

An international civilization?

Empire, internationalism and the crisis of the mid-twentieth century

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Two decades after Martin Wight's untimely death, his fertile blend of history and international relations still shaped the intellectual agenda of the School of European Studies, and of the International Relations Subject Group, my joint homes when I taught at the University of Sussex. The intimate relationship between European history and our conceptions of international order was underlined by Wight in his *Power politics*. As he writes there, the system of international politics that emerged in Europe at the beginning of modern times, by spreading over other continents, 'still provides the political framework of the world.' Behind this system of states, in Wight's view, lay 'a common culture' which formed the basis for the expansion and consolidation of something called 'international society'. Although this concept was later analysed more exhaustively by others, Wight himself made use of it on several occasions. Referring in particular to the crisis of the mid-twentieth century, he stated in *Power politics* that 'the unity of international society is thrown into sharpest relief when it is riven by an international civil war.'¹ He seems thereby to imply, firstly, that international society was essentially still European—the ideological civil war he was referring to, after all, had originated there—and secondly, that the 'gangsters' who had seized control of Soviet Russia and Nazi Germany had not through their acts removed their countries from its confines. In his 1940 application to his local tribunal for conscientious objectors this view became even clearer. He described the war as 'the convulsion of a civilization that has forsaken its Christian origins—a divine judgement upon European civilization for the corporate Sin [in which all share without distinction of religion or nation] which is the cause of the war.'²

In this article I seek to explore further this theme of the emergence of an international system based around an idea of 'European civilization', and to outline in particular how the great convulsion of the mid-twentieth century crisis, which so marked Wight's own thought and life, brought to an end one way of thinking about the international system, and opened the door to another. I wish to suggest that to understand more fully the story of the global expansion of a European

* This article is a revised text of the Martin Wight lecture given at the University of Sussex on 24 November 2005.

¹ M. Wight, *Power politics* (New York: Holmes and Meier, 1978), p. 87.

² Cited in M. Wight, *System of states* (Leicester: Leicester University Press, 1977), p. 4.

state-system we need to stand outside as well as inside the values of its originators. The notion of civilization itself was an intellectual construction riven with ambiguities. It was a claim to power as well as a justification for violence. It was a hypothetical basis for global order in a world of hierarchy. And it was a fitting irony of history that while Europe may have bestowed the conceptual architecture of an international order upon the world, it only managed this by tearing itself apart in the process. What followed after 1945 may have had the formal attributes of the old European state-system; but many of the cultural assumptions that had underpinned it had vanished in the fog of war, leaving Wight—and I think us too—in a very different and fragmented world.

I

On 7 March 1934, an unusual event took place at Madison Square Garden in New York. Twenty thousand people attended a meeting there to hear speeches marking the Nazis' first year in power and denouncing the regime. The rally was organized as a mock trial and was advertised in the press as the 'Case of civilization against Hitler', with indictment, witnesses and, eventually, a judgement delivered by a Minister of the Community Church of New York City. 'Hitlerism denounced as a crime against civilization,' ran the headline in the *New York Times* the following day. Organized principally by the American Jewish Congress, the meeting anticipated Nuremberg in its consciousness of the power of what the scholar Louis Anthes calls 'publicly deliberative drama'. It looked forward too to the Cold War in its evocation of a joint Judeo-Christian civilization ranged against the threat of totalitarianism. But in its emphasis on that common 'civilization' it looked backwards, to the concept that lay at the heart of the claim to world leadership that Europeans had been advancing since at least the early nineteenth century.³

It was really after the defeat of Napoleon that the concept of a European civilization became fundamental to new understandings of international order and new techniques of international rule. In France, Guizot abandoned the Enlightenment project of fitting Europe into a scheme of universal history for the [Herderian] task of tracing the continent's own cultural roots. As he put it in his *History of civilization in Europe*: 'civilization is a sort of ocean, constituting the wealth of a people, and on whose bosom all the elements of the life of that people, all the powers supporting its existence, assemble and unite'. It was just possible, thought Guizot, to locate among the various civilizations of the world a specifically European variant: 'It is evident,' he wrote, 'that there is a European civilization; that a certain unity pervades the civilization of the various European states...'⁴ In Britain, John Stuart Mill suggested by contrast that there was but a single model of civilization; but this too—in his 1836 essay on 'Civilization'—he located in Europe since 'all [the

³ L. Anthes, 'Publicly deliberative drama: the 1934 mock trial of Adolf Hitler for "crimes against civilization"', *American Journal of Legal History* XLII, October 1998, pp. 391–410.

⁴ F. Guizot, *The history of civilization in Europe* (London: Penguin, 1997), p. 11, p. 13. Cited by J. Ifversen, 'The meaning of European civilization: a historical–conceptual approach', Working Paper no. 51–97, Centre for Cultural Research, University of Aarhus, 1997.

elements of civilization] exist in modern Europe, and especially in Great Britain, in a more eminent degree... than at any other place or time.⁵ Whether one believed like Mill that civilization was singular and hierarchical, or plural and historically relative—and as time went on Mill would win out over Guizot—what came to be seen as self-evident was civilization's location in Europe.⁶

One fertile intellectual elaboration of this belief was—as we have learned from the work of Martti Koskenniemi and Antony Anghie—the new discipline of (mostly positivist) international law. As a generalization and adaptation of the values of the Concert of Europe, international law was designed as an aid to the preservation of order among sovereign states, and its principles were explicitly stated as applying only to civilized states—much as Mill saw his principles of liberty as applying solely to members of 'a civilized community'. In 1845 the influential American international lawyer Henry Wheaton had actually talked in terms of the 'international law of Christianity' versus 'the law used by Mohammedan Powers'; but within twenty or thirty years, such pluralism had all but vanished. According to the late nineteenth century legal commentator, W. E. Hall, international law 'is a product of the special civilization of modern Europe and forms a highly artificial system of which the principles cannot be supposed to be understood or recognized by countries differently civilized... Such states only can be presumed to be subject to it as are inheritors of that civilization.'⁷

Thus conceived, international law faced the issue of the relationship between a civilized Christendom and the non-civilized world. States could join the magic circle through the doctrine of international recognition, which took place when 'a state is brought by increasing civilization within the realm of law.'⁸ In the 1880s James Lorimer suggested there were three categories of humanity—civilized, barbaric and savage, and thus three corresponding grades of recognition (plenary political; partial political; natural, or mere human). Most Victorian commentators believed that barbaric states might be admitted gradually or in part. Westlake proposed, for instance, that: 'Our international society exercises the right of admitting outside states to parts of its international law without necessarily admitting them to the whole of it.' Others disagreed: entry 'into the circle of law-governed countries' was a formal matter, and 'full recognition' all but impossible.⁹

The case of the Ottoman empire exemplified this ambivalent process. Of course European states had been making treaties with the sultans since the sixteenth

⁵ Mill, cited in Uday Singh Mehta, *Liberalism and empire: a study in nineteenth century British liberal thought* (Chicago and London: University of Chicago Press, 1999), pp. 99–100.

⁶ cf. C. Schmitt, *The nomos of the earth in the international law of the Ius publicum Europeaeum*, translated by G.L. Ulmen (New York: Telos Press, 2003), pp. 228–9.

⁷ Mehta, *Liberalism and empire*, p. 101; H. McKinnon Wood, 'The treaty of Paris and Turkey's status in international law', *American Journal of International Law* 37: 2, April 1943, pp. 262–74; Hall quoted by Martin Wight, 'The origins of our states-system: geographical limits', in his *System of states*, pp. 115–16. See also Lydia He Liu, 'The desire for the sovereign and the logic of reciprocity in the family of nations', *Diacritics* 29:4, Winter 1999, pp. 150–77.

⁸ Hall cited by A. Anghie, 'Finding the peripheries: sovereignty and colonialism in nineteenth-century international law', *Harvard International Law Journal* 40:1, Winter, 1999, pp. 1–80.

⁹ Lorimer in G. Gong, *The standard of 'civilization' in international society* (Oxford: Clarendon Press, 1984), p. 49; Westlake in Anghie; Hall in Wight, pp. 115–16. Generally, on the Victorian background, see D.S. Bell, 'Empire and international relations in Victorian political thought', *Historical Journal* 49: 1, 2006, pp. 281–98.

century. But following the Crimean War the empire was declared as lying within the 'Public law of Europe'—a move which some commentators then and now saw as the moment when international law ceased to apply only to Christian states but which is perhaps better viewed as a warning to Russia to uphold the principles of collective consultation henceforth rather than trying to dictate unilaterally to the Turks.

In fact, despite its internal administrative reforms, the empire was never regarded in Europe as being fully civilized, the capitulations remained in force, and throughout the nineteenth century the chief justification of the other Powers for supporting first autonomy and then independence for new Christian Balkan states was that removing them from Ottoman rule was the best means of civilizing them. We can see this clearly in contemporary attitudes towards the military occupation of Ottoman territory by European armies. After the Franco-Prussian War, international lawyers had devised the notion of belligerent occupation—a state of affairs in which a military occupant interfered as little as was compatible with military necessity in the internal affairs of the occupied country so as not to prejudice the rights of the former ruler of that territory who was regarded as remaining sovereign until a peace settlement might conclude otherwise. Belligerent occupation was, in other words, a compact between so-called civilized states not to unilaterally challenge each other's legitimate right to rule. In the case of Ottoman territory, the Powers felt no such inhibitions: the Russians in Bulgaria in 1877, the Habsburgs in Bosnia the following year, and the British in Egypt in 1882 all demonstrated through their extensive rearrangement of provincial administrations, that although they would allow the Ottoman sultan to retain a fig-leaf of formal sovereignty, in fact the theory of belligerent occupation did not apply in his lands. Thirty years later, the Austrians [in 1908] and the British [in 1914] went further: on both occasions they unilaterally declared Ottoman sovereignty over the territories they were occupying at an end, suggesting that whatever had or had not been agreed at Paris in 1856, by the early twentieth century, the Ottoman empire was regarded once again as lying outside the circle of civilization. [The fact that it was a Muslim power was certainly not irrelevant to this. In 1915, when the French and Russians prepared a diplomatic protest at the mass murder of Ottoman Armenians, their initial draft condemned the massacres as 'crimes against Christendom'. Only when the British mentioned that they were worried over the possible impact of such a formulation on Indian Muslim opinion was the wording changed to 'crimes against humanity.']

If the Ottoman empire was, as it were, semi-civilized, then sub-Saharan Africa—site of the main European land-grab in the late nineteenth century—was savage. European and American lawyers extended the notion of the protectorate—originally employed for new European states such as Greece—to the new colonial situation, ostensibly as a way of shielding vulnerable non-European states from the depredations of other European Powers, but more urgently, in order to avoid complications among the Powers which might trigger off further conflict. In the increasingly radicalized world-view of late nineteenth century European

imperialism, protectorates might be a way of slowing down social transformation—in the interests of ‘native customs’—as much as they were of introducing it. ‘Much interest attaches to legislation for protectorates, in which the touch of civilization is cautiously applied to matters barbaric,’ wrote a commentator in the *Journal of the Society of Comparative Legislation* in 1899. Yet the concept of civilization remained vital. The treaty that followed Berlin Colonial Conference of 1884–85, which marked the attempt to diplomatically manage the Scramble for Africa, talked of the need ‘to initiate the indigenous populations into the advantages of civilization.’¹⁰

In this way, Victorian international law divided the world according to its standard of civilization. Inside Europe—and in other areas of the world colonized by Europeans—there was the sphere of civilized life: this meant—roughly—the protection of property; the rule of law on the basis—usually—of codes or constitutions; effective administration of its territory by a state; warfare conducted by a regular army; and freedom of conscience. The fundamental task of international law in this zone was to resolve conflicts between sovereign states in the absence of an overarching sovereign. Outside this sphere, the task was to define terms upon which sovereignty—full or partial—might be bestowed. It was thus in the non-European world that the enormity of the task required in acquiring sovereignty could best be grasped. There, too, the potential costs—in terms of legalized violence—of failing to attain the standard of civilization were most evident.

The laws of war, codified by the Great Powers at length at the end of the nineteenth century, were designed to minimize the severity of conflicts between civilized states. But where no reciprocity of civilized behaviour could be expected, European armies were taught they need not observe them—or indeed in some versions—any rules at all. Britain’s General J.F.C. Fuller noted that ‘in small wars against uncivilized nations, the form of warfare to be adopted must tone with the shade of culture existing in the land, by which I mean that, against people possessing a low civilization, war must be more brutal in type.’ The 1914 British Manual of Military Law, too, emphasized that ‘rules of International Law apply only to warfare between civilized nations... They do not apply in wars with uncivilized states and tribes.’ After all, savages were impressed only by force; fanaticism could be stopped only through an awesome demonstration of technological superiority. ‘A shell smashing into a putative inaccessible village stronghold is an indication of the relentless energy and superior skill of the well-equipped civilized foe. Instead of merely rousing his wrath, these acts are much more likely to make [the fanatical savage] raise his hands in surrender.’ These were the words of Colonel Elbridge Colby, an interwar US advocate of air power in colonial insurgencies (and father of William Colby, future director of the CIA and architect of the Advanced Pacification Campaign in Vietnam).¹¹

¹⁰ A. Gray, ‘West Africa’, *Journal of the Society of Comparative Legislation*, 1899, p. 129.

¹¹ Following A. Anghie, ‘Finding the peripheries’, *Harvard International Law Journal*, 1999; Q. Wright, ‘The bombardment of Damascus’, *American Journal of International Law* 20: 2, April 1926, pp. 263–80; E. Colby, ‘How to fight savage tribes’, *American Journal of International Law* 21: 2, April 1927, pp. 279–88. In general, K. Nabulsi, *Traditions of war: occupation, resistance and the law* (Oxford: Oxford University Press, 1999). We can, I think, trace

Until well after the First World War, it was axiomatic that ‘international law is a product of the special civilization of modern Europe itself.’ The United States was, by the century’s end, regarded from this point of view as a European power, if not of the first rank. But Washington—which had stood on the sidelines during the carve-up of Africa, had achieved a special relationship to international law following the war with Spain. Through the Roosevelt Corollary, it toughened up its reading of the Monroe Doctrine, while at the same time encouraging the pan-American codification of international law as a way of enshrining its own regional hegemony. Siam was admitted to the Hague conferences as a mark of respect; but in China, where the Boxer Rebellion was put down with enormous violence—on the grounds that it was ‘an outrage against the comity of nations’—the unequal treaties remained in force. It was only the Japanese who seriously challenged the nineteenth century identification of civilization with Christendom. Having adhered to several international conventions, and revised their civil and criminal codes, they managed to negotiate the repeal of the unequal treaties from 1894 onwards, as well as to win back control over their tariffs, and their victory over Russia in 1905 simply confirmed their status as a major Power. Not surprisingly, the Young Turks—desperate to repeal the humiliating capitulations—could not hear enough of the Japanese success.¹²

The Japanese achievement confirmed that the standard of civilization being offered by the Powers was capable of being met by non-Christian, non-European states. But the Japanese achievement was also unique. After the ending of the Russo-Japanese war, the Second Hague Conference of 1907 talked of ‘the interests of humanity, and the *ever progressive* needs of civilization.’ But could civilization (with a capital C) really ever be universalized, and how far could it be extended? Many had their doubts. German and Italian jurists essentially ruled out any non-European power receiving *full* recognition; the prominent Russian jurist de Martens was equally emphatic. As for the empire-builders, in Africa, in particular, as well as in the Pacific, many liberals and Gladstonians came to terms with imperialism at century’s end—as Saul Dubow has recently reminded us—because they thought in terms of a kind of an imperial cosmopolitanism or commonwealth, in which individual peoples might preserve their own distinctive cultures. Where necessary, of course, civilized powers had to rule others to ensure this.¹³

The idea of trusteeship, which was—with a slightly different coloration—to become the lynchpin of the League of Nations system of colonial rule, expressed a similar caution about the exportability of (European) civilization. Unilaterally abrogating Ottoman sovereignty in Egypt in December 1914, the British

a straight line from the 1898 Battle of Omdurman (48 British dead; about 10,000 enemy fatalities), Peking (during the Boxer Revolt) and the 1904 suppression of the Herero in German Southwest Africa—through the British aerial bombing of hostile tribes in Afghanistan (1919), the Iraqi revolt the following year, and the French bombardment of Damascus in 1925—to the Shock and Awe of the US invasion of Iraq a century later.

¹² R. Worringer, ‘Sick man of Europe or Japan of the Near East?: constructing Ottoman modernity in the Hamidian and Young Turk eras’, *International Journal of Middle East Studies* 36: 2, 2004, pp. 207–30.

¹³ S. Dubow, ‘The new age of imperialism?’, Professorial lecture, Sussex, 19 Oct. 2004; also, R. Koebner and H. Dan Schmidt, *Imperialism: the story and significance of a political word, 1840–1960* (Cambridge: Cambridge University Press, 1965).

proclaimed that they regarded themselves as ‘trustees for the inhabitants’ of the country. Their unilateralism was only one sign of the death of the old Concert and its values. Blazing a trail that others would follow in the wars of the coming century, they tore up one of the fundamental axioms of the late-nineteenth century European order—that the basic legitimacy of the sovereign ruler would always be respected—and replaced it with a new understanding in which sovereignty inhered, not in the head of state, but in the people or nation. What Nehal Bhuta has recently—in the case of Iraq—called the doctrine of ‘transformative occupation’ thus makes its appearance.¹⁴

II

The League of Nations, established at Versailles after the First World War, transformed the idea of international civilization. A permanent international organization whose members included Abyssinia, Siam, Iran and Turkey was already something with a very different global reach to the old European conference. That this was so was chiefly thanks to the Americans, not the British whose schemes for an improved version of the old Concert of Europe were shot down by the heavier firepower of messianic Wilsonian liberalism; at the end of the war, Whitehall’s idea for an international organization run by a small group of select powers lost out to Wilson’s vision of ‘a general association of nations.’

Sovereignty was henceforth explicitly shaped by the doctrine of national self-determination in its most anti-autocratic and optimistic guise so that the task for the civilized nations became that of guiding the less, or uncivilized, into the way of *national* self-realization. ‘Imperialism’ was suddenly once more a term of rebuke, and trusteeship and mandates became—in the minds at least of some idealistic or self-deluded British civil servants—something entirely different from prewar empire-building. Ponder, for instance, the revealing conversation that took place between Balfour and Lord Robert Cecil, in December 1918, on the subject of how to dispose of former German colonies: Balfour: ‘The French and Italians... are not in the least out for self-determination. They are out for getting whatever they can.’ Cecil: ‘They are imperialists.’ Balfour: ‘Exactly’. A few months later, Whitehall lost patience with the Italians because the latter were still pressing all kinds of secret deals over the question of Angola, and would not recognize that—in the words of a Colonial Office official—‘imperialism was dead.’¹⁵

Yet Woodrow Wilson’s general association—the new Society of Nations in Geneva—still depended on the same civilizational hierarchies that had underpinned so much pre-1914 liberal thought. The postwar peace settlement made this crystal clear. Curzon was simply being more honest than his colleagues when he remarked

¹⁴ Gong, *The standard of ‘civilization’ in international society*, p. 56; M. McIlwraith, ‘The declaration of a protectorate in Egypt and its legal effects’, *Journal of the Society of Comparative Legislation* 17: 1–2, 1917, pp. 238–59; N. Bhuta, ‘The antinomies of transformative occupation’, *European Journal of International Law*, 16: 4, 2005, pp. 1–20.

¹⁵ A. Zimmern, *The League of Nations and the rule of law, 1918–35* (London: Macmillan, 1936); James C. Hales, ‘The reform and extension of the mandate system’, *Transactions of the Grotius Society*, 1940, pp. 153–210; W. Roger Louis, ‘Great Britain and the African peace settlement of 1919’, *American Historical Review* 71: 3, April 1966, pp. 875–92.

that the British were supporting the doctrine of self-determination because they believed they would benefit more from it than anyone else. The contrasting treatment of eastern Europe and the formerly Ottoman Middle East bore this out.

In eastern Europe, a territorial settlement was crafted through the offices of the New States Committee. Guided by its advice, the victors at Versailles bestowed sovereignty upon new European nations [unlike in the Middle East, this appeared to suit their strategic concerns], but insisted upon instituting League oversight of their protection of the rights of their national minorities. Should the new minorities rights regime be imposed on established defeated states such as Germany? That was not deemed necessary, still less to universalize it to apply to Britain, France or the United States. Minority rights were, in other words, a badge of the new states' secondary status, manifesting their need for tutelage in the exercise of their own sovereignty.

This was bad enough for East European politicians, but it was considerably less humiliating than the fate assigned to those outside Europe. In Egypt, which was not of course a mandate, the British imprisoned the leading Egyptian nationalists and made it clear that Wilson's new dawn did not apply to them. Not surprisingly, what one historian calls 'the Wilsonian moment' was greeted with demonstrations and protests from north Africa to China. Even Japanese diplomats felt rebuffed, when their proposed racial equality clause was summarily dismissed by the British and the Americans.¹⁶

The other former Ottoman lands were brought under the control of the League whose tripartite system of mandates classified non-European societies on the basis of their likely proximity to 'existence as independent nations'. The Arab provinces of the Middle East became Class A mandates—to the fury of their inhabitants, while former German colonial possessions in central Africa and elsewhere were placed in Classes B and C, to be administered as 'a sacred trust for civilization' until such time as, in the long-distance future, they might be fit to govern themselves. Smuts, a powerful influence on the mandate system as a whole, and keen to see the Dominions allowed to acquire colonial possessions themselves, thought the time could safely be indefinitely postponed: Classes B and C colonies were 'inhabited by barbarians, who not only cannot possibly govern themselves but to whom it would be impracticable to apply any ideas of political self-determination in the European sense.'¹⁷

General Smuts' view did not win the day, however—it was too uncompromising to fit the aspirations of League supporters—and the architects of the League congratulated themselves on a new model of international organization whose disinterested universalism, while taking account of differences in governing capability between peoples, nevertheless marked a step forward from the self-centred imperialism of the previous century. Yet if the League represented—in

¹⁶ E. Manela, 'The Wilsonian moment and the rise of anticolonial nationalism: the case of Egypt', *Diplomacy and Statecraft* 12: 4, 2001, pp. 99–122; N. Shimazu, *Japan and the racial equality proposal of 1919* (London: Routledge, 1995).

¹⁷ A. W. Brian Simpson, *Human rights and the end of empire: Britain and the genesis of the European Convention* (Oxford: Oxford University Press, 2001), p. 146.

their minds—the nucleus of a new world community, that was not how it appeared to some of those who stood outside it. For the leaders of the new Soviet Union, for instance, the League was obviously a continuation of older imperial trends, not a repudiation of them. Proof, if any were needed, was the League's own marked hostility to the USSR itself. The League's anti-Bolshevism was a reality of course, and it is not surprising that in the 1920s, the Bolshevik leadership denounced it as an expression of the struggle among capitalist states and one of the forms in which imperialism was carried on.

The Soviet response is important because it underscored the rift that had opened up as a result of profound ideological differences between the former members of the old Concert of Europe. To the League's liberal utopianism, Russia's Bolsheviks counter-posed their own rival universal vision of a proletarian brotherhood, in which empires would be overthrown through popular revolution, and national states inside and outside Europe would forget their differences in defence of the common class struggle. In fact, this rift was not as unbridgeable as seemed in the 1920s since within a decade it was clear that both the League and the USSR stood for preservation of the post-1918 status quo inside Europe. As a result of Hitler's rise to power, Stalin brought the USSR into the League and by 1935 Molotov was defending it as a bastion against 'belligerent, aggressive elements', a vital element in the struggle to save the Soviet Union from another war.

Far more than Soviet communism, it was the rise of National Socialism in Germany which overshadowed the League and undermined its civilizational claims. Between these two it seemed that there could be no compromise: either the League or Hitler would prevail, and this struggle extended beyond the territorial issue to the very conception of international law. The Nazis challenged the idea of universality, casting doubt on the claim that 'the international society or family of nations is as broad as civilization.' They, too, saw themselves as defenders of civilization, but their conception of civilization was sharply bounded by territory, history and blood. In the thought of Carl Schmitt and the geo-politicians, the boundaries were regional: the Third Reich should follow where the US—through the Monroe Doctrine—had led, and establish its own hegemony over Europe. According to Schmitt, the League had generated an undesirable expansion of international legal norms—what he caustically called a *Normeninflation*; but all of this was really a cloak for its sponsors' territorial appetites and greed. In reality all universal claims hid claims to power; 'spatial international law'—in other words regional hegemony—was simply a more honest expression of existing power relations.¹⁸

The expression of this vision of global order established through regional states-systems each under the leadership of a hegemon was to be found in Germany's 1940 Tripartite Pact with Italy and Japan. This was perhaps the high-point of international regionalism. 'The governments of Germany, Italy and Japan,' opens the

¹⁸ Schmitt in A. Gyorgy, 'The application of German geopolitics: geo-sciences', *American Political Science Review* 37: 4, August 1943, pp. 677–86. But see, M. Koskenniemi, 'International law as political theology: how to read *Nomos der Erde*?', *Constellations* 11: 4, 2004, pp. 492–511. A. Carty, 'Carl Schmitt's critique of liberal international legal order between 1933 and 1945', *Leiden Journal of International Law* 14, 2001, pp. 25–76.

treaty, 'considering it as a condition precedent of any lasting peace that all nations of the world be given each its own proper place have decided to ... co-operate with one another ... to establish and maintain a new order of things.' A similar logic underpinned Japanese thinking on the establishment of a new East Asian order. There too, the League's universalistic pretensions seemed a threadbare cover for European imperialism, and a challenge to the Japanese to provide leadership in an anti-imperialist counterweight. In the words of Tokyo University political scientist, Royama Masamichi: 'as a world organization, the League of Nations is only half true and the other half is no more than an institution for protecting the Versailles system of western European countries like England and France.'¹⁹

Even more important as the war went on for German policy than Schmitt's vision of regional hierarchies was the idea of international order through the racialized purification of conquered territory, or *Lebensraum*. Race was the Nazis' true universal: it underpinned everything, shaped international relations, and explained why there could be no universal family of nations or commonly applicable rules and norms. SS legal expert, Obergruppenfuehrer Werner Best, Heydrich's deputy in the RSHA, put it bluntly in 1939: 'the relations between states, hitherto called international law, cannot be called "law".' Insofar as Europe represented a community, it was because it was 'to a certain extent composed of racially similar peoples with similar cultural experiences.' What that would mean for the Slavs and the Jews, among others, would soon become clear enough.²⁰

Of course the Nazis did observe some existing international legal norms, especially where West European prisoners of war were concerned. On the other hand, their indifference to law in the East was evident from the invasion of Poland in September 1939 when, after a brief but intense discussion, it was made clear to the Army High Command that they were not to regard themselves as *occupying* Poland since this would have implied Poland's continued juridical existence. Germany would take no notice of Poland's government in exile. Rather, Poland was to disappear entirely from the map under the impact of annexation and partition. Once that precedent had been established, one legal norm after another could be flouted, or rather discarded for failing to match up to the racial needs of the conqueror by a regime whose ruler had a low opinion of international law and lawyers in general.²¹

From one point of view, the Nazis were tearing down the whole edifice of nineteenth century international law. But from another, they were only behaving differently from other European imperialists by ignoring the assumption that there was a civilizational fault-line which divided European peoples from those beyond. In the British-dominated Raj, for instance, a civil servant had dismissed the protests of an Indian princely state in 1873 on the grounds that 'the maxims of international

¹⁹ Royama cited in Jessamyn Reich Abel, 'Warring internationalisms: multilateral thinking in Japan, 1933-64', Columbia University D.Phil. thesis, 2004, p.132..

²⁰ Cited in K. Wilk, 'International law and global ideological conflict: reflections on the universality of international law', *American Journal of International Law* 45: 4, October 1951, pp. 648-70; V. Gott, 'The National Socialist theory of international law', *American Journal of International Law* 32: 4, October 1938, pp. 704-18.

²¹ Czesław Madajczyk, 'Legal conceptions in the Third Reich and its conquests', *Michael: on the history of the Jews in the diaspora*, 13, 1993, pp. 131-59.

law' only regulated 'the relations of independent and co-equal European States'. In effect, Central Europe was now Germany's India. By proclaiming the Protectorate (of Bohemia-Moravia) in March 1939, they implied that the colonial model of relations between civilizationally advanced and backward peoples which had been developed by the British and French, might now shape relations among nations on the continent of Europe itself. Wiping out the independent states of Czechoslovakia and Poland, the Nazis were also throwing into reverse the progressivist assumption that sovereignty once gained could not, as an aspect of civilized life, be abolished or whittled down.²²

Contemporaries were struck by the Near Eastern and African parallels. Several cited the example of the French protectorate treaty with Tunis; there was also, of course, the example of Britain in Egypt. A certain racism was evident almost as much in the note of anti-Nazi outrage as in Nazi policy. 'No nation belonging to the white race has ever before had such conditions forced upon it,' wrote Eugene Erdely. 'It constituted the first German colonial statute in modern history for a white and civilized nation.'²³

III

For some years before this, the expansion of the League and the ideological fragmentation of the European state system had made it less and less straightforward to use the old Eurocentric language of 'international civilization'. In 1929 Sir John Fischer Williams confessed that 'the concept of "civilized society" as a community of nations or States distinct from the rest of the world no longer corresponds with the main facts of contemporary life.' According to a French jurist in 1930: 'The family of nations is the totality of states [civilized and uncivilized] and other subjects of international public law.' Writing in *The Listener*, Prof. H.A. Smith of London University drew attention to some of the consequences: 'In practice, we no longer insist that States shall conform to any common standards of justice, religious toleration and internal government. Whatever atrocities may be committed in foreign countries, we now say that they are no concern of ours... This means in effect that we have now abandoned the old distinction between civilized and uncivilized States.'²⁴

The old Gladstonian certainty that had once underpinned that distinction was gone. For the interwar crisis of parliamentary democracy in Europe was also making liberals conscious how far their own values required extensive reevaluation—replacing the old bourgeois stress on protection under the law with a new recognition of the lower classes' social and economic needs—if they were to compete in the modern world against the temptations of Left and Right. To

²² Napier of Merchistoun quoted by L. Benton, 'Landlocked and the legal puzzles of quasi-sovereignty', unpublished paper, p. 47. My thanks to Professor Benton for this reference.

²³ E. Erdely, *Germany's first European protectorate: the fate of the Czechs and the Slovaks* (London: Robert Hale, 1942), pp. 40–41.

²⁴ G. Schwarzenberger, 'The rule of law and the disintegration of international society', *Transactions of the Grotius Society* 22, 1937, p. 66.

be civilized, in the old liberal sense, was thus not necessarily to be modern; on the contrary, to embrace modernity might require abandoning some of the older assumptions of 'civilized society.' It was at just this time that Arnold Toynbee issued his prophetic warning against 'the misconception of the unity of culture'. His book, *A study of history* (Oxford University Press, 1934), which made such an impression on the young Martin Wight, offered a typology of 'civilizations', as if to set the decay of the European version in its historical context. As Wight noted, in his obituary of his friend and mentor, Toynbee was 'the historian who was to teach the English-speaking world that there are other civilizations beside the Western'.²⁵

One way of countering the Nazi claim that the League's universalism was all a cover for the old imperialism was to take universalism more seriously. Indeed for many in the late 1930s, the League experience, failure though it was, suggested a community of nations slowly coming into being that was actually—or potentially—global. But what was this new kind of world community, and could it serve as the basis for a reconstruction of international order? Did it have anything more than a merely rhetorical existence? In 1938, the Spanish philosopher Salvador de Madariaga boldly asserted that 'there exists a world community', only to admit almost immediately that 'we moderns have not only immediately guessed or felt the world community, but begun actually to assert, create and manifest it, though we do not know yet what the world community is, what are its laws, what are its principles, nor how it is going to be built in our minds.'²⁶

The implications for international law were particularly acute since the very foundations of the old system had been thrown into question. 'European civilization has shaped modern International Law,' noted a London University professor in 1938. 'But is European civilization still what it was, and if not, how do the changes affect international law?'²⁷ Many commentators believed that events had shown up the fragility of the entire discipline. 'International law is seriously discredited and on the defensive,' commented another. Cordell Hull, the US Secretary of State, warned, in an address of June 1938, of a 'world growing internationally more and more disordered and chaotic'. One of his assistants, Francis Sayre, followed a few days later: 'The supreme question which we and all the world face today is whether or not we are to live henceforth in a world of law or a world of international anarchy.'²⁸

As we know, a new permanent international organization was eventually established by the United Nations in their struggle against Hitler as their response to this predicament. The United Nations Organization was heralded as a vast improvement on its unfortunate predecessor, but if this was really true it was not for the

²⁵ J. Kunz, 'Pluralism of legal and value systems and international law', *American Journal of International Law* 49: 3, July 1955, pp. 370–76; Martin Wight, 'Arnold Toynbee: an appreciation', *International Affairs* 52: 1, January 1976, pp. 10–12.

²⁶ Cited in G. Schwarzenberger, 'The rule of law and the disintegration of international society', *Transactions of the Grotius Society* 22, 1937, pp. 56–77.

²⁷ Gong, *The standard of civilization*, pp. 84–85; W. Friedmann, 'The disintegration of European civilization and the future of international law', *Modern Law Review*, December 1938, pp. 194–214.

²⁸ *Ibid.*, p. 57; G. Schwarzenberger, 'The rule of law', p. 66.

reasons commonly advanced at the time. In internationalizing still further the old society of nations, the UN quickly banished what was left of the old imperial vocabulary of international civilization. As early as December 1944, feeling the cold wind from Washington, Attlee had recommended replacing the concept of 'trusteeship' with 'partnership' as 'a term which is felt to interpret more correctly the outlook of the colonial peoples themselves towards the present phase of their political evolution within the British Commonwealth of Nations.' As decolonization swelled the number of its members, the UN General Assembly passed a resolution declaring that independence should not be delayed in former colonies because of a purported lack of 'civilization'; the International Law Commission also agreed to 'refrain from using the expression "civilized countries".'²⁹

At the same time as it emphasized its modernity by focusing upon socio-economic development, welfare and population issues, the UN as an institution moved away from the grand supranational aspirations that the 'men of 1919' [in Martti Koskenniemi's term for the reforming jurists of the interwar era] had once had for international law. Veto-wielding Great Powers enjoyed an influence that they had lacked at Geneva—the price for both Soviet and US participation. Despite the noble talk of human rights, and real advances in refugee law, in many other areas—the law of war, minority rights—law was diminished rather than expanded. At least that was how it struck many of those most closely involved. As one commentator noted during the Cold War: 'the division on fundamentals encourages trends away from universal law.' Civilian populations were expelled on a large scale; wars were increasingly waged without being declared. In fact, the world of the UN turned out to be as Hobbesian as that which had preceded it. Wight had understood this from the start. As he noted so presciently in *Power politics*, the growth of an international system did *not* necessitate the growth of internationalism; far more important a force in world affairs remained the states' pursuit of their individual interests. The Great Powers had returned.³⁰

Making the distinction in 1938 between legal conceptions of society and community, the jurist George Schwarzenberger suggested that 'whereas the members of a community are united in spite of their individual existence, the members of a society are isolated in spite of their association.' That suggests that we need to be careful when we encounter—as we do increasingly in the postwar era—the use of the terminology of 'community', not to mistake the wish for the deed. When in 1899 the Convention for the Peaceful Adjustment of International Differences spoke of 'the solidarity which unites the members of the society of civilized nations/desirous of extending the empire of law', the interests that bound that 'society' together were specific and delimited: the interest in minimizing and regulating inter-state conflict. By the mid-twentieth century, such specificity had been lost, both of goals and of actors. Specificity and coherence had been too closely linked

²⁹ PREM 4/31/4, 16 Dec. 1944, 'International aspects of colonial policy: War Cabinet memo by Mr Attlee', in S.R. Ashton and S.E. Stockwell, *Imperial policy and colonial practice, 1925–45*, Part 1 (London: HMSO, 1996), p. 201; Gong, *Standard*, pp. 90–91.

³⁰ K. Wilk, 'International law and global ideological conflict: reflections on the universality of international law', *American Journal of International Law* 45: 4, October 1951, p. 668.

to empire and a very temporary phase of European hegemony to survive Europe's own blood-letting. The 'international community' which all invoked after the war was a rhetorical device, an empty box which successive generations filled with new content—from human rights in the 1940s, civil society in the 1990s. Between these two points, generations of political scientists laboured to find the common bonds which might knit its members together now that the concept of a single civilization had been banished. In the 1950s there was the UNESCO experts' statement on racism, in the early 1960s the work of the Committee for the Study of Mankind; in the 1970s the search for positivist global values (of human dignity). But none of these, in my opinion, amounted to very much: they told one more about the latest fashion among Anglophone social scientists than they did about the world.

It was perhaps an irony of history that just as the old imperial Euro-centrism was being jettisoned, so in Europe itself, chastened by the experience of occupation and ideological civil war, something close to what we might call a common legal civilization was emerging at exactly this time, a product of the moves towards political and economic integration, alongside the creation of a binding human rights regime. Paradoxically, the common experience of Nazi occupation—which had discredited nineteenth century civilizational monism—led European states to reaffirm the value of law as a check on the unfettered executive power over the individual subject and citizen. As Brian Simpson has so fully analysed, the 1950 European Convention on Human Rights emerged out of the crisis of the war and the postwar struggle for decolonization as the expression of an unprecedented voluntary surrender of sovereignty by member states of the Council of Europe. One should not exaggerate the impact of this, and related, developments, not least since the Cold War intensified countervailing forces of state repression and restrictions on individual freedoms. Nevertheless, by the end of the century, the emergence of a number of new common institutions meant that Europe was on the way to establishing its own rule-bound international community in an entirely new sense. The durability of this achievement has come into question in an era of new challenges to the power of law. But its meaning will not be fully understood unless we are willing to trace the relationship between this new European order and that older society of nations which formed the object of Wight's lifelong concern.³¹

³¹ Simpson, *Human rights and the end of empire*.