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## **Sovereign Default and Military Intervention**

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*Comments welcome!*

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**First Draft--Comments welcome, but please do not cite or quote without permission.**

## Sovereign Default and Military Intervention

Sovereign default poses basic questions for states about the nature of sovereignty, international property rights, and contractual obligations. In a domestic context, default by a borrower is arbitrated and remedies are enforced by a third party, usually the state and its courts. In the international context, no such third party exists. Market mechanisms certainly provide powerful incentives for states not to default since default significantly raises the costs of future borrowing. Even if states do default, market forces are usually strong enough that states and their creditors can agree to reschedule the debt in a mutually acceptable way.<sup>1</sup> But economic policies of borrower states are often driven by forces other than international capital markets. Domestic factors such as political instability leading to coups or revolutions, anti-capitalist ideology, corruption, and incompetence have all contributed to state insolvency at various times and have made agreement on rescheduling impossible. In such cases, what recourse do creditors have?

Until the early part of the twentieth century it was accepted practice for states to use military force to collect debts owed to their nationals by other states. Such interventions were most common in Latin America during the 19th century

But not very common in relation to the # of defaults

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<sup>1</sup> For more on sovereign lending practices prior to WWI see Herbert Feis, Europe: The World's Banker, 1870-1914 (New Haven: Yale University Press, 1930); Edwin Borchard and William Wynne, State Insolvency and Foreign Bondholders vols 1 and 2 (New Haven: Yale University Press, 1951.) Both contain extensive case material illustrating the range of accommodations states have come to with private creditors and the kinds of sovereignty ceded to maintain fiscal solvency short of military intervention.

when European direct investment was expanding in these weak and often politically unstable states.<sup>2</sup> Conventional IR perspectives should find such intervention unremarkable. In an anarchic environment where no higher authority enforces contracts states must be prepared to help their nationals protect their investments by whatever means are at their disposal. What conventional perspectives are not able to explain, however, is why this practice stopped in the early part of the twentieth century. There was no sudden technical change that made military collection less efficient or effective. Taking over customs houses and diverting revenue continued to be a simple and effective way of securing payment. No occupation of territory or pacification of local populations was required. Neither did these weak debtor states suddenly become militarily powerful and better able to resist intervention and certainly there was no sudden shortage of defaulting states at this period. In fact, the practice stops just as foreign direct investment in weak states is expanding.

What changed in this case was states' collectively held understandings of the relationship between sovereignty and contractual obligation as well as their understandings of the limits of legitimate uses of force. Intervening states had justified their actions on legal grounds. They were using military means to enforce

<sup>2</sup> Such actions did take place elsewhere, however. British intervention in Egypt in the 1870s was spurred in large part by debt issues arising from Egyptian non-payment to shareholders in the Canal company. Hershey and Drago also mention armed intervention on financial grounds in Portugal, Nicaragua, Morocco, and Turkey. A.S. Hershey, "The Calvo and Drago Doctrines," The American Journal of International Law vol. 1(1907), p.40 and L.M. Drago, "State Loans in the Relation to International Policy," AJIL vol.1 (1907) p.711.

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legally binding contracts. Absent any international authority to perform this function, they were entitled to use force to secure justice and many international legal authorities of the time concurred.<sup>3</sup> After 1902 Latin American states began fighting back on this same legal turf. Appealing to international law they argued that sovereign equality of states was the foundational principle of international law and, indeed, of international order. States could not legitimately use force against each other except in self defense. A legal interpretation that permitted strong states to intervene against weak ones for other reasons made a mockery of sovereignty and independence; it made weak states no better than colonies. Latin

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American states thus reframed the sovereign default issue in terms of legal principles of sovereignty rather than *pacta sunt servanda*. In doing so they were able to persuade the emerging community of international legal scholars of the rightness of their view and, through them, persuade creditor states to sign an international treaty at the Hague in 1907 barring the practice.

The analysis that follows investigates this persuasion process. Persuasion as I use the term here is more than transferring information, reducing uncertainty, or

cites  
<sup>3</sup> For an extensive review of the legal debate over this issue see John Fischer Williams, International Law and International Financial Obligations arising from Contract, vol. 4 in Biblioteca Visseriana Dissertationvm ivs internationale illustrativm (Leyden: Rijksuniversiteit, Faculteit der rechtsgeleerdhei, 1924) and Amos S. Hershey, "The Calvo and Drago Doctrines" American Journal of International Law 1(1907):26-45. The view that forcible collection was legal and justified was very much alive at the turn of the century. For examples see Crammond Kennedy, "The Drago Doctrine" North American Review get volume no.(July 19, 1907): 614-622; John Latané, "Forcible Collection of International Debts," The Atlantic Monthly (Oct. 1906): 542-550.

learning as these processes have been described in the discipline. All of those assume constant utility functions. New information and learning from past mistakes or examples of others may change strategies for getting what one wants.

Persuasion involves changing what one wants. This analysis asks how creditor states came to redefine their interests such that intervention to collect debts was viewed as an illegitimate use of force and threat to peace rather than legitimate action in the pursuit of justice.

This is a case where the arguments of the weak triumph over the arguments of the strong, where the weak are able to persuade the strong that protection of the weak is in their interests. The explanation I construct for this focuses on the role of international law and lawyers in both arbitrating competing normative claims among states and in institutionalizing those the new normative understandings by codifying them in treaties, hence law, or creating new international institutions based on the new understandings. My argument is not simply that shared notions of law caused this change in intervention behavior. It is also that the rising influence of international law and lawyers was, in itself, a systemic change that changed behavior. This period, the late 19th and early the 20th century, was the time at which international law began to become organized as a profession. The first professional organization for international law, the Institute for International Law, was founded in Ghent in 1873. The first US society, the American Society for International Law, was founded in 1906. Journals were established in conjunction with the societies and courses on the subject began

to be taught in law school curricula shortly thereafter.<sup>4</sup> At the same time, diplomatic corps in both Europe and the Americas, were increasingly staffed by people with legal training. Legal training had long been a common credential for those entering public service in the Americas but had been much less common in Europe. There, family and wealth were the chief qualifications for diplomatic posts throughout the 18th and 19th centuries. By the end of the 19th and early 20th century, this began to change and the professional norms of these new legally-trained denizens of foreign offices influenced the kinds of resolutions to interstate conflict that appeared persuasive and attractive to the people making foreign policy decisions.

This influence of professional norms, in this case legal norms, on state behavior is compatible with expectations of institutionalist organization theory in sociology. DiMaggio and Powell (1983) have argued that one important mechanism whereby norms influence organizational behavior in patterned ways is through socialization by the professions of people inhabiting those organizations. Professional training specifically aims to instill powerful norms and worldviews into the people it credentials. Organizations staffed and directed by members of a profession will behave according to its norms as a consequence. In this case, decisions of the foreign ministries of a large number of states were influenced by

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<sup>4</sup> Irwin Abrams, "The emergence of the international law societies" Review of Politics 19(1957):361-380; George Finch, "The American Society of International Law, 1906-1956" American Journal of International Law 50(1956):293-312.

legal norms about appropriate and effective methods of conflict resolution because the diplomats making decisions shared professional backgrounds in law.

The first section of the paper outlines the conventional theoretical wisdom regarding military intervention and advantages offered by my approach. The next section provides some background about state debt collection interventions in the 19th century and sketches the events of the Venezuela intervention by Germany, Great Britain, and Italy in 1902-1903 that prompted international debate on this issue. I then analyze the politics of the Hague Conference of 1907 that resulted in a treaty replacing forcible collection of contract debts with arbitration. The fourth section discusses the evolution of international law as a profession and the increasing "legalization" of diplomacy, and links these events to the Hague treaty. I then briefly discuss state practice after 1907 to with particular attention to US action in Haiti and Santo Domingo shortly following the Hague agreement in which the US was involved in settling those states' debts. The paper closes with a discussion of what the particular changes observed here might tell us about some of the more sweeping and consequential changes which followed later in the 20th century.

### **IR theory and military intervention**

The standard realist expectation is that military intervention will be used by powerful states against weaker states when intervention furthers the interests of the powerful state. For example, strong states have always intervened to install or protect friendly governments. The Holy Alliance intervened in weaker Italian and

German states in the 19th century to crush creeping liberalism and promote dynastic rule deemed compatible with those states interests much as the United States and the Soviet Union intervened in Third World states to ensure friendly governments there.<sup>5</sup> Similarly, states have consistently intervened to secure economic advantages and protect trade flows. Britain's Opium Wars against China in the 19th century and US action against Iraq in the 20th were both responses to weak state efforts to control trade in a commodity viewed as vital to a strong state, in Britain's case silver bullion and the US case, oil. States have always intervened to protect their interests, realists argue.

The realist view may be right as far as it goes, but it does not go very far. The argument that strong states will intervene in weak ones when it suits them leaves unanswered the crucial question: when will it suit them? The answer to this question depends on state interests. Given the centrality of interests to all extant theories in international relations, one might think that scholars would have a lot to say about what these are, where they come from, and how they change. In fact, they have not. Neorealism and neoliberalism both take interests as given. Interests are assumed, they are not investigated.

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<sup>5</sup> It is worth noting that there is a logical contradiction in explaining this common form of intervention for neorealists. The standard neorealist claim is that domestic politics do not matter much to the conduct of foreign policy. Constraints of the international system are such that states will act roughly the same way internationally no matter who is in power. If this is true, states should not care much what form of government their neighbors have. State behavior overwhelmingly suggests otherwise. States, themselves, clearly think domestic governing arrangements matter to the conduct of foreign policy, even if neorealists do not, and will use force to change or protect those governing arrangements.

The justification for assuming interests is two-fold. First, anarchy and the self-help system realists claim it creates applies equally to all states giving them uniform set of basic goals and interests. The fact that they live in an anarchic, self-help world means that all states will pursue security and wealth. Those two basic interests are sufficient specification with which to theorize, neorealists and neoliberals argue. Second, beyond these most basic shared goals, state interests are simply idiosyncratic. Additional interests stem from domestic conditions which are unique to each state. Such individualized utility functions cannot be treated in a systemic theory and are best left to area studies specialists.

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The contention in this paper is that many state interests beyond basic security and wealth are not idiosyncratic. They are shaped by international norms, international law, and shared international understandings of desirable behavior. This international social structure creates shared state interests. As international norms and social standards change, coordinated shifts in state behavior can be expected across the international system. These behavioral shifts will not be explained by realism since it assumes interests and treats them as material only.

Attention to changes in systemic norms, however, helps explain patterned change of the sort we see in practices of military intervention.<sup>6</sup>

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<sup>6</sup> Following standard sociological usage, I understand norms to be shared expectations about appropriate behavior held by a community of actors. Norms thus have both a regulative and a constitutive character. Norms can be rule-like, prescribing behavior for certain social actors, but these prescriptions often constitute new actors, identities, institutions or social values. For example, norms concerning humanitarian intervention set out rules of behavior about when states may intervene and how, but in doing so they also constitute new identities, making

Before proceeding with the analysis, I should say a few words about case selection and classification. This paper and the book of which it is a part are concerned with changes in why and how states intervene. However, all interventions are spurred by more than one motive. All are justified on multiple grounds. This makes analysis of why states intervene tricky. It makes it difficult to answer the standard social science question, "of what is this an instance" when reviewing different interventions and to know which interventions "count" as instances of debt collection.

I see no reason to be Procrustean and force every intervention into a single motive classification. One intervention could potentially be an instance of more than one motive. To understand how motives change, one must be alert to all of the various motives pushing states action. In the following analysis I classify cases according to two features of interventions: what states said they were intervening for and what they actually did on the ground. If states say they are intervening to collect debts and their militaries act to take over customs houses and divert revenues, then I classify that as intervention to collect debts. States may articulate additional goals and their militaries may pursue those as well, but the

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people "human" who previously were not, and endow those new actors with social value. Similarly, norms concerning debt collection set out rules about when states can intervene for this purpose but in doing so they constitute "sovereignty" in certain ways.

existence of additional goals does not make the existence of the particular motive and justification under study any less real.<sup>7</sup>

### State practice prior to 1907

Prior to 1907 it was accepted practice for states to use military force to collect debts owed to their nationals by other states. Forcible collection was by no means commonplace and states were cautious about the moral hazard problems created should investors believe that their loans would be guaranteed by government troops. British policy was clearest on this problem. Beginning in 1848, Palmerston issued a diplomatic circular announcing that decisions to intervene militarily in cases of default were, in Palmerston's words, "entirely a question of discretion and by no means a question of international right...."<sup>8</sup>

Governments did, however exercise this discretion and choose to intervene to protect citizen investments abroad. Such interventions were most common in Latin America during the 19th century when European direct investment was

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<sup>7</sup> Since default was often associated with large-scale political turmoil and a general instability of property rights, the other common aim of interventions in which collect debts was a goal was compensation for property seized or destroyed by the defaulting government or its nationals. Of course, too, states may not articulate important goals of intervention. Hidden agendas are common in these actions. My concern in this study is whether they follow through on the goals they do claim.

<sup>8</sup> "Circular addressed by Viscount Palmerston to Her Majesty's Representatives in Foreign States, respecting the Debts due by Foreign States to British Subjects," January 1848 [Printed as P.P. 1849 (1049), LVI]. Reprinted in D.C.M. Platt, Finance, Trade, and Politics in British Foreign Policy 1815-1914 (Oxford: Oxford University Press, 1968): 398-99.

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expanding in these weak and often politically unstable states. France landed troops at Vera Cruz in 1838 to recover debts owed to its nationals there by the Mexican government. On a larger scale, Britain, Spain, and France sent troops again to collect debts from Mexico in 1861-3. Eighty-five hundred French and Spanish troops and 700 British marines occupied Vera Cruz in January 1862 and marched into the interior. Subsequently it appeared that France had other motives for intervening as French troops stayed and installed Maximilian as Emperor for a brief and disastrous reign, but Britain and Spain quickly distanced themselves from this adventure. They appear to have intervened solely for debt collection.<sup>9</sup>

The practice continued into the 20th century, despite increasing US power and the Monroe Doctrine but in the first decade of the century the practice changed. The watershed event was the Anglo-German intervention in Venezuela. Beginning on December 9, 1902 Germany and Britain engaged in joint military action to force the Venezuelan government to pay the large debts it had incurred

<sup>9</sup> Jones, The Caribbean since 1900, 256-258; The Cambridge Modern History (New York: The MacMillan Company, 1909) vol.11 pp.476-477 and vol. 12, p.676. **vol 12 actually published 1910. How do I cite that?** Debt collection was also a major point of contention in US-Mexican disputes that led to war between those countries in the 1840s. European powers, led by Great Britain threatened Guatemala with military intervention for non-payment of debts in 1901 and would have intervened had Cabrera not capitulated to their demands. Warren G. Kneer, Great Britain and the Caribbean, 1901-1913 (doesn't give city--East Lansing?: Michigan State University Press, 1975), 1-7. For a much more detailed account of the collection problems of British bondholders in Latin America see D.C.M. Platt, "British Bondholders in Nineteenth Century Latin America--Injury and Remedy" Inter-American Economic Affairs 14(1960): 3-43.

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can't find of other examples

with British and German firms, much of it for railroad construction.<sup>10</sup> German and British ships blockaded the five principal Venezuelan ports and the mouth of the Orinoco River. They sank three Venezuelan gunboats and bombarded forts at Puerto Cabello before Venezuela agreed to an arbitration.<sup>11</sup>

At arbitration the Hague Court found, not only that Germany and Britain were justified in intervening but also that, because of their willingness to use force to secure justice, they had a right to payment ahead of the powers who had been content with a peaceful solution.<sup>12</sup> The decision clearly provided justification and

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<sup>10</sup> Dana G. Munro, Intervention and Dollar Diplomacy in the Caribbean, 1900-1921 (Princeton: Princeton University Press, 1964), 67-69. The precise amount of legitimate debt outstanding was one of the quarrels among the parties. Munro puts the amount as \$12.5million in principal and unpaid interest owed to German bondholder and £2,638,200 owed to British bondholders. Italy, whose nationals also claimed to be owed substantial sums, subsequently asked to join in the action. Britain and Germany consented, but Italian participation was slight. Chester Lloyd Jones, The Caribbean Since 1900 (New York: Prentice Hall, 1936, p.225; Samuel Flagg Bemis, The Latin American Policy of the United States (New York: Harcourt, Brace and Company, 1943) p.146; Hill, Roosevelt and the Caribbean, 116.

<sup>11</sup> For more detail on the diplomacy and execution of this intervention see A. Maurice Low, "Venezuela and the Powers" American Monthly Review of Reviews 27(1903):39-43; Dexter Perkins, The Monroe Doctrine 1867-1907, (Baltimore: Johns Hopkins Press, 1937), 319-395; Kneer, Great Britain and the Caribbean, 7-67; Jones, The Caribbean since 1900 pp.218-262; Howard C. Hill, Roosevelt and the Caribbean (New York: Russell and Russell, 1965), 106-147; A.P. Higgins, The Hague Peace Conferences (Cambridge: Cambridge University Press, 1909) p.185; Bemis, Latin American Policy of the United States p.146; Munro, Intervention and Dollar Diplomacy p.70.

<sup>12</sup> United States Senate, Treaties, Conventions, International Acts, Protocols and Agreements between the United States of American and other Powers, 1776-1909, vol. II, comp. William M. Mallory. Senate Doc. no. 357, 61st Congress, 2d session (Washington, DC: Government Printing Office, 1910) pp.1878-1881. Other countries having lodged claims against Venezuela included the United States, Belgium, France, Mexico, the Netherlands, Spain, Sweden, and Norway. Howard C.

diplomatic cover for further intervention at a time when foreign direct investment in weak and unstable states was expanding and force had been proven effective for recovery of debts. In the words of one State Department official at the time, the decisions put "a premium on violence" and tended "to discourage nations which are disposed to settle their claims by peaceful methods of diplomacy." Blockades, in particular, which controlled collection of customs duties and diverted those funds to creditors were relatively easy to implement and produced the required revenue.<sup>13</sup>

#### **Opposition to intervention: the Drago doctrine.**

Initially, the US position on the intervention in Venezuela and forcible debt collection in general was one of tolerance. When Germany sought US opinion on the intervention prior to undertaking it, Secretary of State John Hay replied quoting Roosevelt, "We do not guarantee any state against punishment if it misconducts itself, provided that punishment does not take the form of the

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Hill, Roosevelt and the Caribbean (New York: Russell and Russell, 1965), 109-110.

<sup>13</sup> Quoted in The Literary Digest 28(March 5, 1904) 318. The incentives created by the Hague decision had clear impact on both US and European policy calculations in their attempts to deal with the Dominican government which was encountering serious financial and political difficulties during 1904 and 1905. The US decision to implement a customs receivership in the country (by agreement with the most recent Dominican President, not by military intervention) was a direct result of the Hague finding and its encouragement to European intervention threats. Bemis, Latin American Policy, 151, 154-7. Munro, Intervention and Dollar Diplomacy, 93, 102; Jones, The Caribbean Since 1900 pp.233-4, 249-254.

acquisition of territory by any non-American power."<sup>14</sup> Even after the initial military action and the unfavorable public reaction it evoked Roosevelt, while irritated with the conflict, still felt "bound that we should not be put in the position of preventing the collection of an honest debt."<sup>15</sup> Roosevelt, in particular, had a strong sense that "civilized" states needed to police and discipline others.<sup>16</sup>

Latin American states were not so sanguine. The most consequential critic was Argentina's minister of foreign affairs, Luis Drago, who, in a memorandum to the Argentine ambassador in Washington, outlined a legal argument that reinterpreted existing sovereignty norms and argued that collection of debts incurred by a sovereign states did not constitute a legitimate cause for use of force.

Previously, this kind of intervention had been understood as a states' sovereign right: a state had the right to espouse and protect claims of its nationals against other states. Whether or not a state chose to do so was a matter of policy and

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<sup>14</sup> Jones, The Caribbean since 1900 p.221; Bemis, Latin American Policy p.147. Hill provides extensive quotations from this exchange between the Germans and Hay in Roosevelt and the Caribbean, 111-113.

<sup>15</sup> Letter to G.W. Hinman, Dec. 29, 1902 as quoted in Munro, Intervention and Dollar Diplomacy p.71. Perkins comments on the American unwillingness to apply the Monroe Doctrine to this kind of European intervention in The Monroe Doctrine, 353.

<sup>16</sup> See Roosevelt's annual message to Congress, Dec. 6, 1904, quoted in Hill, Roosevelt and the Caribbean, 149; also Munro, Intervention and Dollar Diplomacy, 76. Many of these defaults were not entirely or even mostly the Latin American states' fault. European financiers often exploited these states' weakness with fraudulent lending schemes. See D.C.M. Platt, British Bondholders in Nineteenth Century Latin America--Injury and Remedy Inter-American Economic Affairs 14(winter 1960):3-42, esp. 10-17.

prudence only, not of law or right.<sup>17</sup> Drago argued that this understanding eroded the notion of sovereign equality among states which underlay all of modern international law. States may not use force against other states except in self-defense.<sup>18</sup> Such uses of force put the weak at the mercy of the strong and made states like those in Latin America no better than colonies; it rendered their independence and sovereignty meaningless. In response to Roosevelt's statement that the US would not protect states in the Americas from the consequences of "misconduct," Drago argued that causes of insolvency such as failure of crops and acts of nature hardly qualified as misconduct. When rights of bondholders were weighed against sovereign rights of states, Drago argued, there was no question which should win.<sup>19</sup>

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<sup>17</sup> Britain had reiterated this as her policy as recently as 1902. footnote Palmerston's circular

<sup>18</sup> For an examination of the way in which self-defense has eclipsed other forms of justification for the use of force see Elizabeth Malory Cousens, "Self-Defence as a justification for the use of force between states, 1945-1989" PhD diss., Oxford University, 1995.

<sup>19</sup> L.M. Drago, "State Loans." Drago also made a strong case that forcible collection of debts was simply unnecessary. States understand that they need to pay debts to maintain their good standing in credit markets, but sovereignty gives them the right to chose the time and conditions of repayment. Further, Drago argued that private parties making loans to states considered the risk of lending to sovereign entities in determining interest rates and conditions of loans; states had no cause to rescue nationals who invested in risky (but potentially lucrative) foreign ventures. It should be noted that the causes of Venezuela's financial woes had little to do with crop failures or acts of nature and much to do with acts Roosevelt would likely have classified as "misconduct." For the Spanish text of Drago's memorandum see Luis M. Drago, Cobro Coercitivo de Deudas Pu(blic)licas (1906) get complete cite. For an English translation see the American Society of International Law vol. 1 (1907), supplement, pp.1-6. Isn't it also in Foreign Relations?

Drago's memorandum was widely circulated and received strong support among weak states and in American and European legal circles. Secretary of State Hay's response to Drago's memorandum, however, was non-committal and simply stated a US policy favoring arbitration in these cases. Hay expressed no great concern over European behavior and no intention of interfering with their debt collection policies.<sup>20</sup>

### **Elihu Root and changes in US policy**

US policy on intervention to collect debts changed when Elihu Root took over from John Hay as Secretary of State in July 1905. Root, unlike Hay, made good relations with Latin America a foreign policy priority. John Hay, former ambassador to Great Britain, had not been much interested in Latin American matters.<sup>21</sup> His lack of interest combined with a long illness meant that during most of Roosevelt's first term the President, himself, had directed U.S. policy toward Latin America and the Caribbean, often taking actions that angered the

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<sup>20</sup> Senate Document No. 119, (58th Congress, third session) VII, 401-405. See also discussion in Hill, Roosevelt and the Caribbean, pp.140-141 and Jones, The Caribbean since 1900 p. 256.

<sup>21</sup> Hay did not have much else in the way of diplomatic credentials. He had begun his career as Abraham Lincoln's private secretary and then spent the next thirty-odd years as a gentleman of letters and sometime poet before accepting the post in London. This bears on the discussion, below, concerning the changing professional background of diplomats. For more on the life of John Hay see cite **Dennett and Thayer**. For an account of Hay's tenure as Secretary of State see cite **Graham Stuart**.

Latin Americans.<sup>22</sup> Root, on the other hand, had been the architect of Cuban independence as Secretary of War for first McKinley, then Roosevelt during his first term and was aware of the strains some of TR's actions had placed on relations in the hemisphere. He was less prone than Roosevelt to confrontation and perceived great benefits in improving relations in the hemisphere. More than either Hay or Roosevelt, Root was attuned to the economic implications of foreign policy and saw the benefits to be reaped from fast-growing investment in the region.<sup>23</sup> Further, he believed that good relations in this region were essential for the success of the Canal then being planned.<sup>24</sup> Early in his tenure as Secretary of

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<sup>22</sup> Roosevelt's methods of securing concessions for the Canal in the newly-independent Panama would have been a particular cause for suspicion and distrust.

<sup>23</sup> See, for example, addresses given by Root before the Trans-mississippi Commercial Congress, Nov. 20, 1906, on "How to Develop South American Commerce, and at the national Convention for the Extension of the Foreign Commerce of the United States on "South American Commerce", January 14, 1917. Reprinted in Elihu Root, Latin American and the United States: Addresses by Elihu Root ed. Robert Bacon and James Brown Scott (Cambridge: Harvard University Press, 1917), 245-282. Root's extensive experience as a lawyer representing large US businesses with dealings in the region undoubtedly contributed to this awareness. Edwin Muth, "Elihu Root: his role and concepts pertaining the United States policies of intervention," Ph.D. diss., Georgetown University, 1966, 57-8.

<sup>24</sup> Roosevelt, who was not prone to minimize his own role, was emphatic about Root's accomplishments in Latin American policy. "During the past three years the bulk of the most important work we have done has been in connection with the South and Central American States. We have done more as regards these States than ever before in the history of the State Department. This work has been entirely Root's." See letter, Roosevelt to Andrew Carnegie, Feb 26, 1909, quoted in Munro, Intervention and Dollar Diplomacy pp.112-113. For more on Root's attitude toward Latin America see, Jessup, Elihu Root get cite and pages; Munro, Intervention and Dollar Diplomacy pp.112-116; Edwin Muth, "Elihu Root: his role and concepts pertaining the United States policies of intervention," Ph.D.

State, and as part of the planning for the Hague conference, Root took an extended trip through Latin America, the first US Secretary of State to make such a trip, with the express purpose of cementing good relations with those states. The cornerstone of the trip was attendance at the Third Pan-American conference at which the debts issues was discussed.<sup>25</sup>

Like John Hay, however, and like a growing number of Americans at the time, Root was deeply committed to arbitration and an expanded role for international law as means of avoiding or resolving international conflicts. A lawyer by training, he had become an eminent member of his profession and became the first President of the American Society of International Law when it was founded in 1906. He had been an active participant in the series of conferences at Lake Mohonk dealing with means to expand the scope of international arbitration and had spoken out repeatedly in favor of expanding the scope of arbitration to resolve international disputes.<sup>26</sup>

diss., Georgetown University, 1966, esp. 42.

<sup>25</sup> The trip was entirely Root's own initiative; Roosevelt was surprised when he heard about it. Jessup, Elihu Root *which volume?* pp.474-75. Root gave extended addresses in every South American city he visited dealing with a wide range of policy issues. These are collected in Elihu Root, Latin America and the United States: Addresses by Elihu Root edited by Robert Bacon and James Brown Scott (Cambridge: Harvard University Press, 1917). For more on Root's Latin American policy see Graham H. Stuart, Latin America and the United States 2nd ed. (New York: The Century Company, 1928), esp chapter on "The New Pan-Americanism"

<sup>26</sup> Root spoke extensively about this in his speech to the National Arbitration and Peace Congress in New York, April 15, 1907. His remarks are reprinted in Elihu Root, Addresses on International Subjects, collected and edited by Robert Bacon and James Brown Scott (Freeport, NY: Books for Libraries Press,

Root's interest in both improving Latin American relations and in expanding the role of arbitration shaped his policy on forcible debt collection. He decided to make cessation of forcible debt collection a priority at the next Hague Peace conference, to be held in 1907. The goal was conclusion of a treaty in which states would agree to compulsory arbitration of debt claims rather than using force to collect. Such a treaty would strengthen his program of Pan American friendship, protect the interests of poorer states from speculators making rash loans on the expectation of forcible collection, and prevent awkward incursions of European powers into the hemisphere relieve pressures to enforce the Monroe doctrine presented by these debt collection episodes.<sup>27</sup>

Note that Root was by no means rejecting the "interest" states had in collecting debts owed to their nationals. Rather, he was attacking military

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1916/1969), pp.129-144.

Roosevelt, himself, had very mixed feelings about arbitration and had to be persuaded by his secretaries of state, first Hay, then Root, to support arbitration of the Venezualan dispute (Hay) and subsequently the arbitration of debts at the Hague (Root.) In the 1896 campaign Roosevelt was very critical of arbitration and the "peace-at-any-price men" who advocated it. See, Theodore Roosevelt, "The issues of 1896: A republican view" Century Illustrated Monthly Magazine 51(189):68-72.

For more on the legal character of the peace movement of the period see C. Roland Marchand, The American Peace Movement and Social Reform, 1898-1918 (Princeton: Princeton University Press, 1972) esp. ch.2.

<sup>27</sup>Philip C. Jessup, Elihu Root, vol. 2 (New York: Dodd, Mead, 1938), 73; Minutes of Meeting of the American Commission to the Second Hague Conference, held April 20, 1907; Address to the National Arbitration and Peace Congress, New York, 15 April 1907, reprinted in Root, Addresses on International Subjects 129-144, esp.139-140.

intervention as a legitimate means of pursuing that end. To do this successfully Root needed an alternative means of collecting and that means was arbitration. To conclude a treaty he needed to persuade European creditor states to stop taking the law into their own hands (self-help) by intervening and he needed to persuade debtor states to agree to compulsory arbitration.

The first step in this task was to get the Latin American states invited to the Conference. They had been excluded from the first Hague Conference in 1899, not so much by conscious design as because it had not occurred to the conference sponsors to invite them. At Root's request, the Russians sponsoring the conference issued the necessary invitations. Root's intercession to ensure Latin American participation was more than just a formality since several of the European Powers were suspicious of cluttering up the conference with large numbers of inconsequential states. Norms of state equality in international forums were not well entrenched at the turn of the century and the notion of one-state-one-vote seemed ridiculous to many given the power asymmetries involved.<sup>28</sup>

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<sup>28</sup> Concerning Root's efforts to get the Latin American states invited, see the correspondence between Baron Rosen, the Russian ambassador to the United States, and Root excerpted in James Brown Scott, The Hague Peace Conferences of 1899 and 1907, volume I: The Conferences (Baltimore: Johns Hopkins University Press, 1909), 98-100. When asked why these states were not invited to the first conference the Russian sponsors of the conference said they had simply invited states who had diplomatic representatives in Moscow. But the larger point here is that no one missed them or thought that small-state representation was important at an international conference--a notion that is hard to imagine in contemporary politics. Scott, The Hague Peace Conference, 47. Scott, who was a technical delegate to the conference, notes in his papers that "The nations of Europe looked forward to the presence of Latin America with foreboding." untitled manuscript, Scott papers, Box 44, folder 9. See also the extended discussion in Frederick

Securing invitations for the Latin Americans to the Conference was, in itself, a positive step for US-Latin American relations. But there were important tactical advantages in the Hague venue from Root's perspective for securing a meaningful agreement on the debts issue. Creditor states in Europe were not enthusiastic about Drago's arguments and Root knew he had to work carefully so as not to solidify opposition.<sup>29</sup> At the third Pan-American Conference in Rio in 1906 Root's delegates were instructed to prevent participants from voting on a resolution calling for the end to forcible debt collection, which would look like an attempt by debtors to dictate creditor state policies, in favor of a resolution that would refer the matter for discussion to the Hague Conference the following year when both debtor and creditor states would be represented.<sup>30</sup>

Having decided on a venue, Root needed a proposal to which both debtor and creditor states could agree. The Drago doctrine, as it had come to be called,

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Charles Hicks, "The Equality of States and the Hague Conferences" American Journal of International Law 2(1908):530-561 and William I. Hull, The Two Hague Conferences and the Contribution to International Law (Boston: Ginn and Company, 1908), 10-15.

<sup>29</sup> Root had also headed off attempts at the Pan American conference to pass a resolution against forcible debt collection. Root thought such a resolution would look like an attempt by debtors to direct the policy of creditor states and so would provoke antagonism and opposition. It was Root's idea that the Pan-American conference should refer the matter to the Hague for joint discussions by both debtors and creditors, together, as the best means of securing a meaningful agreement.

<sup>30</sup> Davis, United States and the Second Hague Peace Conference, 134; Scott, The Hague Conferences, 397-399; David Hill, "The Second Peace Conference at the Hague" American Journal of International Law 1(1907):671-691, esp 686.

was "universally repudiated" in Europe.<sup>31</sup> Only eight months before the conference the British Foreign Secretary, Sir Edward Grey, had told the Americans that he "did not see how we could bind ourselves not to use force to prevent injustice" in many of these contractual debt situations. He went on: "such a large amount of British money had been invested in countries of doubtful honour, under the impression that the British Government would prevent swindling, that I should have to consider this question very carefully."<sup>32</sup> The fact that the British government had gone out of its way to promote foreign investment as part of its larger imperial policies further complicated the its ability to agree to renounce force. The Germans, similarly, were opposed to the doctrine. They believed doctrine was not at all in their interests since it would deprive Germany of all effective means to enforce contractual claims against other debtor states and tried to keep it off the Conference program.<sup>33</sup>

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<sup>31</sup> Minutes of the Meeting of the American Delegation, June 19, 1907, James Brown Scott papers, Georgetown University, Box 44, folder 4, pp. 4-5.

<sup>32</sup> Grey to Durand, November 6, 1906, in British Documents on the Origins of the War, 1898-1914, vol VIII, Arbitration, Neutrality and Security ed. G.P. (George Peabody) Gooch and Harold Temperley, (London: His Majesty's Stationary Office, 1932), 197-198. Grey still had come to no decision on the matter in a conversation with Frederic Martens, the Russian delegate, in February 1907. British Documents, vol VIII p. 209.

<sup>33</sup> Tschirschky (State Secretary at the Foreign Ministry) to Metternich (German Ambassador in London), 4 February 1907 in Die Grosse Politik der Europäischen Kabinette 1871-1914, ed. Johannes Lepsius, Albrecht Mendelssohn Bartholdy, Friedrich Thimme, (Berlin: Deutsche Verlagsgesellschaft für Politik und Geschichte, 1927) vol. 23, part 1, no.7839, page 113. Karl von Wedel (German Ambassador to Vienna) to Foreign Ministry, 26 January 1906, Gross Politik v.23, pt.1, no.7834, p.108.

Drago's proposal that creditors simply renounce forcible debt collection without some other recourse for collecting was unlikely to gain support in Europe.

Root's plan was to offer compulsory arbitration as that alternative. Arbitration

was already central to the Hague conference discussions. One of the few accomplishments of the first Hague Conference in 1899 was the establishment of a Permanent Court of Arbitration and a central item on the agenda for the second conference was expansion and strengthening of those arbitration provisions.<sup>34</sup>

During the planning of the conference program, however, Root did not immediately move to put the debt collection issue on the program. Instead he accepted the Russian invitation to the conference with the stipulation that he reserved the right to bring up the matter during the conference.<sup>35</sup> This had two important tactical advantages. First, it allowed the American delegates to separate the debt collection measure from the fate of the general arbitration treaty (one of

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<sup>34</sup> Arbitration debates consumed much of the energy spent at both Hague Peace conferences. For excellent accounts of the political jockeying and debate over arbitration see Margaret Robinson, "Arbitration and the Hague Conferences 1899 and 1907" University of Pennsylvania PhD dissertation, 1936; Joseph Hodges Choate, The Two Hague Conferences (Princeton: Princeton University Press, 1913); James Brown Scott, The Hague Peace Conferences of 1899 and 1907, volume I: Conferences, (Baltimore: Johns Hopkins Press, 1909), chs. 5-7; and Calvin DeArmond Davis, The United States and the First Hague Conference. Choate, a long-time champion of arbitration, was the head US delegate to the second conference and was its representative on the Commission there dealing with arbitration.

<sup>35</sup> Calvin DeArmond Davis, The United States and the Second Hague Peace Conference (Durham, NC: Duke University Press, 1975), 137-138 and other cites?

the major agenda items) if the latter ran into trouble. Root and most other participants were pessimistic about its chances. Many states had voiced reservations about a general arbitration treaty, most notably Germany which had led the opposition to a strong arbitration agreement at the 1899 conference. Hitching the debt collection proposal to the general arbitration treaty looked like certain death for the initiative. Their hope was that, while a agreement on a general arbitration treaty would be difficult, it might be possible to secure agreement for compulsory arbitration in particular classes of cases such as debt collection.<sup>36</sup>

The other potential advantage was audience selection. Root explicitly decided not to put the issue on the program because he feared that doing so would force European governments to take positions and instruct their delegates in advance about how to vote on the matter. This would almost certainly result in creditor states lining up against debtor states and the failure of the initiative. Root's strategy was to rely on face-to-face persuasion of delegates at the conference who, he hoped, would not have received firm instructions to oppose the proposal (since it was not on the agenda) and so would be open to such persuasion.<sup>37</sup>

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<sup>36</sup> Minutes of the Meeting of the American Commission at the Hague, June 14, 1907, Scott papers, Box 44, folder 4, pp.6-7. See correspondence, Root to Baron Rose, Russian ambassador to Washington, date June 7, 1906, reprinted in Scott, The Hague Conferences, 103-104. For more on opposition to arbitration at both Hague conferences see Robinson, Arbitration at the Hague Conference, 45-105.

<sup>37</sup> Root discussed this strategy with the US delegates explicitly. See Minutes of Meeting of the American Commission to the Second Hague Conference, held April 20, 1907. Choate Papers, Library of Congress. Joseph Hodges Choate was head of

The strategy paid off. The instructions to British delegates said nothing about the Drago doctrine or debt collection and the German government which strongly opposed the general arbitration treaty proposal, explicitly left her delegates to decide the debt collection issue.<sup>38</sup> When the US delegation introduced the measure, both the British and German delegates supported it without reservation as did all the larger creditor states of Europe (Great Britain, Germany, France, Austria-Hungary.) Russia would have preferred the agreement to apply only to future indebtedness but voted in favor anyway. Sweden was unhappy with minor aspects of the wording and succeeded in having it changed. Belgium and Roumania objected to the fact that there were no exceptions to the compulsory arbitration provision. Switzerland argued that the provision was unnecessary because foreigners could sue Switzerland in Swiss courts in the same way as citizens and because it objected to having the decisions of its courts subject to international arbitration. (Since no one was much worried about collecting debts

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the American Delegation.

<sup>38</sup> Sir Edward Grey to Sir Edward Fry, "Instructions to British Plenipotentiaries" June 12, 1907 in G.P. Gooch and Harold Temperley, eds., British Documents on the Origins of the War, 1898-1914, vol VIII (London: His Majesty's Stationery Office, 1932), 242-250; Chancellor Buelow to Delegates of the Second Hague Peace Conference, 19 June 1907, Grosse Politik v.23, pt.1, no.7958, pp.259-260; Margaret Robinson, Arbitration and the Hague Peace Conferences PhD dissertation, University of Pennsylvania, 1936, p.37.

in Switzerland, no one seems to have paid much attention to these concerns.) All of these abstained from voting. No state opposed the measure.<sup>39</sup>

The strongest objections to the proposal came, in fact, from Latin American states, specifically, from Dr. Drago, himself. Drago, who represented Argentina at the conference, argued that the proposal the Americans had framed did not go far enough because it made arbitration compulsory for debtors even before local remedies were exhausted and without any finding of denial of justice in the debtor state. Drago and others from Latin delegations also voiced concerns that the proposal implicitly allowed the use of force should arbitration fail. In the end, a number of states, attached reservations to their support of the measure but none opposed it.<sup>40</sup>

That the Latin American states should ultimately have agreed to Root's proposal is not surprising. They got the pledge against military intervention they

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<sup>39</sup> The result was a vote of 37 in favor, none against and six abstentions (Belgium, Greece, Luxembourg, Roumania, Sweden, Switzerland.) See Scott, The Hague Conferences, 400-422.

<sup>40</sup> Five states abstained on the measure for different reasons--Belgium, Roumania, Sweden, Switzerland, and Venezuela. There was also disagreement among the Latin delegations about desired definition of "contract debts:" the Chileans wanted to the proposal for compulsory arbitration to apply to all kinds of pecuniary disputes while Drago continued to voice is purist stand that sovereigns could not legally be forced to arbitrate any more than they could be forcible compelled to pay. The American proposal that sovereigns could be obliged to arbitrate but only for a certain class of public debts was presented as the compromise. Proceedings of the Hague Peace Conferences, The Conference of 1907 vol.1 (New York: Oxford University Press, 1907), 330-332; William I. Hull, The Two Hague Conferences and their contribution to international law (Boston: Ginn and Company, 1908), 358-370. Scott, Hague Peace Conferences, 417-418.

wanted. If they were offended by the arbitration provisions as intrusions on the autonomy of their judicial systems, these were clearly outweighed by the protection against armed assault these provisions purchased from the Great Powers. What is more surprising, however, is that powerful European creditor states should have agreed to this. As noted earlier, the British government had powerful reasons not to agree and the German government, the Kaiser in particular, had made no secret of its distrust of the arbitration processes which the Americans were offering in lieu of self-help.<sup>41</sup> The French and the Russians, while not actively opposed to the proposal, had not come out in support as late as June 1907 and had to be actively lobbied by the Americans after arrival in the Hague.<sup>42</sup> Thus, going into the conference it was not at all obvious that any of the European creditor states, particularly the two largest (Britain and Germany) saw the contract debt proposal as being "in their interest."

Objective material conditions did not change in the few months between these statements of opposition and agreement on the provision at the Hague in July 1907. What did change was perceptions and social realities. People changed their minds about what was "in their interests," not because of material facts but because of social interaction and persuasion.

### International law and the structure of social interaction

<sup>41</sup> Margaret Robinson, Arbitration and the Hague Peace Conferences, 1899 and 1907 PhD diss., University of Pennsylvania, 1936, pp.36-44.

<sup>42</sup> Minutes of the Meeting of the American Commission at the Hague, June 14, 1907, pp.5-6, James Brown Scott papers, box 44, folder 4, Georgetown University.

What made agreement possible was the "legalization" of both the issue and the conference in which it was discussed. The legal character of debate over the issue was alluded to earlier. Drago's challenge to prevailing intervention practice was a legal one based on an understanding that sovereign equality of states was the foundational principle of international law. Root and the American delegation retained this legal character in their arguments. They did not make this a referendum on the Monroe Doctrine or back their proposal with threats of US force, veiled or explicit. Rather, they made arguments drawn from international law coupled with discussion of the practical benefits of their proposed arrangement.<sup>43</sup>

The legal frame was effective because the participants in the conference were mostly lawyers. One striking feature of the Hague conference was the predominance of lawyers among its participants. Each delegation had one or two military men to provide expertise on the bulk of the work of the conference having to do with disarmament, naval warfare, and laws of war, but most members of each delegation had legal training and the head delegate of almost every delegation had distinguished legal careers. Among the Americans, Joseph Hodges Choate (head delegate) and Uriah Rose were both eminent in the legal profession. Choate

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<sup>43</sup> For the text of debates over the proposal see Proceedings get pages. The fact that the US delegates did not emphasize, in fact hardly mentioned, the Monroe Doctrine did not mean that people weren't aware of it as a policy backdrop for the issue, but it seems to have figured much more heavily in US and Latin American concerns than it did in European calculations. In his initial memo to US government in 1902, Drago emphasized the advantages of his policy for bolstering the Monroe Doctrine however this feature of the argument was dropped by Root and the American delegation in their discussions with the Europeans.

had been a distinguished practitioner credited with persuading the Supreme Court to declare income tax unconstitutional and was president of the New York Bar before he served as ambassador to Great Britain. Rose had been a judge in Little Rock. (He was also a prominent Democrat which gave the delegation a non-partisan character.) The other delegate, Horace Porter, was a military man who had been one of Grant's generals in the Civil War and ambassador to France immediately prior to the conference.<sup>44</sup> The delegation also included six "technical delegates," most notably James Brown Scott (then Solicitor of the State Department) and David Jayne Hill, both of whom were lawyers and who exerted a strong legalistic influence on the U.S. delegation and the conference as a whole. Scott's personality, his legal expertise, and Root's confidence in him allowed him to play a much larger role in the proceedings than many of the delegates, proper. Hill had been part of the 1899 delegation and provided institutional memory for the delegation as well as his legal expertise.<sup>45</sup>

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<sup>44</sup> Davis, The United States and the Second Hague Conference 125-127. For anyone wondering, yes, Uriah Rose was indeed the founder of the Rose Law Firm which Hillary Clinton joined many decades later.

<sup>45</sup> Choate papers, Library of Congress and Scott papers, Georgetown University, passim. The four additional delegates who by all accounts were less influential were: William Buchanan had been one of Root's delegates to the Pan-American conference in Rio in 1906 and had been involved in arbitrations in that region while ambassador to Argentina; Charles Henry Butler was the court reporter at the Supreme Court and helped Scott draft the US proposal for a World Court at the Conference; Rear-Admiral Sperry and General George B. Davis were the naval and military technical delegates, respectively. Davis, The United States and the Second Hague Conference, 44-48, 128, 168-170. The US delegation was the largest at the conference.

The European delegations were similarly dominated by lawyers. Sir Edward Fry, head of British delegation, sat on the Court of Appeals from 1883-92 until he retired and subsequently acting as arbiter in a number of national and international disputes.<sup>46</sup> Baron Adolf Marschall von Bieberstein, Germany's head delegate, had been a public prosecutor in Mannheim before joining the public service and eventually becoming Secretary of State and then ambassador to Turkey. Johannes Kriege, the second German delegate who participated actively in the discussion of contract debts, was a noted legal scholar and head of the legal department at the Foreign Office.<sup>47</sup> Leon Bourgeois, France's head delegate who chaired the commission of the conference that dealt with arbitration and contract debts, had studied law before entering the public service and his colleague, Louis Renault, was a professor at the Paris Law School and Legal Advisor to the Ministry of Foreign Affairs.<sup>48</sup> Others noted as influential delegates in reports on the conference--Heinrich Lammasch of Austria, Frederic de Martens of Russia, Asser of Holland, Beernaert and van de Heuvel of Belgium, and of course Drago of Argentina--were all prominent legal scholars as well as public servants in their

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<sup>46</sup> Davis, H.W.C and J.R.H Weaver, eds., The Dictionary of National Biography 1912-1921 (Oxford: Oxford University Press, 1927), 200-203.

<sup>47</sup> Lamar Cecil, The German Diplomatic Service, 1871-1914 (Princeton: Princeton University Press, 1976), 260-61. Erich Brandenburg, From Bismarck to the World War (Oxford: Oxford University Press, 1927), 23, 276-277.

<sup>48</sup> Scott, The Hague Peace Conferences, vol.1, 158-159; Elbert Baldwin, "France and America at the Hague" The Outlook 86(1907):956-962.

respective countries.<sup>49</sup> The fact that the discussion about contract debts took place in the commission of the conference dealing with arbitration where, not surprisingly, the lawyers dominating the conference were particularly concentrated, amplified this effect.<sup>50</sup>

This ubiquitousness of lawyers in politics seems natural to us today but it had not been the case earlier in 19th century, particularly in Europe. Earlier international conferences had not been dominated by lawyers. The Geneva Congress of 1864, for example, which produced the first Geneva Convention codifying laws of war, was composed almost entirely of military and medical

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<sup>49</sup> Correspondents covering the conference commented on the depth and breadth of legal talent as well as the much smaller number of military men than were delegates to the 1899 conference. See Elbert F. Baldwin, "France and America at the Hague" The Outlook 86(31 Aug. 1907):956-962 and "The Second Hague Conference" The Outlook 86(6 July 1907):499-502, esp 501. See also Davis, The United States and the Second Hague Conference 23, 29; Scott, The Hague Peace Conferences, 144-173.

<sup>50</sup> The interesting exception to this was the American delegate, General Horace Porter, who took a particular interest in the debts proposal Root wanted passed and offered to make the speech introducing it at the conference. He did so in part, it appears, because his French was much better than Uriah Rose's, but not before the legal technical delegates to the conference, Scott and Hill, had extensively critiqued his formulation of the proposal to emphasize the legal character of the proposal. According to the minutes of the meeting, there was lively debate over Porter's original formulation which provoked much concern among the lawyers. "The proper attitude, [Hill] thought, in the Conference was to omit any and all references to political matters; to eliminate questions of special interest to various nations and to confine the arguments to the presentation, consideration and adoption of principles of a legal nature which were universal and universally beneficent in their operation." The lawyers' amendments were all accepted. In addition, Root's approval of the formulation of the proposal was deemed to be necessary since this was Root's particular project. Minutes of the meeting of the American delegation, June 24, 1907, Scott papers, box 44, folder 4, p.9.

personnel. Forty-odd years later, when these same issues were discussed at the Hague, the people dealing with these issues were half (at times more than half) lawyers.<sup>51</sup> When the Concert met to discuss issues of peace in Europe in the first half of the 19th century, the participants were diplomats which in that era meant they were aristocrats. They were liberally educated in the arts and letters but they were not members of professions or "professionals" in the modern (and bourgeois) sense of that term. Participants in the Hague Peace conferences 70 years later were also diplomats but chosen carefully to have credentials and competence in law.

Not surprisingly, legal arguments are more compelling to a group of lawyers than they are to the uninitiated. They are more compelling, not simply because technical expertise imparted during legal training makes them more intelligible.

This was not physics and the arguments of Drago and Root were not so complex that interested lay persons could not follow them (as, indeed, the press and others

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<sup>51</sup> For a discussion of the participants in the 1864 Geneva Conference see Pierre Boissier, From Solferino to Tsushima chap.3. The Conference was divided into four different working groups called commissions, each of which focused on a different part the agenda. The first commission dealt with pacific settlement of disputes (arbitration, contract debts and the proposal for an international court of prize). The second commission dealt with law and customs of land warfare. The third commission dealt with problems of naval warfare including the laws of war at sea. The fourth commission dealt with private property at sea and contraband of war. Participation in the various commissions at the Hague Conference shifted during the months of debate. While military men tended to concentrate their efforts in the second and third commissions where their expertise lay, there were not enough of them to outnumber the lawyers. Indeed, neither commission was chair by a military man and the second commission was chaired by Professors Beernaert and Asser, both legal scholars.

By | did.) What made these arguments compelling was not a shared monopoly of scientific, emphasized in much of the epistemic community literature, but the shared normative orientation in that community.<sup>52</sup>

'epistemic  
community'  
of lawyers

Professional training does more than disseminate expertise and technical skill; it disseminates norms and values. One purpose of professional training is to instill "professionalism" in future members. Professional training socializes people to value certain courses of action and certain social goods over others. Doctors, for example, are trained to value the preservation human life over other social goods. Soldiers, especially military commanders, are trained to sacrifice human life to obtain certain objectives. In the series of international conferences that has promulgated and revised the Geneva Conventions since 1864 one can see these two professional cultures--doctors and soldiers--grappling with issues about the appropriate conduct of war in very different ways. The difference is not simply one of bureaucratic politics. The difference in perspectives continues even when doctors become part of military organizations and so, presumably, have a vested interest in victory. Doctors serving as military medical officers behaved at the

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<sup>52</sup> Peter M. Haas, "Knowledge, Power, and International Policy Coordination," a special issue of International Organization 46(winter 1992) 3. Despite specification in their definition that epistemic communities are composed of professionals, researchers in this literature have remarkably little to say about the nature of "professionalism" or the professionalization process. That research also focuses on the impact of epistemic communities on the state but does not explore the ways in which shared norms and values within the community change or the way that normative change is shaped by the underlying professionalization of the community, as is evident in this case.

1864 Geneva Congress as doctors, not as soldiers, because that was their professional training. They consistently articulated concerns about helping the war wounded at the Congress in opposition to military commanders who articulated concerns about cluttering up the battlefield with Red Cross civilians thus hampering military operations and compromising battlefield objectives.<sup>53</sup>

In this case we see analogous effects of professional training. Legal approaches to conflict resolution, such as arbitration, appear more appropriate and workable to those with legal training than those without. Root, Brown, and Hill among the Americans and a number of the European legal luminaries at the conference had written extensively promoting arbitration and a general elaboration of international legal norms as the surest means to world peace.<sup>54</sup> With the gradual colonization of foreign ministries by people with legal training and the rise to power of the United States, where law has long dominated the public service, we see the expanded use of legal approaches to conflict resolution among states. Two hundred years ago arbitration of disputes among states was uncommon. It gained

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<sup>53</sup> Pierre Boissier, From Solferino to Tsushima: History of the International Committee of the Red Cross (Geneva: Henry Dunant Institute, 1985), chaps 3 and 4; Finnemore, National Interests, chap.3.

<sup>54</sup> See, inter alia, Elihu Root, "The Need of Popular Understanding of International Law," "The Hague Peace Conferences," "The Importance of Judicial Settlement" all in Robert Bacon and James Scott Brown, eds., Addresses on International Subjects (Freeport, NY: Books for Libraries Press, 1916/1969); Fedor Fedorovich Martens, Par la Justice vers la Paix (Paris: Henry Charles-Lavauzelle, 1884). **get date? get cites for Lamasch.** Scott published extensively on law and peace issues during his employment at the Carnegie Endowment for International Peace (check name) after he left the State Department.

in popularity in the late 19th and early 20th centuries, beginning with the successful resolution of the *Alabama Claims* dispute between Great Britain and the United States in 1872, resulting in a rash of arbitration treaties among states including the Great Powers between the first and second Hague Conferences.<sup>55</sup>

No obvious change in systemic constraints or the distribution of power explains the rise of arbitration as a method of conflict resolution among states. In fact, the pattern of treaties is particularly anomalous from a power perspective. Arbitration treaties should be a policy choice of the weak; strong states should prefer to rely on self-help, where they have an advantage, rather than submitting themselves to international tribunals. In fact, however, of the 75 arbitration treaties concluded between 1900 and 1908, 30 involved one or more of the four

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<sup>55</sup> For a listing of these arbitration treaties see Brown, The Hague Peace Conferences vol. 1, 812-819 and David J. Hill, "The Second Peace Conference at the Hague" American Journal of International Law 1 (1907):671-691. The arbitration movement was bound up with the larger peace movements of the time (since arbitration was viewed as the obvious replacement for force in world politics) and the literature on this subject is vast. See, inter alia, C. Roland Marchand, The American Peace Movement and Social Reform, 1898-1918 (Princeton: Princeton University Press, 1972), esp. chap. 2; W.L. Penfield, "International Arbitration" American Journal of International Law 1(1907):330-341; Davis, The United States and the Second Hague Peace Conference, 16-22. For an extensive list of all international arbitrations prior to 1904 see, W. Evans Darby, Modern Pacific Settlements (London: The Peace Society, 1904). This trend toward legalistic solutions accelerates after World War I which domination of European foreign offices by aristocrats and opens them to bourgeois, many lawyers. For a related argument about the propensity of the United States to project its own legalistic political forms onto the rest of the world later in the century see Burley's analysis of the US creation of international institutions following World War II. Anne-Marie Burley, "Regulating the World: Multilateralism, International Law, and the Projection of the New Deal Regulatory State," in Multilateralism Matters ed. John G. Ruggie, (New York: Columbia University Press, 1993), 125-156.

Great Powers--Britain, Germany, France, and the U.S. If one includes Russia and Austria-Hungary, the number rises to 35.<sup>56</sup> The fact that Great Powers were as likely to conclude such treaties as small powers suggests that states decisions about this form of conflict resolution are not driven by the distribution of power.

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Rather, the expanded use of arbitration correlates with the rise of international law as a profession and the infiltration of these professionals into decision-making positions in state governments.

The case under investigation here illustrates this causal mechanism--how people with legal training came to agree on legal (ie, arbitral) solutions to conflict over a specified set of issues. One of the goals of the 1907 Conference was agreement on a general arbitration treaty among states which would apply to a wide range of disputes among all signatories. While this proposal was opposed vehemently and publicly by the Kaiser (who, incidently, had no legal training) Marschall (a former prosecutor) did manage to use his influence as Head Delegate to get Germany on the record as favoring arbitration in principle (a change from Germany's position at the 1899 conference) and to agree to arbitration of debts cases over which he was given discretion.

The "legalization" of both the conference and the debts issue also made agreement easier in another way. It created a perception of depoliticization. Germany, in particular, was concerned about the politics of the conference and a number of key German foreign policy makers feared a repeat of the public isolation

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<sup>56</sup> Calculated from Scott, The Hague Peace Conferences, 813-815.

it had just suffered at the Algeciras conference.<sup>57</sup> To the extent that issues could be dealt with in legal terms, overt and dangerous political disagreements could be papered over. As Germany's future foreign minister, Kiderlen-Wachter, put it, "I had thought that at The Hague it would be a question of political and diplomatic activity. But I was much relieved to see from our choice of delegates that they will only be dealing with legal questions. *Nous verrons*."<sup>58</sup> As was noted earlier, Elihu Root perceived similar effects of a legal forum. Framing his debt collection issue in legal terms, as a pitch for arbitration among sovereign equals shifted the debate away from a debtor-creditor confrontation whose dynamics were roughly zero-sum to a framework in which those substantive fights over material gain were submerged in a legal fight about rules and principles. Root and Kiderlen-Wachter perceived the same depoliticizing effect of a legal framework but used it to secure different ends. Root used it to find common ground and agreement on an issue of

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<sup>57</sup> "Herr Von Kühlmann gave me to understand that the important point for Germany at the Peace Conference was to avoid appearing before the world as if she were isolated as she had been at Algeciras." Cartwright to Grey, 29 Jan. 1907 in G.P. Gooch and Harold Temperley, British Documents on the Origins of the War, 1898-1914 vol. viii, (London: H.M. Stationary Office, 1932) No. 174, p.202. "We will hardly meet with a second Algeciras at The Hague." Holstein to Maximilian von Brandt, 15 May 1907 in The Holstein Papers, vol IV: Correspondence, 1897-1909 ed. Norman Rich and M.H.Fisher (Cambridge: Cambridge University Press, 1963):478. Marschall emphasized this in an interview with Baldwin during the conference. Edwin Baldwin, "The Second Hague Conference" part 3, The Outlook 86(1907): 725.

<sup>58</sup> Alfred von Kiderlen-Wachter to Holstein, 20 April 1907, in The Holstein Papers vol iv, 459. While on one view a legal framework's depoliticized character can create common ground it is clear that Kiderlen-Wachter was much more cynical in his use of it to obscure differences that he and others in the German Foreign office were not particularly interested in resolving. delete?

importance to him. The Germans used it to obscure differences and prevent isolation in ways useful to them.

The different dynamics of legal versus political "frames" for the debt collection issue illustrates the malleability of interests and the importance of social context.<sup>59</sup> There were good reasons for Britain and Germany to oppose the debt collection proposal as not being in their interests--the need to protect their nationals from swindling, reluctance to give up control to arbitrators. There were also good reasons for Britain and Germany to support the proposal--it would keep them out of messy foreign adventures and, in Germany's case, reduce international isolation and the appearance of belligerence at the conference. My argument is not that states after 1907 suddenly began acting in ways counter to their interests. My argument is that interests are very often indeterminate and not obvious. Realists can easily accommodate either position on this question as a rational formulation of state interests. They cannot, however, explain how or why states shift their perceptions of interests from one position to another.

### Intervention after 1907

Following the agreement reached at the Hague, intervention behavior among states changed. European states ceased interventions to collect contract debts from foreign governments. They continued to be concerned about debt and continued to use diplomatic means to help their citizens collect on many occasions. Creditors and capital markets generally have developed more elaborate methods of

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<sup>59</sup> need suggestions for cites here. Expand discussion?

collateralizing, rescheduling, and collecting foreign loans. But military force is no longer considered as an option by states seeking to collect foreign debts.

Military intervention continued, of course. The Hague changed the purposes for which intervention legitimately could be used; it by no means eliminated the practice. European powers continued to deploy force around the world, some of which was certainly aimed at promoting commercial interests in various ways. The United States undertook a variety of interventions in Latin America following the 1907 treaty but again, none aimed at collecting debts for their nationals.<sup>60</sup> Gross financial mismanagement in a general sense certainly contributed to US interventions in Nicaragua (1912), Santo Domingo (1916) Haiti (1916) but the focus in these cases was putting down revolutions and restoring order, albeit an order and government favored by the United States. If US bondholders recouped some of their losses as a consequence, well and good. But the United States did not take specific actions to secure repayment of claims beyond setting up commissions of mixed nationality to arbitrate claims. These certainly did not produce big awards for bondholders--they were much more likely to vastly scale

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<sup>60</sup> In fact the US had a longstanding policy of not intervening to collect debts dating back to when?? When the US established a customs receivership in the Dominican Republic in 1904 (by negotiation, not by military intervention) the aim there was geostrategic, not pecuniary: the US intervened to collect debts, not for US nationals, but for European bondholders and so forestall intervention threatened by European states. See Roosevelt's Message to Congress, December 5, 1905, cited in Munro, Intervention and Dollar Diplomacy p.98, also 98-105. See also William H. Wynne, State Insolvency and Foreign Bondholders vol. 2 (New Haven: Yale University Press, 1951) 240-261. The fact that the receivership served all creditors rather than favoring US creditors made it unpopular with some US bondholders. Munro, Intervention and Dollar Diplomacy, 105-6.

Q: Why didn't intervention resume after the 1907 treaty? Some possibilities:  
(1) Lawyers remained in power  
(2) The treaty → lock-in, b/c the cost of violating the treaty was too great.

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down claims--and it did not require an intervention to get such a commission set up. Certainly their work does not support the notion that the purpose of these Caribbean interventions was to collect debts.<sup>61</sup>

Not only did the practice of forcible debt collection cease but there was positive action to squelch proposals to revive it. In the summer of 1912 when the US State Department was preparing a loan to Honduras, a proposal was made to insert a clause in the loan agreement that would permit US military intervention in case of default. The provision was removed by the Solicitor of the State department (again, a layer making foreign policy decisions) citing the 1907 treaty.<sup>62</sup>

The State Department also took positive action to check usurious loans by the private sector that so often prompted repudiation and Franklin Roosevelt went to far as to apologize the President of Bolivia for usurious rates of interests on loans to his country issued in previous administrations.<sup>63</sup>

### Conclusions and implications

Arg The immediate result of the Hague Conference was a change in military intervention norms. Previously it had been acceptable for states to collect debts owed to their nationals by force. Afterward, it was not. Indeed, such behavior is

<sup>61</sup> Munro, Intervention and Dollar Diplomacy 535-6. The lack of monetary return yielded by arbitration to creditor citizens was well known to policy-makers at the time, further undercutting any claim that monetary recovery was the motive behind these policies. See Root, Address on International Subjects, 140.

<sup>62</sup> Jessup, Elihu Root vol.2, 74-75.

<sup>63</sup> Munro, Intervention and Dollar Diplomacy, 537-539; Borchard, State Solvency and Foreign Bondholders vol. 1, 243, fn88.

unimaginable in contemporary politics. Conventional realist and liberal approaches to political analysis do not provide much insight into this shift in behavior because they take interests as given. In this situation, interests were precisely what was being contested. The explicit and self-conscious mission of the Americans at the conference was to persuade creditor states that the new norm would be in their interest. The Americans had good reasons to support their arguments but so, too, did the German and British have good reasons to support the previous status quo. There was no objective or logical "right" interest for creditors in this matter which could simply be assumed or imputed as conventional approaches require. This is far from unusual in international politics. Interests are often not obvious and much of politics is a struggle to define them. States and the people in them spend a great deal of time and energy arguing about what their national interests are. They also spend a great deal of time and energy trying to persuade other people in other states what *their* national interests are. Much of international politics is about defining, rather than defending, national interests. As scholars we must attend to this process, not assume it away.<sup>64</sup>

The changed norm about forcible debt collection, itself, did not have sweeping impact on world politics but it does offer a theoretical window onto some of the more complex and consequential changes on the world political scene that occurred later in the 20th century. I have taken this episode out of context for

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<sup>64</sup> Martha Finnemore, National Interests in International Society (Ithaca: Cornell University Press, 1996).

purposes of analytical clarity. I wanted to focus on one discrete normative change in order to better understand the processes by which change may come about. Stepping back from the events under study, we can see that some of the factors contributing to change here had much wider influence. For example, the "legalization" of diplomacy at the Hague conference was not an isolated phenomenon but one that became much more widespread and much deeper over the course of the century. In the case here we see it in its early stages. The Hague Conference was unusual for its time in its concentration of legal talent in what earlier would have been a political and diplomatic gathering. The foreign offices of Europe to which most of these delegates were reporting were still very much in the hands of aristocratic elites.<sup>65</sup> The First World War destroyed the aristocratic hold over European foreign offices and opened the door for bourgeois, often lawyers, to populate the diplomatic apparatus. After 1918 and certainly after 1945, foreign offices everywhere ceased to be the province of aristocrats and were much larger, more bureaucratized, and more legalized both in the sense of being populated by lawyers and in the sense of operating according to legal rules. Sociological organization theory would expect organizations of this sort to engage in more legal and bureaucratic approaches to conflict management and, indeed, the post WWII period is unprecedented in its use of international bureaucracies as solution to

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<sup>65</sup> Zara Steiner, The Foreign Office and Foreign Policy, 1898-1914 (Cambridge: Cambridge University Press, 1969), 10-23; Lamar Cecil, The German Diplomatic Service, 1871-1914 (Princeton: Princeton University Press, 1976), chaps. 2 and 3; M.B. Hayne, The French Foreign Office and the Origins of the First World War, 1898-1914 (Oxford: Clarendon Press, 1993), chap.1.

every conceivable international problem and in its use of arbitration and legal solutions to a growing array of international disputes. Thus, the normative shift documented in this case was a precursor to more sweeping later in the 20th century that institutionalized rational legal authority (in a Weberian sense) in diplomatic practice and shaped approaches to conflict resolution in many spheres. The case here identifies a specific mechanism by which this occurs-- professionalization and the colonization of organizations (in this case foreign offices) by professionals.

Another change identified here that subsequently had much wider influence is the institutionalization of the norm of sovereign equality among states. Inviting Latin American states to the Hague Conference on an equal one-state-one-vote footing and acceptance of legal arguments about sovereign equality in forcible collection of debts were not intended to have far-reaching effects. They were localized decisions about specific issues. But they contributed to acceptance of the sovereign equality norm and strengthened it. The Hague Conference created a precedent. After 1907 it became difficult to have international conferences that did *not* include small states on an equal footing. Similarly, as Great Powers increasingly made decisions like the 1907 decision to arbitrate disputes rather than coerce small states, as they increasingly acknowledged publicly that small states had "rights" and that the people in them had "rights" in a variety of decisions, the combined weight of these made it increasingly difficult to deny claims of sovereign equality and self-determination that underlay the decolonization that reconfigured

the world political map in the second half of this century. Again, the Hague Conference decisions by no means caused the decolonization, but they were part of and contributed to the larger normative progression that culminated in the notions of sovereignty we have today. Only by understanding how some of the individual decisions about sovereign equality that were made and how they became institutionalized can we begin to understand the widespread changes in global political organization that has occurred.