



BIROn - Birkbeck Institutional Research Online

Bowring, Bill (2016) Did the states which founded the UN have liberal or illiberal governments? *Baltic Yearbook of International Law* 15 , pp. 31-44. ISSN 1569-6456.

Downloaded from: <https://eprints.bbk.ac.uk/id/eprint/14959/>

Usage Guidelines:

Please refer to usage guidelines at <https://eprints.bbk.ac.uk/policies.html>
contact lib-eprints@bbk.ac.uk.

or alternatively

The Approaches of Liberal and Illiberal Governments to International Law:

A Conference Marking 25 Years from the Collapse of Communist Regimes in Central and Eastern Europe

Did the states which founded the UN have liberal or illiberal governments? Reflections (from the standpoint of Britain and its empires, and the USSR and Russia) on the dangers of epithets, and the development of international law.

Prof Bill Bowring, Birkbeck College, University of London

Introduction

This paper contains a sceptical appraisal of the call for papers, and an attempt to unpack and criticise the various layers of assumptions contained in it. First, I start with some close parallels between the British and Russian colonial experiences. The collapse of Britain's maritime and Russia's continental empire have caused deep crises of identity and purpose in both cases. Second, close attention must be paid to Kant's 1795 proposal in "Perpetual Peace: A Philosophical Sketch", which is so often referred to, in the context of his philosophy as a whole. This contribution has been more often cited than actually read. What did Kant have in mind so soon after the French Revolution, and the experience of universalising nationalism? The passages I cite, denouncing the British imperial enterprise, may not be so familiar.

Third, attention is focused on Jeremy Bentham, John Stuart Mill, both fathers of modern liberalism; and on my ancestor, editor of Bentham's works, John Bowring. I show in detail how liberals became imperialists. Fourth, I analyse the contribution to the question of "liberal" as against "illiberal" states of Anne-Marie Slaughter, writing in the immediate aftermath of the end of the Cold War and the demise of "communism".

Fifth, I examine Britain. It is subjected to scrutiny as a "paradigm" of a state with liberal governments, and I ask what was "liberal" about the activities of British colonisers all over the world.

I close where I started, with a comparison of Britain and Russia.

Britain and Russia

Liberal or illiberal, Russia and Britain have a great deal in common. Both became the centres of great empires, maritime in the case of Britain and continental in the case of Russia. Both started in the 16th century. Britain started as England under Elizabeth I, who was no liberal and burned many Catholics at the stake, as well as murdering Mary Queen of Scots, defeating Spain and laying the basis for

American colonies, the “First British Empire”. Russia, as Moscow, began to expand under Ivan IV “Grozniy”, crushing Boyar resistance, and conquering the Khanates of Kazan and Astrakhan.

The British and Russian Empires had their greatest expansion in the 18th century. Britain defeated France in the Seven Years War and despite losing the American War of Independence and the North American colonies, won Canada and pursued the start of her Empire in India. Russia under Catherine II, assisted by Prince Potemkin, moved decisively into Asia and seized Crimea. Russia became a multi-national empire with a large Muslim population, and Catherine created the world’s first state Islamic structure.

Britain and Russia were on the same side in the war against Napoleon, and fought on the same side in World Wars I and II. There was remarkably little conflict between the great maritime and continental empires from the 16th to the 20th centuries, with the exception of the Crimean War.

My students can never answer the question what the war was about. Russians may have read Lev Tolstoy’s patriotic *Sevastopol Stories*, which tell the reader nothing about the *casus belli*. British students may have heard of the “Charge of the Light Brigade”, the heroically quixotic British cavalry attack on Russian guns, immortalised by the Poet Laureate, Alfred Lord Tennyson, and of the nurse Florence Nightingale who revolutionised the care of the wounded British soldiers. “Balaclava” is the popular name for a kind of woollen hat.

Russia’s devastating defeat in the Crimean War precipitated action by the new Tsar, Aleksandr II, who was no liberal or reformist by nature, to bring about the abolition of serfdom in 1861, several years before the US abolition of slavery; and the Great Reforms of 1864, which brought jury trial, a fighting Bar, and independent judges to the Russian Empire.

Both Britain and Russia suffered the trauma of the loss of empire in the 20th century, a process which has not yet run its course. Britain’s continued occupation of the Falklands Islands, Gibraltar, and the Chagos Islands (Diego Garcia) in the British Indian Ocean Territory, a colony created in 1965 are all hugely controversial. I give more details below. Russia’s latest incident concerns Crimea.

Both countries agonise as to what each stands for, what are their missions, without empire. Hence Britain’s unwillingness to accept the status of membership of the EU or the judgments of the Strasbourg Court.

I turn below to other recent developments in Britain’s post-colonial history.

The definition of liberalism – Bentham, Kant, Bowring, and colonies

One starting point might be that the word “liberal” has become somewhat devalued in recent years. In the United States it has become a synonym for “socialist” or even “communist”. The most rabid

nationalist party in the State Duma of the Russian Federation proudly calls itself the “Liberal Democratic Party of Russia”, and the Liberal Democratic Party (no relation) in Britain is facing melt-down as the result of its performance in coalition with the Conservatives. It must also be noted that the Conservative Party is no longer in any sense conservative if conservatism means the preservation of venerable institutions and traditions, the philosophy of “if it isn’t broken don’t fix it”. It is rather a revolutionary “neo-liberal” party seeking to dismantle the state and particularly all vestiges of social democracy.

In this context the better distinction is not perhaps that between “liberal” and “illiberal” but rather “individualist” and “collectivist”.

Immanuel Kant’s *Perpetual Peace: a Philosophical Sketch* was published in 1795¹, after the French *Declaration of the Rights of Man and of the Citizen*, and the Terror. Kant said nothing about “liberalism” or indeed a free market. His First Definitive Article in Section II, is as follows: “The Civil Constitution of Every State Should Be Republican”.²

It should be recalled that Kant was writing in the context of a European continent dominated by monarchies and empires, with a few exceptions: The Netherlands and ten years of republican England, after the execution of the King in 1649. The French monarchy had been eliminated with much bloodshed.

Kant continued³:

The only constitution which derives from the idea of the original compact, and on which all juridical legislation of a people must be based, is the republican. This constitution is established, firstly, by principles of the freedom of the members of a society (as men); secondly, by principles of dependence of all upon a single common legislation (as subjects); and, thirdly, by the law of their equality (as citizens). The republican constitution, therefore, is, with respect to law, the one which is the original basis of every form of civil constitution.

Kant continued that a republican constitution must be distinguished from a democratic constitution; and its essential feature is that no individual can be subject to a law to which that citizen has consented.

It is often forgotten that Kant denounced empire in the strongest terms. His Third Definitive Article was: “The Law of World Citizenship Shall Be Limited to Conditions of Universal Hospitality”.⁴

¹ Immanuel Kant *Perpetual Peace: a Philosophical Sketch*, 1795, English translation 3rd ed 1917, facsimile at http://if-oll.s3.amazonaws.com/titles/357/0075_Bk.pdf (accessed on 20 May 2014). I have used the translation at <https://www.mtholyoke.edu/acad/intrel/kant/kant1.htm> (accessed on 20 May 2014)

² Kant (1917) p.120

³ Kant (1917) p.120-1

⁴ Kant (1917) p.137

Kant then proceeded to denounce Britain in particular, by clear description if not by name⁵. I quote this passage at length:

But to this perfection compare the inhospitable actions of the civilized and especially of the commercial states of our part of the world. The injustice which they show to lands and peoples they visit (which is equivalent to conquering them) is carried by them to terrifying lengths. America, the lands inhabited by the Negro, the Spice Islands, the Cape, etc., were at the time of their discovery considered by these civilized intruders as lands without owners, for they counted the inhabitants as nothing. In East India (Hindustan), under the pretense of establishing economic undertakings, they brought in foreign soldiers and used them to oppress the natives, excited widespread wars among the various states, spread famine, rebellion, perfidy, and the whole litany of evils which afflict mankind.

China and Japan (Nippon), who have had experience with such guests, have wisely refused them entry, the former permitting their approach to their shores but not their entry, while the latter permit this approach to only one European people, the Dutch, but treat them like prisoners, not allowing them any communication with the inhabitants. The worst of this (or, to speak with the moralist, the best) is that all these outrages profit them nothing, since all these commercial ventures stand on the verge of collapse, and the Sugar Islands, that place of the most refined and cruel slavery, produces no real revenue except indirectly, only serving a not very praiseworthy purpose of furnishing sailors for war fleets and thus for the conduct of war in Europe. This service is rendered to powers which make a great show of their piety, and, while they drink injustice like water, they regard themselves as the elect in point of orthodoxy.

No radical in Britain before Karl Marx excoriated colonialism in such strong terms. My ancestor John Bowring, a devout Christian and writer of hymns, of whom more below, exactly fits the description.

Some fifty years later the English liberal and inventor of Utilitarianism, returned to the topic. If I can be forgiven an autobiographical note, my ancestor John Bowring was a close friend of Bentham who became his literary executor and edited the first edition of Bentham's *Collected Works*. This contained Bentham's "A Plan for an Universal and Perpetual Peace" (1843).⁶

The Plan contained four propositions:

- I. That it is not the interest of Great Britain to have any foreign dependencies whatsoever.
- II. That it is not the interest of Great Britain to have any treaty of alliance, offensive or defensive, with any other power whatever.
- III. That it is not the interest of Great Britain to have any treaty with any power whatsoever, for the purpose of possessing any advantage whatsoever in point of trade, to the exclusion of any other nation whatsoever.
- IV. That it is not the interest of Great Britain to keep up any naval force beyond what may be sufficient to defend its commerce against pirates.

And supported Proposition I with:

⁵ Kant (1917) p.139-40

⁶ Jeremy Bentham's *Essay IV.: A Plan for an Universal and Perpetual Peace* (1843), from *The Works of Jeremy Bentham* Vol. 2, edited by John Bowring (Edinburgh: William Tait, 1843). and <http://perpetualpeaceproject.org/resources/bentham.php> (accessed on 17 May 2014)

The truth of this proposition will appear if we consider,

1st, That distant dependencies increase the chances of war,--

1. By increasing the number of possible subjects of dispute.
2. By the natural obscurity of title in case of new settlements or discoveries.
3. By the particular obscurity of the evidence resulting from the distance.
4. By men's caring less about wars when the scene is remote, than when it is nearer home.

2d, That colonies are seldom, if ever, sources of profit to the mother country.

John Bowring was what was known at that time as a “radical”, in favour of electoral reform, currency reform and most of all Free Trade. According to the Name Index of the *Marx Engels Collected Works* he was an “English politician, linguist and man of letters, follower of Bentham, a Free Trader”.⁷ He was a founding member of the Reform Club, the club of the aristocratic, intellectual and mercantile supporters of the Great Reform Act of 1832 which greatly extended the electoral franchise.

Bowring was attacked in 1848 by Karl Marx⁸ - not as a liberal, but as, along with Cobden and Bright, one of the “worst enemies” of the people and “the most shameless hypocrites” through their advocacy of Free Trade as a panacea for the ills of the working class.⁹ The Corn Laws, imposing high tariffs on imports, were abolished in 1846.

According to Marx, Dr Bowring had conferred on his arguments “the consecration of religion, by exclaiming at a public meeting, ‘Jesus Christ is Free Trade, and Free Trade is Jesus Christ.’”¹⁰ Marx commented: “It will be evident that all this cant was not calculated to make cheap bread tasteful to workingmen.”¹¹

Ironically, Bowring later became an imperialist, responsible as governor of Hong Kong from 1854 to 1859 for the Second Opium War (1856-1859) in which China was forced to acquiesce in the trafficking of narcotics to its population for the profit of Britain¹². This was a prime example of a late colonial “unequal treaty”, imposed by Britain, surely a “liberal state” (if any state can be so described).

⁷ See for example Karl Marx Friedrich Engels Collected Works Vol.6 (Lawrence & Wishart, London, 1976), p.717

⁸ Karl Marx *Speech on the Question of Free Trade* given in Brussels on 9 January 1848, in Karl Marx Friedrich Engels *Collected Works* Vol.6 (Lawrence & Wishart, London, 1976), pp.450-465

⁹ Marx (1976) p.450

¹⁰ Marx (1976) p.455

¹¹ Marx (1976) p.456

¹² The June 1858 Treaty of Tianjin was finally ratified in the Convention of Peking on 18 October 1860, bringing The Second Opium War to an end. Britain, France and Russia were all granted a permanent diplomatic presence in Beijing. The Chinese had to pay 8 million taels to Britain and France. Britain acquired Kowloon (next to Hong Kong). The opium trade was legalised and Christians were granted full civil rights, including the right to own property, and the right to evangelise. The "Supplementary Treaty of Peking" ceded part of Outer Manchuria to Russia.

Bowring's former radical colleagues denounced him. And on 16 March 1857 Marx wrote in the *New York Daily Tribune* commenting on the attack on Bowring. I quote at length – it is delicious¹³:

The Earl of Derby, the chief of the hereditary aristocracy of England, pleading against the late Doctor, now Sir John Bowring, the pet disciple of Bentham; pleading for humanity against the professional humanitarian; defending the real interests of nations against the systematic utilitarian insisting upon a punctilio of diplomatic etiquette; appealing to the *vox populi vox dei* against the greatest-benefit-of-the-greatest-number man; the descendant of the conquerors preaching peace where a member of the Peace Society preached red-hot shell; a Derby branding the acts of the British navy as "miserable proceedings" and "inglorious operations," where a Bowring congratulates it upon cowardly outrages which met with no resistance, upon "its brilliant achievements, unparalleled bravery, and splendid union of military skill and valour" — such contrasts were the more keenly satirical the less the Earl of Derby seemed to be aware of them. He had the advantage of that great historical irony which does not flow from the wit of individuals, but from the humour of situations. The whole Parliamentary history of England has, perhaps, never exhibited such an intellectual victory of the aristocrat over the parvenu.

The hereditary aristocrat was attacking the litterateur as a liberal and humanitarian turned imperialist. But that was the common pattern of the British Empire, to which I return below. Marx's article of 10 April 1857 was entitled "Whose atrocities?"¹⁴, and started:

A few years since, when the frightful system of torture in India was exposed in Parliament, Sir James Hogg, one of the Directors of the Most Honourable East India Company, boldly asserted that the statements made were unfounded. Subsequent investigation, however, proved them to be based upon facts which should have been well known to the Directors, and Sir James had left him to admit either "willful ignorance" or "criminal knowledge" of the horrible charge laid at the Company's doors.

And turning to China at the hands of Bowring:

How silent is the press of England upon the outrageous violations of the treaty daily practiced by foreigners living in China under British protection! We hear nothing of the illicit opium trade, which yearly feeds the British treasury at the expense of human life and morality. We hear nothing of the constant bribery of sub-officials, by means of which the Chinese Government is defrauded of its rightful revenue on incoming and outgoing merchandise.

Was Britain a "liberal state" in 1857?

And John Stuart Mill, a founder of liberal thought, was an advocate of systematic colonisation.¹⁵

Duncan Bell emphasises

Mill's long-standing belief in the role of disinterested expertise. Just as he thought that India was best governed by the bureaucracy of the East India company, and that representative democracy was best regulated by the expertise of the enlightened, so he also thought that colonial development needed to be directed by a class of "philosophical legislators" who

¹³ Karl Marx "Parliamentary Debates on the Chinese Hostilities" at <https://www.marxists.org/archive/marx/works/1857/03/16.htm> (accessed on 20 May 2014)

¹⁴ <https://www.marxists.org/archive/marx/works/1857/04/10.htm> (accessed on 20 May 2014)

¹⁵ Duncan Bell "John Stuart Mill on Colonies" (2010) *Political theory* 38(1) pp.34–64

understood the art and the science of political economy, and who recognized the duty to seek the improvement of humanity.¹⁶

This is a reflection on Mill's *Principles of Political Economy* of 1848.¹⁷

The definition of a liberal state – Anne-Marie Slaughter; and her postponement of it to a distant future

The Call for Papers refers to Kant, but also to the US State Department international lawyer, Anne-Marie Slaughter, who wrote “International Law in a World of Liberal States”¹⁸ in 1995, shortly after liberal democracy and the free market appeared to have comprehensively defeated communism. Her definition was as follows:

Liberal States are States with some form of representative democracy, a market economy based on private property rights, and constitutional protections of civil and political rights.¹⁹

Slaughter noted the scholarly disputes as to whether liberal states are less likely than illiberal states to go to war because they are liberal, or because they are wealthier, and wisely decided to leave this to political scientists.

She continued with the search for

a basis for a more generalized distinction between liberal and non-liberal States, a distinction that is positive rather than normative.²⁰

and listed “correlative attributes”:

peace, liberal democratic government, a dense network of transnational transactions by social and economic actors; 'multiple channels' of communication and action that are both transnational and transgovernmental rather than formally inter-State; and a blurring of the distinction between domestic and foreign issues.

She proceeded to give a definition of “market economy”

Market economies based on private property rights also assure at least the existence of an economic sphere distinct from the State, even if supported by State-created rights and subject to State regulation. The relatively unconstrained ability to pursue economic interest is an engine of social interaction, which in turn produces a climate of trust that facilitates economic expansion.²¹

But her five attributes taken together amount to “a hypothetical world of liberal States, a world of peace, democracy, and human rights”.²² She immediately conceded that her hypothetical world is

¹⁶ Bell (2010) p.43

¹⁷ J. S. Mill *Principles of Political Economy* (1848), in *The Collected Works of John Stuart Mill*, ed. John Robson (Toronto: University of Toronto Press, 1963-1991), cited at Bell, note 1, p.57

¹⁸ Anne-Marie Slaughter “International Law in a World of Liberal States” 6 *European Journal of International Law* (1995) 503-538

¹⁹ Slaughter (1995) p.509

²⁰ Slaughter (1995) p. 510

²¹ Slaughter (1995) p.511

²² Slaughter (1995) p.514

manifestly not the world of traditional international law, a world that accepts many Realist assumptions about States as functionally identical unitary actors seeking primarily to preserve their own sovereignty. It is not the world of contemporary international politics, of Bosnia, Haiti, Rwanda or China. Nor is it a world likely soon to emerge.²³

If Slaughter's "liberal states" only exist in a hypothetical utopian world, the distinction may well break down. And the third question in the call for papers, "what new empirical, historical or theoretical studies would help test the validity of the theory that liberal states 'behave better' in the context of international law?", has it would seem already been ruled out by Slaughter, at least.

The British Empire – a liberal state in action

The purpose of this article is not to argue for some moral equivalence or moral relativism, or to say that Britain was by any means the worst. All the great colonial empires, the American, Belgian, British, French, German, Portuguese, Russian, or Spanish, carried out their fair share of atrocities. The aim here is to seek clarity and realism. Though I cannot resist observing that life in Soviet Central Asia was much more civilised and material conditions were much better than those in the British Indian Empire immediately to the south. And democracy, human rights and the free market were implemented to a similar extent.

Until fairly recently the dominant narrative of Empire in Britain was that, somehow, the British Empire had been far more civilised, more gentlemanly, than the others. The Republic of Ireland, independent after a bloody war which started in 1916, was the only former colony so ungrateful as to leave the British Commonwealth. The Commonwealth, the successor to the Imperial Conferences from 1911, with 53 member states, has been seen as the symbol of Britain's graceful retreat from Empire.

The most prominent representative of this genre is Niall Ferguson, whose *Empire: How Britain Made the Modern World*²⁴ argues as follows:

But this balance sheet of the British imperial achievement does not omit the credit side either. It seeks to show that the legacy of the Empire is not just 'racism, racial discrimination, xenophobia and related intolerance' – which in any case existed long before colonialism – but

- the triumph of capitalism as the optimal system of economic organisation;
- the Anglicisation of North America and Australasia;
- the internationalisation of the English language;
- the enduring influence of the Protestant version of Christianity; and above all,
- the survival of parliamentary institutions, which far worse empires were poised to extinguish in the 1940s.²⁵

²³ Slaughter (1995) p.514

²⁴ Niall Ferguson *Empire: How Britain Made the Modern World* (Penguin 2004)

²⁵ Ferguson (2004) p.xxv

Another is the British Conservative politician Kwasi Kwartung in his *Ghosts of Empire: Britain's Legacies in the Modern World*.²⁶ And it has recently been asserted on the basis of rigorously assembled evidence that "Britain has invaded nearly 90% of the world's countries during its history, with only 22 out of 193 (UN members) not on the receiving end of a bit of Great British aggression." The author intends to praise British adventurousness and initiative.²⁷ He declares: "We're a stropic, dynamic, irrepressible nation and this is how we changed the world, often when it didn't ask to be changed!"

There is, however, a growing literature arguing to the contrary. A representative is Richard Gott's extensive *Britain's Empire: Resistance, Repression and Revolt*.²⁸ He declares:

The creation of the British Empire caused large parts of the global map to be tinted a rich vermilion. Although not meant that way, the colour turned out to be particularly appropriate, for Britain's Empire was established, and maintained for more than two centuries, through bloodshed, violence, brutality, conquest and war. Not a year went by without the inhabitants of Empire being obliged to suffer for their involuntary participation in the colonial experience. Slavery, famine, prison, battle, murder, extermination – these were their various fates.²⁹

In 568 pages Gott details revolt in every colony, culminating in the Great Indian Rebellion of 1857-8. In what British historians described as the "Indian Mutiny", Hindus and Muslims together rose up against British rule. British reprisals were extreme in their ferocity, and a recent account states that British troops killed some 10 million Indians over a ten year period.³⁰

Another such text is John Newsinger's *The Blood Never Dried. A People's History of the British Empire*.³¹ Responding to Niall Ferguson's book referred to above, the author argues:

One problem with contemporary apologists for empire, however, is their reluctance to acknowledge the extent to which imperial rule rests on coercion, on the policeman torturing a suspect and the soldier blowing up houses and shooting prisoners. It is the contention of this book that this is the inevitable reality of colonial rule and, more particularly, that a close look at British imperial rules reveals episodes as brutal and shameful as in the history of every empire.

He refers to Britain's activities in Kenya in the 1950s, when the whole Kikuyu people were rounded up in the context of the Mau-Mau uprising, in what has been termed by the Harvard historian Caroline Elkins as "Britain's Gulag".³² The British government wilfully destroyed many records of

²⁶ Bloomsbury, 2012

²⁷ Stuart Laycock *All the Countries We've Ever Invaded: And the Few We Never Got Round To* (The History Press, 2013)

²⁸ Verso, 2011

²⁹ Gott (2011) p.1

³⁰ Randeep Ramesh "India's secret history: 'A holocaust, one where millions disappeared...'

Author says British reprisals involved the killing of 10m, spread over 10 years" *The Guardian* 24 August 2007, at <http://www.theguardian.com/world/2007/aug/24/india.randeepamesh> (accessed on 20 May 2014)

³¹ Bookmarks (2013)

³² Caroline Elkins *Britain's Gulag: The Brutal End of Empire in Kenya* (Pimlico 2005)

the period, and resisted claims for compensation. Thousands of people were killed during the Mau Mau revolt against British rule in Kenya in the 1950s and 1960s.

However, on 5 October 2012 the High Court in London ruled that three Kenyans who were tortured by British colonial authorities can proceed with their legal claims against the UK government. The government accepted that the British colonial administration tortured detainees but denied liability and will appeal. The government had initially argued that all liabilities for the torture by colonial authorities were transferred to the Kenyan Republic upon independence in 1963 and that it could not be held liable now. But in 2011, the High Court ruled the claimants - Paulo Muoka Nzili, Wambuga Wa Nyingi and Jane Muthoni Mara - did have "arguable cases in law".³³

Britain is still in colonial possession of the Falkland Islands, Gibraltar, and a large number of islands. The newest British colony, the British Indian Ocean Territory, was created as recently as 1965. Britain split the Chagos Archipelago from Mauritius and the islands of Aldabra, Farquhar and Desroches (Des Roches) from the Seychelles to form the British Indian Ocean Territory. The purpose was to allow the construction of military facilities for the mutual benefit of the UK and the United States. The islands were formally established as an overseas territory of the United Kingdom on 8 November 1965. On 23 June 1976, Aldabra, Farquhar and Desroches were returned to Seychelles as a result of its attaining independence. Subsequently, BIOT has consisted only of the six main island groups comprising the Chagos Archipelago. The US base constructed on the largest island is the notorious centre for 'extraordinary rendition', Diego Garcia.

On 11 December 2012 the claim of the Chagos Islanders against the UK was ruled inadmissible by a Chamber of the European Court of Human Rights³⁴. The case concerned complaints made by 1,786 Chagos Islanders, or their descendants, arising from the evacuation of BIOT between 1967 and 1973. The Chagossians took their case to Strasbourg after a long-running legal battle in the UK which ended in 2008, when the House of Lords ruled in favour of the government by a majority of 3-2.³⁵

Conclusion: decolonisation and international law

I have contended elsewhere that international law prior to World War II was based not only on the principles of state sovereignty and non-interference in internal affairs, so beloved of Soviet international law³⁶, but also upon the unbridled right of states to the use of force and, despite the

³³ "Mau Mau uprising: Kenyans win UK torture ruling" at <http://www.bbc.co.uk/news/uk-19843719> (accessed on 20 May 2014)

³⁴ Chagos Islanders v United Kingdom (Application no. 35622/04, Decision of 11 December 2012)

³⁵ "Chagos Islanders lose court bid" at <http://www.bbc.co.uk/news/uk-20801992> (accessed on 20 May 2014)

³⁶ See Bill Bowring "Positivism versus self-determination: the contradictions of Soviet international law" in Susan Marks (editor) *International Law on the Left: Re-examining Marxist Legacies* (Cambridge, 2008), pp.133-168; and *Law, Rights and Ideology in Russia: Landmarks in the Destiny of a Great Power* (Routledge, 2013), Chapter 5.

Mandate system of the League of Nations, the right to colonise. Unequal treaties were the order of the day. The *Vienna Convention on the Law of Treaties* of 1969 (VCLT) shows in detail how far the international law of treaties has come since the creation of the United Nations.

And a number of formidable scholars have demonstrated how international law has its roots in colonialism and imperialism.³⁷

I have also contended that the “right of peoples to self-determination” is the revolutionary kernel of post World War II international law.³⁸ From a political programme devised by Lenin in the run-up to World War I as “the right of nations to self-determination”, put into practice after 1917 in Poland, Finland and the three Baltic states, this right is now a right *erga omnes*, as declared by the International Court of Justice in its *Western Sahara* and *East Timor* judgments and its 2004 advisory opinion on the *Legality of the Wall in the Occupied Palestinian Territories*. It is certainly a peremptory norm as envisaged in article 53 of the VCLT.

It is an ironical paradox that the Russia which as the USSR proclaimed and put serious resources into supporting, through diplomacy, the enshrining of the right into international law, and financing the national liberation movements in the Western colonies, suppressed any attempt at secession from the “communist” bloc or from the USSR itself.

Malaysia, Cyprus, Kenya, Aden (Yemen), Northern Ireland, Iraq – conflicts raged through the 20th century for the UK, and found their reflection in the UK’s continued reluctance to implement the European Convention on Human Rights. Russia has in turn been engaged in internal armed conflict in Chechnya in the 1990s and into the new century, and post-colonial wars – Georgia in 2008 and Ukraine in 2014. All of these have also come to the attention of the Strasbourg Court. Liberal, illiberal? I close where I started.

³⁷ See Gerry Simpson *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge, 2004); Antony Anghie *Imperialism, Sovereignty and the Making of International Law* (Cambridge, 2007); and Matthew Craven *The Decolonization of International Law: State Succession and the Law of Treaties* (Oxford, 2007)

³⁸ See Chapter 1 of Bill Bowring *The Degradation Of The International Legal Order: The Rehabilitation Of Law And The Possibility Of Politics* (Routledge Cavendish, 2008)