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VICTOR'S LAW?: COLONIAL PEOPLES, WORLD WAR II AND INTERNATIONAL LAW[1]

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Abstract. Contemporary world order rests on a fault-line. On the one hand it is an interstate system founded on the legal equality of all states. On the other hand it establishes institutions that privilege a small number of states in economy and politics. This article examines the fault-line, which has widened in recent times and threatens to destabilise the order established after the end of World War II. The 'world' in World wars is because of the global scope of the inter-European wars. The world wars were fought over colonies, in colonial territories, with the manpower and material resources of the colonies. Yet dominant narratives about the world wars speak about the wars as a European war between European nations and write-out colonial questions, colonial contributions and more importantly for this article the colonial impulses in the writing of contemporary international law and establishment of international organisations. This paper examines the human, monetary and material contributions of India in World War II. Britain was the preeminent Empire during the world wars and India the 'jewel in the British Crown'. India was crucial to British conduct of the world wars. At the same time racism and repression during the interwar period fuelled powerful anti-colonial movements in India. Those struggles ended the British Empire. The irony of racism against millions of people who fought and died for Britain presents many perplexing questions about the legacies of World War II for racism and international law. This article examines the responses of different European powers to the independence movements in India during the world wars and argues that the responses of different Empires of the time to the anti-colonial struggles holds the cues to understanding the widening fault-line in the international order today.

Keywords: WW2; Colonial people; Trusteeship; Sovereignty; Bristish Empire

Introduction

The post-World War II (WW2) order is unravelling before our eyes. With the exception of Namibia and Tanzania, the mandate territories in the Middle East and Africa, established after World War I (WW1) are engulfed by wars directly or indirectly. The Skyes-Picot agreements during WW1 (dividing Ottoman territories) (Helmreich 1974), the Radcliffe Award (dividing India, Pakistan and Bangladesh) (Chester 2009) and Yalta agreement (establishing the East-West divide) (Briggs 1946), partitioned territories between dominant powers and sowed the seeds of ethnic, racial and religious divisions in those regions. Those divisions have fed into regional wars throughout the post-WW2 era. The establishment of the League of Nations for the peaceful settlement of interstate disputes failed to avert WW2. The UN which was established to end all wars oversaw four decades of Cold War fought in the continents of Africa, Asia and Latin America. The Cold War was 'cold' because there was no war on the European continent. The end of the Cold War raised hopes among many that it would end proxy wars around the world forever. Instead wars returned to the heart of the European continent.

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We are witnessing the largest military build up of arms along the Russian borders since the end of WW2, the largest US naval build up in the South China Seas since WW2, defence agreements between India and the US and UK encircling China and defence treaties between China and countries that surround India (Nepal, Bangladesh, Pakistan, Sri Lanka). All these regions were important theatres for WW1 and WW2. Talk of a World War III is in the air (Navarro 19 April 2016; Pilger 23 March 2016; Singer and Cole 09 September 2015). As during the interwar years, economic crises plague Euro-American economies. Racism and ultra-nationalism across Europe and North America are in the open cutting through the political Left and Right divides, and located within state institutions as well as in popular politics. This backdrop forms the context for considering, what is perhaps the most important legacy of WW2: international law and institutions.

Contemporary international law sits on a fault-line. On the one hand it establishes a legal order founded on the sovereign equality of all states regardless of race, nationality, religions, economic status. International law seeks to end all forms of colonialism and make colonisation history. On the other hand, the distribution of power in international organisations privileges a small group of states. The UN Security Council privileges the Big Five or the veto powers who are victors in the world wars, the Bretton Woods Institutions privilege the five largest capitalist states drawn from Allied and Axis powers, the NATO alliance privileges the largest Euro-American military powers. Palestine was colonised even as the statutes on decolonisation were being written into the UN Charter. Successive attempts to prosecute the US and UK governments for an illegal war in Iraq under universal jurisdictions of Belgium and Spain have failed so far (Lutz and Reiger 2009, 37; Whitlock 24-05-2009; Yardley 10-02-2014). The International Criminal Court, scholars argue, is a carefully crafted institution that makes prosecution of powerful states like the US difficult (e.g. Schabas 2011, 34-35). Notwithstanding these features of international law, international lawyers continue to seek legal solutions to contemporary problems through interpretative processes and creative litigation strategies in the hope of preventing wars and promoting peace.

Contemporary international law was born in the crucible of the world wars. International law was, not surprisingly, a subject of animated discussion during the world wars (Koskenniemi 2011). The League of Nations was historic in that it was the first attempt to provide an institutional framework for international law. International law occupies a prominent place in academic scholarship and policy in the post-WW2 era. Dominant scholarship on the history of international law sees the development of international law as an extension of European law to the rest of the world, a movement from being the law of Christian nations to becoming the law of humanity (Gozzi 2007). There is a growing body of scholarship in recent times challenging the dominant European narratives of international law from diverse standpoints and ideological orientations (e.g.Anghie 2005; Chimni 1993; Simpson 2004). What is common in the critical scholarship on international law is that they emphasise the importance of incorporating colonialism and the Third World in accounts of developments in international law. Dominant and critical scholarship emphasise doctrinal developments however.

The emphasis on doctrinal developments while important, do not go far in explaining the paradoxical character of international law if doctrinal development is not considered within the socio-historical contexts that prompted the developments. Why did the victors in the world wars write-in sovereign equality of states as the founding principle of the post-WW2 order? If it is because of the desire to avert future wars why did they not extend the same principle to the international institutions that they established? Typically, in the absence of socio-historical analysis, answers to such questions invoke voluntarist explanations that rely on moral/ethical or double standards arguments. If the source of secular law lies in politics, international law was born from disillusionment with politics. International law seeks the sources of secular law in ambiguous concepts like 'humanity' or an 'international community' that transcend politics and invoke metaphysical explanations. At the same time, politics is just the thing that international law seeks to order in international affairs. If instead, politics is seen as the source of international law, it becomes apparent that European wars are the sources of international law. Each major war has stamped its insignia in particular ways that characterise international law today: the Thirty Years' War in Europe produced the Westphalian system, the Napoleonic Wars, the Concert System, the world wars, the UN system. Modern wars, at least since the rise of capitalism in Europe, are wars over colonies,

colonial trade routes, colonial resources, spheres of influence. Yet it is precisely colonies as the reason for European wars and the source of international law that is disguised by locating it in transcendental ethical values instead of history and politics. Recognising the world wars as the source of contemporary international law opens up the pathway to understanding the fault-line not least because the world wars were fought over colonies. More importantly, it raises challenging questions for international lawyers about the relationship of wars and international law. How should international lawyers committed to peace and justice see international law if it is effectively a war settlement?

This article seeks answers to the paradox of unequal relations between states and formal equality between them by inserting colonial experiences during the world war years in the accounts of developments in international law. What stands out about the world wars is that at a time when men and women from the colonies were called upon to make extraordinary sacrifices for the imperial state, the imperial states unleashed the most repressive racism against their colonial subjects. At least partly as a result, European empires lost their colonies and their status as preeminent global powers after WW2. For example, Britain led the Western Allies militarily in the world wars but lost its colonies and its leadership of the Euro-American world after WW2. A historical overview of European wars shows that these paradoxes are not limited to the world wars. Indeed they characterise the history of European modernity. European powers mobilised men and materials from the colonies to fight their European rivals. European powers were forced by circumstances to recognise native rulers in the colonies and at the same time claim superiority. Colonial governance was a complex entwinement of racial bigotry, cooption and collaboration with those same people considered 'inferior'. The sources of international law lie in the simultaneous processes of recognition and de-recognition of non-European states.

The world wars brought those contradictions to the fore most starkly in the British Empire. In the legal discourse of Empire and colonial state building, the entwinement of racial bigotry, cooption and collaboration is mirrored in theoretical modifications to the concepts of sovereignty in European public law and trusteeship in European private law. The principle of sovereignty holds out the possibility of independence and equality of states while the principle of trusteeship establishes a hierarchy of superior and inferior states. Both legal concepts: sovereignty and trusteeship, are founding ideas in international law under the UN system (Purdy and Fielding 2007). Historically, the entwinement of the two concepts occurred as responses to resolving problems of colonial governance. The central challenge in colonial governance is to invite alien rulers and peoples to participate in colonial expansion: military and economic, and at the same time maintain the superiority of the colonising power. The fragility inherent is such a governance apparatus means during times of crisis the fusion of sovereignty and trusteeship unravels. When racism blinded political expediency, European empires collapsed. What does this say about the inclusion of non-discrimination and equality in the principles of colonial governance?

The sections below take the principles of colonial governance in India under the British Empire, in particular the evolution of principles of sovereignty and trusteeship, as the point of departure to illuminate how racial politics and laws of empire are entangled. India offers a unique vantage point for an inclusive history of the development of international law. Britain was the preeminent empire and India its most precious 'jewel in the crown' before the world wars. The British Empire, according to the Statute of Westminster of 1931, comprised the Motherland, the Dominions, India and the Crown Colonies and Protectorates (Voigt 1987, 1). The dominions were 'self-governed' by British settlers (e.g. Australia, New Zealand, Canada), the Crown Colonies and Protectorates (e.g. Nigeria, Sri Lanka, Sierra Leone) were governed directly by the Colonial office in Britain. India was a separate administrative category, being neither a dominion nor governed by the colonial office. The British administrative machinery in India had considerable freedom to innovate principles and institutions for colonial governance therefore. J.S Mill, the liberal British political theorist and officer of the British East India Company for thirty years, saw India as the great experimental laboratory for the Empire (Bell 2010). Indeed during the interwar period British expertise in the governance of India became instrumental in crafting the post-WW2 UN order. Jan Smuts, a member of the British Imperial War cabinet who played a prominent role in promoting trusteeship doctrine in the League of Nations wrote,

> Where the British Empire has been so eminently successful as a political system [...] the league, *working on somewhat similar lines*, could not fail to achieve a reasonable measure of success. (quoted in Grant and Trivedi 2006, 24, fn11) (italics added).

The discussion of the entwinement of sovereignty and trusteeship and institutionalisation of racism in imperial governance is organised around three historical moments in the governance of India: the first is the period from 1757 to 1857, the second from 1857 to 1914 and the last from 1914 to 1947. Section 2 examines the period beginning with the Battle of Plassey in 1757 to the First War of Independence (known as the Indian Sepoy Mutiny in British historiography) in 1857. Section 3 examines the second period from 1857 to 1914 when WW1 broke out. Section 3 examines the period from 1914 to 1947 when India became an independent member of the UN and the Specialised Agencies. Indian independence effectively ended the British Empire. The last section highlights how writing-in colonial histories challenges the way we understand and speak about the legacies of WW2 and international law, both. The world wars reveal that racial and cultural affinities between European states survived even under conditions of the most terrible wars ever fought between rival European states. In contrast European powers were unable to overcome their racial prejudices against non-Europeans even when their survival was in jeopardy. The settlement of WW2 inscribed principles of colonial governance in the architecture of the post-WW2 order. The entwinement of racism and constitutionalism, and sovereignty and trusteeship in colonial law assume heightened significance in the contemporary context as the WW2 settlement unravels before our eyes.

1. Sovereignty and trusteeship in India: 1757-1857

The Battle of Plassey in 1757 is usually considered the beginning of British involvement in the administration of India (Edwardes 1969). The foundations of the European Empire system were laid by European trading companies under royal trading charters issued by different European kingdoms. It was the English East India Company (EIC) more than any other European trading company that became the most state-like in the regions that fell under its influence. The idea that a trading company should behave, *de facto*, like a sovereign was a novel one for many in Britain and Europe more generally. Adam Smith called it a 'strange absurdity', Edmund Burke ridiculed it as a 'state in the disguise of a merchant', and Thomas Macaulay in 1833 thought 'it is strange, very strange' that a joint stock company should have sovereignty 'of a larger population, the disposal of a larger clear revenue, the command of a larger army, than are under the direct management of the Executive Government of the United Kingdom' (quoted in Stern 2011, 3).

The terms of devolved power under the royal charters included military responsibilities, administration, law making, treaties with Indian rulers, criminal and civil justice, taxation and trade (Keith 1961). The Indian Army grew from the EIC's operations in India, initially to guard the EIC's factory outposts, later expanding its role to defend its native trading partners against their Indian rivals (Rafter 1856). Thus, very early on, the EIC became involved in wars in the Indian subcontinent by intervening militarily between native Indian rulers with rival European powers supporting different sides in the Indian wars (Malleson 1888). The Anglo-French wars for example were at least partially fought on Indian soil with each European power siding with one side of the Indian war. These wars resulted in a number of treaties between the EIC and the native rulers on trading concessions as well as military cooperation (Dodwell 1929, 1932). Two types of legal relations emerged as a result. One was the relations between the EIC and Britain under the royal charters and the other between the EIC and the Indian rulers under treaties and agreements. These two relations were arrived at independently of the other and fraught with tensions. Those tensions became the source of developments of principles of colonial governance and theories of sovereignty and trusteeship.

The EIC treaties with the native rulers recognised their legal capacities as sovereigns for the purposes treaties. At the same time they recognised the authority of the British Crown over the EIC. These arrangements gave rise to questions about the nature of relationship between the British Crown and the Indian rulers (Holdsworth 1930;

Palmer 1930). The British Parliament asserted its sovereign authority to regulate the EIC. The EIC on its part sought to limit the authority of Parliament over its India operations (Keith 1961). The tensions between the EIC and the British Crown led to a series of parliamentary inquiries into the EIC's activities in India (Wilbur 1945). A central question in those inquiries concerned the nature of sovereignty in India and whether sovereignty could vest in a trading company (Cohn 1997). The British Parliament claimed the EIC was an agent of the Crown and Britain owed a public responsibility to the Indian people as the principal if the EIC breached its treaty obligations with the native rulers.

The EIC claimed their source of authority for the India operations flowed from the treaties and agreements with the Indian rulers to which Britain was not privy (Stern 2011). The EIC had fiduciary obligations to the Indian states under the treaties. The charters may give authority to the Crown over EIC but not over the Indian rulers who were sovereigns in their own right. The treaties established a relationship of principal and agent between the EIC and the Indian rulers entrusted with the management of their economic affairs (Stern 2011). The right to collect land revenue was by way of fees of the principal to recover costs (Court of Directors 1833). Indeed the EIC established a Court of Wards under the administrative control of its Board of Revenue. The Court of Wards oversaw the estates of native rulers, confiscated land when revenues were not paid and appropriated land when native rulers died intestate (Court of Directors 1833). The idea of 'contracting out' sovereignty was a novel one without any theoretical foundation in modern European constitutionalism that was still emerging in Europe. In these arguments between the Parliament and the EIC both sides defended their claims by invoking principles of trusteeship in principal-agent relations.

These controversies raised disputes about the identity of the reversioner if the trust lapsed. Between 1767 and 1775 there were five separate Acts of parliament to regulate the EIC (Wilbur 1945). The most well known stand-off between the Crown and the EIC concerned the impeachment of Warren Hastings the Governor-General of the EIC in India. Edmund Burke accused him of extortionist taxation and that out of the misery of Indian peasants 'is derived the wealth and subsistence of the East India Company, who use funds thus procured to buy the China tea served on English breakfast tables' (quoted in Wilbur 1945, 299). We see in these accusations early invocations of universal humanitarian obligations of the British Empire. We also see the internationalisation and legalisation of trusteeship.

Occurring against the backdrop of the American War of Independence supported by France and Spain, Anglo-French rivalries in the Indian subcontinent, and fears that the EIC might follow the example of American colonists and declare independence from Britain, the British Parliament could neither return India to the native rulers as reversioners, nor antagonise the EIC by asserting sovereign authority over it. Unrestrained by parliament, the EIC invented the 'doctrine of lapse', a principle in testamentary law where estates revert to the Crown if an estate owner dies without heirs, or if the estate is mismanaged or the trustee's acts are immoral. The EIC claimed it was entitled to the estate of the native rulers as the reversioner. The 'doctrine of lapse' led to widespread annexation of Indian territories by the EIC (Choudhary 2009). To justify annexations Indian rulers were portrayed as debauch, Indian adoption laws were derecognised and Indian systems of administration treated as unethical and unacceptable if they did not comply with British standards. Racism was thus necessary to justify annexations under the legal doctrine of lapse.

The annexations led to the first unified challenge to the EIC's rule in India (D'Souza 2014). In 1857, the soldiers of the British-Indian Army, together with the peasants reeling under extortionist revenue and fractions of the aristocracy led the First War of Independence in 1857 (Stokes 1969, 1970). The 1857 war shook the foundations of the expanding EIC. The EIC could no longer trust the mercenary Indian army that it had relied on. The EIC became indebted to the British Crown because of the war (Keith 1961, 185). The First War of Independence ended the EIC's rule. If racism fuelled the war, the war settlement that followed was forced to address the fault-line - the tension between the sovereignty of Indian rulers and trusteeship of the Crown. The Queen's Proclamation of 1858 did two things. It recognised the legal principle of non-discrimination on the grounds of race (Keith 1961, 167). The 1858 proclamation is perhaps the first legal instrument advancing non-

discrimination as a principle of governance in international affairs, if we consider the protectorates to be states in their own right that is. The proclamation promised to open the civil services in states under direct rule to the Indians. Secondly, the Queen's Proclamation recognised the sovereignty of native rulers, agreed to stop further annexations and to recognise and respect all the treaties entered into with the native rulers in letter and spirit (Keith 1961, 212). The First War of Independence and the Queen's Proclamation of 1858 set in motion a comprehensive reorganisation of governance and institutions in India. If the 1757 war initiated the process of establishing the ground norms of sovereign equality and racial hierarchy, the 1857 war challenged that order and forced further development of both principles in a system of governance that came to known as 'indirect rule'. Indirect rule was another step towards international law as we know it today.

2. Indirect rule, sovereignty and trusteeship: 1857-1914

The disputes between Britain and EIC focused on pragmatic approaches to secure their interests in India, Britain's interest in securing its authority over the EIC and the EIC's interest in minimising regulation (Robins 2012; Stern 2011). When pragmatism is not embedded in legal relations the actions appear as if they were opportunism. In the absence of theology, secular law requires theoretical foundations and moral justifications of some type. Enlightenment thinkers invoked mercantile metaphors of contract and saw social contract between citizens and state as the foundation of the state; and representative government as an article of trust, subject to revocation through democratic politics (Purdy and Fielding 2007). In the colonies in contrast, the source of law was real (not imagined) contracts and trusteeship about governance of native rulers. One of the first moves of Lord Canning, the first Governor-General of India to be appointed by the Crown after it took over the governance of India from the EIC, was to appoint Sir Henry Maine, an expert on jurisprudence and British constitutional law, as the law member of the Governor-General-in-Council from 1862-1869. Sir Maine is considered the architect of colonial law not least because of the significant modifications he made to traditional jurisprudence of sovereignty (Cocks 2004).

Sir Maine modified the core principle of post-Westphalian jurisprudence that sovereignty was absolute and indivisible. Instead Maine developed the doctrine that sovereignty was divisible and that it could be shared between numbers of different authorities, in this case the British Crown, the EIC, the Indian States and the Indian people (Ramusack 2004, 94). For Maine, societies progressed from status-based relations to contract based relations (Maine 1909). Like Darwinian evolution in the natural world, social institutions also evolved and law was a key signifier of their evolution. Contractual social relations are the benchmark of progress. Indian society was founded on status based social relations and lower in the evolutionary ladder (Maine 1909). His doctrinal contributions on divided sovereignty resolved doubts about the constitutional status of treaties and laws by the EIC, a trading company, under direct British Rule. The idea of divided sovereignty legalised and regularised the laws and treaties made by EIC without which sovereignty must revert to the Indian rulers in law. Equally the idea of divided sovereignty made it possible to recognise the sovereignty of native rulers without undermining the supremacy of Britain as the paramount power. Maine freed the concept of absolute sovereignty in European jurisprudence and used it to entrench institutional Darwinism as a constitutional law doctrine. Shared sovereignty necessitated new justifications for a hierarchy of states however. To justify the paramount status of Britain the superiority of the English legal system alone was not sufficient as the EIC recognised Indian laws including the law making powers of native rulers. Maine's legal Darwinism presupposes racism justified by other means. Maine's constitutional theories were supplanted by social sciences. British anthropology flourished as social scientists invented theories of martial, intellectual and labouring races of India (Lewis 1973; Asad 1973).

Some Indian ethnic groups like the Sikhs, the Marathas, the Gurkhas, anthropologists argued, were by their very nature warriors who were capable of bearing arms. They had good fighting instincts, but poor intellectual competencies (Barkawi 2012). These 'martial races' were best organised as distinct regiments under the overall authority of the British-Indian army. Being tied to their cultures, the martial races were not capable of cosmopolitan outlook, which comes with modernity (Barkawi 2012; Rand 2012). Inspired by the Roman

principles of 'divide and rule', the British-Indian army was reorganised along racial and ethnic lines: the Maratha regiment, the Sikh regiment, the Gurkha regiment, the Dogra regiment, the Balauch regiment. In contrast, the Brahmins were classified intellectually inclined. The South Indian Brahmins, the Bengalis for example were considered better suited for administrative jobs in the civil services but were incapable of bearing arms (Barkawi 2012; Rand 2012). Inherent in this structure of state power is the use one section of colonised subjects against others. At the operational level one of the first actions of the Government of India after taking over the reins from the EIC was a comprehensive reorganisation of its armed forces along racial lines.

Shared sovereignty may have appeased some Indian rulers and the new English educated elite but it did not satisfy the Indian people's desire for freedom from colonial rule unleashed by the 1857 war (Martin 1967). Nevertheless, the promises under the Queen's Proclamation in India spurred the expansion of the British Empire around the world. Britain used the equality provisions to train Indians in civil administration and warfare and sent them around the world to other British colonies but always under the command of British superiors at the higher levels of administration. The first global war was perhaps the Boer Wars in South Africa. For the first time troops from five continents were deployed to wage war against the Boers (Datta 2007). It also set the precedent of rallying the 'educated classes' as they were known in support of British war efforts. Britain rallied the support of the Indian trading communities in South Africa under Gandhi's leadership against the Dutch settlers (Desai and Vahed 2016, Ch.3). Within India things were very different. Equal opportunities in the civil services and the army did not materialise (Compton 1967). The government introduced a series of repressive laws to suppress popular resentment in the regions under direct British rule (Chattopadhyay 1991). At the same time in the Princely states under indirect rule, Indian rulers were required to raise an armed force at their costs for Britain (Ramusack 2004, ch.3).

By 1905 there was nationwide opposition to British rule. Within India the discrimination policies in the civil and military services fuelled nationalist movements within and outside India. The Ghadar Movement organised by migrant Indians in North America with roots among peasants and soldiers and the Swadeshi (national) movements within India with roots amongst urban educated classes launched the second most comprehensive resistance to British rule after the 1857 war in 1905 (D'Souza 2014). The Ghadar movement belied anthropological theories of race in that the 'martial races' of India produced a comprehensive internationalist challenge to colonial rule that reverberated throughout the British Empire, established an influential press and gave birth to a literary movement that outlived the bloody repression of the movement. And, the Bengali-Brahmin intellectuals took up arms against colonial rule in the Swadeshi movement. On the eve of WW1 Britain could no longer trust the loyalty of its Indian troops, yet without the Indian troops and resources Britain did not have a fighting chance of defeating its European rivals.

Britain responded with administrative reforms promising greater political representation to Indians in the administration and more effective enforcement of the non-discrimination clauses promised under the 1857 Proclamation. These reforms were accompanied by racism in new forms. In 1909 Britain introduced limited representative democracy with separate electorates for Hindus and Muslims known as 'communal electorates'. If democracy is the recognition of the modern constitutional principle that sovereignty vests in the people, communal electorates divided popular sovereignty between Hindus and Muslims. The ethnic divisions came in the wake of widespread nationalist opposition to British rule. Indian troops were needed to put down internal resistance as much as external deployment against other European powers. These tensions intensified as the wars between European powers intensified. The world wars unravelled the carefully crafted apparatus of governance since 1857 based on race with the gloss of equality and non-discrimination in the army, civil services and polity (see D'Souza 2014).

3. European rivalries, colonial resistance and the World Wars

WW1 and empires

WW1 is the moment when the old empires collapsed. The empire system ended rather abruptly after a century of what appeared to be invincible glory (Gerwarth and Manela 2014). WW1 was fought over the redistribution of the colonies with colonial resources and men. It was fought between empires as well as within empires. All empires were forced to deploy troops on the war fronts as well as to put down internal rebellions in the colonies.WW1 challenged the system of Great Powers settled by the Napoleonic wars. Less powerful empires, most prominently Ottoman, German and Japanese, struggled to survive. WW1 did not lead to a war settlement and led instead to WW2. What is interesting about the world war years is that Russia, one of the four Great Powers in the post-Napoleonic era was the most debilitated by WW1. After its defeat in the Russo-Japanese war in 1905 Russia slid into internal anarchy. The Tsarist regime lost its capacity to govern, internal unrest engulfed Russian society and anti-colonial struggles erupted throughout the Russian empire (Sanborn 2014). The promise to exit from WW1 and the slogan of 'bread and peace' was an important reason for the success of the October Revolution in 1917. Encircled by anti-colonial movements in its colonies, internal revolutions within and expansionist aggression by the other European powers during WW1, Russia, on the verge of disintegration, emerged as the new superpower after WW2 (Sanborn 2014).

In contrast Britain, the empire that boasted the sun never set within its realms, and claimed to be the most liberal empire, lost almost all its colonies as well as its economic supremacy and emerged as a subsidiary power of America. Germany began empire building rather late and except a few small states in Africa and the Pacific, the German Empire was limited to the European continent. Expansionism was a key motivation for Germany in WW1. Germany lost the war and the colonies and was forced to pay war reparations, factors that contributed to WW2 (Kent 1989). The Allied and Axis powers alike were incorporated into the hierarchy of power after WW2. Expansionism was also the key motivator for American participation in WW1. In contrast to Germany and Japan, American authority expanded significantly during WW1 and it emerged as the bigger of the two superpowers after WW2 with military bases around the world and unsurpassed military prowess. America's shared legal traditions with Britain enabled the strongest economy, to bring about a settlement of WW2. Although Britain lost its colonies, its expertise in governance was to play an important role in establishing the post-WW2 order. The responses of Britain, Germany, the United States and Russia to Indian independence during the world war years illuminates the ways in which racism and constitutionalism intersected in the demise of old empires and the emergence of new superpowers in their place.

Britain and India suring WW1

It would not be an exaggeration to say Britain won WW1 because of India. Lord Hardinge the Viceroy of India during WW1 called India 'the key-stone of the structure of the British Empire' (Voigt 1987, 1). India had strategic importance for Britain. Situated between Africa, South East Asia, East Asia and the Middle East, India gave Britain unchallenged command over the Indian Ocean and access to major continents. Moreover India was a source of manpower: soldiers and administrators in the lower orders of the British army and bureaucracy deployed around the world for policing and administering the British Empire. A large part of Britain's wars expenses were paid for by revenues from India. Before the outbreak of WW1 the British-Indian Army comprised less than 320,000 regular and auxiliary troops. Between 1914 and 1918 the numbers rose to 1.5 million men who were deployed in major theatres of WW1 in Mesopotamia, France, Middle East, the Persian Gulf, East Africa, Aden and Gallipoli. Over a third of India's national budget went to the upkeep of the Indian army (Voigt 1987). The Indian/Princely States were called upon, under protectorate treaties, to raise troops and arms from their revenues as their contributions to Britain's war efforts (Ramusack 2004, Ch 3).

The racial architecture of institutions of governance established as a divide-and-rule strategy after the First War of Independence in 1857 became a constraint during WW1. At a time when the war was demanding men in ever growing numbers, the ethnocentric organisation of the British-Indian army limited recruitment to groups classified as 'martial races'. The racial organisation of the army prevented free reorganisation of troops when there were losses in battlefields as reinforcements also had to come from the same ethnic group as the regiment (Barkawi 2012; Rand 2012). Soldiers were not allowed to transfer to regiments that were not of their ethnicity.

The British and the British-Indian armies were officially independent. The British-Indian Army could not adopt an independent war strategy however. Yet on the battlefield the former were better trained and equipped compared to the latter, and the latter suffered greater loss of lives as a result of poor equipment and training. Promotion to ranks of commissioned officers was not permitted, a factor that affected morale and command of troops. WW1 forced the British government to address these issues eventually but it was too little too late (Barkawi 2012; Rand 2012).

Externally Britain was under pressure from America to open up its colonies for economic and political expansion (Darby 1987, 83). India's contributions to WW1, second only to Britain, meant that India had to be included in the imperial peace negotiations. India was invited to the Paris Peace conferences as the only non-sovereign state (Legg 2013). America saw the inclusion of India as Britain's way of bolstering its votes at the peace talks (Legg 2013). After the peace conference, Ireland was granted dominion status in 1922 but not India (Garton 2014). Indians attributed the refusal of dominion status to racial discrimination. Unlike Ireland, India was neither Christian nor European. The other dominions, Canada, Australia and New Zealand, were governed by British settlers. Instead, the constitutional reforms of 1919 expanded communal electorates in numbers as well as scope. If the constitutional reforms were meant to expand representative government, the communal electorates further racialised institutions of governance. The moot question about what might have been the course of the British Empire had it granted dominion status to India in 1919 must remain a speculative one. The consequence of the policies was that British Empire unravelled and racial policies spurred the downfall of the Empire. However, the principles of colonial governance: divided sovereignty, paramountcy/subsidiarity and trusteeship outlived the British Empire. It informed international law in the League of Nations established at the Paris peace conference in 1919 and later the United Nations.

Germany, India and the World Wars

The Indian nationalist movements made dramatic advances as WW1 gathered storm. The nationalist movements turned to Germany for support in the belief that an enemy's enemy would be a friend, in politics at least. In 1903 the Ghadar movement in America sought assistance and help from Germany to overthrow British Rule (Ramnath 2011). It was the capture of Indian soldiers in Europe by German troops during WW1 that provided a fertile recruitment opportunity against Britain's most vulnerable spot: India. Expatriate Indian nationalists established the Berlin India Independence Committee and rallied support for the cause of Indian independence in Europe (Liebau 2011). Germany *did see* the geopolitical importance of India for its own war aims. Geopolitically, Afghanistan on India's northern borders and Burma on the east provided important access routes for Germany. On the eve of WW1 secular German nationalists, most notably the Social Democrats recognised the importance of winning over Indian nationalists for Germany's war efforts to succeed (Fraser 1977; Jones 2014; Liebau 2011). European social scientists invented theories of superiority of the Aryan races (Thapar 1996). Aryan race theories allowed the inclusion of Iranians and Indians, the most strategically important allies for Germany outside Europe, without diluting race-based German nationalism. Notwithstanding these possibilities, Germany was unable to overcome racial prejudice in favour of strategic rational calculations in foreign policy and the conduct of war. German expansionism was driven by a sense of entitlement to Slavic nations. In Hitler's view,

> During the whole of my political activity I have always expounded the idea of a close friendship and collaboration between Germany and England, […] surely the British could understand that just as the Raj gave meaning to their lives, the vision of a thousand-year Reich gave purpose to Germans (quoted in Mukerjee 2010, 39).

Germany believed although the British were their enemies in war it was nevertheless a superior race. According to Hitler,

> If anyone had asked Lord Robert Clive by what right he had seized the riches of Bengal, he would have replied, "I am an Englishman! […] a rebellion of the lower Indian race against the superior

English-Nordic race […] was as futile as it was contemptible. […] The Nordic race has a right to rule the world and we must take this right as the guiding star of our foreign policy […] (quoted in Mukerjee 2010, 33).

With such 'guiding stars' showing the way for its foreign policy, Germany, during its darkest hours of defeat in WW1, slammed with extortionist war reparations, was unable to seize the opportunity that the Berlin India Independence Committee and the Indian independence movement presented. Again the moot question what the future of Germany might have been had it seized the opportunity and supported national liberation movements in India, Egypt, Africa and elsewhere must remain a speculative one. What can be said however is that the sense of racial superiority blinded German foreign policies as much as it did domestic policies and brought about the destruction of the very German nation it set out to glorify.

America, India and the World Wars

The Ghadar party sought the support of the American government as it believed America was committed to democracy and opposed to British imperialism. During the early years of the Ghadar movement the American government turned a blind eye to its activities. America stayed out of WW1 during the early years joining the war after German incursions into Mexico in 1917. Until then, American expansion had focused on Latin America. The Monroe doctrine developed the idea of geographic contiguity, rather than ethnicity or race, as the justification for American claims to the Latin American states (Murphy 2005). Something more that geographic contiguity was needed to justify American claims to the colonies that the unravelling Austro-Hungarian, Russian and Ottoman empires in Europe offered. The Monroe doctrine had outlived its purpose. From the inception American expansion was forced to invoke secular reasons to justify its claims to Latin American states. Settled by all European nationalities, the American state was from its very inception founded on pan-European identity. Pan-Europeanism is not British, French or German but simply 'white' nationalism. In 1918, America under Woodrow Wilson's presidency announced that the recognition of right of nations to self determination under the new League of Nations would be the guiding principle for the settlement of WW1 (Manela 2007). From its very inception the legal right to self-determination was subject to recognition by a superior international body constituted by the Allied powers. It is pertinent to note that at the Paris peace conference Japan proposed the inclusion of a clause in the League statutes prohibiting racism. The anti-racism clause was rejected by all the Allied powers including America (Smith 2014). America still practiced racial segregation and was hardly in a position to accept prohibition of racism as a principle of international law.

Racism interfered with American diplomatic and war strategies. America collaborated with Britain and France in dismembering the colonies of the Central Powers in WW1 but recognised the integrity of British and French empires. America never considered the claims of non-European colonies as legitimate. For a brief moment Woodrow Wilson became a hero and a champion of freedom in the eyes of the colonised people, but that moment was too brief (Manela 2007). It ended at the Paris peace conference. America opposed Britain against its monopoly of India but had no independent diplomatic strategy to deal with the Indian nationalist movements or the Princely states which were generally loyal to Britain (Manela 2007). In America the government cracked down on Indian expatriate nationalists, arresting and sentencing them, refused to engage with nationalist leaders or respond to their petitions or advocate for them with Britain through diplomatic channels (Manela 2007). The advocacy of the legal right to self-determination on the one hand and the refusal to engage with the nationalist movements on the other made nationalist movements wary of American claims to secular legal order based on sovereign equality as the condition for peace. Consequently, Britain, which was economically, politically and militarily devastated by WW1, continued to retain its dominance over colonies it was no longer able to govern.

Nowhere was British influence more profound than in the mandate system established under the League. America was keen to ensure that the Ottoman and German colonies were not divided up between Britain and France. Given Britain's experience of indirect rule the legal right of self-determination was never seen as antithetical or inconsistent with imperial rule. The League mandates over Ottoman and German colonies

internationalised and universalised the laws of the British Empire, in particular the principles of divided sovereignty, paramountcy and subsidiarity (Purdy and Fielding 2007). Britain and France retained their influence over their colonies under the new mandate system, but not entirely. The League became a trustee of the Ottoman and German territories in the same way Britain had been a trustee of the Indian states. The radical change introduced by the Paris peace conference was not in the trusteeship principle but rather it was the new cohort of Great Powers. Russia and Austro-Hungary were out and America and Japan were in. The League managed the mandates and the League was managed by the old and new Great Powers. The basis for peace at the Paris conference was tenuous from the inception. Within India, and indeed other colonies of the Allied Powers, the brief period of optimism in the Wilsonian principles of rights to self-determination as a universal right eroded rapidly. The end of WW1 unleashed the most powerful anti-colonial movements around the world. Until that point Russia was seen as a disintegrating and defeated power and America as the champion of liberty and the victorious power (Gerwarth and Manela 2014). Wilsonian self-determination was unmasked at the Paris peace conference as another Great Power strategy against colonial peoples. The independence movements in India turned to disintegrating Russia for support.

Russia, India and the World Wars

The Ghadar movement, the Berlin India Independence Committee and different strands of the Indian nationalist movements approached Russia for support, as they had done with Germany and America. The Bolsheviks alone, amongst European political groups, extended support to the Indian independence movement, providing safe havens to Indian nationalists in Tashkent, resources and training and later diplomatic and organisational support (Ramnath 2011). The success of the Bolshevik revolution in Russia came hand in hand with the unmasking of the real nature of Wilsonian self-determination under the League. The second Congress of the Third Communist International in 1920 recognised national liberation struggles in the colonies to be the single most important ally of Bolshevik Russia (Drachkovitch 1966). Russia after the October Revolution used nationalism to disrupt all empires. The nationalism espoused by Russia was radically different from European nationalism or for that matter Russian nationalism under the Tsars.

Economic exploitation rather than ethnicity was the basis of national oppression, the Bolsheviks argued. The search by imperial powers for raw materials, markets, investments and labour were the real drivers of national oppression. Leninist theories of imperialism were in direct contrast to the Wilsonian argument that American investments around the world would be the agents of peace and progress (Williams 1962). The Bolsheviks challenged Wilsonian idea of self-determination as a legal right arguing instead that it was a political claim that could only be realised when exploitative relations between nations ended. As a legal right, self-determination would only lead to fratricidal wars based on ethnic and racial differences which the imperialist powers would manipulate using secular international law (D'Souza 2013). A just settlement of the world wars must therefore include political and economic justice for the colonies. Bolshevik framings put nationalism on radically new theoretical foundations.

After the Paris peace conference from which it was excluded, Russia championed national liberation struggles around the world, most notably in South-east Asia, India, China and Egypt, located in the belly of hostile states. The more radical sections of the Ghadar and Swadeshi movement leadership were from their inception sceptical of attaining equal status within the British Empire and sought out the support of the Bolsheviks before they came to power (Ramnath 2011). The elite liberal leadership under leaders like Nehru were hopeful of finding a political solution within the British Empire. When they failed to do so, radical and liberal strands of the Indian independence movement alike turned to Russia away from America. This was the other side of the unstable Paris peace settlement of WW1 (Gerwarth and Manela 2014; Manela 2007).

During a moment of internal chaos and implosion of the Russian empire, the Bolshevik Party in Russia offered 'bread and peace' to its own people, and 'peace without annexation and immunities' to its own colonies. It offered to repeal unjust treaties between Tsarist Russia and the Russian colonies and offered to renegotiate a new

federation on an equal footing with its colonies. The offer of a federation on an equal footing set new standards for relations between imperia and colonies that were more democratic than dominion status in the eyes of the Indian people. America refused to support even the limited demand for dominion status within the British Empire by elite sections of Indian nationalists (Dutt 1940, 325-326, 432-440). Dominion status was founded on recognition of treaties and laws from the EIC era onwards. In contrast to the Russian offer to repeal unjust treaties with the Tsars and renegotiate a new federation of states on an equal footing (Dutt 1940, 442). For the first time capitalism rather than racial superiority became an explanatory framework to understand European rivalries. Colonial states were multi-racial, multi-ethnic and vulnerable to 'divide and rule' policies as British policies in India show. Bolshevik Russia provided a new basis for nationhood based on solidarity of racial and ethnic groups.

Unlike Wilsonian self-determination, which used secular law for annexations in the form of the mandates, Russian socialists initially, and Bolshevik Russia after the revolution opposed all annexations in any form. Although excluded from the Paris peace conference Russian calls after the October Revolution for inclusion of the colonial question in the settlement of WW1, and real power sharing as the basis of a new international order could no longer be ignored by the imperial powers. Russia's aim when it entered WW1 in 1914 was to maintain status quo. The October Revolution in 1917 may have been prompted by Russia's descent into anarchy and implosion. Regardless, the universal and secular nature of the revolution pulled Russia out of anarchy. It provided a new basis for reconstructing its relationships with its colonies. Russia maintained its territorial influence more or less intact. By recognising the colonial world as integral to international politics and international relation, Russia gained prestige and influence, not as the great power that it once was but rather as the champion of oppressed nations, a recognition that had profound influence on the course of events as the Paris peace settlement between the victorious Allies unravelled once more leading to WW2.

WW2, India and empires

Throughout WW2, all European empires faced internal resistance from the social and economic devastation caused by WW1 and external threats. Nowhere was this contradiction greater than in British-India. Britain adopted extraordinary repressive measures. The first anti-terrorism laws were introduced in India in 1914. The notorious Rowlatt Act 1919 against any form of protest, the Jallianwalla Bagh massacres, execution of nationalists and political repression throughout the continent came hand in hand with offers of limited constitutional reforms (D'Souza 2014). The reforms further expanded race-based political representation. The constitutional reforms of 1935 introduced elected governments in the provinces based on enlarged communal electorates. It introduced a system of governance under which economic powers remained with the unelected central government, and social and cultural matters delegated to provincial governments elected by communal electorates (D'Souza 2006). This model of governance that put economic powers in the hands of a superior unelected British government and political, social and cultural affairs in the hands of an elected provincial government was the forerunner of the international UN system where the Bretton Wood institutions, charged with regulation of post-WW2 economies of states, remain in the hands of five largest capitalist states elected on the basis of their share subscriptions alongside decolonisation and self-determination (D'Souza 2005). The limited offers of constitutional reforms came to nought when WW2 broke out in 1939.

Britain joined India in the war without consulting the provincial governments or the Indian nationalists. India contributed two million troops for WW2. It provided goods and services estimated at over £2 billion (Voigt 1987). One third of India's railway engines, tracks and carriages, three quarter of its steel and cement production, the entire commercial production of timber, woollen textiles, leather goods was diverted to WW2. India's industrial infrastructure contributed arms, ammunitions, parachutes, boots, jeep bodies, chassis, machine parts and other ancillary items for the war (Voigt 1987). From one third during WW1 two-fifths of India's budget went towards the conduct of WW2 (Voigt 1987). Besides these public appropriations, WW2 ordinary men and women were compelled to contribute to Britain's war efforts in numerous ways like medical services (Roy 2012; Voigt 1987).

Winston Churchill's hatred of Indians was no less than Hitler's hatred of European Jews. If Hitler referred to the Jews as 'vermin', Churchill said about the Pashtoons of the Northwest regions, insofar as '[t]hese valleys are purged from the pernicious vermin that infest them, so will the happiness of humanity be increased' (quoted in Mukerjee 2010, 18). At the height of WW2 when Indians were compelled to make extraordinary sacrifices for Britain, Churchill said of them,

> [t]he Hindus [are] a foul race protected by their mere pullulation from the doom that is their due. I wish that Harris, [the Air Chief Marshall] would send some of his surplus bombers to destroy them (quoted in Brendon 2011, 12).

Britain ordered the compulsory acquisition of 40,000 tonnes of grain each month from the peasants in Bengal to feed the British Army and Britain's public where food shortages were rife. Six million Indians died as a consequence of the compulsory grain acquisitions at the same time when six million Jews were sent to concentration camps in Europe (Mukerjee 2010). The difference was that Churchill used deliberate economic coercion and starvation instead of political coercion and deprivation. Divisions appeared between America and Britain over the latter's policies in India, which jeopardised the Allied war aims. When Britain surrendered to Japan in Burma and Japan entered India, America rushed supplies and troops to India using the lend-lease loans it gave to Britain (Mukerjee 2010, 59). If India fell to the Axis powers, WW2 was practically over. Yet the Atlantic Charter agreements between Britain and America in 1941, which outlined the principles for settlement of WW2, agreed that the conditions of self-governance and decolonisation in the proposed United Nations would apply only to the colonies of the Axis powers and not Britain and France.

The real test for German nationalism came when a section of the Indian nationalist movement under the leadership of Subhash Chandra Bose asked support from Axis powers to form a government in exile and organise an army from the over 15,000 Indian soldiers captured in Europe and 75,000 prisoners of war taken after Britain surrendered to Japan. Bose was allowed to live in Germany and even marry an Austrian woman, at a time when interracial marriages were illegal in Germany (Mukerjee 2010, 38). Germany never issued a statement in support of Indian independence, nor supported the establishment of a government in exile or organising an army. German historian Milan Hauner noted, 'Germany held the supreme trump card in the person of S.C. Bose and he [Hitler] refused to play along' (quoted in Mukerjee 2010, 71-72). Bose did recruit the Indian prisoners of war under Japan and organised the Indian National Army. A series of mutinies in the Indian army followed after WW2 ended. Although Britain won the world war it could not hold India (D'Souza 2014).

On the eve of WW2 Russia struggled to rebuild the state in the face of divisions within the nation, within the colonies and expansionist ambitions of Germany and America. Britain funded and supported dissent within the Central Asian Republics of the newly formed USSR (Ramnath 2011). The Indian nationalists mobilised support for the USSR in the Central Asian Republics by drawing their attention to Britain's exploitation of nations around the world. Indian Muslim nationalists argued the communism was not antithetical to Islamic values and persuaded the Russian communists to be more tolerant to religion, factors that helped to stabilise Russia's relations with the Central Asian Republics (Ansari 2014). The division of the Ottoman colonies between the Allies under the League mandates, and the treatment of India with whom Central Asian republics have cultural affinities, meant Britain did not succeed in weaning them away from Russia. In Eastern Europe, the Wilson-Lenin controversies over self-determination meant Russia's Eastern European colonies escaped the fate of Ottoman territories and instead attained independent statehood. The USSR's success in leading the defeat of Germany on the eastern front, at the cost of 27 million lives, turned the tide of WW2 more than any other single event (Overy 2011). Until 1942, talks on the settlement of WW2 took place almost entirely between America and Britain. Between them, the two countries had already hammered out the blueprint for a new international organisation, the United Nations, to replace the League, the Bretton Woods organisations and basic principles of international law as the basis for the war settlement (Plesch 2011). What remained was the military settlement of the war. Russia's success in turning the tide of WW2 meant there could not be a settlement of WW2 without

Russia. The Yalta agreement between the US, Britain and Russia can be seen as a settlement under which Britain handed over the reins of the empire to America (Plesch 2011). The settlement of WW2 brought Russia back the new club of Great Powers. It is useful to pause at this point to reflect on the legacies of the world wars and the new world order it established after colonial experiences are inserted into histories of international law.

4. International law and the legacies of the World Wars

The world wars are often characterised as wars between different European nation-states over markets and political influence. A global history of the world wars that includes the colonies shows that the world wars were wars between empires over colonial 'possessions' and protectorates. Britain was the preeminent empire during the world wars and India its 'great experimental laboratory' for governance. The importance of India lies in the fact that the instruments of colonial governance developed in India were used initially throughout the British Empire and later elevated to the League of Nations and the UN. Although this article has focused on India, similar accounts of transitions from empires to the UN order during and after the world war years may be told of other colonies and protectorates. The inclusion of India and colonial experiences more generally, in the accounts of the sources of international law opens the way for a different assessment of the legacies of WW2 in a number of ways.

First, it challenges the realist versus internationalist theories of international law and relations. The realist school argues that in the final analysis international politics is the source of international law (Walt 1998). The internationalist schools argue that there are overarching economic, political, cultural and above all moral forces that bring us together as human beings and forms the basis for an international community of states in international law (Walt 1998). A history of international law that includes the role of colonies shows that the sources of international law are not traceable to abstract ideals of humanity and international community, although the personal motivations of many individuals may have been humanitarian sentiments. Nor is it traceable entirely to state-power as the driving rationale for state actions. Rather, the insertion of colonialism demonstrates a constitutive tension between nation and state in the modern European nation-state. The tension, as the fault-line, alters our understandings of and expectations from international law as an interstate system founded on equality and non-discrimination.

The sense of common humanity and international community of states has not prevented a virtually unending series of proxy wars between the two superpowers since WW2 which threatens to become more open and direct since the end of the Cold War. Equally it can be seen from the foregoing account that Germany and Britain lost, the former politically, the latter economically, because they were not realist enough to rise above racism and nationalism, which overrode their strategic war aims and the self-interest of the states. In contrast Russia prioritised the survival of the state over national chauvinism in the conduct of the war and its foreign policies, and emerged as a superpower. The post-Westphalian European nation-state is a hyphenated word. Modern European states are ethno-national states that combine historically constituted nationalities and modern statecraft. The world wars demonstrate that European nation-states did have agency, the choice of prioritising nation or state in times of crisis. To prioritise statecraft over nationalism, Russian Bolsheviks had to struggle against Russian chauvinism internally and promote a secular foreign policy towards colonial people for the survival of the Russian state, something neither Britain nor Germany did even when they were presented with golden opportunities during the world wars.

Second, international legal scholars attribute unequal relations between the 'West and the rest' to culture or power. Eurocentrism they argue is based on a sense of cultural superiority of Europeans (e.g.Anghie 2005; Said 1985 [1978]). Others argue that Eurocentrism is the consequence of the drive to concentrate political and economic power, which European nations have done through conquests and trade (e.g. Darby 1987; Cohn and Dirks 1988). Imperialism is, in the first instance, either the consequence of cultural difference, 'othering' and Orientalism, or a perversion and abuse of power. These approaches hold explanatory power, but only up to a point. Race and ethnicities are not simple cultural artefacts. During the world wars Indian soldiers (as well as

African, Middle Eastern and indigenous ones) fought shoulder to shoulder and lived and died together with European soldiers. At the trenches race did not divide the men and women. Where it did become divisive was in statecraft and governance. The world wars snapped the hyphen in the hyphenated European nation-state. The post-WW2 order reinstates the ruptured hyphen. The formal equality of states on the one hand and the institutional embedding of inequalities between states, groupings of states as G7 and G77, NATO and 'failed states', 'developed' and 'under-developed' states, from which so much of the dynamics of international law springs, is the result of the reinstated hyphen in the post-WW2 European nation-state.

The impulse for state building in colonies in contrast is not nationality. Colonial states are founded on conquests, victories and defeats in different colonial wars between rival colonial powers and the settlement of inter-European rivalries. Each war and each settlement prompted developments of apparatuses of governance that adapted and modified European legal principles, as the principles of state sovereignty and trusteeship show. Colonial states come in as many varieties and forms as there are crossings of European rivalries, settlements, victories and defeats. By leaving out the colonial wars as sources of international law, international law scholars are trapped within Eurocentric narrative that limits them to culture or power as the explanatory frameworks. These frameworks are limited in their capacities to explain the real nature of the present. International lawyers expected the end of the Cold War to bring about lasting peace in the world. Instead the end of the Cold War has escalated the intensity, scale and scope of wars, destroyed established states and redrawn, and continue to redraw, boundaries of old states. These events ought to lead international law scholarship to consider seriously colonial wars as the source of much of international law. However, research on how colonial wars shaped international law, as we know it today is yet to be taken seriously. An inclusive account could show that the impulses for the development of modern i.e. post-WW2 international law has been twofold. On the one hand international law has developed through inter-European rivalries, which continue to drive the developments. On the other hand, the impulse for development of international law is the domination of colonies in the past and the Third World in the present. The two-fold impulses means international law develops through interstate cooperation-competition cycles propelled by Great Powers under whatever name. The alternating cycles of war and peace and cooperation and competition are as old as capitalism and colonialism.

Third, at least since the end of the Cold War, arguments about the nature of sovereignty under conditions of globalisation have preoccupied international law scholarship. In these debates sovereignty and globalisation are cast in binary terms with many shades of gray in between. For example, Anne-Marie Slaughter a prominent international law scholar and American policy advisor argues that sovereignty must be redefined under conditions of globalisation. We must move away from a unified view of sovereignty and reconceptualise it as disaggregated sovereignty.

> [...] If states are acting in the international system through their own component government institutions – regulatory agencies, ministries, courts, legislatures – why shouldn't each of these institutions exercise a measure of sovereignty – sovereignty specifically defined and tailored to their functions and capability? (Slaughter 2005, 62)

Incorporating colonial histories as sources of international law removes the novelty of such debates and helps us to see that disaggregated sovereignty is the further development of Sir Maine's divided sovereignty. While scholars may argue for or against vertical power-sharing, at least international law scholarship needs to clarify what is entailed in the debate.

Four, seeing Euro-American wars over colonies as the source of international law makes it possible to explain the unequal distribution of power in the institutional architecture of the post-WW2 world. It is possible to see in the Security Council veto powers the return of the Great Power system of the post-Napoleonic wars. It is possible to see in the insulation of International Economic Organisations, the Specialised Agencies, from the UN and the Security Council, the universalisation of the system of indirect rule, most notably in the British Empire (e.g. see D'Souza 2005; Lange 2009; Mamdani 1996). It is possible to see in the system of regional security and

military bases, the universalisation of local treaties establishing the protectorate system (e.g. see Davis 2011). International law scholars have compared the International Monetary Fund's Structural Adjustment Programmes to the capitulation agreements of the colonial era (Fidler 2000). It is possible to see international law in a radically different light when colonial relations and wars are incorporated into its history.

Lastly, the system of trusteeship developed initially by Britain to regulate EIC as Crown agent without taking the responsibility of governing India directly, was internationalised with the appointment of the League as the trustee of the mandate territories. The UN Trusteeship Council's role was to oversee the transitions from colonial rule to independence. It ensured that the apparatus of the colonial state remained intact in the new states. Furthermore the trusteeship council ensured that the newly independent states were incorporated into the structures of economic governance in the post-WW2 era. By the nineteen nineties all colonial states had transitioned into formally independent members of the UN and the Specialised Agencies. The trusteeship idea did not end with the transitions. Instead it returned in an even more universalised form in the environmental discourses after the Brundtland Commission. The environmental discourses since Brundtland Commission have reinstated the idea of the international community as trustees of the world's natural resources within an international legal order founded on unequal relations between states.

Conclusions

The work of the Trusteeship Council, set-up as a principal organ of the UN to supervise transitional arrangements is perhaps the least researched subject in international law. Closer examination of the Trusteeship Council invites us to ask: transition from what to what? From colonialism to new forms of unequal relations between states? The unravelling of the mandate territories and the Yalta agreements which were the basis for international law of the post-WW2 era has ignited wars on new scales since the end of the Cold War contrary to expectations of international lawyers. The extraordinary crises in Europe caused by mass migration of people fleeing years, even decades of war, has produced unprecedented racist backlash. These events challenge international lawyers to rethink their approaches to international law in ways that include colonial histories and see wars around the world and their settlement rather than abstract humanitarian ideals as the sources of international law. The WISE project seeks to remember the legacies of the world wars with a view to end wars and racial conflicts in Europe. It may be useful to begin by asking why the wars were 'world' wars in the first place, and how and why the wars were fought around the world, as the point of departure for international law's quest for peace.

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