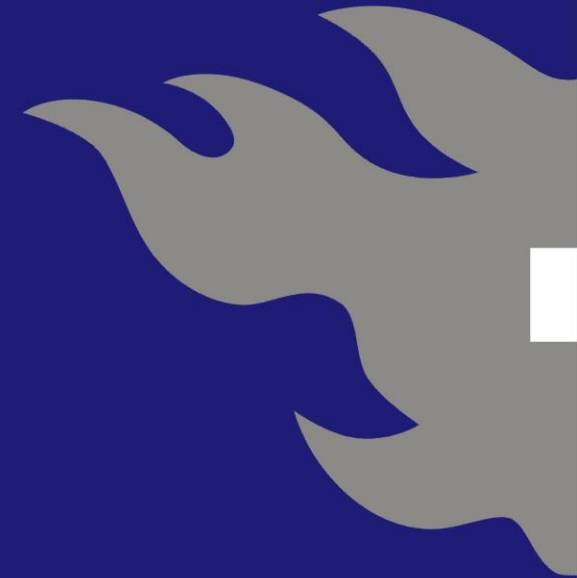




HELSINGIN YLIOPISTO
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Private Rights and International Law: A History of Globalization

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What is the History of International Law a History of?



History or “Histories”?



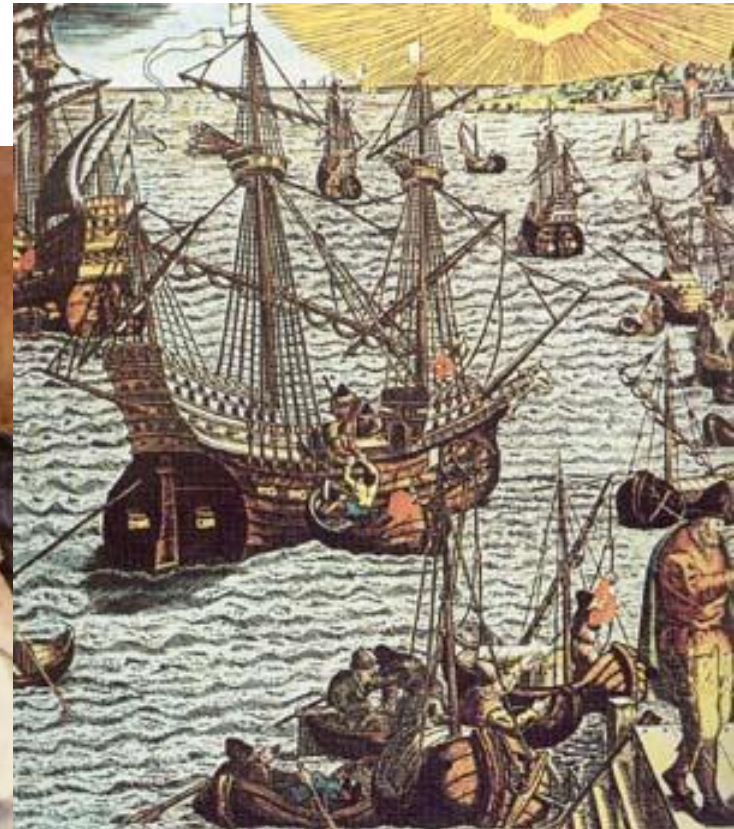


History of the Present





“DOMINIUM” and the “Salamanca School” 1526-1615: *Dominium iurisdictionis and dominium proprietatis*





Hugo Grotius – *De iure belli ac pacis* (1625/32)



- “Right is a **moral Quality annexed to the Person**, enabling him to have, or do, something justly”
- Right in “commutative” vs. “distributive” relations



VOC - “Santa Catarina affair”



- Just war = “punishment for injury”.
- Injury = violation of right
- Obstructing passage = injury
- VOC waging just public and just private war



England: Government as Private Right

- Virginia Company (1609)
- “...full and absolute Power and Authority to correct, punish, pardon, govern, and rule all such the Subjects of Us... according to such Orders, Ordinances, Constitutions, Directions, and Instructions, as ... shall be established...
- Baron of Baltimore (1632)
- “free, full and absolute power ... to Enact Laws, of what Kind soever, according to their sound Discretions whether relating to the Public State of the said Province, or the private Utility of Individuals”....



France: “L’etat c’est moi”... well, not quite

- Number of venal officeholders from 11.000 (1600) to 51.000 (1776), government (including colonies) outsourced to companies, tax-farmers and “officers”
- 1599-1785, 75 large companies of colonisation





Antoine Crozat (1655-1738) & *La Louisiane* 1712



Compagnie de Sénégal (1674)
Compagnie de Guinée (1684)
Compagnie Royale de Saint-Domingue (1698)
Compagnie d'Assiente (1701)
Compagnie d'Occident (1712)





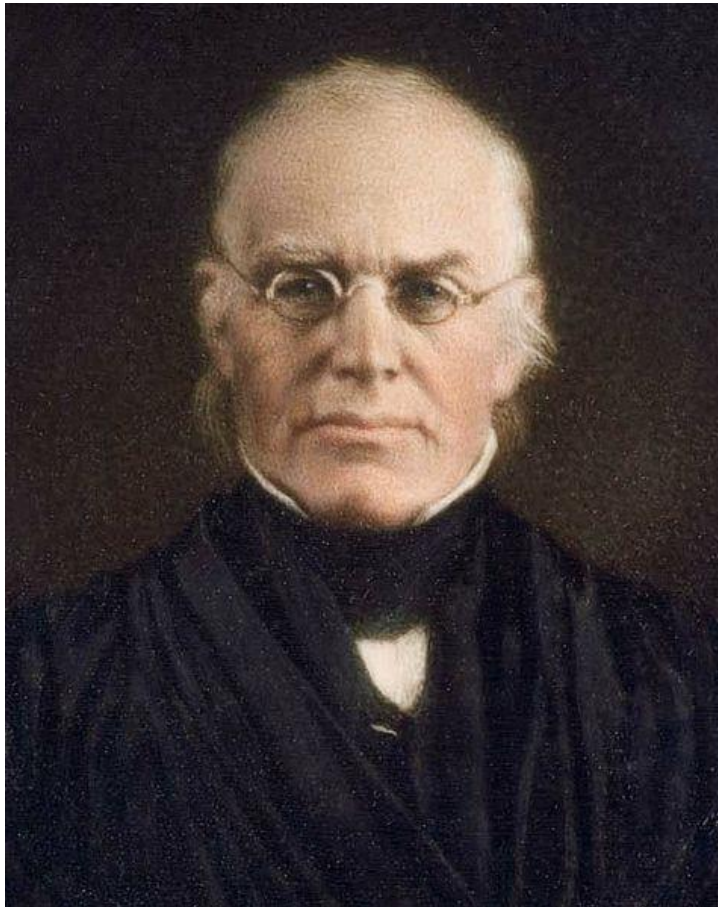
...and in London (Mansfield in Pillans v. Mierop, 1765)

- “ALL Nations ought to have their Laws conformable to each other... *Simplicitas Juris Gentium prevaleat. Hodierni Mores* are such that the old Notion about the *nudum pactum* is not strictly observed, as a Rule...”





Law of Nations and America 1834



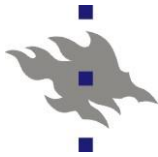
- Joseph Story: “Indeed, in the present times, without some general rules of right and obligation... intolerable grievances would grow up and weaken all the domestic relations as well as to destroy the sanctity of contracts and the security of property”.
- *Commentaries on the Conflict of Laws* (1834)



British Empire and the Law: *Don Pacifico* 1850

- Lord Palmerston (1850):
"As the Roman, in days of old, held himself free from indignity, when he could say, *Civis romanus sum* so also a British subject, in whatever land he may be, shall feel confident that the watchful eye and the strong arm of England will protect him from injustice and wrong."





Mexican Claims 19th Century

Claims Against Mexico 19th Century

Source: Tzvika Nissel *A History of State Responsibility* (Helsinki, 2015)



	Year	Participating States		Topic
1	1823	Mexico	Colombia	General
2	1839	Mexico	U.S.	Mixed
3	1848	Mexico	U.S.	General
4	1853	Mexico	U.S.	General
5	1868	Mexico	U.S.	Mixed
6	1871	Mexico	U.S.	Mixed
7	1872	Mexico	U.S.	Mixed
8	1874	Mexico	U.S.	Mixed
9	1876	Mexico	U.S.	Mixed
10	1882	Mexico	Guatemala	Other: Treaty Interpretation
11	1888	Mexico	Guatemala	Mixed
12	1888	Mexico	Ecuador	General
13	1889	Mexico	U.S.	Other: Boundary
14	1891	Mexico	Guatemala	Mixed
15	1893	Mexico	Salvador	General
16	1895	Mexico	Guatemala	Other: Boundary
17	1897	Mexico	U.S.	Ad hoc



Elihu Root 1910: “The Basis of Protection to Citizens abroad

- “In the famous *Don Pacifico* case, Lord Palmerston said ...
- ...There is a standard of justice...of such general acceptance by all civilized countries...”

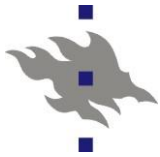




Edwin Borchard (Yale, 1939) and the Mexican nationalizations

- “...the minimum which each state must accord the alien whom it admits...
- ... composed of the uniform practices of the civilized states of the western world who gave birth and nourishment to international law”.





ICSID 1965 - The new standard?

- “[a] government act could be unfair or inequitable if it is in breach of specific commitments, **if it is undertaken for political reasons or other improper motives**, if the investor is not treated in an objective, even-handed, unbiased, and transparent way, or for other reasons”.

Inmaris v. the republic of the Ukraine. ICSID award 1 March 2012).

