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The everyday banality of domination and the exceptional drama of conquest: Rosa Luxemburg’s critique of self-determination through the many lives of the Polish-Lithuanian Commonwealth

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ABSTRACT

This article explores Rosa Luxemburg’s theories in relation to present international legal discourses on the ban on conquest and its fragility. Towards this end, I centre the significance of the (partitioned) Polish-Lithuanian Commonwealth as a generative site for modern conceptualisations of ‘conquest’ and, relatedly, Luxemburg’s formative context of political engagement.

THE CURSE OF TITLE BY CONQUEST

Is it possible for an international legal doctrine to be cursed? One doctrine that turns serious attention to this seemingly absurd proposition is ‘conquest’. Broadly understood as a state’s ability to gain valid title to territory taken by force, the three scholars of international law who produced the most comprehensive systematic analyses of this topic in the English language shared a strangely similar fate. Whether it was Matthew MacMahon’s *Conquest and Modern International Law*, Robert Langer’s *Seizure of Territory*, or Sharon Korman’s *The Right of Conquest*, in each instance, upon the publication of the major study that began as their doctoral thesis, the author abruptly abandoned international legal scholarship and thus left the greater community without opportunity to engage their developing thoughts.¹ What could possibly explain why producing three great works on conquest’s international legal status led to such a stark and analogous outcome amongst those who crafted these texts?

¹ M MacMahon, *Conquest and Modern International Law: The Legal Limitations on the Acquisition of Territory by Conquest* (Catholic University of America Press 1940); R Langer, *Seizure of Territory: Stimson Doctrine and Related Principles in Legal Theory and Diplomatic Practice* (Princeton University Press 1947); S Korman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (Oxford University Press 1996).

One need not venture too far into the supernatural to grasp the quandaries of conquest. Central to this difficulty is the way in which conquest, according to the political theorist Yves Winter, has historically concerned two distinct, yet overlapping, manifestations.² On the one hand, conquest is one society's domination of another.³ On the other hand, conquest invokes the foundation of legitimate political authority *within* a bounded social space.⁴ Oscillating between these external and internal modalities of juridico-political justification, conquest presents fundamental challenges for international law as a field premised on the strict separation between domestic and international spheres of interaction and authority. While nineteenth-century positivists dealt with this problem by portraying conquest as a fact existing beyond the 'scientifically' demarcated domain of 'international law', this stance could not survive twentieth-century realities.⁵ As a global array of political actors/activists campaigned for a new international law that outlawed aggression, guaranteed rights of self-determination, and constrained invaders via a law of belligerent occupation, the traditional acceptance of conquest faltered.⁶ However, the resulting entanglement of these new doctrinal commitments—and their limitations—continues to render international legal questions involving conquest (and its intertwined internal and external manifestations) as all-pervasive as they are difficult.

Confronting this 'curse', I explore how conquest, as both a narrow legal and broadly extra-legal matter, can be understood in relation to greater questions of 'domination'. My protagonist towards this end is the Jewish/Polish/German revolutionary Rosa Luxemburg (1871-1919). Particularly, I argue that reading her critique of self-determination through the *longue durée* of her context expands our consciousness of the relationship between domination and conquest—and its international legal ordering. Departing from liberal, nationalist, and numerous Marxist conceptions (including Vladimir Lenin's), historians, political theorists, and social activists have long been captivated by Luxemburg's infamous critique of national independence as a revolutionary goal.⁷ This critique, especially as it concerned the turn of the century political context of the Russian, Prussian, and Austrian partitioned Polish-Lithuanian Commonwealth (today's Poland, Lithuania, Belarus, and Ukraine⁸), provides much insight into what shaped Luxemburg as a thinker and what it means to inherit her legacy.⁹

² Y Winter, 'Conquest' (*Political Concepts: A Critical Lexicon*, 2012) <<https://www.politicalconcepts.org/conquest-win>>. All URLs last accessed 10 December 2024.

³ *ibid.*

⁴ *ibid.*

⁵ A Carty, *The Decay of International Law: A Reappraisal of the Limits of Legal Imagination in International Affairs* (Manchester University Press 2019) 88.

⁶ Korman (n 1) 135-248; A Gerson, 'War, Conquered Territory, and Military Occupation in the Contemporary International Legal System' (1977) 18 *Harvard International Law Journal* 525; H Wilson, *International Law and the Use of Force by National Liberation Movements* (Oxford University Press 1990); B Roth, *Governmental Illegitimacy in International Law* (Oxford University Press 1999); D Raic, *Statehood and the Law of Self-Determination* (Brill 2002); A Gross, *The Writing on the Wall: Rethinking the International Law of Occupation* (Cambridge University Press 2017); J Gumz, 'International Law and the Transformation of War, 1899-1949: The Case of Military Occupation' (2018) 90 *Journal of Modern History* 621; K Senaratne, *Internal Self-Determination in International Law: History, Theory, and Practice* (Cambridge University Press 2021); L Mälksoo, *Illegal Annexation and State Continuity: the Case of the Incorporation of the Baltic States by the USSR* (2nd ed, Brill 2022).

⁷ BD Wolfe, 'Rosa Luxemburg and VI Lenin: The Opposite Poles of Revolutionary Socialism' (1961) 21 *Antioch Review* 226; A Walicki, 'Rosa Luxemburg and the Question of Nationalism in Polish Marxism (1893-1914)' (1983) 61 *Slavonic and East European Review* 565; Jie-Hyum Lim, 'Rosa Luxemburg on the Dialectics of Proletarian Internationalism and Social Patriotism' (1995) 59 *Science & Society* 498; M Kasprzak, 'Dancing with the Devil: Rosa Luxemburg's Conception of the Nationality Question in Polish Socialism' (2012) 40 *Critique* 423; D Cornell, 'The Contemporary Transnational Relevance of Rosa Luxemburg's Socialist Critique of National Self-Determination' in JA Gordon and D Cornell (eds), *Creolizing Rosa Luxemburg* (Rowman and Littlefield 2021) 51.

⁸ T Kamusella, 'Germanization, Polonization, and Russification in the Partitioned Lands of Poland-Lithuania' (2013) 41 *Nationalities Papers* 815, 816.

⁹ See ED Weitz, 'Rosa Luxemburg Belongs to Us! German Communism and the Luxemburg Legacy' (1994) 27 *Central European History* 27; RS Wistrich, 'Rosa Luxemburg: The Polish-German-Jewish Identities of a Revolutionary Internationalist' (2012) 57 *Leo Baeck Institute Year Book* 239.

Despite this influence, and despite their preoccupation with self-determination, international lawyers rarely engage Luxemburg's thoughts on the matter.¹⁰ However, given both widespread doctrinal frustration with self-determination and the (not unrelated) turn to Marxist critique in the international legal field, there is ample occasion to revisit Luxemburg's assertion that self-determination could not exist under capitalism, and thus must be subordinated to capitalism's overthrow.¹¹ This prioritising of class solidarity over the liberation of nation-states carries tremendous implications for how international lawyers might conceptualise domination. While present-day international legal doctrine provides a vast vocabulary for condemning conquest as an extreme form of military/political domination (and situates self-determination as its reversal), this same regime provides minimal means for condemning economic domination.¹² Such a dearth is not readily compatible with Marxian, and especially Luxemburgian, theories of domination that centre structurally coerced participation within a capitalist social order premised on exploitation.¹³ My objective here is to rectify this gap between narrowly legalistic formulations of conquest—subject to profound fixation—and deeper questions of domination—subject to correspondingly profound concealment. I pursue this end through a broad genealogical narrative that reconceptualises both the development of international legal thought and Luxemburg's theories through their varied and overlapping material contexts as they evolved over the *longue durée*. Towards this end, I seek to expose the interplay between the everyday banality of domination and the exceptional drama of conquest that, through their perceived separateness, operate in complex conjunction to reproduce capitalist social relations. However, making this exposure requires careful amalgamation of a vast array of facets as they exist across numerous layers of time and space.

In forging this amalgamation, Part I presents an ideology critique of conquest's framing in present international legal discourse, especially as it concerns the fear that ongoing conflicts threaten to erode the postwar ban on conquest. I argue that such discourses, while speaking to serious realities, entrench a problematic presumption of conquest as the highest form of domination that affirms a questionable depiction of self-determination as the superseding opposite of the 'right of conquest.' Here, in seeking the grounds of an alternative narration, I turn to Victor Kattan's argument that the nineteenth- and early-twentieth-century Polish independence struggle is the 'missing link' in the evolution of the right of nations to self-determination. Presenting this struggle as Luxemburg's formative context, Part II explores conquest's evolution in Western legal/political thought through a centring of historic Poland/the Polish-Lithuanian Commonwealth. In a unique capacity, and in a world defined by empires, this polity coherently managed contradictory relationships between territorial expansion and political legitimacy as they were embedded within conquest discourse. Such seemingly reconciled contradictions broke down after the Russians, Prussians, and Austrians extinguished this polity by partition in the late-eighteenth century. Here, ensuing independence struggles produced new contradictions as transformed understandings of nationalism, class, and legitimacy arose in the nineteenth century. Shifting views on 'conquest'

¹⁰ For an important exception, see D Whitehall, 'A Rival History of Self-Determination' (2016) 27 *European Journal of International Law* 719.

¹¹ Doctrinally, 'substantive self-determination' is notoriously elusive in the post-Cold context. C Drew, 'The East Timor Story: International Law on Trial' (2001) 12 *European Journal of International Law* 651, 663-70.

¹² A Tzanakopoulos, 'The Right to be Free from Economic Coercion' (2015) 4 *Cambridge Journal of International Law* 616, 630-31.

¹³ N Vrousalis, 'How Exploiters Dominate' (2021) 79 *Review of Social Economy* 103. This problem is compounded by how exploitation's everyday operation is largely concealed by fixation on extreme forms (i.e. slavery, sex-trafficking, etc) as they are condemned through international law. S Marks, 'Exploitation as an International Legal Concept' in S Marks (ed), *International Law on the Left: Re-Examining Marxist Legacies* (Cambridge University Press 2008) 281, 300-01. See also see L Eslava, *Local Space, Global Life: The Everyday Operation of International Law and Development* (Cambridge University Press 2015).

defined all levels of discourse. Part III then situates Luxemburg's critique of self-determination and her broader theory of capitalist imperialism as an outgrowth of this material context. Setting her observations on informal empire in Egypt in interactive comparison to formal empire in the former Polish-Lithuanian Commonwealth, I argue that Luxemburg's self-determination theory requires a non-hierarchical understanding of multiple forms of domination. In her context and beyond, fetishising the harm of conquest threatened to undo broader political struggles. As a conclusion, I consider how conceptualising the domination/conquest relationship through Luxemburg holds promise for present day international legal thinkers.

CONQUEST, THE HIGHEST STAGE OF DOMINATION?

As the commonplace narrative goes, prior to the mid-twentieth century, international lawyers largely agreed that forcible conquest was a perfectly legal means of acquiring valid territorial title.¹⁴ For these lawyers, the moral condemnation of conquest, and its presumption that 'might makes right', did not alter a positivistic international legal order that elevated fact over norm. In Charles Cheney Hyde's 1936 depiction, '[t]he international society is less concerned with the method to which the victor has recourse, than with its propensity under certain circumstances to endeavor to enforce its will.'¹⁵ On this reading, only the UN Charter, and its axiomatic condemnation of the use of force against a member state's territorial integrity or political independence, enshrined in Article 2(4), harmonised the normative and legal inadmissibility of conquest.¹⁶ However, while this ban proved surprisingly durable throughout the postwar era, a series of political developments over the last several years have profoundly undermined the prospective longevity of an international legal/political order premised on the anti-conquest norm.¹⁷ Whether it's Russia's ongoing efforts to annex portions of Ukraine,¹⁸ American recognition of Israeli claims over East Jerusalem and the Golan Heights¹⁹ (as well as Moroccan claims over Western Sahara²⁰), ongoing Israeli actions in Gaza, Lebanon, and Syria (and possibly the West Bank),²¹ or a vast array of less

¹⁴ While largely confirmed by Anglo-American publicists, some Continental European and Latin American scholars claimed conquest was illegal prior to the Second World War. MacMahon (n 1) 5-6.

¹⁵ CC Hyde, 'Conquest Today' (1936) 30 *American Journal of International Law* 471, 471.

¹⁶ M Zacher, 'The Territorial Integrity Norm: International Boundaries and the Use of Force' (2001) 55 *International Organization* 215.

¹⁷ G Ben-Nun, 'Territorial Conquest: Its Prevalence, Demise, and Resurfacing: 1880s—The Present' (2019) *Connections* 1; M Mulligan, 'The Re-Emergence of Conquest: International Law and the Legitimate Use of Force' (2020) 41 *Liverpool Law Review* 293; PB Stephen, 'Wars of Conquest in the Twenty-First Century and the Lessons of History—Crimea, Panama, and John Bassett Moore' (2021) 62 *Virginia Journal of International Law* 63.

¹⁸ While his annexation declaration of Ukraine's Donetsk, Kherson, Luhansk and Zaporizhzhia regions was swiftly condemned by the UN General Assembly—see UNGA Res ES-11/4 (12 October 2022) UN Doc A/RES/ES-11/4—Putin has dedicated much effort to creating 'facts on the ground' in these claimed regions. See D Lewis, *Occupation: Russian Rule in South-Eastern Ukraine* (Hurst 2025). See also T Fazal, 'The Return of Conquest? Why the Future of Global Order Hinges on Ukraine' (2022) 101 *Foreign Affairs* 20.

¹⁹ See V Kattan, 'Why US Recognition of Jerusalem Could Be Contrary to International Law' (2018) 47 *Journal of Palestine Studies* 72; V Kattan, 'US Recognition of Golan Heights Annexation: Testament to Our Times' (2019) 48 *Journal of Palestine Studies* 79.

²⁰ C Borgen, 'The Art of the Deal or 'Abandoning' Self-Determination? US Recognition of Morocco's Territorial Sovereignty over Western Sahara' (2022) 55 *Israel Law Review* 127. This is to say nothing of Trump's ongoing calls to annex Greenland, a territory with a unique legal status. See A Alemanno, 'Greenland and US Annexation Threats: Mapping the Legal Questions' *Verfassungsblog* (13 January 2026) <<https://verfassungsblog.de/greenland-and-us-annexation-threats/>>

²¹ B Reiff, 'Israel's True Objective in Northern Gaza? Removing Palestinians—and Annexing the Territory' *The Guardian* (12 November 2024) <<https://www.theguardian.com/commentisfree/2024/nov/12/israel-northern-gaza-palestinians-annexation-settlers>>; M Rosen, 'Inside the Movement to Settle Southern Lebanon' *Jewish Currents* (19 August 2024) <<https://jewishcurrents.org/inside-the-movement-to-settle-southern-lebanon-uri-tzafon-israel>>; M Lidman, 'As Israel Advances on a Syrian Buffer Zone, it sees Peril and Opportunity' *Associated Press* (10 December 2024) <<https://apnews.com/article/israel-syria-attack-buffer-zone-golan-assad-6ee75aca7f5d820dd623b2aba4a62407>>; D Karni, M Krever, A Salman, and K Khadder, 'Eyeing Trump Support, Israeli Minister Pushes for West Bank Settlement Annexation' *CNN* (12 November 2024) <<https://edition.cnn.com/2024/11/11/middleeast/israeli-minister-annexation-occupied-west-bank-intl/index.html>>.

iconic cases,²² the erosion of the ban on conquest presents a grave challenge to the strained UN Charter system.²³

No longer able to hide behind the success of its banning, international lawyers have no choice but to confront the universe of doctrinal issues embedded within the proposition that territorial title can be gained by conquest. How does the ban on conquest inform the general ban on war by linking the inadmissibility of force to upholding political independence and territorial integrity under Article 2(4) of the UN Charter?²⁴ Was conquest an affirmative right, or an acknowledgment of undeniable fact?²⁵ At what point in hostilities was a captured territory acquired by conquest?²⁶ Did conquest require confirmation by treaty?²⁷ Can, despite longstanding separation, a distinction be drawn between conquest and belligerent occupation given the latter doctrine's 'transformative' turn?²⁸ When can force be used to regain forcibly acquired territories under the justification of preventing conquest?²⁹ Is conquest potentially permissible if done in self-defence?³⁰ How can obligations to protect private property be upheld in conquered territories?³¹ Does a conqueror assume the sovereign debt of a conquered territory?³² How should conquest be understood in relation to other modes of territorial acquisition (i.e. accretion, prescription, cession, and occupation)?³³ What is the role of private law analogies in the analysis of conquest?³⁴ How should conquest be understood in relation to colonisation given its historic applicability to both 'civilised' and 'uncivilised' polities?³⁵ How does conquest, and its illegality, relate to decolonisation, especially when considering the right to self-determination?³⁶ What is the relationship between conquest and partition?³⁷ How does overlap between these varied dimensions generate widespread confusion?³⁸

These issues are inseparable from the equally profound universe of normative and political questions raised by conquest and how it was, and continues to be, experienced in

²² The postwar era generated new 'patterns of conquest' whereby territories (often sparsely populated/undefended) are seized in the absence of war on the assumption victim states will not risk war to defend/reclaim them. D Altman, 'The Evolution of Territorial Conquest After 1945 and the Limits of the Territorial Integrity Norm' (2020) 74 *International Organization* 490, 495-96.

²³ M Hakimi, 'What Might (Finally) Kill the *Jus ad Bellum*?' (2021) 74 *Current Legal Problems* 101, 116-20.

²⁴ R Jennings, *The Acquisition of Territory in International Law* (Manchester University Press 2015) 68-82.

²⁵ MacMahon (n 1) 12-13; R De Martini, *The Right of Nations to Expand by Conquest* (Catholic University of America Press 1956).

²⁶ C Phillipson, *Termination of War and Treaties of Peace* (Dutton 1916) 20-31.

²⁷ Contrast: T Lawrence, *The Principles of International Law* (Macmillan 1895) 158; E Benton, *International Law and Diplomacy of the Spanish-American War* (Johns Hopkins University Press 1908) 251-52.

²⁸ Gross (n 6) 17-23.

²⁹ Contrast: T Ruys and F Rodríguez Silvestre, 'Illegal: The Recourse to Force to Recover Occupied Territory and the Second Nagorno-Karabakh War' (2021) 31 *European Journal of International Law* 1287; D Akande and A Tzanakopoulos, 'Legal: Use of Force in Self-Defense to Recover Occupied Territory' (2021) 31 *European Journal of International Law* 1299.

³⁰ S Schwebel, 'What Weight to Conquest?' (1970) 64 *American Journal of International Law* 344.

³¹ J Westlake, 'The Nature and Extent of Title by Conquest' (1901) 17 *Law Quarterly Review* 392, 394-95.

³² N Bentwich, *The Law of Private Property in War; With a Chapter on Conquest* (1907) 67.

³³ S Lee, 'Continuing Relevance of Traditional Modes of Territorial Acquisition in International Law and Modest Proposal' (2000) 16 *Connecticut Journal of International Law* 1, 10-12.

³⁴ JA Andrews, 'The Concept of Statehood and the Acquisition of Territory in the Nineteenth Century' (1978) 94 *Law Quarterly Review* 408, 409.

³⁵ MF Lindley, *The Acquisition and Government of Backward Territory in International Law: Being a Treatise on the Law and Practice Relating to Colonial Expansion* (Longmans 1926) 160.

³⁶ C Eagleton, 'The Case of Hyderabad Before the Security Council' (1950) 44 *American Journal of International Law* 277; Q Wright, 'The Goa Incident' (1962) 64 *American Journal of International Law* 344; V Kattan, *From Coexistence to Conquest: International Law and the Origins of the Arab-Israeli Conflict, 1891-1949* (Pluto Press 2009) 240-45.

³⁷ V Kattan, 'The Persistence of Partition: Boundary-Making, Imperialism, and International Law' (2022) 94 *Political Geography* 1, 10.

³⁸ I Brunck and M Hakimi, 'The Prohibition of Annexations and the Foundations of Modern International Law' (2024) 118 *American Journal of International Law* 417.

different ways by different peoples.³⁹ Such complexities deeply strain any international legal methodology dedicated to understanding distinct rules and doctrine through unavoidable reference to their systemic totality.⁴⁰ If this entangled morass of meaning was not enough, reflexively celebratory affirmation of the imperilled ban on conquest—a persistent rallying call amongst champions of liberal international legalism—presents its own problems for those of a critical persuasion.⁴¹ On this point, to associate the unjustifiable use of force with territorial conquest is to potentially justify other violent impositions that do not meet this criteria, even if they achieve the ends once sought by conquerors.⁴² As critiques of clarion liberal affirmations—namely Oona Hathaway and Scott Shapiro’s *The Internationalists*—have shown, the postwar ban on conquest can easily legitimise the harm inflicted through other measures. Especially pertinent are economic sanctions, a modern regime that emerged at the same interwar moment that conquest faced unprecedented condemnation.⁴³ Relatedly, the entire institutional architecture upholding this ban on conquest can be easily linked, both structurally and normatively, to the presumption of American global dominance.⁴⁴ After all, by declaring a universally and eternally fixed territorial status quo, a course of action inseparable from a bid for worldwide supremacy amidst the Second World War, it is little exaggeration to say that the US effected a ‘Global Monroe Doctrine’ juridically universalised through the UN Charter.⁴⁵ How then should critical theorists respond when conspicuously similar ‘anti-imperialist’ rhetoric is currently being invoked by Vladimir Putin to oppose the West while simultaneously justifying a war saturated with imperial/(post)colonial dimensions of its own?⁴⁶

To confront this reality, we must view ‘conquest’, a fundamentally legal doctrine perpetually animated by greater extra-legal forces, as a specific manifestation of domination within a broader order of domination, as opposed to being indistinguishable from domination itself. In other words, domination is more than conquest. However, given their self-justifying progress narratives, liberal accounts of international law have a vested interest in obscuring this distinction.⁴⁷ After all, if conquest, explicitly or implicitly, is configured as the highest form of domination, then banning conquest has solved the greatest international problem. If this premise is uncritically accepted then forcible measures that fall outside the category of conquest are either not ‘domination’ properly understood, or, lesser forms of domination that must be tolerated so that the ban on ‘supreme’ domination might be upheld. Any proponent of this understanding is open to presumptively endless charges of hypocrisy, which in turn

³⁹ See A Carty, *Was Ireland Conquered? International Law and the Irish Question* (Pluto Press 1996) 12-14.

⁴⁰ N Tzouvala, *Capitalism as Civilisation: A History of International Law* (Cambridge University Press 2020) 15-16.

⁴¹ See especially O Hathaway and S Shapiro, *The Internationalists: And their Plan to Outlaw War* (Allen Lane 2017).

⁴² C Peevers, ‘Liberal Internationalism, Radical Transformation and the Making of World Orders’ (2018) 29 *European Journal of International Law* 303, 318-19.

⁴³ See N Mulder, ‘The Rise and Fall of Euro-American Inter-State War’ (2019) 10 *Humanity* 133.

⁴⁴ Carty (n 5) 10; T Fazal, *State Death: The Politics and Geography of Conquest, Occupation, and Annexation* (Princeton University Press 2007) 69.

⁴⁵ A Orford, ‘Regional Orders, Geopolitics, and the Future of International Law’ (2021) 74 *Current Legal Problems* 149, 164-70; C O’Sullivan, *Summer Welles, Postwar Planning, and the Quest for a New World Order, 1937-1943* (Columbia University Press 2008); S Wertheim, *Tomorrow, the World: The Birth of US Global Supremacy* (Harvard University Press 2020).

⁴⁶ ‘Full Text: Putin’s Declaration of War on Ukraine’ *The Spectator* (24 February 2022) <<https://www.spectator.co.uk/article/full-text-putin-s-declaration-of-war-on-ukraine/>>. For critiques of Putin’s ‘anti-imperialism’, see M Mälksoo ‘The Postcolonial Moment in Russia’s War Against Ukraine’ (2023) 25 *Journal of Genocide Research* 471; V Ishchenko and Y Yurchenko, ‘Ukrainian Capitalism and Inter-Imperialist Rivalry’ in I Ness and Z Cope (eds), *The Palgrave Encyclopedia of Imperialism and Anti-Imperialism* (2nd ed, Palgrave 2020) 1; S Durdiyeva, ‘“Not in Our Name”: Why Russia is Not a Decolonial Ally or the Dark Side of Civilizational Communism and Imperialism’ (SAIS Review of International Affairs, 29 May 2023) <<https://saisreview.sais.jhu.edu/not-in-our-name-why-russia-is-not-a-decolonial-ally-or-the-dark-side-of-civilizational-communism-and-imperialism/>>.

⁴⁷ See T Skouteris, *The Notion of Progress in International Legal Discourse* (TMC Asser Press 2010).

invites counter-charges thus producing cyclical patterns of claim and response that fundamentally obscure the material forces sustaining the contestation.⁴⁸ To provide just one illustration, the Biden Administration's international legal condemnation of Putin's Ukraine invasion opens the door to invoking a myriad of cases where American-justified international legal deviations in the Vietnam and Arab-Israeli conflicts set the stage for the US-led 'Global War on Terror'.⁴⁹ This in turn raises the issue of how Russia opposed some American 'War on Terror' legal rationales while embracing others in a manner that sustains unending hypocrisy allegations.⁵⁰ While the sheer volume of argument apparently casts opposing sides as embodiments of fundamentally different systems, this argumentative cycle obscures the reality that both sides are ultimately claiming exceptional status within a common system structurally premised on inter-imperial rivalry.⁵¹ Given the entrenched influence of proclaiming cultural and/or civilizational differences in the formation of the modern international order, there are numerous ways in which imperial rivals can characterise the actions of their opponents as alien backwardness as opposed to the contentious pursuit of common material interests.⁵² While an explicitly materialist analysis provides a (self-)critical alternative to theorising the issues of force, authority, and territorial acquisition that structure questions of 'conquest', such approaches remain marginal given how it is not in the interest of contemporary imperial powers to undertake this analysis.⁵³

For those hoping to develop an alternative understanding, there is much to be gained by questioning basic assumptions and their origins. On this topic, in the broad historiography of international law and political thought, the 'right of conquest' and 'popular will'/'self-determination' are cast as fundamentally irreconcilable groundings of legitimate authority whereby the latter eventually triumphed over the former.⁵⁴ Within the confines of this narrative framing, the 'right of conquest' was the primordial pre-modern justification for domination that lay at the heart of monarchic, imperial, or otherwise dynastic orders of rule. By positing the consent of underlying political communities as the one true basis of legitimate government, the concept of 'popular will' challenged this dynastic primordialism in a manner that is arguably constitutive of 'modernity' itself. When considering how this interplay of rival modes of authority shaped the 'international', according to Korman's vital study:

if the doctrine of the self-determination of peoples was now emerging as the new principle of legitimacy in international relations in place of the old dynastic principle, which had

⁴⁸ R Knox, 'Imperialism, Hypocrisy and the Politics of International Law' (2022) 3 *TWAIL Review* 25, 31.

⁴⁹ B Cuddy and V Kattan, 'War and the Shaping of International Law: From the Cold War to the War on Terror' in B Cuddy and V Kattan (eds), *Making Endless War: The Vietnam and Arab-Israeli Conflicts in the History of International Law* (University of Michigan Press 2023) 261, 270.

⁵⁰ While Russian publicists condemned US legal justification for invading Iraq—L Mälksoo, *Russian Approaches to International Law* (Cambridge University Press 2015) 133—Putin embraced analogous American justifications for extraterritorial counter-terrorism operations when pursuing Chechen rebels. J O'Loughlin, G O'Tuathail and V Kolossov, 'A 'Risky Westward Turn'? Putin's 9–11 Script and Ordinary Russians' (2004) 56 *Europe-Asia Studies* 3, 10. American scholars later cited these Russian actions as state practice when justifying incursions into states 'unwilling or unable' to suppress non-state actors. Ashley Deeks, 'Unwilling or Unable: Toward a Normative Framework for Extraterritorial Self-Defense' (2012) 52 *Virginia Journal of International Law* 483, 486, 527–29.

⁵¹ R Knox, 'Civilizing Interventions? Race, War and International Law' (2013) 26 *Cambridge Review of International Affairs* 111, 125–26; see also R Allison, 'Russian Revisionism, Legal Discourse and the 'Rules-Based' International Order' (2020) 72 *Europe-Asia Studies* 976.

⁵² For liberal progressives, conquest has long been depicted as 'primitive' and 'irrational' in the modern world, see eg N Peffer, 'The Fallacy of Conquest' (1936) 17 *International Conciliation* 121. For empirical analysis, see P Liberman, *Does Conquest Pay? The Exploitation of Occupied Industrial Societies* (Princeton University Press 1996).

⁵³ See A Kotova and N Tzouvala, 'In Defence of Comparisons: Russia and the Transmutations of Imperialism in International Law' (2022) 116 *American Journal of International Law* 710.

⁵⁴ J Fisch, *The Right of Self-Determination of Peoples: The Domestication of an Illusion* (Cambridge University Press 2015) 56–58.

placed the rights of rulers above the rights of the nation or the people, then the logical corollary was the right of conquest, by means of which the conqueror had the right to rule the inhabitants of the conquered territory, could itself no longer be part of international law. For if the principle of self-determination applies, then a victor cannot have a right to rule by virtue of *conquest*, but only by virtue of the people's *consent*.⁵⁵

This base dynamic grounds a self-affirming genealogy of the right to self-determination under international law whereby the revolutionary Enlightenment emergence of popular will paved the way for the end of the Eurasian land empires following the First World War; in turn, paving the way for the end of Europe's overseas empires in Asia and Africa following the Second World War.⁵⁶ As novel experiments in world order via the League of Nations and later the UN crafted institutional contours for these post-imperial realities, those advocating an 'international rule of law' viewed the expansion of liberal international institutionalism and the expansion of individual political freedom as necessarily intertwined processes.⁵⁷ Against this backdrop, for prominent liberal international lawyers in the wake of the post-Cold War 'end of history', the next logical step in this evolutionary process was to break with international law's traditional affirmation of sovereign pluralism and elevate life under a liberal democracy to the status of a fundamental human right.⁵⁸ Even previously banned uses of military force were arguably justifiable to achieve this objective.⁵⁹ Such presumptions have left liberal commentators ill-prepared to substantively discuss overlap between self-determination and the right of conquest, especially as the blurred line between the two can be identified in colonial histories and legacies whereby confirmation of colonisers' self-determination confirmed a 'right of conquest' against indigenous peoples.⁶⁰ Few benefit as much from this unaddressed conquest/self-determination disjuncture as Putin. After all, his condemnation of Western hypocrisy fits seamlessly within a campaign of territorial expansion cast in the language of achieving 'self-determination' for Russian-speakers outside of Russia, a substantive reality often hidden behind formalistic condemnations of Russia's international legal breaches.⁶¹

In building a richer historicization of the right of conquest/self-determination relationship in light of present geopolitical realities, international lawyers have much to gain by engaging Kattan's insight that Poland is the 'missing link' in self-determination's evolution.⁶² For Kattan, the Poles' continuous refusal of their dynastic imperial conqueror's impositions following the final 1795 partition is the umbilicus that connects the anti-monarchic American and French Revolutions to rival proclamations on self-determination by Lenin and Woodrow Wilson following the First World War.⁶³ Important as Kattan's argument is,

⁵⁵ Korman (n 1) 37 (emphasis in original).

⁵⁶ T Franck, 'The Emerging Right to Democratic Governance' (1992) 86 *American Journal of International Law* 46, 52-55.

⁵⁷ *ibid* 54.

⁵⁸ *ibid* 90-91.

⁵⁹ See eg M Reisman, 'Sovereignty and Human Rights in Contemporary International Law' (1990) 84 *American Journal of International Law* 866.

⁶⁰ J Massad, 'Against Self-Determination' (2018) 9 *Humanity* 161, 184-85. See also T Menge, 'Colonial Genealogies of National Self-Determination' (2023) 9 *Journal of the American Philosophical Association* 705.

⁶¹ See J Socher, *Russia and the Right to Self-Determination in the Post-Soviet Space* (Cambridge University Press 2021); Andrea Pelliconi, 'Self-Defence as Remedial Self-Determination: Continuity in Russian Narratives to Justify Imperialism and the Use of Force' (2024) 71 *Netherlands International Law Review* 233. On such formalistic condemnation, see eg J Green, C Hendersen, and T Ruys, 'Russia's Attack on Ukraine and the *Jus ad Bellum*' (2022) 9 *Journal on the Use of Force and International Law* 4. For a rare materialist account, see U Özsu, 'Ukraine, International Law, and the Political Economy of Self-Determination' (2015) 16 *German Law Journal* 434.

⁶² V Kattan, 'To Consent or Revolt? European Public Law, the Three Partitions of Poland (1772, 1793, and 1795) and the Birth of National Self-Determination' (2015) 17 *Journal of the History of International Law* 247.

⁶³ *ibid* 251.

it demands further consideration of the concept of conquest and how the unique socio-political structures of the variable entity known as 'Poland' shaped its relationship to this concept in a very particular way. To do so is to consider how, in a manner defined against prevailing views of the nation-state, the early Kingdom of Poland evolved into a unique divided sovereignty form known as the Polish-Lithuanian Commonwealth whose legacy influenced some of the twentieth century's most radical legal theorists.⁶⁴ The *longue durée* of this polity and its post-partition legacies as they have evolved around questions of domination, conquest, and the impulse to conflate them provides rich grounds for incorporating Luxemburg's critique of self-determination (both Wilsonian and Leninist) into critical international legal consciousness.

LEGITIMACY, EXPANSION, AND (POLAND'S) AUTOCHTHONOUS BURDENS

Theorising how Luxemburg's context influenced her theory of self-determination requires a deep exploration of how questions of 'legitimacy' and 'conquest' frame the canon of Western thought that indelibly shapes international law and political philosophy in their present forms. In turning to the formative epistemic well-spring that is Ancient Greece, according to Anthony Pagden, by the time of the Peloponnesian War (431-404 BCE), the prevailing belief was that, '[t]he Greeks, and the Greeks alone ... were born of the earth on which they lived ... whereas all the other peoples of the world have come to wherever they happen to be from somewhere else.'⁶⁵ Generalised despite its innate parochialism, this view of foundationally autochthonous populations supplied the premise 'that each people has an inalienable right, grounded in nature rather than in the political or civil order, to be ruled only by a member of their own tribe or clan.'⁶⁶ Despite this *prima facie* presumption against empire, this same Ancient Greek context gave rise to the additional presumption that discrete communities are destined to expand and thus must claim that which cannot be claimed by timeless presence.⁶⁷

This Greek legacy takes on additional dimensions when considered in conjunction with another Greek legacy. As Ellen Wood has shown, the tradition of Western political thought rooted in Ancient Greece is notably distinct from all other traditions, even those of more complex societies, in its subjugation of political life to a systematic set of analytical precepts premised on an idealisation of logic.⁶⁸ Importantly, we can locate the origins of this unique approach, not in the famous city-states that proclaimed their inhabitants as autochthonous, but in the zones of Greek expansion, particularly the 'Ionian' colonies of Asia Minor. According to Kojin Karatani, taking seriously Ionian origins requires consciousness of a political legitimacy model that, contra Athens or Sparta, was premised on the freedom to migrate as opposed to unflinching allegiance to the spatial coordinate of one's birth.⁶⁹ It was only when individuals introduced these Ionian ideas/methods of inquiry back to their

⁶⁴ On the Commonwealth's material influence on jurisprudential innovation, see E Loefflad, 'Unpartitionable: C.H. Alexandrowicz, Sovereign Divisibility, and the *Longue Durée* of the Polish-Lithuanian Commonwealth' (2023) 24 *German Law Journal* 912; E Loefflad, 'On the Lithuanian Question: Contextualising Pashukanis's Critique of Legal Form' in C Cercel, GG Fusco, and P Tacik (eds), *Legal Form: Pashukanis and the Marxist Critique of Law* (Routledge 2024) 52.

⁶⁵ A Pagden, 'Fellow Citizens and Imperial Subjects: Conquest and Sovereignty in Europe's Overseas Empires' (2005) 44 *History and Theory* 28, 29.

⁶⁶ *ibid.*

⁶⁷ *ibid.* 30.

⁶⁸ EM Wood, *Citizens to Lords: A Social History of Western Political Thought from Antiquity to the Middle Ages* (Verso 2008) 1-3.

⁶⁹ K Karatani, *Isonomia and the Origins of Philosophy* (JA Murphy tr, Duke University Press 2017).

original sources of settlement did the virtue of the polis as autochthon become defined by the Greek Peninsula's distinct geography. Here, in lands isolated by mountains and sea, patriarchal masters of slave labour-based agrarian estates congregated in cities as equals to deliberate on the intertwined matters of philosophical abstraction and concrete political order.⁷⁰

This divergence between the colonial origins of Western philosophical thought and its reconfiguration as political justification in self-styled 'homelands' provides much insight into the tensions between popular rule and external domination. This original Greek problem surrounding the logical political reconciliation of legitimising equality with hierarchical authority reached new proportions with the rise of 'world empires' in the form of conquests by Alexander the Great and eventually the Romans.⁷¹ Amongst the latter, and its centuries of rule as a perpetually expanding Republic turned perpetually consolidating Empire, new general abstractions via the rise of Roman Law provided an array of mechanisms for mediating shifting relational dynamics of equality, inequality, and their justification.⁷² Christianity brought about an entirely new dimension to these matters as it offered models of salvation and universal membership that ultimately redefined the Roman Empire as its state religion.⁷³ Preserving elements of imperial order as the Western Empire collapsed in 476 CE, Christianity, as a provision of sanction in relation to the highest truth, played a significant role in arbitrating claims of force as an antiquity that centred power in cities gave way to a feudalism that centred power in the countryside.⁷⁴ Retrospectively deemed the 'Middle Ages', in this decentralised order of noble inheritance of peasant labour-based estates set against the backdrop of a universal Church, 'conquest' denoted acquisition by any means other than inheritance.⁷⁵ Applicable to the (relatively) communal world of Christendom and the (relatively) antagonistic world of Christian-infidel relations, the discourse of 'conquest'—and its parameters of justified domination—posed a major juridical/normative puzzle.⁷⁶

On the margins of this medieval world, an entity known as 'Poland' first appeared in the historical record in 962 CE.⁷⁷ While the Piast monarchy ruling these Slavic speakers converted to Christianity in this tenth-century timeframe, its inclusion within the unifying domain of Christendom occurred at a time of new divisions.⁷⁸ Failure to resurrect the Roman Empire (especially as King Charlemagne's heirs divisively squabbled over their inheritance⁷⁹) created space for asserting exclusive constructions of identity that, even if limited to the ruling classes, could be deemed proto-nationalist.⁸⁰ Embracing these designations, the nobility of the post-Carolingian 'Holy Roman Empire of the German Nation' consciously defined their linguistic bonds while depicting Poles, and Slavs generally, as 'backwards' inhabitants of shadowy lands to the east despite their common Christianity.⁸¹

⁷⁰ P Anderson, *Passages from Antiquity to Feudalism* (Verso 2013) 20-25.

⁷¹ Wood (n 68) 99-120.

⁷² *ibid* 120-27; Clifford Ando, *Law, Language, and Empire in the Roman Tradition* (University of Pennsylvania Press 2011).

⁷³ On Christianity's novel membership concept, see J Beard, *The Political Economy of Desire: International Law, Development and the Nation State* (Routledge 2006) 16-39.

⁷⁴ Anderson, *Passages* (n 70) 182-96.

⁷⁵ Winter (n 2). See also C Wickham, 'How did the Feudal Economy Work? The Economic Logic of Medieval Societies' (2021) 251 *Past & Present* 3.

⁷⁶ On varied 'proto-international legalism' in this context, see J Benham, *International Law in Europe, 700-1200* (Manchester University Press 2022); J Muldoon, *Popes, Lawyers and Infidels: Church and the Non-Christian World, 1250-1550* (University of Pennsylvania Press 1979).

⁷⁷ P Heather, *Empires and Barbarians: Migration, Development and the Birth of Europe* (Oxford University Press 2009) 407.

⁷⁸ R Michalowski, 'Christianisation of the Piast Monarchy in the 10th and 11th Centuries' (2010) 101 *Acta Poloniae Historica* 5.

⁷⁹ See C Wickham, *The Inheritance of Rome: A History of Europe from 400 to 1000* (Penguin 2010) 427-52.

⁸⁰ C Hirschi, *The Origins of Nationalism: An Alternative History from Ancient Rome to Early Modern Germany* (Cambridge University Press 2011) 64-68.

⁸¹ A Pleszczyński, *The Birth of a Stereotype: Polish Rulers and their Country in German Writings c. 1000 A.D.* (Brill 2011).

Such framings were inseparable from noble cultures of conquest and colonisation whereby those barred from inheritance forcibly created new estates on the margins of Christendom.⁸² Faced with such pressures, the relatively recently Christianised Poles developed their own theories of expansionist 'holy war' directed against the remaining pagans to their east and north.⁸³

Though more prominently waged by Germans and Scandinavians, these intensifying wars of conquest and conversion in Europe's northeastern Baltic reaches, contained within them the seeds of a unique Polish exceptionalism regarding the reconciliation of autochthonous legitimacy and territorial expansion.⁸⁴ As these 'Northern Crusades' increasingly involved military-religious orders forged in the more famous Holy Land crusades, most famously the Teutonic Knights, an initial Polish-Crusader alliance broke down as the diffuse Polish realm began consolidating into a powerful centralised Kingdom.⁸⁵ As Polish contestation of the Teutonic Order solidified, this animosity came to include the Lithuanians—the most powerful of the remaining Baltic pagans.⁸⁶ Beyond their battles with Crusaders from the west, these pagans had also absorbed the Orthodox Slavic lands devastated by Mongol invaders in the 1200s to form the Lithuanian Grand Duchy that stretched from the Black to Baltic Seas.⁸⁷ United by a common enemy, the Poles and Lithuanians forged an alliance in 1386 and, through their combined force, achieved a decisive victory over the Teutonic Order at the 1410 Battle of Grunwald, an event largely viewed as the beginning of the end of the Northern Crusades.⁸⁸

However, this Polish-Lithuanian alliance raised the profound theological-cum-juridical question of whether Christians aligned with infidels against other Christians could ever possess the just cause necessary to wage just war—an issue adjudicated before the papal Council of Constance (1414-18). Representing the Kingdom of Poland, Paulus Vladimiri—a Polish priest, jurist, and Rector of Cracow University—presented eloquent arguments that sought to transcend crude assertions of 'holy war' through a more intellectually rigorous formulation of natural law.⁸⁹ Central to his defence of the alliance was the difference of Christian conversion methods between the Poles and the Teutonic Order in that the former's peaceful means were both virtuous and effective while the latter's means were often insincere pretext for dispossession and domination.⁹⁰ With the papacy tacitly accepting these claims, as the Polish and Lithuanian realms increasingly intertwined, Vladimiri's position was emblematic of the larger ideal guiding an expansion process that elevated consent over conquest—whether it occurred through fanaticism and greed from the West or 'barbarism' from the East. Such innovative processes of acquiring consent and building

⁸² R Bartlett, *The Making of Europe: Conquest, Colonization and Cultural Change 950-1350* (Penguin 1994) 31-39.

⁸³ D von Guttmann-Sporzynski, *Poland, Holy War, and the Piast Monarchy, 1100-1230* (Brepol 2014).

⁸⁴ On these Baltic incursions in the greater crusading context, see C Tyerman, *God's War: A New History of the Crusades* (Allen Lane 2006) 674-712.

⁸⁵ W Urban, *The Teutonic Knights: A Military History* (Greenhill Books 2003) 109-18. See also P Knoll, *Rise of the Polish Monarchy: Piast Poland in East Central Europe, 1320-70* (University of Chicago Press 1972).

⁸⁶ P Knoll, 'The Most Unique Crusader State: The Teutonic Order in the Development of the Political Culture of Northeastern Europe during the Middle Ages' in CW Ingrao and FAJ Szabo (eds), *The Germans and the East* (Purdue University Press 2008) 37, 39-40.

⁸⁷ SC Rowell, *Lithuania Ascending: A Pagan Empire within East-Central Europe, 1295-1345* (Cambridge University Press 2014).

⁸⁸ E Christiansen, *The Northern Crusades* (2nd ed, Penguin 1997) 165-67, 227-30.

⁸⁹ *ibid* 233-9; Muldoon (n 76) 112-19.

⁹⁰ P Vladimiri, 'Conclusiones Tres: De Conversione Infidelium per Vim Armorum, de Ordinibus Religiosis ad Impugnandum Infideles Institutis, et de Conditionibus Iusti Belli Iuridice Faciendis', 'Articuli Contra Cruciferos de Prussia' and 'XXII Positiones et Articuli in Causa Regis Poloniae Contra Cruciferos de Prussia per Procuratorem Regium Iudici Sedis Apostolicae Praesentati' in S Belch (ed), *Paulus Vladimiri and His Doctrine Concerning International Law and Politics: Volume 2* (De Gruyter 1965) 883, 907, 1035.

cross-cultural bonds in this Polish-Lithuanian context carried far-reaching implications. Fascinated by pagan persistence in the Lithuanian Grand Duchy, early modern ethnographers developed innovative approaches for sympathetically conceptualising the Other.⁹¹ Additionally, the fact that Poland was defined by its Catholicism while the Lithuanian Grand Duchy (whose pagan rulers converted to Catholicism) contained so many Orthodox subjects led noble elites to build political institutions/cultures that bridged denominational difference when constructing an expandable multi-faith nobility.⁹² Furthermore, the comparative tolerance of Jews in these realms far-exceeded their treatment in lands to the west.⁹³ Much of this can be viewed as the legacy of how, in the absence of denominational intolerance, Lithuanian pagans could ‘govern Latins, Greeks, Jews, and Tartars impartially’.⁹⁴

Formalised as the ‘Polish-Lithuanian Commonwealth’ via the 1569 Lublin Union,⁹⁵ this composite polity’s exceptionalist reconciliation of expansion with consent was largely spared the burdensome reinventions of formatively Greek conquest-legitimacy dilemmas that defined other European polities in the early modern era. A key vector of this burden, Renaissance revivals of the classical tradition—especially as it concerned the renewed Roman Law—sparked numerous debates as to how, and to what extent, the juridical and constitutional principles of antiquity could be reconciled with centuries of subsequent transformation.⁹⁶ Though knowledge of antiquity was highly regarded in the Polish-Lithuanian Commonwealth,⁹⁷ this polity’s notable non-adoption of Roman Law spared it from many institutional questions.⁹⁸ Relatedly, there was the emergence of absolutist monarchy that, in Perry Anderson’s assessment, effectively synthesised Roman legalism with feudal hierarchy as a state apparatus centred on a single individual undercut the longstanding primacy of a decentralised nobility.⁹⁹ Ruling class dynamics in the Polish-Lithuanian Commonwealth evolved in precisely the opposite direction as the 1596 extinction of the Jagiellonian dynasty that inaugurated the Polish-Lithuanian alliance gave way to an elected monarchy where the nobility celebrated decentralised power as identity-defining liberty.¹⁰⁰ Commonwealth elites could thus simultaneously depict themselves as unbound by the antiquarian past and upholders of wrongfully forsaken traditions.¹⁰¹

Relatedly, the Polish-Lithuanian Commonwealth, which had eschewed developing maritime power, was spared from a great early modern legal/ethical conundrum—overseas colonisation.¹⁰²

⁹¹ F Young, ‘Introduction’ in F Young (ed), *Pagans in the Early Modern Baltic: Sixteenth-Century Ethnographic Accounts of Baltic Paganism* (ARC Humanities Press 2023) 1, 19-24.

⁹² J Kiaupienė, *Between Rome and Byzantium: The Golden Age of the Grand Duchy of Lithuania’s Political Culture. Second Half of the Fifteenth Century to First Half of the Seventeenth Century* (Academic Studies Press 2019).

⁹³ See B Weinryb, *The Jews of Poland: A Social and Economic History of the Jewish Community in Poland from 1100 to 1800* (University of Nebraska Press 1972); Ivan Marcus, *How the West Became Antisemitic: Jews and the Formation of Europe, 800–1500* (Princeton University Press 2024); Ariel Salzmann, *The Exclusionary West: Medieval Minorities and the Making of Modern Europe* (Hurst 2025).

⁹⁴ Christiansen (n 88) 145.

⁹⁵ T Snyder, *The Reconstruction of Nations: Poland, Ukraine, Lithuania, Belarus 1569-1999* (Yale University Press 2003) 19.

⁹⁶ See B Straumann, *Crisis and Constitutionalism: Roman Political Thought from the Fall of the Republic to the Age of Revolution* (Oxford University Press 2016) 260-77.

⁹⁷ T Gromelski, ‘Classical Models in Early Modern Poland-Lithuania’ in W Velema and A Weststeyn (eds), *Ancient Models in the Early Modern Republican Imagination* (Brill 2018) 285.

⁹⁸ T Giaro, ‘Legal Tradition of Eastern Europe: Its Rise and Demise’ (2011) 2 *Comparative Law Review* 1, 6-7.

⁹⁹ P Anderson, *Lineages of the Absolutist State* (Verso 2013) 24-29.

¹⁰⁰ T Gromelski, ‘Liberty and Liberties in Early Modern Poland-Lithuania’ in Q Skinner and M van Gelderen, (eds), *Freedom and the Construction of Europe: Volume 1—Religious Freedom and Civil Liberty* (Cambridge University Press 2013) 215.

¹⁰¹ A Grzeskowiak-Krwawicz, ‘The Younger Europe—or the Older? Visions of Politics in the Early Modern Polish-Lithuanian Commonwealth’ in M Hanusiewicz-Lavallee and RA Maryks (eds), *Defining the Identity of the Younger Europe* (Brill 2023) 31.

¹⁰² Anderson, *Lineages* (n 99) 289.

Inaugurated by the Spanish destruction of the ‘new world’ Andean and Mesoamerican empires, expansionist opportunities generated corresponding condemnations of European violence against indigenous peoples.¹⁰³ While some defended imperial violence outright,¹⁰⁴ others, seeking to defend expansion in relation to universal justice, sifted through the vast archives of antiquarian and medieval doctrine to expound a ‘law of nature and nations’ that emphasised European rights to engage in overseas commerce, and receive local hospitality, at the centre of its structure of justification.¹⁰⁵ With Francisco de Vitoria’s 1539 text ‘On the American Indians’ amongst the most influential exemplifications, against this idealised premise of peaceful engagement, ‘conquest’ was a last resort when other modes of interaction failed.¹⁰⁶ A testament to the success of this discourse, overseas colonising states went to great lengths to not frame their actions as ‘conquest’.¹⁰⁷ By contrast, though its nobility long invoked the ‘Sarmatian’ narrative of descent from eastern conquerors to justify dominion over the peasantry, the Polish-Lithuanian Commonwealth had little need to invoke this discourse in its external relations.¹⁰⁸ Rather, its expansion patterns of incorporating frontier nobles into decentralised political structures were largely distinct from the dynamics of a ‘core’ dominating a ‘periphery’ that defined Europe’s overseas, as well as its land-based absolutist, empires.¹⁰⁹

Though alleviated from the burdens of antiquity, absolutism, and empire, the non-conformity of the Polish-Lithuanian Commonwealth carried its own set of burdens. Widely viewed as a relic by the seventeenth and eighteenth centuries, the Commonwealth—and the nobility’s desire to preserve its institutions—drew much scrutiny as its challenges gave rise to sweeping proclamations of its decline.¹¹⁰ However, on a material level, those rendering these judgments did so with clear agendas. This was especially true of the surrounding absolutist land empires of Russia, Prussia, and Austria who could not gain influence in the Commonwealth through dynastic marriage given its lack of a hereditary monarchy.¹¹¹ In 1772 these three powers, in a bold assertion of sovereign prerogative, initiated the first partition of the Polish-Lithuanian Commonwealth.¹¹² Responding to this political disaster against an Enlightenment backdrop where numerous thinkers condemned conquest,¹¹³ the Commonwealth’s nobles embraced the ethos of liberal nationalism, sought allies abroad, and, in 1791, promulgated a written Constitution—the first in Europe—that was a variable archive of Enlightenment ideals.¹¹⁴ Occurring in a world rapidly redefined by the French Revolution, Russia and Prussia initiated a second partition of the Commonwealth in 1793

¹⁰³ B de Las Casas, *The Devastation of the Indies: A Brief Account* (H Briffault tr, Johns Hopkins University Press 1992); D Moses, *The Problems of Genocide: Permanent Security and the Language of Transgression* (Cambridge University Press 2021) 53-60.

¹⁰⁴ See eg L Glanville, D Lupher and M Feile Tomes (eds), *Sepúlveda on the Spanish Invasion of the Americas: Defending Empire, Debating Las Casas* (Oxford University Press 2023).

¹⁰⁵ M Koskeniemi, ‘Empire and International Law: The Real Spanish Contribution’ (2011) 61 *University of Toronto Law Journal* 1.

¹⁰⁶ F de Vitoria, ‘On the American Indians’ in A Pagden and J Lawrance (eds), *Vitoria: Political Writings* (Cambridge University Press) 231, 285-86.

¹⁰⁷ Even Spain itself barred this term ‘conquest’ from official usage in 1680. Pagden (n 65) 31.

¹⁰⁸ Z Gasiorowski, ‘The ‘Conquest’ Theory of the Genesis of the Polish State’ (1955) 30 *Speculum* 550, 551.

¹⁰⁹ H Grala, ‘Was the Polish-Lithuanian Commonwealth a Colonial State?’ (2017) 26 *Polish Quarterly of International Affairs* 125, 133-5.

¹¹⁰ The 1733-38 War of Polish Succession showed how political disruption in the Commonwealth could plunge all of Europe into militarised turmoil. See JL Sutton, *The King’s Honor and the King’s Cardinal: The War of the Polish Succession* (University of Kentucky Press 1980).

¹¹¹ B Teschke, *The Myth of 1648: Class, Geopolitics, and the Making of Modern International Relations* (Verso 2003) 236-38.

¹¹² For details, see H Kaplan, *The First Partition of Poland* (Columbia University Press 1962).

¹¹³ See S Muthu, ‘Conquest, Commerce, and Cosmopolitanism in Enlightenment Political Thought’ in S Muthu (eds), *Empire and Modern Political Thought* (Cambridge University Press 2012) 199.

¹¹⁴ Kattan (n 62) 266; Jerzy Lukowski, ‘Recasting Utopia: Montesquieu, Rousseau and the Polish constitution of 3 May 1791’ (1994) 37 *Historical Journal* 65.

followed by a third partition in 1795 where, rejoined by Austria, the three reactionary stalwarts extinguished the Commonwealth entirely.¹¹⁵

Notoriously, following the French Revolutionary/Napoleonic wars, the great power-directed Concert of Europe, convened in 1815 to undo the previous decades of disorder, did not restore the Commonwealth—an unsurprising outcome given that, alongside Britain, the three partitioning powers exercised near total control over this system.¹¹⁶ However, this non-restoration, a testament to a dawning era of treaty-centric international legal positivism,¹¹⁷ had its grand array of critics. Amongst both those who championed national rights on the conflicting grounds of liberal rationality and organic community—from Edmund Burke to Thomas Jefferson to Jean-Jacques Rousseau to James Mackintosh (arguably the father of international law’s infamous ‘standard of civilisation’¹¹⁸)—the suppression of the Commonwealth’s peoples was a glaring gap between natural law ideals and the emergent regime of positive law.¹¹⁹ Emboldened by this far-reaching sympathy and solidarity abroad, for the Commonwealth’s nobility—many of them exiled—restoring the Commonwealth was to be the next great national cause following from the ‘age of revolutions’.¹²⁰ As Enlightenment-rooted anti-conquest discourse solidified in the post-Napoleonic era,¹²¹ for these proponents of Polish ‘romantic nationalism’, Commonwealth restoration was demanded by a world where consent’s challenge to conquest, that great recurring problem of Western thought, had reached an entirely new order of magnitude.¹²²

However, in addition to the legitimacy commanded by the Concert system as a barrier to revolutionary disruption,¹²³ the movement to restore the Commonwealth faced significant challenges in conforming to the ‘revolutionary script’ entrenched in decades prior.¹²⁴ Unlike the French Revolution, where an emergent bourgeoisie sought to unite the nation’s masses in challenging the *Ancien Regime* of the nobility, the leading proponents of Commonwealth restoration were themselves the nobility. Additionally, in contrast to the French Revolution’s iconic urban spaces, the masses of the former Commonwealth lands were largely rural peasants—a demographic whose resistance to revolutionary upheaval (and the violent suppression they faced) created a gut-wrenching divergence between the ideals and realities of the French Revolution.¹²⁵ Moreover, unlike Revolutions in the Americas, where severing the sovereign bonds of colonial metropolises was ultimately vindicated by *de facto*

¹¹⁵ R Lord, *The Second Partition of Poland; a Study in Diplomatic History* (Harvard University Press 1915); R Lord, ‘The Third Partition of Poland’ (1925) 3 *Slavonic Review* 481.

¹¹⁶ G Lawson, ‘Ordering Europe: The Legalized Hegemony of the Concert of Europe’ in DM Green (ed), *The Two Worlds of Nineteenth Century International Relations: The Bifurcated Century* (Routledge 2019) 101.

¹¹⁷ E Keene, ‘The Treaty-Making Revolution of the Nineteenth Century’ (2012) 34 *International History Review* 475, 494-5.

¹¹⁸ J Pitts, *Boundaries of the International: Law and Empire* (Harvard University Press 2018) 130-31.

¹¹⁹ Kattan (n 62) 278; J Mackintosh, ‘An Account of the Partition of Poland’ in *The Miscellaneous Works of the Right and Honourable Sir James Mackintosh: Three Volumes, Complete in One* (Carey and Hart 1846) 198, 209; JJ Rousseau, ‘Considerations on the Government of Poland’ in C Bertram (ed), *Jean-Jacques Rousseau: Of the Social Contract and Other Political Writings* (Penguin 2012) 241; A Plassart, ‘Edmund Burke, Poland, and the Commonwealth of Europe’ (2020) 63 *Historical Journal* 885.

¹²⁰ N Davies, *God’s Playground: A History of Poland, Volume II—1795 to the Present* (Oxford University Press 1981) 16-29; A Walicki, *Philosophy and Romantic Nationalism: The Case of Poland* (Oxford University Press 1982).

¹²¹ See eg B Constant, ‘The Spirit of Conquest’ in B Fontana (ed), *Constant: Political Writings* (Cambridge University Press 1988) 51.

¹²² See eg A Mickiewicz, *The Books and the Pilgrimage of the Polish Nation* (James Ridgeway 1833).

¹²³ For a reappraisal of standard tropes here, see I Nakhimovsky, *The Holy Alliance: Liberalism and the Politics of Federation* (Princeton University Press 2024).

¹²⁴ See KM Baker, ‘Revolutionising Revolution’ in KM Baker and D Edelstein (eds), *Scripting Revolution: A Historical Approach to the Comparative Study of Revolutions* (Stanford University Press 2015) 71.

¹²⁵ On this occurrence and its political legacies, see D Bell, ‘The French Revolution, the Vendée, and Genocide’ (2020) 22 *Journal of Genocide Research* 19.

territorial control, this was scarcely possible in the former Commonwealth.¹²⁶ Rather than a singular power (such as Britain, France, or Spain) located an ocean away at a time of wind-driven seafaring, would-be Commonwealth restorationists faced three of Europe's most powerful militaries all in continuous proximity.

These matters of peasant composition and foreign domination were intimately linked by the partitioning powers' concerted appeal to the peasantry against a rebelling nobility.¹²⁷ With the crushing of their 1830 uprising, the romantic nationalist nobility gained acute awareness of Commonwealth restoration's limited appeal to peasants. This prompted several patriotic intellectuals to develop distinctly peasant-focused theories of agrarian populism.¹²⁸ For the influential historian and geographer Joachim Lelewel, this entailed revising the Sarmatian narrative of noble conquest to instead proclaim the common Slavic origins of Poles of all social classes.¹²⁹ While such depictions had much affinity with theories of Slavic identity proliferating in the first half of the nineteenth century, Polish nationalists had to confront the issue of how any such narrative might be communicated to a largely illiterate peasantry under conditions of foreign domination.¹³⁰ These risks were harshly exemplified in the 1846 *Jacquerie* where Habsburg authorities crushed a Polish uprising in the Austrian partitioned portion of Western Galicia by recruiting Polish peasants to massacre approximately two-thousand Polish nobles.¹³¹ Deeply entrenched perceptions of noble Otherness cultivated by longstanding noble promotion of the Sarmatian narrative helped make this mass killing possible.¹³²

Whatever lessons were to be derived from this violence, the very nature of struggle in the lands of the partitioned Commonwealth profoundly changed with the Russian Empire's devastating defeat of the Poles' 1863 January Insurrection.¹³³ Following this loss, the nobility abandoned its efforts to restore the Commonwealth as the Tsarist government introduced its program of 'Russification' that entailed the repression of official publication in Polish and otherwise dispatched with various local autonomy institutions.¹³⁴ Similarly, in the Prussian partition zone, concerted efforts at 'Germanisation' and settler influx, projects that mobilised centuries of German perceptions of Eastern lands as 'backwards', raised additional questions of Polish political strategy.¹³⁵ With the abandonment of the nobility-rooted republican model of civic nationalism that underpinned it, those resisting partition turned to more ethnically focused nationalist models whereby elites would undertake the 'organic work' of building a class-transcending consciousness of a discrete Polish identity.¹³⁶

For those continuing to oppose partition, this reformulating of nationalism raised many questions concerning conquest and its political meaning. As Adam Kożuchowski has shown,

¹²⁶ On effective force as supreme vindication of independence, see T Jefferson, 'Declaration of the Causes and Necessity of Taking Up Arms' in J Appleby and T Ball (eds), *Jefferson: Political Writings* (Cambridge University Press 1999) 80.

¹²⁷ J Connelly, *From Peoples into Nations: A History of Eastern Europe* (Princeton University Press 2020) 137.

¹²⁸ P Brock, *Polish Revolutionary Populism: A Study in Agrarian Socialist Thought From the 1830s to the 1850s* (University of Toronto Press 1970) 5.

¹²⁹ *ibid* 8.

¹³⁰ On this rise of Pan-Slavism in the Habsburg lands, see Connelly (n 127) 108-29.

¹³¹ P Wandycz, *The Lands of Partitioned Poland, 1795-1918* (University of Washington Press 1975) 133-35.

¹³² T Kamusella 'Ethnicity and Estate: The Galician *Jacquerie* and the Rwandan Genocide Compared' (2022) 50 *Nationalities Papers* 684, 692-93.

¹³³ On the Insurrection, see Wandycz (n 131) 155-79.

¹³⁴ Kamusella, 'Germanization, Polonization, and Russification' (n 8) 828-89.

¹³⁵ *ibid* 830-31. See also W Hagen, *Germans, Poles and Jews: Nationality Conflict in the Prussian East, 1772-1914* (University of Chicago Press 1980).

¹³⁶ SA Blejwas, 'Alternatives to Romanticism: The Traditions of Polish Positivism and KOR' (1989) 31 *Canadian Slavonic Papers* 194; B Porter-Szucs, *When Nationalism Began to Hate: Imagining Modern Politics in Nineteenth-Century Poland* (Oxford University Press 2000); MM Kurjanska, 'The Political Value of Cultural Capital: Nationalism, Ethnic Exclusion, and Elites in 19th-century Congress Poland' (2019) 7 *American Journal of Cultural Sociology* 350.

nineteenth-century romantic nationalist historians strategically produced narratives of the original 1386 Polish-Lithuanian Union that, in showcasing its genesis via consent over conquest, affirmed the legitimacy of the Commonwealth in direct relation to the illegitimacy of its destruction.¹³⁷ While this assertion fit seamlessly within the greater strategy of Commonwealth restoration, of what use could it be once restorationist efforts were abandoned? Relatedly, what new politicised origins narrative might replace it? This matter was compounded by how a lack of clear written evidence on the social origins of nations in Eastern Europe (relative to the rest of Europe) presented a void that various political actors sought to fill with contested and consequential narratives of conquest.¹³⁸ While this ambiguity opened much space for exploitation by the partitioning powers,¹³⁹ it also destabilised the quest to liberate the lands of the partitioned Commonwealth from another direction.

In the days of the Commonwealth, the nobility accumulated social power by integrating frontier elites into its political culture—with most consequently becoming Polish-speakers. However, as partition resisters abandoned efforts to restore this Commonwealth model of elite egalitarianism after the failure of 1863 and sought to build an ‘organic’ Polish nation, many questions arose concerning the political and national identities of those who did not or would not identify as ‘Poles’. In the lands subject to Russification, Tsarist authorities who viewed Ukrainians and Belarussians respectively as ‘Little Russians’ and ‘White Russians’ promoted the view that these populations’ true allegiance, politically and culturally, was to Russia.¹⁴⁰ Contemporaneously, the Lithuanians—disillusioned by the 1863 defeat—increasingly disavowed centuries of Polonisation and begin asserting an identity as a non-Slavic Baltic-speaking people fundamentally distinct from Russian and Polish Slavs.¹⁴¹ Given the importance of Polish-Lithuanian difference in the political mythology of the old Commonwealth, the Lithuanian nationalist movement (simultaneously suppressed and encouraged by Russian authorities more fearful of the Poles) had a rich history to draw upon when distancing itself from Polish nationalism in the post-Commonwealth restorationist era.¹⁴² Not limited to Russia’s zone of partition, in the eastern portion of Austrian Galicia, noble Polish lords of estates predominately populated by Ukrainian peasants increasingly drew the ire of an emergent Ukrainian nationalist movement that proclaimed Ukrainians as distinct from Russians.¹⁴³ Thus, with Commonwealth restoration no longer a model for reversing conquest, Lithuanian, Ukrainian, and (less prominently) Belarussian national movements raised the issue of whether an avowedly Polish nation-state on the lands they inhabited would itself be established ‘by right of conquest’.

In addition to this, the end of Commonwealth restoration efforts brought about new questions concerning Jews who, in the old Commonwealth, had long been spared the worst of the persecution faced elsewhere. Thus, at a time when religious intolerance began giving way to modern nationalist/scientific racist formulations of antisemitism, owing to longstanding tolerance, the lands of the former Polish-Lithuanian Commonwealth was home to the world’s largest Jewish population at a time when the ‘Jewish Question’ was a point of

¹³⁷ A Kożuchowski, ‘Contesting Conquests: Nineteenth-Century German and Polish Historiography of the Expansion of the Holy Roman Empire and the Polish-Lithuanian Union’ (2015) 41 *History of European Ideas* 404, 408–89.

¹³⁸ Gasiorowski (n 108) 550.

¹³⁹ On German invocation of the Poles’ conquerors as ‘proto-Germanic’, see *ibid* 556–58.

¹⁴⁰ See T Weeks, *Nation and State in Late Imperial Russia: Nationalism and Russification on the Western Frontier, 1863–1914* (Northern Illinois University Press 1996); D Staliūnas, *Making Russians: Meaning and Practice of Russification in Lithuania and Belarus After 1863* (Rodopi 2007).

¹⁴¹ Wandycz (n 131) 239; S Pivoras, ‘The Role of Latvian Nationalism in the Transformation of Lithuanian Nationalism during the Long 19th century’ (2021) 27 *Nations and Nationalism* 566.

¹⁴² Snyder (n 98) 45–49. See also T Weeks, ‘Russification and the Lithuanians, 1863–1905’ (2001) 60 *Slavic Review* 96.

¹⁴³ Snyder, *Reconstruction of Nations* (n 95) 124–32.

extreme fixation in, amongst other locations, the three partitioning empires.¹⁴⁴ While many Jews had supported Commonwealth restoration, once again, everything changed after 1863.¹⁴⁵ Against the greater backdrop of Russification, post-Commonwealth restoration nationalists often viewed Jewish populations, largely concentrated in cities, as both culturally ‘backwards’ and agents of a commercialisation/urbanisation processes they defined in fundamental opposition to the ideal of a virtuously traditional agrarian Polish nationhood centred in the rural areas where most Poles lived.¹⁴⁶ While Polish nationalists promoted Jewish assimilation into Polish cultural and linguistic worlds—efforts resisted within Jewish communities—these assimilationist measures were conspicuously similar to the Russification practices post-63 Polish nationalists defined themselves against.¹⁴⁷ This exposed another manifestation of the consent/conquest problem and its perspective-based variability.

Matters of nationality, national belonging, and national independence immensely perturbed socialists in the former Commonwealth lands. Adhering to analytical frameworks developed in Western Europe’s very different context of class relations, these socialists had to contend with the ways in which intertwined narratives of conquest and nationalism could divide any working-class or would-be working-class movement. It did not help that Karl Marx and Frederick Engels held shifting views on the matter of Polish independence that were not above reproducing stereotypes of Polish ‘backwardness’.¹⁴⁸ Faced with these challenges, socialists had no choice but to be creative. Amongst those seeking to reconcile socialism and Polish nationalism, perhaps none was as innovative as Kazimierz Kelles-Krauz, Luxemburg’s main Marxist ideological rival and chief theorist of the Polish Socialist Party that opposed Luxemburg’s Social Democracy of the Kingdom of Poland and Lithuania party. For Kelles-Krauz, the nation’s communal and communicative bonds provided the single most effective material basis for diffusing socialist transformation across the totality of a given social space.¹⁴⁹ While rooted in Polish condition’s, Kelles-Krauz’s analysis and political strategy recognised and accounted for the aspirations of other national groups in a manner that few other Polish nationalists did.¹⁵⁰ In proposing options, arguably, Kelles-Krauz creatively adapted features from the old Commonwealth. Regarding Jews, in a manner invoking the Commonwealth’s fabled tolerance, he proposed that Poland must be the acknowledged fatherland of both Jews and Poles.¹⁵¹ Regarding Ukrainians, Belarussians, and Lithuanians, he asserted that these peoples be given extensive autonomy rights within political structures linked to Poland as the sovereign force—a resolution that acknowledged historical ties of these peoples to the Commonwealth’s political society and culture.¹⁵²

For as innovative as it was, when considering broader ideological forces, Kelles-Krauz’s theories could easily be condemned from multiple perspectives as an apologetic confirmation of conquest. While rather clear when it came to the Lithuanians and Ukrainians who viewed anything short of full sovereignty as the confirmation of conquest, this accommodation of other

¹⁴⁴ On the ‘Jewish Question’ in the context of nineteenth century racial thought, see P Wolfe, *Traces of History: Elementary Structures of Race* (Verso 2016) 85-111.

¹⁴⁵ See M Opalski and I Bartal, *Poles and Jews: A Failed Brotherhood* (Brandies University Press 1992).

¹⁴⁶ SA Blejwas, ‘Polish Positivism and the Jews’ (1984) 46 *Jewish Social Studies* 21; T Weeks, ‘Russians, Jews, and Poles: Russification and Antisemitism 1881-1914’ (2012) *Quest* 147.

¹⁴⁷ Blejwas (n 146) 32.

¹⁴⁸ I MacDonald, ‘Marx, Engels, and the Polish National Movement’ (1941) 13 *Journal of Modern History* 321; see also A Ciolkosz, ‘Karl Marx and the Polish Insurrection of 1863’ (1965) 10 *Polish Review* 8.

¹⁴⁹ W Marzec ‘Reading Polish Peripheral Marxism Politically’ (2013) 117 *Thesis Eleven* 6, 11-13.

¹⁵⁰ For a detailed study, see T Snyder, *Nationalism, Marxism, and Modern Central Europe: A Biography of Kazimierz Kelles-Krauz, 1872-1905* (Oxford University Press 2017).

¹⁵¹ Walicki (n 7) 579.

¹⁵² *ibid* 578.

nationalities could also be viewed by Polish nationalists as a concessionary impairment on their innate right to have a sovereign nation that achieves their national purposes. In addition to the Commonwealth rejection underpinning such views, on a broader scale, the formulations of international law within this timeframe, and its positing of sovereignty as absolute and undivided power, gave nationalists a hook to hang their arguments upon. Such was starkly evident in debates on the international legal status of the Ottoman Empire whose constitution via (semi-)autonomous regions was increasingly viewed in Europe as primitively unjustifiable.¹⁵³ Viewing Kelles-Krauz's arguments (and the grounds for rejecting them) as a grand culmination of so many centuries of debate on the relationship between conquest and political legitimacy, we are well positioned to explore how Kelles-Krauz's rival, Luxemburg, sought to transcend these compounded issues through her critique of self-determination.

HOW LUXEMBURG ESCAPED POLISH EXCEPTIONALISM THROUGH EGYPT

As expressed through her iconic critique of self-determination in the 1907 text 'The National Question and Autonomy', Luxemburg saw little emancipatory value in the legacies of the Commonwealth. For Luxemburg, in pursuing the goal of popular mass empowerment via socialism, a great issue in the former Commonwealth was that its impaired development of an advanced bourgeois economy was coupled with the lack of any strong tradition of popular power.¹⁵⁴ Rather than viewing the Commonwealth as a model of decentralised liberty, in Luxemburg's assessment, 'in ancient Poland, a country of natural economy and political rule, there obviously was no local self-government'.¹⁵⁵ While historic urban areas in the Commonwealth might have been incubators of such a tradition, in the seventeenth and eighteenth centuries, most of these cities 'fell under the law of serfdom or regressed to the status of rural settlements and communes, and in consequence urban self-government disappeared'.¹⁵⁶

With these conditions persisting beyond the Commonwealth restoration era, in Luxemburg's reckoning, nationalism only enhanced the dearth of self-government by replacing the deeper questions of 'how' a community might realise its agency with the question of 'who' belonged to an exclusive community. Nationalists fuelled this contradiction by casting Poland as the 'Christ of Nations'—an invocation of the evils of suppression that did not call for the general eradication of suppression, but instead re-channelled its ethos against collective identity assertions that challenged the Polish nationalist narrative.¹⁵⁷ While unsympathetic to non-Polish national movements as national movements, Luxemburg nevertheless observed that, 'Polish bourgeois nationalism is directed as much against the Ruthenians [Ukrainians] as against the Lithuanians. The very [Polish] nationality which had to endure the bitter policy of extermination by the partitioning powers ... now refuses the right of independent existence to other nationalities'.¹⁵⁸ On this point, Luxemburg's critique of self-determination is often read in relation to her economic theory that former Commonwealth lands were so deeply integrated into three very different partitioning empires that reversing

¹⁵³ A Genell, 'Autonomous Provinces and the Problem of 'Semi-Sovereignty' in European International Law' (2016) 18 *Journal of Balkan and Near Eastern Studies* 533.

¹⁵⁴ R Luxemburg, 'The National Question and Autonomy' in *The National Question: Selected Writings* (H Davis ed, Monthly Review Press 1976) 101, 243.

¹⁵⁵ *ibid.*

¹⁵⁶ *ibid.*

¹⁵⁷ *ibid.* 113.

¹⁵⁸ *ibid.* 164

partition was not a viable option.¹⁵⁹ Yet given the histories detailed above, though often viewed as abstractions decoupled from material reality, the jurisprudence/political theory of domination and conquest remain eminently relevant to decoding Luxemburg's critique of self-determination.

For Luxemburg, the issue with the 'right of nations to self-determination' did not primarily concern 'self-determination', i.e. the acquisition of genuine autonomy, or, for that matter, even the 'nation', i.e. a collective of individuals distinguished by the perception of their unique common identity. Rather, it was the general concept of 'rights' that formed the crux of Luxemburg's critique. According to Luxemburg:

A 'right of nations' which is valid for all countries at all times is nothing more than a metaphysical cliché of the type of the 'rights of man' and 'rights of citizens.' Dialectical materialism ... has broken once and for all with this type of 'eternal' formula.¹⁶⁰

Simply applying this 'right' to the subject of the 'nation' and the process of 'self-determination' did nothing to alter the defectively idealised character of 'rights' writ large.¹⁶¹ As such, in Luxemburg's words, the 'right of nations to self-determination ... expresses either absolutely nothing, so that it is an empty, noncommittal phrase, or else it expresses the unconditional duty of socialists to support all national aspirations, in which case it is simply false'.¹⁶² Since 'rights' were fundamentally bourgeois abstractions that enabled capitalism, and the concept of the 'nation' enabled a sense of commonality that obscured fundamental class difference, affirming the nation by reference to this 'right' opposed the ends of socialist revolution by creating the illusion of inter-class commonality under the broader rubric of nationalism.¹⁶³ For Luxemburg, the primary ordering principle was that there could be no self-determination under capitalism, and positing any general 'right of nations to self-determination' threatened to undermine consciousness of this basic truth.¹⁶⁴

When assessing Luxemburg's critique of self-determination in light of this backdrop, a particularly important facet of her analysis is her careful reading of Marx and Engels on their respective support or disavowal of various national/proto-national movements against empire across history. One revealing illustration was Engel's characterisation of successful fourteenth-century rebellions by the Swiss Cantons against the Austrian Habsburgs as a barrier to progress. According to Engels, the Swiss 'won their victory over the civilization of that period, but as a punishment they were cut off from the whole later progress of civilization'.¹⁶⁵ By contrast, the mid-nineteenth-century revolt by Hungarian nobles against the same Habsburg Empire was a progressive cause worth backing.¹⁶⁶ In Luxemburg's assessment, taken as isolated individuals, the nineteenth-century Hungarians were in all likelihood far more reactionary than the fourteenth-century Swiss.¹⁶⁷ As such, support for the former as opposed to the latter had little to do with conformity with some timeless abstracted standard of 'rights'. Rather, it had everything to do with the contingent variation of material

¹⁵⁹ *ibid* 113

¹⁶⁰ *ibid* 110-11.

¹⁶¹ *ibid* 111-12.

¹⁶² *ibid* 112.

¹⁶³ *ibid*.

¹⁶⁴ R Luxemburg, 'There Can be No Self-Determination Under Capitalism' in *The National Question: Selected Writings* (H Davis ed, Monthly Review Press 1976) 299.

¹⁶⁵ Quoted in Luxemburg, 'National Question' (n 154) 119.

¹⁶⁶ *ibid*.

¹⁶⁷ *ibid* 120-21.

conditions which caused the Habsburgs to be either a force of advancement or a force of reaction. Five centuries of world-historical transformation made all the difference.

Connected to its deep rooting in history, Luxemburg's account of self-determination was simultaneously grand in its spatial parameters—a spatiality drawn from her global theory of imperialism. As an entry point into this broad meta-narrative, she raised questions of just how much autonomy could be gained through asserting self-determination, even if 'successful', by small and marginalised polities given the realities of an imperial world-system.¹⁶⁸ True to her elevation of contingent material structures over timeless abstractions, Luxemburg claimed that the various success of nations born out of self-determination claims in the Western Hemisphere were highly limited in their application to her early twentieth-century backdrop. According to Luxemburg, '[b]oth South and North America, until the nineteenth century, were victims of a still primitive system of colonial administration, based more on the plundering of the country for its natural resources for the benefit of the treasurers of European states than on a rational exploitation for the benefits of capitalist production.'¹⁶⁹ Moreover, Luxemburg argued that the status of these self-determining subjects as colonial settlers, as well as chattel slavery profiteers, made them an inappropriate emulation model for those asserting self-determination under the material conditions in which she wrote.¹⁷⁰

On this point, Luxemburg's framing of her critique of the 'right of nations to self-determination' must not be disconnected from her broader theory of imperialism.¹⁷¹ As famously articulated in *The Accumulation of Capital*, since capitalism depended upon perpetual predation upon non-capitalist forms of life, imperial domination was essential to provide capital with access to its sources of sustenance.¹⁷² While direct plunder provided an initial wave of colonial settlers with the foundations of a capitalist system, and 'self-determination' proved a novel rhetoric to justify their inclusion within the existing 'family of nations', this was no longer an option in a capitalist system that had exhausted global frontiers and thus needed to militaristically turn on itself to appropriate the non-capitalist social relations upon which capitalism depended.¹⁷³ It is not difficult to see how assertions of nationalism, especially against capitalist late-comer empires (such as the Commonwealth's partitioners) that still maintained a number of pre-capitalist institutions, could act as violent catalysts for capital accumulation. This is especially prescient when considering the array of inter-imperial great power rivalries and the nigh boundless opportunity for mobilising nationalist assertions as a means of waging proxy conflict in a system driven by capital's imperial imperatives.

Yet when it came to how these imperial rivalries and imperial impositions were largely accomplished according to Luxemburg, outright force was only the tip of a much larger iceberg. She demonstrates this multifaceted domination prominently through her case-study of Egypt (originally a highly autonomous region of the Ottoman Empire) as a site of socio-political transformation via its receipt of loans from the British and French empires.¹⁷⁴ Focusing on the early-nineteenth-century reform efforts of Mehemet Ali, Luxemburg shows how this context attracted European capital—especially as it concerned the construction of the Suez Canal and its transformation of trade relations between Europe and Asia.¹⁷⁵ According to Luxemburg, though Egypt would be marginalised by this transformation, its

¹⁶⁸ *ibid.*

¹⁶⁹ *ibid* 132

¹⁷⁰ *ibid* 133.

¹⁷¹ Whitehall (n 9) 730.

¹⁷² R Luxemburg, *The Accumulation of Capital* (Routledge 2003).

¹⁷³ *ibid* 434.

¹⁷⁴ *ibid* 409-19.

¹⁷⁵ *ibid* 409-10.

elites nevertheless contributed to it through providing labour, buying shares in the Suez Company set to administer the Canal and generally re-gearing economic activities away from local subsistence and towards participation in transnational export markets.¹⁷⁶ However, the optimism surrounding these transformations was soon dashed as Egypt was now more vulnerable to commodity price fluctuations in the world economy (particularly cotton¹⁷⁷) and faced grave issues of labour productivity.¹⁷⁸

The result was a tremendous degree of state deficits in the 1860s that Egyptian elites paid through foreign loans—primarily from British and French creditors.¹⁷⁹ This in turn vastly enhanced their violent exploitation and suppression of the peasantry as a means of guaranteeing the revenues needed to service these loans.¹⁸⁰ Interestingly, and in a manner demonstrating how capital's social logic exceeds seemingly rational calculations of efficiency, 'European capital was not at all deterred by the desperate state of the insolvent country and offered again and again to grant immense loans for the salvation of Egypt.'¹⁸¹ It was only eventual mutiny by the Egyptian army that caused this system to breakdown and prompt Britain's direct occupation of Egypt in 1882.¹⁸² Viewing Egypt as an illustration of something much larger, according to Luxemburg '[t]he case of Egypt, just as that of China and, more recently Morocco, shows militarism as the executor of the accumulation of capital lurking behind international loans, railroad building, irrigation systems, and similar works of civilisation.'¹⁸³

In her illustration of Egypt, and statement of its broader applicability, Luxemburg delineated a banal domination that stood in contrast to the exceptionalist drama of conquest, a distinction with profound international legal dimensions. While leading international legal treatises in this timeframe still generally recognised conquest as a valid means of territorial acquisition, the partitions of the Polish-Lithuanian Commonwealth—whose destruction was positivistically confirmed by this conquest doctrine—could once again be framed as exceptional.¹⁸⁴ Within the Eurocentric 'family of civilised nations', while the conquest of small areas and border regions was a commonplace occurrence, prior to the twentieth century, the mass-scale extinction of major polities was exceedingly rare; the Commonwealth's partitions were the grand exception.¹⁸⁵ However, on even broader temporal and spatial scales, according to Lauren Benton, despite so many mythologised narratives of swift and decisive conquest, the reality of imperial imposition—from Ancient Rome to the expansion of Islam to the Spanish-New World encounter—were far more drawn-out and interactive processes of truce and betrayal that were only framed as absolute submission in retrospect.¹⁸⁶ The partitions of the Commonwealth once again deviated from these patterns in that they reduced one of Europe's largest polities to nonexistence through three definitively one-sided acts in a timespan of less than twenty-five years.¹⁸⁷ Contemporaries viewed this character of the

¹⁷⁶ *ibid* 410.

¹⁷⁷ *ibid* 412.

¹⁷⁸ *ibid* 413.

¹⁷⁹ *ibid* 414-15.

¹⁸⁰ *ibid* 415-16.

¹⁸¹ *ibid* 416.

¹⁸² *ibid* 417.

¹⁸³ *ibid* 419.

¹⁸⁴ On the denouncement of the partitions in the same international legal treatises recognising conquest's validity, see Kattan (n 62) 247-48.

¹⁸⁵ J Herz, 'Rise and Demise of the Territorial State' (1957) 9 *World Politics* 473, 483.

¹⁸⁶ L Benton, 'The Legal Logic of Wars of Conquest: Truces and Betrayal in the Early Modern World' (2018) 28 *Duke Journal of Comparative and International Law* 425, 448.

¹⁸⁷ Compounding this was the high level of identity assertion by its elites immediately preceding the Commonwealth's destruction, see R Butterwick, *The Polish-Lithuanian Commonwealth: Light and Flame* (Yale University Press 2020).

partitions as exceptional even when compared to the non-European world.¹⁸⁸ Moreover, the partitions embodied a dynastic geopolitics that was rapidly eclipsed in subsequent decades. Even the three partitioning powers adapted, in varying measures, to new realities of overseas colonisation, capitalist expansion, and some underlying notion of ‘popular will’ (liberally or organically) acting as the basis of governmental legitimacy.¹⁸⁹ This externally-focused exceptionalism only fuelled the internally-focused exceptionalism detailed above as it evolved from elite civic nationalist Commonwealth restoration to increasingly incommensurable patterns of ethnic nationalism under conditions of imperial domination after 1863.

Through Luxemburg’s critique of self-determination—coupled with her theory of capitalist imperialism—we can conceptualise the distinct pathologies that can follow from efforts, however implicit, to rank exceptionalised domination above banal domination. While placing direct and unapologetic conquest atop a hierarchy of domination might be embedded within present discourse, liberal nineteenth-century international lawyers, even those who did not contest conquest’s validity, deployed strikingly similar rhetoric. To provide an illustration, when contemplating the juridical status of British India (which like Egypt was subject to formal imposition following a military mutiny in 1856) the prominent English jurist John Westlake declared it to be ‘a peculiar case of conquest, operating by assumption and acquiescence’.¹⁹⁰ He contrasts this to the Polish-Lithuanian Commonwealth as a seemingly ‘non-peculiar’ conquest accomplished by ‘suppression’.¹⁹¹ In doing so, Westlake evoked the complex overlays of jurisdiction and authority whereby patchworks of rights, obligations, and customary practices (with varying degrees of formalisation) inherited by local rulers, European chartered companies, and the British state, rendered India, in the eyes of many nineteenth-century commentators, an ‘unfinished conquest’.¹⁹² Similar ambiguities defined British debates on the status of their occupation of Egypt.¹⁹³

Yet whatever label might have been attached to Egypt, beneath grandiose determinations of status, the impositions detailed by Luxemburg were accomplished through background webs of intersecting legalities that ultimately co-empowered local elites and foreign capital at the expense of Egypt’s peasantry.¹⁹⁴ From China to Siam to Ethiopia to the Ottoman Empire similarly juridified mechanisms of capitulation, extraterritorial imposition, and unequal treaties were everywhere to be found.¹⁹⁵ Even clear dividing lines between ‘formal’ and ‘informal’

¹⁸⁸ An Austrian general remarked that ‘I don’t believe that even among the Iroquois and Hottentots such ridiculous things occur.’ Quoted in J Branch, ‘Colonial Reflection’ and Territoriality: The Peripheral Origins of Sovereign Statehood’ (2012) 18 *European Journal of International Relations* 277, 289.

¹⁸⁹ See M Reinkowski and G Thum (eds), *Helpless Imperialists: Imperial Failure, Fear, and Radicalization* (Vandenhoeck and Ruprecht 2012).

¹⁹⁰ J Westlake, *Chapters on the Principles of International Law* (Cambridge University Press 1894) 209.

¹⁹¹ *ibid.*

¹⁹² S Sen, ‘Unfinished Conquest: Residual Sovereignty and the Legal Foundations of the British Empire in India’ (2013) 9 *Law, Culture, and the Humanities* 227.

¹⁹³ See AG Hopkins, ‘The Victorians and Africa: A Reconsideration of the Occupation of Egypt, 1882’ (1986) 27 *Journal of African History* 363; A Genell, ‘Empire by Law: Ottoman Sovereignty and the British Occupation of Egypt, 1882-1923’ (PhD thesis, Columbia University 2013).

¹⁹⁴ D Todd, ‘Beneath Sovereignty: Extraterritoriality and Imperial Internationalism in Nineteenth-Century Egypt’ (2018) 36 *Law and History Review* 105.

¹⁹⁵ See R Horowitz, ‘International Law and State Transformation in China, Siam, and the Ottoman Empire during the Nineteenth Century’ (2004) 15 *Journal of World History* 445; JD Savage, ‘The Stability and Breakdown of Empire: European Informal Empire in China, the Ottoman Empire and Egypt’ (2011) 17 *European Journal of International Relations* 161; R Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance* (Cambridge University Press 2019) 247-64; S Belmessous, ‘What is a Colonial Treaty? Questioning the Visible and the Invisible in European and Non-European Legal Negotiations’ (2022) 10 *Comparative Legal History* 137.

empire were highly elusive.¹⁹⁶ All this came at a time when European empires disclaimed their efforts as ‘conquest’ through recourse to increasingly creative juridical complexities. Beyond the assumed liberal actors, even highly illiberal Russian scholars made such conquest-disclaiming assertions.¹⁹⁷ Thus, from a Luxemburgian perspective, such indeterminate debates on a territory’s juridical status as ‘conquered’, ‘occupied’, or something else are secondary to determinate processes of capital accumulation. The more heavily conquest-centric status determinations were fixated upon, the more normalised capitalism’s underlying predation became.

On this point, as Rose Parfitt and Ntina Tzouvala have shown, the ambiguous diversity of international law’s informal imperial mechanisms must not conceal a unifying systemic logic. Through these heterodox impositions, sites of imposition were coerced into adopting the institutions (namely guarantees of property rights and freedom of contract) that made reliable capital accumulation possible.¹⁹⁸ By serving as a foil to these ‘lesser’ impositions (and their disconnection from their material logics and ultimate consequences), the partitions of the Polish-Lithuanian Commonwealth, viewed as the archetypical act of conquest, implicitly aided this process. Detailed by Kerry Goettlich, imperial opponents and imperial rivals frequently invoked the partitioned Commonwealth as a stark means of framing and condemning European colonisation of the non-European world.¹⁹⁹ However, by invoking the exceptionalist presumptions of this analogy, those on the receiving end of such accusations could affirm their liberal credentials by distinguishing their conduct from the partitions of the Polish-Lithuanian Commonwealth. Much like in present debates on conquest, the result was a compounding descent into charges and counter-charges that increasingly turned on abstracted juridical/ethical models of intent at the expense of any accounting for material conditions.²⁰⁰ Reprising the analogy to the Commonwealth partitions in response thus entrenched this elevation of abstraction and imagery over the material machinations of political economy. This was especially true regarding the ‘Scramble for Africa’ as formalised through the 1884 Berlin Conference, an event critical voices have long depicted as European statesmen gathered around a map of Africa and carving it amongst themselves.²⁰¹ Only relatively recently have international lawyers interpreted this event through its more explicitly-stated goals of creating a zone of free trade—an ideal with ends that could only be realised by untold, yet highly juridified, force and coercion.²⁰² Unfolding action on this decentralised ideological basis, not a singular summit in Berlin, created Africa’s colonial borders.

Accounting for these considerations, as an alternative to any hierarchical ranking (formal or implicit) of the domination that respectively befell the Polish-Lithuanian Commonwealth and Egypt (and analogous locations) could be better understood as an inversion. While the

¹⁹⁶ Moreover, while India (after 1856) and Egypt (after 1882) were sites of direct imposition, both acted as sub-imperial agents whether the vast informal ‘Indian Empire’ or Egypt’s joint administration of the Sudan with Britain. See J Onley, ‘The Raj Reconsidered: British India’s Informal Empire and Spheres of Influence in Asia and Africa’ (2009) 40 *Asian Affairs* 44; E Troutt Powell, *A Different Shade of Colonialism: Egypt, Great Britain, and the Mastery of the Sudan* (University of California Press 2003).

¹⁹⁷ See eg NI Danilevskii, *Russia and Europe: The Slavic World’s Political and Cultural Relations with the Germanic-Roman West*, Stephen Woodburn, trans (Slavica 2013) 19–22.

¹⁹⁸ Parfitt, (n 195) 149–53; Tzouvala (n 40) 42–87.

¹⁹⁹ K Goettlich, ‘Connected Memories: The International Politics of Partition from Poland to India’ (2022) 16 *International Political Sociology* 1, 13–18.

²⁰⁰ See Moses (n 103) 95–99.

²⁰¹ Writing at the dawn of decolonisation, CH Alexandrowicz, a Polish jurist and historian of Afro-Asian international personality, stated the ‘Scramble for Africa’ was preceded by a ‘Scramble for Europe’ via the Commonwealth partitions a century earlier. CH Alexandrowicz, ‘The Role of Treaties in the European-African Confrontation in the Nineteenth Century’ in *The Law of Nations in Global History* (D Armitage and J Pitts ed, Oxford University Press 2017) 259, 300.

²⁰² M Craven, ‘Between Law and History: The Berlin Conference of 1884–1885 and the Logic of Free Trade’ (2015) 3 *London Review of International Law* 31, 54–57.

former was denied juridical personality, the latter—through a process Parfitt deems ‘international legal reproduction’—was recognised as possessing a very specific type of juridical personality that formed the basis of assuming increasingly untenable obligation, and eventual coercive discipline upon failing to meet these obligations.²⁰³ Returning to Luxemburg’s critique of self-determination, it is vital to consider how this inversion did not mean the type of domination that befell Egypt would never befall the lands of the Commonwealth should it successfully reverse its conquest. In other words, had the partitioned lands gained independence (whether as the restored pre-partitioned Commonwealth, a new order of ethno-states, or some combination thereof), this new entity or entities could hardly insulate itself from the same predation visited upon the Egypts of the world. While comparatively more industrialised, the former Commonwealth’s industries were largely integrated into their partitioning powers. The ability of independence to disrupt these linkages, and thus derail the revolutionary potential of workers, was Luxemburg’s ever-present concern.²⁰⁴ Relatedly, given that the Polish nationalist cause had many admirers and contacts in the capitalist West—especially in Britain—there was no shortage of those who would likely finance capitalist penetration in the context of a society that remained heavily agrarian.²⁰⁵ Despite common Polish self-conceptions as Europeans in this Eurocentric nineteenth-century world, experiences in the German partitioned zone had already shown that Polish peasants being subjected to modes of labour developed in the intertwined contexts of African colonialism and American white supremacy was not hypothetical.²⁰⁶

Beyond Luxemburg’s historical materialist theory that the economies of the former Commonwealth and the partitioning powers were too deeply integrated, an additional matter entailed how reversing the exceptional domination of conquest might limit any subsequent discourse on the banal domination of capitalist imperialism. If exceptional domination was dispatched via the achievement of sovereign independence, what vocabulary could there be to contest the banal domination that no newly independent post-imperial state in Eastern/Central Europe could likely insulate itself from? With a reduced public platform for contesting the political economy of banal domination, how many of those facing the inevitable social upheaval might embrace a fetishised nationalism that called for salvation by destroying the remnants of visible legacies of past conquest that would likely take the form of ethnic minorities? Luxemburg was well aware of this dynamic as shown through her observation that, for all their proclamations of victimhood, Polish bourgeois nationalists could be harshly unsympathetic to any movement contradicting their own. This was to say nothing of how this context’s rampant antisemitism affected her personally. After all, well before the empires that partitioned the Polish-Lithuanian Commonwealth gave birth to new states in their collapse, initially egalitarian democratic movements proved just how quickly they could become bastions of authoritarianism fuelled by ethno-nationalist resentment.²⁰⁷ To observe how national independence would not inherently curb—and might very well intensify—this logic is to observe, in Luxemburg’s time and our own, that domination is more than conquest.

²⁰³ Parfitt (n 195) 81-96.

²⁰⁴ Luxemburg, ‘National Question’ (n 154) 157-82.

²⁰⁵ Goettlich (n 199) 9-12; B Porter-Szucs, ‘The Social Nation and Its Futures: English Liberalism and Polish Nationalism in Late Nineteenth-Century Warsaw’ (1996) 101 *American Historical Review* 1470, 1478-79.

²⁰⁶ A Zimmerman, *Alabama in Africa: Booker T. Washington, the German Empire, and the Globalization of the New South* (Princeton University Press 2010) 100-11, 221-22.

²⁰⁷ B Porter-Szucs, ‘Democracy and Discipline in late Nineteenth-Century Poland’ (1999) 71 *Journal of Modern History* 346.

1919 AND AFTER

The beginning of the twentieth century certainly added several layers of complexity to Luxemburg's critique vis-a-vis her formative context. Upon the conclusion of the Great (inter-imperial) War that her theory of global capital accumulation did so much to effectively predict, the inauguration of the Bolshevik 'world revolution' and the rise of new nations from the ashes of old empires (including Poland and Lithuania), the international legal order that previously mediated the relationship between domination and conquest was no longer what it was. This was the world where Freikorps reactionaries murdered Luxemburg amidst the backdrop of the fatally stunted German Revolution in 1919.²⁰⁸ In the wake of this rupture, as matters of international law and institutionalism, the exceptional domination of conquest and the banal domination of restructuring states towards capitalist reproduction evolved along diverging trajectories as matters of regulation and characterisation. The former issue of conquest, especially as it became fundamentally embroiled within the new discourse of 'aggression', became the condemned focal point of a liberal internationalist campaign that some influential present-day scholars cast as a providential legacy we must hold firm to today.²⁰⁹ The latter issue of capitalist restructuring, in measures often celebrated by the same internationalists who lambasted conquest, effectively integrated varied imperial practices of multifaceted state transformation under the aegis of international institutions designed for governing the world economy.²¹⁰ The widespread perceived separation between these two modalities of imposition is a testament to how ideologically entrenched the division between the sphere of violent conquest and the sphere of peaceful economic growth became in the twentieth century.²¹¹

Only in recent years have scholars returned to careful analysis of how these spheres are fundamentally interconnected.²¹² While this marks a return to Luxemburg's broad tradition, such theorisation must also account for the lands of Luxemburg's formative context and how their twentieth-century experience was defined by modes of violence and domination that exceeded all imagination—even Luxemburg's. From the often-ignored Eastern Front of the First World War to the numerous conflicts that marked the collapse of the Russian, German, and Austrian empires to the apocalyptic destruction via the Hitler-Stalin clash to the long period of Soviet rule, the scars that continue to define the lands of the old Commonwealth via modern-day Poland, Lithuania, Belarus, and Ukraine are too deep to comprehend.²¹³

At the time of this writing, violence rages in the lands of the former Commonwealth via Russia's war on Ukraine. Following Luxemburg, this present bloodshed is an opportunity to conceptualise the inter-relationship between exceptional and banal modes of domination

²⁰⁸ R Gerwarth, *November 1918: The German Revolution* (Oxford University Press 2020) 156-57.

²⁰⁹ Hathaway and Shapiro (n 41); see also K Sellers, 'Delegitimizing Aggression: First Steps and False Starts after the First World War' (2012) 10 *Journal of International Criminal Justice* 7.

²¹⁰ J Miller, *The Meddlers: Sovereignty, Empire, and the Birth of Global Economic Governance* (Harvard University Press 2022). As post-imperial states, the lands Luxemburg was most familiar with were 'ground zero' for such experiments. N Wheatley, 'Central Europe as Ground Zero of the New International Order' (2019) 78 *Slavic Review* 900. Here, newly independent Poland's minority rights treaty became an exportable template for capitalism-facilitating individual rights recognition. Parfitt (n 195) 166-70.

²¹¹ J Whyte, *The Morals of the Market: Human Rights and the Rise of Neoliberalism* (Verso 2019) 116-55.

²¹² See N Mulder, *The Economic Weapon: The Rise of Sanctions as a Tool of Modern War* (Yale University Press 2022).

²¹³ See VG Liulevicius *War Land on the Eastern Front: Culture, National Identity, and German Occupation in World War I* (Cambridge University Press 2009); T Balkelis, 'The Logic of Violence in the Polish-Lithuanian Conflict, 1920-1923' (2021) 49 *Nationalities Papers* 911; J Böhler, *Civil War in Central Europe, 1918-1921: The Reconstruction of Poland* (Oxford University Press 2018); T Snyder, *Bloodlands: Europe Between Hitler and Stalin* (Basic Books 2010); A Kay, *Empire of Destruction: A History of Nazi Mass Killing* (Yale University Press 2021); J Gross, *Revolution from Abroad: The Soviet Conquest of Poland's Western Ukraine and Western Belorussia* (Princeton University Press 2002); K Kończal and D Moses (eds), *Patriotic History and the (Re)Nationalization of Memory* (Routledge 2023).

like few others. Prominently, discourses on conquest, partition, and the rights of nationalities define all manner of opinion on this conflict, international legal and otherwise.²¹⁴ However, a far less remarked upon discourse is that of post-Soviet political economy and how the effects of neoliberal 'shock therapy' continue to define identity and ideology in both Ukraine and Russia in a manner mobilising so many of the tensions embedded in their impossibly complex histories.²¹⁵ In remembering Luxemburg's assertion that class solidarity was the political solidarity worth prioritising, we must ask why the array of international political and economic forces (and their fundamentally legal composition) have made the prospect of solidarity between Ukrainian-speaking and Russian-speaking working classes in Ukraine so dismissively unimaginable in the long build-up to Putin's 2022 invasion.²¹⁶ Now that the international legal limits of excising the scourge of conquest are painfully apparent for all to see, Luxemburg's iconic pronouncement that the choice before us is 'socialism or barbarism' must be taken seriously as never before.

²¹⁴ See especially Eugene Finkel, *Intent to Destroy: Russia's Two-Hundred Year Quest to Dominate Ukraine* (Basic Books 2024).

²¹⁵ See R Dzarasov, *Conundrum of Russian Capitalism: The Post-Soviet Economy in the World System* (Pluto Press 2013); Y Yurchenko, *Ukraine and the Empire of Capital: From Marketisation to Armed Conflict* (Pluto Press 2017); V Morozov, *Russia's Postcolonial Identity: A Subaltern Empire in a Eurocentric World* (Palgrave 2017) 67-102.

²¹⁶ V Ishchenko, *Towards the Abyss: Ukraine from Maidan to War* (Verso 2024).

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