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GLOBAL LAW AND HUMAN RIGHTS: MARXIST REFLECTIONS

How can a political account of human rights avoid Eurocentrism?

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Abstract

My recent book *The Degradation of the International Legal Order?* attempts a political account of human rights, and engages with the work of China Miéville and Susan Marks, as well as the extraordinary opus of Alain Badiou. The book has been well received. Sympathetic reviews by Robert Knox and Upendra Baxi have levelled a number of constructive criticisms, and this paper seeks both to grapple with the issues raised and to take the project forward. What is at stake is the concretisation of a thoroughly materialist, properly communist historicisation of human rights, as a contribution to contemporary struggles. In particular, is this project in any sense necessarily Eurocentric?

Introduction

My book on international law and human rights appeared in 2008¹. I have been very fortunate indeed, in that several reviewers have taken it seriously². This conference paper intends to return the compliment, and to explore several cogent criticisms made by Upendra Baxi³ and Robert Knox – to whom I return below⁴.

Baxi comments “He remains (and I do not say this in any uncharitable spirit) unmindful of the contributions of the inaugural post-colonial thinkers (for example, Gandhi, Mandela, Nehru, Nasser, Tito, Nyrere (sic), Fanon, Cabral, among many other sculptors of international law and human rights.)”⁵ I should emphasise that Baxi does not accuse me of Eurocentrism – on the contrary, he recognises my call for the “vital importance for any serious theoretical and practical politics of ‘defending the honour’ of the great revolutions – French, Russian and the extraordinary post World War II history of anti-colonial struggles.”⁶ This is what I term “revolutionary conservatism” – and for me it is the anti-colonial struggles which are the “revolutionary kernel” of Post WW II international law, and the indispensable key to understanding and promoting human rights.

But there has, since the collapse of the USSR in 1991, been a persistent critique of Marxism and indeed of Leninism, that they are somehow ineluctably Eurocentric.

¹ Bowring, Bill (2008) *The Degradation Of The International Legal Order?: The Rehabilitation Of Law And The Possibility Of Politics* (Abingdon, Routledge Cavendish)

² See also Julia Shaw (2009) “Review of Bill Bowring *The Degradation Of The International Legal Order: The Rehabilitation Of Law And The Possibility Of Politics*” v. 43 n.3 *Law and Society Review* 722-724; Paul Feldman (2008) “The meaning of the struggle for rights” *A World to Win* at <http://www.aworldtowin.net/reviews/Degradation.html>; Richard Harvey (2008) “Shock and awe anti-pessimism” *Socialist Lawyer* September 2008, 38-39, at http://bbk.academia.edu/documents/0010/1942/BB_book_richard_harvey_review_SL.pdf

³ Baxi, Upendra (2008a) “Review of Bill Bowring *The Degradation Of The International Legal Order: The Rehabilitation Of Law And The Possibility Of Politics*” in v.35 n.4 *The Journal of Law and Society* 551-558

⁴ Knox, Robert (2008) “Review of Bill Bowring *The Degradation Of The International Legal Order: The Rehabilitation Of Law And The Possibility Of Politics*” *Law and Disorder* 2 April 2008, at <http://pashukanis.blogspot.com/2008/04/book-review-degradation-of.html>

⁵ Baxi (2008a) 554

⁶ Bowring (2008) 208

Furthermore, while Marx remains the object of respectable academic study, Lenin is beyond the pale. In a recent comment Slavoj Žižek stated:

Do you know how much this book on Lenin cost me?⁷ I lost two-thirds of my friends because of it. You can refer to Marx without any problems: *Capital* – what a brilliant description of the capitalist dynamic, of the ‘fetish-character of the commodity’, of ‘alienation’. But if you refer to Lenin, that is another story, a completely different story. It is unbelievable how everybody said to me afterwards that it was merely a cheap provocation.⁸

I am delighted to be able to say that my book (and my book chapter for Susan Marks)⁹ are now in use in at least a few law schools to provide an antidote to the commonplace assertion that Woodrow Wilson was the progenitor of the rights to self-determination. I am also delighted to join Rob Knox in the rehabilitation of Lenin.

In this paper I first engage with both Yevgeny Pashukanis and Robert Knox, on the question of Lenin on self-determination. This concludes with what in my view is a disappointing example of Pashukanis taking a remark of Marx completely out of context. That context was Marx’s unconditional support for bourgeois nationalism, in the form of the struggle for independence from Britain of the Irish Fenians – a point on which Lenin was in sharp disagreement with Rosa Luxemburg. This takes me to the perceptive recent analysis of Pheng Cheah, with which I largely agree, and fourthly to the question of Marx’ alleged Eurocentrism. Here there are two excellent recent analyses, by August Nimtz and Pranav Jani, but I start this question with the Haitian revolution, which I had not come to grips with in my book, Marx’s relation (if any to it), and the work of Susan Buck-Morss and China Miéville. This is compared with some North American scholars for whom the “discourse” of self-determination has “failed”. Fifth, I turn to a splendid analysis by the African revolutionary scholar Issa Shivji, and conclude with a celebration of the continuing vitality of Pan-Africanism.

My starting point

My starting point is a thoroughly materialist and historicised understanding both of international law and of human rights. I assert that there was no discourse of human rights before the late 18th century, and that international law was wholly revolutionised after World War II. In particular, I locate each of the three “generations” of human rights in the revolutionary events which gave birth to them – the French and American revolutions of the late 18th century, the Russian revolution of 1917, and the anti-colonial struggles of the 1950s to 1970s. In this paper I add – I plead guilty to omitting in my book – the great Haitian revolution. Each revolutionary experience, despite triumph turning in each case to bloodshed and bitter disappointment, provided an essential foundation to the next.

In this I draw, as in my book¹⁰, on Alain Badiou. In explaining the ‘event’, Badiou identifies three major dimensions of a “truth-process” – the event, the fidelity, and the truth. The ‘event’ is that which “brings to pass ‘something other’ than the situation” –

⁷ Žižek (2002)

⁸ Badiou and Žižek (2009) 91

⁹ Bowring, Bill (2008a) “Positivism versus self-determination: the contradictions of Soviet international law” in Susan Marks (editor) *International Law on the Left: Re-examining Marxist Legacies* (Cambridge, Cambridge University Press), 133-168

¹⁰ Bowring (2008)

Marx is, for Badiou, an event for political thought; the ‘fidelity’ is the “name of the process... an immanent and continuing break”; the ‘truth’ is “what the fidelity gathers together and produces”. Later, he specifies that the Revolutions of 1792 and 1917 were “true universal events”. St Paul’s proclamation of the Resurrection was another.¹¹

Thus, Badiou asserts (and I enthusiastically agree) that the 20th century was not a century of promises, but of accomplishment, of victorious subjectivity.

This victorious subjectivity survives all apparent defeats, being not empirical but constitutive... “Revolution” is one of the names of this motive. The October revolution in 1917, then the Chinese and the Cuban revolutions, and the victories by the Algerians or the Vietnamese in the struggles of national liberation, all these serve as the empirical proof of the motive and defeat the defeats; they compensate for the massacres of June 1848 or the Paris Commune.¹²

Pashukanis and Knox on Lenin

Knox, on the other hand, rightly reproaches me for ignoring Yevgeny Pashukanis’ text *Lenin and Problems of Law*.¹³ According to Knox, “This is the main text in which Pashukanis attempts to outline a specifically Marxist approach to legal strategy. For this reason I have always found it rather odd that it is *never mentioned* in the contemporary debates.” In my book, I argued that Pashukanis missed the significance of self-determination.¹⁴ Indeed, I assert that “Pashukanis was incapable of recognising the significance of self-determination for international law”¹⁵ – that is, its significance for the imperialist and colonial systems.

Knox answers me as follows. “... Pashukanis takes self-determination *seriously*.” By this he means that in the final part, V, of *Lenin and Problems of Law*¹⁶ Pashukanis does indeed discuss self-determination, and this I had indeed missed – so I am very grateful to Knox.

According to Knox, the demand for the right of nations to self-determination was an “‘abstract’, ‘negative’ demand of formal equal rights.” In the context of Russian absolutism, says Knox, the abstract formal equality of right is a revolutionary demand. However, by 1924, says Knox

The bourgeois-democratic stage had passed, and with it the formal legal demand for national self-determination - characteristic of this stage - lost its former significance. The slogan "overthrow the rule of the bourgeoisie on a world scale and set up the international dictatorship of the proletariat" became the immediate practical slogan.

¹¹ Badiou, Alain (2003) *Infinite Thought: Truth and the Return to Philosophy* (London, Continuum)

¹² Badiou, Alain (2007) “One Divides Itself into Two”, Chapter 1, pp.17 in Budgen, Sébastien; Kouvelakis, Stathis; and Slavoj Žižek (eds) (2007) *Lenin Reloaded: Toward a Politics of Truth* Sic 7 (Durham NC: Duke University Press) 9

¹³ Pashukanis, Evgeny (1924, 1980) “Lenin and Problems of Law” in Beirne, Piers and Robert Sharlet (eds) (1980) *Pashukanis: Selected Writings on Marxism and Law* (London and New York, Academic Press), 132-164

¹⁴ Bowring (2008) 28-30

¹⁵ Bowring (2008) 29

¹⁶ Pashukanis (1924, 1980) 156-162

The demand remained valid for “backward countries which had not passed through the stage of bourgeois-democratic national revolutions.”

We should turn to what Pashukanis says. He reports that Lenin’s opponents – especially Rosa Luxemburg - had argued against the ‘right to self-determination’ “under the pretext that ‘in essence’ no ‘self-determination could exist under capitalism, and that under socialism it was not necessary.”¹⁷ Lenin’s position as stated in 1916, correctly reported by Pashukanis, was that “The dispute is related to one of the *forms of political oppression*, namely, the forceful domination of one nation by the state of another nation. This is simply an attempt to avoid political questions.”¹⁸ But Pashukanis goes on to state that no-one apart from him had noted that Luxemburg’s position amounted to a “complete rejection of the legal form”.¹⁹

Pashukanis then cites a longer passage from Lenin’s 1914 major work on *The Right of Nations to Self-Determination*.

By the way, it is not difficult to see why, from a Social-Democratic point of view, the right to “self-determination” means *neither* federation *nor* autonomy (a though, speaking in the abstract, both come under the category of “self-determination”). The right to federation is simply meaningless, since federation implies a bilateral contract. It goes without saying that Marxists cannot include the defence of federalism in general in their programme. As far as autonomy is concerned, Marxists defend, not the “right” to autonomy, but autonomy itself, as a general universal principle of a democratic state with a mixed national composition, and a great variety of geographical and other conditions. Consequently, the recognition of the “right of nations to autonomy” is as absurd as that of the “right of nations to federation”

The effect of this citation is to render wholly obscure that which is actually quite clear.

Wilfully ignoring Marx and Lenin on Ireland?

Pashukanis has in fact taken this passage completely out of context. It is actually one of Lenin’s footnotes to Chapter 8 of the work in question, “The Utopian Karl Marx and the Practical Rosa Luxemburg”. Lenin is attacking Luxemburg’s position that to call for Polish independence is “utopia”. She asks: why not raise the same demand for Ireland? This leads Lenin straight to Marx’ highly principled stand on Ireland. At first Marx had thought that Ireland “would not be liberated by the national movement of the oppressed nation, but by the working-class movement of the oppressor nation.” Lenin points out:

However, it so happened that the English working class fell under the influence of the liberals for a fairly long time, became an appendage to the liberals, and by adopting a liberal-labour policy left itself leaderless. The bourgeois liberation movement in Ireland grew stronger and assumed revolutionary forms. Marx reconsidered his view and corrected it.

¹⁷ Pashukanis (1924, 1980) 156-7

¹⁸ Lenin, V. I. (1916) ‘The Discussion on Self-Determination Summed Up’ *Sbornik Sotsial-Demokrata* No.1, October 1916, *Collected Works* (Moscow: Progress 1974) Vol.22, pp.320-360, 321, at <http://www.marxists.org/archive/lenin/works/1916/jul/x01.htm>

¹⁹ Pashukanis (1924) 158

In his letter to Engels on 2 November 1867 Marx, according to Lenin, wrote “I have done my best to bring about this demonstration of the English workers in favour of Fenianism.... I used to think the separation of Ireland from England impossible. I now think it inevitable, although after the separation there may come federation.”

In Volume 42 of the Marx Engels Collected Works this appears as follows:

The Fenian trial in Manchester was exactly as was to be expected. You will have seen what a scandal ‘our people’ have caused in the **Reform League**. I sought by every means at my disposal to incite the English workers to demonstrate in favour of **Fenianism**... I once believed the separation of Ireland from England to be impossible. I now regard it as inevitable, although **Federation** may follow upon separation.²⁰

The trial in question was that of the “Manchester martyrs” - William Philip Allen, Michael Larkin, and Michael O'Brien - who were members of the Irish Republican Brotherhood. The men were executed after having been found guilty of the murder of a police officer during an escape that took place close to Manchester city centre in 1867.²¹

That is, Marx was, in the words of the contemporary statute, “glorifying terrorism”, by bourgeois nationalists too.

Once Pashukanis’ quotation is placed in context, it is plain that Pashukanis has wholly misunderstood both Lenin and Marx. And influenced as he is by Pashukanis, Knox has also, it appears to me, misunderstood. The issue at stake between Lenin and Luxemburg was, as I point out in my book and chapter, whether the component parts of the Russian Empire should have the right to self-determination. Luxemburg was convinced that the Empire should be preserved, and was as opposed to Polish liberation as she was to Irish liberation.

In my book I show in detail how Lenin put his theory into practice immediately following the Bolshevik victory, supporting the independence of Finland, the three Baltic states – Estonia, Latvia, Lithuania - and Poland. His last struggle was with Stalin: Lenin, on principle supported Georgian independence, even under a Menshevik government- Stalin was totally opposed.²² Lenin’s creativity was key to the struggles of the National Liberation Movements after World War II.²³

Pheng Cheah on National Liberation Movements

Pheng Cheah is a critic of Marx: he refers to “Marx’s determination of the nation-form as a phantomatic ideology that impedes the formation of cosmopolitan proletarian consciousness...”²⁴ His book *Spectral Nationality* draws from Benedict Anderson and others on the importance of what Cheah terms the “organismic” content of decolonising nationalism. Nevertheless, like Lenin and unlike Pashukanis, he recognises fully the “drastic reevaluation of the nationalism of oppressed peoples”

²⁰Marx to Engels in Manchester *MECW* Volume 42, p. 458; First published: in *Der Briefwechsel zwischen F. Engels und K. Marx*, Stuttgart, 1913., at http://www.marxists.org/archive/marx/works/1867/letters/67_11_02.htm

²¹ McGee, Owen (2005). *The IRB: The Irish Republican Brotherhood from the Land League to Sinn Féin*. (Dublin: Four Courts Press) 36

²² Bowring (2008) 18-20

²³ Bowring (2008) 32-35

²⁴ Cheah, Pheng (2003) *Spectral Nationality: Passages of Freedom from Kant to Postcolonial Literatures of Liberation* (New York, Columbia University Press), 180

with respect to Ireland. As he points out, “Marx’s revised view of Irish independence articulates key principles that will be developed in the Marxist theory of national self-determination.”²⁵

Moreover, Cheah, unlike Anghie (who completely misses Lenin’s contribution²⁶) and practically all other international legal scholars, recognises the crucial role played by Lenin’s contribution. Lenin’s importance for Cheah is in particular as precursor and constant point of reference for Amilcar Cabral²⁷ and Franz Fanon²⁸. Indeed, this section of his book is headed “Acts of culture: The return of the nation-people in socialist decolonisation.”²⁹

According to Cheah, Lenin made a distinction between two successive stages of capitalism: a stage where national state-formation is the norm because the nation is the condition for the growth of capitalism and its victory over feudalism and absolutism; and an advanced stage, immediately preceding the transition to socialism, in which national barriers are eroded.³⁰ Thus, again in Cheah’s formulation, based on Lenin’s argument with Rosa Luxemburg³¹, Western European nationalism was by then reactionary, with no mass democratic movements. But the proletarian movement was under a duty to support the struggle for self-determination elsewhere in the world, “because political democracy is a step closer to socialism.”³² It has already been seen that a little later Lenin made a clear exception even in Western Europe – for Ireland.

As Cheah observes³³, Lenin, far from expressing reservations, revelled in the spontaneous vitality of the national liberation movements. Lenin wrote in 1913, at the same time as he was developing his ideas on self-determination: “Hundreds of millions of people are awakening to life, light and freedom. What delight this world movement is arousing in the hearts of all class-conscious workers... [A]ll young Asia ... has a reliable ally in the proletariat of all civilised countries”³⁴.

Cheah continues: “Lenin thus widens the small foothold opened by Marx’s tactical support for nationalism. Decolonising nationalisms flourished in this opening.” For Cheah, Cabral’s and Fanon’s “... exemplary theories of decolonising nationalism continue this legacy.”³⁵

Marx, self-determination, and Eurocentrism

There is another revision I am obliged to carry out to the position maintained in my book as to Lenin’s role as progenitor of the “right of nations to self-determination”. I note that Marx himself used the term “self-determination” on at least two occasions, in a political rather than a philosophical context. In his letter of 20 November 1865 to

²⁵ Cheah (2003) 189

²⁶ Anghie, Antony (2005) *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press)

²⁷ Cabral, Amilcar (1979) *Unity and Struggle: Speeches and Writings* (New York: Monthly Review Press)

²⁸ Fanon, Franz (1963) *The Wretched of the Earth* (New York: Grove Weidenfeld)

²⁹ Cheah (2003) 208

³⁰ Cheah (2003) 210

³¹ Lenin, V I (1913) “Backward Europe and Advanced Asia” v.19 *Collected Works* p.100, at <http://www.marxists.org/archive/lenin/works/1913/may/18.htm> (accessed on 7 October 2009)

³² Cheah (2003) 211

³³ Cheah (2003) 212

³⁴ Lenin (1923)

³⁵ Cheah (2003) 214

Hermann Jung³⁶, Marx referred, under the heading “International Politics”, to “The need to eliminate Muscovite influence in Europe by applying the right of self-determination of nations, and the re-establishment of Poland upon a democratic and social basis.” Furthermore, in a speech on Poland delivered on 24 March 1875³⁷, he declared:

What are the reasons for this special interest of the workers' party in the fate of Poland? First of all, of course, sympathy for a subjugated people which, with its incessant and heroic struggle against its oppressors, has proven its historic right to national autonomy and self-determination. It is not in the least a contradiction that the *international* workers' party strives for the creation of the Polish nation.

No doubt Pashukanis would have sought to put a different spin on that passage.

Of course, support for self-determination in Poland and Ireland would not absolve Marx from a charge of Eurocentrism. And it is a fact that Marx was aware of the Haitian Revolution and of Toussaint L'Ouverture's role from 1791 to 1804. In *The Holy Family*³⁸ of 1845-6 he wrote

... he [Max Stirner] imagines that the insurgent Negroes of Haiti and the fugitive Negroes of all the colonies wanted to free not *themselves*, but “man”. The slave who takes the decision to free himself must already be superior to the idea that slavery is his “peculiarity”. He must be “*free*” from this “*peculiarity*”. The peculiarity” of an individual, however, can consist in his “*abandoning*” himself. For “one” to assert the opposite means to apply an “alien scale” to this individual.”³⁹

Marx appears to expect his reader to know what he is referring to. But that is his only reference. Susan Buck-Morss says “The Haitian Revolution was the crucible, the trial by fire for the ideals of the French revolution. And every European who was part of the bourgeois reading public knew it.”⁴⁰ But as she skilfully shows, Robespierre as well as Hegel did their best not to engage with its implications. Ironically, the best history of the Haitian revolution was written by C L R James, a Marxist.⁴¹ I should add that the overthrow of President Jean-Bertrand Aristide in the Haitian coup of February 2004, the subsequent occupation of Haiti by US, Canadian and French troops, and their replacement with troops of the UN MINUSTAH mission, have been brilliantly dissected by China Miéville.⁴² He rightly sees the silence of international legal scholarship on this scandal as showing that “relatively uncontroversial ‘legality’ and multilateralism need stand in no opposition at all to strategies of murderous

³⁶ MECW Volume 42, p. 200; First published: in Marx and Engels, *Works*, Moscow, 1934, at http://www.marxists.org/archive/marx/works/1865/letters/65_11_20a.htm

³⁷ At <http://www.marxists.org/archive/marx/works/1875/03/24.htm>

³⁸ Karl Marx *The German Ideology. Critique of Modern German Philosophy According to Its Representatives Feuerbach, B. Bauer and Stirner, and of German Socialism According to Its Various Prophets*. Marx-Engels Collected Works, Volume 5

³⁹ Karl Marx, *The German Ideology*, at <http://www.marxists.org/archive/marx/works/1845/german-ideology/ch03h.htm#c.1.2.4>

⁴⁰ Buck-Morss, Susan (2009) *Hegel, Haiti and Universal History* (Pittsburgh, University of Pittsburgh Press), 42

⁴¹ James, C L R (1938, 2001) *The Black Jacobins* (London, Penguin Books)

⁴² Miéville, China (2009) “Multilateralism as Terror: International Law, Haiti and Imperialism” v.18 *Finnish Yearbook of International Law*; and at <http://eprints.bbk.ac.uk/783/>

imperial control.”⁴³ My only criticism is that he does not mention the Haitian revolution. Perhaps the coup was a belated act of revenge.

The Afro-American Marxist scholar August Nimtz has addressed this “myth” of Marx’s Eurocentrism, as he describes it.⁴⁴ He shows how, from 1870 onwards, Marx and Engels ceased to expect the rebirth of a revolutionary movement in England, following the demise of the Chartists. Instead, they turned to Russia as the revolutionary vanguard. This was “an overwhelmingly peasant country that had only one foot in Europe, and not the Europe that the Eurocentric charge refers to, that is, its most developed western flank.”⁴⁵

But as early as 1849, they urged that:

Only a world war can break old England, as only this can provide the Chartists, the party of the organized English workers, with the conditions for a successful rising against their powerful oppressors. Only when the Chartists head the English government will the social revolution pass from the sphere of utopia to that of reality. But any European war in which England is involved is a world war, waged in Canada and Italy, in the East Indies and Prussia, in Africa and on the Danube.⁴⁶

Nimtz shows how Marx and Engels reversed their earlier position and gave support to religious-led Arab resistance to French imperialism in Algeria in 1857; expressed strong sympathy for the Sepoy Mutiny against Britain in India in 1857-9; and by 1861 wrote, as the US Civil War loomed, that US expansion into Texas and what is now Arizona and New Mexico, brought with it slavery and the rule of the slaveholders.⁴⁷ At the same time, they were quite clear that the “booty of British imperialism” had begun to corrupt and compromise the English proletariat.⁴⁸

In the same collection, Pranav Jani focuses on Marx’s response to the 1857 revolt in British India.⁴⁹ He maintains that “under the impact of the Revolt, Marx’s articles increasingly turned from an exclusive focus on the British Bourgeoisie to theorise the self-activity and struggle of the colonised Indians.”⁵⁰ Jani seeks to show how Marx’s historical-materialist methodology allowed him to transcend weak formulations and prejudices to achieve a more complex understanding of the relation between coloniser and colonised. In much the same way as the Paris Commune forced him to re-assess his theory of the State.⁵¹ For Jani, Marx is thereby transformed from a “mere observer” of the anti-colonial struggle to an active participant in the ideological struggle over the meaning of the Revolt. This enables him also to refute racist representations of Indian violence in the British press “by drawing a sharp division

⁴³ Miéville (2009) p.53 at <http://eprints.bbk.ac.uk/783/>

⁴⁴ Nimtz, August (2002) “The Eurocentric Marx and Engels and other related myths” in Crystal Bartolovich and Neil Lazarus (2002) *Marxism, Modernity and Postcolonial Studies* (Cambridge, Cambridge University Press) 65-80

⁴⁵ Nimtz (2002) 66

⁴⁶ Marx, Karl “The Revolutionary Movement” *Neue Rheinische Zeitung* No. 184, January 1849, at <http://www.marxists.org/archive/marx/works/1849/01/01.htm>

⁴⁷ Nimtz (2002) 68-69

⁴⁸ Nimtz (2002) 71

⁴⁹ Jani, Pranav (2002) “Karl Marx, Eurocentrism, and the 1857 Revolt in British India” in Bartolovich, Crystal and Neil Lazarus (2002) *Marxism, Modernity and Postcolonial Studies* (Cambridge, Cambridge University Press) 81-100

⁵⁰ Jani (2002) 82

⁵¹ Jani (2002) 83

between the violence of the oppressed and that of the oppressor and dialectically linking the two.”⁵² He concludes that if Eurocentrism makes Western Europe the centre of the globe, then the Marx he presents is not Eurocentric.

This collection is to be compared with another, *International Law and the Third World: Reshaping Justice*,⁵³ which, while it has a number of distinguished authors (Baxi, Anghie, Falk, An-Na'im), is very much more timid in its approach. Lenin is not mentioned once, and while self-determination several more times than appears from the Index, Baxi offers only “the resilience as well as the fungibility of a new ‘politics of hope’, of the uncanny and heady mix of forms of politics of intergovernmental and activist desires.”⁵⁴ Balakrishnan Rajagopal at any rate acknowledges (drawing on Morsink⁵⁵) that Britain engaged in intense manoeuvring during the drafting of the Universal Declaration of Human Rights in 1948 to prevent Soviet pressure from extending its effect to the colonies.⁵⁶ On the following page, however, he cites Michael Iganatieff, of all people, as authority for the utterly false proposition that the idea of self-determination was the result of the anti-colonial revolt against empire.⁵⁷ Finally, Vasuki Nesiah, in a flood of unbridled idealism, seeks to persuade us that self-determination has failed – as a discourse. “the failure of self-determination discourse is partly grounded in the invocation of ‘self-determination’ as a trans-historical signifier – a timeless ground for the post-colonial imagination.”⁵⁸ Whatever that means.

A voice from Africa

Issa Shivji, now the Mwalimu Julius Nyerere Research Professor in Pan-African Studies of the University of Dar es Salaam, is one of the most radical African specialists in law and the constitution. His *Concept of Human Rights in Africa*⁵⁹ is a fine exposé of the malign influence of western individualised human rights in Africa. In his 1991 contribution to William Twining’s Aberdeen collection⁶⁰ he was perfectly clear that the comprehensive theorisation of the “right to self-determination” was carried out by Lenin, and was put into practice in the 1918 Declaration of Rights of the Working and Exploited People⁶¹ which proclaimed complete independence of Finland, evacuation of troops from Persia, and freedom of self-determination for

⁵² Jani (2002) 90-91

⁵³ Falk, Richard, Balakrishnan Rajagopal and Jacqueline Stevens (2008) *International Law and the Third World: Reshaping Justice* (London, Routledge-Cavendish)

⁵⁴ Baxi, Upendra (2008) “What may the ‘Third World’ expect from International Law?” in Falk, Richard, Balakrishnan Rajagopal and Jacqueline Stevens (2008) *International Law and the Third World: Reshaping Justice* (London, Routledge-Cavendish) 9-22, 19

⁵⁵ Morsink, Johannes (1999) *The Universal Declaration of Human Rights. Origins, Drafting and Intent* (Philadelphia: University of Pennsylvania Press)

⁵⁶ Rajagopal (2008) 65

⁵⁷ Rajagopal (2008) 66

⁵⁸ Nesiah, Vasuki “Resistance in the Age of Empire: occupied discourse pending investigation” in Richard Falk, Balakrishnan Rajagopal and Jacqueline Stevens (eds) (2008) *International Law and the Third World: Reshaping Justice* (London, Routledge-Cavendish), 199-218, 214

⁵⁹ Shivji, Issa (1989) *The Concept of Human Rights in Africa* (Dakar, Codesria)

⁶⁰ Shivji, Issa (1991a) “The Right of Peoples to Self-determination: an African perspective” in Twining, William (ed) (1991) *Issues of Self-Determination* (Aberdeen, Aberdeen University Press) 33-48

⁶¹ Published in *Pravda* No. 2 and *Izvestia* No. 2, January 4 (17), 1918, V. I. Lenin, *Collected Works*, 4th English Edition, Progress Publishers, Moscow, 1964 Vol. 26, pp. 423-25, at <http://www.marx2mao.com/Lenin/DRWP18.html>

Armenia. It only appeared in the UN Charter (as a principle, not a right) at the insistence of the Soviet delegation.⁶²

As for its application in Africa, Shivji referred to an important passage from the October 1917 *Decree on Peace*, drafted by Lenin.⁶³

In accordance with the sense of justice of democrats in general, and of the working class in particular, the government conceives the annexation of seizure of foreign lands to mean every incorporation of a small or weak nation into large or powerful state without the precisely, clearly, and voluntarily expressed consent and wish of that nation, irrespective of the time when such forcible incorporation took place, irrespective also of the degree of development or backwardness of the nation forcibly annexed to the given state, or forcibly retained within its borders, and irrespective, finally, of whether this nation is in Europe or in distant, overseas countries.

Shivji argued that Soviet practice following World War II was consistently to apply only one aspect of Lenin's proposition, that is, formation of states by formerly colonised people – but otherwise resolutely upheld, in the most conservative manner, the doctrines of territorial integrity, state sovereignty and non-intervention.⁶⁴ For Lenin, however, self-determination was a continuing right, and could be invoked at any time by an *oppressed* nation even in a sovereign state. Shivji continued: “the problem in Africa has been precisely that the existing states have not treated nations and minorities under them democratically, hence their fear that the recognition of this ‘right’ will lead to secession.”⁶⁵

Shivji applied this analysis to Ethiopia/Eritrea and to Southern Sudan. He argues forcefully that state practice in Africa has isolated and absolutised only one element in the right, the element of anti-colonialism. This had “robbed the right of self-determination of its fundamental defining characteristic, anti-imperialism.”⁶⁶ He concluded:

... the right to self-determination is a *collective* right. It is a continuing right, ‘a right that keeps its validity even after a people has chosen a certain form of government or a certain international status’⁶⁷. The right-holders in the right to self-determination are dominated/exploited people and oppressed nations, nationalities, national groups and minorities identifiable specifically in each concrete situation.⁶⁸

It was only a shame that Makau wa Mutua in his passionate 1995 article *Why Redraw the Map of Africa?*⁶⁹ did not refer – in his section III entitled “The National Question

⁶² Shivji (1991a) 34

⁶³ At <http://www.marxists.org/archive/lenin/works/1917/oct/25-26/26b.htm>

⁶⁴ I explore these contradictions in my (2008a) “Positivism versus self-determination: the contradictions of Soviet international law” in Susan Marks (editor) *International Law on the Left: Re-examining Marxist Legacies* (Cambridge, Cambridge University Press), 133-168

⁶⁵ Shivji (1991a) 35

⁶⁶ Shivji (1991a) 37

⁶⁷ From Cassese, Antonio (1979) “Political self-determination – old concepts and new developments” in Antonio Cassese (ed) *UN Law/Fundamental Rights: Two Topics in International Law* (The Hague, Sijthoff) 138, at 150

⁶⁸ Shivji (1991a) 43

⁶⁹ wa Mutua, Makau (1995) “Why Redraw the Map of Africa? A Moral and Legal Inquiry” v.16 *Michigan Journal of International Law* 1113-1176

and Self-Determination: Prospects for Alternative Formulae”⁷⁰ to Shivji’s work at all, but only to the much more conservative and orthodox account by Abdullahi An-Na’im in Shivji’s collection, also published in 1991 .⁷¹

Conclusion

It is a fact, I submit, that the demand and the struggle for the right to self-determination has not, *pace* Vasuki Nesiah, failed or gone away, even as discourse. It is still very much on the agenda in Europe for the Basques and Irish, and nearby for the Kurds and the Palestinians.⁷² It is the rallying cry for the Chechens, Tatars, Buryats, Circassians and many others in Russia, and for the Uighurs and Tibetans in China. The ‘national question’ in Africa, especially the Pan-Africanism for which the Marxists Amilcar Cabral, Kwame Nkrumah and Patrice Lumumba fought, have not left the scene.⁷³ It is the central right of indigenous peoples, as made plain by the 1989 ILO Convention No.169 on Indigenous Peoples, and the recent UN Declaration on the Rights of Indigenous Peoples. There is no corner of the globe where the most fundamental and most political human rights is not proclaimed with passionate intensity.

⁷⁰ Wa Mutua (1995) 1150

⁷¹ An-Naim, Abdullahi Ahmed (1991) “The National Question, secession and Constitutionalism: the Mediation of Conflicting Claims to Self-Determination” in Shivji, Issa (ed) (1991) *State and Constitution: An African Debate on Democracy* (Harare, SAPES Trust) 101-120

⁷² Bowring, Bill (2009) “The Right to Self-Determination for the Basques, Irish, Kurds and Palestinians” n.53 October *Socialist Lawyer* 18-20; with Tim Potter on the Basques (20-22), Sean Oliver on the Irish (22-23); Alex Fitch on the Kurds (24-25); and Annie Rosie Beasant on the Palestinians (26-28).

⁷³ See especially Bankie, Forster Bankie and Kingo Mchombu (2008) *Pan-Africanism/African Nationalism. Strengthening the Unity of Africa and its Diaspora* (Asmara Eritrea, The Red Sea Press)

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