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# BLOOD OF NATIONS, BLOOD OF EMPIRE: PAN-SLAVISM AS A CRITIQUE OF INTERNATIONAL LAW IN LATE IMPERIAL RUSSIA AND BEYOND

ERIC LOEFFLAD

**ABSTRACT:** While international lawyers analysing Vladimir Putin's ongoing actions and justifications through the broad arc of Russian history have no shortage of materials to draw upon, one comparatively under-explored discourse is the Russian tradition of Pan-Slavism. In this piece I argue that while Russian Pan-Slavism – and its invocation of a common Slavic destiny – provides an important resource, uncovering its origins and content requires a new approach to international legal history better attuned to the overlap between nationalism and imperialism. Towards this end I focus on how interactions within and between various empires, especially those in Central and Eastern Europe, gave rise to a distinctly Pan-Slavic consciousness that Russia ultimately championed through a distinctly paternalist anti-imperial imperialism. This contextual account culminates in a reading of Nikolai Danilevskii's 1869 text *Russia and Europe*, the most iconic manifesto of Russian Pan-Slavism, as a critique of the international legal positivism that consolidated in the late-nineteenth century. Through this account, I seek to provide new insights into ongoing political contestations as well as international law's variable functions as an active shaper of collective political identities.

**Keywords:** Pan-Slavism; International Legal History; Nationalism; Imperialism; Geopolitics; Nikolai Danilevskii

## *Introduction*

Is Russia's war on Ukraine better understood through the lens of nationalism or imperialism? Scholars undertaking any such inquiry must first distinguish these two analytical registers. Nationalism is the process of building or maintaining a nation – a political order premised on the common identity of its members.<sup>1</sup> Imperialism is the process of building or maintaining an empire – a political order premised on dominion over peoples that, in one consequential form or another, are distinct from their rulers.<sup>2</sup> Despite these conceptual differences, histories of nationalism and imperialism are fundamentally intertwined; as a medium for both justifying and resisting empire, few were as potent as nationalism.<sup>3</sup> Given that international lawyers concern themselves with

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<sup>1</sup> Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (2016, originally published 1983).

<sup>2</sup> Jane Burbank and Frederick Cooper, *Empires in World History: Power and the Politics of Difference* (2011), at 8.

<sup>3</sup> John Darwin, 'Nationalism and Imperialism, c.1880-1940', in John Breuilly (ed.), *The Oxford Handbook on the History of Nationalism* (2013) 341.

upholding State sovereignty, affirming the right to self-determination, and condemning acts of conquest and colonisation, for better or worse, questions on the nationalism-imperialism relationship can often become questions of international law. While critical theories of nationalism and imperialism are increasingly important within international legal thought, additional considerations are needed if the particularities of the Russia-Ukraine War are to be sufficiently understood.

I turn attention here to ‘Pan-Slavism’ – the broad view that all Slavic peoples share a common destiny.<sup>4</sup> In its distinctly late nineteenth-century Russian version, Pan-Slavism presented a nationalist critique of international law’s imperial propensities that effectively reproduced a rival imperial logic. While dormant for decades via the influence of the Soviet Union and its (imperfect) efforts to overcome Tsarist imperial legacies,<sup>5</sup> Imperial-era Pan-Slavist theories have enjoyed a post-Soviet renaissance – especially in the context of Vladimir Putin’s ‘Greater Russia’ agenda.<sup>6</sup> While ‘Eurasianism’ and/or the ‘Russian World’ have triggered much commentary,<sup>7</sup> the less-focused upon Pan-Slavism discourse nevertheless provides numerous insights, especially those concerning Putin’s claims regarding Ukraine’s ‘historical unity’ with Russia/Russians.<sup>8</sup> Highlighting this obscured Pan-Slavist ideology thus presents a profound opportunity to expand consciousness within the international legal field, especially as it concerns the relationship between nationalism and imperialism in a world where imperialism (and nationalism for that matter) can take many forms.

As a matter of ongoing relevance, echoes of Russian Pan-Slavism as a nationalist anti-imperial imperialism can be located in Putin’s persistent denial of Ukrainians as distinct from Russians and thus (and legitimately empowered to reject) Russian influence.<sup>9</sup> While widely condemned as imperial, Putin’s expansion of the ‘Russian’ category to include Ukrainians is distinct from earlier imperial invocations that brought externally-located and acknowledged non-Russian Slavs

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<sup>4</sup> Mikhail Suslov, Marek Čejka, and Vladimir Đorđević (eds.), *Pan-Slavism and Slavophilia in Contemporary Central and Eastern Europe: Origins, Manifestations and Functions* (2023).

<sup>5</sup> Bill Bowring, ‘Positivism versus Self-Determination: The Contradictions of Soviet International Law’, in Susan Marks (ed.), *International Law on the Left: Re-examining Marxist Legacies* (2008) 133.

<sup>6</sup> Andrei P. Tsygankov, ‘In the Shadow of Nikolai Danilevskii: Universalism, Particularism, and Russian Geopolitical Theory’, 69(4) *Europe-Asia Studies* (2017) 571, at 583-589.

<sup>7</sup> See e.g., Jacob Kipp, ‘Aleksandr Dugin and the Ideology of National Revival: Geopolitics, Eurasianism and the Conservative Revolution’, 11(3) *European Security* (2002) 91; Mikhail Suslov, “‘Russian World’ Concept: Post-Soviet Geopolitical Ideology and the Logic of “Spheres of Influence””, 23(2) *Geopolitics* (2018) 330.

<sup>8</sup> President of Russia Vladimir Putin, *On the Historical Unity of Russians and Ukrainians* (2021), available at <http://en.kremlin.ru/events/president/news/66181>.

<sup>9</sup> Alexander Etkind, ‘Ukraine, Russia, and Genocide of Minor Differences’, 25(3-4) *Journal of Genocide Research* (2023) 384; Eleanor Knott, ‘Existential Nationalism: Russia’s War against Ukraine’, 29(1) *Nations and Nationalism* (2023) 45.

(especially the peoples of the Balkans) into the Pan-Slavic ‘sphere of influence.’ However, despite this difference, Late Russian Imperial Pan-Slavism and Putin’s present-day arguments that Ukrainians are ‘Russians’ (and only distorting periods of Polish and Austrian rule led them to believe otherwise), share a consequential similarity. Both styles of argument represent a distinct ethnicisation of world politics claiming that international law’s failure to validate Russia’s understandings of collective identity (and deeming Russian efforts to be ‘imperial’) is itself an unjustifiable exercise in imperialism, and otherwise condemned uses of force are justified resistance to said imperialism.<sup>10</sup> On this basis, rejecting international legal impediments (materially and normatively) in the name of achieving political configurations that mirror Russian-formulated ethnic destiny narratives can be understood as exemplifying what Nathaniel Berman deemed ‘legitimacy through defiance.’<sup>11</sup> Understanding these recurring patterns of Russia’s rejection of international legal ‘imperialism’ through an alternative imperial logic thus provides a grand opportunity to further develop consciousness of the relationship between international law and inter-imperial rivalry in the context of the Russia-Ukraine War and beyond.<sup>12</sup> This is especially important in a world where ethnic/nationalist claims are often catalysts for interventions in a manner that can expose grave limits within international legal thought.<sup>13</sup>

In making the case that consciousness of earlier Pan-Slavism provides insight into present inter-imperial dynamics, my object of analysis is Russian Pan-Slavism’s magnum opus – Nikolai Iakovlevich Danilevskii’s 1869 treatise *Russia and Europe*.<sup>14</sup> A notoriously enigmatic text,<sup>15</sup> my main focus is on how *Russia and Europe* was framed as a critique of the international legal positivism consolidating within the same moment of this treatise’s publication-cum-dissemination.<sup>16</sup> I thus configure international law and Pan-Slavism through a world-historical co-evolutionary process culminating in Danilevskii’s critique of the former through his distinct affirmation of the latter. Part I underscores the importance of this endeavour by highlighting the presently limited international legal understanding of Russian imperialism by turning attention to

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<sup>10</sup> While Putin’s interventions in the name of protecting ethnic Russians has been compared to Hitler’s interventions in the name of protecting ethnic Germans (see Dainius Žalimas, ‘Lessons of World War II and the Annexation of Crimea’, 3(1) *International Comparative Jurisprudence* (2017) 25, at 34, such a comparison must account for a Russian tradition of ethnicity-based intervention that significantly predates German National Socialism.

<sup>11</sup> Nathaniel Berman, ‘Legitimacy through Defiance: From Goa to Iraq’, 23(1) *Wisconsin International Law Journal* (2005) 93.

<sup>12</sup> Anastasiya Kotova and Ntina Tzouvala, ‘In Defense of Comparisons: Russia and the Transmutations of Imperialism in International Law’, 116(4) *American Journal of International Law* (‘AJIL’) (2022) 710.

<sup>13</sup> See Mohammad Shahabuddin, *Ethnicity and International Law: Histories, Politics and Practices* (2016).

<sup>14</sup> Nikolai Iakovlevich Danilevskii, *Russia and Europe: The Slavic World’s Political and Cultural Relations with the Germanic-Roman West*, translated by Stephen Woodburn (2013).

<sup>15</sup> Vlad Alalykin-Izvekov, ‘The Russian Sphinx: Contemplating Danilevsky’s Enigmatic Magnum Opus *Russia and Europe*’, 86(1) *Comparative Civilizations Review* (2022) 73.

<sup>16</sup> Martti Koskeniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (2001).

‘pan-nationalism’ as a destabiliser of the nationalism/imperialism divide typically presumed by the field. Part II then details the rise of Pan-Slavism’s formative conditions through an account of European legal, institutional, and geopolitical evolution between Russia’s entry into the European diplomatic order and the aftermath of the Napoleonic Wars. Part III then turns to the emergence of Pan-Slavism in the Habsburg Empire and how, through a series of transformative events in this timeframe, a distinctly Russian Pan-Slavism came to exist. Finally, Part IV details Danilevskii’s Pan-Slavism as a critique of international law that collapsed the nation/empire distinction in proclaiming the inescapability of Russo-European difference.

### *I. Law, Nations, Empires, and Russia in Global History*

Amongst critical international legal scholars, adherents of Third World Approaches to International Law (‘TWAIL’) have largely set the terms of debate regarding the nation/empire distinction.<sup>17</sup> Emphasising differences of experience on a planetary scale, TWAILers craft a variable, but unified, epistemology showing that international law, despite its purported universality, privileges European perspectives (and those of their settler progeny) over perspectives from the Global South.<sup>18</sup> Under this view of the nationalism/imperialism distinction, while Europeans built their nations according to ideals of sovereign autonomy (and thus sought to eliminate the gap between ‘nation’ and ‘State’), the subjects of European empires inherited structures of ethnic difference that colonisers deliberately cultivated through technologies of external rule.<sup>19</sup> According to Mahmood Mamdani (an important influence on many TWAILers<sup>20</sup>), the defining structural distinction is that European States are defined by majority/minority dynamics while postcolonial States are definitively composed of ‘permanent minorities.’<sup>21</sup> The juridical distance between these projects of European nation-State formation and extra-European colonialism produced the

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<sup>17</sup> Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (2005).

<sup>18</sup> Obiora Chinedu Okafor, ‘Critical Third World Approaches to International Law (TWAIL): Theory, Methodology, or Both?’, 10(4) *International Community Law Review* (2008) 371, at 375-376.

<sup>19</sup> Makau Mutua, ‘Why Redraw the Map of Africa: A Moral and Legal Inquiry’, 16(4) *Michigan Journal of International Law* (1995) 1113.

<sup>20</sup> See e.g., Obiora Chinedu Okafor and Uchechukwu Ngwaba, ‘The International Criminal Court as a “Transitional Justice” Mechanism in Africa: Some Critical Reflections’, 9(1) *International Journal of Transitional Justice* (2014) 90, at 104-5.

<sup>21</sup> Mahmood Mamdani, *Neither Settler Nor Native: The Making and Unmaking of Permanent Minorities* (2020), at 6-13.

European State and postcolonial State as separate entities in the Interwar period<sup>22</sup> – a separation entrenched through postwar Afro-Asian decolonisation.<sup>23</sup>

Important as TWAIL's framing may be when confronting entrenched international legal deficiencies (namely the long-neglected centrality of empire), critical scholars of the Russia-Ukraine War must substantially adapt its presumptions surrounding the nationalism-imperialism relationship. With TWAIL primarily concerned with (Western) European overseas colonisation and its legacies, there is a risk that this framework might bolster a common trope that 'the West' (under American leadership) is the true global empire and no other present-day empire can be said to truly exist – a trope that Vladimir Putin rarely fails to invoke.<sup>24</sup> This is easy to do if international law is, in a reductionist capacity, understood to be both fundamentally Western and an essential element of modern imperialism.<sup>25</sup> Underscoring this risk, empire-conscious international lawyers have yet to fully explore the liminal spaces that defy any clear binary between 'West' and 'non-West' – particularly 'Eastern Europe.'<sup>26</sup> On this point, international lawyers examining intra-European imperialism and colonialism (an often-unclear dichotomy in its own right) face a closer proximity between imperial citizen and subject that calls for re-evaluating any rigid boundary between nation and empire.<sup>27</sup> In few cases is this proximity as close as it is in Russia.

Relatedly, critical international legal scholars must account for the unique nature of Russian imperialism in its broader global context. In Viatcheslav Morozov's assessment, Russia is a 'subaltern empire' driven by an interplay between perceived exclusion from the West and an inability to define itself outside of Eurocentric terms.<sup>28</sup> This protean imperial identity led to great

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<sup>22</sup> Anghie, *supra* note 17, at 147-154.

<sup>23</sup> On this reading, postcolonial statehood was a continuity, rather than a rupture, within the greater imperial project. See Luis Eslava and Sundhya Pahuja, 'The State and International Law: A Reading from the Global South', 11(1) *Humanity* (2020) 118.

<sup>24</sup> Importantly, Western reactions to the Russia-Ukraine War, international legal and otherwise, have highlighted Western hypocrisy and its normalisation of violence in and towards the Global South. See Kai Ambos, 'Ukraine and the Double Standards of the West', 20(4) *Journal of International Criminal Justice* (2022) 875; Siba N'Zatioula Grovogui, 'Putin's Ukraine Aggression: How Should an African Respond?', 60(1) *International Politics* (2023) 214. However, the same proponents of Realist theories of international relations that have attributed Putin's actions to NATO expansion (and have thus been presented as 'anti-imperial' critiques), have used this theoretical basis to justify interventions in the Global South. Matthew Specter, 'Realism after Ukraine: A Critique of Geopolitical Reason from Monroe to Mearsheimer', 44(2) *Analyse & Kritik* (2022) 243, at 261-262; see also Nicholas Guilhot, 'Imperial Realism: Post-War IR Theory and Decolonisation', 36(4) *International History Review* (2014) 698.

<sup>25</sup> This evades analysis of how Western Empires were formed through interacting with rival imperial forms, see Andrew Phillips, *How the East Was Won: Barbarian Conquerors, Universal Conquest and the Making of Modern Asia* (2021).

<sup>26</sup> Eric Loefflad, 'In Search of Paulus Vladimiri: Canon, Reception, and the (In)Conceivability of an Eastern European "Founding Father" of International Law', 36(4) *Leiden Journal of International Law* (2023) 833.

<sup>27</sup> Maria Mälksoo, 'The Postcolonial Moment in Russia's War Against Ukraine', 25(3-4) *Journal of Genocide Research* (2023) 471, at 474.

<sup>28</sup> Viatcheslav Morozov, *Russia's Postcolonial Identity: A Subaltern Empire in a Eurocentric World* (2015).

variation between categories of imperial subjects and external perceptions of their domination. On the one hand, rule over peoples further removed from European cultural ideals than Russians (Tartars, Siberians, Caucus peoples, etc) placed Russia well within a Eurocentric hierarchy between ‘civilised’ and ‘uncivilised’ nations.<sup>29</sup> This view was prevalent amongst Russia’s leading international jurists.<sup>30</sup> On the other hand, rule over peoples closer to European cultural ideals than Russians (Poles, Finns, Baltic peoples, and so on) raised questions of whether Russia was a non-European threat to the same Eurocentric ‘family of civilised nations.’<sup>31</sup> Distinct from both orientalist and occidentalised others was the ambiguous category of those considered ‘Russian’, but not the ‘Great Russians’ who dominated the empire – the Belarussian ‘White Russians’ and Ukrainian ‘Little Russians.’<sup>32</sup> For Putin’s Russia, Ukrainian rejection of its ‘Little Russian’ designation was an act of war.<sup>33</sup>

How then might an international lawyer analyse the nationalism-imperialism relationship while doing justice to the complexities of the present war in a manner that builds upon the field’s critical ‘turn to history’? To better understand the distinct character of Russian nationalism/imperialism, historically minded international lawyers must consider how their understandings of ‘empire’ and ‘nation’ are shaped by how they view the nineteenth century, and how these views might be expanded. On the one hand, owing to the influence of international legal positivism and its presumption of the abstracted person of the sovereign State (the internal socio-political realities of which were beyond consideration) as its core structuring subject, the substance of nationalist claims were largely irrelevant to nineteenth-century international law.<sup>34</sup> Only in rare instances did the international lawyers of this time see nationalist assertions as an emerging source of legally consequential practice.<sup>35</sup> From this perspective, it was only with the advent of the League of Nations and the collapse of Europe’s land empires that nationalism became an appropriate topic for

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<sup>29</sup> Eric Myles, ‘Humanity, Civilization and the International Community in the Late Imperial Russian Mirror: Three Ideas Topical for Our Days’, 4(2) *Journal of the History of International Law* (‘JHIL’) (2002) 310, at 320-323; see also Willard Sunderland, *Taming the Wild Field: Colonization and Empire on the Russian Steppe* (2016, originally published 2004).

<sup>30</sup> Lauri Mälksoo, ‘The Legacy of F.F. Martens and the Shadow of Colonialism’, 21(1) *Chinese Journal of International Law* (2022) 55.

<sup>31</sup> Condemnation here was especially pertinent to the partitions of the Polish-Lithuanian Commonwealth. See Victor Kattan, ‘To Consent or Revolt? European Public Law, the Three Partitions of Poland (1772, 1793, and 1795) and the Birth of National Self-Determination’, 17(2) *JHIL* (2015) 247, at 277-280.

<sup>32</sup> Dominic Lieven, *Empire: The Russian Empire and Its Rivals* (2000), at 259-261.

<sup>33</sup> Taras Kuzio, ‘Why Russia Invaded Ukraine’, 21 *Horizons* (2022) 40, at 40-42.

<sup>34</sup> Michael Ross Fowler and Julie Marie Bunk, ‘The Nation Neglected: The Organisation of International Life in the Classical State Sovereignty Period’, in Robert Beck and Thomas Ambrosio (eds.), *International Law and the Rise of Nations: The State System and the Challenge of Ethnic Groups* (2002) 38.

<sup>35</sup> See F. F. Martens, *Contemporary International Law of Civilised Peoples: General Part*, translated by William Butler (2022).

international lawyers.<sup>36</sup> Within this same nineteenth-century timeframe, mutual recognition of a core group of European/settler States as the ‘family of nations’ enabled exclusionary colonisation justified by the infamous ‘Standard of Civilisation.’<sup>37</sup>

However, this simultaneous focus on positivist statehood and colonial expansion diverts the attention of international lawyers away from another nineteenth-century imagination, that of ‘pan-nationalism’ whereby visions of greater ethnic unity – be it Anglo-Saxonism, Pan-Germanism, or French Pan-Latinism – blurred any clear line between bounded nationalism and imperial expansion.<sup>38</sup> The question of whether international law would uphold the sovereignty of small States or further the logic of pan-nationalist conquest were very much up for debate in this timeframe.<sup>39</sup> While Pan-Slavism can certainly be located within this scheme, it can nevertheless be distinguished by its self-proclaimed subaltern character, a proclamation that enabled Russian Pan-Slavism to critique international law in the name of an anti-imperial imperialism. However, understanding this outcome requires a contextual account of how Slavic consciousness came to exist in the first place. This requires a distinctly inter-imperialist interpretation of what should be included within international legal history.

## ***II. The Geopolitical Consciousness of Proto-Slavdom***

When it comes to establishing an international legal context for proto-consciousness of a ‘Slavic world’, a fitting place to begin is the early-eighteenth century. In 1717, Russian Vice-Chancellor P.P. Shafirov published *A Discourse Concerning the Just Causes of the War Between Sweeden and Russia: 1700-1721* – widely acknowledged to be the first Russian treatise on the law of nations.<sup>40</sup> The text’s choice of subject matter in relation to its timing was not accidental. Contextually, the early-eighteenth century marked the beginning of Russia’s Baltic dominance following a long series of wars, primarily with the Kingdom of Sweeden and the Polish-Lithuanian Commonwealth, inaugurated when Ivan the Terrible – the first Tsar of ‘All Russias’ – shifted an eastward facing empire westward by launching the early sixteenth-century Livonian Wars against the remnant

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<sup>36</sup> Nathaniel Berman, *Passion and Ambivalence: Colonialism, Nationalism, and International Law* (2011).

<sup>37</sup> Anghie, *supra* note 17, at 52-64.

<sup>38</sup> Musab Younis, “‘United by Blood’: Race and Transnationalism during the Belle Époque”, 23(3) *Nations and Nationalism* (2017) 484, at 485-489.

<sup>39</sup> See Georgios Varouxakis, ‘Great versus Small Nations: Size and National Greatness in Victorian Political Thought’, in Duncan Bell (ed.), *Victorian Visions of Global Order: Empire and International Relations in Nineteenth-Century Political Thought* (2007) 136.

<sup>40</sup> P. P. Shafirov, *A Discourse Concerning the Just Causes of the War Between Sweden and Russia: 1700-1721*, edited by William Butler (1973).



polities founded by medieval German crusaders.<sup>41</sup> With this newfound military dominance and integration within the diplomatic-cum-cultural order of early modern Europe, came a newfound need for Russia's elites to Europeanise themselves, a project that was, according to general perception, inaugurated by Tsar Peter the Great.<sup>42</sup> Speaking in the discrete language of the law of nations was axiomatic and Shafirov's *Discourse* was arguably a retrospective capstone validation towards this end.<sup>43</sup>

Such juridical integrationist demands only increased as the eighteenth century progressed and shifts occurred within the European balance of power, particularly the globe-spanning Seven Years War.<sup>44</sup> From these events came an 'emergence of the Eastern Powers' which, alongside Tsarist Russia, also included an expansionist Prussia under Emperor Frederick the Great and the Austrian Habsburgs who, in violently failing to unite the German-speaking world (under a counter-reformationist Roman Catholic banner amongst other things), turned their attention to the east.<sup>45</sup> With this turn, previously discrete 'Slavic questions' had occasion to be synthesised as never before. This included the way Frederick's Prussia gave new meaning to centuries of German eastward expansion and the various perceptions it created of Germanic/Slavic difference.<sup>46</sup> It also included the many issues connected to the protracted decline of the Ottoman Empire in Southeastern Europe. For the Habsburgs, this largely concerned the halting of Ottoman westward expansion via its victory at the Battle of Vienna (1683), its formalisation via the Treaty of Karlowitz (1699), and its further solidification via the Peace of Passarowitz and establishment of a 'military frontier' (1718) – a metaprocess that placed many new Slavic subjects under Habsburg rule.<sup>47</sup> A major facet of this reordering involved the reunification of the Kingdom of Hungary (previously divided between the Habsburgs and Ottomans).<sup>48</sup> Never failing to claim unextinguished sovereign autonomy *vis-a-vis* the Austrian Habsburgs, the Hungarians' rule over Slavic subjects proved a persistent source of controversy in their relationship with Vienna.<sup>49</sup> For Russia, achieving military supremacy in the

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<sup>41</sup> Robert Frost, *The Northern Wars: War, State and Society in Northeastern Europe, 1558-1721* (2014, originally published 2000).

<sup>42</sup> Andreas Schönle and Andrei Zorin, *On the Periphery of Europe, 1762-1825: The Self-Invention of the Russian Elite* (2018), at 26-27.

<sup>43</sup> William Butler, 'On the Origins of International Legal Science in Russia: The Role of P. P. Shafirov', 1(1) *JHIL* (2002) 1.

<sup>44</sup> Richard Devetak and Emily Tannock, 'Imperial Rivalry and the First Global War', in Tim Dunne and Christian Reus-Smit (eds.), *The Globalization of International Society* (2017) 125.

<sup>45</sup> H. M. Scott, *The Emergence of the Eastern Powers, 1756-1775* (2001).

<sup>46</sup> Vejas Gabriel Liulevicius, *The German Myth of the East: 1800 to the Present* (2009), at 36-38.

<sup>47</sup> Charles Ingrao, Nikola Samardžić, and Jovan Pesalj (eds.), *Peace of Passarowitz, 1718* (2011).

<sup>48</sup> Géza Pálffy, *Hungary between Two Empires 1526-1711* (2021).

<sup>49</sup> István Szigjártó, 'The Birth of the Constitution in Eighteenth-Century Hungarian Political Thought', in Ferenc Hörcher and Thomas Lorman (eds.), *A History of the Hungarian Constitution: Law, Government and Political Culture in Central Europe* (2019) 46.

Baltic coincided with its southward confrontation of the Ottoman Empire against whom it waged numerous wars from the start of the eighteenth century onwards.<sup>50</sup> If all of this were not complex enough, there was also the reality that these three Eastern Powers bolstered their position within the European diplomatic order by undertaking the first partition of the Polish-Lithuanian Commonwealth in 1772 – an action portending many long-term consequences regarding ‘Slavdom’ and who could legitimately speak for it.<sup>51</sup>

However, almost as soon as the Eastern powers became entrenched within Europe’s diplomatic configuration, the very structure of this order was plunged into crisis with the 1789 advent of the French Revolution. Importantly, the Revolution’s challenge to the *Ancien Regime* carried profound international legal consequences in its centring of a nation’s popular will as the true source of domestic legitimacy – and justifying intervention towards this end.<sup>52</sup> In the words of Wilhelm Grewe:

[t]he Revolution shook the foundations of the international legal community, anchored as they were in the European-Christian communitarian consciousness and the dynastic solidarity of princes [...] The [...] Revolution in terms of the law of nations [...] [sought] the full emancipation of the sovereign nation state [...] It amounted to a sharpening and extension of the concept of sovereignty to include the principle of nationality.<sup>53</sup>

For its detractors, this upheaval and the novel intellectual architecture of its justification was nothing short of a grand undoing of a tradition of political coexistence and restraint that grew out of centuries of dynastic and religious war.<sup>54</sup>

Unsurprisingly, the Eastern Powers quickly sought to pre-empt this threat with one infamous response being their erasure of the Polish-Lithuanian Commonwealth via the second and third partitions<sup>55</sup> – a course of action inseparable from the Commonwealth’s embrace of liberal constitutionalism following the first partition.<sup>56</sup> However, as the French Revolution’s world-transforming propensity exponentially expanded with the ascent of Napoleon, the Russian Empire,

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<sup>50</sup> Virginia H. Aksan, *Ottoman Wars, 1700-1870: An Empire Besieged* (2007); Brian Davies, *Empire and Military Revolution in Eastern Europe: Russia's Turkish Wars in the Eighteenth Century* (2013).

<sup>51</sup> Herbert Kaplan, *The First Partition of Poland* (2020, originally published 1962).

<sup>52</sup> Edward James Kolla, *Sovereignty, International Law, and the French Revolution* (2017). On revolutionary impact on Eastern European legal structures, see B. Mirkine-Guetzevitch, *L'influence de la Révolution française sur le développement du droit international dans l'Europe orientale* (1929).

<sup>53</sup> Wilhelm G. Grewe, *The Epochs of International Law*, translated by Michael Byers (2000), at 414.

<sup>54</sup> Reinhart Koselleck, *Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society* (2000, originally published 1988).

<sup>55</sup> Robert Howard Lord, *The Second Partition of Poland: A Study in Diplomatic History* (1915); Robert Howard Lord, ‘The Third Partition of Poland’, 3(9) *Slavonic Review* (1925) 481.

<sup>56</sup> Jerzy Lukowski, ‘Recasting Utopia: Montesquieu, Rousseau and the Polish Constitution of 3 May 1791’, 37(1) *Historical Journal* (1994) 65.

fearful of French alliance with the Ottomans, partially embraced the detested nationality principle – and in a Polished-influenced capacity no less.<sup>57</sup> This entailed the proposed creation of several nationality-delineated semi-sovereign Slavic polities, that, according to Russian Foreign Minister Adam Jerzy Czartoryski, the son of a Polish prince, ‘would enjoy independent administration in their internal affairs but would remain under the supreme authority and protection of Russia’, while acting as a buffer between empires.<sup>58</sup> Yet despite this embrace, the Russian Empire nevertheless held firm to its overarching commitments to dynastic order – its conflict with Napoleon serving as a grand exemplification of two empires mutually-defined in opposition to one-another.<sup>59</sup>

Russia’s paradoxical embrace of imperial reaction against nationalism *and* bolstering nationalism in opposition to empire continued after the final defeat of Napoleon. With the 1815 establishment of the Concert of Europe system, alongside Britain, Prussia, Austria (France after 1818), Russia, a longtime outsider to the core of European diplomacy, was now one of its pillars.<sup>60</sup> To understand Russia’s trajectory as a contradictory vessel of imperial and anti-imperial influence is to understand the multiple tensions that defined the Concert system. While unmistakably a ‘legalised hegemony’ in its formal privileging of great powers above all others, there remained great differences within the Concert’s highest echelon.<sup>61</sup> These tensions cannot be separated from the reality that the French Revolutionary wars made consciousness of popular will/national autonomy commonplace and there was simply no return to the previous order.<sup>62</sup> Famously, there was a divide between Britain’s commitment to non-intervention and the Eastern Powers’ declaration of a Holy Alliance who proclaimed a right of intervention to prevent the recurrence of any disruption akin to Napoleon.<sup>63</sup> However, this was not the only discontent endemic to the Concert’s great powers, and distinctly Russian conceptions of the nationalism/imperialism relationship had everything to do with it. Within the Holy Alliance itself, there was a defining tension between Austria’s Foreign Minister Prince Clemens von Metternich and Russia’s Tsar Alexander I.<sup>64</sup> While the former was fixated on maintaining order via dynastic diplomacy with minimal regard for nationalist claims, the latter

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<sup>57</sup> Alexander Mikaberidze, *The Napoleonic Wars: A Global History* (2020), at 391-399.

<sup>58</sup> Quoted in *ibid.*, at 393; see also W. H. Zawadzki, ‘Prince Adam Czartoryski and Napoleonic France, 1801-1805: A Study in Political Attitudes’, 18(2) *Historical Journal* (1975) 245.

<sup>59</sup> Dominic Lieven, *Russia Against Napoleon: The Battle for Europe, 1807 to 1814* (2016).

<sup>60</sup> Elise Kimerling Wirtschafter, *From Peace to Victory: Russian Diplomacy after Napoleon* (2021), at 35-51.

<sup>61</sup> George Lawson, ‘Ordering Europe: The Legalised Hegemony of the Concert of Europe’, in Daniel Green (ed.), *The Two Worlds of Nineteenth Century International Relations: A Bifurcated Century* (2019) 101.

<sup>62</sup> Edward Keene, ‘International Hierarchy and the Origins of the Modern Practice of Intervention’, 39(5) *Review of International Studies* (2013) 1077, at 1086-1089.

<sup>63</sup> Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (2003), at 247-249.

<sup>64</sup> Henry Delfiner, ‘Alexander I, the Holy Alliance and Clemens Metternich: A Reappraisal’, 37(2) *East European Quarterly* (2003) 127.

viewed himself as discharging a divinely ordained mandate to fulfil the unique destinies of the diverse peoples to whom he had a paternalist obligation towards.<sup>65</sup>

In bridging the gap between nation and empire through a paternalist sensibility, and one inseparable from a distinctly Orthodox Christian worldview, Alexander's vision possessed affinities with otherwise very different contemporaries when it came to the respective legitimacy of (certain) nations in relation to (certain) empires.<sup>66</sup> This was demonstrated in 1827 as Russia, alongside Britain and France, intervened on behalf of Greek independence from the Ottomans.<sup>67</sup> While Russia justified its actions in relation to Orthodox solidarity,<sup>68</sup> and the Western powers justified theirs in relation to emergent 'scientific' views of 'civilisation' that elevated Greeks above Turks,<sup>69</sup> they were nevertheless united by a commonality of purpose, at least momentarily.<sup>70</sup> Yet, as liberalism's entrenchment gave rise to increasingly secular, rationalist, and (legally) positivistic patterns of thought in an increasingly uneven world-system, opportunity for common coordination between Russia and the West increasingly diminished. In adapting to new realities while maintaining an obsessive sense of self-preserving uniqueness, influential Russian thinkers came to further rely upon invented traditions that cast modern reaction as timeless essence.<sup>71</sup> In this metacontext, a new framing of the Russian paternalist reconciliation of nationalism and imperialism reconfigured, and arguably rejected, the ethereal logic of pan-Orthodoxy by introducing a temporal logic of Pan-Slavism. Given the many Slavic identity-implicating issues that manifested throughout the long eighteenth century, there was no shortage of animating topics this emergent Russian sensibility could attach itself to.

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<sup>65</sup> *Ibid.*, at 144-145.

<sup>66</sup> Beatrice de Graaf, 'How Conservative Was the Holy Alliance Really? Tsar Alexander's Offer of Radical Redemption to the Western World', in Matthijs Lok, Friedemann Pestel, and Juliette Reboul (eds.), *Cosmopolitan Conservatism: Countering Revolution in Transnational Networks, Ideas and Movements (c. 1700–1930)* (2021) 241.

<sup>67</sup> Will Smiley, 'War without War: The Battle of Navarino, the Ottoman Empire, and the Pacific Blockade', 18(1) *JHIL* (2016) 42.

<sup>68</sup> Analogously, Russia occupied the Ottoman Empire's Romanian Principalities of Wallachia and Moldavia yet upheld residual Ottoman sovereignty. See Barbara Jelavich, *Russia and the Formation of the Romanian National State, 1821-1878* (2005, originally published 1984); Radu Florescu, *The Struggle Against Russia in the Romanian Principalities: A Problem in Anglo-Turkish Diplomacy, 1821-1854* (2022, originally published 1962).

<sup>69</sup> James Mackintosh, arc-critic of Holy Alliance interventions and father of the modern 'Standard of Civilisation', invoked '[...] the gross and incorrigible rudeness of the Ottomans, incapable of improvement, and extinguishing the remains of civilization among their unhappy subjects, once the most ingenious nations of the earth.' See James Mackintosh, 'A Discourse on the Law of Nature and Nations', 1(3) *Journal of Jurisprudence* (1821) 344, at 356.

<sup>70</sup> On support for Greek independence as unified commitment against the French Revolutionary legacy, see Ada Dialla, 'The Congress of Vienna, the Russian Empire, and the Greek Revolution: Rethinking Legitimacy', 39(1) *Journal of Modern Greek Studies* (2021) 27.

<sup>71</sup> Though obscure, Russian Pan-Slavism emerged as early as the 1820s, see Konstantin Aleksandrovich Kasatkin, "'You Do Not Hear the Cry of the People to Whom You Owe So Much [...]': The Image of the Bulgarians in Russian Pan-Slavism of the 19th Century", 29(3) *ЮГОЗАПАДЕН УНИВЕРСИТЕТ »НЕОФИТ РИЛСКИ«* (2020) 205.

### *III. Pan-Slavism and How it Became Russian*

Against the early nineteenth-century backdrop of great power geopolitics and the rise of international legal positivism,<sup>72</sup> influential figures were devising newly cohesive formulations of collective Slavic identity. Rather than Russia, the great site of this was the German-speaking world and the various lands subject to its imperial rule. No figure was as important as the Prussian philosopher Johann Gottfried von Herder, perhaps the most influential proponent of the idea that all discrete national groups were organically defined by their immutably unique character.<sup>73</sup> Very much shaped by the context of eastward Germanic colonisation, having romanticised the Slavs as a courageous people whose purity and lack of organisation left them vulnerable, Herder viewed German expansion into their lands as a necessary provision of progress and protection.<sup>74</sup> Yet despite his colonial applications, Herder's depiction was nevertheless embraced by Czech and Slovak activists in the Habsburg Empire who are widely recognised as the first Pan-Slavists.<sup>75</sup> For these activist theorists, including Josef Dobrovský, Pavel Šafárik, and Ján Kollár, Herder's claims provided a technique for advocating before the Habsburg Emperor that more must be done to uphold the Slavs' linguistic and cultural autonomy for their peaceful character renders them susceptible to extinction.<sup>76</sup> Moreover, in this same timeframe, the issue of Slavdom had only intensified as the partitions of the Polish-Lithuanian Commonwealth vastly increased the Habsburg Empire's Slavic composition through the addition of so many Polish and Ukrainian subjects.<sup>77</sup>

As these discourses on Slavic vulnerability proliferated, there were a number of open questions as to what this could mean for Russia, a Slavic great power in the active process of refining a legitimising ideology premised on paternalist protection. To link this state of affairs to Pan-Slavism necessarily raises the question of how Russians came to see themselves as 'Slavs' – especially since Herder and his disciples had minimal influence amongst the Russian elites.<sup>78</sup> Though Russia ultimately commanded much force in Pan-Slavic theory,<sup>79</sup> in the first half of the nineteenth century,

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<sup>72</sup> Ian Hunter, 'About the Dialectical Historiography of International Law', 1(1) *Global Intellectual History* (2016) 1, at 7-12.

<sup>73</sup> Johann Gottfried von Herder, *Outlines of a Philosophy of the History of Man*, translated by T. O. Churchill (1966, originally published 1784).

<sup>74</sup> *Ibid.*, at 482-483.

<sup>75</sup> Hans Kohn, *Pan-Slavism: Its History and Ideology* (1960, originally published 1953).

<sup>76</sup> Dušan Ljuboja, 'Herder's Ideas and the Pan-Slavism: A Conceptual-Historical Approach', 2(2) *Pro & Contra* (2018) 67, at 75-78; John Connelly, *From Peoples into Nations: A History of Eastern Europe* (2020), at 80-107.

<sup>77</sup> Larry Wolff, *The Idea of Galicia: History and Fantasy in Habsburg Political Culture* (2012), at 17-19.

<sup>78</sup> Wolfgang Gesemann, 'Herder's Russia', 26(3) *Journal of the History of Ideas* (1965) 224, at 224. This is a rather ironic outcome given how Herder's great context of influence was in the then Russian-controlled city of Riga where he was involved in the process of emancipating enserfed Baltic-speaking peasants from the rule of German lords, see Eva Piirimäe, *Herder and Enlightenment Politics* (2023).

<sup>79</sup> See e.g., Ján Kollár, *Reciprocity Between the Various Tribes and Dialects of the Slavic Nation*, translated by Alexander Maxwell (2008).

Slavic nationalism was largely bypassed in Russia from two directions as prevailing intellectual influences were either rooted in Western Enlightenment liberalism or Orthodox/dynastic traditionalism.<sup>80</sup> However, one source of influence in building Slavic Russia came from Right Bank Ukrainian intellectuals who, roughly contemporaneous with the Habsburg Empire's Pan-Slavists, produced elaborate narratives of Ukrainians as 'Little Russian' subjects of the 'Great Russians' in a manner that affirmed a Slav-centric interpretation of history and society.<sup>81</sup> Historically opposed to the elites of the Polish-Lithuanian Commonwealth, the Tsarist regime came under the influence of these Ukrainian intellectuals who it viewed valuable allies in their campaign to suppress Polish uprisings in the 1830s by those seeking to restore the partitioned Commonwealth in a liberal constitutionalist fashion.<sup>82</sup> Contextually, this development in Russia was inseparable from the broader trend of post-Revolutionary 'Caesarism' whereby forcible State suppression of popular movements increasingly asserted rival concepts of action on behalf of 'the people.'<sup>83</sup>

One event that integrated these forces of imperialism, Pan-Slavism, and the paternalist suppression of liberal revolt, was Tsar Nicholas's intervention upon Austrian invitation to quell the Hungarian uprising in the context of the 'revolutions of 1848.'<sup>84</sup> Rooted in the cessation of the Austrian Habsburgs' communication with the Kingdom of Hungary in Latin due to an embrace of German as a hallmark of vernacular modernisation, the Hungarians, in an anxious effort to preserve linguistic identity, undertook an aggressive program of Magyarisation resisted by the Kingdom's non-Magyar subjects, Slavs (Croats, Slovenes, Slovaks) or otherwise (Romanians).<sup>85</sup> While resistance to these efforts bolstered Pan-Slavism, in a compounding fashion, fear of Pan-Slavism affirmed a Hungarian liberal nationalist self-conception that sought to judiciously uphold the historic rights of the Kingdom's autonomy in a manner that proclaimed conformity with Enlightenment ideals.<sup>86</sup> The result was a well-organised 'lawful revolution' led by the charismatic Lajos (Louis) Kossuth that successfully outmatched Austrian suppression efforts.<sup>87</sup> In providing the

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<sup>80</sup> Janko Lavrin, 'The Slav Idea and Russia', 21(1) *Russian Review* (1962) 11, at 12.

<sup>81</sup> Faith Hillis, *Children of Rus': Right-Bank Ukraine and the Invention of a Russian Nation* (2013), at Chapter 1.

<sup>82</sup> *Ibid.* Such Commonwealth restoration efforts largely preceded Polish nationalism. See Timothy Snyder, *The Reconstruction of Nations: Poland, Ukraine, Lithuania, Belarus 1569-1999* (2003), at 30.

<sup>83</sup> Markus Prutsch, *Caesarism in the Post-Revolutionary Age: Crisis, Populace and Leadership (Europe's Legacy in the Modern World)* (2019). On Russian debate, see Olga Malinova, 'Creating Meanings and Traps: Competing Interpretations of the Idea of Nation in the Debates of Russian Slavophiles and Westernisers in the 1840s', 15(1) *European Review of History* (2008) 41.

<sup>84</sup> Eugene Horváth, 'Russia and the Hungarian Revolution (1848-9)', 12(36) *Slavonic and East European Review* (1934) 628.

<sup>85</sup> Connelly, *supra* note 76, at 109-110.

<sup>86</sup> Judit Pál, "'In the Grasp of the Pan-Slavic Octopus': Hungarian Nation Building in the Shadow of Pan-Slavism Until the 1848 Revolution', 28(1) *Nationalism and Ethnic Politics* (2022) 40.

<sup>87</sup> Istvan Deak, *Lawful Revolution: Louis Kossuth and the Hungarians, 1848-1849* (2001, originally published 1979).

military might that the Habsburgs could not, Russia could cast its efforts as both the counter-revolutionary guardian of post-Napoleonic order *and* the protector of Slavs whose autonomy claims had little place in Kossuth's vision for a liberal Hungary.

While 1848 set many stages, when it came to solidifying Russian Pan-Slavism, the great catalyst was a very different conflict implicating very different empires – the Crimean War (1853-1856). Triggered in great part by the Ottomans decision to replace Russia with France as the protector of their Christian subjects, Russia's subsequent unsuccessful campaign against the Ottomans, France, and Britain marked the first outbreak of war between the Concert's great powers.<sup>88</sup> The legal impact of this event left Russia in a highly ambiguous position. On one level, the war created a newfound discourse of 'peace' as something achievable through an increasingly positivistic international law that contradicted Russian traditions of viewing such matters in more substantive terms.<sup>89</sup> Relatedly, the 1856 Treaty of Paris ending the War granted formal, albeit conditional, European recognition to the Ottoman Empire.<sup>90</sup> While including the despised enemy offended many Russians, the process surrounding the Treaty brought newfound international attention to the question of Christian minorities within the Ottoman Empire, and this created much opportunity for informal Russian involvement.<sup>91</sup> Through mobilising Russian sentiments, this post-Crimean War moment entrenched a unifying project of Russian Pan-Slavism<sup>92</sup> – and all at a time when positivist international lawyers sought to distance themselves from the substance of nationalistic claims.<sup>93</sup>

#### ***IV. Nikolai Danilevskii's Critique of International Law***

Roughly fifteen years separated the post-Crimean War ascendancy of Russian Pan-Slavism and the publication of Nikolai Danilevskii's capstone manifesto of this ideology. Within this gap was an

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<sup>88</sup> For an influential account, see Orlando Figes, *The Crimean War: A History* (2011).

<sup>89</sup> Jorg Kustermans, 'Henry Maine and the Modern Invention of Peace', 20(1) *JHIL* (2018) 57; Paul Robinson and Mikhail Antonov, 'In the Name of State Sovereignty? The Justification of War in Russian History and the Present', in Lothar Brock and Hendrik Simon (eds.) *The Justification of War and International Order: From Past to Present* (2021) 395, at 399-401.

<sup>90</sup> Hugh McKinnon Wood, 'The Treaty of Paris and Turkey's Status in International Law', 37(2) *AJIL* (1943) 262.

<sup>91</sup> Denis Vovchenko, 'Caring for the Sick Man? Russian and Greek Reactions to the Ottoman Reforms (1856-1908)', 58(1) *Middle Eastern Studies* (2022) 1, at 4-5.

<sup>92</sup> Denis Vovchenko, 'Gendering Irredentism? Self and Other in Russian Pan-Orthodoxy and Pan-Slavism (1856-85)', 34(2) *Ethnic and Racial Studies* (2011) 248; Denis Vovchenko, 'Modernizing Orthodoxy: Russia and the Christian East (1856-1914)', 73(2) *Journal of the History of Ideas* (2012) 295; Aslı Yiğit Gülseven, 'Rethinking Russian pan-Slavism in the Ottoman Balkans: N.P. Ignatiev and the Slavic Benevolent Committee (1856-77)', 53(3) *Middle Eastern Studies* (2017) 332.

<sup>93</sup> The few Westerners who viewed international law in substantive terms were generally sympathetic to Russia's Ottoman intentions. See e.g., James Lorimer, 'Of the Denationalisation of Constantinople and Its Devotion to International Purposes', in James Lorimer (eds.), *Studies National and International: Being Occasional Lectures Delivered in the University of Edinburgh, 1864-1889 [1890]* (2009) 121.

era of ‘reckoning with rebellion’ whereby the justified suppression of so many different uprisings throughout the world effectively crystalised the nineteenth-century precept of sovereignty as absolute authority.<sup>94</sup> There was certainly no shortage of Russian involvement on this front. In 1861, with the outbreak of the American Civil War in the United States, Russia’s backing of the Union as against the secessionist Confederacy provided occasion to cast itself as a champion of order in the face of rebellion.<sup>95</sup> In 1863, a new Polish uprising, and its harsh quelling by Russia, ended efforts to restore the partitioned Polish-Lithuanian Commonwealth and instead led to the triumph of a Polish nationalism that, in complicating Pan-Slavism, condemned Russian ‘barbarism’ in a manner very much aligned with proliferating tropes surrounding the ‘Standard of Civilisation.’<sup>96</sup> Russia ideologically adapted itself to this new Polish nationalist enemy and began undertaking extensive Russification efforts in the lands of the former Commonwealth.<sup>97</sup> Though small in scale (yet vast in consequence), in 1864, Prussian Minister President Otto von Bismarck seized the regions of Schleswig and Holstein from the Kingdom of Denmark in a manner that mobilised the contradictions of the nineteenth-century European order in its ‘Janus-faced’ appeal to the national rights of local German-speaking populations as well as the sanctity of (Danish-violated) post-Napoleonic treaties.<sup>98</sup> In doing so, he established a justification model that set the stage for the wars with Austria (1866) and France (1870) ultimately leading to the imperial unification of the German nation-State.<sup>99</sup>

It was Bismarck’s actions against Denmark that provided Danilevskii with an entry point into his critique of nineteenth-century Europe’s international law/politics that framed his view of Russo-European contention as a problem of civilisational incommensurability.<sup>100</sup> For Danilevskii, the tepid reaction amongst European powers to the Prussian attack on Denmark stood in remarkable contrast to the harsh condemnation – and recourse to force – by these same powers in response to the Russian

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<sup>94</sup> Aaron Sheehan-Dean, *Reckoning with Rebellion: War and Sovereignty in the Nineteenth Century* (2020).

<sup>95</sup> Qunicy Wright, ‘The American Civil War (1861-65)’, in Richard Falk (ed.), *The International Law of Civil War* (1971) 30, at 101.

<sup>96</sup> Marcin Wolniewicz, ‘“Russian Barbarism” in the Propaganda of the Polish January Uprising (1863-1864)’, 107 *Acta Poloniae Historica* (2013) 129.

<sup>97</sup> O. E. Maiorova, ‘War as Peace: The Trope of War in Russian Nationalist Discourse during the Polish Uprising of 1863’, 6(3) *Kritika* (2005) 501; Darius Staliūnas, ‘“The Pole” in the Policy of the Russian Government: Semantics and Praxis in the Mid-Nineteenth Century’, 5 *Lithuanian Historical Studies* (2000) 45; Darius Staliūnas, *Making Russians: Meaning and Practice of Russification in Lithuania and Belarus after 1863* (2007).

<sup>98</sup> Stacie Goddard, ‘When Right Makes Might: How Prussia Overturned the European Balance of Power’, 33(3) *International Security* (2009) 110, at 128.

<sup>99</sup> *Ibid.*, at 110.

<sup>100</sup> Importantly, many of the key figure in Russian international law and diplomacy in this timeframe were not Slavic, but rather Estonian and Baltic German. See Lauri Mälksoo, *Russian Approaches to International Law* (2015), at 27-29.



attack on the Ottoman Empire eleven years earlier that triggered the Crimean War.<sup>101</sup> In Danilevskii's reckoning, this divergence in response defied all logic and decency. After all, Prussia was one of Europe's core great powers that, with the backing of Austria, saw it fit to brutalise 'one of the smallest states of Europe [...] not known for being warlike, but highly enlightened, liberal, and humane.'<sup>102</sup> Russia, by contrast, 'out of its most sacred religious interests, attacked Turkey – a barbarian, conquering state, which [...] maintained its illegitimate and unjust dominion by force; a state at that time not included in the political system of Europe.'<sup>103</sup> How was he, or anyone else, to reconcile this divergence?

In recalling the Crimean War, Danilevskii describes the triggering offense as the Ottoman call for the key to the Bethlehem Shrine to be transferred from the Orthodox Christian community to the (French-backed) Roman Catholics.<sup>104</sup> Framing this as an unjustifiable insult to co-religionists that demanded a Russian response, Danilevskii contrasts the sacred duties entailed by this event to the web of positivistic treaty obligations that, in his interpretation, caused Europe's great powers to absurdly side with the Ottoman Empire.<sup>105</sup> While frustration with the incompatibility between substantive obligation and the deceptive gamesmanship enabled by substantively-empty positivism is palpable in Danilevskii's account, there was a deeper issue. For Danilevskii, the problem is not exclusively '[...] the Machiavellianism of the courts and governmental spheres of the European powers seizing a favourable opportunity to gain at Russia's expense [...]'<sup>106</sup> In a manner that recognised Russia's earlier success in Europe's dynastic diplomacy, he claimed the true problem was the public opinion of European States' domestic populations who, empowered by increasingly democratic institutions, had pressured their governments into adopting anti-Russian policies in accordance with their anti-Russian deepest desires.<sup>107</sup> His critique of positivism is thus intimately linked to the rise of the modern State (positive international law's sole subject) as an entity premised on the popular will of its citizens who, in his paranoid reading, could now use their States to realise their inherent animosity against Russia.

From here, Danilevskii critiques the stated premises of this animosity in a section aptly entitled 'What does Europe have Against Russia?'<sup>108</sup> Here he explores two broad characterisations – Russia as conqueror, and Russia as suppressor of popular sovereignty. Regarding the first perception, as a

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<sup>101</sup> Danilevskii, *Russia and Europe*, *supra* note 14, at 1.

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid.*, at 7-8.

<sup>105</sup> *Ibid.*, at 10-11.

<sup>106</sup> *Ibid.*, at 14.

<sup>107</sup> *Ibid.*

<sup>108</sup> *Ibid.*, at 16.

definitional matter, for Danilevskii: '[C]onquest is political murder, or at least political mutilation.'<sup>109</sup> In assessing Russia's liability, especially as it compares to accusatory Europeans, Danilevskii claims that Russia is not a murderer of unique political destinies but their enabler. He proclaims this in relation to Finland by contrasting Russian rule to that of the Swedes.<sup>110</sup> Similarly, he asserts that allowing the historically German-dominated Baltic regions to partake in German unification would unduly harm the Baltic peoples Russia traditionally defended from centuries of Germanic imposition.<sup>111</sup> On the matter of the Polish-Lithuanian Commonwealth, highly resonant with Right-Bank Ukrainian narratives on 'Great' and 'Little' Russians, he names Prussia and Austria as the true wrongdoers for Russia had simply reabsorbed the Commonwealth's 'White Russian' and 'Little Russian' [i.e. Belarusian and Ukrainian] subjects. On this basis 'the part that Russia played [...] was completely lawful and just, the fulfilment of a sacred duty before its own descendants [...].'<sup>112</sup> In connecting anti-Russian sentiment with Pan-Slavism's necessity he further states that '[i]n Europe's eyes, the whole crime of the partition of Poland was that Russia strengthened itself by reclaiming its property. If not for that sad fact, then the Germanization of the Slavic nationality [...] would not arouse such crying and tears.'<sup>113</sup>

Yet despite proclaiming difference from Europe, when it came to the designation of which peoples were 'political', and thus be wrongfully subject to 'political murder/mutilation' via conquest, Danilevskii's theory remarkably reproduced the Eurocentric tropes underpinning the 'Standard of Civilisation.' For Danilevskii, the designation of 'political':

[...] would be incorrectly and unreasonably applied to tribes not living an independent historical life, whether because they never had any internal resources, or because their circumstances were unfavourable, or that their capacity for historical development was destroyed at such an early period of their life [...] Such tribes as the Basques in Spain and France, Celts in the principality of Wales, and our numerous Finns, Tartars, Samoeds, Ostiaks, and other tribes are destined to blend gradually and imperceptibly with the historical nationality within which they are dispersed.<sup>114</sup>

He presents similar tropes in relation to the Caucasus. Here Danilevskii justifies Russian subjugation by stating '[t]hat the Caucus highlanders – by virtue of their fanatical religion, by their way of life, by their customs, and by the very country in which they settled – are natural robbers

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<sup>109</sup> *Ibid.*, at 19.

<sup>110</sup> *Ibid.*, at 20-21.

<sup>111</sup> *Ibid.*, at 21-22.

<sup>112</sup> *Ibid.*, at 26.

<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*, at 20.

and plunders' and obligating Russian tolerance of them would be a unique obligation no other nation would be expected to tolerate.<sup>115</sup>

Danilevskii furthers his critique of European rhetoric as it concerns Russia as the enemy of popular movements. In addition to invoking the long tradition of Russian liberalism, particularly under Catherine the Great, Danilevskii noted that Tsar Alexander I, the proclaimed visionary of the Holy Alliance concept '[...] was the enemy of charters forcefully imposed by revolt or revolution, but on the other hand was a friend of [voluntarily] granted constitutions.'<sup>116</sup> In Danilevskii's account, the Holy Alliance's excesses were attributable to Metternich's corruption of Alexander's vision.<sup>117</sup> This theme of opposing (the wrong kind of) popular sovereignty, frustration with Russia being blamed for Austrian conduct, and promotion of Pan-Slavism was synthesised, through Danilevskii's observation that Russia saved Austria from revolution in 1848 and, in doing so, could not ignore the suffering of fellow Slavs – hardly the actions of an unjustifiable suppressor of peoples' political aspirations.<sup>118</sup> Thus, in direct contravention of its reactionary image, for Danilevskii, Russia nurtured the growth of popular political institutions even when it brought risk to Russia.<sup>119</sup> This illustration did much to exemplify Danilevskii's larger point that Russia had sacrificed much to save Europeans who would forever misrecognise the true nature of this salvation by maligning their Russian saviour.<sup>120</sup> On this view, the international legality that emerged in the nineteenth century could not be compatible with the 'Slavic soul' that Danilevskii set out to delineate in the roughly 350 remaining pages of *Russia and Europe*.

Danilevskii's fears of an international legal disruption of what he envisioned as the destiny of 'Slavdom' were confirmed through the Great Eastern Crisis of 1875-1878 and its ultimate settlement through the Congress of Berlin.<sup>121</sup> In Danilevskii's narration, Russia's decisive victory over the Ottomans meant liberation of the Empire's Slavic subjects in a manner inseparable from Russia's patronage. In his understanding, 'both the interests of justice and the interests of Russia demand that the Bulgars, Serbs, and Montenegrins be entirely independent and, in time [...] be named the rightful heirs to those lands on which they were enslaved by the invasion of the wild Turkish hordes;

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<sup>115</sup> *Ibid.*, at 30. He contrasts Russian actions here to lack of any analogous condemnation of England's suppression of the comparatively more 'civilised' Scottish Highlanders.

<sup>116</sup> *Ibid.*, at 36.

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*, at 34-35 and 38-39.

<sup>119</sup> Here he invokes Russian support for the Northern states in the American Civil War. *Ibid.*, at 39.

<sup>120</sup> *Ibid.*, at 33-34 and 40-41.

<sup>121</sup> On various associated issues, see M. Hakan Yavuz and Peter Sluglett (eds.), *War and Diplomacy: The Russo-Turkish War of 1877-1878 and the Treaty of Berlin* (2011).

and that all of them voluntarily submit to the natural influence of Russia alone.’<sup>122</sup> However, with Russia’s terms for the resulting peace via the Treaty of San Stefano being rejected by Europe’s great powers (especially regarding the boundaries of new States in the Balkans<sup>123</sup>), the Congress of Berlin was alternatively convened with a view towards a more general application of positive international law.<sup>124</sup> For Danilevskii, the result of this was an intolerable situation whereby ‘[...] all the obstacles [...] destroyed by the bayonets of Russian soldiers [...] [were] raised once again [...] by the pens of Russian diplomats.’<sup>125</sup>

Through this condemnation, Danilevskii devised a highly idiosyncratic legal interpretation as it concerned Britain, a particular target of his ire regarding the internationalisation of issues he believed belonged to Slavdom alone.<sup>126</sup> Here he asserted that Britain and Russia had a completely inverted approach when it came to domestic and international legal obligations. The British, he claimed, took domestic legal interpretation to its absurd logical conclusions (such as suggesting a man marry a third wife to escape liability for the crime of having two wives), but would think nothing of violating international law should it suit their purposes.<sup>127</sup> Russia, on the other hand, would not indulge such juridical absurdities domestically but viewed its international obligations as sacrosanct.<sup>128</sup> On this basis, given that Russia was ‘so accustomed to maintaining strict legality in international affairs’ the difference between the armistice via the Treaty of San Stefano and the peace treaty via the Congress of Berlin was too much to bear.<sup>129</sup> In Danilevskii’s mind, Pan-Slavism could transcend the circumstances made possible by these twisted legal machinations for, under a Pan-Slavic order, regional-cum-cultural truths could predominate – however much they offended the outsiders incapable of understanding them. It is thus highly telling that Danilevskii’s final analysis of how international law would create new channels of undue interference in Slavic affairs was fundamentally ordered through the lens of ethnic difference. In stating that Europe could not deprive the new Slavic States of their political independence, it ‘needs to deprive them at least of their economic and commercial independence [...] it needs their exploitation by Jews, under the

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<sup>122</sup> Nikolai Iakovlevich Danilevskii, *Woe to the Victors! The Russo-Turkish War, the Congress of Berlin, and the Future of Slavdom*, translated by Stephen Woodburn (2015), at 124.

<sup>123</sup> Henryk Batowski, ‘A Centenary: Two Partitions of European Turkey: San Stefano and Berlin—A Comparison’, 19(2) *Balkan Studies* (1978) 227.

<sup>124</sup> Occasion to apply public international law generally deeply concerned the one non-Slavic State formally recognised in this context – Romania, see Cristinel Ioan Murzea, ‘European Diplomacy and the Principles of Public International Law applied during the Congress of Berlin 1878’, 14(63) *Bulletin of the Transilvania University of Braşov* (2021) 53, at 54-55.

<sup>125</sup> Danilevskii, *Woe to the Victors!*, *supra* note 122, at 119.

<sup>126</sup> *Ibid.*, at 126-128.

<sup>127</sup> *Ibid.*, at 131.

<sup>128</sup> *Ibid.*

<sup>129</sup> *Ibid.*

hypocritical pretext of protecting religious freedom.’<sup>130</sup> Viewed in retrospect, the consequences of such ethnicisations of politics are all too familiar.<sup>131</sup>

### ***Conclusion***

The purpose of this meta-contextualised reading of Danilevskii’s Pan-Slavism is to show that in a world of competing nations and competing empires, definitions of ‘nationalism’ and ‘imperialism’ are bound to fluidly bleed into one-another in ways that defy the most thorough of prediction models. This is a profound challenge for anyone seeking to proclaim their embodied ideal of identity as ‘timeless’ – and an explanation for why the frustration of such proclaimers when faced with contradictory realities can justify violence in the name of rectification. Such a dynamic is all too visible in Russia’s material, ideological, and spiritual war on Ukraine. In viscerally denying that the particular religious, ethnic, linguistic, and historical configuration of modern Ukraine can exist as a viably coherent entity – let alone one justifiably independent of Russia – the dominant ideology in Putin’s Russia is self-blinded to the fundamentally fluid process by which collective political identities come to exist.<sup>132</sup> This speaks to a profound meta-issue that presently defines Russia. Seeking to fix an unquestionable identity in spite of the many tensions and liminalities that have shaped ‘Russia’ as a historical entity – East versus West, Europe versus Non-Europe, nation versus empire – is the effective denial of the possibility of any alternative Russian political subject.<sup>133</sup> Danilevskii’s Pan-Slavism, and its collapsing of imperial-national distinction, was a grand attempt at such a fixation and it is no coincidence that he lodged his critique at the very moment positivist international lawyers were striving to formalise and codify their field.

Interestingly, despite their identity defining differences, the projects of nineteenth-century international legal positivism and Danilevskii’s Pan-Slavism met their demises through the same factual event – the cataclysmic rupture of European Concert diplomacy retrospectively deemed the First World War. Amongst the positivists, the War exposed the limits of a legal order premised on the presumptively unbound sovereignty of its constituent entities.<sup>134</sup> Amongst the Pan-Slavists, the War revealed that the Russian Empire was a fundamentally multi-ethnic entity whose ability to effectively engage in industrialised total war was, amongst other reasons, constrained by

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<sup>130</sup> *Ibid.*, at 177; see also N. M. Gelber, ‘The Intervention of German Jews at the Berlin Congress 1878’, 51(1) *Leo Baeck Institute Year Book* (1960) 221.

<sup>131</sup> See A. Dirk Moses, *The Problems of Genocide: Permanent Security and the Language of Transgression* (2021).

<sup>132</sup> Jade McGlynn, *Russia’s War* (2023), at 144.

<sup>133</sup> Morozov, *supra* note 28, at 147-154.

<sup>134</sup> Isabel Hull, *A Scrap of Paper: Breaking and Making International Law during the Great War* (2014).

transnational efforts to champion the cause of a single ethnicity – even the dominant one.<sup>135</sup> This of course, paved the way for the Russian Revolution.<sup>136</sup> For those concerned with international legal order, the cataclysm gave rise to new ideas of institutionalism (and new formulations of positivism).<sup>137</sup> For those concerned with ethnicity *vis-a-vis* the historic Russian Empire, the task was to develop an alternative conception under the aegis of the new Soviet Union<sup>138</sup> – or to provide new conceptions that critiqued the Soviet project from abroad.<sup>139</sup>

This transformation of Russia wrought by the Bolsheviks can in no way be separated from the transformation of international law that occurred against the meta-backdrop of this same ‘Soviet Century.’<sup>140</sup> Beginning after the First World War, and perfected after the Second World War, two grand developments occurred within international law whereby self-determination (on a territorial as opposed to ethnic basis) was recognised as the grounding of sovereign legitimacy and the use or threat of force was banned as a acceptable medium of international relations.<sup>141</sup> At the intersection of this pro-self-determination/anti-aggression post-1945 international legal order the longstanding practice of territorial conquest and its ultimate elevation of ‘might makes right’ could no longer be sustained.<sup>142</sup> While the Soviets were influentially vocal (but highly flawed) proponents of this postwar order,<sup>143</sup> everything changed after the Soviet collapse when a new Western-dominated ‘post-Cold War era’ ushered in a myriad of extended use of force justifications that deeply strained existing international legal strictures.<sup>144</sup> Witnessing this from inside a Russia whose chimeric identity consolidated under Putin’s leadership, post-Soviet nationalists-cum-imperialists saw no reason why they could not create justifications attuned to their particular fixations and self-

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<sup>135</sup> Joshua Sanborn, ‘The Russian Empire’, in Robert Gerwarth and Erez Manela (eds.), *Empires at War, 1911-1923* (2014) 91, at 94-95.

<sup>136</sup> *Ibid.*, at 100-104.

<sup>137</sup> Natasha Wheatley, *The Life and Death of States: Central Europe and the Transformation of Modern Sovereignty* (2023), at 181-254.

<sup>138</sup> Francine Hirsch, *Empire of Nations: Ethnographic Knowledge and the Making of the Soviet Union* (2005).

<sup>139</sup> Sergey Glebov, *From Empire to Eurasia: Politics, Scholarship, and Ideology in Russian Eurasianism, 1920s-1930s* (2017).

<sup>140</sup> Moshe Lewin, *The Soviet Century* (2016).

<sup>141</sup> See Brad R. Roth, *Governmental Illegitimacy in International Law* (1999).

<sup>142</sup> Sharon Korman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (1996), at 302.

<sup>143</sup> On Soviet influence, see John Quigley, *Soviet Legal Innovation and the Law of the Western World* (2012), at 133-171. On Soviet contradictions, see Robert Jones, *The Soviet Concept of ‘Limited Sovereignty’ from Lenin to Gorbachev: The Brezhnev Doctrine* (1990). Importantly, condemnation of these interventions came not only from the West, but also the non-European world – especially China, see Kenneth Rea, ‘Peking and the Brezhnev Doctrine’, 3(1) *Asian Affairs* (1975) 22.

<sup>144</sup> Anne Orford, ‘Locating the International: Military and Monetary Interventions after the Cold War’, 38(2) *Harvard International Law Journal* (1997) 443; Gerry Simpson, ‘Two Liberalisms’, 12(3) *European Journal of International Law* (2001) 537.

conceptions.<sup>145</sup> As the war in Ukraine shows, the result is nothing short of a Russian conflation of the seemingly antithetical right of self-determination, on the one hand, and ‘right of conquest’, on the other. Mainstream international lawyers are ill-equipped to conceptualise this within the epistemic parameters of their field.

Given this reality, histories of Pan-Slavism in Late Imperial Russia are of the utmost relevance to international lawyers who might very well need to be increasingly comparative in their approaches.<sup>146</sup> While much can be said about how varied trajectories and flashpoints of contention inform our current global moment, this full analysis will have to wait. Yet for anyone seeking to pursue this pathway, the above study on the world-historic relationship between international legal positivism and the Pan-Slavic rejection of it supplies a guiding proposition. Far from being a neutral arbiter standing above the ever-shifting dynamics of contested collective political identity, ‘international law’, however one chooses to define it, is fundamentally enmeshed within these processes. Changes within political forms and expression cannot but alter the structure and content of international law in the process. This is true whether international law is animated as an object of affirmation or as an object of critique.

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<sup>145</sup> See Johannes Socher, *Russia and the Right to Self-Determination in the Post-Soviet Space* (2021); Lauri Mälksoo, ‘Post-Soviet Eurasia, *Uti Possidetis* and the Clash Between Universal and Russian-Led Regional Understandings of International Law’, 53(3) *New York University Journal of International Law and Politics* (2021) 787; Artur Simonyan, ‘Regional International Law Revisited: A Eurasian International Law’, 31(2) *Michigan State International Law Review* (2023) 283.

<sup>146</sup> See Paul Stephen, ‘Wars of Conquest in the Twenty-First Century and the Lessons of History-Crimea, Panama, and John Bassett Moore’, 62(1) *Virginia Journal of International Law* (2021) 63, at 66-71.