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International Law and Translation in the 19th century

Abstract

The article aims to investigate, under the aspect of translation, the process of legal appropriation and reproduction of international law during the course of the 19th century. An occidental understanding of translation played an important role in the so-called process of universalization in the 19th century, as it made the complexity of global circulation of ideas invisible. Approaches proposed by scholars of Postcolonial, Cultural and Translation Studies are useful for re-reading histories of the circulation of European ideas, particularly the international law doctrines, from a different perspective. The great strides made in Translation and Cultural Studies in the last decades, as well as the discernment practiced in the scholarship of Postcolonial Studies, are important for a broader and more differentiated understanding of the processes of appropriation and reproduction of the doctrines of international law during the 19th century. The present article begins by tracing the connection between translation and universalization of concepts in 19th century international law; after a short *excursus* on the Western idea of translation, the attention is focused on the translation of international law textbooks. The conclusive section is dedicated to a comparison between Emer de Vattel's *Droit des gens* and Andrés Bello's *Principios de Derecho de Jentes*.

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International Law and Translation in the 19th century*

1 Introduction

In *European Legal History – Global perspective* Thomas Duve issued a challenge to cultivate an openness to interdisciplinarity in legal history scholarship, which has tended towards an epistemology of law in the global process of cultural translation. He maintains: »to do so, we have to open the field of observation, and obviously, seek a well-balanced interdisciplinary approach that does not consider ›law‹ as something categorically different from other fields of cultural production, but as one *modus* of normativity.« [1]

This perspective allows us to trace the process of legal appropriation and reproduction of international law during the 19th century. The Western approach to translation was pivotal to how translation was instrumentalized in the universalizing process of the 19th century as an invisible force behind the global circulation of ideas.

Even if translation has taken the center stage in all major cultural exchanges, [2] at the same time it still remains an underestimated phenomenon. [3] Even today, it is perceived as a mechanical process, which can be acquired by studying a foreign language. As Susan Bassnett pointed out:

> »What is generally understood as translation involves the rendering of a source language text into a target language text so as to ensure that (1) the surface meaning of the two will be approximately similar and (2) the structure of the sources text will be preserved as closely as possible but not so closely that the target language structure will be seriously distorted.« [4]

According to this understanding of translation the translator is not seen as a creator but a mere technician. Translation is therefore regarded as a secondary activity in researches that often only consider the *value* of a translation. »What is analyzed in such studies is the *product* only, the end result of the translation process and not the process itself«. [5]

The translation process was foundational to the formation and legitimation of the international law doctrine. At the same time, the complexity of the 19th century translation process cannot be understood without the critical intervention of Postcolonial, Cultural and Translation Studies. That sets the history of the circulation of European ideas, in particular, of the international law doctrines, in a broader context and allows us to reread it in a different way.

2 Translation and universalization of concepts

Translation is not a recent phenomenon, but played an important role in the circulation of Western ideas especially during the 19th century, as recent studies on global, intellectual and transnational history have shown. [6]

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1 Duve (2013) 18; see also Duve (2012).
2 »In Europe that represented the scene of the most sustained and intense cultural transfers throughout its long history, a long process marked by an enormous efforts in translation: of religious, scientific, political and literary works […] and of vernaculars crossing national and linguistic boundaries«: Burke / Po-chia Hsia (2007) 1.
3 Bassnet (2013) 15.
4 *Ibid.*
5 *Ibid.*
6 Among many: Armitage (2013) 17–32; Armitage (2004); Moyn / Sartori (2013). See also: Iriye (2013); Iriye / Saunier (2009), and the recent book edited by McMahon / Moyn (2014).

The American historian and philosopher of science, Arthur Lovejoy, has noted »Ideas are the most migratory things in the world«.[7] European concepts spread all over the world during the 19th century, due in equal part both to the numerous publications of textbooks and to their translations. However, this process had some important consequences: first, European concepts came to be perceived as universally valid, and second Europe established its expansion through the spread of control and culture, as it affirmed its mission to »civilize« the »uncivilized nations«.

> »As concepts moved – as the global intellectual historian Christopher Hill wrote – around the world, they experience multiple mediations, including translation into other languages and mass reproduction in the form of textbooks and publication for popular audiences. The resulting process of abstraction attenuated the concepts' connection to their originators and to the European examples from which they were derived. Mediation and abstraction allowed the ›universalization‹ of concepts in a specific sense. The use of a concept as if it were valid in all places at all times«.[8]

International law doctrines were a part of this wave of universalization for their intrinsic and peculiar aim to regulate relations between states and to create an international legal order.[9] Ideas on international law circulated due to the prolific works of international lawyers. In the 19th century international lawyers, in fact, were called to take an active part in this process and »to mediate between universalism and nationalism, humanitarian aspirations and colonial impulses, technical, economic and financial challenges, nations and states«.[10]

They were hired by non-European states to teach international law and to partake in diplomatic and government matters. Paul Louis Ernest Pradier-Fodéré went to Perù and founded in Lima a faculty of political and administrative sciences,[11] where he taught international law and also worked as a legal advisor to the Peruvian government;[12] Gustave Rolin Jacquemyns, one of the founders of the *Institut de droit international* (in Ghent, 1873), worked as the counselor to the King of Siam (1892–1902).[13]

Non-European scholars and practitioners of international law would meet in European capitals, where they were sent as diplomatic emissaries to their nations and governments while they were acquiring knowledge about the European law of nations. The Latin American legal scholar Andrés Bello lived in London for two decades from 1810 on, working as a diplomat for different Latin American countries;[14] in 1827 the US-American Henry Wheaton was appointed *chargé d'affaires* to Denmark, and between 1837 and 1846 he worked as US minister to the Court of Berlin.[15] The same can be said for the Argentinean Carlos Calvo, who gained his knowledge on international law in Europe. He wrote his works in Spanish and also in French, the language of diplomacy, so »that he would reach a broader European audience«.[16] He also translated Henry Wheaton's *Histoire de Progrès du Droit des gens en Europe* into Spanish (Paris 1841). All of them – Bello, Wheaton and Calvo – »promoted the European legal doctrine. Thus they took an active part in the globalization and globalization of international law«.[17]

Furthermore, with the prolific circulation of literature on international law, the field of international law had properly »universalized« from the second half of the 18th century, and particularly during all the 19th century. Handbooks, textbooks, comprehensive treaties on positive international law, compendia, texts on history of international law (or history of the law of nations[18]) were »mass« produced and translated for European and non-European countries, where governments sponsored and incentivized their translation.[19]

The number of textbooks and comprehensive treatises on positive international law that were published are impressively shown (but not without gaps) in the work of Peter Macalister-Smith and Joachim Schwietzke, *Bibliography of the Text-*

7 Lovejoy (1904) 4.
8 Hill (2013) 135.
9 Becker Lorca (2010) 476; Nuzzo (2012).
10 Nuzzo/Vec (2012) XII.
11 Lachs (1987) 77.
12 Becker Lorca (2010) 484 note 15. For more biographical information on Pradier-Fodéré see: Saint-Bonnet (2007) 641; Elliot (1908).
13 Becker Lorca (2010) 484, note 15. »According to his biographer, Rolin Jacquemyns played a vital role in Siam with his daily advice on foreign affairs and domestic judicial reforms«: Loos (2006) 55.
14 Jaksic (2001) 8.
15 Liu (2012) 1133.
16 Obregón Tarazona (2009b) 158.
17 Vec (2012) 674.
18 For a conceptual history see Steiger (1992). On the history of international law see Koskenniemi (2012).
19 Becker Lorca (2010) 484, note 15.

books and Comprehensive Treatises on Positive International Law of the 19th Century, in which they classify international textbooks by country, region and language and provide references to the different translations. »A greatly increased market demand for the works on international law that were printed in the 19th century is evident not only from the large quantity of very similar titles of publications in this period, but also from the number of editions and translations which were produced«. [20]

Translation played an important role in this process. It was traditionally relegated to the preface, introduction of textbooks translated, but, as it will be shown, it played an important part in the circulation of Western ideas.

Translators, together with international lawyers, could be depicted as mediators and diplomats, who are called on to manage different cultures, languages, spaces and times and are central agents of European ideas and values. [21]

Recent studies have focused their attention particularly on the translation of international law textbooks and on the »appropriation« of European concepts in Eastern countries. In *The Clash of Empires. The invention of China in modern world making*, Lydia Liu offers a precise reconstruction of the translation and circulation of Wheaton's *Elements of international law* in China, in which she aims to »explore the spectacular conjuring of the real in the translated articulation of international law in the 19th century and raise the question how the text of international law negotiated the reality of its unfolding by insisting on a vision of the global that was yet to come.« [22] Stefan Kroll wrote in *Normgenese durch Re-Interpretation. China und das europäische Völkerrecht im 19. und 20. Jahrhundert* about the adoption of international law in China and identified the different phases of this process. [23] Ram Anand has analyzed the circulation of international law textbooks in India, where he shows the relations with European States and the pressure on India to join the family of »civilised nations«; [24] Tetsuya Toyoda focused his research on Japan where, due to the pressure of the Western world »le droit international des pays occidentaux a du être imposé à la nation japonaise. Mais […] le droit international a été accepté par les Japonais, plutôt volontiers, malgré l'immense différence culturelle entre les Occidentaux et les Japonais«. [25] Urs Matthias Zachmann also elaborated on the transfer of concepts and translation of western treatises into Japanese during the 19th century. [26]

Translation was perceived as the perfect instrument to surpass the linguistic and cultural barriers: »the spread of universal knowledge as Europe imposed to do especially during all the 19th century also meant overcoming the resistance of local languages at the textual level.« [27]

The aim of the present paper is not to focus all attention on the linguistic approach, scrutinizing the choices adopted by translators, nor all the difficulties they had to find equivalent meanings for Western concepts (as for example for the Western idea of »sovereignty«), [28] but to depict the close connection between the western theories of translation and the circulation of international law textbooks, both a part of the universalization of European concepts.

3 Western idea of translation

It is necessary to underscore the fact that the idea of translation has always been depicted and defined through the world of words: textual integrity, mother tongue, literary property, fidelity and equivalence. This means that translation was never conceived of as an autonomous and separate discipline but was always perceived as closely tethered to the original text, and was focused on the best way to translate it. Studies on translation have

20 Macalister-Smith / Schwietzke (2001) 78.
21 Liu (1999) 128.
22 Liu (2004) 108. Armitage also argued that »The translation and circulation in Asia of Henry Wheaton's Elements of international law (1836) major vector of Euro-American international thought, suggests that the assumptions underlying modern international law thought were becoming increasingly trans-regional, if not yet fully global, by the middle of the nineteenth century«: Armitage (2013) 28; see also: Svarverud (2007).
23 Kroll (2012).
24 Anand (2005).
25 Toyoda (2010) 60–61. See also: Howland (2002) 8–30.
26 Zachmann (2012) 69–84. See also Yanagihara (2012) 485–488; Akashi (2012).
27 Liu (2004) 125.
28 Keat Tok (2013) 24.

concentrated on linguistic transfer – translation techniques, strategies, standards, and styles. [29]

It has been conventionally affirmed that translation is linked to the Western philosophical notions of reality, knowledge and language; following that, it is necessary to point out that the 19th century German philosophical approaches to hermeneutic studied translation.

For instance, Friedrich Schleiermacher (1768–1834) presented his own concept on translation in his celebrated lecture titled *Über die verschiedenen Methoden des Übersetzens*, delivered on the 24th June 1813 at the Royal Academy of Science in Berlin. [30]

With his essay, Schleiermacher launched the hermeneutic approach on translation that was conceived of as »the investigation of what it means to understand a piece of oral and written speech, and the attempt to diagnose this process in terms of general model of meaning«; [31] this approach was later developed by Wilhelm Dilthey and in the 20th century by Martin Heidegger. [32]

The translator had to draw attention both to the word and the meaning, and as Susan Šarčević has emphasized, »the hermeneutic approach raised the question whether the translator can convey the sense of a text by literal translation in which the basic unit of translation is the word«. [33]

At the base of the hermeneutic approach were some corollaries linked to the idea of universality, as the valorization of a totalizing concept of meaning inscribed in the idea of the historical truthfulness and the prioritization of a universal tradition of world conception. [34] This included debates that started in the 19th century on the evolving consciousness of the national language and, analogously within those bounds, the need to create a legal language and legal categories: »Linguistic imitation of law is a sort of ›circulation of legal models‹ that has normally accompanied the reception of legal, and even more so, doctrinal models«. [35]

Translation now also included linguistic imitation. Imitation, translation, and reproduction are concepts linked to the idea of linearity as well as fidelity to the original. This conception allowed an idea of homogeneous and universal circulation of doctrinal and legal standards: »legal translation involves translation from one legal system to another«. [36]

Furthermore, the real problem at the center of the debate concerning translation is the incommensurability and irrationality of languages, which can also lead to the impossibility of translation. To solve it, Schleiermacher, for example, clearly distinguished between translating literature and translating scientific texts, *Übersetzen* and *Dolmetschen*, [37] and between the two methods that a translator could use, *Verfremdung* and *Entfremdung*, depending on if »the translator leaves the author in peace, as much as possible, and moves the reader towards him; or he leaves the reader in peace, as much as possible, and moves the author towards him«. [38]

This philosophical approach and its underlying questions did not terminate the process of translation that was in use and conceived of as the perfect achievement of universal communicability. [39]

As for legal translation, in Europe the notion that a strict adherence to the original was possible and desirable has dominated over different epochs, due to the authority of legal texts. However this

29 See: Millán / Bartrina (2013). For the Western idea of translation and Chinese's context: Ning / Yifeng (2008); Chesterman (1997).

30 Schleiermacher (1816). It is a well known fact that Wilhelm von Humboldt, in his capacity as the minister of education, was appointed by the King of Prussia in that period to establish a new university in Berlin. He invited the best German scholars, such as Schleiermacher, Fichte, Savigny, Wolf and Niebuhr, to partake of the new venture: Nowak (2003) 223.

31 Šarčević (1997) 34. See also: Palmer (1969) 84–97.

32 Fornero / Tassinari (2002) 1021.

33 Šarčević (1997) 34.

34 Lianeri (2002) 2.

35 Sacco (2000) 115–116; see also Sacco (2008).

36 Cao (2007) 24.

37 Schleiermacher argued: »Paraphrase strives to conquer the irrationality of languages, but only in a mechanical way [...]. The paraphrase treats the elements of the two languages as if they were mathematical signs which may be reproduced to the same value by means of addition and subtraction. Imitation, on the other hand, submits to the irrationality of languages; it grants that one cannot render a copy – which would correspond to the original precisely in all its parts – of a verbal artifact in another language, and that, there is no option but to produce an imitation, a whole which is composed of parts obviously different from the parts of the original, but which would be yet in its effects come as close to that whole as the difference in material allows«: passage translated in: Snell-Hornby (2006) 8.

38 Snell-Hornby (2006) 9.

39 Moyn / Sartori (2013) 20.

doesn't mean that legal translators did not already follow the hermeneutic principles, because

> »[a] legal translator must be able to select the proper translation strategy for various types of legal texts and constituent parts thereof. [...] A skilled legal translation should be able to determine how far he or she can depart from the source text and still produce a target text that leads to the same legal effects. The challenge of legal translation is to strike a proper balance between linguistic purity and legal equivalence.« [40]

More probably, the international lawyers of the 19th century did not consult the translation theories elaborated in the different philosophical approaches of the time, but discussed the process of translation. Seminal textbooks on international law and their translations show different patterns of translation: some international lawyers stressed the importance of content and not the syntax, for others a word-for-word translation is important.

In his introduction to the first edition of his *Principios de Derecho de Jentes* of 1832, Andrés Bello raised the question of translation superficially, which nevertheless revealed his position on the subject:

> »No he escrupulizado adoptar literalmente el testo de los autores que sigo, aunque siempre compendiándolo, y procurando guardar la debida consonancia y uniformidad en las ideas y en el lenguaje.« [41]

For Bello, the translator's task was always to determine how to convert one text into another, while preserving the original meaning. Bello, in fact, emphasized the necessity of adopting and translating international law concepts in consonance with the ideas, but as it will be shown, Bello's own work represents more than an »impersonal« translation.

This is a brief *excursus*, as further examples could be found before the 19th century in the translations of some works written by the founders of the law of nations, starting with the first French edition of Grotius *De iure belli ac pacis* published in 1687. The translator Antoine de Courtin wrote in his *Avertissement du traducteur*, underlining his invisible role, that

> »[...] on a voulu se tenir prez de l'Auteur, et comme le suivre pas à pas, autant que l'a pû permettre le génie de nôtre Langue [...], et la fin que l'on s'est uniquement proposée dans la traduction, de dégager si bien les choses que tout fût naturel, distinct at intelligible. On a voulu dis-je conserver autant qu'il se pourroit le caractère de l'Auteur, ce qui est même de l'essence de la traduction; afin que ceux qui la liroient eussent toûjours devant eux l'Auteur même et non pas le Traducteur.« [42]

During the Enlightenment, Jean Barbeyrac, »the most erudite professor of his time«, [43] represented a perfect example of the fruitful circulation of ideas during the 18th century, when translation activity made the tangible effort to provide greater accessibility to knowledge. [44] He translated Samuel Pufendorf's *De iure naturae et gentium* in 1706 [45] and *De iure belli ac pacis* of Grotius in 1724 into French. [46] In the long *Préface*, in fact, he described his method and his approach to the original texts, underlying all his choices. The peculiarity of his works lies in the sheer number of notes and comments on the translated texts; even if it is possible to recognize and identify his additions, »Barbeyrac was a highly visible translator« and his works met with great success and were, at the same time, a model for the other translations. [47]

It is also worth mentioning in this context Emer de Vattel's *Droit des gens.* His work, published in 1758, was translated into English in 1759, and a

40 Šarčević (1994) 306; Šarčević (1989).
41 Bello (1832) iii.
42 Courtin (1687) iii–iv.
43 Toyoda (2011) 37.
44 Päivärinne (2009); see also Gordley (2013) 130.
45 Pufendorf (1706).
46 Grotius (1724).
47 Päivärinne (2009) 12. See also Goyard-Fabre (1996). Concerning Barbeyrac's work as professor and translator, Labriola said that: »è caratterizzato dal continuo alternarsi di contributi originali e traduzioni, secondo una cadenza che non permette di privilegiare gli uni rispetto alle altre. Barbeyrac appare infatti impegnato con eguale intensità in entrambe le attività che giudica complementari e convergenti al medesimo scopo: la divulgazione massima delle teorie del diritto naturale, oltre il pubblico ristretto e tradizionale degli eruditi«: Labriola (2003) 17. See also: Baldwin (2007); Saunders (2003) 483–484.

year later into German, into Spanish in 1774 (even if this edition was never published due to the Inquisition), and finally into Italian in 1781. Ludovico Loschi, the translator of the Italian edition, wrote: »una traduzione esser non può bella ed elegante che a misura del suo originale. Basta bene che l'opera sia riconosciuta eccellente pel metodo e per la sostanza delle cose.«[48]

The re-printing of Vattel's work, which included new and updated translations and editions, as will be shown, remained a constant throughout the 19th century, in competition with the great number of translations of Wheaton's *Elements of international law*.

Furthermore, in 1863 the international lawyer Paul Louis Ernest Pradier-Fodéré published an edition of Vattel's *Droit des gens*[49] and in 1867 he translated the work of Grotius. Both of these editions are full of his annotations concerning the practice and doctrine of 19th century international law. In his *Avant-Propos* of *De iure belli ac pacis*, criticizing Barbeyrac's version, he wrote about the method used for his translation, which involved word for word translation. His purpose as a translator was to adhere to the original text as much as possible, almost sacrificing his mother tongue:

> »Pénétré de l'idée que le devoir du traducteur est de faire abstraction de lui-même, et de faire connaître l'auteur tel qu'il est, non tel qu'on aurait désiré qu'il fût, je me suis attaché à suivre de très-près le texte; préférant toujours l'exactitude à l'élégance du style, et ne craignant jamais de répéter un mot, lorsque ce mot se trouvait répété dans l'original. [...] Lorsque le style de Grotius a résisté par sa concision au tour de la phrase français, je me suis efforcé de ne pas abandonner pour cela le texte; j'ai sacrifié volontairement les lois de ma langue maternelle […].«[50]

Pradier-Fodéré was depicted by Manfred Lachs as an international lawyer who »has popularized the work of Grotius and Vattel«.[51] The idea of word-for-word translation or of republishing and re-editing not just the works of the great authors of the past, such as Grotius and Vattel, but also the numerous versions of other important international law textbooks derive from the fruitful circulation of European textbooks all over the world.

However, it is important to distinguish between the different ways international law textbooks circulated, namely as commentaries, compendium of international law treaties, remembering that all of them contributed to a homogeneous depiction of the discipline. Since the 18th century, and especially during the course of the 19th century, commentaries on the international law textbooks and treaties became a permanent fixture. All the editions of Vattel's *Droit des gens* published in the 19th century demonstrate this, starting with Silvestre Pinheiro Ferreira's notes published in 1838,[52] the above-mentioned version edited by Pradier-Fodéré, the English edition translated and commented by the English lawyer Joseph Chitty in 1833, who »collect[ed] and condense[d], in numerous notes, the modern rules and decisions«,[53] the Spanish translation full of »unas sacadas de l'Historia de España y de nuestra legislacion, con aplicacion de ellas á la doctrina del autor«.[54]

The commentaries on international law textbooks explain in a concrete way both the process of translation and circulation. Understanding translation as a linear and literal process allowed international lawyers to add notes on case laws, jurisprudence, practice and doctrine of international law to fortify the authority of an international law textbook and to increase the circulation. All editions – revised, translated, commented – »can be just as illuminating as the original work in registering the process whereby, in this case, international law has been globalized and universalized«.[55]

Andrés Bello's work offers an example of compendia in that he used Vattel's work as a major reference work, but also that of Martens and other international lawyers:

48 Loschi (1781) vi. On the translator, his method and the Italian translation itself see: Trampus (2011a); Trampus (2011b). See also Trampus (2013).

49 Vattel (1863). This edition was considered the best in the 19th century, see: Bonfils (1904) 66–67; Rivier (1896) 405; Calvo (1885) 297.

50 Pradier-Fodéré (1867) vii.

51 Lachs (1987) 77.

52 Vattel (1838).

53 Vattel (1833).

54 Vattel (1820).

55 Liu (1999) 128.

> »Cito los pasajes de que hago uso, ya como autoridades y comprabantes, y para indicar los lugares en que pueden consultarse y estudiarse á fondo las materias que toco. Si alguna vez me sucede apartarme de las opiniones de aquellos mismos que me sirven como guia, manifiesto las razones que me asisten para acerlo así. Cuando trato de cosas que estan suficientemente elucidadas en las obras de Vattel, Martens y otros, trasladadas ya al castellano, soi breve, y me limito a presentar, como en una tabla sinóptica, todo aquello que he creido digno de encomendarse a la memoria [...].«. [56]

The idea of the compendium, based mainly on Vattel's theories that advanced word-for-word translation of the commentaries on international law textbooks, is an instance and a part of the process of the universalization of Europe. The abstraction of the universal principles born in Europe became evident in this manner. The same books and concepts could be used in different contexts and times, given that conceiving of translations as a linear process permitted their application all over the world. The aim of universalization seems complete. universalization did not necessarily involve homogenization – differences may just have become less important, and in part due to the circulation of international law textbooks in translation they may even have become invisible.

4 Translation Turn and Postcolonial Studies

The linear translation and the circulation of the international law textbooks represent more than a homogeneous and neutral process. Using translation it is possible to trace a turn, because a translated text could be not depicted as »the final component of a static dichotomy«. [57]

The perspectives and sensibilities cultivated by Translation and Cultural Studies in the last decades, and by Postcolonial Studies as well, are important for a broader and more differentiated understanding of the processes of appropriation and reproduction of international law's doctrines during the 19th century. [58] Within the so-called ›cultural turn‹, even the notion of translation has been critically scrutinized since the 1980s. [59] The category of translation, which until then had only received little attention, became a central question in cultural science, as the translation expert Lawrence Venuti described in 1990. [60]

In his recent book, *Translation changes everything*, Venuti has argued that

> »translation changes the form, meaning, and effect of the source text, even when the translator maintains a semantic correspondence that creates a reliable basis for summaries and commentaries. Translation changes the cultural situation where the sources text originated through an investment of prestige or a creation of stereotypes. Translation changes the receiving cultural situation by bringing into existence something new and different, a text that is neither the source text nor an original composition in the translating language, and in the process it changes the values, beliefs, and representations that are housed in institutions.« [61]

In the context of different cultural science approaches, the concept of translation was rejected as a linguistic challenge, and yet was open to different kinds of disciplines, as it was understood as a practice that brought about cultural transformation. Thereinafter translation is no longer bound to the mere activity of translation itself, but becomes a transdisciplinary challenge, which means not just transdisciplinary collaborations but also a widening of perspectives by dealing with other disciplinary concepts and approaches within the different areas themselves. Furthermore, »translation is understood as an activity that preserves the ›original‹ meanings of an author, but one which sees its tasks in *producing* meanings«. [62] The source text was therefore »dethroned« and the concept of »original« as well as the relationship between translator and translation was revised. [63] The translator and

56 Bello (1832) iii.
57 Lianeri (2002) 4.
58 See: Millán / Bartrina (2013); Munday (2013); Snell-Hornby (2006); Schuttleworth / Cowie (1997); Bassnett (1980); Lefevere (1978).
59 Bassnett / Lefevere (1998); Lefevere (1992) and also Bachmann-Medick (2006).
60 Venuti (1998) 9.
61 Venuti (2013) 21.
62 Snell-Hornby (2006) 61.
63 Snell-Hornby (2006) 62.

his product therefore became the focus of the attention as »visible and active participant[s]«.[64] This metaphorical extension of the notion of translation from a linguistic-textual paradigm to an important and even crucial practice of the modern world, fundamentally summarizes the core of »re-orientation« within Translation Studies. As the linguist and translation scholar, Hans Josef Vermeer, pointed out:

> »Eine Translation ist nicht die Transkodierung von Wörtern oder Sätzen aus einer Sprache in eine andere, sondern eine komplexe Handlung, in der jemand unter neuen funktionalen und kulturellen und sprachlichen Bedingungen in einer neuen Situation über einen Text (Ausgangssachverhalt) berichtet, in dem er ihn auch formal möglichst nachahmt.«[65]

Another important impulse for this re-evaluation came from Postcolonial Studies, which challenged the Eurocentric direction of translation, especially Europe's monopoly over »transfer« and thereby questioned Europe's claim to universality in different fields. Scholars increasingly challenged what they perceived as an occidental approach to translation, which they depicted as linear and clearly imbricated in a universalizing process. At the same time, they stressed the importance of translation for the circulation of western concepts. This broader understanding of the notion of translation, used to generate a monolithic depiction of the world, has been deconstructed: the categories of »original« and »copy« are no longer firm reference points and translation is now considered more a hybrid process than a linear one. Differences must now be recognized and acknowledged.[66] Breaks and misunderstandings as well as the epistemological power of this understanding of translation are highlighted and rendered visible. As Susan Bassnett pointed out:

> »translation does not happen in a vacuum, but in a continuum; it is not an isolated act, it is part of an ongoing process of intercultural transfer. Moreover, translation is a highly manipulative activity that involves all kinds of stages in that process of transfer across linguistic and cultural boundaries. Translation is not an innocent, transparent activity but is highly charged with significance at every stage; it rarely, if ever, involves a relationship of equality between texts, authors or systems.«[67]

In this sense, translation is understood not as a mechanical process, but as agent of cultural intermediation and exchange. Instead of concentrating on equivalence and synonyms, Postcolonial Studies, translation and cultural studies focus on the differences and breaks, on difficulties of translation, creative re-constructions, and overlappings. In effect, they illustrate how hybrid and complex the process of translation is. In other words, the process of translation is not understood as pure or merely as a simple reproduction of words in another language or even as an instrument to overcome cultural differences. Translation does not mean harmonization. Rather quite the contrary: it is a transformative process, as Doris Bachmann-Medick pointed out. The result of a translation is a whole new situation, which, combined with the different context to which it is borne, generates something different that cannot easily be equated with the original.[68]

5 Conclusion, an example: The works of Andrés Bello and Emer de Vattel

The process of translation is an autonomous creation and generates changes itself.[69] In this sense, a key theme within translation studies is power, in that it is not simply an act of faithful reproduction, but, rather, involves a deliberate and conscious act of selection, assemblage, structuration and fabrication. »In these ways translators as much as creative writers and politicians participate in the powerful acts that create knowledge and

64 Snell-Hornby (2006) 62.
65 Vermeer (1986) 33.
66 Bachmann-Medick (2008) 141.
67 Bassnett/Trivedi (1999) 2.
68 Bachmann-Medick (2008) 141.
69 Armitage argues that: »Texts carried ideas but always amid framing paratexts and then into unpredictable contexts for their translation and reappropriation. These conditions generated dissimilitude out of similarity, but rarely to the extent of complete disjuncture and incomparability«: Armitage (2013) 30.

shape culture«,[70] and this process is well shown through Andrés Bello's work.

Bello's *Principios de Derecho de Jentes* is one of the first Hispano-American doctrines of International Law. For Bello, Emer de Vattel was »el escritor mas elegante y popular [...], y su autoridad se ha mirado tiempo ha como la primera de todas«.[71] Especially the first edition of Bello's manual of international law, published in 1832 in Santiago de Chile, is mainly based on Vattel's *Droit des Gens*.

At first glance, Bello's work belongs to the genre of the compendium, as he seemingly summarizes the theories of the most important European lawyers, among them Vattel's *Droit des Gens*. But, on the contrary, it is a new work bearing its own characteristics.

Liliana Obregón argues that from his *Prologo*:

> »Bello informa a sus lectores que su obra no es original, sino un repertorio bien organizado de las obras de muchos autores. Se presenta como un editor ilustrado y selectivo que, según su propia descripción, adopta, revisa, discute, cita, prueba, presenta, contradice y reescribe las obras de los autores que ha consultado. Podríamos decir que Bello conversa con estos autores a lo largo del libro y mediante la edición cuidadosa, la homogenización del lenguaje y estilo, y la adición de múltiples pies de página, nos proporciona, de hecho, una voz autorizada sobre sus ideas. Incluso, la selección de textos que resume o reescribe (a menudo sin citarlos) hace difícil distinguir si se encuentra editando más de lo que reconoce en su prólogo o si realmente lo que está escribiendo es un texto original.«[72]

The originality of his work is clearly exemplified by the theory of non-intervention, Vattel and Bello were both depicted as advocates of the theory of non-intervention,[73] and it has always been remarked that Bello »relied on the writings of [...] Emer de Vattel«.[74]

Vattel did not write a specific chapter on non-intervention, but in some passages of his *Droit des gens* he created »the *nidus* of the modern doctrine relative to intervention«.[75] He linked the principle of non-intervention to his idea of state sovereignty:

> »It is an evident consequence of the liberty and independence of nations, that all have a right to be governed as they think proper, and that no State has the smallest right to interfere in the government of another. Of all the rights that can belong to a nation, sovereignty is, doubtless, the most precious, and that which other nations ought the most scrupulously to respect, if they would not do her as injury.«[76]

In particular, he noted that the domestic jurisdiction was inviolable, even if he admitted that in some cases intervention had to be allowed, as for example »good offices, unless requested to do it, or induced by particular reasons«,[77] or in the case of self-preservation,[78] the moral obligation of restraining wrong-doing.[79] Vattel also legitimized interventions to liberate oppressed people from a tyranny.[80]

Bello pursued Vattel ideas, but pointed out that »the development of rules of non intervention as historically linked to the response of Latin American States in the 19th century to intervention by United States and the European Power.«[81]

Bello, like Vattel, did not dedicate an entire chapter to the question of intervention, but addressed it in the chapters on independence and sovereignty of a state or nation:

> »De la independencia y soberanía de las naciones sigue que a ninguna de ellas es permitido dictar a otra la forma de gobierno, la relijion, o la administracion que esta deba adoptar.«[82]

Although Bello in that passage does not cite any »European authority« or any other doctrine of international law, a comparison of the two doc-

70 Tymoczko/Gentzler (2002) xxi.
71 Bello (1832) 9.
72 Obregón Tarazona (2010) 70.
73 Forsyth et al. (2009) 87.
74 López Escarcena (2014) 21.
75 Winfield (1922–1923) 134.
76 Vattel (1797), B. II, Chap. IV, § 54. See: Chetail (2014) 291–292. On Vattel's intervention theory among many: Distefano (2011) 226; Zurbuchen (2010); Beaulac (2004) 150–155, and also Glanville (2013) 56–59.
77 Vattel (1797) B. I, Chap. III, § 37.
78 Vattel (1797) B. II, Chap. IV, § 50.
79 Vattel (1797) B. I, Preliminaries, § 22.
80 See: Rech (2013) 218–224.
81 Kofi Abiew (1999) 65.
82 Bello (1832) 15.

trines clearly shows that this part was based on Vattel's ideas. Vattel made some exceptions to the general doctrine of non-intervention, while Bello only allowed one exception to the general principle of non-intervention. For him, intervention is only justified in cases of self-preservation:

> »No hai duda que cada nacion tiene derecho para proveer a su propria conservacion y tomar medidas de seguridad contra cualquier peligro.« [83]

Bello limits even this exception, as he explicitly states that the danger, which justifies the intervention of a state, needs to be »significant, evident and imminent […].« [84] But Bello also used his strict idea on non-intervention to criticize the European practice of intervention. Bello therefore only used Vattel's ideas in very narrow and selective ways.

Bello's work remarkably shows how different codes and normative models interact in the target society.

As Koskenniemi writes »Latin American international law textbooks have adapted the universal vocabulary of European writings into a ›professional style uniquely Latin American‹, thus supporting not the passive assimilation of the region to Europe, but its asserted distinctiveness from it.« [85]

Taking that as the point of departure, Bello's work appears to be his own work, written in a particular moment of Latin American history, and used as an international law textbook to explain European principles on the law of nations, but also used to address Latin American interests. He remodelled European theories of international law and used the authority of Emer de Vattel to argue against Europe (especially the Holy Alliance) and to legitimize his own political aims. [86]

Translation of textbooks, or translation of ideas, is a more complex phenomenon than generally acknowledged. It is not a homogenous, neutral and linear process and only on superficially can it be considered a vehicle for universalization. »The concept and practice of appropriation may thus reconfigure the status of translation as the production of texts that are not simply consumed by the target language and culture but which, in turn, become creative and productive, stimulating reflections, theorizations, and representation within the target of cultural context«. [87]

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83 Bello (1832) 16.
84 *Ibid*.
85 Koskenniemi (2011) 173. See also: Obregón Tarazona (2009a); Obregón Tarazona (2008).
86 Arias Ospina (2013).
87 Bastin et al. (2010) 62–63.

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