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ORIGINAL ARTICLE

INTERNATIONAL LEGAL THEORY

In search of Paulus Vladimiri: Canon, reception, and the (in)conceivability of an Eastern European 'founding father' of international law

Eric Loefflad*

University of Kent, Kent Law School, Canterbury CT2 7NS, United Kingdom
Email: e.d.loefflad@kent.ac.uk

Abstract

While many international lawyers are familiar with Francisco de Vitoria (1483–1546), very few have even heard of Paulus Vladimiri (1370–1435) – a Polish priest and jurist who made striking similar arguments to Vitoria on legal universality and the rights of non-Christians a full century before Vitoria. This divergence of consciousness, I argue, provides a unique opportunity to explore questions of canon, reception, and the role of 'founding fathers' within international legal thought. Centring Vladimiri as an 'Eastern European' figure, I argue that his non-reception is largely the result of how Eastern Europe implicitly functions as a distinctly liminal space within international legal thought that makes any possible 'founding father' from this region immensely difficult to imagine. I examine this dynamic through the differing postwar efforts of the Polish jurists Kazimierz Grzybowski and C. H. Alexandrowicz to include Vladimiri within the international legal canon. In examining the background structures of twentieth-century international law, I conclude that, in a manner directly connected to the liminality of Eastern Europe, neither Soviet nor Third World nor Western imaginations could easily receive Vladimiri within their fundamentally political narratives of normative order that shaped their international legal approaches. However, despite this historic non-reception, I argue that Vladimiri, and the question of Eastern Europe more generally, holds great promise in our current global moment. Particularly, engaging Eastern Europe's liminal character offers a more sociologically grounded alternative to the reductionist Schmittian view of international law as a product of inescapable conflict in a world of exclusionary 'greater spaces'.

Keywords: Eastern Europe; geopolitics; international legal history; Paulus Vladimiri; reception

1. A century before Vitoria

One of the most defining and contentious features of international legal thought is the centring of certain figures as disciplinary 'founding fathers'. Through this sensibility, the field has constructed an identifiable canon where 'classical' natural law publicists such as Francisco de Vitoria, Alberico Gentili, Hugo Grotius, Samuel Puffendorf, and Emer de Vattel paved the way for the positivists of the nineteenth century who paved the way for the institutionalists and pragmatic reformers of the twentieth century.[1] Only with the critical 'turn to history' have international lawyers begun

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[1]Though rarely considered a historian of international law, David Kennedy has performed a valuable role in mapping the field's perceptions of its past, see 'Primitive Legal Scholarship', (1986) 27 HILJ 1; 'The Move to Institutions', (1987) 8 *Cardozo Law Review*

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questioning 'founding father' narratives, both individually and as a general concept. The problems with this approach now appear to be legion. For one, fixation on the texts of classical publicists produces an 'inbuilt disciplinary historiography' that marginalizes alternative means of historicizing international law.[2] Furthermore, this canonical restriction separates those 'belonging' to international law from historical figures believed to either be irrelevant or 'belong' to other disciplinary canons (such as political thought) despite substantial convergences of context and insight.[3] Yet perhaps most importantly, and intimately linked to the other concerns, there is the way in which 'founding father' mythologies define the field as a product of elite white men. This prevents the emergence of more critical and inclusive accounts of the persistent, yet unanswerable, question of what international law is – an essential *a priori* task for any history of international law.[4] In other words, 'founding father' mythologies preserve racialized and gendered hierarchies in the name of 'disciplinary identity' long after such constructs have been formally discredited.[5]

However, despite (and perhaps because of) these issues, 'founding father' questions remain worthy of attention – albeit from a critical perspective. As debates on the 'correct' methodology for historicizing international law continue in force, though long-standing knowledge production practices need to be perpetually reconsidered, recognizing recurring patterns of thought such as 'founding father' mythologies continues to be relevant. The task here is not simply to replace the 'wrong' founders with the 'right' ones, but to critically assess how the impulse to cast certain individuals as 'founding fathers' reveals much about the character of disciplinary thought. On this point, a vital consideration is how the history of 'legal thought' might demand a different methodological treatment from the history of 'political thought' – the latter being the grounds on which the context-focused, anti-anachronistic 'Cambridge School' (an approach often counterpoised to the 'genealogical' pursuits of international lawyers[6]) was originally developed.[7]

While accounts of the history of political thought have much to gain by deferring to the uniqueness of political situations, since law proves time and time again to be a resilient survivor of political rupture, decline, and renewal, historicizing legal thought must account for the transmission of, amongst other things, the key authorities that define it across varied spatial and temporal contexts.[8] However, to acknowledge these limits of context is to simultaneously acknowledge the compounded distance between texts and the original meaning intended by their authors as authorities are translated into different languages and transplanted into different socio-legal environments.[9] This is especially true in the domain of international law which, by virtue of its universal aspirations, seeks to provide a common medium of meaning for speakers of different languages and adherents of different legal systems on a global scale.[10] While it is through

841; 'International Law and the Nineteenth Century: History of an Illusion', (1996) 65 *Nordic Journal International Law* 385; 'When Renewal Repeats Thinking Against the Box', (2000) 32 *NYU Journal of International Law and Politics* 335.

[2]R. Parfitt, 'The Spectre of Sources', (2014) 25 EJIL 297, at 298–9.

[3]For a defiance of this pattern see J. Pitts, *Boundaries of the International: Law and Empire* (2018).

[4]A. Orford, *International Law and the Politics of History* (2021), at 255–7.

[5]For 'counter-canonical' endeavours see L. Eslava et al. (eds.), *Bandung, Global History, and International Law: Critical Pasts and Pending Futures* (2017); P. Owens et al. (eds.), *Women's International Thought: Towards a New Canon* (2022).

[6]See N. Wheatley, 'Law and the Time of Angels: International Law's Method Wars and the Affective Life of Disciplines', (2021) 60 *History and Theory* 311.

[7]See Q. Skinner, 'Some Problems in the Analysis of Political Thought and Action', (1974) 2 *Political Theory* 277.

[8]E. Cavanagh, 'Legal Thought and Empires: Analogies, Principles, and Authorities from the Ancients to the Moderns', (2019) 10 *Jurisprudence* 463, at 491–8.

[9]This is a familiar problem for theorists of comparative law and/or law and development, see J. Kroncke, 'Law and Development as Anti-Comparative Law', (2012) 45 *Vanderbilt Journal of Transnational Law* 477. This resonates deeply for international lawyers given the field's entanglement with these issues, see L. Eslava, *Local Space, Global Life: The Everyday Operation of International Law and Development* (2015).

[10]For an approach to this issue conscious of the historical hierarchies constructing this proclaimed 'universality' see M. McKenna, 'Remaking the Law of Encounter: Comparative International Law as Transformative Translation', in Z. G. Capan et al. (eds.), *The Politics of Translation in International Relations* (2021), 67.

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cumulative transmissions of authorities that 'founding father' mythologies are made, by more consciously mapping these multifaceted processes of transmission and reception, contingencies can be exposed, contexts can be multiplied, and reigning truth narratives can be destabilized.[11] Cumulative mistranslation and distortion are themselves endemic parts of this process and uncovering them provides vast insights into otherwise hidden patterns of hierarchy and contestation.[12] Thus, rather ironically, distinguishing political from legal historiography provides international legal thinkers with new avenues of political engagement that actively resist any definitive account of 'context' from acting as a new iteration of politics-denying legal formalism.[13]

Against these premises, I argue that this critical approach to 'founding fathers' can be applied not only to those who currently occupy the international legal canon, but those who failed to be venerated as such, despite efforts to include them. My focus here concerns Paulus Vladimiri (1370–1435), a late medieval Catholic priest and rector at Cracow University in the Kingdom of Poland who made strikingly similar arguments to Francisco de Vitoria (1483–1546) on the rights of non-Christians a full century before Vitoria.[14] However, despite their similarity, Vladimiri is virtually unknown outside Poland and the Baltic states, yet Vitoria, in both celebratory and critical accounts, is widely hailed as the 'first international lawyer'.[15] This particular 'non-globalisation of ideas' demands an explanation.[16] After all, if international lawyers pride themselves on rigorously evaluating ideas based on their substance, how does such a misidentification of origins stand? The problem here is not a dearth of information. Numerous scholars have persistently made the case that Vladimiri, and his juridical approach to the question of infidel rights, very much belongs within the international legal canon.[17] Moreover, Vladimiri's key writings on issues of international legal significance were comprehensively compiled by the Polish scholar and priest Stanislaus Belch in the 1960s.[18] Why then have they remained untranslated from their original Latin? In deciphering this particular 'founding father failure', my primary aim is not to provide a close reading of Vladimiri's (con)texts, or even traditions of studying him. Rather, I seek to explain the curious non-reception of Vladimiri despite efforts to include him within the international legal canon – and consider what his present-day inclusion might look like despite this long-standing non-reception.

[11]P. Amorosa and C. Vergerio, 'Canon-Making in the History of International Legal and Political Thought', (2022) 35 LJIL 469, at 470.

[12]See, e.g., E. Cheung and M. Fung, 'The Hazards of Translating Wheaton's Elements of International Law into Chinese: Cultures of World Order Lost in Translation', in A. Carty and J. Nijman (eds.), *Morality and Responsibility of Rulers: European and Chinese Origins of the Rule of Law as Justice for World Order* (2018), 316.

[13]See Orford, *supra* note 4, at 252.

[14]For Vitoria comparisons see B. Díaz, 'Just War Against Infidels? Similar Answers from Central and Western Europe', (2017) 21 *Studia Philosophiae Christianae* 55; W. Czapliński, 'A Right of Infidels to Establish Their Own State? Remarks on the Writing of Paulus Vladimiri and Francisco de Vitoria', in R. Uerpmann-Wittzack et al. (eds.), *Religion and International Law: Living Together* (2018), 37.

[15]See, e.g., C. McKenna, 'Francisco de Vitoria: Father of International Law', (1932) 21 *Studies* 635; A. Anghie, 'Francisco de Vitoria and the Colonial Origins of International Law', (1996) 5 *Social & Legal Studies* 221; P. Zapatero, 'Legal Imagination in Vitoria: The Power of Ideas', (2009) 11 JHIL 221; M. Koskenniemi, 'International Law and Empire: The Real Spanish Contribution', (2011) 61 *University of Toronto Law Journal* 1; M. Koskenniemi, 'Vitoria and Us: Thoughts on Critical Histories of International Law', (2014) 22 *Rechtsgeschichte* 119; J. M. Beneyto and J. C. Varela (eds.), *At the Origins of Modernity: Francisco de Vitoria and the Discovery of International Law* (2017); J. M. Beneyto (ed.), *Empire, Humanism and Rights: Collected Essays on Francisco de Vitoria* (2022).

[16]See S. Moyn, 'On the Nonglobalization of Ideas', in S. Moyn and A. Satori (eds.), *Global Intellectual History* (2013) 187.

[17]See S. F. Belch, *Paulus Vladimiri and His Doctrine Concerning International Law and Politics, 2 Vols.* (1965); W. Czapliński, 'Paweł Włodkowic (Paulus Wladimiri) and the Polish International Legal Doctrine of the 15th Century', (2007) 7 *Baltic Yearbook of International Law* 65; P. Kras, 'An Overview: The Conversion of Pagans and Concept of *Ius Gentium* in the Writings of Cracow Professors in the First Half of the Fifteenth Century', (2013) *6 Bažnyčios istorijos studijos* 23; J. Grzybowski, 'Paulus Vladimiri and Stanislaus de Scarbimiria–Medieval Krakow Law School and the Polish Contribution to the Formation of the Rights of Nations', (2020) 24 *Christianity-World-Politics* 25.

[18]See Belch, ibid., vol. II.

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However, before undertaking this exploration, it is helpful to understand how Vladimiri and Vitoria lodged similar, but nevertheless distinct, arguments as shaped by their divergent positions within a shared world-historical scheme. While there are a multitude of nigh-unanswerable questions on 'when the law of international society was born',[19] a critical facet of this boundless genealogy concerns Medieval legal relations between Christians and Non-Christians, especially in the domains of war and conquest.[20] As a doctrinal matter, the defining rivalry within Latin Christendom occurred between the followers of Pope Innocent IV (1195–1254) and the followers of his onetime student Henry of Segusio (1200–1271), commonly known as Hostiensis.[21] For the former, war against non-believers (as with wars between Christians) required an identifiable offence that would furnish the just cause essential to a just war of rectification.[22] For the latter, all wars against non-believers, and claims over their lands, were justified to recover the universal dominion that manifested upon the divinity of Christ.[23] Though centred on the fabled Holy Land Crusades (themselves involving far more actors beyond Latin Christians and Muslims[24]), these debates were of the utmost importance in two additional religious-cum-cultural fault lines that defined the respective contexts of Vladimiri and Vitoria – the Baltic and the Iberian Peninsula.[25]

Home to Europe's last remaining pagans, the Baltic region emerged as a site of various medieval wars of conquest and conversion waged by Germanic and Scandinavian lords as well as religious military orders, most famously the Teutonic Knights.[26] Occupying something of a liminal space between crusaders and pagans, the consolidating Kingdom of Poland, largely Christianized in the tenth century, had resisted subjugation by the German-speakers of the Holy Roman Empire through a close relationship with the Catholic Church.[27] While initially joining with crusaders, ensuing contention led the Poles to align with the most powerful of the pagan communities, the Grand Duchy of Lithuania, who together delivered a devastating defeat against the Teutonic Order at the Battle of Grunwald in 1410.[28] However, this Polish-Lithuanian alliance raised the legal question of whether Christians aligned with infidels against other Christians could ever claim the just cause needed to justify a just war.[29] Defending the Polish position at the papal Council of Constance (1414–1418), Vladimiri mobilized a vast array of sources and doctrine to denounce the Teutonic Order as cynically using faith as a pretext for conquest in a manner he directly contrasted to a Polish approach whereby recognizing the land rights and legal subjectivity of pagans provided a more virtuous and effective means of converting them.[30] Though not explicitly endorsed by the Council, implicit acceptance of the alliance between the Kingdom of Poland and the Grand Duchy of Lithuania laid the foundations for the Polish-Lithuanian Commonwealth, one of the most

[19]Y. Onuma, 'When Was the Law of International Society Born? An Inquiry of the History of International Law from an Intercivilizational Perspective', (2000) 2 JHIL 1.

[20]See S. C. Neff, *War and the Law of Nations: A General History* (2005), at 39–82; see also J. Benham, *International Law in Europe, 700–1200* (2022).

[21]J. Muldoon, *Popes, Lawyers and Infidels: The Church and the Non-Christian World 1250–1550* (1979), at 18.

[22]Ibid., at 5–15.

[23]Ibid., at 15–18.

[24]See P. Frankopan, *The First Crusade: The Call from the East* (2013); N. Morton, *The Mongol Storm: Making and Breaking Empires in the Medieval Near East* (2022).

[25]On the larger transformations driving feudal/Christian expansion in both directions see R. Bartlett, *The Making of Europe: Conquest, Colonization and Cultural Change 950–1350* (1994).

[26]See E. Christiansen, *The Northern Crusades* (1997).

[27]F. Dvornik, *The Making of Central and Eastern Europe* (1949), at 70–2.

[28]See P. Knoll, 'The Most Unique Crusader State: The Teutonic Order in the Development of the Political Culture of Northeastern Europe during the Middle Ages', in C. W. Ingrao and F. A. J. Szabo (eds.), *The Germans and the East* (2008), 37, at 38–41.

[29]On the defining persistence of this question see R. Tuck, 'Alliances with Infidels in the European Imperial Expansion', in S. Muthu (ed.), *Empire and Modern Political Thought* (2012), 61.

[30]P. Vladimiri, 'Articuli Contra Cruciferos de Prussia', in Belch, *supra* note 17, at 907; see also Christiansen, *supra* note 26, at 232–41; see Muldoon, *supra* note 21, at 107-119.

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important polities of Early Modern Europe.[31] Officially converted to Roman Catholicism, Lithuania's lingering pagan ethos (an object of much ethnographic fascination[32]) allowed these lands to function as a mediation zone between Latin Christendom and Eastern Orthodoxy due to a lack of deeply rooted influence by this religious schism.[33]

Regarding the Iberian Peninsula, questions of Christians/non-Christian relations were of a profoundly different character. Rather than pagans, the Iberian non-Christians were Muslims and Jews. While the former assumed the role of defining Other via the Holy Land Crusades, the latter were the original model for navigating the status of non-Christians in relation to a normative order premised on the universal truth of Christianity.[34] Moreover, unlike the Baltic where pagans formed a buffer between Latin and Orthodox worlds, Catholicism in the Iberian Peninsula possessed a monopoly over Christian subjectivity, yet its subjects were far more communally integrated with non-Christian communities.[35] Relatedly, when it came to justifying war by Christians against non-Christians, the Iberian once again differed dramatically from the Baltic. While pagan lands in the Baltic were never part of Christendom, and thus strained justifications for conquest,[36] the Iberian Peninsula's iconic eighth-century conquest by the Moors provided the identifiable offense that gave rise to a just war via *Reconquista*.[37] As these battles raged, a similarly important site of Iberian legal development concerned long-distance sea voyages that posed the question of what claims could be asserted over hitherto unknown lands.[38] These logics of *Reconquista* and discovery infamously crossed paths as the final expulsion of Jews and Muslims from the Iberian Peninsula via the Spanish Inquisition and the 'New World' Encounter both occurred in the fateful year of 1492 which ushered in a conjoined regime of spatial purification coupled with presumptively limitless expansion.[39] However, as Spanish brutality in the Americas generated shock, horror, and a new vocabulary of transgression,[40] Vitoria, from a vast distance to the subjugated non-Christian Others unshared by Vladimiri, dissentingly reformulated natural law theory through a qualified defence of native rights whereby reason was universally discoverable and religious difference was not in itself grounds for exclusion from subjectivity under this universal scheme.[41] This in turn demanded responses based on earlier formulations including the profoundly anti-Vitorian justification of Spanish conquest by Juan de Solórzano Pereira (1574–1655), perhaps the purest embodiment of centuries of preceding Catholic legal

[31]See D. Stone, *The Polish-Lithuanian State, 1386–1795* (2001).

[32]For various contemporary depictions see F. Young (ed.), *Pagans in the Early Modern Baltic: Sixteenth-Century Ethnographic Accounts of Baltic Paganism* (2022).

[33]J. Kiaupienė, *Between Rome and Byzantium: The Golden Age of the Grand Duchy of Lithuania's Political Culture. Second Half of the Fifteenth Century to First Half of the Seventeenth Century* (2019).

[34]See Muldoon, *supra* note 21, at 3–4.

[35]See M. R. Menocal, *The Ornament of the World: How Muslims, Jews, and Christians Created a Culture of Tolerance in Medieval Spain* (2009).

[36]See Christiansen, *supra* note 26, at 81–2.

[37]See J. F. O'Callaghan, *Reconquest and Crusade in Medieval Spain* (2002). On its impact on non-Christian communities see J. Ray, *The Sephardic Frontier: The Reconquista and the Jewish Community in Medieval Iberia* (2009); A. Verskin, *Islamic Law and the Crisis of the Reconquista: The Debate on the Status of Muslim Communities in Christendom* (2015).

[38]On this initial expansion see T. B. Duncan, *Atlantic Islands: Madeira, the Azores, and the Cape Verdes in Seventeenth-Century Commerce and Navigation* (1972), at 7–24. On the development of legal practices in this context see P. Seed, *Ceremonies of Possession in Europe's Conquest of the New World, 1492–1640* (1996). On the rights of these indigenous populations in relation to earlier discourse on non-Christians see Muldoon, *supra* note 21, at 132–52. On the destruction of the Guanche people of the Canary Islands as the original European colonial genocide see A. Crosby, *Ecological Imperialism: The Biological Expansion of Europe, 900–1900* (1986), at 71–103.

[39]M. Mamdani, *Neither Settler nor Native: The Making and Unmaking of Permanent Minorities* (2020), at 5; J. Beard, *The Political Economy of Desire: International Law, Development and the Nation State* (2006), at 55–7.

[40]D. Moses, *The Problems of Genocide: Permanent Security and the Language of Transgression* (2021), at 53–60; D. Lupher, *Romans in a New World: Classical Models in Sixteenth-century Spanish America* (2003).

[41]See W. Bain, 'Vitoria: The Law of War, Saving the Innocent, and the Image of God', in S. Recchia and J. M. Welsh (eds.), *Just and Unjust Military Intervention European Thinkers from Vitoria to Mill* (2013), 70.

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thought.[42] This history leaves modern scholars with much to debate on whether the intervention of Vitoria (and the tradition of the law of nations he is deemed to have 'founded') was either true progress or a self-serving reformulation of the Eurocentric colonial gaze.[43]

In delineating the reception gap between Vladimiri and Vitoria in light of these contexts, structurally and methodologically, my account draws inspiration from Rose Parfitt's monumental text *The Process of International Legal Reproduction*. Employing a 'shadow box' technique, Parfitt arranges different aspects and perspectives of her account at different levels of scale and depth as a means of highlighting the complexities that inform an overarching theory of the materiality of international law.[44] As such, broad world-historical accounts coexist alongside detailed micro-histories from varied vantage points. Similarly, though less extensively, my account employs a visitation of themes and issues in differing measures while nevertheless building an overarching narrative of the non-reception of Vladimiri. Eschewing linear chronology, I seek to reverse engineer international legal consciousness in a manner that begins with the question of 'Eastern/East-Central Europe' as a distinctly constructed 'region' within the field.[45] This provides a basis for interpreting and contextualizing the works of writers from the region about the region in a manner framed by the greater contexts that led to their non-reception. Through such an interpretation, it is possible to show how the historic conditions that accompanied the development of the discipline left imprints on international legal thought that stunt the field's consciousness of itself. Such exposure shifts attention to the broader questions of why now is the right time for a reception that has hitherto never occurred.

In searching for Paulus Vladimiri against these presumptions, Section 2 frames the absence of Vladimiri around the broader issue of Eastern/East-Central Europe's ambiguous place within the consciousness of international law(yers). Section 3 then examines the efforts of two prominent, yet very different, Polish lawyers to include Vladimiri within the international legal canon in the early postwar era – Kazimierz Grzybowski and C. H. Alexandrowicz. In examining the 'non-reception' of Vladimiri despite these efforts, Section 4 considers the broader factors informing Soviet, Third World, and Western conceptions of international law as a means of assessing why a medieval Polish jurist failed to gain disciplinary influence against these backdrops. Finally, Section 5 explores the ongoing crises of international legal thought and argues that, especially in light of current realities, there is scarcely a better time to consider the thoughts of Eastern European jurists and their contexts – an intellectual turn that would bring Vladimiri and his legacy to the forefront.

2. The lands of Vladimiri

Owing largely to the influence of Third World Approaches to International Law (TWAIL), it is currently difficult to make any claims on the nature of international law without mentioning European overseas colonialism. Even the most recent editions of mainstream treatises now highlight such realities.[46] While this newfound focus is a most welcome development, it raises a host of questions. For instance, how might this critical empire-focused narrative best account for regions that, while very much European culturally and historically, did not expand through overseas colonization and themselves possess long histories of similar, but nevertheless distinct,

[42]J. Muldoon, *The Americas in the Spanish World Order: The Justification for Conquest in the Seventeenth Century* (2015); see also L. Glanville et al. (eds.), *Sepúlveda on the Spanish Invasion of the Americas: Defending Empire, Debating Las Casas* (2023).

[43]See G. Callavar, 'Vitoria, Grotius, Pufendorf, Wolff and Vattel: Accomplices of European Colonialism and Exploitation or True Cosmopolitans?', (2008) 10 JHIL 184.

[44]R. Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance* (2019), at 15, 54–6.

[45]See A. Anghie, 'Identifying Regions and Sub-Regions in the History of International Law', in A. Peters and B. Fassbender (eds.), *The Oxford Handbook of the History of International Law* (2012), 1058.

[46]See, e.g., J. Crawford, *Brownlie's Principles of Public International Law* (2019), at 4–6.

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experiences of imperial domination?[47] Correspondingly, what is this same narrative to make of appeals to European identity by those on Europe's margins as a means of vindicating experiential memories of subjugation by empires that were less European in character?[48] These are the issues posed by 'Eastern' and/or 'East-Central' Europe, an indeterminate region generally depicted as beginning at the Elbe River and (depending on whether one chooses to include Russia) ending at the Ural Mountains.[49] Though many events of profound international legal significance occurred in this region, and some of history's most influential international lawyers hailed from these lands, its place within international legal thought seemingly defies categorization.[50]

Against a backdrop where 'Eurocentrism' has emerged as a defining critique of international law, its usages remain varied and there is thus no clear answer on how 'Eurocentrism' applies to Eastern Europe.[51] In light of this, I adopt the method advocated by Ntina Tzouvala that international lawyers would be well-served by returning to the original understanding of Eurocentrism as a mode of accumulation centred in Europe.[52] Towards this end, while there is considerable scholarship on Eastern European 'backwardness' in relation to the West, any such account of material conditions must also account for the ideological presumptions embedded within reigning discourses of law, sovereignty, and the state.[53] While the origins of East/West European divergence in social and economic development have a much deeper lineage, it was only during the Enlightenment that the unified spatial imaginary of 'European Christendom' became secularly split along an East/West axis. As Larry Wolf has shown, this production of 'Eastern Europe' by Enlightenment publicists centred on how the idea of the 'West' (and its presumptions of liberty, rationality, and progress) occurred not only through it construction of the 'East' as the Orientalized Other, but also through the depiction of Eastern Europe as a hybrid liminal space for navigating this 'East/West' binary.[54] Giving ideological form to material difference, this new

[47]See R. Healy and E. Dal Lago (eds.), *The Shadow of Colonialism on Europe's Modern Past* (2014). For Mahmood Mamdani, the difference between European and (post)colonial states is that the former is defined by majority/minority dynamics (with liberal 'tolerance' shaping an East/West divide) while the latter consist of 'permanent minorities' engineered by colonial powers through divide and rule strategies. See Mamdani, *supra* note 39, at 6–13.

[48]See F. Ejdus (ed.), *Memories of Empire and Entry into International Society: Views from the European Periphery* (2017).

[49]According to one major study, the defining historical character of Eastern Europe was a fear of ethnic survival unknown in the West (or Russia). J. Connelly, *From Peoples into Nations: A History of Eastern Europe* (2020), at 23–4.

[50]Home to world's largest pre-holocaust Jewish community, Eastern Europe is profoundly relevant to the recent interest in Jewish international legal engagement, see R. Y. Paz, *A Gateway Between a Distant God and a Cruel World: The Contribution of Jewish German-Speaking Scholars to International Law* (2012); J. Loeffler, *Rooted Cosmopolitans: Jews and Human Rights in the Twentieth Century* (2018); J. Loeffler and M. Paz (eds.), *The Law of Strangers: Jewish Lawyers and International Law in the Twentieth Century* (2019); G. Ben-Nun, 'How Jewish is International Law?', (2020) 23 JHIL 249; L. Bilsky and A. Weinke (eds.), *Jewish-European Émigré Lawyers: Twentieth Century International Humanitarian Law as Idea and Profession* (2021); R. Giladi, *Jews, Sovereignty, and International Law: Ideology and Ambivalence in Early Israeli Legal Diplomacy* (2021). However, there has been less of an effort to understand key Jewish scholars as Eastern Europeans. For an exception see A. Carty, 'Hersch Lauterpacht: A Powerful Eastern European Figure in International Law', (2007) 7 *Baltic Yearbook of International Law* 83.

[51]N. Tzouvala, 'The Specter of Eurocentrism in International Legal History', (2021) 31 *Yale Journal of Law and the Humanities* 413, at 416. An important question here is race given how the 'whiteness' of Eastern Europeans, especially South-Eastern Europe, generates numerous complications, see C. Baker, *Race and the Yugoslav Region: Postsocialist, Post-Conflict, Postcolonial?* (2018).

[52]See Tzouvala, ibid., at 421–7.

[53]See D. Chirot (ed.), *The Origins of Backwardness in Eastern Europe: Economics and Politics from the Middle Ages until the Early Twentieth Century* (1991); K. Brzechczyn, *The Historical Distinctiveness of Central Europe: A Study in the Philosophy of History* (2020). Unlike generally homogenous Western nation-states, Eastern European societies consisted of linguistic/ethnic/religious difference largely corresponding to social class. See Connelly, *supra* note 49, at 59–61. However, Western homogeneity was achieved through destroying minority communities prior to the nation-state ideal and thus enabled the 'naturalness' of this later political form, see A. Salzman, *The Exclusionary West: Medieval Minorities and the Making of Modern Europe* (forthcoming).

[54]L. Wolf, *Inventing Eastern Europe: The Map of Civilization on the Mind of the Enlightenment* (1994), at 7.

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imaginative geography presented tremendous implications for the 'law of nations' – and its successor regime of 'international law'.

In assessing these implications, a suitable starting point is the impact of the 'age of revolutions' on the global legal order – a phenomenon garnering surprisingly minimal attention from international lawyers.[55] Occurring alongside new understandings of the law of nations critical of empire, these revolutions were driven by the ideal that 'popular will' formed the basis for sovereign legitimacy, a development that raised deep questions concerning the nature of the international system.[56] However, the geographically uneven character of this transformation is an essential consideration for any narration of it. While unfurling in varied measures in the Americas and Western Europe, the lands of Eastern Europe remained domains of imperial rule.[57] Formalized through the 1815 Concert of Europe system convened after the defeat of Napoleon, the region's imperial powers, Russia; Prussia; and Austria, not only wielded supreme authority (along with a considerably less interventionist Britain) within a structure of 'legalised hegemony', but actively sought to suppress popular revolution under the aegis of their 'Holy Alliance'.[58] Though national movements in the region attracted sympathy from abroad, imperatives of post-Napoleonic security took precedence in a process aided by new understandings of international law that elevated great power treaties over formulations of independence as a matter of natural right.[59]

Perhaps nowhere was this truer than in the lands of the former Polish-Lithuanian Commonwealth, a polity extinguished via Partitions in 1772, 1793, and 1795, orchestrated by the three members of the Holy Alliance.[60] Notably unrestored despite the Concert's reversal of Napoleonic era conquests, continued resistance within these partitioned lands enabled the discourse of self-determination to persistently challenge an order that, in the name of 'positivism', sought to exclude such considerations from international legal concern.[61] However, there was one question raised by the partitioning of the Commonwealth that was highly significant within the nineteenth-century legal mind – whether a nation's destruction by one lower on the 'civilisational' hierarchy was in breach of the 'Standard of Civilisation'? In the words of Thomas Jefferson, a figure of neglected international legal significance:

> A wound indeed was inflicted on the character of honor in the eighteenth century by the partition of Poland. But this was an atrocity of a barbarous government [Russia] chiefly, in conjunction with a smaller one still scrambling to become great [Prussia], while one only of those already great, and having character to lose [Austria], descended to the baseness of an accomplice in a crime.[62]

[55]See Neff, *supra* note 20, at 93. Most studies of the era's international legal significance are from historians, see N. Onuf and P. Onuf, *Federal Union, Modern World: The Law of Nations in an Age of Revolutions, 1776–1814* (1993); D. Armitage, 'The Declaration of Independence and International Law', (2002) 59 *William and Mary Quarterly* 39; E. J. Kolla, *Sovereignty, International Law, and the French Revolution* (2017).

[56]E. Loefflad, 'Popular Will and International Law: The Expansion of Capitalism, the Question of Legitimate Authority, and the Universalization of the Nation-State', PhD Thesis, University of Kent (2019).

[57]However, even successful revolutions that proved unduly radical led to new forms of backlash by existing powers. Nowhere was this truer than Haiti, see L. Obregón, 'Empire, Racial Capitalism and International Law: The Case of Manumitted Haiti and the Recognition Debt', (2018) 31 LJIL 597.

[58]G. Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (2004), at 247–9.

[59]See E. Keene, 'The Treaty-Making Revolution of the Nineteenth Century', (2012) 34 *International History Review* 475; E. Keene, 'International Hierarchy and the Origins of the Modern Practice of Intervention', (2013) 39 *Review of International Studies* 1077; G. Lawson, 'Ordering Europe: The Legalised Hegemony of the Concert of Europe', in D. M. Green (ed.), *The Two Worlds of Nineteenth Century International Relations* (2019), 101.

[60]See J. Lukowski, *The Partitions of Poland 1772, 1793, 1795* (2014).

[61]V. Kattan, 'To Consent or Revolt? European Public Law, the Three Partitions of Poland (1772, 1793, and 1795) and the Birth of National Self-Determination', (2015) 17 JHIL 247.

[62]Quoted in ibid., at 278. On Jefferson's under-recognized international legal significance see Loefflad, *supra* note 56, at 195–9.

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Yet rather than the powers who partitioned the Commonwealth, the great focus on this issue of civilization, sovereignty, and the margins of Europe was the Christian subjects of the Ottoman Empire. As the great powers condemned Ottoman suppression, yet remained sceptical of local populations ruling themselves, these lands proved a variable laboratory for international legal techniques of intervention and conditional sovereignty justified by minority protection.[63] Here, the emergence of an independent, yet condition-laden, Montenegro, Serbia, Romania, and Bulgaria following the 1878 Russo-Turkish War was an effective precursor to the greater proliferation of new states (and efforts to impose conditions upon them) with the breakup of the three empires of the old Holy Alliance following the First World War.[64] Captivating both liberal and romantic imaginaries, post-First World War Eastern Europe was 'ground zero' for projects of law and governance now possible within a new order where sovereignty was substantially qualified and (European) self-determination was now a consequential concern for international lawyers.[65] Importantly, some of the most iconic cases to come before a highly expanded realm of international adjudication via the Permanent Court of International Justice concerned novel projects, namely minority rights treaties, that called for a close scrutiny of Eastern Europe's social realities.[66] Through these means, a Eurocentric international legal order constructed a distinct 'Other within Europe.'[67]

As the interwar system of conditional sovereignty and minority protection broke down, largely as a result of its appropriation by the Third Reich, the Second World War rendered Eastern Europe a vast 'bloodland' hosting some of history's greatest acts of violence.[68] What followed was an international legal response where, through developments that included the Nuremberg judgment; the Universal Declaration of Human Rights; the Genocide Convention; and the Fourth Geneva Convention, this violence was portrayed in universal and individualistic terms in a manner that sought to transcend regional specificity and its politics.[69] Regional conceptions of international legal order were too closely associated with fascism.[70] Soon after came the descending of the Iron Curtain where a perceived Cold War 'hiatus' of international law went

[63]See A. M. Genell, 'Autonomous Provinces and the Problem of "Semi-Sovereignty" in European International Law', (2016) 18 *Journal of Balkan and Near Eastern Studies* 533; D. Rodogno, 'European Legal Doctrines on Intervention and the Status of the Ottoman Empire within the "Family of Nations" Throughout the Nineteenth Century', (2016) 18 JHIL 5; A. D. Sorescu, 'National History as a History of Compacts: *Jus Publicum Europaeum* and Suzerainty in Romania in the Mid-Nineteenth Century', (2018) 45 *East Central Europe* 63; N. Tzouvala, '"These Ancient Arenas of Racial Struggles": International Law and the Balkans, 1878–1949', (2018) 28 EJIL 1149; N. Fujinami, 'Georgios Streit on Crete: International Law, Greece, and the Ottoman Empire', (2016) 34 *Journal of Modern Greek Studies* 321; N. Kornioti, 'The Island of Cyprus, Sovereignty, and International Law in the Early Decades of British Rule (1878–1923)', (2020) 32 *Cyprus Review* 105.

[64]See M. Spanu, 'The Hierarchical Society: The Politics of Self-Determination and the Constitution of New States After 1919', (2019) 26 *European Journal of International Relations* 372; see also C. Fink, *Defending the Rights of Others: The Great Powers, the Jews, and International Minority Protection, 1878–1938* (2008). On international law and the plight of independent Eastern European states during the First World War see J. D. Prestia, '"Civilized States" and Situational Sovereignty: The Dilemmas of Romanian Neutrality, 1914–1916', (2021) 51 *European History Quarterly* 45.

[65]N. Wheatley, 'Central Europe as Ground Zero of the New International Order', (2019) 78 *Slavic Review* 900; see also Parfitt, *supra* note 44, at 154–222; N. Berman, '"But the Alternative Is Despair": European Nationalism and the Modernist Renewal of International Law', (1993) 106 *Harvard Law Review* 1792; A. Anghie, 'Nationalism, Development and the Postcolonial State: The Legacies of the League of Nations', (2006) 41 *Texas International Law Journal* 447; N. Wheatley, 'Spectral Legal Personality in Interwar International Law: On New Ways of Not Being a State', (2017) 35 *Law and History Review* 753; L. Smith, *Sovereignty at the Paris Peace Conference of 1919* (2019).

[66]See *Rights of Minorities in Upper Silesia (Minority Schools)*, (1928) PCIJ, Series A. – No.15; *The Greco-Bulgarian 'Communities'* (1930) PCIJ, Series B. – No.17; *Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory*, (1932) PCIJ, Series A./B. – No.44; *Minority Schools in Albania*, (1935) PCIJ, Series A./B. – No.64; see also W. E. Rappard, 'Minorities and the League', (1926) 11 *International Conciliation* 330. On anti-minority prejudice see M. Turda and P. J. Weindling (eds.), *Eugenics and Racial Nationalism in Central and Southeast Europe 1900–1940* (2007).

[67]M. Shahabuddin, *Ethnicity and International Law: Histories, Politics and Practices* (2016), at 111–22.

[68]T. Snyder, *Bloodlands: Europe between Hitler and Stalin* (2010).

[69]See M. Lewis, *Birth of the New Justice: The Internationalization of Crime and Punishment, 1919–1950* (2014), at 150–273.

[70]A. Becker Lorca, 'Eurocentrism in the History of International Law', in Peters and Fassbender, *supra* note 45, at 1039.

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hand-in-hand with a general failure in the West to comprehend the agency of Eastern Bloc states on the greater world stage.[71]

Within this meta-narrative, Eastern Europe re-entered the realm of international legal significance with the 1989 'End of History'.[72] Once again, the region became an implementation site of a triumphant liberalism that merged cosmopolitan philosophy with efforts to transcend politics through increasingly comprehensive legal and institutional techniques. Yet, when it came to this integration of Eastern Europe into Western orders of security, governance, and economic management, despite the proclaimed 'apolitical' character of relevant interventions, a familiar politics of 'backwardness' was, however implicitly, nevertheless all-pervasive.[73] Nowhere was this truer than in this era's one great site of armed conflict, the former-Yugoslavia, where imaginations of innate barbarism (and blindness to the complicity of external meddling) were invoked to justify numerous experiments in the region on questions of statehood, intervention, and international criminal justice.[74] While dashed hopes in post-socialism has been a common refrain amongst regional experts,[75] as the twenty-first century progresses, Eastern Europe has received broader renewed attention as the space where the 'liberal international order' is under grave threat both internally from 'populist backlash' and externally from aggression by Vladimir Putin's Russia.[76] Yet, when making sense of such developments, as the ongoing Russia-Ukraine War has shown, Western distortions of the region continue to frame the terms of knowledge production.[77]

Identifying this status of Eastern Europe as a liminal space restrained in its ability to either fully embrace or fully contest reigning Western notions forms a grounding for understanding why consciousness of Vladimiri, a figure of this region, has not upended reigning narratives of international legal origins. While much of this exclusion can be traced to a perceived divide between 'medieval' and 'modern' in international theory, this explanation remains limited.[78] Varied attempts to connect legal modernity to its pre-modern foundations have been united in their exclusion of Vladimiri. For Harold Berman, a Soviet law expert and explorer of the depths of legal history, Vladimiri is nowhere to be found in his monumental account of the medieval origins of European legal thought.[79] Additionally, the recent collection *Christianity and International Law*, a work concerned with deep foundations and a seemingly fitting place to showcase Vladimiri, makes no mention of him.[80] Moreover, Martti Koskenniemi's recent large-scale effort

[71]M. Craven et al., 'Reading and Unreading a Historiography of a Hiatus', in M. Craven et al. (eds.), *International Law and the Cold* War (2019) 1; J. Mark et al., *1989: A Global History of Eastern Europe* (2019).

[72]F. Fukuyama, 'The End of History', (1989) 16 *National Interest* 3.

[73]See D. Kennedy and D. E. Webb, 'The Limits of Integration: Eastern Europe and the European Communities', (1990) 28 *Columbia Journal of Transnational Law* 633; D. Kennedy, 'Turning to Market Democracy: A Tale of Two Architectures', (1991) 32 HILJ 373; M. Mälksoo, *The Politics of Becoming European: A Study of Polish and Baltic Post-Cold War Security Imaginaries* (2009).

[74]See A. Orford, 'Locating the International: Military and Monetary Interventions After the Cold War', (1997) 38 HILJ 443, at 451–9; P. Radan, *The Break-up of Yugoslavia and International Law* (2002); M. Koskenniemi, 'The Lady Doth Protest Too Much': Kosovo, and the Turn to Ethics in International Law', (2002) 65 *Modern Law Review* 159; R. Kerr, *The International Criminal Tribunal for the Former Yugoslavia: An Exercise in Law, Politics, and Diplomacy* (2004); J. Dugard, *The Secession of States and Their Recognition in the Wake of Kosovo* (2013).

[75]See V. Tismăneanu, *Fantasies of Salvation: Democracy, Nationalism, and Myth in Post-Communist Europe* (1998); C. King, *Extreme Politics: Nationalism, Violence, and the End of Eastern Europe* (2010).

[76]See T. Snyder, *The Road to Unfreedom: Russia, Europe, America* (2018); B. Bugarič, 'Central Europe's Descent into Autocracy: A Constitutional Analysis of Authoritarian Populism', (2019) 17 *International Journal of Constitutional Law* 597; S. Sayapin and E. Tsybulenko (eds.), *The Use of Force against Ukraine and International Law: Jus Ad Bellum, Jus In Bello, Jus Post Bellum* (2018); T. D. Gill, 'The *Jus ad Bellum* and Russia's "Special Military Operation" in Ukraine', (2022) 25 *Journal of International Peacekeeping* 121; W. Sadurski, *A Pandemic of Populists* (2022).

[77]M. Mälksoo, 'The Postcolonial Moment in Russia's War Against Ukraine', (2022) *Journal of Genocide Research* 1.

[78]W. Bain, 'The Medieval Contribution to Modern International Relations', in W. Bain (ed.), *Medieval Foundations of International Relations* (2017), 1, at 1–3.

[79]T. Giaro, 'The East of the West: Harold J. Berman and Eastern Europe', (2013) 21 *Rechtsgeschichte* 193, at 193.

[80]P. Slotte and J. Haskell (eds.), *Chrisitianity and International Law: An Introduction* (2021).

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to stretch the wellspring of global legal thought back to the Middle Ages continues this pattern of absence.[81] While broader geopolitical and ideological presumptions go great distances when explaining Vladimiri's non-reception, it is first necessary to detail efforts to include him within the canon.

3. The uses of Vladimiri

Largely unknown in the English-speaking world, the Northern Crusades against Europe's last pagans in the Baltic were very much part of the greater era of the Crusades – and far more successful than the famed Holy Land Crusades in permanently extending Christendom.[82] With this lack of knowledge comes Anglophone ignorance as to how these events inform conflicting political identities/mythologies amongst German, Scandinavian, Slavic, Baltic, and Finno-Ugric populations. Given the Baltic's status as an arena of conflict between religiously, ethno-linguistically, and ideologically diverse forces over many centuries,[83] contentions that reached their nigh-apocalyptic apotheosis during the twentieth century, there was virtually limitless occasion to cast and recast the Northern Crusades when making sense of constant rounds of unimaginable violence.[84] When it comes to the production of international legal knowledge, the region plays a vital, if grossly under-acknowledged role. Highlighting the characteristic liminality of Eastern Europe, it was largely through jurists from the region (especially Estonians) that Western conceptions were introduced to Russia and Russian conceptions were introduced to the West.[85]

An important vector of this translation, and one that showcased its political valence, concerned the strategic desire of Westerners to learn the intricacies of Soviet international law – an objective proving the indispensable worth of Eastern European jurists intimately familiar with Russian language, culture, and history.[86] While these efforts were underway during the early years of the Soviet Union, the general value of exiled intellectuals was perhaps most profoundly displayed through their contribution to the Allies' war effort against Nazi Germany.[87] However, as the previously aligned Soviets became a new enemy with the dawning of the postwar order (and Nazi-Soviet similarities fell increasingly under the unifying rubric of 'totalitarianism'[88]), the currency of exiled scholars only increased against this new Cold War backdrop.[89] When it came to analysing Soviet international law in this capacity, few were more prolific than Kazimierz Grzybowski, a Polish jurist who escaped the Soviets and found an American academic home at Duke

[81]M. Koskenniemi, *To the Uttermost Parts of the Earth: Legal Imagination and International Power 1300–1870* (2021).

[82]On these wars within the broader Crusades contexts, see C. Tyerman, *God's War: A New History of the Crusades* (2006), at 674–712.

[83]See M. North, *The Baltic: A History* (2015).

[84]See Christiansen, *supra* note 26, at 4–5. Beyond the Second World War and ensuing Soviet domination, the region witnessed numerous identity-defining conflicts, see A. Filyushkin, 'Livonian War in the Context of the European Wars of the 16th Century: Conquest, Borders, Geopolitics', (2015) 43 *Russian History* 1; R. I. Frost, *The Northern Wars: War, State and Society in Northeastern Europe, 1558–1721* (2014); A. Mikaberidze, *The Napoleonic Wars: A Global History* (2020), at 332–67; V. G. Liulevicius, *War Land on the Eastern Front: Culture, National Identity, and German Occupation in World War I* (2000); T. Snyder, *The Reconstruction of Nations: Poland, Ukraine, Lithuania, Belarus, 1569–1999* (2002); see also A. Kożuchowski, 'The Devil Wears White: Teutonic Knights and the Problem of Evil in Polish Historiography', (2019) 46 *East Central Europe* 135.

[85]L. Mälksoo, *Russian Approaches to International Law* (2015), at 25–35.

[86]The first major English-language study of Soviet international law was produced by an Estonian exile. Ibid., at 28; see T. A. Taracouzio, *The Soviet Union and International Law: A Study Based on the Legislation, Treaties and Foreign Relations of the Union of Socialist Soviet Republics* (1935).

[87]See F. Neuman et al., *Secret Reports on Nazi Germany: The Frankfurt School Contribution to the War Effort* (2013).

[88]For an intriguing wartime linkage through international law see J. Herz and J. Florin, 'Bolshevist and National Socialist Doctrines of International Law: A Case Study of the Function of Social Science in the Totalitarian Dictatorships', (1940) 7 *Social Research* 1.

[89]See D. Bessner, *Democracy in Exile: Hans Speier and the Rise of the Defense Intellectual* (2018).

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University.[90] While Grzybowski produced numerous studies on Soviet law and institutionalism that closely focused on the realities of his day, his journey back to the Middle Ages in an attempt to place Vladimiri (and fifteenth century Polish contributions more generally) within the international legal canon can be very much read within this pattern of engagement.[91]

In accounting for the lost influence of Vladimiri and his contemporaries, Grzybowski, in a deeply anachronistic exercise in 'juridical thinking', provides a reading of this past through a distinct lens of Cold War politics.[92] When depicting the defence of the Polish alliance with pagans against the Teutonic order, Grzybowski draws heavily upon Western tropes about the 'uncivilised' East as a means of showcasing the Poles' virtue in performing a judicious appraisal of the legality of their alliance.[93] In his account:

> [t]here was considerable concern over the possible hardships which might be suffered by a peaceful population as a result of the presence of barbarians in the Polish armies. The problem of moral responsibility for the suffering of the innocent was uppermost in the minds of many.[94]

Continuing this mode of argument, Grzybowski depicts a consequence of the defence of the Polish-infidel alliance to be the recognition of a 'right to self-determination' for, in Vladimiri's purported understanding, '[a]ny governmental power on earth ... is legal if it is derived from the institution of God or by the choice of the people'.[95]

Through this portrayal comes a rejection of any notion of supra-national authority by the Holy Roman Empire, an entity Poland did not belong to, but possessed full rights as a sovereign regardless of this exclusion.[96] However, this lack of hierarchical authority did not preclude the force of peacefully resolving international disputes as a demand of a universal, and non-hierarchical, regime of natural law. In synthesizing his points in reference to natural law as a force above and beyond (and therefore capable of directly bypassing) the institutions of Church and Empire, Grzybowski claimed that:

> Peaceful settlement of disputes ... was designed in the Polish doctrine to take the place of a settlement by imperial or ecclesiastic authority representing the centralised Christian community of nations. This new concept ... was also directly linked to the rights accorded to pagans and their states. Neither the pope nor the emperor could claim any special rights in relations with them, nor could the law of the Church or the empire apply.[97]

Through such a merger, Grzybowski's Vladimiri connects the premises of sovereign equality and autonomy to a transcendent, yet horizontal, duty to settle disputes that self-interested hierarchical entities would only impede.

While this account raises numerous issues of historical accuracy, when read through the lens of its time, it can be seen as a wide-ranging critique of Soviet international legalism that fits well

[90]K. Grzybowski's studies include: *Soviet Legal Institutions: Doctrines and Social Functions* (1962); *Peaceful Settlement of International Disputes in the Communist Bloc* (1963); *The Socialist Commonwealth of Nations: Organizations and Institutions* (1964); *Soviet Private International Law* (1965); *Soviet Public International Law: Doctrines and Diplomatic Practice* (1970); *Soviet International Law and the World Economic Order* (1987).

[91]K. Grzybowski, 'The Polish Doctrine of the Law of War in the Fifteenth Century: A Note on the Genealogy of International Law', (1958) 18 *Jurist* 386.

[92]On recourse to anachronism in international legal argument generally see Orford, *supra* note 4, at 197–206

[93]See Grzybowski, *supra* note 91, at 390–1.

[94]Ibid., at 391.

[95]Ibid., at 398.

[96]Ibid., at 399.

[97]Ibid., at 405.

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within Grzybowski's greater body of work. Though he did not explicitly say so, the Soviet Union would seem to occupy a similar position to the old Holy Roman Empire as a mode of hierarchical authority that dominated those within its structure while antagonizing those outside of it. Moreover, this presence of ideologically fuelled hierarchy coupled with the logic of sovereignty had great potential to disrupt any attempt to build a unified international legal order based on shared principles. This sentiment is especially present in Grzybowski's study of the approach of socialist judges on international courts. Here, insistence by these judges upon the primacy of sovereignty, especially on state discretion over matters of interpretation, perpetually impedes the purpose of international courts in explicating universal standards that can then be generally applied in a horizontal capacity.[98] This is to say nothing of how any such theory was ultimately incompatible with a genuine right of nations to self-determination, despite the Soviet emphasis upon self-determination in their diplomatic rhetoric. Tracing this issue to the origins of the Soviet Union, Grzybowski claims that this usage simply amounted to a 'right' to be subjected to the Soviets and their ideological whims; a fate diametrically opposed to 'true' self-determination.[99]

However, despite his critiques, Grzybowski nevertheless remained hopeful that the influence of international law and institutions would come to progressively manage Soviet challenges. Here, he remarked that conforming to the institutional parameters of postwar international legalism had stemmed the radicalism of early Bolshevik endeavours – a reality demonstrated by the demise of the Comintern and its explicit purpose of revolutionary export.[100] Moreover, he placed great hopes in the acceptance of the Helsinki Final Act and the possibilities it might conform diverse invocations of self-determination towards the version of this concept aligned with liberal visions of human rights.[101] This progressive hope in the international legalist containment of the Soviet agenda can be viewed as dovetailing with his earlier proclamations on fifteenth century Polish contributions to international law, especially if his anti-Soviet agenda is read into this account. Sceptical of theories that international law could have only begun with Grotius, Grzybowski welcomed early twentieth-century efforts to deepen the narrative by depicting Vitoria as the field's 'founding father'.[102] Yet, in his reckoning, this history could go even deeper since '... Polish scholars have opened a new vista in the historical aspects of the science of international law ... and [thus] new elements dating from an even more remote past ... modify our understanding of how international law as a separate discipline has come into existence'.[103] Thus, for Grzybowski, constraining Soviet radicalism and expanding the timescale of international legal history to include Eastern Europe appeared to be two progressive developments that went hand-in-hand.

Grzybowski showed how it was possible for a Polish jurist in the immediate postwar era to draw upon Vladimiri, and through him, mobilize the liminality of Eastern Europe when advancing a position in the era's ideological struggle of East vs. West. However, within this same timeframe, a very different Polish jurist showed how it was possible to mobilize this same liminality in relation to a connected, but nevertheless distinct, axial tension – 'North vs. South'.[104] This jurist was none other than C. H. Alexandrowicz, an exiled professor at the University of Madras and later the University of Sydney. A pioneer of international legal history, and global history more generally, Alexandrowicz played a pivotal role in including Asia and Africa within the international legal

[98]K. Grzybowski, 'Socialist Judges in the International Court of Justice', (1964) *Duke Law Journal* 536, at 540.

[99]'[W]hile theoretically radical, the Soviet doctrine of self-determination was far from revolutionary.' K. Grzybowski, 'Propaganda and the Soviet Concept of World Public Order', (1966) 31 *Law and Contemporary Problems* 480, at 500; Interestingly, Grzybowski undertook extensive study of the most renown theorist of liberal self-determination, see K. Grzybowski, 'Woodrow Wilson on Law, State, and Society', (1962) 30 *George Washington Law Review* 808.

[100]See Grzybowski (1966), ibid., at 495–7.

[101]K. Grzybowski, 'Soviet Theory of International Law for the Seventies', (1983) 77 AJIL 862.

[102]See Grzybowski, *supra* note 91, at 410–11.

[103]Ibid., at 411.

[104]See P. Dann and J. von Bernstorff, 'The Battle for International Law: A Sketch', in P. Dann and J. von Bernstorff (eds.), *The Battle for International Law: South-North Perspectives on the Decolonization Era* (2019), 1.

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meta-narrative, both in relation to their historic agency and contemporary independence claims.[105] Though much of his writing concerned the past and present of the Afro-Asian world, the boom in recent scholarship on his work-life nexus has revealed the importance of his formative Polish background on this theories of sovereignty, empire, and international law.[106] Of particular importance here is how the historic Polish-Lithuanian Commonwealth represented a configuration of sovereign divisibility that, for Alexandrowicz, had more in common with Afro-Asian patterns of sovereignty than it did with the sovereign absolutists who partitioned it.[107] However, though he did consider whether the resurrection of a Polish state following the First World War could serve as a precedent for the emergence of new states in Asia and Africa, deeper histories of Europe were rarely the main focus of his narrative.[108] However, one important exception did exist – and the protagonist was Vladimiri.[109]

For Alexandrowicz, the nineteenth-century invention deemed 'international law' was an exclusionary regime that must not be confused with the richer and more inclusive tradition of the 'law of nations' that preceded it. Whereas 'international law' drew unjustified divisions based on a 'standard of civilisation', the 'law of nations' was non-discriminatory and facilitated egalitarian cross-cultural interaction – patterns Alexandrowicz sought to show most prominently through his study of the European encounter with the East Indies.[110] While a Eurocentric 'founding father' narrative would have been anathema to Alexandrowicz's meta-project (where the depth of origins was much greater[111]), Vladimiri's defence of the Christian-pagan alliance between the Kingdom of Poland and the Grand Duchy of Lithuania is taken as evidence for his theory of a universal non-discriminatory law of nations.[112] For Alexandrowicz, formulations similar to Vladimiri's on Christian-infidel coexistence were very much present in Vitoria and Grotius.[113] Moreover, when it came to the question of why this 'law of nations' was displaced by 'international law', Alexandrowicz claims this to be a result of the emergence of absolutist great powers via the Concert of Europe who, through their self-referential doctrines of 'positivism', could not abide the historic rights of neither Poles nor Afro-Asians.[114] According to Alexandrowicz:

> the period of the collapse of the independent Asian State system in the East Indies at the end of the eighteenth century witnessed also the collapse of Poland, to a great extent under the pressure of those intransigent dynastic forces which stood in the way of a liberal and non-discriminatory conception of the family of nations.[115]

While Alexandrowicz's Vladimiri certainly differed from Grzybowski's Vladimiri, both drew upon the liminality of Eastern Europe, and the susceptibility of international lawyers to 'founding father' narratives, to advance their particular normative visions of the world. For Grzybowski, the liminality and marginalization of Poland, both historically and at present, enabled a particular

[105]C. H. Alexandrowicz, 'The Afro-Asian World and the Law of Nations', (1968) 123 RCADI 121.

[106]C. H. Alexandrowicz, '"This Modern Grotius": An Introduction to the Life and Thought of C.H. Alexandrowicz', in D. Armitage and J. Pitts (eds.), *The Law of Nations in Global History* (2017), 1.

[107]E. Loefflad, 'Unpartitionable: C.H. Alexandrowicz, Sovereign Divisibility, and the *Longue Durée* of the Polish-Lithuanian Commonwealth', (forthcoming) *German Law Journal* 1.

[108]C. H. Alexandrowicz, 'New and Original States: The Issue of Reversion to Sovereignty', in Alexandrowicz, *supra* note 105, at 399–400.

[109]C. H. Alexandrowicz, 'Paulus Vladimiri and the Development of the Doctrine of Coexistence of Christian and Non-Christian Countries', in ibid., at 53.

[110]C. H. Alexandrowicz, *An Introduction to the History of the Law of Nations in the East Indies (16th, 17th, and 18th Centuries)* (1967).

[111]C. H. Alexandrowicz, 'Kautilyan Principles and the Law of Nations', in Alexandrowicz, *supra* note 106, at 35.

[112]See Alexandrowicz, 'Vladimiri', in ibid., at 53.

[113]Ibid., at 56.

[114]Ibid., at 60.

[115]Ibid.

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relationship to universal principles of law that could be deployed against those who claimed authority on the basis of some self-created hierarchy, be it the fifteenth-century Holy Roman Empire or the twentieth-century Soviet Union. For Alexandrowicz, this same liminality and marginalization spoke not to contention, but to unity. Eschewing any focus on the political divisions of the Cold War in favour of a juridical vision that denied non-consensual historical conquest as a basis for title, Alexandrowicz sought to return the world to a state of fluidity and flexibility unburdened by a hierarchical supremacy of undivided sovereigns over divided sovereigns.[116] Yet despite their difference, both accounts were part of richer projects by scholars who attained a significant degree of acclaim in their time. Why then did both of their attempts to include Vladimiri within the international legal canon fail as they did? While they spoke to different audiences, non-reception occurred with a profound degree of uniformity. What possible explanations could there be?

4. The non-reception of Vladimiri

When considering the non-reception of Vladimiri despite efforts from Grzybowski and Alexandrowicz, it is helpful to frame the development of postwar international law around three major poles: the Western Bloc, the Eastern Bloc, and the broader Third World movement. After all, this rough tripartite division arguably globalized and entrenched the foundational concepts of sovereign equality and non-intervention as set forth by the UN Charter.[117] Beginning with the Soviet-led Eastern Bloc, the non-reception of Vladimiri is rather easy to theorize – even if we can presume the Soviets could account for such history in their largely positivist Cold War international legal thought.[118] Seeking a unified victimhood narrative, an effort of great importance to their international legal engagement, the Soviets could not readily tolerate dissenting formulations – especially those of a disharmoniously nationalistic variety.[119] As Vladimiri's advocacy spoke most directly to Polish and Baltic experiences of victimization, it is not difficult to see why the Soviets would not welcome such a narrative.[120] Moreover, there is the issue of how the religious character of Vladimiri's legal engagement would be incompatible with Soviet atheism. While the Soviets certainly possessed a just war tradition, it was constituted along distinctly Marxist-Leninist lines, and thus far removed from Vladimiri's Catholicism.[121]

The question of the broad Third Worldist movement in relation to the non-reception of Vladimiri is substantially more complex. Though largely outside Western narratives about Eastern Europe, the Eastern bloc members had substantial involvements with states throughout the Global South – a reality not lost on contemporary Western experts on Soviet Law.[122] However, such engagement was not without its tensions. As exemplified by Tito's Yugoslavia and its place within Third Worldism via the Non-Aligned movement, this involvement showed how perceptions of comparative Yugoslav racial similarity led to a differentiated treatment by the West compared to

[116]Though he did raise the ideal-reality disjuncture concerning self-determination under socialist conception of international law, rather than the Soviet Union in relation to Easter Europe, Alexandrowicz focused on China in relation to Tibet, see C. H. Alexandrowicz, 'The Legal Position of Tibet', in ibid., at 202.

[117]B. Roth, 'Sovereign Equality and Non-Liberal Regimes', (2012) 43 *Netherlands Yearbook of International Law* 25, at 32–3.

[118]See B. Mamlyuk, 'The Cold War in Soviet International Legal Discourse', in Craven et al., *supra* note 71, at 339.

[119]An important factor was the Soviet strategy to link universal ideology and victimization experiences via the Nuremberg judgment, see F. Exeler, 'Nazi Atrocities, International Criminal Law, and Soviet War Crimes Trials: The Soviet Union and the Global Moment of Post-Second World War Justice', in I. Tallgren and T. Skouteris (eds.), *The New Histories of International Criminal Law: Retrials* (2019), 189; F. Hirsch, *Soviet Judgment at Nuremberg: A New History of the International Military Tribunal after World War II* (2020).

[120]See N. V. Riasanovsky, 'Old Russia, the Soviet Union and Eastern Europe', (1952) 11 *American Slavic and East European Review* 171.

[121]J. Socher, 'Lenin, (Just) Wars of National Liberation, and the Soviet Doctrine on the Use of Force', (2017) 19 JHIL 219.

[122]See J. N. Hazard, 'Technical Assistance in the New International Law', (1966) 60 AJIL 342.

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their African and Asian counterparts.[123] This was especially troubling to China who viewed Yugoslavia as detrimentally interfering in Afro-Asian affairs.[124] From such a perspective, there remained a division with the Global South whereby Europeans, however peripheral within Europe, nevertheless retained features of their European character (and its historic 'civilising' mission) that complicated efforts to build Third World solidarity.[125] Moreover, the violent historical realities of Eastern Europe very much impacted consciousness in numerous locations throughout the Global South.[126] This was especially true regarding state partition, a practice that defined post-First World War Europe and deployed with similarly disastrous effects in Palestine and British India after the Second World War as a method for preserving imperial aims despite the formal departure of imperial rule.[127] Such associations would be deeply suspect given that a key pillar of anti-colonial international legal argument was the condemnation of partition as imposed by outgoing colonial powers.[128]

While the above realities certainly speak to the non-reception of Vladimiri amongst Third World actors, especially those concerned with building good relations with the Soviet Union, reasons for his resonance also existed. Of great importance here is the way in which many in the Global South feared that, despite its rhetoric, the Soviet Union would act as a new manifestation of imperial rule – a fear the Soviets' rivals in the Peoples' Republic of China used to great strategic advantage. Here one could point to Soviet actions against weaker Eastern bloc states as undermining their proclaimed commitments to national liberation in the name of the right to self-determination. In addition to condemnations of Soviet interventions in Hungary (1956) and Czechoslovakia (1968), an issue that spoke to the experience of the Global South (and one that directly spoke to Vladimiri's context and its legacies) concerned Soviet claims over the Baltic states.[129] After all, the proclaimed annexation of Estonia, Latvia, and Lithuania directly invoked Third World fears over the recently banned ability to gain territorial title by conquest.[130] This explains condemnations of illegal Soviet occupation of the Baltic states throughout the postcolonial world.[131] With these factors in mind, the applicability of Vladimiri's influence in the Third World was not inconceivable. Moreover, there was already an approach to linking him to a new anti-colonial international legal history as demonstrated by Alexandrowicz.

However, there was a deeper issue when considering what did or did not influence the legal consciousness of the rising Third World movement. With the end of formal empires, serious questions were posed as to whether, given their status as tools of the old imperial order,

[123]J. Subotic and S. Vucetic, 'Performing Solidarity: Whiteness and Status-Seeking in the Non-Aligned World', (2019) 22 *Journal of International Relations and Development* 722.

[124]J. Friedman, *Shadow Cold War: The Sino-Soviet Competition for the Third World* (2015), at 40–1.

[125]See P. Betts, *Ruin and Renewal: Civilising Europe After the Second World War* (2020), at 345–82.

[126]See A. Mufti, *Enlightenment in the Colony: The Jewish Question and the Crisis of Postcolonial Culture* (2007); E. Kissi, *Africans and the Holocaust: Perceptions and Responses of Colonized and Sovereign Peoples* (2020).

[127]On the 1938 German partition of Czechoslovakia's discursive applications to pre-independence India see Moses, *supra* note 40, at 366–72; see also A. Dubnov and L. Robson (eds.), *Partitions: A Transnational History of Twentieth-Century Territorial Separatism* (2019).

[128]See V. Kattan, 'Self-Determination during the Cold War: UN General Assembly Resolution 1514 (1960), the Prohibition of Partition, and the Establishment of the British Indian Ocean Territory (1965)', (2016) 19 *Max Planck Yearbook of United Nations Law* 419.

[129]On Chinese condemnation here see T. Ruskola, 'The Dao of Mao: Sinocentric Socialism and the Politics of International Legal Theory', in Craven et al., *supra* note 71, at 386; V. V. Šveics, 'China's View of the Baltic States', (1974) 6 *Nationalities Papers* 151.

[130]This was especially true concerning the condemnation of Israeli annexations, see H. Cattan, *Palestine, the Arabs and Israel: The Search for Justice* (1969); see also P. Chamberlin, *The Global Offensive: The United States, the Palestine Liberation Organization, and the Making of the Post-Cold War Order* (2012).

[131]W. Hough, 'The Annexation of the Baltic States and its Effect on the Development of Law Prohibiting Forcible Seizure of Territory', (1985) 6 *New York Law School Journal of International and Comparative Law* 301, at 444–6.

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existing regimes of international law were even binding on newly decolonized states in any capacity.[132] On this reading, it was the suppressed traditions and ideas of newly liberated peoples that would supply the normative groundings of a radically new order.[133] While certainly a sweeping proposition, it rested ontologically upon a binary division of the world between colonizers and those they colonized. As such, there was minimal occasion to consider the role of liminal spaces such as Eastern Europe, especially given the multitude of complicating factors produced and reproduced by Cold War politics. This being the case, there was not exactly substantial room to embrace the present significance of a medieval jurist from this subsequently constructed liminal space who spoke to realities of marginalization, but against a backdrop fundamentally definitive of the idea of 'Europe'.

However, perhaps the most revealing aspect of Vladimiri's non-reception concerns the West. There were certainly a number of reasons why, in theory, invoking him would have seamlessly fit within Western strategic models in this era of the Cold War and decolonization. To begin, the US-led Western bloc rarely failed to attack Soviet conceptions of self-determination by turning attention to their actions in Eastern Europe – and correspondingly using this as a basis to assert the superiority of their own approach to this concept.[134] Therefore, it would seem intuitive that invoking a centuries old jurist could be used depict the region as an arena of longstanding struggle between freedom and domination that the US-led West was uniquely poised to intercede upon in the name of liberty and justice. This argument would be all the more fitting if invoked by modern jurists such as Grzybowski whose regional knowledge and experience were essential in shaping Western consciousness of the largely alien world of Soviet legalism. Moreover, though Western jurists were weary of the notion of just war in the decolonization context, the religious aspect of Vladimiri's arguments could certainly have its place.[135] As both a defender of pagans and a proponent of their conversion, Vladimiri could very much be adapted to a particularly American conception of religious liberty as a fundamental human right forged in a context of expanding missionary activity.[136]

However, incorporating Vladimiri into the international legal cannon could present a profound issue for the West; it would destabilize an origin narrative compatible with the placement of the US at the centre of world-historical progress. Through casting the 'New World' encounter as the birthplace of international law, this is precisely what Vitoria and his legacy enabled. Grounded here was the possibility that the newness of the Western Hemisphere would ultimately give rise to a messianic power embodying the best of the Old World, but cleansed of its retrograde qualities and tasked with the mission of uplifting humanity writ large.[137] This was precisely what the early twentieth century project of James Brown Scott (1866–1943) enabled as he proclaimed Vitoria the 'founding father' of international law against a backdrop of American

[132]See Dann and von Bernstorff, *supra* note 104, at 2–3. Alexandrowicz embraced the position that new states should not be legally burdened, see C. Landauer, 'The Polish Rider: CH Alexandrowicz and the Reorientation of International Law, Part II: Declension and the Promise of Renewal', (2021) 9 LRIL 3, at 18–19.

[133]See G. Wilder, *Freedom Time: Negritude, Decolonization, and the Future of the World* (2015); A. Getachew, *Worldmaking After Empire: The Rise and Fall of Self-Determination* (2019); M. Younis, *On the Scale of the World: The Formation of Black Anticolonial Thought* (2022).

[134]In few places was this truer than through continued recognition of the annexed Baltic states, see Hough, *supra* note 131, at 391–412; T. Grant, 'United States Practice Relating to the Baltic States, 1940-2000', (2001) 1 *Baltic Yearbook of International Law* 23; see also O. Barsalou, 'The Failed Battle for Self-Determination: The United States and the Post-War Illusion of Enlightened Colonialism, 1945–1975', in Dann and von Bernstorff, *supra* note 104, at 426.

[135]On this scepticism see J. Whyte, 'The "Dangerous Concept of the Just War": Decolonization, Wars of National Liberation, and the Additional Protocols to the Geneva Conventions', (2018) 9 *Humanity* 313.

[136]See A. Su, *Exporting Freedom: Religious Liberty and American Power* (2016).

[137]See T. Cha, 'The Formation of American Exceptional Identities: A Three-Tier Model of the "Standard of Civilization" in US Foreign Policy', (2015) 21 *European Journal of International Relations* 743.

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ascendence on the global stage.[138] It was at this moment with the closure of the continental frontier, victory in the 1898 Spanish-American War, and creation of an overseas American Empire that the US cast itself as a 'universal nation' tasked with worldly improvement, a mission it anachronistically read back into its late eighteenth-century founding.[139] Through a narrative that began with Vitoria, an elaborate interplay of domestic and international political factors allowed the US to present itself as a 'legalist empire' uniquely capable of fulfilling a distinctly modern regime of order that could never have existed without the providential 'discovery' of the Western Hemisphere.[140]

At the moment the US cast itself as the saviour of Eastern Europe following the First World War via the efforts of Woodrow Wilson,[141] it had already developed a distinctly hemispheric order of international institutionalism premised on the infamous Monroe Doctrine.[142] Though concerted challenge both outside and within the US during the interwar period mollified US interventionism in Latin America, the inter-American system became universalized a model for global order.[143] It was this parochialism that lurked behind moments celebrated by international lawyers for their universality.[144] During the Second World War, the joint declaration by Franklin Roosevelt and Winston Churchill to reverse Nazi conquests via the Atlantic Charter occurred at a time when the post-war international system was envisioned to lack any overarching multilateral institution and thus be jointly dominated by American and British imperial power.[145] Moreover, once such an institution was envisioned via the United Nations (a concession to an American public sceptical of empire[146]), its collective self-defence regime effectively preserved the function of regional alliances such the one that defined the inter-American system.[147] Throughout this shift, the function of the myth of Vitoria as international law's 'founding father' remained intact.[148] As such, no matter how functionally similar they happened to be, conceding that any jurist, let alone an Eastern European one, preceded Vitoria would upend the foundations upon which this narrative was erected. Thus, while Grzybowski imagined that the Spanish recasting of international legal history paved the way for an acknowledgment of earlier Polish contributions, his hopes were grossly misplaced.

This process only continued in force with the end of Europe's overseas empires in Asia and Africa. As more radical assertions in this greater moment of decolonization failed for a variety of reasons, it was the US and its particular approach to global legality that filled the voids left by the old empires.[149] Accompanying this turn was, in a manner that expanded features of the inter-American system, an export of American nation-building projects aimed at having every person on earth configure themselves as the subjects of a sovereign state.[150] Even radical anti-colonial

[138]See J. B. Scott, *The Spanish Origins of International Law: Francisco de Vitoria and his Law of Nations* (2013); see also P. Amorosa, *Rewriting the History of the Law of Nations: How James Brown Scott made Francisco de Vitoria the Founder of International Law* (2019).

[139]A. Rana, *The Two Faces of American Freedom* (2010), at 272–90.

[140]B. Coates, *Legalist Empire: International Law and American Foreign Relations in the Early Twentieth Century* (2016).

[141]See L. Wolf, *Woodrow Wilson and the Reimagining of Eastern Europe* (2019).

[142]See J. Sexton, *The Monroe Doctrine: Empire and Nation in Nineteenth-Century America* (2011).

[143]G. Grandin, 'The Liberal Traditions in the Americas: Rights, Sovereignty, and the Origins of Liberal Multilateralism', (2012) 117 *American Historical Review* 68, at 88; see also C. D. O'Sullivan, *Sumner Welles, Postwar Planning, and the Quest for a New World Order, 1937–1943* (2008).

[144]See, e.g., O. Hathaway and S. Shapiro, *The Internationalists: And Their Plan to Outlaw War* (2017).

[145]S. Wertheim, *Tomorrow, The World: The Birth of U.S. Global Supremacy* (2020), at 111–14.

[146]Ibid., at 119.

[147]A. Orford, 'Regional Orders, Geopolitics, and the Future of International Law', (2021) 74 *Current Legal Problems* 149, at 164.

[148]With this grand normalization of American geopolitical interests, geopolitics as a distinct tradition of study largely disappeared in the US, see O. Rosenboim, 'The Value of Space: Geopolitics, Geography and the American Search for International Theory in the 1950s', (2020) 42 *International History Review* 639.

[149]See Dann and von Bernstorff, *supra* note 104, at 31.

[150]See J. D. Kelley and M. Kaplan, 'Nation and Decolonization: Toward a New Anthropology of Nationalism', (2001) 1 *Anthropological Theory* 419; see also A. Bâli and A. Rana, 'Constitutionalism and the American Imperial Imagination', (2018) 85 *University of Chicago Law Review* 257.

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movements sceptical of such logics nevertheless embraced key features of American legal and political order, namely federalism, while simultaneously failing to consider how the material (and colonial expansionist) conditions of American consolidation and growth hardly applied to them.[151] Relatedly, as the greater world revolution declined (an outcome accelerated by external interventionism[152]), forces of rebellious discontent were prone to capture by American interests in a manner that replaced broad unifying fronts seeking universal emancipation with movements based on parochial ethnic or religious interests.[153] Regardless of how conscious all those involved were of international legal history, the basic Vitorian premise was very much compatible with these occurrences and the modality of power they upheld.[154]

If there was a distinct moment that truly eclipsed the possibility of any Eastern European recasting of international legal origins against this backdrop, it was the 1989 end of the Cold War as the lands of the old Eastern bloc now fell under the 'Global Monroe Doctrine'. Folded into a narrative of universal history, any regional particularity was thoroughly disclaimed as a relic to be transcended by this widely invoked prophecy that history itself was now at an end. Instead, at least from an international legal perspective, the region came to embody transcendent liberal truths and the task was now the implementation of technical measures based on transcendent liberal paradigms.[155] Since history had ended, there was no longer political occasion for asserting origin narratives that questioned the foundations of the now-achieved normative order. On this point, the narrative of international legal origins that triumphed was the narrative of Vitoria as shaped by James Brown Scott – a vision directly tailored to an American mission of building a virtuous world in its image that now seemed fulfilled through incorporating the lands of the vanquished 'Evil Empire' within its orbit. Against this backdrop, any question about how Vladimiri might displace Vitoria in the international legal origin story would likely be preceded by a more fundamental question of why anyone would bother to raise such a point in the first instance. While knowledge of Vladimiri might exist as a curiosity, the possibility of recasting foundations through him was not readily comprehensible within international legal thought. Despite international lawyers' claims to objectivity, given the pervasive force of geopolitical-cum-ideological conditions, the fact that Vladimiri made strikingly similar arguments to Vitoria a century beforehand simply did not matter.

5. Why Vladimiri matters today

The widely proclaimed 'end of history' proved to be as premature as it was grandiose. As the attacks of 9/11 inaugurated a new era of conflict via the 'Global War on Terror', and crises of finance; food supply; and climate became unavoidable, international lawyers, no longer as confident in their field's ability to progressively uplift humanity writ large, began 'turning to history' in an effort to make sense of an increasingly uncertain present and future.[156] Within this newfound focus on the past, Carl Schmitt, a figure long maligned for his association with the Third

[151]See Getachew, *supra* note 133, at 119; see also R. Drayton, 'Federal Utopias and the Realities of Imperial Power', (2017) 37 *Comparative Studies of South Asia, Africa and the Middle East* 401.

[152]See G. Kolko, *Confronting the Third World: United States Foreign Policy, 1945–1980* (1988); G. Grandin, *The Last Colonial Massacre: Latin America in the Cold War* (2011); V. Bevins, *The Jakarta Method: Washington's Anticommunist Crusade and the Mass Murder Program that Shaped Our World* (2021); S. Williams, *White Malice: The CIA and the Neocolonisation of Africa* (2021); W. Blum, *Killing Hope: US Military and CIA Interventions since World War II* (2022).

[153]P. Chamberlin, *The Cold War's Killing Fields: Rethinking the Long Peace* (2018), at 44.

[154]See K. Koram, 'The Vitorian Recovery and the (Re)Turn towards a Sacrificial International Law', (2018) 6 LRIL 443.

[155]See. e.g., E. Stein, 'International Law in Internal Law: Toward Internationalization of Central-Eastern European Constitutions?', (1994) 88 AJIL 427; T. Grant, *International Law and the Post-Soviet Space I: Essays on Chechnya and the Baltic States* (2019); *International Law and the Post-Soviet Space II: Essays on Ukraine, Intervention, and Non-Proliferation* (2019). This included the nationalist dismantling of Soviet international law, see G. Ginsburgs, *From Soviet to Russian International Law: Studies in Continuity and Change* (1998).

[156]See Orford, *Politics of History*, *supra* note 4, at 44–50.

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Reich, came to occupy a particular place amongst the more critically minded.[157] Through Schmitt came a theory where, stripped of its superficial performance of altruism, the essence of international law was the justification for colonialism and domination that had built the Eurocentric world order over the past several centuries. In his telling, a stable European core where the logic of absolute sovereignty enabled strategic restraint amongst mutually recognized 'just enemies' came at the expense of European imposition against 'unjust enemies' in the world beyond Europe where no restraint could be abided.[158] Such is a common frame for new radical re-interpretations of international legal history.[159]

Through Schmitt, one could purportedly find the 'real meaning' of Vitoria and, by extension, James Brown Scott's mobilization of him to aid in proclaiming the messianic force of the US.[160] Rather than the benevolently inclusive figure asserted by Scott, Vitoria, in Schmitt's telling, was the first great illustration of how vast spatial appropriation claims are what international law evolved to enable.[161] Scott, in claiming a normative and historical pedigree for his nation's efforts to conflate its parochial self-assertions with universal morality, was simply, to use a Schmittian dictum, an invoker of humanity who wanted to cheat.[162] Moreover, the fact that Scott's veneration of Vitoria was strikingly similar to dutiful servants of fascism in Franco's Spain would only seem to affirm a Schmittian position on his endeavours as sanctimoniously fraudulent.[163] On this view, Scott, and the world he helped enable to exist, fits well within the larger genealogy of the hidden compatibility between fascism and international law.[164]

Of profound relevance here is Schmitt's particular interpretation of the Monroe Doctrine. Contra the Americans (such as Scott) who framed Latin American interventions as justified measures to build and uphold universal precepts of law and order (and the Latin Americans who viewed the Monroe Doctrine as originally intended to uphold their marginalized sovereignty), Schmitt claimed the Monroe Doctrine was a self-interested exercise in asserting order over a 'greater space'.[165] In other words, by proclaiming a regional regime beyond its borders, and excluding intervention by alien competitors (i.e., the old European dynastic powers), the US pioneered a system whereby an ordering power (*Reich*) maintains its particular conception of order over an extended 'sphere of influence' (*Großraum*).[166]

Within the confines of this account, the problem was not that the US had proclaimed the Monroe Doctrine, but that it believed that such a model could be globalized as a basis for liberal world order. For Schmitt, this amounted to a dysfunctional 'spaceless universalism' that ignored the overwhelming truth of regional particularity and could justify hitherto unwitnessed violence against those who dissented from this mode of domination.[167] Thus, in Schmitt's account, there was hardly a legitimate basis to deny a similar German assertion over

[157]See, e.g., L. Odysseos and F. Petito (eds.), *The International Political Thought of Carl Schmitt: Terror, Liberal War and the Crisis of Global Order* (2007).

[158]C. Schmitt, *The Nomos of the Earth in the International Law of Jus Publicum Europeum* (2003), at 140–51.

[159]See, e.g., C. Miéville, *Between Equal Rights: A Marxist Theory of International Law* (2005), at 27.

[160]For a critical view see J. Smeltzer, 'On the Use and Abuse of Francisco de Vitoria: James Brown Scott and Carl Schmitt', (2018) 20 JHIL 345.

[161]See Schmitt, *supra* note 158, at 101–19.

[162]Ibid., at 321; C. Schmitt, *The Concept of the Political* (2007), at 54.

[163]See I. Rasilla del Moral, 'The Fascist Mimesis of Spanish International Law and Its Vitorian Aftermath, 1939–1953', (2012) 14 JHIL 207; J. Bühner, 'Histories Hidden in the Shadow: Vitoria and the International Ostracism of Francoist Spain', (2020) 22 JHIL 421; J. P. Scarfi, 'Francisco de Vitoria and the (Geo)Politics of Canonization in Spain/America', (2022) 35 LJIL 479.

[164]On other fascist engagements see H. Case, *Between States: The Transylvanian Question and the European Idea during World War II* (2009); see Parfitt, *supra* note 44, at 316–51; R. Parfitt, 'Fascism, Imperialism and International Law: An Arch Met a Motorway and the Rest is History . . . ', (2018) 31 LJIL 509.

[165]See Schmitt, *supra* note 158, at 191.

[166]Ibid., at 231; C. Schmitt, '*Großraum* versus Universalism: The International Legal Struggle over the Monroe Doctrine', in S. Legg (ed.), *Spatiality, Sovereignty and Carl Schmitt: Geographies of the Nomos* (2011), 46.

[167]See Schmitt, *supra* note 158, at 227–9.

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Eastern Europe.[168] While tarnished by Nazi associations, Schmitt's sentiment has been resurrected as a relevant act of counter-hegemonic contestation whereby rising powers, namely Russia and China, are poised to challenge the faltering US-led 'liberal international order' that emerged after the Second World War and triumphed after the Cold War.[169] For some, this is a harbinger of what international legal analysis must become in a new era of normative contestation between great power blocs – a turn to 'comparative international law' is necessary to navigate juridical relations in the fundamental absence of shared interests and values.[170]

While such observations certainly speak to the truths of a changing global system, there remains the risk that 'comparative international law' will become the latest apology for the 'tragedy of great power politics.'[171] As Anne Orford has argued, in this new age of multipolarity, relevant perspectives must include more than just rival would-be hegemons; those caught in their margins and borderlands must be heard.[172] This is especially true when considering the historical experiences of the 'buffer states' trapped between great power rivalries who, empirically, are at the greatest risk of having their sovereign personality extinguished.[173] Since one of the great consequences of rising multipolarity is declining respect for the territorial integrity norm, the differentiated process through which states justify, and resist, acts of conquest will be a key task for (comparative) international lawyers.[174]

On this point, it is vital to recognize how Schmitt's 'counter-hegemonic' argument for a 'German Monroe Doctrine' was underpinned by a fundamentally colonial understanding of German superiority over Eastern Europeans that existed long before Schmitt – a history that Eastern European liminality largely excludes from the Western mind.[175] For Schmitt, claims that incorporating Eastern Europe within Germany's sphere of influence to guarantee the unique destinies of its unique peoples (spatially alienated Jews not withstanding[176]), displayed a type of false benevolence strikingly similar to how American proponents of the Monroe Doctrine imagined Latin America.[177] Eventually recognizing this, abandoning the harshest of their

[168]A. Carty, 'Carl Schmitt's Critique of Liberal International Legal Order Between 1933 and 1945', (2001) 14 LJIL 25, at 40–5. On other contemporary efforts 'Monroe Doctrines', see Orford, *supra* note 147, at 161; T. Dedering, 'South Africa and the Italo-Ethiopian War, 1935–6', (2013) 35 *International History Review* 1009; C. Storr, 'Imperium in Imperio: Sub-Imperialism and the Formation of Australia as a Subject of International Law', (2018) 19 *Melbourne Journal of International Law* 335; R. M. Mitchell, 'Monroe's Shadow: League of Nations Covenant Article 21 and the Space of Asia in International Legal Order', (2021) 2 *TWAIL Review* 200.

[169]On Schmitt's influence in Russia and China see D. Lewis, *Russia's New Authoritarianism: Putin and the Politics of Order* (2020); R. M. Mitchell, 'Chinese Receptions of Carl Schmitt since 1929', (2020) 8 *Penn State Journal of Law & International Affairs* 181.

[170]See A. Roberts et al. (eds.), *Comparative International Law* (2018).

[171]J. Mearsheimer, *The Tragedy of Great Power Politics* (2001); D. Abebe, 'Why Comparative International Law Needs International Relations Theory', in Roberts et al., ibid., at 171. For a critical view see B. Teschke, *The Myth of 1648: Class, Geopolitics and the Making of Modern International Relations* (2003), at 273–5.

[172]See Orford, *supra* note 147, at 190–4. This is especially important when considering regions that defy reigning notions of 'hegemony', see H. Verhoeven, 'Ordering the Global Indian Ocean: The Enduring Condition of Thin Hegemony', in H. Verhoeven and A. Lieven (eds.), *Beyond Liberal Order: States, Societies and Markets in the Global Indian Ocean* (2021), 1.

[173]T. Fazal, *State Death: The Politics and Geography of Conquest, Occupation, and Annexation* (2008), at 69.

[174]P. B. Stephen, 'Wars of Conquest in the Twenty-First Century and the Lessons of History—Crimea, Panama, and John Bassett Moore', (2021) 62 *Virginia Journal of International Law* 63, at 70.

[175]See V. G. Liulevicius, *The German Myth of the East: 1800 to the Present* (2009). Such context provides insight as to why Alexandrowicz's history was considerably more optimistic than Wilhelm Grewe's, a German scholar deeply inspired by Schmitt, see P. Starski and J. A. Kämmerer, 'Imperial Colonialism in the Genesis of International Law—Anomaly or Time of Transition?', (2019) 19 JHIL 50.

[176]See Carty, *supra* note 168, at 40.

[177]Schmitt's proclamations proved limited once the war began, see P. Stirk, 'Carl Schmitt's *Volkerrechtliche Grossraumordnung*', (1999) 20 *History of Political Thought* 357.

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intervention practices enabled Americans to rebut Nazi claims that the Monroe Doctrine stripped them of their standing to legitimately judge German expansionism.[178]

However, abandoning such interventionism was hardly the sole result of an inevitably progressive American conscience – critical Latin American reformulations of international law were of the utmost importance.[179] As a present day parallel to these twentieth-century Latin Americans, the insights of Eastern European legal thinkers are similarly axiomatic in this present era of Russian interventionism. Since jurists from the region possess a wide-array of opinions (even within shared national contexts[180]), serious engagement with their varied insights offers a profound opportunity to resist the stunting legal formalism that acts as a tool of geopolitical contestation in a manner that prevents its adherents from seeing it as such.[181] For the perspective these jurists bring is one from a borderland whose populations, ruled by successions of waxing and waning empires, had to negotiate continued identity and existence under variable patterns of authority.[182] Such circumstances are not readily intuitive to Westerners accustomed to the fixed border nation-states, built and sustained through overseas expansion (and property-based unilateral continental expansion in the case of Anglo settler colonies[183]), that arose as an alternative to the terrestrially fluid imperial frontiers persisting in the eastern regions of the Eurasian landmass.[184] Embracing this perspective allows for a substantially more sociologically-grounded approach to historically-shaped questions of international law and order than anything offered by the geopolitical fetishization that defines Schmitt's international thought.[185]

The importance of this alternative is precisely why Paulus Vladimiri matters today. For better or worse, a canon of 'founding fathers' remains a default presumption of international legal consciousness and, if it is ever to be transcended, perpetual reappraisal-cum-pluralization of who can be considered within this canon is perhaps the best available tool towards this end. Contextualizing Vladimiri turns our attention to a historical backdrop where the consolidation of expanding land empires in the Eurasian borderlands cyclically raised legal questions on the rights and duties of clashing hierarchical powers – and those caught both under and between them. These are the issues the tradition of Western international law (developed through proximity-removed overseas colonization) has perpetually had difficulty addressing given how its idealized premise of an egalitarian 'world of states' masked the reality of a hierarchical 'world of empires'.[186] This borderland influence was present in diverse attempts to apply Vladimiri's insights centuries later. For Grzybowski, it was an implicit analogy for Soviet imposition in Cold War Eastern Europe – the latest regional manifestation of empire. For Alexandrowicz, the divided sovereignty

[178]See Hathaway and Shapiro, *supra* note 144, at 242–3.

[179]See J. P. Scarfi, 'Denaturalizing the Monroe Doctrine: The Rise of Latin American Legal Anti-Imperialism in the Face of the Modern US and Hemispheric Redefinition of the Monroe Doctrine', (2020) 33 LJIL 541. On Schmitt's dismissal of such efforts see C. Schmitt, 'The Changing Structures of International Law', (2016) 20 *Journal for Cultural Research* 310, at 321.

[180]Two of Estonia's most prominent jurists profoundly disagree on how Russian aggression should be characterized, see L. Mälksoo, 'The Annexation of Crimea and Balance of Power in International Law', (2019) 30 EJIL 303; R. Müllerson, 'What Went Wrong? From the Fall of the Berlin Wall to the Rise of New Fences', (2022) 20 *Russia in Global Affairs* 30.

[181]B. Mamlyuk, 'The Ukraine Crisis, Cold War II, and International Law', (2015) 16 *German Law Journal* 479, at 520–2.

[182]See A. Rieber, *The Struggle for the Eurasian Borderlands: From the Rise of Early Modern Empires to the End of the First World War* (2014). On variable identity constructions within the region see J. Jedlicki, *A Suburb of Europe: Nineteenth-Century Polish Approaches to Western Civilisation* (1998); B. Ablonczy, *Go East! A History of Hungarian Turanism* (2022).

[183]See J. Weaver, *The Great Land Rush and the Making of the Modern World, 1650–1900* (2003).

[184]C. Maier, *Once Within Borders: Territories of Power, Wealth, and Belonging Since 1500* (2016), at 15–16.

[185]B. Teschke, 'Fatal Attraction: A Critique of Carl Schmitt's International Political and Legal Theory', (2011) 3 *International Theory* 179, at 184.

[186]J. Pitts, 'Law of Nations, World of Empires: The Politics of Law's Conceptual Frames', in A. Brett et al. (eds.), *History, Politics, Law: Thinking Through the International* (2021), 191; see also J. M. Fradera, *The Imperial Nation: Citizens and Subjects in the British, French, Spanish, and American Empires* (2018). In Eastern Europe, nation-state and empire directly confronted one another as rival modes of political authority, see A. Cusco, *A Contested Borderland: Competing Russian and Romanian Visions of Bessarabia in the Late Nineteenth and Early Twentieth Century* (2017).

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that existed in the region exemplified a forgotten, but inextinguishable, 'law of nations' that (after its long suppression) returned to demand an end to European colonialism in Asia and Africa. Though accounts of Vladimiri guided by such presumptions went unreceived in their own times, revisionist efforts such as Grzybowski's and Alexandrowicz's have reached a new era of relevance as the normativity of a Vitoria-centric account of international legal origins now lies in ruins.

As a concluding matter, it is worth restating the ways in which Vladimiri's context fundamentally differed from Vitoria's despite their generally congruent conclusions on the rights of non-Christians. While Vitoria's articulation of natural law occurred through a distanced moralizing appraisal of an unprecedented colonial encounter, Vladimiri's articulation was concerned with the immanent task of surviving invasion and occupation from multiple directions. Thus, while Vladimiri's arguments were partially sustained through an imperative of missionary conversion (Vitoria's reluctant, but ultimate, justification for Spanish colonization[187]), unlike in Vitoria's context, it was also an act of resisting the harshest and most destructive aspects of this practice.[188] Vladimiri's contribution is thus perhaps the perfect embodiment of the Eastern European liminality that international law has struggled to comprehend given a persistent Vitorian influence premised on a dynamic of colonizing 'Self' against colonized 'Other' – a stark binary that cannot abide the liminal.[189] When considering political possibilities of rupturing this binary, given the profoundly Eurocentric character of international law, perhaps it is this unspoken, yet constitutive, liminality that enables the lost Vladimirian legacy to act as a bridge to contexts further removed from the idea of 'Europe' when further expanding and disrupting the canon of 'founding fathers.'[190] We are then left to imagine what new, and politically consequential, narratives of international legal origins might come to be if translations of Vladimiri's most relevant insights existed across major world languages – not just in English, French, and German, but also in Spanish, Portuguese, Mandarin, Arabic, Hindi, Japanese, Indonesian, Urdu, Korean, Swahili, Farsi and, especially, Russian.

[187]If native rulers refused missionaries and/or failed to protect converts, their conquest was justified. F. Vitoria, 'On the American Indians', in A. Pagden and J. Lawerence (eds.), *Vitoria: Political Writings* (1990) 231, at 285–6.

[188]For Vladimiri, Christian-pagan alliance against the Teutonic Order was justified by peaceful Polish conversion means compared to the Order's use of conversion as a pretext for conquest. See Muldoon, *supra* note 21, at 117–18.

[189]See Anghie, *supra* note 15, at 331–3. On the compatibility between this frame and materialist consideration of Vitoria's and Vladimir's differing contexts see R. Knox 'Valuing Race? Stretched Marxism and the Logic of Imperialism', (2016) 4 LRIL 81, at 111–12.

[190]For an attempt from another ex-Soviet location see K. Yunusov, 'Contributions of Central Asian Scholars to the Development of Islamic Sciences: Sarakhsi – Founder-Father of International Law', (2022) *Lawyer Herald* 108.

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