Reflection/ Review

Winner Takes it all *or* How Did Arena of International Law Fail to Decolonize the World in Versailles?

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Abstract:
We are living in a time when there is no shortage of excuses to encroach on foreign territories. This article deals specifically with the political and legal justifications for encroachments on other peoples' territories during the Peace of Versailles and the later created Mandate system. It systematically shows how the socio-political changes at the end of the 19th century and the development of international law led to the maturation of the idea of sovereignty and how it affected the empires of the Great Powers. It then shows in detail how the liberal mindset in international law is used to justify new colonial achievements and the expansion of empires even after the end of the First World War.

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1. Introduction

This article will examine the relationship between imperialism and winning powers of First World War (WW1) and their desire to continue to govern an empire. The hypocrisy of the Entente Powers that article will look into is their realization needed a new moral, political and philosophical explanation for their new acquisition of the territory on which they were going to exercise "political control … over the effective sovereignty of other political societies" (Doyle, 1986). This article will show that the "new" mandate system they created is just a new tool for the same practices and how did arena of international law (lawyers that were building international public law) gave them necessary academic background to do so.

2. What is imperialism?

Before delving into intentions and consequences of imperialism, we must answer a core question: what is imperialism? Defining such a broad term is in no way easy as it may encompass various internal and international attitudes of states.
Doyle accordingly concludes that "… [e]mpires are relationships of political control imposed by some political societies over the effective sovereignty of other political societies. They include more than just formally annexed territories, but they encompass less than the sum of all forms of international inequality. Imperialism is the process of establishing and maintaining an empire" (Doyle, 1986).
The author therefore outlines an empire as the goal and imperialism as its function.

3. Liberal road to mandates

3.1. Positivists influence the international law

The arena of international law at the end of the 19th century was concerned with the universality of law. The imperialist moves and the expansion of European powers suddenly made relevant the question how international law should deal with the deprivation of sovereignty of another community. To paraphrase, what excuse will the European powers use when they subjugate peoples in Africa, Oceania and elsewhere? Such an argument, at least on the surface, must appear objective in order not to undermine the legitimacy of international law. The lawyers of positivists schools of the time proudly proclaimed how their approach to international law was the most legitimate, but they had to come to grips with their own idea of sovereignty. Positivism claims that the law itself is a product of the sovereign will and that the sovereign not merely administers and executes the law. How can then a sovereign entity simply declare authority over another sovereign entity without overpowering it in war? The only possible answer was that the natives of the targeted areas were simply declared unworthy of sovereignty. If there is no sovereignty, then there is nothing to challenge the supremacy of the European powers: the average international law scholar of the time could thus be described as "… the positivist jurist who basically resolves the issue by arguing that the sovereign state can do as it wishes with regard to the non-sovereign entity which lacks the legal personality to assert any legal opposition" (Anghie, 2005). In an academic atmosphere predominated by such mentality, it was necessary to define the qualities needed to acquire sovereignty. Here, the whole arena of international law resorted to the level of civilisation as the relevant threshold. The earlier naturalist international law that prevailed in the sixteenth and seventeenth centuries claimed that all peoples, whether European or not, were subject to a universal international law derived from human reason. In contrast, positivist international law made a distinction between civilized and non-civilized states and further argued that only the sovereign states that made up the civilized "family of nations" were subject to international law (Anghie, 2005).

3.2. Level of civilisation as a criteria of international law

As an example of the application of this idea, we will look at the work of the 19th century English international law theorist John Westlake. According to Westlake, an entity's legal capacity was predetermined by the level of civilisation it had acquired. Therefore, Westlake claimed that African tribes were unable to transfer sovereignty because they could not comprehend the idea of it (Westlake, 1894). This is just an example of a theoretical approach that international jurists have created to complete the system of classifying peoples according to their level of civilisation and have attributed rights to them in international law accordingly. Westlake proposed a native people's understanding of concepts as the relevant criteria to test their level of civilisation. The peoples would thus be awarded as many rights as their understanding of the concepts of such rights would warrant. As formulated by Westlake, "… we have here a clear apprehension of the principle that an uncivilized tribe can grant by treatsuch rights as it understands and exercises, but nothing more" (Westlake, 1894). Of course, we cannot fool ourselves: that was purely an attempt to create a coherent system of classification of the "natives." In reality, the concept of 'civilization' was used as a form of exclusion of non-Western values, of non-Western identity and even of legal personality of the peoples who were targets of imperialism. The test assessing their civilisational level was precisely as accurate as the "tester" wanted it to be. It had always been carried out by forces that were more highly evolved and were checking whether their "students" understood the concepts. Systemically, therefore, it was not a system that followed the elementary concepts of fairness and did not contribute to the assessment of the level of development of nations – regardless of whether this could ever be put forward as a legitimate criterion for the acquisition of rights under international law.

3.3. Level of civilisation as a justification for imperialism

Here we will examine the view of another great liberal legal theorist, A. V. Dicey. Dicey criticizes individuals who supported imperialism as a system founded on force, privilege, and enduring class inequality. The actual supremacy of law, which was regarded as a vital element of systematic justice, was considered as being in direct conflict with these principles. The inference is that imperialism founded on the former basis was fundamentally wrong and went against liberal ideals. This criticism is part of a larger discussion about imperialism's nature and legitimacy, as well as the function of the law and justice in the exercise of political power in the late nineteen century. Dicey thought that Britain's grip on the rule of law was the most significant achievement of civilization. Ability to transmit that achievement abroad justified British imperialism (Lino, 2018).

3.4. What is the mandate system?

In response to Article 119 of the Treaty of Versailles which required Germany to renounce its colonies, the League of Nations mandate system was established. This gave the victorious powers a legal justification for taking control of the colonial territories previously administered especially by Germany.

The Mandate System was established with the Article 22 of the covenant of the League of Nations 12 in 1920. The main objective of the Mandate System was to promote the political economic, and social development of the inhabitants of the Mandate Territories and to gradually prepare them for independence.

The idea was put forward by Jan Christiaan Smuts, a South African general and the country's Prime Minister. He designed it to expand authority over the strategically important and oil-rich former Ottoman Middle East. Smuts disagreed that captured German possessions in Africa and the Pacific should be subject to such global regulation (Pedersen, 2006). He called the people in these territories barbaric, and he was completely convinced that they are not able of managing a self-governed nation state (Pedersen, 2006).

Although the League of Nations' mandate system provided some tools for managing and safeguarding the people living there, its application was in reality found to be rather limited. In managing the territories, the powers in charge of a mandate had a lot of latitude and weren't necessarily obligated to fulfil their duties to the locals. Additionally, European

nations and League of Nations officials largely held the international control over the mandated territories, with the local populace having little influence over political development and decision-making.
The League of Nations' rationale was that the mandate system constituted a significant step towards the acceptance of the necessity for political autonomy and the development of colonial territory towards self-determination. This process as it will be later explained is called decolonization.

4. What is decolonization?

What should change that we could talk of a fundamentally decolonized approach of Imperial powers to international law? Decolonization is a social and political process that aims to dismantle the structures and systems of colonialism, which have historically oppressed and exploited colonized peoples. It seeks to undo the damage caused by colonization and to restore sovereignty, dignity, and self-determination to those who have been colonized. Decolonization demands an Indigenous framework and the placement of Indigenous land, Indigenous sovereignty, and Indigenous ways of thinking into the foreground.
In case of decolonizing arena of international law, the international law should be rethought and reorganized. It should liberate the legal systems that have historically been dominated by Western powers. The aim should be to re-establish the sovereignty and self-determination of colonized peoples and to challenge the Eurocentric nature of international law.

4.1. Mandate for Togoland

Recognizing and honouring the multiplicity of legal traditions and knowledge systems is one of the main objectives of the decolonization of international law. This entails recognising and changing the continuing effects and causes of colonialism and the way colonial power structures have been maintained through the international law. We will examine if any of the goals described above are met in the in the structure that was set up in the mandate for a former German colony Togo.

4.1.1. Natives do not gain sovereignty by being "uncivilised".

As seen in Article 9:
"The Mandatory Shall have full powers of administration and legislation in the area subject to the mandate. This arca shall be administered in accordance with the laws of the Mandatory as an integral part of his territory and subject to the above provisions." (United Nations Geneva, 1922).
The main element of decolonisation, which is supposed to be the establishment of a government of the people living in the territory, and other principles of self-determination, are clearly being eroded. Sovereignty as Bodin's concept of a supreme entity without limits has therefore remained in Europe. If we combine that with Article 22 of the Covenant of the league of nations: "… that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant." (The United Nations at Geneva, 1919) which is superior to the document that establishes the mandate for Togo, we can clearly see where the root cause lies in the complete removal of any possibility of even de facto sovereign decisions. They still justify colonialism with benign liberal ideas.

4.1.2. The rights are attributed in line with the understanding of European legal concepts

The pure Westlake approach itself is no longer detectable. It could hardly be said that the mandate system, at least legally speaking, denies legal personality to anyone or denies them rights because of a misunderstanding of mental concepts. Yet governance is still based on European concepts. As the article 2 says: "… the promotion to the utmost of the material and moral well-being and the social progress of its inhabitants." (United Nations Geneva, 1922)

The attitude towards "natives" is thus still based on European concepts of well-being and, especially, social progress. The inclusion of social progress within the list of tasks can only be understood as the idea of imposing western societal rules into the local communities of Togoland, especially considering the characteristic urge of French colonialism to assimilate indigenous inhabitants of colonised territories. This is clear exclusion of non- Western values. They are clearly missing from this agreement, and I cannot show them. I can only refer the reader to the whole document and the reader can see that there is no emphasis in the whole document on the values that would be important to the people of Togo (United Nations Geneva, 1922).

4.1.3. Self-determination

Self-determination is a principle that refers to the right of a group of people to determine their own political status and to be free from external domination. The League of Nations analysed the scope of the principle of self-determination and concluded that it was a vague and general principle that could not be considered a positive rule of the Law of Nations (Lewis, 1962). However, the principle evolved into a "right" to self-determination during the decolonization period of the 1960s-1970s before that, so in the time frame relative to us, we would expect that ideas connected to it would pop-up in a document like the mandate for Togo. But there is no such a thing in the in it (United Nations Geneva, 1922).

4.1.4. Use of military under Article 3

Text of the Article 3 says:
"The Mandatory shall not establish any military or naval bases, erect fortifications, or organize any native military force in the territory except for police purposes and for the defense of the territory." (United Nations Geneva, 1922).
We observe that there is an awareness of colonial atrocities and genocides and their causal link to the presence of a large amount of coercive organs. This provision really tries to prevent such excesses. Yet is it not rather hollowed out by the second paragraph of the same article: "However, it is understood that the troops thus raised shall be utilized, in the event of a general war, to repel an attack or for the defense of the territory outside of that which is subject to the mandate." (United Nations Geneva, 1922).
When, if not during a war, will troops be needed on the ground? And it is also up to the colonial power to decide whether a state of war exists, so it can easily use the army to suppress internal unrest, because it is defending itself against attack.
However, if we look at it in a completely cynical way, we realise that it is most probably again a question of maintaining the status quo between the superpowers, who wanted to prevent the other superpowers from gaining a strategic military advantage through one of the mandates, which is also clear from the systemic interpretation, since the only ones who can bring a case against the holder of a mandate within the League of Nations at that time are the other superpowers (The United Nations at Geneva, 1919), who will most probably act in accordance with their own interests as described above.

4.1.5. Classification of peoples as being more and less developed and rights are attributed to them accordingly

The Article 2233 of the Covenant of the League of Nations categorized the regions distributed among the mandatory authorities between 1919 and 1921 into three classes: "A" mandates, "B" mandates, and "C" mandates (Wempe, 2019a) Class A mandates included areas in the Near East that had been "liberated" from the Ottoman Empire, like Iraq and Syria. The Europeans in charge of the labelling thought this class of regulations to be »civilizationally advanced enough as to reasonably pursue the construction of independent, hopefully democratic, states in the near future« (Wempe, 2019b). German colonies in East Africa, Cameroon, and Togo made up the mandates of class B. The authors categorized these territories as being too underdeveloped to expect for quick autonomy and as needing to be under European "guidance" for the foreseeable future because of their sizable African populations. Additionally, Class B mandates were anticipated to keep trade open for all

prospective League members. Class C included the remaining German colonies in the Pacific and Southwest Africa. These lands were held by Japan and the British Dominions and were basically annexed (Pedersen, 2006).
As we have shown old imperialist ideas permeated the international law that established the mandate system and did not decolonize anything. To conclude let us say that League of Nations had no interest in creating a truly decolonized system, but that the reorganisation was merely a political bargain that gave the colonies and their people false hopes of progress. The League was really a structure designed for global governance, not global reformation. It was truly League to preserve Empires (Wempe , 2019a).

5. Conclusion

As a result of colonialism, the concept of civilisation and the moral need to advance civilization are still invoked to justify interventions in and control over other countries. The mandate system, which was advertised as a different method of combating colonialism, was a continuation of the same behaviours, and the fight for decolonization is still ongoing. Additionally, we may observe the employment of similar concepts in modern discourse, such as the Responsibility to Protect (R2P) principle, which asserts that the international community has a moral duty to step in when mass atrocities occur. Despite the apparent good intentions of this concept, it is frequently invoked to justify military intervention and regime change using the same rhetoric of civilized superiority as was prevalent during the colonial era. Considering this, it is crucial to analyse critically and question the underlying presumptions of how concepts of civilization and goodness are applied in international politics. Our responsibility is to make sure that the effects of colonialism do not continue to breed injustice, exploitation, and inequality in the world. We can only hope to create a more just and equitable society by acknowledging and tackling the lingering repercussions of colonialism.

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