital is secure in Brazil, that commerce flourishes, and that individual liberty is respected.⁶⁵

A LEGAL APPROACH TO EMPIRE

Elihu Root took his place in McKinley’s cabinet at the head of the War Department as the United States embarked on a new era of foreign relations marked by a rapid expansion of U.S. engagement with Latin America. Having acquired from Spain new colonial possessions in Cuba, Puerto Rico, and the Philippines, the McKinley Administration relied on Root to develop policies for governance and enforcement of U.S. authority. Furthermore, Root presided over the suppression of anti-colonial uprisings rebelling against those very administrations he helped to put in place. Washington hoped to establish regimes and cultures favorable to U.S. interests and develop new consumer populations for American industry. Cuba and Puerto Rico’s location in the Caribbean made them essential to defending routes to and from the proposed Panama Canal while the Philippines extended America’s reach further into the Pacific Ocean to the rich markets and resources of China and the rest of Asia.

As Secretary of State, Root’s twin goals for Latin American policy remained constant: developing regimes friendly to U.S. culture and financial interests and maintaining the necessary defensive capabilities for protecting those interests. However, as chief of American diplomacy, he faced a different set of challenges. Chronic civil war and regime

⁶⁵ Ibid., 43-44.

turnover in Latin American states threatened the hemispheric dominance of the United States, the integrated economic system American business hoped to establish, and the security of the Panama Canal Zone. Foreign lending by European bankers funded Latin American governments in their efforts to legitimize their authority, consolidate their power base, and develop their respective countries. However, regular loan defaults and supposed diplomatic insults by the Latin Americans resulted in the specter of European intervention to enforce repayment. Washington determined this scenario was unacceptable because it left open the possibility for a European power to take and retain territory within the Americas. The Roosevelt administration believed that such a result would violate the Monroe Doctrine and seriously threaten the United States' strategic and economic interests in the region.

The Roosevelt Administration determined that it needed stable, reliable Latin American regimes supportive of American policies in order to minimize the presence of its European rivals in the hemisphere. Certainly this could be accomplished through a sustained military presence throughout South America, Central America, and the Caribbean, but the United States did not have the ability or the desire for such a dramatic mission. Rather, the United States engaged strategies of informal empire whereby the government supported bankers and private lenders who offered financial assistance tied to fiscal and political oversight backed by the real threat of military intervention. Practitioners of dollar diplomacy meant to put nations on the proper path economically, politically, and culturally to protect American financial interests and property and, ideally, achieve strong self-government conducive to U.S. commercial interests.

Root guided this form of U.S. intervention in the region, but he also initiated a new strategy of engagement with Latin American states by which the federal government used a

Euro-American construction of international law to further support private industry. As the U.S. Secretary of State, Elihu Root publically articulated legal principles defined by the progressive politics of the United States and by popular conceptions of race, gender, and class in order to create an inter-American culture and identity. This culturally bound legalist approach to foreign policy further augmented the American empire-building project by transferring cultural expectations onto the populations of Latin America under the auspices of unity and international equality. The secretary, in effect, set standards for political and institutional behavior while also establishing U.S. intervention as a legal and legitimate, if not necessary, consequence for failure to live up the legalized standards.

The following chapters identify those legal principles articulated by Root and their significance in terms of popular cultural constructions existing within the United States in order to provide definition to this unique informal empire, based on law, deployed by the United States to further the objectives identified within this first chapter.

CHAPTER TWO: IMPERIAL INTERNATIONAL LAW

INTRODUCTION

The international law that Elihu Root came to champion arose from European colonial practices. Although Washington preferred to steer clear of outright colonialism, Root's formulation of international legal standards retained racial and ethnic hierarchies that bore a striking resemblance to those associated with European imperial projects. This system of laws seemingly prescribed behavior on equal terms for all while providing protection for all. Law in this context allowed for the peaceful resolution of disputes and provided an arena for a transnational dialogue and cooperation. As such, Root's application of law to foreign relations sprang from his professed desire to seek peaceful resolution of disputes and the desire to seek community rather than antagonism. However, history has significance. Root worked from an intellectual and cultural foundation that failed to provide him the path to success in negotiation and international influence that he regarded as essential for U.S. security.

While imperial international law of the nineteenth century created and reinforced inequalities in the international system, the secretary's application of international law to inter-American relations exacerbated hemispheric dynamics based on U.S. hegemony rather

than equality and national chauvinism rather than international cooperation. The forums in which Root attempted to forge a Pan-American consensus on legal structures and practices nonetheless provided a measure of negotiating space where some Latin American officials contested Root's version of the law. The Argentine diplomat Luis Drago, who emerged as foremost among the dissenters, used the venue to propose an altered version of foreign policy legalism based on the sovereign rights of the Latin American republics.

At its heart, as argued by Robert E. Hannigan, Root's legalist foreign policy represented a conservative agenda to freeze the hemispheric status-quo that privileged U.S. power and prerogatives. Hannigan argued that after 1898, "American leaders were seeking to... ensure a framework within which, as they saw it, the U.S. might successfully realize 'wealth and greatness' in the coming twentieth century world."¹ Having arisen from previous decades as master of the North American continent and trade routes to the south, U.S. leaders sought to maintain and "institutionalize nineteenth century political boundaries and frameworks for trade." U.S. objectives in Latin America, Hannigan maintained, can be likened to those pursued by Britain across much of the Afro-Asian world. As this strategy played out, Root sought to control the weaker, infant regimes of Latin America by creating and promoting a legal framework founded on the same principles of international law developed for empire building. These principles set certain cultural benchmarks to which a nation would aspire while also requiring each nation to accept responsibility for certain obligations in the face of threatened U.S. intervention by way of the Monroe Doctrine and Roosevelt Corollary.²

¹ Hannigan, *The New World Power*, xi.

² *Ibid.*, xi-xiii.

IMPERIAL INTERNATIONAL LAW

Understanding the imperial origins of early twentieth century international law is critical to fully grasp the implications and drawbacks of Elihu Root's legalist approach to Latin America. In his book, *Imperialism, Sovereignty and the Making of International Law*, Antony Anghie explained that the origins of modern international law connected with the civilizing mission advanced by the great powers of the nineteenth century. European legal thought, according to Anghie, divided the world into two groups of societies and nations: the advanced civilizations of Europe and North America, and the uncivilized who inhabited colonized regions. International law, and those who advocated global legal doctrines and structures, continually highlighted the differences that existed between the civilized and the uncivilized world and sought to define a universal system into which the uncivilized might be integrated. Only when these non-Europeans adopted European institutions and international law and were incorporated into the system would their sovereignty be granted and all the rights inherent thereto permitted.³

The guiding hand of legal positivism, defined by Anghie as a legal theory that nations "are the principal actors of international law and they are bound only by that to which they have consented...", served as the intellectual pillar for the emerging legal system. Legal positivism addressed the question of how to create a legal order among sovereign states. The answer came from limiting the number of participants to the club.⁴ Lawyers and policy makers of the nineteenth century practicing pursuant to the dominant

³ Anghie, *Imperialism, Sovereignty, and the Making of International Law*, 3-5.

⁴ *Ibid.*, 32-33.

positivist legal theory doggedly held the belief that there existed two distinct groupings of people in the world: the community of civilized nations and everyone else. By making this distinction, legal theorists excluded the uncivilized societies from exercising sovereignty, which had the effect of shutting out the supposedly uncivilized societies from any legal existence and the ability to exercise legal rights. Any perceived conflict between European nations and the uncivilized people did not exist in the legal sense because the ability of the uncivilized to assert a position in conflict with that of the Europeans would not be recognized. In order to gain recognition among the community of civilized nations, a society necessarily had to adopt European institutions and customs, what Anghie called “the racialization of law by delimiting the notion of law to very specific European institutions.”⁵ Consequently, universally applied principles of law did not equate to universal equality among states.

The colonial powers denied societies sovereignty because those societies lacked essential characteristics necessary to join the community of civilized nations. Christianity ranked first and foremost among those characteristics, which in itself created a cultural identity among European nations and the United States. Furthermore, claiming cultural heritage in Roman antiquity, these civilized nations created common legal systems to pursue justice through scientific legal studies and the study of philosophy. These nations also demanded monogamous marriage, they protected the rights and virtues of women, they valued their reputations within the community of nations, and they respected the importance of individuals’ reputations within society. Institutions and laws within these nations

⁵ Ibid., 54-55.

protected private property of both citizens and foreigners, and these states provided mechanisms for citizens and foreigners to equally enforce their rights under the law.⁶

When faced with similarities in culture or government between European and non-European nations, international legal practitioners resolved the apparent inconsistencies between theory and reality through a simple construction of colonial logic. Law that developed in Europe governed Europe, while it did not govern the non-European societies, and, thus, non-European societies were not civilized and not recognized as sovereign.⁷ Clearly the source of the culture and heritage of the institutions influenced the classification of a nation within the civilization spectrum. Europe welcomed countries like Japan into the society of civilized nations because they adopted European forms of government and other institutions.⁸ By implementing this system of international law based on colonial conceptions of racial and cultural superiority, the European powers established a basic framework that forced all nations to aspire to certain cultural and political standards, eschewing unique identities and local history and the specific needs of the non-European countries in favor of imposing an alien culture of which the indigenous people did not understand and to which they could not, or would not, live up.⁹

⁶ Theodore Dwight Woolsey, *Introduction to the Study of International Law*, 6th ed. (New York: Charles Scribner's Sons, 1891), 6-17; John Westlake, *Chapters on the Principles of International Law* (Cambridge: Cambridge University Press, 1894), 101-106.

⁷ Anghie, *Imperialism, Sovereignty, and the Making of International Law*, 59.

⁸ *Ibid.*, 84-87.

⁹ *Ibid.*, 108.

John Westlake ranked as particularly representative of the imperial legal scholar and practitioner in international law of the nineteenth century.¹⁰ Westlake won election to British Parliament in 1885 and served from 1888 to 1908 as professor of international law at Cambridge University. In 1894, he published his *Chapters on the Principles of International Law* through Cambridge University Press.¹¹ He also represented Great Britain at the International Court of Arbitration at The Hague from 1900 to 1906.¹² Westlake contributed significantly to crafting and articulating conceptions of culture in international relations and international law developed through British imperial power.

Westlake defined international law as “the body of rules prevailing between states. It may also be described as the body of rules governing the relations of a state to all outside it, whether other states or private persons not its own subjects.”¹³ In referring to the rules among states, it was understood by Westlake that “states form a society, the members of which claim from each other the observance of certain lines of conduct, capable of being expressed in general terms as rules, and hold themselves justified in mutually compelling such observance, by force if necessary.”¹⁴

He argued that law and society were inseparable and that inclusion within the society of nations constituted a prerequisite for gaining respected international status. Where there

¹⁰ See also Henry Sumner Maine, *International Law; A Series of Lectures Delivered Before the University of Cambridge*, 1887 (New York: H. Holt and Company, 1888); Wharton Francis, *Commentaries on Law, Embracing Chapters on The Nature, The Source, and The History of Law; on International Law, Public and Private; and on Constitutional and Statutory Law* (Philadelphia, Kay & Brother, Law Booksellers, Publishers, and Importers, 1884); Woolsey, *Introduction to the Study of International Law*.

¹¹ Westlake, *Chapters on the Principles of International Law*.

¹² Cambridge University provides useful, short biography of its alumni like John Westlake at <http://venn.lib.cam.ac.uk/Documents/acad/enter.html>.

¹³ Westlake, *Chapters on the Principles of International Law*, 1.

¹⁴ *Ibid.*, 2.

existed a society, there would be law, and vice versa. Therefore, when speaking of international law, according to Westlake, there would necessarily be a society of states from which that law arose. Conversely, speaking of a society of states implied that law existed by virtue of the existence of that society.¹⁵ He drilled down even further to define with specificity to whom he included within this society of states. In no uncertain terms, Westlake identified all European states as being members of the society of civilized nations and being bound together through their common interests. He also included all the countries of the Americas within this society, understanding that “on becoming independent” they “inherited the international law of Europe,” through no choosing of their own, because “[n]o new state, arising from the dismemberment of an old one within the geographical limits of our international society, has the option of giving or refusing its consent to the international law of that society.” Westlake wanted to hold the newly independent Latin American states accountable for their debts and obligations, stating that “[s]ince all obligations are ultimately those of men, the men who compose the new state were bound by that law as members of their former state, and they cannot by unilateral act change the footing on which their intercourse with other members of the international society is based.”¹⁶

Having defined from whom international law originated and to whom it applied, Westlake enumerated certain essential principles of this international law, all of which greatly depended on equal rights with equal responsibilities by virtue of a nation’s status as a member of the society of civilized nations. One such principle stated that “[t]he society of states, having European civilization... is the most comprehensive form of society among

¹⁵ Ibid., 3.

¹⁶ Ibid., 81-82.

men.... The duties and rights of [those] states are only the duties and rights of the men who compose them.” Therefore, according to Westlake, European civilization produced the society of states from which international law existed, and the obligations and privileges, or rights, derived from international law existed only for those individuals who were citizens within European civilization. In addition, Westlake stated that a rule within international law did not apply to a state because that state ever consented to such a rule. “It is enough to show that the general *consensus* of opinion within the limits of European civilization is in favour of the rule.”¹⁷ In terms of international relations existing within the structure of international law, he stated that nations possessed equal rights and equal obligations regardless of their relative size or power, but these rights and obligations applied only to those sovereign states within the society of civilized nations and to natural persons interacting with those sovereign states.¹⁸ Consequently, international law denied those rights and obligations to states or people existing outside the society of civilized nations. International law existed only “for the purpose of regulating the mutual conduct of its members,” whether they, individually, agreed to those rules of conduct or not.¹⁹

Pinning his conception of civilization to the presence of common cultural values, Westlake limited his inclusiveness to Europe and the United States and did not include the Latin American states upon which Europe had imposed civilized culture through colonialism. He argued that there existed throughout Europe and the U.S. substantially similar cultural and moral values, referencing family life, monogamous marriage, legal

¹⁷ Ibid., 78-79.

¹⁸ Westlake, *Chapters on the Principles of International Law*, 86.

¹⁹ Ibid., 136.

systems and education, going so far as to argue that “no one who has had a liberal education feels himself a stranger in the houses, schools, law courts, theatres, scarcely even in the churches, of another country” within this transnational society. Highly complex societies in nations like Turkey, China, and Persia did not meet the qualifications because Europeans and Americans would not feel well protected or comfortable subjected to the institutions that existed within those countries. Westlake argued that “Europeans and Americans” in these countries “form classes apart, and would not feel safe under local administration of justice which, even were they assured of its integrity, could not have the machinery necessary for giving adequate protection to the unfamiliar interest arising out a foreign civilization.” This statement reinforced the European identity simply by emphasizing difference or otherness outside of the European state system.²⁰

Addressing specific conduct, Westlake declared that a nation maintained its status as civilized and acted pursuant to international law if it treated the rights of citizens and non-citizens equally. Using the United States as an example and its suspending of the writ of habeas corpus during the Civil War, he noted that the Lincoln administration had limited individual rights but had done so to citizens and non-citizens alike. Prejudice aimed solely at non-citizens, according to Westlake’s logic, violated the principles of civilization and international law and thereby thrust an otherwise civilized nation into a quasi-uncivilized status. He further refined this quasi-uncivilized status by including those states defaulting on debts owed to foreign citizens, whether the debt be by public bond or private contract. In a passage packed with relevance to European and U.S.-Latin American relations, he cited debt

²⁰ Ibid., 101-03.

default as grounds for suspension of the rule of non-intervention in the internal affairs of other states.²¹

Ultimately, the question of civilization could be determined by whether there existed within a nation a government that allowed citizens of Europe or the U.S. to carry on their normal lives, defended state territory and boundaries, and defended the rights and security of the native population. According to Westlake, if a state could not provide this basic type of government, civilization tasked the European powers with filling the perceived void and creating such a government. As this discussion shows, ease of movement, investment and function for Europeans across the globe dictated the rules of international law.²² John Westlake's writings in fact articulated an ideologically and culturally-bound international law that justified, and perhaps even required, colonial expansion. No nation or society could hope to meet the requirements of civilization unless that nation or society renounced its indigenous culture and adopted in wholesale fashion the institutions of Europe.

The intellectual framework established by lawyers and scholars like John Westlake underpinned international law as it evolved in the late nineteenth and early twentieth centuries. It also overlapped with the cultural outlook and foreign policy orientation that Secretary of State Elihu Root applied to inter-American relations. Much like Westlake, Root understood the world through the prism of legal positivism and believed that universal scientific principles of law, as defined by European and American officials and consented to

²¹ Ibid., 103-09.

²² Ibid., 141-43.

by all civilized nations, applied to all international disputes and governed relations among states. Through Root's initiatives, these legal precepts found application to Latin America.²³

AMERICAN LEGAL EMPIRE

As Secretary of State, and as a lawyer, Elihu Root advocated for peaceful regimes that respected the rights and obligations of the aforementioned society of civilized nations. Root furthered those same positions of John Westlake and his ilk in the context of U.S. foreign policy. While acknowledging the sovereignty of all civilized nations, he insisted on swift intervention and retribution for those nations who failed to live up to their obligations or, worse yet, whose misdeeds removed them from membership of the society. Having briefly introduced Root and established the context for relations with Latin America in the previous chapter, this section will explain the personal, historical, and cultural factors that informed the Secretary's vision of hemispheric relations and animated U.S. policy toward Latin America. Using his own words drawn from public addresses and correspondence with Roosevelt and with other U.S. diplomats, this section will show that Root addressed U.S. interests and concerns in the region by employing cultural constructions and by relying on institutions that had developed alongside of imperial international law. Like Westlake, Root sought to use domestic, national norms to articulate what he deemed to be universal rules applicable to international relations, especially inter-American relations.

Much like Westlake and the European lawyers of the nineteenth century, Root saw civilization as dependent upon key national institutions and behaviors. He called for respect

²³ Elihu Root, "The Sanction of International Law: Presidential Address at the Second Annual Meeting of the American Society of International Law, Washington, April 24, 1908," in *Addresses on International Subjects*, ed. Robert Bacon and James Brown Scott (Cambridge: Harvard University Press, 1916), 25-30.

for private property, peaceful resolution of disputes, and defense of the rights of others. Like Westlake, Root admired societies that enabled citizens of Europe and the United States to prosper culturally and financially without the assistance or intervention of home governments. He elevated the timely repayment of national debts, the acceptance of international arbitration, the safeguarding of foreign investment, and the welcoming of European immigration as policies particularly appropriate for Latin American states that aspired to advanced civilizational status. The concept of civilization within the context of international law is more thoroughly explored in chapter three by employing a cultural analysis to the legalist policies advocated by Root, which identifies how these enumerated essential characteristics of civilization were founded in constructs of gender, class, and race.

Root's fullest articulation of Latin American policy came in his public conversation with leaders of the region during his 1906 trip to South America. The Third International American Conference in Rio de Janeiro provided the initial venue for the discussions. Root sought most of all to repair the past damage done to hemispheric ties by unilateral U.S. blustering and military intervention and President Roosevelt's renown for wielding the big stick across the region. He intended on doing so without entirely surrendering U.S. prerogatives as outlined in the Monroe Doctrine and proclaimed in the Roosevelt Corollary. The secretary clearly rated imperial international law, tweaked to fit the American experience, as a much preferred tool of U.S. hegemony. The U.S. had hosted the first International American Conference in Washington in 1889 in order to promote U.S. economic interests in Latin America. Pan-Americanism was the pet project of Republican Secretary of State James G. Blaine in the 1880s as U.S. business, military, and political leaders pressed for a more forceful U.S. international presence. Mexico City hosted the

Second International American Conference during 1901 and 1902, at which the participant states elected through resolution to schedule a third conference to meet within five years.²⁴

The third conference, held in Rio de Janeiro, served as an initial forum for Root to articulate the centerpiece of his Latin American policy: a process of inter-American rapprochement guided by the precepts of imperial international law. He would use the conference and his trip through South America to build relationships, trust, and cooperation while continually making his pitch for Latin Americans to embrace an international legal system based on European cultural values. He promoted incessantly the idea that international rights were accorded to those who carried out their international obligations and who entrusted the resolution of claims and disputes to international courts of arbitration.

As such, Root's instructions to his fellow U.S. delegates constituted a clear, high-level articulation of U.S.-Latin American policy and strategy for the conference.²⁵ They would also guide Root and the delegation through the South American tour that followed the Rio de Janeiro gathering.²⁶ Secretary Root instructed the delegates that this conference should not be used as "an agency for compulsion or a tribunal for adjudication." He did not want nations creating treaties or sitting in judgment of one another or to take up controversial or divisive issues. The conference should instead allow nations to find common ground and take up issues upon which little difference of opinion existed. Root

²⁴ Elihu Root, "The Secretary of State to the Delegates of the United States to the Third International Conference of American States," June 18, 1906, *Foreign Relations of the United States, 1906* (Washington, D.C., U.S. Government Printing Office, 1909), Pt 2: 1566-76 (hereafter *FRUS*, with appropriate year, part, and page numbers); Boyle, *Foundations of World Order*, 104-05.

²⁵ The U.S. delegates to the conference were Andrew J. Montague of Virginia, Dr. Paul S. Reinsch of Wisconsin, Charles Ray Dean, H. Fletcher Neighbors, and Frank L. Joannini who would act as translator. (Robert Bacon, "The Acting Secretary of State to the Brazilian Ambassador," May 23, 1906, *FRUS, 1906*, Pt. 2: 1566.)

²⁶ Elihu Root to Theodore Roosevelt, July 3, 1906, Reel 65, *Theodore Roosevelt Papers*, Manuscript Division, Library of Congress, Washington, D.C.

wanted consensus and cooperation. Much like his general approach to foreign policy, he did not pursue “any striking or spectacular final results....” The secretary prioritized issues that appeared to be of minimal significance and which garnered only modest publicity. Rather than sweeping, impactful resolutions, he looked for areas of broad agreement and common ground.²⁷

These instructions were not meant to minimize the importance of this conference but simply emphasized building trust. Secretary Root believed that, when taken all together, these occasions for reaching common ground represented small steps in a progression toward “the acceptance of ideals the full realization of which may be postponed to a distant future.” “All progress toward the complete reign of justice and peace among nations,” the secretary observed, “is accomplished by long and patient effort and by many successive steps....” Root believed he needed time to sell his and the United States’ vision of a world order governed by law and cultural universalism and that this effort, or sales pitch, would be most effective if made patiently, with no expectations or pressure for immediate success.

With this goal in mind, Root had already used his influence to dictate the agenda of the conference to provide an orderly program while limiting the possibility for controversy. He wanted his to stick to the issues on the agenda, issues with which there was already some degree of consensus, and to make sure the conference did the same. These issues included establishing a bureau of American republics in order to expand Pan-American efforts, simplifying customs and consular laws, creating conventions related to copyrights, patents and trademarks, and drafting agreements regarding naturalization laws, and agreements related to sanitation and quarantine regulations. Root also wanted his delegates to give their

²⁷ Elihu Root, “The Secretary of State to the Delegates of the United States to the Third International Conference of American States,” June 18, 1906, *FRUS, 1906*, Pt. 2: 1566-67.

support to anything that promoted U.S. commerce in the region, especially a Pan-American railway.²⁸ Following the script, the Third International American Conference avoided the hard questions of compulsory arbitration and how the region would approach forcible debt collection by European creditors, passing these matters on to the larger international conference scheduled for 1907 at The Hague.²⁹

Even more significant than personally supporting the conference and guiding American strategy for negotiations, Root actually traveled to the conference in South America and addressed the delegates, an unprecedented move in 1906 for a sitting U.S. Secretary of State. He followed up his appearance with a goodwill tour of the continent, hoping that such a trip would help ease regional distrust of the United States. The secretary was gratified by the large crowds that regularly turned out to greet him.³⁰ Organizers set the conference in Rio to begin in late July, 1906.³¹ Root started his trip at the same time with a visit to Brazil, making the rounds to local officials before speaking to a special session of the conference where he addressed the representatives.

Despite having two solid months of travel and public appearances lined up, the secretary prepared only one speech before he arrived in Brazil. He delivered that address to the conference delegates on July 31, 1906, intending to create a foundational roadmap upon which he and the U.S. delegation would rebuild relations with the region. He articulated U.S. policy toward South America in such a way as to encourage his Latin American

²⁸ Ibid., 1567-72.

²⁹ Jessup, *Elihu Root*, 1:482.

³⁰ Hannigan, *The New World Power: American Foreign Policy, 1898-1917*, 67.

³¹ Joaquim Nabuco, "The Brazilian Ambassador to the Secretary of State," April 25, 1906, *FRUS, 1906*, Pt. 2: 1565.

audience to understand the basis for inter-American relations as a series of mutual obligations. By doing this, Root effectively shifted the prevailing transnational dialogue that had previously placed expectations of behavior solely upon the Latin Americans. Root would make many speeches throughout his trip, but the conference address highlighted his over-arching purpose: to identify the positivist legal and cultural frameworks prerequisite to hemispheric cooperation and progress under U.S. leadership. His speech won him enormous praise and admiration, not least of which came from the delegates and from heads of state who he would later meet.³²

The secretary began his address by invoking the concept of “civilization.” Placing himself and his audience on par as citizens of the “civilization of America,” he advanced a notion of shared culture and imagined community. In keeping with the assumptions of legal positivism, he held out U.S.-style, electoral democracy as a cornerstone for civilizational status across the Americas. Root lectured that democracy came through struggle and did not come naturally or easily, that democracy was something to be learned through accumulated experiences, and that nations that aspired to democratic self-government should seek mentorship from more advanced states – a clear reference to the special leadership role he envisioned for the United States. He then enumerated the prerequisites for a stable democracy within civilization, characteristics which he earnestly hoped the delegates would strive to achieve in their home nations, including “respect for law; obedience to the lawful expressions of the public will; consideration for the opinions and interests of others equally entitled to a voice in the state. . . .”³³

³² Jessup, *Elihu Root*, 1:479-80.

³³ Root, “Speech of the Secretary of State: Honorary President of the Conference,” in *Latin America and the United States*, 6-11.

The secretary explained the path toward democracy in evolutionary terms, as a slow but steady advance “toward more perfect popular self-government,” similar to the United States’ political trajectory. He implied, not so subtly, that the absence of those democratic institutions signaled either regression or a failure to progress along a proper evolutionary path. He also implied that some nations were not so advanced as others and that the less mature nations must learn from their more progressive neighbors. The secretary then praised Latin American nations for their remarkable progress toward democracy, stating that “[n]owhere in the world has this progress been more marked than in Latin America,” and he traced Latin America’s progress from fighting with native populations and racial conflicts to civil war to the establishment of governments now prepared to abide by the necessary rule of law. These new governments, Root hoped, would ensure “[p]roperty is protected and the fruits of enterprise are secure,” while also defending “individual liberty,” all of which served as critical signals within imperial international law of civilized nationhood.³⁴

Root then addressed the potential for misdeeds in the world’s eyes and the consequences inherent thereto using language and concepts of striking similarity to those developed during the previous century and articulated by the likes of John Westlake. Root stated that nations are to be judged under an ethical code, much like men, and must conform to that code of the community or suffer the negative judgment of the group of nations. Furthermore, he declared that “[a] people whose minds are not open to the lessons of the world’s progress, whose spirits are not stirred by the aspirations and the achievements of humanity struggling the world over for liberty and justice, must be left behind by civilization in its steady and beneficent advance.” In essence, Root told the delegates to either get on

³⁴ Ibid., 6-8.

board with this ethical code among nations or be left behind by civilization. Though not addressing in this speech the consequences of being left behind, both Root and the imperial international law of John Westlake had been quite clear on this issue. Legal positivism denied the benefits of private trade and investment to renegade societies, and mandated political and military intervention when necessary to protect foreign property and citizens.³⁵

Having made his address and offered his instructions and advice on governance, the secretary let the business of the conference to continue without him as he made his way to Uruguay in early August, 1906. On August 10, Root spoke on the subject of the Monroe Doctrine before an audience that included José Romeu, Minister of Foreign Affairs for Uruguay. Romeu introduced Root to the audience and expressed his gratitude for the U.S. Secretary of State's visit and his admiration for the United States. Portraying the Monroe Doctrine as a guarantor of Uruguay's sovereignty he praised that "chivalrous declaration which President Monroe launched upon the world, contributed efficaciously to assure the stability of the growing republic" of Uruguay. Alluding to the efforts toward whitening society then taking place throughout South America, the Minister emphasized the importance of the close ties and cultural influences with European nations and the importance of immigration from Europe to the nations in the Americas.³⁶ "Italy, Germany, and Spain send to America a valuable contingent of their emigration," but he acknowledged that the future of Latin American nations hinged on continued relations with the United States.³⁷

³⁵ Ibid., 8.

³⁶ For a thorough analysis of the cultural and political whitening taking place throughout much of Latin America at the time, see Andrews, *Afro-Latin America 1800-2000*, 117-51.

³⁷ José Romeu, "Speech of His Excellency José Romeu, Minister for Foreign Affairs," in *Latin America and the United States*, 55-58.

In response, Secretary Root thanked Romeu for the welcome and agreed with the importance of the Monroe Doctrine in providing the autonomy necessary for Latin American nations to develop their own governments. He called the doctrine “an assertion to the world of the competency of Latin Americans to govern themselves.” Root likely believed this to be half the story of Monroe’s proclamation, a fortuitous byproduct of protecting U.S. territorial and financial security. He echoed his host’s strong support for European immigration and reassured his audience that unity with the U.S. need not come at the sacrifice of cultural heritage. “[T]here is nothing in the growing friendship between our countries which imperils the interests of those countries in the Old World from which we have drawn our languages, our traditions, and the bases of our customs and laws.”³⁸

Yet Root distinguished between Latin America’s ties to Europe and its ties with the U.S. Harkening back to the Monroe Doctrine’s assertion of two separate spheres, the older European world and the rising Americas, the secretary rhapsodized on the new world’s penchant for the art of self-government. Emphasizing the importance of law and order and invoking the common bond of religion, the secretary declared that the relationship among American nations was based on “advancing the rule of order, of justice, of humanity, and of the Christianity which makes for prosperity and happiness of all mankind.”³⁹

Speaking at the Atheneum in Montevideo, Uruguay, on August 12, 1906, Root brought his focus back to the importance of international law in establishing stability within foreign affairs through conservatism by again evoking the concept of politics through evolution. He argued against those who would call international movements and

³⁸ Elihu Root, “Reply of Root to the speech of His Excellency José Romeu, Minister for Foreign Affairs” in *Latin America and the United States*, 58-59.

³⁹ *Ibid.*, 58-60.

organizations “idle dreams,” and he referred to such internationalization as a next step in the progress of man and of civilization. Root declared that the strength of moral opinion of the world had begun to replace the use of force in conflict resolution and the management of international affairs. Calling the progress slow but unstoppable, he expressed confidence that each act in furtherance of international justice, though seemingly small to the individual at the time, represented a substantial step in moving humanity further in its path of progress.⁴⁰ While the secretary’s professions of international community might be read as what Akira Iriye has identified as an emerging twentieth century “cultural internationalism,” or an espousal of open-ended cultural pluralism, they in fact arose from a carefully circumscribed Euro-centric cultural dialogue.⁴¹ Scholars, policy makers and legal practitioners living before Root and as contemporaries did not speak or write of a society or world in which all people’s opinions would be counted or cultures valued. Nor did Root intend to create a unifying movement of true equality and inclusion. As has already been shown, the “opinion of the world” actually referred to Europe, the United States, and those countries who sufficiently adopted European institutions to be considered within the society of the civilized.

To a mostly American audience in Argentina on August 16, 1906, the secretary of State augmented his vision of political evolution with a prescription for U.S.-guided economic progress. Root described the progression of the U.S. from a debtor nation to the status of creditor nation, having paid off its debts and benefitted from foreign investment,

⁴⁰ Elihu Root, “Reply of Root to the Speech of Doctor Zorrilla de San Martin at the Breakfast by the Reception Committee, in the Atheneum at Montevideo,” in *Latin America and the United States*, 70-71.

⁴¹ Akira Iriye, *Cultural Internationalism and World Order* (Baltimore: The Johns Hopkins University Press, 1997).

principally from Britain, and created surplus capital to develop its own resources. Having kicked off the shackles of debt, the U.S. engaged markets overseas to invest its own capital and reached the pinnacle of the development cycle. The U.S. looked to South America to invest to manage its vast resources similarly: to foster an atmosphere conducive to private foreign investment, promote free trade, welcome productive newcomers as immigrants, and to studiously attend to its debts.⁴²

Root's U.S.-centric vision of an American civilization based on international law did not go unchallenged. August 17, 1906, brought the unique opportunity for Luis Drago of Argentina, perhaps the region's most outspoken critic of dollar diplomacy and the forcible collection of debts, to meet and engage in a public dialogue with the secretary. Drago introduced the secretary of State at this particular gathering and publically thanked the U.S. for its support of Argentina since its independence. He then openly protested the practice of forcible collection of debts by European nations, a practice that he warned threatened the very survival of debt-ridden Latin American governments. The U.S. should not view "the impropriety of the forcible collection of public debts by European nations," he asserted, simply as "an abstract principle of academic value or as a legal rule of universal application outside of this continent." For Drago, the collection of debt by force amounted to a calamity "of conquest, disguised under the mask of financial intervention – conduct that was clearly in violation of U.S. policy since the dawning of Latin American independence." Appropriating U.S. policy principles and diplomatic language, the Argentine diplomat cleverly framed Latin America's opposition to the forcible collection of debts as an

⁴² Elihu Root, "Reply of Root to the Speech of Mr. Francis B. Purdie at St. George's Hall," in *Latin America and the United States*, 90-93.

affirmation of the Monroe Doctrine and the doctrine's prohibition of armed conquest and recolonization in the Americas.⁴³

Root responded to Drago in the only way the secretary's imperial international law allowed, and his response exposed the limits to inter-American cooperation inherent to his legal framework. He reiterated Washington's respect for Latin American sovereignty and its opposition to forcible debt collection – in theory. But he also emphasized that while the international community was evolving in the direction of non-intervention, the practice would die a slow death. Such conduct would dissipate “perhaps not today nor tomorrow, but through the slow and certain process of the future, the world will come to the same opinion.”⁴⁴ For the moment, the secretary declared himself “an advocate of arbitration; of mediation; of all the measures that tend toward bringing reasonable and cool judgment to take the place of war...,” but turned the discussion on its head by placing primary responsibility for international legal progress on the shoulders of the Latin American people to avoid conflict. Most significantly, he reaffirmed the need for nations and their people to respect the rights of others, “which lie at the basis of peace of the world.”⁴⁵ The secretary wanted the people of Argentina and of the other nations of Latin America to do their part and live up to their obligations as members of a society of civilized nations. Doing so rendered Drago's rejoinder moot.

In broader policy terms, Root dismissed the idea of extending the Monroe Doctrine and Roosevelt Corollary to demand a stop to all forcible collections of debt because he

⁴³ Luis Drago, “Speech of Dr. Luis M. Drago,” in *Latin America and the United States*, 93-97.

⁴⁴ Elihu Root, “Reply of Root to the Speech of Dr. Luis M. Drago,” in *Latin America and the United States*, 98.

⁴⁵ *Ibid.*, 102.

wanted the matter submitted to binding arbitration, or some other means of peaceful resolution of the claims. He would not reject the claims of the Europeans, which would have been the practical effect of incorporating Drago's position into U.S. policy, because he would have been rejecting a pillar of international law as he and the Roosevelt administration understood it. Civilized nations must respect their obligations and maintain stable, reliable institutions to follow through on their obligations to the civilized world or risk having another civilized nation intervene and do it for them.

As the secretary's trip wound down, he adopted an increasingly didactic tone, as if the more he articulated these positions and the richer the detail he could provide the greater acceptance these ideas would receive. As a particular address in Peru in mid-September demonstrated, Root lectured sternly that Peru had a moral obligation to the international community to get its own house in order and ensure justice within its borders. To that end, Root stated that "[a]ll international law and international justice depended upon national law and national justice. No assemblage of nations can be expected to establish and maintain any higher standard in their dealings with one another than that which each maintains within its own borders." Similarly, the justice and civilization within the community of nations depended on the character and level of civilization of each participant nation within the community.⁴⁶

Root then challenged his audience and all of Latin America to actively support efforts to create international institutions to peacefully resolve conflict, to educate their citizens with respect to the standards and ideals of international arbitration, and to inculcate a popular appreciation for the procedures and principles embedded within local court

⁴⁶ Elihu Root, "Reply of Root to Speech of His Excellency Javier Prado y Ugarteche," in *Latin America and the United States*, 142.

systems. He further called upon his audience to engage in a global education of the “sacredness of the exercise of the judicial function of arbitration...,” describing arbitration as the preferred means of preventing war in the face of real, contested national differences and emotions and to “seek victories of peace rather than the glories of war; to regard more highly an act of justice and generosity than even an act of courage or an act of heroism.” In doing so, he advised, Latin Americans would be joining a united effort toward peace and respect for human rights and justice.⁴⁷

Soaring rhetoric notwithstanding, the truth of the matter was that the international legal system philosophically favored the creditor nations and put debtor nations at a disadvantage. Root’s formula, in fact, meant that Latin America’s disputes with Europe regarding debt would be decided by courts of arbitration pursuant to established international law, and Latin America would have to abide by the decisions. The court at The Hague had already proved its predisposition toward creditors’ rights to collect in 1904 when it ruled on the conflict between Venezuela and England and Germany.⁴⁸

NEGOTIATION AND CONTESTATION

In mid-September 1906, Secretary Root reported to President Theodore Roosevelt that he had been received very well throughout his tour and believed that his trip had successfully promoted U.S. interests and had given assistance to friends of the administration in South America.⁴⁹ However, the ideological conflict revealed in August

⁴⁷ Ibid., 143-44.

⁴⁸ “Arbitration of the Preferential Treatment of Claims Against Venezuela,” *FRUS, 1904*: 505-519.

⁴⁹ Elihu Root to Theodore Roosevelt, September 15, 1906, Reel 68, *Theodore Roosevelt Papers*, Manuscript Division, Library of Congress, Washington, D.C.

1906 between Root and Drago with respect to the forcible collection of debt did not disappear. It reemerged in 1907 at the international conference of nations at The Hague. Despite all the face time spent with Root during the summer of 1906, those Latin American nations represented at The Hague rejected the U.S. proposal for expanding arbitration and the international legal system to include submission of all claims for national debt as a prerequisite to military intervention. Led by Luis Drago, the Latin American delegates advocated legal principles that respected the national sovereignty of all states and that acknowledged the unique, local cultural attributes that could influence domestic politics. Fully aware that the U.S. proposal would sanction military intervention, the Latin Americans roundly rejected Root's culturally-bound, legal positivism. Ironically striking a market-oriented posture, they insisted that private investment always carried inherent risk, a risk that should not be mitigated by the state's military muscle.⁵⁰

Following custom within the conference, Argentina ultimately voted to accept the convention of compulsory arbitration of financial claims as proposed by the U.S. but did so while declaring significant reservations to its acceptance that rendered the application of the convention useless. Speaking for Argentina, Drago rejected the right of nations to use force to compel payment on contract debts to their private citizens unless, and until, those foreign citizens exhausted their remedies through the local court system and had been denied justice. He further rejected the notion that public loans through bonds could ever give right to

⁵⁰ Luis M. Drago, "Senor Luis M. Drago, Minister of Foreign Relations of the Argentine Republic, to Senor Martin Garcia Merou, Minister of the Argentine Republic to the United States," *FRUS*, 1-5.

foreign intervention, or even occupation, stating that such circumstances “shall in no case give rise to military aggression or the material occupation of the soil of American nations.”⁵¹

Following Drago’s lead, the delegations of Paraguay and Nicaragua voted with the same reservations as that of the Argentine delegation. Peru also voted to accept the convention but with the reservation that the convention did not apply to those contracts agreed to with foreign citizens in which the contract explicitly stated that dispute resolution must take place within the courts of the nation in question. Colombia and El Salvador agreed and voted with the same reservation as Argentina. Gil Fortoul of Venezuela stated that his delegation rejected the wording of the convention and would not even take part in the vote. The Guatemalan delegation expressed reservations similar to those of the other Latin American states, but, out of a desire for unity with its neighbors, backed the Argentine reservations as articulated by Drago, while Ecuador and Uruguay reaffirmed their own reservations.⁵²

As a follow-up to this startling assertion of independence by the Latin American states, Luis Drago soon issued a more expansive legal treatise. The Argentine diplomat published his own pronouncement of international law in 1907 in the *American Journal of International Law*.⁵³ In an article he affirmed those positions taken at The Hague and argued that the independence and sovereignty of the Latin American state should be valued more than the debts owed to speculators from Europe. Under international law, he insisted, local rules and procedures governed cases involving contracts and crimes, and local remedies had

⁵¹ *The Proceedings of the Hague Peace Conferences: The Conference of 1907*, vol. 1 (New York: Oxford University Press, 1920), 330-31.

⁵² *Ibid.*, 331-32.

⁵³ Drago, “State Loans in Their Relation to International Policy,” 692-726.

to be exhausted before appeal could be permitted to international forums. Only in instances of “flagrant injustices” would intervention be appropriate because such instances would, according to Drago, be a violation of international law. As if trying to channel those imperial-era lawyers and display his own Western European and international law credentials, Drago cited the authority of British Prime Minister Lord Salisbury’s argument that no nation can or should expect all other nations in the world to use the same judicial system or standards of review for enforcing the law, thus refuting Root’s advocacy for universal law and culture. Interestingly, the reference to British precedent was meant to refute Root’s imperial, legal positivism.⁵⁴

When addressing sovereignty within the question of forcible debt collection, Drago argued that there existed no competent courts, and none could ever exist, within which one could bring claims arising from foreign loans. A nation could not possibly be brought to judgment by a creditor that could be enforced through those courts. Drago stated that “[s]overeignty is a historic fact and may be studied in each of the phases of its long and slow evolution, but it has attributes and prerogatives which may not be disregarded without danger to the stability of social institutions.” This statement served as direct challenge to the U.S. Secretary of State’s vision of international law. The Argentine statesman further elaborated on his argument by indirect reference to the United States’ Declaration of Independence, stating that nations and their citizens possess “inalienable rights, inherent in their nature, among which is the right to grow and develop independently and without hindrance.” Therefore, international law, according to Drago, ensured respect for national sovereignty and the unique characteristics of local peoples. Ultimately, a sovereign’s actions

⁵⁴ Ibid., 693-96.

may not be questioned nor intervention permitted unless the sovereign consents to the jurisdiction of those tribunals sanctioning such actions. As demonstrated at The Hague, Argentina did not so consent as the United States had hoped.⁵⁵

Going beyond the specific doctrines within international law, Drago rejected outright the ethnocentric assumptions that undergirded both European colonialism and Root's legalism. He dismissed the arguments that South America consisted of "degenerate races without the capacity for government" who should give way to the civilized nations of the world. For Drago, militarism enacted in the name of Social Darwinism represented an anachronism no longer applicable to the regulation of an increasingly complex and interconnected world.⁵⁶

The Argentinian, however, did not fully reject the tenants of Social Darwinism. As an elite of European descent, in a multi-cultural and multi-racial society, he too respected established hierarchies. He relied on Latin America's Christian heritage to make the case that the region had progressed, or evolved, on a path toward greater equality with its European forbearers. At the same time, he reaffirmed Europe's status as a leader of the civilized world. He parted ways with European and U.S. diplomats by challenging them to help the less civilized peoples of the world as peaceful mentors rather than as gunboat interlopers. One nation could not sit in judgment of the relative strength and civilization of another nation because there could always be a third nation with greater strength, civilization, and culture who could then, by the logic used by the previous nation, impose its will on both lesser nations simply because of relative strength. "Theories of violence, of

⁵⁵ Ibid., 697-701.

⁵⁶ Ibid., 706-08.

struggle for existence, and of survival of the fittest may thus wound on the rebound the very persons who proclaim them,” the Argentinian warned. “In the din of the universal conflict in which they desire to involve us, there may arise new social groups superior or stronger and capable of applying the rule of iron to the conquerors of yesterday.”⁵⁷

LAW DEFINED BY CIVILIZATION

Though declining to completely shift the discourse and source of legitimacy for the international legal order, Luis Drago represented a real and significant challenge to U.S. policies and the legal order advocated by Secretary of State Elihu Root. As with imperial international law of the nineteenth century, Root’s brand of international law and foreign policy gave purpose and reason to intervention. Drago certainly recognized this fact. Though advocating equality and justice, Root’s legalist approach failed to live up to its promise because it served as an American application of imperial principles developed during the nineteenth century to perpetuate a global system of racial hierarchies created to advance the interests of the major powers. Ironically, having established the forum of international law for negotiation and projection of this cultural construct, Root created a mechanism for contestation and reinterpretation of empire within Latin America. Not only did officials like Drago adopt Root’s international legal system as a way of contesting U.S. hegemony, they incorporated certain legal principles to maintain and legitimize their own independence within the international order.⁵⁸

⁵⁷ Ibid.

⁵⁸ *The Reports to the Hague Conferences of 1899 and 1907*, ed. by James Brown Scott. (Oxford: The Clarendon Press, 1917), 489-99.

The concept of civilization and those cultural constructions defining civilization that existed within international law bore a direct correlation to the treatment rendered to nations like those in Latin America who remained on the fringe of the community of civilized nations. As evidenced by the selected public addresses within this chapter, Root developed certain themes in his speeches, themes articulated in tropes that rendered international law a cultural construction in and of itself. The deconstruction of Root's legal thought is the focus of the next chapter.

CHAPTER THREE: LAWS OF CULTURE

INTRODUCTION

“All sovereignty in this world is held upon the condition of performing the duties of sovereignty.”¹ Elihu Root declared this simple condition for respect and recognition of national borders and self-determination. The statement belied a combination of Euro-American cultural constructs and a laundry list of U.S. economic and geopolitical interests in Latin America. Nations achieved status in civilization and earned rights of sovereignty, according to Root, by maintaining certain institutions and values common to the Euro-U.S. culture. As U.S. Secretary of State, Elihu Root did not approach foreign relations as a clash of cultures. Rather, he articulated U.S. cultural expectations (such as paying foreign debts) as common legal principles among nations – legal principles that were so embedded in societal evolution that they came to him in the guise of common sense and truth. By deconstructing Elihu Root’s public discourse in law, this chapter highlights the cultural foundations of Root’s legalist foreign policy and those cultural constructions that underpinned his imagined hemispheric community. Ironically, many of the cultural precepts

¹ Elihu Root, “Address at the Ninety-Ninth Annual Banquet of the New England Society of New York,” in *Miscellaneous Addresses*, 270.

advanced by the U.S. Secretary of State, especially those that elevated patriarchy, whiteness, and class privilege, found acceptance among Latin American elites and especially Latin American government officials.

Works of cultural history by scholars such as Emily S. Rosenberg and Gail Bederman provide essential clarity and definition for understanding the discourse which Elihu Root engaged. Root, emblematic of the progressive political and economic culture then existing within the United States, shaped U.S. foreign policy to conform to what Rosenberg has termed the professional-managerial discourse and civilizing mission. Convinced of the correctness and legality of U.S. expansionism in the early twentieth century, the secretary and those around him adhered to an ethic of professional detachment – managing the chaotic and not yet fully civilized world. It was a world wracked by financial mismanagement, military conflict, and most disconcerting of all – revolutionary passions and political instability. The goal of policy was to prescribe and help bring about the world-wide support for representative governments led by responsible male patriarchs; sound, and responsible financial practices that nurtured liberal, market-based economic development; and racial engineering to whiten populations and advance the cause of civilization. For Root, what benefitted mankind benefitted the United States, and what benefitted mankind in Latin America helped to advance U.S. economic interests and secure the vital Panama Canal region.²

Chapter one of this thesis identified the context and motivations for policy in relations with Latin America, and chapter two identified the mode of cultural transfer and discourse of international law as deployed by men like Elihu Root to accomplish objectives in Latin America. This chapter provides the critical definition of those cultural conceptions

² Rosenberg, *Financial Missionaries to the World*, 32-33.

projected through Root's rendition of international law and their reception among Latin American officials.

THE UNITED STATES AS MASCULINE PROTECTOR

Policy makers in Washington like Secretary Root and President Roosevelt viewed relations between states through the prism of gender. They expected nations to conduct affairs in accordance to the virtues and values of middle and upper class, Victorian, male culture. Otherwise, a nation would be dismissed as suffering the same defects assigned by men to Victorian women: effeminate, weak, incapable of self-control, and requiring the supervision and protection of the virtuous male.

Historians have pointed out that those qualities that make a man, or a woman, in terms of the nation or the individual, continually shift throughout history and have been subject to consistent reimagining by successive generations. Rosenberg defined the cultural construct of "manhood" in the early twentieth century United States as the outcome of a "dynamic cultural process through which men asserted a claim to certain authority as though it had a status immutably rooted in nature."³ According to Bederman, "at any time in history, many contradictory ideas about manhood are available to explain what men are, how they ought to behave, and what sorts of powers and authorities they may claim, as men." Though the bounds of gender are contradictory and shifting, "manhood" is "constructed as a fact of nature, and manhood is assumed to be an unchanging, transhistorical essence, consisting of fixed, naturally occurring traits." This process of defining manhood creates "a set of truths about who an individual is and what he or she can

³ Ibid., 33.

do, based upon his or her body. Individuals are positioned through that process of gender, whether they choose to be or not... And with that positioning as ‘man’ or ‘woman’ inevitably comes a host of other social meanings, expectations, and identities.”⁴

Men like Elihu Root and Theodore Roosevelt sat atop a patriarchal hierarchy at the turn of the twentieth century that was rooted in centuries of tradition yet under pressure to adapt to the social realities of the industrial age. Women were even subtly challenging the notion that international relations and empire were male domains. Kristin Hoganson has shown how middle and upper class female homemakers had carved out positions of international authority in the home as purchasers of internationally produced home furnishings and consumer items.⁵ Yet men continued for the most part to stake their claim as breadwinner and family head based on commonly held assumptions that wives and mothers lacked the self-discipline and rationality required of leadership. Gender divisions also defined relationships outside the home. Men assumed roles in business and the professions because the Victorian culture determined that women could not maintain the necessary impersonal relationships, nor could women adequately organize their affairs or sufficiently plan ahead to successfully participate in the world of modern, industrial era public life. In politics, women did not enjoy the franchise – although the women’s suffrage movement was fast gaining momentum. In the world of law, women were denied a wide array of legal rights granted to men.⁶

⁴ Bederman, *Manliness & Civilization*, 7.

⁵ Kristen L. Hoganson, *Consumers’ Imperium: The Global Production of American Domesticity, 1865-1920* (Chapel Hill, NC: University of North Carolina Press, 2010).

⁶ Rosenberg, *Financial Missionaries to the World*, 32-33; McGerr, *A Fierce Discontent*, 40-55.

Socially engineered in this context, Root and Roosevelt applied their understandings and expectations of manhood to form a similar culturally bound identification of the manly nation. Nations that exercised restraint, self-discipline, and planning, like individual men who did likewise, earned the respected status of manhood and earned entitlement to all the rights of privileges accorded to civilized nations. But nations in which political passions fired revolutions, corruption fed financial mismanagement, and greed and protectionism trumped market-based trade, were relegated a lower class of men. Indeed, they might even be likened to women or children. Popular cultural conceptions assumed women, children, and nonwhites lacked in qualities of manhood, and, thus, needed the supervision and guidance of a strong man.

According to the standards of manhood, men who mastered themselves earned the right and responsibility to master others. Applying these same gendered assumptions to foreign relations, the intervention by supposedly manly, disciplined nations in the affairs of supposedly reckless, unstable nations appeared as beneficent obligations of patriarchal protectors.⁷ Thus, officials in Washington interpreted their duty as men, and as leaders of a manly nation, to impart their financial and political oversight, and the resulting civilizing effects, on states of disrepute and instability. To carry out this vision, Washington sought to spread sound currency policy and sound commercial and moral influence upon the effeminate nations of Latin America.⁸

Root's formulations of international law both reflected and helped to construct an understanding of the United States as a male protector of the hemisphere. His

⁷ Rosenberg, *Financial Missionaries to the World*, 33.

⁸ *Ibid.*, 33-36.

pronouncements of legal principles counseled that nations under the tutelage of the United States learn the importance of patience, self-control, self-sacrifice, and acting in the best interests of the community of civilized nations. The secretary approved of sound, stable foreign governments that satisfied domestic and international obligations and followed the U.S. model for national development. Failing to meet those inherent qualities of civilization violated both cultural understandings of national manhood and principles of international law. Such national failings required the effeminate nation's submission to the guidance, or intervention, of a civilized, manly nation.

Armed with a cultural construction of gender that equated the universal validity of international law with that of patriarchy, Root took on skeptics who suggested that legal positivism stood merely as an imperfect social standard among nations that lacked a sovereign authority to compel obedience.⁹ Speaking before the American Society of International Law in 1908, while serving as its president, he presented international law as having the force and effect of law because it represented the social standard among nations. He argued that despite there being no compelling sovereign force to persuade one side to concede its position to a rival, civilized norms of self-sacrifice and disciplined foresight compelled adherence to legal outcomes in the name of the common good. Root stated that “all the foreign offices of the civilized world are continually discussing with each other questions of international law, both public and private, cheerfully and hopefully marshaling facts, furnishing evidence, presenting arguments, and building up records...” in order to persuade the other side of the legitimacy or moral power of their position. Boundless in

⁹ Originating with English legal scholar John Austin, lawyers and academics argued over whether international law was “law” or merely an imperfect social standard among nations that lacked a sovereign authority to compel obedience. (See Maine, *International Law*; Wharton, *Commentaries on Law*; Woolsey, *Introduction to the Study of International Law*.)

optimism, he continued, “in countless cases nations are yielding to such arguments and shaping their conduct against their own apparent interests under discussion, in obedience to the rules which are shown to be applicable.” Just as societal gender norms relied on a continuous discourse for definition and the power of custom and conformity for enforcement, the world did not need a true sovereign or institution for law enforcement to maintain peace and proper behavior. Nations had each other, especially when they came together in international courts of arbitration, to impose a social standard that elevated the qualities of self-restraint, discipline, and reason – characteristics of true manhood as well as viable nationhood. The manly nation served and respected the interests of the community and its reputation within that community.¹⁰

Root argued that international penalties received from a court of arbitration or public opinion did not originate from a sovereign power yet did not differ substantially from those a state court would impose. The social condemnation received with a sanctioning from a court, local or international, served as the true motivating factor for obeying law. Criminal punishment did not compel obedience as much as the social stigma of a conviction that struck a blow to one’s manhood and worth within respectable society. According to the secretary, “[s]ocial esteem and standing, power and high place in the professions, in public office, in all associated enterprise, depend upon conformity to the standards of conduct in the community. Loss of these is the most terrible penalty society can inflict.”¹¹

¹⁰ Elihu Root, “The Sanction of International Law: Presidential Address at the Second Annual Meeting of the American Society of International Law, Washington, April 24, 1908,” in *Addresses on International Subjects*, 25-26.

¹¹ *Ibid.*, 27-28.

This sanctioning function of community formed the basis of Root's international law. It mirrored the manner in which social constructions of manhood and femininity gained legitimacy. Reputation, community approval, and social conditioning sealed national compliance.

There is no civilized country now which is not sensitive to this general opinion, none that is willing to subject itself to the discredit of standing brutally on its power to deny to other countries the benefit of recognized rules of right conduct. The deference shown to this international public opinion is in due proportion to a nation's greatness and advance in civilization. The nearest approach to defiance will be found among the most isolated and least civilized of countries, whose ignorance of the world prevents the effect of the world's opinion; and in every such country internal disorder, oppression, poverty, and wretchedness mark the penalties which warn mankind that the laws established by civilization for the guidance of national conduct cannot be ignored with impunity.¹²

As understood here, should a nation rebuke the will of the community and fail to live up to its manly obligations, it risked punishment through ill will, which, as articulated by the Secretary of State, represented a most severe punishment in and of itself.

Root further minimized the problem of international legal enforcement by emphasizing that only "the most isolated and least civilized of countries" would willingly risk being socially ostracized.¹³ But in the event of flagrant acts of illegality, the less civilized still faced retribution at the hands of individual nations that bore the badge of manliness and civilized status. Root had previously declared that in Latin America "we are bound to say that whenever the wrong cannot be otherwise redressed we ourselves will see that it is redressed." As a nation standing strong to protect the safety and well-being of the Latin America states, the secretary had reasoned that "the obligation of civilization to see

¹² Ibid., 30.

¹³ Ibid.

that right and justice are done by these republics” was an obligation the U.S. properly held.¹⁴ Just as respectable, self-disciplined men in the United States believed they had a duty to protect and advise less capable individuals, like women, children, and the lesser races, so, too, did the manly nation have an obligation to assist the less capable nations. Root’s gendered interpretation of law and transnational relations justified intervention within those nations perceived as backward or less civilized in order bring about necessary reform and instill or reinstate practices of national manhood deemed respectable within the community.

Civilized nations, according to the secretary, understood that they benefited from following accepted norms of conduct because they prized the protections associated with membership in the civilized community. Civilized nations, moreover, submitted to the community’s collective judgment any matters in dispute because taking up arms and disregarding public world opinion risked collective condemnation, the severest of punishments within national manhood. Arbitration and international legal cooperation, therefore, formed an essential component of Root’s conception of national manhood, as did abiding by the decisions of the courts of arbitration.¹⁵

The efficacy of international arbitration ultimately hinged on each member state’s ability to keep its own citizens informed of the rules of the game. In an article published in 1907 in the inaugural issue of the *American Journal of International Law*, the secretary highlighted the importance popular understanding and acceptance of the fundamentals of international law, at least the cardinal principal that each state make good on its obligations

¹⁴ Elihu Root, “The Monroe Doctrine: Address at the Ninety-Ninth Annual Banquet of the New England Society of New York, December 22, 1904,” 267-73, in *Miscellaneous Addresses*, 271-72.

¹⁵ *Ibid.*, 31-32.

to the international community.¹⁶ He argued that as national populations better grasp the significance of international obligations, the less they insisted upon unreasonable demands with respect to their own supposed rights.

In the great business of settling international controversies without war, whether it be by negotiation or arbitration, essential conditions are reasonableness and good temper... and it is very important that in every country the people whom negotiators represent and to whom the arbitrator must return, shall be able to consider the controversy and judge the action of the representatives in this instructed and reasonable way.¹⁷

Furthermore, properly educated populations would be less likely to take up arms for something to which they were not necessarily entitled under international law. “The more clearly and universally the people of a country realize the international obligations and duties of their country, the less likely they will be to resent the just demands of other countries that those obligations and duties be observed.” Root held the people of each nation accountable for their failure to meet their obligations as a civilized nation and blamed such a failure on their lack of understanding of their obligations. The secretary’s argument advanced the claim that disputes and war would not exist if only the people of each nation fully understood the principles of international law because the rules of conduct in international law were inherently fair and universally applied. Consequently, should the people of a nation disagree with the application or principles of international law thereby

¹⁶ The American Society of International Law formed on January 12, 1906, in New York City and elected Secretary Root its president. The Society also published the *American Journal of International Law*. (*Addresses on International Subjects*, ed. Robert Bacon and James Brown Scott, 3.)

¹⁷ Elihu Root, “The Need of Popular Understanding of International Law,” in *Addresses on International Subject*, 4.

causing a violation of law, such conduct justified, if not compelled, the civilized world to right the injustices being wrought.¹⁸

Root's instructions did not specifically apply to any region of the world, but, rather, served as general principles for sustaining political stability and social coherence.

Conservative notions of social hierarchy, elite, male political leadership, and abhorrence of popularly-based, revolutionary upheaval were implicit within the doctrine of legal positivism. "[T]he true basis of peace among men," Root prescribed, "is to be found in a just and considerate spirit among the people who rule our modern democracies...." According to the Secretary of State, the people should not take it upon themselves to demand certain rights, necessarily, but, rather, to educate themselves in line with the principled and rational positions of the ruling class.¹⁹

This message to the world articulated controlled national manhood through an obedient society. In fact, according to Root, the state itself did not compel law and order or ensure peace among the citizens. Similar to his argument regarding the international court of public opinion, the citizenry of a state exercised its own restraint and willingly obeyed the law for the common good. Root predictably defined the common good as the maintenance of a representative government that protected private property, free markets, and the sanctity of business contracts. People did not conduct business lawfully and ethically through fear of the government but through the exercise of self-control among the business community. "The true basis of business is not the sheriff with the writ of execution; it is the voluntary

¹⁸ Ibid., 5.

¹⁹ Ibid., 3-5.

observance of the rules and obligations of business life which are universally recognized as essential to business success.”²⁰

In application to Latin America, Root expected the citizenry to follow through with the obligations imposed upon their nations contractually, culturally, and politically from the civilized world, just as society expected the civilized man to conduct himself. Specifically, international law obligated Latin America states to pay their debts, and the civilized world, expected the people of each nation to educate themselves with respect to these obligations, to follow proper standards of conduct supporting the ruling elites as they managed those obligations, to exercise restraint and self-mastery should they personally believe those obligations too harsh or applied unequally, and to accept their place in the world.²¹ The gendering of nations as vigorous yet self-restrained males rendered the states of Latin America compliant to U.S. economic and geopolitical interests. Under the protective shield of stable, manly, governance, U.S. investments and credits, trade arrangements, and military bases remained secure.

In a series of lectures delivered at Yale University in 1907, Root further articulated the connection of manhood to government and established conservative self-restraint and social discipline as pre-requisites for admission to the community of civilized nations. Acclaimed by President Roosevelt, the secretary’s arguments gave legal credence to Washington’s claim to an international police power in the Caribbean.²²

²⁰ Ibid., 3-5.

²¹ Ibid., 5.

²² President Roosevelt regarded Root's lectures given at Yale very highly and commended Root for their “robust, healthy commons sense” that he felt was lacking in political debate of the time. (Theodore Roosevelt to Elihu Root, July 26, 1907, in *LTR*, vol. 5, 728-729)

For Elihu Root, government, in fact, served as the very embodiment of national manhood and an extension of the character and civilization of its people. In a proper modern government, the people submit control to this manly authority in order that the government may protect society from itself. The secretary stated that modern government, as found in the United States, no longer constituted repression from authoritarian elites, but, rather, functioned as “self-repression” and “organized self-control - organized capacity for the development of the race.” Government existed to control inner demons within men and within society and to resist the “cruel passions of man...” and “the lust for power and savage instinct for oppression struggling against manhood and self-respect for the maintenance or destruction of liberty....” He further argued that “the prosperity and honor and life of nations, and the future of civilization...” depended on the fulfillment of these ideals of national self-denial and self-control.²³

The United States’ relations with Colombia at the time of Panama’s independence illuminates the international ramifications of Root’s gender politics. On November 3, 1903, Panama declared its independence from Colombia. The United States recognized the new nation on November 13, 1903, and subsequently signed a treaty with Panama that allowed the U.S. to build an isthmian canal connecting the Atlantic Ocean to the Pacific. This dramatic series of events occurred after years of frustrating and fruitless negotiations with Colombia for a similar agreement to allow the U.S. to build a canal and in the immediate shadow of Roosevelt’s dispatch of a U.S. naval squadron to the Panamanian coast that prevented Bogota’s suppression of the Panamanian revolt. Just prior to assuming the

²³ Elihu Root, *The Citizen's Part in Government* (New York: Charles Scribner's Sons, 1907), 10-12.

position of Secretary of State, Root spoke publically in defense of the Roosevelt administration's actions.²⁴

According to Root, the regime in Bogota had been a considerable irritant to the U.S. in its conduct of negotiations regarding the rights to building the canal. The most serious transgression occurred earlier in 1903 when the Columbian Senate refused to ratify the Hay-Herran Treaty sanctioning a U.S. canal zone in Panama and demanded a renegotiation upward of U.S. financial payments for canal rights. As interpreted by Root, Colombia's inability to exercise mastery over itself and its desires and Colombia's failure to protect its own people and territory negated the need for the United States to respect Colombia's sovereign rights. In the face of supposed self-sacrifice of the United States to build an inter-ocean canal for the good of humanity, Root cited the unconscionable, selfish behavior of the government in Bogota.²⁵

He also challenged the worth of Colombia's sovereignty and the legitimacy or practicality of recognizing a sovereignty that depended on the protection of the United States. A much less nuanced attack on national manhood, the future Secretary of State criticized the physical strength of the nation, asking: "Should we continue to maintain upon the Isthmus that feeble sovereignty whose existence had depended for half a century upon our protection...?"²⁶ "Feeble," an unmistakably evocative choice of words, eliminated all impression of power, authority, or international respect. Root struck a true blow to Colombian national manhood by openly asking what could be the point in recognizing one's

²⁴ Elihu Root, "An Address Before the Union League Club of Chicago, February 22, 1904," in *Addresses on International Subjects*, 175-180.

²⁵ *Ibid.*, 186-87.

²⁶ *Ibid.*, 189.

authority over his own house when those living within that household refused to do so. Conceptions of manhood required mastery over one's self and one's domestic world before the outside world could recognize one's worth or respect.²⁷

As the secretary saw the state of conditions, Colombia's failures obligated the U.S. to build the canal with or without Bogota's consent.²⁸ In addition, Washington recognized in Colombia an exception to its abhorrence toward revolutions, an exception that came when the popular uprising served the interests of the United States, did not threaten private property, and did not sow the seeds for prolonged social disorder. Thus, in the face of perceived injustices and oppression done to the people of Panama by the government in Bogota, Root argued that the United States justly allowed the rebellion in Panama to continue to allow the true owners of the isthmus to take back control of the land from an abusive government, Root's general distaste for revolution and disturbances to the status quo notwithstanding. As such, the United States acted justly in recognizing the right of the people of Panama to organize their own government, and the acted with the firm authority of the owners of the land to develop the canal for the benefit of mankind.²⁹

In the context of international law, according to Root, specific legal principles existed to which the community of nations adhered, such as Colombia's sovereignty, but, in practice, these principles remained subject to negotiation and flexibility depending on the circumstances. To that end, Root declared that:

²⁷ Rosenbert, *Financial Missionaries to the World*, 33.

²⁸ Elihu Root, "An Address Before the Union League Club of Chicago, February 22, 1904," in *Addresses on International Subjects*, 190.

²⁹ *Ibid.*, 200-206.

The formal rules of international law are but declarations of what is just and right in the generality of cases. But where the application of such a general rule would... injuriously affect the general interests of mankind, it has always been the practice of the civilized nations to deny the application of the formal rule and compel conformity to the principles of justice upon which all rules depend.

Root then applied this caveat to the Colombian matter by stating that “the sovereignty of Colombia over the Isthmus of Panama was qualified and limited by the right of the civilized nations of the earth to have the canal constructed...” Thus, while Root recognized possibly the most significant right under international law, that being national sovereignty, he interpreted conditions through a culturally constructed prism of manhood. In doing so, Root blurred the right of sovereignty enabling the United States, in its own judgment and on behalf of the community, to take the right away. A law is a law, until someone says it is not a law. Who decided and why, therefore, became critical. According to Root, the community of civilized nations would decide and would do so in the best interests of this community. Speaking for the community in this instance, the United States proclaimed that the interests of civilization and the world’s desire to have a passageway linking the Atlantic Ocean with the Pacific limited Colombia’s sovereignty and control over the isthmus.³⁰

Elihu Root and other policy makers in Washington believed the United States filled the roles as a protector and patriarch, and served as a model for manly nationhood to be emulated by the Latin American republics. During a speech in 1907, he called attention to the United States’ “special relation towards” the Caribbean nations, particularly the Dominican Republic and Cuba. Caribbean nations like the Dominican Republic and Cuba sat in close proximity to routes to and from the Panama Canal Zone, so Root’s special interest was understandable. Notwithstanding the geography, he referred to these countries

³⁰ Ibid., 180-81.

in feminine form, “her” or “she,” when he brought up the need for U.S. supervision and assistance of these damsels in distress. In that regard, he specifically articulated the essence of the Roosevelt Corollary and U.S. intentions toward these nations:

- First. We do not want to take them for ourselves.
- Second. We do not want any foreign nations to take them for themselves.
- Third. We want to help them.

As Secretary of State, he intended to help these nations reach a point of capable of self-government, to manage their finances, and to end their internal violence and revolution while keeping them out of the hands of European rivals.³¹

The Dominican Republic, according to Root, should have been a nation of wealth and stability, considering the richness of its natural resources. Instead, he noted, the Dominican people chose revolution and war, plunging the nation further and further into debt. From Root’s point of view, the nation's politics had become “purely personal,” another gendered reference that, as Gail Bederman has pointed out, constituted a behavior associated with women. Conversely, men conducted themselves in an impersonal, detached, business-like manner.³² Therefore, not only did the nation act impermissibly similar to women in society, it did not have the self-control to manage its own financial house, allowing its obligations to extend far beyond its means. Having received a request for help, the U.S. felt obliged as a manly nation to assist its “neighbor” in developing and implementing good habits. Less than a decade later, beginning in 1916, the United States occupied the Dominican Republic militarily and placed its customs houses under U.S. financial

³¹ Elihu Root, “Address at the National Convention for the Extension of the Foreign Commerce of the United States, Washington, D.C.,” in *Latin America and the United States*, 274-75.

³² *Ibid.*, 275.

management. Other “neighbors” in the region – including Cuba, Haiti, Mexico, and Nicaragua – encountered similar manly assistance during the first third of the twentieth century.³³

A MATTER OF RACIAL EVOLUTION

Race, much like gender, influenced Secretary of State Root’s development of legal doctrine and foreign policy. Policy makers like Root often combined popular understandings of race with gender to further clarify the concept of “civilization.” Gail Bederman argued that Americans of the turn of the century were “obsessed with the connection between manhood and racial dominance,” arguing that “whiteness” meant male power. These connections found a transnational voice within international law.³⁴

Commonly understood in the United States as products of human evolution, race and civilization dominated Americans’ world view. Discourses on race, like discourses on gender, changed over time. In the late nineteenth and early twentieth century, social scientists and U.S. imperial statesmen had begun to equate racial differences to culture rather than biology – social Darwinism rather than biological Darwinism. Thus, people like Secretary Root and other administrators of empire believed that with Anglo-Saxon mentoring and the passage of time, inferior races could be improved.³⁵ As such, whites in America implied certain necessary traits to signify racial development and often used language that spoke to age and maturity, referring to nations they understood as non-white

³³ Ibid., 276.

³⁴ Bederman, *Manliness & Civilization*, 4-5.

³⁵ Kramer, *The Blood of Government*, 200-01.

as being child-like and in need of supervision by more politically mature nations, such as the United States.³⁶ In addition, white Americans commonly believed they represented the most advanced form of the human species and that they had an obligation to further advance civilization and the survival of the white race. Men like Roosevelt and Root projected outward through foreign policy this culture of white male supremacy. Alongside the cultures and ideology of manhood, the doctrine of whiteness embedded in Root's legal thought further legitimized U.S. hemispheric hegemony and facilitated military and financial intervention in Latin American states where national governments fell short of civilizational standards.³⁷

Though he presented international law as a mechanism that could bridge gaps in understanding among nations and to achieve peace among neighbors, international law represented an inherent contradiction of universal culture premised on a Euro-American white superiority versus unique local conditions. Yet these racial constructs were not necessarily rejected out of hand by Latin Americans. As discussed below, elites who closely associated with the United States and Europe often embraced this contradiction as part of their own national projects of "whitening" their population and their national culture for domestic and international political gain.

Popular belief within the United States regarded race as one of the causes of the chronic civil war and debt default of Latin American nations. The presence of supposedly inferior races in Latin America – where Spanish, Indian, Mestizo, and African populations each took a place within a color-conscious social hierarchy – prevented stable governments and peaceful political transitions because U.S. observers and commentators often assumed

³⁶ Rosenberg, *Financial Missionaries to the World*, 39.

³⁷ Bederman, *Manliness & Civilization*, 26.

that the presence of so many racial inferiors undermined social coherence and political and legal order. The most potent threat to U.S. interests in the region, according to conventional wisdom, arose from the perpetual danger of political and social revolution – carried out by the uneducated and racially suspect masses. Ironically, the very people though most susceptible to revolutionary outbursts, were also typically portrayed as lazy, without inclination toward work and industry. The U.S. media and U.S. officials typically assigned culpability for these shortcomings to the region’s tropical climate and the absence of a Protestant culture of work. An article published by The American Academy of Political and Social Sciences claimed that “the great mass of North America falls in a climate which encourages effort; while the great mass of South America falls in a climate which discourages it [effort].” Anglo-American observers of Latin America nonetheless held out a modicum of hope for the region’s improvement. The elite, white, Europeanized populations of South America, often a minority demographic, earned North American esteem for their attempts to establish governments and advance civilization in spite of the large population of inferior races of mixed bloods, natives and blacks.³⁸

During his guest lectures at Yale, Root spoke in these racial terms, spiced with constructs of gender and class, when he addressed international relations broadly and relations with Latin America specifically. Assuming that deficient manliness resulted in chaos and savagery, Root argued that “perpetual revolutions of underdeveloped Latin-America” occurred as a consequence of power wielded recklessly by the poor. For Root, mass politics and populism always fell susceptible to the tyranny of the mob, a tyranny that easily undermined the ameliorative effect of private property and free enterprise. Yet,

³⁸ Talcott Williams, “Ethnic Factors in South America,” in *Relations of the Latin-American Countries with Each Other* (Philadelphia: American Academy of Political and Social Science, 1903) 25-27.

through the example of disciplined and orderly U.S. governance, an example that Root rated superior to that of ancient Rome, the Latin American nations might gradually wean themselves of internal squabbles, class conflict, and civil war in favor of “a condition of peaceful industrialism.”³⁹ Noting the significance of age and maturity in politics, Root stated that popular government must be learned through experience with the development of sufficient national character. Youth required instruction in order to develop character and manhood. To that end, Root explained that “[a]t the base of all popular government lies individual self-control; and that requires both intelligence, so that the true relation of things may be perceived, and also moral qualities which make possible patience, kindly consideration for others, a willingness to do justice, a sense of honorable obligation, and capacity for loyalty to certain ideals.”⁴⁰

Expanding upon his concept of political maturity, Root stressed that “loyalty to an abstract conception is a matter of growth.” Since men, rather than women, possessed the ability to think and act in abstractions within the business and political world, this statement not too subtly further implied a requisite manhood for a civilized nation. However, the reference to national “growth” revealed Root’s assumption of racial distinctions among nations. As Gail Bederman and Emily S. Rosenberg have pointed out, a reference to age implied characteristics of race, in that the white, Anglo-Saxon had progressed to a mature, civilized point in societal evolution while other races, including those of Latin America, trailed behind. The lesser, or younger and less mature, races had not reached the peak of development attained by the white race. The secretary spoke in these terms when he

³⁹ Root, *The Citizen's Part in Government*, 13-14.

⁴⁰ *Ibid.*, 19.

declared that national wrongdoing, such as selfishness and lust for power signified “a low stage in the political development of every country that has a history....” Root called on each nation to turn away from these infantile and unmanly desires and to seek national growth and development, pledging loyalty not to one’s self but the common good of the nation and the civilized world. Only then could a nation follow the model of the United States and achieve successful popular government.⁴¹

Root lamented that certain racial groups would require a long duration of time (decades or perhaps centuries) and prolonged education before they arrived at maturity. In the foreseeable meantime, they posed a variety of threats to the broader international community. Plagued by internal disagreements, they continuously failed to exhibit a selfless loyalty to the state or other higher political purpose. In such cases, he counseled that population groups that did possess a capacity for higher, unselfish purpose would work together to overcome the internal disagreements within and among the races. Those more elevated peoples, he confidently predicted, would naturally “rule the world.” Under the guidance of its elite, European populations, Roots expressed confidence that many Latin American states had already begun to ascend the civilizational and racial ladder, passing beyond “the stage of militarism and . . . continual revolution into the stage of industrialism and stable government.” Still, he warned that a number of states, especially those located “on the borders of the Caribbean” – nations that typically included large Afro-Caribbean populations – faced a long, chaotic learning curve. These were, of course, the states in closest proximity to the strategic Panama Canal Zone.⁴²

⁴¹ Ibid., 19-20; Bederman, *Manliness & Civilization*, 26-30; Rosenberg, *Financial Missionaries to the World*, 39.

⁴² Root, *The Citizen's Part in Government*, 21-22.

The secretary believed that all nations must go through the slow, evolutionary process of national aging and maturing. A nation's age limited civilization because government gradually incorporated moral rules of men into its own laws, thus further civilizing the populace by institutionalizing "liberty, justice, order, peace, protection of the weak, public purity, public spirit..." into conduct among men. Therefore, a nation could do little to realize civilization except follow the model of those more advanced nations as best they could, creating levels, or grades, of civilization recognized within the community of nations. Certainly, those long-established civilized nations held a grander status than newly civilized nations or nearly civilized nations, thereby further institutionalizing the racial hierarchies implied by international law. "As a rule," Root noted, "political wisdom, in the best sense, comes in life and not in study..." and that "[i]t is the process of government that educates for government." Nations must experience for themselves the highs and lows of governing and wielding power before they can be ready for successful self-government. This line of thought reinforced the necessity of tutelage by a nation at a higher level of civilization.⁴³

Stereotypes of individual ability that influenced constructions of race within American culture made their way into Root's understanding of foreign relations and international law. During his 1906 tour of Brazil, the secretary paid his audience a back-handed compliment when he rhapsodized that while the United States stood ready to mentor Brazilians in the art of commerce, "you may give us the beauty of life."⁴⁴ The stereotyped contrast of an industrious North and charming South emerged again in a Kansas City

⁴³ Ibid., 26-27.

⁴⁴ Elihu Root, "Reply of Root" to Speech of His Excellency Senhor Doctor Jose Marcelino de Souza, Governor of Bahia," in *Latin America and the United States*, 51-52.

address. The “South American,” Root generalized, “is polite, refined, cultivated, fond of literature and of expression and of the graces and charms of life, while the North American is strenuous, intense, utilitarian. Where we accumulate, they spend.” He went on to state that the North Americans cannot sit satisfied for long with the current status of their life and their work, while the Latin Americans “have less of the inventive faculty which strives continually to increase the productive power of man and lower the cost of manufacture.”⁴⁵

In fact, these statements represented more than just racial stereotypes given credibility by the U.S. Secretary of State. His references to productive power and lowering the cost of manufacturing, implicitly reinforced those economic qualifications for civilization within international law, namely economic development and the establishment a consumer class similar to that in the United States. As historian Matthew Frye Jacobson argued, U.S. intellectuals at the turn of the twentieth century typically associated “civilization” and “racial development” with a nation’s full participation in material progress and modernization. Failure to fulfill this ideal resulted in a nation’s branding as backward, and it legitimized Washington’s policies of intervention for the purpose of ensuring proper economic conduct along the lines of civilized society.⁴⁶ According to Greg Grandin the “dynamism of American capitalism and a growing sense of racial superiority” had strengthened America's belief in its own exceptionalism and its obligation to bring civilization to the rest of the world.⁴⁷

⁴⁵ Elihu Root, “Address Before the Trans-Mississippi Commercial Congress, Kansas City, Missouri,” in *Latin America and the United States*, 250.

⁴⁶ Jacobson, *Barbarian Virtues*, 49.

⁴⁷ Grandin, *Empire's Workshop*, 17.

In addition to strategic and geo-political considerations, U.S. aspirations to build politically stable nations open to foreign trade and investment underpinned Theodore Roosevelt's Corollary to the Monroe Doctrine. Jacobson argued that the Corollary targeted non-whites of Latin America who Washington identified as lesser races not performing in accordance with the financial plans of the United States. Therefore, the legal principle of "civilization," as articulated by Root and the Roosevelt administration, ranked people according to economic stages, and those rankings worked to justify levels of U.S. military, diplomatic, and economic intervention in the region. As the United States showed in its handling of affairs in Colombia with respect to the proposed location of the Panama Canal, savages and the uncivilized would not stand in the way of economic progress.⁴⁸

In order for a nation to advance to civilized status and successfully achieve popular government, thereby achieving a higher standing within the world, Root stressed the work must come from the bottom up. A nation's advancement must incorporate participation and obligation amongst all the people rather than only the privileged class operating amidst "ignorance and prejudice of a multitude" who held "no interest in preserving what such civilization had gained, no capacity to appreciate its merits, and but little contribution to make toward its increase."⁴⁹ Accordingly, the ruling elite presumably had advanced to a point of noteworthy civilization, but the people within the nation required further development and growth.

The secretary purposefully identified this racial dichotomy, acknowledging that elites of Latin America considered themselves white as they developed policies in the early

⁴⁸ Jacobson, *Barbarian Virtues*, 48-51.

⁴⁹ Root, *The Citizen's Part in Government*, 23

part of the twentieth century to culturally and physically whiten their nations through immigration, politics, and national economic development. This ruling class accepted and adhered to the cultural constructions advocated by the U.S in order to move their respective nations into the upper tier of power and respect within the international community. Thus, Root not only legalized Washington's policies for intervention and hegemony, he offered his support to the white ruling class, which represented the best chance for quelling popular unrest while following the United States' model for national economic and political development.

LATIN AMERICAN RESPONSE AND POLICIES OF NATIONAL WHITENING

The growing industrial economies of the United States and Europe at the turn of the century hungered for increasing amounts of raw materials and relied to a great extent on Latin America to feed the demand. As a result, Latin America experienced an export boom that generated tax revenues previously unheard of in these countries. With this new source of wealth, the ruling elites no longer had to forge multi-racial coalitions to achieve and retain political power. They instead adopted economic and immigration policies to reconfigure national demographics, reshape political alliances, and further integrate local economies into the Euro-American world system.⁵⁰

Most Latin American elites identified themselves as white and of European heritage, and they subscribed to the ideal of white male supremacy projected by the U.S. These elites then directed this cultural construct inward to domestic politics to legitimize their authority as men most worthy of guiding their respective nation along the path of civilization. To continue down that path, elites pursued policies of racial and cultural enhancement.

⁵⁰ Andrews, *Afro-Latin America*, 117-18.

Immigration and economic development served as the key components of this plan.

Governing elites believed that the presence of large numbers of blacks, Indians, and people of mixed blood degraded society and the nation. Yet, consistent with plans for economic modernization, many Central American governments still supported companies like United Fruit, which imported West Indian labor along with European workers in order to divide workers along racial lines and inhibit union organization. The U.S. government developed a similar labor strategy in the Canal Zone when it encouraged both European immigrants and immigrants of color (mostly from the West Indies), and then institutionalized Jim Crow. Latin American governments hoped to dilute the negative effects of the inferior races with a greater influx of white Europeans. Certain nations had greater success in attracting European immigrants. Of the nearly eleven million Europeans who immigrated to the region between 1880 and 1930, ninety percent chose Argentina, Brazil, Cuba, or Uruguay.⁵¹

Thomas E. Skidmore has studied this process of “ethnic redemption” in Brazil. In that South American state, economic modernization was accompanied by the belated abolition of African slavery, guarantees of individual freedoms for former slaves, and the government’s encouragement of miscegenation in order to “whiten” the working class population. In addition, the Brazilian authorities secularized education, marriage, and other institutions, decentralized government, and embraced individual freedom and free labor. In this context, the federal government and Brazilian business leaders recruited and welcomed 3.5 million European immigrants between 1880 and 1930, drawn primarily from Italy, Portugal, Spain, and Germany. Brazilian abolitionists such as Joaquim Nabuco, a close

⁵¹ Ibid., 118-120, 136-37; Aline Helg, “Race in Argentina and Cuba, 1880-1930: Theory, Policies, and Popular Reaction,” in *The Idea of Race in Latin America, 1870-1940*. p. 37-69. ed. Richard Graham (Austin, TX: University of Texas Press, 1990), 38-43; Julie Greene, *The Canal Builders: Making America’s Empire at the Panama Canal* (New York: The Penguin Press, 2009).

friend and ally of Secretary Root, believed that miscegenation and exposure to European immigrants would eventually improve the national population by gradual and natural whitening. Contrarily, Nabuco strongly contested the immigration of Chinese workers and opposed the idea of replacing African blood with Chinese blood.⁵²

These policies of economic development and national whitening materialized in the Latin America alongside of and in response to Root's legalism. Government officials generally showered praise on the United States, on Root, and on the Monroe Doctrine.⁵³ Latin American leaders like José Marcelino de Souza, the governor of the state of Bahia in Brazil, publically offered their support for the policies and legal principles advocated by Root. Officials then turned inward to integrate those same legal principles and cultural constructions into domestic political structures and discourse.⁵⁴

Governor De Souza expressed his appreciation for Root's economic policies and advocacy for resolving disputes through the rule of law rather than power politics or war, and he urged European nations to follow suit. The peaceful resolution of disputes through law, he observed, "tightens the international economic and commercial relations of this planet. These are the aims of Pan Americanism." These remarks followed the trajectory the U.S. wanted Latin America to follow, but, from De Souza's point of view, an integrated

⁵² Andrews, *Afro-Latin America*, 136; Helg, "Race in Argentina and Cuba," 37; Thomas E. Skidmore, "Racial Ideas and Social Policy in Brazil, 1870-1904," in *The Idea of Race in Latin America, 1870-1940*, p. 7-36, ed. Richard Graham (Austin, TX: University of Texas Press, 1990), 7-9.

⁵³ A. M. Beaupre, "*Minister A. M. Beaupre to the Secretary of State*," October 24, 1905.

⁵⁴ A notable letter of support, though given in private, was that of Joaquim Nabuco when he served as Brazilian Ambassador to the United States in which he offered Root high praise for the Root's lectures, entitled *The Citizen's Part in Government* and discussed earlier in this paper. Of singular importance with respect to this discussion is Nabuco's professed support for those racial and gender constructions articulated within the address of Root and their applicability within economic policy and the liberal-developmentalism ideology. (Joaquim Nabuco to Elihu Root, May 12, 1907, in Box 52, Elihu Root Papers, Manuscript Division, Library of Congress, Washington, D.C.)

economic system benefited the regimes of Brazil because it furthered racial and cultural advancement through modern economic development. Directly addressing those domestic policies of whitening and ethnic redemption, De Souza remarked that he hoped the American nations would “grow up,” or develop, based on “systematizing and utilizing the resources of her economic force.” Furthermore, the governor connected civilization and progress to Christianity when he argued that efforts to resolve conflict through law honor the “Christian civilization of our continent.”⁵⁵

Echoing De Souza’s support for a regional economic system and modernizing development, José Battle y Ordonez, president of Uruguay, called for increased hemispheric unity. He expressed his own appreciation for the United States and its initiative to cultivate unity. The president called the United States the “most powerful and most advanced” among the American nations and the model for generating modern economic and industrial development and safeguarding justice and republican principles. Ordonez hoped the United States would continue to institutionalize its methods for creating regional prosperity and insuring peace and justice.⁵⁶

Similarly, Zorrilla De San Martin, also of Uruguay, talked about the social evolution of the Uruguayan people as they struggled for peace and prosperity, “advancing slowly but surely up the steep mountain at whose summit the ideal of self-government, freedom, and order, and the reign of internal justice and peace awaits them,” such was “the foundation and real guaranty of the reign of international justice and peace, to which we aspire.” San Martin agreed with Root's address in Rio de Janeiro on July 31, 1906, that all nations must follow

⁵⁵ José Marcelino de Souza, “Speech of His Excellency Senhor Doctor Jose Marcelino de Souza, Governor of Bahia,” in *Latin America and the United States*, 48-50.

⁵⁶ José Battle y Ordonez, “Address of His Excellency José Battle y Ordonez, President of Uruguay” in *Latin America and the United States*, 60-63.

the same natural law that grouped people into an orderly society. Yet, echoing Luis Drago's views on international law and debt repayment, he extended Root's pronouncement by stating that the address really meant equality before the law and upholding the right of weak nations in the face of the strong nations. San Martin recognized "a species of international American democracy" in which all persons were free to pursue a destiny of their own choosing and that to fully achieve the moral calling of this international democracy, all participants must rise to meet their obligations.⁵⁷

FULFILLING OBLIGATIONS

Meeting one's obligations was a foundational element of Elihu Root's inter-American legal structure. Determining who had obligations and to whom, and what those obligations were, served as the point of negotiation in the discourse. The concept of "civilization" addressed those questions from the American perspective as policy makers like Root deployed "civilization" as a universal determinant of a modern state worthy of legal and diplomatic recognition by the U.S. and European powers. Interpreting "civilization" through the prism of American cultural constructions of race, gender, class, and religion, Secretary Root placed squarely on the shoulders of all of Latin America the obligation to follow the model of political and economic development set by the United States and to pursue gradual social and racial advancement under the supervision of Washington. From the Latin American governments, Root expected fulfillment of all contractual and diplomatic agreements, while from the Latin American people, the secretary

⁵⁷ Zorrilla de San Martin, "Speech of Doctor Zorrilla de San Martin at the Breakfast by the Reception Committee, in the Atheneum at Montevideo," in *Latin America and the United States*, 66-68.

expected their acquiescence to the decisions of the ruling class. Couched in language of universally applied legal principles promising equality and peace, these obligations, in fact, served to justify foreign intervention should a nation fail to meet its obligations.

Engaging in transnational dialogue, officials in Latin America reconfigured the legal principles promoted by Root to fit their own interests and worldview. Domestically, regimes interpreted these principles to impose obligations on the citizenry to follow their leadership and submit to foreign guidance for modernizing development. Many Latin American states adopted export strategies to promote economic growth and replenish national treasuries. Latin American elites of European descent also embraced Root's civilizational formula that elevated "whiteness" over other racial complexions and perceived in European immigration a path toward national salvation. Internationally, as exemplified by Luis Drago and Zorrilla De San Martin, Latin American officials appropriated Root's legal positivism more selectively. They acknowledged that European and North American economic and political structures provided models for Latin America's future, but they inverted Root's notions of manliness, race, and nationhood to forge a legal doctrine that sanctified peaceful arbitration rather than one that legitimized U.S. military intervention.

The ensuing hemispheric dialogue underpinned a U.S.-led empire that proved to be more fluid than the hemispheric community that Root and other U.S. officials had imagined. By no means an even playing field, and without challenging U.S. hegemony head-on, the empire was nonetheless characterized by fluidity rather than rigid structures. It included social and political space for negotiation as well as the imposition of U.S. authority. Its shape was forged by multiple agents rather than a select power elite in Washington. Finally, cultural discourses of race, class, gender, religion, and national identity produced hybridized

imperial meanings. Ironically, the nuances often escaped Elihu Root's understanding, and the secretary presumed that international law and civilizational progress represented universal truths that traveled a one-way street – enlightenment and power flowed unilaterally from Washington D.C. southward.

CONCLUSION

In this thesis I argue that U.S. Secretary of State Elihu Root engaged in a transnational discourse in law with Latin American officials in which he articulated legal principles defined by American cultural constructions of class, race, gender, and religion. He did so to create political, social, and economic conditions favorable to U.S. interests throughout the hemisphere. Root, and, to a lesser extent, Latin American officials, gave these legal principles universal applicability by using them to grade the behavior of the Latin American people, and, thus, their levels of civilization. Repaying international debts, protecting private property and foreign investment, peacefully resolving disputes, and adhering to the authority of established regimes represented criteria for civilization within the secretary's international legal framework. Failing to meet such criteria in the eyes of Washington raised the warning flag that a nation or a race of people was uncivilized and inferior. Root and policy makers in Washington viewed those uncivilized nations as dangerous to the regional stability and peace necessary for the preservation of U.S. interests. In Root's mind, they stood out as candidates for U.S. political, economic, and military intervention. Consequently, Washington, through Root's public legalist diplomacy, codified

in international law American conceptions of racial superiority and the conditions under which U.S. unilateral intervention could take place.

This is a limited case study in the development of international law in the modern era of U.S. foreign relations, so the scope of the argument and evidence does not explicitly address the current state of international law or of U.S. foreign policy. Yet throughout the twentieth and twenty-first century, international legal and political institutions strongly supported by the United States and other industrialized Western nations advocated goals similar to those expressed by Root. Legal scholar and historian Francis Boyle investigated these parallel objectives and found important connections between historical eras. He argued that the work of Elihu Root in the early twentieth century supported the creation of the current world order formed in the aftermath of World War II by American legalists like Dean Acheson. Furthermore, Boyle argued “[t]here persists a remarkable degree of continuity and congruence between the world order model of these 1898-1922 legalist founders and the world order model of the 1945 legalist creators.” Boyle, in fact, claimed that the 1945 legalists carried out and/or continued plans laid by the early legalists in leading a new post-war international community.¹ Consequently, Boyle posited that “it is fair to say that throughout the twentieth century, the U.S. government has attempted to create a ‘regime’ of international law and organizations in the Western hemisphere that would consolidate, advance, and legitimate its hegemonial position in the region.”²

Understood in the context of Boyle’s more sweeping study, the arguments presented in this thesis with respect to the origins of Root’s legalist foreign policy beg the question of what degree Root’s culturally-bound legalism permeated foreign policy throughout the rest

¹ Boyle, *Foundations of World Order*, 3.

² *Ibid.*, 87.

of the twentieth century and what affect such an influence had on U.S. foreign relations and international law. As Root found out at The Hague in 1907, the cultural origins of foreign policy and transnational relationships are significant. They guide reactions and negotiations within the relationship. In fact, those origins determine the very nature and purpose of relationships and create a baseline understanding from which a foreign policy emerges. Despite his stated goal of a hemisphere unified through law and peace, Root could not escape the purpose of Westlake's international law or his own world view. Implementing foreign policy and attempting to build relationships based on a framework founded in racial and cultural hierarchies created for the purpose of colonial domination and racial superiority did not foster a feeling of mutual cooperation or trust nor did it build relationships based on equality. The policies of the United States, and the cultural constructions underpinning those policies, only worked to perpetuate systems, both internationally and domestically, of racial and ethnic inequality.

At the same time, Root consistently underestimated Latin American agency. The imperial imaginary that he helped to invent downplayed the limits to U.S. power – that is, cultural as well as military and diplomatic power. In an increasingly interconnected world, Root's ideas on economic development, race and gender, nationhood, and international law were bound to be appropriated, tweaked, and at times reshaped. Latin Americans, like other former colonial peoples, suffered grave disadvantages as they simultaneously sought to modernize and to resist – or at least negotiate – U.S. hegemony. But they were not utterly powerless. In the early twenty-first century, social democracies in Brazil, Uruguay, and Bolivia have in many ways become fully integrated into the global economic system. Yet they have also found innovative ways to assert their independence, to stray from the U.S.

free trade formula, and on a few occasions to defy the dictates of the International Monetary Fund. The game of cat and mouse that defines contemporary U.S.-Latin American relations is by no means a new one. It has historic “Roots.”

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VITA

Erik A. Moore earned his undergraduate degree in history at Truman State University in Kirksville, Missouri, in 2001. He then attended law school at the University of Missouri – Kansas City and earned his law degree in 2004. As a law student, Erik served as Literary Editor of the *UMKC Law Review* and participated in national moot court competition. After law school, Erik was admitted to the Missouri and Kansas bars. He worked for several small law firms in the Kansas City area, focusing his practice on real estate transactions, land use planning, and business law. He also tried numerous cases before courts in Missouri and Kansas.

Erik grew extremely dissatisfied with the practice of law and decided to return to his true passion, the study of history. He left his job at the firm and, with the encouragement and support of his wife and two sons, began graduate work at the University of Missouri – Kansas City in the winter semester of 2010 under the advisement of Dr. Dennis Merrill. While a graduate student at UMKC, Erik was awarded the “Carla Klausner Award for Best Graduate Student Presentation at UMKC Diastole Conference of Graduate Research in History and the Humanities, 2012” for his submission and presentation of “Legal Empire: Elihu Root’s Legalist Approach to Latin American Relations.” Erik also served as a

graduate teaching assistant in the department of history for the 2012-2013 academic year. Erik will graduate from UMKC in May 2013 with a Master of Arts degree. In the fall of 2013, he will begin his doctoral work in American history at the University of Oklahoma under the direction of Dr. Alan McPherson.