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ARTICLE

Unpartitionable: C.H. Alexandrowicz, Sovereign Divisibility, and the Longue Durée of the Polish-Lithuanian Commonwealth

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Abstract

In recent years, scholars of international legal history have demonstrated much newfound interest in C.H. Alexandrowicz, a Polish jurist renowned for his anti-Eurocentric revisionist account of Asian and African agency within the meta-narrative of international law. Building on efforts to link his Polish origins with his studies of the Afro-Asian world, especially on matters of imperialism and state personality, my purpose in this Article is to explore these connections through a materially grounded historical sociology of international legal thought. Centering the issue of whether sovereignty is divisible, I situate the historic Polish-Lithuanian Commonwealth—extinguished by a series of Partitions in 1772, 1793, and 1795—as a unique divided sovereignty-based polity that provided a basis for Alexandrowicz's study of the juridical status of non-European sovereigns. This analogy united his overarching critique of nineteenth-century international legal positivism as an unjustifiable denial of both Polish and Afro-Asian sovereignty. In deciphering the materiality of Alexandrowicz's imagination against this presumption, I build a narrative of the Polish-Lithuanian Commonwealth and the evolution of its distinct approach to sovereign divisibility. Through analysis of the interplay between internal and external factors, I account for the Commonwealth's medieval origins, its development in opposition to the consolidating indivisible sovereignty of its absolutist neighbors, its attempts to maintain independence in the face of Partition, and the continued assertions of its variegated legacies following its destruction. This, I argue, provides a novel means of assessing Alexandrowicz's theory, and the materiality of international law more generally.

Keywords: C.H. Alexandrowicz; International Legal History; Historical Sociology; East-Central Europe; Legal Personality

> "As soon as a nation presents symptoms of an incurable weakness, in its internal or external life, its stronger neighbors must take away its independence, until either its dormant strength awakens to liberation or it disappears, spiritually as well as politically, from the ranks of living nations."
>
> —Constantin Roessler, 1844

> "Poland was in Russia's fetters, but the Poles remained free: a great example that shows you how you can brave the power and ambition of your neighbors. If you cannot prevent them from swallowing you up, at least ensure they cannot digest you."
>
> —Jean-Jacques Rousseau, 1782

A. The Polish-Lithuanian Commonwealth in Global History

Charles Henry Alexandrowicz (1902–1975) is a towering testament to just how much of the world can exist within a single person. Present at some of the sharpest flashpoints of twentieth-century history, he was born in the Eastern Galicia region of the Austro-Hungarian Empire, today part of Ukraine, educated as a lawyer and canon lawyer in the successor state of Poland, fought Nazi invaders in 1939, escaped to the United Kingdom by way of Romania, worked with the Polish government-in-exile, handled issues of Europe reconstruction after the war, and established an academic career in India and Australia, at the Universities of Madras and Sydney respectively, as a new postwar order took shape. Alexandrowicz was thus a firsthand witness to what Eric Hobsbawm deemed the "Age of Extremes."[1] When creatively conceptualizing international law against these tumultuous backdrops, Alexandrowicz indicted Europe's long-standing exclusion and colonization of the Afro-Asian world as legally, intellectually, and morally unjustifiable. Defying this embedded mistreatment, he produced one of the first modern attempts at a truly global history of international law that, in its inclusion of the long-excluded agency of Asians and Africans, changed the standard by which the discipline depicts its past. A jurist of the "semi-periphery" and early forerunner of Third World Approaches to International Law (TWAIL), as well as the broader "turn to history" within the international legal field, it is rather remarkable how long his theory-life nexus went under-analyzed.[2] Scholars have only just begun to rectify this dearth.[3]

While I intend to contribute to this rectification, an overview of Alexandrowicz's general theory is in order. In his account, the Benthamite construction deemed "international law" could only be understood in relation to the richer and more inclusive "law of nations" tradition that preceded it.[4] Under this original ordering of world legality, there was no question that Asian and African sovereigns enjoyed full and equal subjectivity.[5] However, a great deviation came in the nineteenth century as the natural jurisprudence animating this law of nations gave way to a strict consent-based legal positivism—and its attendant theory that recognition by established sovereigns was a constitutive requirement of statehood.[6] As this premise was cemented by the 1815 post-Napoleonic Concert of Europe system, juridical inclusion and personality were now unilaterally dictated by the chauvinist and draconian whims of Europe's mutually-recognized great powers.[7] However, nearly a century and a half later, postwar Afro-Asian decolonialization provided a profound opportunity to reverse this disastrous decay. In this moment, a key backdrop of Alexandrowicz's career, the postcolonial emergence of "new states" was less a novel creation and more a reversion back to an original sovereignty that was

[1]Eric Hobsbawm, The Age of Extremes: The Short Twentieth Century 1914–1991 (1994).

[2]Arnulf Becker Lorca, Mestizo International Law: A Global Intellectual History 1842–1933, 33–34 (2015).

[3]David Armitage & Jennifer Pitts, '*This Modern Grotius': An Introduction to the Life and Thought of C.H. Alexandrowicz*, *in* C.H. Alexandrowicz, The Law of Nations in Global History (David Armitage & Jennifer Pitts, eds., 2017); Carl Landauer, *The Polish Rider: C.H. Alexandrowicz and the Reorientation of International Law, Part I: Madras Studies*, 7 London Rev. Int'l L. 321 (2019); Carl Landauer, *The Polish Rider: C.H. Alexandrowicz and the Reorientation of International Law, Part II: Declension and the Promise of Renewal*, 9 London Rev. Int'l L. 3 (2021).

[4]C.H. Alexandrowicz, *Some Problems in the History of the Law of Nations in Asia*, *in* The Law of Nations in Global History, *supra* note 3, at 76.

[5]*See* C.H. Alexandrowicz, An Introduction to the History of the Law of Nations in the East Indies (16th, 17th, and 18th Centuries) (1967); C.H. Alexandrowicz, *The Afro-Asian World and the Law of Nations* 123 RCADI 121 (1968); C.H. Alexandrowicz, The European-African Confrontation: A Study in Treaty Making (1973).

[6]C.H. Alexandrowicz, *The Theory of Recognition, in* The Law of Nations in Global History, *supra* note 3, at 371–72.

[7]Armitage & Pitts, *supra* note 3, at 19.

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never truly lost.[8] "International law" could finally give way to the prodigal "law of nations" that never actually disappeared.

Alexandrowicz's account has certainly garnered much criticism; the central contention being that he was far too idealistic and thus failed to account for the law-justified violence and exclusion that defined his contexts of inquiry.[9] However, rather than joining this chorus of critique—though there are ample grounds to do so[10]—my primary purpose is to explore *why* Alexandrowicz depicted his global juridical vision as he did. Towards this end, I focus on how the unique polity known as the Polish-Lithuanian Commonwealth, and its extinction via a series of Russian, Prussian, and Austrian orchestrated Partitions—1772, 1793, 1795— provides new insight into his imagination and the world that produced it. As David Armitage and Jennifer Pitts have shown, through his interwar studies of Polish marital law—an interest potentially sparked by his own multiple marriages—Alexandrowicz learned how differentiated legal regimes governed marriage depending on where one happened to be in the "restored" state of Poland that emerged in 1918.[11] The reason for this juridical patchwork had everything to do with distinct conquers imposing their laws independent of local custom or consent—an imprint that survived imperial rule. Uncovering these juridical scars left Alexandrowicz well-placed to theorize the role of hierarchy and empire within an international order ostensibly premised on formal sovereign equality.

Though Polish international legal personality was not Alexandrowicz's main object of study, it nevertheless appears sporadically throughout his scholarship. When discussing international law in ancient India, he noted a specific configuration of sovereignty that was incompressible to the powers that partitioned the Commonwealth.[12] In analyzing European treaty-based imposition in the African continent, he claimed that this "Scramble for Africa" was foreshadowed a century earlier by a "Scramble for Europe" via the partitions.[13] Elsewhere, Alexandrowicz claims that this first "scramble" was the result of transformed legal sensibilities in that " . . . the partitions of Poland which by positivist standards were justifiable but were flagrant violations of the principle of the natural law of nations."[14] Moreover, he was particularly interested in how one of the Partitioning powers in the form of Prussia, via the greater German Empire it ultimately spawned, legally justified its claims over African lands.[15] Additionally, on the question of how Afro-Asian independence might be characterized as a reversion to unextinguished original sovereignty, he asked whether Poland's interwar independence might provide a precedent.[16] On this task, Alexandrowicz lamented the Polish Supreme Court's failure to consult classical publicists on the

[8]C.H. Alexandrowicz, *New and Original States: The Issue of Reversion to Sovereignty*, *in* THE LAW OF NATIONS IN GLOBAL HISTORY, *supra* note 3, at 395-96 [hereinafter *Reversion*].

[9]*See* EDWARD KEENE, BEYOND THE ANARCHICAL SOCIETY: GROTIUS, COLONIALISM, AND ORDER IN WORLD POLITICS 28 (2002); ANTONY ANGHIE, IMPERIALISM, SOVEREIGNTY, AND THE MAKING OF INTERNATIONAL LAW 36–38 (2005); Eric Michael Wilson, *The 'Alexandrowicz Thesis' Revisited: Hugo Grotius, Divisible Sovereignty, and Private Avengers within the Indian Ocean World System*, *in* EARLY MODERN SOUTHEAST ASIA 1350–1800, at 28 (Ooi Keat Gin & Hoang Anh Tuan eds., 2015); JENNIFER PITTS, BOUNDARIES OF THE INTERNATIONAL: LAW AND EMPIRE 17 (2017); Paulina Starski & Jörn Axel Kämmerer, *Imperial Colonialism in the Genesis of International Law—Anomaly or Time of Transition?*, 19 J. HIST. INT'L L. 50 (2017).

[10]For a recent account of the systems of coercion that accompanied European entry into the Indo-Pacific, *see* J.C. Sharman, *Power and Profit at Sea: The Rise of the West in the Making of the International System*, 43 INT'L SEC. 163 (2019).

[11]Armitage & Pitts, *supra* note 3, at 5.

[12]C.H. Alexandrowicz, *Kautilyan Principles and the Law of Nations*, *in* THE LAW OF NATIONS IN GLOBAL HISTORY, *supra* note 3, at 51.

[13]C.H. Alexandrowicz, *The Role of Treaties in the European-African Confrontation in the Nineteenth Century*, *in* THE LAW OF NATIONS IN GLOBAL HISTORY, *supra* note 3, at 300.

[14]C.H. Alexandrowicz, *Doctrinal Aspects of the Universality of the Law of Nations*, *in* THE LAW OF NATIONS IN GLOBAL HISTORY, *supra* note 3, at 179.

[15]C.H. Alexandrowicz, *The Role of German Treaty Making in the Partition of Africa, in* THE LAW OF NATIONS IN GLOBAL HISTORY, *supra* note 3, at 303.

[16]Alexandrowicz, *Reversion, in* THE LAW OF NATIONS IN GLOBAL HISTORY, *supra* note 3, at 399.

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law of nations who claimed that no conquest, however brutal, grants title absent voluntary submission.[17]

When considering how Alexandrowicz's history of the law of nations was influenced by his consciousness of the historical Polish-Lithuanian Commonwealth it is of special importance that the lands of the former Commonwealth played a pivotal role in shaping our modern intertwined consciousness of "partition" and "self-determination." Regarding partition—defined as the *nonconsensual* division of an existing territory—the Commonwealth's experience was foundational.[18] With this occurrence came serious questions on the acquisition of territory by force and, by extension, how international law would forever be a "primitive or defective form of law" so long as it validated any "right of conquest."[19] As Victor Kattan has shown, by continually proclaiming identity following the Partitions, the Polish cause was the "missing link" of national self-determination connecting the Enlightenment-era revolutions to the competing visions of Woodrow Wilson and Vladimir Lenin in the wake of the First World War.[20] However, this view raises highly contestable questions of continuity between the Commonwealth and the later Polish nation-state.[21]

While a narrative of direct continuity is certainly appealing to some, this path is complicated by the fact the Commonwealth's legacy also gave rise to fiercely conflicting Lithuanian, Belorussian, and Ukrainian—in addition to Polish—identities.[22] Such is a testament to how "partition," through the endless creation and recreation of oppositional identities, must be viewed as a structure that endures long after the initial event concludes.[23] In light of this complication, if the right to self-determination can be characterized as an indeterminate, contradictory, and intoxicating concept that persistently makes capacity-exceeding demands of international law, then the Polish-Lithuanian Commonwealth is a most appropriate foundation for this ideal.[24] How did this context lead Alexandrowicz to assert such a bold and far-reaching vision at a time when, in the name of universal self-determination, the practice of partition was being legally condemned

[17]*Id.* at 400; *see also* Elżbieta Dynia, *International Recognition and the Internal Law Status of Poland in the 20th Century*, 9 Polish Rev. Eur. & Int'l L. 21 (2020); Anna Wyrozumska, *The Role of Polish Courts in the Development of International Law After Regaining Independence by Poland in 1918*, 9 Polish Rev. Eur. & Int'l L. 73 (2020). Such juridical discourse cannot be disconnected from the greater context of ongoing violence that accompanied the rise of new states after the First World War, see Jochen Böhler, Civil War in Central Europe, 1918–1921: The Reconstruction of Poland (2018); *see also* Robert Gerwarth, The Vanquished: Why the First World War Failed to End, 1917–1923 (2016). On the general unsettled character and conception of sovereignty in this moment, see Leonard V. Smith, Sovereignty at the Paris Peace Conference of 1919 (2018).

[18]Victor Kattan, *The Persistence of Partition: Boundary-Making, Imperialism, and International Law*, 94 Pol. Geography 1, 2 (2022). However, though applied as such in this Article, such a broad definition of "partition" is controversial. From another perspective, "partition" was a uniquely twentieth-century technique of reconfiguring imperial authority through the creation of new political entities—a definition that excludes the Partitions of the Polish-Lithuanian Commonwealth where a political entity was destroyed as opposed to created. Arie M. Dubnov & Laura Robson, *Drawing the Line, Writing Beyond It: Towards a Transnational History of Partition*, *in* Partitions: A Transnational History of Twentieth-Century Territorial Separatism 1, 4 (Arie M. Dubnov & Laura Robson eds., 2019). For a critique of this approach as overly restrictive, *see* Kattan, *infra* note 20, at 5–7.

[19]Sharon Korman, The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice 9 (1996).

[20]Victor Kattan, *To Consent or Revolt? European Public Law, the Three Partitions of Poland (1772, 1793, and 1795) and the Birth of National Self-Determination*, 17 J. Hist. Int'l L. 247, 251 (2015).

[21]While Polish jurists, including Alexandrowicz, proclaimed state continuity following independence, parallel discourses were occurring amongst Lithuanian jurists, see Eglė Bendikaite, *Interwar Lithuania as a Laboratory of International Law*, 2 Jus Gentium 555, 556–61 (2017). However, this dimension of Lithuania's international legal personality is often forgotten given the more famous matter of how it, along with Latvia and Estonia, maintained their claims of continuous state sovereignty through five decades of Soviet occupation. On this latter issue, *see* Lauri Mälksoo, Illegal Annexation and State Continuity: The Case of the Incorporation of the Baltic States by the USSR (2d ed., 2022).

[22]Timothy Snyder, The Reconstruction of Nations: Poland, Ukraine, Lithuania, Belarus 1569–1999 (2002).

[23]Dirk Moses, *Partitions and the Sisyphean Making of Peoples*, 46 Refugee Watch 36, 40 (2015).

[24]*See* Jörg Fisch, The Right of Self-Determination of Peoples: The Domestication of an Illusion (2015).

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on a planetary scale?[25] I aim to answer this question by detailing the material conditions that shaped the particular embodied lens of "universalism" through which Alexandrowicz connected so many facets.[26]

Part B methodologically situates my account and argues that the centrality of divided sovereignty in Alexandrowicz's theory opens the path to a broad analysis on the historical co-constitution of law and material social relations. In accounting for the origins of the Polish-Lithuanian Commonwealth through this lens, Part C explores the medieval "Northern Crusades" where Christian Poland forged an alliance with pagan Lithuania against invading crusaders—an event Alexandrowicz viewed as well within the evolution of a non-discriminatory law of nations. Part D then examines the early modern evolution of this alliance into the "Polish-Lithuanian Commonwealth," a unique divided sovereignty-based republican polity that resisted rising absolutism and the international order being shaped to accommodate it—a resistance that resulted in the First Partition in 1772. Accounting for the wake of the First Partition, Part E examines engagement by the now weaken Commonwealth in the Enlightenment "Age of Revolutions." While such engagements brought much attention to the Commonwealth in this era of great ideological transformation, they also intensified a geopolitical environment whereby absolutist reaction could not abide the Commonwealth's continued existence, thus leading to its extinction through the Second and Third Partitions. Finally, Part F accounts for the Commonwealth's legacies against the backdrop of an international order premised on the infamous "Standard of Civilization." Alexandrowicz's theory was a distinct product of these conditions.

B. Towards a Historical Sociology of Sovereign Divisibility

Currently, it is difficult to say anything about international legal history without clarifying where one stands in a debate between lawyers and historians on the question of methodology.[27] Simply articulating a position on these terms can easily swallow the substance of one's original intervention. In avoiding this "method war," I focus on a facet largely neglected in this debate on international legal origins—materiality. Despite their defining emphasis on historicization, materialist international legal theorists have been comparatively reluctant to substantially engage reigning questions on historical method in international legal scholarship.[28] However, these same materialists have much to offer on the question of what counts as "context" when historicizing international law. As Martin Clark has observed, in the ongoing "method wars," "context" is heavily associated with the "Cambridge School's" linguistic convention-focused methods which, whether by affirmation or critique, dominate the discourse at the expense of alternative modalities of historicization.[29] Following this observation, and those of Onur Ulas Ince and Ntina Tzouvala, I embrace the view that fixation on grammar and syntax has come at the expense of inquiry into

[25]*See* Victor Kattan, *Self-Determination during the Cold War: UN General Assembly Resolution 1514 (1960), the Prohibition of Partition, and the Establishment of the British Indian Ocean Territory (1965)*, 19 Max Planck Ybk U.N. L. 419 (2016). On the prelude to this development, see Victor Kattan, *The Empire Departs: The Partitions of British India, Mandate Palestine, and the Dawn of Self-Determination in the Third World*, 12 Asian J. Mid. East. & Islamic Stud. 304 (2018).

[26]Darryl Li, The Universal Enemy: Jihad, Empire, and the Challenge of Solidarity 16 (2019).

[27]*See, e.g.*, Ian Hunter, *Global Justice and Regional Metaphysics: On the Critical History of the Law of Nature and Nations*, *in* Law and Politics in British Colonial Thought 11 (Ian Hunter & Shaunnagh Dorsett eds., 2010); Anne Orford, *On International Legal Method*, 1 London Rev. Int'l L. 166 (2013); A. Fitzmaurice, *Context in the History of International Law*, 20 J. Hist. Int'l L. 5 (2018); Lauren Benton, *Beyond Anachronism: Histories of International Law and Global Legal Politics*, 21 J. Hist. Int'l L. 7 (2019); Anne Orford, International Law and the Politics of History (2021).

[28]For an important exception, *see* Rose Parfitt, The Process of International Legal Reproduction: Inequality, Historiography, Resistance 17–44 (2019).

[29]Martin Clark, *Ambivalence, Anxieties/Adaptations, Advances: Conceptual History and International Law*, 31 Leiden J. Int'l L. 747, 756–57 (2018); *see also* Natasha Wheatley, *Law and the Time of Angels: International Law's Method Wars and the Affective Life of Disciplines*, 60 Hist. & Theory 311 (2021).

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how material social relations concerning distribution, production, and exchange explain why historical figures thought as they did.[30]

As a grounding for this materialist analysis, I argue that international lawyers would be well served by engaging the insights from the field of International Relations (IR) as they concern historical sociology.[31] Concerned with how long-term material dynamics of human interaction have shaped the assumed features of the international system, such perspectives have largely been ignored by international lawyers in their "turn to history."[32] This evasion arguably stems from leading critical international lawyers prominently resisting any and all engagement with IR as corrosive to the discipline and its identity.[33] However, such critique is very much a product of a certain historical moment and questions remain as to how relevant it continues to be.[34] This is especially true given how IR has undergone a "turn to history" of its own. This greater past-oriented consciousness reveals key commonalities within two fields long-defined by their mutually proclaimed differences. As Pitts has shown, overlaps:

> . . . [I]nclude aspirations to the status of a science, a dependence on stylised histories populated by founding fathers and origins myths, a reliance on sovereignty as a foundational principle, a tendency to regard empires and imperialism as historically superseded and also 'incidental to the discipline proper,' and a blindness to their own participation in structures and discourses of racialized hierarchy.[35]

With all this in mind, critical international lawyers and historical sociology-focused IR scholars have much to learn from oneanother. For critical international lawyers, engagement with historical sociology-based accounts of IR can help overcome anxious reliance on the default sources, namely the writings of canonical publicists—Vitoria, Grotius, Vattel, etcetera—that define the field's identity while reproducing a profoundly limited historiographic perspective.[36] For the IR scholar, engagement with critical international legal theory provides a means of deconstructing the monolithic notions of "sovereignty" and "legal authority" that reproduce foundational Realist conceptions of "anarchy," "power," and "survival"—even within critical historical sociologies.[37]

In articulating a historical sociology of Alexandrowicz's critique of nineteenth-century international law through this lens, one consideration proves indispensable—whether or not sovereignty is divisible. As Carl Landauer makes clear, Alexandrowicz presumed that sovereignty

[30]Onur Ulas Ince, Colonial Capitalism and the Dilemmas of Liberalism 19-20 (2018). Of special relevance here is the question of "Eurocentrism" where, despite many lodgings and counter-lodgings of this pejorative charge, theorists typically miss the original deployment of this term as a materialist theory of a world-historical mode of accumulation literally centered in Europe. Ntina Tzouvala, *The Specter of Eurocentrism in International Legal History*, 31 Yale J.L. & Human. 413, 421–27 (2021).

[31]On its many manifestations, *see* Global Historical Sociology (Julian Go & George Lawson eds., 2017). On international law specifically within this frame, see Maia Pal, Jurisdictional Accumulation: An Early Modern History of Law, Empires, and Capital (2020).

[32]Martti Koskenniemi, *Expanding Histories of International Law*, 56 Am. J. Legal Hist. 104, 106 (2016).

[33]Martti Koskenniemi, The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870–1960 494–96 (2001); *Law, Teleology and International Relations: An Essay in Counterdisciplinarity,* 26 Int'l Rel. 3 (2012). However, Koskenniemi once stated that international lawyers interested in accounting for the political consequences of international law pay insufficient attention to the "historical sociology of international relations" and consequentially fail to justify their methodological choices. *See* Koskenniemi, *A History of International Law Histories*, *in* The Oxford Handbook of the History of International Law 943, 961 (Anne Peters & Bardo Fassbender eds., 2012).

[34]*See* Marc Pollack, *Is International Relations Corrosive of International Law? A Reply to Martti Koskenniemi*, 27 Temp. Int'l & Compar. L.J. 339 (2013).

[35]Jennifer Pitts, *International Relations and the Critical History of International Law*, 31 Int'l Rel. 282, 283 (2017).

[36]Rose Parfitt, *The Spectre of Sources*, 25 Eur. J. Int'l L. 297, 298–99 (2014); fixated on treaties and classical publicist, this problem of source limitation is demonstrated very well through Alexandrowicz, see Landauer, *Part I*, *supra* note 3, at 325, 333.

[37]Andrew Davenport, *Marxism in IR: Condemned to a Realist Fate?,* 19 Eur. J. Int'l Rel. 29, 42 (2013).

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was in fact divisible and, for this reason, legal practices such as capitulations and protectorate status were not inherent tools of empire, but a confirmation of the subjectivity of Asian and African sovereigns.[38] Rather, the true tool of domination was the nineteenth-century belief that only indivisible sovereignty was true sovereignty. This belief could justify any action—such as the Partitions—those self-proclaimed indivisible sovereigns were powerful enough to perpetrate. Though starkly separating law from politics, Alexandrowicz's approach enabled him to cogently present a case for postcolonial sovereignty as a matter of right unconnected to the whims of colonial powers.

However, there appears to be a glaring issue with this relationship between divided sovereignty and partition in Alexandrowicz's thinking. Would the ability to divide sovereignty not be a justification for partition? Despite its limits, focus on linguistic convention does enable something of a reconciliation here. The literal translation of "partition" in Polish is "to dismember"—thus giving it a pejorative character entirely different from its English usage as a neutral synonym for division.[39] Yet on a deeper level, this divisible sovereignty-partition divergence can be explained by the material evolution of the Polish-Lithuanian Commonwealth as a unique polity where divided sovereignty engendered a view of liberty that led it to define itself against the absolutist Empires that ultimately extinguished it through a mode of conquest comparatively rare within modern intra-European relations until the two World Wars.[40] Details of these points, and their influence upon Alexandrowicz—especially regarding his empathy with Asians and Africans—are aided by a theory of how divided sovereignty shaped the materially uneven evolution of the international system.[41] For this, I turn to the work of the IR theorist Edward Keene and the international legal theorist Ntina Tzouvala as a means of building a historical sociology of sovereign divisibility.

Beginning with Keene, an exponent of greater historical and legal sophistication within the "English School" of IR, the question of where and when sovereignty could be divided is central to his theory of "the international." For Keene, the move from a bounded medieval system, premised on divided sovereignty, to an expansive modern system entailed the forging of "two patterns of world," a process that reached its apotheosis in the nineteenth century.[42] Within the first pattern, which defined the European states-system and held tolerance as its end, true sovereignty was posited as indivisibly absolute and only the state entities possessing it could claim international subjectivity.[43] However, within the "second pattern," which defined European interaction with non-European societies and held "civilizing" intervention as its end, divided sovereignty remained the norm and individuals possessed rights as international legal subjects, especially in relation to

[38]Landauer, *Part I*, *supra* note 3, at 330; Landauer, *Part II*, *supra* note 3, at 10–11, 21.

[39]Kattan, *supra* note 25, at 274.

[40]When legal, gaining title by conquest was strangely egalitarian in that it applied " . . . whether . . . [the] sovereign be an advanced State or a native political society." MARK LINDLEY, THE ACQUISITION AND GOVERNMENT OF BACKWARD TERRITORY IN INTERNATIONAL LAW 160 (1926). However, in practice, conquest was much more harshly and frequently invoked outside the recognized "family of nations," CARL SCHMITT, THE NOMOS OF THE EARTH IN THE INTERNATIONAL LAW OF *JUS PUBLICUM EUROPAEUM* 185–90 (2003). On the Commonwealth as an exception to generally limited practices of intra-European conquest amounting to large-scale state destruction, *see* John Herz, *Rise and Demise of The Territorial State*, 9 WORLD POL. 473, 483 (1957).

[41]It should be noted the undivided sovereign state's ascendence as the singular vessel for full political subjectivity and international legal personality has long marginalized consciousness of earlier divided sovereignty-based forms such as the Polish-Lithuanian Commonwealth that proliferated in the early modern era. Distortion of this history is emblematic of the nineteenth century "Age of Questions" where timeless conceptions of law, nation, and statehood provided simplistic answers in a moment of profound transformation, *see* Holly Case, THE AGE OF QUESTIONS: OR, A FIRST ATTEMPT AT AN AGGREGATE HISTORY OF THE EASTERN, SOCIAL, WOMAN, AMERICAN, JEWISH, POLISH, BULLION, TUBERCULOSIS, AND MANY OTHER QUESTIONS OVER THE NINETEENTH CENTURY, AND BEYOND (2018); *see also* ADAM KOZUCHOWSKI, UNINTENDED AFFINITIES: NINETEENTH-CENTURY GERMAN AND POLISH HISTORIANS ON THE HOLY ROMAN EMPIRE AND THE POLISH-LITHUANIAN COMMONWEALTH (2019).

[42]KEENE, *supra* note 9, at 105, 117–19.

[43]*Id.* at 98.

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property.[44] Importantly, the divided sovereignty-based impositions of this second pattern were not simply a broad-scale transference of medieval practices. Notably, the claims to property rights that justified, and were justified through, colonial expansion were distinctly modern in that they were stripped of their connections to feudalism and thus required new formulations of hierarchy.[45]

However, Keene later stated that his theory should not rely on too stark a divide between European and non-European worlds. After all, in addition to a longstanding ignorance of colonialism, theorists of "international society" also failed to consider the contemporaneous disappearance of many European polities at the highpoint of European global dominance.[46] In Keene's assessment, rather than absolute bifurcation, the development of the international system was a multifaceted stratification process where an entity's position was determined through an intricate interplay of raw power, cultural belonging, and legal status.[47] Such an approach is needed if one is to explain why Japan emerged as an imperial great power, yet Bavaria lost its international legal personality within a similar timeframe.[48]

While Keene highlights several important features, Tzouvala provides a means of placing them within an overarching materialist meta-context. In her assessment, the consolidation of the international order in the nineteenth century was the consolidation of capitalism as a distinct mode of social relations on a global scale.[49] Driven by alternating logics of biology, justifying immutable hierarchies, and improvement, justifying transformative intervention, the "standard of civilization" was a variable means of implementing the legal-institutional groundings of capitalist social relations— the protection of individual commercial and property rights through a coercive state apparatus—across a diverse array of conditions.[50] On this basis, the current order of international law that facilitated this process can be distinguished from other juridical regimes, not merely by its exclusionary qualities, but by the historical reality that it alone devoured the entire global system.[51] Juridical formulation of either divisible or indivisible sovereignty, including principles adapted from earlier eras, could be mobilized as tools towards this end depending on the situation.

In the European states who were relative latecomers to capitalism, nation-building in the name of absolute indivisible sovereignty enabled "top-down" capitalist restructuring.[52] Throughout much of the non-European world, capitalist disruption of existing social relations justified divisions of sovereignty, often through regimes of extraterritorially and unequal treaties, as a means of protecting the individual rights of contract and property essential to capital accumulation.[53] In the temperate colonies of formative capitalist societies, the UK and US, the intertwined denial of indigenous sovereignty and creation of property-based settler democracies

[44]*Id.* at 98–99.

[45]The notion of absolute ownership central to modern theories of liberal individual developed, in great part, through the claiming of non-European lands that existed outside the feudal order. *Id.* at 62–66; Henry Jones, *Property, Territory, and Colonialism: An International Legal History of Enclosure*, 39 Legal Stud. 187 (2019).

[46]Examples include Bavaria, the Two Kingdoms of Sicily, Anhalt-Dessau, Mecklenburg-Schwerin, and Modena. Edward Keene, *The Standard of "Civilisation," the Expansion Thesis and the 19th-century International Social Space*, 42 Millennium 651, 656 (2014).

[47]*Id.* at 663–64.

[48]*Id.* at 665.

[49]Ntina Tzouvala, *Civilisation*, *in* Concepts for International Law: Contributions to Disciplinary Thought 83, 99–103 (Jean d'Aspremont & Sahib Singh eds., 2019).

[50]Ntina Tzouvala, Capitalism as Civilisation: A History of International Law 44–87 (2020).

[51]Tzouvala, *supra* note 30, at 429.

[52]Barry Buzan and George Lawson, The Global Transformation: History, Modernity and the Making of International Relations 143–44 (2015); *see also* Christopher Hesketh, *Passive Revolution: A Universal Concept with Geographical Seats*, 43 Rev. Int'l Stud. 389 (2017).

[53]For studies of the extraterritorial enforcement of rights across different contexts, see Turan Kayaoglu, Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China (2010); Benjamin Coates, Legalist Empire: International Law and American Foreign Relations in the Early Twentieth Century (2016); The Extraterritoriality of Law: History, Theory, Politics (Daniel S. Margolies, Umut Özsu, Maïa Pal, & Ntina Tzouvala eds., 2019).

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could safeguard concentrated capital by redirecting, and thus diffusing, potentially revolutionary tensions through spatial expansion.[54] In locations such as the border regions of Europe, non-conformity with established categories enabled highly experimental measures.[55] As such, through Tzouvala's theory of "capitalism as civilization," the variable "two patterns of world order" identified by Keene can be situated within a greater historical sociology of sovereign divisibility able to account for the anomalies and liminal spaces, such as the Polish-Lithuanian Commonwealth, that defy ideal-type categorizations.

Through the combined insights of Keene on the variegated divisibility of sovereignty and Tzouvala on the materiality of "civilization," we gain a new basis to unearth the contextual grounding of Alexandrowicz's thought and how engaging it might expand our consciousness. Yet, where should a historicized account based on these presumptions begin? After all, in eschewing the standard Eurocentric benchmark dates, Alexandrowicz, through his studies of ancient India, set the origins of international law back to at least the fourth century BCE.[56] However, in adopting a materialist lens, because divided sovereignty was so central to Alexandrowicz's account, it makes sense to go back to the Middle Ages where this configuration, then the norm, could be located in a manner traceable to the emergence of the modern sovereignty that defines international law today.[57] It was in this medieval timeframe that Alexandrowicz located the very formation of the Polish-Lithuanian Commonwealth in the context of a consequential controversy surrounding the application of a universal system of law to different orders of political authority.

C. Can Pagans Form a Commonwealth?

Had Alexandrowicz been less dedicated to rigorous historical work and the critique of Eurocentrism, he might have consecrated Paweł Włodkowic, Latinized as Paulus Vladimiri (1370-1435) as the lost "founding father" of international law.[58] A Catholic priest and Rector of the Kingdom of Poland's Cracow University, Vladimiri presented a detailed case that non-Christians were indeed rights holders under the universal regime of natural law—a full century before Vitoria.[59] Presenting this case at the papal Council of Constance, 1414–1418, in Anthony Carty's

[54]Lorenzo Veracini, The World Turned Inside Outside: Settler Colonialism as a Political Idea (2021); *see also* James Belich, Replenishing the Earth: The Settler Revolution and the Rise of the Angloworld, 1783–1939 (2009).

[55]*See* Ntina Tzouvala, *'These Ancient Arenas of Racial Struggles': International Law and the Balkans, 1878–1949*, 28 Eur. J. Int'l L. 1149 (2018).

[56]Landauer, "Part II," *supra* note 3, at 28.

[57]However, this connection is often missed, see Nicholas Rengger, *The Medieval and International: A Strange Case of Mutual Neglect*, *in* Medieval Foundations of International Relations 27 (William Bain ed., 2017).

[58]While the idea of international law being a product of "founding fathers" is a superficial and methodologically fraught trope that cannot avoid reproducing gendered and racialised presumptions, this approach to narrative productive has had a defining impact in shaping the international legal field, *see* Martine Julia van Ittersum, *Hugo Grotius: The Making of a Founding Father of International Law*, in The Oxford Handbook of the Theory of International Law 82 (Anne Orford & Florian Hoffman eds. 2016); Kojo Koram, *The Vitorian Recovery and the (Re)Turn towards a Sacrificial International Law*, 6 London Rev. Int'l L. 443 (2018); Paolo Amorosa, Rewriting the History of the Law of Nations: How James Brown Scott made Francisco de Vitoria the Founder of International Law (2019). On the ways in which understanding the reception and production of historic individuals as discipline-defining "canonical figures" can further critical consciousness, *see* Claire Vergerio, *Context, Reception, and the Study of Great Thinkers in International Relations*, 11 Int'l Theory 110 (2019); Paolo Amorosa & Claire Vergerio, *Canon-Making in the History of International Legal and Political Thought*, 35 Leiden J. Int'l L. 469 (2022); *see also* Edward Cavanagh, *Legal Thought and Empires: Analogies, Principles, and Authorities from the Ancients to the Moderns*, 10 Jurisprudence 463 (2019).

[59]*See* Kazimierz Grzybowski, *The Polish Doctrine of the Law of War in the Fifteenth Century: A Note on the Genealogy of International Law*, 18 Jurist 386; Stanislaus F. Belch, Paulus Vladimiri and His Doctrine Concerning International Law and Politics (1965); Władysław Czapliński, *Paweł Włodkowic (Paulus Wladimiri) and the Polish International Legal Doctrine of the 15th Century*, 7 Baltic Ybk. Int'l L. 65; Frederick H. Russell, *Paulus Vladimiri's Attack on the Just War: A Case Study in Legal Polemics*, *in* Authority and Power: Studies on Medieval Law and Government Presented to Walter Ullmann on His Seventieth Birthday 237 (Brian Tierney & Peter Linehan eds., 2012); Paweł Kras,

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assessment, Vladimiri's advocacy represented an important step towards open-forum adjudication—and away from closed textual-doctrinal expounding—when it came to the formulating the practice that defines international law.[60] If there is any truth to medievalist Walter Ullmann's claim that those concerned with international legal origins should focus on adjudication relating to papal controversies, then Vladimiri's contribution must be of the utmost interest.[61] Such focus is all the more interesting when considering the substance of Vladimir's controversy—whether Christians allied with infidels against other Christians could ever possess just cause in a just war? Despite its monumental importance, Christian-infidel alliance questions, and their role in building the international order, is rarely confronted within present scholarship.[62] Uncovering Vladmiri's influence on Alexandrowicz is thus a verdant trove of opportunity. The infidels in question were of the Grand Duchy of Lithuania, the last pagan polity in Europe, and their alliance with the Kingdom of Poland was against the crusading Teutonic Order.

Understanding Vladimiri's defense requires some attention to events deemed the "Northern Crusades." Though less famous than the Holy Land Crusades, these religion-embroiled wars in the greater Baltic littoral region occurred against the same socio-political backdrop of the better known Crusades, and were far more successful in achieving the long term goals of Christian dominance.[63] Sanctified by the Church and executed by Scandinavian and German princes alongside religious military orders—the most famous being the Teutonic Order formed in the Holy Land—these wars, waged between the twelfth and fifteenth centuries, devastated the pagan Slavic, Finno-Uralic, and Baltic-speaking societies, and cultivated enduring animosity with the Eastern Orthodox lands integral to the later Russian Empire.[64] For the modern international lawyers, especially those not from Poland or the Baltic states, making sense of these unfamiliar events is aided by recognition of two important distinctions from the Holy Land Crusades—one material and other juridical.

On a material level, though the harsh winters of the Baltic had largely precluded long-term occupation by invaders, and thus fostered the region's great linguistic and cultural diversity, by the twelfth century, innovations in military technology and socio-political ordering enabled unprecedented incursions.[65] At this time, a consolidating feudal system led to military expansions in the frontier regions of Latin Christendom as noble progeny barred from inheritance under rules of primogeniture that favored eldest sons sought land tenures of their own—creating cultures of

An Overview: The Conversion of Pagans and Concept of Ius Gentium *in the Writings of Cracow Professors in the First Half of the Fifteenth Century*, 6 BAŽNYČIOS ISTORIJOS STUDIJOS 23 (2013); W. Bańczyk, *The Right of Infidels to Protect their Goods from the Perspective of the 15th Century Polish School of* "Ius Gentium," 24 ETHICAL PERSPECTIVES 39 (2017); Tomasz Tulejski, *Paulus Vladimiri and His Forgotten Concept of the Just War*, 20 ARCHIWUM FILOZOFII PRAWA I FILOZOFII SPOŁECZNEJ 39 (2019); Jacek Grzybowski, *Paulus Vladimiri and Stanislaus de Scarbimiria–Medieval Krakow Law School and the Polish Contribution to the Formation of the Rights of Nations*, 24 CHRISTIANITY-WORLD-POLITICS 25 (2020). For Vitoria comparisons, see Bárbara Díaz, *Just War Against Infidels? Similar Answers from Central and Western Europe*, 21 STUDIA PHILOSOPHIAE CHRISTIANAE 55 (2017); Władysław Czapliński, *A Right of Infidels to Establish Their Own State? Remarks on the Writing of Paulus Vladimiri and Francisco de Vitoria*, in RELIGION AND INTERNATIONAL LAW: LIVING TOGETHER 37 (Robert Uerpmann-Wittzack, Evelyne Lagrange, & Stefan Oeter eds., 2018). Vladimiri has been almost entirely neglected by Western jurists, even those concerned with the medieval origins of European legal thought. Tomaz Giaro, *The East of the West: Harold J. Berman and Eastern Europe*, 21 ZEITSCHRIFT DES MAX-PLANCK-INSTITUTS FÜR EUROPÄISCHE RECHTSGESCHICHTE 193, 193 (2013). Even Martti Koskenniemi's recent effort to expand international legal history back to the fourteenth century does not account for Vladimiri, *see* MARTTI KOSKENNIEMI, TO THE UTTERMOST PARTS OF THE EARTH: LEGAL IMAGINATION AND INTERNATIONAL POWER 1300–1870 (2021).

[60]ANTONY CARTY, PHILOSOPHY OF INTERNATIONAL LAW 4–5 (2d ed., 2017).

[61]Walter Ullmann, *The Medieval Papal Court as an International Tribunal*, 11 VA. J. INT'L L. 356 (1970).

[62]Richard Tuck, *Alliances with Infidels in the European Imperial Expansion*, *in* EMPIRE AND MODERN POLITICAL THOUGHT 61 (Sankar Muthu ed., 2012).

[63]*See* CHRISTOPHER TYERMAN, GOD'S WAR: A NEW HISTORY OF THE CRUSADES 674–712 (2006).

[64]For a detailed overview, *see* ERIC CHRISTIANSEN, THE NORTHERN CRUSADES (1997).

[65]*Id.* at 47–49.

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conquest and colonization in the process.[66] However, though an object of feudal Europe's religious-military fixation, one region that defied this modality of geopolitical accumulation was the Middle Eastern Levant. Faced with the organized resistance of local populations, coupled with the challenge of disease and agricultural production in an unfamiliar climate, the crusader kingdoms established in this region proved unsustainable.[67] Yet despite failures of permanent settlement, conflict in the Holy Land gave European crusaders the military experience and prestige that fueled subsequent impositions in Christendom's more immediate peripheries.[68] The pagan Baltic region, a key site of recycled crusading efforts, proved far easier to incorporate into the sphere of European feudalism where the commonality of material social relations, despite religious difference, enabled comparatively high degrees of trade and mutual respect—even amongst parties engaged in ferocious warfare.[69] So frequent were these interactions that crusaders were themselves accused of adopting pagan ways.[70]

However, the comparative material ease of integrating Baltic lands into feudal Christendom was coupled with the difficulty of devising a legal justification for this process of integration. As papal authority consolidated in the twelfth century, and increasingly influenced the terms by which Christendom encountered and navigated its growing connections with non-Christian worlds, questions of just war and infidel land rights were of preeminent importance. In short, did Christians possess a natural right to conquer non-believers? For Pope Innocent -IV, 1195–1254, there was no right to wage expansionary wars against non-Christians absent their commission of a specific offence.[71] While widely accepted, Innocent's position was not without challenge. For the jurist Hostiensis, 1200–1271, and the tradition he founded, because the divinity of Christ manifested universal sovereignty, any war for infidel land was a just effort to restore the original universality of Christ's dominion.[72] Against this discursive backdrop, the justificatory divergence between the Holy Land and Northern Crusades was clear. While the former could claim the recovery of formerly Christian lands and protections of pilgrims/holy sites as just cause for just war, the latter had to rely on attenuated rationals of conversion and expansions in lands that were never Christian.[73] The Northern Crusades were thus a site of innovative and controversial rationales for justifying holy war.[74]

In was in this context that Vladimiri lodged a theological-philosophical argument on infidel alliance that forged the institutional basis for the polity that became the Polish-Lithuanian Commonwealth. By the end of the thirteenth century, the Teutonic Order, and the various lessor orders it absorbed, had subjugated numerous pagan tribes and established powerful crusader polities in Prussia and Livonia—however, it faced a formidable foe in the form of the Lithuanians.[75] Adopting feudalism while maintaining paganism, the Grand Duchy of Lithuania built a vast empire to the East that incorporated much of the Orthodox Slavic world devastated by

[66]Robert Bartlett, The Making of Europe: Conquest, Colonisation and Cultural Change 950–1350, at 43–51 (1993).

[67]Alfred Crosby, Ecological Imperialism: The Biological Expansion of Europe, 900–1900, at 60–67 (1986).

[68]Bartlett, *supra* note 66, at 24–26; *see also* Burnham W. Reynolds, The Prehistory of the Crusades: Missionary War and the Baltic Crusades (2016).

[69]Rasa Mažeika, *Of Cabbages and Knights: Trade and Trade Treaties with the Infidel on the Northern Frontier, 1200–1390*, 20 J. Medieval Hist. 63 (1994); *An Amicable Enemy: Some Peculiarities in Teutonic-Balt Relations in the Chronicles of the Baltic Crusades*, *in* The Germans and the East 49 (Charles W. Ingrao & Franz A.J. Szabo eds., 2008).

[70]Kaspars Kļaviņš, *The Ideology of Christianity and Pagan Practice among the Teutonic Knights: The Case of the Baltic Region*, 37 J. Baltic Stud. 260 (2006).

[71]James Muldoon, Popes, Lawyers, and Infidels: The Church and the Non-Christian World 1250–1550, 7–12 (1979).

[72]*Id.* at 16–17.

[73]Christiansen, *supra* note 64, at 81–82.

[74]Marek Tamm, *How to Justify a Crusade? The Conquest of Livonia and New Crusade Rhetoric in the Early Thirteenth Century*, 39 J. Medieval Hist. 431 (2013).

[75]*See* William Urban, The Teutonic Knights: A Military History (2003).

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the Mongol invasions of the 1200s.[76] Along with the Teutonic Knights, the Lithuanian Grand Duchy faced armed opposition from the Catholic Slavic Kingdom of Poland where various decentralized estates were uniting into a powerful monarchy.[77] Originally aligned against a common pagan enemy, the Poles coordinated their efforts with the Teutonic Order until 1308 when, upon capturing the city of Danzig on behalf of Poland, the Order refused to relinquish control.[78] Following prolonged contention, the Poles eventually joined an alliance against the Order initiated by the Lithuanians whose Grand Duke Jagiełło converted to Catholicism, baptized as Władysław, and married Princess Jadwiga of Poland in 1385 thus beginning the Jagiellonian Dynasty.[79] United, the Poles and Lithuanians achieved a decisive victory over the Teutonic Order at the fabled Battle of Grunwald in 1410.[80]

As the Council of Constance convened in 1414 with the primary aim of reunifying fractured papal authority and settling major theological controversies, the Kingdom of Poland's dispute with the Teutonic Order constituted an important sub-matter. Against the Order's crude assertions, Vladimiri presented the Polish case with the utmost lawyerly precision and decorum. Beginning with the position of Hostiensis, whom the Order itself did not even explicitly invoke, Vladimiri dissected this argument to show the superiority of Innocent's significantly more measured position as it applied to the Northern Crusades.[81] While presuming the duty of pagans to admit Christian missionaries, Vladimiri contrasted the Order's forcible conversion measures against the peaceful and consensual means of the Poles and, from this basis, claimed the Order was only interested in using papal authorization as a duplicitous pretext for acquiring wealth and territory.[82] While a commission to settle the Polish-Teutonic Order dispute largely endorsed Valdmiri's argument—a milestone in dissolving the influence of Hostiensis—there was no definitive declaration of victory by the Council.[83] However, acceptance of the Polish-Lithuaian alliance Vladimiri defended was eminently tacit as Pope Martin V named King Władysław Jagiełło of Poland and Grand Duke Vytautas (Witold) of Lithuania as his vicars-general in Russia.[84]

Though largely uninvoked in subsequent centuries, according to Alexandrowicz's survey, definite traces of Vladimir's argument on Christian-infidel coexistence could be found in a number of legal texts—including those of Vitoria and Grotius.[85] For Alexandrowicz, who blamed the lack of citation on the Council's failure to more explicitly embrace the Polish cause, Vladimiri's argument was of great importance in highlighting the non-discriminatory character of the classical law of nations.[86] Contra the heated question of Muslim-Christian relations, as Landauer observes, this topic of Christian-pagan alliance allowed Alexandrowicz, a student of canon law, to study the juridical character of coexistence in what he believed to be a more objective sense.[87] As a matter of cross-contextual application, Polish Christians allying with pagan Lithuanians formed perhaps a clearer parallel to European relations with Hindu and Buddhist societies in the East

[76]*See* S.C. Rowell, Lithuania Ascending: A Pagan Empire within East-Central Europe, 1295–1345 (2014).

[77]*See* Paul Knoll, The Rise of the Polish Monarchy: Piast Poland in East Central Europe, 1320–1370 (1972).

[78]Paul Knoll, *The Most Unique Crusader State: The Teutonic Order in the Development of the Political Culture of Northeastern Europe during the Middle Ages*, in Ingrao & Szabo, *supra* note 69, at 38.

[79]*Id.* at 40.

[80]*Id.* at 41.

[81]Muldoon, *supra* note 71, at 113.

[82]*Id.* at 114–18. While an accessible English translation of Vladimiri is yet to exist, for a compilation of his texts on this subject in Latin, *see* Belch, *supra* note 59, at Vol. II.

[83]Muldoon, *supra* note 71, at 118–19. The Order's representative, Dominican priest John Falkenberg, presented a case so slanderous he was nearly condemned as a heretic. Though avoiding this fate, his fellow Dominicans imprisoned him for six years for his gross improprieties. Christiansen, *supra* note 64, at 238–39.

[84]*Id.* at 241.

[85]C.H. Alexandrowicz, *Paulus Vladimiri and the Development of the Doctrine of Coexistence of Christian and Non-Christian Countries*, *in* The Law of Nations in Global History, *supra* note 3, at 53–54 [hereinafter *Vladimiri*].

[86]*Id.* at 56.

[87]Landauer, "Part II" *supra* note 3, at 26–27.

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Indies, a central facet of Alexandrowicz's scholarship.[88] Interestingly, Alexandrowicz takes this parallel to whole new level through his proclamation that both the Polish-Lithuanian Commonwealth and the East Indies shared a similar fate as legal universalism gave way to the positivism he so thoroughly despised. On his reading:

> .. . [T]he period of the collapse of the independent Asian State system in the East Indies at the end of the eighteenth century witnessed also the collapse of Poland, to a great extent under the pressure of those intransigent dynastic forces which stood in the way of a liberal and non-discriminatory conception of the family of nations.[89]

Thus, for Alexandrowicz, by empowering the worst aspects of European civilization, a new regime of legal order undid the progress of an earlier system that enabled both Christian-pagan and Euro-Asian interaction on a humane and egalitarian basis. Axiomatic here is the way in which both the Commonwealth and the East Indies were premised on an understanding of divided sovereignty that was rejected in both instances by actors who insisted that indivisible sovereignty was the only true sovereignty. To fully understand the significance of this parallel, we are well-served by uncovering the material conditions of the divided sovereignty, and its detractors, that proved so critical to Alexandrowicz's thought. It is thus highly worthwhile to account for how the Polish-Lithuanian Commonwealth, the ultimately product of Vladimiri's defense of Christian-pagan alliance, was a uniquely persistent manifestation of divided sovereignty besieged by those building regimes of indivisible sovereignty. This path of inquiry conjoins the history Alexandrowicz crafted with the history that crafted him. After all, the "golden age" of universal law-governed encounter and interaction between Europeans and the East Indies proclaimed by Alexandrowicz occurred in roughly the same timeframe in which the Polish-Lithuanian Commonwealth experienced its own mythologized "golden age."

D. The Commonwealth Against Absolutism

While Vladmiri sought vindication before the papal Council of Constance, armed with the benefit of hindsight, the Council's (non-)verdict is less compelling than the character of Vladimiri's argument. At this point, the role of the papacy in the world beyond Christendom was profoundly changing. Rather being the immediate source of contact with the non-Christian world, the Church reinvented its relevance as an arbiter of competing claims amongst Christians over infidel lands.[90] Such was the gradual turn from a hierarchal order to one premised on the decentralized will of sovereigns. Following the Council, the aligned Poles and Lithuanians, increasing integrated within a singular state structure, were embarking on the path of a great power within this new order as the medieval gave way to the early modern.[91] Here, Vladimiri's defense of a Christian-pagan alliance makes for a compelling case study in Keene's point that membership in a constellation of multiple polities identifiable as an "international states-system" is the result of a multi-faceted alchemy of cultural belonging, raw power, and legal status.[92]

Beginning with the Kingdom of Poland, its main contribution to this formula was its claim to inclusion within Latin Christendom. Resistant to German vassalage under the Holy Roman Empire since its conversion to Christianity in the 900s, Poland maintained a close link to the authority of the Catholic Church.[93] A great testament to this was Cracow University, Vladmiri's

[88]Landauer, "Part II" supra note 3, at 26–27; *see also* Alexandrowicz, *Vladimiri*, *in* The Law of Nations in Global History, *supra* note 3, at 57–60.

[89]Alexandrowicz, *Vladimiri*, *in* The Law of Nations in Global History, *supra* note 3, at 60.

[90]Muldoon, *supra* note 71, at 105.

[91]*See* Robert Frost, The Oxford History of Poland-Lithuania: The Making of the Polish-Lithuanian Union, 1385–1569 (2015); *see also* Daniel Stone, The Polish-Lithuanian State, 1386–1795 (2001).

[92]Keene, *supra* note 9, at 664.

[93]Knoll, *supra* note 77, at 1–2.

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institution, which emerged as a vastly influential center of knowledge production within the late medieval world.[94] By contrast, the Grand Duchy of Lithuania was an important military power, that, despite its paganism, played a pivotal role in defending Christendom against nomadic invasion from the East.[95] Alliance between these differently situated entities demanded an innovative approach to the justification of legal status. Yet, through Vladimiri's creativity, there emerged a fitting juridical articulation that, in a time prior to the rigid distinction between "internal" versus "external" sovereignty, accounted for both the international legal personality and domestic constitutional structure of the polity latter deemed the Polish-Lithuanian Commonwealth.

What made this union so unique relative to every other European state-formation that could claim "great power" status was its reverse evolution regarding the general consolidation of undivided sovereignty elsewhere. Importantly, it was divided across not one, but two distinct axes. The first division was between the Polish and Lithuanian "nations"—then the designation of an upper social strata not extended to all classes until the nineteenth century. While merger via the 1569 Lublin Union, the act officially constituting the "Commonwealth," unified most practical matters of governance, Poland and Lithuania were maintained as distinct administrative divisions—thus contributing to a persistent "two-nation" identity.[96] The second, and closely related division, was between the division of power amongst a decentralized nobility (the *Szlachta*) who convened the *Sejm*, a bicameral parliamentary assembly.[97] While states elsewhere in Europe became increasingly centralized through hereditary absolutist monarchies—and an accompanying rise of elaborate ranking systems amongst the nobility—the Commonwealth followed a completely different trajectory. When the Jagiellonian dynasty became extinct in 1572, rather than replacement by a competing lineage, the *Sejm*, in the interests of preserving its decentralized power, opted for a weak monarchy elected by a formally egalitarian nobility for a limited term.[98]

The maintenance, and intensification, of such a divided regime of sovereignty led to defining institutional and ideological particularities within the Commonwealth. On one level, it preserved power within the countryside and thus lacked urban development and its associated patterns of commerce and encounter.[99] Of defining importance here was the Commonwealth's rejection of Roman law and, by extension, its harmonization of trans-boundary interactions through a common medium of order and authority.[100] However, on another level, the juridical equality amongst the nobility—as large as ten percent of the population and unsubjected to absolutist ranking hierarchy—led to a pronounced tradition of republican political thought that defined Commonwealth identity.[101] Divided sovereignty was thus a measure of liberty.[102]

[94]Janusz J. Tomiak, *The University of Cracow in the Period of Its Greatness: 1364–1549*, 16 Polish Rev. 25 (1971).

[95]While Lithuania became Christian rapidly after the Polish alliance, lingering paganism remained an object of fascination, *see* Pagans in the Early Modern Baltic: Sixteenth-Century Ethnographic Accounts of Baltic Paganism (Francis Young ed., 2022).

[96]However, Lithuanian elites gradually adopted Polish language and culture. Snyder, *supra* note 22, at 19.

[97]On its origins, *see* Agnieszka Januszek-Sieradzka, *The Crown Sejm in the Jagiellonian Era (1386–1572): The Birth, Development, "Golden Age,"* 167 Przeglad Sejmowy 15 (2021). On this political culture, *see* Norman Davies, God's Playground: A History of Poland, Vol. I, The Origins to 1795, at 156–96 (2005).

[98]Alfred Rieber, The Struggle for the Eurasian Borderlands: From the Rise of Early Modern Empires to the End of the First World War 172–75 (2014).

[99]Perry Anderson, Lineages of the Absolutist State 282 (2013).

[100]Tomasz Giaro, *Legal Tradition of Eastern Europe: Its Rise and Demise*, 2 Comp. L. Rev. 1, 6–7, 15 (2011).

[101]*See* Karl Friedrich, *Polish-Lithuanian Political Thought, 1450–1700*, in European Political Thought, 1450–1700: Religion, Law, and Philosophy 409 (Howell A. Lloyd, Glenn Burgess, Simon Hodson eds., 2008); Anna Grześkowiak-Krwawicz, Queen Liberty: The Concept of Freedom in the Polish-Lithuanian Commonwealth (2012); Tomasz Gromelski, *Liberty and Liberties in Early Modern Poland-Lithuania*, in Freedom and the Construction of Europe, Volume I: Religious Freedom and Civil Liberty (Quinten Skinner & Martin van Gelderen eds., 2013) 215: Dorota Pietrzyk-Reeves, Polish Republican Discourse in the Sixteenth Century (2020).

[102]However, most such invocations came from an elite perspective that has, and continues to be, contested, *see* Hieronim Grala, *Was the Polish-Lithuanian Commonwealth a Colonial State?*, 26 Polish Q. Int'l Aff. 125 (2017).

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The explication of the Polish-Lithuanian Commonwealth's uniqueness raises questions of the material factors that enabled it to develop so differently from its neighbors. Importantly, the lands of Commonwealth were comparatively spared the ravages of the Black Death—an event of demographic devastation—that, in creating a vast labor shortage, demanded a profound reconfiguration of feudalism's peasant-noble-monarchy relationship.[103] Though it stunted long-term prospects of innovation, preserving traditional agricultural practices against this backdrop of crisis enabled the Commonwealth to assume the role of Europe's "bread basket."[104] Moreover, as a distinct legacy of the old Lithuanian empire, the Commonwealth continued in its role as buffer to Eastern incursion against Latin Christendom.[105] Integrating the practices of Western knighthood with the steppe warfare tactics of the Orthodox Cossacks inhabiting its frontiers, the Polish-Lithuanian Commonwealth possessed the most powerful calvary in Europe.[106] Furthermore, as a matter linked to the comparative tolerance of religious diversity that defined the polity's republican identity, there was the relatively favorable treatment of Jews within the Commonwealth, many of whom had fled intolerance elsewhere.[107] Unable to own property, but unburdened by restrictions on money-lending and with access to wide-spanning merchant networks, Jews played a profound role in linking landed Polish nobles to commercial opportunities despite the Commonwealth's lack of urban development.[108] In light of these factors, the Polish-Lithuanian Commonwealth was able to maintain a non-conforming approach to sovereignty in a way that few others were.

While its sixteenth century can be deemed a "golden age," this divided sovereignty-based polity faced a new reality as indivisible sovereignty-based absolution gained force in the seventeenth century. Materially, absolutist state formation in Europe was marked by a distinct West-East divide with the Elbe River being a commonly accepted demarcation line.[109] In the West, with the Kingdom of France as exemplar, a centralized absolutist monarchy, through its powers of taxation and official patronage, had deeply constrained the decentralized power of the nobility.[110] Fueling this process was a transformation of law, particularly the rise of Roman law.[111] As Western European powers simultaneously expanded abroad and centralized internally, Roman law innovations were key to ordering the "domestic" and the "international" as distinct, yet permeable, spheres of authority.[112] Even in highly divided patchworks, namely the vast fragmented array of principalities deemed the Holy Roman Empire of the German nation, Roman law proved a highly effective medium of connection and coordination.[113] Also of great importance was the way in which Roman law doctrines, often shaped obscurely in the shadow of the Canon law in the

[103]Anderson, *supra* note 99, at 279.

[104]*Id.* at 282; Davies, *supra* note 97, at 197–224.

[105]Rieber, *supra* note 98, at 154.

[106]Snyder, *supra* note 22, at 113.

[107]*See* Ariel Salzman, The Exclusionary West: Medieval Minorities and the Making of Modern Europe (2023).

[108]Davies, *supra* note 97, at 165; Stefania Ecchia, *A Price for Toleration: The Role of Grain in Shaping Business Relations Between Nobles and Jews of the Polish-Lithuanian Commonwealth*, Bus. Hist. 1 (2021).

[109]*See* Krzysztof Brzechczyn, The Historical Distinctiveness of Central Europe: A Study in the Philosophy of History (2020).

[110]Benno Teschke, The Myth of 1648: Class, Geopolitics, and the Making of Modern International Relations 168–70 (2003).

[111]In Anderson's account, Roman law effectively synthesized features of Antiquity and medieval feudalism to create early modern absolutism. Anderson, *supra* note 99, at 24–29.

[112]*See* The Roman Foundations of the Law of Nations: Alberico Gentili and the Justice of *Empire* (Benedict Kingsbury & Benjamin Straumann eds., 2010); Benjamin Straumann, Roman Law in the State of Nature: The Classical Foundations of Hugo Grotius' Natural Law (2015); Crisis and Constitutionalism: Roman Political Thought from the Fall of the Republic to the Age of Revolution (2016). Of course, overseas colonization (and the wealth it enabled) was a tremendous driver of this legal innovation process, *see* Lauren Benton & Benjamin Straumann, *Acquiring Empire by Law: From Roman Doctrine to Early Modern European Practice*, 28 L. & Hist. Rev. 1 (2010).

[113]Daniel Lee, *Roman Law, German Liberties and the Constitution of the Holy Roman Empire*, *in* Freedom and the Construction of Europe, Volume I: Religious Freedom and Civil Liberty, *supra* note 101, at 256.

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city-states of medieval Italian peninsula, could justify novel approaches to waging war.[114] Based on analogies to private individual rights of self-defense applied to free cities, this protective rationale for force eventually extended to justify permanent territorial annexation in a manner progressively un-moored from established Christian morality.[115] Any polity, including the Commonwealth, that failed to adapt to this mode of reasoning was at a grave disadvantage.[116]

Compounding this challenge was the rise of a distinctly Eastern variant of absolutism in the realms surrounding the Commonwealth. Relative latecomers to state centralization, rather than the gradual rise of peasant freedom from local lords experienced in the West, the lands under the authority of Prussia, Russia, and Austria experienced a "second serfdom" as feudal control consolidated through a greater alignment of monarchs and nobles against the peasantry.[117] One reason for this development concerned a need for concentrated labor-intensive food production as lands in the West became increasingly geared towards industry as opposed to agriculture; another concerned the need for military manpower and organization. Facing immense geopolitical pressure from Western absolutist powers, in the Prussian, Russian, and Austrian empires, state centralization was, compared to the West, dedicated to enhancing military capabilities at the expense of any other state activity.[118] Largely cut-off from direct overseas colonial extraction, these Eastern powers continued to rely heavily on immediately proximate geopolitical accumulation through dynastic alliance and inheritance or, failing this, outright wars of conquest.[119]

With absolutists consolidating their power, the anomalous Polish-Lithuanian Commonwealth was an anvil between many hammers. Interestingly, important catalysts for these resulting wars of devastation were remnants of the old Teutonic crusader realms of Livonia and Prussia. Beginning in the mid-sixteenth century, dominion over Livonia was an initial source of a long series of wars between the Commonwealth, the newly consolidated Russian Empire, and the Kingdom of Sweden—a scourge of Eastern lands that demonstrated the efficiency commanded by even a relatively weak absolutist power in the Western mold.[120] As for Prussia, which continued as a site of German settlement long after the crusades, the Commonwealth's failure to eradicate it entirely allowed it forge close connections with the principalities of the Holy Roman Empire and guarantee German domination of the West Baltic coast, thus preventing the emergence of any Polish naval power.[121] On its southeastern frontier, Catholic-Orthodox confessional differences with the Cossacks, and failure to integrate them as third nation within the Commonwealth, drew them closer to Russia.[122] Following the Cossack's great Khmelnytsky Uprising of 1648, and subsequent Russian intervention, large swarths of the Commonwealth's eastern border lands fell under the control of the Russia's Empire, a situation formalized via the 1667 Truce of Andrusovo.[123] As for Austria, while Commonwealth forces famously rescued a besieged Vienna from Ottoman invasion in 1683, this victory over the Turks solidified Habsburg

[114]Ryan Greenwood, *War and Sovereignty in Medieval Roman Law*, 32 L. & Hist. Rev. 31 (2014).

[115]*Id.* at 59–60.

[116]Despite maintaining its Common Law, the arrival of leading Italian Romanist Alberico Gentili at Oxford enabled England to reap these juridical innovations. *Id.* at 58–59.

[117]Anderson, *supra* note 99, at 195–96, 224–28.

[118]*Id.* at 197–98.

[119]However, on a broader scale, there were deep connections between overseas colonization and these serf estates. Richard Drayton, *The Collaboration of Labour: Slaves, Empires, and Globalizations in the Atlantic World, c. 1600–1850*, in Globalisation in World History 98, 102 (A.G. Hopkins ed., 2002).

[120]*See* Robert Frost, The Northern Wars: War, State and Society in Northeastern Europe, 1558–1721 (2000). On Sweden as a persistent source of geopolitical pressure, see Anderson, *supra* note 99, at 198–200.

[121]Anderson, *supra* note 99, at 288–89; *see also* Christopher Clark, The Iron Kingdom: The Rise and Downfall of Prussia, 1600–1947 (2006).

[122]Snyder, *supra* note 22, at 113–14.

[123]*See* Carol B. Stevens, Russia's Wars of Emergence, 1460–1730, at 147–80 (2007).

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strength in the East and thus empowered another absolutist entity at odds with the long-term existence of the Commonwealth.[124]

When considering these varied wars, it is crucial to understand what, as a matter of systemic logic, the absolutist powers wanted from the Commonwealth. Given its nobility-focused republican rejection of hereditary monarchy, there was no way to acquire these lands through diplomatically-orchestrated dynastic inheritance—direct conquest was thus the only option.[125] In the face of such impositions, Commonwealth nobles doubled down on the logic of divided sovereignty as an embodiment of freedom defined in contrast to absolutist tyranny. While this oppositional framing bolstered identity, it also constrained the institutional reforms that might enable the Commonwealth to better resist its rivals.[126] Perhaps the single greatest example of this recalcitrance was the general persistence of the *Liberum Veto*, a mechanism granting any member of the *Sejm* the power to unilaterally block legislation.[127] An embodiment of divided sovereignty at its purest, the *Veto* effectively paralyzed most institutional efforts at a time when decisive organization was needed.

Important as they were, these internal dynamics need to be considered in relation to greater external forces. Beyond setting their sights on the lands of the Commonwealth, the Eastern absolutists were also locked into a system of competition with one another. With Russia acquiring significant territory its ongoing wars against the Ottomans, Prussia and Austria harbored deep concerns over this shifting balance of power and sought out means of enhancing their own positions while avoiding direct confrontation with Russia.[128] Moreover, beyond these localized concerns, change in this general timeframe occurred on an even larger scale through the Seven Years Wars, 1756–1763. Beginning as skirmishes between Britain and France over colonial boundaries in North America, the far-reaching imperial character of the powers involved led to a globe-spanning conflict that included intense fighting in contested regions of Europe involving all the Eastern absolutist powers.[129] With the defeat of France, continental Europe's most significant and influential geopolitical force, there came unprecedented opportunities for Russia and Prussia, victors in this conflict, to claim a vastly enhanced degree of status within Europe's power-ranking system.[130] This spelled disaster for the Commonwealth. Armed with a newfound assertiveness, without even formally declaring war, Russia and Prussia, along with Austria, initiated the first Partition in 1772—costing the Polish-Lithuanian Commonwealth ". . . approximately 30 per cent of its territory, and one third of its population."[131]

E. The Commonwealth's Last Stand

Was the First Partition of the Polish-Lithuanian Commonwealth legal at the time of its commission? To even pose this question invites a considerable discourse on the nature of lawful authority in a moment of profound transition. From one perspective, the Partition epitomized a logic that arose alongside the absolutist state that, in superseding early patterns of moralism,

[124]Gábor Ágoston, The Last Muslim Conquest: The Ottoman Empire and Its Wars in Europe 490-494 (2021); Rifaat A. Abou-el-Haj, *The Formal Closure of the Ottoman Frontier in Europe: 1699–1703*, 89 J. Am. Oriental Soc. 467 (1969).

[125]Teschke, *supra* note 110, at 236–37.

[126]Jerzy Lukowski, Liberty's Folly: The Polish-Lithuanian Commonwealth in the Eighteenth Century (2014).

[127]*See* Jerzy Lukowski, *'Machines of Government': Replacing the Liberum Veto in the Eighteenth-Century Polish-Lithuanian Commonwealth*, 90 Slavonic & East Eur. Rev. 65 (2012).

[128]Korman, *supra* note 19, at 73–74.

[129]*See* Franz A.J. Szabo, The Seven Years War in Europe: 1756–1763 (2008); Richard Devetak & Emily Tannock, *Imperial Rivalry and the First Global War*, in The Globalization of International Society 125 (Timothy Dunne & Christian Reus-Smit eds., 2017); Daniel Baugh, The Global Seven Years War 1754–1763: Britain and France in a Great Power Contest (2d ed., 2021).

[130]Hamish Scott, The Emergence of the Eastern Powers, 1756–1775 (1995).

[131]Kattan, *supra* note 20, at 263.

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viewed unquestionable prerogative as its own justification. Retrospectively, such a view was perhaps expressed most directly by the nineteenth-century Luxembourgian jurist and historian François Laurent that "[i]nternational law really amounts to laying down the principle of national sovereignty and deducing the consequence."[132] The Partition, however condemnation-worthy for its brutality or imprudence, could not be similarly condemned as illegal; general acceptance of this event amongst the powers of Europe seemed to confirm this.[133] However, from another perspective, there was a growing view that political legitimacy and, by extension, sovereignty derived solely from the consent of the governed.

Articulated more than a century before the Partition in 1600s England, and in the context of it Revolution/Civil War, this development cannot be dismissed as mere normative flourish, but was deeply intertwined with the rise of capitalism as a distinct mode of social relations.[134] Materially, this discourse of popular consent was one of absolutism-opposing landowners who sought to guarantee their interests through representation in Parliament as the legislative organ of an abstracted bureaucratic state unconstrained by the feudal burdens of personalized loyalty.[135] As assertions of land rights by this nascent capitalist class destroyed traditional peasant subsistence via enclosures of common lands—forcing the peasantry to sell their labor power as wage-earners thus providing a labor basis for enhanced industrialization—the English constitutional-parliamentary state proved highly efficient at overcoming the contradictions that constrained absolutism.[136] Free to establish a central banking system independent of any ruler, the state could efficiently generate the revenue needed to support a standardized military, and thus exert great geopolitical pressure on its rivals.[137]

However, as the eighteenth century dawned, the pressure of this material innovation surrounding the nexus between capitalism and popular will produced widespread ideological effects.[138] The meta-phenomenon deemed the "Enlightenment" can be placed squarely in this frame in a manner that had tremendous consequences for the characterization of war, conquest, sovereignty, and the law of nations—all of which directly concerned the partitioning of the Polish-Lithuanian Commonwealth. In contrast to the East, warfare in the West, if not its overseas colonies, was constrained through the series of treaties constituting the 1715 Peace of Utrecht and its establishment of a durable balance of power.[139] In this age, common understanding amongst warring princes on what could be legitimately gained or lost through battle limited the duration and brutality of war to a degree unwitnessed before or since.[140] Moreover, there arose new critiques of overseas colonial violence as secular discourses of universality sought to account for human commonality despite a seemingly infinite array of cultural difference.[141] Crucially, a transformed discourse of the "law of nations" arose as a driver of this critical universalistic ethos.[142] However, with these new articulations of universalism came new grounds for category division. In this time, and against this cultural backdrop, material distinctions took on a new

[132]Quoted in Herz, *supra* note 40, at 480.

[133]Korman, *supra* note 19, at 76–79.

[134]On the debates defining this era, *see* Divine Right and Democracy: An Anthology of Political Writing in Stuart England (David Wootton ed., 1986); *see also* Christopher Hill, Intellectual Origins of the English Revolution: Revisited (1997).

[135]Teschke, *supra* note 110, at 251–54.

[136]*Id.* at 251.

[137]*Id.* at 256–62.

[138]*See* Ellen Meiksins Wood, The Pristine Culture of Capitalism: A Historical Essay on Old Regimes and Modern States (2015).

[139]For various perspectives, *see* The 1713 Peace of Utrecht and its Enduring Effects (Alfred H.A. Soons ed., 2019).

[140]James Whitman, The Verdict of Battle: The Law of Victory and the Making of Modern War (2012).

[141]Sankar Muthu, *Conquest, Commerce, and Cosmopolitanism in Enlightenment Political Thought*, *in* Empire and Modern Political Thought, *supra* note 62, at 199; Jurgen Osterhammel, Unfabling the East: The Enlightenment's Encounter with Asia (2018).

[142]Pitts, *supra* note 9, at 92–96.

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ideological form as the previously unified space of "Europe" became divided according to an "West/East" axis, with the latter acting as a liminal space between an ideal of the "West" and the rest of the world beyond it.[143]

Embodying these many contradictory and uneven realities was the most important international legal treatise to emerge in this era—Emer de Vattel's (1714–1767) *The Law of Nations*, first published in 1758. Despite his efforts to streamline the systematic philosophical complexities of his influences, namely Christian Wolff (1679–1754) Vattel's text leads to many diverging conclusions when applied to the Partition. A unique aspect of his treatise, and one often overlooked by international lawyers, was Vattel's placement of the will of the people as the basis for domestic sovereign legitimacy. On this understanding, a given system of government was a matter of pure domestic discretion and even absolutist monarchies were presumed to be ultimately legitimized by the consent of their subjects.[144] This pluralistic framing underpinned his famous proclamations that sovereign equality and nonintervention are the core structuring features of the international order.[145] Such presumptions fit well within the view that Vattel's purpose was to use natural law to uphold the sovereignty of Europe's small and uniquely constituted polities—including his native Swiss Canton of Neufchâtel—from aggressive domination by absolutist empires.[146] If these presumptions and proclamations are the object of focus, it would appear that Vattel's text was a most fitting authority for condemning the Partition.[147]

However, provisions elsewhere in his text cast doubt on any such unqualified utility. For instance, Vattel explicitly names preserving the balance of power as a legitimate ground to use force—a logic the Partitioning powers were all too familiar with.[148] Moreover, Vattel was clear that conquest was indeed a basis for gaining valid title to territory.[149] Beyond simply accepting this mode of acquisition, Vattel was novel amongst classical publicists in accepting the "right of conquest" as a self-justifying outcome unconnected to any normative grounding beyond the raw fact of its occurrence.[150] Interestingly, in a move rather superfluous to his stated purpose of articulating legal standards, Vattel offers pragmatic advice to would-be conquerors. On the question of preserving existing governmental structures in conquered territories, while he admits that doing so is well within a conqueror's rights, he warns of the long-term difficulties of maintaining such arrangements.[151] As such, he recommends that local institutions be completely obliterated in the name of stability.[152] This is certainly a perplexing statement from one dedicated to upholding the principle of popular will and preserving the sovereignty of those most at risk.[153]

The contradictions embedded within reigning legal doctrine precluded any easy answer to the question of Partition. However, it was this very ambiguous universalism that enabled the Commonwealth's cause to be framed in the post-feudal terms of liberalism despite its profoundly

[143]Larry Wolff, Inventing Eastern Europe: The Map of Civilisation on the Mind of the Enlightenment (1994).

[144]Frederick Whelan, *Vattel's Doctrine of the State*, 9 Hist. Pol. Thought 59, 70 (1988).

[145]Emer de Vattel, The Law of Nations: Or, the Principles of Natural Law Applied to the Conduct and Affairs of Nations and Sovereigns 150, 155 (Joseph Chitty ed., 1852).

[146]Pitts, *supra* note 9, at 72–74.

[147]Vattel's scholarship certainly garnered interest in the Commonwealth, *see* Radoslaw Szymanski, *Vattel as an Intermediary Between the Economic Society of Berne and Poland*, *in* The Legacy of Vattel's Droit des gens 29 (Koen Stapelbroek & Antonio Trampus eds., 2018).

[148]Vattel, *supra* note 145, at 311–13.

[149]*Id.* at 386.

[150]Antony Carty, Was Ireland Conquered? International Law and the Irish Question 2 (1996).

[151]Vattel, *supra* note 145, at 390.

[152]*Id.* at 390–91.

[153]Alexandrowicz's Vattel stood for the clear presumption that sovereignty could never be involuntarily surrendered. Alexandrowicz, *Reversion*, *in* The Law of Nations in Global History , *supra* note 3, at 400. This view can paradoxically be reconciled with Vattel's defense of the right of conquest. If conquest is solely a matter of fact, then no title on this basis is ever completely secure for reconquest is always a legal possibility. Carty, *supra* note 150, at 2–3.

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feudal character. While confined to the nobility, Commonwealth republicanism as an expression of "liberty before liberalism" fit well within Enlightenment efforts to proclaim the timeless universality of its ideals.[154] Though they emerged to account for very different material social relations, Commonwealth nobility republicanism and Western Enlightenment liberalism could form a common normative front against absolutism. Armed with such a wide discursive range, in its quest for allies abroad, promoters of the Commonwealth's cause could appeal to vary different actors in a manner could shift emphasis while maintaining core ideals. Perhaps the greatest demonstration of this range was the simultaneous appeal to both the Ottoman Empire, a common enemy of Russia, and the independence movement in Britain's North American colonies—two late-eighteenth-century embodiments of social order and political thought of the utmost divergence.[155]

While it provided a mechanism for universalizing local agendas, engagement with Enlightenment discourse, and the politics it entailed, meshed these Commonwealth patriots within a compounding array of contradictions. This is especially true when considering the Enlightenment scholar most influenced by and influential to the Commonwealth's cause— the famed Genevan philosopher Jean-Jacque Rousseau (1712–1778).[156] For Rousseau, who feared centralized structures of delegation as a diminishing of popular sovereignty, the decentralized character of the Commonwealth's nobility was a promising foundation for achieving the elusive, yet essential, "general will" from which political legitimacy derived. However, it was this rejection of popular authority's delegation that rendered Rousseau's assertion at odds with then existing theories of the law of nations. Because the sovereignty of foreign polities that failed to respect the general will of their populations was hardly something to be respected, Rousseauian theory can be viewed as legitimizing intervention without limit.[157] Importantly, Rousseau's approach to governmental legitimacy and international order differed immensely his fellow Swiss scholar Vattel, for whom authority delegation within a bounded political community was a matter beyond external judgment—a presumption underpinning his international theory.[158]

Ironically, the fortunes of the Commonwealth were intimately shaped by a reception of Rousseau's ideas in a very differently-situated geopolitical entity in the form of France, the core of Western absolutist order *and* the Enlightenment critique thereof.[159] As the crisis-plunged monarchy sought to manage its cascading budget deficient through the sale of overvalued state offices, it was the emergent urban middle-class—those whose ambitions of upward mobility were dashed by this fraudulent scheme of office selling—who famously initiated the French Revolution in 1789.[160] Amongst this class, material conditions were ripe for a reception of the Rousseaian critique of absolutism, and this embrace only became more embedded as rounds of intervention in

[154]Quentin Skinner, *Liberty Before Liberalism* (2014).

[155]Kattan, *supra* note 20, at 265–68. However, this divergence must be qualified. Contrary to images of recalcitrant "Oriental Despotism," the Ottoman Empire was undertaking numerous constitutional experiments in this timeframe, *see* Ali Yaycioglu, Partners of the Empire: The Crisis of the Ottoman Order in the Age of Revolutions (2016). Regarding the American colonists, while their "universal liberty" proclamations might seem at odds with Commonwealth nobility, their entire project was premised on numerous patterns of exclusion based on race, religion, and property ownership, *see* Aziz Rana, The Two Faces of American Freedom (2010).

[156]On his engagement in this capacity, *see* Jean-Jaques Rousseau, *Considerations on the Government of Poland, in* Jean-Jaques Rousseau: Of the Social Contract and Other Political Writings 241 (Christopher Bertram ed., 2012); *see also* Karma Nabulsi, Traditions of War: Occupation, Resistance, and the Law 182–85, 213–24 (1999).

[157]Martti Koskenniemi, *The Advantage of Treaties: International Law in the Enlightenment*, 13 Edinburgh L. Rev. 27, 42 (2009).

[158]*See* Theodor Christov, *Vattel's Rousseau:* Ius Gentium *and the Natural Liberty of States, in* Freedom and the Construction of Europe, Volume II: Free Persons and Free States 167 (Quinten Skinner & Martin van Gelderen eds., 2013).

[159]*See* Reinhart Koselleck, Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society (2000).

[160]Alexander Anievas, *Revolutions and International Relations: Rediscovering the Classical Bourgeois Revolutions*, 21 Eur. J. Int'l Rel. 841, 858 (2015).

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both suppression and export of the Revolution demanded a new urgency of answers to questions on war, sovereignty, nationhood, and international order.[161] It was in this context that the Commonwealth nobility promulgated the 1791 Constitution—the first written constitution in Europe—which bore distinct imprints from the nobility's engagement with the Enlightenment.[162] In response, Russia and Prussia, reactionary stalwarts against French revolutionary disruption, initiated a Second Partition of the Commonwealth just two years later.[163] With the Commonwealth hobbled beyond recovery, Russia and Prussia, now rejoined by Austria, undertook a Third and final Partition in 1795.[164] The Polish-Lithuanian Commonwealth ceased to exist on the map of Europe.

F. The Commonwealth's Legacy, Civilizational or Universal?

A presumed core characterization of international law in the nineteenth century is that legal positivism and self-determination were fundamentally without overlap.[165] In other words, the juridical-scientific ascertainment of the personality and will of a sovereign state had nothing to do with distinct communities' aspiration to independence as a matter of natural and historical right. According to an infamous proclamation of this divergence, "the character of the Law of Nations and of an International Person can[not] be attributed . . . to . . . races after the loss of their state (as, for instance the Jews or the Poles)."[166] For many scholars of history, law, and international politics, the genesis of this separation was the 1815 Concert of Europe system tasked with post-Napoleonic reconstruction under the self-anointed "legalized hegemony" of great powers via Britain, Russia, Prussia, Austria, and, after 1818, France.[167] Exemplifying the gap between legal recognition and normative claims of belonging, while the goal of the Concert was "restoring order" through the reversal of French revolutionary territorial disruptions, the Polish-Lithuanian Commonwealth went notoriously unrestored.[168] Rather, the three Partitioners of the Commonwealth now sought, in the interests of preventing future disruption, to suppress all popular sovereignty-based movements against their installed princes via a "Holy Alliance."[169] It is little surprise that Alexandrowicz cursed this turn of events.

Yet from another perspective, viewing these issues of self-determination and international legal positivism as mutually incompatible fails to grasp the ways in which both of these issues were embroiled within a common "civilizational" logical. Consider the Scots-highlander politician, scholar, and former colonial judge James Mackintosh (1765–1832). Unlike many of his contemporaries who lionized the Commonwealth's cause, Mackintosh showed open disdain for its

[161]Edward James Kolla, Sovereignty, International Law, and the French Revolution 16–17 (2017). Importantly, from their earliest interventions to export popular sovereignty, the revolutionary Jacobins drew comparisons to the Commonwealth's Partitioners as unwarranted disruptors of long-existing orders despite their proclaimed ideological difference; *see Id.*, at 103–04.

[162]*See* Jerzy Lukowski, *Recasting Utopia: Montesquieu, Rousseau and the Polish Constitution of 3 May 1791*, 37 Hist. J. 65 (1994).

[163]*See* Robert H. Lord, The Second Partition of Poland: A Study in Diplomatic History (1915).

[164]*See* Robert H. Lord, *The Third Partition of Poland*, 3 Slavonic Rev. 481 (1925).

[165]*See, e.g.*, Michael Ross Bunck & Julie Marie Fowler, *The Nation Neglected: The Organisation of International Life in the Classical State Sovereignty Period*, *in* International Law and the Rise of Nations: The State System and the Challenge of Ethnic Groups 38 (Robert J. Beck & Thomas Ambrosio eds., 2002).

[166]Lassa Oppenheim, International Law: A Treatise, Vol. I, at 100 (1905).

[167]George Lawson, *Ordering Europe: The Legalised Hegemony of the Concert of Europe*, *in* The Two Worlds of Nineteenth Century International Relations 101 (Daniel M. Green eds., 2019).

[168]Mikulas Fabry, Recognising States: International Society and the Establishment of New States Since 1776, at 40 (2010).

[169]Gerry Simpson, Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order 247–49 (2004).

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nobility and their many mismanagements.[170] However, personal feelings did not overcome his general critique of external domination, even when done in the name of improvement.[171] According to Mackintosh: "Conquest and extensive empire are among the greatest evils . . . . To destroy the independence of a people, is to annihilate a great assemblage of intellectual and moral qualities, forming the character of a nation and distinguishing it from other communities."[172]

Despite such seeming progressivism, in Pitts's reckoning, this same Mackintosh was the first jurist to articulate the infamous nineteenth-century "Standard of Civilisation" as such. For Pitts, while there were highly chauvinist characterizations of the law of nations since its inception, they configured this phenomenon as timeless morality as opposed to the product of historical process; later historicist accounts were deliberately lodged as critiques of these exclusionary proclamations.[173] Through Mackintosh, chauvinist hierarchy and methodological historicism were merged for the first time.[174] In contextualizing this synthesis, Mackintosh, in this distinct post-French Revolutionary moment, devised an alternative account of popular will in relation to international law. Rather something to be exported *a la* the Jacobins, popular will was a manifestation of uniquely bounded organic communities that formed an inherent limitation on universalist assertions of natural right, and it was international law's purpose to uphold these boundaries.[175] Resembling his former rival Edmund Burke's (1729–1797) famous conservative critique of the French Revolution, this reconfiguration of the popular will-international law relationship was well suited to the Britain's post-Napoleonic European policy that, contra the Holy Alliance, stressed non-intervention in domestic affairs as a general principle.[176] Civilizational hierarchy discourse was an indispensable tool towards this end. Armed with Mackintosh's reasoning, the British could attack Holy Alliance interventions as no better than those of the Jacobins and, consequentially, a betrayal of the virtues that led Europeans to occupy the highest racial strata of all humanity.[177] Critique of the continued suppression of the Commonwealth fit very well within this frame.[178]

This common backdrop of the seemingly irreconcilable facets of legal positivism and self-determination fits well within the Tzouvalian notion of "capitalism as civilization."[179] Far from purely benevolent, British nonintervention was very much in the interests of British capitalists seeking to expand markets in a continental European market no-longer limited by Napoleon's bans on British imports.[180] It is not difficult to see how presumptively endless pro-dynastic intervention by the Holy Alliance could disrupt such ambitions. Against these systemic pressures,

[170]James Mackintosh, *An Account of the Partition of Poland*, *in* JAMES MACKINTOSH, THE MISCELLANEOUS WORKS OF THE RIGHT AND HONOURABLE SIR JAMES MACKINTOSH 198, 209 (1846).

[171]*Id.*

[172]*Id.*

[173]PITTS, *supra* note 9, at 130–31.

[174]*Id.*

[175]James Mackintosh, *A Discourse on the Law of Nature and Nations*, 1 J. JURIS. 344, 369 (1821).

[176]Iain Hampsher-Monk, *Edmund Burke's Changing Justification for Intervention*, 48 HIST. J. 65, 99–100 (2005); *see also* John Bew, *"From an Umpire to a Competitor": Castlereagh, Canning and the Issue of Intervention in the Wake of the Napoleonic Wars*, *in* HUMANITARIAN INTERVENTION: A HISTORY TO 1980 117 (Brenden Simms & David Trim eds., 2011). On his earlier critique of Burke, see James Mackintosh, '*Vindicae Gallicae: A Defence of the French Revolution and its English Admirers Against the Accusations of the Right Hon. Edmund Burke*, in Mackintosh, *supra* note 170, at 404. On Burke's famous condemnation of the French Revolution, see EDMUND BURKE, REFLECTIONS ON THE REVOLUTION IN FRANCE (Frank M. Turner ed., 2003).

[177]James Mackintosh, *Speech on the Annexation of the Kingdom of Genoa to the Kingdom of Sardinia*, in MACKINTOSH, *supra* note 170, at 512.

[178]*See* Anna Plassart, *Edmund Burke, Poland, and the Commonwealth of Europe*, 63 HIST. J. 885 (2020).

[179]TZOUVALA, *supra* note 50, at 42.

[180]ERIC WOLF, EUROPE AND THE PEOPLE WITHOUT HISTORY 296 (2d ed., 2010). By this same logic, the British argued that disruption abroad wrought by their commercial legislation was a purely internal matter and thus outside international legal condemnation. Isaac Nakhimovsky, *Carl Schmitt's Vattel and "The Law of Nations" Between Enlightenment and Revolution*, 31 GROTIANA 141, 160–61 (2010).

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and the realization of geopolitical limits, the Holy Alliance agenda was gradually abandoned and projects to implement capitalist social relations via state-directed "revolutions from above" proliferated amongst the powers that formed it.[181] At this same time continental jurists, in manner similar to Mackintosh, posited notions of statehood and organic community that moved sovereignty away from the person of the absolute dynastic leader and into the abstracted "will" of the underlying political community.[182] Presumptively excluded from these conjoined understandings of "law," "state" and "peoplehood," the world beyond Europe was a blank slate for the legal imposition designed to extract the resources that fuelled this Europe-centred mode of production and distribution.[183]

Central to this entire process was an indivisible-divisible sovereignty hierarchy, and the means by which this shaped new and violent expressions of collective identity. As ethnic nationalism proliferated in a post-absolutist world, gaining or preserving indivisible sovereignty became seen as the ultimate prize that redeemed past victimhood and could shield against future victimization. For partisans to these struggles, the example of the Polish-Lithuanian Commonwealth showed that simply being located in Europe did not spare a people the fate of externally imposed sovereign divisibility that characterized Europe's colonization of the rest of the world. As one Austrian general remarked of the harshness of the Partitions: "I don't believe that even among the Iroquois and Hottentots such ridiculous things occur."[184] Perhaps nowhere was this compounding relationship between sovereign divisibility and civilizational logic stronger than in the Partitioned lands.[185] Here, attempts to build a divided sovereignty-based constitutional regime, reminiscent of the Commonwealth clashed against mutually-irreconcilable ethno-nationalist quests for indivisible sovereignty.[186]

While such contentious rhetoric over civilization and sovereign divisibility defined the lands of the former Commonwealth, they were not confined there. Through the Partitioning powers, conflict discourses were transmitted across broad transnational vectors. Influential here was the view that it was a grave injustice for a people to be dominated by those beneath them on the civilizational hierarchy.[187] Russia was particularly susceptible to this charge.[188] Very much aware of this, opponents of Russian rule prominently invoked "barbarism" in the context of the failed 1863 Polish Revolt, an event that definitively shifted a campaign of Commonwealth restoration to one of Polish ethno-nationalism.[189] However, such charges by the Poles can be interpreted as

[181]*See* George C. Comninel, *Marx's Context*, 21 Hist. Pol. Thought 467 (2000). On accompanying ideological developments, see Markus J. Prutsch, Caesarism in the Post-Revolutionary Age: Crisis, Populace and Leadership (2020).

[182]Paulo Barrozo, *The Great Alliance: History, Reason, and Will in Modern Law*, 78 L. & Contemp. Probs. 235 (2015); Duncan Kelly, *Popular Sovereignty as State Theory in the Nineteenth Century*, in Popular Sovereignty in Historical Perspective 270 (Richard Bourke & Quentin Skinner eds., 2016).

[183]Peter Stirk, *The Westphalian Model and Sovereign Equality*, 38 Rev. Int'l Stud. 641, 654 (2012); Tzouvala, *supra* note 50, at 29-30.

[184]Quoted in Jordan Branch, *"Colonial Reflection" and Territoriality: The Peripheral Origins of Sovereign Statehood*, 18 Eur. J. Int'l Rel. 277, 289 (2012).

[185]On debates in this context, *see* Jerzy Jedlicki, a Suburb of Europe: Nineteenth-century Polish Approaches to Western Civilization (1998).

[186]The old Lithuanian capital of Vilnius was a particularly fierce arena of such contention, *see* Snyder, *supra* note 22, at 52–56.

[187]A case study was the 1827 independence of Greece from the Ottoman Empire following protracted conflict that began with the 1821 Greek Revolution, *see* Mark Mazower, The Greek Revolution: 1821 and the Making of Modern Europe (2021). Later Greek jurists invoked Western characterizations of Ottoman Empire's divisible sovereignty to justify annexation of regions believed to historically and/or ethnically belong to Greece. Nobuyoshi Fujinami, *Georgios Streit on Crete: International Law, Greece, and the Ottoman Empire*, 34 J. Mod. Greek Stud. 321, 331 (2016).

[188]*See* S.V. Sokolov, *Between Barbarism and Progress: Enlightenment Historical Writings on a Major Conflict in Russian History*, 3 Changing Societies & Personalities 388 (2019).

[189]Snyder, *supra* note 22, at 30; Marcin Wolniewicz, *"Russian Barbarism" in the Propaganda of the Polish January Uprising (1863-1864),* 107 Acta Poloniae Historica 129 (2013); *see also* Magdelena Opalski & Israel Bartal, Poles and Jews: A Failed Brotherhood (1992).

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contributing to Russia doubling-down on its own particular civilizational rhetoric.[190] Though more inclined to stress Christianity over liberalism, on a material level, their rationales operated very much in conjunction with those of the West.[191] While the later, through maritime projection, subjected the "semi-periphery" to predatory processes of state restructuring via regimes of extra-territoriality and unequal treaties, many of these same polities, including China, Persia, and the Ottoman Empire, were simultaneously besieged from land by an expanding Russian Empire.[192]

A parallel manifestation of civilizational politics occurred amongst the German-speaking Partitioners—themselves engaged in a bitter struggle over the character and future of the "German nation."[193] For Prussia, incorporating the Commonwealth's territories was accompanied by large-scale state transformation.[194] Highly ambitious, this eventually became a campaign to build a pan-ethnic German nation-state.[195] Towards this end, Prussian leadership, when asserting territorial claims, proved highly adept at setting "rhetorical traps" that mobilized the "positivism versus self-determination" contradictions of the post-Napoleonic order for its own ends.[196] Amongst international lawyers infatuated with visions of civilizational supremacy—as well as eager capitalists enamored by its brutally quick modernization—Prussian ascendence came with great welcome. When Prussia guaranteed its primacy in the German-speaking world through military victory against Austria in 1866, the Scottish international lawyer James Lorimer, an infamous grand avatar of the "Standard of Civilisation," viewed the situation as one where "[t]he hard-working, anxious, restless, and progressive North has once more prevailed over the indolent, easy, and retrograde South."[197] Subject to the invasive practices of "Germanisation" accompanying this state/nation-building project, the Poles of the Prussian Partitioned lands faced rule as colonial subjects in a manner that defied many of the European/non-European binaries that shape reigning imaginations of colonialism.[198]

[190]*See* Eric Myles, *Humanity, Civilization, and the International Community in the Late Imperial Russian Mirror: Three Ideas Topical for Our Days*, 4 J. Hist. Int'l L. 310 (2002); Lauri Mälksoo, *The Legacy of F.F. Martens and the Shadow of Colonialism*, 21 Chin. J. Int'l L. 55 (2022).

[191]This divergence was apparent in British and French versus Russian rationales for intervention on behalf of the Greek Revolution, Fabry, *supra* note 168, at 79–80.

[192]John Darwin, After Tamerlane: The Rise and Fall of Global Empires, 1400–2000, at 21 (2008).

[193]This competition was efficiently, yet precariously, managed through divided sovereignty-based arrangements. For a study, *see* Peter Haldén, *Republican Continuities in the Vienna Order and the German Confederation (1815–1866)*, 19 Eur. J. Int'l Rel. 281 (2011).

[194]William W. Hagen, *The Partitions of Poland and the Crisis of the Old Regime in Prussia 1772–1806*, 9 Cent. Eur. Hist. 115 (1976).

[195]Jasper Heinzen, *State-Building, Conquest, and Royal Sovereignty in Prussia 1815–1871*, 64 Hist. J. 1281 (2021). On the systemic pressures motivating this approach to statehood and nationalism, *see* Frédérick Guillaume Dufour, *Social-Property Regimes and the Uneven and Combined Development of Nationalist Practices*, 13 Eur. J. Int'l Rel. 583, 596–99 (2007).

[196]An important site was Prussia's 1864 war with Denmark over Schleswig-Holstein. Here, Otto von Bismarck simultaneous claimed that Prussian dominance of the region was needed to both uphold the sanctity of post-Napoleonic treaties (a discourse directed towards conservatives in Russia and Austria) and protect the rights of German-speakers (a discourse directed towards liberals in Britain, France, and the German Confederation). Stacie Goddard, *When Right Makes Might: How Prussia Overturned the European Balance of Power*, 33 Int'l Sec. 110, 127–28 (2009).

[197]James Lorimer, *The German War, in* Studies National and International 25, 25 (1890).

[198]*See* Kristen Kopp, Germany's Wild East: Constructing Poland as Colonial Space (2012); Róisín Healy, *From Commonwealth to Colony? Poland Under Prussia*, *in* The Shadow of Colonialism on Europe's Modern Past 109 (Róisín Healy & Enrico Dal Lago eds., 2014); Interestingly, German depictions of peoples in the East varied greatly and even the relative status of Poles and Lithuanians was highly inconsistent. During the First World War, Lithuania was considered a "savage land" and placed under an entirely different regime of occupation administration than comparatively "civilized" Poland. Vejas G. Liulevicius, War Land on the Eastern Front: Culture, National Identity, and German Occupation in World War I 6–7 (2000); *see also* Mark T. Kettler, *Designing Empire for the Civilized East: Colonialism, Polish Nationhood, and German War Aims in the First World War*, 47 Nationalities Papers 936 (2019). During the Second World War, Nazi race theory considered Baltic peoples to be measurably superior to Polish Slavs. Timothy Snyder, Black Earth: The Holocaust as History and Warning 162 (2015).

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In Alexandrowicz's native Galicia, the region Partitioned by the Austrian Habsburgs and named for their former Spanish possession, questions of civilization and sovereign divisibility manifested very differently.[199] An innovative merger of continued absolutist monarchy and pluralist accommodation of a vast range of nationalities, the multicultural Habsburg Empire appeared to offer a road to modernity not taken.[200] Though easily conceivable as a world—or many worlds—unto itself, the Austrian (Austro-Hungarian after 1867) Empire was very much attuned to the world beyond—but through its own unique lens of perception.[201] Importantly, Habsburg constitutional structures had a tendency to construct regions as simultaneously integral to multiple national identities.[202] Yet who was to prevail when, after the Empire's dissolution, these spaces became, or became part of, indivisible sovereignty forms claiming legitimacy on the basis of a single nationality?[203]

Few regions represent this riddle better than Galicia. Amongst its Polish residents, Galicia was widely believed to possess the greatest autonomy of any location in the old Commonwealth, a message disseminated through universities heavily attend by Polish subjects of Russia and Prussia's empires.[204] It was also the intellectual cradle of a distinctly self-consciousness Ukrainian, as opposed to "Russian," national identity.[205] Between the confrontation of Hitler's Germany and Stalin's Soviet Union, this Galician composition of Ukrainian peasants, Polish landowners, and heavily Jewish cities was desolated beyond recognition.[206] Working for the Polish government-in-exile, Alexandrowicz witnessed this fate of his homeland from London while part of an endeavor premised on the precarious claim that not even the apocalypse itself could extinguish sovereignty.[207]

In concluding this analysis with the materiality of Alexandrowicz's formative context, and the burdens of memory within it, we gain new insights into his critique of nineteenth-century international law as an abomination of the most grotesque description. For Alexandrowicz, the horror brought about by this turn was the entrenchment of an unshakable hierarchy between indivisible and divisible sovereigns. The possession of indivisible sovereignty by some made the sovereignty of those excluded from this category divisible on alien terms by conquers and exploiters. No system worthy of calling itself "law" could abide such a nauseating embarrassment. Sovereignty, however it may have been divided, was always and forever unpartitionable. No attempt to masquerade barbarism as "civilization" could change this naked truth—no matter how persistently it endured. With the Polish-Lithuanian Commonwealth and its legacy embedded in

[199]Larry Wolff, The Idea of Galicia: History and Fantasy in Habsburg Political Culture 1 (2010).

[200]For an important revisionist account, *see* Pieter Judson, The Habsburg Empire: A New History (2016). Alexandrowicz was likely very familiar with such dynamics given his father's status as a general in the Empire's characteristically multinational army. Armitage & Pitts, *supra* note 3, at 3; *see also* Richard Bassett, For God and Kaiser: The Imperial Austrian Army, 1619–1918 (2015).

[201]While it never colonized large swarths of the world outside Europe, many of its subjects imagined the prospects of doing so, *see* Ulrich E. Bach, Tropics of Vienna: Colonial Utopias of the Habsburg Empire (2016).

[202]This became especially apparent after the Austrian Habsburgs formed a 'dual-monarchy' with the Hungarians in 1867, *see* John Connelly, From Peoples into Nations: A History of Eastern Europe 187–207 (2020).

[203]*See* Natasha Wheatley, The Life and Death of States: Central Europe and the Transformation of Modern Sovereignty (2023).

[204]Wolff, *supra* note 199, at 210–21; Giaro, *supra* note 100, at 19.

[205]Snyder, *supra* note 22, at 121–25.

[206]*Id.* at 154–78. Such results were enabled by theories of state extinction under international law practiced not only by the Nazis, but also the Soviets for whom non-existence of sovereignty justified their invasion and occupation of Eastern Poland (which included Alexandrowicz's Galicia). George Ginsburgs, *A Case Study in the Soviet use of International Law: Eastern Poland in 1939*, 52 Am. J. Int'l L. 69, 70 (1945). Moreover, similar fates of partition and ethnic strife befall locations aligned with the Nazis in addition to those conquered by them. On the far-reaching trials and tribulations of Transylvania, another ex-Habsburg region of multi-integral identity, against this backdrop, *see* Holly Case, Between States: The Transylvanian Question and the European Idea During World War II (2009).

[207]Armitage & Pitts, *supra* note 3, at 7. On the international legal difficulties this posed by the continued recognition of such governments, *see* F.E. Oppenheimer, *Governments and Authorities in Exile*, 36 Am. J. Int'l L. 568 (1942).

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his being, Alexandrowicz was uniquely suited to tap into vast streams of memory when articulating a juridical narrative for a world after empire.[208] Though hidden in a footnote, his position was that the rules of the old order must not burden the new states in Asia and Africa who could now presumably chose configurations of sovereignty free from hierarchies between its indivisible and the divisible variants.[209] Leaving aside unanticipated structural questions as to why this did not occur, from Alexandrowicz's perspective, perhaps the historic Polish-Lithuanian Commonwealth was as good a guide as any in navigating this radically open future?

This study has only scratched the surface of possible contexts and engagements through which to interpret Alexandrowicz and his scholarship. In seeking out additional avenues, it is interesting to ask why his Galicia produced some of the twentieth century's most innovative juridical thinkers. In addition to international law luminaries Hersch Lauterpacht—who legally formulated "crimes against humanity"—and Raphael Lemkin—who legally formulated "genocide"—Alexandrowicz's home city of Lviv was also the birthplace of Mohamed Asad, born Leopold Weiss, a Jewish convert to Islam who crafted highly creative theories of Muslim statehood and was a founding figure of Pakistan.[210] Additionally there was the Cracow-born jurist Krystyna Marek whose 1954 treatise *The Identity and Continuity of States in Public International Law* remained the single most comprehensive treatment of the subject until the 1979 publication of James Crawford's *The Creation of States in International Law*.[211] Similar to Alexandrowicz, this text was assertive in its claim that the mere fact of foreign intrusion does not extinguish sovereignty—no matter how long and forcefully it happens to be exerted.[212] Certainly something profound contributed this impossibly rich theorization within such a small and particular geographic space, especially when we consider how this world was destroyed during the Second World War.

With consciousness of how his formative setting was shaped over the *longue durée*, we gain vast new insights into Alexandrowicz's distinct portrayal of a variety of issues—be it recognition, the prospect of a New International Economic Order, or questions of disputed sovereignty in Tibet, Kashmir, and Israel-Palestine.[213] While the uniqueness of Galicia explains many things, before it was Galicia it was part of the Polish-Lithuanian Commonwealth. The transnational interplay of juridical thought and material social relations that defined this unique polity across its medieval, early modern, and modern histories is certainly an ample source of challenge and inspiration for any scholar hoping to push the boundaries of international legal theory. Fortunately, the life and thought of C.H. Alexandrowicz provides a grounding for international lawyers to journey into this lost world and its many afterlives.

[208]On a different, yet connected, crafting of visions amongst Africans and the African diaspora, *see* ADOM GETACHEW, WORLDMAKING AFTER EMPIRE: THE RISE AND FALL OF SELF-DETERMINATION (2019). On transnational patterns of domination that connected Africans, African-Americans, and Poles, *see* ANGELA ZIMMERMAN, ALABAMA IN AFRICA: BOOKER T. WASHINGTON, THE GERMAN EMPIRE, AND THE GLOBALIZATION OF THE NEW SOUTH (2010).

[209]Landauer, "Part II," *supra* note 3, at 18–19. On the legal debates on colonial (dis)continuity, *see* THE BATTLE FOR INTERNATIONAL LAW: SOUTH-NORTH PERSPECTIVES ON THE DECOLONIZATION ERA (Philip Dann & Jochen von Bernstorff eds., 2019).

[210]On Lauterpacht and Lemkin's Galician origins, *see* Philippe Sands, *A Memory of Justice: The Unexpected Place of Lviv in International Law—A Personal History*, 43 CASE W. RES. J. INT'L L. 739 (2011); EAST WEST STREET: ON THE ORIGINS OF GENOCIDE AND CRIMES AGAINST HUMANITY (2016). On Asad, see Murad Hofmann, *Muhammad Asad: Europe's Gift to Islam*, 39 ISLAMIC STUD. 233 (2000).

[211]Natasha Wheatley, *What Can We (She) Know about Sovereignty?: Krystyna Marek and the Worldedness of International Law*, *in* WOMEN'S INTERNATIONAL THOUGHT: A NEW HISTORY 327, 330 (Patricia Owens & Katharina Rietzler eds., 2021).

[212]*Id.* at 342–43.

[213]C.H. Alexandrowicz, *The Legal Position of Tibet*, *The Quasi-Judicial Function in Recognition of States and Governments*, '*Israel* in Fieri, *The Charter on the Economic Rights and Duties of States*, *in* ALEXANDROWICZ, *supra* note 3, at 202, 354, 384, 411; *The Kashmir Deadlock*, 25 POL. Q. 236 (1954). This to say nothing of the highly developed consciousness of East Central Europe in the Indian context that shaped Alexandrowicz's scholarship, *see* DIRK MOSES, THE PROBLEMS OF GENOCIDE: PERMANENT SECURITY AND THE LANGUAGE OF TRANSGRESSION 366–72 (2021); AMIR MUFTI, ENLIGHTENMENT IN THE COLONY: THE JEWISH QUESTION AND THE CRISIS OF POSTCOLONIAL CULTURE (2007).

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