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## Humanitarian intervention in the long nineteenth century

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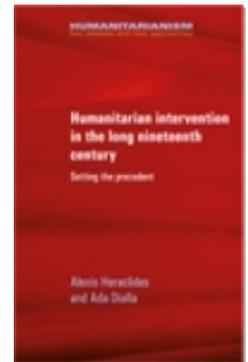
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## Eurocentrism, 'civilization' and the 'barbarians'

In the nineteenth century, the idea of European cultural and moral superiority was at its peak, with a presumed historical mission to civilize the rest of the world by expanding European influence and by colonization.<sup>1</sup> At the level of the self-defined Eurocentric international society and law, countries and peoples were distinguished as either 'civilized' or 'uncivilized' ('barbarians'), with Europe the basis of comparison, in what came to be known as the 'standard of civilization'.<sup>2</sup>

### **European international society and the 'standard of civilization'**

International society as it emerged from the Renaissance was the Christian society of states, despite the fact that the classic jurists from the sixteenth to the mid-eighteenth century (Vitoria, Suarez, Gentili, Grotius, Pufendorf, Wolff and Vattel)<sup>3</sup> had spoken in terms of universal society, though probably not in the sense that we use it today.<sup>4</sup> Las Casas and Montaigne and, in the eighteenth century, Montesquieu, Diderot, Rousseau, Smith, Kant and 'virtually all the thinkers of the Enlightenment'<sup>5</sup> referred to the existence of humanity as a whole, though they regarded European culture and civilization to be the forefront of progress.<sup>6</sup> It was in the nineteenth century that a (self-)conception of 'European society' replaced the one of 'Christian society' (though it still had a strong Christian component) and civilization.<sup>7</sup>

The novel concept of 'civilization' (as distinct from the civilized–barbarians dichotomy, which is ancient) had been coined in 1757 by Victor Mirabeau, in a treatise on population, and a decade later it was used by Ferguson in his *Essay on the History of Civil Society* (1767). 'Civilization', once unleashed, took on a life of its own, being incorporated into the self-concept of European-centred international society.<sup>8</sup>

Charles Alexandrowicz has argued that the shrinking of international society's scope to 'Eurocentrism' was due to the switch from natural law, which was universal, to positivism, with its emphasis on treaty law, sovereignty, international

personality and recognition (as constitutive of statehood) confined to the so-called 'civilized states' as original members of the 'family of nations'.<sup>9</sup> This is arguable, for many nineteenth century jurists remained partly naturalists<sup>10</sup> and, more crucially, the previous universality of international law under naturalism is debatable, given the foundation of Christianity as a 'limiting' and 'excluding concept'.<sup>11</sup> There may not be a proven causal correlation between legal positivism and Eurocentrism but there is an obvious correlation and interaction between them.<sup>12</sup> International law for most of the nineteenth century remained mainly the law between European states and those of European extraction, and treaties with states outside Europe (and America) were unequal, with the sovereignty and independence of the Ottoman Empire, China, Siam, Persia and Japan thereby limited.<sup>13</sup>

Civilization linked with progress 'became a scale by which the countries of the world were categorized into "civilized", barbarous and savage spheres',<sup>14</sup> a distinction adhered to by Montesquieu in *The Spirit of the Laws*,<sup>15</sup> which was common among Enlightenment thinkers from Wolff ('civilized' and 'barbarous' nations) to Smith and Kant ('civilized' and 'savage' nations).<sup>16</sup> There was also a fourth category in vogue, 'wild men'.<sup>17</sup> For nineteenth-century publicists (lawyers and other influential commentators on international affairs with a legal dimension), only 'civilized nations' qualified as full members of the family of nations, while 'barbarous nations' had less legal capacity and even less the 'savages'. Those in the 'barbarous sphere' enjoyed only partial recognition and inferior membership in the family of nations.<sup>18</sup> As for 'savages', the belief prevailed that they were 'vanishing', that they 'were doomed to fall by the wayside'.<sup>19</sup> As the esteemed British Liberal politician Charles Dilke had put it, '[t]he gradual extinction of inferior races is not only a law of nature, but a blessing to mankind'.<sup>20</sup>

In general, nineteenth-century European and American views ranged from racialist (differences due to stage of development, which could be overcome) to racist (innate unbridgeable differences) intertwined with the concept of civilization. The new concept of 'race', introduced in eighteenth-century anthropology by Georges Buffon and Johann Blumenbach, came to rank peoples as 'races' hierarchically. The races of mankind were innately unequal according to Arthur de Gobineau, with the 'Aryans' as the master race. Such racist views were lent greater credibility with the advent of social Darwinism.<sup>21</sup> The Asians, Africans and native Americans were regarded 'inferior races', with the so-called 'white race' superior intellectually, culturally and otherwise.<sup>22</sup>

The idea of progress, coupled with the standard of civilization, provided the European powers with a handy justification for their global expansion.<sup>23</sup> From the 1830s onwards, even several liberal thinkers, such as J. S. Mill, Alexis de Tocqueville, Giuseppe Mazzini and Henry Sidgwick, supported colonization in order to bring to these backward peoples the benefits of civilization.<sup>24</sup> This was also the case with most liberal international lawyers (see below). In the

eighteenth and early nineteenth century, the opposite had been the case: Wolff, Smith, Hume, Burke, Diderot, Voltaire, Kant, Bentham, Condorcet and Constant had been critical of the European imperialist project.<sup>25</sup>

Jennifer Pitts mentions only two alternative thinkers in nineteenth-century Britain critical of British imperialism: the linguist Henry Stanley and the polymath Francis Newman (brother of the famous cardinal Newman).<sup>26</sup> But the most widely known liberal critics of the British Empire were Richard Cobden, John Bright and Herbert Spencer.<sup>27</sup> In France, Gaston Jèze and Charles Solomon were critical of colonial rule but they did not suggest abandoning it, so long as it was not brutal.<sup>28</sup> It was at the turn of the century that critics of imperialism attained a critical mass, comprising mainly radicals, such as John A. Hobson in Britain<sup>29</sup> (who did not regard imperialism as necessary for capitalism), and Marxists, such as Lenin and Bukharin (who regarded imperialism necessary for capitalism in its last stage).<sup>30</sup>

But let us address the standard of civilization. From the 1860s until 1914 the law of 'civilized' states was the law between states that met the 'standards of civilization'<sup>31</sup> or 'standard of civilization'.<sup>32</sup> The 'standard' was not clearly defined and remained 'open-ended',<sup>33</sup> but there was a general understanding of its criteria. According to Gerrit Gong, they included the following: (1) safeguard of basic rights, such as life, dignity, property, religion; (2) organized bureaucracy and a capacity for military self-defence; (3) adherence to the rules of international law, including the laws of war; (4) diplomatic relations and communication; and (5) conformity with the norms and practices of 'civilized' society.<sup>34</sup> The minimum test according to Georg Schwarzenberger was a stable government capable of undertaking 'binding commitments under international law and whether it was able to and willing to protect adequately the life, liberty and property of foreigners'.<sup>35</sup> More generally, the level of civilization was judged with reference to religion, technological development, ascribed racial characteristics, economic capacity, political institutions, morality, intellectual competence, and sense of nationhood.<sup>36</sup>

Towards the end of the nineteenth century the religious and racial aspects lapsed and emphasis was put on the other 'minimum standards of civilization' and in this sense the standard opened the way for the inclusion of Japan and other non-Christian and non-European states to the 'family of nations' and international law.<sup>37</sup>

## The family of 'civilized nations': the views of publicists

### *The dominant view*

In the 1860s and 1870s international law was established as a distinct discipline, with the launching of the *Revue de droit international et de législation comparée* and the formation of the Institut de droit international, whose ultimate aim was for

international law to become the ‘juridical consciousness of the civilized world’ (see [chapter 4](#)).<sup>38</sup> From then on, international lawyers became increasingly influential in international affairs, at a time when international relations as a discipline did not exist, and thinking in the foreign policy establishment had a legal bent, in a deliberate quest for legality or legal rationalization, even on matters of war, territorial expansion and imperialism, where *Realpolitik* considerations dominated the scene.<sup>39</sup>

International law was a matter for the ‘civilized states’, which set the standard of entry into the ‘charmed circle’,<sup>40</sup> as put by Thomas Erskine Holland, the second Chichele Professor of Public International Law at Oxford University. According to William Edward Hall, relations between states were akin to a Victorian social club: admission was granted to a state if it enjoyed a sufficient degree of European culture for its internal rules to be ‘understood or recognized by countries differently civilised’.<sup>41</sup>

From the 1830s until the First World War, one can discern a spectrum among publicists, from exclusion to inclusion: (1) permanent exclusion; (2) acceptance of certain former ‘barbarous’ states but exclusion of Muslim countries; (3) grudging acceptance of former ‘uncivilized’ states once they attained the standard, but even then less than equality; (4) entry for all non-European states that met the standard and full membership; and (5) questioning the distinction or the standard. We will refer to the views of key publicists, all of them also influential in the humanitarian intervention debate (see [chapter 4](#)).

Among those presuming permanent exclusion, the US diplomat Henry Wheaton (the pioneer of international law in his country together with James Kent), in his widely read treatise, with eight editions up to 1866<sup>42</sup> (translated into French, Italian, Spanish as well as Chinese and Japanese), asserted that there is ‘no universal, immutable law of nations, binding upon the whole human race... Hence the international law of the civilized, Christian nations of Europe and America, is one thing; and that which governs the intercourse of the Mohammedan nations of the East with each other, and with Christians, is another and very different thing’.<sup>43</sup> It was ‘the international law of Christendom’ as ‘understood among civilized Christian nations’.<sup>44</sup>

Similar views were held by Wheaton’s near contemporary, August Wilhelm Heffter, of the University of Berlin, author of the most widely read international law treatise in Europe until the mid-nineteenth century (translated into many European languages, including Greek and Serbian).<sup>45</sup> Like Wheaton, he stressed Christianity as a basic feature in international law and relegated the relations of European states with non-Christian ones to the level of morality and politics rather than law.<sup>46</sup>

This overall trend continued even in the last decades of the nineteenth century. According to Henri Bonfils, one of the earliest French international lawyers, whose international law treatise ran into several editions after his death,<sup>47</sup>

international law was the product of European and Christian principles and it applied only to the civilized nations of European origin. He shared J. S. Mill's idea that international law cannot apply to barbarians, for they cannot reciprocate (see [chapter 5](#)). Interestingly, however, Bonfils did not subscribe to the domination of Europeans over non-Europeans and asserted that civilized states could not breach the law in relation to uncivilized nations.<sup>48</sup> Ernest Nys of the University of Brussels, a distinguished legal historian, divided the world into civilized, barbaric and savage peoples and argued that international law as a European creation could not be compared to the few agreements between the civilized states and barbarians or savages.<sup>49</sup>

The second category (exclusion of Muslim states) had several adherents. Travers Twiss of King's College London and Oxford University, a publicist active in the Institut and intimately involved in British colonial policy as a consultant of the Foreign Office,<sup>50</sup> toyed with the exclusion of 'barbarians' from international law, on the grounds that their 'minds' are incapable of reciprocity.<sup>51</sup> He concluded that reciprocity did not arise with Buddhist or Confucian nations, but only with Islamic nations, for their moral code, based on the Koran, prohibits relations of equality and reciprocity.<sup>52</sup>

The Scottish James Lorimer, the Edinburgh Professor of the Law of Nature and Nations, though 'eccentric'<sup>53</sup> and extreme even by the standards of the age, was highly regarded on the Continent and within the Institut. He was influenced by Gobineau's racist ideas<sup>54</sup> and widely known for his tripartite division of civilized–barbarians–savages.<sup>55</sup> Lorimer, like almost all of his contemporary publicists, was convinced that international law was Christian and Christianity the highest civilization. Oriental communities were akin to immature or irrational individuals deprived of legal capacity.<sup>56</sup> He believed that non-Christian states based on Hinduism and Buddhism could qualify as civilized states, but this was not the case with Muslim states, for they sought to become universal.<sup>57</sup>

From the 1860s onwards, the third category (entry into the coveted club, but with fewer rights and capabilities) wielded the widest acceptance and included many heavyweight publicists. The Swiss jurist Johann Caspar Bluntschli, professor at Heidelberg University, a revered figure in international law circles during his lifetime and one of the main driving forces of the Institut and the *Revue*<sup>58</sup> (he was also consulted by Bismarck), argued that international law is the creation of the Christian civilized world of Europe, mainly a product of the 'Germanic' and 'Romanic races'.<sup>59</sup> The superiority of the 'Aryan races', he claimed, was evident in the development of higher science, higher culture, in their respect for women and human rights and in statecraft.<sup>60</sup> The civilized nations of Europe and America were called upon to develop 'a common legal conscience of mankind'. Yet international law was destined to be extended to the entire globe and not limited to Christian nations, as seen with the admission of the 'Turkey'<sup>61</sup> to the 1856 Paris Congress.<sup>62</sup>

Robert Phillimore was the first major British jurist to write on international law, in the nineteenth century, a naturalist rather than a positivist, attached to Christian principles. He was a Member of Parliament, a High Court judge, held other influential posts, and was a close friend of William Gladstone, whom he influenced on matters of international politics, especially with regard to intervention on behalf of Christians in ‘Mohametan’ states like the Ottoman Empire.<sup>63</sup> Writing in 1854<sup>64</sup> he argued that ‘International Comity, like International Law, can only exist in the lowest degree among Independent States; in its next degree among Independent Civilized States, and in its highest degree among Independent Christian States.’<sup>65</sup> Christianity, according to Phillimore, was the highest form of civilization and Christian nations deserved a privileged position in international law.<sup>66</sup> However, non-Christian nations should not be refused recognition as members of the international community.<sup>67</sup>

Similar views were held at the time by the Italian jurist Pasquale Fiore, of Cremona and Naples universities, whose work was highly acclaimed in Europe during his lifetime, and translated into French and English.<sup>68</sup> Fiore, whose work anticipated the international law of human rights,<sup>69</sup> was of the view that the ultimate source of international law was the juridical conscience of European peoples.<sup>70</sup> Human society was ‘universal’ but only fully civilized states could be members of what he called the *Magna civitas*, the juridical community. He had doubts whether civilization could extend uniformly to all parts of the world.<sup>71</sup> Beyond Europe there was a clear distinction between the somewhat civilized cultures of Asia (such as ‘Turkey’ and the ‘great Oriental Empires’) and the less civilized peoples, perhaps barbarians, of Asia and Africa, who did not possess a stable political organization.<sup>72</sup>

F. F. Martens, of the University of St Petersburg (an ethnic Estonian), legal adviser to the Russian Foreign Ministry and the most acclaimed Russian international lawyer of his time, held similar views. International law was based on common values and reciprocity, hence could not apply to relations with ‘non-civilized peoples’, as pointed out by John Stuart Mill (see [chapter 5](#)), despite commercial relations with such states or treaties. Relations with such entities were based only on natural law and morality. However, he reluctantly accepted that international law applied to non-Christian peoples if they are prepared to accept the rational aims of humanity as elaborated by the civilized European states.<sup>73</sup>

The eminent Swiss jurist Alphonse Rivier, of Brussels University, Secretary-General of the Institut, argued (in the 1890s) that the sphere of international law extended to the family of nations that shared the Christian faith. He claimed that the law of nations could not function properly between Europeans and ‘inferior races’ for the gulf between them was similar to that between ancient Greeks and barbarians. However, the family was not closed but open, consisting of European nations as well as ‘Turkey’ (accepted in 1856). But other Asian states and Christian

Abyssinia were excluded from the so-called 'family of nations'.<sup>74</sup>

A decade later, John Westlake, one of the founders of the *Revue*, President of the Institut and third Whewell Professor of International Law at Cambridge University, held similar views. He argued that the international society comprises those states equipped with 'European civilization',<sup>75</sup> that is, all the European and American states as well as 'Turkey' and Japan. Some backward Christian countries, such as Abyssinia or Liberia, could not contribute to the development and enforcement of international law.<sup>76</sup> A country 'with an old and stable order of its own' might be considered 'civilized', as in the case of China or Japan, whose 'leading minds' were 'able to appreciate the necessities of an order different from theirs'.<sup>77</sup> He regarded Japan an equal member of the family of nations and Morocco, 'Turkey' Muscat, Persia, Siam and China as enjoying only parts of international law.<sup>78</sup>

Moving onto the fourth category (eventual acceptance by all), worth mentioning is the British jurist Thomas Erskine Holland, a pure positivist,<sup>79</sup> who posited that international law need not be restricted to Christian nations, for this was a 'question rather of Civilisation than Creed'.<sup>80</sup> For him, 'civilized states' were those states that were well organized and effective,<sup>81</sup> even if they were non-European.<sup>82</sup> Participation in international conferences, such as the Hague Peace Conferences, did not automatically confer 'civilized' status but was a move forward, bringing China, Persia and Siam to the 'outer courts of the charmed circle'.<sup>83</sup> He accepted that Japan had become a full member of the family of nations.<sup>84</sup>

Lassa Oppenheim, Westlake's successor at Cambridge University, one of the most authoritative international lawyers of his time and author of the most widely read international law treatise of the twentieth century (with nine editions up to 2005), defined international law as 'the body of customary and conventional rules which are considered legally binding by civilized States in their intercourse with each other'.<sup>85</sup> For a new member to be admitted 'into the circle of the Family of Nations', three conditions had to be met: (1) to be civilized and 'in constant intercourse with members of the Family of Nations', (2) expressly 'or tacitly consent to be bound for its future international conduct by the rules of International Law', and (3) states of 'the Family of Nations must expressly or tacitly consent to the reception of the new member'.<sup>86</sup> Following 'the reception of Turkey' in 1856, international law was no longer limited to Christian states, but the position of the Ottoman Empire remained 'anomalous, because her civilization was deemed to fall short of that of the Western States'.<sup>87</sup>

### *Contemporary criticism*

Very few publicists questioned the overall distinction between civilized and uncivilized countries. The earliest dissenting voices did not question the distinction

but rather forceful intervention in the name of civilization. Terenzio Mamiani, the father of the Italian school of international law and actively involved in Italian unification, warned (in 1859) that ‘to introduce civilization amongst barbarians, and to take them out of their savagery ... at the point of the spear, and by force of arms, as the Romans chose to do, was an uncivilized and tyrannical proceeding’.<sup>88</sup> His compatriot Giuseppe Carnazza Amari, of the University of Catania, pointed out that civilizing the barbarian peoples was an act of ‘high philanthropy’ but it should be accomplished by civilized means, as ‘imposing [civilization] by force is a barbarity greater than the one that we want to destroy’.<sup>89</sup> Similarly, Bonfils was against intervening to educate barbarians and savages: ‘For if in the name of humanity we claim to have the right to mingle in the affairs of Negro kings of Africa how could we contest such occurrences in Europe, as in the case of those who intended to invade France in 1793?’<sup>90</sup>

David Dudley Field, a US legal reformer and one of the founding members of the Institut, argued that a lack of neither Christianity nor ‘civilization’ supplied a justification for exclusion from international law. Referring to China he made the following pertinent point: ‘Can it be justly claimed that a nation which has maintained a regularly administered government, over hundreds of millions of human beings, for thousands of years ... is uncivilized?’<sup>91</sup>

The Swiss professor Joseph Hornung referred to acts of barbarity and inhumanity by various ‘civilized’ states (Russia, Britain, France, Spain, Portugal, Holland) against so-called ‘barbarian’ and ‘savage races’, and concluded that ‘all the Christian States have committed more or less the same crimes. In general they have proceeded towards other races by conquest, brutality and egoistical exploitation’.<sup>92</sup>

Another dissenting voice was that of Alexandre Mérignac, of Toulouse University. As he put it: ‘on the basis of what sign can they recognize civilized States and distinguish them from those that are not? ... seeing things from a higher level, if we do not limit civilization on the basis of this or the other criterion, which is more or less arbitrary we may arrive at the conclusion that perhaps these nations simply have a distinct civilization from our own, for in addition they, in turn, consider us barbarians’.<sup>93</sup>

It was only following the First World War, when the ‘civilized’ world clashed in the most uncivilized manner imaginable, that reference to ‘civilized states’ was largely abandoned. Now international lawyers and diplomats were ‘wary of the language of civilization’,<sup>94</sup> although it did continue to crop up in various texts of the inter-war period.<sup>95</sup> It found its echo in the trusteeship system of the League of Nations, with its notion of the ‘sacred trust of civilization’, and in the statute of the Permanent Court of International Justice of the inter-war period, and more embarrassingly in the statute of the International Court of Justice (1945), which still refers to ‘the general principles of law recognized by civilized nations’ (article 38, 1c).<sup>96</sup>

### The reactions of the outsiders: China and Japan

But what was the reaction of those on the receiving end of the 'standard of civilization'? These states, initially not accepted into the family of nations, were not participants in international conferences, were party to unequal treaties against their interests and suffered military interventions to boot. Three cases are well documented: China, Japan and the Ottoman Empire (the last is treated under its own heading in the next section of this chapter).

#### *China*

China's reaction and adaptation to the modern world were greatly delayed. In order to understand this inertia one must bear in mind that for thousands of years and well into the nineteenth century the Chinese held a Sinocentric concept of the world. They regarded their country as the centre of the world, the 'Middle Kingdom', the Celestial Empire under the 'Son of Heaven' (the Emperor) as a universal ruler, reigning over the entire world. The Middle Kingdom was the quintessential country of virtue, the embodiment of civilization, indeed the only civilized country, hence their sense of superiority, huge pride and utter contempt for foreigners, invariably regarded as 'barbarians' (akin to 'dogs and sheep'). Barbarian entities, namely the various small states near China, were, at best, vassals in a tributary system, and then only provided they showed obedience and their representatives performed the famous *kowtow* ritual (three kneelings and nine prostrations) before the Son of Heaven. Some authors have called this a distinct 'East Asian society' or 'family of nations' with China as the centre, though it was hardly an international society in which some form of equality reigned, but was more like the Roman Empire and its relations with its neighbours. From the late eighteenth century onwards, with China's first contacts (through trade) with Britain and other Western states, the ruling Chinese regarded Westerners as 'Western barbarians' and this remained the case past the mid-nineteenth century. The Son of Heaven ruled with the mandarins, officials trained in the Confucian classical tradition (in the famous Hanlin Academy), who knew almost nothing else, for all other knowledge or practical expertise was seen as being beneath their dignity. Trade and foreign affairs (called 'barbarian affairs', which included knowledge of other countries and peoples) were regarded as a waste of time, and demeaning.<sup>97</sup>

This mentality and sense of superiority, together with China's size, long history and self-sufficiency (intellectually and economically) and lack of knowledge or interest for the rest of the world, made China impervious to foreign influence and even to the much more intrusive Western influence until it was too late. The 'immobile empire' moved at tortoise pace when confronted with the West, which initially was not regarded for what it was, the greatest challenge and existential

threat ever faced by China, which called for quick reactions and far-reaching reforms in education, government and foreign policy.<sup>98</sup>

In this tragic meeting, or rather clash, of civilizations, one can discern three stages on the part of the Chinese ruling elite:

- (1) 1840–60. Following the Opium War of 1840–42, with Britain, China's defeat and the 'unequal' Treaty of Nanking, China ceded Hong Kong and opened five ports to British residence and trade; it was also made to accept a 'most favoured nation' clause for Britain. The resultant trauma and humiliation led to a 'closed-door foreign policy' in what were two 'lost decades' for the Chinese Empire. The defeat by a much smaller army was seen as resulting merely from the superior fire-power of the 'Western barbarians' instead of being seen as pointing to the urgent need for radical change in the name of survival. Thus, acquiring Western weapons and manipulating the 'Western barbarians' through trade were regarded as the ways to manage the West, along with the age-old Confucian strategy towards 'barbarians', known as the 'loose-rein policy'.<sup>99</sup>
- (2) 1860–80. After the 1857–60 War (with the invasion by Britain and France and huge shock of the burning of the Summer Palace in 1860), it dawned on the Chinese that the situation was unprecedented and 'unalterable'.<sup>100</sup> Thus the 'self-strengthening' policy was adopted, stressing knowledge of the West ('Western learning', though it made limited inroads). This new phase saw the formation of the equivalent of a foreign ministry (the *Tsungli Yamen*) under enlightened officials Prince Kung and Wen-hsiang, the formation of the Interpreters College (for learning foreign languages, again with limited inroads made), the sending of the first permanent diplomatic mission to London in 1877, under Kuo Sung-too (a Confucian scholar like the rest but forward-looking), followed by missions in Paris, Berlin, Madrid, St Petersburg, Washington and Tokyo, the translation of several international law treatises and the sending in the 1870s of the first student to study international law in Paris (Ma Chien-chung, who was to prove a valuable adviser on international affairs). China opened a new era in its relations with the West but continued to be torn between tradition and modernity.<sup>101</sup> Western learning, the initiatives by Prince Kung and the positive appraisal of Britain by Kuo in his reports in London faced heavy criticism from traditionalists on Confucian grounds and on the grounds of Chinese superiority.<sup>102</sup>
- (3) 1880–1900. According to Sinologist Immanuel C. Y. Hsü, by '1880 China had belatedly taken her place in the family of nations'<sup>103</sup> (this was not accepted by Western international lawyers, who placed the date later, at the turn of the century). What is more than clear is that Sinocentrism was now on the wane, the term 'barbarians' regarding the Westerners was dropped, 'Western learning' was now 'new learning', the Japanese Westernization example was

seen in a positive light and by the 1890s 'Western knowledge' had entered the school curricula (previously it had been scanty to non-existent). The defeat in the war with Japan (1894–95), a lesser power, was a great shock and, with continued foreign expansion in the region (by Britain, France, Russia, as well as Germany), China felt threatened with dismemberment, with 'being cut up like a melon'.<sup>104</sup> Yet despite the urgency of the situation, there was backlash on the part of conservative officials, including the reactionary mother of the Emperor (the Empress Dowager), who ran the state given the weakness of her son. This period ended dramatically with a tug of war for China's soul: on the one hand, there was the famous 'hundred days' when the Kuang-hsu Emperor asserted himself under the influence of the reformists, headed by scholar K'ang Yu-wa, who convinced him, for the good of the country and its survival, to take a series of major reforms, possibly including constitutional monarchy; and on the other, there was the Empress Dowager's coup, which deposed her son and ushered in the reactionary Boxer Rising (with its call to 'expel the barbarians').<sup>105</sup>

As regards international law, on the eve of the Opium War, in 1839, commissioner Lin Tse-hsu, in charge of abolishing the opium trade, had extracts from Vattel's treatise (see [chapter 2](#)), on a state's right to control foreign trade, translated into Chinese. He also sent two eloquent letters to Queen Victoria (which she never read), in which he pointed out that she would no doubt 'be bitterly aroused' if people from another country 'carried opium to England and seduced your people into buying and smoking it'.<sup>106</sup>

In the 1860s and 1870s, under the guidance of Kung, works of international law were translated into Chinese, starting with Wheaton's treatise and followed by those of Woolsey, Martens, Bluntschli and Hall (all of them translated by W. A. P. Martin, who initially wanted to translate Vattel's but found it too antiquated) as well as the *Manuel de lois de la guerre* of the Institut.<sup>107</sup> Martin, an American missionary and member of the Institut who lived in China for sixty years, taught international law and tried to present it as compatible with Confucian tradition. But his translations and teachings had limited influence prior to the 1890s. No doubt China's self-concept as the abode of civilization did not allow it to emulate Western-inspired international law, though it was obliged to do so in its relations with the Western powers. It was to incorporate international law and respect for the laws of war in its foreign behaviour mainly after the Sino-Japanese War of 1894–95.<sup>108</sup>

### *Japan*

Japan was isolated and autarkic for centuries, styling itself as an empire under the 'Son of Heaven of the country where the sun rises', implying that it was the

equal of China (under ‘the Son of Heaven of the country where the sun sets’), much to the Chinese Emperor’s anger, but, by and large, and despite Japan’s sense of superiority even in comparison with China, it fell under the Chinese ‘sphere of civilization’, together with Korea, Vietnam and other smaller countries of the region.<sup>109</sup>

From the early seventeenth century until Commodore Perry’s arrival in Japan in 1853, Japan, under the ruling Tokugawa warrior clan (with the Emperor powerless), had opted for a policy of complete seclusion (but for limited trade with Korea, China and the Dutch, and with no Japanese allowed to leave the country or foreigner to enter the country). When from Perry’s arrival onwards the Japanese were confronted with the West and obliged to sign unequal treaties (as in the case of other ‘uncivilized states’) their initial reaction to humiliation was to build Japan’s power and repel the ‘Western barbarians’.<sup>110</sup> But with the advent of Emperor Meiji (and the ‘restoration’ of imperial power), seclusion was officially abandoned and Japan declared its willingness to become a member of international society. Indeed, it was deemed desirable to become Westernized, comply with Western rules and practices and to follow the Western ‘standard of civilization’. Major intellectuals such as Fukuzawa Yukichi (the Enlightenment theorist) and Uchimura Kanzō (who introduced Christianity to Japan) were at the forefront of this process, together with the Meiji leaders. Students were sent to Europe and the US to study international law in a deliberate attempt to emulate the West. Various treatises on international law were translated into Japanese (far more than the number translated in China into Chinese), including those by Wheaton, Heffter, Bluntschli, Kent, Halleck and Hall, and were very influential (far more so than in China), making Japan better able to defend itself on the basis of Western international law.<sup>111</sup>

No doubt this overall pro-Western approach was stimulated by Japan’s apprehension that this was a one-way street: if it did not follow this course it was bound to lose its independence to the imperialist Western powers, which were spreading their colonies and influence across the world, including East Asia. The 1857–60 defeat of China in particular was a turning point for the Japanese.<sup>112</sup>

For Japan, the 1894–95 Sino-Japanese War provided the opportunity to join the ‘family of nations’. After an initial bad start with its onslaught on Port Arthur (with 3,000 dead civilians), the Japanese followed the laws of war, unlike the Chinese. Fukuzawa dubbed it ‘a war between civilization and barbarism’ and Uchimura claimed that the war was righteous, aimed at Korean independence.<sup>113</sup> Two international law professors, Ariga Nagao and Takashaki Sakue, were appointed to the Japanese army and navy to make sure that no transgressions occurred and they wrote two international law books on the war, Ariga in French and Takashaki in English, the latter with an introduction by Holland and a preface by Westlake. These two British authorities claimed that, apart from the Port Arthur incident, Japan had followed the laws of war and merited being regarded as ‘civilized’

and a member of the family of nations, a line taken by other European and US international lawyers.<sup>114</sup>

The acclaimed jurist and diplomat Kaneko Kentaro (a Harvard graduate), an associate of the Institut de droit international, in an article in the *Revue* argued that the Japanese laws and institutions were of as high a standard as those in Europe and America. He distinguished between the European standard of civilization as a mere European juridical device and the wider, more substantial concept of civilization as such, which had a long history in Japan,<sup>115</sup> concluding that the characteristic trait of the Japanese was that, when in contact with a worthy foreign civilization, they assimilated it, but this hardly amounted to simple imitation.<sup>116</sup>

In Japan, criticism of the standard was rare. One of the very few dissenting voices was international lawyer Tsurutaro Senga, who criticized the standard as unscientific, beyond jurisprudence and ideologically charged and untenable.<sup>117</sup>

The downside to Japan joining the 'family of nations' was that it started to act as an expansionist imperialist power, trying to emulate the Western imperialists, regarding itself as the only 'civilized country' in the region and its Asian neighbours fit to be under its hegemony.<sup>118</sup>

## The Ottomans

### *The European 'Other': the 'Turks'*

The Ottoman Empire was officially accepted as a member of the European family of nations, of international law ('the public law of Europe') as well as of the European Concert itself at the 1856 Congress of Paris, following the Crimean War, but was rarely treated as an equal.<sup>119</sup> This was the case above all because the Ottomans were for centuries the quintessential 'Other' in the history of the European state system.<sup>120</sup>

From the Renaissance onwards, the 'Turks' superseded the 'Saracens' as the European 'Other'. They were depicted initially as 'unbelievers' (infidels) and later as 'barbarians'.<sup>121</sup> When Constantinople fell in 1453 to the Ottomans, King Christian I of Denmark spoke of the 'grand Turk' as 'the beast rising out of the sea described in the Apocalypse'.<sup>122</sup> The 'Turks' were seen 'as a pernicious force sent by God to scourge Christendom from its sins'.<sup>123</sup> Yet in the next century an exception was made: the first alliance between a European state and the Ottoman Empire, upon French initiative, during the struggle between the Habsburg Charles V and Francis I of France, the latter concluding several treaties with Suleyman the Magnificent.<sup>124</sup> Moreover, in the course of the sixteenth and seventeenth century the image of the 'Turk' was more nuanced, with many European travellers praising the Ottomans for their administration, for promoting people on the basis of merit and not birth, as well as for their cleanliness and good manners.<sup>125</sup>

From the eighteenth century onwards, the negative image dominated the scene. For Edmund Burke, they were 'wholly Asiatic', 'worse than savages', people who 'despised' all Christians as infidels and wished to subdue and exterminate them.<sup>126</sup>

In the nineteenth century, Lorimer, expressing a widely held sentiment of his time, opined that 'the rights of civilization' should not have been extended to the 'Turks' in Paris in 1856, for 'bitter experience' had shown that they are incapable of performing their duties and 'possibly do not even belong to the progressive races of mankind',<sup>127</sup> adding that 'there is probably no other instance of a people that has been so long in contact with civilization without producing one single individual who has been distinguished in any intellectual pursuit. The art of war is the only art that they seem capable of acquiring'.<sup>128</sup>

Following the Congress of Vienna (1815), no less than five options were entertained by public figures regarding the fate of the Ottoman Empire and the so-called 'Eastern Question':<sup>129</sup> (1) upholding its territorial integrity; (2) dismemberment and division of the spoils by the great powers; (3) expulsion from Europe; (4) Russian conquest of part of the Empire, including the Straits and Constantinople; and (5) major reforms that would make the Ottoman state like the other modern 'civilized' European states.

The first option was advocated by, among others, Austrian Chancellor Clemens von Metternich and British Foreign Secretary Castlereagh in the 1820s, and in the 1870s by Prime Minister Benjamin Disraeli and his Foreign Secretary Lord Derby, though they hardly regarded the Ottoman Empire as an equal state.

The second option, dismemberment, suggested to be the ultimate aim or wish (or wishful thinking) by several personalities in Europe, and not least in Russia, was impractical, for it meant a general war, with unpredictable consequences. One of the few explicit presentations of this option by a public figure was in 1829, by the ultra-royalist Jules de Polignac, the last premier of King Charles X of France.<sup>130</sup>

The third possibility (expulsion from Europe) was supported across the political spectrum: in France by the writer and politician Chateaubriand, the French historian and statesman François Guizot (the dominant figure of the July Monarchy) and the writer and politician Alphonse de Lamartine, one of the founders of the French Second Republic; in Britain by Stratford Canning in the 1820s and many Liberals; in Prussia in the 1820s by the historian Friedrich Ancillon as Director of the Prussian Foreign Ministry; and in Russia in the 1820s by Ioannis Capodistrias, as co-Foreign Minister of Russia, and in the 1870s by Russian ambassador Nikolay Ignatiev, both advocates of the creation of independent Christian states in all the Balkans. This was also the approach of Giuseppe Mazzini.

The fourth option (Russian conquest) was entertained not only by Russian nationalists and pan-Slavists, such as Ivan Aksakov or Fiodor Dostoevsky in the 1870s, but also by Richard Cobden (see below). By and large, however, this option

was seen as unrealistic, even by the pan-Slavists who fantasized about capturing Constantinople.

For a time from 1839 until 1875, the Tanzimat reforms made the fifth option – reforming the Ottomans, based on the conviction that the Ottoman Empire could indeed be reformed and follow the European model – a distinct possibility.<sup>131</sup> This minority view was held by several Orientalists, including British diplomat and politician David Urquhart in the 1840s and 1850s and two pro-Ottoman British ambassadors to the Porte in the 1870s, Henry Elliot and Austen Henry Layard. However, the 1875–78 Balkan crisis and the Bulgarian atrocities were decisive in convincing most of the elite in Europe that the Ottoman Empire was perhaps 'unreformable'.<sup>132</sup>

Stratford Canning, the long-serving British ambassador to the Porte, is the first to have used the expression about driving the Sultan 'bags and baggage into the heart of Asia'.<sup>133</sup> Guizot maintained that the 'Turks will go out of Europe' and that that day 'would be a triumph for humanity'.<sup>134</sup>

The French diplomat and jurist Édouard Engelhardt, a frequent contributor to the *Revue* and acclaimed Ottomanist, argued that 'the Ottoman Porte finds itself in a situation of subordination vis-à-vis the continental powers', in a state of 'tutelage' and 'surveillance'.<sup>135</sup> As for the Tanzimat reforms, he concluded, in his two-volume study, that they had not transformed the Empire into a secular state. It remained under Islam's doctrine, 'primitive', 'fanatic', 'Asiatic', 'corrupt', 'inferior', 'despotic' and 'virtually at war' with the Christians and Europeans, whom they hated for their 'superiority'.<sup>136</sup>

Such views were not limited to conservatives but resonated among liberals, socialists and other progressive thinkers and public figures of the long nineteenth century.

A striking case is Cobden, the important Radical and Liberal politician and scathing critic of British imperial rule, who, in damning the 'Turks', went as far as supporting a Russian conquest of Constantinople. According to Cobden, the 'backwardness' of the 'Turks' was due: (1) to Islam, for it teaches its followers 'to despise all other fields of learning than the Koran';<sup>137</sup> (2) to 'a fierce, unmitigated, military despotism' under the Sultan, which 'enables him to sway the lives and destinies of the people, with an absoluteness greater than was ever enjoyed by any tyrant of ancient times';<sup>138</sup> (3) to their disdain for commerce and industry, and the forbidding of communication with the 'infidels';<sup>139</sup> and (4) to a distinctive characteristic of the 'Turkish' and 'Mongolian races', compared with the Russian and 'Sclavonic' (*sic*), 'the former unchanging and stationary, the latter progressing and imitative'.<sup>140</sup>

Gladstone, in his famous pamphlet *Bulgarian Horrors and the Question of the East* (1876), written as an impassioned reaction to the 1876 Bulgarian atrocities (see [chapter 8](#)), claimed that this instance of barbarity was not a question of 'Mahometanism simply'.<sup>141</sup>

but of Mahometanism compounded with the peculiar character of race. They [the 'Turks'] are not like the mild Mahometans of India, nor the chivalrous Saladins of Syria, nor the cultured Moors of Spain. They were, upon the whole, from the black day when they first entered Europe, the one great anti-human specimen of humanity. Wherever they went, a broad line of blood marked the track behind them, and, as far as their dominion reached, civilization disappeared from view. They represented everywhere government by force, as opposed to government by law.

This frame of mind continued until the eve of the First World War. Georges Scelle, for instance, one of the most innovative French international lawyers of the inter-war period (he discarded sovereignty and regarded individuals as the subjects of international law),<sup>142</sup> claimed (in 1911) that 'the Turks' were a 'living anachronism', that their 'particularly energetic methods of repression' were not used in modern times by European states, and that 'the Turk', well known for his massacres and plunders, had 'never more than camped in Europe'.<sup>143</sup>

David Lloyd George, the last Liberal Prime Minister of Britain, confided before the outbreak of the First World War that he was all for the expulsion of 'the Turk' from Europe, bag and baggage, adding that 'personally, I don't want him even to keep Constantinople'.<sup>144</sup>

### *The admission of the Ottoman Empire*

The admission of the Ottoman Empire to the 1856 Congress of Paris had been mainly political: keeping the Ottoman Empire formally outside was seen as counterproductive. There were obvious advantages to making it a titular member of the European legal structure and thus partaking in the stability of the continent.<sup>145</sup>

There was also the tricky question as to whether the Ottoman Empire was now an equal member of the Concert of Europe, actually the sixth European great power (with Italy later as the seventh).<sup>146</sup> The wording is more than clear ('et du concert Européens') and Turkish Ottomanist scholars claim that in 1856 the Ottoman Empire had indeed become 'a member of the European concert'.<sup>147</sup>

Yet for the next decades there was considerable disagreement about the Ottoman Empire's legal status.<sup>148</sup> Lorimer regarded the admission a major mistake, 'Turkey' a 'phantom state', its recognition a 'farce', and he urged the Europeans to conquer Constantinople and civilize the country.<sup>149</sup> Few jurists were so extreme but even moderates such as Twiss,<sup>150</sup> Martens, Westlake and Rivier regarded the admission premature and incomplete, given the capitulation system.<sup>151</sup>

For the great majority of European and US publicists and diplomats the Ottoman admission was provisional. It was to remain inside Europe conditionally, the condition being improving the living conditions of the Christians in the Ottoman Empire.<sup>152</sup> The 1856 Treaty of Paris also referred to respect for the

independence and territorial integrity of the Ottoman Empire by the signatory states. Yet after 1856, interventions in the Ottoman Empire increased rather than diminished, on humanitarian or other grounds. Indeed, the 'maltreatment of Christian minorities' provided 'an excuse for foreign intervention in Ottoman affairs' and such deficiencies in 'civilization' limited the Ottoman Empire's ability to participate in the European international system as a full legal personality.<sup>153</sup>

### *The Ottoman response*

To begin with, the universalist Islam-centred approach during the Ottoman golden age (from 1453 until the end of the seventeenth century) left little ground for international legal relations among equals. But with the Empire's decline the Ottoman rulers had grudgingly to accept their inferior position, at least technologically and militarily, and the need for reforms, starting in the reigns of sultans Selim III (1789–1807) and Mahmud II (1808–39).

The Ottoman reaction to the nineteenth-century humanitarian interventions and other intrusions in the Empire's internal affairs warrants a separate study. One can approach this theme, which has wider ramifications, by delving into the Ottoman archives and by examining what has been written by present Turkish and other specialists on the Ottoman Empire's troubled relations with Europe. On both counts, the overall thrust is that the European powers were biased, anti-Ottoman and, according to modern scholars, Orientalist. Moreover, the massacres committed by the Ottomans were grossly exaggerated, while those committed by the Christians were downplayed or even justified, and there was no concern whatsoever for the plight of the Muslims at the hands of the Christian insurgents.<sup>154</sup>

Here we will limit ourselves to a few cursory remarks on the official Ottoman response and on the stance of the Ottoman opposition.

When intervention was afoot, the attitude of the Porte was, at times, one of rejection and outrage, as we will see in the Greek case of great power involvement in 1821–32 ([chapter 6](#)) and with the Balkan uprisings of 1876–78 ([chapter 9](#)), or, at other times, one of bending with the wind, as we will see in the case of the Lebanon/Syria crisis of 1860–61 ([chapter 7](#)). These two contrasting postures correspond to the reigns of Mahmud II and Abdulhamid II, with their haughty reaction, which was counterproductive for the Ottoman Empire, and Abdulmecid, who was the most reformist Sultan of the nineteenth century and who followed a careful approach vis-à-vis the European great powers.

Special reference is due to the Tanzimat reforms, which commenced in 1839, the very year that Abdulmecid succeeded his father, Mahmud II, as sultan. These reforms started with the 1839 Rose Chamber Edict and the process lasted nearly four decades; they were headed by committed reformist statesmen, in particular by Mustafa Reshid Pasha, Mehmed Emin Ali Pasha, Mehmed Fuad Pasha and

Ahmed Shefik Midhat Pasha, as Foreign Ministers and Grand Viziers, until 1877. The aim was to render the Ottoman state modern, more effective and more legitimate to its subjects, not least to its non-Muslim minorities, but above all the aimed was to save the Empire from collapse, by not permitting further external meddling in its domestic affairs.<sup>155</sup> Presumably, in an Ottoman Empire where equality and the rule of law reigned – where previously all were either *reaya* (flock) or *kul* (servants-slaves of the Sultan) – there would be fewer pretexts for foreign admixture. If European interference was threatened it could be dealt with more convincingly by the Porte as unwarranted. One of the aims of the reforms from the start was also Ottoman accession to the Concert of Europe.<sup>156</sup>

Under Abdulmecid, several Ottoman officials, some of whom, like Mehmed Fuad Pasha (Foreign Minister and Grand Vizier), had studied in Europe and were proficient in international law, were aware of the humanitarian intervention discourse in Europe and tried to adjust the policy of the Empire accordingly. European diplomacy was entrusted to Ottoman diplomats, many of them Ottoman Greeks, trained as lawyers in Western Europe, such as John Aristarchis and Constantine Mousouros (who served as Ottoman ambassador in London for thirty-five years) and Alexander Karatheodori Pasha (under-secretary at the Foreign Ministry and briefly Foreign Minister in 1878).<sup>157</sup>

The other side of the coin is the stance of the Ottoman opposition, namely the ‘Young Turks’ (as they were known in Europe), headed by the Committee of Union and Progress (CUP) in exile (mainly in Paris, Geneva, Cairo and in various British cities), whose avowed aim was the overthrow of absolutism and the formation of a democratic and modern Ottoman Empire. The CUP in exile was not limited to educated radical young men who could not stand Abdulhamid’s Islamist turn and onslaught against all forms of opposition, but came to include some major high-ranking Ottoman officials, such as Murad Bey (briefly the main figure of the CUP in exile), Ismail Kemal Bey, Basil Mousouros Gkikis (the leader of the Ottoman Greek Young Turks) and none other than the Sultan’s brother-in-law, Damad Mahmud Pasha, and his two sons, Princes Sabahaddin Bey and Lutfullah Bey.<sup>158</sup>

With the advent of the twentieth century the liberal wing of the Young Turks was headed by Sabahaddin, who was close to Greek and Armenian Young Turks. He advocated foreign armed intervention, mainly on the part of Britain and France, the ‘liberal great powers’ as he called them, in order to overturn Abdulhamid’s authoritarian rule. This foreign intervention would allow the liberal Ottomans to address the Armenian plight and bring about a modern, liberal, multi-ethnic, quasi-federal Ottoman state. This was known as the majority view of the Young Turks, though it was in the ascendancy for only a brief period. And there was the minority view (soon to become the dominant view), headed by the conservatives and would-be nationalists under Ahmed Rıza, who opposed any notion of European armed intervention.<sup>159</sup>

At the First Congress of Ottoman Opposition, held in Paris in February 1902, Sabahaddin urged the acceptance of 'the benevolent mediation of the Great Powers' in order 'to execute the terms of the treaties, and to bring force to bear against the present absolutist regime that rules against the general will in our fatherland'.<sup>160</sup> He called for intervention on behalf of all 'Ottoman nations' (including the Ottoman Greeks, the Ottoman Armenians and the Ottoman Jews).<sup>161</sup> When the question was put to him whether the intervention was to be military, Sabahaddin's response was 'How many times have [the great powers] intervened in our domestic affairs, how many times even have parts of our country been taken away? Why do we not want to transform these interventions, which most of the time took place without even a military action, into one favoring our own interests?'<sup>162</sup> Rıza retorted that 'every nation is free to conduct its domestic affairs in conformance to its own will'; foreign interventions in the affairs of the Ottoman Empire had always taken place in order to advance the interests of those intervening; seeking European intervention amounted to accepting 'our inability and impotence'; and if Europe intervened it would be to advance its own 'material interest' and any gains for 'us' would be far less than the losses; moreover, calls for intervention would bring about malign Russian intervention.<sup>163</sup>

The end result of the debate was a compromise formula calling the great powers for *concours morale*, taken from a wording used by the reformist Grand Vizier Midhat in the 1870s. At the Second Congress of Ottoman Opposition, in Paris in 1907, with the conservatives under Rıza now the majority, the use of armed force to topple the Addulhamid regime was approved but it was to be achieved without foreign assistance.<sup>164</sup>

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