

‘THIS MODERN GROTIUS’

AN INTRODUCTION TO THE LIFE AND THOUGHT OF C. H. ALEXANDROWICZ

We may be able to learn from the past what the present is unable to teach us.

(C. H. Alexandrowicz)¹

Since the late nineteenth century, international law has taken something of a roller-coaster ride. The most influential account of its trajectory has argued for a slow, painful ‘rise’ beginning in the 1870s, followed by a swiftly accelerating ‘fall’ to its nadir in the 1960s.² Yet, as so often happens, anxieties about irrelevance inspired resurgence. In the closing years of the twentieth century, the fortunes of international law started to climb again, beyond the academy as well as within it. As two of its leading practitioners (including the one who had earlier pronounced its obsequies) recently remarked, ‘From an exotic specialisation on the fringes of the law school, international law has turned during the twentieth century into a ubiquitous presence in global policy-making as well as in academic and journalistic commentary.’³ This move from the margins foreshadowed a remarkable renaissance in the twenty-first century, when international law has become more ever-present in international relations, political theory, and history. Two factors stand out in explaining the latest ascent of international law: the impact of globalization and the return of history. These motives are novel but not unprecedented: as this introduction will show, they had converged productively before, starting in Madras in the 1950s, with consequences that have both lessons and cautions for the new history of international law in our own globalizing, historicist moment.

Globalization—the acceleration and thickening of transnational and interregional connections—exposed the limitations of ‘classic’ international law inherited

¹ C. H. Alexandrowicz (hereafter, CHA), ‘Introduction’, in Gesina H. J. van der Molen, ed., *Alberico Gentili and the Development of International Law: His Life, Work and Times*, 2nd revised edn (Leiden, 1968), p. ix.

² Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870–1960* (Cambridge, 2001).

³ James Crawford and Martti Koskenniemi, ‘Introduction’, in Crawford and Koskenniemi, eds., *The Cambridge Companion to International Law* (Cambridge, 2012), p. 1.

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from the nineteenth century. In particular, decolonization and post-colonial reconstruction revealed how reigning legal norms and established international institutions were dominated by the heirs of colonial empires and their hand-picked allies. The former objects of imperial subjection and control accordingly asserted their rights as subjects within a greatly expanded and fundamentally transformed international society. This led to a series of challenges to an international legal order that had been centred first on Europe, then on the Atlantic world, and finally in the organs of international and global governance that perpetuated structural inequality in all its forms. Following the Second World War, international lawyers from beyond the West—especially in Asia (South, East, and Southeast) and Africa—joined later proponents of ‘Third-World Approaches to International Law’ (TWAAIL) and then self-critical international lawyers across the world in their efforts to provincialize Eurocentric international law and to propose robust alternative frameworks for regulating transnational relations.⁴ As we shall see, one major taproot of this tendency can be traced to an unexpected origin in Central Europe between the wars, amid an earlier moment of imperial collapse and post-imperial reconstruction.

History became central to the late twentieth-century enterprise of globalizing international law. Uncovering the processes by which the international order had been formed in the past became an indispensable tool for reforming it in the future. Suppressed sovereignties could be reinstated and alternative distributions of power restored, not least by laying bare the machinations of the mighty over those whom they deliberately marginalized. The critical use of history reinforced a broader turn to the past which has been one of the most remarked-upon features of recent scholarship on international law.⁵ The history of international law had a distinguished pre-history, of course, which stretched back to the earliest disciplinary accounts of the law of nations in the late eighteenth and nineteenth centuries by D. H. L. von Ompteda, G. F. von Martens, Robert Ward, Henry Wheaton, and others, and then forward to mid-twentieth-century works by Wilhelm Grewe, Arthur Nussbaum, and (more idiosyncratically) Carl Schmitt.⁶ However, the history of international law had been mostly marginal to the discipline as a whole except when it could provide affirmatory just-so stories. Only when conjoined with post-colonial approaches could it become an effective vehicle of critique.

⁴ Upendra Baxi, ‘Some Remarks on Eurocentrism and the Law of Nations’, in R. P. Anand, ed., *Asian States and the Development of International Law* (Delhi, 1972), pp. 3–9; Martti Koskenniemi, ‘Histories of International Law: Dealing with Eurocentrism’, *Zeitschrift des Max-Planck-Instituts für europäische Rechtsgeschichte*, 19 (2011), 152–76; Arnulf Becker Lorca, ‘Eurocentrism in the History of International Law’, in Bardo Fassbinder and Anne Peters, eds., *The Oxford Handbook of the History of International Law* (Oxford, 2012), pp. 1034–57.

⁵ Philip Allott, ‘International Law and the Idea of History’, *Journal of the History of International Law*, 1 (1999), 1–21; George Rodrigo Bandeira Galindo, ‘Martti Koskenniemi and the Historiographical Turn in International Law’, *European Journal of International Law*, 16 (2005): 539–59; Alexander Orakhelashvili, ‘The Relevance of Theory and History—The Essence and Origins of International Law’, in Orakhelashvili, ed., *Research Handbook on the Theory and History of International Law* (Cheltenham, 2011), pp. 3–22; Matthew Craven, ‘Theorising the Turn to History in International Law’, in Anne Orford, Florian Hoffmann, and Martin Clark, eds., *The Oxford Handbook of the Theory of International Law* (Oxford, 2016), pp. 21–37.

⁶ Martti Koskenniemi, ‘A History of International Law Histories’, in Fassbinder and Peters, eds., *The Oxford Handbook of the History of International Law*, pp. 943–71.

The origins of that critical rapprochement between the history of international law and criticism of the impact of empire lie in the work of the remarkable Polish–British scholar and lawyer, Charles Henry Alexandrowicz (1902–75).⁷ Alexandrowicz pioneered historical study of international law in its extra-European contexts, a vein of research that is now fundamental to the history of international law and to global history more generally. Unlike contemporary scholars who assume that international law was an exclusively European phenomenon, or those who find only Eurocentrism in various forms in the history of European thought on international and global affairs,⁸ Alexandrowicz recognized international law's complicity with European imperial expansion and sought in history resources for a more egalitarian and less Eurocentric international order. In the era of decolonization, he used history to unsettle the 'orthodox view' that 'New States are faced with the *fait accompli* of the existing international legal order and must accept its principles as they find them.'⁹ This critical historicist approach to the law of nations arose from interests in empire, statehood, and the continuity of legal identity that had begun in Poland in the inter-War period.

Alexandrowicz's beginnings in Austrian Galicia inspired questions that would animate his scholarship across a career spanning from the First World War to the zenith of decolonization, and from Kraków to Cambridge via London, Madras, and Sydney.¹⁰ He was born Karol Aleksandrowicz in October 1902 in Lemberg (Lviv/Lwów), the son of Franciszek Aleksandrowicz (1856–1927), a major general in the Austro-Hungarian army who ended his career at the same rank in the Polish army after the First World War.¹¹ His mother, Maria Gregorowicz, claimed Scottish Jacobite descent: Karol's early education at Vienna's prestigious Catholic *Schottengymnasium*, at a time when few non-Viennese pupils attended the school, may thus have been somewhat overdetermined.¹² After the First World War, and

⁷ Alexandrowicz published his work under various versions of his name: Karol Aleksandrowicz, Carolus Alexandrowicz, Karol Alexandrowicz, Charles Henry Alexander, C. H. Alexander, Charles Henry Alexandrowicz-Alexander, C. H. Alexandrowicz-Alexander, Charles Henry Alexandrowicz, and C. H. Alexandrowicz (the version by which he was and is best known). This diversity of spellings, along with the fact that many of the journals in which many of his early articles appeared have not been digitized, has occluded large parts of his oeuvre. With only a handful of exceptions, all the pieces collected here are being reprinted for the first time since their original publication: see the 'Bibliography of the Writings of C. H. Alexandrowicz', below.

⁸ For example, John M. Hobson, *The Eurocentric Conception of World Politics: Western International Theory, 1760–2010* (Cambridge, 2012).

⁹ CHA, 'The New States and International Law', *Millennium* 3 (1974), 226 (p. 404 below).

¹⁰ Unless otherwise specified, biographical information in this and following paragraphs comes from CHA, 'Biographical Note', *Recueil des Cours*, 100 (1960), 205; T. S. Rama Rao, 'Introduction', *The Indian Year Book of International Affairs*, 11 (1962), vii–ix; *Who's Who* (London, 1974), p. 40; W. A. Steiner, 'Charles Henry Alexandrowicz (1902–1975)', *British Year Book of International Law*, 47 (1974–75), 269–71; Clive Parry, 'Obituary: Professor Charles Alexandrowicz', *The Australian Law Journal*, 49 (1975), 644; Rama Rao, 'Prof. C. H. Alexandrowicz: A Tribute', *The Indian Year Book of International Affairs*, 18, pt. II (1980), viii–xii.

¹¹ Piotr Stawecki, *Słownik biograficzny generatów Wojska Polskiego* (Warsaw, 1994), pp. 67–8; Henryk Piotr Kosk, *Generacja polska: popularny słownik biograficzny* (Pruszków, 1998), p. 44.

¹² Marsha L. Rozenblit, *The Jews of Vienna, 1867–1914: Assimilation and Identity* (Albany, NY, 1983), p. 116.

the restoration of Polish statehood in 1919, he studied law at the Jagiellonian University in Kraków, where he took his doctorate in 1926, and published widely in the field of canon law. This might explain Alexandrowicz's later interest in what he called the 'Jagiellonian school of the law of nations' in the Middle Ages.¹³ It certainly accounts for his lifelong interest in legal pluralism and the history of comparative law.

Alexandrowicz had emerged from the same milieu in Habsburg Galicia that produced two of the greatest legal theorists of the mid-twentieth century, Hersch Lauterpacht (1897–1960) and Raphael Lemkin (1900–59), both of whom were also brought up in Lemberg. If that city has an 'unexpected place' in the history of international law, then Alexandrowicz deserves consideration alongside his better known Jewish contemporaries there. Lauterpacht and Lemkin were both educated at the Jan Kazimierz University in Lemberg but Lemkin had previously spent a year in the Jagiellonian law faculty in 1919–20, just before Alexandrowicz studied there.¹⁴ Unlike Lauterpacht—the Whewell Professor of International Law at Cambridge, QC, FBA, and Judge of the International Court of Justice (ICJ)—Alexandrowicz never scaled the peaks of academic and institutional eminence; nor did he help to shape international institutions or their emergent norms, unlike Lemkin, the only begetter of the Genocide Convention.¹⁵ He held no permanent position in Britain; the United States was not on his intellectual trajectory, except for a year as a visiting professor in Ohio after retirement;¹⁶ and unlike another contemporary, the Cambridge public lawyer Sir Ivor Jennings (1903–65), he never became an itinerant constitution-maker for new countries in the British Commonwealth.¹⁷ He spent the bulk of his career on what might be called the intellectual semi-periphery, first in India (1951–61) and then in Australia (1961–67).¹⁸ It was there, in the

¹³ CHA, 'Paulus Vladimiri and the Development of the Doctrine of the Coexistence of Christian and Non-Christian Countries', *British Year Book of International Law*, 39 (1963), 448 n. 1 (p. 61 n. 28 below). See also the near-contemporary *magnum opus* on Vladimiri and his school: Stanislas F. Belch, *Paulus Vladimiri and his Doctrine Concerning International Law and Politics*, 2 vols. (The Hague, 1964).

¹⁴ Philippe Sands, 'A Memory of Justice: The Unexpected Place of Lviv in International Law: A Personal History', *Case Western Reserve Journal of International Law*, 43 (2011), 739–58; Sands, *East West Street: On the Origins of 'Genocide' and 'Crimes Against Humanity'* (New York, 2016), p. 143.

¹⁵ Raphael Lemkin, *Totally Unofficial: The Autobiography of Raphael Lemkin*, Donna-Lee Frieze, ed. (New Haven, 2013); Elihu Lauterpacht, *The Life of Sir Hersch Lauterpacht, QC, FBA, LLD* (Cambridge, 2010). More generally, see James Loeffler and Moria Paz, eds., *The Law of Strangers: Critical Perspectives on Jewish Lawyering and International Legal Thought* (Cambridge, forthcoming). Alexandrowicz contributed Indian and later Burmese case-notes to the *International Law Reports* for 1953–58 edited by Lauterpacht and, after his death in 1960, by his son, Elihu Lauterpacht: Hersch Lauterpacht, 'Preface', in Lauterpacht, ed., *International Law Reports*, 23 (London, 1960), p. v.

¹⁶ Alexandrowicz held the Gillespie Visiting Professorship at the College of Wooster in 1969–70: 'Wooster Today', *Wooster Alumni Magazine*, 84, 1 (November–December 1969), 24.

¹⁷ *Constitution-Maker: Selected Writings of Sir Ivor Jennings*, ed. Harshan Kumarasingham, *Camden Fifth Series*, 46 (Cambridge, 2014); Kumarasingham, 'Eastminster—Decolonisation and State-Building in British Asia', in Kumarasingham, ed., *Constitution Making in Asia: Decolonisation and State-Building in the Aftermath of the British Empire* (London, 2016), p. 28 n. 4, draws the connection with Alexandrowicz.

¹⁸ The non-evaluative term 'semi-periphery' is borrowed from Arnulf Becker Lorca, *Mestizo International Law: A Global Intellectual History, 1842–1933* (Cambridge, 2014), pp. 18–19.

Indo-Pacific region, that ‘this modern Grotius’ broke new ground, in ways that he might not have done had he followed a more conventional path for one of his early formation and intellectual gifts, to a chair at Columbia or Cambridge, for instance.¹⁹

Alexandrowicz’s first scholarly specialism was Polish marital law and its history, on which he received his doctorate from the Jagiellonian University in 1926.²⁰ This was, of course, a central concern of canon law; it may have become personally relevant to Alexandrowicz, who was married twice in Poland before the war.²¹ The law of marriage was also a particularly pressing problem in Polish history. Due to Poland’s history of partition and extinction in the eighteenth century, its partial reconstruction after the Congress of Vienna, and its subsumption into the Austro-Hungarian Empire, Polish marriage law was divided regionally and between canon and civil law, central and eastern Poland observing canon law alone but western and southern Poland following civil marriage. The resulting confusions and collisions about such matters as marital consent, dissolution and divorce, and remarriage (or the prohibition against it) generated contentious case law and fertile ground for work on conflict of laws and the enduring effects of historic legal pluralism.²² Alexandrowicz himself saw this as a richly fertile ‘problem of comparative law’:²³ the matrix of many of his leading concerns as an historian of the intertemporal and transnational law of nations can be found here. After his years at the Jagiellonian and three years working at the Bank of Poland, he practised law in Kraków and Katowice (1930–39) before being appointed to a lectureship at the Higher School of Social Sciences in Katowice on the eve of the Second World War.²⁴ In 1934,

¹⁹ ‘Afro-Asia cannot afford to forget the juristic contribution of this modern Grotius who showed it its rightful place in the panorama of International Law’: Rama Rao, ‘Prof. C. H. Alexandrowicz’, xii.

²⁰ Karol Aleksandrowicz, *Konsens małżeński w nowym kodeksie prawa kanonicznego i w dawnym prawie kanonicznym* [*Marital Consent in the New and Old Code of Canon Law*] (Włocławek, 1927); Aleksandrowicz, ‘Błąd, przymus i bojaźń przy zawieraniu małżeństw według nowego i dawnego prawa kościelnego’ [‘Error, Coercion, and Fear in Contracting Marriages according to New and Old Church Law’], *Ateneum Kapłańskie*, 19 (1927), 468–81; Aleksandrowicz, *Zezwolenie na małżeństwo w prawie kanonicznym i w prawie polskim* [*Marital Permission in Canon and Polish Law*] (Włocławek, 1931); Carolus Alexandrowicz, *De primis vinculi matrimonii in iudicio episcoporum cracoviensium defensoribus* (saec. XVIII) (Rome, 1933); Aleksandrowicz, *Brachium saeculare według obecnie obowiązujących i dawniejszych konkordatów* [*Brachium Saeculare according to Current and Past Legally Binding Concordats*] (Kraków, 1934); Aleksandrowicz, *Małżeństwa domniemane w prawie kanonicznym* [*The Presumption of Marriage in Canon Law*] (Kraków, 1934); Aleksandrowicz, *Prawo małżeńskie* [*Marriage Law*] (London, 1943); Aleksandrowicz, *Prawo osobowe, według kodeksu cywilnego b. Królestwa Polskiego (przy uwzględnieniu prawa cywilnego francuskiego)* [*Personal Law according to the Civil Code of the Former Kingdom of Poland (as Compared to French Civil Law)*] (London, 1944).

²¹ Franciszek Moskal, *The Passions of an Optimist: My Life as an Emissary with the Polish Government-in-Exile in World War II, as a Productivity and Management Counsellor with Canadian Manufacturers and as a Consultant in Post-Soviet Poland* (Rawdon, 2005), pp. 91–2.

²² Ulrike Harmat, *Ehe auf Widerruf: der Konflikt um das Eherecht in Österreich 1918–1938* (Frankfurt am Main, 1999); Harmat, ‘Divorce and Remarriage in Austria-Hungary: The Second Marriage of Franz Conrad von Hötzendorf’, *Austrian History Yearbook*, 32 (2001), 70–90.

²³ Karol Alexandrowicz, ‘Marriage Law in Poland: A Problem of Comparative Law’, in *Studies in Polish and Comparative Law: A Symposium of Twelve Articles* (London, 1945), pp. 156–67.

²⁴ CHA, ‘Curriculum Vitae’ (23 May 1943), Polish Institute and Sikorski Museum, London (hereafter, PISM), A.48.2.IX/12.

he had also undertaken legal research in Paris, where he was elected to the Société d'histoire du droit.²⁵ Religion was also evidently important to him in this period, as in 1931–32 he published a conservative Catholic socio-political journal, *The Living Word of Father Oraczewski*.²⁶ To the end of his life, he would identify as Roman Catholic.²⁷

As a Pole by descent but an Austrian by citizenship until 1919, Alexandrowicz was a member of a suppressed nationality, part of a nation without a state who claimed continuity and identity under the integument of a multiethnic empire. This history of empire and of multiple claims to jurisdiction inflected his concerns long after he had moved from Galicia to Tamil Nadu. The defining question of his career, at least for other international lawyers—the suppression and recovery of sovereignty within and after empire—first arose not in post-imperial India but in Central Europe and then in exile in Paris and London. It opened Alexandrowicz's eyes to illuminating parallels—for example, between the Holy Roman Empire and the Mughal Empire—but it also left him with a consistent equation in his work between sovereignty and statehood and a general aversion to conceiving of empire, even in India, within the categories of colonialism.

At the start of the Second World War, Alexandrowicz joined the Polish Army as an officer and took part in the defence of Lviv against attack by the Wehrmacht and the Red Army.²⁸ After the collapse of Poland in September 1939, he fled to Romania with the historian, politician, and former Jagiellonian professor Stanisław Kot and his family.²⁹ A member of a 'pro-government, pro-British, sharply anti-German' faction of the Polish exile community in Bucharest in 1939–40 that was committed to combating the authoritarian Sanacja ('Sanitation') movement,³⁰ he chaired the Army's research commission, which was, among other duties, tasked with maintaining the continuity of the Polish state, including its legal code.³¹ After

²⁵ Académie des sciences d'outre-mer, 'Alexandrowicz, Charles Henri': <<http://www.academicoutremer.fr/academiciens/fiche.php?aId=849>> last accessed 1 November 2016.

²⁶ Karol Aleksandrowicz, ed., *Żywe Słowo Księdza Oraczewskiego: tygodniowe pytania i odpowiedzi o sprawach bieżącego życia* [*The Living Word of Father Oraczewski: Weekly Questions and Answers about Everyday Life*] (Warsaw, 1931–32). Czesław Oraczewski was a priest, political activist, and Polish patriot with right-wing, anti-secularist, monarchist views: Jerzy Pietrzak, 'Oraczewski, Czesław, pseud. Agnis Arman (1891–1965)', in Władysław Konopczyński, et al., eds., *Polski słownik biograficzny*, 50 vols. to date (Kraków, 1935–), XXIV, pp. 151–3.

²⁷ CHA, 'Application Form' (27 July 1968), The College of Wooster Faculty, Archives Collection (The College of Wooster), Box 10 (Alexandrowicz, Charles H.).

²⁸ CHA, 'Curriculum Vitae', PISM.

²⁹ Tadeusz Paweł Rutkowski, *Stanisław Kot 1885–1975: Biografia Polityczna* (Warsaw, 2000), p. 163.

³⁰ Władysław Kański, 'Bukareszt, 30 sierpnia 1940r.' (30 August 1940), PISM, KOL 25/41 (Kolekcja 25, Stanisław Kot collection). Kański was Polish vice consul in Bucharest: Wolfgang Jacobmeyer, *Heimat und Exil: die Anfänge der polnischen Untergrundbewegung im Zweiten Weltkrieg* (Hamburg, 1973), pp. 131, 305.

³¹ CHA, 'Sprawozdanie. Komisji Badawczej przy Ambasadzie R.P. w Bukareszcie [Report: Research Commission of the Polish Embassy in Bucharest]' (29 June 1940), PISM, A/26/V/1; see also Tadeusz Dubicki and Stanisław Jan Rostworowski, *Sanatorzy kontra Sikorszczycy, czyli, Walka o władzę na uchodźstwie w Rumunii 1939–1940* (Warsaw, 1993), pp. 72, 84; Władysław Horst, 'Józef Kordian Zamorski przed Komisją Rejestracyjną w Bukareszcie', *Teki Archiwalne*, 27 (2000), 129–30.

a brief arrest by the right-wing Romanian Iron Guard, he evacuated to Istanbul with other members of the Polish government, where he continued to combat the Sanacja faction.³² By May 1941, he had reached London, by way of Cairo and Freetown, to join the Polish government in exile under Władysław Sikorski. The provisions of the Polish Constitution, under which the President could appoint his own successor, who in turn created his own government far beyond Polish soil, ensured that the Polish government had a special status among the exile governments. 'This internationally recognised continuity was a valuable asset for a state which had emerged into independence only 20 years before after more than a century of non-existence,' one historian has noted.³³ It must also have strengthened Alexandrowicz's convictions about the need to protect continuity of sovereignty and legitimacy, especially as one of his tasks as a member of the Polish committee on legislative work was to restore pre-war legal codes on the return of the government.³⁴

In London between 1941 and 1946, Alexandrowicz was a financial counselor to the Polish Embassy and then acting governor of the Bank Gospodarstwa Krajowego, the Polish state development bank (1943–46); he also served in the Home Guard (1942–45).³⁵ During this period, his second marriage, to Irena Thetschel-Aleksandrowiczowa, collapsed: Irena had moved to New York in 1941; on returning to London in August 1943, she discovered her husband was having an affair and filed for divorce.³⁶ In late 1945, Alexandrowicz married Marguerite Gabrielle ('Gaby') Drabble (1908–96), an Englishwoman of partly French descent whose mother had been born in the British community in pre-Revolutionary Russia; Irena returned to New York a few months later.³⁷ After the war, he chaired the European Central Inland Transport Organization (ECITO), an Allied reconstruction agency designed to restore mobility in Europe, for a year before it was wound up in 1947.³⁸ He continued to write and lecture on Polish,

³² CHA, 'Do Pana Ministra Sprawiedliwości R.P. w Londynie' [To the Polish Minister of Justice in London] (late 1940), PISM, KOL 25/41; Report from [Jozef Jordan?] Rozwadowski, Istanbul (11 December 1940), PISM, KOL 25/37A.

³³ Dariusz Stola, 'The Polish Government-in-Exile: National Unity and Weakness', in Jan Láníček and James Jordan, eds., *Governments-in-Exile and the Jews during the Second World War* (London, 2013), p. 93.

³⁴ Grzegorz Kulka, *Komisje prawno-ustrojowe Rady Narodowej RP na emigracji w latach 1939–1991* (Warsaw, 2009), pp. 80–2.

³⁵ CHA, curriculum vitae (3 November 1960), Personnel (Staff) Files [Registrar], University of Sydney Archives (University of Sydney), Series 136, Container 171 (Alexandrowicz, Charles Henry). In a letter of December 1943, Alexandrowicz mentioned his research on German banks in Europe: CHA to Stanisław Kot, 4 December 1943, PISM, KOL 25/25/1, Folder: Grudzien [December] 1943.

³⁶ Moskal, *The Passions of an Optimist*, p. 139; Passenger and crew lists of vessels arriving at New York (3 October 1941), National Archives and Records Administration, Immigration and Naturalization Service Record Group 85, Film T715, roll 6583; Gaby Alexandrowicz to Richard Davies (24 July 1995), Drabble and Stock Family Papers, Leeds Russian Archive (University of Leeds), LRA/MS 1379. A son remained in Poland: CHA, 'Curriculum Vitae', PISM.

³⁷ CHA and Marguerite Gabrielle Drabble, marriage certificate (6 November 1945), General Register Office (England and Wales) (hereafter, GRO), December 1945, Paddington, 1a, p. 137; Gdynia America Shipping Line, outwards passenger list, Cardiff–New York (6 March 1946), The National Archives (UK) (hereafter, TNA), BT 27/1580/39.

³⁸ On the ECITO, see CHA, 'The European Economic Institutions', *The Year Book of World Affairs*, 2 (1948), 185–90; CHA, *International Economic Organisations* (London, 1952), pp 199–201; Frank

European, and economic affairs in these years but his career soon returned to the law, presumably with the aim of settling down and beginning a new life in London after his third marriage. Alexandrowicz was called to the bar at Lincoln's Inn in January 1948 and took British citizenship in January 1950.³⁹ While in practice as a barrister, he lectured part time on law and international relations at the University of London (1948–51) but a new opportunity soon appeared that would decisively reorient his intellectual trajectory towards South Asia and the post-colonial world.

When in 1951 the Vice-Chancellor of the University of Madras decided to set up a new Department of International and Constitutional Law (the first such research department in India), Alexandrowicz was chosen to lead it, on the recommendation of his former teacher David Hughes Parry, director of the University of London's Institute for Advanced Legal Studies.⁴⁰ Alexandrowicz soon became a pivotal figure in the rapidly growing world of Indian legal education and scholarship. This was a moment, just after independence in 1947 and soon after the new Indian Constitution had come into effect in 1950, when the Indian legal academy was in need of reform and when the expertise of European and American lawyers who were not indelibly associated with the former colonial power was in particular demand.⁴¹ Alexandrowicz, only recently naturalized and with his Polish background, would not have been identified as British: indeed, when the Alliance Française was inaugurated in Madras in 1953, he was elected its first president.⁴² Another of his contemporaries, the denazified German lawyer Friedrich Berber (1898–1984), also arrived in India in 1951. He advised Jawaharlal Nehru's government on matters such as water rights before returning to a chair in Munich in 1954.⁴³ Berber must have become acquainted with Alexandrowicz in these years, though Alexandrowicz himself would remain in India until 1961.

Schipper, *Driving Europe: Building Europe on Roads in the Twentieth Century* (Amsterdam, 2008), pp. 165–6.

³⁹ CHA, call to the bar (26 January 1948), in *The Records of the Honourable Society of Lincoln's Inn: The Black Books*, VI: A.D. 1914–A.D. 1965, ed. P. V. Baker (London, 2001), p. 768; CHA, naturalization certificate (31 January 1950), TNA, HO 334/336/10553; CHA, oath of allegiance (3 February 1950), *The London Gazette*, Supplement 38862 (14 March 1950), 1285.

⁴⁰ D. Hughes Parry to the Registrar, University of Sydney (10 December 1960), Personnel (Staff) Files [Registrar], University of Sydney Archives; A. L. Mudaliar, 'Prof. C. H. Alexandrowicz: A Tribute', *The Indian Year Book of International Affairs*, 11 (1962), [xi].

⁴¹ Jayanth K. Krishnan, 'Professor Kingsfield Goes to Delhi: American Academics, the Ford Foundation, and the Development of Legal Education in India', *American Journal of Legal History*, 46 (2004), 447–99.

⁴² 'Cultural Relations with France', *The Hindu* (14 August 1953), 6; S. Muthiah, *A Madras Miscellany: A Decade of People, Places and Potpourri* (Chennai, 2011), p. 671.

⁴³ Katharina Rietzler, 'Counter-imperial Orientalism: Friedrich Berber and the Politics of International Law in Germany and India, 1920s–1960s', *Journal of Global History*, 11 (2016), 127–33. Berber published two essays under Alexandrowicz's editorship: F. J. Berber, 'The Indus Water Dispute', *The Indian Year Book of International Affairs*, 6 (1957), 46–62; Berber, 'International Aspects of the Holy Roman Empire after the Treaty of Westphalia', in CHA, ed., *Studies in the History of the Law of Nations (Grotian Society Papers)*, *The Indian Year Book of International Affairs*, 13, pt. II (1964), 174–83.



Plate 1 Farewell party for Dr Suri Bhagavantam, Osmania University, 8 March 1957. Gaby Alexandrowicz is first on the left, C. H. Alexandrowicz third from the left. Reproduced with the kind permission of H. S. Gururaja Rao

Over the course of a decade, Alexandrowicz created a ‘Madras School of Law’ which trained leading scholars of the field in India as well as major Indian jurists and advocates.⁴⁴ As one of his former students recalled, ‘His knowledge was phenomenal and his lectures were brief but salient.’⁴⁵ He wrote widely on Indian law and constitutionalism and acted as honorary legal adviser to the Government of India and to Prime Minister Nehru.⁴⁶ He associated with two of the authors of the Indian Constitution, B. R. Ambedkar and Alladi Krishnaswamy Iyer, and

⁴⁴ [CHA,] ‘Department of International and Constitutional Law’, *Journal of the Madras University. Section A. Humanities*, 28 (1957), 361–62. Alexandrowicz’s contribution is still often overlooked: for example, he and the University of Madras are absent from the account of Indian legal history in the 1960s in Mitra Sharaḥ, ‘South Asian Legal History’, *The Annual Review of Law and Social Science*, 11 (2015), 312–13. For his retrospective reflections on legal education in India, see CHA, ‘Legal Education’, in Humayun Kabir, ed., *The Teaching of Social Sciences in India, 1947–67* (Delhi, 1968), pp. 191–200; CHA, ‘The Dichotomy in Control of Legal Education (Academic and Professional)’, in S. K. Agrawala, ed., *Legal Education in India: Problems and Perspectives* (Bombay, 1973), pp. 48A–51.

⁴⁵ Vengrai Parthasarathy, ‘My Professor—A Great Guy’, *Vengrai.com* (24 November 2014): <<http://www.vengrai.com/?p=114>> last accessed 1 November 2016.

⁴⁶ For Alexandrowicz’s writings on Indian history, jurisprudence, and international relations from these years (not collected here), see CHA, ‘The Supreme Court of India as a Habeas Corpus Bench’, *Journal of the Madras University. Section A. Humanities*, 22 (1951), 71–81; CHA, ‘American Influence in Indian Constitution Making’, *Journal of the Madras University. Section A. Humanities*, 23 (1952), 78–87; CHA, ‘International Law in India’, *International and Comparative Law Quarterly*, 1 (1952), 289–300; CHA, ‘The Indian Constitution’, *The Year Book of World Affairs*, 7 (1953), 258–82; CHA, ‘Common Law Prerogative Writs in India’, *Indian Year Book of International Affairs*, 2 (1953), 199–213; CHA, ‘The Kashmir Deadlock’, *Political Quarterly*, 25 (1954), 236–45; CHA, ‘Delegation of Legislative Power in India’, *American Journal of Comparative Law*, 3 (1954), 72–9; CHA, ‘American Influence on Constitutional Interpretation in India’, *American Journal of Comparative Law*, 5 (1956), 98–105; CHA, ‘Le Cachemire: aspect juridique

with Radhabinod Pal, the dissenting Indian judge on the Tokyo war crimes tribunal, all of whom were members of the Indian Committee of Comparative Law Alexandrowicz had initiated in 1953.⁴⁷ Around the same time, he founded and edited *The Indian Year Book of International Affairs* (1952–86), modelled on the British *Year Book of World Affairs* to which he had been a frequent contributor. Alexandrowicz produced an essay for almost every early issue of the *Indian Year Book*; as editor, he solicited contributions from leading thinkers within India as well as major figures from beyond, among them Berber, Bertrand Russell, Georg Schwarzenberger, and Quincy Wright;⁴⁸ and he promoted some of the key figures in India, such as M. K. Nawaz and R. P. Anand, who were then theorizing international law in the New States, at the beginning of the first wave of the TWAIL movement in the global South.⁴⁹

Alexandrowicz's paradoxical combination of distance from the ostensible centres of learned life and proximity to new scholarly materials decisively redirected the course of his work. As his student and then successor at the University of Madras, the Indian jurist T. S. Rama Rao recalled, Alexandrowicz responded creatively to the wealth of material available in Indian archives as well as to the relative absence of the standard works in contemporary European international law with which he had been accustomed to work. As a result, he began an intensive study of the practices of international law in Asia, especially those between Indian and European actors.⁵⁰ The East India trade, he argued, had contributed fundamentally to the development of the law of nations. Nineteenth-century European jurists erased this contribution from the legal and historical record and

du conflit Indo-Pakistanais', *Österreichische Zeitschrift für Öffentliches Recht*, 7 (1956), 296–308; CHA, 'India's Himalayan Dependencies', *The Year Book of World Affairs*, 10 (1956), 128–43; CHA, *Constitutional Developments in India* (Bombay, 1957); [CHA,] 'L'influence française sur la Constitution de l'Inde', *The Indian Year Book of International Affairs*, 6 (1957), 376–85; CHA, ed., *A Bibliography of Indian Law* (Madras, 1958); CHA, 'India Before and After Reorganisation', *The Year Book of World Affairs*, 12 (1958), 133–55; CHA, 'Föderalismus in Indien', *Schweizer Monatshefte*, 39 (1959), 754–64; CHA, 'The Secular State in India and in the United States', *Journal of the Indian Law Institute*, 2 (1960), 273–96; CHA, 'Personal Liberty and Preventive Detention', *Journal of the Indian Law Institute*, 3 (1961), 445–58.

⁴⁷ Alva Myrdal, 'Report on Mission to India and Egypt' (4 February 1953), 3–4, UNESCO Archives, Paris, X07.83 (Missions of Myrdal); [CHA,] 'The Indian Committee of Comparative Law', *International and Comparative Law Quarterly*, 3 (1954), 101–2. Iyer was chair, Ambedkar and Pal vice-chairs, and Alexandrowicz secretary-general of the Committee, which was the Indian branch of the UNESCO International Committee of Comparative Law.

⁴⁸ For example, see CHA to Bertrand Russell (26 March 1958), Bertrand Russell Archive Collection (McMaster University), RA1, Class 410, Box 1.23 (though Russell never contributed to the journal).

⁴⁹ M. K. Nawaz, 'The Law of Nations in Ancient India', *The Indian Year Book of International Affairs*, 6 (1952), 172–88; Nawaz, 'International Law in the Contemporary Practice of India: Some Perspectives', *Proceedings of the American Society of International Law*, 57 (1963), 275–90; Nawaz, *The Changing Law of Nations: An Indian Focus* (Calcutta, 2000); R. P. Anand, 'Asian States and the Development of a Universal International Law: Report of a Seminar', *International Studies*, 11 (1969), 167–84; Anand, ed., *Asian States and the Development of International Law*; review by CHA, *International and Comparative Law Quarterly*, 21 (1972), 812–13. B. S. Chimni has identified Alexandrowicz as one of the crucial precursors of TWAIL: Chimni, 'The World of TWAIL: Introduction to the Special Issue', *Trade, Law and Development*, 3 (2011), 16; see also Chimni, '10 x 10', *International Journal of Constitutional Law*, 8 (2010), 44.

⁵⁰ Rama Rao, 'Prof. C. H. Alexandrowicz', x–xi.

insisted that international law was an exclusively European product, but one that thanks to the achievements of European civilization had a moral claim to govern the entire world.

Alexandrowicz first presented his findings at length in 1960 when, on Hersch Lauterpacht's recommendation, he lectured at the Hague Academy of International Law for the first time.⁵¹ This material later formed the substance of his most enduringly influential book, *An Introduction to the History of the Law of Nations in the East Indies (16th, 17th and 18th Centuries)* (1967).⁵² In the same year, he founded the Grotian Society for the study of the history of international law and remained its president and research director until his death in 1975.⁵³ Such was the esteem in which Alexandrowicz was held by his Indian colleagues that, when he retired from the University of Madras in 1961, two of them nominated him for the Nobel Peace Prize, 'in recognition of his historical researches on the treaty and diplomatic relations between European and Asian powers'.⁵⁴ Alexandrowicz himself nominated Grenville Clark and Louis B. Sohn, American authors of the best-selling book *World Peace through World Law* (1958), that same year.⁵⁵ No one could begrudge the Nobel Committee's award of Peace Prizes in 1961 and 1962 to Dag Hammarskjöld and Linus Pauling respectively, though a third Madras colleague did nominate Alexandrowicz in 1964 (again without success) 'for strengthening the bonds between the nations of the world, especially those of Asia and the West'.⁵⁶

After a decade teaching in India, Alexandrowicz left Madras in May 1961.⁵⁷ In August that year, he moved to Australia and to a post as Associate Professor of International Legal Organization at the University of Sydney. Although this was nominally a demotion from his full professorship at the University of Madras, he soon found himself amid an intellectual ferment in the School of Law at Sydney and in the newly created Australian Society of Legal Philosophy (ASLP). The

⁵¹ Arnold, 1st Baron McNair to the Registrar, University of Sydney (2 December 1960), Personnel (Staff) Files [Registrar], University of Sydney Archives.

⁵² CHA, 'Treaty and Diplomatic Relations between European and South Asian Powers in the Seventeenth and Eighteenth Centuries', *Recueil des Cours*, 100 (1960), 203–320; revised and expanded as CHA, *An Introduction to the History of the Law of Nations in the East Indies (16th, 17th and 18th Centuries)* (Oxford, 1967).

⁵³ CHA, 'The Grotian Society', *American Journal of International Law*, 61 (1967), 1058; CHA, ed., *Studies in the History of the Law of Nations (Grotian Society Papers)*; CHA, ed., *Grotian Society Papers: Studies in the History of the Law of Nations*, 2 vols. (The Hague, 1970–72). The Society was wound up in 2001.

⁵⁴ Nobel Prize, 'Nomination Database', T. M. P. Mahadevan (1961): <<http://www.nobelprize.org/nomination/archive/show.php?id=15805>> last accessed 1 November 2016; T. S. Rama Rao (1962): <<http://www.nobelprize.org/nomination/archive/show.php?id=16981>> last accessed 1 November 2016.

⁵⁵ Nobel Prize, 'Nomination Database', CHA (1961): <<http://www.nobelprize.org/nomination/archive/show.php?id=15829>> last accessed 1 November 2016; CHA to Harry B. Hollins (20 January 1961) and CHA to Nobel Committee (20 January 1961), Grenville Clark Papers (Dartmouth College), Series 22, Box 264 (Nobel Peace Prize, 1958–61), Folder 35; Grenville Clark and Louis B. Sohn, *World Peace through World Law* (Cambridge, Mass., 1958). Like Alexandrowicz, Lauterpacht, and Lemkin, Louis B. Sohn (1914–2006) was born in Lemberg; Sands, 'A Memory of Justice', 746–8.

⁵⁶ Nobel Prize, 'Nomination Database', Rama Ras (1964): <<http://www.nobelprize.org/nomination/archive/show.php?id=18445>> last accessed 1 November 2016.

⁵⁷ 'Prof. C. H. Alexandrowicz', *The Hindu* (9 May 1961), 7.

moving spirit behind both was another emigré, the British-Jewish legal scholar Julius Stone (1907–85), who developed strong contacts in India, made imaginative—often international—appointments as Challis Professor of Jurisprudence and International Law at Sydney, and attempted to bring law into closer dialogue with philosophy and history in the Australian legal academy.⁵⁸ During these Sydney years, Alexandrowicz extended his historical studies deeper in time, to Kauṭilya's *Arthaśāstra*, originally from the first or second century CE, and to the reflections of Paulus Vladimiri/Paweł Włodkowic (1370–1435) on Christian-infidel relations: his later articles on Kauṭilya and on Vladimiri, as well as a key article on 'Doctrinal Aspects of the Universality of the Law of Nations', were all presented as working papers to the ASLP between 1962 and 1967.⁵⁹ He also completed research for his masterwork on the law of nations in the East Indies, which he later submitted for the Sydney degree of Doctor of Laws. 'Our author is a specimen of Marco Polo', one of his examiners wrote of the book. 'One can, as it were, scarcely credit some of his traveller's tales. But he alone has made the journey and . . . his will always remain the distinction of being first in the field.'⁶⁰

When Alexandrowicz retired from Sydney in 1967, he returned to London where he died from cancer on 26 September 1975.⁶¹ In his remaining years, he was attached to the British Institute of International and Comparative Law (1968–69) and latterly to the Centre of International Studies at Cambridge (1969–75). He acted as a 'poor man's lawyer' at the South London Christian Mission in Bermondsey and taught European Community law for the University of Notre Dame in London (1973–75).⁶² He also gathered research material on the evolution of Australia's external sovereignty before the First World War but never published on the subject.⁶³ His interest in treaty relations between European and non-European peoples

⁵⁸ Leonie Star, *Julius Stone: An Intellectual Life* (South Melbourne, 1992), pp. 119–20, 123–4, 130; Ivan A. Shearer, 'The Teaching of International Law in Australian Law Schools', *Adelaide Law Review*, 9 (1983), 76, 77; Upendra Baxi, email communication (22 March 2012). Stone inspired and led the seminar, 'Indian Traditions and the Rule of Law Among Nations' in Delhi (9–11 March 1960): *Indian Traditions and the Rule of Law Among Nations: Report of the All-India Seminar, 1960* ([n.p., n.d. [Delhi, 1960]). (Alexandrowicz did not attend.)

⁵⁹ Australian Society for Legal Philosophy, [Proceedings and Papers, 1960–1975], 3 vols. (Sydney, 1960–75); CHA, 'Doctrinal Aspects of the Universality of the Law of Nations', *British Year Book of International Law*, 37 (1961), 506–15 (ASLP.11) (pp. 168–79 below); CHA, 'Paulus Vladimiri' (ASLP.20); CHA, 'Kautilyan Principles and the Law of Nations', *British Year Book of International Law*, 41 (1965–66), 301–20 (ASLP/IVR/35) (pp. 35–52 below). On Alexandrowicz's reading of Kauṭilya, see also Upendra Baxi, 'Kautilyan Principles and the Law of Nations: A Comment' (1967) (ASLP/IVR/35a): <https://www.camdenia.edu/8133285/KAUTILYAN_PRINCIPLES_AND_THE_LAW_OF_NATIONS_A_COMMENT> last accessed 1 November 2016.

⁶⁰ Clive Parry, 'Report on two works entitled "An introduction to the history of the Law of Nations in the East Indies" (1967) and "World Economic Agencies, Law and Practice" (1962) submitted by Professor C. H. Alexandrowicz for the degree of LL.D. of the University of Sydney' (24 February 1969), Personnel (Staff) Files [Registrar], University of Sydney Archives.

⁶¹ CHA, death certificate (26 September 1975), GRO, September 1975, Croydon, 11, p. 1580.

⁶² CHA, 'Application Form', College of Wooster Archives; Thomas L. Shaffer, 'Report of the Dean, 1973–74', *Notre Dame Lawyer*, 50 (1974), 177 n. 38; *Notre Dame Report '73–'74*, 3, 4 (26 October 1973), 70; *Notre Dame Report '74–'75*, 4, 4 (25 October 1974), 98.

⁶³ CHA to Hedley Bull (22 October 1971) and Bull to CHA (28 January 1972), Records of the Australian Institute of International Affairs (National Library of Australia), MS 2821, Box 93: Series

also continued but its main focus shifted from Asia to Africa. In 1968, he gave another course of lectures at the Hague Academy on 'The Afro-Asian World and the Law of Nations,' which was later revised as his second major historical work, *The European-African Confrontation: A Study in Treaty Making* (1973).⁶⁴ Aside from other essays on treaty relations in Africa, many of Alexandrowicz's late publications spoke to pressing international concerns in these years: the expansion of the 'Family of Nations'; 'the appearance or re-appearance of Afro-Asian states'; the attitude of these 'new' states to existing international law; the need to welcome them into international society, unencumbered by the prejudices of positivism; and the revisions to international law demanded by the 'state explosion' of the period—from 51 states in 1945, to 125 in 1968, and c. 140 by 1974.⁶⁵

Equally striking in retrospect are some of the absences from Alexandrowicz's thought in this period. For example, he paid little attention to contemporary discussions of self-determination and first-generation human rights; he always avoided the still-novel terms 'Third World' (coined in 1952) and 'Non-Aligned Movement' (from 1961) to describe the blocs of states that most captured his attention, and he never discussed the Bandung Conference of Asian and African nations that met in Indonesia in April 1955.⁶⁶ His body of writing bears at best only an oblique relation to perhaps the major axis of global political division at the height of his career, the Cold War: only rarely did he admit that that the 'two Great Powers in the world today . . . had two different ideologies which found expression in their different conceptions of international law'.⁶⁷

Alexandrowicz focused his attention on law, not politics. He remained deeply interested in procedural questions of the formation of international law,⁶⁸ and the

3—Research Committee Chairmen's Correspondence Files, 1969–82 (Prof. C. H. Alexandrowicz, 1972–73).

⁶⁴ CHA, 'The Afro-Asian World and the Law of Nations (Historical Aspects)', *Recueil des Cours*, 123 (1968), 121–210; CHA, *The European-African Confrontation: A Study in Treaty Making* (Leiden, 1973). 'Le cours de M. Alexandrowicz . . . a beaucoup séduit ses auditeurs', reported the Secretary General of the Academy. 'Aussi savant historien et juriste que brillant professeur, M. Alexandrowicz a remporté un réel succès': 'Rapport du Secrétaire général sur les activités de l'Académie durant l'été 1968' (1968), Records of the Hague Academy of International Law (The Peace Palace, The Hague), uncatalogued.

⁶⁵ CHA, 'Introduction', in van der Molen, *Alberico Gentili and the Development of International Law*, p. viii (125 states); CHA, 'The New States and International Law', 226 (c. 140 states—in fact, there were 138 UN member states by 1974); CHA, 'Empirical and Doctrinal Positivism in International Law', *British Year Book of International Law*, 47 (1974–75), 286–9 (pp. 404, 349–53 below). There are currently (2016) 193 UN member states.

⁶⁶ Though other international lawyers at the time did, of course: Luis Eslava, Michael Fakhri and Vasuki Nesiiah, eds., *Bandung, Global History and International Law: Critical Pasts and Pending Futures* (Cambridge, forthcoming).

⁶⁷ 'International Law: Need for Clarifying Rules Stressed', *The Hindu* (13 February 1952), 7 (quoting CHA, 'International Law and the Use of Force in International Relations', British Council lecture, Madras, 12 February 1952); see also CHA, 'Comecon: The Soviet Retort to the Marshall Plan', *World Affairs*, 4 (1950), 35–47; CHA, 'The Soviet Conception of International Law and the Doctrine of Positivism' (12 December 1963), Australian Society for Legal Philosophy (ASLP 18a).

⁶⁸ See, for example, CHA, 'The Voting Procedure in the Security Council', *Justitia* (Hyderabad), 4 (1958), 21–5; CHA, *The Law-Making Functions of the Specialised Agencies of the United Nations* (Sydney, 1973).

ways in which it would have to be radically reconsidered in light of the proliferation of states. For example, he noted that the ‘weighted’ system of international law-making by which the major powers had a ‘decisive voice’, however acceptable in the homogeneous nineteenth-century context in which powerful and weak states had similar social and economic structures, was no longer appropriate given the diversity of participating states, particularly in their economic organization (free-market, communist, and the ‘compromise solution’ settled on by most developing states).⁶⁹ He celebrated the New States’ use of UN General Assembly procedures to challenge the body of nineteenth-century customary law, such as special protections for foreign investors, that the European powers had been using in the wake of decolonization to maintain their dominance and limit the economic autonomy of the New States. Yet his genius for perceiving analogy and continuity did not blind him to the differences between phases in the life of the family of nations. He was fully aware how the grip of the past might paralyse the present: history could confine as well as liberate.⁷⁰

As a scholar with a long-standing interest in international organizations and communication,⁷¹ Alexandrowicz had repeatedly stressed the importance of history for contemporary international problems: ‘Any current international issue may call for a thorough knowledge of international antecedents and legal precedent.’⁷² Central to his work across almost a quarter of a century were questions of continuity and discontinuity in international law that went back to his Polish roots and to his formative interest in canon law and its history. Were the so-called ‘new’ states of the post-War world in fact new or ‘old’—that is, restored or revenant—members of international society? Could sovereignty have endured under colonialism, to be recovered after it ended? Was it possible to go back behind a hierarchical and discriminatory positivist international legal order to return to ‘the vital foundations of the law of nations’ beneath ‘Bentham’s international law which continues to bear the seeds of its own crisis’?⁷³ To answer such questions, Alexandrowicz relied on the fundamentally historicist principle of intertemporal law (*lex retro non agit*): ‘the past deserves to be viewed in light of the law as it stood at the particular period under consideration. The law which matters for its proper understanding cannot be *ex post facto* law.’⁷⁴ Historical research was essential to establish a universal and non-discriminatory international law in his own time.

It was therefore fitting that some of Alexandrowicz’s very last publications addressed that ambivalent dialogue between history and the present. In two brief articles published in the British journal *Millennium* just before his death in 1975,

⁶⁹ CHA, ‘The New States and International Law’, 229–30 (pp. 408–9 below).

⁷⁰ CHA, ‘Paralysis Symptoms of the Treaty of Rome of 1958’, *Co-Existence*, 12 (1975), 13–19.

⁷¹ CHA, *International Economic Organisations*; CHA, *World Economic Agencies: Law and Practice* (London, 1962); CHA, *The Law of Global Communications* (New York, 1971).

⁷² CHA, ‘Introduction’, in CHA, ed., *Grotian Society Papers 1972: Studies in the History of the Law of Nations* (The Hague, 1972), p. vii.

⁷³ CHA, ‘Some Problems in the History of the Law of Nations in Asia’, *The Indian Year Book of International Affairs*, 12 (1963), 3 (p. 76 below).

⁷⁴ CHA, ‘G. F. de Martens on Asian Treaty Practice’, *The Indian Year Book of International Affairs*, 13, pt. II (1964), 77 (p. 193 below).

he voiced emphatic support for the political-legal strategy of using the New States' numerical majority in the UN General Assembly to revise international law. Declaring the early 1970s 'a turning point in the history of international law,' he perhaps over-optimistically looked forward to the prospect of the New States using their 'overwhelming majority' as a legal counterweight against the economic and political strength of the older powers in the context of the emergent (but ultimately short-lived) New International Economic Order.⁷⁵ In these articles, he was more explicit about the politics of international law than he had ever been; he more openly acknowledged the fault lines of international politics between capitalism and communism; he looked to the Latin American countries as having '[led] the way' in responding to European economic domination and legal manoeuvring.⁷⁶ These terse pieces suggest subtle but significant new directions that his thought might have taken had he lived longer. The principled commitment to intertemporal and transnational equity visible in these late essays, as throughout his wide-ranging oeuvre, makes Alexandrowicz the forgotten founder of the current critical movement to historicize international law.

Alexandrowicz believed that history was the cure for the oppressive weight of the past. From the early 1950s to the mid-1970s, he elaborated and refined a picture of world history since the fifteenth century in which, starting in the late eighteenth century but becoming definitive in the period after 1815, a universal, naturalist law of nations had given way to a distinctly 'un-universal positivism' in international law.⁷⁷ The major axes of difference between the two frameworks, in Alexandrowicz's account, were: the scope of the family of nations (universal *versus* European); the approach to civilizational, religious, and racial difference (non-discriminatory and multi-ideological *versus* arrogant and intolerant); and the theory of recognition of states each presupposed (declaratory *versus* constitutive). Here is perhaps his most succinct statement of what Alexandrowicz believed was lost in the transition from 'naturalism' to 'positivism' and from the law of nations to international law:

The universality of the Family of Nations, the multi-ideological character of the Law of Nations (its attitude towards ideological struggles such as the Christian-Islamic or the Catholic-Protestant conflicts), its non-discriminatory approach to civilisation, religion or race, declaratorism in respect of recognition as well as the doctrine of *bellum justum* were all functional qualities peculiar to the 'natural law' system within the classic law of nations.

The 'elimination' of naturalism and the triumph of positivism 'contributed to a system of international law which accepted colonial expansion and the institution

⁷⁵ CHA, 'The New States and International Law'; CHA, 'The Charter of Economic Rights and Duties of States', *Millennium*, 4 (1975), 72–4 (pp. 404–10, 411–13 below); Nils Gilman, 'The New International Economic Order: A Reintroduction', *Humanity*, 6 (2015), 1–15.

⁷⁶ CHA, 'The New States and International Law', 228 (p. 407 below).

⁷⁷ CHA, 'Some Problems in the History of the Law of Nations in Asia', 8 (p. 79 below). For an overview of Alexandrowicz's historical writings, see Mohammed Ashraf Ali Khan, 'The History of International Law: As Interpreted by Alexandrowicz' (M.Phil. thesis, Jawaharlal Nehru University, 2001).

of war as a mode of settlement of international conflicts.⁷⁸ That described the world in which Alexandrowicz had grown up as well as the one where he found himself in the 1960s and to which 'new' states claimed entry on their own terms.

International law's indifference to its own history, he charged, had cut the field off from its universalist roots in transregional exchanges in the early modern period. Such willed ignorance prevented any passage across the great barrier of the nineteenth century when 'the law of nations by some ideological cataclysm had ceased to be the universal law of all nations under which all States in all Continents could enjoy equal rights with other nations provided they had achieved Statehood and the necessary degree of civilisation.'⁷⁹ Alexandrowicz never explained the causes of that 'cataclysm': only towards the end of his life, when pressed at a seminar, did he suggest that the Industrial Revolution may have been to blame, as it changed the criteria of 'civilization' from cultural achievement to technological superiority.⁸⁰ Archival and textual research, arrayed against the fallacies of anachronism, presentism, and Eurocentrism, and conducted over a much longer *durée* than international lawyers' usual myopic perspective of a century or less, would be the means to bridge the abyss. Only then could the consequences of cataclysm be reversed for large parts of the world's population, particularly in Asia and Africa.⁸¹

Alexandrowicz's own turn to the history of the law of nations occurred in the context of debates around so-called 'New States'. That term most often referred to the post-colonial polities that emerged in the course of decolonization in the 1950s and 1960s and it appeared prominently in discussions among social scientists and lawyers of the time.⁸² In this respect, it is striking that Alexandrowicz's earliest direct engagement with the urgent contemporary questions raised by emergent statehood, as well as his first tentative use of history to justify the emergence of a new state as the bearer of continuous sovereignty, was not in relation to an Asian or African entity but rather with regard to the State of Israel. In a short article published in 1951, Alexandrowicz confronted the dilemma posed by the fact that the newly established State of Israel (1948) could apparently not claim sovereignty by either of the established routes for its acquisition, original title by occupation or derivative title

⁷⁸ CHA, 'New and Original States', 469 (p. 394 below). On the links among natural law, universalism, and 'declaratorism' (or the absence of constitutivism), see also CHA, *An Introduction to the Law of Nations in the East Indies*, p. 9.

⁷⁹ CHA, 'A Persian-Dutch Treaty in the Seventeenth Century', *The Indian Year Book of International Affairs*, 7 (1958), 206 (p. 156 below).

⁸⁰ CHA, 'The Partition of Africa by Treaty', in Kenneth Ingham, ed., *Foreign Relations of African States: Proceedings of the Twentyfifth Symposium of the Colston Research Society held in the University of Bristol, April 4th to 7th, 1973* (London, 1974), p. 156 (report on 'Discussion').

⁸¹ '[I]nternational lawyers would be well advised to look at their discipline not only in legal terms prevailing in the last fifty or a hundred years but with a readiness to go back to its roots and to contemplate the lessons of the past which often offer suitable patterns of solution for ever recurring situations': CHA, 'G. F. de Martens on Asian Treaty Practice', 76 (p. 193 below).

⁸² For example, see K. M. Panikkar, *The Afro-Asian States and their Problems* (London, 1959); Rupert Emerson, *From Empire to Nation: The Rise of Self-assertion of Asian and African Peoples* (Cambridge, Mass., 1960); J. J. G. Syatauw, *Some Newly Established Asian States and the Development of International Law* (The Hague, 1961); Michael Brecher, *The New States of Asia, a Political Analysis* (London, 1963); CHA, 'New and Original States: The Issue of Reversion to Sovereignty', *International Affairs*, 45 (1969), 465–80 (pp. 390–403 below); Hanna Bokor-Szegö, *New States and International Law*, trans.

transferred by another state. Meticulously tracing the post-Ottoman legal history of the Mandate of Palestine, he argued that although Israel's sovereignty was *sui generis*, it should be understood as continuous, as having passed from the Ottoman Empire to the Principal Allied Powers after the First World War, to the new State of Israel as the final legatee. The 'Family of Nations', represented by the United Nations, then recognized Israel's membership and thereby affirmed its sovereignty.⁸³ Significant here is his espousal of what he would later call the 'constitutive' theory of state recognition, as opposed to the earlier 'declaratory' procedure which acknowledges the identity of *de facto* and *de jure* statehood.⁸⁴

Because there had never been a 'legal vacuum' in the territory, Alexandrowicz argued, Israel could not claim rights through occupation. This meant that while Israel's effective control over the territory assigned to it by the United Nations General Assembly in November 1947 established its sovereignty there, there was doubt about its sovereignty over the land that the UN had designated for an independent Arab state. It also meant that while Israel was right to deny that it was a successor of the Mandatory Power's rights and duties in the former Palestine, since Britain as Mandatory Power had never held sovereignty, Israel had inherited other rights and duties under customary international law (including duties under private law to indemnify holders of certain concessions). He saw it as being in the interest of the new state that its 'present rights and duties should as far as possible be linked with the past.'⁸⁵ While Alexandrowicz's commitment to tracing continuities of sovereignty remained a central theme throughout his career, his use of history, his theory of recognition, and his belief in the obligation of new states to accept the duties prescribed by conventional international law all changed after his translation to Madras. From that post-colonial and semi-peripheral perspective, his historicism became more radical and thoroughgoing.

Throughout the rest of his career, Alexandrowicz would use historical argument to establish the legal equality of states that had been denied both under colonialism and under the post-colonial legal order. He saw the universality of the law of nations, repudiated by the European-dominated legal order, as a peremptory norm (*jus cogens*) of fundamental moral status, akin to the prohibitions on genocide and crimes against humanity.⁸⁶ To support that strong claim for equality, he set out to provide historical evidence that decolonizing societies, particularly the 'new Asian democracies,' were not in fact new to international society but were being restored after a colonial period that was not 'a starting point but ... an interlude only,' and a 'period ... of negligible duration.'⁸⁷

Sándor Simon (Budapest, 1970); R. P. Anand, *New States and International Law* (Delhi, 1972); F. C. Okoye, *International Law and the New African States* (London, 1972); CHA, 'The New States and International Law' (pp. 404–10 below).

⁸³ CHA, 'Israel in *Fieri*', *International Law Quarterly*, 4 (1951), 423–30 (pp. 384–9 below).

⁸⁴ CHA, 'The Theory of Recognition in *Fieri*', *British Year Book of International Law*, 34 (1958), 176–98 (pp. 354–74 below).

⁸⁵ CHA, 'Israel in *Fieri*', 426 (p. 387 below).

⁸⁶ CHA, 'New and Original States', 479; CHA, 'The New States and International Law', 226 (pp. 402, 409 below).

⁸⁷ CHA, 'Introduction', *The Indian Year Book of International Affairs*, 3 (1954), viii; CHA, 'Introduction', in Molen, *Alberico Gentili and the Development of International Law*, p. ix; CHA,

In Alexandrowicz's longer historical narrative, early ideological prohibitions on relations with infidels in medieval theology had relaxed under the pressures of European commercial expansion, beginning in the fourteenth century.⁸⁸ He regarded legal theory and treaty practice in the early modern period as mutually reinforcing: on his account, naturalist legal theorists took for granted that the law of nations was universally applicable and that treaty relations and a shared legal framework between European states and others were unproblematic. He saw the profusion of treaties between European states and others, especially Asian commercial states, as the most persuasive evidence for the force of this universalist conception. He then identified a radical shift at the end of the eighteenth century, in which ideological transformations in Europe preceded changes in state practice, and European writers declared the obsolescence of universalism even as European state agents continued to recognize Asian states as treaty partners. He maintained that 'limitations imposed on [the Asian states'] legal capacity by ideological change (without their participation in such change) could not produce such far reaching results as their reduction to a sort of extraneity—a status which implied a serious restriction of their position in international law.'⁸⁹ That is, their exclusion from the family of nations by the bulk of nineteenth-century legal treatises was illegitimate in legal as well as moral terms, because the Europeans did not possess the legal capacity unilaterally to expel states whose legal status they had once recognized in theory and in practice.⁹⁰

Alexandrowicz's key conceptual, historical, and normative arguments all turned on this distinction between a pre-nineteenth-century law of nations based on natural law and therefore universal, and the positivist, and exclusively European, conception of international law that originated around the turn of the nineteenth century. (It is notable in this regard that he persistently distinguished the 'law of nations' from 'international law' on normative rather than merely descriptive grounds.) That nineteenth-century view was the primary target of his criticism, both historical and normative. Although he was never quite precise about when the

The European-African Confrontation, p. 127. He considered the distinctive legal questions faced by states such as Ceylon, Madagascar, and Algeria that could lay claim to a 'reversion to sovereignty' on the grounds that they had once existed as independent states in CHA, 'New and Original States' (pp. 405–6 below); CHA, 'Les pays afro-asiatiques et le droit des nations: le problème du retour à la souveraineté', *Comptes rendus trimestriels des séances de l'Académie des sciences d'outre-mer*, 34 (1974), 629–37.

⁸⁸ CHA, *An Introduction to the Law of Nations in the East Indies*, pp. 83–96. For more recent accounts of treaty relations between Europeans and 'infidels', see Noel Malcolm, 'Alberico Gentili and the Ottomans', in Benedict Kingsbury and Benjamin Straumann, eds., *The Roman Foundations of the Law of Nations: Alberico Gentili and the Justice of Empire* (Oxford, 2010), pp. 127–45; Richard Tuck, 'Alliances with Infidels in the European Imperial Expansion', in Sankar Muthu, ed., *Empire and Modern Political Thought* (Cambridge, 2012), pp. 61–83.

⁸⁹ CHA, 'Some Problems of the History of the Law of Nations in Asia', 9 (p. 80 below).

⁹⁰ Alexandrowicz describes colonialism as 'certainly not of a legal nature': CHA, 'Some Problems of the History of the Law of Nations in Asia', 9 (p. 80 below); compare CHA, *An Introduction to the Law of Nations in the East Indies*, pp. 234–5. This is a claim directed at the jurists of his own day, who were deciding cases in part based on the treaty practices of European colonial powers, considering such questions as whether the British in India recognized Portugal's right to pass over their territory to reach its landlocked enclaves.

ideological cataclysm had first begun, whether in the late eighteenth century or the early nineteenth century, his often-repeated narrative was notable for failing ever to invoke 1648 as the starting point for an alleged ‘Westphalian’ international order based on mutually recognizing statehood.⁹¹ This aversion to the myth of 1648 was strategic rather than accidental. The irredeemably Eurocentric Westphalian story was irrelevant to his more radical counter-narrative of interpolity relations in global history as the encounter between regimes of sovereignty—Asian and European—rather than as the export or diffusion of a European model.⁹²

For Alexandrowicz, 1815 and not 1648 was the pivot around which world history turned, for it was from the Congress of Vienna and its aftermath that he dated the emergence of the arrogantly positivist vision of legal order Europe imposed on the rest of the world over the course of the nineteenth century.⁹³ 1815 also marked the moment when the last artificial vestige of Polish autonomy, the Kingdom of Poland, was created by the Congress of Vienna and then gradually subsumed into the Russian Empire. He was well aware of the homology between the two processes. He frequently compared the Mahratta Confederation with the Kingdom of Poland and the collapse of the Mughal Empire with the decline of the Holy Roman Empire, as the ‘disappearance of the two most powerful empires of the world had a decisive impact on the law of nations.’⁹⁴ The collapse of the Mughal Empire, in rendering China vulnerable to European force, ultimately led to the collapse of the Asian inter-state legal order that had ‘been part and parcel of a world-wide international structure.’⁹⁵ In Europe the declining entity was replaced by a group of independent powers, the Concert of Europe, that declared themselves bound by the ‘public law of Europe,’ thus establishing a new and fairly stable interpolity legal order and simultaneously declaring that law to have global validity. India and Poland were both victims of this aggressively self-centred *ius publicum Europaeum* in the nineteenth century.⁹⁶

⁹¹ The *locus classicus* is Leo Gross, ‘The Peace of Westphalia, 1648–1948’, *American Journal of International Law*, 42 (1948), 20–41.

⁹² Martti Koskenniemi, ‘Expanding Histories of International Law’, *American Journal of Legal History*, 56 (2016), 106.

⁹³ CHA, ‘Mogul Sovereignty and the Law of Nations’, *The Indian Year Book of International Affairs*, 4 (1955), 317–18 (p. 63 below); CHA, *An Introduction to the Law of Nations in the East Indies*, p. 11.

⁹⁴ CHA, ‘“Jus Gentium” and the Law of Nature in Asia’, *The Aryan Path*, 27 (1956), 19 (quoted); CHA, ‘Mogul Sovereignty and the Law of Nations’, 320–1, 323–4; CHA, ‘The Discriminatory Clause in South Asian Treaties in the Seventeenth and Eighteenth Centuries’, *The Indian Year Book of International Affairs*, 6 (1957), 141–2; CHA, ‘Paulus Vladimiri and the Development of the Coexistence of Christian and Non-Christian Countries’, 447 (pp. 75, 65–6, 67–8, 152, 60 below). Alexandrowicz frequently cited John Westlake, *Chapters on the Principles of International Law* (Cambridge, 1894), pp. 193–4, on this analogy.

⁹⁵ CHA, ‘Mogul Sovereignty and the Law of Nations’, 323–4 (p. 68 below).

⁹⁶ He also occasionally added Italy; for example, ‘Poland’s and Italy’s political agony hardly disturbed the peace of mind of any of the leading European statesmen, and the Asian powers were relegated to a vacuum from which (they were told) they could be readmitted to legal existence as candidates for membership in the family of nations’: CHA, ‘Some Problems in the History of the Law of Nations in Asia’, 7 (p. 79 below); CHA, *An Introduction to the Law of Nations in the East Indies*, p. 234.

Alexandrowicz's Polish background also explains why he sometimes antedated the beginnings of European positivism to the late eighteenth century: not because of events in Asia, but because this was the moment of the Polish partitions, when a once-proud state was dismembered as evidence of a 'European egocentric attitude' that began with policing the boundaries of Europe and found its most violent expression in South Asia and later in Africa.⁹⁷ Yet he found the period also to be pivotal because it was then that the evolution of a theory of recognition, which constituted an important aspect of the emergence of international law, occurred in the crucible of the struggles between the ideologies of legitimism and popular sovereignty around and following the French Revolution. He argued that before the late eighteenth century there was essentially no theory of state recognition, and therefore nothing approximating to modern international law. There was instead an 'inter-dynastic system' that was deferential to hereditary rulers but permitted some interference by outsiders in the internal affairs of a state, such as meddling in the selection of an elective monarch. His reconstruction of the emergence of a theory of recognition and its transformation from an implicitly declaratory theory to an explicitly constitutive one, from the early positivists of the eighteenth century through the invention of a constitutive theory of recognition by Henry Wheaton in the 1840s, is a *tour de force* of historical legal analysis. It exemplifies Alexandrowicz's instinct for significant conceptual puzzles as well as his skill at tracing lines of argument among once significant but later forgotten thinkers.⁹⁸

Alexandrowicz traced the ideological and doctrinal developments that led first to the development of an implicit declaratory theory of recognition, according to which it was argued that all existing states, whatever their regime, had a right under the law of nature to be treated as legal equals. The question of when and how third parties should recognize a rebelling province prompted an evolving response, whereby an initial belief in the importance of recognition by the mother country before others could recognize the rebels as a new state gradually gave way to a 'defactoist' view that third parties could, and should, recognize the new state when the mother country had definitively lost control over it but that their recognition was merely declaratory. The last decisive development came with Wheaton's claim, under the influence of Hegel, that a new state's *de facto* control did not alone confer perfect external sovereignty, which depended instead on its recognition by foreign powers. Unlike the majority of his historical work, his key essay on 'The Theory of Recognition *in Fieri*' (1959) traced developments within Europe and its settler colonies rather than relations with Asian or African states. As he would argue

⁹⁷ CHA, 'Doctrinal Aspects of the Universality of the Law of Nations', 510; compare CHA, 'G. F. de Martens on Asian Treaty Practice', 74 ('European egocentrism') (pp. 173, 191 below); CHA, *An Introduction to the Law of Nations in the East Indies*, p. 2 ('European egocentricity'). On the Polish partitions more generally, see Victor Kattan, 'To Consent or Revolt? European Public Law, the Three Partitions of Poland (1772, 1793, and 1795) and the Birth of National Self-Determination', *Journal of the History of International Law*, 17 (2015), 247–81.

⁹⁸ CHA, 'The Theory of Recognition *in Fieri*' (pp. 354–74 below).

elsewhere, however, the constitutive theory of sovereignty was a linchpin of the exclusivity and Eurocentrism of nineteenth-century international law.⁹⁹

What difference would it make that many Asian and African states could be shown to be successors to states whose sovereignty was once recognized by European powers? Alexandrowicz's strategy had the advantage of showing something like the hypocrisy or self-contradiction of European states in withholding a recognition they had once granted: the argument entailed an internal critique in which he showed that European states' policy of legal recognition fell short of their own erstwhile standards. At the same time, in setting out to make this case, Alexandrowicz arguably was entering the terms of debate set by the positivism whose agenda he was so eager to expose and refute. His argument, for instance, seems to concede something to the constitutive theory of recognition, in placing such weight on the recognition by other states of a state's sovereignty, despite his explicit avowal of the declaratory theory of sovereignty.

At stake in these debates were legal and political as well as broadly cultural judgments: about which treaties governed contested territorial and other state claims and how such treaties, sometimes centuries old, should be interpreted; about what was necessary to make good on the promise that all states had equal sovereignty; about whether decolonized states were obliged to accept a legal order dictated by Western powers as a condition for recognition; and more fundamentally about whether the nations of Asia and Africa were, as Leopold von Ranke along with many nineteenth-century European thinkers had claimed, 'without history'.¹⁰⁰ Alexandrowicz's claim that non-European states before the colonial 'interlude' had been active makers of international law defied the mainstream European view that the new states were gaining (even earning) admittance to an existing system to which they had always been outsiders and whose terms they were in no position to question or alter. This led to the charge that his desire to justify universalism and sovereign equality in the present had caused him to overstate reciprocity and mutual recognition in the past. As the British theorist of international relations Martin Wight noted in 1971, 'in order to correct an interpretation of the history of the states-system that was exaggerated (as well as being today politically unfashionable), [Alexandrowicz] exaggerates upon the other side.'¹⁰¹

Alexandrowicz's view may have been exaggerated, even utopian, but it was not historically or legally unfounded. For him, a signal moment in contemporary international law occurred in the 1960 decision of the ICJ in a dispute between India and Portugal over the territorial enclaves of Dadra and Nagar-Aveli, which had been ruled by Portugal until achieving *de facto* independence in 1954.¹⁰² Although the

⁹⁹ For example, CHA, 'The Partition of Africa by Treaty', in Ingham, ed., *Foreign Relations of African States*, p. 129 (p. 230 below).

¹⁰⁰ CHA, 'Empirical and Doctrinal Positivism in International Law', 286 (p. 349 below).

¹⁰¹ Martin Wight, 'The Origins of Our States-System: Geographical Limits' (1971), in Wight, *Systems of States*, ed. Hedley Bull (Leicester, 1977), pp. 117–28 (p. 118 quoted); Edward Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge, 2002), pp. 26–8.

¹⁰² ICJ, 'Case concerning Right of Passage over Indian Territory (Merits)', Judgment of 12 April 1960', *ICJ Reports* 1960: <<http://www.icj-cij.org/docket/files/32/4521.pdf>> last accessed 1 November 2016.

Court gave limited recognition to Portugal's claim to sovereignty over the enclaves, and although he favoured the dissenting opinion by the Argentinian Judge Lucio Moreno Quintana, Alexandrowicz regarded the opinion as a salutary legal development and as evidence of the contemporary legal validity of several of his most important historical claims. At stake for him in the ICJ judges' interpretation of the 1779 Maratha-Portuguese treaty that had granted title to the Portuguese were two points above all: first, the eighteenth-century Maratha state's international personality and membership in the Family of Nations; and second, the importance of interpreting treaties according to the legal standards the treaties themselves presupposed, rather than according to later principles of international law. The *Right of Passage* case affirmed the validity of early treaties between Europeans and Asian powers, the recognition of such treaties as binding by Europeans, their recognition of the sovereignty of their Asian treaty-partners, and the significance of attending to diverse perspectives in the determination of the meaning of a treaty. Alexandrowicz cited the case repeatedly in his historical essays as evidence of the contemporary legal significance of pre-positivist legal norms, and of an older 'universal' family of nations.¹⁰³

It was another major ICJ judgment that turned Alexandrowicz to the history of what he called the 'European-African confrontation'. In 1966, the Court decided in the *South West Africa Cases* that Ethiopia and Liberia did not have legal standing to challenge the conduct of South Africa, the mandatory power, in South West Africa (Namibia), including its policy of apartheid. At issue in the cases was the legal nature of the duty of governing countries in the Mandate system, according to Article 22 of the Covenant of the League of Nations, to govern in accordance with the 'sacred trust of civilization' to promote the wellbeing and development of the people under their 'tutelage'. Because the Court was evenly divided, the decision to dismiss the claims of Liberia and Ethiopia was made on the basis of the casting vote by the ICJ President, the Australian Sir Percy Spender; the seven dissenters wrote unusually extensive and wide-ranging dissents protesting that the Court's interpretation deprived the international community of any recourse against abuses of power by Mandatory states.¹⁰⁴ Alexandrowicz's own distinctively historical response to the cases was to challenge the Court's judgment that the 'sacred trust of

¹⁰³ CHA, *An Introduction to the History of the Law of Nations in the East Indies*, pp. 3–11; CHA, 'Doctrinal Aspects of the Universality of the Law of Nations', 512; CHA, 'G. F. de Martens on Asian Treaty Practice', 76; CHA, 'Le Droit des Nations aux Indes Orientales', *Annales. Histoire, Sciences Sociales*, 19 (1964), 872–3; CHA, 'New and Original States', 467–8; CHA, 'The Partition of Africa by Treaty', in Ingham, ed., *Foreign Relations of African States*, p. 130 (pp. 176, 192, 86–7, 392, 231 below). For a more recent assessment of the case and its significance, see Prabhakar Singh, 'India Before and After the *Right of Passage* Case', *Asian Journal of International Law*, 5 (2015), 176–208.

¹⁰⁴ ICJ, 'South West Africa (Liberia v. South Africa and Ethiopia v. South Africa), judgment of 18 July 1966', *ICJ Reports* 1966: <<http://www.icj-cij.org/docket/index.php?p1=3&p2=3&k=f2&case=47&code=lsa&p3=4>> last accessed 1 November 2016.

civilization' had no legal content outside the League of Nations Mandate system, by tracing the prominent place, in both nineteenth-century European treaties with Africans and multilateral European agreements about Africa, of claims about the duties of European states to use the powers they acquired for the benefit of the indigenous populations.¹⁰⁵

The implication of this longer history was that Europeans had assiduously relied on legal instruments to validate their territorial claims.¹⁰⁶ Alexandrowicz thus went to some lengths to show in his writings on Africa of the early 1970s not only that, before the nineteenth century, Europeans had concluded treaties with Africans, especially North Africans, on terms of equality and reciprocity (as he earlier argued they had in Asia), but also, and more importantly for the disputes of his day, that the nineteenth-century treaties by which African leaders ceded their rights over territory were bilateral instruments in which the Europeans recognized African rulers' sovereignty and international legal standing, and which they saw as constituting 'valid title in international law.' He read the partition of Africa as taking place first with a stage of protection treaties. He insisted on the 'legally binding form' of the treaties, the European states' recognition of the international legal standing of the African rulers with whom they concluded treaties, and even the basis of 'perfect reciprocity' on which some treaties were concluded (with Zanzibar and Uganda, for instance).¹⁰⁷

Although Alexandrowicz conceded that the protectorate stage was a 'transitory phase leading sooner or later to absorption,' and although his many examples make clear that the Europeans recognized African leaders' sovereignty only to enable them to cede sovereign rights to Europeans, it was important to him to show that 'Africa's entry into the Family of Nations' could be read as taking place not in a 'legal vacuum' but under conditions of legal recognition. He did not consider the objection that, as Antony Anghie has put it, the sovereignty of the African powers was 'artificially created' precisely so that it could then be ceded to Europeans: that

¹⁰⁵ Alexandrowicz saw his historical argument as a purely legal one that avoided the 'political point of view' so he did not, for instance, point out that the court was divided largely along geographical lines: CHA, 'The Juridical Expression of the Sacred Trust of Civilization', *American Journal of International Law*, 65 (1971), 159 (p. 346 below); CHA, *The European-African Confrontation*, pp. 113–15.

¹⁰⁶ CHA, 'The Juridical Expression of the Sacred Trust of Civilization', (p. 342 below).

¹⁰⁷ CHA, 'The Partition of Africa by Treaty', in Ingham, ed., *Foreign Relations of African States*, pp. 139–40, 156; CHA, 'The Role of German Treaty Making in the Partition of Africa', *The Indian Year Book of International Affairs*, 18, pt. II (1980), 188, 195 (pp. 243, 324, 329 below). See also Jörg Fisch, 'Africa as *Terra Nullius*: The Berlin Conference and International Law', in Stig Förster, Wolfgang J. Mommsen, and Ronald Robinson, eds., *Bismarck, Europe and Africa: The Berlin Africa Conference 1884–1885 and the Onset of Partition* (Oxford, 1988), pp. 347–75; Isabelle Surun, 'Une souveraineté à l'encre sympathique? Souveraineté autochtone et appropriations territoriales dans les traités franco-africains au XIXe siècle', *Annales. Histoire, Sciences Sociales*, 69 (2014), 313–48; Mieke van der Linden, *The Acquisition of Africa (1870–1914): The Nature of Nineteenth-Century International Law* (Oisterwijk, 2014); Mamadou Hébié, *Souveraineté territoriale par traité: Une étude des accords entre puissances coloniales et entités politiques locales* (Geneva, 2015).

‘sovereignty is a flexible instrument which readily lends itself to the powerful imperatives of the civilizing mission.’¹⁰⁸ In reply to concerns that the coercive nature of such treaties vitiated their status as bilateral or as legally valid, or that international law served as a mere handmaid of colonization, he insisted on their legal significance: ‘In most cases,’ he argued, ‘the scramble [for Africa] was one for legal titles in international law.’¹⁰⁹

The political stakes of Alexandrowicz’s intervention are complex. He aimed to restore to Africa a history of ‘civilisation and political organisation’ against those who would reduce nineteenth-century African history to a story of exclusively European agency.¹¹⁰ He sought to demonstrate to contemporary jurists that colonial-era agreements should not be considered binding on postcolonial successor states and to recover an emancipatory role for international law. He maintained that the colonial protectorate was ‘at best a political device’, since the European powers’ mutual agreement to accept one another’s outright annexation of their protectorates could not affect the validity of their prior treaties with African rulers. Thus, the ‘attempt to draw international law into the orbit of colonialism was ultimately not successful.’¹¹¹ But in arguing in this way that colonialism was a relatively brief ‘interlude’ without legal validity, he arguably drew an untenably sharp distinction between the legal and the political, one that stood in tension with his general indictment of nineteenth-century positivist international law as complicit with the European domination of Asia and Africa.¹¹²

The stark divide that Alexandrowicz drew between the nineteenth century and the earlier period gives a powerful shape to his narrative that served his project to recreate a non-discriminatory legal order but is also the source of some weaknesses of interpretation. For example, he did not acknowledge the degree to which a sense of moral superiority (partly religious and partly civilizational) already permeated much European thought on other parts of the world before 1800. He often cited Edmund Burke as exemplary of the inclusive posture he associated with

¹⁰⁸ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, 2005), pp. 104, 114.

¹⁰⁹ CHA, *The European-African Confrontation*, pp. 5, 12 (quoted), 62–83.

¹¹⁰ CHA, ‘The Role of German Treaty Making in the Partition of Africa’, *The Indian Year Book of International Affairs*, 18, pt. II (1980), 197 (p. 331 below). Similarly, his early call to combat the ‘vivisection of Asian reality’ by integrating historical scholarship with the study of contemporary political and economic problems was intended to restore a recognition of Asians’ agency in the past and of their traditions as political resources ‘independent of Western materialism and agnosticism’: CHA, ‘Introduction’, *Indian Year Book of International Affairs*, 3 (1954), vii.

¹¹¹ CHA, ‘The Partition of Africa by Treaty’, in Ingham, ed., *Foreign Relations of African States*, p. 154 (p. 257 below).

¹¹² Helen Kinsella, *The Image Before the Weapon: A Critical History of the Distinction Between Combatant and Civilian* (Ithaca, NY, 2011), pp. 55–6; compare CHA, ‘The New States and International Law’, 233 n. 16, on ‘the type of positivism which was running on parallel lines with colonialism in the nineteenth century’ (p. 410 n. 16 below).

pre-nineteenth-century naturalism, as one among 'a number of leading British statesmen' who believed the law of nations governed European relations with Asian states.¹¹³ However, Burke arguably was not representative of his age but rather highly unusual in both his explicit engagement with the question whether Asian states were members of the community governed by the law of nations and his emphatically affirmative answer.¹¹⁴

Likewise, Alexandrowicz admired the German legal and political theorist J. H. G. von Justi (perhaps now best known for his influence on Kant), for his critique of European abuses of the customary law of nations. Justi had argued that European traders exploited privileges granted to foreign merchants by Indian Ocean legal custom to establish military outposts and ultimately political supremacy in the region.¹¹⁵ But rather than recognizing the rarity of this view in European discourse, he cited corroborating passages from the abbé de Raynal's *Histoire des deux Indes* to claim that Justi's views were 'not isolated as far as public opinion in Europe was concerned.'¹¹⁶ While a number of eloquent and prominent writers in the eighteenth century did indeed voice powerful criticisms of European abuses of law and moral principle in commercial and imperial expansion, they cannot be said to have represented anything like the pre-nineteenth-century consensus Alexandrowicz's narrative suggests.

In this way, Alexandrowicz's narrative invoked a set of heroes and of villains: among his heroes are Vladimiri and Justi, who challenged European prejudices against Asian and other 'supposedly barbarous' governments and who wrote admiringly of Asian laws of warfare that he believed made it possible to conduct hostilities in a relatively humanitarian manner. Alexandrowicz proposed Vladimiri as an early exponent of 'progressive doctrine' on relations between Christians and non-Christians, one who stressed that the dominant European position refusing to recognize legal relations with infidels posed dangers of 'international lawlessness, anarchy and even genocide which might follow from an aggressive Christian power disregarding the factual statehood and rights of non-Christian communities.'¹¹⁷ Such a judgement, based on careful consideration of the historical context while also frankly anachronistic in its use of categories

¹¹³ CHA, 'The Discriminatory Clause in South Asian Treaties in the Seventeenth and Eighteenth Centuries', 142; see also CHA, 'Mogul Sovereignty and the Law of Nations', 323; CHA, 'G. F. de Martens on Asian Treaty Practice', 72 (pp. 152, 167, 189 below); CHA, *An Introduction to the Law of Nations in the East Indies*, pp. 21–3, 231.

¹¹⁴ See, for example, Burke's speech of 30 May 1794 in the closing of the impeachment trial of Warren Hastings: Edmund Burke, *The Writings and Speeches of Edmund Burke*, gen. ed. Paul Langford, 9 vols. (Oxford, 1981–97), VII, pp. 282–302. For discussion, see Jennifer Pitts, 'Empire and Legal Universalisms in the Eighteenth Century', *American Historical Review*, 117 (2012), 92–121.

¹¹⁵ Ulrich Adam, *The Political Economy of J. H. G. von Justi* (Bern, 2006).

¹¹⁶ CHA, 'A Treatise by J. H. G. Justi on Asian Government', *The Indian Year Book of International Affairs*, 9–10 (1960–61), 139 (p. 165 below).

¹¹⁷ CHA, 'Paulus Vladimiri and the Development of the Doctrine of the Coexistence of Christian and Non-Christian Countries', 443 (p. 55 below).

like genocide, is characteristic of Alexandrowicz's approach, as is his cautious speculation about the possible influence of the ideas he traces on later doctrinal developments.

Alexandrowicz's essay on Kautilyan principles is, similarly, at once historicizing and driven by a set of enduring normative commitments to a religiously ecumenical legal framework and respect for the sovereignty of weaker powers. He set out in this essay to show with some precision how East Asian principles of inter-state conduct may have influenced modern international law by shaping early modern treaty relations and customs between Indian states and European states and commercial agents. He concluded that the principles of Kauṭilya's *Arthasāstra* had become merely customary in relations among Indian states, and that it was the encounter with Europeans that drove Indian statesmen to articulate them as explicit principles. He speculated that Indian states' 'multi-ideological' legal framework (particularly pronounced in the Mughal empire after the reign of Akbar), their commitment to 'ties of solidarity' among polities, and their principle of respect for dependent states' sovereignty may have influenced the development of a secularized conception of the family of nations.¹¹⁸ He also sought evidence of influence of South Asian principles on Europeans in the writings of authors including Raynal and Justi who he argued seem to have been aware of Indian ideas about the separation of political and religious functions and about the rules for conduct in war.

By focusing on the doctrinal universalism of thinkers such as Grotius, Freitas, Wolff, and Vattel, Alexandrowicz overlooked or downplayed the features in their work, and in that of a broader tradition of European writing on relations with Asian states, that called into question their inclusion as full members in the community governed by the law of nations. Although he noted the ideological diversity of the earlier period, he was scouring that period for evidence for his claim of a non-discriminatory legal universalism and so overlooked differences of opinion among Europeans: particularly the belief, widespread though by no means universal at that time, in Europeans' civilizational superiority over Asians, Africans, and native Americans. Accounts of 'oriental despotism' make little appearance in his narrative.¹¹⁹ And he failed to see that what historians now call 'interpolity law' could generate conflict as well as cooperation.¹²⁰ Such shortcomings may be forgivable if we recall the prevailing assessment of the exoticism, inferiority, and normative irrelevance of extra-European legal orders by Alexandrowicz's contemporaries among historians of international law, most notably Wilhelm Grewe who strongly

¹¹⁸ CHA, 'Kautilyan Principles and the Law of Nations', 312, 318–19 (pp. 45, 51 below); Kauṭilya, *King, Governance, and Law in Ancient India: Kauṭilya's Arthasāstra*, trans. Patrick Olivelle (Oxford, 2013).

¹¹⁹ On which see Jennifer Pitts, *Boundaries of the International* (forthcoming), ch. 2.

¹²⁰ Lauren Benton and Adam Clulow, 'Legal Encounters and the Origins of Global Law', in Jerry H. Bentley, Sanjay Subrahmanyam, and Merry E. Wiesner-Hanks, eds., *The Cambridge World History*, VI, 2: *The Construction of a Global World, 1400–1800 CE: Patterns of Change* (Cambridge, 2015), pp. 80–100.

contested Alexandrowicz's account of the universalism of the pre-positivist law of nations.¹²¹

Equally striking is the absence of Latin America from Alexandrowicz's historical narratives. Beginning in the 1810s, the various Latin American polities were the first new or post-colonial states to be recognized as entering the international system in the nineteenth century, in the wake of the successful assertion of anti-colonial independence by the United States. (The independence of Haïti, declared in 1804, was much more hard-fought.)¹²² Latin America supplied the earliest challenges to the Eurocentrism and hierarchy of nineteenth-century international law, by lawyers such as the Argentinians Carlos Calvo and Luis Drago and the Brazilian Ruy Barbosa.¹²³ Latin American jurists continued up to the heyday of decolonization to intervene innovatively in debates over the legal implications of colonialism and its aftermath, as Alexandrowicz's own admiration for the dissenting opinion of the Argentinian jurist Lucio Moreno Quintana in the ICJ suggests. It is accordingly somewhat surprising that he seems to have had so little contact with or interest in historical or contemporary Latin American contributions to his subject except at the very end of his career.

The trajectory of the Iberian empires in the New World departed in some key respects from the central themes and narratives that Alexandrowicz developed in his work on Asia and Africa. Empires of territorial conquest from the start, they could not be said to have followed the path that he attributed to Europeans in Asia, in which they began as commercial agents fully prepared to recognize extra-European polities as legal counterparts and only later excluded non-Europeans from international law as their aspirations turned territorial. The new Latin American states could not be seen as returning to an international system of which they had once been members, as Asian and North African states could. And however subordinate their place in international politics and even, at times, under international law, these states had not been excluded in principle from the community of international law by nineteenth-century jurists but as European settler colonies were considered, as the major mid-nineteenth-century treatise by Henry Wheaton put it, participants in the 'public law of Europe, and of the American nations which have sprung from the European stock.'¹²⁴ Moreover, the Latin American states gained independence during exactly the period that Alexandrowicz considered international law's darkest

¹²¹ Wilhelm G. Grewe, 'Vom europäischen zum universellen Völkerrecht: Zur Frage der Revision des "europazentrischen" Bildes der Völkerrechtsgeschichte', *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 42 (1982), 449–79; Grewe, *The Epochs of International Law* (1984), trans. Michael Byers (Berlin, 2000), pp. 152, 465–6; Becker Lorca, *Mestizo International Law*, pp. 32–4; Jörn Axel Kämmerer and Paulina Starski, 'Imperial Colonialism in the Genesis of International Law—Anomaly or Time of Transition', *Journal of the History of International Law*, 19 (2017).

¹²² David Armitage, *The Declaration of Independence: A Global History* (Cambridge, Mass., 2007); Julia Gaffield, *Haitian Connections in the Atlantic World: Recognition after Revolution* (Chapel Hill, NC, 2015).

¹²³ Becker Lorca, *Mestizo International Law*, pp. 103–6, 152–60.

¹²⁴ Henry Wheaton, *Elements of International Law: With a Sketch of the History of the Science*, 2 vols. (London, 1836), I, p. 51.

time, when it was narrowing from a universal to a purely European enterprise under the influence of positivism.¹²⁵

Alexandrowicz's commitment to discovering a multi-ideological legal framework for transnational relations occasionally led him into overstatement. One of his claims in particular has not stood the test of time: that Asian norms had not merely intersected with those of European sovereigns but had also fundamentally shaped the development of the law of nations as Europeans conceived it. Alexandrowicz acknowledged the difficulty of tracing causation but pointed to the influence of Indian Ocean maritime traditions on Grotius's conception of *mare liberum* and on the law of fishing rights as candidates.¹²⁶ He anticipated by decades the recent burst of interest in Grotius's early writings on the affairs of the Dutch East India Company (VOC),¹²⁷ and his essay 'Freitas *Versus* Grotius' (1959) remains a rare and authoritative account of the Portuguese jurist Serafim de Freitas's official response on behalf of the Spanish crown to Grotius's *Mare Liberum* (1609).¹²⁸ For Alexandrowicz the key question raised by that controversy was whether these treatises were produced in a 'legal vacuum,' or whether there instead existed a legal framework, informed by regional state practice and 'express or implied legal traditions,' recognized by the participants in the Indian Ocean trade, European and Asian alike. He maintained that Grotius must have researched regional practices in the VOC archives and that his legal arguments were informed by local principles, and that on the key question of the sovereignty and legal equality of the Asian sovereigns, Grotius and Freitas were in agreement, though he attributed to Freitas a more robust, and legally justified, conception of their sovereign right to refrain from trade with Europeans or withdraw access to their territories.¹²⁹

More recent scholars have severely questioned this aspect of the 'Alexandrowicz thesis' on the grounds that Grotius himself knew little about the actual practices in the Indian Ocean arena and that he had his own domestic reasons, springing from the ideological needs of the VOC and from the circumstances of Dutch

¹²⁵ Mikulas Fabry, *Recognizing States: International Society and the Establishment of New States since 1776* (Oxford, 2010), stresses the importance of Latin American independence for the formation of modern theories of recognition and statehood.

¹²⁶ CHA, 'Grotius and India' (pp. 113–20 below); see also R. P. Anand, 'Maritime Practice in South-East Asia until 1600 A.D. and the Modern Law of the Sea', *International and Comparative Law Quarterly*, 30 (1981), 440–54; Anand, *Origin and Development of the Law of the Sea: History of International Law Revisited* (The Hague, 1983).

¹²⁷ Hugo Grotius, *Commentary on the Law of Prize and Booty* (1604), ed. Martine Julia van Ittersum (Indianapolis, 2006); Grotius, *The Free Sea* (1609), ed. David Armitage (Indianapolis, 2004); van Ittersum, *Profit and Principle: Hugo Grotius, Natural Rights Theories and the Rise of Dutch Power in the East Indies, 1595–1615* (Leiden, 2006); Eric Wilson, *The Savage Republic: De Indis of Hugo Grotius, Republicanism, and Dutch Hegemony within the Early Modern World-System (c. 1600–1619)* (Leiden, 2008); Peter Borschberg, *Hugo Grotius, the Portuguese and Free Trade in the East Indies* (Singapore, 2011).

¹²⁸ Serafim de Freitas, *De iusto imperio Lusitanorum asiatico* (Valladolid, 1625); on Freitas, see now Mónica Brito Vieira, 'Mare Liberum vs. Mare Clausum: Grotius, Freitas, and Selden's Debate on Dominion over the Seas', *Journal of the History of Ideas*, 64 (2003), 361–77; Anthony Pagden, *The Burdens of Empire: 1539 to the Present* (Cambridge, 2015), pp. 130–47.

¹²⁹ CHA, 'Freitas *Versus* Grotius', *British Year Book of International Law*, 35 (1959), 164–5 (pp. 123–4 below); CHA, *An Introduction to the Law of Nations in the East Indies*, pp. 41–82.

republicanism after the revolt from Spain, for promoting the freedom of the seas and espousing theories of divisible sovereignty.¹³⁰ It is less clear that Alexandrowicz thought that European treaties recognized Asian states as possessing equal sovereignty and sharing membership in a law-of-nations community or that practices in South and Southeast Asia were not derogatory to the sovereignty of non-European states. He also insisted, against nineteenth-century views and those of more recent scholars, that the so-called capitulations, agreements granting legal privileges to European merchant communities in the Ottoman Empire and elsewhere, did not establish the legal inferiority or compromise the sovereignty of the states granting such privileges.¹³¹ However, recent scholarship on early modern Eurasia has affirmed at least some ‘clear parallels with political practices across the region,’ in the process of re-examining questions Alexandrowicz had first raised regarding indigenous treaty-making, diplomacy, and legal consciousness.¹³²

Alexandrowicz was engaged in a fundamentally recuperative project. His aim was to loosen the conceptual and ideological grip of what he called positivism but could more broadly be called the nineteenth-century understanding of international law.¹³³ He deplored its ‘fallacy of projecting the present onto the past,’ particularly the error of assuming that nineteenth-century Europe’s economic and military supremacy, and consequent posture of cultural and legal superiority, had characterized their earlier relations with Asian states. He saw his own expansive vision for a more just, inclusive, and egalitarian international order presaged by

¹³⁰ C. G. Roelofsen, ‘The Sources of *Mare Liberum*: Contested Origins of the Doctrine of the Freedom of the Seas’, in W. P. Heere, ed., *International Law and its Sources: Liber Amicorum Maarten Bos* (Deventer, 1988), pp. 93–124; Borschberg, *Hugo Grotius, the Portuguese and Free Trade in the East Indies*, pp. 80–81, 109, 145 (‘The “Alexandrowicz thesis” ... cannot be sustained by any stretch of the imagination’); Eric Wilson, ‘The “Alexandrowicz Thesis” Revisited: Hugo Grotius, Divisible Sovereignty, and Private Avengers within the Indian Ocean World System’, in Ooi Keat Gin and Hoang Anh Tuan, eds., *Early Modern Southeast Asia, 1350–1800* (London, 2015), pp. 28–54.

¹³¹ CHA, *An Introduction to the Law of Nations in the East Indies*, pp. 97–128; CHA, ‘Some Problems of the History of the Law of Nations in Asia’, 10–11; CHA, ‘G. F. de Martens on Asian Treaty Practice’, 67; CHA, ‘A Treatise by J. H. G. Justi on Asian Government’, 137 (pp. 81–2, 186, 164 below). For more recent assessments of the capitulations see, for example, Feroz Ahmad, ‘Ottoman Perceptions of the Capitulations, 1800–1914’, *Journal of Islamic Studies*, 11 (2000), 1–20; Maurits H. van den Boogert, *The Capitulations and the Ottoman Legal System: Qadis, Consuls, and Beraths in the 18th Century* (Leiden, 2005); Turan Kayaoğlu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China* (Cambridge, 2010), pp. 104–48.

¹³² Adam Clulow, ‘The Art of Claiming: Possession and Resistance in Early Modern Asia’, *American Historical Review*, 121 (2016), 29; more generally, see Sanjay Subrahmanyam, *Courtly Encounters: Translating Courtliness and Violence in Early Modern Eurasia* (Cambridge, Mass., 2012); Saliha Belmessous, ed., *Native Claims: Indigenous Law Against Empire, 1500–1920* (Oxford, 2012); Belmessous, ed., *Empire by Treaty: Negotiating European Expansion, 1600–1900* (Oxford, 2014); Joan-Pau Rubiés, ‘Political Rationality and Cultural Distance in the European Embassies to Shah Abbas’, *Journal of Early Modern History*, 20 (2016), 351–89.

¹³³ Nineteenth-century proponents of natural law, or of a fusion of natural and positive law, such as Travers Twiss or James Lorimer, shared their contemporaries’ Eurocentrism and their exclusion of extra-European states from the ‘family of nations’: Twiss, *Two Introductory Lectures on the Science of International Law* (London, 1856), p. 49; Lorimer, *Institutes of the Law of Nations* (Edinburgh, 1884), pp. 98, 123; Andrew Fitzmaurice, *Sovereignty, Property and Empire, 1500–2000* (Cambridge, 2014), pp. 232, 276–84.

the naturalist and universalist conception of the law of nations he believed had distinguished the modern period through the end of the eighteenth century. This classical law of nations ‘was in essence not a mono-ideological system’;¹³⁴ instead, it ‘promoted universal intercourse in response to a social reality extending to the whole world,’ a process that accelerated in the nineteenth and twentieth centuries with the proliferation of new forms of interconnection and communication, in posts, telecommunications, and aviation. The advent of satellite technology in outer space even allowed an extraterrestrial escape from the constraints of merely ‘geocentric law’.¹³⁵

Alexandrowicz’s desire to establish equality in the present may have coloured his assumptions about equality in the past. His egalitarian project was progressive and redressive, premised on the creation, or the *re*-creation, of ‘horizontal’ transnational solidarities to combat the ‘vertical’ divisions fracturing international society.¹³⁶ Yet his vision was also somewhat utopian, based on the belief that international lawyers in particular could refine the norms that would restrain ‘power politicians’ and force them to ‘choose the path of peace’.¹³⁷ This antipathy to ‘power politics,’ his preference for ‘international society’ in the relations between states, and his scepticism that colonialism was a useful category of historical analysis, may have blinded him to the ways that power saturates law.¹³⁸ Alexandrowicz’s concern was more to expose the ‘fallacy’ of Eurocentric positivism as a legal doctrine—and thus to reveal its failure as law—than to explore how it operated as ideology.¹³⁹ He argued that positivists’ move to condemn the extra-European world to a legal vacuum ‘could hardly be considered realistic’: it represented a capitulation to ‘doctrinal trends’ rather than a sound legal argument, and the alternative account he proposed was both legally superior and ‘objective’.¹⁴⁰ He tended, in short, to suggest that his work could be

¹³⁴ CHA, *An Introduction to the Law of Nations in the East Indies*, p. 237.

¹³⁵ CHA, *The Law of Global Communications*, pp. 132, 25, 142 (‘The legal status of outer space is not geocentric’).

¹³⁶ CHA, ‘Vertical and Horizontal Divisions of the International Society’, *The Indian Year Book of International Affairs*, 1 (1952), 88–96.

¹³⁷ ‘International Law: The Need for Clarifying Rules Stressed’, *The Hindu* (13 February 1952), 7. Alexandrowicz’s rejection at this moment of ‘power politics’ and his faith in the restraining force of international law likely represent an implied critique of Georg Schwarzenberger’s pessimistically realist *Power Politics* (1941), which had just been reissued in a much expanded 2nd edition: Schwarzenberger, *Power Politics: A Study of International Society* (London, 1951).

¹³⁸ CHA, review of Robert Redslob, *Traité de Droit des Gens* (1950), *International Law Quarterly*, 4 (1951), 437 (on ‘Power Politics’ *versus* international integration); CHA, ‘The Quasi-Judicial Function in Recognition of States and Governments’, *American Journal of International Law*, 46 (1952), 631–40 (on ‘power politics’ *versus* ‘international society’); CHA, ‘Le Droit des Nations aux Indes Orientales: Aux XVI^e, XVII^e, XVIII^e siècles’, *Annales. Histoire, Sciences Sociales*, 19 (1964), 1084 (scepticism about ‘colonialism’) (pp. 375–84, 112 below).

¹³⁹ For example, ‘the proclamation of [the European positive law of nations] as universal without universal participation was bound to result in a *pars pro toto* fallacy’: CHA, ‘G. F. de Martens on Asian Treaty Practice’, 75 n. 27 (p. 191 n. 37 below).

¹⁴⁰ CHA, ‘Doctrinal Aspects of the Universality of the Law of Nations’, 515 (p. 178 below); ‘If the connections between the West and Asia are to be conceived *in objective terms* ...’: [CHA,] ‘Introduction’, *The Indian Year Book of International Affairs*, 3 (1954), viii (our emphasis).

historical and juridical without being political.¹⁴¹ Nonetheless, his consistent use of history as a critical solvent of prejudice, his commitment to a cosmopolitan law of nations, and his determination to provincialize Europe long before that move became reflexive still have the capacity to unsettle and inspire. As Alexandrowicz pointedly asked in a posthumously published essay: ‘are we to carry on with the outdated axioms of historians of international law still basing the *universal* international law, valid for all continents, on nothing but Western history?’¹⁴²

¹⁴¹ Contemporary proponents of critical legal studies, in contrast, stress law’s inextricability from politics; as Martti Koskenniemi writes, ‘[t]here is no space in international law that would ... not involve a “choice”—that would not be, in this sense, a politics of international law’: Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument. Reissue with New Epilogue* (Cambridge, 2005), pp. 589–96 (p. 596 quoted).

¹⁴² CHA, ‘The Role of German Treaty Making in the Partition of Africa’, 203 (Alexandrowicz’s emphasis) (p. 353 below).