

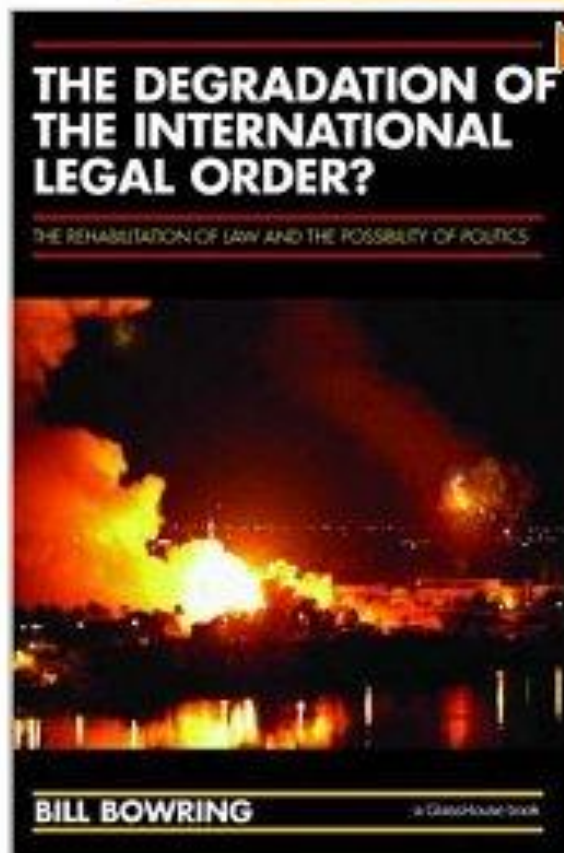


TWAIL
CAPITALISM AND THE COMMON GOOD
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University of Oregon School of Law
Eugene, Oregon

Bill Bowring

Marx, Lenin, Pashukanis and Shivji on Self-Determination

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Self-determination today

- The right of peoples to self-determination –
- Common Art. 1 to 1966 Covenants
- 1970 – Declaration on Principles of International Law
- East Timor Case 1995
- Palestine Wall Advisory Opinion 2004
- It is a right *erga omnes*
- How did this come about?
- **The originator was NOT Woodrow Wilson!**
What is the ‘symbolic capital’, the constantly re-ignited content of this history?



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Self-determination today

- Palestinians
- Kurds
- Basques
- Irish
- Tamils
- Russia
 - Chechens
 - Tatars
 - Circassians
 - Buryats
 - Indigenous peoples
- Africa – indigenous and other peoples
- Latin America – my colleague Oscar Guardiola-Rivera *What if Latin America Ruled the World?*



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What is Capital?

- “Capitalism” is, perhaps, an ideology or at best a description – there is a “capitalist system”
- What we are concerned with is **Capital** – “a case where for good material reasons an objective reality has the shape of an ideality” (Arthur 2004, 9)
- “Capital must transform use-values, and for that it needs labour, which remains capital’s “other”.
- “The value form is the characteristic social form of commodity capitalist relations.” (11-12)
- “... value is an unnatural form that clings, vampire-like, to labour and feeds off it.” (157) - **valorisation**



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What is Imperialism? Lenin (1917)

- we are living in a peculiar epoch of world colonial policy, which is most closely connected with the “latest stage in the development of capitalism”, with finance capital.
- For this reason, it is essential... to ascertain as exactly as possible what distinguishes this epoch from those preceding it, and what the present situation is.
- In the first place, two questions of fact arise here: is an intensification of colonial policy, a sharpening of the struggle for colonies, observed precisely in the epoch of finance capital? And how, in this respect, is the world divided at the present time?
- The more capitalism is developed, the more strongly the shortage of raw materials is felt, the more intense the competition and the hunt for sources of raw materials throughout the whole world, the more desperate the struggle for the acquisition of colonies. — **the new “race for Africa today”?**



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What is Imperialism? Lenin (1917)

- To the numerous “old” motives of colonial policy, finance capital has added the struggle for the sources of raw materials, for the export of capital.... economic territory in general.
- When the colonies of the European powers, for instance, comprised only one-tenth of the territory of Africa (as was the case in 1876), colonial policy was able to develop—by methods other than those of monopoly—by the “free grabbing” of territories, so to speak.
- But when nine-tenths of Africa had been seized (by 1900), when the whole world had been divided up, there was inevitably ushered in the era of monopoly possession of colonies and, consequently, of particularly intense struggle for the division and the redivision of the world.



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What was international law under Imperialism?

(Cassese 1986, 24)

- States enjoyed complete freedom as regards the conduct of their foreign policy
- They were authorised by the legal order to use force as much as they wished and on any grounds they chose (Art 2, *Hague Convention for the Pacific Settlement of International Disputes* (1907) etc.
- States could engage in a war or resort to forcible measures short of war, either on the grounds that one of their legal rights had been violated
- Or because they considered it politically and economically expedient forcibly to attack another State, for example in order to occupy and annex part or the whole of it



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Marx and Engels on self-determination

- Britain in Ireland
 - 1867 - “The Fenian trial in Manchester was exactly as was to be expected. You will have seen what a scandal ‘our people’ have caused in the **Reform League**. I sought by every means at my disposal to incite the English workers to demonstrate in favour of **Fenianism**.... I once believed the separation of Ireland from England to be impossible. I now regard it as inevitable, although **Federation** may follow upon separation.”

This would now be “glorification of terrorism” – a criminal offence
- The Russian Empire:
 - 1875 – “What are the reasons for this special interest of the workers' party in the fate of Poland? First of all, of course, sympathy for a subjugated people which, with its incessant and heroic struggle against its oppressors, has proven its **historic right to national autonomy and self-determination**. It is not in the least a contradiction that the *international* workers' party strives for the creation of the Polish nation.”



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Marx and Engels on self-determination

- Nimtz (2002)
 - Marx and Engels reversed their earlier position and gave support to religious-led Arab resistance to French imperialism in Algeria in 1857; expressed strong sympathy for the Sepoy Mutiny against Britain in India in 1857-9; and by 1861 wrote, as the US Civil War loomed, that US expansion into Texas and what is now Arizona and New Mexico, brought with it slavery and the rule of the slaveholders.
 - At the same time, they were quite clear that the 'booty of British imperialism' had begun to corrupt and compromise the English proletariat.
- Jani (2002)
 - Marx's response to the 1857 revolt in British India
 - 'under the impact of the Revolt, Marx's articles increasingly turned from an exclusive focus on the British Bourgeoisie to theorise the self-activity and struggle of the colonised Indians.' (82)



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Lenin on self-determination

- 1913 – “A democrat could not remain a democrat (let alone a proletarian democrat) without systematically advocating, precisely among the Great-Russian masses and in the Russian language, the “self-determination” of nations in the political and not in the “cultural” sense.”
- 1914 – *The Right of Nations to Self-Determination* (against Rosa Luxemburg)
- 1916 - “Our theses say that the demand for the immediate liberation of the colonies is as “impracticable” (that is, it cannot be effected without a number of revolutions and is not stable without socialism) under capitalism as the self-determination of nations, the election of civil servants by the people, the democratic republic, and so on— and, furthermore, that the demand for the liberation of the colonies is nothing more than “the recognition of the right of nations to self-determination””



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Lenin - “Decree on Peace” (1917)

- discarding the imperialist distinction between “civilised” and uncivilised” nations.

“By annexation or seizure of foreign territory the government..., understands any incorporation of a small and weak nationality by a large and powerful state without a clear, definite and voluntary expression of agreement and desire by the weak nationality, regardless of the time when such forcible incorporation took place, regardless also of how developed or how backward is the nation forcibly attached or forcibly detained within the frontiers of the [larger] state, and, finally, regardless of whether or not this large nation is located in Europe or in distant lands beyond the seas.

If any nation whatsoever is detained by force within the boundaries of a certain state, and if [that nation], contrary to its expressed desire ... is not given the right to determine the form of its state life by free voting and completely free from the presence of the troops of the annexing or stronger state... then the dominance of that nation by the stronger state is annexation, i.e., seizure by force and violence.”



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Pheng Cheah (2003, 214) on Lenin

- Lenin (*Backward Europe and Advanced Asia*, 1913) revelled in the spontaneous vitality of the national liberation movements: “*Hundreds* of millions of people are awakening to life, light and freedom. What delight this world movement is arousing in the hearts of all class-conscious workers...”
- For Cheah, Cabral’s and Fanon’s “... exemplary theories of decolonising nationalism continue this legacy.”



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Woodrow Wilson – did not intend to refer to the Empires!

- 8 January 1918, 14 points: “5. A free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the population concerned must have equal weight with the equitable claims of the government whose title is to be determined.”
- Lynch (2002, 424): “For Wilson, the right of ‘self-determination of peoples’ was rooted in the AngloAmerican tradition of civic nationalism: that is, for Wilson self-determination meant the right of communities to self-government. It had nothing to do with the tradition of collective or ethnic nationalism, in which the principal agent was the nation as distinct from the individuals constituting the nation.”
- (425) “As the Bolsheviks themselves embraced the principle, albeit with very different content, Wilson, while reaffirming the validity of national self determination in principle, believed that: **“In point of logic, of pure logic, this principle which was good in itself would lead to the complete independence of various small nationalities now forming part of various Empires. Pushed to its extreme, the principle would mean the disruption of existing governments, to an undefinable extent ...”** and “ When I gave utterance to those words [that all nations had a right to self-determination], I said them without a knowledge that nationalities existed, which are coming to us day after day ... **You do not know and cannot appreciate the anxieties that I have experienced as the result of many millions of people having their hopes raised by what I have said.**”



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Lenin's practice

- On 4 (17) December 1917 the Soviet government recognised the right to self-determination of Ukraine; on 8 (31) December 1917 it recognised Finland's independence. In fact, it was the Whites, including Tsarist officers, who opposed Finnish independence, seeking to restore the Russian Empire; by a Decree of 29 December 1917 (11 January 1918) the right of the people of "Turkish Armenia" to self-determination was recognised. In answer to a request from the government of Soviet Estland, on 7 December 1918 Lenin signed a Decree on recognition of the independence of Estonia, Latvia and Lithuania
- 1918 - Constitution of the RSFSR – Article 1 Chapter 4 – *voluntary* participation of every people of Russia in the Federation
- 1924 - Constitution of the USSR – Article 4, Chapter 2: "Each one of the member Republics retains the right to freely withdraw from the Union."
- Lenin's *Last Testament* (1923), warning against Stalin: "It is quite natural that in such circumstances the "freedom to secede from the union" by which we justify ourselves will be a mere scrap of paper, unable to defend the non-Russians from the onslaught of that really Russian man, the Great-Russian chauvinist, in substance a rascal and a tyrant, such as the typical Russian bureaucrat is."



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Pashukanis – *Lenin and Problems of Law* (1924)

- “Bourgeois democratic slogans on the national question have lost their revolutionary quality. The defence of the “abstract” equality of rights was a halfway house.”
- Pashukanis cited but mis-read Lenin’s “Draft Theses on the National and Colonial Questions” (1920).
- He missed the following:
 - 9) The Communist International’s national policy in the sphere of relations within the state cannot be restricted to the bare, formal... recognition of the equality of nations to which the bourgeois democrats confine themselves....
 - ... the Communist parties must consistently expose that constant violation of the equality of nations and of the guaranteed rights of national minorities which is to be seen in all capitalist countries, despite their “democratic” constitutions. It is also necessary, first, constantly to explain that only the Soviet system is capable of ensuring genuine equality of nations...; and, second, that all Communist parties should render direct aid to the revolutionary movements among the dependent and underprivileged nations (for example, Ireland, the American Negroes, etc.) and in the colonies.
 - Without the latter condition, which is particularly important, the struggle against the oppression of dependent nations and colonies, as well as recognition of their right to secede, are but a false signboard, as is evidenced by the parties of the Second International.
- He became an enthusiastic supporter of “socialism in one country” and “peaceful coexistence”.



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The USSR and self-determination – schizophrenia

- Cassese (1995) : the Dumbarton Oaks Proposals, the basis for the UN Charter, did not contain any reference to self-determination. The demand for self-determination was reconsidered at the end of April 1945, at the UN Conference on International Organisation in San Francisco – at the insistence of the USSR. A draft was presented referring to “...respect for the principle of equal rights and self-determination of peoples.”
- This became Article 2(1), against strong US and UK opposition.
- At the II Session of the UNGA the Soviet delegation proposed an article for the UDHR as follows: “Each people and each nation has the right to national self-determination. A state which has responsibility for the administration of self-determining territories, including colonies, must ensure the realisation of that right, guided by the principles and goals of the United Nations in relation to the peoples of such territories.”
- This was rejected . The Soviet delegation therefore abstained in the vote on the UDHR.



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The USSR and self-determination – schizophrenia - II

- The admission of seventeen newly independent States at the opening of the fifteenth session of the General Assembly had a decisive effect on the UN. On 23 September 1960, the Soviet Union, grasping the opportunity presented by this dramatic development, requested the addition of a ‘declaration on the granting of independence to colonial peoples and countries and peoples’ to the agenda.
- The USSR submitted to the XV Session of the UNGA the draft of the historic Resolution 1514 (XV) of 14 December 1960, the “Declaration on the granting of independence to colonial countries and peoples”.
- The adoption of Common Article 1 to the 1966 ICCPR and ICESCR, on the right of peoples to self-determination, was an achievement of the USSR and the national liberation movements
- Against this – the Brezhnev doctrine – East Berlin 1953; Hungary 1956; Czechoslovakia 1968; the repression of Chechens, Crimean Tatars and others



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Why do progressive scholars miss the politics?

- Karen Knop, *Diversity and Self-Determination in International Law* (2002)
 - Her focus on indigeneity and on gender is exemplary
 - But she has nothing at all to say on the contribution made by Lenin to the political deployment of the principle of self-determination.
 - Nor does she mention even in passing the role of the USSR in bringing about the enshrinement of the principles as a right in international law.
 - Lenin does not appear in her index; neither do the USSR or Soviet Union.
- Antony Anghie *Imperialism, Sovereignty and the Making of International Law* (2005)
 - mentions Lenin only in a footnote, and only in the context of analysis of Lenin's analysis of imperialism, not his advocacy of self-determination
 - he does note that "Lenin went a stage further in his analysis, which pointed to the centrality of colonialism to the entire capitalist system."
 - he refers to "...Woodrow Wilson's forceful promotion of the concept of self-determination" without mentioning Lenin's even more forceful promotion; Lenin's vision extended to the colonial empires, which Wilson's most certainly did not.



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Shivji (1991) on self-determination

- For Lenin self-determination was a continuing right, and could be invoked at any time by an *oppressed* nation even in a sovereign state.
- ‘the problem in Africa has been precisely that the existing states have not treated nations and minorities under them democratically, hence their fear that the recognition of this ‘right’ will lead to secession.’
- state practice in Africa has isolated and absolutised only one element in the right, the element of anti-colonialism. This has ‘robbed the right of self-determination of its fundamental defining characteristic, anti-imperialism.’
- ... the right to self-determination is a *collective* right. It is a continuing right, ‘a right that keeps its validity even after a people has chosen a certain form of government or a certain international status’ .
- The right-holders in the right to self-determination are dominated/exploitation people and oppressed nations, nationalities, national groups and minorities identifiable specifically in each concrete situation.