

EUROPE 1815-1914: CREATING COMMUNITY AND ORDERING THE WORLD

Martti Koskenniemi and Bo Stråth (eds)



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Cover illustration top:

Vienna Congress 1814-1815. Meeting of the representatives of the great powers. Metternich is standing in the centre of the left part of the engraving, Castlereagh sitting to the right of him. Engraving by Jean Godefroy 1819 after painting by Jean Baptiste Isabey

Cover illustration bottom:

The European partition of Africa. The Berlin conference on Congo 1884-1885. On the wall in the background a map of Africa. Bismarck in the centre looking on the drawer. Wood-engraving in *Ueber Land und Meer. Allgemeine illustrierte Zeitung* No 7 1884: 1233.

**Creating Community and Ordering the World:
The European Shadow of the Past and Future of the
Present.**

Report from the Research Project “Europe between Restoration and Revolution,
National Constitutions and International Law: an Alternative View on the Century
1815-1914” financed by the European Research Council (2009–2014)

**University of Helsinki
January 2014**

Edited by Martti Koskenniemi and Bo Stråth

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The project has, furthermore, operated with five working groups on: 1. Teleology and History: A Critical Assessment of an Enlightenment Thought, chaired by Dipesh Chakrabarty, Sanjay Subrahmanyam and Henning Trüper; 2. Paradoxes of Peace in Nineteenth-Century Europe, chaired by Thomas Hippler and Miloš Vec; 3. Constitutions and the Legitimization of Power, chaired by Kelly Grotke and Markus Prutsch; 4. Ordering the World in the Nineteenth Century: Beyond Realism and Idealism, chaired by Thomas Hopkins; and 5. Property and Poverty: Perspectives on the Nineteenth-Century Social Question, chaired by Thomas Hopkins. They all prepare presentations of the results in collected volumes which are summarized here.

The text was presented in an earlier version at a major conference organized at the University of Helsinki on 9–10 June 2013. It took place in the banquet hall of the Finnish Literature Society (opening) and in the banquet hall of the Alexander Institute with some fifty participants: the team members, the chairs of the five working groups of the project, some fifteen invited discussants, several of the members of the working group on teleology, and friends and interested parties from the University of Helsinki. It was the 99th meeting, both small and large (from seminars in the project premises in Metsätalo with one or a few invitees to workshops and larger conferences), since the beginning of the project on 1 September 2009, in addition to all the internal team seminars and meetings. We want to thank the invited participants to the discussion for their very valuable comments and suggestions: Risto Alapuro, Juhana Aunesluoma, Etienne Balibar, Lauren Benton, Günter Frankenberg, Elise Garritzen, Rolf Gustavsson, Peter Holquist, Christian Joerges, Jukka Kekkonen, Pauli Kettunen, Mark Mazower, Jan-Werner Müller, Anne Orford, Anthony Pagden, Kari Palonen, Markku Peltonen, Kari Saastamoinen, Henrik Stenius, Willibald Steinmetz, and Benno Teschke. We also want to thank all the contributors to the seminars, workshops and conferences and in the five working groups during the project work since 2009: too many to be mentioned individually. They have all been invaluable in helping us to formulate our questions and answers.

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Helsinki, September 2013
BS and MK

Creating Community, Ordering the World and Struggling for Securing Welfare, an Introduction.

Martti Koskenniemi and Bo Stråth

I

The research project ‘Between Restoration and Revolution, National Constitutions and Global Law: an Alternative View on the European Century 1815–1914’ (EReRe) was established at the University of Helsinki in 2009 with the goal of providing an alternative view on the so-called European century that began with a spectacular peace under the motto of ‘never again’ and ended with the First World War. From the outset, our assumption was that the century was traversed by themes and tensions that in one way or another continue to dominate ideas about European peace and progress today. These need to be highlighted so as to enable an adequate historical understanding of the difficulties of the present moment, including the nature of the alternatives faced by European decision-makers today. We also knew that our focus must reach beyond European institutions, in order to approach the themes and tensions that overarch the past two centuries in their global context.

The present situation is an outcome of developments at all of the three levels: national, European and global. They must all be captured in their inter-relatedness, and this must be done realistically. By realistic we mean a view of the past as open towards the future, fragile and contentious in its achievements, and contingent rather than deterministic in terms of outcome.

We have identified three themes that are cut across by tensions that are no less visible today than they were in the nineteenth century: these themes are those that concern the nature of a desirable ‘community’ in Europe, the character of the order that we can see in the world and that Europe should contribute to govern, and the ways in which European societies have sought to secure their welfare, including the question of what ‘welfare’ means. The tensions within each theme, and the attempts to overcome them, are addressed in the vocabularies of politics, law and economics. We do not see these three as in the common view, as parallel tracks, but in their entangled and inter-dynamic dimensions. Politics, law and economy each offer specialist platforms on which contending views about political community, world order and social welfare are put forward and contested. Each of the three vocabularies is profoundly influenced by the European experience in the eighteenth and nineteenth centuries. Indeed, what ‘politics’ means in practice within the national community and beyond, and how the public realm has constituted itself against the ostensibly non-political ‘private’ one reflects in the vicissitudes of the European experience within and beyond parliaments and constitutional conflicts. ‘Law’, it is well-known, experienced its most important transformations in Europe’s nineteenth century, if regarded from the perspective of ideas of the *Rechtstaat* of today. The story of the ‘two globalizations’ of European law in the nineteenth century – the expansion of the ‘classical’ legal formalism of a German pedigree all over the world, followed up by the ‘social laws’ of a French mode – has by now entered contemporary

political consciousness.¹ We can add to this the creation of ‘international law’ towards the end of the nineteenth century as something more than just a codification of European diplomatic mores (the classical model of the ‘Vienna system’), namely as a cosmopolitan, professional ethos focusing on multilateral conventions and international institutions as new forms of global government. This is where European law, too, receives its roots. And finally, the language of political economy turned into neoclassical economy, the lingua franca of Europe’s ruling classes for much of the late twentieth and early twenty-first century. It was in the nineteenth century that much of the ‘social question’ was turned into a problem of political management of economic performance, first as a national question, a question of balanced budgets, production and distribution on the domestic scale – but soon in a wholly global ‘system’ of hectic competition, ultimately detached from its national moorings and political management ambitions into the high heaven of altogether global financial mechanisms and systems of expertise.

II

Politics, law and economics – even as each was developed into a highly complex formal vocabulary and expert system within which many kinds of ideas could be pushed forward, supported and opposed, each also developed a structural bias of its own specific kind. It was never the case that the vocabularies offered only neutral or scientific outlooks on the world. On the contrary, each was always, and remains, a field of struggle between a leading position (a ‘mainstream’) and a counterpoint that seeks to contest it. In politics, the ruling position may have been held by a national or religiously inclined conservatism (‘Christian democracy’), a moderate liberalism or a more or less reformist branch of ‘social-democracy’ while each, when hegemonic, was always challenged by a most varied set of contestant movements from the right or the left. It is highly symbolic of the relative stability of these structures throughout the twentieth century that the changes have been described in terms of a vocabulary derived from the seating arrangement of the French Assemblée Nationale in 1789! And although parliaments and elections have not set the boundaries for European politics (for good and for ill), they still form the background against which political moves become visible, are understood and dealt with in popular imagination as well as scholarly commentary. But the question of parliamentarism versus extra-parliamentary politics has also surfaced now and then to test the limits of fixed understandings of ‘the political’. Even as hegemonic actors have tended to stress the centrality of democratic institutions as privileged loci of political contestation, undercurrents of more widely conceived activism have also surfaced frequently to challenge the complacency and stasis that has often infected official politics. Populism and ‘Caesarism’ remain live concerns of European politics.

As for law, constitutionalism and ‘rule of law’ have doubtlessly formed the centre of European legal imagination, heavily supporting a public-law centred understanding of what modern polity might mean. If the ‘nation’ emerged as the substance of the most important communal identity in Europe, then ‘sovereignty’ and ‘constitution’ have become its privileged forms. At the same time, however, the latter are anything but uncontested. Their lack of authenticity and tendency

¹ See Duncan Kennedy, ‘Three Globalizations of Law and Legal Thought’ in David Trubek & Alvaro Santos (eds), *The New Law and Economic Development*, (Cambridge UP, Cambridge, 2006)

for formalization has often seemed to undercut more spontaneous forms of communal identification and solidarity. Yet sovereignty has re-emerged, Hydra-like, from more than a century of lamentations about its harmful sociological and moral implications.² As one leading theme in recent debates about the development of the European Union, ‘constitutionalism’ has taken on a largely institutional, even bureaucratic tone, sharply contrasting with the mid-nineteenth century debates among liberal radicals. It is good to remember that the idea of a constitution ‘given’ (*octroyé*) by the ruler from above is also part of the European heritage and should complicate the way we see public law’s contribution to the framing of political communities. It takes more to form a community of European peoples than a formal legal instrument adopted in some distant location among representatives of governmental elites. Alongside public law and legislation, an enormous impact has also followed law in its less spectacular form, as ordering the private relations between family members, property-holders, and economic actors at home and abroad.

Often neglected as microscopic, the legal notion of ‘property’ has operated alongside its rather more spectacular big brother ‘sovereignty’ to organize much of the life of European communities. The quintessentially nineteenth-century notion of civil society may have been defined as that which is not covered by the political institutions of the public realm – but this certainly does not mean that the relations between civil society members would not have been thoroughly determined by law, from the more intimate aspects of family to the expansive ones of property and contract, the rule-systems responsible for the formation of the conditions of economic initiative, and the expansion of trade and finance. In law, a strongly hegemonic mainstream understanding of the relations between the private and the public, and of the main constituents of each, was formed in the nineteenth and continued into the twentieth century with contesting views sometimes emerging (as in the last decades of the nineteenth century). Firstly, this was in types of ‘social law’, challenging traditional ideas about contract and social responsibility, but also as forms of ‘free law’ or legal realism, highlighting the politics of law-application rather than legislation, and ‘human rights’ seeking to set definite legal limits to what can be attained by ‘balancing’ and notions of ‘proportionality’ in an increasingly informal set of legal arrangements geared to reflect the Weberian and Durkheimian complexity of a modern world of functional differentiation. Themes from the late nineteenth century, first taken up by the novel discipline of sociology at the time, dealing with the consequences of the perceived breakdown of traditional society, continue to date in terms of the puzzling complexity and pluralism of laws and legal orders in ostensibly still constitutionally governed national polities.

Sometime in the late eighteenth century, the power of natural law and natural rights as the overriding idiom of political and social thought began to lose its appeal: with Kantian critiques of all the preceding philosophical traditions, with the French revolution’s excesses turning against revolutionary abstractions, and with Adam Smith’s failure to turn his lectures of jurisprudence in Glasgow into anything like an empirical theory of law, the stage was set for the rise of national economy as the successor discipline to early modern forms of governmental reflection.

² See e.g. Hent Kalmo & Quentin Skinner, *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept*. (Cambridge UP, Cambridge, 2010); Jens Bartelson, *The Critique of the State*. (Cambridge UP, Cambridge, 2001).

Before, as well as after, the economy was conceptualized as national, the economists operated with universal categories. The spread of industrial capitalism from its British origin promoted new forms of economic thinking, and the beginning of a slow transformation of the enlightenment moral philosophers into a cadre of specialists, debating and disputing questions about glut, overproduction and underconsumption, property and poverty. They certainly observed the emerging new forms of social problems in the wake of industrial capitalism and contract-based wage labour, but they were optimistic that economic growth would solve the social problems in the long run. The economists departed from assumptions about general and universal relationships between the components ('supply', 'demand', 'growth', 'surplus') of an increasingly ingenious conceptual machinery. Their model world became more complex than that of Adam Smith. Issues of property and poverty in uneasy relationships on new kinds of labour markets transformed the economic reflection.

The social question was put on the agenda in the 1830s. It continued to torment Europe and imposed new ways of thinking about the economic. Doubts about general growth and universal economic relationships provoked growing attention to the role of the historically given as the decisive factor in explaining economic performance or lack of performance, progressiveness or backwardness. Savigny's historical school in jurisprudence spread to the formulation of economic theories. Culture and customs, experiences and exclusiveness determined economic development trajectories, which were ever more understood in national terms. Universalism and natural law theories were historicized, nationalized and contextualized. Historicism was an answer to what was identified as the social question. When the social problems accelerated in the 1870s, to the accompaniment of the fighting spirit of the new class language, a new generation of economists and sociologists gave the historical school a new emphasis with their focus on the state and its institutions as corrective to the problems triggered by economic performances and behaviours. This trend was particularly strong in Germany. One of the most powerful consequences of the identification of the social question was the decoupling of the economic and the social into two separate spheres, which were to be represented by two academic disciplines with two distinguished vocabularies. The separation of the economic and the social can be seen as part of a three-way conceptual tussle with the political, as Thomas Hopkins suggests in his contribution to this volume on the social question.

The generalizing economists continued their reflection and were not overly intimidated by the growing attraction of the historical school – the main trend and counter positions competed. The time of the universalists came back again with what later would be called the marginal utility revolution. The marginal school, later called the neoclassical, competed with the historical school about the best interpretation and explanation of economic processes. The neoclassical camp focused on the demand side in their analyses of the price formation. They translated psychological models of utility-maximizing consumer behaviour to mathematical formulae with universal pretensions. The imagery of rationally and intentionally utility-maximizing individuals as the core of economic performance – 'economic man' as a 'new man' fantasy, acting and choosing between clear options on transparent markets – got clearer contours. When the neoclassical economists connected their theoretical thought to the nation-building processes, and anchored their models in national

frameworks as national economy, *Volkswirtschaft*, they merged universalism, individualism and nationalism into a powerful economic language which would dominate the twentieth century. The neoclassical tradition proposed techniques for the political management of the economies as well as propagated ideas that the market economy was self-propelling, meaning that the interpretative scope was considerable under the overarching national universalism and individualism.

The entangled interaction between politics, law and economics was, on the one hand, a struggle of the faculties that still persists in European universities, but may already have been decisively won by 'economics' outside Europe. Marx and Marxian economic thought (which came perilously close to meaning 'Marxian thought' tout court) are quintessential products of the nineteenth century scientism, teleological thinking, and concern over the social question. Marx's thought might be seen as an attempt to bridge the gap between the historical and the classical/neoclassical schools in its linkage of a theory with universal pretensions to historical developments and social observations. Marx himself argued that 1848 was pregnant with 1917, but few could have predicted 1989 at that point, or the struggles and sufferings that took a large part of Europe from the former point of time to the latter. Economics has much to account for, though perhaps the fact that its rivals (theology, philosophy, morals) simply collapsed was less a result of its overwhelming persuasive power than the latter's sheer exhaustion for having carried so much of the burden of prior centuries' thinking.

The dynamic of each of the three fields of politics, law and economics is constituted of this dialectic: the dominant vocabulary seeks to maintain and strengthen its hegemony and one or several contestant views challenging it and the hierarchies it is accompanied by. This is not of course only a matter of some nameless logic of ideas or ideational structures but of clashing interests and preferences, above all a contest about the distribution of spiritual and material values among different social groups. That is why the disciplinary contestations matter. Whether we are governed by politics, law or economy is about whether the prince's ear should be leant to politicians, jurists or economists. That choice has always been loaded with further preferences and biases, and it might be possible to trace the intellectual history of European government by charting the ups and downs of each of these three vocabularies as they have sought an audience with powerful men and women. But yet each has also always been internally divided, as pointed out above: mainstream politics, law and economics have always been confronted by their counterpoint, with the internal clashes (like civil wars generally) having been no less bloody than the external ones. What we can learn from the nineteenth century is indeed the grammar of a particular kind of government that is about the organization of the relations between politics, law and economy in particular ways, and coping with the (external and internal) challenges to such organizations. The game continues.

Finally, it needs to be highlighted that politics, law and economy each have a national as well as an inter- or transnational and, ultimately, global dimension. Even as our focus is on Europe, and as much of the formal development of the political, legal and economic thought that rules today's decision making globally is of European origin, it has long since left Europe, and novel entanglements and inter-dynamics have been developed. To understand these, non-teleological

histories are needed – and this is what we have tried to attain. No solution has been the necessary result of impersonal forces; everything has depended, and continues to depend, on human choice: how is a dominant position formed, and then challenged by its counterpoint? And how are relations between these sometimes turned upside down? These are matters of strategic vision as much as of modern forms of professional engagement and expertise. To choose wisely today, a realistic history is needed that rejects any grand teleological scheme, so as to focus precisely on contexts and choices. There is no grand narrative about modernity, progress or liberalism (to name some popular contestants) embedded in the nineteenth century. If we have had this time as not beginning with the revolution in 1789 this is because we have wanted to avoid accepting perhaps the most persistent foundation myth with which European institutions have preferred to decorate themselves. Concentrating on the restoration and the search for European stability in 1815 does not mean a focus on the spectacular exception, but on what appears as normal: the imposition of order from above. But from the choices of the men of Vienna, designed to attain stability, grew fragility. So the narrative of the nineteenth century is neither about the victory of the revolutionary spirit nor of conservative reaction but of both: ambitious men and women, hoping to attain positions of rule, have had to choose either one or the other of these positions, and then create their vocabularies of rulership within the necessary limited avenues opened by that initial choice. The writing of this book has been about those choices.

To argue that the nineteenth century was more complex and contradictory than the conventional liberal-Marxist compound, fraught with teleological assumptions, does not exclude that the century was full of beliefs in progressive goal-bound developments. Images of hope and expectations of economic growth and civilizing progress oscillated with fears of the new and apprehensions about the breakdown of tradition. Within the topos of “modernity”, innumerable goals competed and clashed with one another. Therefore, teleologies and grand narratives must be destabilized, historicised, and contextualised. Instead of developing a linear evolution and progress from the monarchical constitutionalism of the post-revolutionary period towards the breakthrough of democratic parliamentarism after World War I – a far too simplistic view – we want to highlight the openness towards the future of the past through a focus on the contested movements between restoration, revolution and reform, movements in more than one direction. We want to shed light on the twisted histories of authoritarianism and democratisation that escape any narrative of linear progress.

In other words, a century that was perceived by the majority of its intellectual elite in teleological terms stands in need of being rewritten through destabilizing and historicising narratives. Kant, Hegel, Marx, liberals and socialists, even conservatives, wanted to steer it, to direct its course in one way or another. In retrospect, the conventional narratives have not been wholly wrong. The nineteenth century *was* the era of transformation from absolute monarchy to constitutional republics, from divine to secular sovereignty, from natural to positive law (although this transition was much more complex than conventional wisdom tells, as Martti Koskenniemi’s contribution in this volume demonstrates), from precapitalism to industrial capitalism. The idea of modernity *did* frame the century. Our point is not to deny these achievements but to remind of the fact that the century was *also* the seedbed of new forms of totalitarianism and of two world wars. It

was the century that changed Europe from being the centre of the world to lying in the shadow of its two offspring, the USA and the Soviet Union. It was in this respect a century of decline. If we do not integrate this side of the story we miss the ambiguities, uncertainties and fragility in social norms and institutions that are the nineteenth century's principal legacy to us. What we feel so strongly today was also the conditions of life in the nineteenth century. The positive side of the development was never a one-way issue or self-propelling machinery driven by inherent forces in history, but rather the slow outcome of a process of trial and error full of alternatives produced by human agency.

Our method for discerning openness towards the future in the past is conceptual history. The focus is thereby on the language in law, politics, and economics, on the key concepts with which elites mobilise populations and protests confront the elites in the semantic field where top down meets bottom up. Everybody agrees on the centrality of concepts like reform, freedom, justice, fairness, people, nation, sovereignty – but deep disagreement emerges in the attempts to give political substance to such concepts. Without agreement there is no language community, without disagreement there is no politics. There is no predictability about the outcome of these discursive struggles, about the disagreements in the agreement. There is no predictability about who will come out with the strongest interpretative power. Our effort has been to show how “inside” concepts that were as familiar to the protagonists of the nineteenth century struggles as they are to us continue; some meanings emerge as hegemonic, others as contesting, with subtle local reversals and nuances.³

III

The research project *Between Restoration and Revolution*, as we have said above, has focused on three substantive areas of contestation: creating community, ordering the world and producing welfare. Within each, politics, law and economics have played their different roles. As regards to the first of the themes, creating community, we do not start from the standard focus on national

³ The conceptual history as method has most systematically been practiced in Otto Brunner, Werner Conze and Reinhart Koselleck (eds): *Geschichtliche Grundbegriffe. Historisches Lexikon zur politisch-sozialen Sprache in Deutschland*. Klett-Cotta, Stuttgart. The journal *Contributions to the History of Concepts* published by Berghahn Books (New York and Oxford, 1979–1997) provides a forum for the methodological debate. It is clear that conceptual history is *one* methodological approach to discern openness, although in our opinion the most efficient. There are significant voices within the liberal and neo-Marxist historiography that have long since rejected statism, determinism and teleology and do not reify categories like capitalism and working class or impose a totalizing meta narrative on the past, but at the same time do not deny such terms but historicize them and present them as politically and legally constituted social relations, not as neo-classical ideal types of a political economy that follows its own economic laws in a rationally unfolding project. See, for instance, Robert Brenner, *The economics of global turbulence: the advanced capitalist economies from Long Boom to Long Downturn, 1945–2005*. (Verso, New York, 2006); Robert Brenner, *Property and progress: the historical origins and social foundations of self-sustaining growth*. (Verso, London, 2009); Ellen Wood, *Liberty & Property: A Social History of Western Political Thought from Renaissance to Enlightenment*. (Verso, 2012); or the influential demonstration of Europe's bellicose past in John Brewer, *The Sinews of Power: War, Money and the English State 1688–1783*. (Knopf and Unwin Hyman, New York and London, 1989). We are grateful for comments and suggestions by Benno Teschke on this point.

diversity defined in terms of identity. Nationalism is important, but not the final word. Strategic choices that have to do with creating community have promoted institutions of a new kind as much as identities. Institutions and identities have become intertwined in interrelationships, mutual reinforcement, or impairment. Our focus on the political choices in attempts to cope with social and economic problems is more relevant than the question of whether identity predates institutions or vice versa. In making these choices, politics, law and economy all play important roles. But – and this is crucial – these are not limited to single nations. On the contrary, the political ideas and the law that give expression to the ‘nation’ are profoundly and irreducibly international and global. So is the economy – despite the short-lived effort to think of it in the uniquely particularist context of Nationalökonomie. Hence, the need to examine the creation of community (in concrete terms often, though not only, the formation of ‘nations’) requires particular attention on two distinct vocabularies on the eve of the First World War: the language of geopolitics and the language of international law, and the relations between them.

For the past thirty years, national identities have been used as a blueprint for the imagination of today’s Europe. These identity stories often begin with a reference to 1789 and unfold in a narrative that suggests the slow capture of claims of identity within an overall liberal frame. We reject such a ‘Whig history’ and want to highlight, instead, the contingency of any chosen date. Why not instead begin in 1815, as we have done, so as to highlight restoration and the recurrent authoritarianism in European politics. But the significance of these dates or any other dates is dependent on where one looks: national experiences differ significantly.

Moreover, history is a continuum; materials from the eighteenth century must, out of necessity, be included (and are included) in our descriptions of the nineteenth century. In some areas the sense of continuity is greater than in others. In intellectual history, for example, it would be impossible to understand developments in politics and science without also seeing there a reaction to the earlier predominance of natural law. We wish to examine both liberalism and authoritarianism as well as the presence of an ambivalent traditionalism, even narcissism, as key parts of the Europe heritage. And we wish to consider the alternative temporalizations operative in the colonies and in Europe’s margins. Perspectives from Latin America, Russia and the Ottoman Empire provide distinct counterpoints for the traditional narrative. Europe is a fluid and contested concept full of meanings, imageries of economic, cultural, religious, political, legal and physical borders. The narrow European political geography must be seen in a wider spatial context that connects it with the world.

The project of ‘ordering the world’ was inextricable from the one of ‘creating community’ in the nineteenth century. Europe felt, and largely was, in control of the world and its varied self-images presupposed that things should stay that way. In his 1784 essay on ‘Universal history with a cosmopolitan purpose’ Kant said pretty much everything that needed to be said about the European self-image. For itself, Europe was the world and it would gradually ascend to perfection – as Kant predicted, ‘Europe will lead the way’. For the inhabitants of the nineteenth century, the century often seemed one of relative peacefulness, despite the failure of official efforts within the ‘Concert’ to become the directorate of the continent. Until the last third of the century, the European nations were too self-absorbed to pose serious challenges to each other. As for areas

outside Europe, control could be largely left to the commercial actors and the settlers, with only a light touch by the Metropolitan government – with a few important exceptions, however, such as the Russian–Ottoman clash in the Balkans and France in Algeria in 1830. In the fringes, the ‘Eastern Question’ did call for occasional military action and upheld continuing rivalry between the Russia and the Western powers. It was only in the last third of the century that loss of control began to seem evident; the Indian ‘mutiny’ (1857) heralded a new era in British imperial oppression, but by the end of the century all the colonial powers had been compelled either for internal or external reasons, especially through the failure of ‘cat’s paw’ strategies, to assert formal control. With larger interlocutors, such as China or the Ottoman Empire, Europe’s ordering efforts never had much of an effect. This did not diminish the number or intensity of violent conflicts, however, so by the First World War European populations had largely had enough of Europe’s ‘ordering’ pretensions.

The spread of industrialism and capitalism from Britain to the European and other continents brought, in the 1830s, the identification of what was labelled ‘the social question’. Experience taught that the increase of private property in a new kind of contract-based economy went in tandem with growing proletarianization and poverty. Property and poverty seemed to constitute each other.

The debate on the social issue raised questions about social integration and about welfare politics in order to mitigate the social problems and secure political stability. This debate contained questions about what kind of community should be created. The ever-louder class language from the 1870s challenged the idea of the nation as the basis of community and provoked questions about what kind of nation.

There was potential violence in the clash on the social question. Domestic welfare went hand in hand with warfare abroad, between nations within Europe and between European powers in the colonies (‘social imperialism’). A frequent teleological thought argues that welfare succeeded and put an end to warfare. Our interpretation is rather one in which welfare and violence have coexisted and interrelated ever since the nineteenth century. Bismarck was far from alone in this vein, but is rather a case in point. Welfare was about social integration as an instrument of national strength. Nineteenth-century nations and empires canalizing and exploiting nationalism dealt with international strength in a world that was ever more interpreted as competition and rivalry. International strength required internal strength: a strong population for a strong economy with a military subtext. State-organized welfare was an instrument in these processes. As the nation needed a wealthy and healthy population, so did the industrial enterprises need a healthy workforce, which triggered the development of company-specific employer welfare programmes. The next move in this scenario was made by the workers themselves, the objects of the concerns about social and national integration. As subjects they disconnected welfare from the connotation of national and military strength and argued that welfare was a value of its own, a prominent goal of social activities.

The three themes of creating a desirable community, producing an orderly international world and providing for the welfare of European populations are of course connected in innumerable ways, and we have wanted to stress those connections rather than try to map them in great detail. They are also connected today, as Europeans struggle to overcome or at least to learn to live with

the ‘crises’ that seem to have become part of Europe’s mundane everyday life. Can one still believe in the abilities of conventional politics, law and economy as instruments for carrying out these three tasks? No doubt answers to this question vary, and perhaps the time to give a verdict on such questions is not now, or not yet. But however one wants to examine them, one needs to take account of the deeply rooted nature of the vocabularies in the experiences received in and patterns and institutions created in the nineteenth century. There are no permanent ‘lessons’ that the century provides – history simply does not operate in that way. Each subsequent period sees in the past what its concerns dictate are relevant. But even as one accepts the fragmented, elusive and contradictory character of that period one needs to recognize that, in more respects than we would perhaps like to think, our political and legal institutions and economic presuppositions derive from that time. If they, too, seem problematic today, this is because of the enormously problematic character of the contexts from which they received their inherited form. That is, our unfounded, nostalgic view of that past that, it often seems, remains the sole reason for why we still believe that desirable communities, world order or human welfare can still be created by tools that bear all the hallmarks of the era of the steam engine.

IV

In his contribution, Martti Koskenniemi writes on the role of law and legal thought in organising the government of the domestic and the international worlds in the period between 1815 and 1914. According to standard histories, the abstractions of natural law from the eighteenth century gave way to a legal ‘positivism’ that focused on the government of the nation state in its internal and external affairs. As European jurists became less concerned with the justification of sovereignty and turned their attention to how it would operate in practice, they would also have less time for debating the theories of the origin or nature of laws that had preoccupied intellectuals in the previous century. While not wholly wrong, this outlook does not account for the innumerable ways in which positive laws remained dependent on large assumptions about the operations of legal systems and the nature of the sovereign ‘will’ that was supposed to lie at their origin and surfaced at moments of political contestation through the century. Koskenniemi also examines how the distinction between public and private law operated to organize the distribution of decision-making power in Europe and elsewhere – how ‘sovereignty’ and ‘property’ came to be globalized and principal aspects of ‘modern’ law. He also discusses the relations between the ‘will theory’ and various historical and sociological approaches to law and legislation and the ways in which formal and informal empire complemented each other in European colonial administration. Finally, he provides a brief narrative of the turn of European law of nations from its focus on coordinating the interaction between European diplomats to a global law intended to organize the functional government of the world.

Thomas Hopkins, in his contribution on ‘Ordering the World in the Nineteenth Century’, discusses ways to transcend the methodological nationalism which has marked the approach in international relations with its focus on the European nation state. He goes back, beyond the formation of the languages of geopolitics and international law and their binary domicile in two academic disciplines during the second half of the nineteenth century, looking for a more fluid

conceptual understanding of key nineteenth-century terms like states, war, peace, trade, nationality, diplomacy and law than in the conventional view with its fixation on (nation) states. A key question is thereby how to relate the realm of the ‘international’ to the politics of domestic social, economic and cultural transformation. With his more fluid and open conceptualization he suggests that one might understand the Italian and German unifications during the decades after 1850 not as the assertion of national identity as the basis of state-making, but as the creation of new imperial spaces to rival the other great powers in Europe. Imperialism did not only have an extra-European dimension in the colonies but also an intra-European dimension. The European nation states emerged only after the Second World War. Nationalism in the nineteenth century was an ideological tool in the negotiation of the small states about their place within the European big power empires and in the big power rivalry within and outside Europe.

In a similar vein, Adrian Brisku compares the politics for change and stability in the Russian and Ottoman empires during the century from 1815 to 1914. The connection between domestic reform politics and the search for a status among the empires was obvious. Reform was a device for long-term stability; legal and religious norm orders were instruments to connect reform to stability. The Russian reforms also had international relations as a target. There is a clear connection from Alexander I’s Holy Alliance, to Alexander II’s reform politics after the devastating Crimean War, to Nicolas II’s call for the peace congress in The Hague in 1899, and representation reform after the revolution in 1906. Russia was on the eve of the First World War, far on the way towards reforms, but in the end these reforms failed to cope with the war economy and the communist ideology which was fuelled by the privations and hardships in the wake of the war. There was a striking parallelism between the Russian and Ottoman empires and their transformations and final collapse. Brisku uncovers the long-term tension in the politics of change and search for stability in these two cases, which spilled over into a tension between domestic and foreign politics.

Liliana Obregón investigates how seven lawyers wrote the history of the law of nations and international law in the long nineteenth century (1750–1914). The name shift from law of nations to international law was already indicated in Jeremy Bentham’s invention of the term international in 1780, with the argument that the phenomenon that the debate dealt with was not a law of, but between nations (c.f. on this point the chapter on ordering the world by Thomas Hopkins). However, the shift became more systematic from the 1860s onwards with the emergence of a professional cadre of specialists in legal regulations of the relationships between states as opposed to the earlier doctrine debate among legal philosophers. Across this name shift, Obregón discerns a common denominator among the seven lawyers commenting on the expanding global sphere with intensified interstate relations. They all believed in telling a correct history, documented with established historical source-based methodology, but their formal claim for an objective relation of the past had a subtext purpose of correcting an experienced injustice in their present and inserting their nations into a better position in international relations.

Thomas Hippler and Miloš Vec report from a working group on the paradoxes of war and peace, which they have chaired. They discuss the consequences of the upgrading of the peace concept and corresponding downgrading of the war concept in languages of political correctness. The peace concept has been overloaded with meaning, and has lost clarity. They locate this

development to the emergence of peace research between the 1960s and 1980s against the backdrop of the Cold War. They argue for an approach which investigates how peace has been the object of dispute, contention and power struggles, and ultimately war. A conceptual-historical method rejecting essential understandings of political key concepts is their instrument when they discuss the paradoxical languages where peace means war and war means peace. The aim of the collected volume they are editing from their working group, and which they epitomize in their contribution here, is to confront the theoretical dualism between war and peace on which the history and theory of international relations still relies, despite the fact that the political language has been inflated with the peace concept. They argue for a de-essentialized focus on the discursive struggles with the entangled categories of war and peace as instruments, categories which perform in ever-changing and ever-contested combinations.

There was a clear connection between the European foreign political ordering of the world and the domestic politics of securing welfare and creating political community. Foreign and domestic politics interacted; warfare went hand in hand with welfare. Threatened social integration was re-established through foreign political activism, for instance. Social imperialism in the 1880s is a case in point. Other examples reveal how warfare imposed social integration. Welfare and warfare were two connected sides of the modernity of Europe.

In the section on securing welfare and creating political community Thomas Hopkins has two contributions, one is a report from a working group on the political economy in Europe that he has chaired ('Property and Poverty'), the other is an essay on the political economy and the social question in post-revolutionary France, which is part of a monograph he is writing. The point of departure of 'Property and Poverty' is the fact that earlier understandings of an integrated socioeconomic system during the century from 1750 to 1850 divided into what was conceptualized as two separate spheres, the social and the economic, each represented by an academic discipline, social science and economics respectively. This separation underpinned nineteenth-century political conflict, which came to be sharply oriented towards social conflict in the wake of the spread of industrial capitalism. Both capital and labour became contract based, which provoked new kinds of dispute. The fact that growing economic concentration of a different kind than the earlier one, based on land ownership, went hand in hand with growing experiences of poverty and proletarianization on new kinds of labour market was commented upon very differently in the two academic languages, giving the social conflict a clear ideological twist.

Hopkins's essay on political economy and the social question in post-revolutionary France, with Sismonde de Sismondi and Jean-Baptiste Say as protagonists, analyses the debate on the relationships between production and consumption. The issue at stake was whether aggregate production was limited by the extent of consumption. A later time would describe the issue as a question of whether supply creates its own demand, which, in turn, would later provoke questions about overproduction and underconsumption, and about political stimulation of the demand. The early nineteenth century obviously saw the beginning of a debate which is still with us.

The question of social integration had a bearing not only on the economy but also on the construction of political community. Francisco Ortega investigates how the collapse of the Spanish monarchy between 1808 and 1825 opened up new perspectives in that respect. The political crisis in

Spain led to the fragmentation of the trans-Atlantic Hispanic empire and the emergence of an alternative model for organizing the political community when over a dozen states required political independence. A popular, elective and representative republican model emerged through political practice. Republic as a form of government now, for the first time, emerged in opposition to monarchy. Existing typologies described a virtuous and educated people as the basis of political stability, whether monarchical or not. This basis was not at hand in the collapsing empire but had to be created. Ortega analyses how the identification of and with social and racial diversity and difference became the point of departure for the search for convergence and community.

Markus Prutsch takes the question of legitimacy as the point of departure in his inquiry into the development of political community in nineteenth-century Europe. A conventional stereotype describes the century as the establishment of constitutionalism as positive law, binding monarchical power and outlining the contours of people's sovereignty, a process of continuous democratization where today's Western-styled European world appears as the teleological outcome of a more or less linear development towards liberal representative democracy. Prutsch confronts such perspectives and turns the searchlight on the phenomenon of modern Caesarism, where in times of crisis the demands for strong leadership indicate alternative meanings of the voice of the people than representative democracy. Much more than a unidirectional development towards representative democracy, the nineteenth century was a continuous struggle about the power and legitimacy to speak in the name of the people, and those who managed to establish positions from which they could do so were not necessarily the representatives they argued to be. What later came to be called populism has a long history and is a phenomenon rather entangled with, than distinct from, democracy.

The discussion continues in the contribution that Prutsch has co-authored with Kelly Grotke, on the intricate connections between constitutions, legitimacy and power. Their contribution is a report from a working group that Grotke and Prutsch have chaired. They elaborate on a rich variety of meanings of constitutionalism: as antirevolutionary devices to contain or oppose revolutionary impulses, as tools for justification of new social inequalities or as support for increased egalitarianism, as promoters of nationalism, as instruments of imperialism, or as legal and political text spanning between the spheres of law and politics where legal and ideological reasoning are intertwined and overlapping.

The nineteenth century was the imagination of a past that had been different – that is, worse – and a future that could be made different – that is, better – through human action. The imagery of progress was affirmed by many but feared by others. The separation between present and past and between present and future underpinned beliefs in goal-bound progression. Teleological thought has been with us since then. Beliefs in development trajectories on rail have become problematic, but it is probably impossible to avoid teleological thought in debates on social, political and economic developments. The critical task must instead be to historicize and destabilize teleologies. Henning Trüper has co-chaired a working group on teleology with Dipesh Chakrabarty and Sanjay Subrahmanyam. In his contribution he outlines that teleology as a concept was invented in 1728 by Christian Wolff, the German professor in mathematics and philosophy in Halle who was removed from his chair on pietistic initiative, accused of being an enemy of religion and a determinist. Via

Diderot's encyclopedia and Kant's philosophy, 'teleology' embarked on a remarkable career into the furthest corners of philosophical debate. The ancient Greeks had certainly begun the reflection on ends and goals, but this discourse accelerated with the enlightenment discourse. Trüper maps out the rich European variety and manifold understandings of teleology and of the nature of history and of social change.

Bo Stråth connects, in his contribution, teleological thinking to utopia. The point of departure is not apocalyptic versions of utopia but utopias of 'never again' after devastating wars (1815, 1918 and 1945), where the utopian aim was stability and the creation of domestic social as well as international military peace through a lasting legal framework of politics, the separation of law and politics. 'Never again' was utopian in the sense that it maintained that social conflicts and claims for change of human conditions can be avoided through legal arrangements. The belief in the elimination of conflicts and in the predictability and management of the future through international rules and agreements constitutes the core of the utopian fantasy. Beginning in Vienna in 1815, the belief emerged that international stability, based on domestic national stability, could be achieved through the 'depoliticization' of interstate relations by means of a legal straightjacket. Social protest prevented depoliticization, however, and destabilized the teleology. There was a link between the national and the international peace. When destabilization threatened the imagined ordered world through the emergence of the social question, and later the class question, the European search for a political economy that guaranteed social peace and stability became the instrument that tried to save stability. This search was highly political and the legal rules constituting the state and the market undermined the teleological thinking through the demonstration that politics and law are entangled rather than separate categories.

Etienne Balibar, in the final essay of the volume, discusses teleology from the perspective of temporalities. Beginning with a comment on John Maynard Keynes's critique of the Versailles peace, with its prophetic prediction of the next world war, Balibar proceeds to today's European crisis with a method that combines retrospection and prospection, an analysis of past futures, as Reinhart Koselleck would have put it. He investigates the development from national ruling elites towards today's globalized and de-territorialized management of a hegemony and takes note of the fact that a European bourgeoisie never emerged. He interweaves long-term and short-term cyclical crisis perspectives in his neo- or post-Marxian approach. Balibar ends with a note on the replacement of the old military, diplomatic and ideological East–West division of Europe with the new economic, financial and ideological North–South division, which, however, also cuts across the nations in both the South and the North. He discerns "a strange accumulation" of contradictions leading to this geographical shift of oppositions and asks whether the insight about them will make it possible to (again) develop a common issue, although of a different kind than has been the case so far.

Ordering the World

Ruling the World by Law(s): The View from around 1850

Martti Koskenniemi

Introduction

The most striking, often noted fact about the history of the international law of the nineteenth century is that most of it seems to exist only in the last third of the century.¹ Events of importance for international law include the establishment of the Red Cross in 1864, followed by other institutions on international technical cooperation towards the end of the century.² The Berlin Conference, where the colonial powers discussed the division of Africa by reference to legal rules on occupation, was held in 1884–1885, and the great peace conferences with their important legal results were held only in 1889 and 1907. It was only at that time, too, that European foreign ministries began to employ their first experts in public international law. There had existed academic teaching in the law of nature and of nations since the seventeenth century – especially in Germany – but by the beginning of the nineteenth century international law was only rarely broached from existing positions. The first chairs in the new discipline of public international law were established in Britain, for example in 1858 and 1866, in Holland and Belgium in the 1870s and 1880s and it was only with the appointment of Louis Renault in Paris in 1873 that modern international law entered the French academy.³

In my previous work, I have explained the details of the way in which a new generation of activist lawyers from Europe organized themselves towards the end of the 1860s and the beginning of the 1870s in professional associations and set up journals to provide a platform for commenting on contemporary affairs and propagating liberal legislative change across the continent. In the present contribution I have wanted to sketch a much larger view on the “long nineteenth century” that would also encompass the demise of formal natural law and its transformation by ideas about individual liberty and legislative sovereignty in the early nineteenth century. We are often held hostage with the view that ruling the world is the business of *public* international law in the same way that *public* law also rules at home, especially that part of it we have been accustomed to calling “constitutional law”. It is with this in mind that Immanuel Kant in his essays in the 1780s and 1790s proposed that the international world, too, ought to be governed by a constitution, with the ultimate aim, perhaps, of setting up an international federation. Generations of liberal lawyers have more or less expressly held that view. Before there is an international constitution, the laws that regulate the international world cannot be taken quite as seriously as the laws back home. But I

¹ See further, David Kennedy, (1996) ‘International Law and the Nineteenth Century: History of an Illusion’, *NJIL*, 65, 385–420.

² For a detailed examination of the new institutions, see See Milos Vec, *Recht und Normierung in der industriellen Revolution. Neue Strukturen der Normsetzung im Völkerrecht, staatlicher Gesetzgebung und gesellschaftlicher Selbstnormierung*, (Frankfurt, Klostermann, 2006).

³ See my *The Gentle Civilizer of Nations. The Rise and Fall of International law 1870-1960*, (Cambridge University Press, 2002), 28-35.

would like to challenge this view and instead propose that although from a “constitutionalist” perspective there did not indeed seem to be much law ruling the world in the first part of the nineteenth century, what did exist was a widespread system of laws that quite efficiently regulated varied kinds of international behaviour, both inside Europe and in the colonies. This was largely a system of private law, however, that inaugurated the market as the key institution around which much of the world now organized itself. In this sketch I propose to do no more than to point to the dichotomies of the period’s legal theory (2) that led to what has been perceived as the death and natural law and the emergence of a “vacuum” in international regulation by public law (3). I will then point to the presence of an alternative legal consciousness based on converging rules of private law (4) generalized under “Classical Legal Thought” as the means to rule European markets as well as the colonies (5).

The Dichotomies of Theory

In the period between 1815 and 1914 a number of legal vocabularies developed in Europe to respond to the needs of international and domestic government. The abstractions of natural law that had been familiar from the eighteenth century gave way to a legal ‘positivism’ that focused on the government of the nation state in its internal and external affairs. As European jurists became less concerned with the *justification* of domestic sovereignty and turned their attention to how it would *operate in practice*, they would also have less time for debating the theories of the origin or nature of laws that had preoccupied intellectuals in the previous century. Still, positive laws remained dependent on large assumptions about the nature of the sovereign ‘will’ that was supposed to lie at their origin and that continued to surface at moments of political crisis. To have a sense of the ways in which law operated to organize European government it is useful to examine the different ways in which the tension between abstract arguments about the lawfulness of sovereign power and concrete legislative projects organized themselves. Three cross-cutting themes emerge.

Perhaps the most significant and yet least theorized of the dichotomies of Western law that consolidated themselves in the course of the nineteenth century was that of public and private law. An inheritance of Roman law, more taken for granted than expressly theorized, this dichotomy distributed power between territorially effective authorities in control of the community’s collective resources and actors operating on a global scale through the intermediary of the private contract. The reasons for the significance of the *topos* in the nineteenth century are clear: “The bourgeoisie wanted to mark the *jus privatum* as a safe territory for the citizen, where he had a free run, away from the structures and demands of the *jus publicum*”.⁴ Both laws stood for specific interests and actors, and much of the period’s legal theory took it upon itself to envisage an ideal delimitation between them. This, it was held, was what would distinguish the bureaucratically organized *Rechtsstaat* from the *Ständestaat*. A sophisticated system of constitutional law was developed towards the end of the century that was paralleled on the ‘private’ side by an increasingly detailed regulation of property, especially when it organized itself in collective forms as corporations. Ideologies of laissez-faire oscillated with those of social welfare, and each came with its preferred forms of legal thought:

⁴ R.C. van Caenegem, *European law in the Past and the Future*, (Cambridge University Press, 2002), 43.

“legalism” on the right, flexible “solidarity” on the left.⁵ Outside Europe, this oscillation was manifested in the ways in which ‘formal’ and ‘informal’ aspects of empire complemented each other in the organization of European supremacy.

Much of the debate on finding the proper roles for ‘public’ and ‘private’ actors was conducted in the idioms of theories of legislation and the nature of private rights. Here, the ‘will theory’ had challenged natural law at the outset of the century and persisted in providing the period’s pragmatic mainstream until 1914. Nevertheless, natural law was not slow in renewing itself into ‘sociological’ theories that understood legislation not so much as law-creating but *law-declaring* instrument for what were regarded as essentially scientific tasks of government and administration. The ‘will theory’ had important political and economic implications on the public and private law sides equally, but those implications were also challenged by the collectivism engendered by industrialism and mass society. Liberalism and socialism each had its preferred legal theory and the nineteenth-century histories of European legal systems offer a wide variety of attempts to accommodate their contrasting concerns.

Finally, the way from Vienna 1815 to Versailles 1918 saw a complete transformation of ideas and practices of international government by (international) law. The reaction following the Napoleonic wars had vindicated the view of the law of nations as essentially the ‘external public law’ of European states, with principal objectives to coordinate imperial action both on the continent and in the colonies. It was supported by the ideology of civilization and growth of societies by ‘stages’, to which specific forms of law and legally organized tutelage would correspond. Yet the professionalization of that law in the latter part of the century tended to remove it from being a mere ‘diplomats’ law’ and it began to develop autonomous ideas about the government of an autonomous ‘international’ realm, especially through the intensification of ‘functional’ cooperation, finally peaking in the ideological push towards a more or less supranational international government.

Among many other aspects of European culture, the forms of legal thought developed in the nineteenth century came to be ‘globalized’ as aspects of an autonomous logic of law and legal development. A distinction between the public law of statehood and the private laws of family and economy were taken for granted in most of the world. A ‘French’ and a ‘German’ legal culture spread around the non-European world, with their preferences for formalism and sociological approaches, respectively. International law turned from being a law of European diplomacy to one embodying a global teleology that would become concrete in the turn to institutions after the First World War. None of this took place in a linear or automatic fashion; as European legal thinking was divided against itself, its more or less well established ‘mainstreams’ clashed with contesting viewpoints. But, if individual rules or principles never became global law as such, a way of thinking about government and the channelling human power through law did colonize the political imagination of elites around the world.

⁵ See e.g. Roberto Mangabeira Unger, *Law in Modern Society. Towards a Criticism of Social Theory*, (New York, Free Press, 1976) 203-216.

The Two Deaths of Natural Law and the Law of Nations – the Early Nineteenth Century Crisis

There had been a live tradition of natural law and the law of nations from the Spanish scholastics to Hugo Grotius, Samuel Pufendorf and John Locke. Towards the end of the eighteenth century, this tradition had turned in an increasingly pragmatic direction. To assist in the government of German territorial states, Christian Thomasius and his followers at the universities of Göttingen and Halle developed what they called *Staatsklugheit* (a theoretical science of state government) and *Staatskunst* (a practical science of government), dabbling in policy and *cameralism* as successor disciplines to a natural law. With the reception of revolutionary thinking, *Menschenrechte* were introduced into German political and legal thought to compete and sometimes join with ideas and ideologies brought in from the French Physiocrats and the social philosophers of the Scottish enlightenment.⁶ If natural law had the ambition to provide for the “happiness” of the state and its people (as the tradition invariably assumed), then it needed to become a concrete reservoir of governmental instructions about how to see to the welfare of the people and the needs of the royal *Kammer*.⁷ In other words, it needed to become political economy. If Adam Smith was responsible for one death suffered by the natural law tradition at the end of the eighteenth century, its other death was achieved by the devastating philosophical blows dealt to it by Immanuel Kant’s series of critiques. We could not know the great principles of natural law in any inter-individually valid way; neither deduction nor observation could produce credible knowledge of how we should be ruled. The real question, Kant demonstrated, was not how to reach “happiness” but how to be worthy of it.

What survived the two deaths of natural law to regulate international behaviour was a *Droit public de l’Europe* that was largely descriptive of what states and diplomats did in the post-1815 Europe. Its predominant representative, the Göttingen Professor and the author of the most widely used international law textbook at the turn of the century, Georg Friedrich von Martens, was a critic of the French revolutionary abstractions and conceived “European public law” as a formalization of classical European diplomacy.⁸ In principle, public law also had the ambition to organize the internal relations between rulers and citizens and classical *jus gentium* had always moved between a law of sovereigns and the basic principles of domestic law that would be valid everywhere. It could no longer carry out the latter task for reasons stated clearly by Emer de Vattel in his *Law of Nations* of 1758: “Since all men are naturally equal, and a perfect equality prevails in their rights and obligations, as equally proceeding from nature, nations composed of men, and considered as so many free persons living together in the state of nature, are naturally equal, and inherit from nature the same obligations and rights”.⁹ That nations were sovereign equals meant that they could be bound by a superior law that would aim to regulate the internal relations between governments and their citizens. International law now became firmly defined as a law between sovereign equals that

⁶ See e.g. Diethelm Klippel, ‘Die Diskussion der Menschenrechte am Ende des 18. Jahrhunderts in Deutschland’, 23 *Giessener Universitätsblätter* (1990), 29-40.

⁷ For a useful history of the two strands of German natural law in the eighteenth century, see Ian Hunter, (2001) *Rival Enlightenments. Civil and Metaphysical Philosophy in Early Modern Germany*, Cambridge University press.

⁸ See Martti Koskenniemi, ‘Into Positivism: Georg Friedrich von Martens (1756-1821) and Modern International Law’, 15 *Constellations. An International Journal of Critical and Democratic Theory*, (2008), 189-207.

⁹ Emer de Vattel, *The Law of Nations*, Indianapolis, (Liberty Fund, Preliminaries, 2008[1758]) § 18 (75).

were bound by its rules and principles only to the extent they had agreed to them (this was the international consequence of the “will theory”). There never had been any agreement between European states to form a common polity, Martens wrote in 1796, and it was unlikely that they would ever form such. By contrast, there were numerous special treaties and customs that individual states have concluded with each other. “*In diesem Sinn hat jedes Volk in seinem Verhältnisse mit jedem der übrigen Völker, die mit ihm Verkehr treiben, sein eigenes Völkerrecht (auswärtige Staatsrecht).*”¹⁰

During the Vienna settlement and thereafter, there appeared a steady flow of treaties explaining the mores of European diplomacy as a “legal system” in operation.¹¹ In Germany, alongside Martens, Johann Ludwig Klüber collected and published the acts of the Vienna Congress and wrote of diplomatic contacts in terms of the administration of a legal system. Another German liberal professor of public law, Theodore Schmalz, perceived an international law that was based on the three pillars of Christianity, the customs of European nations and Roman law.¹² Nevertheless, for more critical minds it always seemed dubious whether the practices, thus abstracted, could really qualify as “law” at all. The least one had to concede, together with Robert Ward in 1795, was that there was no *universal* international law. Even if it did have an aspiration of universality, its pedigree and key principles had been taken from the practice of European nations and it was thus (only) a *Droit public de l’Europe*.¹³

A debate on “perpetual peace” had of course been waged throughout the eighteenth century with *philosophes* such as Abbé de Saint-Pierre and Jean-Jacques Rousseau perhaps its most famous participants. Their writings had as little practical effect as had Kant’s more famous text that capped the century in 1795 with a threefold proposal: all nations should become “republican”, they should among themselves join a federation where, while they would preserve their independence, they would still be bound by a legal system. And third, they were to see to it that a “cosmopolitan law” would allow all human beings to enjoy the “hospitality” of the nations to which they might arrive.¹⁴ Men such as Christian Garve and Friedrich Gentz were among the first to produce elaborate “political realist” critiques that rejected the domestic analogy and the optimistic conception of human nature on which the proposal was based. This did not, of course, end the debates, but the tides of pacifist enthusiasm arose and sank in the course of the nineteenth century, only receiving a specifically *legal* colouring towards the century’s end when the utopians joined hands with the arbitration movement and sought respectability and visibility through interparliamentary cooperation.

Little of this arose at the level of diplomatic proposals to strengthen the system of diplomacy and treaties that arose out of the Vienna conference, however. James Mill gave voice to a more

¹⁰ Georg Friedrich von Martens, *Einleitung in das positive europäische Völkerrecht*, (Göttingen, Dieterich, 1796) § 2 (3).

¹¹ A thorough recent examination is Claudia Storti: ‘Empirismo e scienza: il crocevia del diritto internazionale nelle prima metà dell’Ottocento’, in Luigi Nuzzo & Milos Vec, *Constructing International Law. The Birth of a Discipline*, (Frankfurt, Klostermann, 2012) 51-146.

¹² Theodore Schmalz, *Das europäische Völkerrecht in Acht Büchern*, (Berlin, Duncker & Humblot, 1871) 11-23.

¹³ Robert Ward, *An Enquiry into the Foundation and History of the Law of Nations from the Time of the Greeks and the Romans to the Age of Grotius*, 2 vols. (London, Butterworth, 1795) Vol I xl, xxxi-xxxiii.

¹⁴ The most recent annotated edition is Immanuel Kant, *Zum ewigen Frieden. Kommentar von Oliver Eberl und Peter Niesen*, (Frankfurt, Suhrkamp, 2011).

general feeling in 1825 as he struggled with the suggestion, as he put it, that international law was “utterly without force”? Was there really nothing to be done to make a reality of it? Mill, like many others, used the refuge of the eternal optimist – well, perhaps it was nevertheless enforceable through public opinion – “by disapprobation, by the praise or blame, the contempt and hatred, or the love and admiration, of the rest of mankind”.¹⁵ Mill was of course a student of Jeremy Bentham’s who – apart from coining the expression “international law” – had also argued that the same principle of general utility that governed domestic societies was also applicable in the international realm.¹⁶ But at the beginning of the nineteenth century, the suggestion that international law was what “utility” commanded smacked of an outdated naturalism. From the same group of British intellectuals, John Austin (1832) frankly regarded that a law between equals and without sanctions, a law that was only enforced by public opinion, was not law at all properly so called, but merely “positive morality”.¹⁷ This conclusion echoed through the century, with dozens of publicists trying in one way or another to avoid the conclusion Austin had drawn from what became the leading “modern” legal theory in the English-speaking world – the view of law as a command of the superior addressed to the inferior and backed up by sanctions

It was a nobleman and professor of public law at the University of Halle, Baron Carl von Kalternborn, whose *Kritik des Völkerrechts* (1847) put into words the prevailing malaise about the nature and reality of international law.¹⁸ For Kalteborn, there was no real, objective science of international law at all, no workable understanding of the relations between sovereigns and the international community. Existing works either paid too much deference to sovereignty – in which case they arrived at no law at all – or then they too readily assumed that the presence of natural principles would compensate: a utopian position. The great challenge was to put these together, and this, he claimed, had nowhere been attained, except perhaps among the small group of Protestant scholars whose legal theories he wanted to celebrate in the other book he left as his legacy to the profession.¹⁹

An Alternative Legal Consciousness

In 1834, however, Joseph Story, a member of the US Supreme Court and Harvard law professor gave a very different image of the situation. A vacuum in the way the world was regulated would indeed constitute a grave problem:

Indeed, in the present times, without some general rules of right and obligation, recognized by civilized nations to govern their intercourse with each other, the most serious mischiefs and most injurious conflicts would arise. Commerce is now so absolutely universal among all countries; the inhabitants of all have such a free intercourse with each other; contracts,

¹⁵ James Mill, ‘Law of Nations’, in *Supplement to the Encyclopedia Britannica*, (London, Innes, 1825) 6.

¹⁶ Jeremy Bentham, ‘Principles of International law’, in John Bowring (ed), *The Works of Jeremy Bentham* vol 2 ,Indianapolis, (Liberty Fund – Online Library of Liberty, 2013).

¹⁷ John Austin, *The Province of Jurisprudence Determined*, (Indianapolis, Hackett, 1998) 127, 141-142.

¹⁸ Carl von Kalternborn, *Kritik des Völkerrechts nach dem jetzigen Standpunkte der Wissenschaft*, (Leipzig, Mayer, 1848a).

¹⁹ Carl von Kalternborn, *Die Vorläufer des Hugo Grotius auf dem Gebiete des Ius naturae et gentium*, (Leipzig, Mayer, 1848b).

marriages, nuptial settlements, wills and successions are so common among persons whose domiciles are in different countries having different and even opposite laws on the same subjects, that without common principles adopted by all nations in this regard there would be an utter confusion of all rights and remedies; and intolerable grievances would grow up and weaken all the domestic relations as well as to destroy the sanctity of contracts and the security of property.²⁰

But this was not at all the case. Instead, he argued, there was a well-established national jurisprudence that had emerged to deal with those and every other kind of international issue that involved the possibility of conflicts of laws. In fact, he noted that: “[t]he jurisprudence, then, arising from the conflict of laws of different nations, and their actual application in modern commerce and intercourse, is a most interesting and important branch of public law...”²¹

For men such as Story it may have been true that the old tradition of natural law and the law of nations had become largely inoperable as a practical legal system. But it had left a hugely important legacy – namely *the view of the legal world as a world of nation-states, each with exclusive jurisdiction over a determined piece of territory*. No longer would there be overlapping customs and feudal rules to be coordinated with Roman and Canon law, *jus gentium* and *jus civile*. The law would no longer be thought of in terms of personal loyalties or relations. Instead, the world would coordinate as a whole in nation states.

In the early nineteenth century this view of the world was taken as self-evident by competent jurists such as Story. Instead of there being a legal vacuum, the international world was fully regulated – namely by the laws of territorial states. This, however, raised precisely the problem that Story was dealing with in his pioneering work of 1834. There was no guarantee that those laws would deal with every international issue – or if they did deal with it, they might do so in differing ways. A merchant moving about in Europe might find his business regulated by the law of his own home state, the state where his contracts are concluded, where the property relating to them is situated or where his partner comes from. How to deal with such situations? For this, Story had a ready answer:

In the silence of any positive rule, affirming or denying, or restraining the operation of a foreign laws, courts of justice presume the tacit adoption of them by their own government, unless they are repugnant to its policy, or prejudicial to its interests, It is not the comity of the courts, but the comity of the nation, which is administered, and ascertained in the same way, and guided by the same reasoning by which all other principles of municipal law are ascertained and guided. ²²

To the rules that govern the conflicts of several domestic laws Story gave the name “private international law”. Because these rules set the limits of state jurisdiction, they were in a sense higher than the latter. But because it was inconceivable that there would be a binding system of rules above sovereign states Story called it the *comity* of nations – not the *law* of nations. They were not formally

²⁰ Joseph Story, *Commentaries on the Conflict of Laws*, (Boston, Hilliard, 1834) 5.

²¹ *Ibid*, 9.

²² *Ibid*, 37.

binding; their basis lay on prudential legal statesmanship or as it would be said, “deference to foreign sovereignty” – “Mutual utility presupposes that the interest of all nations is consulted, and not that of one only”.²³ It was not strictly speaking “law” – that it is to say it was not binding on the courts. But this did not hinder its often being applicable on the basis of the utilitarian argument that commerce and other interaction necessitated it.²⁴

The rules of private international law came to regulate much of the international legal landscape. They provided, for example, that a transaction validly made in one place ought to be regarded as valid in other places, that the law applicable to real estate would be that of the place where it was situated – irrespective of the nationality of the parties involved in a transaction concerning it – that the personal status of a person would normally be decided on the basis of his or her domicile, and so on – with some difference in detail and theoretical justification. The rules also included an *ordre public* clause according to which foreign law was applicable only to the extent it did not violate the public policy of the forum state – the state where a right was being enforced. In fact, Justice Story’s doctrine was born at a time when there was controversy about the law to be applied to foreign slaves; Story himself had, in a famous case, *La jeune Eugenie*, regarded it against public policy in the United States to recognize the French law that upheld slavery.

By and large, these rules operated everywhere in Europe in a routine manner. But while the Americans spoke of *comity*, the Europeans organized the same materials into law. It was inconceivable that courts could decide international cases on the basis of rules that were discretionary. They had to be legally binding. This may seem paradoxical because men such as Friedrich Karl von Savigny in Germany and Pasquale Stanislao Mancini in Italy had, after all, learned to think that law was based on the specific history and consciousness of each nation. How, then, could there be supra-national principles coordinating and limiting the force of national laws? Savigny explained this in the famous part VIII of his *System des heutigen römischen Rechts* (1849) where he suggested that there did exist legal notions common to all Christian nations. They included, for example, the distinction between private law and public law as well as principles such as the autonomy of the individual and the foundational character of the family to society. In the course of the increasing interchange between peoples, these principles identified an “international legal community” (*Völkerrechtliche Gemeinschaft*). The rules of private international law that linked specific legal relationships to specific domestic laws were part of this law that was *both national and supranational at the same time*. It was these laws that would govern the international world beyond the formal codes of diplomacy and public international law. Grasping and expounding their content was a key task, and would be the key task of legal science.²⁵

²³ J. Story (1834), 36.

²⁴ But Story also had very strong sense of a public policy over and beyond the notion of state sovereignty that allowed him in a famous case to condemn slavery and the slave trade. For him, “private international law” – the rules of jurisdiction – were not separate from public international law, the laws of statehood and diplomacy, but part of the very same fabric of a single system of universal law. See further Joel Paul, ‘The Isolation of Private International law’, 7 *Wis. Int’l L.J.*, (1988-1989) 149-177.

²⁵ For a discussion, see Jean-Louis Halpérin, *Entre nationalisme juridique et communauté du droit*, (Paris, PUF, 1999), 47-66.

In the first decades of the nineteenth century, German legal science was busily looking for techniques for to how to do this – on what basis can conflicts having to do with international relations, especially international commercial relations, be resolved? The answer was found from Roman law. While the substance of national laws would indeed be predominantly national, the principles of scientific jurisprudence that would enable the elucidation and systemization of national laws had a rational and universal character expressed in Roman legal categories – such as “persons”, “goods”, and “actions”, typically. Those categories would also enable directing legal science towards Kantian cosmopolitan individualism. The new scientific jurisprudence was thus both positivist and philosophical – its law would be a matter of rules whose elaboration could take place by an autonomous scientific discipline.²⁶

Thus, Gustav Hugo, for example, developed a *ius commune* in his *Lehrbuch des Naturrechts* as a project for universal law – an extrapolation of Roman private law as the common law of all nations owing to its intrinsic rationality.²⁷ The substance of the law divided in accordance with Roman law – persons, things and actions. *Pandectist* jurisprudence carried many legacies of natural law, assuming the “objective” end universal character of individual rights, the concept of the legal transaction, the declaration of will, the synallagmatic contract, the duty to perform, impossibility of performance, and so on. This all peaked in Georg Friedrich Puchta and his “Pyramid of legal concepts”.²⁸ The idea was that legal science could deduce solutions to legal problems by deduction from legal concepts. His theory of legal development by “stages” had a naturalist nuance but also a Hegelian message. A period of “innocence” would be followed by one of legal “variety” and both would be synthesized as the “higher unity” of “science”. Roman law, explained Puchta in his *Pandekten* textbook, had not been received in Germany owing to violence but through its intellectual and scientific force. The same force would make it the shared inheritance of all civilized countries (“*als ein Gemeingut aller gebildeten Nationen*”, 2).

Indeed, later Henry Sumner Maine, for example, in his inaugural lecture to the Whewell chair of international law in Cambridge would argue that international law was little more than the application of Roman law in the relations between nations. But Roman law’s influence was far wider and extended to providing the basis on which Savigny, Puchta and the whole of German science could elaborate a universal jurisprudence that could, following Duncan Kennedy, be called “classical legal thought”. As it spread with German jurisprudence across the world in the latter half of the nineteenth century, it privileged private law as the quintessence of all law.

Classical Legal Thought: Global Rule By Private Law

Around 1850, then, the kind of activist, liberal and institutionally inclined “public international law” whose emergence I traced in the *Gentle Civilizer* did not yet exist. The old natural law from the eighteenth century had long been become scientifically and politically implausible. At the same time, “[t]he forces of economic, technical and social change released in the past half-century [had

²⁶ Franz Wieacker, *A History of Private Law in Europe. With Particular Reference to Germany*, T. Weir transl. (Oxford University Press, 1994), 292.

²⁷ *Lehrbuch des Naturrechts als Philosophie der positiven Rechts. Insbesondere des Privatrechts*, (4th edition, Berlin, Mylius 1819).

²⁸ G. F. Puchta, *Pandekten* (7th improved edition), (Leipzig, Barth, 1853).

been] unprecedented, even to the most sceptical observer”.²⁹ The scope and intensity of international contacts had grown to an unforeseen scale. Capitalism was spreading around the globe. Law could hardly be oblivious to this. And, as perceptive jurists such as Story and others noticed, there was a lot going on in the legal world, too. Domestic courts and administrations were busily responding to the challenges of “the first globalization”. They did it on the basis of domestic law, but a domestic law that took account of the international nature of the relationships being regulated in two ways. First, domestic laws were understood to be based upon or express large logical or scientific principles that were not at all territorially limited and that were largely expressed in Roman law. Second, it was assumed that there existed specific rules for dealing with international legal problems – namely rules of the conflict of laws that could be applied to transactions or situations lacking a uniquely national character. Five points can easily be grasped, modifying Duncan Kennedy,³⁰ as the content of “Classical Legal Thought” as it emerged in Europe in the first half of the nineteenth century:

1. Roman private law – the law of persons, things and actions – as the logical core of law;
2. Individualism;
3. The idea that law is an emanation of will;
4. The idea that legal exists in formal sources;
5. The view that the elaboration and interpretation is a task of legal science – legal practice is applied legal science.

These ideas would be used both to regulate the markets that were emerging in Europe and to expand the sphere of European activity to the colonies.

Regulating Markets in Europe: Domestic markets

The beginning of the nineteenth century was a period of relative peace between European powers. This was not occasioned by a new pacifist spirit but by the shared interests in free trade – in contrast to the trade wars of the eighteenth century. This then went on to the international gold standard. The gold standard, again, had the effect of stabilizing currencies and credit structures. Again, it was upheld by law. The “new organization of economic life”, wrote Karl Polanyi, that followed the Vienna settlement of 1815 “provided the background of the Hundred years’ Peace”.³¹ This was constituted by the interest the nascent middle class had, after the revolutionary wars, to participate in reaping the benefits of an increasingly internationalizing systems of productive and commerce. The liberation of trade and the access to the professions, again, were wholly constituted by a series of legal reforms drawing on free market principles.

²⁹ Eric Hobsbawm, *The Age of Revolution: 1789-1848*, (London, Abacus, 1962) 366.

³⁰ Duncan Kennedy ‘Three Globalizations of Law and Legal Thought: 1850-2000’, in David M. Trubek, *The New Law and Economic Development*, (Cambridge University Press, 2006), 21, 25-37.

³¹ Karl Polanyi, *The Great Transformation. The Political and Economic Origins of our Time*, (Beacon Press, 2001) 17.

In practice, the sacredness of *property* and the freedom of *contract* would come to express the period's individualism and voluntarism, embodying the legal core of the laissez faire economy. To free the private economic operator it was necessary to legislate against monopolies, status privileges and other special rights. Typically, the French penal code of 1810 criminalized manoeuvres directed towards disturbance in “*la concurrence naturelle et libre de commerce*” (Article 419). But above all, the French *Code civil* of 1804 had an enormous influence on the continent. It was introduced by French troops in Belgium in 1795, on the Rhine left bank in 1798, in Piedmont 1802. It was largely received in Germany as well, even after the end of the occupation; although the Code itself was lifted, its contents were often inscribed in national laws (as in Baden) or otherwise applied.³² In Italy it was introduced gradually to liberalize the country's laws so that by independence in 1861 most of it was in force in most of the country. On the Iberian peninsula its influence was greatest in the abolishing of feudal relationships and seigniorial jurisdictions; most of it was in force there by the 1830s.³³

The content of the *Code civil* was – not by accident – fitted precisely to deal with a post-mercantilist economy. It enshrined the right of property and the sacredness of contract and provided for the freedom to carry out commercial transactions in its 1200 or more articles in great detail that is impossible to review here, with those articles still supplemented by a commercial code of 1807 that also became a order for a large number of similar codes.

The new legislation was so extensive that in the 1840s French jurists complained that commercial law had invaded all of private law. Frequent inroads had already been made in Colbert's commercial order of 1673 in the eighteenth century, not least by Turgot's partly successful reforms. During the revolution, steps were taken to abolish corporations and other monopolies but this work continued well into the nineteenth century. The *droit d'ambaine* – the State's right to the property of deceased foreigners – had prevented much investment and was abolished on the basis of reciprocal treaties with other countries. In France and Prussia, new legislation began to lift domestic monopolies and internal customs duties, gradually opening the professions for all. It would also no longer be necessary to have notarial validation to invoke contracts in courts – the freedom of contract became a reality. Nevertheless, customs policy continued vacillating and the protective measures taken in the 1870s and 1880s were an aspect of the developments that, as I have explained in the *Gentle Civilizer*, led to the formation of the *Institut de droit international*.

Other aspects of a well-functioning market were set in place by legislative action, mostly in the first part of the nineteenth century. Alongside freedom of contract, abolishing usury legislation and the development of laws on warrants and checks in the 1850s and 1860s largely codified existing mercantile practices.³⁴ Bankruptcy laws were made less stringent and more attuned to the increasing economic activities and competition laws were enacted. The first trade-mark law was enacted in France in 1803. The emergence of the limited liability company had a much more difficult beginning, the memories of the South Sea Bubble (1720) were still fresh in the minds of the English, as were the criticisms of the colonial companies by Adam Smith and others. These attitudes led, in 1813, to the abolition of the trade monopoly of the East India Company.

³² See Wieacker, *A History of Private Law in Europe*, (1994), 274-275.

³³ Jean-Louis Halpérin, *Histoire des droits en Europe*, (Paris, Flammarion, 2004) 51-56.

³⁴ Halpérin, *Histoire des droits*, (2004), 111-113.

Nevertheless, Napoleon's Commercial code of 1807 allowed the establishment of *sociétés anonymes*, though this was strictly conditioned by public authorization. More liberal laws were enacted in Holland (1838), Britain and Italy (1865) and Prussia (1843) after the French model. But the requirement of public authorization remained valid in these and most other company laws until the latter part of the century.

However, it would be wrong to think that it was only rules having to do with economic transactions in the global market that came to participate in ruling the world in the nineteenth century. Another set of connected legal reforms with a global impact had to do with the transformed image of the family. The family, it came to be thought, was a natural unit in contrast to the business corporation, for example, and as such would exist in its basic form everywhere. The older understanding of this form as the household had been expressly economic, with its slaves, servants and employees as much a part of it as the husband, wife and children. The nuclear family of the early nineteenth century – formalized in the novel discipline of “family law” – suggested another image of a community outside the market to which the ethics of individualism and contract would not apply and that would house liberal society's need for a community of private passion. But this move was heavy with distributive consequences, especially affecting the bargaining power both of those left outside the nuclear family and those inside of it. The integration of some female labour, for example, in the labour market, especially as servants, and the continuing patriarchalism and system of unpaid labour in the home became an important part of the operation of industrial society, not least in ensuring the reproduction of its labour force.³⁵

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The most important inter-European trade problem in the first part of the nineteenth century was that of customs tariffs. The jealousy of trade led states to undertake complex manoeuvres such as accompanying the lifting of the continental blockade in 1815 by Britain with the enactment of the corn laws at the same time. The latter were abolished only in 1843 after a vocal Cobdenite campaign for free trade. In fact, this was only logical. Since the 1830s Britain had concluded a great number of free trade treaties and although opening up markets was in principle available for all, British politicians by now realized that “opening an area to outside influences by treaty was often sufficient to ensure that British trade and finance, rather than any rival's, would be paramount in that region”.³⁶ But the use of commercial principles for political goals was no British eccentricity. In Germany, for example, it was realized that what the jurists called ‘*Kommerzialisierung des Zivilrechts*’ could be used for the purpose of national unification.³⁷ And sure enough, efforts at a free trade in

³⁵ For these themes, see e.g. Janet Halley & Kerry Rittich (eds), ‘Critical Directions in Comparative family Law’, 58 *American Journal of Comparative Law*, (2010) 753-1073.

³⁶ Martin Lynn, ‘British Policy, Trade, and Informal Empire in the Mid-Nineteenth Century’, in Andrew Porter (ed), *The Oxford History of the British Empire. The Nineteenth Century*, (Oxford University Press, 1999) 105-106. See further Ronald Robinson & John Gallagher, with Alice Denny, *Africa and the Victorians. The Official Mind of Imperialism*, 2nd edn. (London, Macmillan, 1981)

³⁷ Uwe Wesel, *Geschichte des Rechts. Von den Frühformen bis zur Gegenwart* 2nd edn. (Munich Beck, 2001), 453.

Germany finally led into a customs union – the Zollverein – that in 1834 encompassed eighteen German States.

But the free trade movement had its hardest time in respect of the monopoly trade in the colonies. It is not difficult to understand why. Colonial trade was the single greatest source of European wealth, and not only owing to its value at the domestic market. For instance, in the 1790s the products from French Caribbean colonies – sugar, coffee, cotton – counted for two-thirds of the value of France’s foreign trade. No wonder it fought a bitter struggle to prevent the independence of Haiti and, once this had become a reality in 1804, waited for more than thirty years before officially and unconditionally recognising it (1838).

Governing the Colonies

With the spread of European empire, both formal and informal, in the first part of the nineteenth century, aspects of European law and legal consciousness also spread across the world. Through this means, parts of the Ottoman Empire, Japan, and much of Latin America came to be ruled under laws with French or German origins. Such legal transplantation did not at all take place forcibly. The introduction of the French *Code civil* in Latin America, for example, came about as a part of Bolivarian policy; Latin American *creole* elites would have no difficulty in using European law in their constitutional thinking or commercial and private relations, including in their process of colonization waged against indigenous populations.³⁸ In the mid-nineteenth century, the Ottoman Empire embarked on a large-scale effort to adapt its commercial and civil laws in accordance with German models as part of its effort to centralize its governmental structures. Even if the Europeans may have provided models for this process, and the reform of land law was especially in their interests, there is no reason to believe that Ottoman elites were adverse to the changes. Likewise, the fact that the Japanese *Civil Code* of 1898 followed the German *Pandekten*-jurisprudence came about as express governmental policy. Under the Meiji period, Japanese nationalism would feed from the use of the most advanced forms of Western law – German jurisprudence – as part of the country’s modernization.³⁹ In some places such as Africa, direct colonization took care of the transplanting of European laws on foreign soil, with varying effect. In other places that already had a well-developed legal-normative regulation such as China, the demand for opening up was accompanied by more or less active resistance or adaptation by local laws and practices. Old forms of pluralism made these changes often seem initially acceptable – even if the maintenance of those traditional forms became increasingly difficult to reconcile with the hegemonic European codes.

Second, to the extent that non-European countries did not apply or adapt these European laws, extraterritorial exemptions with consular jurisdiction covered Europeans trading in China, Japan and the Ottoman Empire. In the mid-century, European settlers and merchants moved widely in the colonial world. The contexts in which they lived and worked were often unfamiliar to

³⁸ See Liliana Obregón, ‘Completing Civilization: Creole Consciousness and International law in Nineteenth-Century Latin America’, in Anne Orford, *International law and Its Others*, (Cambridge University Press, 2006), 247-264.

³⁹ See e.g. Hitoshi Aoki, ‘Nobushige Hozumi: A Skilful Transplanter of Western legal Thought into Japanese Soil’, in Annelise Riles (ed); *Rethinking the Masters of Comparative Law*, (Oxford, Hart, 2001), 129-150.

them and local institutions appeared typically as weak and acting in ways that seemed unjust, irrational, incompetent, or corrupt. The leading English-language textbook of the 1840s, Henry Wheaton's "Elements of International Law" dealt with the system of extraterritoriality quite laconically, noting only that "[t]he resident consuls of Christian powers in Turkey, the Barbary States, and other Mohammedan countries, exercise both civil and criminal jurisdiction over their countrymen, to the exclusion of local magistrates and tribunals".⁴⁰ "[T]he reasons" for this practice, wrote Woolsey a few years later, "lie with the fact, that the laws and usages there prevailing are quite unlike those of Christendom, and in the natural suspicion of Christian states, that justice will not be administered by the native courts".⁴¹

There was hence great interest in transforming the context in which Europeans operated to correspond to those back home. The British Government, for example, was well aware of the problem. It was also concerned that when British citizens travelled abroad they often mistreated natives or behaved in ways that were illegal or unjust or otherwise plainly contrary to the government's interests. But it did not wish to treat it with the most obvious instrument available to it, namely annexation. This would have been too costly for the British taxpayer and involved the government in all kinds of potentially complicated relations with local authorities. The anti-slavery laws would have required efficient policing that would have demanded resources the government did not possess. The result was the *Foreign Jurisdiction Act* (FJA) of 1843 that replaced a number of special laws relative to specific territories. The point of the Act was to enable the British government to exercise its jurisdiction in a foreign territory "in the same and as ample manner as if her Majesty had acquired that jurisdiction by the cession or conquest of territory".⁴² In addition, there were a number of special laws governing, for example, the exercise of criminal jurisdiction in the overseas territories. Although such legal instruments were sometimes used for expansionist purposes, this did not always cause resistance. Many parts of the non-European world – such as China and the Ottoman empire – had traditionally accommodated overlapping legal institutions, the creation of special regimes to apply to European merchant communities in "treaty ports" or more widely to litigation involving Europeans did not initially pose insurmountable problems.⁴³ It was only in the latter part of the nineteenth century that extraterritoriality began to seem an objectionable affront to local sovereignty.

Extraterritoriality often emerged as self-government rights extracted from local rulers and granted to the European trade companies. Thus the Levant Company, operating in the Ottoman Empire, had jurisdiction not only over its employees but also disputes involving British citizens in

⁴⁰ Henry Wheaton, *Elements of International Law*, 3rd edn. (Philadelphia, Lea and Blanchard, 1846), 167.

⁴¹ Theodore Woolsey, *Introduction to International Law*, 4th edn., (London, Simpson, 1879), § 69 (97).

⁴² J. Ross, Johnston, *Sovereignty and Protection. A Study of British Jurisdictional Imperialism in the late Nineteenth Century*, (Duke University Press, 1973), 36. Where the act was to be applied and the extent of the powers granted was to be determined by Orders in Council for each case separately. Such acts were made for Turkey in 1844, Siam 1856, Morocco 1857, China and Japan 1865, Zanzibar 1866, Madagascar and Muscat in 1867. For acts providing for jurisdiction especially over African territories, *id.* 37-53.

⁴³ For the way Western extraterritoriality in China did not initially seem different, to the Chinese, from the other regimes under which foreigners (such as Mongolians) were dealt with under their native laws, see Pär Cassel, 'Excavating Extraterritoriality: The 'Judicial Sub-Prefect' as a Prototype for the Mixed Court in Shanghai', 24 *Late Imperial China*, (2003), 156-182.

general. However, by the nineteenth century, many of the great trade companies had either ceased operations or faced a dire financial and administrative situation. The Levant Company's control over Egypt was extinguished in 1807 and it was no longer able to administer the booming trade with Turkey either; its monopoly appeared unjustified and the rising political importance of the Eastern Mediterranean pushed the government to take over its administrative and consular tasks. The company's charter was finally withdrawn in 1825.⁴⁴ The most well known and most formidable powers that any company ever exercised over colonial territory were those of the British East India Company that possessed:

... fortified settlements in India [as] virtually sovereign enclaves, with governmental and judicial systems organized on English principles, autonomous systems of revenue collection, and a permanent armed force. The company exercised sovereign powers over all British subjects in India, including the power to try and punish Under English civil and criminal law, and also to make necessary bylaws. The company minted coins in Bombay [and] [i]t had the right to make war and peace anywhere in the East.⁴⁵

Owing to the scandalous mismanagement and corruption that was revealed within the Company at the end of the eighteenth century, the early years of the nineteenth saw the government strengthening its control over it – though the question of “sovereignty” was still left unsettled. By now the Company was also extending its activities to China, where the British East India Company had had jurisdiction over British citizens since its establishment there in 1676 until 1833 when it was transferred to Crown officials. Although the right of self-government of the Western merchant communities was originally granted unilaterally by the non-European ruler it was soon translated into Western legislation – usually without informing the local ruler – so that it ceased being a matter of concession and became part of binding European law.⁴⁶

As is well known, the US Government displayed initial reluctance to follow European imperial habits. Its 1833 treaty with Siam, for example, provided for no extraterritoriality for US citizens. However, the efforts to open up China brought the US in line with other imperial powers. The treaty of Wanghia of 1844 already included very extensive extraterritorial rights – without reciprocity – to US citizens and provided for consular jurisdiction even in cases where the defendant was a Chinese citizen. It did so even if no reference had been made to extraterritorial rights in Cushing's instructions, largely on the strength of the fabrication that Cushing had produced of reports about past practices. A pattern was thereby set that the US also followed in its treaties with Borneo and Japan in the 1850s. Furthermore, the treaty with Siam was re-negotiated in 1856 to include extraterritoriality.⁴⁷ An 1860 Act of Congress provided that the US laws in civil and

⁴⁴ A.G. Wood, *A History of the Levant Company*, (London, Cass, 1964) 179-204.

⁴⁵ Partha Chatterjee, *The Black Hole of Empire. History of a Global Practice of Power*, (Princeton University Press, 2012), 37-38.

⁴⁶ Turan Kayaoglu, *Legal Imperialism. Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China*, (Cambridge University Press, 2010), 42-43 and 42n7.

⁴⁷ See Teemu Ruskola, *Legal Orientalism. China, the United States and Modern Law*, (2013), 130-139.

criminal matters would extend to all US citizens in “China, Japan, Siam, Turkey, Persia, Tripoli, Tunis, Morocco and Muscat” as provided in the treaties made with those countries.⁴⁸

In the Ottoman empire, Europeans had enjoyed treaty-based extraterritorial privileges since the sixteenth century. In the late eighteenth and early nineteenth centuries, the Ottoman state’s integration in the capitalist economy was in part stalled by its fragmented legal system that involved overlaps between local, religious and state laws and administrations leading to what Europeans perceived as insufficient protection of property rights. By the mid-nineteenth century, a large part of Ottoman economic life was in European hands. A special bone of contention concerned land, however, that was traditionally not understood as amenable for private property until the legal reforms in the 1840s made it possible for Europeans to begin to purchase land as well. By this time, most legal transactions involving Europeans in Ottoman territory or with Ottoman citizens were dealt with under European laws and in European jurisdictions or by European consuls on Ottoman territory. It is true that since the 1830s the Ottomans themselves began to carry out a legal reorganization of the country’s administrative and legal system. Nevertheless, an incomplete civil code was achieved only in the 1870s and even as a formal constitution was adopted in 1876 it was immediately suspended until 1908.⁴⁹

The development of the “treaty port” system in Shanghai and other commercial centres in China was another technique of guaranteeing that European principles of law and the conflicts of law would be applied to legal relationships, one party of which would be European. The very extensive literature on the European extraterritoriality in China highlights, however, its very localized nature. European consular courts and jurisdictional practices were also often very haphazard and subject to complaints about favouritism and corruption even among the Europeans.⁵⁰

* * *

European imperialism in the first half of the nineteenth century was largely an empire of free trade (with the French exception). It was conducted with the help of private interests and colonial companies under private contracts with the purpose of exchanging property. If the relations with the “natives” were understood to come under a residual natural law, as most lawyers argued, this did not mean that their communities enjoyed sovereignty – only that their members could freely sell their property. It was only when those private operations began to collapse, both from imperial rivalry and resistance on the side of the colonized, that the move to “formal empire” emerged in the 1870s and 1880s. The result was that “[a]t the beginning of the nineteenth century Western states claimed 55 per cent but actually held about 35 per cent of the earth’s land surface. By 1878 the latter proportion had risen to 67 per cent and by 1919 to 85 per cent.”⁵¹ When it finally emerged towards

⁴⁸ Woolsey, *Introduction*, (1879) 98n1.

⁴⁹ Kayaoglu, *Legal Imperialism*, (2010), 114-121.

⁵⁰ For a discussion, see e.g. Frances Wood, *No Dogs and not Many Chinese. Treaty Port Life in China 1843-1943*, (London, Murray, 1998).

⁵¹ Giovanni Arrighi, *The Long Twentieth Century. Money, Power and the Origins of our Times*, (London, Verso, 2010), 54 (citing Magdoff, 1978, *Imperialism from the Colonial Age to the Present*).

the end of the century, public international law was part of the same phenomenon as formal empire, its goals and concerns indistinguishable from the official justifications of the expansion of direct European rule.

Conclusion

During the “European century” most of the world came to be ruled by European laws. This did not take place under any well-planned or coherently executed blueprint. It took place through converging practices, both informal and formal, that led to the globalization of Western legal thinking before actual laws were set in place. Two principles dominated that thinking. One was the view that all humans enjoyed natural (private) rights and that it was the task of the law to protect and enhance them. The other was the view of law as a social “function” that operated so as to provide for the “happiness” of the people and that what this might mean was to be decided by legislative compromise. The rule of law expanded within and beyond Europe as the principle that property was to be respected, contracts were to be kept and public authorities were not to overstep the limits of their legally determined jurisdiction. This view coincided with the “standard of civilization”, measuring the extent to which non-European/American communities could begin to partake of the system of official relations between sovereign nations. At the outset of the century, international law was hardly more than a set of generalizations from the diplomatic practices of European nations. After mid-century, it began to change into a system of principles parading as a kind of constitution under which all states – as long as they were “civilized” – would be able to cooperate peacefully so as to fulfil their rights-protecting and welfare-producing goals. By that time, it was assumed, the penetration of European laws, institutions and European legal thinking everywhere would have guaranteed sufficient homogeneity at a global scale.

Ordering the World in the Nineteenth Century¹

Thomas Hopkins

I

We are, we are told, in the midst of an ‘international turn’ in intellectual history, a claim that directs our attention to the recent rise of interest in historicizing conceptions of political space.² Historians, intellectual historians amongst them, have, it is alleged, allowed themselves to be governed by ‘methodological nationalism’,³ which is to say that they have been overly preoccupied with one particular way of ordering political space, the European nation-state. Hunting for Leviathan still has its rewards⁴ – the legacies of European political modernity are too intricately woven into the fabric of the contemporary international order for it to be otherwise – but it is no longer self-evidently the case that even the most intensive investigation of the ‘rise of the modern state’ will, by itself, give much purchase on the problems of modern politics. The question is, what is involved in thinking ‘beyond the state’, certainly spatially, and perhaps also temporally. Intellectual historians have been somewhat laggardly in addressing themselves to this problem, but conceptions of empire, of inter-state order, of international law and of transnational markets have, belatedly, entered the discipline’s field of vision in the last two decades.⁵ The contours of a conceptual history of our contemporary global political, legal and economic regimes are beginning to come into focus, but much remains to be done if we are to make sense of their origins. The point has been well made that we are unlikely to discover those origins in a singular western conceptual tradition, no matter how privileged it may have been in the institutionalization of international politics in the course of the twentieth century.⁶ International politics is never univocal, even if it appears to be increasingly monolingual. Nietzsche’s genealogical metaphor for investigating conceptual change never looks more appropriate than when considering the confluence of political languages under the impact of empire and globalization. However, the privileges of power are not negligible, and an account of modern

¹ NB. This discussion paper concerns a working group whose discussions are ongoing and whose work remains in progress at the time of writing. The papers referred to are likewise to be considered work in progress.

² D. Armitage, ‘The international turn in intellectual history’, in *Foundations of Modern International Thought*, (Cambridge: Cambridge University Press, 2013), pp. 17-32.

³ *Ibid.*, p. 17.

⁴ To borrow, with apologies, from S.I. Mintz, *The Hunting of Leviathan: Seventeenth-century reactions to the materialism and moral philosophy of Thomas Hobbes*, (Cambridge: Cambridge University Press, 1962).

⁵ Notably, Armitage, *Foundations of Modern International Thought*; *idem*, *The Ideological Origins of the British Empire*, (Cambridge: Cambridge University Press, 2000); D. Bell, *The Idea of Greater Britain: Empire and the Future of World Order, 1860-1900*, (Princeton, NJ: Princeton University Press, 2007); *idem*, ed., *Victorian Visions of Global Order: Empire and International Relations in Nineteenth-Century Political Thought*, (Cambridge: Cambridge University Press, 2007); S. Muthu, *Enlightenment Against Empire*, (Princeton, NJ: Princeton University Press, 2003); J. Pitts, *A Turn to Empire: The rise of imperial liberalism in Britain and France*, (Princeton, NJ: Princeton University Press, 2005); and, in an altogether more searching vein, I. Hont, *Jealousy of Trade: International competition and the nation-state in historical perspective*, (Cambridge, MA: Harvard University Press, 2005).

⁶ A point recently reiterated by J.M. Hobson, *The Eurocentric Conception of World Politics: Western international theory, 1760-2010*, (Cambridge: Cambridge University Press, 2010).

international thought that neglected a thorough investigation of European traditions of political thought for the light they can shed on its origins would be rather seriously deficient. *Ordering the World in Nineteenth-Century Europe* was conceived as a contribution to this investigation, as a working group that would look at nineteenth-century European attempts to theorize international politics.

By the eve of the First World War, two distinct languages had emerged in Europe to describe, and perhaps to legislate for, relations among states. One, the language of ‘geopolitics’, had been so named as late as 1900 by the Swedish political scientist Rudolf Kjellén,⁷ although the antecedents of the view that states had definite discernible interests linked to their territorial basis reached rather further back (just how far back is an open question: does Thucydides belong in a ‘realist’ tradition?). The other, of international law, had been brought to birth more gradually in the decades after 1870, although again with many an anxious backwards glance.⁸ In the twentieth century these two discursive-analytical traditions were institutionalized in academic settings, professional organizations, think-tanks, a range of international courts and tribunals, and through intergovernmental organizations such as the League of Nations and its successor, the United Nations. The language of geopolitics had its respectability in polite circles rather compromised by association with German imperialism, but by this time the ‘realist’ position, purged of its orientation towards racialism, had found an alternative home in Anglo-American international relations theory, the first chair in this subject having been created in Aberystwyth in 1918. From its inception, international relations has had the ambition of accounting for both the realist and idealist legacies of nineteenth-century political and legal thought, but has in effect succeeded only in further institutionalizing them as alternative and deeply contested theoretical approaches within the discipline. The impasse this has created within international relations theory, and between the academic theorists of international relations and international law, is unlikely to be immediately overcome by any efforts on the part of historians. But it is possible that in interrogating the nineteenth-century foundations of these discursive traditions it may be possible to get a surer grip on what is at stake in this disagreement. Doing so requires a more thorough-going attempt to tackle legal history and the history of political thought in a manner both contextually sensitive and analytically deft. The workshop started from the proposition that treating international law and power politics as conceptually alien to one another, as conventional wisdom holds, is unlikely to prove particularly illuminating. Rather, it is in the entanglement of the two, at the level of theory and the level of practice, that we will find the proximate origins of the international orders of our times. Consequently, we have sought to reach back beyond the formation of discrete disciplinary traditions, and to explore the more fluid landscape of conceptual possibilities that is to be found in the century or so after the publication of Kant’s seminal essay of 1795 on perpetual peace. How should we understand nineteenth-century conceptualizations of such key elements of the international order as states, war, peace, trade, nationality, diplomacy and law; and how should we relate this conceptual realm of the ‘international’ to the politics of domestic social, economic and

⁷ R. Kjellén, *Inledning till Sveriges geografi* (Göteborg: Kungliga Universitetet i Göteborg, 1900); *idem*, *Staten som livsform* (Stockholm, 1916).

⁸ M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870-1960*, (Cambridge: Cambridge University Press, 2004).

cultural transformation? The aim was a new understanding of the spectrum of debate on these issues – one not bound to looking through the prism of twentieth-century political debate, but grounded firmly on a realistic view of past conflicts and anxieties.

II

Kant published *Zum eigen Frieden. Ein philosophischer Entwurf* (*Perpetual Peace: A Philosophical Sketch*) in 1795, the year of the Peace of Basel, under the terms of which Prussia ceded the left bank of the Rhine to France and withdrew from the War of the First Coalition.⁹ That winter French armies had captured the Netherlands in a surprise assault and established the Batavian republic, a more successful attempt at establishing a client republic than the brief experiments in Bouillon, Mainz and Rauracia, and the pattern for the client republics established in Italy and Switzerland in the next decade. Spain followed Prussia into seeking terms with France, and the coalition rapidly disintegrated, although Austria fought on until 1797, at which point Britain was left to continue the fight alone. The success of French arms raised two possibilities long discountenanced by sober analysts of the European inter-state system. The first was that war might actually prove an effective means of durably transforming the political map of Europe. As Montesquieu noted in his *Réflexions sur la monarchie universelle*, prepared as a companion piece to the *Considérations sur les causes de la grandeur des Romains et de leur décadence* of 1734, it had not been war that had made Europe what it was but marriages, successions, treaties and edicts.¹⁰ For the first time since the War of the Spanish Succession, the French seemed in a credible position to overturn the verdict of four hundred years' experience. One explanation for the rapid turnaround in French fortunes after Valmy and Jemappes, an explanation that recalled the discussions of patriotic sentiment and its invigorating effects that had accompanied Frederick the Great's successful defence of Prussia in the Seven Years War, was that the advent of republican government in France had transformed its populace into virtuous citizen-soldiers on the ancient model.¹¹ The question as the republican armies went on the offensive was whether their success would, following the example of Rome, be turned towards the creation of universal empire in Europe, or, as the Jacobins in particular were keen to stress, they aimed only at the erection of 'sister-republics' in territory liberated from aristocratic government. The former possibility had few enthusiasts amongst eighteenth-century political theorists, but the latter tapped into the long debate on the preconditions for a lasting European peace settlement that

⁹ I. Kant, *Perpetual Peace: A Philosophical Sketch*, in *Political Writings*, ed. by H.S. Reiss, trans. by H.B. Nisbet, 2nd ed., (Cambridge: Cambridge University Press, 1991), pp. 93-130.

¹⁰ Montesquieu, 'Réflexions sur la monarchie universelle', in *Œuvres complètes*, 2 vols, ed. by R. Callois, (Paris : Gallimard, 1949-51), II, p. 20. For discussion, see Hont, *Jealousy of Trade*, p. 29.

¹¹ For a helpful way into the debates on patriotism associated with the Seven Years War, see E. Piirimäe, 'Dying for the Fatherland: Thomas Abbot's theory of aesthetic patriotism', *History of European Ideas*, 35 (2009), 194-208. For a broader conspectus of patriotic reform rhetoric, K. Stapelbroek and J. Marjanen, *The Rise of Economic Societies in the Eighteenth Century: Patriotic Reform in Europe and North America*, (Basingstoke: Palgrave Macmillan, 2012). On the revolutionary armies of France the works of Alan Forrest are indispensable, including most recently on this subject, *The Legacy of the French Revolutionary Wars. The Nation-in-Arms in French Republican Memory*. (Cambridge: Cambridge University Press, 2009), and ed. with K. Hagemann and J. Rendall, *Soldiers, Citizens, Civilians: Experiences and Perceptions of the Revolutionary and Napoleonic Wars, 1790-1820*, (Basingstoke: Palgrave, 2009).

had been launched by the abbé de Saint-Pierre in the first decades of the century.¹² Kant's essay was a late contribution to this debate. He took his stand on the idea that the guarantor of a lasting peace settlement must be the establishment of republican, or in another word, representative government in the European states. Only on this basis would a confederative system of dispute resolution be possible. This would put an end to European wars, but he also insisted on the outlawing of the other means of redrawing political boundaries that we have found enumerated by Montesquieu: marriages, successions and treaties. Perpetual peace implied a perpetual settlement of Europe's political map.

In the twentieth century Kant's essay was appropriated as a canonical statement of the liberal position in international relations theory. Here was the blueprint for an international order governed by law and underpinned by shared representative institutions. Kant became a hero to international lawyers and democratic peace theorists alike. But Kant was no irenicist. As he made clear in the seventh thesis of the *Idea for a Universal History with a Cosmopolitan Purpose* (1784) the interpretive key to understanding relations between states was the same as that for understanding relations between individuals: their 'unsocial sociability'. Nature's design for humankind was realized through humanity's mutual antagonism. Civilization was the work of war as much as trade, for it was through war that states capable of bearing peace would emerge:

'Wars, tense and unremitting military preparations, and the resultant distress which every state must eventually feel within itself, even in the midst of peace – these are the means by which nature drives nations to make initially imperfect attempts, but finally after many devastations, upheavals, and even complete inner exhaustion of their powers, to take the step which reason could have suggested to them even without so many sad experiences – that of abandoning a lawless state of savagery and entering a federation of peoples in which every state, even the smallest, could expect to derive its security and rights not from its own power or its own legal judgement, but solely from this great federation (*Fœdus Amphictyonum*), from a united power and the law-governed decisions of a united will.'¹³

Towards Perpetual Peace was an argument to the effect that the transformation of France, the greatest monarchy in Europe, into a republic, and the wars that this had sparked, could deliver the conditions for the emergence of just such a league of nations. In the short run Kant was proved dramatically wrong. The round of general European wars through which he had lived, and which continued another nine years after his death in 1804, proved insufficient to effect the transformation he had hoped for. A European league of nations would have to wait until two even more destructive wars had reduced the continent to dependence on two very different, and rival,

¹² On universal monarchy, see J. Robertson, 'Universal monarchy and the liberties of Europe: David Hume's critique of an English Whig doctrine', in N. Phillipson and Q. Skinner, eds, *Political Discourse in Early Modern Britain*, (Cambridge: Cambridge University Press, 1993), pp. 349-74; P. Rahe, 'The Book that Never Was: Montesquieu's *Considerations on the Romans* in historical context', *History of Political Thought*, 26 (2005), 43-89. On Saint-Pierre's peace plan, see the essays collected in B. Bachofen and C. Spector, *Principes du droit de guerre, Écrits sur le Projet de Paix Perpétuelle de l'abbé de Saint-Pierre*, (Paris : Vrin, 2008).

¹³ I. Kant, 'Idea for a Universal History with a Cosmopolitan Purpose' (1784), in *Political Writings*, pp. 41-53, p. 47.

‘republican’ states, organized on a scale incomparably greater than revolutionary France: the USA and the U.S.S.R.

The debates of the 1790s and 1800s remain, however, a uniquely helpful way into thinking about what was at stake in nineteenth-century theories of international order. Kant’s strong endorsement of the republican peace tradition could look naïve in the face of the increasingly ruthless behaviour of French armies in the later 1790s, particularly in Italy. Struggling domestically, the Directory came to rely increasingly on the plunder foreign wars provided and on the coercive power of the army. The advent of military government under Napoleon, and the creation of a European empire more extensive than any seen in Europe since Rome, appeared to render moot the vigorous discussions that had been occupying theorists in France and elsewhere as to the proper foundations of a stable republic in a large state.¹⁴ Napoleon’s bid for universal monarchy, however, proved no more durable than that of any of his post-Roman predecessors. The nineteenth century would be concerned not with schemes for the recreation of the Napoleonic empire, but with the peaceful ordering of a Europe of competing states of various sizes and strengths. Only a minority of these states emerged from the Vienna peace process as republics in the Kantian sense of possessing representative government. The initiative in 1815 seemed to belong to Tsar Alexander of Russia, and it was the curious combination of religious mysticism and monarchical solidarity that he favoured that underwrote the Holy Alliance.¹⁵ In a way, however, the drama of the French Revolution, the rise of Napoleon, and his overturning of the old European order had forced upon all European statesmen the conclusion that had lain at the heart of Kant’s analysis: that there could be no resolution to the problem of military conflict between states without attention to their respective domestic constitutions. The reformation of the European state system came to appear to be intimately bound up with the reformation of individual states, whether one’s goal in effecting this reformation was Revolution or Restoration. Ordering the world appeared to be intimately bound up with ordering the state; the question was what form this order should take.

The legacy of the eighteenth-century perpetual peace debates appeared to point in a number of differing directions as to how one might approach this problem. At a superficial level, the Kantian peace programme could be read as a scheme for ordering international relations through law. In this sense it could be read as an outcrop of that branch of jurisprudence concerned with the law of nations. Traditionally, the normative foundations of the law of nations had been located within the law of nature, yet by the last decades of the eighteenth-century post-Grotian natural jurisprudence had come under sustained attack, and from a number of different directions. Dismissive as Kant was of the ‘sorry comforters’ of the Grotian tradition, however, he remained in recognizable dialogue with them and devoted substantial space in the *Metaphysics of Morals* to an account of the emergence of what he preferred to term the right of states - *ius publicum civitatum* – (as opposed to the right of nations – *ius gentium*) from a state of nature analogous to that which existed

¹⁴ Hence the fragmentary state of B. Constant, *Fragments d'un ouvrage abandonné sur la possibilité d'une constitution républicaine dans un grands pays*, ed. by H. Grange, (Paris : Aubier, 1991) and J.C.L. Simonde de Sismondi, *Recherches sur les constitutions des peuples libres*, ed. by M. Minerbi, (Geneva : Droz, 1965).

¹⁵ A. Brisku, ‘The Holy Alliance of Tsar Alexander I: “An Order of Things Conformable to the Interests of Europe and to the Laws of Religion and Humanity”’, in T. Hippler and M. Vec, eds, (2014) *Paradoxes of Peace in Nineteenth-Century Europe*, Oxford: Oxford University Press.

between individuals before the advent of the civil state.¹⁶ This was not the last gasp of philosophical inquiry into the normative foundations of the law of nations – Fichte and Hegel alike would give it its accustomed place in their respective philosophies of right. But, as Martti Koskenniemi argues in his contribution to the working group, the decline of natural law, as much in its institutional presence in the universities as in its intellectual hold on European thought, left such philosophical speculation isolated from the practice of jurists. The most successful figures in the field, preeminent among them the German jurist Georg Friedrich von Martens, retreated into positivist studies of the accumulated treaty law of Europe. The law of nations was reduced to a branch of *Staatswissenschaft*, an element in the training of diplomats, state officials and jurists, but with limited intellectual ambitions. One would receive no ‘sorry comfort’ from the pupils of Martens, but nor could one hope for any deep insight into the international predicament. A conceptual sea-change was necessary to move from the apologetics of Martens’ generation to the *mission civilisatrice* of late nineteenth-century international law. The ‘vacuum’ created in the interstitial period between the collapse of the post-Grotian framework and the rise of the new international law tended to denude the project of ordering the world through law of any of the more utopian expectations that might otherwise have been attached to it. Martens and his ilk were apologists for the Vienna settlement and the diplomatic and legal structures it had created.¹⁷

But we should be careful not to dismiss the role of the *ius gentium* in early nineteenth-century political debate too lightly. The claim of jurists had always been that the law underwrote the rights of the weak as well as of the powerful. This had been the basic principle of the Kantian idea of a federation, and it remained a powerful weapon for the small states that had survived the Napoleonic adventure and the cull at Vienna. Martens himself was a spokesman for the state of Hannover in the earliest meetings of the Federal Assembly of the German Confederation, deploying, as a sceptical Friedrich List noted at the time, his jurisprudential expertise to defend the rights of those North German states determined to make the most of their diplomatic ties with the British commercial hegemon at the expense of their less privileged southern neighbours.¹⁸ The comment might be taken, and was probably intended, as a reflection on the ready manner in which appeals to law could readily be made to serve particular interests. But in a way, this had long been the point. As Richard Whatmore has reminded us in his study of the relationship between Geneva, France and Britain in the eighteenth century, European politics had long been concerned with the interactions between imperial powers and small states that had to find some way of accommodating themselves to the demands of their neighbours.¹⁹ The nineteenth century was the century of empire *par excellence*, when the chequered map of Europe was reduced to a handful of empire-states. Faced with the overwhelming strengths, military, economic and diplomatic, of the great powers, few small states could hope to survive without making appeal to normative values located beyond the realm

¹⁶ I. Kant, *The Metaphysics of Morals*, ed. by M. Gregor and R.J. Sullivan, (Cambridge: Cambridge University Press, 1996).

¹⁷ M. Koskenniemi, ‘Scientific Anxieties: Imagining Law of Nations in the Early 19th Century’, Work in progress.

¹⁸ W.O. Henderson, *Friedrich List: Economist and Visionary, 1789-1846*, (London: Frank Cass, 1983), p. 28

¹⁹ R. Whatmore, *Against War and Empire: Geneva, Britain and France in the Eighteenth Century*, (New Haven, CT: Yale University Press, 2012).

of international competition. Béla Kaposy has provided the working group with a potent illustration of this in the case of the early debates on the principle of Swiss neutrality, in which the statesmen Charles Pictet de Rochement played a leading role. In the immediate aftermath of the Vienna Peace settlement, the Swiss sought guarantees that their state would not fall victim, as it had during the French Revolutionary Wars, to the predatory inclinations of larger and more powerful states. The result was an activist diplomacy with a two-fold strategy that has become almost synonymous with Switzerland's modern political identity: on the one hand to seek guarantees of the federation's republican governments and its neutral status, on the other soft-power encouragement for the reform of other European states in a liberal direction. The goal was to produce an international environment safe for a small republican state at the heart of monarchical Europe.²⁰ It should not come as a great surprise to find the Swiss, the Belgians and the Dutch to the fore in the creation of the institutional frameworks of the new international law from the 1860s. The siting of the League of Nations' headquarters in Geneva was a reflection of a long-standing association between Swiss neutrality and internationalism.

In most respects, however, the Swiss experience was highly unusual. For much of the nineteenth century the trend was towards the consolidation of territory in the hands of larger states with imperial ambitions within Europe and without. The initially unamicable divorce between the Netherlands and Belgium was an early exception to this, and the independence of Greece from the Ottoman Empire would prove the first in a long run of partitions of the Empire's European provinces – this was the century that gave us the term 'Balkanization' after all. Elsewhere, however, the story was the reverse. The consolidation of the German states from several hundred to a few dozen in 1815, and their eventual incorporation into a Prussian-dominated Second Reich in 1871 eliminated central Europe's soft geo-political core. The dominant role accorded to Austria in Italy could not stand up to an alliance between a revanchist France, and an aggressive Piedmont empowered by the spread of nationalist sentiment. It is possible to read the two unifications simply through the prism of power politics – here finally were examples of durable political change achieved through war. In other ways the parallels with the events of the 1790s is more instructive, particularly in the Italian case. Success in war went hand in hand with a transformation in the basis of political identity. The 'principle of nationality' set eighteenth-century 'patriotism' on an ethno-cultural basis, creating a potent mixture capable of reviving the republican tradition. The failure of the Revolutions of 1848 broke the link between democracy and nationalism – Italy would be a kingdom, and Germany an empire – but placing nationhood at the centre of the state's political identity served to smuggle into its foundations something of the logic of the republican peace theory. A Europe of nations, as Mazzini and his followers in Young Europe were keen to argue, would be a pacific Europe, since the extent of the nation would place natural frontiers on the state's territorial ambitions.²¹ Woodrow Wilson appears to have had something of the same idea and championed the refashioning of central Europe after the First World War around it. But a Europe

²⁰ B. Kaposy, 'The Law of Nations as the Interest of Europe', work in progress.

²¹ L. Obregón, 'Challenging the Boundaries of 1815: Augusto Pierantoni's (1840-1911) 'History of International Law from the Italian Resurgimento' (Work in Progress), will speak to the debates on Italian unification.

of nations, disastrously unstable as it proved to be, could only be built on the ruins of the Austrian, Russian and Ottoman Empires. Nationality became a kind of para-political identity, capable of buttressing states, but also of undermining them. It introduced a new variable into thinking about the inter-state order even if one denied it normative priority in defining territorial boundaries.

However, for much of the nineteenth century the question for many small nations, and some large ones, was not how to conserve a political independence they had already lost, but how to negotiate the experience of empire. This was not, as nationalist historiographies of many stripes have tended to suggest, uniformly a case of preparing for an independence that must inevitably one day be acquired. As the Scots (though not the Irish) had found from their union with England, the opportunities afforded small nations that abandoned their claims to sovereignty in return for incorporation into larger political and economic units could be extensive.²² The Russian empire has seldom seemed an obvious site for thinking about such symbiotic relationships, but Adrian Brisku for Georgia and Lauri Tähtinen for Finland offer exemplary studies of how we might think about the complex process of negotiating a place for small nations within imperial reform schemes. Brisku's study of the Georgian intellectual Nikolai Nikoladze's political economy shows how one might go about envisaging a strategy for national survival and prosperity by navigating the opportunities opened up by incorporation into the Russian empire. It remained possible to conceive of a Georgian national interest in economic terms, notwithstanding the political extinction of the nation, and to use the Russian umbrella to pivot away from the influence of the Ottomans and Persia and towards Europe.²³ The case of Finland is a little more complex, for the Grand Duchy enjoyed substantial political autonomy compared to Georgia. Tähtinen shows that for Finnish statesmen such as J.V. Snellman, this provided Finland with the opportunity to act as a middleman between an underdeveloped Russian economy and a more developed western and central Europe. In both cases we can see the link between the assertion of a distinct national identity and a political economy that sought to profit from imperial power structures.²⁴

III

Nikoladze and Snellman direct us towards the importance of political economy for thinking about intra- and inter-state relations in the nineteenth century. Each was engaged in an argument about the political economy of the largest contiguous land empire then existing, but to think about Russia in this light was also to reflect on the empire's place in the international trading system. Britain had emerged from the Napoleonic Wars as the undisputed commercial and manufacturing hegemon in Europe and, through its colonial possessions, particularly in India, it was rapidly creating or reshaping global markets in manufactured goods to re-enforce its position. The prospect of a mercantile state achieving such power had been the subject of much speculation in the eighteenth century. More than once the proposal of the Marquis de Mirabeau for an anti-British league to

²² I. Hont, 'The "Rich Country-Poor Country" Debate in the Scottish Enlightenment', in *Jealousy of Trade*, pp. 267-322.

²³ A. Brisku, 'Between the Nation and the Empire: Niko Nikoladze's Political Economy', Work in Progress.

²⁴ L. Tähtinen, 'Nation, Empire and Political Economy in the Thought of J.V. Snellman', Work in Progress.

prevent it achieving just such power had seemed a possibility.²⁵ Napoleon sometimes presented the Continental System in just such a light. With his fall, possibility had clearly become reality. Future thinkers would have to choose between examining how other nations might accommodate themselves to the British trade regime, or how they might seek to challenge it. The eighteenth century international scene had been dominated by commercial warfare between Britain and France.²⁶ No power appeared in a position to challenge the British in the immediate aftermath of the wars, and for a time the rhetoric of free trade as a means of neutralizing commercial rivalry had a certain widespread appeal. Yet the anxieties awakened by Britain's ascendancy did not dissipate, as the belated success of Friedrich List's *System of National Economy* with its advocacy of protected markets to prepare German industry for the challenge of competing seriously with Britain suggested.²⁷ As the century wore on the USA and Germany began to seem like plausible contenders for the central role in global trade occupied by Britain, whilst France re-established itself as a colonial power, alongside newcomers such as Germany, Italy and Belgium. But this only served to revitalize the idea that competition for markets and colonial territory could easily slide into warfare.

But there was another side to the complications commerce and industrialization introduced into international relations, and this concerned its transformative effect on state–society relations. The idea that economic life created a distinct sphere of human activity within, but also transcending, the state gained ground rapidly in the early nineteenth century. Norbert Waszek's contribution to the working group explored the central role this idea played in the thought of one of the most ambitious and systematic of nineteenth-century thinkers, G.W.F. Hegel. Hegel is not usually thought of as a theorist of international trade, but as Waszek demonstrates commerce, and particularly maritime commerce with its character-building struggle with the sea, were envisioned in his work as playing an equivalent role in the development of civil society as war and diplomacy did for the state. They had a dual role in stimulating the evolution of state and society and in forging relations between nations.²⁸ Echoes of Kant's 'unsocial sociability' are easy to catch. Hegel reaffirmed the necessity of thinking about domestic and international political orders in tandem, but as his work made clear this could not be merely a matter of public law or international right. The political economy of the state, and of the international order, had to be brought into consideration as well. In fact, this conclusion had been reached rather early in the debate over Kant's work by J.G.

²⁵ The proposal formed the heart of Mirabeau's *L'Ami des homes* (Avignon, 1756); see M. Sonenscher, *Before the Deluge: Public Debt, Inequality and the Intellectual Origins of the French Revolution*, (Princeton, NJ: Princeton University Press, 2007), pp. 189-99 for discussion of the text in its wider context.

²⁶ F. Crouzet, *La guerre économique franco-anglaise au XVIIIe siècle*, (Paris : Fayard, 2008) offers a thorough account.

²⁷ F. List, *The National System of Political Economy* [1841], trans. by Sampson S. Lloyd, (London: Longmans, Green and Co., 1909). A scholarly edition of List's works was published in the 1920s and 1930s: *Schriften/ Reden/ Briefe*, ed. by E.V. Beckerath et al., 10 vols. in 12, (Berlin: Reimar Hobbing, 1927-35). The text of *Das nationale System der Politischen Oekonomie* is to be found in Bd. 6. I have written elsewhere on List's political economy, see T. Hopkins, 'The Limits of Cosmopolitical Economy: Smith, List and the Paradox of Peace through Trade', in Hippler and Vec, eds, *Paradoxes of Peace in Nineteenth-Century Europe*, forthcoming.

²⁸ N. Waszek, 'Hegel on Maritime Trade and Globalization', Work In Progress.

Fichte. Fichte's *Der geschlossene Handelsstaat* (*The Closed Commercial State*, 1800)²⁹ was, as Isaac Nakhimovsky has argued, conceived as a reply to Kant's *Perpetual Peace* that would start from a reworking of the political economy of Rousseau's *Social Contract*. Fichte sought to tackle the two-fold problem of domestic economic security and international commercial rivalry by disentangling states from the ties of mutual dependence that trade had created between them. A closed commercial state implied withdrawal from international trade networks and the realization of a sort of autarkic socialism that would neutralize trade as a factor in power politics.³⁰ This was a radical solution to the problem of the entanglement of states and markets, not embraced by any European power before international isolation forced the choice upon the Soviet Union in the 1920s. But it stood at one end of a wide spectrum of thought on how to manage the relationship running through the national economics of List, liberal free trade and on out to the anti-statism of Marxism or anarchism.

With the exception of the last two of these currents in nineteenth-century thought, which looked rather to the abolition of the political order as such than to its transformation, none of these positions involved abandoning the basic framework of competing individual states that had defined Europe's political modernity. Napoleon may have offered a compelling image of what universal monarchy might look like in the nineteenth century, but it found relatively few takers. Empire came to denote not a universal polity, merely one organized on a great scale, whether as an accumulation of roughly contiguous territory, as with Russia, Austria or Germany, or as a maritime colonial empire. But if universal monarchy in the old sense was off the table, so too seemed to be any aspiration towards federation. Henri de Saint-Simon might still hope for an Anglo-French union to provide the core of a European league of nations in 1815,³¹ but for much of the century the project appeared dead in the water. Much has, of course, been written about how such projects came to be revived in the early twentieth century, although much of the historiography has tended towards a kind of tunnel vision in attempting to trace the historical lineage of the arrangements created by the Treaty of Rome in 1957. The final two contributions to the working group suggest we need to take a broader view of the intellectual history of ideas of European unity in the nineteenth and early twentieth century. Hugo Drochon locates one enthusiast in the unlikely figure of the philosopher, Friedrich Nietzsche. Drochon pieces together the fragments of Nietzsche's *Grosspolitik*, conceived as a response to the philosopher's distaste for the petty-fogging nature of the Bismarckian Reich. Drochon shows that Nietzsche arrived at the idea of a Europe united under the rule of a new ruling class, bred (quite literally) from the union of Prussian Junkers and Jewish financiers. This new ruling class would be engaged in a 'war of the spirit' against mediocrity, but this equally seems to have been about keeping Russia at bay in a more traditional form of *Grosspolitik*.³² The case of Nietzsche

²⁹ J.G. Fichte, *Der geschlossene Handelsstaat: Ein philosophischer Entwurf als Anhang zur Rechtslehre und Probe einer künfftig zu lieferenden Politik*, (Tübingen: Cotta, 1800).

³⁰ I. Nakhimovsky, *The Closed Commercial State: Perpetual Peace and Commercial Society from Rousseau to Fichte*, (Princeton NJ: Princeton University Press, 2011).

³¹ M. Le comte de Saint-Simon et A. Thierry, son élève, 'De la réorganisation de la société européenne, ou De la nécessité et des moyens de rassembler les peuples de l'Europe en un seul corps politique, en conservant à chacun son indépendance nationale', (October 1814), in H. de Saint-Simon, *Œuvres complètes*, 4 vols, ed. by J. Grange, P. Musso, P. Régner and F. Yonnet, (Paris : PUF, 2012), II, 1233-97.

³² H. Drochon, 'Nietzsche's "Great Politics" in the Context of the Second Reich', Work In Progress.

should remind us that there is no one story to be told about ideas of European unity. The idea has recurred many times since the seventeenth century, but seldom following the same trajectory. Anne-Isabelle Richard offers one vanished trajectory in her account of the inter-war Czech activist for a united Europe, Richard Coudenhove-Kalergi. Coudenhove-Kalergi was an advocate of a Franco-German axis that would unite western and central Europe. Central to this scheme, however, was the incorporation of the imperial possessions of the European partners into a kind of grand imperium for the extraction of raw materials. Only this could allow continental Europe to face British, American and Asian competition in the decades to come. Coudenhove-Kalergi's scheme was underwritten by a rather complex racial politics that privileged Europeans and Asians at the expense of Africans. Richard's analysis takes us into a world where European unity is no longer a resolution of great-power conflicts, but their recreation on a larger stage.³³

IV

The ground covered by the contributions to the working group is broad, and it is hoped that in extending the field of vision for historians of nineteenth-century international thought, whether by introducing into the discussion figures alien to the established canon, or by re-interrogating the work of more familiar philosophers, political theorist, political economists and jurists, we can make the case for a more thorough investigation of the problems raised. The Kantian problematic – what are the appropriate legal, governmental and economic underpinnings for a world of competing states whose relations are governed by law – remains very much with us. The dilemmas this has opened up for the European Union will take a long time to work through, even as the prospect of thorough-going federation appears a more realizable prospect than at any time since Kant wrote in 1795. Whether such a federation can succeed in creating for itself a reasonably representative structure remains to be seen. The problem of power imbalances between its members remains all too real, even if the idea of any state, even the most powerful, making a bid for institutionalized ascendancy, or empire as we might once have termed it, seems slightly fanciful. Aligning democratic government, market economies and international co-operation appears a more difficult task and our successes in this regard more fragile now than at any time in the recent past. Perhaps casting our minds back to when the fragility of the international order seemed a more self-evident feature of the political landscape can help us orientate ourselves towards an uncertain future.

³³ A.I. Richard, 'Europe, Africa and the World in the Thought of Richard Coudenhove-Kalergi', *Work in Progress*.

‘Politics of Change and Stability’ in the Ottoman and Russian Empires, 1815–1914

Adrian Brisku

Introduction

Two cardinal issues undercut the ordering of the Ottoman and Russian empires in the ‘long European century’. The first concerned resolving the question of whether to open or restrict the political space at the level of imperial governing, whereas the second revolved around the prudence of maintaining a highly regulated and controlled economic space or subscribing to the principles of the open liberal economy. These tensions, which in this manuscript are referred to as the ‘politics of change and stability’, were interlinked and had domestic and external repercussions for both empires. Indeed, the many wars between the two empires were a mere extension of these tensions.

Aside from the periods of political repression and pressures for economic isolation, the Russian and Ottoman empires repeatedly sought to renew themselves politically and economically, in order to react to internal and external pressures. Renewal for the purpose of peace and prosperity came to be articulated in the vocabulary of domestic *reforms*, and as a morally guided if not rule-based European political order. In these efforts, much hope and suspicion was directed to the imperial state and its bureaucratic order. The manuscript engages with some key political figures and projects for renewal in the realms of law, politics, economics and international relations at crucial moments of Russian and Ottoman imperial histories as well as the wider European history – of which this paper only highlights some fragments with their inherent tensions – to explore what went on with the alternative of change and stability.

I

Men versus Institutions: Law and Religion

The first three vocabularies regarding the ‘politics of change and stability’ that came into prominence during the first half of the nineteenth century in both empires were those of permanent laws, new institutions and religion. They were elevated and articulated as the fundamental means to think about, and act upon, the ordering of the empires from within and in their relations to other European powers (see Hopkins (ed.) *Ordering the World*) when the question of a single individual or a state threatened the internal and external power balances. For a long time, laws and religion had been used as tools for stability, in forging state order as well as alliances and boundaries within and between imperial states. But, they acquired the valence of change with the rapid political, military, and economic changes taking place in the continent. If in both empires legal, institutional and maybe constitutional (at this point) reforms became the means to constrain extreme political and economic imbalances, and so to revive imperial and European politics, Russian and Ottoman statesmen and rulers in discussion here differed on the role of religion, and its ultimate purpose, *telos*, (see Chakrabarty *et al* (eds) on *Teleology and History*) in this renewal. Imperial Russians sought to bring in religion for its perceived unity, while the Ottomans struggled with it, because of its divisiveness.

‘True Monarchy’ and the Apogee of Fundamental Laws

In the first two decades of nineteenth-century Russia, Emperor Alexander I in European politics and the statesman Mikhail Speransky in Russia were at the forefront of the politics of renewal. This might appear counterintuitive, for what was the need for fundamental renewal when Russia’s position in the continent at the end of the eighteenth and early nineteenth century was in ascendancy? For Speransky, however – who came to prominence in domestic politics as the Tsar’s state minister from 1808 until the onset of the Great War with Napoleonic France in 1812 – there was something greatly unfitting about how political power was exercised and the political will administered in Russia, called ‘despotic monarchy’. The alternative he sought to pursue, as noted in his earlier political writings of 1801 and 1802, was a ‘True Monarchy’. The uneven balance of power between imperial state and society that ‘despotic monarchy’ generated, threatened common welfare and undermined Russia’s position in Europe. Such had been the story of the reign of the enlightened Catherine the Great and the repressive Emperor Paul I.¹ ‘When the peoples realised that their rulers separated their own interests from those of the welfare of their people’, Speransky wrote, ‘then, the peoples found it necessary to add ... rules ... called the *fundamental laws of the state*, and their collection is a general statute or constitution.’²

The fundamental laws and constitution was not a mere listing of synonyms in his statement, for they cut to the heart of the political debates on the future of Russia. Would it be only a question of establishing fundamental laws as in the rule of law, which the tsar as the sole source of law remained above? Or, would there be a constitutional monarchy in which the autocrat and the nation (nobility) shared power? (See Grotke & Prutsch (eds) on Constitutionalism, Legitimacy and Power). This plurality of legal idioms was also about the understanding of the law’s ultimate purpose in a political community: that is, the granting of rights and obligations to the nation (nobility), or simply delineating duties and obligations to be observed by the bureaucratic state – which together with a monarch’s unlimited will fulfilled the spiritual task of guiding imperial subjects with ethical and moral strength.³ In his early writing, Speransky contemplated both alternatives, and so did Tsar Alexander I. As Speransky put it, ‘True Monarchy’ entailed a state based on law, guiding the spiritual and material progress of the nation.⁴ This meant reforms that ‘consist in establishing and founding the government, *hitherto absolute*, on unchangeable laws’ that even the all-powerful monarch could not violate.⁵ Newly enthroned, the Tsar was faced with the nobility’s constitutional plan, the Charter of 1801, which sought constitutional guarantees for the rights to life and property against bureaucratic arbitrariness and which objected to the monarch’s legislation. He was also faced

¹ M. M. Speransky, *Proekty i zapiski*, ed. S. N. Vlak, (Moscow-Leningrad, 1961), p. 140.

² Marc Raeff, *Michael Speransky: Statesman of Imperial Russia 1772-1839* (The Hague: Martinus Nijhoff, 1957), p. 120.

³ V. I. Semevskii, ‘Pervyi politicheskii traktat Speranskogo’, *Russkoe Bogatstvo* 1, (1907), pp. 53-54, Raeff, Michael Speransky, p. 216.

⁴ David Christian, ‘The Political Ideals of Michael Speransky,’ *The Slavonic and East European Review*, Vol. 54, No. 2 (April 1976), p. 165.

⁵ *Ibid.* p. 199.

with the imperative of addressing the legal chaos in the empire. Of the two, he opted for the latter, vowing to establish a 'single law' for the empire.⁶

It was the meaning of the latter which served as the fulcrum in Speransky's framing of *A Draft Statute of State Laws* (*Vvedenie k ylzheniju gosudarstve'nmikh zakonov*). He completed this *Draft* in 1809, having been tasked by the Tsar in secrecy from public opinion, soon after the 1807 signing of the Treaties of Tilsit with Napoleon. In it, he provided a clear separation of the judiciary (the senate), the legislative (*Duma*) and the executive, at local and imperial levels. But rather than having checks and balances, Speransky introduced a new institution, the Council of the State, to coordinate these branches in order to provide unity and purpose in the workings of government. In his earlier writings, he had casted doubt on whether laws and new institutions alone could curb monarchical absolutist power and alter the 'slavery' relations between the monarch and the nobility as well as serfs and the nobility. The solution he saw was the engineering of a new propertied class drawn from the nobility and freed peasants which, conscious of its legal rights, would translate its economic power into a political one. In the *Draft*, Speransky codified the legal and institutional clarity of bureaucratic procedure and left the monarch's prerogative to legislate uncurbed. This, he thought, would quell the nobility's resentment of an encroaching, arbitrary central bureaucracy. Of the new branches that Speransky proposed, the Tsar approved only the Council of the State in 1810. Yet even this backfired. Nikolai Karamzin, a spokesman for the high nobility, attacked Speransky for 'playing with forms' of the much-heated French with this new institution in order to curb the Tsar's absolute prerogative to legislate.⁷ He saw Speransky's bureaucratic ordering – external coercion through rules and decrees for creating a responsible society – as the incarnation of an absolutist state.⁸ Meanwhile, bureaucracy remained outside political supervision.⁹ This along with the portrayal of him as a promoter of the Russian-French alliance – in light of an impending war against Napoleon in 1812 – seemed enough for the Tsar to exile Speransky to Siberia.

Buried in secrecy, the *Draft* became mythical amongst the 1825 Decembrists, who considered it as a basis for their liberal federalist and unitary constitutional projects. Some even nourished plans that Speransky – now back from exile – would become a leading political figure in the expectation that the monarchy would fall. But failing to do so, the new tsar Nicholas I, personally leading the investigation of the Decembrists, made use of Speransky's abilities by asking him to produce clear bureaucratic procedures in delivering punishments. When in exile, Speransky wrote to Tsar Alexander I that the reform project was nothing more than what he had requested,¹⁰ with the sole exception that they were to serve a higher purpose, a call to unity beyond the mundane – a *telos* that the Tsar would make part of his life's mission, in the ordering of European politics.

⁶ Raeff, *Michael Speransky*, p. 33.

⁷ Christian, 'The Political Ideals', p. 201.

⁸ A. N. Fateev, 'K istorii iuridicheskoi obrazovannosti v Rossii', *Uchenye zapiski osnovaniye russkoi uchebnoi kollegii v Prage*, (Prague, 1924), Vol. 3, p. 219.

⁹ Raeff, *Michael Speransky*, p. 141.

¹⁰ *Ibid.*, p. 117.

European Peace and Stability by Religious Unity: Emperor Alexander I's Holy Alliance

Pursuing a politics for a European order and peace based on the principles of the Gospel,¹¹ as the Holy Alliance was, would appear to be a folly on the side of Emperor Alexander I. It was a paradox (see Hippler & Vec (eds) *Paradoxes of Peace*) to the continent's previous centuries of wars, triggered in the name of defending and/or promoting Christianity. With the signing of the Holy Alliance on 26 September 1815 by the Austrian Emperor Francis I, Prussian King Frederick William III and the Tsar, nearly three months after the conclusion of the Vienna Peace Congress, the Russian monarch was not only restoring full aristocratic/monarchic order and values, but also going against the currents of time – or was he?

The pledge to ground European politics on the Christian precepts of 'justice, love, and peace' and reform European order to 'perpetuate the mundane institutions and adjust their imperfections' was a project about which only he, amongst his European peers, seemed convinced. The British side discarded it, and the Papal States and the Ottoman Empire rejected it. Chancellor Metternich viewed it as a 'union of religious and political-liberal ideas', which his Emperor signed only under Russian pressure.¹² But there was genuine support for it, too. Many within the German speaking milieu cherished a 'Christian Theocracy and European Union'¹³ as opposed to Napoleon's profane European empire. For Siberia-bound Speransky, its proclamation in Russia was how 'my dreams for the perfectibility of governments and the application of the doctrine of Our Lord on public affairs'¹⁴ became a reality. It represented also a new prospect for religious plurality in Russia, one the Russian Orthodox Church 'endured' for seven years until forcing the hand of the Tsar to close down religious mystics and secret societies.¹⁵

Yet, aside from these mixed views, the Holy Alliance represented a sustained effort from the Tsar to establish a common European strategy against a single man and one nation that wreaked havoc in the continent and in the future peace of Europe. From his perspective, it was Napoleonic France's tyranny that had discredited the secular vocabulary of equality, sovereignty, federalism, and diplomacy for a European order. This vocabulary of 'the highest principles of justice and love of humanity', was the basis for the *Grand Design* of 1804 in which the Tsar envisaged an 'indissoluble union' between Russia and Britain as the main pillar for other European nations to join in forging a third coalition against Napoleon¹⁶ and constructing a future European order. After failing to obtain British consent about it, and then again about the Holy Alliance, with the latter the Tsar wanted to create a common European system for reintegrating France through the language of brotherly

¹¹ V. K. Nadler, *Imperator Aleksander I i ideia sviashchennago soiuza*, 5 Vols., (Riga, 1886-1892), Vol. 1, p. 3.

¹² Prince Clemens von Metternich, *Metternich: The Autobiography, 1773-1815* (Welwyn Garden City: Ravenhall Books, 2004), p. 262.

¹³ Janet M. Hartley, *Alexander I* (London and New York: Longman, 1994), p. 135.

¹⁴ Raeff, *Michael Speransky*, p. 226.

¹⁵ Francis Ley, *Alexandre I et sa sainte-alliance* (Paris: Librairie Fischbacher, 1975), p. 272

¹⁶ Charles Morley, "Cartoryski's Attempts at a New Foreign Policy under Alexander I," *American Slavic and East European Review*, Vol. 12, No. 4, (Dec., 1953), pp. 475-485, p. 477.

union of sovereigns and cabinets,¹⁷ dealing with all European ‘local’ tensions as intra-national/state problems.¹⁸

For such a common strategy, seemingly irreconcilable compromises were needed. A post-Vienna Congress monarchical order had to be restored. Yet the republican and constitutional legacy of the French Revolution and Napoleonic rule in Europe, particularly the core European country, France, and the troublesome part of the empire, Poland, could not be entirely erased. In the Tsar’s political vocabulary this was expressed as ‘Sage Libéralisme’,¹⁹ whereby rather than yielding to revolutionary demands for liberal constitutions, the monarch granted them provided the nations in question were predisposed to a constitutional government. This was a precondition which he thought nations such as the Spanish, Italian and even his own nation – having requested a new constitutional project in 1820 what came to be known as Novosiltsev’s *Charte Constitutionnelle* for Russia²⁰ – did not yet have.²¹ The other strategy for ordering Europe through the Holy Alliance was deciding on more sensitive common measures at a European level. When granting constitutions was not possible, then Christian morality, articulated at the first Holy Alliance congress of Aix-la-Chapelle (1818) as ‘joint moral actions’ (collective intervention), would ensure future order and peace in Europe and around the globe.²²

The Holy Alliance’s other congresses in the early 1820s were set against the background of liberal revolutionary uprisings in the German states, Italy, Portugal, and Spain. Furthermore, questions of ordering for the political communities of colonies in Latin America (see Ortega’s contribution), were – with Britain less focused on continental affairs – a fierce contest between the Tsar and Metternich on the options to ‘pacifying’ Europe: granting constitutions, unilateral or collective interventions. While collectively rubberstamping most of the unilateral intervention of France in Spain and Austria in Italy, the Tsar’s Holy Alliance was unable to garner ‘joint moral actions’ for the Greek nationalist insurgency against the Ottoman Empire. At this point in time, reconciling the principle of brotherly solidarity on which the Greek nationalists called him out on to help them on their national project that fitted well with Tsar’s grandmother’s project for a trade route access in the Mediterranean Sea, proved insurmountable to the principle of monarchical order,²³ irrespective of the religious differences of that particular order.

‘Alternation and Complete Renewal of Ancient Custom’: Permanent System and New Laws

As advisor on imperial foreign affairs, Reshid Pasha subscribed to sultan Mahmud II’s centralising efforts and the opening up of the empire, diplomatically and economically, to the European powers during the 1820s and 1830s, following the internal and external repercussions of the Greek

¹⁷ Ley, *Alexandre 1er*, pp. 209-228

¹⁸ Jacques-Henry Pirenne, *La Sainte-Alliance: Organisation européenne de la paix mondiale*, Vol. 1 (Switzerland, Neuchâtel: Éditions de la Baconnière, 1946), p. 237.

¹⁹ Alan Palmer, *Alexander I: Tsar of War and Peace* (London: Weidenfeld and Nicolson, 1974), p. 312.

²⁰ Raeff, *Michael Speransky*, pp. 42-43.

²¹ Hartley, *Alexander I*, p. 152.

²² L. V. Mel’nikova, “Aleksandr I i sozdanie Svyashchennogo soyuza,” in http://www.borodino.ru/download.php?file_id=166&_CM3_CM3=2td7ueq02re5hpc44vt7i99ru3 (accessed 27 March 2011), pp. 8-9.

²³ Maurice Bourquin, *Histoire de la Sainte Alliance* (Genève, 1954), pp. 299-314.

independence. Yet it was the nature of internal order within the empire and that of external relations which he sought to alter. For, while Mahmud's internal order – emulating Peter the Great's military and centralising reforms²⁴ – had only led to despotism, taking the life of his beloved patron and statesmen Pertev Pasha, the sultan's infirm positioning in the European order had allowed Russia to exert unparalleled influence on the Empire.

His alternative focused on reviving and integrating the empire through legal and institutional means, while anchoring it in a rule-based European order of lasting alliances with 'friendly powers'. Reshid Pasha laid this out in an 1839 memorandum to the British Foreign Minister, Palmerstone. Seeking British backing in a second Ottoman–Egyptian crisis, he vowed to overhaul the Ottoman legal system with new institution and laws so as to create a 'permanent system'²⁵ that, as his political ally/rival Rifaat Pasha elaborated, would 'determine the limits of the permissible in a way that would preclude the exercise of personal whims'.²⁶ This was articulated through the imperial decree of *Hatt-ı Gülhane*,²⁷ guaranteeing the life, security and honour of all subjects – setting the stage for the *Tanzimat* era reform. The crux of the matter was not that sultan Mahmud II exercised his despotic powers in an institutional and legal vacuum. Rather, that he had discarded them. The task then was to introduce new laws to revive the old customs, as the new sultan Abdul-Mecid also demanded. As he made sure to emphasise: 'This alteration and complete renewal of ancient custom', was 'solely for the purpose of reviving religion, government and the empire,' and the state was not to engage in 'anything that is contrary thereto'.²⁸

While there was no doubt for Reshid Pasha or his peers that the *Hatt-ı* was no constitution, it was still a radical perspective on reforms²⁹ and administrative unity³⁰ for it sought to re-order one of the most important and sensitive systems of the state, the legal one, undermining the 'de facto' constitution of a theocratic empire. A similar path of shifting from traditional notions of reform – the 'circle of equity' and strengthening of *din-ü-dehvet* (religion and state)³¹ – towards a 'rational-legal'³² ones had been undertaken by sultan Selim III as late as early nineteenth century. Yet these *New Order* military and financial reforms had resulted in his dethronement.³³ Even Metternich, whose advice Reshid was keen to take, recommended to 'build your government upon the basis of

²⁴ Bernard Lewis, *The Emergence of Modern Turkey*, 2nd edition (Oxford: Oxford University Press, 1968), pp. 76-103.

²⁵ Frank E. Bailey, *British Policy and the Turkish Reform Movement: A Study in Anglo-Turkish Relations, 1826-1853* (Mass: Cambridge: Harvard University Press, 1942), p. 271.

²⁶ Serif Mardin, *The Genesis of Young Ottoman Thought* (Syracuse University Press: 2000 [1962]); pp. 182-183.

²⁷ Abdolonyme Ubicini, *Lettres sur la Turquie*, Partie 1 (Elibron Classics, 2007 [1853]), p. 31.

²⁸ Harold Temperley, *England and the Near East: The Crimea* (London: Longmans, Green and Co, 1936), p. 162.

²⁹ Edouard Ph. Englelhardt, *La Turquie et le Tanzimat; ou: Histoire des Reformes des l'empire ottoman depuis 1826 jusqu'à nos jours*, (Paris: Imprimeur-éditeur F. Pichon, 1884), Vol. 1, p. 36.

³⁰ Ubicini, *Lettres*, p. 3.

³¹ Virginia H. Aksan, 'Ottoman Political Writing, 1768-1808', *International Journal of Middle East Studies*, Vol. 25, No. 1 (Feb., 1993), pp. 53-69.

³² Carter V. Findley, *Bureaucratic Reform in the Ottoman Empire: The Sublime Porte, 1789-1922* (Princeton: Princeton University Press, 1980), p. 113.

³³ *Ibid.*

adherence to the religious institutions which are the essentials of your existence. ... The bases of the West are Christian laws. *Restez turcs: mais alors consultez la loi musulmane*.³⁴

For Reshid Pasha, however, there was much more flexibility than it actually seemed, not only with regards to renewing the empire internally, through new laws and institutions, but in joining the European order. In general, he was of the view that existing Islamic legal structures and interpretations could be either transformed, or if not they were at least flexible enough³⁵ to endure new change. The empire had used capitulations to interact with the Christian space; this interaction was now easier because the European powers, with their law of nations operating under the concept of civilisation with new system of rules (see Obregon's contribution). For Rifaat Pasha, who assisted Reshid in the preparation of the *Hatt-ı*, civilisation was precisely about peaceful relations between nations, to avoid wars.³⁶ This was what drew the interest of late eighteenth-century Ottoman reformers – Europe's formal setting of negotiations and alliances to control one another's power.³⁷ This meant, however, discarding Islamic terms of war and peace, which were so constitutive of the Ottoman Empire.³⁸ These terms rigidly divided the world between *Dar al Harb* (land of infidels) and *Dar al-Islam* (land of Islam), in which negotiations or wars with non-Muslim nations were conducted on the basis of moral and religious superiority. The division and superiority within the Islamic law of nations was no different from that of medieval Christendom in its idea of universal monarchy, being ruled by one law and one ruler, and the need to convert the unconverted featured prominently.³⁹ Hence, in pushing for alliances with friendly powers, Reshid Pasha went further than any of his predecessors or contemporaries:⁴⁰ the 1838 Treaty of Balta Liman and the *Hatt-ı*, rendered the Empire de facto a part of European system of powers – British backing in return for access to the Ottoman market – *de jure* sealed at the 1856 Paris Peace Treaty.

Having drawn the link between external protection and internal reform, Reshid Pasha envisaged no great obstacles for the reordering of the empire emerging from the Islamic legal system, but instead from the inequality it set between Muslim and non-Muslim communities. On the one hand, there was the flexibility within Islamic law (*Shariat*), which he noted had equally been abused by the previous sultan to cover up his despotism, and the high clergy to provide that cover by issuing religious decrees (*fatwa*). On the other hand, there was another source of law in the Ottoman legal system, the secular imperial decrees (*irades*), and the *Hatt-ı* was the example of a means through which the new legal and institutional order could be put in place, and the centralisation and unity of the empire could be ensured. In his memorandum, he stressed that the guarantees of life and property in the *Hatt-ı* were not about implementing revolutionary liberal ideas. Quite the contrary, the absence of these guarantees had pushed Greece towards

³⁴ Nyazi Berkes, *The Development of Secularism in Turkey* (Montreal: McGill University Press, 1964) pp. 148-149.

³⁵ Bailey, *British Policy*, p. 273.

³⁶ Mardin, *The Genesis*, pp. 178-79.

³⁷ Virginia H. Aksan, *An Ottoman Statesman in War and Peace: Ahmed Resmi Efendi 1700-1783* (Leiden, New York, Köln: E. J. Brill, 1995), p. 200.

³⁸ Aksan, 'Ottoman Political Writing', p. 60.

³⁹ Majid Khadduri, *War and Peace in the Law of Islam* (Baltimore: The John Hopkins Press, 2008 [1955]), p. 44-45.

⁴⁰ Hippolyte Castille, *Réchid-Pacha* (Paris, 1857), p. 28.

independence and Wallachia, Moldavia, and Serbia towards substantial autonomy.⁴¹ New institutions and laws meant that the state governed in accordance with the rights of people (*millet*),⁴² guaranteeing the rights of all communities, including Christian ones. Seeing the latter as more civilised and productive, he was convinced that not only imperial territorial integrity would be assured but also its economic future.⁴³

These strategies allowed him to dominate Ottoman politics for nearly twenty years, as foreign minister and grand vizier – de facto shifting the power from the imperial Palace to the Porte – and introduce new institutions such as the Supreme Council of State and Justice for drafting laws⁴⁴ and a new penal code that enshrined that all subjects were equal before the law.⁴⁵ At the same time, the flexibility or sidelining of Islamic law and the Islamic system proved less evident in reality, as he discovered very quickly during a 1841 governmental debate on the new Commercial Code (drawing on the French model), which was interpreted as un-Islamic save for the political intrigues and rivalries, precipitating his dismissal as foreign minister.⁴⁶ Less evident was also the implementation of equality of all subjects before the law. With sultan Abdul-Mecid's proclamation of a new imperial reform decree (*Islahat Fermani*), in 1856, as a pledge to the Paris Peace Congress, settling the peace of the Crimean War, Reshid's goal of the empire joining the European system became a reality; yet inside, and legally, it was more fragmented than ever – state laws overlapping with religious and communal law.⁴⁷

II

Managing the Future: from Laws and Permanent Institutions to Political Economy and Political Representation

In restoring or renewing peaceful relations among European states on Christian precepts or civilizational underpinnings, including the Ottoman Empire, there was also a search for a new political economy (see Stráth on Three Utopias of Peace). When the Holy Alliance was at the peak of its activities, i.e. 1815 to 1821, Tsar Alexander I's Russia maintained the most liberal tariffs ever *vis-à-vis* its two key allies, the Habsburg Empire and the Prussian Kingdom: thereafter having to resort to heavy protectionism on internal calls to defend national industry.⁴⁸ The link between economic imperatives and power politics had been one of the causes of the Great Russo-French war in 1812, after the Tsar decided to abandon Napoleon's autarkic Continental System. Controversially, he had signed up to it at the Treaties of Tilsit. But the 1810 Tariff, which Speransky pushed for to alleviate the economic pressure of the Continental system by reopening free trade

⁴¹ Bailey, *British Policy*, pp. 275-276.

⁴² Temperley, *England*, p. 131.

⁴³ Bailey, *British Policy*, pp. 275-276; Mardin, *The Genesis*, p. 158.

⁴⁴ Berkes, *The Development*, p. 199.

⁴⁵ Temperley, *England*, p. 231.

⁴⁶ *Ibid.* p. 161.

⁴⁷ Turan Kayaoglu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire and China* (Cambridge: Cambridge University Press, 2010), pp. 114-115.

⁴⁸ Anatole G. Mazour, *The First Russian Revolution, 1825* (Stanford: Stanford University Press, 1964 [1937]), pp. 13-17.

(grain exports) with Britain,⁴⁹ had been instrumental in instigating the war. Similarly, with the Ottoman Empire there was a direct link between search for peace and political economy. The Paris Treaty, in Article 7, made her a member of the Concert of Europe: guaranteed independence and territorial integrity for further liberalisation and access to its economic space through the institutionalisation of capitulations and extraterritoriality. That is, guaranteeing Western merchants legal and commercial rights, in turn, becoming the most animating issue for the Young Ottoman and Turk movements.⁵⁰

But besides the questions of international trade, for which the role of the state in navigating alliances was unquestionable, the Ottoman and Russian states had to proactively manage, and intervene in, the restructuring of their economies (in agricultural, fiscal, and industrial development), with implications for internal politics most directly articulated through constitutions, so as to gain a wider political oversight of these processes.

'Better Order' at Home and A Civilised Empire Abroad

The fear of losing its great standing in European affairs in the aftermath of the Crimean War⁵¹ put the Russian Empire, with its imperial central institutions, in a frenzy for deep structural socio-economic reforms.⁵² Externally, Tsar Alexander II's policy crystallised into rebuilding new alliances in the continent, while pursuing a double tract foreign policy: a persistent search for a rule-based conduct of war and peace within the continent⁵³ and an increased colonial expansion in Asia. What Russia needed, as Tsar Alexander II made clear in his 1856 imperial manifesto on the conclusion of war, was a fundamental social and economic ordering to strengthen and perfect 'her domestic order', with just laws protecting all.⁵⁴

A large consensus had emerged in the empire that the perfection of that order had to start with the emancipation of peasants. The unsettled question, however, was how they would be emancipated: on the basis of a free market (landless) or solidarity (with land)? Intrinsically linked to this politico-economic question was the wider political issue of who would undertake this profound change. Would it be the high nobility, which had procrastinated over the issue for decades with no result, or would it be the imperial bureaucracy that was still marred by arbitrariness, over-formalisation and over-centralisation? Of course, as might be predicted, it was the autocrat himself who made sure that while these 'great reforms' were taken, there would not be any changes in the realm of imperial politics.

The stakes in this move were enormous. In engaging with this reform, the monarchy was bound to alienate its closest estate, the nobility, by 'injuring' their legal property rights to land. In

⁴⁹ Raeff, *Michael Speransky*, pp. 172-73.

⁵⁰ Kayaoglu, *Legal Imperialism*, pp. 106-13.

⁵¹ Larisa G. Zakharova, "From Reform to Revolution," in *Reform in Modern Russian History: Progress or Cycle?* Theodore Taranovski (ed), (Cambridge: Cambridge University Press, 1995), p. 98.

⁵² Lincoln, *The Great Reforms*, p. 61.

⁵³ Peter Holquist, 'The Russian Empire as a "Civilised State": International Law as Principle and Practice in Imperial Russia, 1874-1878', *The National Council for Eurasian and East European Research*, (Jul 2004), pp. 1-37; p. 1

⁵⁴ *Ibid.* p. 243.

siding with the peasantry, depending on the outcome of the reform, the monarchy could not know with certainty if it could rely on its political support.

In one respect, however, Tsar Alexander II was certain that prior to embarking on such reforms, the nobility's demands for a monarchical constitutional regime had drastically subsided following the 1825 Decembrist debacle and repressive measures of his father, Nicholas I. His tutor of Russian law, Speransky, had enshrined in his opus, the *Svod Zakonov Rossiskoj Imperii* (Collection of Laws of the Russian Empire) in 1835, the monarchical prerogative of unlimited power.⁵⁵ An emerging vibrant intellectual scene of the 1830s and 1840s moulded and fragmented into *Zapadniks* (in search of applying 'scientific' values of Saint-Simon and Comte), Slavophiles (with their focus on Muscovy's *Duma* and communal heritage) and the older generation of juridical experts (keen on European legal thought but opposing parliamentarism), which was lethargic to political change.⁵⁶ The change that mattered for a new generation of 'enlightened' bureaucrats, such as Nikolai Miliutin (who would be key in the Editing Commission set in 1859 by the Tsar to prepare the legislation for the 1861 Peasants Emancipation), Peter A. Valuev (appointed Minister of Interior during the decentralisation reform of 1864, establishing local governments, *zemstvo*) and others who moved around in these intellectual currents of the late Nicholean regime, was articulated as a 'desire for better order'. Nevertheless, the constitutionalist impulse was not completely wiped out. In fact, it was rekindled with the process of emancipation and decentralisation. Economic loss had to be balanced by political gain. Although Miliutin was of the conviction that for the general good there was a need to 'free peasantry [and] unleash capital from agriculture [and help] the industrialisation of the empire';⁵⁷ by therefore undertaking liberal reforms through an authoritative government (bureaucracy), Valuev maintained great suspicions about bureaucracy. Instead, Valuev argued for a 'gradual development of constitutional forms'.⁵⁸

In the long run, Tsar Alexander II's final decision to emancipate the peasants with land satisfied neither the nobility nor the peasants. Indeed, it was one of the main causes for his assassination in 1881 by the left-wing revolutionary organisation *Narodnia Volna*, whose other causes were the demand for universal political and civic freedom, including constitutionalism. A vocal nobility contested the emancipation with land as illegal by violating their property rights; of which, the head of Editing Commissions was very much aware. In writing to the Tsar about how they were striving to find a balance between the nobility's loss and the peasants' gain, he accepted the nobility's questioning of the legality of the matter. Yet, he assured the Tsar that what ultimately mattered was legitimacy for the reforms – a legitimacy that derived from his uncurbed will.⁵⁹

⁵⁵ Richard S. Wortman, *The Development of a Russian Legal Consciousness* (Chicago and London: The University of Chicago Press, 1976), pp. 3-16.

⁵⁶ S. Frederick Starr, *Decentralisation and Self-Government in Russia, 1830-1870* (Princeton: Princeton University Press, 1972), pp. 51-53.

⁵⁷ W. Bruce Lincoln, *Nikolai Miliutin: An Enlightened Russian Bureaucrat of the 19th Century* (Mass: Newtonville, Oriental Research Partners, 1977), pp. 34-40.

⁵⁸ Valentina G. Cherunkha and Boris V. Anan'ich, 'Russia Falls Back, Russia Catches Up: Three Generations of Russian Reformers', in *Reform in Modern Russian History: Progress or Cycle?* Theodore Taranovski (ed) (Cambridge: CUP, 1995), p. 69.

⁵⁹ E. M. Alemdingen, *The Emperor Alexander II* (London: The Bodley Head, Ltd, p. 1962), p. 160.

Soon after the proclamation of emancipation, in an anticipation of extreme right and left violence, Miliutin conceded the need for political change. He contemplated the possibility of having a state-sponsored, centre party that would carry out the reforms.⁶⁰ He was adamant, however, with regards to the aims for *zemstvo* local reforms, the legislative framework into which he had put considerable work. The first aim was an administrative one – taking on social and economic functions that the nobility had previously exercised. The second was a political one – thwarting political aspirations of the local nobility at a national level.⁶¹ As the minister of the interior who finally delivered the *zemstvo* reform in 1864, Valuev contested Miliutin's view, arguing for the local nobility's right to exercise a limited political role in state imperial legislation and financial affairs. Unable to have his views incorporated in the *zemstvo* reform, Valuev envisaged a future of gradual acceptance of a monarchical constitutionalism, limiting the 'expressions of imperial will'. It was the sole path for resolving two growing tensions in the empire, the nationalities questions, and improving the legislative process. He still believed, in spite of everything, that the nobility remained the estate closest to the throne and hence was willing to go to great lengths to defend its interests.⁶² It was a path, he wrote in 1881: of 'institutions without which Europe cannot exist,' and which, 'are not alien to Russia. ... Russia cannot go back and must follow the path predestined for all nations in the history of mankind. But if we aim to domesticate European civilisation among us, we must not take as a model the despotism of the Orient, but European institutions.'⁶³

On his first meeting at the Winter Palace with the *zemstvo*'s representatives in 1894, the new emperor, Nicholas II, discarded the option of 'European institutions', promising to refocus on economic reforms and development. With the question of land reform seemingly resolved, the focus of the imperial state by the late nineteenth century became commercial and industrial policy and competition in the continent. For instance, pursuing a Listian regulatory framework of moderate tariffs in this competition, finance minister Sergei Witte also encouraged Russian industrial and banking growth in the eastern Asian markets.⁶⁴ In some respects, this double economic policy of protectionism and free trade was a reflection of Russia's geopolitical standing; unable to compete economically in Europe, it sought to preserve its 'great power' status by championing the cause of a rule-based European order under the standard of civilisation.⁶⁵ Retrospectively, however, it proved rather late on both domestic and external fronts. Thus, while the Tsar finally 'domesticated' the European civilisation by making constitutional monarchy a reality in 1906, this new order⁶⁶ proved inept at handling a full-blown European war⁶⁷ and a powerful

⁶⁰ Lincoln, *Nikolai Miliutin*, pp. 65-67.

⁶¹ Daniel T. Orlovsky, *The Limits of Reform: The Ministry of Internal Affairs in Imperial Russia, 1802-1881* (Cambridge, Mass.: Harvard University Press, 1981), p. 150-151.

⁶² Cherunkha and Anan'ich, 'Russia Falls Back', p. 69.

⁶³ *Ibid.*, pp. 68-69.

⁶⁴ Boris Ananich, 'Russian Economy and Banking System', in *The Cambridge History of Russia: Imperial Russia, 1689-1917*, 2nd volume, Dominic Lieven (ed.), (Cambridge: Cambridge University Press, 2006) pp. 395-415.

⁶⁵ Holquist, 'The Russian Empire', p. 1

⁶⁶ Peter Waldron, 'Late Imperial Constitutionalism', in *Late Imperial Russia*, Ian D. Thatcher (ed) (Manchester: Manchester University Press, 2005), pp. 28-43; pp. 28-30.

⁶⁷ Peter Waldron, *Between Two Revolutions: Stolypin and the Politics of Renewal in Russia* (London: UCL Press, 1998), p. 1-11.

revolutionary ideology of communism – a new political alternative that shunned the course of gradual change, and instead offered a profound revolutionary one.

‘I Recommend You... to Adopt Common Measures... to Restore our Credit’

Unlike with Russia, the economic ordering of the Ottoman Empire *vis-à-vis* other European states had been forged with much more clear-cut liberal principles. Underneath the much professed need for establishing permanent institutions and finding a working mode between the old and new laws, there was the strong undercurrent of geopolitical alignment and economic re-ordering of the empire, as we saw was the case most notably in relations with the British Empire – reconfirmed in the 1856 Reform Edict (*Islahat Fermani*).⁶⁸ But this undercurrent increasingly came to the fore, especially with the Crimean War, and together with the ongoing legal and bureaucratic goals and tensions this complicated the politics of renewal and tilted the empire constantly towards the verge of instability and dissolution.

Although perhaps with much greater drama than in Russia, the Ottoman post-Crimean world was a similar story of onerous state-led efforts to re-organise and revitalise the empire amidst strong internal and external pressures. The question was not only about a better management of the economy but also about having a wider political access in the process. This was played out during the time leading up to the so-called first constitutional era (1876–77) in which questions of constitutional monarchy, and the fate of the Ottoman Balkans (precipitating the Russo-Ottoman war of 1877 and 1878), collided with the economic question of financial bankruptcy and corruption. In the view of the Ottoman statesman Midhat Pasha, such an impending economic and geopolitical crisis required political responses by establishing a constitutional monarchy with parliamentary control over state finances.

What Midhat Pasha found profoundly wrong with the Ottoman economy was its indebtedness and lack of political accountability, and thus he sought instead to restore financial credibility to the state by eradicating rampant corruption (especially from the imperial palace) and establishing balanced budgets. Early on, the Ottoman state had embarked on a new path for the economy – to monetise it and shift the fiscal burden of taxation from land to urban wealth. Unable to generate enough revenues, the state experimented with other new financial instruments: state bonds, and domestic and external borrowing (after the Crimean War), which it could not service.⁶⁹ The situation was further complicated by the state’s inability to freely regulate its tariffs and the question of extraterritoriality. The Ottoman foreign minister Aali Pasha had requested from the Great Powers a revision of this question, for it created ‘a multiplicity of governments within the Government, and consequently, an insuperable obstacle to all improvements’ at which the Ottoman reforms were aimed, but to no avail.⁷⁰

All of these issues amplified while Midhat Pasha as an experienced reformer in Ottoman provinces and also as having been the protégé of Fuad and Aali Pasha – the duumvirate who

⁶⁸ Donald Quatert, *The Ottoman Empire, 1700-1922*, 2nd edition (Cambridge: Cambridge University Press, 2005), p. 127

⁶⁹ Stanford J. Shaw, ‘The Nineteenth-Century Ottoman Tax Reforms and Revenue System’, *International Journal of Middle East Studies*, 6(4), (Oct., 1975): p. 421-25.

⁷⁰ Kayaoglu, *Legal Imperialism*, p. 121.

maintained the de-facto power of the Porte since they rose to prominence in 1856 – found himself unable to access the power structures after their deaths. Having been appointed grand vizier in 1874 by sultan Abdul-Aziz, whom he would dethrone two years later, he resigned on the grounds of a lack of executive accountability: ‘our finances are in a hopeless condition ... all this compromised the security and credit of the country, and the non-Muslim element loudly proclaims the intention that it long ago formed of placing itself under foreign protection’.⁷¹ While earlier in his career he had not seen a real need for a constitutional monarchy, the financial and geopolitical crisis urged him towards this conclusion. His model for a constitutional empire was the 1814 French Constitutional Charter (in which Emperor Alexander I had a great role to play) that established a semi-autocratic state ruled by the King and the government⁷² where the monarch was under the law and the national assembly controlled state finances. Largely, this was also the view of one of the drafters of the constitution, Namik Kemal, who was one of the most influential members of the Young Ottomans. But in having ‘a constitutional regime’ (*usul-u meshvert*), Kemal envisaged the coming together of Islamic law and thought and modern constitutionalism. It would have the double *telos* of rejecting the duumvirate’s authoritarianism and their disregard for the Islamic heritage, while ushering of the Ottoman Islamic liberalism that would put the sultan under the law.⁷³ At times, however, Namik Kemal contradicted himself on the purpose of this constitution, suggesting instead that it had to be a single body of law containing all imperial decrees and regulations in circulation since the promulgation of the 1839 *Hatt-ı*, to provide clarity and access to Ottoman Law for all Ottoman subjects.⁷⁴ It was a view that strongly resonated with Speransky’s opus, even though Namik Kemal did not make references to these nineteenth-century Russian constitutional efforts.

Midhat Pasha appeared less keen on rescuing the Islamic heritage in the new constitutional project, however. As the key figure behind a number of dethronements and enthronements of sultans – ensuring that the new sultan Abdul-Hamid II would come to the throne with a constitutional agenda – he succeeded in having the constitution promulgated in February 1877. This was just at the time when the European Powers had concluded the Ambassadors Conference in Constantinople, delivering to the Ottoman government an ultimatum for political reforms in the Balkans – a powerful sign that the guarantees of the Paris Treaty were no longer assured – which then led to Russo-Ottoman war. With the new constitution, he lost the political battle of putting the sultan under the law as he also, ironically, found himself banished from the empire under a constitutional provision. However, he won the battle of parliamentary control over the budget. In his speech at the first Ottoman parliament, opened in March 1877, sultan Abdul-Hamid had to concede this by calling for the ‘budget to be submitted to Chamber’. As such, he urged the new members of the parliament: ‘I recommend you ... to adopt common measures adapted to meet the difficulties of the situation and to restore our credit ... One of our greatest wants of our Empire

⁷¹ Ali Haydar Midhat Bey, *The Life of Midhat Pasha: A Record of his Services, Political Reforms, Banishment, and Judicial Murder* (London: John Murray, 1903), pp. 69-70.

⁷² Lewis, *The Emergence*, p. 142.

⁷³ *Ibid.*, p. 132.

⁷⁴ Mardin, *The Genesis*, pp. 308-10.

and our subjects is the development of agriculture and industry, and the progress of civilisation and of public wealth'.⁷⁵

Yet the concession was not for long; using the 1877 and 1878 war against Russia as a reason to suspend the constitutional order, he re-concentrated the powers in his control away from the bureaucrats that had dominated since 1839.⁷⁶ Under a staunchly anti-Western and pan-Islamic discourse, he further liberalised the economy, also continuing with the Tanzimat legal reforms. The Sultan was able to raise Ottoman credit worthiness by establishing the foreign-run Public Debt Administration in 1881. The latter rested the control away from the Ministry of Finance – a state structure the Parliament had been extremely keen to oversee – and repaid Ottoman bondholders while making vast amounts of money for himself,⁷⁷ but he was losing his political grip. The new movement of the Young Turks – much more in tune with revolutionary change than its predecessor, the Young Ottomans – had already considered toppling him and saving the empire. At their Paris congress of 1902, they saw the future of the empire teetering upon a precipice if Hamidian rule continued, and as such they debated whether the options of federalism, with free enterprise and European support and intervention or a unitary and centralised state that nurtured a new Turkish nation and nationalism,⁷⁸ would be the new ways of ordering the empire.

Epilogue: Beyond Laws, Religion and New Institutions

By the first two decades of the twentieth century, the alternatives of revolutionary change (of a different nature) had touched the core of the Russian and Ottoman empires, ultimately ordering them into completely different political entities. So what happened to the alternative of imperial state-led gradual change that, in their own particular ways and particular political projects, these two empires embarked on repeatedly during the 'long nineteenth century'?

In their 'politics of change and stability' some of these political figures subscribed to a legalistic, institutional and, eventually, a constitutional approach in the ordering of empires, in order to deal with internal and external pressures. While the mantra of rules and regulations persisted, imperial politics remained many steps above or ahead of them. For most of the century, and this was mostly the case with the Russian Empire, the imperial political centre were not seriously challenged, save for the 'irritations' of the abortive Decembrist revolt, with which federalist and unitary constitutional projects sought to give a resolution to Tsar Alexander I's tantalising constitutionalism. But in a similar way, after resolving the crisis with Egypt in 1839, the Ottoman political centre also remained unchallenged – if not for the de-facto shift of power from the Palace to the Porte, which in itself was not peculiar for the Ottoman context.

The point to highlight here is that while these imperial states (in which the role of bureaucracy was and remained primary) directly or indirectly linked their legalistic and institutional ordering to the opening up and exerting of more control in their economic space, the political pressure increased from within the centre for more access to and oversight for these processes

⁷⁵ Haydar Midhat Bey, *The Life*, p. 159.

⁷⁶ Carter V. Findley, *Turkey, Islam, Nationalism and Modernity: A History, 1789-2007* (New Haven: Yale University Press, 2010), pp. 132-33.

⁷⁷ *Ibid.* pp. 135-51.

⁷⁸ *Ibid.* p. 161-63.

while from peripheries for less state control. But this became more evident in the second half of the nineteenth century, with the imperial states coming under more scrutiny and more pressure for their politics of ordering the economy internally and how it related to the outside world – with constitutions (re)appearing as alternatives for the future. In his earlier writings, while contemplating a Russian constitution, Speransky had considered engineering a ‘middle class’ that would balance a powerful monarchy. Failing to visualise this in reality, he concentrated on permanent laws and institutions. Similarly, during his long presence in Ottoman politics Reshid Pasha did not see the need to formalise the relations between the monarchy and the Porte or push for ‘Ottoman national’ representation at the imperial level, for there was none. As for the reform of their foreign relations, while wars against each other opened and closed the whole period of the ‘century of Europe’, they also saw a great benefit in pursuing their imperial ambitions within a morally/rule-based European order. Despite lasting for as long as it did, the rule-based order was no ultimate guarantee of peace but a platform to struggle for it, and for exerting influence and control – as Russia found out with its religiously-coated peace project, or the Ottoman Empire with its embrace of civilisation with its membership at the Concert of Europe.

In the Ottoman and Russian empires, in times of crisis and change, laws, rules, religion, new institutions, a more open economy and less politics, and a larger role for the imperial bureaucracy was the vocabulary of ‘politics of change and stability’. They had not completely run their course at the turn of the century. They were simply overtaken by the powerful ideologies of communism and nationalism, and further undermined by the outcome of the Great War. While it was difficult to see how the Ottoman Empire could not be renewed as a multi-ethnic state with a nationalist project, the Russian Empire could re-order and expand as a new federal state with a universal project, as communism was. Strikingly, the language of the European project, articulated in the vocabulary of peace and prosperity, does share resemblances with the ‘politics of change and stability’ in the Russian and Ottoman empires. Repeatedly, in times of crisis, this project is faced with similar alternatives as these two empires: federalism, status quo, or nationalism. Save for the collapse of *telos* of communism, the European project (that indeed would not want to be about extreme imbalance of power and wealth as Russian and Ottoman imperial were) is in search of an alternative *telos* to existing ones: maybe that can be achieved by brining in the *telos* of common good and why not also ‘a European common good’.

Normative Histories of the World Written in the Long European Century

Liliana Obregón

Origins and Objectives

The idea for this paper, and the book project on which it is based, was born from my own struggle to understand the intersection between the rise of international law and history as professional practices and academic disciplines in the nineteenth century. To explore this relation, I chose to research the works and lives of seven lawyers who wrote a history of the law of nations or international law during the long nineteenth century (1750–1914). I identified lawyers that viewed the writing of history as central to their view of law. I excluded treatises or general textbooks that included a history section but were not writing “a history”. The final selection of authors represents different moments of the century and different locations (France, Britain, United States, Argentina, Spain, Belgium, and Italy). The resulting authors and texts are not generally known for their contribution to international legal thought. Most have been forgotten or never remembered. Even the recently revived names (Ward, Wheaton, Calvo, and Nys) have been branded together in reviews of international law’s historiography.¹ Despite their lack of bibliographical status, I believe these works and their authors’ subjective location illuminates the particularities of place and moment in an era that has been understudied in international legal history.

By exploring these authors’ history writing in their particular intellectual, social and political contexts, I contrast the linear and progressive nineteenth century with national and imperial histories. As such, I confirm the Helsinki project’s objectives in exposing the tensions of law as a frame of history and politics, the teleological self-understandings of this period, the relationship between historical narratives and territorial politics, religious beliefs, socio-cultural environments, regional identities and transnational ideas of law during the century on which our present conception of Europe was built.

For my book project, I have made an effort to appropriate conceptual history as a necessary tool that has been suggested by other international law scholars as a way for understanding meaning formation,² national differences,³ spatial and temporal movements,⁴ and the constructed character of international legal history.⁵ Therefore, I do not look at the authors’ historical narratives or statements as correct or incorrect. Rather, I strive to show how they gave meaning to the international from their particular political, social and legal struggles at the local/national level.

¹ Bardo Fassbender and Anne Peters, eds., *The Oxford Handbook of the History of International Law* (Oxford: Oxford University Press, 2012); Martti Koskenniemi, “A History of International Law Histories,” in *The Oxford Handbook of the History of International Law*, ed. Bardo Fassbender and Anne Peters (Oxford: Oxford University Press, 2012).

² Koskenniemi, “A History of International Law Histories,” 970.

³ Martti Koskenniemi, “Why History of International Law Today?,” *Rechtsgeschichte* 4(2004): 65.

⁴ Anne Orford, “The Past as Law or History: The Relevance of Imperialism for Modern International Law,” in *History and Theory of International Law Series* (New York: IILJ Working Paper, NYU School of Law, 2012), 2.

⁵ Thomas Skouteris, “Engaging History in International Law,” in *New Approaches to International Law*, ed. J.M. Beneyto and David Kennedy (The Hague: T.M.C. Asser Press, 2012).

By looking at the modes of international legal history writing during this period I explore their understandings of ‘History’, how they conceptualized historical narratives with a normative intent, what organizing principle they chose in the selection of sources, the value they gave to them and their theory of periodization and chronology. I also emphasise how the concept of ‘Progress’ and ‘Origins’ worked in these narratives and how their meanings and usages may have varied in different locations and at different moments in their relation to Europe and their own localities. I look at the emergence of nationalist ideologies present in their writings and the way they conflate with events past their borders while viewing their use of European identity either as a frame or a solution for their historical thinking about law.

The question about the use of historical narratives in international law claims in the past and present is thus at the heart of this book. This inquiry begs the need to historicize my own subject position as writer as well as that of the authors that I study. As such, I hope to contribute to the recent discussion on the uses and purposes of history writing in/on/from international law.⁶ Needless to say, I am aware that by writing in a discipline that is immersed in power struggles that have established boundaries, new histories can backfire and be used in unforeseen ways, also making us, or our work, part of the problem.⁷

Why the Nineteenth Century?

The majority of texts chosen for this study are published during the same period (1750–1850) that Reinhart Koselleck viewed as the time when European culture achieved a “concept of history” a way of acting and thinking as if it existed in history and “as if its ‘historicity’ was a feature, if not the defining feature of its identity” as well the century in which “history became a professional field”.⁸

The nineteenth century is also the time in which the concept of the state arises and when international law becomes a professional practice, a discipline.⁹ Indeed, history was the mode “whereby non-nations were converted into nations” and “emerge as the subjects of History just as History emerges as the ground, the mode of being, of the nation.”¹⁰ This book confirms the Helsinki project’s vision of the nineteenth century as lived by its actors in terms of a series of tensions in creating community, providing for global order, and securing welfare in the transitions from monarchical towards parliamentary rule, from informal to formal empire.

⁶ Carty, “Visions of the Past of International Society: Law, History or Politics?.”; Matthew C. R. Craven, M. Fitzmaurice, and Maria Vogiatzi, *Time, History and International Law, Developments in International Law*, (Leiden; Boston: M. Nijhoff, 2007); Orford, “The Past as Law or History: The Relevance of Imperialism for Modern International Law.”; Martti Koskenniemi, “A History of International Law Histories,” in *Oxford Handbook on the History of Public International Law*, ed. Bardo Fassbender and Anne Peters (London: Oxford University Press, 2012); Thomas Skouteris, “Engaging History in International Law,” in *New Approaches to International Law*, ed. J.M. Beneyto and David Kennedy (The Hague: T.M.C. Asser Press, 2012).

⁷ For an excellent overview of the anxieties of contemporary international legal history writing see Skouteris, “Engaging History in International Law.”

⁸ Hayden White, “Foreword,” in *The Practice of Conceptual History: Timing History, Spacing Concepts* (Stanford: Stanford University Press, 2002), x.

⁹ Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (Cambridge UK: Cambridge University Press, 2004).

¹⁰ Prasenjit Duara, *Rescuing History from the Nation Questioning Narratives of Modern China* (Chicago [u.a.: The Univ. of Chicago Press, 1997). 27.

More specifically, this book explores the question of creating new communities by writing them into a historical narrative of a world that is breaking traditional borders in a moment when a global dimension emerges as central to the imagination of law ‘in’ the past or of law ‘and’ the past. The nineteenth century also coincides with the birth of world history and the tools of global intervention through empire and commerce.

Kant’s Progress, Law, History and Europe

Immanuel Kant’s work marks a definitive moment for the understanding of global history and its relation to law. Goguet and Ward, as we will see, published their work before the spread of Kant’s influential idea that universal history and law had a *telos* – a cosmopolitan purpose.¹¹ The rest of the works studied in this book are posterior and generally follow the unifying structure given to law by this historical perspective which would become a professional project by the end of the century.¹²

Kant’s turn-of-the-century vision viewed a progressive fate for the European continent to lead and legislate for a world united by law.¹³ But what is often forgotten or quickly dismissed in contemporary histories is that Kant’s federation of peoples was backgrounded with his theory of human difference.¹⁴ He argued that a “principle of progress” determined the human race as “continually advancing in civilisation and culture as its natural purpose”,¹⁵ but his theory on the unitary nature of humanity was based on the centrality of Europeans as naturally predetermined to superior moral and intellectual capacities for reason, education and revolution. Other peoples were differentiated by religion and race determined by geography and climate.¹⁶

¹¹ Immanuel Kant, “Idea for a Universal History from a Cosmopolitan Perspective,” in *Toward Perpetual Peace and Other Writings on Politics, Peace, and History*, ed. Pauline Kleingeld, et al. (New Haven: Yale University Press, 2006). See also, Martti Koskenniemi, “On the Idea and Practice of Universal History with a Cosmopolitan Purpose,” in *Terror, Peace, and Universalism: Essays in the Philosophy of Immanuel Kant*, ed. Bindu Puri (New Delhi: Oxford University Press, 2007).

¹² Koskenniemi, “A History of International Law Histories.”

¹³ Immanuel Kant, “Idea for a Universal History from a Cosmopolitan Perspective,” in *Toward Perpetual Peace and Other Writings on Politics, Peace, and History*, ed. Pauline Kleingeld, et al. (New Haven: Yale University Press, 2006); Immanuel Kant, *Project for a Perpetual Peace: a Philosophical Essay* (London: Printed by S. Couchman for Vernor and Hood, 1796).

¹⁴ Immanuel Kant, “On the Different Races of Man (1775),” in *Race and the Enlightenment: a Reader*, ed. Emmanuel Chukwudi Eze (Cambridge, Mass.: Blackwell, 1997), 48.

¹⁵ Immanuel Kant, “The Principle of Progress considered in Connection with the Relation of the Theory to Practice in International Law (1784),” in Kant’s *Principles of Politics, including his Essay on Perpetual Peace. A Contribution to Political Science* (Edinburgh: 1891).

¹⁶ Kant’s role in developing the ‘scientific’ notion of race was recognized throughout the twentieth century. See Robert Bernasconi, “Who Invented the Concept of Race: Kant’s Role in the Enlightenment Construction of Race” in *Race*, ed. Robert Bernasconi, Blackwell Readings in Continental Philosophy (Malden, Mass.: Blackwell, 2001). Kant viewed humanity as emerging from a ‘stem genus’ from which the four main ‘genuine races’ derived with visible and perpetual differences 1) the race of Whites or very blonds ... who live in the Old World between the 31st and 52nd parallels ... where the best mixtures of climate and earthly creatures coexist’ 2) The Negro race who are given immutable natural characteristics, no accomplishments in art or science, profess a ‘religion of fetishes, do not have the capacity to rule themselves and cannot make revolutions 3) the copper red American race who live in the dry cold and the 4) Hindu race or olive yellow Indians of dry heat. Kant, “The Principle of Progress considered in Connection with the Relation of the Theory to Practice in International Law” (1784).

Despite European leadership, Kant augured that the principle of progress would be forestalled by the paradox of humanity's self-destructiveness; therefore, the only remedy was a system of law "to which every [European] State must submit" because "universal peace based on the Balance of Power in Europe" was "a mere chimera".¹⁷ The proposal was understood as "mere hypothesis" though Kant presented a detailed code for it to work; he ultimately relied on the progress of human nature, history and providence to guarantee the results for the future.¹⁸

Kant's argument exemplifies the point where the concepts of "Progress," "History," "Law" and "Europe" meet and are essential to each other in nineteenth century historical narratives. The general vision was that an advancing humanity was morally better than its (European) past but would only improve when structured by a system of law led by Europeans. This powerful assumption became a nineteenth-century paradigm. The entanglement of these narratives arises constantly in the five post-Kantian writings which present a regretful past (History) to sustain the argument for a normative solution (Law) of unity (Europe) for a better future (Progress) but their specific meaning is contrasted in the different periods according to the political struggles of their time and place.

An Early History of the Global Origins of the Law, Arts and Sciences

My book begins with a history of law, arts and sciences published in 1758 by Antoine Yves Goguet (1716–1758) in collaboration with his close friend Alexandre Conrad Fugère, both Parisian magistrates of the *Ancienne Régime*. Goguet presented his work as a universal history, a history of the human mind (*l'esprit humain*) that, he argued, was the first to show the "real" origins and gradual improvement of all branches of knowledge through facts and history, rather than through conjectures and imagination. Goguet's remarkable work of more than a decade of research discussed the idea of shared laws across nations, the concepts of origins and a stadial theory of history, a geography of difference and a biblical chronology – Goguet also defined what constituted a civilized nation and a savage one, praised the rules of war as progress, and admired the magnificence of empire. His book also offered a theory on the relation of law with society, recognized the importance of the role of women, and viewed Egypt (not Greece) as the origins of civilized Europe. Written before the French Revolution, Kant's proposals for a confederation of states and the new theories on evolution and chronology, "the Goguet" offers a starting point in which to view the conceptual changes that occurred after these events.

The Foundation and History of the Law of Nations on the Eve of the French Revolution

The young Robert Ward (1765–1846), a British lawyer of Spanish-Jewish descent, published his *Enquiry into the Foundation and History of the Law of Nations in Europe from the Time of the Greeks and Romans, to the Age of Grotius* (1795) soon after he had unintentionally witnessed the events of the French Revolution. Ward (known later as Robert Plumer Ward) was conscious of writing a history that was the first of its kind and that he thought would "forever be a consequence to mankind". He

¹⁷ Kant, "The Principle of Progress considered in Connection with the Relation of the Theory to Practice in International Law" (1784).

¹⁸ Ibid.

explained, however, that his inquiry was limited to the history of the law of nations *in Europe* because he was unsatisfied with the common explanation that the law of nations could be applied to *all the world*. Ward's book is often considered as the first "true history" of international law despite its obvious exclusion of the law of nations as universally applicable. The law of nations, Ward concluded, was binding "only upon particular Sets or Classes of Nations, as they fall into different divisions of it, observing different Religions and pursuing different systems of Morality."¹⁹ Christianity, however, was the religion that could unify Europe and was the only possible point of unity to describe an international law. Though Ward narrated a progressive history of rises and falls, his choice of chronology seems awkward to the modern reader as his chapters are divided by peoples, events, centuries and authors. He began with the progress in law of the 'remarkable' Greeks and Romans, passed on to a regression under the 'polytheist', 'rugged' and 'brutal' Scandinavians, goes on "from the Fall of the Roman Empire to the Eleventh Century", and finally finishes with a law of nations revived through Christianity from the "Eleventh Century to the Fifteenth Century" where religion helped to "soften" the established barbarism still present in cruel acts of violence (i.e. dismemberment, poisoning, hostage taking) all over Europe.

In addition to Christianity, Ward identified institutions and people (Charlemagne, neutrality, the feudal system, laws of war, chivalry) and certain treaties and conventions that contributed to the development of what would be known as the *Jura Gentium* or European Law of Nations during this period. Ward ended his book with a chapter on "the Age of Grotius" where he presented Grotius as the "father of the science", the only one who could coherently put together the "jumble ... between very different sorts of laws" into one Law of Nations. It is Vattel's treatise, however, which he recommends to his contemporaries because it is "more light and elegant" than those "heavy though magnificent structures" written by Grotius and others before.

The United States' Debut in the History of International Law

In the mid-nineteenth century, the United States emerged as an international power. Henry Wheaton (1785–1848) was the first diplomat to represent his country in Denmark, where he wrote a history of the law of nations that included the United States as an equal member in 'the community of civilized nations'. Wheaton is known for his famously edited reports of the United States Supreme Court (1816 to 1827), but his two decades (1827–1847) in Europe would mark his most prolific writing era. During this period he published his very successful *Elements of International Law* (1836), which had an unprecedented readership around the world due to its several translations, easy to read format and the author's careful revisions of new editions.

Though Wheaton is well known for these two works, his extensive historical work has rarely merited attention. During his residence in Denmark, Wheaton published *History of the Northmen, or Danes and Normans, from the Earliest Times to the Conquest of England* (1831) which brought him grand recognition in the Nordic countries and made him a member of the Scandinavian and Icelandic historical societies. He also wrote *Scandinavia, Ancient and Modern; being a History of Denmark,*

¹⁹ Robert Plumer Ward, *An Enquiry into the Foundation and History of the Law of Nations in Europe from the Time of the Greeks and Romans, to the Age of Grotius*, 2 vols. (Dublin: P. Wogan, P. Byrne, W. Jones, and J. Rice, 1795). 24.

Sweden, and Norway (1841) and *Histoire des progres du droit des gens en Europe, depuis la paix de Westphalie jusqu'au Congres de Vienne: avec un precis historique du droit des gens Europeen avant la paix de Westphalie* (1841) later translated into English as *A History of the Law of Nations in Europe and America from the Earliest Times to the Treaty of Washington* (New York, 1845). This historical work was translated by Carlos Calvo into Spanish and after Andrés Bello's work published in 1832, the Wheaton translation became the most popular international law book to circulate in Spain and its former colonies.

Wheaton's historical writing on international law evidently sought to position the United States as an equal player by giving it a story of origins. His odd interest in Scandinavian history had the same purpose. Wheaton wrote:

Even to us [in America]...the literature of the North must have its interest, since we deduce our origin, our language, and our laws, from the Scandinavian and Teutonic races. The filiation of languages is not only a curious subject of philosophical inquiry, but an acquaintance with it is absolutely essential to a perfect knowledge of the structure of our own language, derived as it is from the mingled streams of all Northern dialects, and enriched with the addition of copious supplies from classic sources.²⁰

The concept of origins for Wheaton was as important as it was for Goguet, though the technology of proving historical facts was different. Origins stories are rooted in the biblical narratives that give sacredness to the original peoples, either after the Flood or parting from the fall of the Tower of Babel. Wheaton searched for a Scandinavian origins story to trump the Latin sources by claiming they had anticipated them by planting colonies and founding kingdoms in almost every region of Europe and “spreading their possessions and their power from the dreary borders of Lapland to the sunny coasts of Africa”, as one Wheaton editor claimed. Thus the Anglophone nations, their laws, customs and arts of war and peace descended from these ancestors.

The Belgian Revolution and the Catholic Church in Laurent's History of International Law

François Laurent (1810–1887) was born in Luxembourg when it was part of the Napoleonic Empire, five years before the Congress of Vienna united it as a Grand Duchy with the Netherlands. In 1826, he entered the University of Louvain to study philosophy but was expelled two years later as he signed a petition requesting freedom of the press. He moved to Liège to continue his studies in law and graduated with a doctoral degree in 1832. Marked by the Belgian revolution of 1830, the young Laurent was invited to work in the Ministry of Justice of the new Kingdom of Belgium and soon after began teaching at the University of Ghent, where he would remain for the rest of his life.

After 1850 Laurent went into a publishing frenzy initiating with an eighteen-volume collection on the history of the law of nations and international relations (*Études sur l'histoire de l'humanité*), which he would continue for the next twenty years. This enormous collection centred on Laurent's thesis that the only way to penetrate the spirit of the law (*l'esprit d'une législation*) was to study its origins and primitive beliefs. But his historical writing had an additional purpose: to challenge the role of the Roman Catholic Church which Laurent believed went in opposition of the religious faith necessary to uphold the unity of mankind. Laurent, a Protestant liberal, was both anti-

²⁰ Wheaton.

socialist and anti-clerical, positions that took over most of his writing and his life. Of the eighteen volumes on history of humanity, seven addressed the history of the Catholic Church and its relation to the state, though all touch upon it in some matter. His activism in daily life also showed his disdain for the Catholic Church and represented a division in Belgium between Catholics and Protestants that continues to this day.

Laurent also viewed history as an aid in understanding the true meaning of legal institutions as they changed progressively forward. Historical study, for Laurent, revealed the original reason for institutional creation. If the institution remained static while the mentality, public law and mores of the present changed in contradiction with the original reason, then that institution should be abolished. In this way, wrote Kantian inspired Laurent, the history of humanity would march progressively forward through gradual unity and association as hostile elements disappeared through the ultimate goal of a universal peace.

International Legal History and the Two Spanish Decolonizations

Carlos Calvo (1824–1906), an Argentine lawyer, translated into Spanish Henry Wheaton’s historical work *Histoire des progrès du droit des gens en Europe et en Amérique, depuis la paix de Westphalie jusqu’à nos jours*. Calvo realized that a historical project was necessary for the American nations to be recognized as equal participants in the international community. He set out to accomplish his own extensive historical compilation in order for the American nations to be taken seriously because of the “absolute ignorance in Europe of the state of civilization and the progress that has been made and is being made in America”.²¹ To correct this state of affairs, Calvo presented the “written facts” in an eleven-volume collection of treaties, statistics and other documents dating from the legitimation of the Spanish conquest (1493) to independent statehood (1862–1869). He also published a five-volume series which focused on the history and documents of the “revolution of Latin America” dating from 1808 to the recognition of independence. The sixteen volumes were published from 1862 to 1869 in Spanish and French editions.

Calvo observed that international law was *not* universal because its first characteristic was the limitations on its extension; therefore, it was “limited to the Christian nations that marched at the head of civilization.”²² As international law was viewed as the sign of civilization *par excellence*, Calvo sought to demonstrate that there was a long-standing tradition of international law in the region that would give the new nations equal standing before European states.²³ The effort to

²¹ Carlos Calvo, *Recueil complet des traités, conventions, capitulations, armistices et autres actes diplomatiques de tous les états de l’Amérique Latine compris entre le golfe du Mexique et le cap de Horn, depuis l’année 1493 jusqu’à nos jours précédé d’un mémoire sur l’état actuel de l’Amérique, de tableaux statistiques, d’un dictionnaire diplomatique, avec une notice historique sur chaque traité important* (Paris: A. Durand, 1862).

²² Calvo, *Derecho Internacional de Europa y América*, 70; Calvo, *Le droit international théorique et pratique*, 155.

²³ Carlos Calvo, *Derecho internacional teórico y práctico de Europa y América*, First ed., 2 vols., vol. 1 (Paris: D’Amyot, Durand & Pedoné-Lauriel, 1868); Carlos Calvo, *Le droit international théorique et pratique, précédé d’un exposé historique des progrès de la science du droit des gens*, 2d ed., 2 vols. (Paris: A. Durand & Pedone-Lauriel, 1870). As described by Limantour, who wrote Calvo’s obituary in 1909 the purpose of the compilation was “to combat with better tools, in favor of the nations of his race, reclaiming for them the same international consideration as the countries of the Old Continent had given exclusive privilege.” José Yves Limantour, *Memoria sobre la vida y la obra de D. Carlos Calvo* (Paris, Mexico: Librería de la Vda. de C. Bouret, 1909). 20.

“prove with facts” the civilized state of the American nations and their tradition of international law continued in Calvo’s 1868 treatise *Derecho Internacional Teórico y Práctico de Europa y América* (Theoretical and Practical International Law of Europe and America) in which he broadened the territorial scope of international law by including *América* in the title and clarifying its notion in the text. His purpose was to reclaim the original continental reference and challenge the one which viewed America as synonymous with the United States (as had Wheaton).²⁴

The work of Rafael María de Labra Cadrana (1840–1918), a Spanish lawyer born in Cuba, serves as a counterpoint to Calvo’s histories. Labra viewed the state of international law in Spain as provincial, and was quick to recognize that the only available textbooks in Spanish were “exclusively thanks to our Latin American friends” which, of course, included Calvo.²⁵ So Labra took it upon himself to write, teach and promote the learning and use of international law as part of the refashioning of the new Spanish State after the first decolonization.

From 1869 to 1912, Labra published more than forty texts on topics ranging from women’s rights to the abolition of slavery, the question of Cuba and Puerto Rico, the relation of Spain and the Americas, and the general problem of the colonial enterprise. Labra’s own “turn to history” was to improve relations between Spain and its former colonies. His historical work on the Constitution of Cadiz (1812), for example, was written to commemorate the highpoint of Spanish American collaboration “based on equality of political and civil rights in a transatlantic Spanish nation” but also to mark continuity with the remaining colonies of Cuba, Puerto Rico and the Philippines.²⁶ Though Labra, like all of his contemporaries, was a self-trained historian, he never wrote extensive works. His historical work was always short and had either a political or academic purpose (to educate or to influence policy). But also, like others of his time, he was adamant in building a new Spanish history to lessen the trauma of the loss of American colonies, while legitimizing the continuation of the remaining colonies as part of the Spanish nation. Labra sought to argue through his histories how Empire could subsist as Nation in the modern era.

Writing a Unified Italy into the History of International Law

Two Italian lawyers were present in the 1873 foundational meeting of the *Institute de Droit International*: Pasquale Stanislao Mancini and his lesser-known son-in-law Augusto Pierantoni.²⁷ By that time, Mancini and Pierantoni, along with their famous poetess wives, had lived all of their adult lives for the cause of Italian unification. Mancini was a *tour de force* in Naples, where in the 1840s he owned a newspaper, participated in all cultural activities and began an Italian school of law in his own home in order to build the “new science of the nation” to teach law around the “happy

²⁴ Henry Wheaton, *History of the Law of Nations in Europe and America: from the Earliest Times to the Treaty of Washington* (New York: Gould, 1845).

²⁵ As cited in Ignacio de la Rasilla del Moral, “The Study of International Law in the Spanish Short Nineteenth Century”, *Chicago Kent Journal of International and Comparative Law* 12(2012).

²⁶ Christopher Schmidt-Nowara, *The Conquest of History: Spanish Colonialism and National Histories in the Nineteenth Century* (Pittsburgh: University of Pittsburgh Press, 2008) 18.

²⁷ This meeting was described as foundational for modern international law in Martti Koskenniemi, *The Gentle Civilizer of Nations: the Rise and Fall of International Law, 1870-1960* (Cambridge, UK; New York: Cambridge University Press, 2004) 42.

conjunction of philosophy and history” and the objective of “civilization and progress.”²⁸ When the revolutions of 1848 hit Naples, Mancini had to flee to Turin where he continued to actively promote unification with other exiles. In 1851 he published *Della Nazionalità come Fondamento del Diritto delle Genti* (Of Nationality as the Foundation of the Law of Nations) as a reinterpretation of Giambattista Vico’s *mondo delle nazioni* (World of Nations), or in Mancini’s words: “as the celebration of humanity and its civil progress in the free, harmonious and full development of nationalities”.²⁹

The young Pierantoni joined the Garibaldean forces in 1856 and again in 1860 with the definitive “Spedizione dei Mille”, the final battle for the unification of the south with the north of Italy. Soon thereafter, Pierantoni met Mancini and began a life-long personal and professional relationship with him.

In 1865 Pierantoni became professor of constitutional law and international law at the University of Modena and married Mancini’s daughter, Grazia, in 1868. A year later, Pierantoni wrote his first history on the importance of international law for the newly united Italy. In 1870 he became professor of constitutional law in Naples and in 1873 he was invited, along with his more famous father-in-law to the foundational meeting of the Institute de Droit International. Three years later, while beginning his new post as professor of international law in Rome, he wrote a history of international law of his own century, a text of nearly 700 pages that described political events from the Congress of Vienna of 1815 to the Centennial International Exhibition of 1876 held in Philadelphia.

Pierantoni took Mancini’s principle of nationalities and devotion to history further by writing historical works focused on the newly united Italy as well as on the profound transformations that the nineteenth century brought to Europe’s international order. Pierantoni’s construction of the history of international law in Italy (1869) and in the nineteenth century (1876) was imbedded with his view of the Risorgimento. On the other hand, his narrative highlighted continuities and progress in European international law through conceptual pairs: the transitions from the doctrine of intervention to the doctrine of non-intervention; from the Holy Alliance to the representative form of government; from treaties imposed by force to agreements negotiated through politics; from the balance of powers to the juridical equality of states. Though Pierantoni viewed Europe’s past in the negative light of how it divided Italy, his vision for the future was optimistic as he anticipated new interests in economics and communications that would spread law and justice throughout the world and build a new international law.

The Origins of International Law into the Future of the Twentieth Century

My book project begins with a study of origins and it ends with one. A student of Francois Laurent, the Belgian scholar Ernest Nys (1851–1920) published his *Les Origines de droit international* in 1894 appropriately as a *fin de siècle* proof that documented, together with his other historical writings, that

²⁸ Maria Malatesta, *Society and the Professions in Italy, 1860-1914* (Cambridge: Cambridge University Press, 2002). 97-99.

²⁹ As cited in James Summers, *Peoples and International Law: How Nationalism and Self-Determination Shape a Contemporary Law of Nations*, vol. 8, The Erik Castrén Institute Monographs on International Law and Human Rights (Martinus Nijhoff Publishers 2007) 113.

the history of the law of nations was also the history of civilized peoples.³⁰ Despite its “interrupted, halting advancement, of wavering and uncertain efforts” Nys believed that the history of international law was the gradual institutionalization of humanity’s progress. Nys was also an originator. Not only was he the first lawyer to make history the locus of his profession,³¹ but his *Origines* version was a source and model for most history chapters of international law textbooks well into the twentieth century. He was also the first to resuscitate Francisco de Vitoria’s writings and declare him a founding father of international law.³²

Nys’ historical oeuvre at the end of the century presented a different concept of history, time, progress, and sources than those of Goguet’s history of origins published before the French revolution and Kant’s *Perpetual Peace*. Biblical chronology as a form of measuring history was gradually disregarded from the appearance of Newtonian time at the end of the eighteenth century and Darwin’s (r)evolutionary theory in the mid-nineteenth. The secularization of time liberated the access to non-biblical sources and brought a new “historical time” which viewed a perspective that presented a process of progress into the future.³³

While Goguet wrote in isolation and to obtain recognition in the environment of parliament lawyers of the *ancien régime*, Nys wrote for a cosmopolitan European audience that was consolidating a professional language. His writing of history had a twofold purpose as he explained on the doorstep of World War I. The first was to establish and clarify the nature and existence of international law and the second was to obtain respect for the discipline:

Up to a few years ago the imperfection in the rules of the law of nations and in their application was apparent to every eye. Even at the present time distinguished men, men of national affairs or men devoted to study and research, entertain false conceptions of the nature of international law... they never cease to point out as a weakness of international law the absence of a legislative organization and of a completely equipped judicial power. We have had occasion to consider in detail the history of the law in its development among a

³⁰ Ernest Nys, *Notes pour servir à l'histoire littéraire & dogmatique du droit international en Angleterre* (Bruxelles C. Muquardt, 1888); Ernest Nys, *Les initiateurs du droit public moderne* (Bruxelles; P. Weissenbruch, 1890); Ernest Nys, *Les théories politiques et le droit international en France jusqu'au XVIIIe siècle* (Bruxelles; P. Weissenbruch, 1891); Ernest Nys, *L'état et la notion de l'état; aperçu historique*. On Acad.roy.de Belgique. Bull.1901, Lettres. p.667-694,1013-1069 (Bruxelles1901); Ernest Nys, *The independent state of the Congo and international law* (Brussels; J. Lebègue and c p0 s, 1903); Ernest Nys, *Le droit international; les principes, les théories, les faits* (Bruxelles, A. Castaigne1904).

³¹ Arthur Nussbaum, *Historia del Derecho Internacional*, trans. L.G. Arias and F.J. Osset (Madrid: Editorial de la Revista de Derecho Privado, 1949). 328; Koskenniemi, “A History of International Law Histories,” 943.

³² Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, trans. G. L. Ulmen (New York: Telos Press, 2003). 117. Schmitt is referring to references to Vitoria in Nys works Nys, *Les initiateurs du droit public moderne*, Ernest Nys, *Les origines du droit international* (Bruxelle; A. Castaigne, 1894); Ernest Nys, *Le droit de la nature et le droit des gens au XVIIe siècle* (Bruxelles1914); Ernest Nys, *Le droit des gens et les anciens juriconsultes espagnols* (Bruxelles: M. Weissenbruch, 1914); and Nys’s collaboration in the 1917 re-edition of the *relecciones* Ernest Nys, ed. Francisci de Vitoria *De Indis et De iure belli relecciones, Classics of International Law* (Washington: The Carnegie Institution of Washington, 1917). This was the first edition of the “Classics of International Law” series published by the Carnegie Institute under the editorial direction of James Brown Scott

³³ “The modern concept of history draws its ambivalence from its necessary conception of history as a totality...but a totality that can never be complete, for, as we know, the future remains unknown” Reinhart Koselleck, *Futures Past: on the Semantics of Historical Time* (New York: Columbia University Press, 2004). 140.

number of civilizations, and feel that we have refuted any argument that can be based upon this absence of legislative organization or of judicial tribunals in any one of the three great subdivisions of the law.

Satisfied with the proof of international law across time and as a product of civilization, Nys also used historical narrative to promote the prevention and elimination of war as an act of progress and civilization.³⁴

Conclusion

In the 1970s the “deep roots” of European integration were seen by policy makers as coming from a nineteenth century of peace and progress.³⁵ In 2000, with a continued optimistic view of the past, the European Council adopted the Lisbon strategy, a ten-year development plan to “make Europe, by 2010, the most competitive and dynamic knowledge-based economy in the world”.³⁶ More than a decade later, while its citizens live the worst economic and social crisis since World War II, European Union leaders promote a forward-looking solution of “more Europe.” “Less Europe,” these politicians argue, is to promote failure, a return to a fragmented region and a violent past.³⁷ The current view of the nineteenth century, in times of crisis, is synonymous with regression, failed populism, dubious nationalism and a precarious balance of power politics. As the European Council designed the 2020 plan based on the failed Lisbon strategy, it envisioned the current situation as a temporary deviation from Europe’s destined success.³⁸ The idea of moral evolution resonates in much of the political language defending the continuity of the European Union project: “only a united Europe has the leverage and strength to defend our values and promote our interests in the world ... values and interests that must be promoted.”³⁹ ‘Europe’ was (and for some still is) regarded as synonymous with Progress, for itself and the rest of the world. Its evolution has been epitomized through a legal and economic union deemed as “institutionally and politically ... the single greatest achievement of ... human history.”⁴⁰ Thus, underlying the argument for ‘more Europe’ as a solution to the present economic collapse is a continued faith in a Kantian narrative of Europe as centre and point of departure for global progress, an inspirational and transformational model for the rest of the world that needs to be defended. At a popular and national level, however, a new wave of scepticism views a continuity of an intra-imperial past of dominating states inside Europe that have built the idea of a united Europe to continue benefiting from a monetary union.

³⁴ Ernest Nys, “The Development and Formation of International Law,” *The American Journal of International Law* 6, no. 1 (1912): 310.

³⁵ Citing Walter Hallstein the first president of the EEC Neil Nugent, *The Government And Politics of the European Union* (Durham: Duke University Press, 2006). 12.

³⁶ European Council, “Presidency Conclusions,” (Lisbon: European Council, 2000).

³⁷ This modernist rejection of the past in order to freely build the present or the future is certainly not new or unique to international lawyers. See Orford, “The Past as Law or History: The Relevance of Imperialism for Modern International Law,” 4-5; Fasolt, *The Limits of History* 7.

³⁸ European Council, “Communication from the Commission: EUROPE 2020: A Strategy for Smart, Sustainable and Inclusive Growth,” (Brussels 2010).

³⁹ José Manuel Durão Barroso, “The State of Europe,” (Berlin: Haus der Berliner Festspiele, 9 November, 2011).

⁴⁰ Ibid.

In this argument, the view of the past is also negative, but for different reasons. In both perspectives, a negative past allows for “horizons of expectation” in order to build alternatives for the future (“more Europe” or “less Europe”). The question was then and is now: what does a world united through law mean in its relation to the concept of Europe, History and Progress?

In relation to the expanding global sphere in the midst of internal strife, the nineteenth-century lawyers who wrote a history of the law of nations or international law prioritized their concerns over the consolidation of their state, the development of national law and the protection of their government. Though they believed in telling a correct history documented with proper sources, their purpose was to correct a present injustice, insert their nation into a better position in contemporary international relations, or guide state behaviour in relation to the past, in order to progress.

Paradoxes of Peace in Nineteenth-Century Europe

Thomas Hippler and Miloš Vec

I

Cynics have argued that if Tolstoy were to publish his novel *War and Peace* today he would probably have chosen *Peace-Restoring and Peace-Keeping Missions* as a title. The notion of ‘war’ is increasingly banned from the official political vocabulary and we are more and more employing expressions such as ‘restoring peace’ when talking about the use of armed force in conflict. To put it even more clearly: we are using the word ‘peace’ when meaning ‘war’. The starting-point for the idea of our volume on “Paradoxes of Peace in Nineteenth-Century Europe” stems from there, and from the perceived necessity to investigate what this paradoxical use of vocabulary tells us about our current situation. War can be peace, and peace, war.

It would be an error, however, to presume that this inversion of meaning is just a matter of intellectual dishonesty. On the contrary, it displays the puzzling but undisputable fact that peace has become one of the fundamental values in politics today. In his foreword to the 2010 published *Oxford International Encyclopaedia of Peace*, the Dalai Lama states: “Peace, not war, is the basis of progress, the basis of happiness, the basis of improvement.”¹ Until the nineteenth century, it was possible to openly argue for an intrinsic value of war, for instance Kant in his essay ‘Conjectural Beginning of Human History’ in which he argued that war was a necessity for the progress of humanity, culture, liberty and social coherence.² As a matter of fact a holder of this kind of view would be denied any legitimacy today: no one would declare themselves openly in favour of war and against peace. The most war can be is a regrettable necessity in order to defend higher goods.

However, if everybody agrees in condemning war and in aspiring for peace, does this mean that conflict has effectively disappeared? Obviously not. But to the extent that contentions are not enounced anymore in the language of war, they have to be enounced in the language of peace. And this is the precise reason why ‘peace’ has become such a disputed concept. As a core part of our political language peace is always contested and claimed by specific groups with specific interests. Yet this also implies that the usages of this concept are extremely different and even irreconcilable. Quite paradoxically, peace is a polemical concept. Its specific usages bring forward and defend particular visions of politics and legitimacy which are of necessity opposed to other visions. One man’s peace is another man’s oppression and one man’s fight for justice is another man’s breach of a peaceful order. This is why the oxymoron of ‘peace as a polemic concept’ is plainly justified and this is why peace raises, by necessity, paradoxes: peace is intrinsically polemical and contentious, while at the same time unavoidably repressing its contentious character.

When turning to historical scholarship in order to better understand this paradox, we realise that historical peace studies had contributed to a considerable extent to the creation of this paradox and our conviction that the conceptual history of war and peace urgently needs to be readdressed

¹ The Dalai Lama, Foreword, *The Oxford International Encyclopedia of Peace*, ed. by Nigel J. Young, (Oxford 2010), Vol. I, p. xix-xxi (xix).

² Kant, *Political Writings*, ed. by H. Reiss, (Cambridge, Cambridge University Press, 1991), p. 321-2.

stems from this insight. Historical peace studies developed in Western Europe and in North America during the Cold War era, partly taking up directions that had emerged in the inter-war period in Europe. Their research agenda was to replace the older fields of history of international relations and of military history with a focus on peace, rather than on international relations and on war. Already in 1959 the Peace Research Institute was founded in Oslo. In the United States a *Peace History Society* was founded in 1964 and thus in the aftermath of the Cuban Missile Crisis, in the context of the Vietnam War. Another institutional focus was established in Western Germany with the foundation of the *Arbeitskreis Historische Friedensforschung* in 1984 and thus in the context of NATO's double-track decision of 1979. In all these cases the institutional settings and the research agendas were closely linked to the concerns of peace movements between the 1960s and the 1980s.

On the ideological level, peace movements in the Western world were heavily inspired by left-wing politics. In the particular political context of the Cold War this led to an ambiguous position. On the one hand, the scope of historical peace research in Western Europe and in the United States was quite clearly to construct an historical legacy on which to consolidate a political commitment against the Vietnam War or in the context of the nuclear confrontation which became more worrisome during the early 1980s. Peace studies during these years – which were to become an academic discipline embracing sociology, philosophy, history, and political sciences – were thus deliberately seeking to construct an intellectual alternative to hegemonic NATO concepts. On the other hand, this intellectual and political movement was also partly opposed to Soviet ideology. The intellectual solution for this tricky situation was to construct 'peace' as an alternative value with its distinct characteristics and a history of its own. This intellectual construction permitted the criticism of armed containment policies and NATO nuclear strategy, without, however, endorsing the Soviet position.

This construction and the particular historical and political context in which it took place gave rise to some epistemic orientations in peace history which were rarely reflected upon. Schematically, we can distinguish three areas in which these epistemic orientations seem problematic in our eyes: the definition of peace as an entity endowed with an immutable essence and a distinct social locus (II), its construction as an independent political value (III), and finally the historiographic orientations which stemmed from these characteristics (IV).

II

Between the 1960s and the 1980s, peace studies, as developed in the context of the peace movements in Europe and North America, were keen to construct a line of tradition. The intellectual actors' own political commitment for the sake of peace would gain supplementary historical signification to the extent that historical peace studies would inscribe their own concrete causes into a longer tradition. Constructing this tradition obviously also meant constructing a homogenous object of their political and intellectual commitment: peace. Peace as historical object is presented as an immutable and thus trans-historical entity. Peace history, in other words, tends to de-historicize its object; peace history is the history of the various struggles, in different historical contexts, in favour of the un-historical cause of peace. The contexts were changing but peace was

not and peace history was the history of these contexts and not of peace 'as such'.³ Placing the history of peace centre stage means approaching the topic from the usages of the concept. In this respect our approach is clearly indebted to the methods of conceptual history and we depart indeed from the assumption that language, concepts, and the values conveyed by them are a precondition of human agency and thus of human history. At the same time, however, language, concepts and values are never fixed entities; they are always disputed and used for various purposes. On the one hand, there has to be some form of a common language without which there would be no possibility of a common action of any kind; on the other hand this language is always disputed, without which there would be no politics.

Our volume tries to consequently historicize its object and it thus departs from the assumption that there is no stable entity called peace. Rather than being contraries, war and peace constitute themselves mutually in an unstable and contentious relationship. The starting point of this project was precisely to put the interconnections of war and peace to the forefront, and to address these entanglements through the category of 'paradoxes of peace'.

The essentialized and un-historical object of peace history was also assigned a precise social locus. In the historical and ideological context in which peace history developed, war basically meant war between states and, more precisely, between nation-states. According to Charles Tilly's famous dictum, 'war made the state, and the state made war'.⁴ Peace studies, as it were, departed symmetrically from the assumption that 'peace makes civil society, and civil society makes peace'. The story of peace as a trans-historical and thus un-historical object was basically a story opposing states and governments as the agents of war to civil society, both national and transnational, as the promoters of peace.

Yet this way to structure the story overlooks some important features. At least from the times of the Roman Empire onwards, the European concept of peace could imply a hardly dissimulated justification for political domination. In his political will, the *Res Gestae*, Emperor Augustus thus uses the verb *pacificari* (to pacify) when describing his military conquests: 'I extended the boundaries of all the provinces which were bordered by races not yet subject to our empire. The provinces of the Gauls, the Spains, and Germany, bounded by the ocean from Gades to the mouth of the Elbe, I reduced to a state of peace (*pacavi*).'⁵ A part from being a human aspiration, 'peace' is also a powerful ideological device for the moral, political and juridical legitimation of conquest, hegemony and of power-inequalities. To put it bluntly: the stronger party in an asymmetrical power-relation has a vested interest in the promotion of peace to the extent that open conflict would mean to put into question the legitimacy of the unequal power relation. Peace, in other words, may signify imperial domination and the language of peace is in no way the exclusive property of powerless groups in society or networks in civil society, but can be, and actually was, used to justify imperial purposes.

³ See e.g. Charles F. Howlett, History of Peace, Contemporary, in: *The Oxford International Encyclopedia of Peace*, ed. by Nigel J. Young, (Oxford 2010), Vol. II, p. 318-320.

⁴ Charles Tilly, *The Formation of National States in Western Europe*, Princeton 1975, p. 42.

⁵ *Res Gestae Divi Augusti*, chap. 26, cited from *The classical Roman reader: new encounters with Ancient Rome*, ed. Kenneth John Atchity, (Oxford, Oxford University Press, 1997), p. 161.

Moreover, peace may also signify domestic domination. This is certainly why concepts such as ‘class war’ were invented during the nineteenth century. *A contrario*, this expression stressed the fact that ‘peace’ may imply a social order based on inequality, injustice and exploitation which has to be rejected as such. Peace languages, in other words, serve in certain cases to silencing social protest – national as well as international/transnational, foreign as well as domestic. The war/peace nexus may also take even more intricate forms, for instance when international workers associations argue for the ‘class war’ and revolution on the domestic level and for international solidarity in order to promote peace.

It is the ambition of our volume to put these entanglements centre stage. As a polemic and contentious notion, peace has no meaning as such and the various contributions in our volume are illustrations of different and context-specific usages of peace as a polemical concept. In the language of conceptual history we would say that peace is a ‘fundamental concept’, that is a concept which all kind of actors have to use and have to cope with. We try to point out for whom and thus against whom one was speaking and acting when promoting peace, and which hopes and which fears were attached to it from various sides. In doing so, we do not intend to attack the use of the term as such, but our aim is to investigate what the specific interests were and what specific actors meant when talking about peace.

There might have been a ‘strategic’ interest in presenting peace as an essentialized and thus un-historical entity during the Cold War era but the situation has arguably changed during the last decades and we feel that it is time to question this ‘strategic essentialism’ and to historicize and thus to de-essentialize the notion of peace. This is why we are addressing the question of what peace concretely means in different historical contexts, placing the paradoxes which peace generated to the forefront of attention. In other words, Nietzsche’s question of the ‘value of values’ is central to our endeavour.

III

In a situation of a perceived threat to the existence of humankind by nuclear destruction, peace was constructed not only as an entity with an immutable essence but was, moreover, conceptualized as a fundamental and independent value. In the context of the late Cold War, peace studies contributed to building up peace as an alternative value against Western values such as ‘freedom’ – which had to be defended, by nuclear weapons if necessary – as well as against Soviet values such as class struggle. To be sure, both Western and Soviet ideologies were not opposed to peace as such, but in both cases the value of peace was dependent on other values, such as freedom, workers’ emancipation, justice, and so forth. Constructing peace as an independent and, what is more important, unconditional political, ethical and legal value signified to deliberately ignoring the conceptual under-determination of the term peace and a high intellectual price had to be paid for this intellectual operation.

If peace has acquired this exceptional political value during the Cold War era, this specific concept of peace is of very limited use in our very different historical situation today. The critical charge of peace as value stemmed precisely from the fact that it was situated between the two major blocks in global politics, which entailed a critical distance to both Western and Eastern concepts.

Yet the post-1989 situation is distinctly different in this respect and an unconditional reference to peace has arguably lost much of the critical impetus that it had at its inception and is at risk of degenerating into a pure apologetic history of the existing global order of things.

To be sure, seeing peace as a value is no invention of the Cold War era. On the contrary, as a human aspiration peace has always been considered as a value. Yet the intellectual construction of this value has taken very different forms throughout history. Schematically, peace can either be seen as dependent on other values or as an independent value. One of the most influential examples for the former position is Saint Augustine who distinguished 'true peace' from 'false peace' and defined the former as a 'just order'.⁶ 'Justice' and 'order' are thus the concepts from which the value of peace is derived.⁷ One can obviously ask the question of what 'justice' actually means and different conceptions of justice can affront each other. The important point is that the values from which peace draws its value can be made explicit and eventually be debated. This is quite different in the second approach which tends to consider peace as an independent value. Drawing on Enlightenment concepts of peace⁸ the last third of the twentieth century witnessed the rise of peace to a political *a priori*, that is, a concept that all actors have to endorse and a value that no one can put into question. However, in ascribing such an unconditional value to peace we not only run the risk of forgetting the contentious nature of peace but of deflating the concept of war and inflating the concept of peace. The long-term outcome was a hypocritical use of language in which we are no longer talking about war, but about 'humanitarian interventions', 'air strikes', 'stabilizing' and 'peace-keeping missions' and so forth, often not carried out by identifiable political actors anymore but by an 'international community' as an abstractly universal agent of peace. In contrast, our volume departs from the assumption that peace had never been, nor can it be, an independent value and it tries to map out the different, and even antagonistic values that were attached to peace by different actors in concrete historical situations.

Peace, being not an independent but a 'qualified value', always meant a certain form of peace, implying a certain domestic and international order, the two being intimately linked.⁹ In nineteenth-century Europe, we thus see a large variety of political, ethical and juridical norms on which peace was to be built; its doctrine based on the international level to a large extent on the liberal assumptions of eighteenth century political thinking which estimated autonomy and individual freedom and remained structurally quiet when it should handle tensions or conflicting obligations between Empires or states.¹⁰ The early attempts of the French Revolution to 'export' republicanism

⁶ 'pax omnium rerum tranquillitas ordinis. Ordo est parium dispariumque rerum sua cuique loca tribuens dispositio', Saint Augustine, *The City of God*, book 19, chap. 13.

⁷ Wilhelm Janssen, 'Frieden', in: *Geschichtliche Grundbegriffe. Historisches Lexikon zur politisch-sozialen Sprache in Deutschland*, Otto Brunner/ Werner Conze/ Reinhart Koselleck (ed.), (Stuttgart 1972-1992), Vol 2, (1975), pp. 543-591.

⁸ Thomas Hippler, La paix perpétuelle et l'Europe dans le discours des Lumières, *European Review of History — Revue européenne d'histoire*, Vol. 9. No. 2 (2002), 167-182.

⁹ JE Nijman and A Nollkaemper, 'Beyond the Divide' in JE Nijman and A Nollkaemper (eds), *New Perspectives on the Divide between National and International Law* (Oxford University Press Oxford and New York 2007) pp. 341-360.

¹⁰ M Koskeniemi, *From Apology to Utopia. The Structure of International Legal Argument*. Reissue with new epilogue, (Cambridge 2009), p. 119.

and eventually democracy were clearly linked to a European peace project,¹¹ the idea being not so far removed from Kant's assumption that peace can only be established between republican states.¹² While being neither republican nor democratic, Napoleon's Empire tried to impose upon Europe its vision of peace, based on the assumptions of popular sovereignty, civic rights and the rule of law.¹³ After Napoleon's fall, different peace concepts coexisted in Europe: peace as the renewal of the eighteenth-century idea of a political balance of power;¹⁴ peace as a system of regular interstate congresses;¹⁵ peace as the legacy of Enlightenment ideas of a European civil society, including an insistence on free-trade and colonialism; peace based on the recognition of the 'principle of nationality'¹⁶ and of national self-determination;¹⁷ peace based on religiously founded principles of monarchical legitimacy;¹⁸ peace having to be achieved through transnational revolutionary solidarity between the exploited working-classes; peace as being based on the universalization of democratic participation rights;¹⁹ peace as technical and positivistic project promoted by the particular professional group of international lawyers²⁰ and of peace movements.²¹ To put it in other words, each party had its own peace and the political principles of which peace was to be built were not only very different, but even irreconcilable. On the level of conceptual history, we thus witness struggles for the imposition of peace concepts against rival and even clearly opposed concepts of peace.

IV

It is amazing to see how these facts are almost systematically eluded by most of the existing studies in peace history. Anyone comparing the bulk of the existing secondary literature on peace

¹¹ Heinhard Steiger, *Das Völkerrecht und der Wandel der Internationalen Beziehungen um 1800*, in: Andreas Klinger, Hans-Werner Hahn, Georg Schmidt (ed.), *Das Jahr 1806 im europäischen Kontext*, (Köln Weimar Wien 2008), pp. 23-52.

¹² Immanuel Kant, *Zum ewigen Frieden. Ein philosophischer Entwurf*, (Königsberg 1795, Erster Definitivartikel), p. 20.

¹³ *In the Embrace of France. The Law of Nations and Constitutional Law in the French Satellite States of the Revolutionary and Napoleonic Age (1789-1815)*, ed. by Beatrix Jacobs, Raymond Kubben and Randall Lesaffer.

¹⁴ M Vec 'De-Juridifying 'Balance of Power' – a Principle in 19th Century International Legal Doctrine' (December 5 2011) European Society of International Law Conference Paper Series. Available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1968667

¹⁵ Matthias Schulz, *Normen und Praxis. Das Europäische Konzert der Großmächte als Sicherheitsrat, 1815-1860* (Studien zur Internationalen Geschichte 21), (München 2009); Schroeder, Paul W.: *The transformation of European politics 1763-1848*, (Oxford 1994).

¹⁶ L. Nuzzo, *Das Nationalitätsprinzip: der italienische Weg zum Völkerrecht, Les conflits entre peuples. De la résolution libre à la résolution imposée*, Serge Dauchy und Miloš Vec (ed.), (Baden-Baden: Nomos Verlag 2011) (Studien zur Geschichte des Völkerrechts 24), pp. 93-122.

¹⁷ J Fisch, *Das Selbstbestimmungsrecht der Völker. Die Domestizierung einer Illusion* (Historische Bibliothek der Gerda Henkel Stiftung (CH Beck München 2010); J Fisch (ed) *Die Verteilung der Welt. Selbstbestimmung und das Selbstbestimmungsrecht der Völker. The World Divided. Self-Determination and the Right of Peoples to Self-Determination* (Schriften des Historischen Kollegs 79 München 2011).

¹⁸ Francis Ley, *Alexandre I^{er} et sa sainte-alliance*, Paris, Fischbacher, 1975.

¹⁹ C. A. Bayly and E. F. Biagini, (eds.), *Giuseppe Mazzini and the Globalization of Democratic Nationalism, 1830-1920*, (Oxford, Oxford University Press, 2008).

²⁰ M Koskeniemi, *The Gentle Civilizer of Nations. The Rise and Fall of International Law 1870-1960*, (Cambridge 2004).

²¹ Cecelia Lynch, *Peace Movements, Civil Society, and the Development of International Law*, in: *The Oxford Handbook of the History of International Law*, ed. by Bardo Fassbender, Anne Peters), (Oxford 2012), pp. 198-221.

movements with source material will be struck by the gulf that separates the former from the latter. Standard accounts in historical peace studies present the struggles of men, women and networks for the sake of peace, thus constructing a continuity of social and sometimes transnational networks that anticipate in many respects the political commitment of the bulk of peace historians themselves. When re-reading the sources, however, one cannot but be surprised by the fact that one dimension is almost completely silenced in the secondary literature. And this is precisely the contentious character of claims for peace. One standard argument brought forward by peace activists is for instance that – in order to bring about peace in Europe – the first thing to be done is to crush the enemies of peace. In other words, the call for peace is in many cases accompanied by a call to arms:²² *Si vis pacem, para bellum*. It was one of the most astonishing findings in the work of our volume to become aware that the bulk of the existing literature was strangely low-key about these disturbing facts. As a consequence of this, we felt the necessity to place these paradoxes of peace at the centre of our attention. Telling the story of war and peace in black and white is not only disputable on a theoretical level: it is often quite simply wrong.

Our volume is thus to be intended as a contribution to a critical re-writing of the contentions around the concepts of war and peace and of their connections to other nineteenth-century European key concepts like sovereignty, empire, security, humanity, civilization and barbarism, Christendom, and colonialism. These disputed fields are mapped out in the various contributions to our volume. If our focus lies in Europe, we believe that any contribution to European history has to inscribe Europe 1815–1914 into the context of global history. If Europe has to be ‘provincialized’²³ this concretely means for us to globalize it, to historicize and to locate it contextually. The same goes for the values and norms argued to be European when they are practised outside Europe.²⁴ In this sense, the global intersections, that is the unequal power relations on a global scale, needed to be addressed. This does not only imply taking account of class and gender positions in the field of international history, but also re-addressing the impact of global inequalities on the issue of nationalism and of nationalities. The older peace history has argued that the cause of peace has been lost against the hegemony of nationalisms since the end of the nineteenth century. Here too, this way to tell the story is obviously in affinity with attempts to write a history of Europe as a history of European integration, culminating obviously with the European Union as the institutional realisation of a universal principle of peace. This history of progress also affects the view on the historiography of peace which suffers in post-1945 a-historical overestimations, like the statement that “Views of peace have evolved within the field of peace studies, particularly since World War II.”²⁵

Given the fact that nineteenth-century Europe witnessed such a vast variety of antagonistic “peaces” this spatial and chronological setting seemed particularly fruitful as a starting-point. It was

²² Mary Ellen O’Connell, Peace and War, in: The Oxford Handbook of the History of International Law, ed. by Bardo Fassbender, Anne Peters, (Oxford 2012), pp. 273-293 (274).

²³ Dipesh Chakrabarty, Provincializing Europe: Postcolonial Thought and Historical Difference (New Edition), With a new preface by the author, (Princeton University Press 2007).

²⁴ Jörg Fisch, *Die europäische Expansion und das Völkerrecht. Die Auseinandersetzungen um den Status der überseeischen Gebiete vom 15. Jahrhundert bis zur Gegenwart*, (Stuttgart, Steiner 1984).

²⁵ Gabriel Palmer-Fernandez, Evolving Views of Peace: Positive Definitions, in: The Oxford International Encyclopedia of Peace, ed. by Nigel J. Young, (Oxford 2010), Vol. II, p. 124-127 (124).

arguably in nineteenth-century Europe that concepts which were to become hegemonic on the global scene first came to blossom. Saying this, however, we must be aware of the limits of this endeavour which also indicates a direction for future research. A global comparison of the different “indigenous” conceptual histories of war and peace might thus be a fascinating perspective. There is probably no social formation that has not been compelled to conceptualize conflict and its settlement, both internally and externally. The conceptual, social and political grounds on which this has been done are, however, distinctly different.

To give just a few examples: in contrast to the Western tradition the Chinese vocabulary distinguished between two words for peace: *heping* on the one hand, and *mu* on the other, the former being invested with encompassing metaphysical, social and psychological contents, and the latter denoting more narrowly a peace-treaty or a ceasefire. Moreover, the whole idea of peace is traditionally embedded in an imperial political theology, in which the Emperor represents the unity of harmony and stability within the political order of the state. He therefore is the upholder of peace. Under his ‘Mandate of Heaven, war is never supposed to occur, so if it does, it is considered an aberration to the natural state of peace’.²⁶ In theory, non-violent solutions are preferred to direct confrontations and defensive warfare is preferred over wars of aggression, military force, and violence.²⁷ It is clear, however, that this spiritual framework only holds true within the framework of imperial centralism.

The classical Arabic tradition addressed the ethical and psychological implications of the conceptual couple in yet another perspective, since the noun *jihad*, deriving from the verb *gabada*, signifies both war and the ethical struggle against disturbing passions of the soul.²⁸ It thus comprises a part of what other traditions would understand as being part of the semantics of peace, rather than of war. In the Christian tradition, for instance, the harmony of the soul is not only addressed as being part of an overwhelming notion of peace, but ‘earthly peace’ is even dependent on the development of peace in the individuals’ souls. This, in turn, is only possible through the Christian faith. In striking contrast to this Christian tradition, the Islamic tradition addresses this issue through the language of war. There are two different sorts of *jihad*, major and minor. The ‘major *jihad*’ precisely refers to this struggle within the souls, the struggle for faith and against the passions. By contrast, ‘minor *jihad*’ refers to war. In both senses, *jihad* means combat, which requires the strength of the soul.

There is, however, yet another word for peace in the Arabic language: *salm* or *salam*. In contrast to *jihad* it conveys the idea of submission to political and religious authority, as well as of tranquillity, security, and religious salvation. The link between these meanings is that one is safe and sound by submission to and respect for religion. The word Islam is in itself derived from this same origin and Islam originally signifies submission (i.e. to the divine commandments) which will make the individuals safe and sound, and hence peaceful in their souls.

²⁶ Henry Kissinger, *On China*, (New York, The Penguin Press, 2011), p. 15.

²⁷ Nadine Godehart, “The Chinese Meaning of Just War and Its Impact on the Foreign Policy of the People’s Republic of China,” *Giga Research Programme: Violence, Power, Security* 88 (Sept., 2008): 10

²⁸ The following relies on Makram Abbès ‘Guerre et paix en islam: naissance et évolution d’une « théorie », Mots. Les langages du politique 73 (2003), □ Les discours de la guerre, p. 43-57.

V

One objection, however, could be raised against this deconstructivist approach. Does this way of proceeding not deprive us of any means to measure concrete practices against normative standards? Or, to put it in other words, does this approach not hamper any possibility to write a critical history of the international order, to the extent that one might be inclined to think that the very possibility of criticism depends on a normative standard against which concrete practices can be measured? This objection relies on the assumption that universal standards for the codification of norms in the international realm can be formulated. Our project, on the contrary, seeks to demonstrate that all normative systems are always and of necessity situated. They developed in particular historical, intellectual, and geostrategical contexts and their genesis should be reconstructed in relation to their specific situations. The critical impact of our approach is accordingly to be found in its attempt to historicize and thus to destabilise these very normative orders. To be sure, this approach involves the assumption that social relations are fundamentally agonistic in character. The novelty of our approach is to be found in the fact that we apply this insight to the very category of peace. Rather than being an essential entity that describes a state of affairs among humans, peace is the object of dispute, contention, power-struggles – and ultimately war.

The methodological choice adopted in our volume is thus to challenge the theoretical dualism to which the bulk of the theory and history of international relations still relies. We have spontaneously a tendency to distinguish between norms for political behaviour on the international sphere on the one hand, and concrete historical actions on the other, the latter being determined by selfish interests rather than by universal norms. It is our aim to challenge this dualistic structure of reasoning. To put it bluntly, we depart from the assumption that the world is one, rather than being split into a noumenal and a phenomenal part. Drawing on the conceptual arsenal of conceptual history, of discourse analysis and of Nietzsche's genealogy, we intend to ask how systems of normativity emerge within complex historical situations in which strategic competition and different motivational settings interact. Rather than distinguishing between normative orders on the one hand, and concrete historical situations on the other, we address the various entanglements between these two. We tend to deliberately exclude any duality between normative ideals and the practical realisation of these ideals. This implies a conscious break with the neo-idealistic paradigm that is still hegemonic in the field of the history and theory of international relations. Normative orders are no abstract ideals but precisely one form of historical practice.²⁹ As such they are intimately linked to multi-layered power-relations both on the international and on the domestic level. The blunt reason for this is that historical practice always and necessarily implies power-relations.

At the same time, however, these power-relations are never independent from normative systems, without which it would be difficult to acquire any legitimacy. For instance, when the early modern territorial state imposed 'security' as one of its core-values, the operations implied both the formulation of normative framework, running from juridical measures to political philosophy (the

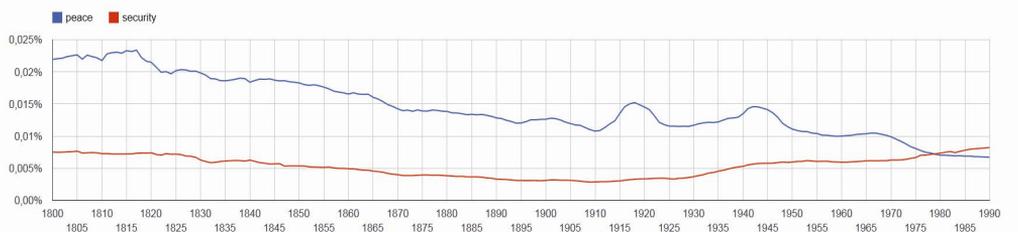
²⁹ R Forst and K Günther, *Die Herausbildung normativer Ordnungen. Zur Idee eines interdisziplinären Forschungsprogramms 01/2010 Normative Orders Working Papers* (urn:nbn:de:hebis:30-80730).

most obvious example being Thomas Hobbes³⁰), and very concrete steps to gain control of the means for physical violence, through the setting-up of more or less centralized military and police apparatuses. And the same hold true for the semantics of war and peace, as well as the ulterior enlargement of the concept of security to the international realm, which is clearly expressed in the syntagm of ‘collective security’ and its rise after the 1930s:



Source: Google ngram viewer.³¹

However, it seems even more notable, that “security” clearly passed “peace” in terms of popularity some decades ago. The idea of peace was/is externalized in political relations and attributed mainly to the outer relations of states; the domestic sphere now seeks for and speaks favourably of “security” (at least in English and German [“Frieden” vs. “Sicherheit”]):



Source: Google ngram viewer.³²



Source: Google ngram viewer.³³

³⁰ J Bühler, Thomas Hobbes in den internationalen Beziehungen: zur Existenz eines zwischenzeitlichen Naturzustandes in der politischen Philosophie von Thomas Hobbes, (Saarbrücken 2007).

³¹ http://books.google.com/ngrams/graph?content=collective+security&year_start=1800&year_end=1990&corpus=15&smoothing=3&share= (online: 10.04.2013).

³² http://books.google.com/ngrams/graph?content=peace%2C+security&year_start=1800&year_end=1990&corpus=15&smoothing=3&share= (online: 10.04.2013).

Without any ambition to completeness, our volume maps out some of the ‘paradoxes of peace’ in nineteenth-century Europe. After the Napoleonic Wars the hegemonic order of the Great Powers stabilized their particular concept of peace and bound them to a code acceptable to a broad majority of state actors, that found measures to make sure that administrative and political elites in leading states internalize international norms and rules. However, the politics of the Holy Alliance only fitted partially into the conservative mindset that called for military interventions against uprisings and revolutions that threaten peace and stability. The ideological origins of the Holy Alliance were much more intricate than one is often tended to believe and there was a clear liberal heritage, especially in the Tsar’s early attempts to set up a durable peace in Europe.

But peace movements in civil society were also far from embracing an unequivocal pacifism and transnational networks of nationalists called for interventions in favour of national minorities in their struggle for independence and the emergence of transnational pacifistic networks of liberal democrats generated the similar paradox of a democratic war against the enemies of democracy. One important feature was the gendered dimension of peace activism. On the one hand peace as a political cause is traditionally reserved for men alone but, on the other hand, one nineteenth-century strand of discourse conceptualized women as inherently more “peaceful” than men. As a consequence, peace activism seemed to perfectly fit the female nature. Consequently, women increasingly engaged in international peace activism, but failed in relating their peace discourse to the quest of democratization of the domestic order or in a critical and meaningful way to any real war among civilized nations.

International lawyers were to define ‘peace’ more than any other profession at the beginning of the nineteenth century; but only when it turned out that their formal understanding did not suit the needs of an growing public debate and interests for more elaborated concept that did not limit to a technical understanding, did the concept of peace re-materialize, and the lawyers themselves started to engage in manifold ways in the projects for a peaceful international order around 1900. This included a particular perspective on conflicts and dispute settlement in a world in which international courts hardly existed for their dissolution; thus, the situation is remarkably different from the domestic/intrastate relations where a juridification/legalization of conflicts through permanent courts and procedural law had taken place for centuries. The international lawyers confirmed, on the one hand, code as the definitive way, together with arbitration, to build peace in the constituted new system of international relations; on the other hand, the codification-idea suffered obviously on the international level from weaknesses that undermined the international lawyer’s efforts to build a normative order that was positive and universal at the same time. But even if that norm-setting agenda would succeed, the question remains open of how the aim of peace could be enforced in the international community without the threat of war.

Economic liberals argue that free-trade was the necessary precondition for peace among nations. However, economic barriers had to be opposed by military force in some cases, with free-trade thus becoming a cause for armed conflict rather than a remedy against war. Against the

³³http://books.google.com/ngrams/graph?content=Frieden%2CSicherheit&year_start=1800&year_end=&corpus=20&smoothing=3&share= (online: 12.04.2013).

paradoxes of 'cosmopolitical' liberal economy some economists argued that some forms of protectionism were necessary in order to allow economic systems to develop unhindered by international competition. This kind of economic nationalism was never remote from expansionist concerns and colonial ambitions. Moreover, regulatory regimes dealing with the liquidation of state debts and state bankruptcies displayed that law and legal avoidance were mobilized simultaneously and they supported contradictory ideas of stabilizing peace and power intensification/force at the same time.

Colonial fanatics hold that peace was an essential precondition for the spreading of European civilization around the world. These ideas entered the discourse on barbarism and the ideas of the peace of the civilized that was based on manifold assumptions of religious paternalism and cultural inequality. The transformation of the Ottoman Empire gives evidence of the domestic militarization of society and war that was required to participate in the Europeanizing mission for securing international peace. An Ottoman elite that felt increasingly frustrated by their exclusion from the European Great Power system consciously used militarization and islamization as political remedies.

If the reader's perception is that the various contributions to our volume deal in a critical sense with the term peace, our intentions would be fully matched. The language and ideology of peace has to be criticized, as must any other language and ideology, and history should be part of this criticism. There are numerous examples how peace was instrumentalized for very particular interests. These often hypocritical languages have to be unveiled and discussed. Orwell's newspeak slogan from 1984 that 'war is peace' reminds us once again about the necessity of that critical task and its manifold dimensions in the nineteenth and twentieth centuries.

Accordingly, our deconstructivist stance is by no means cynical, nor does it entail any kind of fatalism. If conceptual history reveals the pitfalls of language and the aporia of the possibilities of its instrumentalization and abuse, the reason for this is that any human agency is dependent upon language. Consequently, the historical subjects necessarily have to use concepts such as peace in order to speak and ultimately to act. In this respect our volume is not an attack on the use of the concept of peace, it is about the identification of certain sights and engagements, about the multiple entanglements and how people perceived peace. This intention does not imply the negation of the belief that peace is something right, but it wants to show the tragic sensibility of that position.

Securing Welfare and Creating Political Community

Property and Poverty: Perspectives on the Nineteenth-Century Social Question¹

Thomas Hopkins

I

There is a rich body of literature on what Karl Polanyi labelled the ‘Great Transformation’ of the nineteenth century that informs us that central to the social and political changes Europe underwent was the decoupling of the economic and the social spheres.² An integrated socio-economic system, in which the values of social life were reinforced in the main by the prevalent modes of economic production and exchange, gave way to a world in which the two were set in opposition, and in which society would have to struggle to maintain itself in the face of the inequalities opened up by the expansion of manufacturing industry. At the conceptual level, the story appears even clearer. It was during the century of 1750–1850 that the conceptual distinction between society and economy first emerged: the one furnishing material for the rise of ‘social science’ and philanthropic social inquiry; the other becoming the mainstay of political economy, and its successor science, economics. The nineteenth century saw political conflict come to be sharply orientated towards social divisions; our political systems, ideologically and institutionally, are marked by the legacy of these conflicts to this day.

How are we to understand this sense of conceptual dislocation? Marxist scholarship took it as a reflection of underlying social conflicts, but as a number of scholars have argued, we should be wary of treating political or ideological languages as simply derivative of social tensions. It is tempting to frame the contestation between the economic and social as part of a three-way conceptual tussle with the political. The recasting of European politics around the idea of the modern bourgeois liberal republic, and its constitutional monarchist variant, created a dilemma: how was political liberty/equality to be reconciled with rampant social inequality? This was the heart of what became known as the nineteenth century’s ‘social question’. The welfare state in its social democratic and Christian democratic manifestations may be taken as one twentieth-century attempt to resolve this question – Fascism and Communism, in their different ways, represented others. What, however, was the nineteenth century’s answer?

This working group attempted to tackle the emergence of the conceptual split between the economic and the social to give a more realistic picture of nineteenth-century political thought in its interactions with the transformation of the global economy and the transformation of European societies. How should we understand this in relation to older ways of thinking about the state, markets, social relations and law? How can we integrate these questions into an attempt to understand nineteenth-century Europe in a global context, incorporating the experience of empire?

¹ NB. This discussion paper concerns a working group whose discussions are ongoing and whose work remains in progress at the time of writing. The papers referred to are likewise to be considered work in progress.

² K. Polanyi, *The Great Transformation: The political and economic origins of our times*, (Boston, MA: Beacon, 1957).

The aim must be conceptual history that is attentive to recent debates in economic history and in the ever-broadening canvas that is social history.

II

Polanyi's account of the 'great transformation', like many twentieth-century histories of the changes wrought in European societies by the growth of industrialism, supposed a stark contrast between a capitalist and industrialist modernity and an older model of the organization of production in societies that remained predominantly agrarian in character. Notwithstanding the ongoing argument about the periodization of European industrialization, there is much that remains compelling in such strong assertions of the significance of the development of the characteristic institutions of the nineteenth- and twentieth-century capitalist economy. The emergence of a structured class division around the market for labour created socio-economic relations quite unlike those of medieval or early modern Europe. The contrast of industrial modernity with agrarian tradition can, however, be an unhelpful way into thinking about nineteenth-century attempts to render these novel phenomena intelligible, for the simple fact was that the social question intruded itself into an intellectual world already deeply preoccupied with the 'modernity' of Europe's political and economic condition. In the eighteenth century the dominant motif in interpreting Europe's past was the lack of a unilinear course of development. The decline and fall of Rome, and with it the Mediterranean-dominated economy of the Ancient World, had introduced a decisive caesura into Europe's development.³ European modernity did not rest upon the urban and civic foundations of the ancient polis and the military empires it had spawned, but upon the slow transformation of feudal government and land-holding practices into the eighteenth-century world of well-armed and well-financed monarchies competing for prestige, territory, and, crucially, for trade, under the pressure of their incorporation into Mediterranean and Asian trading networks. From the 'unnatural and retrograde order' (the phrase is Adam Smith's) of the past millennium of European history had emerged the 'commercial societies' that so preoccupied eighteenth-century political science.⁴ For many, commerce promised the pacification of domestic and international relations – the *doux commerce* theory, often associated with Montesquieu, which Albert Hirschman made central to the historiography of eighteenth-century political thought.⁵ Yet commerce, as a number of scholars, the late Istvan Hont pre-eminent amongst them, have since demonstrated, was a more ambiguous feature of the eighteenth-century political landscape than Hirschman was inclined to suppose.⁶ It was as likely to be seen as

³ The magisterial series, J.G.A. Pocock, *Barbarism and Religion*, 5 vols to date, (Cambridge: Cambridge University Press, 1999-2011) offers the most comprehensive investigation into the eighteenth-century debate on the Europe's 'two histories'.

⁴ Adam Smith, *An Inquiry into the Nature and Origins of the Wealth of Nations* (1776), 2 vols, ed. by R.H. Campbellell, A.S. Skinner and W.B. Todd, (Indianapolis: Liberty Fund, 1981), I, 380. Smith's account of this development dominates Book III. For discussion, see I. Hont, 'Adam Smith and the Political Economy of the "Unnatural and Retrograde" Order' in *Jealousy of Trade: International Competition and the Nation-State in Historical Perspective*, (Cambridge, MA: Harvard University Press, 2005), 354-88.

⁵ A.O. Hirschman, *The Passions and the Interests: Political Arguments for Capitalism before its Triumph*, 2nd ed., (Princeton: Princeton University Press, 1997).

⁶ I. Hont and M. Ignatieff, eds, *Wealth and Virtue: The shaping of political economy in the Scottish Enlightenment*, (Cambridge: Cambridge University Press, 1983); Hont, *Jealousy of Trade*, K. Tribe, *Governing Economy: The reformation of German economic discourse, 1750-1840*, (Cambridge: Cambridge University Press, 1988); J.

feeding international conflict as resolving it, whilst the novel forms of inequality it generated had already begun to force themselves upon the attention of political thinkers long before the storm of social revolution broke in France. Commercial modernity appeared inherently fragile. The spectre of unmanageable public debt haunted the eighteenth-century imagination – it would eventually topple the French monarchy – but there was no consensus on what the bankruptcy of a major state, or the ever-spiralling costs of war, or the widely-envisaged prospect of an overthrow of existing property relations, would be.⁷ Would it involve a reversion to an earlier model of political and social relations, a prospect that would have been welcome to many, or the emergence of a new and more dangerous combination of coercive political power and financial wherewithal.

One interpretive key that was available for speculating about the future prospects for European societies was the Ancient, and particularly the Roman, past; the only comparable historical experience that Europe had of widespread urbanization and the kind of interconnected trading economy that made it possible. The pressures that destroyed the Roman Republic – the expansion of the empire in a cycle of seemingly relentless territorial acquisition; the divorce this created between the military and the small land-owning nobility that had constituted the backbone of the early republic; the extension of citizenship across the Italian peninsula in the wake of the Social War and the ensuing corrosion of political life in Rome itself; the mass influx of slaves into the peninsula to work the new latifundia-style estates, and the ensuing immiseration of the plebeian class of small freeholders and their consequent flight into the cities – held up certain parallels to eighteenth-century experience, notwithstanding the obvious disanalogies. As Iain McDaniel has shown in his recent study of the Scottish philosopher, Adam Ferguson, the dangerous combination of wealth and empire, with the upheavals in social order that it brought, could be used to hold up a ‘Roman mirror’ to the future of states like Britain, in which military government could appear a distinctly plausible outcome.⁸ Napoleon’s rise to power in France gave such speculation more than a little credibility, and as McDaniel shows in his contribution to the working group, the spectre of Caesarism, with the dangerous combination of military prowess and charismatic power over the dispossessed that the figure of Caesar embodied, became as entrenched a fixture of nineteenth-century debate as it had in the decades following the Seven Years War.⁹ The success of Napoleon’s nephew, Louis-Napoleon Bonaparte, both in winning a popular election and in pulling off a military-backed coup, re-enforced the idea that ‘new Caesars’ might form a characteristic response to the instability opened up by popular revolutions. Yet Caesar was only one among the personae of the dying days of Roman Republic adapted and adopted in the attempt to render the revolutionary

Robertson, *The Case for the Enlightenment: Scotland and Naples 1680–1760* (Cambridge: Cambridge University Press, 2005); M. Sonenscher, *Before the Deluge: Public debt, inequality and the intellectual origins of the French Revolution*, (Princeton, NJ; Oxford: Princeton University Press, 2007); and *idem*, *Sans-Culottes: An eighteenth-century emblem in the French Revolution*, (Princeton, NJ; Oxford: Princeton University Press, 2008); I. Nakhimovsky, *The Closed Commercial State: Perpetual Peace and Commercial Society from Rousseau to Fichte*, (Princeton, NJ: Princeton University Press, 2011).

⁷ Sonenscher, *Before the Deluge*; T.E. Kaiser and D. Van Kley, *From Deficity to Deluge: The origins of the French Revolution*, (Stanford, CA: Stanford University Press, 2011).

⁸ I. McDaniel, *Adam Ferguson in the Scottish Enlightenment: The Roman Past and Europe’s Future*, (Cambridge, MA: Harvard University Press, 2013), pp. 119-55.

⁹ I. McDaniel, ‘Caesarism and the Social Question in Germany, 1850-1919’, *Work in Progress*. Cf. Markus Prutsch’s contribution to this volume.

shifts in politics and society intelligible. Tiberius Gracchus, the second-century ‘democrat’ who sought the restoration of the ancient agrarian law, provided a direct inspiration for François-Noël ‘Gracchus’ Babeuf’s Conspiracy of Equals of 1796.¹⁰ Spartacus too emerges more than once from the shadows in association with figures as diverse as Toussaint Louverture, Rosa Luxemburg and Karl Liebknecht.¹¹

That this was not mere play-acting, however, is suggested by the career of that most successful of borrowings from the vocabulary of Roman history, at least as far as discussion of the Social Question is concerned – the term ‘proletariat’. Though now pre-eminently associated with the rhetoric of the *Communist Manifesto*, the origins of the term’s modern usage appears to be the description of a labouring class reduced to perpetual uncertainty as to its employment prospects from one day to another found in the Swiss historian and political economist, J.-C.-L. Simonde de Sismondi’s *Nouveaux principes d’économie politique* of 1819. In such a position labourers could make no reasoned judgment as to their future prospects of feeding their families – as in Ancient Rome, ‘those who had no property, as if more than all others, were called to have children: *ad prolem generandum*.’¹² Sismondi’s claim was set within a much larger argument about the deleterious effects of crises of over-production in economies dedicated to manufacturing on the welfare of labourers, but in the image of the Roman proletarian he had already found way to link together the causes believed to explain the precariousness of the labouring classes of modern Europe: the divorce of labour from property, over-population, and the reduction of labourers to a state of material, intellectual and moral destitution. As Gareth Stedman Jones has argued, by drawing the parallel with the immiseration of plebeian Rome, Sismondi was throwing into doubt the oft-repeated link between commerce and the much vaunted ‘freedom of the moderns’.¹³ The virtuous circle linking the advance of wealth and the advance of freedom, made central to the liberal tradition by Adam Smith and his followers, threatened to be thrown into reverse. Avoiding some variation on the fate of Rome involved embracing one of two strategies. Either, like the Gracchi in ancient times, and like Ferguson, Babeuf, Sismondi and a host of others in the modern world, one attempted to reverse the course of the modern world and restore socio-economic relations to some antecedent, more natural state, or one sought a means of fashioning an acceptable future out of the tools that the rise of commerce and industry had made available.

¹⁰ The background to Babeuf’s adoption of this moniker is explored in M. Sonenscher, ‘Property, community and citizenship, in M. Goldie and R. Wokler, eds, *The Cambridge History of Eighteenth-Century Political Thought*, (Cambridge: Cambridge University Press, 2006), pp. 465-94.

¹¹ Louverture was initially associated with the abbé Raynal’s prediction that a Spartacus figure would arise to challenge colonial slavery, although after his death it would require the efforts of C.L.R. James in the twentieth century to reaffirm the importance of Haiti the ‘Age of Revolution’: C.L.R. James, *The Black Jacobins: Toussaint L’Ouverture and the San Domingo Revolution*, ed. by J. Walvin, (London: Penguin, 2001). Luxemburg and Liebknecht led the doomed Spartacus League of 1918.

¹² J.-C.-L. Simonde de Sismondi, *Nouveaux principes d’économie politique, ou De la richesse dans ses rapports avec la population*, 2 vols, (Paris: Delaunay; Treuttel et Wurtz, 1819); II, 363.

¹³ G. Stedman Jones, *An End to Poverty? A Historical Debate*, (London: Profile, 2004), p. 151.

III

Pre-eminent amongst these tools was political economy, and its consolidation as an intellectual enterprise in the opening decades of the nineteenth century provides an important starting point for thinking about the various ‘modern’ approaches to the social question. Political economy, whether institutionalized through universities, learned societies and academies, or in the form of more open-ended public debates in the press, ministries and parliaments on the prospects of states and societies faced with the transformation of the European economy, established an intellectual ascendancy amongst the nascent social sciences in the early nineteenth century which its successor discipline, economics, still clings to. The strident claims of its practitioners to a deeper insight into the workings of markets, and the nature of their interactions with governments became an increasingly conspicuous, and often resented, feature of the intellectual landscape of nineteenth-century Europe. Historians of economics have often been tempted to cast the rise of political economy either as a progressive story of doctrinal refinement, or as a falling away from some earlier more holistic conception of the science of society, such as Adam Smith’s ‘science of the legislator’. Both approaches tend to overstate the distance separating Smith’s generation from the generation that dominated early nineteenth-century debate: Ricardo, Malthus, Say, James Mill and Sismondi. Eighteenth-century debate was marked by intense controversy over the relationship between international trade, war and social welfare. Early nineteenth-century debate continued to gnaw away at this problem, particularly once the contours of the post-Napoleonic world had begun to emerge. With Britain ascendant economically and as a naval power, intense inquiry into the origins of that ascendancy, and its potential limitations, was inevitable. The expansion of its manufacturing industry during the decades of war, the ‘revolution in industry’ much discussed by French commentators in the 1820s, seemed to herald a new age in which one nation threatened to establish a hegemony both in the production of manufactures and in global trade.¹⁴ Yet if this prospect appeared threatening enough to those countries forced to consider means of adaptation to the new order, shadows unmistakably clouded the prospects for Britain too. The end of the wars brought a prolonged period of domestic unrest in Britain, exacerbated by the first of the series of cyclical shocks that were to shake the global trading economy repeatedly over the course of the nineteenth century. Speculation quickly followed which suggested that the well of the new industrial prosperity had been poisoned from the first, whether by the atavistic survival of militarism, aristocracy and empire, or by some structural flaw in the nature of ‘industrial society’ itself.¹⁵ Increasingly, the theoretical framework of economic analysis appeared to contain within it the key to understanding

¹⁴ G. Stedman Jones, ‘The genesis of the “Industrial Revolution”’: Jean-Baptiste Say and the French debate on *Industrie*’ in *Les idées passent-elles la Manche? Savoirs, Représentations, Pratiques* (France-Angleterre, Xe-XXe siècles) PUPS (2007) pp.211-233; *idem*, ‘Engels and the Invention of the catastrophist conception of the Industrial Revolution’ in D. Moggach, ed., *The New Hegelians, Politics and Philosophy in the Hegelian School*, (Cambridge: Cambridge University Press, 2006), pp. 200-219.

¹⁵ As Stedman Jones has argued in *An End to Poverty?* (pp. 138-43, 145-6) and in the articles cited above, crucial in setting the agenda for discussion of Britain’s role in the post-war world was J.B. Say’s pamphlet, *De l’Angleterre et des Anglais*, (Paris: Arthus Bertrand, 1815). See further, R. Whatmore, *Republicanism and the French Revolution: An intellectual history of Jean-Baptiste Say’s political economy*, (Oxford: Oxford University Press, 2000), pp. 189-204; and T. Hopkins, ‘Say and Sismondi on the Political Economy of Post-Revolutionary Europe, c. 1800-1842’, (Unpublished PhD thesis: University of Cambridge, 2011), pp. 140-50.

the political and social divisions of nations. Capital, labour and land acquired corporeal representation as structurally distinct class formations and began to be translated into the building blocks of personal and group identities. The rights of property and the rights of labour began to be asserted as counter-claims. The late 1830s saw '*la question sociale*' increasingly impinging on public debate, sparking an ongoing discussion about the prospects, reformatory or revolutionary, for resolving the tensions that urbanization and inequality had generated.

It is against this background that two of the papers, my own study of French debates about 'social economics' in early nineteenth-century France, and Koen Stapelbroek's discussion of the Dutch economist and reformer, Jan Ackersdijk, should be placed. My paper takes as its starting point the construction of a distinction in the 1830s, by writers such as A.J. Blanqui and Alban de Villeneuve-Bargemont, between an 'English' and a 'French' school of political economy. 'English' writers, such as David Ricardo, James Mill and (by discourtesy) J.B. Say were associated with over-attention to aggregate production levels at the expense of considerations of questions of distribution. 'French' writers, the Swiss Sismondi at their head, but numbering also Charles Dunoyer, Charles Comte, Joseph Droz, Villeneuve-Bargemont, and perhaps even Saint-Simon and his followers (an eclectic list if ever there was one) had considered the distribution issue far more closely, it was argued. This would seem to conform well to our instinctive grasp of what arguments about the rupture between the 'social' and the 'economic' should be about. Here we have the contrast between the logic of economic efficiency and the logic of social solidarity that the EReRe Project has taken as one of its principal themes. Yet, as I show, the story is more complex. This was also a debate about commercial power politics in the wake of the Vienna settlement. The question of the security of the labouring classes was inseparable from the question of how France and other nations were to adjust to the commercial hegemony of Britain.¹⁶ This may help explain the fascination that the French debates held for Ackersdijk in the Netherlands, whose attempt to link political and economic reform in the decades covering the union with Belgium in 1815, its dissolution in 1830, and the political upheavals of the 1830s and 1840s, is the subject of Stapelbroek's paper. The economic position of the Netherlands, long since a subject of anguished discussion, was transformed by the accession of Belgium, which for the first time gave the commercial cities of the Netherlands an agricultural hinterland under Dutch control. The Belgian revolt of 1830 placed the Dutch back in the dilemma they had faced throughout the eighteenth century: how could a rich trading state, without significant political power, adapt itself to flourish in a world where trade was dictated on the terms of others. The domestic costs of social inequality generated by the Dutch difficulty in finding a role were evident enough. As Stapelbroek shows, the reform plans of Ackersdijk and others are best understood as attempts at political and social solutions to this problem.

Lurking not too far in the background of these political economic discussions is the question of property, and its changing role in the emergent industrial world. The French Revolution had dramatically placed the traditional property order in question, and its legacy would be a source of constant reworking throughout the nineteenth century. But the results were seldom the same

¹⁶ T. Hopkins, *Social Economics and the Social Question in France*, Work in Progress. This is a theme that recurred in the discussions of the working group, 'Ordering the World'.

from place to place. As Anna Plassart shows in her study of the development of Scottish political thought and political economy at the dawn of the nineteenth century, the indigenous radicalism of English ‘Jacobinism’ found no echo north of the border, where interest in reform of the property order tended to come from men of an older generation such as Adam Ferguson and John Millar, who looked back to the early modern republican tradition for inspiration. The younger generation, James Mill prominent amongst them, took their lessons in political economy from Adam Smith, often via Dugald Stewart, but of far greater significance in the long term was their embrace of the deductive political science associated with Thomas Reid’s Common Sense philosophy. For some this provided cover for a retreat from politically dangerous positions, for others, it was a kind of gateway to the very different brand of radicalism associated with Bentham. In either case, it tended to pull the younger Scottish generation away from the kind of grand historical theorizing about the origins of modern property systems that had preoccupied their eighteenth-century predecessors, and that would animate discussion in France, Germany and elsewhere in the nineteenth century.¹⁷

In France, the epicentre of modern ‘socialist’ ideas, the question of property came in many respects to define responses to the ‘social question’. French socialism has often been discussed in teleological fashion as the ‘precursor’ of a ‘scientific’ socialism associated with Marx. This is to drastically underplay its significance and interest. Edward Castleton offers an overview of French debates on property from the 1830s to the 1860s, paying particular attention to the writings of Pierre-Joseph Proudhon.¹⁸ He is particularly concerned not only with the criticism of private property that was a central feature of much of this discourse, but also with the role that ideas about credit came to play in imagining a future beyond private property. The idea had been associated with the Saint-Simonians since the 1820s. As Castleton shows it became central to Proudhon’s thinking and came to define much of the debate about the possibilities for mutual aid or state action as a solution to unemployment and distress in 1848. Proudhon is now best known for the essay, *Qu’est-ce que la propriété? (What is Property?)*, published in 1840, and it is through this text that his political thought and his early claim to be an ‘anarchist’ have generally been interpreted. But as Castleton effectively demonstrates, this narrow textual focus has had the effect of badly misconstruing the position Proudhon came to embrace, which was far less dismissive of the positive role that property could play in disciplining government. In his later years he looked far more ‘liberal’ than his more recent admirers would perhaps care for.

Diana Siclovan meanwhile analyses the work of the great German historian of the French social movement, the Hegelian jurist, Lorenz von Stein.¹⁹ Stein has often been reductively treated as the author of a ‘reformist alternative’ to Marx, but as Siclovan shows, he has much more to offer for thinking about the way in which the social question was increasingly transformed into a vehicle for thinking about government, law and their relationship with economic change. Stein cleaved quite closely throughout his life to the vision of monarchical government outlined in Hegel’s *Philosophy of Right*, like Hegel according a critical role to the bureaucracy in harmonizing relations

¹⁷ A. Plassart, *Property and Inequality in Post-Revolutionary Scottish Political Economy*, Work in Progress.

¹⁸ E. Castleton, *What was property for Pierre-Joseph Proudhon? From theft to freedom, 1840-1865*, Work in Progress.

¹⁹ D. Siclovan, *Lorenz von Stein on the “social movement” and the “science of society”*, Work in Progress.

between the state and a civil society that he believed to have been profoundly transformed by the currents unleashed by political revolution and social change. In many respects his adherence to the core of Hegel's political thought left him a somewhat isolated political figure – unsympathetic to the Left Hegelians of the 1840s, but an intellectual relic to the younger generation of *Kathedersozialisten* who rose to prominence in his old age. But Siclován makes a convincing case to the effect that his contributions to *Staatswissenschaft*, and in particular his work on the foundations of administrative law, made him an influential figure from Vienna to Tokyo, the new capital of Meiji Japan. One might speculate as to the broader significance of the emergence of administrative law for our understanding of how nineteenth-century states reoriented themselves in the face of the social question. Martti Koskenniemi has suggested that central to the emergence of international law in the 1860s were developments arising not from the old law of nations, but from private law.²⁰ It is tempting to suggest, based on Siclován's work on Stein, that thinking of the development of administrative law as a way of accommodating the complexities of the modern economy in its interactions with the state apparatus might offer a domestic parallel to the development of international law that might shed a little more light on the complex manner in which states and markets became ever more intermeshed as the century wore on.

In any case, Stein's work fits into a broad tradition of thinking about the means through which social conflict could be overcome through the harmonization of the interests of the different social classes created by the capitalist economy. This way of thinking might embrace figures as diverse as Hegel, Robert Owen, Charles Fourier, Auguste Comte or the *Kathedersozialisten* of the 1870s and 1880s. The last two contributions to the working group look at this idea of harmonization from two quite different angles. Jocelyn Betts turns to Elizabeth Gaskell's novel *North and South* (1855), describing its vision of the ultimate reconciliation of the competing claims of capital and labour as a kind of Carlylean romance.²¹ The factory owner, John Thornton's struggles with his workforce, his humbling, and his assumption of a more intimate relationship of leadership amongst them are paired with the transformation of the heroine, Margaret Hale into the capitalist proprietor of John's factory. The contrivances of the plot allow for the separation of Thornton the entrepreneur from his enmeshment in the dangerous world of financial speculation, so that when, in the final pages of the book, he finally wins Margaret's hand, his authority over his workers has been reestablished upon a different basis, as the kind of patriarchal leader-figure that Thomas Carlyle, whom Gaskell admired greatly, had set up as an ideal. This is reconciliation at the level of the individual firm, but the Carlylean vision always carried a wider, if very diffuse promise, that greatness of character could be re-attained in the modern world if the kind of social relationships that characterized the past could be reimagined in an industrial context.

Finally Bo Stråth takes us from the firm to the nation as the site of reconciliation with a study of 'national socialism' in early twentieth-century Sweden.²² Stråth argues that the nation

²⁰ M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870–1960*, (Cambridge: Cambridge University Press, 2004).

²¹ J. Betts, 'Gaskell's *North and South*: "Alive to distant and dead to near things"', Work in Progress.

²² B. Stråth, 'National Socialism versus Class Struggle Socialism: Two Approaches to a Political Economy for Social Integration in Sweden, c. 1890-1930', Work in Progress.

became the preferred site for the realization of a politics beyond the class struggle for both left and right in Sweden from the 1890s onwards. Conservative claims for the primacy of the nation over the interests of particular social groups came to overlap with a general conviction on the left that a socialism orientated towards national community rather than class conflict offered not only a more realizable prospect of promoting social welfare, but also a greatly preferable one. The idea became a common property of left and right in the decades leading up the arrival of the Social Democrats in power in the 1930s. Stråth's Swedish example shows most clearly that the trajectory leading from the nineteenth-century debates to the ideological maelstrom that engulfed Europe after the First World War was by no means a simple one. In Sweden at any rate, nationalism and socialism could be yoked together with very different results to those obtained in Germany.

IV

Much remains to be done as the group reflects upon the material already gathered. We have a number of overlapping themes: the relationship between social inequality and international trade regimes; the relationship between political and economic reform; the exploration of novel ways of structuring individual firms and the wider economy; and the question of the constraints imposed on freedom by the demands of resolving the social question. The process of drawing these together into a compelling narrative is just beginning, but this brief discussion paper has hopefully suggested at least some of the directions this may take.

Before Socialism: Political Economy and the Social Question in Post-Revolutionary France

Thomas Hopkins

‘Economists,’ wrote Jean-Charles-Léonard Simonde de Sismondi (1773–1842) in 1824, ‘are today divided over a fundamental question, on the decision of which depends, in some measure, the very foundations of their science.’¹ The question to which he referred was, to employ the pithy formulation of a later age, whether supply creates its own demand, or, in terms closer to his own, whether aggregate production was limited by the extent of consumption. The argument that it was not, at least in the sense intended by Sismondi, had been advanced by Jean-Baptiste Say (1767–1832) in his *Traité d’économie politique, ou Simple exposition de la manière dont se forment, se distribuent, et se consomment les richesses*, the first edition of which had been published in 1803. Further editions of Say’s work, elaborating the *théorie des débouchés* underlying his argument, had appeared in 1814, 1817 and 1819, and two more were to follow, in 1826, and a posthumous edition of 1841, edited by Say’s son, Horace.² Say’s position, moreover, found other, powerful advocates in England, including James Mill, David Ricardo and J.R. McCulloch. Sismondi, meanwhile, had published his own *Nouveaux principes d’économie politique, ou De la richesse dans ses rapports avec la population* in 1819, arguing that the indefinite advance of productivity Say promised would be checked by society’s real capacity for consumption, itself determined not by productivity *per se*, but by the distribution of income.³ The debate that ensued was not narrowly technical in character; it raised questions of deep political import for the emerging industrial world. The aim of this study is to explore the origins of these arguments in the debates surrounding the French Revolution, and to consider the implications that could be drawn from Say and Sismondi’s respective positions in order to understand why they could be regarded as of ‘fundamental’ importance to the political economy of early nineteenth-century Europe.

These implications reach further than may at first be evident. Sismondi’s critique of Say has been treated as an opening salvo in the debate over the inequalities generated by advances in manufacturing industry, a debate that would in time come to be known as the nineteenth century’s “social question”.⁴ That question recast the landscape of European political thought, yet the terms

¹ J.-C.-L. Simonde de Sismondi, ‘Sur la balance des consommations avec des productions’, *Revue encyclopédique*, 22 (1824), 264-298, p. 264.

² J.-B. Say, *Traité d’économie politique, ou Simple exposition de la manière dont se forment, se distribuent, et se consomment les richesses*, (Paris: Deterville, An XI/1803). The six principal editions of the work can be conveniently compared in the variorum edition by A. Tiran et al., 2 vols, (Paris: Economica, 2006), prepared as part of the ongoing publication of Say’s *Œuvres complètes* by the Centre de recherche Triangle and Éditions Economica. References throughout will be to the variorum edition, accompanied, as appropriate, by the date of the base edition cited.

³ J.-C.-L. Simonde de Sismondi, *Nouveaux principes d’économie politique, ou De la richesse dans ses rapports avec la population*, 2 vols, (Paris: Delaunay; Treuttel et Wurtz, 1819). A second, revised edition appeared in 1827.

⁴ This is an aspect of the debate between the two most recently revisited by G. Stedman Jones, *An End to Poverty? A historical debate*, (London: Profile, 2004), ch. 3-4; see also, G. Procacci, *Gouverner la misère: La question sociale en France, 1789-1848*, (Paris: Seuil, 1993), pp. 105-58.

in which it was initially posed remain troublingly opaque. It is not that it is unduly difficult to restate the problem at a certain level of abstraction, for it remains the cardinal predicament of modern politics – namely, how to resolve the apparent tension within (and perhaps without) the modern republic between liberty and inequality.⁵ This has placed a premium upon our ability to think through the inter-relationship between our political and economic arrangements. Notwithstanding the analytical accomplishments of the modern academy, however, it remains somewhat difficult to specify what precisely this might involve. It may be the case, as John Dunn has suggested, that we are ultimately forced to return to the Aristotelian question: ‘What are the best arrangements to make about property?’⁶ If so, we are not wanting for answers, albeit of varying degrees of attractiveness or credibility.⁷ Since the early nineteenth century, these have tended to find their articulation in the guise of either liberalism or socialism. The relative success with which their respective exponents have systematised an account of political and economic life from the basis of a commitment to, or rejection of, individuated property rights may, nevertheless, perhaps be better measured in terms of ideological sway than in the purchase they have actually given us over ‘real politics’.⁸ Socialism, at least as a theory of the organisation of the productive forces in society, if not as a set of claims about distributive justice, appears to have foundered upon this cognitive gap.⁹ The liberal coupling of representative government and markets may yet prove a similarly contingent achievement, although for now – perhaps one should say even now – its demise seems somewhat more remote. However, whilst the ideological axis of contemporary politics may now look more than a little lopsided, it remains difficult to think beyond the horizons of possibility for collective action that were opened up by the unprecedented expansion of productive capacity in the course of the nineteenth and twentieth centuries. That boom may yet turn to (environmental) bust. For the moment, though, we remain recognisably within a world in which our collective welfare and security depend in great measure upon our industry. The collapse of collectivist economic planning has somewhat narrowed the terms within which we might plausibly discuss how best that industry might be harnessed, for now at least leaving some form of market economics as the only contender on that particular stage. What it has not done is resolve the question of what kind or kinds of politics might potentially, or perhaps must ultimately, fit with a market economy.

The dimensions of this problem began to emerge with a degree of clarity in the late seventeenth century, and a wealth of studies have established with what vigour, and rigour, the role

⁵ This is the formulation offered by I. Hont, *Jealousy of Trade: International competition and the nation-state in historical perspective*, (Cambridge, MA, London: Harvard University Press, 2005); more broadly, J. Dunn, ‘The identity of the bourgeois liberal republic’, in B. Fontana, ed., *The Invention of the Modern Republic*, (Cambridge: Cambridge University Press, 1994), pp. 206-225.

⁶ J. Dunn, ‘Property, justice and common good after socialism’, in Dunn, *The History of Political Theory and other essays*, (Cambridge: Cambridge University Press, 1996), pp. 121-135, p. 133.

⁷ For historical orientation on this question, see P. Garnsey, *Thinking about Property: From antiquity to the age of revolution*, (Cambridge: Cambridge University Press, 2007); and, J. Waldron, *The Right to Private Property*, (Oxford: Clarendon Press, 1988).

⁸ R. Geuss, *Philosophy and Real Politics*, (Princeton, NJ: Princeton University Press, 2008), pp. 9-16.

⁹ Whether the two can be neatly so detached is an open question; Dunn, ‘Property, justice and common good after socialism’, pp. 121-3; and *idem*, review of R. Nozick, *Anarchy, State and Utopia*, *Ratio* 19 (1977), pp. 88-95. But see the spirited, if qualified, defence offered by G.A. Cohen, *Why Not Socialism?*, (Princeton, NJ: Princeton University Press, 2009).

of politics in markets, and of markets in politics, was debated over the course of the next several decades.¹⁰ The advent of ‘commerce’ as a central preoccupation of eighteenth-century political theory implied, on the one hand, recognition, if not necessarily acceptance, of the constraints under which politics must labour in a market economy. Markets, it was argued, may or may not be the solvent of national boundaries, but they do transcend them, and obey a logic quite distinct from that which shapes political authority. This could form part of their attraction, the *sine qua non* of Benjamin Constant’s *liberté des modernes*, but this did not obviate the congruity dilemma that eighteenth-century political science had brought into focus.¹¹ The locus of political authority remained the territorial state, but this authority was increasingly conditioned by its ability to secure national prosperity in the face of international commercial competition. This was framed, in the first instance, as a matter of *raison d’état*.¹² But it was never the case that it was reducible to this dimension alone. Even the most determinedly focussed application of the principle of *raison d’état* to commercial policy would struggle to isolate questions of production, distribution and exchange from the normatively richer theoretical contexts in which they had traditionally been located. Commerce, it was widely acknowledged, was grounded in reciprocal utility, but it remained an important question whether this guaranteed that the property and labour regimes that a market economy entailed were consonant with the justice of either God or man.¹³ This could form the basis of a searching moral critique of the more perturbing implications that a market society held for individuals and community alike. It could also provoke extensive reflection on how best a state might be constituted so that it was not irrevocably compromised (morally, fiscally, militarily) in the attempt to accommodate market structures. The modern representative republic, with its

¹⁰ Most notably, J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*, (Princeton NJ: Princeton University Press, 1975; 2nd ed. 2003), part III: ‘Value and history in the pre-revolutionary Atlantic’; *idem*, *Virtue, Commerce, and History*, (Cambridge: Cambridge University Press, 1985); A.O. Hirschman, *The Passions and the Interests: Political arguments for capitalism before its triumph*, (Princeton NJ: Princeton University Press, 1977; 2nd ed., 1997); *idem*, ‘Rival Views of Market Society’, in Hirschman, *Rival Views of Market Society and other Recent Essays*, (Cambridge, MA: Harvard University Press, 1992), pp. 105–41; I. Hont and M. Ignatieff, eds, *Wealth and Virtue: The shaping of political economy in the Scottish Enlightenment*, (Cambridge: Cambridge University Press, 1983); Hont, *Jealousy of Trade*; K. Tribe, *Governing Economy: The reformation of German economic discourse, 1750-1840*, (Cambridge: Cambridge University Press, 1988); J. Robertson, *The Case for the Enlightenment: Scotland and Naples 1680–1760* (Cambridge: Cambridge University Press, 2005); M. Sonenscher, *Before the Deluge: Public debt, inequality and the intellectual origins of the French Revolution*, (Princeton, NJ; Oxford: Princeton University Press, 2007); and *idem*, *Sans-Culottes: An eighteenth-century emblem in the French Revolution*, (Princeton, NJ; Oxford: Princeton University Press, 2008).

¹¹ B. Constant, ‘De la liberté des anciens comparée à celle des modernes: Discours prononcé à l’Athénée royal de Paris en 1819’, in *Écrits politiques*, ed. by M. Gauchet, (Paris: Gallimard, 1997), pp. 589-619; and *idem*, ‘Des droits individuels’ in *ibid.*, pp. 510-22. For commentary, S. Holmes, *Benjamin Constant and the Making of Modern Liberalism*, (New Haven, CT: Yale University Press, 1984), pp. 62-78; J. Dunn, ‘Liberty as a substantive political value’, in *Interpreting Political Responsibility: Essays 1981-1989*, (Cambridge: Polity, 1990), pp. 61-84. On the problem of incongruity between state and market, see Hont, *Jealousy of Trade*, p. 155, and *passim*.

¹² I. Hont, ‘Free trade and the economic limits to national politics: neo-Machiavellian political economy reconsidered’, in *Jealousy of Trade*, pp. 185-266, and, further, pp. 1-37, 51-62.

¹³ I. Hont and M. Ignatieff, ‘Needs and Justice in the *Wealth of Nations*’, in Hont, *Jealousy of Trade*, pp. 389-443.

characteristic attempt to square a greater or lesser degree of civil equality with the inequalities opened up by an extensive division of labour, was a product of these concerns.¹⁴

So too, it would seem, was the French Revolution, the most ambitious attempt at political and social reform undertaken in the eighteenth century.¹⁵ The political and financial crisis that engulfed the French monarchy in 1789 was, we are told, widely taken as the realisation of long-standing expectations concerning the likely consequences of roping together markets and states.¹⁶ The prospect of a national debt default, born of the monarchy's inability to meet the obligations arising from over a century of continental and maritime warfare, and a series of failed financial and economic reform schemes, threatened to undo the very property order on which society appeared to rest. This could be feared or welcomed. Public credit, the first victim of such a default, connected in immediate and tangible ways the conduct of governments and that of market-actors. It opened new financial avenues to governments, but made them dependent upon the confidence of creditors in the political structures and economic prospects of the debtor-states. This, as recent scholarship has made clear, could be a double-edged sword; on the one hand, holding governments to some kind of account; on the other basing that account not upon their success in furthering the interests of the nation, but on their ability to meet the interest payments demanded by their creditors. This was a powerful tool for the ambitions of princes. The Revolution was a result of the disappointment of such ambitions. It was, from the outset, an attempt to bring the ambitions of the monarchy rather more into line with those of the nation. But it became something more, for it proved impossible to isolate the political reform of the monarchy from the social re-organization of the nation that supported it. This placed the foundations of the social order in the balance, exposing in dramatic fashion the tension between the competing claims of political community and the rights of individuals.

This is not, in the first instance, a study of the French Revolution. But it takes as its point of departure some of the debates that were its product in order to understand the genesis of the very different political landscape that had emerged by the 1830s and 1840s, first in France, and then beyond. Broadly speaking, this is the history of the emergence of a new pair of ideological antitheses – liberalism and socialism – that diverge over the nature and import of private property rights. But, it will be argued, this is a history that is impossible to understand without reference to the reworking of ideas about the social basis of republican government in the first three decades of the nineteenth century. The starting point for this rethinking lay in developments within the field of political economy, and in particular in Say and Sismondi's argument over the possibility of a general glut, although its repercussions were felt more widely. From Say derived the attempt to rework

¹⁴ On the emergence of representative government in the late eighteenth century, see B. Manin, *The Principles of Representative Government*, (Cambridge: Cambridge University Press, 1997); and, for a variety of perspectives, Fontana, ed., *The Invention of the Modern Republic*.

¹⁵ In addition to works cited above, see J. Livesey, *Making Democracy in the French Revolution*, (Cambridge, MA: Harvard University Press, 2001); *The Political Economy of Virtue: Luxury, patriotism, and the origins of the French Revolution*, (Ithaca, NY: Cornell University Press, 2006); P. Cheney, *Revolutionary Commerce: Globalization and the French Monarchy*, (Cambridge, MA: Harvard University Press, 2010).

¹⁶ What follows draws liberally on Sonenscher, *Before the Deluge*; and *idem*, *Sans-Culottes*, which together give the most developed account thus far of how these debates played out; see also Hont, *Jealousy of Trade*, ch. 7.

revolutionary social science around the concept of *industrie*, a term with connotations as much metaphysical as economic; from Sismondi, the refashioning of Genevan social contract theory into a tool for the legitimation of active state intervention in relations between capital and labour. French socialism implied a rejection of both these options; the history of its rise is inseparable from that of their eclipse.

This is not a history that has tended to feature much in recent historiography. If, since the publication of François Furet's path-breaking *Penser la Révolution française* in 1979, the research agenda has been dominated by the triangular conceptual relationship between state, demos and individual, surprisingly little attention has been given to the role of property in shaping their interaction.¹⁷ Studies of the emergence (and decline) of *l'état providential*, such as those of François Ewald or Pierre Rosanvallon, do not in themselves fill the gap, in so far as they are concerned with configurations of state power that only began to heave into view in the late 1840s.¹⁸ More promising is the work of the Italian sociologist, Giovanna Procacci, like Ewald a student of Michel Foucault.¹⁹ Procacci treats the social question in France as a transformative moment in the history of the governance of the poor, the catalyst for which was the destruction of existing relief mechanisms during the revolutionary era and their replacement by various forms of state supervision. The sphere of the 'social', she argues, emerges as a counter-point to those of the 'political' and the 'economic' at the point where urban poverty reveals the void left by the revolutionary dissolution of civil society. The 'discovery of the social question' in the 1830s was, she concludes, an attempt to turn urban poverty into a morality play of deserving and undeserving poor, rather than a symptom of systemic dysfunction in political and economic arrangements. There is, no doubt, much truth in identifying much of the cant that surrounded discussions of the social question with an agenda aimed at furthering social control. Yet this is to oversimplify a complex pattern of responses to a complex problem.

Procacci places considerable emphasis in her account on the changing fortunes of political economy in France. Surveying much the same ground, from the closer vantage point of 1841, the French Catholic social theorist, Alban de Villeneuve-Bargemont, likewise believed himself able to discern the emergence of an important conceptual shift in the discipline over the course of the preceding decade. He associated this shift with the attempt to give a stronger moral cast to this most utilitarian of social sciences, to move beyond what he took to be its foundation in the arid materialism of eighteenth-century philosophy, and to address the problems increasingly believed to derive from the inequalities associated with the development of manufacturing industry:

¹⁷ F. Furet, *Penser la Révolution française*, (Paris: Gallimard, 1979).

¹⁸ F. Ewald, *L'État providence*, (Paris : B. Grasset, 1986) ; P. Rosanvallon, *La crise de l'état providence*, (Paris : Seuil, 1984) ; *idem*, *L'État en France de 1789 à nos jours*, (Paris : Seuil, 1990).

¹⁹ G. Procacci, *Gouverner la misère : La question sociale en France, 1789-1848*, (Paris : Seuil, 1993).

Finally, a few philanthropic moralists, alarmed by the anti-social tendencies of the English theories, and struck by the vices of the present constitution of society, attempted to give a more moral, a more human, in a way a religious character to the science of utility, and to supplant the theory of *industrialism*, which is to say that of civilization through industry, with *socialism* or the theory of the organization of society through the association of labour with justice, with liberty, with morality and with universal charity.²⁰

Villeneuve-Bargemont chose his terms with care. Since the publication of the Genevan historian and political economist, Jean-Charles-Leonard Simonde de Sismondi's influential *Nouveaux principes d'économie politique* in 1819, it had become common to distinguish between the intellectual preoccupations of post-Smithian political economy in Britain, and of its purported intellectual sympathizers in France, such as Jean-Baptiste Say, and those of an emergent school of 'social' economists in France. Villeneuve-Bargemont had himself been so described in Adolphe Blanqui's *Histoire de l'économie politique en Europe, depuis les anciens jusqu'à nos jours*, published in 1837, even if the waspish Blanqui had qualified this statement with the observation that the remedies Villeneuve-Bargemont proposed for the problem of poverty were those of an apostle rather than an economist.²¹ It is at times difficult to say what might be taken to link the various forms this so-called 'social' economics took, beyond a generalized hostility to the idea, so readily associated with the works of Say or Ricardo, that aggregate productivity increases rather than matters of distributive justice constituted the proper concern of the discipline. At its most sophisticated, as in the works of Sismondi, this critique could take the form of an attempt to lay bare systematic contradictions in the basic functioning of the market economy, and to place stringent limits upon the ability of market mechanisms, taken in isolation, to deliver either continued economic growth or a basis for political stability.²² More generally, the 'anti-social' character of the 'English theories' was perceived as a callous disregard for the welfare of the labouring classes, a group to which Sismondi was the first to apply the term 'proletariat' in 1827.²³ As in Britain, what was felt to be lacking in the 'dismal science' was any particularly strong moral compass. For Villeneuve-Bargemont, the restoration of this moral dimension to the *industrialism* of the political economists gave meaning to the rise of the new *socialism*.

²⁰ A. de Villeneuve-Bargemont, *Histoire de l'économie politique: ou, Etudes historiques, philosophiques et religieuses sur l'économie politique des peuples anciens et modernes*, 2 vols, (Paris: Guillaumin, 1841), II, pp. 336-7. The book was based upon lectures delivered at the collège de Juilly between 1835 and 1837. An unauthorized edition of the course had been published in Brussels in 1839, under the title, *Histoire de l'économie politique*, (Brussels: Société Nationale, 1839). Villeneuve-Bargemont, a former prefect of the département du Nord, and prominent legitimist after 1830, was the author of the influential treatise, *Economie politique Chrétienne: ou, Recherches sur la nature et les causes du paupérisme en France et en Europe et sur les moyens de le soulager et de le prévenir*, 3 vols, (Paris: Paulin, 1834). On Villeneuve-Bargemont and legitimist social thought in the 1830s, see M. Drolet, *Tocqueville, Democracy and Social Reform*, (Basingstoke: Palgrave, 2003), pp. 95-111.

²¹ A. Blanqui, *Histoire de l'économie politique en Europe, depuis les anciens jusqu'à nos jours, suivie d'une bibliographie raisonnée des principaux ouvrages d'économie politique*, 2 vols, (Paris: Guillaumin, 1837), II, pp. 274-8.

²² J.C.L. Simonde de Sismondi, *Nouveaux principes d'économie politique, ou de la richesse dans ses rapports avec la population*, 2 vols, (Paris: Treuttel et Würtz, 1819 ; 2nd ed., Paris: Delaunay, 1827).

²³ For general discussion of these debates, G. Stedman Jones, *An End to Poverty? A Historical Debate*, (London: Profile, 2002) is helpful.

The sequence of events as depicted by Villeneuve-Bargemont appears familiar enough. The social question in the 1830s and 1840s drove a wedge between the politics of the mid-nineteenth century and what had come before that continues to condition the social-democratic ideology of the modern European state. Yet there is much that remains obscure in the conceptual shift that Villeneuve-Bargemont identified. Whilst the scholarship on early socialism is all but inexhaustible, industrialism remains a more intangible phenomenon.²⁴ Villeneuve-Bargemont described it as a ‘theory of civilization through industry’. This is helpful, but requires us to specify what it is we are to understand by these terms. One possibility is that we are looking at a reworking of the eighteenth-century idea of commercial sociability. A more proximate point of departure would be the nineteenth-century fate of a certain way of thinking about the interconnections between a society patterned on an extensive division of labour and a system of representative government that was most thoroughly explored by Emmanuel-Joseph Sieyès in his published and unpublished works and in his attempts to give form to such a system in the course of the 1790s. As recent work on his thought has shown, Sieyès’ contention was that if one wished to give a democratic cast to the Hobbesian idea of a representative sovereign, the initial move must be a re-evaluation of the idea of representation itself. Political representation, Sieyès argued, was only a special form of the principle that underlay all social relations, the division of labour, with the corollary that the extension of the division of labour in society provided the basis for representative government.²⁵

Sieyès’ ideas find many echoes in early nineteenth-century French thought. In so far as our focus falls on what Villeneuve-Bargemont termed *industrialism*, however, our principal concern will be with the divergent strands in social, political and economic theory that in the late 1820s and early 1830s were associated with the political economist, Jean-Baptiste Say, his younger contemporaries, Charles Dunoyer and Charles Comte, and with the Comte de Saint-Simon and his followers.²⁶ Where these strands converged was around the idea that the concept of industry, broadly defined as productive activity, provided the underlying principle of social life, an idea readily associated with Sieyès’ works, as with the political economy of Smith, and the broadly utilitarian currents of thought evident in France and Britain in the latter half of the eighteenth century. It was this background that gave the framework for a vision in which material and moral progress might follow hand in hand upon economic expansion. What I would like to suggest is that a study of the eclipse of this way of thinking in the face of the class-centred debates of the 1830s and 1840s may cast revealing light upon exactly what kind of challenge the social question posed for such a vision.

The central issues here are what it meant to talk of industry as the basis of social life, and the related, but distinct, question of what might be understood by the concept of ‘industrial society’. We

²⁴ For pointers, see M. James, ‘Pierre-Louis Roederer, Jean-Baptiste Say, and the concept of *industrie*’, *History of Political Economy*, 9 (1977), pp. 455-75; M. Sonenscher, *Before the Deluge: Public debt, inequality, and the intellectual origins of the French Revolution*, (Princeton, NJ; Oxford: Princeton University Press, 2007).

²⁵ M. Sonenscher, ‘Introduction’ in E.-J. Sieyès, *Political Writings*, ed. by M. Sonenscher, (Indianapolis: Hackett, 2003), pp. vii-lxiv; Hont, ‘The Permanent Crisis of a Divided Mankind: “Nation-State” and “Nationalism” in Historical Perspective’, in *Jealousy of Trade*, pp. 474-92; P. Pasquino, *Sieyès et l’invention de la constitution en France*, (Paris: O. Jacob, 1998).

²⁶ B.-Ch. Dunoyer, ‘Esquisse historique des doctrines auxquelles on a donné le nom d’*Industrialisme*, c’est-à-dire, des doctrines qui fondent la société sur l’*Industrie*’, *Revue Encyclopédique* 33 (1827), 368-394; F. D’Eckstein, ‘De l’état actuel de la France et de l’Europe III’, *Le Catholique* V (1827), 185-308.

might think about the answer to the first question in at least two distinct, although far from incommensurable, ways. Firstly we might give it a utilitarian cast, supposing that it is intended to convey something about how a society founded upon economic exchange and the division of labour is bound together by the mutual needs of individuals. This would be consonant with the affiliation of the concept of industry with Sieyès' representative society; it would also suggest that *industrialism* shared in some of the deep debts owed by eighteenth-century political economy to post-Grotian natural jurisprudence, particularly in the form given to it by Pufendorf. It was no coincidence that when Friedrich List named the principal exponents of what he termed 'cosmopolitical economy', that is political economy considered as a branch of natural jurisprudence, he named Jean-Baptiste Say alongside François Quesnay and Adam Smith.²⁷ This is certainly a helpful way of thinking about Say's political economy, which he saw as a comprehensive social science capable of addressing itself to almost every facet of social relations. In his *Traité d'économie politique* (1803), Say argued that industry was productive of utility, which could be used as a master concept in the analysis of the production, distribution and consumption of social goods of all kinds. His later works, notably the *Cours complet d'économie politique pratique* (1828-29) were an elaboration of this idea. The works of Charles Comte, Say's son-in-law and the author of a *Traité de législation, ou exposition des lois générales suivant lesquelles les peuples prospèrent, dépérissent ou restent stationnaires* (1826-27) and a *Traité de propriété* (1834) that served as one of Proudhon's chief polemical targets, likewise betray this interest in utility-maximization as the key to social and economic progress. To what extent one might wish to draw parallels or explicit links with British or continental Benthamism remains unclear.²⁸

Secondly, however, one might also construe a society based upon industry as one in which the development of the productive capacities of the individual are posited as the goal of social life. This seems to permeate the works of Saint-Simon and his followers as much as it does that of Comte and Dunoyer. Indeed, for the Catholic publicist, Ferdinand d'Eckstein, this was the very essence of *industrialism*, and one that allowed parallels to be drawn between Saint-Simon and J.G. Fichte's *Der geschlossenen Handelstaat*.²⁹ This too suggests roots in certain developments in late eighteenth-century natural jurisprudence, although it may be necessary to reflect on the question of how far this would seem to take us towards a meeting in uneasy tension of utilitarian and idealist currents of thought in post-Napoleonic France.

In any case we can point to two divergent visions of 'industrial society': Say's free market model, in essence taken up by Comte and Dunoyer, and Saint-Simon's society of orders based upon a tripartite division into *savants*, *artistes*, and *industriels*. Both these systems accept the premise that a society founded upon the division of labour necessarily is productive of inequality. The potentially disintegrative tendencies that this might unleash are, however, meliorated by economic growth, and in Saint-Simon's case, by an emphasis upon the renewal of religious community. Social conflict is not immanent within industrial society; it is primarily a product of atavistic hangovers from earlier

²⁷ F. List, *The National System of Political Economy*, trans. by S.S. Lloyd, (London: Longmans, Green & Co., 1909), pp. 97-107.

²⁸ N. Sigot, *Bentham et l'économie: Une histoire d'utilité*, (Paris: Economica, 2001); C. Blamires, *The French Revolution and the Invention of Benthamism*, (Basingstoke: Palgrave Macmillan, 2008).

²⁹ F. D'Eckstein, 'De l'état actuel de la France et de l'Europe III', *Le Catholique* V (1827), 185-308.

social systems based not upon labour but upon domination. There may of course be good reason to believe that these may be very resistant to eradication. It would be doing a grave injustice to at least some of these thinkers, notably Charles Comte, to suppose that they held progress to be automatically guaranteed. Comte set out at length an analysis that registered the obstacles posed to the emancipation of industry by the Malthusian population question, which he took to have governed much earlier social development, and by the insidious presence at the heart of the global economy of slavery, reborn in the Americas and Southern Africa and with the potential to condition social relations for the worst even in Europe. His *Traité de propriété* built upon this theme, making the argument that the Roman law foundations of the *Code civil* enshrined a system of property rights into French law that belonged more properly to a society of slave owners rather than to a modern market economy, an interesting comment on the supposed 'bourgeois' nature of the *Code*.

Nevertheless *industrialist* theorists of all stripes remained remarkably resistant to the notion of social conflict arising from industrial society itself, which I would suggest may explain some of the difficulties it encountered when faced with the language of class struggle. The historian and political economist, Adolphe Blanqui, himself sympathetic to both Say and Saint-Simon remarked of the radicalization of Saint-Simonianism after 1830 that what Saint-Simon's followers wished to avoid above all was the narrowing of the social basis for government from that of the *tiers état* lionized by Sieyès as comprising the whole productive nation, to a narrow *bourgeoisie*. The subsequent history of Saint-Simonianism undoubtedly took it further away from its founder's starting point. Say had already been confronted in quite stark terms with the problem of class conflict based upon the failure of a society divided between capitalists and proletarian labourers to effectively distribute the products of economic growth in the works of Sismondi after 1819. Comte, as has been noted, would serve as the target for Proudhon's polemics against the bourgeois order of property-ownership. Dunoyer would fight an increasingly lonely, one might say quixotic, battle for the absolute liberty of labour contracts into the 1840s. In each case what seems to remain under-theorized is the extent to which large-scale capital-ownership might subvert the relationship between economic growth and the management of the inequalities that it produced. Trying to ascertain what this might mean for the idea of representative government, or in the case of the Saint-Simonians the order-based meritocracy that was to take its place, will be central to what follows.

In some sense, this remained was a debate about the social foundations of republican government, and it is this that makes the initial framing of the debate between Say and Sismondi so full of moment for what was to follow. Say and Sismondi both came to intellectual maturity in the 1790s, and it was during this decade that they prepared their first sallies into the field of political economy. They were, it is important to note, the products of somewhat different intellectual backgrounds. Say was, at an early age, thrust into the intellectual politics of the Revolution by the patronage he received from the Genevan financier and member of the revolutionary Girondin faction, Étienne Clavière. He subsequently edited the influential *Décade philosophique, politique et littéraire*, a position that placed him at the centre of the intellectual debates of the Directory and the Consulate. Sismondi, however, was a Genevan by birth, who spent much of the late 1790s in exile in Tuscany. His writings always bore the marks of his Genevan background, and of the impression

made on him by the prosperous peasant agriculture of the Val di Nievole. Nevertheless, by 1803 both had converged upon the writing of a treatise of political economy as the project best suited to the political needs of the moment, and both claimed to take as their point of departure the work of Adam Smith: the result was Say's *Traité d'économie politique*, and Sismondi's *De la richesse commerciale: ou Principes d'économie politique, appliqués à la législation du commerce*.³⁰

Say would, as noted, rework his *Traité* extensively in the decades between its publication, and his death in 1832. Sismondi would, however, revise his ideas more fundamentally between the publication of the *Richesse commerciale* and that of the *Nouveaux principes*. If in later years he was concerned to present the former as the work of his intellectual apprenticeship to Smith, the latter represented his emancipation. Smith, he claimed, had overplayed the virtues of free competition; Sismondi's work was intended to redress the balance and to restore to government its proper role in the oversight of the economy. From this perspective what was at stake in the arguments that Sismondi ranged against Say and his supporters was whether the argument that they advanced concerning the self-propelling nature of industrial growth sufficed to confirm Smith's contention that the best encouragement to industry, and the course most in conformity with the interests of the nation, was to leave to commerce its 'natural liberty'. This has suggested to many commentators that *Traité d'économie politique* and the *Nouveaux principes* should be ranged upon opposite sides of the ideological fault-line that separates economic liberalism from various forms of state intervention in the name of popular welfare. I would like to argue that this is not only inadequate as a characterisation of the debate over Say's Law, it is seriously misleading as a guide to the politics behind Say and Sismondi's positions.

Say and Sismondi have often appeared somewhat peripheral to the Anglo-centric focus of many histories of economic thought in the early nineteenth century. Insofar as Say and Sismondi have not been relegated to the ranks of the also-rans in such histories, they have generally been assigned the character of continental foils for British classical political economy. Under this guise, Say's political economy could be aligned with British economic liberalism: his well-advertised admiration for Smith serving to define his work. Sismondi, meanwhile, was from an early stage identified as the progenitor of a 'social' economics that was intended to pay more attention to questions of distributive justice than, it was alleged, were Ricardo or Say. The *locus classicus* for this characterisation of Say and Sismondi's works was Adolphe Blanqui's *Histoire de l'économie politique en Europe depuis les anciens jusqu'à nos jours*, first published in 1837.³¹ For Blanqui, Say, as assuredly as the British themselves, had been seduced by the prodigious expansion of British manufacturing during the wars; his 'industrialism', like the political economy of Ricardo or McCulloch, was a doctrinaire defence of the productive capacities of the British industrial system. Sismondi, meanwhile, had taken the measure of the suffering that industry could inflict upon the lower classes. Blanqui placed him at the head of a school of French 'social economists', amongst whom he numbered Joseph Droz, the Catholic legitimist, Alban de Villeneuve-Bargemont, and the former editors of the

³⁰ J.C.L. Simonde, *De la richesse commerciale: ou Principes d'économie politique, appliqués à la législation du commerce*, 2 vols, (Geneva : J.-J. Paschoud, 1803).³⁰

³¹ A.J. Blanqui, *Histoire de l'économie politique en Europe, depuis les anciens jusqu'à nos jours, suivie d'une bibliographie raisonnée des principaux ouvrages d'économie politique*, 2 vols, (Paris: Guillaumin, 1837).

journal, *Le Censeur Européen*, Charles Dunoyer and Say's son-in-law, Charles Comte.³² Blanqui's somewhat eclectic cast of 'social economists' have rarely appeared in quite the same form in the work of subsequent historians; the increasing centrality of the apparent conflict between property and labour rights in the 1830s and 1840s served to demonstrate the distance between the likes of Villeneuve-Bargemont and Dunoyer. Nevertheless, the opposition between an 'English' Say and a 'socially-minded' Sismondi became an established fixture of the historiographical landscape, notably serving to structure the account given in Charles Gide and Charles Rist's influential *Histoire des doctrines économiques depuis les physiocrates jusqu'à nos jours* of 1909.³³

To be sure, the curious intellectual isolation in France to which Blanqui had seemed to consign Say, whilst conversely arguing that it was he who had done most to popularise political economy in Europe, came to appear somewhat exaggerated. Edgard Allix, in a series of important articles published in 1910 and 1911, established Say as a central figure in the debates over *industrialisme* in the 1820s, a doctrine associated on the one hand with the followers of Saint-Simon, and on the other with the liberals Dunoyer and Charles Comte.³⁴ However, this kind of contextualization of Say's work was subsequently all but abandoned for much of the twentieth century. Say's reputation came to rest on two features of his work: firstly on his status as Adam Smith's self-appointed, and certainly most influential, interpreter in continental Europe; and secondly on the theory of markets, which, dubbed 'Say's Law' and reduced to the proposition that supply creates its own demand, assumed a new importance in twentieth-century economic debates. The catalyst was Keynes, who singled it out amongst the 'postulates of the classical economics' as a target in *The General Theory of Employment, Interest and Money* of 1936. Keynes revived the standing of underconsumption models, although he preferred to look back to Malthus rather than to Sismondi as a predecessor. Yet if 'Say's Law' took on a renewed significance for Keynesians and their opponents alike, interest in Jean-Baptiste Say himself dwindled. Keynes had tended to assimilate Say to the ranks of those he termed the 'classical economists', by which, unlike Marx, he intended to imply not Ricardo's predecessors, but his successors, all the way up to Marshall and Pigou.³⁵ Ricardo certainly came to overshadow Say's reputation in the mid-twentieth century; the impact of Sraffa's edition of Ricardo's *Works and Correspondence* serving to confirm for many the pre-eminence over his contemporaries that Marxists had long accorded him.³⁶ Narrowly grounded disputes over

³² A.-J. Blanqui, *Histoire de l'économie politique en Europe depuis les anciens jusqu'à nos jours*, (Paris: Guillaumin, 1837), 2 vols, II, pp. 262-87

³³ C. Gide and C. Rist, *Histoire des doctrines économiques depuis les physiocrates jusqu'à nos jours*, (Paris: L. Larose & L. Tenin, 1909).

³⁴ E. Allix, 'J.-B. Say et les origines de l'Industrialisme', *Revue d'économie politique*, (1910), pp. 303-313, 341-363; 'La déformation de l'économie politique libérale après J.-B. Say: Charles Dunoyer', *Revue d'histoire des doctrines économiques et sociales*, 4 (1911), pp. 115-147; 'La méthode et la conception d'économie politique dans l'œuvre de J.-B. Say', *Revue d'histoire des doctrines économiques et sociales*, 4 (1911), pp. 321-360; and, on one aspect of the intellectual background to French economic liberalism, see also Allix's 'L'œuvre économique de Germain Garnier, traducteur d'Adam Smith et disciple de Cantillon', *Revue d'histoire des doctrines économiques et sociales*, 5 (1912), pp. 317-342.

³⁵ On the debates around Keynes' interpretation, see S. Kates, *Say's Law and the Keynesian Revolution: How macroeconomic theory lost its way*, (Cheltenham: Edward Elgar, 1998).

³⁶ D. Ricardo, *Works and Correspondence*, ed. by Piero Sraffa, with M.H. Dobb, 11 vols, (Cambridge: Cambridge University Press, 1951-73; repr., Indianapolis: Liberty Fund, 2004).

originality and the interpretation of an ever-shrinking textual base served as the complements to polemic.

The reputation of Sismondi was likewise refracted through the lens of debates over welfare economics. Blanqui had described him as a ‘social economist’, a somewhat vacuous phrase that has nevertheless proved strangely resilient, in part because of the facility with which it could be elided with socialism, in part because, after socialism’s decline its very vacuity has served to allow Sismondi’s work to be distanced from both socialism and ‘orthodox’ political economy. Marx and Engels famously branded Sismondi the head of the school of ‘petty-bourgeois socialism’ in *The Communist Manifesto*, adept enough at dissecting ‘the contradictions in the conditions of modern production’, but bereft of solutions to the problem other than through a return, ‘both reactionary and Utopian’ to older forms of property relations, namely, corporate guilds in manufacturing and patriarchal relations in agriculture.³⁷ Marx’s disdain notwithstanding, over the course of the nineteenth and early twentieth centuries it became common to identify Sismondi’s embrace of state intervention of some kind in the economy as a precursor of socialism, of the welfare-state, or of both, an identification that prompted a flush of monographs between the 1890s and 1940s.³⁸ Echoes of this can be caught in those few studies of Sismondi’s economic thought as have been published since the 1940s.³⁹

The debate between Say and Sismondi was thus gradually reframed so as to map onto the politics of the twentieth-century welfare state. This was far from a simple case of false-affiliation – twentieth-century debates on welfare certainly owed something to those that divided early nineteenth-century political economists – but, as a guide to intellectual life in post-Napoleonic Europe, the liberal-socialist dichotomy served to obscure more than enlighten. Sismondi never did make a particularly convincing socialist; his reputation as an historian and as a political thinker tended rather to the opposite, particularly in Italy where he has long been granted honorary status as a leading liberal of the Risorgimento.⁴⁰ Only the curious, and curiously persistent, divorce between the historiography of Sismondi the historian and political thinker and that of Sismondi the political

³⁷ K. Marx and F. Engels, *The Communist Manifesto*, ed. by G. Stedman Jones, (London: Penguin, 2002), pp. 247-248. Rosa Luxemburg was a little more charitable in *The Accumulation of Capital*, trans. by A. Schwarzschild, (London: Routledge, 2003), *Section II: Historical Exposition of the Problem – First Round: Sismondi-Malthus v. Say-Ricardo MacCulloch*. Little need be said of the role Sismondi played in Leninist propaganda.

³⁸ Of note are A. Aftalion, *L’œuvre économique de Simonde de Sismondi*, (Paris, 1899); H. Grossman, *Sismondi et ses théories économiques: une nouvelle interprétation de sa pensée*, (Warsaw: Universitatis Liberae Polonae, 1924); Tuan M.L., *Simonde de Sismondi as an Economist*, (New York: Columbia University Press, 1927), and A. Amonn, *Simonde de Sismondi als Nationalökonom. Darstellung seiner Lehren mit einer Einführung und Erläuterungen*, (Bern: Francke, 1945-49), 2 vols. To these may be added Elie Halévy’s edited selection from Sismondi’s works, *Sismondi*, (Paris: F. Alcan, 1933).

³⁹ Interest has been sparse. Recently, see Mark A. Lutz, *Economics for the Common Good: Two centuries of social economic thought in the humanist tradition*, (London: Routledge, 1999). Colloquia organised in the 1970s were dominated by the question of Sismondi’s relationship to socialism: *Atti del colloquio internazionale sul Sismondi, (Pescia, 8-10 settembre 1970)*, (Rome: Accademia nazionale dei Lincei, 1973); J. Weiller, ed. *Histoire, socialisme et critique de l’économie politique: Colloque organisé par la Société des amis de Sismondi, Paris, 7-8 mai 1973*, (Paris: Institut de sciences mathématiques et économiques appliqués, 1976).

⁴⁰ See the essays in F. Sofia, ed., *Sismondi e la Civiltà Toscana: Atti del Convegno internazionale di studi, Pescia, 13-15 aprile 2000*, (n.p.: Olschki, 2001), for a good recent collection stressing the Italian connection,

economist, allowed the apparent contradiction to go unresolved and all too often unremarked. However, it has been Say who has been the subject of comprehensive reassessment by historians of political thought and of economics in recent years, in large part driven by a re-evaluation of his politics and of his intellectual formation in the years prior to the publication of the first edition of the *Traité* in 1803. Of particular importance has been a revival of interest in the early essay, *Olbie, ou Essai sur les moyens de réformer les mœurs d'une nation*, published in 1800.⁴¹ J.P. Frick argued for the significance of the text as an interpretative key to Say's works in an article of 1987.⁴² Subsequent studies have endorsed his claim, leading to a new emphasis upon the revolutionary republican origins of Say's political economy, notably articulated in recent works by Evelyn L. Forget, Richard Whatmore, Gareth Stedman Jones and Michael Sonenscher.⁴³

'Republicanism' can cover a multitude of sins; what is striking in the use to which it has been put, particularly by Forget, Whatmore and Stedman Jones, and notwithstanding the differences between them, has been its deployment as a means of putting clear water between Say and economic liberalism as it developed in Britain. To the extent that this has re-directed attention back to Say's intellectual context, this 'republican turn' has been most valuable. It is unclear, however, whether much weight should be attached to the claim that 'republican' politics after the French Revolution should issue in a particularly determinate position in political economy. It has not taken long for the example of Say to be brought to bear upon the work of Sismondi. In an article of 2005, which at least enjoys the distinction of being the first serious attempt for many decades to give an integrated account of Sismondi's intellectual career, Roberto Romani has argued that a particularly Genevan form of republicanism lies behind much, if not all, of Sismondi's *œuvre*, including the *Nouveaux principes*.⁴⁴ In both instances, republicanism has been associated with the claim that there is a broad and discernible unity of interest within society, and that the legislator is tasked on some level with its defence. Quite how far that in fact takes one from a recognisably 'liberal' political position is an open question; as has emerged clearly from recent studies of the idea of the 'modern'

⁴¹ Jean-Baptiste Say, *Olbie, ou Essai sur les moyens de réformer les mœurs d'une nation*, (Paris: Deterville; Treuttel et Würtz, 1800). The essay was reprinted in the edition of Say's *Œuvres diverses* published as the twelfth volume of Eugène Daire's *Collection des principaux économistes*, (Paris: Guillaumin, 1848). The text has been translated into English by Evelyn L. Forget as an appendix to *The Social Economics of Jean-Baptiste Say: Markets and virtue*, (London: Routledge, 1999). All references in what follows are to the text as published in Jean-Baptiste Say, *Œuvres complètes V: Œuvres morales et politiques*, ed. by E. Blanc, A. Tiran et al., (Paris: Economic, 2003), pp. 191-236, which includes the important notes appended to the first edition.

⁴² J.-P. Frick, 'Philosophie et économie politique chez J.-B. Say: Remarques sur les rapports entre un texte oublié de J.-B. Say et son œuvre économique', *Histoire, économie et société*, 6 (1987), pp. 51-66.

⁴³ E.L. Forget, *The Social Economics of Jean-Baptiste Say: Markets and virtue*, (London: Routledge, 1999); R. Whatmore, *Republicanism and the French Revolution: An Intellectual History of Jean-Baptiste Say's Political Economy*, (Oxford: Oxford University Press, 2001); G. Stedman Jones, *An End to Poverty? A Historical Debate*, (London: Profile, 2004), pp. 110-162; M. Sonenscher, *Before the Deluge: Public Debt, Inequality and the Intellectual Origins of the French Revolution*, (Princeton: Princeton University Press, 2007), pp. 260-266, 334-348.

⁴⁴ R. Romani, 'The republican foundations of Sismondi's *Nouveaux principes d'économie politique*', *History of European Ideas*, 31 (2005), pp. 17-33.

republic, 'republican' and 'liberal' cannot be employed as simple counter-concepts in the late eighteenth and nineteenth centuries.⁴⁵

Somewhere in the overlap between theories of republican government and speculation about the future of a world bound together by increasingly complex patterns of trade lie the intellectual origins of the nineteenth-century's social question. Starting from the most important of the early nineteenth century's debates about the prospects of an economy dominated by manufacturing industry provides a crucial piece of the puzzle.

⁴⁵ Hont, *Jealousy of Trade*, p. 92; the point is argued at length in Kalyvas and Katznelson, *Liberal Beginnings*; see also the essays collected in B. Fontana, ed., *The Invention of the Modern Republic*, (Cambridge: Cambridge University Press, 1994), particularly J. Dunn, 'The identity of the bourgeois liberal republic', pp. 206-225.

Constituting New Republics: Difference in Nineteenth-Century Spanish America

Francisco A. Ortega

The initial paradox

The collapse of the Spanish monarchy between 1808 and 1825 made two scenarios possible that were unthinkable before the political crisis: the fragmentation of the trans-Atlantic Hispanic community and an alternative model for organizing the political community. A little more than a dozen states demanded political independence and exercised territorial sovereignty over the former Spanish provinces in the first scenario. Recent studies have shown the magnitude of the social transformation, the diversity of actors and the richness of the political culture that made it possible. While it is true that there is still much to learn, the existing historiography has enriched and decisively transformed our understanding of the period.

The second scenario led to the adoption of the popular, elective and representative republican model by all of the new Spanish American states. However, little is known about the processes that led the elite to insist on the republican model and broad sectors of the population to regard themselves as citizens of a popular republic at this early stage. The contrast is noteworthy: if in 1823 Ecuadorian Vicente Rocafuerte insisted with agonic vehemence that he was content “if I can divert some of my fellow countryman from the monarchical system, and draw him by conviction to the Republican regime,” by mid-century Chilean Luis Miguel Amunátegui simply declared that “every new state that emerges, every country that emancipates, is of necessity Republican.”¹ Such self-confidence veiled a troubling paradox, one which persistently nagged republicans and necessarily qualified their commitment.

Prior to 1810 the republic did not imply an opposition to other political forms. During the wars of independence, however, it acquired value in opposition to the monarchy. If the monarchy was understood as governed by fear and blind obedience, the republic was the product of freedom and equality; if the former was despotic the first relied on virtue and required the active participation of all citizens in the pursuit of the common good.² These were the values that made some believe the republican model was the “more rational in theory, and the most economical in

¹ Vicente Rocafuerte, *Ensayo político. El sistema colombiano, popular, electivo, y representativo es el que más conviene a la América independiente* (Nueva York: Imprenta de A. Paul, 1823), p. 8. Amunátegui, *La dictadura de O'Higgins* (Santiago, Imprenta de Julio Belín, 1855), p. 1.

² For an early study of republicanism in Spanish America, see the collection edited by José Antonio Aguilar Rivera and Rafael Rojas, eds., *Republicanism in Hispanoamérica. Ensayos de historia intelectual y política* (México: FCE, 2002). Most recently see Rafael Rojas, *Las repúblicas de aire. Utopía y desencanto en la revolución de Hispanoamérica* (México: Taurus, 2009); and Gabriel Entín, “La République en Amérique Hispanique. Langages politiques et construction de la communauté au Río de la Plata, entre monarchie catholique et révolution d'indépendance” (Doctorat, École des Hautes Études en Sciences Sociales-Universidad de Buenos Aires, 2011).

practice ... perhaps the only one that suits our climate, our small population, our wealth, our nature, and our state of civilization.”³

According to existing typologies, the republican system required a virtuous people for political stability; an educated people to engage in deliberation and reach the common good; and an industrious people to secure prosperity. For republican enthusiasts, on the other hand, it was quite evident that the Spanish-American people were not virtuous: they lived under the “triple yoke of ignorance, tyranny, and vice” and did not have the “noble passions, which constitute the springs of civic virtues.”⁴ These authors also coincided in identifying several factors that contributed to their degradation: the Spanish colonial regime that closed the doors on commerce and industry and deprived Spanish Americans of political experience; the scarcity of a population scattered over a vast territory; the diversity of classes and proliferation of heterogeneous interests; and the “barbarous origins” of some of its inhabitants. “Therefore”, wrote a close aide of Bolívar, “the national spirit remains unknown to our people and the name of [Colombian] scarcely has a vague and indifferent meaning among the multitudes.”⁵

The above reasons constituted a formidable obstacle to the adoption of a republican form because, as authors insisted – echoing Montesquieu – political institutions should always conform to the people and not vice-versa. Obstinate republicans insisted on the suitability of the republic but warned that the diagnosis “should be kept in mind when drafting our constitutions; otherwise we will delay our march towards prosperity and wallow in the horrors of a harmful freedom.”⁶ Else, claimed Bolívar in 1812, we will continue to “create fantastic republics in [our] imagination [and seek] to attain political perfection, ... assuming the perfectibility of the human race.”⁷ Thus, despite the objections, most of the emerging states adopted the republican system and even those that initially refused, such as Brazil and Mexico, eventually became republics. No doubt much of this decision was due – as Bolívar himself noted a few years later – to an intense process of democratization of expectations about civil liberty and social equality among broad sectors of society during the wars of independence.⁸

Republicans faced with optimism the possibility of performing the “greatest miracle in the moral order”, that is of turning degraded vassals into virtuous citizens.⁹ It certainly would be a slow and arduous process but a well-founded republic was the scenario for producing such a prodigy.

³ Rocafuerte, *Sistema colombiano* p. 6.

⁴ Simón Bolívar, “Address to the Angostura Congress, February 15, 1819, the Day of the Installation”, in *Nineteenth-Century Nation Building and the Latin American Intellectual Tradition. A Reader*, ed. Janet Burke and Ted Humphrey (Indianapolis: Hackett Publishing Company, 2007), p. 5. Benito Laso, *Exposición que hace el Diputado al Congreso por la provincia de Puno* (Lima: Imprenta Republicana Administrada, 1826), p. 13.

⁵ Laso, *Exposición*, p. 14.

⁶ *ibid.*, p. 7.

⁷ Simón Bolívar, *Selected writings*, ed. Harold A. Bierck, trans. Lewis Bertrand, 2nd ed., 2 vols., Compiled by Vicente Lecuna (New York: Colonial Press, 1951), p. 19.

⁸ See Alfonso Múnera, *El fracaso de la nación: región, clase y raza en el Caribe colombiano (1717-1810)* (Bogotá: El Ancora Editores, 1998); Marixa Lasso, *Myths of Harmony: Race and Republicanism during the Age of Revolution, Colombia 1795–1831*, Pitt Latin American Series (Pittsburgh: University of Pittsburgh Press, 2007); James Sanders, *Contentious Republicans: Popular Politics, Race, and Class in Nineteenth-Century Colombia* (Durham, NC: Duke University Press 2004). For Mexico, see Peter Guardino, *The Time of Liberty. Popular Political Culture in Oaxaca, 1750-1850* (Durham, NC: Duke University Press, 2005).

⁹ Laso, *Exposición*, p. 20.

American republics cannot be like Sparta and Athens; between these disparate realities there “should be the same difference that exists between ... the height of the gigantic Chimborazo and the humble elevation of the Hymeto, between the roaring ocean formed by the Amazon and the placid music produced by the Cephiso.”¹⁰ The chasm between the classical locus and the uncouth American societies provides the stage for a prolonged meditation on the nature and uses of power, the creation of community and the moral and political place of diversity in such process.

Constitution, difference, virtue

The menu of civic vices that, according to the elite, hindered the construction of a republic was common to America and Europe. However, two of these were repeatedly identified as particularly significant for Spanish-America: the notion that the new American states were in their infancy and the idea that these countries were composed by a social diversity of *a different kind*. Both points are intimately connected and admit a constitutional formulation that was particularly influential throughout the nineteenth century.

Let us note that in principle Spanish-Americans were in their infancy because prior to their establishment as independent states they existed only as aggregates of cities and provinces, corporations and social classes, with diverse even antagonistic interests. For early republican leaders the problem was that these societies were not yet formed and lacked in the spirit of the nation. Furthermore, the prospect of a society composed by racially diverse groups was troublesome. Alexis de Tocqueville made it clear that such a predicament was not exclusively Latin American. Towards the end of Volume 1 of *Democracy in America* he shifted from the description of North American democratic institutional forms of democracy to the dangers facing the new republics. Of these, the fact that “the human beings who are scattered over this space do not form, as in Europe, so many branches of the same stock” is among the most pressing.¹¹ These “three races – continued Tocqueville – [are] naturally distinct, and I might almost say hostile to each other.”¹² There were “Almost insurmountable barriers ... raised between them by education and by law, as well as by their origin and outward characteristics” and though “fortune has brought them together on the same soil ... each race fulfills its destiny apart.”¹³ There remained but two alternatives for the future: these different races “must either wholly part or wholly mingle.”¹⁴

Tocqueville’s formulation was a warning but not a deterrent. Spanish Americans shared the will to homogenize legal systems, dissolve privileges, do away with estates, and moralize the masses. They accepted the formulation that regarded the proliferation of diverse interests a serious challenge that had to be suppressed or controlled and fully embraced the classic literature that explored the ability of each of the political forms to administer it. Much of this literature posited the community as an organic and monist whole that regarded private interests as destructive passions that needed to be controlled or subject. That same literature identified the republic as the most

¹⁰ Rocafuerte, *Sistema colombiano*, pp. 11-12.

¹¹ Alexis de Tocqueville, *Democracy in America*, trans. Henry Reeve, 2 vols. (New York: George Dearborn & co, 1838), Vol 1, p. 313.

¹² *ibid.*, Vol 1, p. 313.

¹³ *ibid.*, Vol 1, p. 313.

¹⁴ *ibid.*, Vol 1, p. 353.

vulnerable of all political forms to anarchy and fragmentation. In open polemic with that tradition Machiavelli takes as its starting point the idea that communities are not harmonious and that politics is, therefore, the art of skilfully managing these antagonisms.¹⁵

For Machiavelli, diversity remained a challenge that must be overcome: "... all these diversities of opinion and modes of governing spring from the weakness of those who are at the head of governments, and who, lacking the requisite force and energy to preserve their states, resort to such expedients; which in times of tranquillity may occasionally be of service, but when trouble and adversity come, then manifest their fallacy."¹⁶ However, the goal was not to abolish conflict but to channel it through the deliberate mingling of interests to produce a stable republic. Machiavelli proposed a mixed government with a strong authority to exercise sufficient control over the divergent parts so that "by interposing his authority as a conciliator and mediator, he quickly puts an end to any differences that occur between them."¹⁷

If Machiavelli was determined to reconcile diverse interests to ensure stability, Montesquieu sought the distribution of political functions to ensure freedom through a system of checks and balances. According to him the division of powers produced a moderate constitution that prevented despotism. Both formulations – as the federalist thesis of Hamilton, Jay and Madison – nourished Hispanic republicans with a language that addressed the recurrent tension between social diversity and constitution, that allowed, in the language of North-American federalist, making out of many, one, *E pluribus unum*.

Despite being attentive readers of Montesquieu, these leaders had been educated with a set of readings that turned them in a very different direction. The question of the heterogeneous composition of the community was not, by any means, outside the historical experience of the Spanish monarchy or beyond the Neo-Scholastic tradition that constituted the intellectual sustenance for much of the sixteenth and seventeenth century. The political culture provided a language of great plasticity to express the monarchy as a hierarchical community of individualized bodies, each with its constitution, duties and privileges.¹⁸ The notion of justice was formally linked to the process of mutual recognition between king and vassals so that good government included the appreciation of the diversity of peoples that made up the monarchy.

On the other hand, that same tradition developed an intolerant stance towards diversity when affecting issues of religious dogma or royal authority. The writer and diplomat Diego de Saavedra Fajardo noted that people "of different customs and religions are domestic enemies rather than neighbors;" that was the main reason, he added, that "forced Spain to expel the Jews and the

¹⁵ It is worth noting that Machiavelli takes up the proposal of the mixed government from Book VI of Polybius' *Histories*. Polybius elaborates a complex system of mixed government in which the courts represented the democratic principle, the senators the aristocratic principle, and the consuls the monarchical principle. Each institutional principle complemented and contrasted with the other and thus ensured stability and freedom. See J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* 2nd & Rev. ed. (Princeton, NJ: Princeton University Press, 2003), pp. 103; ff; 296-98.

¹⁶ Discourse, III: XXVII, Niccolò Machiavelli, *The Historical, Political, and Diplomatic Writings*, trans. Christian Detmold, 4 vols. (Boston: James R. Osgood & Company, 1882), Vol. 2, p. 393.

¹⁷ Discourse, II: XIX, *ibid.*, Vol. 2, p. 280.

¹⁸ See, for instance, Juan de Solórzano Pereira, *Política indiana [1605]*, 3 vols., Biblioteca Castro (Madrid: Fundación José Antonio de Castro, 1996), Libro II; capítulo XXV-XXVI.

Moors.”¹⁹ In these cases diversity was assimilated to factionalism and sedition. Factions represented groups of people that co-opted the common good for their own interests and thus promoted tyranny; the consequence of factionalism was dissolution. To Francisco de Vitoria “Sedition occurs between the opposing sides of a crowd, for example if part of the city rises in tumult against another.” Sedition is a “mortal sin ... since it opposes ... the unity and peace of the multitude.”²⁰

Such Neo-Scholastic languages, deeply rooted in the region, fostered what might be called the ancient constitutions of Spanish-America. These constitutions envisaged a rigid hierarchical ordering of the population within which white Americans benefitted from the labour by Indians and blacks in exchange for caring for their spiritual and material instruction. The 1687 Constitutions of the Synod of the Diocese of Caracas tersely expressed it when it addressed Creoles as “parents” and warned that “God has not given them children, servants, slaves and estates ... to live idly in the Republic. ... He has made them parents so that by love and in accordance with the rules of justice, they correspond to the honor, service, obedience and reverence bestowed upon them, with good parenting, teaching, support and care of their people...”²¹ Despite the effect produced by the familial metaphor, the Spanish-American provinces were not inhabited by individuals who shared a common interest. Rather, individuals saw themselves as participants in social groups with multiple conflicting interests whose final if benevolent arbiter was the King.

During the eighteenth century, with the arrival of the Bourbons to the Spanish throne, the work of Jean Benigne Bossuet helped re-develop the notion of authority and community. Drawing from Augustinian sources, Bossuet insisted that sociability was a gift from God that predisposed us to mutual assistance and prepared for the pursuance of the common good. That original state had been ruined by sin and human arrogance, from which men had ceased to understand each other and begun to treat each other as foreigners: “It seems that two things separated in many branches human society, one is diversity and the distance between countries ... the other, the diversity of languages.”²² The sacred bond that had made humans members of one family “had been violated by passions” which caused the worst crimes and disorders.²³ Government and authority appeared as the necessary conditions to combat the weakness of man: “it is not enough that men inhabit the same country or that they speak the same language because they made themselves unapproachable by the violence of their passions and incompatible by the variety of their humors and diversity of their conditions and could not keep together without being held together by a unified government

¹⁹ Diego Saavedra Faxardo, *Empresa LXVI*, “Ex Fascibus Fasces”, *Idea de un Príncipe Político-Christiano* (Valencia, En la Oficina de Salvador Faulí, 1801), Vol. 2, p. 188.

²⁰ Francisco de Vitoria, *Relectio de Potestate Civili: estudios sobre Su filosofía política* (Madrid: CSIC, 2008), p. 237-39. See also, Francisco Suárez, *Tractatus de Legibus*, ed. Luciano Pereña, trans. J.E. Eguillor Muniozgueren, Facsimile of Coimbra's 1612 ed., 8 vols. (Madrid: Consejo Superior de Investigaciones Científicas, Instituto Francisco de Vitoria, 1971).

²¹ See “Título IX”, article 346–68, Manuel Gutiérrez de Arce, *El Sínodo diocesano de Santiago de León de Caracas de 1687*, 2 vols. (Caracas: Acad. Nacional de la Historia, 1975), Vol. 2, p. 144 and ff. See, also, Elías Pino Iturrieta, *Contra lujuria, castidad. Historias de pecado en el siglo XVIII venezolano* (Caracas: Alfil Ediciones, 1992), especially pages 28–34.

²² Jacobo Benigno Bossuet, *Política deducida de las propias palabras de la Sagrada Escritura al serenísimo Señor Delfín. Obra postuma*, trans. Miguel Joseph Fernández, 4 vols. (Madrid: Antonio Marín, 1743), Vol. 1, p. 165.

²³ *ibid.*, Vol. 1, p. 164.

that regulated everybody.”²⁴ This re-elaboration of royal power and the political community endowed with force the reform programs that transformed the monarchy during the eighteenth century while it explains the reasons such reforms were often perceived as threats against local constitutions.

A final factor was decisive for the eventual collapse of the monarchy and the ancient constitution of the American provinces. The Spanish monarchy’s separation between Indians and Europeans constituted the foundation of the early colonial system, but was displaced by a broad stratum of racially mixed and acculturated people, imprecisely known as *castas* or free men of colour.²⁵ To the extent that the distinction between *castas* and Creoles (white Americans) became more difficult to maintain, some of the wealthier members of the *castas* claimed white status. In 1795 the King issued a royal decree that allowed affluent *pardos* (mulattoes) to apply for an exemption of their status in order to acquire the legal standing of whites. The Caracas elite spiritedly fought the decree until the end of the colonial period. Their argument gives us insight into colonial assumptions of worth and honour which influenced perceptions about the civic virtue of a large part of the population in the aftermath of the republic. According to the elite the decree ignored that *castas* were:

... men possessing a perverse inclination, ... marked with all the ignominy of barbarism and the infamy of slavery. Stupid, rude, naked men, without signs of rationality Men who were victims of the ferocity of their brothers, who took their freedom away. Men in whom the coarsest passions rule to such an extent that almost deny them of their being. Men prone to theft, bloodthirsty, suicidal, covered by the common confusion of the most barbarous customs ...²⁶

A collection of unsavoury images drawn from biblical hermeneutics, natural and criminal law, moral theory and natural history converged in an unsettling portrayal. Clearly, granting dispensation to such subjects would “cause an extraordinarily dangerous disruption.”²⁷ They urged the King to prevent the subversion of the social order by “keeping them in dependence and subservience to Whites as hitherto; otherwise they will become unbearable and will want to dominate those who have been their Lords.”²⁸ If the King did not take energetic actions, they continued in another document, *pardos* would turn “this beautiful portion of the universe into a filthy and reeking compilation of sins, crimes and evils of all kinds: the social machine will be dissolved:

²⁴ *ibid.*, Vol. 1, p. 175.

²⁵ The term *castas*, as used by eighteenth and nineteenth century contemporaries, does not denote the closed rigid and inheritable system of stratification defined by Louis Dumont in *Homo Hierarchicus* (1967). Instead, the term designated the strata of so-called “mixed bloods” that made up an important segment of plebeian society in Iberian America.

²⁶ “Representación from the University of Caracas to the King on October 20th, 1803.” Reproduced in Ildefonso Castro, ed. *Cedulario de la Universidad de Caracas* (Caracas: Universidad Central de Venezuela, 1965), p. 36.

²⁷ “Informe ... Ayuntamiento,” p. 290

²⁸ “Acta del Cabildo de Caracas de 21 de noviembre de 1796.” Reproduced in Santos Rodulfo Cortés, *El régimen de "las gracias al sacar" en Venezuela durante el período hispánico*, 2 vols. (Caracas: Academia Nacional de la Historia, 1978), Vol. 2, pp. 46-47. The second passage appears in José Hernández Palomo and Lila Mago de Chopite, *El Cabildo de Caracas, 1750-1821* (Caracas-Sevilla: CSIC-Escuela de Estudios Hispano-Americanos-UPEL-Cabildo Metropolitano de Caracas, 2002), p. 507.

corruption will arrive.”²⁹ This vision may be called “the ancient constitution” as a particular mode of constructing a political community where difference was reaffirmed as the means to guarantee moral and social hierarchy.

Many commentators of late colonial life regarded these divisions as serious threats to the community’s viability. In 1804, Fray Antonio de San Miguel wrote that while almost all of the property and wealth in the Americas was hoarded by whites:

The Indians and the *castas* cultivate the soil; they service the well-to-do people; and they live by the work of their hands. Hence there results between the Indians and the whites an opposition of interests, that mutual hatred, which universally takes place between those who possess all and those who possess nothing, between masters and those who live in servitude.

Social antagonism was not simply a reflection of divergent interests, but it was a sign of profound injustice. It produced social disorder and not – as the white elite claimed – the preservation of the kingdom. Alexander von Humboldt appropriated these words to define “the odious principle of the colonial system,” that of the attainment of “security, founded on the hostility of *castas*, and prepared during ages.” Such principle “had burst forth with violence” and threatened the foundation of American societies.³⁰

Spanish colonial administrators viewed the opposition of class interests as evident. In 1808, on the eve of the revolutions, the prosecutor of Caracas’ Royal Court dismissed the possibility of local revolts against the metropolis by arguing that:

The multitude classes that constitute these provinces ... offer ... insurmountable obstacles for their reunion in a political body. Rivals of each other, the nobles would never admit commoners among themselves, and these would never admit *pardos* (mulattoes), and none of them would admit the other *castas*, and much less that of the slaves. These differences in colour and condition produce a violent shock that would destroy the parts among themselves. All of this will always present insurmountable difficulties for them to come together and reconcile their opposing wills and interests.³¹

Subsequent events proved the prosecutor wrong. However, when reading his report, written months before the crisis reached the other side of the Atlantic, one cannot help but wonder what were the reasons that led the first generation of statesmen to commit to creating popular republics or, to put it another way, to dismiss their ancient constitutions in favour of another covenant.

²⁹ In Ayuntamiento de Caracas, "Informe que el Ayuntamiento de Caracas hace al Rey de España referente a la real cédula del 10 de febrero de 1795," in *Documentos para la historia de la vida pública del Libertador*, ed. José Félix Blanco (Caracas: Imprenta de la Opinión Nacional, 1875), p. 291.

³⁰ Alexander von Humboldt and Aimé Bonpland, *Personal Narrative of Travels to the Equinoctial Regions of America, During the Year 1799-1804*, trans. Thomasina Ross, 3 vols. (London: Henry G. Bohn, 1853), Vol. 3, p. 275.

³¹ “Representación fiscal de Francisco Berrío y Francisco Espejo (20 de abril de 1808).” In Angel Francisco Brice, ed. *Conjuración de 1808 en Caracas para formar una junta suprema gubernativa. Documentos completos*, 2 vols. (Caracas, Ven.: Academia Nacional de la Historia, 1969), Vol. 1, p. 323.

While republicanism might appear as a break with the colonial past, in many ways it also represents continuity. Spanish American republicanism simultaneously gives way to a “radical impulse” that insisted on equality and democracy and a conservative demand to preserve and produce order and stability.³² This is evident, for example, in one of the era’s major debates that transformed the monarchy’s localized and stratified regime of citizenship into a universal category that uniformly expressed the rights and obligations of all citizens vis-à-vis the abstract nation. As a result, the legal apparatus that sustained colonial segregation begun to crumble.

In 1811 the Constitutional Assembly in Caracas had an intense debate about the citizenship of blacks and *pardos*. Liberal deputy Francisco Javier Yanes insisted that Venezuelans should not fear their inclusion, “a class which is much larger than ours,” in the political system: “denying equal rights to *pardos* is a manifest injustice, a usurpation and insane policy that will lead us to our ruin.”³³ Instead, “We should fear turmoil when treating people with contempt because at that moment justice will provide *pardos* with an irresistible impulse....”³⁴ Yanes’ statements provide evidence of the participation of the “lower classes” in the new political scenarios. British Major George Flinter described the events leading up to the approval of the constitution:

The free people of color, who formed by far the greatest proportion of the community, hailed it as the glorious day, that placed them on an equality with the whites; when they would no longer be considered inferior to their employers; they had a deep sense of the importance of their own numbers and strength, and they were anxious to profit by this opportunity of laying prostrate every destination of rank and color.³⁵

The Constitution of Caracas of 1811 revoked and annulled “... in all its parts, the old laws that imposed a civil degradation of the free population of Venezuela, known until now under the name of *pardos*: they are in possession of their natural and civil appreciation and are returned to their corresponding inalienable rights, like every other citizen.”³⁶

The rhetoric was impassionate but actual discrimination continued in all aspects of social life. Hasty and half-felt constitutional provisions were not enough to undermine royalists’ support and prevent Spanish reconquest. Peninsular military strategy built upon the racial divide and royalist mobilized Afro-Venezuelans with promises of freedom from Creole domination. The Venezuelan wars of independence soon acquired a devastating racial dimension which had a profound impact on the entire region for years to come. In fact, the political thought of Simon Bolivar can be understood as a spirited meditation on the dissolving effects of racial conflict. He first addressed the issue in two extraordinary letters he wrote while in exile in Jamaica in 1815, at the height of the Spanish reconquest. In the first of these Bolivar presented the case for American independence. He

³² See Roberto Gargarella, *The Legal Foundations of Inequality: Constitutionalism in the Americas, 1776-1860*, Cambridge Studies in the Theory of Democracy (Cambridge, UK: Cambridge University Press, 2010).

³³ In Juan Garrido Rovira, *El Congreso Constituyente de Venezuela* (Caracas, Ven.: Universidad Monteávilla, 2010), p. 159.

³⁴ In *ibid.*, p. 159.

³⁵ George Dawson Flinter, *A History of the Revolution of Caracas* (London: T. and J. Alleman, 1819), p. 19.

³⁶ Art. 203, “Disposiciones generales”, “Constitución Federal de los Estados de Venezuela de 1811”, *Constituciones Fundacionales de Venezuela (1811)*, (Barcelona, Ven.: RED Ediciones, 2007), p. 70. The Constitution also abolished the slave trade.

drew on anti-Spanish propaganda to depict a long list of abuses and oppressions but he grounded the reason for independence on the disregard colonial authorities had shown for the ancient constitution:

Emperor Charles V made a pact with the discoverers, conquerors, and settlers of America, and this ... is our social contract. ... In return, they were made the lords of the land, entitled to organize the public administration and act as the court of last appeal, together with many other exemptions and privileges that are too numerous to mention. ... Yet there are explicit laws respecting employment in civil, ecclesiastical, and tax-raising establishments. These laws favor, almost exclusively, the natives of the country who are of Spanish extraction.

Despite the existence of this time honoured constitution, “by an outright violation of the laws and the existing agreements, those born in America have been despoiled of their constitutional rights as embodied in the code.”³⁷

Such dispossession meant that America “was denied not only its freedom but even an active and effective tyranny” and preserved it a state of “permanent infancy.”³⁸ The bond with Spain had been cut and it “would be easier to have the two continents meet than to reconcile the spirits of the two countries.”³⁹ Now the patriots must find a way to persuade those who, “because the weight of habit,” have not joined the patriotic forces and “complete our work of regeneration.”⁴⁰ The argument must not have been entirely convincing because Bolívar wrote a second letter in which he sought to refute those who contended that “the main obstacle to [the] attainment [of independence] lies in the difference between the races that make up the people of this immense country.”⁴¹ Bolívar countered that America is not an extraordinary case: “America’s domestic disputes have never stemmed from differences of race: rather, they were born of divergent political opinions, and the personal ambition of a few men, like all those that afflict other nations.”⁴² What beleaguered Spanish-Americans was the reasonable diversity of opinions and not, as Tocqueville warned, “the insurmountable barriers ... raised between” groups that “do not form ... branches of the same stock.”⁴³

Instead, Bolívar painted a picture of racial harmony. Even if whites constituted the smallest portion of the population:

... it is also certain that [they] possess intellectual qualities which confer on them relative equality and an influence which may seem excessive to those who have not been able to judge for themselves of the moral situation and material circumstances.... Understanding of these

³⁷ Bolívar, *Selected writings*, Vol. 1, p. 112.

³⁸ *ibid.*, Vol. 1, p. 110.

³⁹ *ibid.*, Vol. 1, p. 105.

⁴⁰ *ibid.*, Vol. 1, p. 121.

⁴¹ Simón Bolívar, *The Hope of the Universe*, Salcedo-Bastardo, José Luis ed. (Mayenne, France: UNESCO, 1983), p. 118.

⁴² *ibid.*, p. 121.

⁴³ Tocqueville, *Democracy in America*, Vol. 1, p. 313.

could not fail to foster a desire for unity and harmony among all the inhabitants, regardless of the numerical disproportion between one colour and another.⁴⁴

The other races regarded Creoles with awe and admiration: natives worshiped them; they were rustic, indifferent and content with their peace, land and family.⁴⁵ As offspring of whites and Indians, Mestizos were mild-mannered and addicted to whites. As for blacks, the most oppressed of all races, their natural state was domestic dependency, while religion taught them to be servants. Slaves and blacks only mobilized against whites because Spaniards compelled them but, once given their freedom again, they “have gone over to the revolutionary side, even though the latter had not offered them absolute freedom as the Spanish partisans had.”⁴⁶ Bolívar concluded that “we feel justified in believing that all the sons of Spanish America, of whatever colour or condition, hold one another in a reciprocal brotherly affection which no amount of scheming can ever alter.”⁴⁷ Bolívar’s view might be naïve or delusional, but it certainly conforms to the 1687 Constitutions of the Synod of the Diocese of Caracas.

Such a gullible picture contrasts with Bolívar’s latter writings and deeds. The opening address to the Congress of Angostura, the constitutional convention that originated the Republic of Colombia in 1819 can be juxtaposed here. It is probably the most important and best known of his political writings. However, the people do not appear in this text as harmonious or virtuous; they “have been able to acquire neither knowledge nor power, nor virtue.... [They] have been degraded more by vice than by superstition. ... An ignorant people is a blind instrument of its own destruction.”⁴⁸ Furthermore, ignorance is not the only problem. Bolívar called on legislators to keep in mind that:

... our people is not European, nor North American; ... it is more a composite of Africa and America than an emanation of Europe, because even Spain itself is not quite European because of its African blood, its institutions, and its character. It is impossible to determine with complete precision to which human family we belong. The majority of the indigenous has been annihilated, the European has mixed with the American and the African, and the African has mixed with the Indian and the European. All born of the womb of the same mother, our fathers, different in origin and in blood, are foreigners, and all of them differ visibly in their epidermis; this dissimilarity carries an obligation of atonement of the greatest significance.⁴⁹

The political institutions designed by Bolívar sought to conduct with a “... steady hand and an infinitely delicate touch to guide this heterogeneous society, whose complex contrivance is dislocated, is divided, is dissolved at the slightest disturbance.”⁵⁰

⁴⁴ Bolívar, *The Hope of the Universe*, p. 118.

⁴⁵ What follows from *ibid.*, pages 118–121.

⁴⁶ *ibid.*, p. 120.

⁴⁷ *ibid.*, p. 121.

⁴⁸ Bolívar, “Angostura”, p. 5–6.

⁴⁹ *ibid.*, p. 9.

⁵⁰ *ibid.*, p. 10.

It might seem paradoxical but Bolívar's fundamental principle is equality, alongside the division of powers and the representative system: "We need equality in order to recast as a whole ... the race of men, political opinions and public practices."⁵¹ The levelling effect produced the salutary "merging of all classes into one state – in which diversity used to increase by virtue of the propagation of the species.... By this single step, cruel disharmony has been pulled up by the roots. How many jealousies, rivalries, and hatreds have been avoided!"⁵² Bolívar used the alchemy of the mixed government and sought to combine the democratic nature of these societies with the aristocratic principle of a hereditary senate and the monarchical benefits of a strong elected executive for life. Formal equality does not preclude "physical and moral inequality" and thus Bolívar's proposal for an executive for life and a hereditary senate does not constitute a violation of the democratic principle. These institutions, together with a fourth moral power in charge of overseeing public behaviour, are designed to "provide our existence with a basis of guarantees."⁵³

Bolívar's ultimate objective was not to safeguard stability and order but to set in motion a nation to come: "All our moral strengths will not be enough to extract our nascent republic from this chaos if we do not fuse the mass of people into a whole, the makeup of the government into a whole, the legislation into a whole, and the national spirit into a whole. Our slogan must be unity, unity, unity. The blood of our citizens is various, let us mix it to unify it..."⁵⁴

Educating the plebs

Popular education was, for Bolívar, a privileged vehicle to achieve such unity; for the Venezuelan pedagogue Simón Rodríguez it was the way to "give being to the imaginary Republic that stumble around in books and Congresses."⁵⁵ For Rodríguez, social heterogeneity fragmented and atomized public life; such fragmentation precluded the existence of subjects capable of sustaining sovereignty and, therefore, of being agents capable of contributing to public welfare. The existence of racial diversity in the continent inevitably leads us back to the colonial principle: "The greed of the Europeans", such a seemingly fatal historical fact, "fated America to be the place of convergence for the three known races – mix – and produce a new one."⁵⁶ Thus, Spanish America becomes a historic opportunity for the republican program to be fully realized. A true republic is not composed by people who are simply together; they must have relations with each other, "work with each other or on each other."⁵⁷ The inability or unwillingness to recognize the social ties that bind people together as equals undermined the republic.

⁵¹ *ibid.*, p. 10.

⁵² *ibid.*, p. 10. I have corrected the translation.

⁵³ "Letter to General Santander," January 6, 1825. In Simón Bolívar, *Doctrina del Libertador*, 3ra. corregida y aumentada. Manuel Pérez Vila ed. (Caracas: Biblioteca Ayacucho, 2009), p. 216.

⁵⁴ Bolívar, "Angostura", p. 17.

⁵⁵ "Carta al General Francisco de P. Otero," Lima, 10 de marzo, 1832. Rodríguez, Simón Rodríguez, *Cartas* (Caracas, Ven.: UNESR, 2001), 161.

⁵⁶ In "El Libertador del Mediodía de América y sus compañeros de armas, defendidos por un amigo de la causa social" (1830). Simón Rodríguez, *Obras completas*, 2 vols. (Caracas, Ven: Presidencia de la República, 2001), Vol 2, 291.

⁵⁷ "Extracto sucinto de mi obra ...," in Rodríguez, *Inventamos o erramos*, p. 189. I quote from different editions as some passages are only available in these.

By the 1830s it was evident that public customs were not republican – even if governments were. They had to be transformed and popular elementary education seemed the appropriate means to achieve it: “Only EDUCATION! imposes obligations on the WILL. These OBLIGATIONS are those we call HABIT.”⁵⁸ In order to work, republican education must be universal, uniform, free and compulsory. Furthermore, students should study in the classrooms, regardless of race or social class, and follow the principle: “EACH ONE FOR ALL AND ALL FOR ONE. This is the principle of a uniformed society that results from a UNIFORMED EDUCATION.”⁵⁹

Rodríguez’s proposal was based on the distinction between instruction and education. A republican education, claimed Rodríguez, does not consist in instructing or disseminating information: “To Teach ... is to make comprehensible/ It is to employ the discerning mind [*entendimiento*], not to make memory work.”⁶⁰ Consequently, education must create the conditions for the development of several cognitive processes: to observe – that is, “... to place oneself before an object to ... appropriate it...” – to reflect – that is, “to make reflect the image between the object that produces it and the meaning that receives it” – and to meditate – “to put oneself in the middle of the images to compare them, seeing one side and the other.”⁶¹ These processes prepare students to ponder, deliberate and critique, fundamental aptitudes in a republican society.

Because
everything that is good
in society
is due
to criticism
or better yet
society exists ... due to
Criteria the same as *discernment*
to critique is to judge with rectitude⁶²

Observing, discerning, judging, critiquing. Rodríguez’s psychological language of learning speaks of an active subject and not of docile, pliable citizens. Furthermore, it is a citizen willing to participate in public life:

In Republican Societies
it is neither permitted to say
I am not concerned with public affairs
nor to ask another
*what business do you have for meddling with them.*⁶³

⁵⁸ “Extracto sucinto...,” *Neo-Granadino*, Núm. 39, Bogotá, 28 de abril de 1849, p. 132.

⁵⁹ “Partidos”, Rodríguez, *Obras completas*, Vol. 2, p. 392.

⁶⁰ *Sociedades americanas* (1842), p.104.

⁶¹ “Extracto sucinto...,” Rodríguez, *Sociedades americanas*, p. 304.

⁶² In the 1840 edition of “Luces y virtudes sociales” as reprinted in Simón Rodríguez, *Escritos de Simón Rodríguez*, Pedro Grases ed., 3 vols., *Sociedad Bolivariana de Venezuela* (Caracas: Imprento Nacional, 1958), p. 70.

⁶³ In the 1840 edition of “Luces y virtudes sociales” as reprinted in Rodríguez, *Escritos*, p. 70.

These active critical subjects must develop an ability to exercise scrutiny through deliberation and critique and a toleration to be equally scrutinized. A student thus formed is able to transform political lack into a historical opportunity and carry out the political and social legacy that had begun in 1810.

Prepared they might be, but often they are not willing, least of all if they are the direct beneficiaries of these colonial societies. Thus, Rodríguez advocated devoting special attention to poor children:

GIVE ME THE POOR CHILDREN

or	{	declare free at birth
GIVE ME THOSE THE LANDOWNERS		cannot teach
		are abandoned for coarse
or	{	because they are already grown
give me those the orphanage casts away		because they can't be supported
		because they are illegitimate ⁶⁴

With them, Rodríguez will make the Republic. They have “paid for Independence with their persons and property ... or, like sheep, with their meat and wool ... [but] have become less free than before.”⁶⁵ With Indians, in Quechua, Rodríguez writes, he will start the republic. In them he finds the much sought industry, the wealth, the defenders of the nation, in one word, the fatherland [*patria*].⁶⁶

Writing the History of one republic and many peoples

If Spanish-Americans willed a break with the ancient constitutions and entered into a new covenant, then the republic was not a product of the local customs and the history of the new republics was entirely new. José Manuel Restrepo, Secretary of Interior and Foreign Relations of Colombia under Bolívar, sought to provide in *The History of the Revolution in the Republic of Colombia* (1827, 1858) a new history, one that traced the genealogy of the emerging sovereign subject: the people. However, the people consisted of:

⁶⁴ *Sociedades americanas* (1842), p. 17.

⁶⁵ “Extracto sucinto de mi obra sobre la educación republicana” en *Neo-Granadino*, Núm. 39, Bogotá, 28 de abril de 1849, p. 131.

⁶⁶ “Sociedades americanas” (1828) Rodríguez, *Obras completas*, Vol. 1, p. 286.

... ignorant men ... who could not read, or that, at best, read *El ejercicio cotidiano* [a popular book of prayers], absolutely ignorant of the meaning of independence and freedom, believing as an article of faith that the authority of kings came from heaven ... and taking the King of Spain for a demigod, whom they must obey under pain of mortal sin.⁶⁷

Society itself “was ... divided by *casta* Indians, blacks and browns, Spaniards and Creoles, all contrary to one another.”⁶⁸ Of these, the Indian was “abject, exceedingly ignorant, stupid and slave to priests and magistrates, who take advantage of the fruits of their labor and industry”; blacks, meanwhile, “exhibited the ignorance and vices created by slavery.”⁶⁹ *Castas* participated in all these defects. Driven by passion and a victim of fanaticism, the people were passive spectators if not declared opponents of the patriotic class. They could not embody the nation and become political agents for the new order.

The accusation might seem unfair given that Bolívar’s armies relied on popular mobilization. But, according to Restrepo, the actions of the people, “who had been flattered with the ideas of freedom and the title of sovereign”, are precisely what justified his remarks. During the days that followed the formation of the Junta of Bogotá in 1810, the people “exercised command for a few days to the fullest.”⁷⁰ But, prisoners of “the passions that agitate crowds when they have thrown off the yoke of the authorities”, the people made “many excesses” and their actions led to anarchy.⁷¹ The republic was the result of “a small part of the enlightened part of the population, which had some wealth and much influence [who] hoped the rest of the population would follow after the outbreak of the revolutionary movement.”⁷²

As long as the republic was not a product of popular historical action it could only be a precarious solution. But the revolution was the concerted attempt to introduce the people into historical times. The people-without-history did not make the revolution, but the patrician revolution seeks to induce the people and give them a proper national historicity. After all “the free mulatto was endowed with vividness, insight, courage and aptitude for the arts and sciences, as well as for any other destiny.”⁷³ Under a good and strong government Creoles and *castas* will be “able to form a new people in a short time and produce great men in all branches. Finally the revolution that should be the cause of such great results took place.”⁷⁴

A final paradox by way of conclusion

The republic was not the only political form that addressed the pressing tensions between diversity and constitution. In more than one way, the monarchy was better positioned to engage it. Karl Friedrich Philipp von Martius published *How to write the History of Brazil*. In 1840 the Brazilian

⁶⁷ José Manuel Restrepo, *Historia de la revolución de la República de Colombia*, 7 vols. (Paris: Librería Americana, 1827), Vol. 1, pp. 119-20.

⁶⁸ *ibid.*, Vol. 1, p. 123.

⁶⁹ *ibid.*, Vol. 1, p. 102.

⁷⁰ *ibid.*, Vol. 2, p. 180.

⁷¹ *ibid.*, Vol. 2, pp. 18; 190; 189; 181.

⁷² *ibid.*, Vol. 1, p. 120.

⁷³ *ibid.*, Vol. 1, pp. 103-4.

⁷⁴ *ibid.*, Vol. 1, p. 105.

Geographic and Historical Institute, based in Rio de Janeiro, offered a prize to the best essay on the proper way to write the history of the new nation. The Bavarian botanist von Martius, who twenty years earlier had explored the country with zoologist Johann Baptist von Spix (1817–1820), sent the winning entry from Munich. Von Martius, who had gained initial fame with his *Travels in Brazil* (1827) and his pioneering work on botany and ethno-linguistics, deliberated on the relationship between the writing of a national history and Brazil's social and racial composition. The text was published in 1845 in the Journal of the Institute and later reprinted on several occasions.

Von Martius begins with a premise that shows his commitment to Savigny's historicism: Brazil has a particular history, its experience is different and therefore its institutions are different from those in Europe. The theoretical and methodological character of this essay follows the need to identify and specify the elements of that unique history. Brazil is, according to von Martius, a place of the future, "a country that promises so much".⁷⁵ Such absence from the present is the result of the mode of convergence in the same territory of the three races that compose it: "from the mix, and the mutual relations and changes of these three races the current population was formed, whose history, consequently, has a very particular imprint."⁷⁶ Brazil's particular sign of identity is, therefore, the result of the co-existence and mutual engagement of these races which, however, are destined to disappear to make way for a new nation. In this complex social equation the "physical and moral characteristics" of each of these people, their "organic life" – that is, their customs, religion, mythology, institutions and legislation – contributed decisively to a historical movement that is both characteristic and particular.⁷⁷ The tension between each "historical movement" and the common but still-in-the-process-of-being-forged destiny is what von Martius called the "Particular Law of the diagonal forces."⁷⁸ Writing the history of such society means to apprehend the nature and direction of such a law; the historian of Brazil should never forget that his task is not simply to "describe the development of a single people, circumscribed within narrow limits, but that of a nation whose current crisis ... belong to universal history, and which is still in the midst of its higher development."⁷⁹

But not all historical movements are equivalent. The influence of each group varies in relation to "how great the energy, the size and dignity of its society are in each of these races."⁸⁰ The Portuguese, von Martius wrote, "who ... as discoverer, conqueror, and master ... has provided the moral and physical conditions and safeguards for an independent kingdom ... presents itself as the most powerful and essential motor."⁸¹ It is up to him, therefore, to morally and politically direct the new republic. However, such recognition should not lead to the dismissal of the manifold contributions by the "inferior races". "It would be a very serious mistake with regards to the rules of pragmatic historiography if we despised the forces of the Indians and imported black; these

⁷⁵ Karl Friederich von Martius, "Como se deve escrever a história do Brasil", *Revista Trimestral de Historia e Geographia* 6, no. 24 (1845), p. 381.

⁷⁶ *ibid.*, p. 383.

⁷⁷ *ibid.*, p. 382.

⁷⁸ *ibid.*, p. 382.

⁷⁹ *ibid.*, p. 395.

⁸⁰ *ibid.*, p. 382.

⁸¹ *ibid.*, p. 382.

forces also contributed to the physical, moral and civil development of the entire population.”⁸² In fact, disavowing indigenous and blacks produces mistaken ideas about local circumstances, “a fact which doubtlessly contributes to the occurrence of frequent political disturbances.”⁸³

For von Martius the move towards convergence of all the races in Brazil is providentially designed to fulfil the “the most sublime goal in the ordering of the world.”⁸⁴ Racial mix does not result in a degenerative process but in the “improvement of the three races.” Thus, Brazil’s fate is revealed to the extent that the mixing progresses: “this mixing takes place in the lower class, and like in other countries, the upper classes are formed with elements from the classes below; and through that process they are vivified and strengthened, and that is how the racial mixture is presently being prepared in the lower classes that in centuries to come will powerfully influence the upper classes, and will inform them of the historical activity for which the Empire of Brazil is called.”⁸⁵ Furthermore, Brazil is part of a preordained plan in which the progress of the world is greatly favoured by the “confusing not only people of similar race but of entirely different ... races in order to form out of them a new and wonderfully organized nation”⁸⁶

Like the republic, the monarchy possessed rich resources and languages to engage the recurrent tension between social diversity and political constitution. Like its Spanish-American counterparts, von Martius also made a claim about the suitability of a political form. But for him, the political framework that allowed this work of providence was the constitutional monarchy. The monarchy, claimed von Martius, recognized the difference of its constituent peoples while it gently laboured to destroy diversity “by means of a judicious instruction”; under its aegis “Brazil begun to feel like a unified whole.”⁸⁷ Since a country like Brazil is not apt for the republic, and utopian and dangerous political form, historians should never forget that in order to serve well his country he should write like a monarchical constitutional. But the contrast I have set up should not be taken to mean that the monarchy is better prepared or was a more suitable model for early independent thinkers.

⁸² *ibid.*, p. 382.

⁸³ *ibid.*, p. 401.

⁸⁴ *ibid.*, p. 383.

⁸⁵ *ibid.*, p. 383.

⁸⁶ *ibid.*, p. 383.

⁸⁷ *ibid.*, p. 401.

Crisis, Populace and Leadership: Reflections on ‘Modern Caesarism’

Markus J. Prutsch

Intricacies of Democracy

Debate about the legitimacy and ‘essence’ of political rule and the search for ‘ideal’ forms of government have been at the heart of political thought since its beginnings in the Ancient World. Discussion on how ‘just’ and ‘effective’ government can best be guaranteed has been particularly intensive and controversial, as has been discourse on how demands for and dangers of dictatorship should be assessed, the scope and limits of democracy, and on whether there might be some logical development or sequencing of in the rise and fall of certain regimes. At the same time, however, an astonishingly simplistic and a-historical view is often taken on these matters by many twentieth-century and present-day observers. This is manifest most explicitly in two intrinsically linked *topoi* that have become commonplace in Western political rhetoric and public debate, even though a more critical view seems to have gained ground in the more recent past. The first is the paradigm of ‘constitution(alism) as positive law’, and the second that of ‘continuous democratisation’: the idea that today’s (Western-styled) world represents the outcome of a more or less linear development towards liberal and representative democracy, in which specific, inalienable values are considered to be upheld.

No less problematic than a romanticising concept of ‘constitutionalism’ – one that will be critically taken up in more detail in the following chapter of this volume, titled “Constitutionalism, Legitimacy and Power” – is to suppose that the nature of (Western) democracy is uncomplicated. The teleological assumption of there having been a breakthrough of liberal democracy in the eighteenth, nineteenth and twentieth centuries is not only biased: it also underestimates the sheer complexity of historical developments and neglects the tensions and obstacles that the West has undergone and still has to face. The weaknesses of the ‘democratisation imperative’ are expressed in the difficulties of providing an explanation for twentieth-century totalitarian experiences, which to describe simply as ‘temporary aberrations’ is far from satisfactory. They are also manifest in the fact that, on a global scale, political systems considered as undemocratic still outnumber those regarded as democratic, thus putting into perspective how pervasive the ‘charms’ of democracy have been beyond the frontiers of the ‘West’.¹ Weaknesses are also evident in the image we may entertain of contemporary Europe as a union of stable democratic states which is in itself dangerously

¹ Obviously, over the last couple of years the Western model of ‘democracy’ has not taken a giant leap forward on a global scale. The ‘Arab Spring’ has certainly demonstrated the continued appeal and strength of the language of self-determination, civil rights and liberties. Whether the eventual outcome will be western-style democracies, however, is doubtful. Moreover, the (economic) success story of China offers an alternative ‘path to modernity’, the pervasiveness of which is not to be underestimated. This is particularly when the Chinese achievements are compared with those of its ‘democratic rival’ in Asia, India. In addition to that, the Western world has done a great part itself over the last couple of yours to reinforce its standing for economic tinkering, political undecidedness, national self-doubts and moral as well as cultural arrogance.

deceptive. Europeans cannot escape from critically pondering on their own political systems. Does 'formal democracy' guarantee 'real democracy'; that is, do democratic institutions and practices function where they are thought to exist and claimed to be implemented? Is there always a clear distinction between pluralistic and autocratic regimes? Do liberal society and economy on the one hand and authoritarian polity on the other mutually exclude each other? And is 'democracy' after all so ardently desired and keenly sought after by the masses?

On closer examination the borderline between democracy and 'non-democracy', to use the perhaps least biased counter-term, turns out to be far less clearly defined than might appear at first sight. It can be plausibly argued that we are living in a distinct crisis of representative forms of democracy, seen in the growing alienation from parliamentarism – of which the steady drop in election turnouts is just one indication – and increasing demands for forms of direct democracy. However, we are also facing an erosion of democracy as such. Subtle encroachments on public and political liberties, or attempts to manipulate public opinion via the media could be cited as revealing examples, but also an increasing openness towards 'strong leadership' and charismatic politicians claiming to be the 'crisis managers' societies desperately need. This openness is not exclusively found on the 'periphery' of Europe, where the examples of Russia, Ukraine or Turkey demonstrate the fragility of democracy in so-say 'transitional' states as they are described in social and political science. Even at the very heart of (EU-)Europe, the crisis – or rather imponderability – of democracy is manifest. Hungary is a case in point, where the Orbán government has successfully pushed for curtailing (potential) oppositional forces in politics and society by limiting freedom of the press and revising the constitution to the benefit of the ruling party. Whether one characterises these political decisions as 'autocratic' or just as a means for more 'efficient' governance:² it remains a given fact that these decisions have been made by a government democratically elected and entrusted with a two-thirds majority in parliament. Of course, one might pragmatically claim that politics practised does not necessarily reflect what the electorate originally wanted its government to accomplish, or that it was only the political inexperience of a population in a country with a relatively short tradition of post-dictatorial government that made for such electoral results. Unfortunately, however, the most convenient explanations are not always the most sustainable ones. Contrasting the image of an innocent – at least inexperienced – electorate with that of an unruly government, or to portray Hungary and other 'sinners' as one-off cases, is one of them.

Together with other recent empirical inquiries, it is a study published in early 2011 at the behest of the German *Friedrich-Ebert-Stiftung* which demonstrates that throughout Europe the wish and preparedness for authoritarian forms of government is on the increase. Despite national differences, overall results do not leave much space for ambiguity: in Portugal, where the social and economic consequences of the European debt crisis are being particularly felt, no less than 62.4% of respondents expressed their active support for the idea of authoritarian leadership, and even in long-established and relatively well-off democracies like Great Britain and France more than 40%

² In the same vein see, e.g., the article *Orbán's Handschrift* in [FAZ] 19 April 2011: "Ungarns Opposition behauptet, Ministerpräsident Orbán habe sein Regierungssystem mit der neuen Verfassung ‚cäsarisiert‘. Viel eher schafft er damit eine Grundlage für effizienteres Regieren in Ungarn – trotz aller Schönheitsfehler."

took the view that what their country most urgently needed was a ‘strong man’ in power, ruling regardless of parliament or election results (41.8% and 43.2% respectively); even in Germany with its traumatic experience of National Socialism around one third of the sampled population (32.3%) was of the same opinion.³

So what should we make of such unsettling empirical findings? If nothing else, they remind us of the fact that present-day Europe is still on the brink of authoritarianism: not (only) because a reckless minority of politicians are pushing for it, but since a considerable number of Europeans actually want to be there, or at least do not feel uncomfortable being there. At present, any ‘natural’ distinction between ‘good democracy’ on the one hand and ‘bad dictatorship’ on the other seems to fade away in the presence of widely-felt anxiety about the future. Such feelings are nurtured by unease about the present and the almost omnipresent feeling of a ‘crisis’, be it economic, political or cultural, real or imagined. Yet it is worth asking whether the relativisation of this distinction is a particularly ‘new’ or ‘modern’ phenomenon. To better understand Europe’s present state and future prospects, a more sophisticated and less teleologically biased analysis of the past, paying attention to the palpable ambivalence towards authority, therefore seems to be a promising, if not indispensable, starting point.

Caesarism: Approaching a Compound Concept

Not a simple ‘creation’ and ‘preservation of values’, European history was and is a continual ‘clash of values’, which over time has given rise to a diversity of theoretical and institutional compromises which have brought about stability and fragility alike. This can be said for all periods of European history, but particularly so for the ‘long’ nineteenth century as *the* ‘European century’; an age which experienced a discernible shift from monarchical and dynastic to democratic concepts of legitimacy, but also an age in which clashes of value systems became manifest in fervent intellectual and political action, in fact the actual preface of much of contemporary Europe. My aim is, therefore, to challenge the overly optimistic democratisation narrative by problematizing anew the complex relation between democracy and dictatorship from the late eighteenth century onwards. More concretely, to assess in how far democracy emerged as (in-)compatible with dictatorship during the (post-)revolutionary period both at the level of political thought and practice.

The claim that democracy and dictatorship might be compatible will appear daring to some and even offensive to others in view of the strict ‘illegitimacy’ ascribed to the latter in post-Second-World-War political theory. It does much less so, however, when we take historical usage into account. In 1923, it was Carl Schmitt who – inspired by antiparliamentary sentiments – argued in *Die geistesgeschichtliche Lage des heutigen Parlamentarismus* that a democratic concept of legitimacy could perfectly be attuned to the establishment of dictatorship which could act, or at least decide, in the name of those represented no less than a representative (parliamentary) body could:

³ See Zick/Küpper/Hövermann (2011), especially p. 115f. Eight countries were closely examined, namely Britain, France, Germany, Portugal, Italy, the Netherlands, Poland and Hungary. Besides Portugal, the ‘yes’ rate for the question “Was ein Land am meisten braucht, ist ein starker Mann an der Spitze, der sich weder um das Parlament noch Wahlen schert” was highest in Poland (60.8%) and Hungary (56.6%). For each country, a balanced sample of 1,000 interviewees had been questioned in the study on issues of political radicalism, intolerance and discrimination.

[...] der Gedanke des Parlamentarismus erscheint als etwas wesentlich Demokratisches. Aber trotz aller Gleichzeitigkeit und aller Zusammenhänge mit demokratischen Ideen ist er das nicht [...] Wenn aus praktischen und technischen Gründen statt des Volkes Vertrauensleute des Volkes entscheiden, kann ja auch im Namen desselben Volkes ein einziger Vertrauensmann entscheiden, und die Argumentation würde, ohne aufzuhören demokratisch zu sein, einen antiparlamentarischen Cäsarismus rechtfertigen.⁴

At the time Schmitt made this statement, his contentious claim that democracy and rule of the one were not quite incompatible already had a long and intricate intellectual history; a history, which needs to be understood as part of a more general debate about the nature and viability of modern statehood, the relationship of modern society, constitutionalism and representative government to classical forms of rule, and – more abstractly still – the potential (non-)links between the ancient and the modern world. That debate hence refers to the kind of experience which was opened up by the emergence of modernity, and the (political) alternatives which were conceived to manage it. The term Schmitt uses to characterise an alternative system of government, placed somewhere between democracy and dictatorship, well reflects the struggle to make sense of the ‘present’ by relating it in one way or another to the ‘past’. ‘Caesarism’ refers back to the regimes of the Roman Emperors created out of the late Republic and more particularly to the person of Julius Caesar, but at the same time, it indicates intrinsic ‘novelty’ by the sheer fact that the term was coined only in the nineteenth century.

It is not least due to this inherent ambivalence together with greater suitability *vis-à-vis* other alternatives that the notion of ‘(modern) Caesarism’⁵ presents itself as a *Leitbegriff* for my enquiry. This is, however, neither with an intent to pre-empt any clear-cut definition of what ‘Caesarism’ might mean, nor with the aim to argue for a pure unadulterated ‘conceptual history’ (*Begriffsgeschichte*) of the term. Both approaches certainly have their respective strengths, but suffer from immanent flaws, too: to agree *a priori* on an authoritative classification of Caesarism provides a handy list of features against which certain historical phenomena and statesmen could be easily ‘checked’ as to whether or not they match the model. Yet any pre-definition of what Caesarism actually means is inevitably constructive, adulterating any results one would eventually get.⁶ A ‘lexicographic’ history of ‘Caesarism’ proper, in turn, focusing on the usage of that very concept over time would provide a clear research agenda, but at the same time run the risk of neglecting instances in which the same issues might have been addressed under other terminology, for example ‘Bonapartism’. In other words, focusing exclusively on one term disregards the fact that the existence of a specific word does not necessarily coincide with the existence as a (political) concept or as a member of a family

⁴ Schmitt (1996 [1923]), p. 42. The common English translation of the book’s title is somewhat inaccurately *The Crisis of Parliamentary Democracy*, even though this encapsulates the work’s central message rather well.

⁵ Given its coinage in the 19th century, adding ‘modern’ in front of Caesarism seems superfluous. In order to distinguish reference to Roman imperial government, however, stressing the ‘modernity’ of the concept might after all be justified.

⁶ On the problems of applying a rigid concept of Caesarism or Bonapartism for the assessment of individual statesmen see, e.g., Pflanze (1982), p. 598f., even though one does not need to go so far as to call into question the usefulness of such concepts altogether.

of (related) concepts. This also goes for Caesarism, which has a far longer lineage than its sudden appearance as a word in the 1840s suggests, and is embedded in a wider semantic field of both adjacent and counter concepts.⁷

Against this background, a less straightforward approach to the analysis of ‘Caesarism’ seems to be called for; one in which Caesarism is not regarded as one fixed category, but as a ‘drifting’ and ‘open-end’ political term describing visions of political rule that were present and under discussion at the crossroads of democratic and monocratic/dictatorial imperatives. With this in mind, one key concern is to find out why ‘Caesarism’ and related concepts of government became central at particular moments in history, discover what they basically signified, and unearth the hopes and fears associated with them by contemporaries.⁸

Yet even in attempting to demonstrate the fluidity and often ambiguous nature of seemingly clear political concepts and their boundaries, there is a need for some kind of preconception of what Caesarism represents in order to decide what should reasonably be included in the analysis and to avoid ‘whateverism’. To this aim, three traits of Caesarism are seen as being intrinsic, the first of which refers directly to the democracy-monocracy dichotomy: if Caesarism is a political and politico-theoretical phenomenon between these two poles, it has to incorporate both ‘democratic’ and ‘monocratic’ elements. More particularly, it is assumed that Caesarism combines strong and authoritarian, often charismatic, leadership by one person, with an underlying democratic – usually plebiscitary – legitimisation by the people effectively steering clear of or neutralising intermediary representative bodies.

A second criterion is regarding Caesarism as an essentially (post-)revolutionary phenomenon. There might have been pre-revolutionary instances in which monocratic premises had to be brought into line with democratic ones; however, it is presumed that only with the shift from a traditional to a predominantly democratic legitimisation of rule in the American and especially French Revolution – a period accompanied by fundamental economic, social and cultural changes – that this challenge gained in acuteness and historical relevance. Defining Caesarism in these terms

⁷ Other alternatives like ‘Bonapartism’, ‘democratic dictatorship’ or ‘democratic monocracy’ might certainly be conceivable as well, yet there are some arguments that can be made in favour of Caesarism: on the one hand, the term has not only been used by contemporaries in the nineteenth and twentieth century and hence avoids being a purely artificial *ex-post* construction (such as ‘democratic monocracy’ or the like would be), but is still familiar in the present; on the other, the term signals sufficient ‘neutrality’ to be used as a heuristic device in a dispassionate manner, at least compared to terms so charged up with prejudices like ‘dictatorship’. Compared to ‘Bonapartism’, perhaps the most obvious alternative, ‘Caesarism’ has a universally wider meaning and context, and does not immediately suggest entrenchment with France and one family. A careful conceptual history of Caesarism and related concepts is only available for the German speaking world. See the entries for “Cäsarismus, Napoleonismus, Bonapartismus, Führer, Chef, Imperialismus” by Dieter Groh and “Diktatur” by Ernst Nolte in *Geschichtliche Grundbegriffe*. Brunner/Conze/Koselleck 1972-1997 Vol. 1, pp. 726-771 and pp. 900-924. On the reception history of the (ancient) term ‘Caesarism’ in particular see the entry “Cäsarismus” in *Der Neue Pauly* (Kloft/Köhler 1999; for the English translation in *Brill’s New Pauly* see Kloft/Köhler 2006).

⁸ The understanding of (modern) Caesarism as a dynamic category characterising a form of rule corresponds with nineteenth-century usage when it developed its own peculiar dialectic. Unlike ‘liberalism’, ‘democracy’ or ‘socialism’, ‘Caesarism’ did not turn into a social ‘epoch term’, but a terminology of rule with predominantly political connotations.

also substantiates the starting point in time for investigating (modern) Caesarism: the second half of the eighteenth century.

A third and final element considered to be a characteristic feature of Caesarism is its being embedded in a pronounced and often fundamental ‘crisis’, whatever actual shape it might have. Irrespective of whether this crisis is real or merely constructed, it is assumed that Caesarism is inseparable from a chiselled ‘moment of exception’. It is the state of exception running parallel to a crisis that has hitherto provided the most pervasive arguments for Caesaristic forms of government and blazed the trail for ‘unorthodox’ regimes to assume power. At the same time, however, the state of exception that tends to characterise not only moments of crisis, but also potential political answers to them, has also given rise to the most outright rejections of Caesarism as a viable or desirable alternative.

What can reasonably be expected from an enquiry revolving around the underlying concept of Caesarism as defined above? Above all, a more critical understanding of the political challenges following in the wake of Enlightenment and Revolution, revolving around the fundamental question of how to organise rule after these experiences. What may be debunked is an idealized narrative of continuous ‘European progress’ from absolutism to parliamentary democracy, with ‘constitutional monarchism’⁹ often seen as a temporary stepping-stone between the two. Such a narrative neglects the complexity of historical development and more particularly the fact that in the (post-)revolutionary period there were in fact multiple alternatives available to transform the European heritage with its inherently conflicting sets of (political) values, including one in the direction of autocratic yet genuinely modern-style leadership. While it was increasingly difficult to neglect the democratic spirit invoked by the Great Revolutions, there was a steady risk of parliamentary control mechanisms and liberal values falling behind a monocratic element assuming comprehensive power. This was particularly the case in moments of an actual or perceived ‘crisis’, when the susceptibility to radical political solutions was increased.

Somewhat paradoxically, it was the increasing complexity of social and political life from the (late) eighteenth century onwards which generated a desire for new forms of ‘monarchical rule’ and ‘personalized leadership’, which did, however, differ considerably from the pre-revolutionary period. Regimes that re-interpreted the ‘monarchical principle’ of unrestricted rule by one man in line with the spirit of the time were particularly appealing: regimes which managed to make the ‘rule of the one’ fit with the demands of the ‘modern age’, namely with claims for political ‘participation’ of the people, progress, innovation, national power and social welfare. The concept that actually seemed to meet these demands best was that of a democratic-plebiscitary form of autocratic leadership, to be subsumed under Caesarism. But who could fit the role of a ‘leader’ in an age geared more towards the future than the past?

The decline of tradition and customs as a legitimate basis for rule together with growing public interest and concern in politics made other forms of legitimacy all the more important.

⁹ ‘Monarchical-constitutional’ systems are characterized by the overriding idea to reconcile traditional monarchical sovereignty and authority based on divine rights with a representative constitution. On the role of constitutional monarchism in post-1814 Europe see Prutsch (2009), Prutsch (2013).

Following Max Weber's classical distinction of 'pure' sources of political legitimacy, these were above all rational-legal and charismatic elements, both of which are considered as revolutionising powers by Weber.¹⁰ The growing rational-legal underpinning of rule found its clearest expression in the wave of legal codifications taking place throughout Europe from the second half of the eighteenth century onwards, including the many constitutions being enacted in the wake of revolutionary upheaval. To no lesser degree than rational authority, based on the perception that a government's power derives from established (constitutional) norms, it was charismatic authority which assumed a lead role, embodied by individuals who by their sheer personal magnetism and their exceptional attributes seemed to be born leaders and guarantors of progress and/or stability.¹¹

It was certainly not unfeasible for traditional monarchs to take on the role of a 'charismatic leader' and adapt their style of government accordingly. Yet even more than the rational-legal it was the charismatic element and its unique characteristics which created untold political possibilities for political newcomers and social climbers never seen before in history. What essentially counted was gaining the status of a national saviour and hero; a process favoured by the growing impact of (mass) media that could serve as a tool for the 'charimatisation' of the leader and as link between him and the 'people'. In combination with a democratic-plebiscitary underpinning, charismatic rule by one unmistakably had some potential advantages: while it embraced the 'popular moment' and thus dissociated itself from tyranny, it promised better decision-making capacities than parliamentary democracy, which still had to struggle with the reproach of tending towards anarchy. Charismatic-plebiscitary forms of rule also suggested the ability of transcending existing borders, legal and perhaps even ethical ones, provided that the leader could guarantee that it was for the benefit of the 'nation' or 'whole'. The option of abandoning – at least temporarily – the rule of law and customs, e.g. in order to justify a 'necessary' *coup d'état* or declare a state of emergency, was not least due to the pseudo-religious traits of charismatic leadership. If charismatic leaders were seen as 'prophets' of a new era, chances were high that their political ambitions and promises would be perceived more as a 'creed' than a simple 'political programme'. This was especially so in the (post-)revolutionary age, when the 'cult' of charismatic leadership – which could even nurture Messianistic traits and provide for the idea of a community of fate – served as 'mundane' compensation for traditional religions that were growingly exposed to secularization tendencies.

It is therefore vital to keep charisma – in whatever forms it might manifest itself (e.g., populism) – as a key category of Caesaristic government in mind. This is particularly the case for the one figure in modern history that more than any other is regarded as representative of what many sharp-eyed analysts of European politics have seen as a qualitatively new type of rule both growing out of the Revolution and representing a reaction against it: Napoleon Bonaparte. It was his seizure

¹⁰ For Weber's distinction between three 'pure types of legitimate government' ('traditional', 'legal', and 'charismatic') within his sociology of politics and government see Weber (1980 [1922]), pp. 122-176. The actual basis for Weber's distinction is his concept of *Legitimitätsglaube*, according to which a certain form of rule is legitimate provided that subjects accept this rule as just and valid. See *Ibid.*, pp. 122-124.

¹¹ According to Max Weber, charisma can be defined as a certain quality of an individual, by virtue of which one is set apart from ordinary people and treated as endowed with supernatural, superhuman, or at least specifically exceptional powers or qualities. These as such are not accessible to the ordinary person, but are regarded as divine in origin or as exemplary. On their basis the individual concerned is treated as a leader. On charismatic rule see *ibid.*, pp. 140-142.

and exercising of power that essentially triggered interest of nineteenth-century political theory and philosophy in 'Caesarism'. Let us therefore turn to Napoleon's rise, his system of rule, and the perception of 'Bonapartism' at the time.

The Revolutionary Crisis and the Caesar Question

The 'Great Revolutions', particularly the French Revolution, as an entry for utopian visions of political and social renewal had shattered traditional bedrocks of political life and legitimacy. Revolutionary activism went beyond the mottos of enlightened philosophy: "Sapere Aude!" and "Have the courage to use your own understanding!"¹² It was now also about 'Create Aude!' and 'Have the courage to create your own world!'

But as appealing the perspective might have appeared to design one's own Elysium on earth, rid of the straitjacket of religious (pseudo-)morality and tradition, equally as sobering was public awakening in the French Revolution, when the dark realities of seemingly 'infinite liberty' became obvious in the face of instability, disorder, and economic chaos. The more obvious the 'crisis' became, into which the Revolution drifted, the louder the demands for a 'domestication' or termination of the Revolution were. The chances of and for a figure with 'heroic' appeal to take charge were excellent: the Bourbon monarchy had been immolated on the altar of 'popular sovereignty', but faith in strong leadership had not. Moreover, revolutionary deicide had created a gap which was waiting to be filled by charismatic characters, epitomising stability while not sacrificing the prospect of progress altogether.

It is no wonder that at the sight of the 'revolutionary crisis', the republican model was faced with growing scepticism as well, and that the 'great parallel' with antiquity assumed negative overtones. More often than before, ancient republicanism was now invoked as a warning, as something to be feared, not emulated; major currents of political thought across the ideological spectrum attempted to make sense of contemporary events by example of the Ancient world, Rome in particular, as 'paradigmatic' in a negative sense. Recurring elements of the 'negative great parallel' included the masses as the new barbarians, civil war, and popular usurpatory militarism. This was also the position Edmund Burke took, who asserted that because the new republican regime could not rest upon traditional authority, it would be so unstable as to produce a military dictatorship. A single man would rule by a power unchecked because any limitation would be regarded as incompatible with the revolutionary principles of popular sovereignty. This, in effect, would lead to a regime oriented to dominion and conquest.¹³ French royalist writers took a slightly different line. Maistre, for example, made an analogy anticipating the later use of 'Caesarism' as the term for plebiscitary dictatorship when he emphasised that providence would always deny the people the desire to designate their own rulers. The Roman plebs had enslaved itself by revolting against the aristocracy; similarly, in 1789 the French people, already in possession of all necessary liberties, had

¹² According to Immanuel Kant's famous quotation in his treatise *Zur Frage: Was ist Aufklärung?* (Kant 1999 [1784], p. 20).

¹³ See especially Edmund Burke's *Reflections on the Revolution in France* (Burke 2001 [1790]).

taken up arms against their legitimate rulers. As a consequence, the nation had been enslaved and exploited.¹⁴

However, while a new ‘Caesar figure’ might be perceived as a *bête noire*, one could also see him as ‘saviour’, or at least born of necessity. This was the case if hopes of overcoming revolutionary turmoil by means of a (temporary) dictatorship were projected onto a ‘new Caesar’. In the early years of the Revolution there had been no real ‘candidate’ for this role: while the Marquis de La Fayette did not want to fulfil it, Robespierre could not. The quest nevertheless continued, and the rise of the victorious general Napoleon Bonaparte finally provided a face for the debate which until then had been rather abstract.

Backed by his military victories abroad, Napoleon took effective advantage of the historical chance being offered at 18 Brumaire, and served not only as the gravedigger of the defective political system of the Directorate, but also outmanoeuvred the initiators of the coup d’état around Sieyès who had hoped to use the Corsican to their own purpose. Napoleon took action, and not only the political establishment,¹⁵ but also the people let him do so. A set of conditions made the coup of 18 Brumaire possible: the breakdown of traditional authority and a civilian political consensus; the emergence of the armed forces as the one body holding actual power, but appearing disinterested; the actual or alleged need to prevent chaos; an attitude of acquiescence among the population, particularly since the French saw in Napoleon what they hoped to see.

The new Consular Constitution effectively deactivated parliament and the representative system altogether. ‘Popular will’ was now expressed by a new instrument, which would turn into a permanent *signum* of ‘Bonapartism’: plebiscites. However, what this plebiscitary element was meant to achieve was not providing a means for political opinions to be expressed, but only affirmation of the leader’s authority and policies; thus, an instrumentalized concession to the democratic imperative having emerged as the mantra of the Revolution.

Napoleon actively advanced his authority and power, well aware that his successful policies – domestic as well as foreign – generated necessary popular support. The backing Napoleon enjoyed in the population found clear expression in the plebiscite on lifelong Consulate: while the result of the plebiscite legitimising the 18 Brumaire had needed to be ‘burnished’ by manipulation in order to guarantee a glowing result, in 1802 nothing like that was necessary. Public enthusiasm in France for the Corsican was perhaps never higher than around the Peace of Amiens: the First Consul had achieved peace and international preponderance through military victory, economic stability, as well as the repatriation of most émigrés. All this occurred without jeopardising civil equality, the abolition of seigneurialism, or the transfer of the *biens nationaux*. Indeed, “Bonaparte seemed to be sustaining the most tangible interests created by the Revolution while soothing its most aggrieved victims.”¹⁶ Napoleon’s coronation in 1804 marked the culmination, but somehow also termination of the *système Napoléon*, not least since the – relatively – disappointing results of the plebiscite on establishing hereditary Empire demonstrated the frontiers and fragility of the ‘plebiscitary model’.

¹⁴ See Maistre (1821), e.g., p. 161.

¹⁵ Countering the argument that the break with the Revolution would be too abrupt, Napoleon is reported to have replied as brief as bluntly: “For the Men of the Revolution [...] I am the best guarantee” (Thibaudeau 1827, p. 264), a mantra that the revolutionary elite evidently internalised.

¹⁶ Woloch (2004), p. 30.

Tellingly, the plebiscite of 1804 was the last until the collapse of the regime in 1814, and marked the beginning of an increasingly authoritarian style of rule.

Napoleon was careful to maintain the appearance of being ‘the nation’s tribune’ and ‘Emperor of the French’ rather than ‘Emperor of France’, but at the same time made efforts to draw on alternative sources of legitimacy, most notably rationality and tradition. The long-term institutionalisation of his position nevertheless remained a difficult endeavour, since Napoleon’s rule ultimately depended on the category of ‘success’, military and otherwise. Famously, Napoleon is believed to have said himself that whereas established monarchs could suffer a dozen defeats and still be accepted as rulers by their peoples, he could survive only through continuous victories and was dependent on being perceived as “fortune’s son”.¹⁷ Whether these utterances are authentic or not, they certainly reflect a characteristic feature of his rule, which never entirely escaped a systemic fragility. In the end, it was perhaps not military defeat as such which put an end to his reign. Yet the burden of continuous warfare and the accompanying economic consequences undermined Napoleon’s domestic basis of power and eventually allowed the same political elite in the Senate, which owed Napoleon status and power, to declare him forfeit his throne in April 1814.¹⁸

However, it is a trademark of Napoleon that his ‘myth’ did not end with his defeat, but was rather grounded on and favoured by his failure. In exile Napoleon worked hard on creating his own legacy: he emphasised what would have been possible, if hostile Europe had allowed him to put his visions into practice; at the same time, he played down the authoritarian elements of his regime by arguing that these had been due to the exceptional circumstances of the time, with the reign of liberty and happiness already envisaged for the time after the end of the war(s). Despite actual historical experience, the image of the nation’s ‘saviour’, needed and anticipated by a desperate people, was preserved – an image which allowed favourable analogies with Caesar to be drawn. While the Napoleonic propaganda machine did its best to present the Corsican as an ‘exceptional phenomenon’ of history, even among observers of the time the idea grew and developed that he was ‘singular’: if only in a negative respect. “That he has done much evil, there is little doubt – that he has been the origin of much good, there is just as little”,¹⁹ the “Character [sic] of Buonaparte” was summarised in 1814. In public perception, the ‘great parallel’ to other figures of world history and Caesar in particular was frequently referred to as well, with the main question remaining as to Napoleon’s relation to the epoch-making event of the Revolution: was he the heir and executor of the French Revolution, “die personificirte [sic] Revolution in einem ihrer Stadien”, as Karl Wilhelm Koppe (1777-1837) argued in 1815,²⁰ or liquidator of revolutionary ideals?

¹⁷ Those words have actually been put into Napoleon’s mouth by Metternich. See Metternich 1880-1884 Part 1 Vol. 1, p. 151. It is striking that they appear similarly in Constant’s characterization of Napoleon’s rule in *De l’esprit de conquête et de l’usurpation*. See Constant (1814), Constant (2002 [1988]), p. 98.

¹⁸ On the history of the regime change in 1814 and the restoration of the Bourbon dynasty see Sellin (2001). More generally on the legitimisation of monarchical forms of rule in the 19th century: Sellin (2011).

¹⁹ *Character of Buonaparte*. In: [European Magazine] 1782-1825 Vol. 65 (January to June 1814), p. 395.

²⁰ Koppe (1815), p. 45. The same line of interpretation can be found in recent literature, e.g., Lyons (1994).

This question was – and continues to be – one which is difficult to answer. After Brumaire, Napoleon himself had coined the famous formula *Ni bonnet rouge, ni talon rouge, je suis national*.²¹ Reversely, one could argue that Napoleon carried on both pre-revolutionary and revolutionary traditions. The construction of a hereditary monarchy as well as the (re-)establishment of nobility evoked reminiscences to the *Ancien Regime*. At the same time, links to the Revolution were clearly apparent as well, including those to Jacobin rule. Bureaucratic gigantism and state paternalism, centralisation, a powerful executive branch seeking to legitimise its authority through the incitement of patriotic fervour and thus inclined towards war – all these had been characteristic features of the French Jacobin State as well. What the Italian writer Guglielmo Ferrero later determined as perhaps the most important ‘nexus’ to the Jacobin heritage was that Napoleon’s reign had “saved France and the work of the Revolution, by definitely organising, on the lines traced out by the Convention, the new universal secular protection of the Jacobin State in place of that formerly exercised by the Church”.²² The fact that Napoleon could be seen as the embodiment of secularisation by some observers, while others – including a majority of the French clergy at the beginning of the nineteenth century – hailed him as the providential saviour of the Church and compared him to Cyrus or Moses²³ just underlines still further the ambivalence embodied by the Corsican.

Along with debate about what Napoleon ultimately represented, in which hope and revulsion converged in a way hardly seen in such intensity before in human history, the question as to the actual ‘novelty’ of his regime gained importance as well. All this dynamized the discourse on categories of political (il-)legitimacy, which had been prepared by the tacit and open reinterpretation of classical ‘tyranny’ in the eighteenth century. Napoleon’s regime was seen not only as ‘special’, but also as an archetype of the post-revolutionary age, in which democracy and dictatorship were conflated in a particular way. But Napoleon’s fall also raised expectations that his rule might have been only a temporary phenomenon.

This view was also shared by Benjamin Constant, who in 1814 put forward the first detailed ‘theory’ of what was soon to be termed ‘Bonapartism’ or ‘Napoleonism’. Constant characterised Napoleon’s rule as ‘usurpation’²⁴ based on and converged with despotism, and in his eyes, the regime was illegitimate not only since “the usurper sits with fear on an illegitimate throne, as on a solitary pyramid”,²⁵ but also because it derived from a seizure of power and demanded constant warfare. Despite all his merits in understanding ‘Napoleon’ as an essentially ‘systemic’ phenomenon and challenge, and demarcating Napoleon’s regime from classical forms of illegitimate rule, Constant was fundamentally wrong with respect to the potential which ‘Bonapartism’ might embody in the long run. Not least, he failed to see that it had been ‘liberals’ such as himself who had helped to provide convincing arguments for the abandonment of popular democracy and the move towards a strong state authority even before Brumaire. For a long time, liberal thinkers had

²¹ Napoleon thereby emphasized having neither the red heel which distinguished the aristocrats at Versailles, nor the red bonnet of liberty worn by the extreme Sansculottes during the Revolution.

²² Ferrero (1903 [1899]), p. 207.

²³ On attempts during the Consulate and Empire to make sense of Napoleon’s rise to power with reference to religious exegesis see Thurston (2004).

²⁴ The term ‘usurpation’ had been used before, but in a much narrower and slightly different way than by Constant, e.g. by John Locke in his *Second Treatise of Government*. See Locke (2004 [1689]), p. 397f.

²⁵ In: Constant (2002 [1988]), p. 147.

challenged the republican model; for them, the great mistake of the Revolution and its ideologues was to try to recapitulate Graeco-Roman antiquity and to impose on modern 'public opinion' what was no longer suitable for it. "In the present era liberty means everything that protects citizens' independence of the government", Madame de Staël aptly summarised liberal positions. Thinkers like Rousseau had lost sight of the fact that "public opinion will be based upon the love of tranquillity, the desire to acquire wealth, and the need to preserve it; that people will always be more concerned with administrative concepts than political questions because they bear more directly upon private life."²⁶

But was it not this wish for 'tranquillity' upon which Napoleon's rule had very much rested; the guarantee of stability and the protection of vested rights, in particular for the middle classes – in exchange for restricted political liberty and participation? Indeed, contrary to Constant's optimistic conception of civilisation, 'Bonapartism' proved to be anything but a phase-out model of history.

Bonapartism, Caesarism, Totalitarianism?

By the time Napoleon had come to and fallen from power, the concept of Caesarism – even though not yet termed as such – had made its way into political thought and practice. Touching upon the crucial question as to whether diverging claims of popular sovereignty and efficient leadership, clashing expectations of progressiveness and stability, and seemingly contradictory hopes for 'mundane salvation' and rational government could possibly be reconciled, Caesarism had become and continued to be a matter of keen interest for theorists and politicians alike from the late eighteenth century onwards. Yet while Napoleon certainly played a significant role in popularising the concept, the sheer fact that over time Bonapartism and Napoleonism, respectively, were supplemented and increasingly replaced by the term Caesarism is evidence of the fact that the concept became more and more 'depersonalised'. Rather than just the leadership style of one particular ruler, Bonapartism/Caesarism was perceived as a regime type *sui generis* with certain universal features; one, which, depending on the perspective taken, could either be seen as good or evil, as herald of a better future or simply a disguised form of tyranny, and as such even more abhorrent than open despotism. At the same time, the concept could not remain static over time, given the dynamic processes of change in society, the economy and (political) culture alone. These changes embraced the rise of the social question in the wake of industrialisation and the progressing mediatization of politics, to mention but two.

While changing framework conditions altered the perception of Caesarism among external analysts of the concept and politicians resorting to Caesaristic techniques of rule alike, the reality of Caesaristic government had obvious repercussions on the intellectual discourse as well. To examine the long-term development of Caesarism throughout the nineteenth and into the twentieth century is thus not an end in itself, but allows us to shed light on the mutual conditionality of political theory and practice within an environment in permanent flux. In this context, two questions emerge as central to my enquiry: How was Caesarism perceived as a specifically 'new' (post-)revolutionary form of political rule by both contemporary observers and politicians at different historical

²⁶ Staël-Holstein (1964), p. 129.

moments? How did the flaws and perils, but also possible strengths and promises, considered to be inherent in such regimes, change over time?

No less interesting than tracing the changes of the concept from the late eighteenth century onwards is addressing any potential link between Caesarism on the one hand, totalitarianism on the other. Can we legitimately label Caesarism as a 'prelude' to twentieth century totalitarianism, or are these two distinct phenomena? What parallels or differences can be determined? Drawing a causal line 'from Napoleon to Hitler' does not seem to be particularly helpful, but neglecting any nexus from the outset is no less so.

These questions and the complex 'Caesarism' in general have not been exhaustively dealt with in current scholarship, which is anything but encompassing especially as regards transnational aspects. While in twentieth and twenty-first century research national variants of (modern) Caesarism have been looked at in detail, especially French Bonapartism,²⁷ works focusing on broader European contexts and interconnections as well as theorising in-depth studies on the background of and impetus for the phenomenon and its repercussions have largely remained a *desideratum*. This gap seems all the more astonishing in view of the considerable interest displayed among nineteenth-century observers, but it can be explained by at least two facts: firstly, that (modern) Caesarism hardly fits into the persisting Western *topos* of long-term democratisation and parliamentarization; secondly, that the totalitarian experiences of the twentieth century have absorbed much of the attention in research Caesarism might otherwise have received.²⁸ More recently, growing scholarly interest can be observed, favoured by current political developments that challenge long-established narratives of political progress and pose anew the question of whether and in how far democracy and monocracy/dictatorship exclude each other.²⁹ Nevertheless, it is still too early to talk about intensive scholarly debate which would come close to the keen attention paid to the experience of Caesaristic rule throughout the nineteenth and early twentieth century.

Against this background, an attempt to paint a more general picture of Caesaristic government in a trans-European framework would seem both timely and useful. A contribution can be made both to the history and theorising of a political concept intrinsically linked with the genesis of modern politics and society. Gaining a deeper insight of Caesarism as both a seminal political phenomenon and political-theoretical concept in history allows us not least to better assess its legacy today: a legacy to be seen in the timeless appeal of strong, even authoritarian and personalised, yet at the same time plebiscitary underpinned leadership as opposed to representative government and parliamentarism.

²⁷ E.g., Gacon (1958), Chatelain (1970), Lacour (1971), Mangoni (1976), Mitchell (1977), Chandler (1989), Thody (1989), Magraw (1997), Gluck (2001).

²⁸ See, among others, such influential works as Eric Voegelin's *Die politischen Religionen* (Voegelin 1996 [1938]), or that of Hannah Arendt on *The Origins of Totalitarianism* (Arendt 2004 [1951]).

²⁹ The contributions of Peter Baehr and Melvin Richter can be taken as an example, including Baehr (1998), Baehr/Richter (2004), Richter (2005), Baehr (2008).

Constitutionalism, Legitimacy, and Power: Nineteenth-Century Experiences

Kelly L. Grotke and Markus J. Prutsch

European Constitutionalism Reconsidered

At first sight, to write about ‘European Constitutionalism’ in the nineteenth century appears to be an endeavour which is neither particularly exciting, nor perhaps even fruitful, if one suggests that everything has already been said. But is that so? We dare to say no.

By production of constitutional documents alone, the nineteenth century can reasonably lay claim to being a ‘constitutional age’, one in which the generation and reception of constitutional texts served as a centre of gravity around which law and politics consistently revolved.¹ The present-day routinization of this process, marked by the drafting, instituting, and amending of written constitutions as a means for achieving both internal and external stability and legitimization, should not obscure the novelty of nineteenth-century developments or the conflicts and uncertainties accompanying them; the reassuring sense of inevitability that can attend hindsight is not generally a reliable guide through terrain so clearly marked by historical complexity, plurality, and contingency. If to constitute something is to bring something into being, then what was formed during this period, and to what end? In what ways were constitutional texts related to the revolutionary legacy of attempting to break with the past or to post-revolutionary attempts to ‘restore’ it? Which factors determined the differences or similarities among constitutional strategies in national and colonial contexts, centre or periphery? How did constitutional developments compromise with or challenge existing strategies of legitimization and arrangements of power, whether directly or indirectly? This essay, which reflects the work of a collaborative working group on constitutional history that convened twice over a period of two years, is offered to the reader as a starting point for further reflection on these questions.

At the outset of our project, the working group took two opposing groups of claims – one direct and one implied – as shared points of departure. The former were set down in a working group statement structured by five critical themes:

- 1) Constitutions as Anti-Revolutionary Devices, confronting the claim that constitutions served to oppose or contain revolutionary impulses, thus putting at stake the widespread idea that nineteenth-century constitutionalism is by nature a ‘revolutionary’ phenomenon, one that at very least provided a considerable increase of rights and liberties for peoples around the globe.
- 2) Constitutions and the Justification of New Social Inequalities, scrutinizing practices of identifying constitutionalism with increased egalitarianism, a perspective that implies that the

¹ In concert with many contemporaries, Karl von Rotteck remarked as early as in 1830: ‘Es ist heute ganz eigens das Zeitalter der Constitutionen’. Rotteck 1829-1835 Vol. 2 (1830), 172. In a similar vein, cf. also the entry ‘Constitutionen’ in the seventh edition of the Brockhaus lexicon: Brockhaus 1827-1830 Vol. 2 (1830), 829.

establishment of constitutional orders replaces pre-existing forms of discrimination by increasing equality before the law.

- 3) Constitutions as Promoters of Nationalism, dealing with the relationship between nineteenth-century constitutionalism and emerging nationalism and critically examining the extent to which constitutions either contributed to generating a sense of belonging to a unified national body, or rather instigated or deepened divisions between members of different nationalities.
- 4) Constitutions as Instruments of Imperialism, addressing the question of the extent to which constitutions served as instruments of imperialism, and studying the ways that constitutional means were used in the nineteenth century to exert hegemonic imperial power and to create or maintain unequal relationships between political centres and peripheries based on domination and subordination, whether under the guise of 'progress' and 'civilization' or in some more overt and undisguised manner.
- 5) Constitutions as Legal *and* Political Texts, highlighting the intricacies of constitutionalism as it spans between the spheres of law and politics, which makes constitutions as much a matter of ideological reasoning as of legal reasoning, and exposes them to inherently politicized discourses and controversies.

These themes reflect an initial scepticism regarding any easy relationship between constitutional ideals and constitutional practices. Taken together, they also function as a general working hypothesis about the role of constitutions in the establishment and maintenance of a domestically and internationally imbalanced *status quo*, of which we are the present-day inheritors. This deliberately pointed perspective was intended to draw out embedded problems of legitimization in the field of constitutional study by departing from the claim that in the long nineteenth century, constitutions did not primarily inaugurate a consistent movement towards inclusive, participatory democratization, but on the contrary sanctioned authoritarian and non-democratic regimes and channelled citizen or subject autonomy in directions that served the interests of such regimes, thereby suppressing alternative conceptions of autonomy and setting the stage for new forms of domination.

As a starting point for reflection, such a negative assessment is justified by the palpable contemporary presence of its implied opposite: namely, that (written) constitutions advance political progress, modernity, and stability. The question of the relative adequacy of either of these general claims is what our group set out to examine together, as we engaged in the historical and critical task of negotiating the conceptual distance between these two one-dimensional tendencies, in whatever ways they have been expressed within the disciplines of law, politics, history, and philosophy, from which our working group contributors were drawn. The intention of our working hypothesis has been to provoke potential readers just as we did with the working group's participants, aiming in the process for a better understanding of the dynamics of revolution and reaction so characteristic of this 'European century'. As provocation, the results of the working group are unified by a shared intellectual objective rather than by any collectively dictated perspective or conclusions.

The normative field of tension set up between these two general and opposing tendencies, one allegedly negative and the other positive, allowed at the outset for a range of perspectives and responses in keeping with a multidisciplinary collaborative effort. By explicitly drawing attention to competing narratives, one whose teleology is as apparently dark as the other's is light, we hoped to advance a more credible account of Europe's constitutional past, one that would not prematurely settle on either side of the conceptual divide with which we began our reflections. And while this divide was formulated as a present-day heuristic, it also gains in historical relevance when one considers, for example, the marked 'polarizing tendency' that developed in the wake of the French Revolution, which left European culture struggling with persistent dualisms.² The attendant political dynamics are nicely evoked in Flaubert's sardonic remark that the age of revolutions must be 'always ongoing, since every new government pledges to bring it to an end'.³ Constitutions were important parts of such attempted conclusions. If it is a commonplace that the intensity of normative commitments increases with proximity in time or place, then the nineteenth century is much closer than it seems. This was a period, after all, when the close connection between constitutions and national identities was more or less forged, shaping both freedoms and constraints within the processes of power's dissemination throughout states and empires.

That time may be past, but many of its concerns and templates remain very much with us. Constitutional form and reform are firmly established elements of contemporary political language and practice at the national level – so much so that one of the first steps taken to redress or forestall political crises during transitions of power is often the establishment of a constitution, as was the case after the Soviet Union's collapse and, more recently, in Iraq and during the Arab Spring. Because of constitutional ubiquity, there are now dozens of institutions and NGOs whose missions aim either partially or entirely at advancing constitutionalism and 'the rule of law' in areas all across the globe, many acting under American and/or European aegis. The pervasiveness of the constitutional idiom itself, however, can serve to draw attention away from the consequences, intended or not, to societies, cultures, institutions, and economies undergoing constitutional implementation or reform. The issue of analogous or equivalent processes of constitutionalization at the global or international level and their relationship to national constitutions and laws is currently a matter of considerable debate as well, particularly in the field of international law, where questions of the processes, structures, and mindsets behind extensions of constitutional language have arisen in concert with increasing globalization.⁴ Constitutionalism has also been taken to mark an ideal-normative process of social reflection and self-criticism, even if the recent constitutional changes in Hungary caution against any overly sanguine assessments concerning the results of such processes.⁵ As all of these observations attest, the language of constitutionalism is pervasive when it comes to expressing claims for power and legitimacy, both nationally and internationally. Attention to the precursors of these very present-day concerns is warranted, not least because engaging with the past is an important way of exploring how situated one's own vocabulary, concepts, and values

² Cf. Mannheim (1993), 265.

³ Flaubert (2010), 4.

⁴ See Klabbers (2009); Koskenniemi (2007).

⁵ See Preuss (1990).

may really be. In this respect, it is interesting to consider the recent constitutional struggles of the European Union. An affirmative view of constitutional development clearly lay behind the effort to draft and implement a ‘transnational’ constitution, which failed ratification both in France and the Netherlands and was eventually replaced by the Lisbon Treaty: thus, by a legal form predominant in international law for settling negotiations among sovereign entities rather than for constituting new ones. It is possible to view this attempt, however, as being of a piece with a particular kind of (global) development narrative about constitutions, in which the nineteenth century in particular marked a transition from forms of traditional (monarchical and/or divine) legitimization of authority to parliamentarianism and the sovereignty of the people, a final throwing off of the shackles of despotism in the service of advancing liberalism and equality, with the constitutionalization of Europe signifying a more or less orderly process of advancement towards increasing democracy, eventually putting power securely in the hands of the people. This is a comforting ideal, perhaps, if one is principally concerned with being on the right side of historical progress; but to believe in it as such requires a retrospective subsumption of the many and variegated constitutional histories of Europe and elsewhere within a single, linear vision of legal and political change that takes as normative a sovereign state with clearly defined territorial and national borders, to which of course cultural, religious, or ethnic homogeneities have often additionally reinforced. Yet the picture was not nearly so straightforward. Nineteenth-century struggles and negotiations between monarchical and parliamentary authority caution against any premature generalizations even at the national or proto-national level, not to talk about the imperialist endeavours of the European powers. However great the desire to chart a steady course toward the future may be, simplified perspectives on the nature and direction of historical change, often relying from the outset on idealized conceptions of shared (Anglo-European) political, social, and cultural development, leave little place for the sceptical perspectives readily available even to nineteenth-century observers of constitutional expansion. Consider, for example, the following excerpt from one of John Stuart Mill’s *Examiner* articles, written in the wake of the 1830 Revolution in France, which reveals his considerable doubts about whether (British) national constitutional traditions could be meaningfully transformed into international or universal models and practices:

It is well known that for a century or more, the sole idea which the continental nations had of a constitutional government, consisted of the British constitution misunderstood. They took our own word for the theory of our constitution; and were entirely unaware, that the British constitution has no theory. The works of design and intelligence have their laws, but the fortuitous concurrence of atoms has no law . . . The doctrine, that the British constitution was a compound of the three simple forms of government, monarchy being represented by the king, aristocracy by the upper house of parliament, and democracy by the lower, a conceit which never could have issued from any head but that of a pedant,⁶ passed off among ourselves in a manner characteristically national, that is to say, it served as well as any other form of words to swear by, but never assumed a sufficiently definite signification in our minds, to determine the slightest of our actions. To foreign nations, however, this went forth

⁶ Mill is here referring to William Blackstone. Cf. Blackstone (1765–1769) Vol. 1, 50-52.

as the true theory and approved explanation of the British government, and became the received formula for making a constitution.⁷

Mill's doubts were very much of his time, but they are significantly less of ours, since the constitutional form is now commonplace. Mill's emphasis here is on a crucial misconception, evident in the attempt to theorize and thereby render universal something that was never intended as such. This theorization was hardly unmotivated either, since the quest for law-like universality on the political or legal level was fairly consistently and often unselfconsciously commingled with its opposite: the desire for specifically national pre-eminence within an environment of intense economic competition and strategic balances of power, such as existed within nineteenth-century Europe. But even if Mill's views on constitutional transfer and reception are not taken as the last word on the subject, they point to an important and oft-mentioned divide between the national constitutional histories of England and the Continent, which is relevant to the resources that could be brought to bear when attempting to legitimize constitutional claims by recourse either to tradition or to principle. What can be shown is that the interpretation of constitutions and their provisions can be just as politically or historically momentous as the drafting of them, and the fact that Britain would itself debate and engage in constitution-making in the context of its colonial empire provides further impetus for a closer consideration of the relationships between constitutional theories and practices.

Again, written constitutions are now ubiquitous, giving an air of necessity, reasonableness, and purpose to what was and is very much a matter of political choice, calculation, and struggle. And because it is a well-established field, constitutional history can likewise be burdened by tropes and stereotypes. In what follows, we therefore offer a few reflections on the state and goals of contemporary constitutional scholarship and the function of our critical undertaking therein.

Constitutional History Today

At first glance, it might seem obvious that constitutional history is an integral component of 'political history'. Constitutions may then be understood as one among many facets of the political struggles, debates, and power dynamics with which political history has long been engaged: documents that give order to the form and processes of political systems and in so doing both channel and regulate political life. Despite such close association with explicitly political processes and aims, however, the status of constitutional history within historiography was, and partly still is, far less clear than one might expect. Rather than being integrated into political history, it has often lived an 'extraterritorial' life, on the outskirts of the discipline, strongly influenced by jurisprudence and habitually researched by legal rather than historical scholars. Though the proximity to law is no less obvious than to politics, the predominance of lawyers in the field of constitutional study (a tendency that is particularly, though not exclusively, characteristic of German scholarship) accounts for a certain predictable emphasis: the contraction of constitutional history to the 'history of legal texts', mainly focused on the normative element of constitutions. In general, this narrowing has

⁷ John Stuart Mill, 'Prospects of France, VII' (*Examiner* 28, Nov. 1830, 756f.). In: Mill (1963–1991) Vol. 22, 196f.

taken place at the expense of considering: 1) constitutional genesis, i.e. the often complex processes of how constitutions come into being; 2) the broader political, social, and cultural context in which constitutional developments are embedded; and 3) 'constitutional practice', that is, the use, application, and perception of constitutions after their enactment.

Similarly, transnational and comparative perspectives have been largely underrepresented in historically-focused constitutional scholarship. This deficit can plausibly be explained by the predominantly national organization of both legal and historical scholarship, but even more so by the widespread identification of constitutionalism with the emergence of the modern nation state. While a distinct parallelism between constitution making and nation building is beyond doubt, this coincidence bears the obvious risk of limiting one's view to particular (national) cases, which then tend to be seen as 'absolute', thereby eclipsing other possible reference points.

Given the predominant focus of past scholarship on norms and nations, two requirements of a more incisive constitutional history begin to emerge: on the one hand, widening the scope of constitutional analysis beyond legal-normative aspects; on the other hand, pushing beyond the narrow framework of national case studies. Considerable progress in both regards is already visible within recent scholarship, a development which has been spurred on by a more general disciplinary reorientation under the catchphrases of 'new political history' and the 'cultural turn'. A growing number of constitutional scholars have attempted to overcome the legalistic orientation of the field, broadening their methodologies and expanding the understanding of 'constitution' in the process.⁸ They acknowledge that constitutional history needs to be perceived and practised as the history of political and social life around constitutions, and that this history should acknowledge the political, social, and cultural determinants of every constitutional project in the service of a more nuanced understanding of constitutional time and place.

Likewise, comparative research and studies on transnational and intercultural transfer are also rising. The comparative approach, which had been widely recognized in the first half of the twentieth century⁹ before losing its appeal in the wake of WWII,¹⁰ has been reanimated in constitutional scholarship over the last couple of years as an indispensable tool for highlighting both transnational similarities and national idiosyncrasies. In addition to the comparative method,¹¹

⁸ See for example the project *Handbuch der Europäischen Verfassungsgeschichte im 19. Jahrhundert* (Vol. 1: Brandt/Kirsch/Schlegelmilch 2006), which is keen to apply a broader concept of constitution(alism). On the prospects and limitations of a modern constitutional history see, e.g., Prutsch (2010), especially 'Introduzione: Prospettive e limiti di una "Nuova Storia Costituzionale"', 6-12.

⁹ Ground-breaking steps towards writing 'European constitutional history' were taken at that time by Otto Hintze, Fritz Hartung, and Conrad Bornhak in Germany, John A. Hawgood in Britain, and Boris Mirkine-Guetzévitch in France. See Hintze (1911); Hintze (1970 [1941]); Hartung (1940); Bornhak (1935); Hawgood (1939); Mirkine-Guetzévitch (1931); Mirkine-Guetzévitch (1932); Mirkine-Guetzévitch (1936). On the appeal of the comparative method even in the second half of the nineteenth century, including constitutional scholarship, see Collini/Winch/Burrow (1987 [1983]), particularly chapter VII *The Clue to the Maze: the Appeal of the Comparative Method*, 207-246. Especially comparative law enjoys a long intellectual and institutional tradition. See, for example, Warnkönig 1856.

¹⁰ If comparative research was done after 1945, it was primarily within political science. See, e.g., Anderson/Anderson 1967; Beyme (1973 [1970]); Friedrich (1953); Fusilier (1960); Kaltefleiter (1970).

¹¹ On the state of historical comparison see Haupt/Kocka (1996); Kaelble (1999); Cohen/O'Connor (2004). For a general theory of 'transfer' see Espagne (1994). On the transfer of political 'models' in European history see Velde (2005); Pombeni (2005). A synopsis of comparative and transfer research in

transfer and reception research have become established as promising tools in assessing constitutional ‘exchange processes’ and the role of ‘models’, allowing for interactions between different national constitutionalization processes to be better understood. This can be taken as an indicator of a growing awareness that history and constitutional history in particular need to be studied in a more open manner and go beyond the objects of research taken for granted in the past. The collection of experts gathered in our working group has demonstrated how different disciplines with different methodologies can expand our current understanding of nineteenth-century constitutional history. A comparative study that would have relied upon a set of clearly (pre-)defined parameters for comparison and covered Europe in its entirety was, and is, not intended. Nevertheless, a comparative dimension is apparent across the multiple case studies within the working group, which all pivot around the same five critical themes presented at the outset. Additionally, they advance a more comprehensive understanding of constitutional developments in nineteenth-century Europe by considering both national and international aspects of constitutional development, and by highlighting transnational interconnections and exchanges.¹² In taking this approach, we do not claim to define the field anew, but rather to provide the reader with multiple case studies reflecting their respective authors’ responses to our collective project and its points of departure. Within the panoramic vista of nineteenth-century constitutionalism offered here, there is both complexity and diversity, commonality and interconnection. If the reader’s response to our project as a whole provokes further critical engagement with the methods and aims of constitutional history in general, and nineteenth-century constitutional experiences in particular, our objective will be satisfied. For now, we offer the following reflections on the stakes and challenges of nineteenth-century developments.

Nineteenth-Century Constitutionalism and the Prospects of Historical Reconnaissance

Constitutions posed key problems in the nineteenth century, and these were problems of power. This ‘constitutional century’ was, after all, also a century of revolutions and reactions, with law a key site for the play of political interests. That this is no mere retrospective abstraction may be seen, for example, in the conservative Ludwig von Gerlach’s reminiscences from 1852: ‘We have learned, however, that revolutionary laws are more important than the Constitution, and from this experience the conclusion lies very near that, if one enacts laws that are the opposite of the

the social, historical and cultural sciences is offered by Kaelble/Schriewer (2003). For harsh criticism against the distinction of comparison and transfer see Paulmann (1998). Perhaps the most ambitious attempt to overcome ‘traditional’ historical comparison is the concept of *histoire croisée*. See Werner/Zimmermann (2003); Werner/Zimmermann (2004); Werner/Zimmermann (2006).

¹² This is, nevertheless, with a clear awareness of the ‘limits’ inherent to constitutional scholarship: (nation)states remaining the major units of analysis, even as others are also conceivable; elite-centred levels of analysis, resulting from the ‘elitist’ character of every constitutional project, although constitutional practice and the repercussions of constitutions on everyday life can and should also be taken into account; and finally, the (pre-)eminence of ‘structures’ and ‘institutions’, given the role of constitutions in providing a body politic with institutional structure.

Revolution and dispenses with those that are revolutionary, then the Constitution, insofar as it is revolutionary, likewise must and can be dispensed with.¹³

If our present age considers itself post-modern and post-colonial, the nineteenth century was neither: it was the formative period for many of the ideals and institutions whose excesses, abuses, and (self-)deceptions we now most readily and thoroughly criticize. It is clear, however, that we do not live in a post-constitutional world but rather one in which the gravitational pull exerted by constitutionalism has arguably only increased over time. The possible reasons for this asymmetry bear examination and go to the heart of this volume's rationale, not least since the following essays will offer the reader many occasions for reflecting upon the often difficult and uncertain relationships between constitutional theories and practices during the nineteenth century. Hopes for 'a new song, a better song', in the words of Heine's *Wintermärchen*, often remained just that over the course of the many human lifetimes spanning the century.

Characterized by colonial expansion abroad, revolutionary and reactionary ferment at home, and economic changes throughout, this period also witnessed the establishment of constitution making and breaking as a means for negotiating and compromising between and among both highly abstract and very concrete understandings of rights and justice. Even as various measures of hypocrisy may be taken by gauging the distance between the two, what remains clear is the centrality of the constitutional form as a means for forging social consensus over individual and collective values, protections, and obligations within bounded jurisdictions.

The establishment of this 'consensus regarding consensus' was largely a nineteenth-century effort. And, it signalled different things to different people, as it still does. Throughout, however, the constitutional form functioned, and continues to function, as a kind of formalized, legal promise that the many can somehow be both acknowledged by and integrated within the one, and in a purposeful way that fairly reconciles private with public goods. The legitimization of state power has come largely to rest on this ideal, with elections serving as tests for how well it is being approximated. The constitutional idiom has thus attained some of its resilience from the ways it has pointed toward a negotiated or at least potentially negotiable *status quo* with an ideally forward-looking and stabilizing intent. This forward-looking aspect, moreover, allowed realities to trail persistently behind ideals, with the result that ideals could be considered merely deferred rather than absent. Seen in this way, constitutions are pre-eminently anti-revolutionary devices. But if one looks backward rather than forward, allowing the ideals and realities of the nineteenth century to be brought into a simultaneous relation rather than the staggered one available at the time, the ways that both were mutually conditioning may begin to emerge more clearly for consideration, allowing for a more precise delineation and assessment of nineteenth-century issues to which the constitutional idiom was responsive, in relation to and contrast with those of today. That pursuit is what the critical perspective adopted in the working group work is meant to encourage.

¹³ Gerlach (1891–1892) Vol. 1, 828: 'Wir haben aber gelernt, dass die revolutionären Gesetze wichtiger sind als die Constitution, und von dieser Erfahrung liegt der Schluss sehr nahe, dass wenn man Gesetze zu Stande bringt, welche das Gegentheil der Revolution sind und die beseitigt, welche revolutionair sind, die Constitution, in so weit sie revolutionair ist, ebenfalls beseitigt werden muss und beseitigt werden kann.'

Constitutions have long presented a Janus-faced expression of both universalism and particularism, allowing for considerable flexibility and adaptation. The enduring tension between these simultaneous tendencies, each of whose full realization is prevented by the pull of its opposite, is a feature that marks the constitutional form, its history, and the ordering norms after which it strives, not least because the word ‘constitution’ itself admits of multiple understandings and translations in multiple contexts. To acknowledge this intensely contested array of meanings is to appreciate the above-mentioned gap between present reality and future ideal, and also the ways in which historical work can contribute to a better understanding of their common, reciprocal construction.

On the one hand, constitutions aim at a kind of universality, both in the territorial sense of being jurisdictionally universal, but also in the ways that the same ‘universal’ aims and values of defining and restricting power, creating and enfranchising a body politic, and setting up procedures and parameters for the harmonization of interests are conveyed. Constitutions are also a foundational aspect of the similarly universalizing concept of the ‘rule of law,’ thereby linking them with other, related universalisms, such as human rights. Such interlocking universalisms attest above all to the context in which they function and that in some important way continues to call them forth: a world increasingly global in scope and aspiration. Thus, and in critical acknowledgment of the expansive reach of market economy and its attendant explanatory mechanisms, Günter Frankenberg has recently described constitutionalism as a global(ized) phenomenon, with constitution-making appearing as the exchange of more or less standardized ‘sellable’ goods among the participants within a transnational discursive market.¹⁴

On the other hand, constitutions are intrinsically non-universal and particular, in that they are always (be it explicitly or not) about inclusion and exclusion, demarcating ‘we’ from the ‘others’, and determining ‘right’ and ‘wrong’, ‘lawful’ and ‘unlawful’. In this respect, it is no surprise that constitutionalism proved one of *the* main vehicles of nationalism and jingoism by providing the means for clear-cut distinctions among political entities. Throughout the nineteenth century, one can sense the increasing tension between the now venerably formulaic ideas of the ‘rule of law’, and national interest. And as has already been mentioned, the discipline of constitutional history from the early nineteenth century onwards has predominantly focused on the national and particular dimension of constitutions, bolstering the conception of constitutional history as a field mainly concerned with underpinning or even actively advocating the idea of the nation state, thereby neatly sidestepping the worrisome entanglements of legal universalism. The notion of the particularity or embedded and situational character of law can of course be found prior to the nineteenth century, for example in Montesquieu’s point that ‘Laws should be so appropriate to the people for whom they are made that it is very unlikely that laws of one nation can suit another.’¹⁵ But it was principally in the nineteenth century that such particularism was expressed, often by the language of cultures, nations and destinies.

¹⁴ One of the strongest articulations of constitutional ‘items’ being ‘standardized’ and available on a global market is Frankenberg’s ‘IKEA theory’ of constitutional transfer. See Frankenberg 2003, especially 124-132; Frankenberg 2010.

¹⁵ Montesquieu 1989 [1748], 8.

During the nineteenth century, constitutional ideals were still deeply in the process of formation, underscoring the close relationship between law and political struggle. Further, the centrality of constitutions to nineteenth-century politics raises important questions concerning whether, and in what circumstances, political conflicts admit of ‘legal’ resolution, and also of the extent to which enacted law is itself regarded as an outcome or expression of preceding political contests. Taking up these issues has been a key concern of our collective endeavour: one which allows the complexity of constitutional forms, transfers, and receptions within the nineteenth century to emerge for renewed consideration.

The flexible and expedient is juxtaposed with the rigid and principled, all within the context of a gradual but persistent process of constitutional expansionism, to which we are the present heirs. To understand this inheritance better is to be more aware of the ways in which intensely ordering norms and narratives often emerge on the heels of very disordered circumstances. The present ubiquity and seeming uniformity of constitutional language and appeals runs the risk of dilution by abstraction, with the constitutional vocabulary functioning as an ever-broadening and self-evident frame of reference whose contingent origins no longer enlighten the understanding. Our working group has sought to counter that possible impression by exploring how the constitutional form, while providing stability and order over time, has not relinquished its character as a multivalent, elusive, and highly political phenomenon.

Confronting Teleologies

Teleology and History: Nineteenth-Century Fortunes of an Enlightenment Project

Henning Trüper

Teleology, the project

The word was a success. Invented by Christian Wolff in 1728, with Diderot's *Encyclopédie* and the philosophy of Kant as its most powerful transmitters, "teleology" soon projected itself into the furthest corners of philosophical discourse. Wolff's placid definition held that we "might call Teleology" that "part of natural philosophy which explains the ends of things, and which thus far lacks a name, even if it is most ample and useful."¹ Some two millennia after the Greek philosophers had begun to discuss the status of the explanation of something by reference to an end, goal, aim, or purpose, the issue was antique. It had been overwritten by uncountable theoretical texts and traditions in various languages throughout the vast space of reception the Greek classics enjoyed. It was not, perhaps, so surprising that this palimpsest bore no definitive name when Wolff entered the scene. His seemingly minuscule intrusion into the philosophical mess of the final cause was grave in consequence, since by sleight of hand he temporalized it. As opposed to the dry technicality of the *causa finalis* or the *conatus* (inherent tendency or direction, a Leibnizian term), "teleology" promised the *future* achievement of a well-ordered doctrine, a disciplined *logos* with a clearly and distinctly defined ambit, and a "most ample and useful" application. In a word, teleology became a project. The very term expressed a conviction about what philosophy had so far failed to achieve but would, soon, amend. Even if the future course of the development of thought was not known in detail, the sense of direction was clear. In an oblique and imbalanced manner, Wolff coupled history and teleology. Crucially, teleology was to be self-reflective; it would ultimately include an account of itself since it was itself goal-directed. In this way, history, too, would comprise its own explanation.

Wolff's project was to have a tremendous career, but only as a project, not as an accomplishment. The promise of teleology, in combination with the obscurity that shrouded the possible paths toward its realization generated a great variety of novel theoretical efforts that were grafted onto the older tradition of the final cause. These efforts always failed. Still, they paved one of the most important inroads for the novel conceptions of historicity that emerged in the late enlightenment. Throughout the nineteenth century, and far into the twentieth, and arguably until today, the heritage of this tradition has, if ever more fragmented and transformed, continued to be passed on. Although its death certificates have piled up, teleology's demises were never more than

¹ Christian Wolff, *Philosophia rationalis sive Logica* [1728], Verona: Typographia Dionysii Ramanzini, 31735, ch. III, § 85, p. 25: "Datur [...] philosophiae naturalis pars, quae fines rerum explicat, nomine adhuc destituta, etsi amplissima sit et utilissima. Dici posset Teleologia." For the history of the word, see the somewhat summary article "Teleologie, teleologisch" (Horst Busche), in: *Historisches Wörterbuch der Philosophie*, ed. Joachim Ritter, Karlfried Gründer, 10, (Basel: Schwabe, 1998), coll. 970-77.

local. Through its multiple uses in the modern European “regime of historicity”,² the ensemble of language games and cultural practices constituting various understandings of what it meant to be historical, after 1800, teleology became a future that did not pass. It is this phenomenon that stands at the centre of the volume here introduced.

Bastard physics

The question of ends was a traditional component of physics where it had been placed by Aristotle himself in his discussion of the four different kinds of causation.³ The underlying reason for the presence of the matter in physics was to be sought in Greek mathematical thought. In Plato’s theory of ideas, geometrical figures had acquired exemplary status for the immutable ideas or forms behind the contingent and ever-fleeting objects in perceived reality. In Aristotle’s view, this left open the problem of how to account for the mutability of physical reality.⁴ It was the inability of Greek mathematics to represent movement or change (*kinesis*) that constituted the distinction between mathematics and physics in Aristotle’s work; it was the problem of movement that the *causa finalis* was first meant to overcome. The projection of a given object towards its form, which ultimately coincided with the object’s *telos*,⁵ was to be its highest-ranking explanation since it marked the transition from the mere potentiality to the actualization of form. Entelechy, the immanence of the pursuit of form in nature (*phusis* – defined as that which can be in motion)⁶, became the foremost specialized “teleological” doctrine in philosophy.

When Wolff entered the fray, his intention was to reconcile explanation by reference to the pursuit of ends with explanation by reference to efficient causes.⁷ The protagonists of the so-called “scientific revolution” had rather unanimously dismissed the *causa finalis* as, in Francis Bacon’s words, a “barren virgin”, devoted to God in the pursuit of the inbuilt purposes of all creatures in creation, but unproductive of any such knowledge of nature that would be capable of begetting further knowledge.⁸ There was no future in the knowledge of *tele*. Baconian, Hobbesian, Cartesian, and Spinozist philosophies all focused on the competing notion of a comprehensive and total “chain” of efficient, “mechanical” causes in order to eliminate any space for teleological explanation outside – possibly – the domain of intentional human (or divine) action. Yet, the notion of the world as mechanism seemed to fall short of explaining numerous phenomena, and it laid claim to a kind of universality that was difficult to bear out. Most prominently, as Wolff believed, mechanism failed to answer the question of how mind was able to produce any effect on matter. The

² François Hartog, *Régimes d'historicité*, (Paris: Seuil, 2003).

³ Aristotle, *Physica*, transl. R. P. Hardie, R. K. Gaye, (Oxford: Clarendon, 1930), Book II, 3.

⁴ See *De motu animalium*, transl. A. S. L. Farquharson, (Oxford: Clarendon, 1912), 698a26-28, where Aristotle points out the lack of movement in mathematics.

⁵ Aristotle, *Physica*, Book II, 8, 199a30: ‘And since “nature” means two things, the matter and the form, of which the latter is the end, and since all the rest is for the sake of the end, the form must be the cause in the sense of “that for the sake which”.’

⁶ As in *Physica*, Book II, 1, 193b4-5.

⁷ See Monte Ransome Johnson, *Aristotle on Teleology*, (Oxford: Clarendon, 2005), p. 30f. for useful remarks on the way in which Wolff sought to reconcile efficient and final causes in the passage quoted above.

⁸ Francis Bacon, *De augmentis scientiarum*, Liber III, cap. 5, *The Works of Francis Bacon*, ed. J. Spedding et al., (New York: Hurd & Houghton and Boston: Taggard & Thompson, 1864), p. 298.

mechanists, he charged, had to posit a *qualitas obscura*, an inexplicable *explanans*, on at least one side of the Cartesian abyss between matter – understood as extended, inert, and solid – and consciousness. More precisely, since consciousness seemed rather obviously capable of anticipation and directedness, for the anti-mechanists it was clear that the modification had to take place in the concept of matter. Wolff, for instance, proposed adding what he labelled a specific “moving force” (*vis motrix*) to the understanding of matter.⁹

Wolff’s embracing of teleology was in part motivated by English physico-theology that sought out the evidence for God’s creative agency in the purposefulness of nature. That the translatability into theological concerns had to remain assured was almost taken for granted by philosophers on both sides of the divide over mechanism. Much has been made of the enlightened philosophies of history as a symptom, or a cause, of the secularization of Christian eschatology.¹⁰ However one assesses the plausibility of this hypothesis, the marginality of classical Augustinian eschatology – be it to be opposed, be it to be corroborated as a narrative scheme – in the actual text of the philosophies of history is salient. By contrast, the force of the conceptual debate in physics has often been, but ought not to be underestimated.¹¹ It was this debate that provided the plot; theology was already reduced to acting as *deus ex machina* providing a forced resolution if the action otherwise failed to achieve closure. Arguably, physico-theology remained a bystander, as is illustrated by the dynamics of the Wolffian argument. Wolff’s concerns were expressed through an appropriation of Leibnizian ideas, the reception of which over the course of the eighteenth century, due to the erratic posthumous publication of several of his most important works, was a convoluted affair. It seems clear that his development of the infinitesimal calculus (simultaneous to Newton’s) persuaded Leibniz to posit the existence of unextended, and therefore unqualified, atomic substances. In order to justify assuming the plurality and distinctness of such substances, and also in order to explain the possibility of movement and to legitimize perception of substances as moving, Leibniz concluded that those substances, “monads”, had to be directional. They had inherent goals they realized in an entelechic manner.¹² Strikingly, Aristotle’s mode of argument reasserted itself: the directional principle of the monad coincided with the distinction between potentiality and actualization. The multitude of the actualizations of a monadic form across time was both its movement and direction. Leibniz thus introduced a novel notion of substance into natural

⁹ See the instructive discussion in William Clark, “The Death of Metaphysics in Enlightened Prussia”, in: id., Jan Golinski, Simon Schaffer (eds.), *The Sciences in Enlightened Europe*, (Chicago: University of Chicago Press, 1999), pp. 423-73, here 429-35.

¹⁰ The classical formulation of the secularization thesis is in Karl Löwith, *Meaning in History*, (Chicago: University of Chicago Press, 1949); it was most famously rejected by Hans Blumenberg, *Legitimität der Neuzeit* [1966], Frankfurt a.M.: Suhrkamp, 1996; and from the standpoint of theology by Walter Jaeschke, *Die Suche nach den eschatologischen Wurzeln der Geschichtsphilosophie: Eine historische Kritik der Säkularisierungsthese*, (München: Kaiser, 1976); see also Jean-Claude Monod, *La querelle de la secularization. Théologie politique et philosophie de l’histoire de Hegel à Blumenberg*, (Paris: Vrin, 2002).

¹¹ A less recklessly incomplete sketch of the philosophical genealogy of historicity would also include the terrain of traditional epistemologies, psychologies, and conceptions of memory, which has been analysed in great detail by Janet Coleman, *Ancient and Medieval Memories: Studies in the Reconstruction of the Past*, (Cambridge: Cambridge UP, 1992).

¹² Following the discussion in Robert Spaemann, Reinhard Löw, *Die Frage Wozu? Geschichte und Wiederentdeckung des teleologischen Denkens*, (Munich: Piper, 1981), pp. 114-21.

philosophy, a substance that was “dynamic” and combined in itself both the possibility of mechanist and teleological explanation.¹³ The momentum of creating novel conceptions of ontology fed, above all, on the relation between mathematics and physics, even though Leibniz’s monadology also was a theological doctrine.

In the subsequent decades, cognate programs of re-conceptualizing substance spread through European metaphysics, engendering – across emerging disciplinary fields such as chemistry and biology – a cascade of different conceptions of matter as imbued with a variety of natural forces and immanent directions.¹⁴ At the same time, in the distant field of historical studies, the traditional *ars historica*, the moral-educational paradigm of history as life’s *magistra*, was collapsing.¹⁵ An opening emerged for new notions and approaches of historical writing. Into this opening intruded the new idiom that metaphysics and natural philosophy produced for the purpose of analysing natural reality. Still, this intrusion was not obvious and direct. Rather, it occurred by way of a bastardization that transported the ontological vocabulary of physics into the transforming field of history by way of political philosophy.

To be sure, the convergence of natural and political philosophy in the eighteenth century is not a novel discovery. In the interwar period, it was already commonly recognized that the mediation of nature and politics had been an indispensable driving force behind the emergence of the famed, and defamed, philosophies of history of the enlightenment.¹⁶ However, the eighteenth-century pioneers of the philosophy of history in France, most notably Voltaire and in his wake Turgot, d’Alembert and Condorcet, all sided with the mechanists. As Voltaire had it, physics was to provide the epistemological model for a renewed understanding of history.¹⁷ Until at least the 1770s, the Prussian debate, with its outright (and controversial) discussion of teleology, remained a curiosity at best. Mechanist physics, by contrast, continued priding itself for having struck down the naivety of physico-theology and conquering one of the most important bastions of religious “prejudice”. History was to serve for the identification of the psychological laws that governed the making of human-constructed, civilizational, social and political reality. The essence of humankind, reason, was considered exempt from historical change; yet, this essence still had to realize itself over the course of history by overcoming culturally established impediments and shedding prejudice, particularly regarding the political organization of humans *qua* social and communicative animals.

¹³ Ernst Cassirer, *Die Philosophie der Aufklärung*, (Tübingen: Mohr, 1932), ch. 5.

¹⁴ See especially Timothy Lenoir, *The Strategy of Life: Teleology and Mechanics in Nineteenth-Century German Biology*, Dordrecht: Reidel, 1982; Peter Hanns Reill, *Vitalizing Nature in the Enlightenment*, (Berkeley et al.: University of California Press, 2005).

¹⁵ See Anthony Grafton, *What Was History?*, (Cambridge: Cambridge UP, 2007), ch. 4.

¹⁶ See e.g. Max Horkheimer, *Anfänge der bürgerlichen Geschichtsphilosophie*, (Stuttgart: Kohlhammer, 1930); also Friedrich Meinecke, *Die Entstehung des Historismus*, I, (Munich, Berlin: Oldenbourg, 1936), p. 2 defined “Historismus” as the “application” of the newly developed principles of life in German natural philosophy since Leibniz.

¹⁷ As Voltaire stresses in the ‘Avant-Propos’ of the *Essai sur les mœurs*, written for the Madame du Châtelet in 1740, in: *Œuvres complètes*, vol. 22, (Oxford: Voltaire Foundation, 2009), pp. 1-16, here 16; similarly in ‘Nouvelles considérations sur l’histoire’ [1744], in: *Œuvres complètes*, vol. 28B, ed. Voltaire Foundation, (Oxford: Alden Press, 2008), pp. 177-85, here 177. The question as to the presence of teleological motives in Voltaire’s notions of natural history is complex in spite of his partisanship for Newton.

History thus was conceived as a progressive process of the increasing perfection of humankind, a process over the course of which reason became transparent to itself.¹⁸

Among the Scottish philosopher-historians – who with the French and the Germans form the classical triangle of enlightened philosophies of history – the basic constellation was subtly different, yet led to rather similar results. Responding to a Humean understanding of causality, which undercut the epistemological trust in the recognizability of mechanist causal laws, the Scots nonetheless arrived at a conception of the new manner of writing history as “natural history”, which was both empirical and conjectural and endowed with a notion of gradual civilizational progress as its underlying principle.¹⁹ Like the French debate, however, the Scottish one belaboured the problem of reconciling actual history with contractualist accounts of the genesis of the political commonwealth. On both sides, in spite of the overall mechanist physics, formulations of progress adopted traditional features of the self-realization of form in the inherent teleology of given entities or kinds. As political thinkers whose discourse was framed by a conceptual tradition the power of which matched that of natural philosophy, the enlightened philosophers overwhelmingly relied on variations of the Aristotelian formulation of human nature in terms of a *zoon politikon* that as such had to be a *zoon logon echon* and realized its form or *telos* in the organization of the rationally instituted *polis*.²⁰ The Aristotelian heritage had been fragmented across different traditions. Teleology entered the enlightened reconceptualization of history not by means of an outright embrace of Aristotelian – let alone Wolffian – physics, but through a seemingly minimal opening within a specific problematic in political philosophy. Preserving the linkage between human nature and politics meant that anthropology, though part of natural reality and thus of natural philosophy, defied reduction to mechanism. Nonetheless, teleology remained a rudimentary theoretical idiom in these philosophies of history.

Manifold teleology

In spite of its initial marginality, it fell to the Prussian debate, and more precisely the Kantian critical project, to recognize the bastard child *de iure* and bring historical teleology into its own. Above all, this meant the multiplication of teleology as a product of the proliferation of teleological argument, especially in Kantian philosophy and its aftermath. Kant’s most momentous contribution to the vocabulary of natural philosophy was arguably his explication of the meaning of “organism” in terms of a whole as consisting of parts that were to be understood by way of their inherent purposes for the functioning of the other parts as well as the whole.²¹ Organic reality thus required a set of purposive explanatory means categorically different from the efficient causes that alone were admitted in the mechanical nexus of causality. At the same time, teleology became constitutive, through the powerful vitalist metaphor of the organism, of a novel idea of self-organizing

¹⁸ See Cassirer, *Aufklärung*, pp. 288-95.

¹⁹ See Bertrand Binoche, *Les trois sources des philosophies de l'histoire (1764-1798)*, (Québec: Presses de l'Université Laval, 2008), part II.

²⁰ As famously defined at the beginning of Aristotle, *Politics* I, I, 8-11, 1252b28-1253a18.

²¹ Immanuel Kant, *Kritik der Urteilskraft* [1790], Akademie-Ausgabe I, 5, (Berlin: Georg Reimer, 1913), §65f., pp. 372-77.

complexity. It is hardly necessary to point to the tremendous history of “organicist” perspectives in the nineteenth and twentieth centuries.

In the *Critique of Judgment*, inherent finality was a necessary assumption in order to explain the very possibility of both theoretical and practical reason, and their unity. The decisive passage, in the introduction to the *Critique*, in which Kant stages the overarching understanding of a “principle of purposiveness in nature” as a condition of possibility of theoretical knowledge, teems with references to mechanism and the problem of explaining change in the realm of physical bodies. Kant observes that such explanation relies on a set of principles – such as the variant of Ockham’s razor Kant labelled *lex parsimoniae*: “nature takes the shortest way” – which are underdetermined by reality as empirically given, including the empirical – psychological – observation of the production of knowledge itself. Such principles indicate the unity of experience, which is a necessary prerequisite of the very notion of reason. Hence, they require a non-empirical, transcendental demonstration. Kant goes on to argue that this demonstration can only be sought in the principle that nature itself is purposively structured in such a fashion as to be amenable to our understanding. It is thus the very intelligibility of natural reality that constitutes its teleological character.²² One might easily be tempted to conclude that it is the progressive understanding of this reality that constitutes the realization of its inherent *telos*. This would be a remarkable way of re-interpreting and nullifying the Wolffian project of teleology as a specific field. On the one hand, Kant offers a rule by the application of which any given natural object can be regarded as teleological; on the other hand, the very same rule would deprive teleology of any meaningful limits *vis à vis* other areas of knowledge. Yet Kant’s barrage of carefully staked off concepts for the distinct “faculties” of the mind – most importantly sensibility, imagination, understanding, reason, judgment – prohibits such an escalation of teleology-as-intelligibility.²³

At the same time, teleology-as-intelligibility might have offered Kant a most peculiar entrance into a teleological understanding of history as coinciding with the progress of understanding. Once again, the complexity of theoretical reason in the Kantian system prohibited such a move. Crucially, Kant’s actual works on the philosophy of history rely on a structurally more complex argument that draws especially on political philosophy in order to make its case. His *Idea for a Universal History with a Cosmopolitan Purpose* (1784) sets out an argument in terms of human nature and its entelechic development in the species (as opposed to the mere individual), as forming societies capable of the type of antagonism that ultimately brings forth the historical development of law-governed political systems. Kant is far from embracing an optimistic notion regarding the possibility of building something “straight” from the “crooked wood” of humanity. Indeed, his scepticism as to the validity of his own argument is so great that he requires history to yield merely the symptoms of a progress that will forever be too chaotic and manifold to be known in its entirety. Indeed, history is not intelligible in the same way as nature. Its teleology requires a semiotic procedure that identifies the mere signs of the underlying “plan of nature”. In the *Contest of Faculties* (1798), Kant developed

²² Kant, *KdU*, Einleitung, xxix-xxxviii, AA I, 5, pp. 181-86.

²³ See also *KdU* § 79, AA I, 5, p. 416f., where Kant places teleology, as a “Wissenschaft” in the way envisaged by Wolff, in the mere context of the critique of judgment, denying it any applicability outside this sphere.

further this notion of history as a provider of signs. In his eyes, it was the French Revolution, not in its practical realization, but in the mere impact on the way of thinking of its actors as well as its spectators, the mere *interest* it aroused in humanity, that was the privileged sign of the moral capacities of humanity as a whole, and of their progressive realization.²⁴

The semiotic understanding of history ingeniously avoided the problems that beset historical epistemology, and which had been discussed, under the heading of “Pyrrhonism”, throughout post-Cartesian scholarship. Kant presented not an epistemological but an ontological argument about the material of which history consisted. This material was none other than humanity as a whole, universally. His argument was so structured as to forbid any fragmented conception of this material, regardless of the concession that history’s empirical intelligibility was limited to mere episodes. History was one and only one, it was ontologically unified, and it derived its unity from that of humanity, and more precisely human reason as constituted by “judgment”. This unity – which may have contributed to the growing preponderance of the usage of “history” in the singular in several European languages²⁵ – was achieved by means of the teleological conception of human nature. Ultimately, the basic foundations of historical ontology were laid in the complex idiom of late enlightenment physics and anthropology, which nonetheless had undergone so many reformulations and such a degree of separation from its origins that it had become barely recognizable.

Kant’s argument heavily stressed the self-reflective character of history as the prerequisite of future progress. The only way of sustaining an argument about the historical future, he claimed in the *Contest of Faculties*, was if that future was to be produced by those who made the prediction.²⁶ Therefore, any perspective on a historical future requires to be bound up with notions of agency; and an optimistic perspective had to include a notion of future human self-empowerment of which the very act of thinking about the historical future had to be part. In the Kantian system, freedom and morality coincided. In this way, and in this way only, philosophy was able to have a moral-historical “chiliasm of its own”, as Kant had already put it in the *Idea for a Universal History*.²⁷ The idea of progress that became palpable in this context thus ultimately coincided with such visions that regarded the historical future as finite. In twentieth-century philosophies of history, much has been made, especially with reference to Darwinian evolution, of the opposition of limited progress, toward a determinate end, and unlimited progress into an open, but unending future.²⁸ In such

²⁴ Heinz Dieter Kittsteiner, “Kants Theorie des Geschichtszeichens. Vorläufer und Nachfahren”, in: id. (ed.), *Geschichtszeichen*, (Cologne: Böhlau, 1999), pp. 81-115.

²⁵ See Reinhart Koselleck’s analysis of the “collective singular” “Geschichte” as replacing the widespread use of the plural “Geschichten” in the preceding period) in his entry “Geschichte”, in: *Geschichtliche Grundbegriffe*, 2, (Stuttgart: Klett-Cotta, 1975), pp. 593-717.

²⁶ Immanuel Kant, *Der Streit der Facultäten* [1798], Akademie-Ausgabe I, 7, (Berlin: Georg Reimer, 1917), Zweiter Abschnitt, pp. 77-94, here p. 79f.

²⁷ Immanuel Kant, *Idee zu einer allgemeinen Geschichte in weltbürgerlicher Absicht* [1784], Akademie-Ausgabe I, 8, (Berlin: Georg Reimer, 1923), pp. 15-31, here §8.

²⁸ Though the model for posing the problem thus may well have been supplied by Condorcet who put much emphasis on the openness and the absence of determinate limits on the perfectibility of the human species, though at the same time he defined progress as a march toward truth and happiness, as resulting from a perfected grasp of reality; and clearly, his ideas concerning the perfectibility of the political system envisaged a finite constitution; see Condorcet, *Esquisse d’un tableau historique des progrès de l’esprit humain*

discussions, teleology has often been taken to reside only on the former side, the “chiliastic” one that was built on some notion of redemption at the end of history. Yet, the Kantian argument collapsed both sides into one with the sole help of the concept of “freedom”, and by contrasting the notion of progress “toward the better” with that of an open-ended processuality where there is no stable criterion of improvement. In Kant’s eyes, the very idea of improvement required finality, even where the end can only be approximated in a process of indefinite duration.

Arguably, the most influential teleological philosophy of history of the period after 1800 was that of Hegel.²⁹ In his conception, which was heavily but not perhaps obviously indebted to the Kantian, history was progress toward, and the realization of, freedom. This progress was to take place in the form of the objectivation of reason, the workings of the “spirit” in time, its tireless labour, in the sequence of nations, to give itself form and in this way to know itself. Hegel’s teleology of history was periodic. It was conceived of as realizing forms that were then absorbed into “higher” processes of objectivation. He, too, rejected the notion that there might be no ultimate purpose to the historical process; in his view, this purpose was constituted by the rule of law in the state, which was to mediate the individuals’ claims to freedom with the idea of freedom – the universal and final *polis*. The state of law expressed the most complete self-understanding of the spirit, as a productive, self-objectivizing agency in the world; it realized freedom in the form of the maximal ability to act, the maximally attainable extent of (subjective as well as generalized) agency.

The production of knowledge about history was part of this historical process of the achievement, on the part of human reason, of self-knowledge (though the knowledge of history did not suffice for a full self-understanding of humanity). This was so because the process in question was supposed to be unified and singular; all the diverse histories one grasped when expanding the knowledge about the past formed an interconnected whole. If humanity made progress in its understanding of history, it could be certain that history as a whole progressed. Thus, the scholarly work toward the understanding of history was at least co-constitutive of the teleological character of the historical process as a whole. In a circular structure between the epistemic and the ontological side of the argument, history was always a process of making itself understood. Hegel had abandoned the finely adjusted systematic distinctions between the different kinds of understanding that had prevented, in the architecture of Kantian critique, the equalizability of the various kinds of understanding. By contrast, Hegel established a more confident and more absolute version of the Kantian argument: history was teleological progress towards freedom precisely to the extent that it understood itself, and in the very effort to understand itself, it made itself into an intelligible object.

At first glance, the Hegelian reading deprived teleology of the conceptual multiplicity the Kantian project had borne out. Instead, it universalized history and turned it into the source of teleology. In this way, one might argue, the Hegelian argument established historical teleology autonomously, in independence of the traditional debates of physics. Yet, this notion would be

[1795], ed. Alain Pons, (Paris: Flammarion, 1988), here p. 80f. and p. 294f. for a discussion of the meaning of “indefinite” progress.

²⁹ See Georg Wilhelm Friedrich Hegel, *Vorlesung über die Philosophie der Weltgeschichte, Berlin 1822/23*, ed. Karl Heinz Ilting, Karl Brehmer, Hoo Nam Seelmann, (Hamburg: F. Meiner, 1996). The history of the editions of Hegel’s lectures on the philosophy of history is complex and was marked, until recently, by an almost proverbial lack of philological method.

mistaken. Hegel embraced a philosophy of nature in which in particular chemistry was deployed as a field constituted, not merely by mechanical causality, but also by the teleological directedness inherent in different kinds of matter as orientated toward, or against, their polar opposites.³⁰ Hence, the systematic place of teleology was in ontology and required physics. Yet, historical teleology derived at least in part from epistemological givens that were to be integrated with physics by Hegel's tremendous systematic apparatus. Whether or not this apparatus was functional, and thus able to keep the promise of a theoretical integration of all teleology under one principle, perhaps remains up for debate. In terms of the reception of Hegel's philosophy of history specifically, the systematic aspect was lost. Unintentionally in keeping with Kant's reservations, Hegel's philosophy corroborated the fragmentation of teleology. The mere notion of explanation by goal-directedness, the erstwhile conceptual core of the Aristotelian final cause, drastically underdetermined the theoretical variations and their incongruences as they had emerged until 1830.

The nature of history

Debates in the eighteenth century arrived at novel conceptions of, and about, historicity with hectic frequency. Aesthetics, as a result of the impasses incurred in the imitation of the model of idealized classical antiquity, provided a major discourse of the novelty and autonomy of modernity. Antiquarianism, expanding into ever more far-flung, European and non-European funds of remnants of the past, created a vast body of empirical knowledge that subjected the cultural imagination, and the scholarly exploration, of history to constant transformation. Philology, as it deconstructed and reconstructed the ancient textual heritage, overturned everything from the trustworthiness of the sources themselves to the positive knowledge about, and the normative status of, ancient history. The philology of the Old Testament contributed considerably to purging history of the agency of the deity, thus mirroring the physical project of purging nature from the same type of agency. The political events of the period itself, above all the American, French, and – as increasingly recognized – Haitian Revolutions, have often been credited with introducing a new sense of historical-political change and instability among the populaces of Europe and those under European influence abroad. Legal theories staged one of the most powerful teleological conceptions of historical change towards the perfection of national constitutions and international law.³¹ Adam Smith, in his economic work, introduced one of the key teleological tropes of the novel philosophies of history, the notion of the “invisible hand” of the marketplace, to which Kant's *Naturabsicht* and Hegel's “cunning of reason” were mere responses.³² Malthusian economists invented their own genre of a socio-economic philosophy of history, often with a pessimistic bent and a resulting tendency to the design of projects in the politics of population. The enlightened campaign against religious “prejudice” discredited traditional eschatology, while the reception of the chronologies of Ancient China, and later Egypt, India and Babylon, and the work that historians of

³⁰ Following the remarks on “Chemismus” and teleology in the section on “the object” in Georg Wilhelm Friedrich Hegel, *Enzyklopädie der philosophischen Wissenschaften im Grundriss* [1830], ed. Wolfgang Bonsiepen, Hans-Christian Lucas, (Hamburg: Meiner, 1992), pp. 204-14.

³¹ See esp. Martti Koskeniemi, *From Apology to Utopia: The Structure of International Legal Argument*, (Cambridge: Cambridge UP, 2005).

³² See Heinz Dieter Kittsteiner, *Naturabsicht und unsichtbare Hand*, (Frankfurt a.M.: Ullstein, 1980).

nature, in the wake of Buffon, conducted on the presumptive age of the planet, eroded whatever hope had been left for the preservation biblical chronology.

There have been numerous attempts at subsuming these, and further, entrances into the compound regime of modern historicity under a single overriding and synthesizing principle that would ensure the regime's genetic unity. Some prominent attempts of this kind have been: the secularization thesis; the proposal to regard modern historicity as a function of the experience of comprehensive change in the late eighteenth century;³³ and the great variety of arguments that granted primacy to aesthetics.³⁴ Arguably, the constructions of the history of historicity thus advanced have all proven to be empirically too narrow. Among the passages into historicity that have remained relatively, and unduly, neglected is the one from natural philosophy or physics. Unduly neglected, for physics supplied a foundational ontological vocabulary concerning time and space, change and duration, object and event, unity and difference, direction and repetition, agency, causation and efficaciousness. This vocabulary has been almost self-evident for all European and Europeanized historical discourse after 1800. At the same time, due to its chequered internal history and the multiplicity of its formulations and systemic deployments, for which teleology is the most striking example, the vocabulary was in effect fragmented. It did not correspond to a theory of historical reality comparable to modern theories of physical reality. Accordingly, the passage into history from physics did nothing to salvage the genetic unity of the regime of historicity. Moreover, the physical ancestry of modern historicity also made it improbable that a unified regime over such a disorderly discourse could be constructed by some sort of contractual fiat, be it in the *de facto* convention of collective practice or the *de jure* convention of a fictitious constitutional assembly of historical thought. This is why it is worth dwelling on the periodic returns, and the ensuing multiplication, of that enlightened project, teleology: it provides privileged access to the physical-ontological vocabulary in question. To be sure, teleology did not constitute this vocabulary, but it was able to communicate with all of its components. It was possible for historical writing in the nineteenth century to avoid teleology and still deploy the vocabulary commonly used for historical reality. However, due to the dazzling multitude of ways in which teleology could figure in the overall discourse, it was *difficult* to avoid it. For the same reason, the question of whether or not a specific body of textual evidence contains teleological notions is usually an intricate affair.

The teleologies of intelligibility and understanding, organicism, progress, political freedom and statehood, historical knowledge as self-knowledge, and optimistic finality provided a widely-extended aggregate of low-level theoretical tools. Teleologies provided not only notions of direction and finality that were eminently usable in the construction of accounts of history. Teleologies also lent unity to the objects and events on which they were imposed. As a result of this mode of operation, historical teleologies were among the key vehicles of the formulation of universalist understandings of humankind in the eighteenth and nineteenth centuries as they offered unification

³³ See especially Reinhart Koselleck, "Historia Magistra Vitae: Über die Auflösung des Topos im Horizont neuzeitlich bewegter Geschichte", in: id., *Vergangene Zukunft: Zur Semantik geschichtlicher Zeiten*, (Frankfurt a.M.: Suhrkamp, 1979), pp. 38-66, and id., "Erfahrungsraum' und 'Erwartungshorizont' – zwei historische Kategorien", in: *ibid.*, 349-75.

³⁴ See esp. Peter Szondi, *Poetik und Geschichtsphilosophie I: Antike und Moderne in der Ästhetik der Goethezeit*, (Frankfurt a.M.: Suhrkamp, 1974).

in time to the species at large. Moreover, teleologies provided schemes of the ascription of intentional change effected on the part of some agency, and they provided schemes of complex organization effecting unintended change. Also, since they could be applied both to very large ranges of objects and to small-scale individual objects (including persons), teleologies constituted a highly functional resource for the movement between different scales of historical representation. Similarly, as needed, they set apart or connected the social and natural worlds. Teleologies could serve for constituting an individual object as well as for integrating such an object into a larger systematic or directional unit. Finally, teleology was constitutive of a kind of temporality apart as determined by ends and directionality. Much attention has rightly been invested in the study of historical futures as constituted by the teleologies of past project making. However, teleology was more technical an instrument and it did not depend on temporality as pre-given by, for instance, the phenomenal experience of time.³⁵ Teleological directionality was not bound to the future. The ends of history could just as well be located in the present or, in the form of the target of an envisaged return or merely a vague nostalgia, in the past. Moreover, if temporality is to be regarded as a cultural product – that is to say, at least co-constituted by practical and discursive devices as developed in and among social groups – temporality is capable of being plural. The plurality of teleology may then count among the ways in which such plural temporality is produced.

As demonstrated by this diversity of deployments, at the unravelling of the enlightenment, the theoretical compound of teleology evolved into an indispensable component of historical writing as a *techné*. Ironically, the *nature* of history – its ontology, the range of kinds of objects and individuals it comprised or excluded – was a technical product. The ontology of history constituted a kind of reality that was entwined with its being the target of an epistemic pursuit that, confusingly, was also named “history”.³⁶ This pursuit was a matter not only of a philosophical discourse, but also of a broader practice of historical writing. Teleology was a theoretical device as well as part of the sheer craftsmanship that went into the constitution and the maintenance of the various sections of the modern regime of historicity. A considerable part of this work was a matter of actual writing. Discussing teleology in the abstract forms of theoretical ideas is useful for a variety of purposes but tends to ignore the fact that teleologies were mostly crafted in the form of written text. Historical writing unfolded over a variety of genres and was assembled not only in the academic, but also in other societal contexts. Moreover, the limits between historical and fictional literature, while certainly present, were not impermeable. Fiction, too, comprised a discourse on teleology, which translated into far-reaching changes in the patterns of narration. The requirements of narrative closure began to appear as a burden in specific ways in the nineteenth century and found themselves transformed, perverted, or rejected in multiple ways.³⁷ Teleology constituted a poetics,

³⁵ For much of the literature on historical time, under the influence of Husserlian phenomenology, the concern with phenomenal time, temporal experience as foundational for the understanding of time, has remained paramount; see Paul Ricœur, *Temps et récit*, 3 vols., (Paris: Seuil, 1983–85).

³⁶ As influentially reflected in Martin Heidegger’s distinction between “Geschichte” and “Historie”, *Sein und Zeit* [1927], (Tübingen: Niemeyer, 2001), part II, ch. 5, here esp. §76.

³⁷ For a discussion of this problematic see Philip Ajouri, *Erzählen nach Darwin. Die Krise der Teleologie im literarischen Realismus: Friedrich Theodor Vischer und Gottfried Keller*, (Berlin, New York: de Gruyter, 2007).

and this poetics, however indirectly, also communicated with other than fictional forms and genres of writing.

Historicity and narrative schemes, as marked by the technical device of teleology, were also intimately connected to the sphere of the political as it was reconfigured throughout the tremendous processes of political mobilization that swept Europe and its colonial universe over the course of the nineteenth century. It is hardly surprising that several of the era's philosophers who put forward teleological conceptions of history, notably Saint-Simon and Comte, and Marx and Engels, but also somewhat lesser known figures such as Henry Maine, pursued wide-ranging and ambitious political projects. The intimacy between historicity and the political field can be observed across the constitutionalisms, the state and society-building projects, the emancipatory movements, and the imperial and anti-imperial struggles of the period, Hobsbawm's "Age of Revolution" and its aftermath. Historicization – the assignment, to some carrier, of a specific meaning within the framework of history as established through historical writing, practical commemoration, and other media of representation – was and remains one of the most important resources for deciding whether something was, or was not, political. The historicization of the present developed into an ongoing and ubiquitous practice. This practice involved an ever-expanding application of inclusion and exclusion, of historicity granted and historicity denied. Yet, if historicity was plural, it was also capable of informing the political in multiple ways. This is one of the furthest-reaching issues at stake in the examination the volume intends to carry out.

Revisiting the history of historicity

To recapitulate, the volume this paper announces seeks to explore that enlightened project, teleology in its complicated combination with history, across its fragmentation and multiplication in the nineteenth century. This exploration requires coverage of multiple concrete contexts (completeness is, needless to say, unattainable) as located in a variety of broader areas – especially theoretical discourse, textuality, ontology and epistemic *techné*, and political thought and practice – in which historical teleologies manifested themselves. Neither purely a history of ideas, nor purely a history of literary or political culture, the methodological make-up of the volume will be hybrid, and by necessity so.

The broader aim is to advance a revision of the history of historicity in the nineteenth century. In Walter Benjamin's view, in the period after 1800 the philosophies of history and the practice of historical writing colluded in the creation of a "homogenous and empty time"³⁸ as coinciding with linear and secular physical time, to be understood as a unified and universal frame of meaning for the experience of the world and the determination of the politically possible. This and cognate views of historical time, for the most part dating from the interwar period, continue to exert great influence on the understanding of European modernity as achieved in the nineteenth century. The correlated assumption that the modern regime of historicity possessed genealogical as well as constitutional unity continues to be widely held. Benjamin's formulation is easily recognizable as alluding to a conception of time and space usually addressed as Newtonian in the

³⁸ Walter Benjamin, *Über den Begriff der Geschichte*, ed. Gérard Raulet, *Kritische Gesamtausgabe* 19, (Berlin: Suhrkamp, 2010).

philosophy of the period. However, as sketched out in the preceding pages, the history of philosophical physics and its impact on the reconfiguration of historical writing in the late eighteenth century suggests that an equation of modern notions of historical time with Newtonian physics is imprecise. The very idea that a single, if powerful, conception of time could function as the unifying principle of all modern historicity is thus cast in doubt. Our volume intends to expand on this doubt.

Some indispensable resources for this pursuit derive from the philosophy of history of the interwar period, which has in many respects been foundational for much of the discussion in the decades following the Second World War. Interwar period attacks on the unity of historicity – as in particular represented by nineteenth-century beliefs in progress and continuous betterment – appear remarkably concerted from today’s perspective. In Heidegger’s *Sein und Zeit*, for instance, a primary, existential historicity is derived from the anticipation of death and opposed to a second, mindless and dissipated historicity of the many. Thus, at least a duality of historicities is entailed.³⁹ Benjamin saw in “historicism” the key to understanding the self-defeating embrace of progressivism by social democracy; the destruction of this vacuous historical time, as prefigured in earlier notions of messianic advent, was the *sine qua non* of revolution. Heidegger’s and Benjamin’s philosophies marked extremes of the political as well as the philosophical spectrum; yet, their conceptions of historicity shared decisive features. The emphasis on “historicism” as an agent of alienation required historicity in the nineteenth century to have constituted, or at least reconfigured, the modern historical consciousness in the singular. Characteristically, in both conceptions, the unity of history was to be exploded by an intervention that was envisaged in teleological terms, even if it did not theorize itself in this traditional philosophical vocabulary.

In Benjamin’s conception, it is clear that the revolutionary moment, which he also described as a “tiger’s leap”, was meant to be goal-directed at least in its destructive intention that targeted the all-unifying teleology of civilizational progress. If this reading is correct, Benjamin deployed one teleology against another. The references to messianic time scattered over the first half of *On the Concept of History* and the much-cited parable of the enlightened fake chess automaton also point in this direction: the insufficiency of mechanism and “Newtonian” time. The chess automaton only worked because it was controlled by an undersized human player hidden inside; in the same way, modern historicity was secretly governed by an undersized and crippled theology. Only radical and intentional disruption promised an escape from the secret teleological apocalypticism inhabiting the historical future of modernity.

In *Sein und Zeit*, too, diluted teleological motives configured the duality of historicities. The distinction of primary and secondary historicity mirrored that between the “ontological” and the “ontic” ways of inquiry. Ontic inquiry comprised the domain of objects of science and bore a certain similarity with the world as conceived by the twentieth-century successors to mechanist physics. The ontological question, by contrast, concerned the essence of “being” itself, as accessible to humans in the guise of the essence of being human. Such being was withdrawn from the domain of *physis* not merely by dint of the possession of phenomenological experience as irreducible to scientific description. Rather, being-human was un-physical through its practical and purposive

³⁹ Heidegger, *Sein und Zeit*, part II, ch. 5.

interrelatedness with an irreducibly local life-world: being-there, or *Dasein*. Historicity meant to achieve an understanding of the temporal structure of *Dasein*. Heidegger claimed that secondary historicity, the history “of the many”, was always directed at submerging *Dasein* by imposing on it an ultimately fragmenting temporal structure from outside. *Dasein* had to affirm its primacy by an act of anticipation of its own finality that alone made it intelligible to itself as a unified temporal whole. At a distance, which is enhanced by Heidegger’s choice of terminology, this conception reflects several aspects of teleology as refashioned in the Kantian and Hegelian discourse, not least in the form of a concern with self-observation, intelligibility, and the unity of understanding, by way of a consideration of finality.

Both Heidegger and Benjamin challenged the unity of history and both, as they were driven by a concern with contestation, posited a duality of teleologies as rending historicity apart. In their respective antagonisms, both thinkers took a radically partisan stance. For both, modern historicity was an all-engulfing structure of falsehood that had, or would, become uninhabitable. Plurality, and the actual problems of establishing it by way of argument, was not their concern. Antagonism was the chief argumentative tool they deployed. Such antagonism had just emerged in the immediate past, or only would in the near future, as a result of the epochal rupture of the twentieth with the nineteenth century both diagnosed. Antagonistic historicities, however, had already emerged significantly earlier, and not as an abstract philosophical project, but in historical concretion.

For much of the nineteenth and twentieth centuries, the most important context for such conflict was the ensemble of European colonial and imperial projects. Monotonously, the colonizers had legitimized their rule through the vocabulary of civilization and modernization, progress, backwardness and catching up. This vocabulary deployed the device of placement in history to work out a wealth of distinctions which often went so far as to refuse a colonized population a share in historicity altogether. Local, previously established models of staging historical time, and their respective histories,⁴⁰ were often marginalized or submerged; and other such models, as based on objects, practices, and notions otherwise excluded, appeared in response.⁴¹ On the colonial scene, the transition from the nineteenth to the twentieth century hardly seems to have made a difference. At any rate, it is difficult to try and trace a reception of such conflicts into the conflictual philosophies of history of the early twentieth century.⁴² Similarly, the application of the conceptual apparatus provided by interwar period philosophers of history poses problems of its own in spite of its seeming usefulness for analysing antagonist historicities. For, in the ambit of historical concretion, the dualism becomes merely relational, that is to say, it states the interrelatedness of two different orders of historical time, yet it fails to limit their absolute number to two. Conflicts proliferate and plurality is inadvertently introduced. In view of not merely the historical but also the heuristic significance of colonial and imperial histories, the history of modern

⁴⁰ See for instance Velcheru Narayana Rao, David Shulman, Sanjay Subrahmanyam, *Textures of Time: Writing History in South India 1600-1800*, (Delhi: Permanent Black, 2001).

⁴¹ See Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference*, (Princeton: Princeton UP, 2007).

⁴² The challenges are instructively revealed in Susan Buck-Morss’s endeavor, for an earlier era, to retrieve the Haitian Revolution in Hegel’s philosophy: *Hegel, Haiti, and Universal History*, (Pittsburgh: University of Pittsburgh Press, 2009).

historicity, in the plural, cannot be written as if it had remained confined to the continental container of Europe.

To be sure, in the past, and perhaps also still in the present, European historical writing has continued to entertain more or less secret hopes precisely for such containment. This has been one of the most formidable hindrances to a revisionary understanding of modernity in general and nineteenth-century historicity in particular. Eurocentrism today is, among many other things, also a function of the still widespread intuition that twentieth-century European history is to be regarded as determined by the historical futures of the nineteenth century, more precisely the unkept promises and failed projects of that epoch. Yet, if twentieth-century Europe is the aggregate *telos* of the nineteenth century, the nineteenth century is organized as an epoch in terms of its direction towards its future failure. It is the literature on “futures past”, in Koselleck’s phrase, that has done most to explore the variations of historical teleology in the past, especially in the form of the grand projects that were pursued within a discourse of goal-directed historicity. Yet, ultimately, this literature has often drawn on a tragic employment of history as commented on in the final discourse of the choir, of Europe-as-choir, after the denouement, in full catharsis.⁴³ The problematization of historical teleology has thus often been part of another teleological arrangement – yet another dualist confrontation of historical teleologies.

As one of their mottoes, the curators of the *documenta 12* art exhibition posed the question: “Is modernity our antiquity?”⁴⁴ The “we” in this question is that of Europe as its own tragic choir. The question posits modernity – not merely modernism, as a period of the history of art – as an epoch of universal reference, insurmountable in its determining force for the present: the very function classical antiquity had once performed in occidental aesthetics and politics. The question also suggests that modernity is finished, a self-enclosed whole that cannot now change, or more precisely, yield itself to substantial revision. This closure of modernity reflects the need of its aftermath to see itself as teleologically determined. In the same way, classical antiquity, over the centuries, had become ever more self-enclosed and stabilized, until piecemeal, through the historical and philological work of the eighteenth and nineteenth centuries, it was interwoven with a broader context of Mediterranean and Middle Eastern ancient history. The modern notion of the unity of history as applied to the ancient world ultimately meant cancelling the historical self-enclosure of the classical, Greek or Greco-Roman world. By subjecting modernity to a similar procedure as the one that had once created classical antiquity as a particular unit of historical meaning, it might even be that “we” are still taking revenge, by enthroning a surrogate, for having been deprived of classical antiquity as “our” privileged epoch of reference: choir in search of a tragedy. Since such an epoch is defined as a self-enclosed whole that excludes “us” while it determines “us”, modernity becomes

⁴³ Philippe Lacoue-Labarthe, in his *Poétique de l'histoire*, (Paris: Galilée, 2002), ch. 1, went so far as to suggest that Hegel’s notion of “Aufhebung”, the dialectical sublation so important also to his philosophy of history, derives from a specific debate on the nature of tragedy and coincides with catharsis. If this analysis is acceptable, the roots of the dominant twentieth-century mode of critique of the philosophies of history reach back far beyond Nietzsche who is often credited as its originator.

⁴⁴ See Mark Lewis, “Is Modernity our Antiquity?”, in: *Documenta Magazine No.1, 2007: Modernity?*, ed. Georg Schöllhammer, (Cologne: Taschen, 2007), pp. 28-53, with reference to T. J. Clark, *Farewell to an Idea. Episodes from a History of Modernism*, (New Haven, London: Yale UP, 1999) as the original inspiration for the question.

uninhabitable. The intervention we seek to carry out, in retrieving the plurality – and not merely the duality – of modern historicity, also aims to counter the antiquization of modernity.

This paper does not mean to argue that it is possible, or impossible, to eliminate teleology, or even just tragedy, from history. Neither does it insist that, normatively speaking, teleology, historicity, or temporality *ought* to be plural. It does, however, suggest that historically they have been, and that the present-day tendency to overlook this plurality is at least in part a product of this very plurality. Ultimately, the questions of how to describe and how to explain the plurality at hand also point to the larger question of the habitability of the modern European regime of historicity. We propose a change of perspective taking into account that its inhabitants and modes of habitation have been and are multiple and change in multiple ways; that the *polis* subjected to the regime has been and continues to be rather larger than smaller, and the regime itself much less consistent and comprehensive than has often been assumed.

Vienna 1815 in Perspective: Three Utopias of Peace and the European Search for a Political Economy

Bo Stråth

The utopia of never again

“Never again” was the motto that guided the Vienna peace congress in 1815. Never again a revolution that threw Europe into chaos. A future world of order and stability was envisaged. Through international rules and agreements this ordered world was to be established. Restoration was a key concept guiding the peace-makers. Most of them realized that it would be impossible to go back to the antediluvian time of the ancien régime, that reaction in the verbal sense of the term was impossible, but as much as possible of the old order had to be retrieved through restoration, although certain reforms might be necessary. They changed to avoid change. The compass needle towards the goal of no more revolution and no more dangerous democratic experiments oscillated between restoration and reform. The project was about re-construction. The goal was nourished by beliefs in the potential of economies of growth through commerce and distribution of labour.

Very soon the stability plans proved to be wishful thinking. The point here is that utopian thinking about permanent peace through permanent stability prevailed amidst the peace negotiations which have been referred to by posterity under the label of *Realpolitik*, the patient search for compromises and balances to interest differences and power conflicts.

“Utopia” is a contentious concept full of diverging meanings. Negative connotations of a dreamlike divorce from reality compete with positive appreciations championed by, for instance, Ernst Bloch, in his outline of the principle of hope, or Karl Mannheim, with his term “utopian consciousness”. However, irrespective of whether with a positive or negative connotation, it is striking that no author wants to be labelled “utopian”.¹

The title of Johannes Kühn’s (Reinhart Koselleck’s PhD supervisor) inaugural lecture at Heidelberg University in 1949 was “*Geschichtsphilosophie und Utopie*”, “Philosophy of History and Utopia”. Its primary focus was on the role of utopias in history.² Kuhn described a tension between a philosophy of history which outlines a totality connecting past, present and future, and a utopia which denies this totality and divides history into development so far, which is erroneous and therefore does not need any consideration, and the future, which will bring a correctly regulated and permanently felicitous state of affairs.

According to Kühn, the utopian consciously or unconsciously envisages a particular kind of human, not the dubious and contradictory beings that we know ourselves to be, but rather one which is fundamentally good and which exists outside time. Rousseau’s *Du Contrat Social* (1762) is a sharp and occasionally naïve portrayal of a social constitution with a biting opposition between an erroneous past and a correct future. This contrast was also depicted by Condorcet, Saint-Simon and

¹ Hölscher (1990)

² Kühn (1951)

Comte. Comte's altruism, for instance, as seen in his outline of positivism, formed a human morality on which a hierarchically-scientific labour society was to be built.

The fact that Karl Marx referred to his doctrine as scientific did not make it less utopian. Nietzsche might, at the first glance, be seen as the antipode of Marx, but he, too, divides history into a past which is judged to have been erroneous and a final, correct stage in which the powerful will of philosophers and artists will endure for millennia. The content of this utopia differs from the vision of Marx; however, Nietzsche's vital, great and powerful superman (*Übermensch*) belongs to the same genre as Marx's proletariat. The utopian visions deal with lasting valid conditions in a history without time, a final stability.

The transition from religious to secular utopias was part of the enlightenment project. In his final work, Saint-Simon outlined the coming industrial society as *Le nouveau Christianisme* (1825), and this text was equally his contribution to the debate on the social issue. The motto of the Communist manifesto was fraternal love, an originally Christian *Denkfigur*. A third stage of utopian deployment (following religious and secularised versions of an end-time) came with the attempt to realise the utopian spirit through a great revolution.

Kühn emphasises that it was not only socialism and pacifistic internationalism that had utopian origins. He argues that the same was true of democratic societies and liberalism as well as the many versions of nationalism present during the second half of the nineteenth century. Nonetheless, in his view it was "the gigantic worker armies...[which constituted] the proper infantry of the utopian strategies of the intellectuals".³

Kühn's critical view is that utopian thinking has developed great and strong progressive historical forces. Not everything in the imagery of a utopian future is impossible. Only the hard core of the utopia is impossible, the belief that social conflicts and change can be abolished.

The utopian moment is recognizable when the parol of "never again" is uttered. Historically, "never again" is certainly formally true in the sense that history never repeats itself. There are reiterative structures, *Wiederholungsstrukturen*, but the point is that they are always connected to ever-new elements. Therefore, no historical situations are identical, although they might be similar or analogous.⁴ However, "never again" is utopian in the somewhat different sense that it maintains that social conflicts and claims for change of human conditions can be avoided through legal arrangements. The belief in the elimination of conflict and in the predictability and management of the future through international rules and agreements constitutes the core of the utopian fantasy; this belief runs the risk of contradicting the puzzling and enigmatic nature of life itself. Every philosophy of history is aware of the invisible, ambiguous and enigmatic dimension of social life, the self-same point that the utopia tries to deny.

There is a huge stock of academic writings about utopia. The intention here is not to get involved in that debate, which is hard to grasp. The utopian dimension of relevance here is the belief, beginning in Vienna in 1815, that international stability based on national stability could be achieved through the "depoliticization" of interstate relations by means of a legal straightjacket in the form of a peace treaty and by the grease provided by various models of political economic

³ Kühn (1951): 10

⁴ Koselleck (2003)

growth. International and domestic order and stability could be established by legislation. In *From Apology to Utopia* Martti Koskenniemi has developed a critical view on international law and politics, which in the nineteenth century with the emergence of a professional cadre of international lawyers, as part of their self-understanding, were seen as clear-cut separate units.⁵ International law set the rules of the game of politics. The political arena was enclosed by the rules. In fact the rules were not separated from politics but intertwined with it, and seemingly clear-cut legal key concepts such as “sovereignty”, “aggression”, “self-defence”, “war”, “intervention”, and so on, were and are notoriously ambiguous and can be interpreted in various ways, even by experts. “Aggression” in one interpretation is “self-defence” in another.⁶

Koskenniemi connects to Kühn’s idea (without directly referring to him) of utopia as a separation between a past that was worse and a future that can be made better, by the assumption that politics begins with the negative. Something is found to be bad, and it is argued that it can be made better. This argument connects to the Kantian thought of perfectibility: permanent social improvement through the use of reason. The core of the better society ahead is that oppositions are transcended or diluted. Through the compromise between extremes a middle ground is found on which conflict is transformed to consensus and polarization to *détente*.

The unjoinables are joined in this imagery: liberty and equality, individual freedom and collective solidarity. It was exactly this middle ground that the peace-makers in Vienna were looking for in the name of the balance of power and of interests. This balance was the key to harmony. Outside Europe global free trade and international distribution of labour would provide harmony. The economic growth in the wake of commerce and distribution of labour would provide domestic harmony. The balance did not exclude wars, but the wars that might occur were controlled and limited, reminiscent of the good old cabinet wars far from the Napoleonic mass mobilization. This imagery is something different than the *Realpolitik* conventionally attributed to the Vienna peace. Conventional international relations analyses of Vienna have failed to see the utopian dimension of the argued stability.

The utopian moment in Vienna was the belief in stability through interest and power harmony. The utopia of a legal framing guaranteeing an ordered world was strong. The belief in it remained for many decades despite the fact that the rules set in Vienna could not, against the expectations of the peace-makers, prevent trespasses of the normative order imposed upon Europe. Responses in the form of cracking down on unrest and revolts when nationalism spread in the 1820s as a matter of fact demonstrated that it worked. They were also part of the utopia for stability. In the end, the attempts to quench the revolutionary fires certainly lost credibility, but the order still worked in the reaction to 1848. When the erosion of the order speeded up in the wake of growing social unrest in Europe, and increasing European conflicts in the Balkans and in the colonial world (“social imperialism”), the legal framing, which had been trespassed, continued to be

⁵ Koskenniemi (2005) [1989].

⁶ Koskenniemi (2005) [1989]. See also, Hippler and Vec (2014). The languages of war and peace are full of paradoxes where legal and political actors on the international arena say peace and mean war or talk about war for peace.

relevant, but now as apology, as a point of reference and an excuse for not obeying to it. The trespass was argued to be just an exceptional case, which did not change the norm.⁷

The utopia was an arrangement of power which was contested from the beginning. The utopians themselves were blind to this contention, since they believed that they had formulated some historical necessity or logic of 'never again'. When their belief was soon confronted by the alternative ideas of people's sovereignty, nationalism, citizen's freedom and customs protectionism the utopia became ever-more apologetic. Apology meant increasingly heavier oppression in order to protect the motto of "never again." The utopia was from the beginning, in 1815, viewed from different perspectives, although for the peace-makers there was only one view, but over time its initial refulgence declined and the language of apology grew. Utopia and apology were like two communicating vessels, when the one increased the other decreased. Protectionism never had a breakthrough as an alternative utopia, but was from the 1870s onwards used as an apologetic argument about a necessary but temporary exception from the free trade principle.

The 1815 utopia was based on a mix of politics and economy: repressive domestic life if necessary reforms did not help to legitimize authoritarian rule went hand in hand with arguments for global free trade, authoritarian domestic rule with the revolutionary implications of free trade. The key to the Vienna utopia was that Friedrich Gentz, its architect and the secretary of the conference and the right-hand man of Metternich, understood and satisfied both Metternich and Castlereagh. Nevertheless there was a paradoxical Hobbesian-Kantian-Smithian tension between the domestic and the global in the utopia. The solution to the tension was that the rhetoric of free trade described a British hegemon which ruled the waves and was the guarantee against a new French eruption of power. Britain was the world police who cooperated with the continental police represented by Metternich. Russia tried to cooperate with both these police forces, but could not prevent growing tensions in the world police. In addition, Britain was seen as the key to economic growth, which, in turn, was the key to domestic peace. Nobody understood these relationships better than Friedrich Gentz who had begun as a student of Kant and ended up as an admirer of Burke.

Legal arguments legitimize political actions *ex post*, law as apology. The conventional distinction between international law and politics assumes law to be more objective than politics and, at the same time, that legal norms are both concrete and normative. A legal doctrine with much concreteness in the interpretation of specific cases seems to lose its normative nature and end up in descriptive apology. A truly normative doctrine, on the other hand, creates a gap between law and politics where law ends up in undemonstrable utopia.⁸ The language of international lawyers is a grammar, which can be used in concrete situations in various ways in terms of pro and contra provided one masters the grammar professionally. The legal expert language provides ambiguous input to the political processes under the label of legal clarity.⁹ As Koskenniemi demonstrates, the antimonies of politics and law, ideology and legal utopia are entangled with and constituting one another, but they can be opened up by critical conceptual analysis.

⁷ Koskenniemi (2005).

⁸ Koskenniemi (2005): 54-60

⁹ Koskenniemi (2005): 563-576

On this point Koskenniemi comes close to Michael Freeden, who in his analyses of liberalism argues that the connection between language and action – law and politics in the phrasing of Koskenniemi – is not necessarily intentional in a perspective of rational choice, but quite often action comes first and the legitimising language afterwards, law as apology in the conceptualisation of Koskenniemi. Ideologies provide arguments in a big conceptual arsenal where the arguments can be picked up and combined in mutative ways, rather arbitrarily contingent on the context. There is no cohesive and unambiguous socialism or liberalism but only ideological arguments of various provenance incessantly brought together in new combinations to provide contextual orientation.¹⁰ However, the belief that there are cohesive norms that structure and order “the real world” is nevertheless a powerful political instrument, law as utopia.

When the utopian force and the beliefs in the norm eroded, such as when growing poverty was observed in the wake of growing concentration of property, the solution was to repeat it at a new level: for example with the restriction that freedom to own was not allowed to do harm to other persons. This only meant that the conflict reappeared with the question of what harm was and how much harm could be allowed.

War for peace, just and unjust, liberal and illiberal are other binary examples in addition to liberty and equality, which are joined in the utopia of arriving to the stage of depoliticized politics. As a matter of fact the distinction between such opposites is razor thin. To take a recent example, the caricatures of the Prophet, where the vocabulary of tolerance is mobilized to legitimize practices of intolerance in the name of freedom against that which, from other perspectives, is called blasphemy. The meaning of seemingly clear concepts shifts to their opposites like a chameleon changes colour. Law is both utopia, in the sense that it tries to define the middle ground of no conflicts and frame it with rules, and apology, in the sense that legal arguments are brought forward in order to retrospectively justify political decisions. Law describes why what happened should happen. Law lapses into what seems like normative prescription but is political justification, an apology for politics. However, law is more than concrete comment on and ex-post legitimization of politics. While law emerges through politics it is also assumed to remain separated from it, binding politics irrespective of interests and opinions, setting a normative frame of politics. Law, in our case international law in particular, has a dual character, normative and prescriptive on the one side, and concrete and descriptive on the other: law as utopia and as apology.¹¹ The norm is like a straightjacket on politics and politics is the continuous adjustment to and reformulation of the straightjacket, even the attempt to get rid of it.

This complex relationship between law and politics became the target of attack by Carl Schmitt (1888–1985), lawyer and state theoretician, believing catholic right revolutionary and critic of the prevailing order, who in *Political Theology* (1922) in an authoritative phrasing stated that the sovereign is the one who has the power to declare a state of emergency. He excavated down through the established layers of philosophical-political exegeses on the execution of power to the zero ground of the control of the exceptional case, to the proclamation of politics without alternatives irrespective of what legal rules there might be. Five years later, in *The Concept of the*

¹⁰ Freeden (1996), (2005), Freeden, Humphrey, and Talshir (2006), cf. Stråth (2012)

¹¹ Koskenniemi (2005 [1989]: 17-19.

Political (1927), he added an icy definition of the deepest essence of the political: the distinction between friend and enemy.¹²

Schmitt attacked the prevailing liberal legal positivism where universal law was equal to existing law and to the concrete practices of the legal practitioners, who pretended that they were operating within a covering law order prescribing how legal decision were to be rationally executed, which put the legal above all suspicions of arbitrariness. The legal decision was, in the view of Schmitt, based on naked power rather than universal law. The relevant question dealt with who had the power to interpret the law. Schmitt indicates an obscure legitimacy in the mere force of action.

Schmitt no doubt hit the blind spot of liberal understandings of law as a universal order framing politics. However, his own blindness, hand in hand with his critical perspicacity, was that he failed to imagine legislation by politics as a potentially progressive force which through criticism of prevailing institutions might have positive impacts on the normative developments. Law does not stand above politics but is made and remade by politics, it deals with continuous political adjustment to and reformulation of the legal straightjacket. Continuous criticism as the essence of the political must not necessarily end up in the exceptional case where there is no alternative. Politics is, or at least should be, a struggle about alternatives.

The utopia in Vienna was the belief in the legal enclosure of politics and that this enclosure, through Hobbes in domestic terms, through the monarchical solidarity of the Holy Alliance in external terms, was the key to stability. It was a utopia because the legal enclosure was not an external frame but was made from within by politics. The legal enclosure was not stable but continuously re-negotiated through politics.

Vienna demonstrates that utopia is not necessarily revolutionary apocalypse but can be deeply enchaind in everyday politics. Besides the apocalyptic utopia there is also the everyday utopia, the belief in future as progress, and at the same time stability through managing and mastering the world, the belief in a project with a clear design and architecture. Utopia is an instrument in the contested territory and grey-zone between the extremes of revolution and anti-revolution, where history is a struggle about the future, where politics is muddling through, and where there is a continuous negotiation and re-negotiation of values. The utopian belief in a stable regulating order and in some permanence provides some clarity in this foggy terrain. Utopia has in many readings an eschatological subtext, readings that suggest that we in an easy and clear way can distinguish between good and evil, a Manichean reading, where at the end utopia freezes history. However, utopia is not necessarily about taking heaven down to earth. There is also the everyday utopia at a somewhat lower level of expectations but still with a belief in some stability and permanence through a regulating norm order, regulating “reality” as utopia where experiences of instability and fragility prevail. This everyday utopia sheds light on the way the three utopias of peace and of never again in Vienna 1815, Versailles 1919 and Paris 1951 emerged as well as on the theories of a political economy for stability that accompanied the peace utopias.

Focusing on utopian thinking in years like 1789, 1830, 1848 and 1917 would be a conceivable alternative approach. However, such an approach would lay out how utopian energy around the concept of freedom was turned into its opposite when the revolution got stuck and was enmeshed

¹² Schmitt (2006 [1922]), Schmitt (2007 [1927]); see German original Schmitt (1922), Schmitt (1927)

and caught in its own ideology or collapsed through the strength of the antirevolutionary forces. This story has been told many times and there would be little new to gain. The revolution destroyed the existing order and itself. The teleology became eschatological. However, the story contains little about what happened after the revolutions when efforts were undertaken to stabilize and control the revolutionary energy. There has been little attention paid to the post-revolutionary stabilizing utopias designed in such situations.

The interest here is in exactly this set of utopias: those that try to stabilize, to prevent dramatic change, to “freeze the time”, to organize an order ever more conceived in terms of progress, which is not to say that everybody wanted progress – many feared it. Utopias emerged to prevent or slow down what many called progress, as in 1815, or they tried to combine progress and stability, as in 1919 and 1951. The organization of stability and order appealed to law, in particular international law, which was mobilized as a stabilizing instrument and as an obstacle to the reiteration of revolutionary violence. The utopian beliefs in law as a frame of rules standing above politics prevailed in these situations.

The ex ante normative utopia of legal ordering of the economy and the world and the ex post legitimizing language of apology were not separated from but closely connected to what was perceived as the economic and political realities. Utopia dealt with the immediate problems of the day. One might talk about the political esthetics of the two main categories of utopia and reality.

The Vienna peace utopia

The Vienna treaty was based on a utopia of never again designed by Friedrich Gentz. The utopia had two connected dimensions, a domestic and an external. As to the domestic policy the aim was to prevent new social unrest or revolutions. There was a general insight that the world of the ancien régime was gone and could not be reestablished as it had been. However, as much as possible of the old order had to be restored according to the victors. Some concessions and reforms had to be undertaken but not more than necessary. Restoration rather than reaction was the motto. If, nevertheless, social unrest recurred it had to be confronted with as much violence as the situation required. From here the link from domestic social peace to external inter-state peace was made. The crushing of revolts was based on monarchical solidarity and international cooperation. The victors committed themselves to support each other in the case of domestic problems.

Both dimensions of the peace treaty – the domestic and the external – were instruments to guarantee the dream of stability. In a turbulent time there was a quest for stability. For Metternich the balance of power between the European states was the instrument to maintain stability and when the balance was threatened through social unrest – the fear on this point was liberal nationalist claims for people’s sovereignty – monarchical solidarity would restore it. No violent domestic overthrow of displeasing sovereigns and no attempt by a power to become too powerful and disturb the balance would be tolerated.

Friedrich Gentz’s utopia of stability connected to and reconfirmed this peace strategy. On the domestic front necessary reforms had to be undertaken to guarantee legitimacy. Gentz believed in a legal framing of the political. Law defined the limits of politics. Domestic social problems would be mitigated through economic growth before they threatened the overall international stability.

Growth through global commerce was the part of Gentz's utopia that would guarantee peace in both the domestic social and the external interstate dimensions. The classical economic theory in the wake of Adam Smith would solve possible domestic as well as interstate conflicts. Gentz was – as mentioned – a warm adherent of Edmund Burke and had translated his book on the revolution in France. Burke, like Smith, envisaged a world of fewer conflicts through global commerce. Britain was, in the mind of Gentz, the convincing alternative to Napoleon. Britain was the symbol of simultaneous stability and progress.

What Gentz, with reference to the classical theory, labelled global free trade was nothing but British hegemonic global power. Gentz realized this, but believed in the hegemon as a model to emulate. Everybody should be like Britain through industrial capitalism and free trade. Even if the growth of the economy was bigger in Britain, all nations participating in this global order would benefit, and with growth for everybody there was no need to thematize the fact that the British economic power would increase more than that of its competitors.

Gentz avoided discussing the tension between the national focus in the domestic dimension of the utopia and the transnational in the imagined global free trade area. Others identified this tension and reacted to it, such as the contemporary Johann Gottlieb Fichte, with his idea of the closed commercial state as the best way to promote development, and, some twenty years later, Friedrich List, with his sketch of a free trade area protected by the tariff wall of a customs union. Customs would serve for a while to protect new industries before they had gained the sufficient experience and strength required for survival in competitive markets, in particular for competition with the powerful British industry.

Arguments for protectionism did not fundamentally change the general belief in free trade, however. It remained in many respects a belief, an ideal type on the horizon. A really global free trade order never emerged. The substance of the order in the 1860s, when the free-trade language culminated, was a series of bilateral free trade agreements for a selection of commodities varying from case to case. Through the most favoured nation clause, with an obligation to apply reduction of customs in one agreement also in agreements with other nations, the overall customs level abated, but this did not mean that there was a general free trade order. The general confession after Vienna to free trade went hand in hand with practices of protectionism.

The real challenge to the global British commercial hegemony in the name of “free trade” would come in the 1870s when Bismarck, after the German unification, began to challenge the British global power and when in the wake of the long economic stagnation beginning with the crisis in 1873, at that period called the Great Depression, the claims for customs protection grew in strength.

Metternich was a continental power player in Vienna, interested in balance of power for continental stability. Castlereagh was a global player, certainly interested in continental stability, but outside continental Europe he did not want any peace regulation but free rein for Britain to rule the waves. The Balkans – that is, on the Mediterranean – and the oceans with the colonies were consequently not part of the peace treaty. The other winner, Alexander I's Russia, could expand in Asia unthreatened. The European power axis after Vienna was between the sea power of Britain and the land power of Russia. Around this axis tensions emerged, in particular in the Balkans, but

also in Afghanistan, for instance, in what became the East–West conflict of the nineteenth century. The peace treaty regulated the continent but not the world.

The peace treaty of Vienna in 1815 has been seen as the work of Clemens von Metternich, the Austrian Chancellor, despite the fact that the two winners against Napoleon were Britain and Russia, represented in Vienna by Lord Castlereagh and Alexander. There is a paradox on this point.

The two main victors were certainly interested in continental stability, but in particular they wanted unregulated opportunities for expansion. This explains the paradox. The victors handed over the continental solution to Metternich, interested in continental stability as they were. Although this was not their primary goal, in particular not Britain's, they certainly had opinions and positions here, too. The point to be made here is that what was not included in the Vienna peace treaty – the issue of global commercial power – says as much about the power relationships at the time as what was included. This point has been ignored in most International Relations theory, which has the Vienna peace as perhaps its most important historical point of reference.

The peace treaty regulated the national question triggered by the French revolution and Napoleon, but there was little attention to the social question, which emerged in the 1830s as a new domestic problem in the wake of the spread of industrial capitalism. Gentz and the other peace-makers did not see any major problem here, but thought that economic growth would solve social problems.

During the “Congress era” wars in continental Europe certainly decreased, although the wars of the Italian and German unification between 1859 and 1871 confronted the borders regulated in Vienna. The other international wars during the century after Vienna were either about the spatial order in South-Eastern Europe and in the Ottoman Empire, or about colonial possessions. On these fronts there was no peace regulation and no stability. The European battlefields were exported. Attempts initiated by Bismarck to regulate the Balkans and the scramble for Africa through conferences in Berlin in 1878 and 1884 did not prevent the developments. The European wars were not only exported. They were also transformed into internal social conflicts. The number of civil wars increased and “‘the Revolution’ came to no end.”¹³ The national and the social issues triggered the revolutions. The domestic dimension of the peace design for stability failed because of the failure to come to terms with the connected national and social questions.

Not only the role of the non-European power situation and conflict potential but also of the domestic national and social conflict has been ignored in conventional International Relations theories, which see Vienna as the model for stability through the balance of power. Instead of overall stability, Vienna meant that stability on one point was instability on others. The domestic and the global dimension of the Vienna peace negotiations disappeared when the IR theories began to see the Vienna treaty as an ideal type of stable interstate relations with the states as black boxes, and with little place for the world beyond continental Europe and inside the state borders, for economic and social influences.¹⁴

¹³ Koselleck (1969): 199-229

¹⁴ The argument is developed at length in Bo Stråth, *Three Utopias of Peace. The Bicentenary European Search for a Global Political Economy Since 1815*. Forthcoming: Ch 1.

The two dimensions of the peace utopia were framed by the rhetoric figure of the enlightenment philosophy, which argued that world peace would emerge through commerce. A web of commercial transactions and division of labour would weld together the world and decrease the lust for war. However, as opposed to this enlightenment thought there was also the opposite argument that competition about economic market power promoted warfare: the jealousy-of-trade argument, first developed by David Hume (1758). The Vienna peace utopia repressed this latter view.

The social question and the tension between warfare and welfare

The Vienna arrangements in 1815 for domestic social peace and external interstate peace between the powers were repeatedly challenged in the 1820s by the national question and from the 1830s onwards by what was identified as the social question. Industrialization and urbanization on an unprecedented scale, and the emergence of mass markets for wage labour, triggered new languages about social inequalities and injustices that echoed ever stronger over Europe during the century that followed. The political reactions to these developments varied from crushing the social protest to integrating it by means of concessions. The social question lived in an uneasy relationship with the national questions from the 1830s onwards, sometimes mutually reinforcing one another, sometimes in strong opposition. This contradictory relationship runs throughout the century.

Until the beginning of the nineteenth century, theories about the economy and society had kept the social and economic together in one mutually reinforcing figure. Adam Smith, for instance, had certainly observed social problems in the wake of economic development, but he had emphasised economic growth as the solution to such problems. Through growth even the poorest could hope to improve their situation. Even if the rich certainly would improve their situation even more, what was believed to matter was not the increasing gap between rich and poor but the little improvement of the living conditions by which the poor would also benefit.

The imagery when moral philosophy was transformed to political economy dealt with one world held together by beliefs in a seamless economy of growth and progress. History was universal, marked through development stages. This world view eroded when, in the wake of the spread of contract-based wage labour and industrial capitalism, new kinds of social problems were identified. Property was not only a matter of land and heritage, but also machines, movable capital, credits, purchases and sales. Concentration of capital and growing signs of a new wealthy class of capital owners went hand in hand with signs of poverty and proletarianization. Property and poverty seemed to constitute one another. Concentration of capital and wage labour in factories went together with growing precariousness on shifting labour markets, where the new wage labour was exposed to laws of demand and supply, and to cyclical oscillations between booms and depressions on fluctuating commodity markets.

The experiences of the industry captains and capital owners were not the same as those of the workers. Where the former experienced the benefits of economic integration – and the risks of speculations and depressions – the latter experienced the hardships of social disintegration. The imagery of a seamless economy split up in a tension between the economic and what was identified as the social: the social questions, the social issue, the social problems. This separation was an

epochal shift which divided the nineteenth from the eighteenth century and would become one of its most distinctive features. The experienced past and the imagined future of those who were exposed to social disintegration were obviously not the history and the imagined future of those who enjoyed the advantages of economic integration. The universal history of the philosophers of enlightenment split up in various histories from various experiences and perspectives: history in the plural. The social issue challenged the Smithian theory of economic functionalism through an emphasis on ruptures, structural oppositions and interest clashes.

Along the time axis of the nineteenth century, nationalism intervened to comment on the tense relationship between the economic and the social. Nationalism had a bearing on both domestic social integration and external demarcation between friend and enemy. Warfare went hand in hand with welfare. In conventional teleological understandings of the European history during the last couple of centuries welfare is seen as the successor of warfare, from a bellicose past followed peace and prosperity. In the perspective here they are seen more in terms of a simultaneous tandem. Warfare and welfare competed for scarce resources in the modernizing Europe, for instance. Nobody demonstrated this connection better than Otto von Bismarck, whose achievement it was to appropriate the national question from the liberals and the social question from the socialists, and merge them in a political strategy of change for stability.

The social question was at the core of the struggle about how to organize the economies during the century that followed on the 1830s. It was a struggle about the degree of economic concentration in the emerging industries, about the boundaries of private property and its legal frame of private law, about the degree of state intervention to mitigate social destitution and to control production in the factories, about the definition of a fair distribution of the yields of the economy, about the preconditions and prospects of economic growth, and about many other social and economic issues. The contention was about how to organize the European economies politically under growing social pressures and tensions.

This problem was not only a question of how to organize domestic economies to mitigate social unrest. The problem was closely connected to the issue of global economic power on markets for imports of raw materials as well as luxury consumption goods and for exports of the products from manufacturing and agriculture. Global economic power spilled over into domestic economies. The question of peace had a connection to the question of how to control and canalize the clashes of European interests on continental and global markets. This was the interstate dimension of peace.

The connected second question of peace dealt with domestic social peace. The power of property was increasingly contested against the backdrop of growing experiences of poverty in the emerging industrial capitalist order.

The revolutions and national liberation wars did not come to an end as the Vienna peace utopia assured, rather they were driven by amalgamations of liberal and socialist languages and by what from the 1830s, with the continental breakthrough of the early phase of industrial capitalism, was ever more frequently identified as the “social issue”. There had always been poor people, and the rich and the churches had mitigated their situation with relief assistance. Yet now from the 1830s onwards the poor were rapidly growing in number and this was increasingly seen as a

systemic shortcoming of the emerging industrial capitalist order which required major political corrections. This critique became more pointed when the poor began to act collectively and the violence of the French revolution continued to haunt ruling elites. The confrontation between what was understood as progressive and reactionary forces grew in intensity. Nationalism was not only about people's sovereignty and freedom but ever more about social integration.

After 1830, doubts about the economy's capacity to supply intrinsic solutions to poverty increased. The thematization of the social issue opened up a gap between what was conceptualised as a social and an economic sphere. The model of economic growth through expanding commerce came under fire. According to Karl Marx, the social issue was a spectre which stalked Europe in the guise of the industrial proletariat. In the Communist Manifesto of 1848, Karl Marx and Friedrich Engels had developed the language of class struggle going beyond reforms and envisaging a social revolution. The spectre disturbed the architecture designed in Vienna by Alexander I, Castlereagh and Metternich. Those who did not want a fundamental social and political change, but argued for necessary reforms in order to prevent new outbreaks of violence, like Lorenz Stein in Prussia, began to talk about a social monarchy and conservative reform. The liberal free-trade rhetoric was challenged by the language of protectionism. However, free trade remained the ideal type and the imagined standard.

In the 1870s, against the backdrop of Germany's authoritarian unification, and a long economic stagnation with increasing competition and growing pressures on wages and profits, the beliefs in a political economy with automatic growth through commerce lost credibility as a provider of viable solutions. In the polarisation brought about by the language of class struggle, the rupture between the economic and the social became ever more pronounced. Militarism, nationalism and colonialism grew, underpinned by a social Darwinian rhetoric about the struggles of the nations for survival.¹⁵ Rearmament became a political tool, vaunted as a means of restarting the economy and integrating social protest. The full backing socialists gave their governments at the outbreak of World War I was an expression of the nationalisation of socialism. The peace utopia of Vienna perished. Its belief in a Hobbesian domestic social order had never really come to fruition in the unfolding mass societies of the nineteenth society, which saw the development of new kinds of publics based on new and faster means of communication enabling critique on a previously never experienced magnitude.

A new language about class, solidarity, equality, reform and justice, with redefinitions of old concepts like revolution, freedom and liberty, emerged. The state and the market became crucial fictions in this new language and so did terms like *Rechtstaat* and *Sozialstaat*. The state traditionally connoted status and stability. Statistics were the description of the state in figures. With the social issue, "the state" began to connote institutions with a legal framing and an administrative apparatus

¹⁵ Social Darwinism is a term coined in the late Victorian era to describe the idea that humans, like animals and plants, compete in a struggle for existence in which the strongest persist and survive. The point of reference was Charles Darwin's *On the Origins of Species* (1859). The proper term would have been social Spencerianism, since whereas Darwin talked about evolution and transmutation as a slow process of natural selection, it was Herbert Spencer who coined the term the survival of the fittest in the *Principles of Biology* (1864), which connoted evolution of humankind through competition and struggle.

with a capacity to solve emerging problems of a new kind. The fiction of the state took shape in a lengthy discursive struggle about how to conceptualize the emerging industrial society and about how to use the concepts for political purposes.

The basis of the control of continental and global markets was, in particular, the three empires of Britain, Russia and Habsburg with the Ottoman Empire as an additional power factor in the Mediterranean basin. Of these four empires only Britain remained after World War I. From the 1870s onwards Germany was an ever more powerful imperial newcomer. France at least had the pretension to remain an empire also after the defeat of Napoleon III to Germany in 1871. However, more important than France was the ascendance of the USA to a world economic power after 1870.

This nineteenth-century world of empires was thus in a certain flux where Britain remained the constant until World War I. However, the British commercial hegemony was increasingly challenged from the 1870s onwards. Moreover, Britain as well as the other empires was increasingly challenged from within by the ever louder class and nationalist languages. Nationalism and its underlying idea of people's sovereignty, and the class language with its underlying ideas of equality and solidarity, were the European legacy of the French revolution. The political control of the nationalist rhetoric became a contested and potentially violent issue, which involved social protest movements as well as conservative or reactionary attempts to stabilize threatened power bastions. The national issue became even more complex when two or more peoples clashed on the definition of the borders of the nation. Nationalism contained minority questions which provoked violent intra- and interstate responses. Taken as a whole, not only the social question but also nationalism destabilized Europe and its empires during the century before 1914.

The Versailles utopia

The peace utopia in Versailles in 1919 was different. This was, in particular, because there was no general agreement among the victors on the treaty, but rather deep disagreement.

The designers of the utopia in 1919 were Woodrow Wilson, the American president, and Jan Smuts, the Boer War veteran and South African representative of the British Empire.¹⁶ They went in quite a different direction than Gentz and the peace-makers in Vienna. Their point of reference was not Hobbes but something with connections to Kant and his idea of perpetual peace through a world confederation of free states.

However, in other respects Kant was hardly the relevant reference. Wilson's neo-Hegelian faith in historical progress infused his vision of the League of Nations when he found no need to choose between multilateralism and unilateralism or between international obligations and national interests. His assumption was that history was moving somewhere ever better. History would eliminate the gap between multilateralism and unilateralism by transcending contradictions between national interests and common interests. Instead of a balance of power a community of power would emerge, not organized rivalries but an organized, common peace: he argued with a phraseology reminiscent of the Holy Alliance (although Wilson himself, of course, would have

¹⁶ The appreciation of the role of Smuts for the peace utopia is based on (Mazower (2013 [2012]), esp pp. 131-134.

rejected this comparison) but with history rather than religion as the cohesive cement. A community of power would exist “when all unite to act in the same sense and with the same purpose, all act in the common interest and are free to live their own lives under a common protection”, as he said in a speech in January 1917. The vagueness of this message also made it flexible as to the suggestions in the peace negotiations by the more interest-oriented French and British politicians. The demise of narrow national self-interest became his tenor in 1918 but it was a statement without immediate policy implications. National and common interests would come into harmony increasingly over time.¹⁷

Smuts’s holistic world view as a botanist and philosopher gave him an evolutionary argument for international association fitting well with Wilson’s view on the League as the culmination of nature’s love of association. With a degree in law from Cambridge and experiences as a Boer guerrilla commander he reorganized politics in the new Union of South Africa. He became a leading theorist of imperial rule committed to create a new white South African Union reconciling the Boers and the British in a missionary project of bringing civilization to what was referred to as the black or Sub-Saharan Africa. In the idea of a Commonwealth as a parallel to Pan-Americanism he saw a model for the coming League.¹⁸

America was still a segregated society and Wilson had no problems with Smuts’s racial approach, which was an implicit subtext rather than very explicit, more or less taken for given as something natural at this peak hour of white imperialism in the decades around 1900. Smuts and Wilson both believed in reform through scientific and technical expertise representing a new leadership class. Smuts argued forcefully that cooperation with America and support of president Wilson’s policy of a League of Nations, and indeed by going further and giving form and substance to his rather nebulous ideas, would provide the best prospects for Britain. In the pamphlet *The League of Nations: a Practical Suggestion*, which Lloyd George endorsed as the ablest state paper he had seen during the war, Smuts suggested that the future League should be led by a Council of the five great powers (the USA, Britain, France, Italy and Japan with Germany to be added later) but balanced by four smaller states. There should also be a general conference, or congress, of all constituent states, in which public debates of general international interest would take place. Smuts’s League included proposals for the peaceful settlement of conflicts through arbitration, conciliation and sanctions, and disarmament. The League should serve as the “reversionary” for the peoples and territories formerly belonging to Russia, Austria-Hungary and Turkey. These were bankrupt estates and the League should become their liquidator or trustee. Reversion to the League of Nations should be substituted for any policy of national annexation and the League would delegate “authority, control or administration” to another state to act as an educating agent or mandatory for the new states emerging from the break up of the old eastern and south-eastern European order.

¹⁷ Wertheim (2011): 351.

¹⁸ Pan-Americanism existed in the form of a series of Inter-American Conferences during the nineteenth century in the wake of the independence of the colonies in North and South America and of the Monroe declaration. The initial aim was to provide for a common defense. Later on treaties for arbitration and tariffs reduction emerged. The International Union of American Republics, served by a permanent secretariat called the Commercial Bureau of the American Republics was established for cooperation between North and South America in 1890.

The proposal foreboded the mandate system. However, Smuts never envisaged his embryo of the mandate system as being suitable for the former German colonies in Africa and the Pacific, where it was to be implemented instead of on the ruins of the fallen empires, as Smuts wanted. The former colonies were inhabited by “barbarians, who not only cannot possibly govern themselves, but to whom it would be impracticable to apply any idea of political self-determination in the European sense.”¹⁹ Making the world safe for democracy through national self-determination was a European business.

The League of Nations could connect not only to the ideas of Wilson and Smuts but also to a body of international law developed by professional lawyers since the 1860s, to the discussions at the peace congresses in the Hague in 1899 and 1907, and to the Inter-Parliamentary Union formed by peace activists in 1889 with the aim to encourage governments to solve international conflicts peacefully.

The international cooperation within the League of Nations was very different from the Concert of Europe, affirming democracy rather than trying to prevent it. The League would prevent wars through collective security and disarmaments, and settle international disputes through negotiation and arbitration. As opposed to the Directorate of Europe in Vienna, who avoided control and supervision of the world outside continental Europe, being the prerogative of Britain, the approach of the League was truly global with member states from all continents and with global rules – however, global in the sense of the Western ruling of the world. The establishment of sub-organizations for protection of labour, the International Organization of Labour, and for protection of health, the League of Nations Health Organization, (in 1948 the UN World Health Organization) must be seen as a response to the Russian revolution, which for many in Europe at the end of and after World War I was seen as a promise and by the ruling elites as a threat.

The League was mentioned in the last of President Wilson’s Fourteen Points for perpetual peace, a general association of nations, a budding world government to be, although Wilson did hardly envisage any global authority transcending the states, only their cooperation for the purpose of providing mutual guarantees of political independence and territorial integrity to great and small states alike. Point one prescribed open diplomacy and negotiations and points two and three free trade and the removal of all economic barriers. Eight of the points listed cases of border adjustments under the motto of national sovereignty. The adjustments dealt basically with territories around Germany and Austria. Only the imagery of free trade remained from Vienna in the Versailles ordering of the world.

Wilson’s dream of stability through democracy was thwarted because of his failure to realize that the definition of nations contained minority problems and repeated claims for border revision. The minority claims was one important factor paving the way towards World War II.

Strong opinions were expressed after the war against the harsh treatment of Germany. Two experts of the British delegation, John Maynard Keynes and Edward Hallett Carr, argued that this contained the germ of the next war.²⁰ However, the Locarno spirit and the general international

¹⁹ Henig (2010): 27-28.

²⁰ Keynes (1919) and (1922); Carr (2001 [1939])

détente during the second half of the 1920s demonstrate that there was no teleology predicting 1933 in the peace.

The League of Nations did not become the embryo of a world government that Woodrow Wilson dreamt of. Not only that he failed to get approval for an American membership by his own congress, the League became an organization in a flux with members opting in and opting out, being accepted as members and leaving in dissatisfaction with, for instance, border revisions or peace settlements, or forced to exit after violation of the rules. There was a mix of integrative and disintegrative forces represented by names like Rapallo, Locarno, Stresemann, the Kellogg-Briand pact (1928, typically signed outside the League) on the positive side, and with the German reparations, the hyperinflation, the French-Belgian occupation of the Rhineland, the German rearmament, the Italian attack on Ethiopia, and the Soviet Russian on Finland as negative examples. The Dawes (1924) and the Young (1929) plans were to solve the economic problems in the wake of the indemnity requirements imposed on Germany, and to make compatible the French implacability and the British attempts of reconciliation with Germany and its payment burden. Sometimes the League really looked like a world centre of diplomatic activity and the foreign ministers of the world attended the annual assemblies. The day-to-day business dealt with tiresome attempts to resolve territorial disputes, many of which were triggered by Wilson's Fourteen Points, but the diplomatic machinery somehow functioned until the early 1930s when the Great Depression changed the preconditions.

The utopian organization of stability at the outset through international law and the League of Nation eroded and finally collapsed when the legal framework was contested and rejected by powers dissatisfied with the outputs from the negotiation apparatus, in particular against the backdrop of the stress provoked by the depression. There was no international force like the Holy Alliance to maintain order, only ad hoc forces from case to case. The border conflicts became at the end the main business of the League and on this point the scope for utopia declined rapidly and apology became the legitimizing principle. The contradictions caused by the integrative and disintegrative forces and by the general economic instability made it ever more difficult to separate the languages of utopia and apology. The attempt by Coudenhove-Kalergi to put his Paneuropean movement in a global context as a kind of civil society pendent to the League of Nations failed in the end against the backdrop of the Great Depression, which in its second version was of a much stronger caliber than its predecessor in the 1870s. The second dimension of Wilson's utopia, global free trade, had begun to erode earlier but in 1931 it collapsed. Protectionist politics and global price and production cartels divided and segmented the markets in new ways. The failures of the League and of the free trade were closely connected.²¹

The interdynamics between utopia and apology collapsed when the world government began to be imploded and the price and production cartels began to regulate the markets, sobering down the imagery of the invisible hand of free trade. The tension between the economic internationalism of the cartels and the political nationalism of the governments driven by the social protest in a new kind of mass societies ended up in a demonstration of how thin the edge between democracy and

²¹ The development of the Versailles utopia is analysed in greater detail in Stråth (forthcoming): Chapters 4 and 5.

totalitarianism was. Confronted by the mass-supported totalitarianism the democratic appeasement politics fell short. Appeasement was the final failure of the language of peace.

The Paris utopia

It is difficult to discern any peace utopia of never again in Potsdam in 1945. The negotiations were marked by the positioning in the big power conflict which, in short, was to be called the Cold War. Many with experiences from the resistance movements against Nazism and fascism, across the political spectrum from communists on the left to national conservatives on the right, talked about a unified Europe. However, soon their Europe narrowed down to Western Europe. When the Korean War threatened to make the Cold War hot the efforts of preparation for the next war grew and the question emerged of how to integrate the German coal and steel resources and at the same time control the country politically. The answer to this question was the establishment in 1951 in Paris of the European Coal and Steel Community managed by the autonomous High Authority standing above the governments of the member states. This was something very different from the League of Nations, restricted to Western Europe and autonomous in relation to governments, as it was designed to be.

ECSC was the precursor of the Rome Treaty (1957) on the European Communities, which in 1992 became the European Union. The democratic experiment in Versailles caused fear, as did the political failure to control and manage the global economy. The technocracy in the High Authority sought to impose rigid rules of competition to prevent a *da capo* of the interwar years' price and production cartels, the Council attempted to control Germany politically and make it strong through rearmament in the armed peace of the Cold War under a motto which might be described as a mix of never again war in Europe but, if necessary, if attacked, a war for freedom and final peace.

In a situation where 25 per cent of the electorates in France and Italy voted communist the term democracy got a new implication among the continental Christian Democrats who negotiated the ECSC under American pressure. Through a European guarantee of welfare by means of a European internal market, the European High Authority would make the member states safe for liberal democracy, "the European rescue of the nation states" in the phrasing of Alan Milward. The leading negotiators (Jean Monnet, Robert Schuman, Konrad Adenauer, Walter Hallstein, Alcide De Gasperi, Altiero Spinelli) were all very aware of the thin edge between democracy and totalitarianism and therefore they went for a solution which would guarantee democracy through the provision of welfare, which, in turn, would be guaranteed by European free trade. The global free trade imagery since 1815 narrowed down, although some kind of relationship to the Atlantic "free world" was envisaged. Technocratic rule surveillance by the High Authority beyond national parliamentary control went hand in hand with dreams about a federal end stage nourished by neofunctionalist ideas of a self-propelling machine, where dimensions of the European societies would be increasingly drawn into the integration, thereby making it ever tighter.²²

The utopia about a regulating rigid legal order framing politics came close, in certain respects, to the utopia in Vienna. Dreams of stability and progress went hand in hand. Foreign trade on an

²² Deutsch (1957) and Haas (1958).

internal European market would provide welfare. The European free trade area protected by the external tariffs of a customs union was a model that reminds one of Friedrich List. The distribution of labour between a welfare-providing Europe and welfare-distributing member states relaxed the tensions between economic integration and social disintegration.

The utopia of stability and progress through distribution of labour between the European Communities and the member states was based on the straightjacket imposed by the Cold War. It became problematic after the end of the Cold War when that straightjacket was thrown off. The Maastricht Treaty in 1992, with the name shift from community to union, from the EC to the EU, was propagated as a brave step towards a federal Europe with a monetary union and a common currency as the crowning glory.

The development went in the opposite direction in the 1990s, however, without being paid attention to or even noted. The end of the Cold War triggered a power migration from the Commission (as the High Authority was called since the Rome Treaty in 1957) to the member state representatives in the Council, from hard community law to discretionary soft law of recommendations under jargon terms like open method of coordination, bench-marking and monitoring, from harmony of rules to coordination of them notwithstanding the more federal language in Maastricht. The legal framework of the polity, the utopia that produced stability, became more porous and more vague. The utopian dimension of the Paris design decreased and the apologetic grew.

This shift from utopia towards apology hardly garnered any attention in a decade marked by the liberal language of the end of history and of seamless globalization, which promoted hubris in the EU. The Central and East European countries were taken on board as new members in a grand gesture of a unified Europe in 2004.

This big bang enlargement was the culmination of the language of utopia. There had been shifts towards apology on several occasions during the previous decades such as during the empty chair politics of De Gaulle, the wasteful agrarian politics, or after the failure of the Werner Plan in the 1970s: a grand design for a monetary *and financial* union. However, the utopia of continuous integration and stability consistently remained as a point of reference. In 2004, it was particularly strong.

Few people, if anybody, thought of the consequences for the old motor of economic growth through European free trade and political stability through social welfare, “the European rescue of the nation state”, when the enlargement in 2004 suddenly made the social differences within the EU much bigger. The fear of low-wage competition and social dumping spread in the old member states and was no doubt a decisive factor when the voters in France and the Netherlands in 2005 turned down the proposal for a European constitution. In the end, when in 2008 the gigantic input of tax payers’ money to prevent a general collapse of the bank system and the financial markets was transformed into no less gigantic state debts, which became a new target of speculation by hungry market operators, the dynamics of utopian and apologetic languages disappeared into a hole of despair. The differences in terms of social standards and productivity in the euro zone, which had been dimmed by the refulgence of the initial success of the common currency, triggered a situation

of northern against southern member states and a wave of politics of re-nationalization. In the 1990s, the new forward-looking keyword had been Europeanization.

There is no better illustration of the present helplessness of the European leaders than the U-turn in their market language. The previous language had hailed the market, which brought blessings to Europe. The European integration was from the very beginning a market integration. The new language after 2010 was built on terms like fire power, fire walls and bazookas *against* the financial markets.²³ In opaque weekend meetings in Brussels about how to mollify and pacify the financial markets before the stock markets opened a new turbulent week, words like *alternativos* echoed moments of Carl Schmitt declaring the state of exception. The Paris utopia has obviously been dissolved through a lack of future.²⁴

The European search for a global political economy

“The European Search a Global Political Economy” in the title of this essay contains three problem fields: the European search, the global, and the political economy.

The reference to search underlines how tentative the formulation of an economy was, full of trials and errors, failures and successes. The economic debate was full of both warning examples and models to emulate across Europe. At the end of the Napoleonic wars, Britain was the ideal of industry and trade for wealth outstanding against the previous experiences of economies as deeply involved in warfare, experiences which David Hume referred to as the jealousy of trade. The ideal became, with every decade of the nineteenth century, more nuanced and developed more shady sides. Welfare was not welfare for all and was not necessarily in opposition to warfare.

The tentative search for a political economy became more of a contentious matter of defining a position between free trade and protectionism. The references to the utopia of a seamless global economy of growth were mixed with apologies for deviations from the normative prescriptions. It was clear that there was not one European model or one European development trajectory. There were not even national development trajectories, if trajectory is understood in terms of path dependency. The development of the European economies did not follow any intrinsic or historical logic built into the emerging industrial capitalist system or the histories of the European countries, as many argued.²⁵

The search meant that representatives of organized interests tried to accommodate competition and disagreement, cooperation and agreement about how to manage the economies.

²³ There is a paradoxical affinity between such reversals of the language and the continuity of language describing formally reversed political systems. Victor Klemperer, Jewish Romanist and intellectual, whose diaries span the decades of the 1940s and 1950s in the GDR, was a contemporary who emphasized the continuity in language between Nazism and Communism. In July 1945, we find him asking whether there is any difference between Hitler’s creation of language and truth and that of Stalin. “Every day I observe the continuity from the Third Reich’s *Lingua Tertii Imperii* to the *Lingua Quarti Imperii* in the Soviet sphere”, he added in October of that year. Klemperer (1999 [1945–1959]). The corresponding question to the relations between EU and the financial markets deals with what really has changed. The French proverb *plus ça change, plus c’est la même chose* catches the present EU situation and the transition between Nazism and communism that Klemperer experienced in the summer and autumn of 1945. Cf Strâth (2000): 39

²⁴ The discussion of the third utopia of peace is elaborated in greater detail in 6, which, in turn, to a considerable extent is based on Strâth and Schulz-Forberg (2010).

²⁵ As for the term path dependency, for a critical discussion see Strâth (2009)

They tried to get through as much as possible of what they defined as their interests through conflict or through majority-creating compromises. “Search” is thus preliminary, without any final goal but with many immediate goals, conflicting or overlapping. There was no invisible hand guiding and managing the emerging economic system based on wage labour. The political economies in Europe were the outcome of many competing and cooperating wills. There was no master plan. The development was the sum of many histories. However, the search for a solution was a shared European one.

Two closely connected fields proved to be particularly fertile ground for the nurture of social utopia in nineteenth-century Europe: 1. peace and 2. social justice and solidarity. The peace-makers in Vienna certainly did not think of social justice but of other methods to prevent social unrest, which they regarded the big risk to international stability and peace. In particular, they considered claims for democracy the trigger of social unrest. Their solution was consequently to swoop down on any sign of claims for democracy.

Nevertheless, the 1830s began with large-scale European revolutionary movements, which again began in France and spread to the German-speaking territories and to Poland and other Central European peoples. The revolutions had a social dimension, but the main issue at stake was national independence, the definition of nations and the redefinition of borders. The national question was linked to a liberal project for democracy and values, like freedom of expression and religion, and to ideas of universal suffrage and property rights. The liberal project was framed within the same enlightenment discourse that had provoked the French revolution. The never-again imagery of Vienna which sought to quash this discourse lost ground. The restoration design was challenged just a few years after the peace. The conservative forces were pushed back onto the defensive by the language of democracy and revolution.

At the outset, the revolutionary threats hailed largely from a set of emerging nationalisms. In the 1830s, what was identified as the social issue became, ever more, the key threat. Against the backdrop of the break-through of industrial capitalism in continental Europe in the 1830s, in particular in Belgium, Germany and Northern France, the large-scale introduction of wage labour, and a growing rural and urban proletarianization, in the wake of rapid population growth, the nationalist and democratic threat became a social threat. The leaders and organizers of the social protest referred to democracy as the solution, whatever they meant by this ambiguous term.

Europe had always had its poor, and various ways to cope with them had been developed; charity and philanthropy, often under the aegis of the churches, were accompanied by the more punitive means of forced labour and houses of correction. Underlying each of these means was the idea that it was poor individuals themselves who were responsible for their destitution. What was new in the 1830s was that poverty emerged on an unprecedented scale, or at least in unprecedented contexts, at the core of a newly emerging industrial system.

Industrial wage labour, which brought people together in large factories, provoked a greater unease than the notion of workers tied to the soil. Periods of employment were interrupted by periods of unemployment. Indeed, while the use of the term ‘unemployment’ to describe this fluctuation was introduced in the debates only in the 1880s, the phenomenon as such provoked growing concern. There was a growing understanding that the problem of considerable fluctuation

in terms of occupation was systemic and went beyond the control of those individuals suffering its effects. The question of poverty was increasingly thought to have political implications of a new kind. The idea of a public responsibility to solve the social question emerged.

The debate on the “social issue” was driven by a growing intellectual concern based on a mix of fear and empathy. Some intellectuals became political activists, others contemplated the situation as more distanced theory builders in the universities, as armchair thinkers in their private dens or as increasingly professionalized civil servants and legal experts in state administrations. Many academics and statesmen drafted theories about causes and effects, about the problems and their solutions. Pierre-Joseph Proudhon, Karl Marx, Lorenz Stein and John Stuart Mill were just a few of many thinkers to contribute to a contentious debate on the boundaries of solidarity and freedom, of economic growth and employment. In the 1870s this debate sharpened and its metre shifted from mediating on a threat experienced by the ruling elites towards the formulation of a collective social protest in the name of class. The initiative shifted from top-down to bottom-up. The two entangled social dimensions of top and bottom were not new, but the bottom-up dimension became more visible. The background to this shift was the development of increasingly industrialised societies and the genesis of a more distinct language of class among the now ever-larger working class. By the 1870s, the industrial expansion had led to hardening competition about markets and downward pressures on profits and wages. Bankruptcies and mass lay-offs became more frequent. The social pressures on political leaders became more intense and state interventions increased. The fiction of the state was seen in new ways, as a device of political interventions of a new kind aiming at integrating rather than repressing social protest.

The tension grew between liberal arguments about rights of property, which constituted the core of the liberal market economy, and more frequent empirical observations of poverty, which triggered the new class language. The question of the control of the state apparatus became central.

The arguments for “capitalism before its triumph” that were made in the seventeenth and eighteenth centuries optimistically suggested that the rise of commerce alone would lead to a new and better society.²⁶ It was believed that the expansion of trade would enhance both domestic and international peace as well as increasing the wealth of nations. This understanding conceived of continuity between the economic and the social, although the social was subordinate to the former. There was no understanding of a tension or rupture between these two fields. Several key economists held chairs in moral philosophy during this period. The imagery of a continuity between the economic and the social co-existed in parallel with the similarly enlightenment-based rise of the calls for popular sovereignty: that is, for some form of collective autonomy. From the French revolution onwards, in particular during the 1830s, and increasingly from the 1870s, those employing the language of collective autonomy had to consider growing empirical observations that the workings of the liberal market economy increased social inequality. The collective will, wherever it was permitted to express itself, requested measures to protect society from the dangers of the market. In the clash between arguments for market freedom and for social protection, the idea

²⁶ Hirschman (1977)

arose that under democratic conditions states would always be against markets. A rupture was introduced between the economic and the social.²⁷

The argument here is that it is insufficient to address these two perspectives in terms of a rupture. The theoretical part of the argument is that the idea of opposed principles suggests that they are in equal measure potentially independently constitutive of social order. No one has offered a more convincing account of the impossibility of an autonomous economy than Karl Polanyi in his *The Great Transformation*. In the aftermath of World War II this text saw Polanyi reflecting on the developments that had brought the world into the catastrophe.²⁸ His point was that markets cannot consistently be thought of as self-regulating. Markets are always constituted by a framework of conditions which are beyond the scope of the markets themselves. The parallel to the impossibility of law as an autonomous sphere subordinating politics is obvious. Many social and political theorists erroneously accepted the postulate of market self-regulation as a theoretical possibility. In contrast, we must, like Polanyi, think of market society, or capitalism, as always being politically constituted. The range and scope of market rules emerge in negotiations and agreements between social actors. Even the most pure version of economic liberalism always simultaneously entails a political philosophy. The economy must be understood as a polity, as politically constituted, as an arrangement that is always organised around some collective agreements about its mode of operation. It goes without saying that the shape of such agreements reflects economic and ideological power relationships. Markets are socially and politically “embedded” as Karl Polanyi put it. In fact this insight was present in all major contributions to the analysis of capitalism: in Adam Smith’s wealth of nations, in Karl Marx’ critique of political economy, in Max Weber’s protestant ethic as well as in Polanyi’s great transformation.²⁹

They all challenge the perspective of the Vienna utopia where autonomous free trade supports autonomous domestic authoritarianism. They do so because each part is already split within and against itself, free trade was seen as destructive of somebody’s welfare and poverty undermined domestic authoritarianism. There was no stable opposition which could just be “balanced” since each side of the opposition was, from the beginning, unstable because of internal oppositions. The Vienna utopia was based on an illusive assumption.

The century-long debate was pursued with labels such as socialism and liberalism, concepts that stood and stand for very much and often said and say very little. The issue at stake behind the strong words and battle cries was the degree of optimism, scepticism and pessimism as to the beliefs in economic growth and its potential to solve social problems. Economists and moral philosophers like Smith, Say, Sismondi and Malthus or social visionaries like St. Simon and Fourier were early examples in a long debate on how economies could be managed and if and why they should.

The Cold War was probably the single greatest confrontation of the understanding of the economy as an autonomous sphere. With the neoliberal globalisation rhetoric in the 1990s after the end of the Cold War, such understandings recurred forcefully. In the 1930s global economic forces

²⁷ Wagner (2005)

²⁸ Polanyi (2001 [1944])

²⁹ Wagner (2005)

in the form of globally operating price and production cartels could set the rules of the market in the absence of a political counter-force since politics was focused on drawing the line between democracy and totalitarianism. By the 1990s this line no longer existed. Only democracy remained. Thus there was a widespread belief in what seemed to be a new unfolding perpetual peace project. Not the absence of political counter-forces but a powerful academic lobby of economists set the rules of the market under political support. This set of rules has become problematic after the collapse of the financial markets and the banking system in 2008. There is again a search for a global political economy. In the absence of such a political economy there is a growing concern about peace and a continued erosion of the peace utopia designed in Paris in 1951.

“Global” in the title means that the economy was conceptualized in a global framework. Adam Smith’s *Wealth of Nations* was based on the imagery of a global division of labour understood in terms of rather seamless arrangements of commerce based on settlements and supporting trade stations outside Europe. Confronted to nineteenth century experiences and practices the debate shifted from Smith’s outline towards issues of glut, overproduction and underconsumption as problems in economic performances, which proved to be less smooth than the classical theory assumed. The global dimension was debated under new labels like colonialism and imperialism, costs and revenues. The debate integrated the domestic, national and the global dimensions of the economic arrangements, and the tensions between them. National and international, local and global became entangled dimensions of the economic debate.

Today, the debate about “economic globalisation” has reached a new phase. For a short time during the 1990s even critics had forgotten the nineteenth century experiences and practices and become convinced that neoliberal thinking had achieved such a hegemony that nothing stood in the way of the further dismantling of all kinds of “barriers to trade” and of the creation of an effective world market for all commodities, including labour and capital themselves. In the meantime, the politico-intellectual climate has also changed among economists and market-oriented policy-makers and the interest in a more historically realistic understanding of the political economy in the nineteenth century has grown. The story about the rise and fall of market society, a term introduced by Karl Polanyi 70 years ago, is as Peter Wagner has noted about to receive a new chapter, where economy is again understood as the polity it always was.³⁰

Ever since the market forces were unleashed there was a struggle between regulators and deregulators of economic activity, but the point is that even those who argued for deregulation did so in political terms. The economy was always political and ideological; that is, the economy was a polity, even though the argument was that it was automatic and unleashed from politics following its own special logic.

³⁰ Wagner (2005). Karl Polanyi developed his thought about the political framing of the economy in Polanyi (2001 [1944]): 515.

The Rise and Fall of the European Union: Temporalities and Teleologies¹

Etienne Balibar

It is my intention, in this opening lecture, to try and seize what, in addition to being an extraordinary honour for which I express to you my deep gratitude, is also in my eyes an exceptional occasion to combine further reflections on the crisis of the European construction with more speculative ideas on the different temporalities which become intricately shaped to form what we perceive as Europe's historical, cultural, and political "identity". The fact that the Research Program whose final session we are now opening, bringing together European and non-European historians and theorists, was especially concerned with discussing relations between historiography on one side, the philosophical notions of "historicity" and "teleology" on the other side, is of considerable help here. We have been discussing the extent to which teleological assumptions are involved in the writing of history, as a consequence of the "central" place that Europe has attributed itself in Modern history, and/or specific ideologies regarding the understanding of time and space. The idea of "Europe" itself, whether perceived from inside or outside, is by definition ideological, or, better said, as Bo Stråth rightly insists, it is a "discourse", which performs epistemological and political functions at the same time.² Whether we consider ourselves "European citizens" or not (and there are many interesting more complex categories), we have a keen interest in trying to understand how the current crisis (which is not only financial or political, but also institutional, moral, even spiritual) does affect our representations of Europe as a historical formation, reigniting and displacing the conflicts that it always covered. And we are interested in seeing if a critical review of the teleologies that have been (and remain) associated with a reference to "Europe", can help clarify what is at stake in the current crisis. Of course I am not really qualified to undertake such a task, I am probably one of the less qualified among the historians and social theorists who are gathered here tonight – which perhaps is one of the reasons why I was induced to attempting it. I will take the chance to propose some general formulations and hypotheses, without being able, indeed, to substantiate them really, and I will leave it to you to dismantle them or perhaps transform them into something more defensible.

Allow me to begin by quoting a famous passage from the introductory chapter of John Maynard Keynes' early essay from 1919, *The Economic Consequences of the Peace*. I am not thinking here (or not only) of the prophetic character of this text, which, as we can see now, extended well

¹ This essay is a revised version of my Keynote Lecture at the Conference "Creating Community and Ordering the World. The European Shadow of the Past and Future of the Present", The University of Helsinki, 8-9 June 2013, forming the conclusion of the research project *Between Restoration and Revolution, National Constitutions and Global Law: an Alternative View on the European Century 1815-1914 (EReRe)*. My thanks to the organizers and the directors of the project: Martti Koskeniemi, Bo Stråth, and Henning Trüper.

² Bo Stråth: "Introduction: Europe as a Discourse", in Bo Stråth (ed.), *Europe and the Other and Europe as the Other*, P.I.E. (Peter Lang S.A., Bruxelles, 2010) (4th printing).

beyond his accurate prediction of the catastrophes for Europe and the World, which resulted from the conditions imposed by the victors to “settle” the military confrontation of World War I. But I am thinking of the way in which Keynes initially presented his “object”:

For one who spent in Paris the greater part of the six months which succeeded the Armistice an occasional visit to London was a strange experience. England still stands outside Europe. Europe’s voiceless tremors do not reach her. Europe is apart and England is not of her flesh and body. But Europe is solid with herself. France, Germany, Italy, Austria and Holland, Russia and Rumania and Poland, throb together, and their structure and civilization are essentially one. They flourished together, they have rocked together in a war, which we, in spite of our enormous contributions and sacrifices, ... economically stood outside, and they may fall together. In this lies the destructive significance of the Peace of Paris. If the European Civil War is to end with France and Italy abusing their momentary victorious power to destroy Germany and Austria-Hungary now prostrate, they invite their own destruction also, being so deeply and inextricably intertwined with their victims by hidden psychic and economic bonds. At any rate, an Englishman who took part in the Conference of Paris ... was bound to become, for him a new experience, a European in his cares and outlook.³

As we can see, distinct representations are at stake here: (1) a representation of the historical space that can be called Europe (of which Britain according to Keynes is not yet really a part at that time), (2) the “civil war” as a representation of the conflict that was just terminated and threatened to start again if not settled in the correct way (a notion that later was extended by other historians to the largest part of the twentieth century), and (3) a representation of the destiny or fate to which the European nations are jointly tied. This forms indeed a teleology, whose concept is based on selecting some determinant factors, all of which are disputable. Nevertheless, I will take advantage of this great model to try and articulate myself a reflection on the crisis, combining retrospection and prospection, with a figuration of the “space-time realities” of the European construction in the twentieth century.⁴

I will work on the basis of two related assumptions (very summarily of course). The first is that there is no such thing as a “European space” (be it called continent or otherwise) that is framed in a stable manner, whether it be considered the result of a preexisting cultural identity or the effect of cumulative developments oriented towards the realization of some singular idea. This is not to say that the notion of close European cultural, economic or political solidarities of the kind evoked by Keynes in the language of “flesh and body” does not make sense at all. But they are always an expression and a consequence of specific interactions, with which they constantly evolve. More precisely they always express a specific and unstable relationship between Europe and the world, of which it is itself a part. I say specific *and* unstable because, ever since the moment when a

³ John Maynard Keynes, *The Economic Consequences of Peace* (Introduction by Paul A. Volcker), (Skyhorse Publishing, 2007), p. 2.

⁴ This time an expression that I borrow from Immanuel Wallerstein, especially in his *Unthinking Social Science. The Limits of the 19th Century Paradigms*, (Polity Press, 1991).

meaningful reference can be attributed to the idea of a European system of nations, this relationship has been evolving and changing content.

There are symptomatic shifts in this evolution, however. One of them – of which we are now experiencing the full consequences – was the fact that Europe had acquired the function of a “centralizer” of the world-system, defining itself for that purpose as a power and a “spirit” as Hegel would say, i.e. a culture, and has now lost this function: what Dipesh Chakrabarty famously called the “provincialization” of Europe.⁵ This cannot but appear in European eyes (and probably others) as a *reversed teleology*. But a reversed teleology is still a teleology, or it is an index of its latent contradictions. To view “Europe” as a point or figure of equilibrium between itself and the world therefore inevitably leads to critically discussing teleological schemes that are involved in our identifications of the “European space”, the “European history”, the “construction of Europe”, etc.

But we must be more precise on this, and also indicate some *choices* that we will have to make, knowing that choosing a perspective always expresses certain political concerns and prerequisites. For example, to choose “Charlemagne” as an iconic figure of European supranational government (perhaps ironically, as in the case of the columnist writing Op-eds for *The Economist* under this alias) does not lead to the same “teleological judgments” as if one chooses the Napoleonic conquest or the Holy Alliance forged against him by Fürst Metternich, Czar Alexander, and Viscount Castlereagh. Hence my second assumption: there is a necessary correlation between the choice of certain time spans or measures, and the identification of certain teleologies. This, in particular, is the consequence of the fact that a privileged way of reading “teleologies” in history is to consider *cycles*, hence imagine circular processes, where a certain historical configuration can be said to have “returned” to the conditions of its constitution, in order to reiterate the origin or, more generally, to exhibit its displacement and reversal. This will provide me with my guiding thread in the continuation of this lecture. I will envisage three historical cycles of very unequal length, of which the current “state of the Union” could be considered the outcome. Of course I do this only to prompt a discussion, in the full awareness of the fact that my distribution of European time among these different cycles is not the only possible one.

The first measure that I select is the *longue durée*, the long history of the European power to “centralize” the world around itself, or to make the world, at least apparently, its own “periphery”. Expanding Chakrabarty’s terminology, I will call it *the cycle of “capitalization” and “provincialization” of Europe*, where I take capitalization in its different etymological meanings: being subjected to the law of capitalist accumulation, but also acquiring the status of a “capital city”, a metropolis of the world. Dates are of course only allegoric indexes in the case of the *longue durée*, so I propose to imagine this cycle as one that begins with the European discovery of America in 1492, giving the impulse to the construction of the European World-System, and ends with the participation of most European nations in the post-9/11 American expeditions in the Middle-East, whereby Europe appears as a supplementary force in geo-political conflicts which are completely independent of its own decisions and projects. This is also, of course, the moment when it becomes clear that “globalization”, as a new moment in the history of capitalist accumulation, is driven by forces and

⁵ Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference*, (Princeton University Press, New Edition 2007).

“centres” (or “poles”) which are located outside Europe (particularly in Asia, but also in Latin America). The teleological category that can be associated with this cycle is *universalism*, and the question raised by the fact that “Europe” is no longer the centre (or part of the centre) thus appears in particular as a question regarding the decline of “universalism”, or the possibility that universalism be recreated or recast (perhaps with a different name, since this one is so deeply entangled with European culture) apart from its symbolic and material association with Europe.⁶

The second measure that I select is the “short twentieth century”, in Eric Hobsbawm’s sense: beginning with WWI which is also the immediate precondition for the Russian Revolution, the first communist insurrection in history to give birth to a political system of continental magnitude, whose principles are rooted in the history of European social struggles and political ideas.⁷ It would form one of the preconditions (not the only one, as we know) for the division of Europe into antagonistic blocs or “camps” during the Cold War era. The “end” of this cycle is certainly a complex matter to discuss, if we look into the transformations in the relationships of forces between the socialist and the capitalist Europe and the varying degrees of the circulation of ideas and impulses between the two halves. But of course it was marked by the dramatic collapse of the Soviet system in 1989 in Eastern Europe (which also produced the reunification of Germany), soon followed by the disintegration of the Soviet Union as a multinational construction, thus putting an end to the competition between two different types of supra-national integration. Following Keynes and later historians of different orientations (Hobsbawm, Nolte), who essentially reflected on the armed conflicts which “destroyed” Europe and forced to “reconstruct” it in this period, I call this cycle the “European Civil War”, in order to emphasize its imbrication with an antagonism between communism, liberalism, and fascism (especially Nazism): ideologies which, however national and nationalist their practical implementation can be, aim at imposing “total systems” of social and political life to the world (which is not only true, of course, for communism and fascism, but also for liberalism, and becomes explicit with neo-liberalism). The figure of teleology which we can associate with this cycle, therefore, appears as a *conflict of eschatologies*, whose vicissitudes are sometimes extremely violent (reaching exterminism), and sometimes “peaceful”, i.e. frozen in diplomatic standstill and the “war of positions”. Why is it indeed crucial to take into account this “medium range” historical cycle, with its specific antagonistic texture? This is the case in the first place because the “origins” of the institutional construction of the European Union are often referred to the necessity of *preventing forever* the return of a state of war in Europe after the collapse of Nazism, or to the necessities of the Cold War and its rival alliances, or to both. But also, more disturbingly, because we need to interpret the fact that the collapse of the Soviet system, where the Marxist economic doctrine had been elevated to the status of a political dogma, essentially coincided with the moment when the European Union itself (now encompassing most of the former “socialist countries”, with the considerable exception of the former Soviet Union) officially adopted its own economic dogma as supreme law of the political unification, although one of opposite sign (namely the principle of “free and unrestricted competition”). “Unrestricted”, of

⁶ This was the question raised by Chakrabarty in his lecture delivered at the ‘Universal Exhibition’ in Shanghai, 2010: “*From Civilization to Globalization: The “West” as a Shifting Signifier in Indian Modernity.*” See <http://www.uchicago.cn/event/dipesh-chakrabarty-lectures-in-shanghai-hangzhou/>

⁷ Eric Hobsbawm: *The Age of Extremes. A History of the World, 1914-1991*, (Vintage Books, 1996).

course is the important word (which strongly departs from the combination of market economy and “regulative planning” which had dominated the first phase of the European Common Market).

The third time-measure that I select is, of course, the “short range” of the European unification process itself, in the post-WWII period, assuming that the institutional figures beginning with the “Coal and Steel Community” established in 1951 (and “teleologically” preceded by the famous “Schuman Declaration” from 1950), through the Rome Treaty in 1957 to the “European Economic Community”, to the current “European Union” proclaimed in 1992 by the Maastricht Treatise, form a single process. This idea of a linear development however is part of the problem, and I will need to qualify its representation. Can we indicate an “end” for this cycle? I submit that this is the case *at the very least* in the form of the following assertion: Europe as a political construction with quasi-federal characters now faces the *dilemma* of degenerating *or* being structurally reshaped. Such a formulation tries to avoid apocalyptic prophecies, which are used sometimes as means of intimidation concerning the “state of exception”, both economic and political, that would be required (in the classical figure of a *kathèkon*) in order to prevent or postpone the collapse of the European institutions. But it also tries to avoid euphemizing the depth and nature of the current crisis. It became a properly *European crisis* when the imminence of the Greek default led to an incapacity of the EU to invent a political treatment of the corruption of its own member state that would not produce the ruin of the country and the imposition of a “protectorate” neutralizing its democratic institutions. This was followed by a general crisis of the European banking system, with acute episodes of speculation on the sovereign debts of several countries, where they could become “played” against one another by the financial operators, leading to the vacillation of the single currency, and finally to a persistent state of depression which now paralyzes the political institutions of Europe. Since then it has become clear for many of us that the European construction faces an “existential” problem which can be resolved only through a complete reorganization, in fact a new foundation on different bases. However the recognition of these bases completely fails at the level of the political class, not to speak of winning an agreement among the majority of the citizenry on their orientation. We have therefore entered a period of *interregnum* in the Gramscian sense, where “the old is already dying, but the new is not yet born”, be it in terms of forces or ideas and programs. This is what, I submit, marks the “end” of the cycle opened in 1949 – granted that this “end” itself has no predictable end, or termination. Nevertheless, it makes it possible to ask a question about the kind of “teleological discourse” that is involved, either positively or negatively, in our representation of the European construction as a cycle.

One way of addressing the issue is to take the *periodization* of successive “enlargements” as a guiding thread, because they also coincide with changes in the goals of the Union, the modalities of its “governance” (in particular the powers attributed to “federal” or “quasi-federal” bodies, such as the Commission itself), and the hierarchies of nations inside the Union, which form part of what we may call its *material constitution*. This is interesting because the dominant idea (greatly reinforced of course by the circumstances surrounding the last great enlargement after the collapse of the Soviet system) is that the EU *must expand* until it reaches the “limits” of Europe as a historical civilization

(as if such limits objectively existed).⁸ What challenged the naïveté of this idea before the crisis were essentially the conflicts around the interest and possibility of incorporating into the Union new “peripheries” such as Turkey, the Balkan States or some of the ex-Soviet nations. But now the challenge is clearly different: even if we leave aside the possibility that was raised at the height of the Greek crisis (and is certainly not entirely forgotten today) to have some “failed states” expelled from the eurozone, in order to reduce it to “competitive” and “well administered” nations, there is the fact that the EU is now *cleaved* into different modalities of participation, and different “speeds of integration” which have become permanent. The distinction of the eurozone and the states which keep a different currency is apparently the main one, since it is not only “economic”, but also a political cleavage, which is far from stabilized. But in a moment I will suggest an alternative representation.

In referring to a “linear” process of integration and expansion which was part of the agenda of the EU, and in any case was intimately linked to its “progressivist” ideology, we also reach a deeper level where the representation of the European construction communicates with conflicting teleologies. In fact, the crisis has brought back to the fore and aggravated the clash between two rival representations, which always existed, but with different capacities to influence the public opinion and the intellectuals themselves. One teleology is in fact a quasi-official dogma of the European Commission and is repeatedly exposed by experts and political theorists linked to the “federal” (and federalist) establishment: we can call it the *cunning of European Reason*, after the famous Hegelian model.⁹ It is essentially a speculative extension of the famous “Monnet Method”, also used by other great leaders of the European Commission, such as Hallstein, Spinelli, Mansholt and Delors, experts in introducing advances in the federal character of the common policies and the European institutions, hence advancing *occult elements of political federalism*, through the detour of their economic or technical necessity, albeit most of the time after harsh confrontations, overcoming the nationalist resistance of the member-states and their public opinions. This leads to the more general idea that major *crises of the European construction* sooner or later, but inevitably, produce new advances of European federalism. Hence the economic integration is bound to serve the emergence of a post-national state (or a post-national political construction that is not a state, but has sovereign prerogatives), because it is tacitly assumed that “economy” *always unites Europe*, or the European nations or regions (or populations) *cannot have substantially different economic interests*. To this representation another teleology is directly opposed, again a “negative teleology” as it were, which can be found both among the left and the right opponents of the EU, namely the idea that a “post-national Europe” (which is also a *capitalist Europe*), was always already the “plan” of its driving

⁸ It aims at presenting the creation of the EU and the history of its development as a kind of “Europeanization of Europe”, starting with a core whose “Europeanness” is taken for granted, and leading to external borders whose location should be at the same time strategic and cultural. Such phrases were used, in particular, in the tragic moment of the wars in the former Yugoslavia, cf. Ismael Kadaré, “Il faut européeniser les Balkans”, *Le Monde*, April 10, 1999 (quoted in Étienne Balibar, *We, the People of Europe? Reflections on Transnational Citizenship*, (Princeton University Press, 2004), p. 4.

⁹ See for example Michael Burgess, *Federalism and European Union: The Building of Europe, 1950-2000*, (Routledge, London, 2000); or Luuk van Middelaar: *Le passage à l'Europe. Histoire d'un commencement*, (Gallimard, Paris, 2009).

forces (whether visible or invisible), as if inscribed in “the genome” of the European Union.¹⁰ For this reason defenders of the national independences or critics of the social polarization that, following the trends of globalization in which it is plunged, Europe now increasingly produces within its own borders, conclude that there is no other alternative to the destructive forms taken by Europe’s economic “orthodoxy” than to abolish the construction itself (or sometimes “simply” abolish the single currency system, the *euro*, but since it is now clear that this forms the core of the federal or neo-federal construct, it amounts exactly at rejecting the federal project).

I will not discuss these two symmetric representations in detail, but I want to emphasize that their common character is a notion of *necessary development*, which in one case would be dialectical and *a posteriori*, and in the other case intentional and *a priori*. For this reason, an alternative (which is the path that I try to illustrate) lies in the possibility of identifying *real discontinuities* in the contingent history of the European construction: not only at the level of projects, but at the level of practices, in relation to the transformations of the European society. Whether such discontinuities ever reached the point of actual *bifurcations*, alternative routes that could be taken, without a pre-established result, so that the current configuration of the economic and political system of the Union had a relatively *contingent* character, is a difficult question, but vital, to be examined with the help of historians of the European institutions and the European society as such, since what we can call project is not a simple blueprint, but an articulation of political decisions with their social effects. As in the case of Europe’s territorial extension and cultural identity, this leads into the crucial question: how to understand the successive *phases* of the European construction, partly due to internal processes, partly to dramatic changes in the international environment. And I will hypothesize that the two issues concerning the recent cycle of European construction: the internal “splits” of the European space, and the “bifurcations” of its political history, are in fact not really independent.

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I want now to return to each of these three temporalities with their teleological implications, adding some more specific remarks. I realize that this will be far from the complete presentation that we need, but I hope that it suffices to, at least, make some discussion of the general idea possible. I follow the same order, passing as quickly as I can (with regret, I must say) on the *longue durée*, to concentrate on the “middle range” temporality of the European civil war, and trying to keep as much time as possible for the question indicated in my title: “rise and fall of the European Union”. But in fact my conviction is that the three temporalities are just as important as one another, producing in our present cumulative effects which are anything but linear.

Let me begin again with the *longue durée*, which I characterized as a transition from Europe’s capitalization to its provincialization. Of course I am not pretending to *tell the story* of five hundred years of world history, or to indicate something like a “principle of evolution” in this history. Not even the development of capitalism provides such a principle, and in fact it is rather the contingent

¹⁰ This “genetic” theme is insistently present in the recent volume *En finir avec l’Europe, sous la direction de Cédric Durand*, (La Fabrique Editions, Paris, 2013).

history of the capitalist world system, that could account for the forms in which capitalism has developed. However, I want to point at a question raised by this development, which becomes a burning issue in the framework of current debates concerning the crisis of the European Union. It concerns the relationship between a geopolitical structure articulated as a “centre vs. periphery” pattern, and the historical destiny of *the nation form* (or the “form of the nation state” as dominant political form of organization and the government of societies). In European modern history (which precisely gives rise to the idea of “modernity”), this pattern took the form of a hierarchic relationship between European metropolis and dominated colonies or semi-colonies, a configuration originating in the sixteenth century, which would reach a “perfect” stage at the beginning of the twentieth century, with an almost complete “distribution of the world” among European or quasi-European powers (the USA, later Japan). We usually assume that it led to the catastrophic World War in 1914 (which, as convincingly but partially argued by Marxist historians, found its causes in the ferocious competition between rival imperialist powers), which itself created some of the conditions for a growing pressure towards decolonization. During the classical age of imperialism, the nations are essentially the European powers, and the non-European colonies are non-nations, which is an intrinsic part of the so-called “Westphalian order”. Of course, not all European nations are directly or equally colonial powers, but all major nations are empires, and Europe as such relates to the world as a colonial metropolis. This has several dramatic consequences, particularly the fact that the nation-form becomes *universalized as a dominant political form*. It is universalized in the “intensive” sense, meaning that it appears as the “natural” or “necessary” framework for the construction of the rule of law, plus the representative political regimes based on elections, plus the development of republican citizenship in the name of popular sovereignty... And it is universalized in the “extensive” sense, meaning that independent nationhood becomes the necessary form of emancipation for subjugated and exploited peoples – with all the consequences that we know in terms of the ethnic imperative of cultural homogeneity and the establishment of sovereign borders - a typically European invention that became generalized, or “globalized” in the twentieth century through decolonization. My suggestion here is not to indicate something like a single turning point in the history of the European World System with respect to the “export” of the nation-form, but it is nevertheless to consider as a *major trend of transformation* in world history the “turning” of the nation-form against the domination of the European nations, who invented that form and used it to compete with one another in the ruling of the non-European world. This is indeed a very long process itself, which begun very early, with some failed attempts within Europe itself, such as Ireland’s or Poland’s crushed wars of liberation (since we should never forget that there existed proper *colonies* within the European continent). It became successful on a grand scale with the American independences, North and South (in fact complex processes of “colonial decolonization”), to become accelerated and reach its official consecration after WWII, in the form of a new international legal order, within the structure of the United Nations.

The resulting philosophical question is twofold, so it seems to me. It concerns the kind of geo-political pattern succeeding the centre vs. periphery order (or disorder) when its cultural and economic functions are exhausted: what are the alternatives? Abstractly speaking, one can think of

several modes (and it is possible that they are competing among themselves even today): one is a *de-centring* in the sense of the emergence of “centres” which are “European” in their culture and political traditions, but located outside Europe; another one is a direct reversal of the hierarchy, with the “periphery” becoming central, and the “centre” becoming periphery; and a third is linked to the idea that after modernity there is no longer any real “centre” (although there are certainly extremely polarized *zones* of riches and poverty, but distributed in all parts of the world).¹¹ The important fact, however, is that in any of these scenarios “Europe” as a single historical entity (that Keynes called “solid with herself”) becomes relativized, if not irrelevant. And the question is also: if the crisis of the “pan-European” project is the crisis of a construction which was devised at the time when colonialism begun to really decline, but was preserved with a mixture of neo-colonialism and adaptations to decolonization (French politics in Africa being a case in point), what are the effects on the *forms of European politics* itself (including its domestic politics), or perhaps the effects on *the European concept* of the political? Perhaps the difficulty that we now observe for Europeans to invent forms of political representation and decision-making, and ultimately new forms of citizenship, which are neither purely national nor imperial, or which truly institute a “politic of the governed” (Partha Chatterjee), are linked to this enigmatic reversal of a hegemony that has become incrustated within the nation-form itself.¹²

I come now to some similar remarks on the “European civil war”, or the “short twentieth century”. I said that the typical teleological pattern at work here is a conflict of eschatologies, but we should not understand that this is a pure ideological matter. Or we should understand that the ideological forces are incorporated into a material relationship of forces which, for more than 70 years, took the form of the most violent political antagonisms. This is also one of the reasons which explain why Carl Schmitt’s “concept of the political” is nowadays considered by many, in different political camps, as extremely relevant to interpret the logic and the “subjective” effects of the European Civil War, because Schmitt is not content with describing a struggle between antithetic forces, be they social, national, religious or even racial: he is analysing a conflict of the *second order*, or a meta-conflict, which opposes *antithetic manners of defining the “friend-enemy” relationship*, or politicizing the social.¹³ Precisely, eschatologies which are also political discourses have a tendency to reduce the conflict in which they are taken to *binary patterns*, of the type “liberalism vs. totalitarianism”, or “socialism vs. capitalism”.¹⁴ But the fact is that the civil war in Europe was never a binary one, neither in its military nor in its frozen diplomatic forms. And it is on this background that we may

¹¹ Such general patterns can become projected upon Europe itself, inasmuch as it is an ‘image’ of the world: see my essay: ‘Europe as Borderland’, *Society and Space*, (2009), Volume 27, Number 2 April, pp. 190-215.

¹² Partha Chatterjee: *The Politics of the Governed: Reflections on Popular Politics in Most of the World* (Leonard Hastings Schoff Lectures), (Columbia University Press, 2006).

¹³ Carl Schmitt: *The Crisis of Parliamentary Democracy* (1923), MIT Press, 1988. A recent critical assessment of the legacy of Schmitt’s thought in international law and international relations is Martti Koskenniemi, *The Gentle Civilizer of Nations. The Rise and Fall of International Law 1870-1960*, Cambridge University Press 2001, p. 413 sq.

¹⁴ The consequences are dramatically illustrated by the shifting of alliances immediately preceding the break-out of WWII, with liberal democracies picturing Hitler and Stalin as similar dictators, then communists (albeit not all of them) after the Soviet-German pact denouncing in all Europe the western capitalist powers and social-democrats as principal enemies of the peoples...

try to interpret the enigmatic, often disturbing, phenomena that allow us to locate the European Union within a mobile pattern of political, economic and ideological forces.

In this pattern we must include the fact, particularly highlighted by Mark Mazower in his recent book on *Hitler's Empire* (2008), that the first form of an *economic and political integration* of modern Europe was attempted by the Nazis.¹⁵ This would make it possible in a sense, from a “realistic point of view”, to explain that the contemporary European Union was begun in 1940 with the invasion of Poland and France, not 1947 with the Marshall Plan or 1951 with the Coal and Steel Community... However it could not blur the fact that the political constructions of Europe on both side of the Iron curtain, be it the Comecon or the European Economic Community, were projects made possible by the defeat of the Nazi rule and incorporating the ideal of rendering its return unthinkable in Europe (albeit they regularly accused each other of recuperating experts and civil servants with a Nazi background, especially in Germany, the hot spot of the Cold War).¹⁶ I find it important to insist on this point right now, because the crisis has started to unleash anti-German discourses and feelings in Europe (particularly in Greece, but not only), which invoke the fact that Germany now enjoys again a hegemonic position in Europe (however “reluctant” a *hegemon* it claims to be)¹⁷, therefore plays a major role in implementing the neo-colonial aspects of the ultra-liberal policies imposed on them by the European leadership (such as the forced privatizations, selling public land and national services to foreign capitalists, imposing a political protectorate, creating a unilateral drain of skilled manpower towards the centre, etc.). This makes it all the more important to carefully study and distinguish different forms and moments of hegemonic national or multinational power inside the European history in the twentieth century. It is equally difficult to lift taboos and avoid the confusions in these matters... But, historically speaking, there is another question which seems to me even more important to discuss: this is the question of the relationship between the division of Europe during the Cold War and the fluctuating *social dimensions* of the European construction. It is this question which leads us most directly to the understanding of the intrinsic relationship between the periodization of European politics and the structural divisions of its “space”, provided we abandon the official idea of a Europe reduced to *one of its parts*, or to its “core” region, with the others becoming “Europe” only inasmuch as they are progressively absorbed by this “core” or aligned on its institutions.

It could be argued in a simple manner namely (an idea that traces back to Keynes himself), that the construction of the welfare state in western Europe, pushed by a combination of Social-democratic and Christian-democratic forces, was continuously fostered by the necessity to offer an alternative to Soviet socialism (not so much as it was “really existing” than as it was “imagined”), in order to prevent the working classes to adopt a communist ideology and massively reject the

¹⁵ See Mark Mazower: *Hitler's Empire. How the Nazis Ruled Europe*, (The Penguin Press, New York, 2008).

¹⁶ Cf. E. Balibar: ‘Europe after Communism’, in *We, the People of Europe ?*, cit., 78-100.

¹⁷ The discussion on Germany as “reluctant hegemon” was launched by William E. Patterson in the Journal of Common Market Studies, Special Issue: The JCMS Annual Review of the European Union in 2010, Volume 49, Issue Supplement, 57–75, September 2011. It was popularized by *The Economist*, June 15th-21st 2013, “The reluctant hegemon. A special report on Germany”. See also Ulrich Beck, *German Europe*, (Polity Press, 2013).

capitalist system.¹⁸ In Gramscian terms, the threat for the West was not so much a military threat than a “hegemonic challenge”. Of course this would never have produced any result without a powerful thrust of social movements, acting under different political leaderships and ideologies, taking the form of conscious class struggles in Britain, or in France, or in Italy, or reformist trade-unionism in Germany or Sweden. But the impulse had to come at the same time from below and from above. To a large extent its outcome was influenced by “third way” political discourses that had been formed during the interwar period, especially in France, and which, not by chance, were immensely influential on the ideology of the “founding fathers” of Europe (like Monnet and Delors).¹⁹ But it was also the direct result of the competition with the “socialist camp” (something which, let’s note in passing, did not exist to the same degree in the US).

It is in this context that I believe to be able to better understand the ideological and political shift that was realized in 1989 and after (i.e. when the European Union was officially founded). Already since 1981 (if not before), with the Solidarnosc movement in Poland, it had become clear for everyone that the Soviet system in the East was not a “popular” democracy actively supported by the working class; and with the democratic revolutions in 1989, every trace of the ideological challenge on the other side had completely disappeared. During the same period, as a consequence of the advances of globalization and the rise of neo-liberalism, a new “hegemony” or perhaps, as Gramsci would say, a “passive revolution” was on its way in the West, which deprived the Marxist or Socialist organizations of their influence and progressively marginalized them. It is therefore ironic, no doubt, but no longer entirely surprising, that the EU in its constitutive moment was endowed with a quasi-constitution (in the form of founding treaties) where, for the first time in this part of the world, but not the first time in Europe, a principle of political economy deriving from a specific ideological discourse (namely neo-liberal deregulation and unrestricted competition, believed to produce “optimal allocation of resources” and spontaneously “just” redistribution) was presented as the sovereign rule which all member states ought to implement in their national policies under the close surveillance of the federal (or quasi-federal) organs of the Union. It is really tempting to read here a “repetition” of the inaugural scene that I was recalling after Keynes: the “victors” in this last episode of the European Civil War, driven by interest but also by ideology, are equally unable to see that a “fanatic” implementation of their own principle after the complete defeat of their opponents could lead to catastrophes... I am of course not suggesting that we have reached today the same degree of acute contradiction in Europe as in the interwar period after the Versailles Treaty. But still, I am wondering if a comparison between the “origin” and the “end” would not deliver meaningful lessons for our present, with respect to the imbrication of processes which destroy solidarities and foster popular resentment.

¹⁸ Antonio Negri developed this hypothesis as early as 1967: see ‘John M. Keynes et la théorie capitaliste de l’Etat en 1929’, in *La classe ouvrière contre l’Etat*, Editions Galilée, Paris 1978. For a different interpretation see Donald Sassoon, *One Hundred Years of Socialism. The West European Left in the Twentieth Century*, The New Press, New York 1996. If we follow this hypothesis, European history as a whole displays its terrible irony: while the Soviet mode of ‘socialism’ generated totalitarianism and, in the end, economic inefficiency in the East, it indirectly but powerfully contributed to welfare policies and democratic politics in the West.

¹⁹ See Antonin Cohen: *De Vichy à la Communauté Européenne*, (Paris, Presses Universitaires de France, 2012).

And now, with very little space remaining, I reach my third point, already announced as a critical trajectory of European federalism. Many recent debates and readings have convinced me that it is extremely important to provide an alternative to every *deterministic narrative* of the European construction, which is not to say that the European construction was a “free” project, inspired only by peaceful or cosmopolitan or industrial ideals (but also others, which had to do with the relative “independence” of Europe in the newly polarized world). Much the contrary, it was taking place in the framework of rigid constraints, both economic and geo-political, and it reflected a relationship of social forces within each country which, albeit with notable fluctuations, was always in favor of the capitalist logic. But this framework was changing considerably over time, and each change offered possibilities of bifurcation as much as it imposed a transformation of the project as such. Successive broadenings of the European space, are a symptom of these transformations rather than a cause, even if they impose additional constraints. If there is something like a “European society”, which indeed is a stratified and unequal society, as some sociologists would claim, it is now miles away from what it was in the 1960s.²⁰ Some of these changes have dramatic consequences on the working of the European political system (which we may assume has become a reality, if not a success either from the functional or from the democratic point of view).²¹ One such change is the progressive dissolution of the working class as a social group, organized through trade-unions and political parties or associations, but it is also the case in a different manner for the capitalist class, or the upper stratum of the bourgeoisie. It is no longer really a “national” hegemonic group, but has also not become a “European” bourgeoisie: rather, it is increasingly “globalized” and “de-territorialized”, as are the operations of financial capital themselves (something which is revealed to the public through the generalization of tax-evasion, now a “normal” system of accumulating financial patrimony, in Greece or France and elsewhere). And the fact that the most precarious part of the working class in Europe is now largely made of migrant workers or their children, also forms an illustration of the effects of globalization on the social structure of European society: but it certainly creates no solidarity or common ground with the transnational capitalists... Such transformations remain continuous evolutions, however, whereas I want mainly to insist on the *turning points* and the *antithetic character of the phases* of the trajectory.

Historians and scholars of the European construction, whether they believe in the idea of the “cunning of the European reason” producing a federal construction out of unwilling economic common interest (like Bino Olivi or Michael Burgess), or they defend the idea that the European construction is about the preservation of nations in a new historical era (like, famously, Alan Milward followed by Perry Anderson), all roughly agree on the idea that the three phases in the history leading to the EU coincide with the three “geometries” of Europe²²: the “small” Europe of 6 members (phase A), the “middle” Europe of 9 to 12 members in the ‘70s and ‘80s (phase B), the “large” Europe of 25 and 27 members after 1990 (phase C). What is less clear are the structural transformations between each phase.

²⁰ Ulrich Beck and Edgar Grande, *Cosmopolitan Europe*, (Polity Press, 2007).

²¹ E. Balibar: ‘A New Europe Can only come from the bottom up’, *Opendemocracy*, 6 May 2013 (<http://www.opendemocracy.net/etienne-balibar/new-europe-can-only-come-from-bottom-up>)

²² Bino Olivi: *L'Europe difficile. Histoire politique de la communauté européenne*, “Folio”, (Editions Gallimard, 1998); Michael Burgess, cit.; Perry Anderson, *The New Old World*, (Verso, 2009).

It is important here, in my view, not only to identify the first great turning point with the consequences on the European construction of the global “oil shock” in 1973 (and also the American decision to modify the international monetary system in 1971), but to view the 68 events as a decisive political and cultural component of the change. To be sure, 68 is itself a global phenomenon, which highlights the articulation of external and external factors in the European history. It is after 68, and as a consequence of its new challenge to “authoritarian” forms of management as well as family or academic life, that Western capitalism invented innovative forms of “individualized” job management, which intensified exploitation while seemingly enhancing the personal responsibility of workers and employees, thus destroying the classical forms of class solidarity in the factories.²³ But it is also as a consequence of 68 that powerful new social movements and new forms of internationalist consciousness became possible. If we agree on this correlation of antithetic aspects, we can understand better why the “intermediary” phase is so contradictory. This is really, it seems to me in retrospect, the moment in which the alternative routes were presented to the public, but eliminated in the end. There are several elements which I find worth recalling here. Many of them are strangely forgotten or obliterated in the contemporary discussions. And there are good reasons for that, of course, since a contingent result retrospectively creates the appearance of its own necessity, and the end of the phase was marked with an even more spectacular turning point, in 1989 and the following years.

What I find striking in the phase B, between 1968 or 1973 and 1990, is the fact that the question of the division of Europe was not addressed uniquely in the form of an integration of the Eastern part of Europe into the Western part in the “subaltern” form that we have observed after 1990. This was namely the time of a relative *détente* in the Cold War, with the US in a difficult situation in Vietnam, which made it possible for alternatives to “Atlantic Europe” to emerge, from atop with the *Ostpolitik* of German Chancellor Willy Brandt, and from the bottom with the campaigns for nuclear disarmament (END) and the Helsinki Initiative of citizens on both sides of the wall.²⁴ What would later become called by Gorbachov the “common house of Europe” seemed to acquire a certain momentum, unless it precisely displayed its utopian character, since it was precisely the moment in which the Soviet bloc “froze” itself in absolute conservatism. And the West worked hard to eliminate, recuperate, or deviate the innovative forces that had started to imagine a different future than capitalist accumulation.²⁵

But even more important was the fact that, in the new division of powers between the nation-states and the federalist forces, on the general background of a weakening of social movements and a dissolution of the working class as an organized force that I already mentioned, what emerged was the historic incapacity of the European left to create a new horizon or develop a campaign for equality and solidarity beyond the limits of the nation-states where it had become entrenched. As a consequence, the project of a “social European policy”, as a necessary counterpart of a European

²³ See Luc Boltanski and Eve Chiapello, *The New Spirit of Capitalism*, (Verso, 2005).

²⁴ E.P. Thompson and others, *Exterminism and Cold War*, (Verso, 1982) (includes my own essay “The Long March for Peace”).

²⁵ It is worth asking here again, who manipulated the terrorist groups of “Die Rote Armee Fraktion” and “Brigate Rosse” to kill these possibilities, together with the strategy of Eucommunism, which of course had its own weaknesses.

monetary policy that had been imagined by social-liberal politicians like Delors, was defeated under the joint effort of the nationalist leaders (Mitterrand and Kohl having replaced Giscard and Schmidt with a decidedly more *souverainiste* agenda, even before the German reunification) and the rising forces of globalized capitalism (which massively used the weapon of industrial “delocalization”), and relegated to the dustbin of European policies. After the global turn of 1989, in the framework of a new wave of financial globalization, with “unrestricted competition” working as the Trojan horse of nationalism and speculation within the limits of the EU itself, it was decidedly too late. The deeply heterogeneous and antagonistic “union” that we observe today, was becoming the reality, before it was manifested in the open through the extremely unequal consequences of the “crisis” for “strong” and “weak” European states: a *North-South division of Europe* (which sometimes crosses the nations themselves, tending to radicalize their own internal *regional* antagonisms) replacing at the “end” the *East-West division*, with which the contemporary cycle had begun, although based on quite different principles and rules (not military, diplomatic, and ideological, but economic, financial... and ideological). Perhaps the continued reflection on the “strange accumulation” of contradictions which led to this (no doubt provisional) result will help us imagining a common, and different, issue.

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EUROPE 1815-1914: CREATING COMMUNITY AND ORDERING THE WORLD

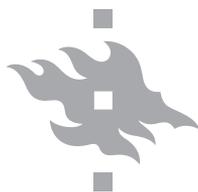
The Shadow of the Past and Future of the Present

The research project 'Between Restoration and Revolution, National Constitutions and Global Law: an Alternative View on the European Century 1815–1914' (EReRe) funded by the European research Council was established at the University of Helsinki in 2009 with the goal of providing an alternative view on the European century that began with a spectacular peace under the motto of 'never again' and ended with the First World War. From the outset, the assumption was that the century was traversed by themes and tensions that in one way or another continue to dominate ideas about European peace and progress today. These need to be highlighted so as to enable an adequate historical understanding of the difficulties of the present moment, including the nature of the alternatives faced by European decision-makers today. The focus reaches beyond European institutions, in order to approach the themes and tensions that overarch the past two centuries in their global context.

The volume argues that a realistic history is needed that rejects any grand narrative about modernity, progress or liberalism (to name some popular contestants) embedded in the nineteenth century. If we have had this time as not beginning with the revolution in 1789 this is because we have wanted to avoid accepting perhaps the most persistent foundation myth with which European institutions have preferred to decorate themselves. Concentrating on the restoration and the search for European stability in 1815 does not mean a focus on the spectacular exception, but on what appears as normal: the imposition of order from above. But from the choices of the men of Vienna, designed to attain stability, grew fragility. So the narrative of the nineteenth century is neither about the victory of the revolutionary spirit nor of conservative reaction but of both.



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