THE IDEA OF TRUSTEESHIP IN INTERNATIONAL SOCIETY:
UNITY, PROGRESS, AND THE PERFECTION OF HUMANKIND

BY

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The idea of trusteeship presupposes a relationship in which a natural person or a legal person is responsible for the general well being of one or more persons who are deemed to be incapable of directing their own affairs without incurring harm to themselves. The purpose of this study is to interrogate the character of trusteeship in international society. By that I mean: I want to discern the assumptions, claims, and justifications that render trusteeship intelligible as a recognised and settled form of human conduct. This investigation will proceed by examining trusteeship in the context of the British East India Company, the partition of Africa, the League of Nations mandates system, the United Nations trusteeship system, the anti-colonial movement, and the contemporary problems presented by failed and unjust states. This investigation concludes by suggesting that the character of trusteeship is intelligible in a particular relation of virtue, inequality, and tutelage. The idea of trusteeship assumes that the fit, that is, the virtuous, shall rule in the interest of the incapable. It assumes that some notion of defect joins ruler and subject in a hierarchical relationship whereby the enlightened instruct the ignorant in the true nature of things. And it assumes that the ends toward which this tutelage is directed are concerned with promoting the welfare of dependent peoples and protecting them from exploitation. The character of trusteeship is also intelligible in the context of other ideas that say something about the nature of the human family, its relation to history, and the possibilities of its future. First, trusteeship is premised on the notion of a universal human family that is joined together by a mutual capacity to understand a common law of humanity. Second, groups within this universal human family may disclose different degrees of development but they are all moving in a common direction called ‘progress.’ Third, these peoples are moving in a common journey toward some state of enlightenment called ‘perfection.’ Together, these ideas provide the context in which trusteeship ought to be understood as an obligation imposed on the strong to act on behalf of the weak.
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Chapter One

Introduction

While reflecting on the differences that were thought to divide the human family, P.H. Kerr posed the question: 'What is the obligation on those who by reason of their own claim to superior civilisation have the responsibility for saving the weak from the ravages of the strong?\(^1\) He answered this query by suggesting that some people, on account of superior virtue, a sharp sense of personal responsibility, and great achievements in the fields of politics, law, education, commerce, science, and industry, may rightly regard themselves as the leaders of mankind. In contrast, so-called backward peoples, those who were mired in a state of ignorance, idleness, and poverty, were destined to obey until they were able to take their place alongside more advanced peoples. The superiority that Kerr ascribed to civilisation—European civilisation to be precise—did not issue licence for the exploitation of the disadvantaged, but imposed an obligation on the fit to act on behalf of the unfit. And in repudiating all pretension of aggression and domination, he insisted that alien rule could be justified only so far as it raised these peoples in the standard of civilisation. Thus, the benefits of civilisation must be shared equally by a progressive notion of humanity that embraces both the ‘zenith of civilisation’ and the ‘nadir of barbarism’.\(^2\) Public order, the rule of law, and useful education must be instituted in places where they are absent; and steps must be taken to eradicate human suffering, poverty, and the sort of cruelty that is the hallmark of uncivilised society. To act in any other way would be to deny the underdeveloped segment of humanity a chance at improvement and progress; it would be to forsake a duty that arises ‘not from any pride of dominion, or because they wish to exploit their resources, but in order to protect them alike from oppression and corruption, by strict laws and strict administration,

\(^1\) P.H. Kerr, ‘Political Relations Between Advanced and Backward Peoples,’ An Introduction to the Study of International Relations, (London: Macmillan, 1916), 149.
which shall bind foreigners as well as the native, and then they must gradually develop, by education and example, the capacity in the natives to manage their own affairs.  

In this understanding of duty it is possible to detect the main contours that define the idea of trusteeship in international society. But in order to grasp the nature and limits of this idea, it is useful to consider trusteeship against a backdrop framed by its opposite: the idea of liberty. John Stuart Mill defends the value of liberty by asserting: ‘neither one person, nor any number of persons, is warranted in saying to another human creature of ripe years that he shall not do with his life for his own benefit what he chooses to do with it.’ In the activity of choosing, that is, in observing, interpreting, reasoning, and judging one’s situation, human beings develop a plurality of experiences upon which progressive society depends. These choices may strike some people as being strange, uncomfortable, and even repugnant; and, as a result, they may evoke feelings of pity, contempt, or the wish to encourage a different course of action. But the tolerance of such conduct is justified, Mill argues, because freedom to innovate and to experiment is a necessary condition of flourishing individuality and of civilised society. For this reason, he asserts that a man’s liberty must not be subject to interference so long as the consequences of his actions do not injure others. Trusteeship is distinguished from liberty in so far as it invokes a paternal mode of human conduct—the idea that ‘interference with a person’s liberty of action [is] justified by reasons referring exclusively to the welfare, good, happiness, needs, interests or the values of the person being coerced.’ Trusteeship presupposes a relationship in which a natural person or a legal person is responsible for the general well being of one or more persons who are deemed to be

\[2\] Kerr, ‘Political Relations Between Advanced and Backward Peoples,’ 142.

\[3\] Kerr, ‘Political Relations Between Advanced and Backward Peoples,’ 149, 166.


incapable of directing their own affairs without incurring harm to themselves. Thus, trusteeship always entails a loss of liberty; for a ward or public charge must be coerced, as with children and lunatics, toward some good for his own happiness and benefit. Stupidity may deprive them of full use of reason, incompetence may obscure some fundamental truth, or overriding passion may obliterate the moderation, restraint, and discipline that is required of orderly social intercourse. Incompetence of this or some other sort rules out relations based on mutual consent. Persons who are unfit to choose for themselves cannot by their own volition enter into contracts and, therefore, they cannot enjoy the civil condition or make any contribution to it. Someone must choose for them.

The purpose of this study is to interrogate the character of trusteeship in the practice of international society. By that I mean: I want to discern the assumptions, claims, and justifications that render trusteeship intelligible as a recognised and settled form of human conduct. Trusteeship is in this respect cast as a problem of international political theory. This approach to engaging and understanding the problems of world affairs regards international human relations as consisting in something more than what Martin Wight once described as a monotonous and indeed bleak struggle for survival. International theory, he wrote, is concerned with ultimate questions of life and death, and, as such, is not always expressed coherently in the vocabulary of political theory—a vocabulary that is best suited to expressing the nature of the good.7 This approach also issues a rejection of the Hobbesian premise (which often finds its way into international theory) that where there is no sovereign to enforce the law there can be no morality. For Hobbes, covenants are of little value in lieu of a power sufficient to enforce the obligations contained therein. Without the power of the sword, he asserted, 'every man will,

and may lawfully rely on his own strength and art, for caution against all other men.8 But in spite of the pessimism expressed by Wight and theorists who follow in the Hobbesian tradition, investigating trusteeship as a problem of international political theory supposes that political theory and international theory are both concerned with the conditions of the good life. In other words, political theory and international theory are, as Robert Jackson contends, distinct branches of the same tree.9

International political theory understands the problems of international society as imparting a moral significance that is internal to the subject as opposed to an enterprise that only involves moral prescription that follows in the wake of investigation. By internal I mean that international society is a realm of human conduct that must be interpreted in terms of the norms and values that are distinctive of that realm.10 Indeed, the problems that are peculiar to international society, problems related to questions of war, sovereignty, self-determination, nationalism, human rights, and intervention, to name but a few, are surely obscure without some knowledge of right and good and the vocabulary required to express these ideas. The affairs of international society are conducted in terms of a vocabulary that includes not only the words 'right' and 'good,' but also the words 'obligation,' 'commitment,' 'duty,' 'responsibility,' 'principle,' and 'value.' Trusteeship discloses a character—an idea or standard of human conduct—that is distinctly its own and which cannot be separated from the ideas, beliefs, and values from which conceptions of the good life spring. It discloses a character that is specific to some time and some place, a character that is historical rather than abstract, particular rather than universal. Thus, trusteeship says something about how human beings ought to live their lives, how they ought to


treat their fellows, and how they ought to live amongst themselves. It is in this context that we shall interrogate the character of trusteeship in terms of questions that are classically questions of political theory. Who shall rule and by what authority? What is the relation of ruler and subject? And, toward what end or ends shall the activity of government be directed?

**Conversation as a source of knowledge**

Before proceeding any further in this investigation it is necessary to make an important distinction explaining human behaviour and interpreting the character of human conduct. Whereas investigating the patterns of human behaviour consists in identifying the causes that account for actions, interpreting the character of human conduct is grounded in the moral conundrums that arise when human beings choose their course of action in relation to diverse and sometimes conflicting values, principles, and obligations. Human conduct refers to what Michael Oakeshott describes as a ‘human being responding to his contingent situation by doing or saying this rather than that in relation to an imagined and wished from outcome and in relation, also, to some understood conditions.’ Interpreting the character of human conduct does not involve the discovery of the ‘true’ motive or the ‘real’ intention from which they emanate; nor does it involve the explanation of the process or the forces that bring a particular state of affairs into being. Character is not evident in an unbroken chain of causes and effects, but in a particular context of activity; for actions, as Oakeshott points out, are intelligible in many contexts and therefore may be read to mean many things. Thus, discerning character is a problem of human conduct in which ‘[c]onduct is specified as actions and utterance, wise or foolish, which have reasons, adequate or inadequate, but not causes.’ And it is in these reasons, which are the result of

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conscious deliberation and choice, as opposed to cosmic forces that act on and determine human behaviour, that we able to detect the character of trusteeship. These reasons are rarely, if ever, the product of a single corpus of knowledge or a sovereign voice that speaks for all humankind. Reasons, and the justifications they entail, are the product of a conversation of voices; they are a representation and an amalgamation of different experiences, values, ideas, principles, and desires that collectively provide insight into the human condition.

Oakeshott elaborates upon this idea by contrasting his conception of conversation with that of inquiry. Conversation is appropriate to a world of a past, present, and future; and it carries with it an inheritance that, in the context of international society, is registered in a repository of treaties, charters, covenants, declarations, resolutions, minutes, policies, speeches, letters, and other forms of speech. He describes conversation as implying a meeting-place in which ‘the participants are not engaged in an inquiry or a debate; there is no “truth” to be discovered, no proposition to be proved, no conclusion sought.’ Understanding human intercourse in terms of conversation implies a diversity of voices. These voices do not constitute a hierarchy. No single voice is recognised as the bearer of truth. There is no arbiter to judge the relative merits of what each voice has to contribute. And this plurality of voices is not directed toward any final destination. Conversation is an end in itself; it is an ‘unrehearsed intellectual adventure’ that is fundamentally inconclusive. In contrast, inquiry invokes the singular voice of science to the extent that utterance is endowed with purpose. Unencumbered speech is transformed into considered debate and the participants in debate are fixed on problems that require solutions. Thus, inquiry is in search of answers; and, as such, represents ‘the voice of argumentative

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discourse, the voice of "science", and all others are acknowledged merely in respect of their aptitude to imitate this voice.\footnote{15}

It is in the idiom of conversation, rather than of inquiry, that the character of trusteeship is intelligible; for it is in the way human beings speak about trusteeship that we are able to detect its assumptions, claims, and justifications. This proposition does not mean we are disinterested in argument; it is only to suggest that argument is internal to conversation in such a way that it is tentative, provisional, and always open to challenge and revision. Nor does it mean that human beings always understand or mean what they say, that what they say is well founded, or that there is any truth in what they say. Human beings are surely prone to misinterpret their situation as well as to deliberately misrepresent it. But the sincere, foolish, and dishonest all communicate their claims and expectations in a normative discourse that proposes how they ought or ought not to act. Indeed, liars often provide the best evidence of shared understandings of value, principle, and right conduct; for John Plamenatz correctly observed that ‘even the conscious hypocrite is a victim as well as an exploiter of his professed beliefs.’\footnote{16} We shall make no attempt to separate the apostle from the hypocrite. Our purpose is to understand the character of trusteeship in a particular context of activity, namely, the proper ordering of relations between two groups of people that have been historically described as strong and weak, advanced and backward, civilised and barbarian, enlightened and ignorant, and just and unjust.

The obligations of power

Trusteeship is above all else intelligible in a context of activity that is concerned with obligations of power which arose out of the extension of European rule to distant reaches of the Americas, Asia, Africa, and Oceania. Most popular accounts of imperialism rehearse a sordid tale of

\footnote{15} Oakeshott, ‘The Voice of Poetry in the Conversation of Mankind,’ 488-89.
domination and exploitation. For Lenin, the age of empire announced the arrival of the final stage of capitalism, an epoch in which rich financiers and powerful industrialists plundered the world for profit. Others understood imperialism as a great game of the sort popularised (perhaps unfairly) by Rudyard Kipling’s celebrated novel *Kim*. However, at least some patrons of empire regarded it as their ordained mission to bestow upon the less fortunate the blessings of European institutions, knowledge, and traditions. These men, according to A.P. Thornton, ‘saw themselves as the trustees of civilization. They reckoned it their duty to see to it that civilization was disseminated among as many beneficiaries as could be contrived.’\(^{17}\) This understanding of imperialism is grounded in the belief that power entails responsibility, an idea that accepts the justification of power set out by the British Resident in Nepal in 1843. ‘The British government,’ he suggested, ‘would be ill-represented (in Nepal or anywhere else) if every valuable opportunity were not used to prompt to that which is good, and to deter from, that which is evil; to express abhorrence of acts of cruelty, perfidy, and injustice; and to give full approbation of all that is benevolent, honest, high-minded, and just.’\(^{18}\) Thus, self-designated trustees of civilisation set out to eradicate slavery in Africa, *sati* in India, and despotism wherever it occurred. And in their place they endeavoured to introduce true religion, useful knowledge, efficient government, rational law, legitimate commerce, and the virtues required of mature and reasoning individuals. Trusteeship constitutes an important part of this civilising project.

But not all who came into contact with the people of the non-European world were moved by such high-minded ideals. Most colonies were acquired for commercial purposes, some for strategic purposes, and others for humanitarian reasons. That only a few proved to be of any value, indeed, on the eve of the partition of tropical Africa a member of the British Colonial Office suggested that the

acquisition of the entire continent 'would be but a worthless possession,' did not in any way reduce the obligations of power. Dominion required justification. In that respect, the Spanish theologian Francisco de Vitoria alluded to the idea of trusteeship during the sixteenth century when he suggested that a European prince may lawfully exercise authority over the Indians of the New World provided that they were incapable of administering a legitimate government by their own efforts. In putting forth this claim to rule he argued that the Indians cannot be arbitrarily dispossessed of their lands and property: they may be barbarians, slow-witted and foolish, but they were nonetheless true masters entitled to the rights of dominion. Thus, he denied claims of universal dominion put forward on behalf of the Holy Roman Emperor and the supreme pontiff of the Latin Christendom; and he rejected the right of discovery, refusal to receive the Christian faith, and the commission of mortal sins as adequate reasons for occupying territory belonging to barbarians. However, he admitted, albeit as no more than a point of argument, that Spanish dominion would be justified if the Indians were all so close to madness that they were incapable of managing their own affairs. The Indians would then, he suggested, be like children over whom it would be entirely lawful and appropriate for European princes to exercise authority, but only so long as 'everything is done for the benefit and good of the barbarians, and not merely for the profit of the Spaniards [emphasis in original].

However, it was not for another two-hundred years that the idea of trusteeship, as we have come to know it as a practice of international society, began to take definite shape in territories administered by the British East India Company. The emergence of trusteeship in late-eighteenth

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21 Vitoria, *Political Writings*, 290-1.
century British India coincided with several important developments in the current of European ideas that forever altered the terms on which alien rule was justified. Thornton argued that the architects of empire during the eighteenth century had to confront the legacies of the American and French Revolutions in a way that the Spanish and Portuguese did not in the fifteenth and sixteenth centuries. In a later day, the rights of man and the idea of social contract disallowed all appeals to divine right, Papal blessing, and the right of conquest as justifications of dominion in Africa and Asia. The possession of empire had to be justified by a higher calling. The East India Company came to recognise, at least as a matter of declared policy, that the well-being of its native subjects must be secured before the pursuit of profit; and in Africa, abolitionists demanded that imperial authority be used to put down slavery and the slave-trade. Thus, trusteeship thrived in an age when the ideas of progress and perfection reigned supreme. Europeans set out to make the world better than when they found it; and, in that respect, "[t]hey have also, more than other peoples, been deliberate reformers; they have often tried to change institutions in order to improve them." This disposition of reform and improvement encouraged the interpretation of history as a gradual ascent in which humanity moved inexorably toward some notion of complete harmony.

Related to this progressive interpretation of history was the shift from a mercantilist and corporate state to one based on the principles of economic individualism. In the writings of Adam Smith, J.B. Bury argues, we encounter the claim that "the free commercial intercourse of all the peoples of the world, unfettered by government policies, was to the greatest advantage of each, presented an

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ideal of the economic "solidarity" of the race, which was one element of the ideal of Progress. The significance of this claim extends well beyond the field of economics in that it suggests a particular notion of obligation that joins all human beings. Smith's theory of individuality understands human beings as creatures that seek satisfaction of their desires in co-operation with others of their kind. Thus, human beings disclose a natural interest in the fortunes of others. Oakeshott interprets this disposition in Smith's thought to mean that 'we not only recognize ourselves as natural individuals, moved by our own desires, but recognize others as also of the same character as ourselves, and that in consequence they have a claim upon our consideration.' Smith did not, however, mean to suggest that the office of government ought to direct men in becoming 'good;' rather government was obliged to provide conditions favourable to just and orderly society. In these conditions, free and unhindered human beings would, in the course of pursuing their desires, aspirations, and hopes, develop the sense of duty, responsibility, and fair-play that trusteeship sought to cultivate in persons who were not yet prepared to direct their own lives.

Although these ideas exerted enormous influence throughout all of Europe, the idea of trusteeship in international society remains largely an Anglo-American tradition. That is not to say that other European powers did not confront the same problems the British confronted. Indeed, Thornton argues:

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[w]hat the Russians said about their task in Central Asia was repeated by Frenchmen, invoking their mission civilisatrice in Africa and in the Far East; by Germans, planning to implant their Kultur in a world that so plainly needed it; by Japanese, who wanted to westernize others as they themselves had been westernized; and by the British who, without asserting doctrine, took it for granted that their presence anywhere ensured more peaceful and prosperous conditions than those that had obtained before.  

Each of these powers evolved responses to the challenges of governing backward peoples that involved judging the state of society in dependent territories in relation to the presumed superiority of their own ideas, institutions, and practices. The French, for example, endeavoured to civilise the ‘lower races’ by destroying indigenous culture and assimilating them into a superior French culture so that in the end all men would be Frenchmen. However, only the British understood themselves as holding their empire in trust in a fully self-aware way. Sir Andrew Cohen argued that ‘[i]n Britain the moral revulsion which prompted the anti-slavery campaign found expression later in movements to carry Western civilization into Africa, later still in movements to protect the people of Africa from undesirable exploitation in the very process of their growing contact with the Western world.’

Indeed, the British, and later the Americans, were disproportionately responsible for establishing trusteeship in the practice of international society. Other European powers proved to be rather indifferent toward these efforts or they obstructed them as did the French in opposing the creation of the League of Nations mandates system. Thus, it is the Anglo-American voice, which discloses best the character of trusteeship in international society, that is the focus of the chapters that follow.

Past and present

This investigation will proceed in chapter two by considering trusteeship in the experience of the East India Company in the eighteenth and nineteenth centuries. The Company got its start, not as a vast political power, but as a rather modest merchant authorised by parliament to pursue a peaceful and

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27 Thornton, Doctrines of Imperialism, 154.
lawful trade. However, with the assumption of extensive political responsibilities it quickly proved itself to be grossly ill-prepared to rule. Persistent allegations of misrule and corruption eventually provoked Edmund Burke's crusade against the Company which culminated in the famous trial of Warren Hastings before the House of Commons. Although Burke and his allies did not succeed in seeing the abolition of the Company's dominion, they did succeed in establishing the principle against which all future governments of India would judged: political power must be exercised for the benefit of persons subject to it. The elevation of the Indian subject to the foremost concern of government encouraged a habit of thought that related ruler and subject in terms of inequality. Favourable assessments of Indian society were soon eclipsed by accounts of depravity and destitution. Indians were thought to be ignorant because they professed false religion, adhered to flawed systems of knowledge, and endured the oppression of despotistic government. Thus, in every respect, Indian society fell well short of the standard of perfection set by European society. With the imperfect state of Indian society confirmed, the Company's servants were left to determine the end toward which the activity of government should be directed. Not surprisingly, the devout advocated the propagation of Christian truth; utilitarians wished to reconstruct Indian society in terms of rational law and efficient government; and liberals understood the panacea of India's moral and material poverty as resting in the promise of education. While these remedies of Indian inferiority were prone to elicit contrary action, they each aspired to satisfy the test of political power established by Burke.

Experience in British India exerted considerable influence on the character of British colonial administration in Africa, but the European encounter with Africa is most significant in that it resulted in the internationalisation of trusteeship. Thus, chapter three will consider the Berlin Conference of 1885 at which members of international society pledged to watch over and to care for the native tribes of

tropical Africa. The performance of this obligation entailed the institution of complete and perfect freedom in commerce, the adoption of rules for the prevention of war, and the introduction of scientific, religious, and philanthropic organisations to assist tropical Africa’s native population in moving toward civilisation.\(^{30}\) However, the great achievement of the Berlin Conference was that it established the principle that the conditions of native life in tropical Africa constituted a legitimate subject of international scrutiny. It is interesting to note that egregious abuses, namely those committed in the Congo Free State, did not discredit the legitimacy of trusteeship at the Paris Peace Conference of 1919.

The League of Nations mandates system, which is the subject of chapter four, accepted the principles enshrined in the Berlin Act and then institutionalised trusteeship by erecting machinery to ensure the performance of relevant duties. The mandates system represented a compromise between Woodrow Wilson’s insistence on ‘no annexations’ and the equally adamant demand advanced by Australia, New Zealand, and South Africa for the annexation of certain captured German colonies.\(^{31}\) But in acceding to this compromise, they accepted the principle that the pursuit of national interests could not entail the neglect of dependent peoples. And in respect of this principle, members of the League of Nations agreed that the well-being and development of these peoples form a ‘sacred trust of civilisation.’\(^{32}\)

The victors of the second world war restated the substance of this principle twenty-six years later when they met in San Francisco to adopt the Charter of the United Nations in 1945. Thus, chapter five will consider two contending ideas of trusteeship that are enshrined in the Charter. Chapter XI of the Charter expresses the British conception of imperial trusteeship: tutelage of dependent peoples was to lead to self-government within the empire. Chapter XIII expresses the American conception of


international trusteeship: tutelage of dependent peoples was to lead to independence and to membership in the society of states. These ideas are distinctive in so far as imperial trusteeship was a justification of empire and international trusteeship was an alternative to empire. But in spite of procedural disagreement, both conceptions of trusteeship were in principle little more than an amalgamation of British traditions of colonial administration and the obligations specified in the Berlin Act and the mandates system. Decolonisation eventually destroyed these arrangements and, with them, the legitimacy of trusteeship. The idea that the strong shall rule on behalf of the weak could not withstand the hammer blows delivered by the ideas of self-determination and human equality. Indeed, the strictly anti-paternal world that emerged out of decolonisation ruled out the notion that some people, on account of moral or material inferiority, required guidance in progressing toward membership in international society. Independence became a categorical right.

The events of decolonisation and the subsequent expansion of international society into a universal society of states have not exiled trusteeship to the realm of obscure historical curiosity. In 1903, Roger Casement described the Congo Free State as a society stricken by hardship and cruelty. Natives were forced to labour without remuneration, they were subject to summary imprisonment, and they were unable to seek relief of grievances from the courts. Moreover, the state and its agents afforded no protection of property and they enforced edicts through fear, mutilation, and murder. Casement concluded by observing that the native population 'endured such ill-treatment at the hands of the Government officials and the Government soldiers in their own country that life had

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become intolerable. These words may well describe life in the Congo today or, in recent times, life in Angola, Bosnia-Hercegovina, Cambodia, East Timor, Kosovo, Liberia, Rwanda, Sierra Leone, Sudan, and several other places in contemporary international society. Indeed, the hardship and cruelty of these places must surely equal that which justified the tutelage of dependent peoples in an earlier day. International society is today marked by areas in which states are both juridical realities and empirical fictions. In these states, good government, respect for human rights, the rule of law, and the regular provision of public goods are conspicuous by their absence. This state of affairs presents a daunting challenge to the fundamental normative justification of sovereign states; that is, states are arrangements of the good life. Independent statehood has in far too many instances collapsed into the danger and misery that accompanies failure.

The deplorable conditions in which some of the world’s population lives have engendered renewed interest in trusteeship as a response to the problems of failed and unjust states. The establishment of an international protectorate in Kosovo renders interest in trusteeship a matter of practical necessity. United Nations Security Council Resolution 1244 confers on the international civil and security presence responsibility for protecting and promoting human rights, maintaining law and order, and reconstructing the Kosovo economy. Jarat Chopra describes a similar United Nations administration in East Timor as evidence of the ‘trend towards increasing social and territorial control in interventions to remedy the breakdown of failed states, combat warring factions and topple abusive warlords.’ Among the peculiarities of this international ‘monarch’ is its exclusive possession of legislative and executive power, reluctance to grant the local population a share in decision-making, and tendency toward what its chief administrator calls benevolent despotism. These characteristics might

35 ‘Mr. Casement to the Marquess of Landsdowne.—(Received December 12),’ December 11, 1903, Cmd. 1933 lxii (1904), 23-52.

very well describe any number of dependent territories during the age of empire. But most striking is Chopra's suggestion that coalitions led by single states, instead of the United Nations' ill-prepared bureaucracy, may make for more effective temporary government; for the success of transitional administrations, he argues, depends on a 'judicious determination as to which parties are legitimate, and a concerted effort to prepare them, by example as well as by prescription, for sound representational government.' Of course, what Chopra is describing is not a form of statehood, at least not statehood as it is commonly understood today, but rather a form of trusteeship replete with its paternal discourse of preparation for a higher stage of being.

Any attempt to revive trusteeship runs up against a dilemma that is the principal subject of chapter six. This dilemma is expressed in the question: what sort of moral argument is required to reconcile a practice that is premised on the values of inequality and interference, and a society of states that is based on the values of sovereign equality, territorial integrity, and non-interference? I do not propose to offer a solution to this question; nor do I intend to argue on behalf of either position. Indeed, such questions are not susceptible to being solved or answered as such. Rather, the character of trusteeship is discernible in full relief at the intersection of two moral dispositions that are laid open by this dilemma. One way of understanding virtue in human relations is in relation to the biblical injunction: love your neighbour as yourself. Jesus elaborated on the nature of this obligation by telling the parable of the good Samaritan. When the Samaritan came upon a man beaten and half dead, Jesus said, 'he had compassion, and went to him and bound up his wounds, pouring on oil and wine; then he set him on his own beast and brought him to an inn, and took care of him.' In order to fulfil this obligation, to act on the compassion that is felt for human beings that are downtrodden, oppressed, and

37 Chopra, 'The UN's Kingdom in East Timor,' 35-6.
suffering, advocates of trusteeship must accept that these people do not understand or that they are unable to make good use of their liberty. Modern day Samaritans, those who feel compelled to intervene to save strangers from peril, must concede that these people are for some reason incapable of directing their own affairs. Thus, advocates of trusteeship must be prepared to overturn the normative settlement that emerged out of decolonisation, a settlement that for better or worse accepts the advice offered by Satan in Milton’s *Paradise Lost:* ‘Better to reign in hell than serve in Heaven.’\(^{39}\) But in accepting the moral worth of this claim—a claim that understands virtue as being the author of one’s own actions—people who defend the sanctity of liberty before all else must be prepared to accept failure when people fall short of the mark. They must be content not to interfere and to set things aright, but to recognise tragedy and to express sympathy in the face of human suffering and cruelty. The ideas expressed by Jesus and Satan are ubiquitous dispositions of human conduct. However, there are times when we must draw upon all our wisdom and courage in order to choose between them.

This journey through the conversation of trusteeship concludes by suggesting that the character of trusteeship is intelligible in a particular relation of virtue, inequality, and tutelage. The idea of trusteeship assumes that the fit, that is, the virtuous, shall rule in the interest the incapable. It assumes that some notion of defect joins ruler and subject in a hierarchical relationship, one based explicitly on a condition of inequality, whereby the enlightened instruct the ignorant and incompetent in the true nature of things. And it assumes that the ends toward which this tutelage is directed are concerned fundamentally with promoting the welfare of dependent peoples and protecting them from exploitation. But the character of the idea of trusteeship in international society is not fully intelligible unless it is placed in a context of other ideas which say something about the nature of the human family, its relation to history, and the possibilities of its future. First, trusteeship is premised on an understanding of a

universal family of human beings who are joined together by their mutual capacity to know and to understand a common law of humanity. Second, groups within this universal human family may be placed differently along the ladder of civilisation, but they are all moving in a common direction called ‘progress.’ And, third, these peoples are in their common journey moving toward some total harmony or state of enlightenment called ‘perfection.’ Together, these ideas provide the context in which trusteeship ought to be understood as an obligation imposed on the strong to act on behalf of the weak.
Chapter Two

**Ruling on Behalf of the Weak**

The idea of trusteeship in international society finds its origin in late-eighteenth century British India. Thus, the purpose of this chapter is to interrogate the character of trusteeship as it emerged as a justification of political power in territories administered by the East India Company. It is certainly true that not all who came into contact with the people of India professed the high ideals that are associated with trusteeship; nor were the principles of trusteeship always performed faithfully. Some of the Company’s servants were moved by considerations of personal enrichment; others were simply not up to the task or were disinterested in the plight of the disadvantaged. Still, the great experiments undertaken by the East India Company resulted in the articulation and affirmation of a particular mode of conduct which assumed that the strong are obliged to rule on behalf of the weak; that ruler and subject are joined in a relationship defined by a condition of inequality; and that government is duty-bound to promote the welfare of the ignorant and to protect them from exploitation. And in that respect, the experience of the East India Company prefigures the emergence of trusteeship as a recognised and accepted practice in international society.

**From merchant to sovereign**

At the height of the impeachment trial of Warren Hastings in 1789, Edmund Burke denounced the East India Company as a ‘state in the disguise of a merchant.’ But the Company began its existence, not as a vast economic and political power, but as a modest merchant charged by Elizabeth I with discovering and establishing a lawful trade for the benefit of the commonwealth. After a succession of isolated and commercially risky voyages, the Company obtained from the Mughal
emperor in 1613 permission to establish a permanent trading station at Surat. Within a decade the Company expanded its presence to Broach, Ahmadabad, and the imperial capital of Agra; and by 1650 the Company established a presence in Madras and in Calcutta. In these early years, the Company’s relations with Mughal India were guided by the policy laid down by Sir Thomas Roe: ‘Lett this bee receiued as a rule that if you will Profitt, seeke it at Sea, and in quiett trade; for without controuersy it is an error to affect Garrisons and Land warrs in India.’ The Company’s directors, being convinced of the incompatibility of war and commerce, proceeded on the belief that the prince of a well-ordered state could provide the conditions necessary to conduct a flourishing and profitable trade. Land-based fortifications were viewed as an unnecessary and potentially provocative expense; and, accordingly, agents posted to India were instructed against using force to secure commercial advantage and against interfering in the domestic affairs of Indian society. Thus, the maintenance of trading privileges commanded a greater share of their attention than the internal politics of the Mughal Empire.

But as the Mughal Empire entered into a period of decline during the latter part of the seventeenth century, the Company’s future prosperity and its policy of non-interference were ever more a source of speculation. Rebellious chiefs and ongoing war, along with Emperor Aurangzeb’s fanatical devotion to Islam and concomitant intolerance of Hinduism, eroded the stability of the Empire. While local officials, lured by the attraction of personal power and wealth, were increasingly willing to act independently of the imperial court in Delhi, the Company’s agents complained that they secured advantage through extortion, interfered with trading privileges and commercial transactions, and could

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not be relied upon to redress grievances.  

4 Nowhere did the ensuing disorder evoke greater alarm than in the Company’s enclave on the island of Bombay, which felt compelled to raise a sizeable army in order to fend off marauding Maratha armies and to defend its rather precarious position at the periphery of Mughal authority. The slow but steady decay of the Mughal Empire convinced many of the Company’s agents that Mughal authorities were incapable of ensuring the conditions of peace, order, and security upon which their commerce depended. Indeed, in the absence of an authority capable of sustaining conditions favourable to a profitable commerce, the Governor of Bombay, Gerald Aungier, suggested to the Court of Directors in 1677 that ‘the times now require you to manage your general commerce with your sword in Your hands.’  

5 The Court of Directors, confronted by persistent disorder and lawlessness, eventually conceded that the Company may have to assume greater responsibility for ensuring the security of its commercial interests in India. In 1687 they indicated a newly found assertiveness when they instructed agents in Madras that the Company ‘will maintain and defend against all persons, and govern by our own laws, without any appeal to any prince or potentate whatsoever, except our Sovereign Lord the King.’  

6 However, the realities of power would soon demonstrate the practical limitations of conducting relations with instruments of force, as the seizure of Mughal ships and interference in pilgrim traffic provoked an attack on Bombay and nearly led to the Company’s expulsion from India in 1689. Impressed with the still formidable power of the Mughal Empire, the Company sought Aurangzeb’s pardon in the hope of re-establishing its licensed trade.  

7 Despite the humiliation of this setback, the Company persisted nonetheless in charting a new course for superintending its affairs in India. The weakened state of the

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Mughal Empire suggested rather ominously that the Company's security and prosperity would in the future depend on its ability to defend, by force if necessary, its principal settlements at Bombay, Calcutta, and Madras. Tellingly, Governor Sir Josiah Child conveyed to the Company's servants in 1681 his conviction that 'all war is so contrary to our constitution as well as to our interest that we cannot too often inculcate to you our aversion thereunto;' by 1687 the deterioration of conditions in India convinced Child of the need to 'establish such a polite of civil and military power, and create and secure such a large revenue to maintain both...as may be the foundation of a large, well-grounded, sure English dominion for all time to come.' The latter of these opinions soon became a matter of necessity: palace intrigue so severely weakened Mughal authority that the Company's trade was increasingly vulnerable to the aggrandisement of local officials who had established their de facto independence from imperial authority.

The charter granted by William III in 1698 formalised this shift in thinking by reserving to the Crown the sovereign right, power, and dominion over British possessions in India while authorising the Company to 'raise, train, and muster, such Military Forces as shall or may be necessary for the Defence' of the Company's property. Although the Company obtained the right to raise an army, the Court of Directors did not abandon entirely their general aversion to becoming entangled in the politics and wars of the many Indian princes. They persisted in reaffirming the primacy of trade and the presumption against fortifications and waging war: 'We cannot avoid remarking' they wrote to their servants in Bengal in 1759, 'that you seem so thoroughly possessed with military ideas as to forget your employers are merchants and trade their principal object, and were we to adopt your several plans for Fortifying,

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8 Quoted in Griffiths, The British Impact on India, 56-57.
half our capital would be buried in stone walls.' The imperatives of defence resulted in a rather momentous modification of the injunction issued by Roe seventy-five years earlier; but still the Court of Directors adhered to a course of restraint that proscribed interference beyond what was necessary to safeguard the Company’s privileges and property. Thus, they insisted that the Company’s servants conduct themselves in such a way that the people of India be ‘allowed to live in the full enjoyment of the privileges of their respective Casts [sic], provided they do nothing to the prejudice of the English Government.’

Rivalry between competing British and French companies, which by the mid-eighteenth century erupted into open conflict, put this policy to a severe test. Agents of the British company demonstrated an increased willingness to intrude into the domestic affairs of Indian states in a bid to parry the growth of French influence in India: they offered gifts in exchange for enhanced trading privileges; they participated in the intrigues of dynastic succession by supporting, installing, and maintaining their preferred candidates for disputed thrones; and, perhaps most significantly, they demonstrated in engagements with Indian armies the superiority of European arms and military discipline. This degree of confidence and assertiveness aroused such suspicion and fear in the Nawab of Bengal, Siraj-ud-Daulah, that he attacked the Company’s factories at Kasimbazar and Calcutta in 1756 in an attempt to reduce the commanding position the English enjoyed in Bengal. Although the Company’s army managed to recapture Calcutta six months later, the Nawab’s vacillating support of contending British and French interests incited Robert Clive, who had gained the support of influential Hindu merchants and bankers, to depose Siraj-ud-Daula in favour of Mir Jafar after the Battle of Plassey in 1757. Victory at Plassey not only confirmed the Company’s predominant commercial position in

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Bengal, it signalled the beginning of British political mastery and abuse of authority as well. The government of Bengal remained nominally independent of British power and the Company’s commerce still relied upon government issued licences, but Mir Jafar, and all subsequent Nawabs, could not offend British sensibilities without fear of being unseated. Indeed, a succession of weak and subservient governments met this very fate; and on each occasion, additional concessions were extracted from newly installed rulers who were little more than executives of the Company’s interest.

By 1764, after the ruling Nawab again suffered military defeat inflicted by the Company’s army, Bengal had been transformed into a British protectorate. The Company pledged to support a newly enthroned Nawab against all enemies and in return the Nawab ceded territory to offset some of the Company’s military expenses and agreed to receive a British advisor to assist in managing the affairs of government.\(^\text{12}\) The Company’s emergence as a Mughal feudatory is by far and away the most significant development in the growth of British power in India. In August 1765, Emperor Shah Alam granted to the Company exclusive and perpetual possession of the \textit{diwani}—the right to collect and administer revenue—of Bengal, Behar, and Orissia. Securing the \textit{diwani} irrevocably engaged the Company in the defence and public administration of Bengal, for the grant obliged the Company to remit a fixed annual sum to the emperor and to maintain a large army for the protection of the subject provinces. The magnitude and potential danger of such great responsibility did not escape Clive, who conceded that ‘so large a sovereignty may possibly be an object too extensive for a mercantile Company.’\(^\text{13}\) However, he eventually came to regard the possession of the \textit{diwani} as the best way of


\(^{13}\) ‘Shah Alam’s farman granting the Diwani of “Bengal, Behar and Orissa” to the Company, 12 August 1765,’ and ‘Robert Clive on the policy of acquiring territorial possessions, 7 January 1759,’ \textit{Readings in the Constitutional History of India 1757-1947}, S.V. Desika Char, ed., (Delhi: Oxford University Press, 1983), 31, 34-5.
redressing persistent problems of instability, disorder, war, and the errant conduct of corrupt Company agents. This conclusion rested on the conviction, expressed by the Council at Fort William, that a stable and lasting government in Bengal required the abandonment of all schemes of divided power: 'all must belong to the Company or to the Nabob.'\(^{14}\) With the assumption of political power the Company ceased to be a commercial enterprise seeking to establish a lawful trade for the benefit of the commonwealth; and as a necessary consequence it had to confront the problem of governing, an activity it was wholly ill-prepared to perform.

The claim to rule

Acquisition of the *diwani* did not result in the establishment of conditions favourable to a healthy trade, nor did it arrest corruption amongst the Company's servants. Rather, government in the custody of the Company aided the cause of despotism and rapacity; disorders of every kind multiplied as territories rich in natural wealth, territories that Clive described as 'abounding in the most valuable productions of nature and of art,'\(^{15}\) lapsed into a state of privation. Mismanagement and corruption continued unabated, war frequented the Company's relations with neighbouring states, the peasant population laboured under a yoke of exploitation, and famine, which struck in 1769, laid waste to the Bengali countryside and killed millions. To compound matters, the belief that acquisition of the *diwani* would bear great financial advantage proved to be hopelessly misplaced when the Company advised parliament in 1772 of its inability to meet financial obligations owed to creditors and shareholders. The complete failure to devise a government that approached a modicum of stability, in addition to persistent allegations of corruption and the stress imposed by excessive debt, hastened the Crown's first


\(^{15}\) 'Robert Clive on the policy of acquiring territorial possessions, 7 January 1759,' *Readings in the Constitutional History of India 1757-1947*, S.V. Desika Char, ed., (Delhi: Oxford University Press, 1983), 32.
attempt to regulate the Company’s affairs. It is in the ensuing debates that we encounter a particular claim to rule that underpins the idea of trusteeship and which is essential to any understanding of its central assumptions and justifications.

Parliament’s first involvement in the affairs of the East India Company resulted in the enactment of the North Regulating Act of 1773. Ironically, opposition to the rather modest reforms prescribed by the North Act did not arise in direct response to charges of corruption and misrule in India, but from deeply held beliefs about the best constitution of the British polity. Indeed, the North Act raised important questions about the status of rights granted by charter and their purpose of affording protection against the abuse of legislative and executive authority. It is in this context that the Company defended its claim to rule in India. At the end of the eighteenth century the activities of state were still generally regarded as being properly limited to the conduct of foreign policy, the direction of armed forces, and the disposal of revenue. Likewise, the affairs of a private corporation, and especially matters concerning its property rights, were believed to be inappropriate matters of parliamentary attention.

The City of London, the most important chartered corporation in England, concurred and looked on any restriction of the Company’s chartered rights with grave apprehension: ‘the said Bill is a direct and dangerous attack on the liberties of the people, and will, if passed in to a law, prove of the most fatal consequences to the security of property in general, and particularly the franchises of every corporate body in this kingdom.’ Edmund Burke also came to the aid of the Company, mainly because he feared that interfering in the Company’s affairs would lead the country to destruction, for it would entail responsibilities far too great for parliament to contemplate. Thus, he opposed the North


Act, saying that it is 'impolitic, is unwise, and entirely repugnant to the letter as well as the spirit of the laws, the liberties, and the constitution of this country'\textsuperscript{19}

While any encroachment on the chartered rights of a private corporation required the utmost caution, the North government believed that allegations of corruption and misgovernment in India were of sufficient magnitude to warrant some form of intervention. The North Act prescribed reforms of rather modest ambition in the hope of placing the Company's finances and government in India on a more secure footing. The Act confirmed the Company's right of dominion in India, but in recognition of this right it charged the Company's Governor General with the responsibility of making rules and regulations in order to promote and to maintain public order. The Company's servants were forbidden to engage in personal trade, to receive gifts, and to exact tribute in the performance of their duties; and, significantly, the long-standing premise positing the incompatibility of commerce and war obtained positive affirmation. Thus, the Act declared that in the absence of lawful authorisation '[i]t shall not be lawful to make any orders for commencing hostilities, or declaring or making war, against any Indian princes or powers, or for negotiating or concluding any treaty of peace, or other treaty, with any such Indian princes or powers.'\textsuperscript{20} In spite of modest aspirations, the North government advanced a claim on behalf of the Crown that the public interest and national honour justified parliamentary determination of appropriate standards of conduct to guide the Company's commercial and political activities in India. Indeed, the North Act endorsed the Company's argument that certain rights granted by parliament sustained its claim to rule, but it also registered the principle that these rights were neither supreme nor absolute. And in doing so, it established a pattern of relations between Crown and Company that formed the basis of future deliberations on the Company's activities in India.


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In the years immediately following the passage of the North Act the Company’s administration in India disclosed improvement, but efforts to restore stability through principles of good government fell well short of expectations. Allegations of corruption and abuse continued to tarnish the Company’s reputation; and for a second time the Company experienced financial crisis that forced it to seek parliamentary relief. But it was the Company’s role in a series of controversial wars that fired the passions of its most determined critics in parliament, which by then counted Edmund Burke among them. Indeed, Burke argued during the North Act debates that the disorders associated with the Company’s government were few in number and, therefore, did not warrant parliamentary interference. Exactly ten years later he argued that ‘in its present state, the government of the East India Company is absolutely incorrigible.’ A parliamentary committee which investigated these allegations issued a devastating indictment, charging the Company with waging war in contravention of the public faith and reproaching its servants for condemning and defying orders stipulated in an act of Parliament with little discernible reservation. The committee concluded rather gloomily that the North Act had done little to curtail manifold abuses and that the only plausible remedy entailed subordinating the Company in the strictest obedience to parliamentary supervision. But in an even more startling conclusion, the committee determined that the amelioration of misrule in India required that ‘[t]he prosperity of the native must be previously secured, before any profit from them whatsoever is attempted.’ These conclusions implied a rather different principle against which to judge the Company’s claim to rule: the right of dominion depended not only on the possession of rights chartered in acts of parliament, but on the extent to which the welfare and prosperity of its native subjects coincided with the Company’s rule.


The underlying justification of this principle is most eloquently articulated in Burke’s celebrated speech in support of Charles Fox’s motion to abolish the Company’s dominion in India. Burke understood the Company’s abuse of commercial and political power as constituting a gross offence against the natural rights of men. Rights of this sort, he argued, are not the products of human activity: natural rights exist prior to the creation of positive rights and their fundamental character and inviolability are not debased by an absence of formal recognition in positive instruments of law. Thus, positive rights impose no obligation when they are repugnant to authority of natural rights; for ‘self-derived rights, or grants for the mere private benefit of the holders,…are all in the strictest sense a trust: and it is the very essence of every trust to be rendered accountable,—and even totally to cease, when it substantially varies from the purposes for which alone it could have a lawful existence. [emphasis in original]’  

But commercial and political privileges, Burke declared, are not rights of men; and the failure to discharge the duties assumed in possession of these rights violated the trust upon which the Company’s claim to rule depended. It is for this reason alone that Burke countenanced an increase in executive power and authority, even when it comes at the expense of rights that are intended to restrain the increase of executive influence. Indeed, he did not deny the Company’s right of commercial monopoly; nor did he dispute the Company’s authority to administer the revenue of its Indian territories, to command an army of sixty-thousand men, and to rule over the lives of thirty million Indian subjects. However, egregious abuse of commercial and political rights, and the magnitude and extent of misrule in India, left him with little doubt that the Company had forfeited its claim to rule.

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23 Burke, ‘Speech on Mr. Fox’s East India Bill,’ 439.

24 Burke, ‘Speech on Mr. Fox’s East India Bill,’ 439, 522.
It is the notion of trust that underpins Burke’s conviction that the affairs of British India must be placed under parliamentary authority and supervision. He believed that the trust that joined ruler and subject in India had been irreparably broken; for he could discern no benefit adequate to justify the maintenance of the Company’s dominion. He protested that the Company reduced to ruin every prince with whom it came into contact and that millions of Indians experienced neglect and despair at the hands of the Company’s administration: treaty obligations were ignored, rights of war and peace were abused, and young boys, intoxicated by the excesses of power, governed without sympathy for native interests. And he complained bitterly that the Company’s English masters had done nothing to compensate for the injustice of an ignominious rule. Indeed, he feared that ‘[w]ere we driven out of India this day, nothing would remain to tell that it had been possessed, during the inglorious period of our dominion, by anything better than the orangoutang or the tiger.’

Burke’s passionate discourse attracted the sympathy of others that regarded the Company’s conduct in India as being repugnant to the honour of the British nation and to the law of nations. Perhaps the most important of these sympathisers was Adam Smith, who attributed the Company’s misconduct to a fundamental contradiction between the interests of merchant and sovereign: ‘[a]s sovereigns, their interest is exactly the same with that of the country which they govern. As merchants their interest is directly opposite to that interest.’

For Smith, a government conducted by merchants is apt to prefer the meagre profit of the monopolist to the great revenue of the sovereign; and for this reason he suggests that ‘a company of merchants are, it seems, incapable of considering themselves as sovereigns, even after they have become such. Trade, or buying in order to sell again, they still consider as their principal business, and by a strange absurdity

25 Burke, ‘Speech on Mr. Fox’s East India Bill,’ 447-64.
regard the character of the sovereign as but an appendix to that of the merchant, as something which ought to be made subservient to it."^{27}

Although Burke did not succeed in seeing the revocation of the Company’s privileges, he registered the principle against which all subsequent governments in India would be judged: ‘all political power which is set over men, and that all privilege claimed or exercised in exclusion of them, being wholly artificial, and for so much a derogation from the natural equality of mankind at large, ought to be some way or other exercised ultimately for their benefit.’^{28} Success in this respect resulted in the passage of the India Act of 1784, which left the Company’s commerce unmolested but stipulated principles of good government that were intended to ‘secure the happiness of the natives.’^{29} The India Act reiterated without significant deviation the principles of good government contained in North’s Regulating Act; however, it also permitted the Crown’s supervision of Indian affairs in order to curb abuses perpetrated by the Company’s servants and to ensure the welfare of its native subjects. Indeed, William Pitt, the Prime Minister who presided over the passage of the India Act, argued that the success of the East India Company ‘must chiefly depend on the establishment of the happiness of the inhabitants, and their being secured in a state of peace and tranquillity.’^{30} That Burke and his allies shaped both the terms of debate and the character of reform is beyond the pale of doubt: they registered the principles that ruler and subject were joined by a sacred trust and that the native subjects of India ought to be the ultimate beneficiaries of government. Thus, the happiness and security of the native inhabitants of British India could no longer be dismissed as an adjunct or incidental interest to the

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^{28} Burke, ‘Speech on Mr. Fox’s East India Bill,’ 439.


business of commerce; and recognition of the Company’s claim to rule now depended on the performance of duties pertaining to the general well-being of people on behalf of whom the government of India were obliged to act as a faithful trustee.

The relation of ruler and subject

The elevation of the native subject to the foremost concern of government encouraged a mode of thought that not only affirmed the idea of trusteeship, but presupposed a relation of ruler and subject based on a condition of inequality. If the native inhabitants of British India were to be objects of solicitude, making the Company responsible for their happiness and security, then the conditions of their individual and collective lives took on a practical importance that supplanted the scholarly curiosity of the famed Orientalists of the late eighteenth century. The most famous of the Oriental scholars, Sir William Jones, viewed Indian society with high esteem, even if despotism impaired its progress to some degree. He regarded Indian poetry, drama, architecture, theology, and philosophy as providing evidence of superior achievement and he noted that Indian scientists were adept in the field of astronomy and possessed rudimentary knowledge of the basic laws of physics. Burke similarly regarded India as home to a polished civilisation erected on its own laws, institutions, and traditions. In one of his many declamations against the excesses of merchant rule he declared that the people of India do not ‘consist of an abject and barbarous populace;...but a people for ages civilized and cultivated,—cultivated by all the arts of polished life, whilst we were yet in the woods.’ Indeed, he compared the constitution of Indian society favourably to that of Britain and viewed it as being roughly equal to the constitution of the German Empire. And for Burke, the high degree of moral perfection exhibited by Indian society commanded respect as a civilisation in its own right, for ‘in Asia as well as in Europe the

32 Burke, ‘Speech on Mr. Fox’s East India Bill,’ 444.
same law of nations prevails;' and Asia, he insisted, 'is as enlightened in that respect as well as Europe.' But the respect that Burke accorded Indian civilisation soon gave way to a contemptuous denunciation of Indian difference in such a way that it established the inferiority of Indian society, culture, religion, and character.

Favourable assessments of the state of Indian society came to be viewed with considerable scepticism as attempts at reform met with great success. With the India Act in place, the Company dispatched Lord Cornwallis to repair the government of India’s stained reputation. Before long the oft-maligned government came to be viewed as the custodian of a well-ordered and prosperous territory as reports of precipitous decline and decay were soon replaced by accounts of rising standards of living and renewed wealth. The apparent success of the Cornwallis reforms pacified the Company’s most strident critics and seemingly confirmed the superiority of British ideas, practices, and institutions. The most consequential of these reforms, the introduction of property rights, aimed at creating a progressive landholding class and securing for the government a permanent source of revenue. To establish the permanence of these arrangements Cornwallis endeavoured to promote the rule of law; for ‘security of property must be established by a system upheld by its inherent principles, and not by the men who are to have the occasional conduct of it.’ But it is imperative to note that in pursuing a rather ambitious agenda of reform, Cornwallis did not aspire to restore Indian society to some memory of former greatness. The character and objectives of reform proceeded from the belief that Indian ways of life were obstacles to achieving stability, prosperity, and good government. Indeed, it is in the years


immediately following the passage of the India Act that it is possible detect both an implied and deliberate change in the British estimation of Indian society. George Bearce argues that the Company’s success in bringing order and prosperity to the lands of British India fostered a sentiment that ascribed superiority to the character of the British people and inferiority to an Indian character described in terms of weakness, timidity, and moral depravity. And by extension, Indian society ceased to be an object of admiration and study, but instead became an object of denigration and pity.

One of the most influential statements propounding the manifest inferiority of Indian society is found in an essay penned by Charles Grant, a man who, according Ainslee Thomas Embree, did more to shape the character and assumptions of the Company’s government in India than any other of his generation. In a sweeping and total indictment, Grant described Bengal as being inhabited by people who were without qualification in want of the virtues required to perfect a society abounding in comfort, wealth, prosperity, and security. Selfishness operated without restraint or regard for authority. Deception, fraud, evasion, procrastination, and forgery were pervasive habits of Bengali life and acts of gross dishonesty passed without reproach, leaving no mark of dishonour or disgrace on persons who perpetrated them. Despotism framed a society in which those who were entrusted with the responsibilities of power knew nothing of moderate and pacific rule. And a principle no more enlightened than fear, which set every man against every man, joined the Bengali to his ruler. Indeed, Grant insisted that in every respect the people of Bengal ‘exhibit human nature in a very degraded humiliating state, and are at once, objects of disesteem and of commiseration.’ Thus, in one broad...

35 ‘Cornwallis and his Council on reforms in judicial administration, 6 March 1793,’ Readings in the Constitutional History of India 1757-1947, S.V. Desika Char, ed., (Delhi: Oxford University Press, 1983), 124; and Bearce, British Attitudes Towards India, 45-46.
36 Bearce, British Attitudes Towards India, 40-42.
stroke, the difference of Bengali society that commanded a measure of respect from the likes of Jones and Burke provided for Grant evidence of a society founded upon irredeemable error.

For Grant, the totality of this error compounded the ill-effects of an utterly defective character, one mired in ignorance and the excesses of unfettered appetite and avarice. The faults of Bengali society were both ubiquitous and complete, so much so that he asserted: 'in Bengal, a man of real veracity and integrity is a great phenomenon; one conscientious of the whole of his conduct, it is to be feared, is an unknown character. [emphasis in original]' Grant offered no account of this state of affairs that did not involve the categorical condemnation of a baneful and, indeed, pernicious system of law and religion. He understood law and religion in Bengal as expressing a single unified system of authority, a system whose authenticity was confirmed by a (false) claim of divine origin. But in truth, he countered, the Hindu religion upholds a system of oppression: it prescribes a caste system—a system that is resistant to every scheme of liberal and enlightened change—that consigns the lowest orders of society to a life of perpetual ignorance, superstition, and servitude. And he betrays no hesitation when he concludes that the injurious effects of the caste system, which are in the main responsible for the depressed state of Bengali society, are the work of a 'crafty and imperious priesthood' and are the necessary consequence of a religion '[e]rected upon the darkest ignorance, and the boldest falsehood.'

The wholly unfavourable estimation of Bengali society that runs throughout Grant's thought obtains validation of sorts in James Mill's famous history of India, a monumental treatise widely regarded during the early nineteenth century to be the most important and authoritative history of its kind. Mill's reading of history suggests that India had not progressed since contact with the Greeks; that

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40 Grant, 'Observations on the State of Society,' 45, 73.
they were mired in a stationary condition of barbarity; and that 'having reached its present stage, Hindu society does not appear that it has made, or that it is capable of making, much further progress.' Indeed, he rejected as pretentious nonsense the suggestion that the people of India once enjoyed a period of opulence and grandeur; for he could find no evidence, supported by reason or history, of a great calamity sufficient to reduce them to a state of abject ignorance and barbarism. Thus, Mill attributed the poverty of Indian civilisation to despotic government and a defective body of law, both of which enjoyed the sanction of a fraudulent system of priestcraft that sustained an equally fraudulent religion from which 'no coherent system of belief seems capable of being extracted from...wild eulogies and legends.'

He described the native government of Bengal as being constituted by the unrestrained will of a single person and he submitted that it did not appear as if any thought had been given to forms of government that did not combine the offices of sovereign, judge, and legislator. Moreover, he argued that Hindus deprived themselves of a well-ordered society by subscribing to a body of law which was both incomplete and inexact. Hindu law created a multitude of rights which ought not exist and, having little regard for uniformity, it left matters of precedent shrouded in uncertainty. And like other 'rude' societies, these arrangements of public life were all imposed by a divinely ordained caste system, a system 'built upon the most enormous and tormenting superstition that ever harassed and degraded any portion of mankind.'

The ignorant and miserable conditions of Indian society confirmed for Mill the shrunken and feeble state of the Hindu mind, a mind easily succoured by the fantastic tales portrayed in Hindu epics, poetry, and mythology, but thoroughly unaware of the 'sober limits of truth and history.' Thus, he

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found the Sanskrit language, like Hindu law, to be deficient because it too was imprecise. Whereas the standard of perfection consisted in having one name to describe all that requires a name, Sanskrit specified many words to describe the same thing. With respect to scientific achievement, he found no evidence to suggest that the Hindu mind imagined the universe as a connected and perfect system governed by general laws knowable to all; and what little of mathematics and astronomy it did understand was misdirected toward astrology—"the most irrational of all imaginable pursuits."45 In matters of social intercourse, Mill likened Indians to uncultivated children: "among children, and among rude people, little accustomed to take their decisions upon full and mature consideration, nothing is more common than to repent of their bargains, and wish to revoke them."46 Indeed, Mill was so impressed with European standards of achievement that he was certain that anyone who exerted the slightest effort, and who was not shackled by sentimentality, hubris, and superstition, could "form no other conclusion, but that every thing (unless astronomy be an exception) bears clear, concurring, and undeniable testimony to the ignorance of the Hindus, and the low state of civilization in which they remain."47

Burke’s defence of a highly organised and polished Indian civilisation must have appeared as a rather strange and unintelligible fiction to Grant and Mill; for their histories of Indian society were dedicated solely to the illumination of error and defect. History written and understood in these terms accompanied what C.H. Alexandrowicz describes as the abandonment of a natural law tradition, a tradition that disallows the notion of geographic morality—the idea that differences in civilisation endowed like actions with different moral qualities. In place of a tradition that embraced all nations within an universal system of law, European powers substituted a system of positive international law

46 Mill, *The History of British India*, 76.
which repudiated the principle of universality and thereby destroyed a general framework within which people of different civilisations, religions, races, traditions, and values might live out their lives in a spirit of coexistence. Currents of thought that induced a startling and relatively sudden transformation in the writing of history and in thinking about the origins of law also resulted in an equally changed understanding of the proper relation of ruler and subject. The superior virtue of the European and the corresponding defect of the Indian established a pattern of relations grounded in a condition of inequality. It is this conception of defect, understood as false religion, despotic government, faint character, or something else, which Europeans invoked as justification for treating the people of India as wards, that is, subjects of trusteeship, who were incapable of directing their own affairs. Thus, Indians, on account of their certain inferiority, were thought to be worthy subjects of a benevolent government responsible for securing them in a state of peace and seeing to their improvement.

Lord Wellesley, the Governor General who added more territory to the Company’s holdings than any other, took refuge in this mode of argument when he justified the absence of Indian participation in government: ‘at the same time that we excluded our native subjects from all participation in the legislative authority, abundant security was afforded to them, that the exercise of that authority would always be directed to their happiness and benefit.’ Justifying the organisation of society on these terms, namely, the joining of ruler and subject in terms of inequality, raised a question previously foreclosed to a government of merchants. On what grounds would it be right to withhold the benefits of British rule from Indians not under the Company’s dominion? Lord Minto answered this question by proposing a policy of expansion and annexation that he believed would deliver the people of India from oppressive conditions of barbarism and would confer upon them the benefits of a liberal,

enlightened, and moderate British government. And, in form, Lord Hastings (no relation to Warren Hastings) claimed that the Company's wars in Nepal and in the Mahratta states helped stimulate public works and educational progress. Out of the presumption of inequality arises the idea that the possession of knowledge, wealth, power, and virtue imposes an obligation to attend to the social, moral, and material improvement of the weak and disadvantaged. Indeed, the Court of Directors resolved that the performance of this obligation is expected on account of the 'total inability of the people to perform it with their own scanty means.' Thus, the Company's dominion would be to some extent justified by its promise of emancipation.

**The purpose of the office of government**

With the imperfect state of Indian society established, its European masters were left with the task of determining the ends toward which the power of dominion should be directed. All agreed that political power ought to be exercised in such a way that it contributed to the security and happiness of the native people of India, but thinking about the ways in which this state of affairs might be realised remained a great deal less settled. A plethora of disparate and sometimes conflicting voices suggested that security and happiness depended on the introduction of religious, legal, educational, or some other form of improvement.

Advocates of religious improvement were moved by the fervent belief that the propagation of the Christian religion would remedy the moral depression that shrouded the people of India in a state of darkness. The assumptions and justifications that underpin this belief are again brought into sharp relief

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50 Bearce, *British Attitudes Towards India*, 50-51.

in the thought of Charles Grant, who understood the poverty and distress of India to be the consequence of something more fundamental than the Company’s misrule. Like most evangelical Christians, he believed that the people of India endured a life of misery on account of ignorance; and the remedy of this unhappy condition depended on the communication of Christian truth so that they might understand the nature of their errors. For Grant, the benefits of this enterprise were beyond scrutiny:

> the pre-eminent excellence of the morality which the Gospel teaches, and the superior efficacy of this divine system, taken in all its parts, in meliorating the condition of human society, cannot be denied by those who are unwilling to admit its higher claims; and on this ground only, the dissemination of it must be beneficial to mankind.

That such a remedy awaited only an agent to disseminate its truths served to strengthen his resolve that the office of government should assume responsibility for what William Wilberforce described as the ‘temporal and eternal happiness of millions; literally million on millions yet unborn.’ Inconvenience could not justify leaving the people of Bengal mired in darkness, nor could the consequences of failure be allowed to impede work destined to improve the lives of millions. Indeed, Grant submitted that dominion imposed an obligation far in excess of protecting the people of India from oppression, and, for that reason, he recommended that the office of government be entrusted to look into evil and disorders that afflict Indian society and ‘to enact and enforce wholesome laws for their internal regulation, and in a word, with the affection of a wise and good superior, sedulously to watch over their civil and social happiness.’

Although utilitarian thinkers dismissed religion as the veneration of superstition, their prescription for the regeneration of India’s ignorant masses was in its assumptions remarkably similar to the Christian theory of improvement. Both utilitarians and evangelical Christians viewed the Indian

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character as being sufficiently malleable that the institution of 'true' law, albeit law of differing origins, would effect its improvement. Whereas Charles Grant believed that improvement would follow the propagation of God's law, James Mill believed that improvement would follow the implementation of law rationally conceived, precisely articulated, and executed with economy and mechanistic efficiency. Indeed, Mill's theory of improvement amounted to little more than a secular Gospel of utilitarianism; for acolytes of utilitarianism, as Eric Stokes points out, merely 'abolished God and substituted human for Divine Justice.' From the time of his appointment to the India Office in 1819, Mill brought the full force of utilitarian thought to bear on the policies of the Company's Indian government, in part to controvert the scholarly authority of William Jones and others who expressed admiration for Indian society. But he remained fixed on the substantive problem of governing the Company's vast territories: 'to ascertain the state of the Hindus in the scale of civilization is not only an object of curiosity in the history of human nature; but to the people of Britain, charged as they are with the government of that great portion of the human species, it is an object of the highest practical importance.'

In this respect, Mill harboured few doubts about the sources of Indian depravity: poverty was the result of bad government and bad law in India just as it was everywhere else. True to the utilitarian canon, he proposed to rectify the sources of bad government and bad law—the evil alliance of political despotism and priestly superstition—by unleashing a revolution aimed at radically reordering the system of law of British India. The defects of India's existing system of law must be replaced with a more accurate and rational system. Law must be clear, effective, and economical so that presiding judges are able to declare its obligations without delay. Thus, he testified before the House of Commons in 1832 that 'there ought to be but one legislative organ for our whole Indian empire' and that 'there should be no limit to the power of legislation in India in the hands of the organ I speak of,

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except that the exercise of this power should be under the strict control of the British Parliament.\textsuperscript{57} In other words, Mill believed that the people of India required a human legislator, a government superior to all other authorities, to direct them away from harm and to guide them along the path of improvement. Only then would it be possible to erect a competitive and vibrant society built upon the veracity of individual effort in place of one blinded by the narrowing outlook of the priest and the tyrant.\textsuperscript{58} Indeed, a government invested with supreme authority, he assumed, would also happily avoid what he identified as the fundamental error of the whig theory of government. Government must proceed singly; and once the legislator determines the course on which to travel, the executive and judiciary must be nothing more than instruments charged with carrying out these commands. Thus, Mill shared with Bentham the view that '[t]o attempt to control government in the interests of the community by dividing its powers, and setting them as a mutual check against one another, was to frustrate its purpose.'\textsuperscript{59}

The propositions put forward by Mill, as well as those by Grant, are noteworthy insofar as they imply a revolutionary reformation of Indian society. Improvement was something to be achieved in one momentous step. It is this approach to improvement that prevailed through much of the great decade of reform, from 1828-38, in which attempts were made to deliberately direct the moral and material improvement of India. For example, Lord William Bentinck, the Governor General most closely associated with these reforms, determined that the people of India needed a wise and knowledgeable overseer, one sufficiently powerful to devise efficient laws in order to erode practices that obstructed or


\textsuperscript{58} Stokes, \textit{The English Utilitarians and India}, 69.

\textsuperscript{59} Stokes, \textit{The English Utilitarians and India}, 72.
were incompatible with native happiness. Perhaps no issue better illustrates what he had in mind than the abolition of sati. Bentinck disclosed a thorough appreciation of the hazards to British authority that might follow interference in Hindu religious custom, but he maintained that conscience dictated that government endeavour to separate the Hindu mind from this practice, to dissociate religious belief and tradition from blood and murder. Only then would it be possible for Hindus to accept acknowledged truth, with calmness and clarity, that there can be no inconsistency in the divine commands received by all men and all races. Missionaries denounced sati as an odious ritual that should not in any circumstance be tolerated: ‘[t]he sacred principles of justice are not to be abrogated, because private individuals are mistaken in their notion of the worship which is acceptable to the Deity.’ Bentinck seems to have agreed; for his government issued a circular in 1828 declaring that the continued toleration by Christians of such a horrific practice incurred before God responsibility for the victims of an impious and inhuman ritual. Thus, the eventual prohibition of sati entailed an important qualification of the long-standing presumption against interference in religious affairs: ‘to the full extent of what it is possible to reconcile with reason and with natural justice they will be undisturbed in the observance of their established usages.

While Bentinck claimed early in his career that few reforms would benefit India more than wise laws and the impartial dispensation of justice, he eventually came to view education as the greatest of all possible engines of improvement. Indeed, he believed that education must precede all other attempts at

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61 Bentinck, ‘Bentinck’s minute on sati,’ The Correspondence of Lord William Cavendish Bentinck, 344.

62 ‘Petition of the missionaries to Bentinck,’ The Correspondence of Lord William Cavendish Bentinck, 192.

63 Bentinck, ‘Bentinck’s minute on sati,’ 470; and ‘Sati: Regulation XVII, A.D. 1829 of the Bengal code,’ The Correspondence of Lord William Cavendish Bentinck, 360.
reform: "[g]eneral education is my panacea for the regeneration of India. The ground must be prepared and the jungle cleared away, before the human mind can receive with any prospect of real benefit, the seeds of improvement. [italics in original]"\textsuperscript{64} He conceived no advantage in maintaining ignorance: the natives must possess the wherewithal to recognise and represent their grievances and to seek redress in case of dissatisfaction. Moreover, he submitted that "[i]f their own habits, morals or ways of thinking are inconsistent with their own happiness and improvement, let them have the means provided by our greater intelligence, of discovering their errors."\textsuperscript{65} Thus, Bentinck approved of every plan devised to communicate the accumulated knowledge and wisdom of European civilisation, especially the introduction of European school-masters and colonial settlers who would impart formal knowledge and carry with them the imagination, skill, and capital necessary to raise India in the standard of civilisation. Education in this respect entailed the provision of all sorts of useful knowledge, including the gradual implementation of English instruction. However, Bentinck feared that meddlesome interference in native education may result in great harm; and, therefore, he regarded the sudden substitution of English in place of all local dialects as "an intolerable act of arbitrary power, and quite impossible."\textsuperscript{66}

The rather modest degree of restraint exhibited in Bentinck's approach to education is wholly absent in the thought of Thomas Babington Macaulay, who advocated the wholesale Anglicisation of education in India. Bentinck surely looked on European knowledge as a superior achievement, but he did not share Macaulay's utter contempt for Indian learning. For Macaulay, champions of vernacular instruction were mistaken in their belief that native dialects contained any information of literary or scientific value; indeed, he claimed that a "single shelf of a good European library was worth the whole

\textsuperscript{64} Bentinck, 'Bentinck on reform in India,' \textit{The Correspondence of Lord William Cavendish Bentinck}, 1287.

\textsuperscript{65} Bentinck, 'Bentinck on reform in India,' \textit{The Correspondence of Lord William Cavendish Bentinck}, 1286.

\textsuperscript{66} Bentinck, 'Bentinck on reform in India,' and 'Bentinck on the education of Indians,' \textit{The Correspondence of Lord William Cavendish Bentinck}, 1288, 1395-98.
native literature of India and Arabia." Useful knowledge could be communicated in no other language than English. Thus, Macaulay engaged the debate on education in India as if it presented no vexing dilemma: it concerned nothing more than identifying the best language worth knowing. In this respect it is worth quoting Macaulay's defence of English instruction at length:

[The question now before us is simply whether, when it is in our power to teach this language, we shall teach languages in which, by universal confession, there are no books on any subject which deserve to be compared to our own, whether, when we can teach European science, we shall teach systems which, by universal confession, wherever they differ from those of Europe differ for the worse, and whether, when we can patronize sound philosophy and true history, we shall countenance, at the public expense, medical doctrines which would disgrace an English farrier, astronomy which would move laughter in girls at an English boarding school, history abounding with kings thirty feet high and reigns thirty thousand years long, and geography made of seas of treacle and seas of butter.]

Macaulay hoped that the substitution of English for eastern languages would strike a decisive blow against a system of knowledge that disseminated nothing but error. With this objective in mind, he recommended the abolition of Sanskrit and Arabic institutions of higher learning and he advised against printing any new books in those languages. Only then would it be possible to create a 'class who may be interpreters between us and the millions whom we govern—a class of persons Indian in blood and colour, but English in tastes, in opinions, in morals and in intellect.'

But not all shared the supreme confidence exhibited by Macaulay and others who believed that the reform of India could be accomplished in one revolutionary step. In the thought of John Malcolm, Thomas Munro, and Mountstuart Elphinstone we encounter a more cautious and deliberate approach to securing the people of India in a state of peace and tranquillity. Indeed, Malcolm looked upon the haste with which less experienced politicians wished to effect improvement in India with great

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69 Macaulay, 'T.B. Macaulay's minute on education,' 1412.
circumspection: ‘I do not think [the younger politicians] know so well as we old ones, what a valuable gentleman Time is; how much better work is done, when it does itself, than when done by the best of us.’

For Malcolm, schemes of improvement must be suited to the peculiarities of Indian society; they must be implemented gradually and, most important of all, sustained by the efforts of Indians rather than their European masters. Munro similarly disparaged what he regarded as the reckless and ill-considered aspiration of remaking the people of India as brown Englishmen. ‘The ruling vice of our government is innovation,’ he wrote, [and] ‘it is time that we should learn that neither the face of the country, its property, nor its society, are things that can be suddenly improved by any contrivance of ours, though they may be greatly injured by what we mean for their good.’

Both Malcolm and Munro were convinced that the reform of Indian society must proceed incrementally, and in light of experience, rather than in accordance with the orthodoxy of abstract theory. Elphinstone expressed this idea when he advised that any sensible and prudent attempt at reform must carefully preserve what is of value and purge what is not: ‘it becomes of the first consequence to cherish whatever there is good in the existing system, and to attempt no innovation that can injure the principles now in force, since it is so uncertain whether we can introduce better in their room.’

The modesty that infuses this conviction implies an approach to reform that is professedly liberal but one that is also conservative in tone. For example, Munro objected in particular to the exclusion of natives from all but the lowest levels of government; for a nation is enslaved and its national spirit extinguished when it is unable to frame it own laws, raise its own revenue, and oversee the administration of its own affairs. The less patient advocates of reform, he argued, ‘do not seem to

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71 Quoted in Stokes, The English Utilitarians and India, 19.

72 Mountstuart Elphinstone, ‘Mountstuart Elphinstone on the wisdom of maintaining indigenous forms of judicial administration, 1818-19,’ Readings in the Constitutional History of India, 132-49.
have perceived the great springs on which it depends; they propose no confidence in the natives, to give them no authority, and to exclude them from office as much as possible; but they are ardent in their zeal for enlightening them by the general diffusion of knowledge. However, it would be a mistake to interpret the value ascribed to aspects of Indian society as constituting indifference to its defects. Munro believed that India lacked principles of good government and he thought its system of higher education stifled creative thinking; likewise, Elphinstone described education in India as ‘medieval’ in curriculum and the Hindu religion as an impediment to the development of law and morality. Thus, they set out, like the impassioned prophets of Christianity, utilitarianism, and Anglicisation, to remedy these defects, albeit gradually and in sympathy with the traditions, habits, and practices of Indian society. Still, they endeavoured to reform Indian society by introducing liberal ideas in order to prepare it to join the family of nations; and in doing so, they deliberately introduced into Indian political and social life alien ideas that would inevitably undermine and perhaps destroys aspects of Indian society.

For all of the very obvious differences that distinguished the participants in this debate, they remained true to the principle that political power ought to be exercised so that it benefits those persons who are subject to it. Some disclosed the modesty of Burke, others the intemperance of Macaulay. And, to be sure, they often disagreed on the best way in which to proceed. However, they all shared in common the belief that the people of India were unable to direct their own affairs on account of ignorance and moral poverty; and, consequently, they understood it as the duty of the office of government to take steps toward rectifying this unhappy state of affairs. Thus, each in his own turn proposed a remedy, based on religion, law, education, or something else, in the interest of drawing the

73 Thomas Munro, ‘Thomas Munro on the supreme folly of excluding Indian subjects from higher offices, 31 December 1824,’ and ‘Thomas Munro on the adverse effects of foreign rule and his suggestions for reform, 31 December 1824,’ Readings in the Constitutional History of India, 140, 174.

74 Bearce, British Attitudes Towards India, 124-25, 130, 142.
people of India in closer contact with British authority and in the hope of eventually lifting them into the ranks of civilised life.

**Justifying dominion**

It would be an exaggeration to say that the East India Company governed its territories in India according to the principle of trusteeship. Questions concerning the character of government in India, from the Company's rise to political power in the mid-eighteenth century to its abolition in the mid-nineteenth century, were in the main grounded in beliefs about the proper relation of power and responsibility. Thus, it might be said that the principle of trusteeship expresses one such belief. Burke issued the most important statement of this relation of power and responsibility when he said that all political power that is set over men ought to be exercised for their benefit. This test of political power set aside the right of conquest, economic interest, and national pride as sufficient justifications for British rule in India. The rights of dominion had to be justified by the calling of a higher purpose. In that respect, the principle of trusteeship assumes that political power is justified to the extent that it protects people from their own ignorance and from the rapacity of others. That is what William Pitt meant when he said that the success of the Company must depend on the inhabitants of India being secured in a condition of peace. The principle of trusteeship also assumes that government is responsible for actively promoting the welfare of its subjects; that is, government is responsible for providing not only elementary conditions of public order, but for providing positive entitlements to which its subjects may lay claim as well. It is this justification of political power that underlies the emancipatory ideas of Charles Grant, James Mill, and T.B. Macaulay. Through proper instruction in religion, law, and education, government would be able to deliver the people of India from the bonds of false religion, irrational law, and dubious knowledge.

But it must also be said that over time the principle of trusteeship exerted rather uneven influence on the policies adopted by the government of India; nor were these policies ever described as
being part of an overarching policy of trusteeship. Periods in which the Company’s servants consciously pursued the moral and material well being of India’s native population were often followed by periods of imperial expansion that disclosed little care for the obligations of trusteeship. Moreover, the pressures of financial retrenchment often forced the curtailment of more ambitious attempts to improve the state of society in India. But the great experiments undertaken in India provided the impetus for a particular mode of conduct which assumed that the strong are obliged to rule on behalf of the weak; that ruler and subject are joined in a relationship defined by a condition of inequality; and that government is duty-bound to promote the welfare of the ignorant and to protect them from exploitation. The British Crown did not abandon this justification of political power after parliament abolished the Company’s dominion in the wake of the Indian Mutiny of 1857. Queen Victoria affirmed the principle laid down by Burke when she proclaimed that ‘it is our earnest desire to stimulate the peaceful industry of India, to promote works of public utility and improvement, and to administer its government for the benefit of all our subjects resident therein.’ Indeed, the idea of trusteeship that is implied in this pledge would not only come to define the character of British colonial administration, but it would be introduced into the practice of international society, first as part of the Berlin Act, and then in the League of Nations covenant and the United Nations charter. It is in this respect that the experience of the East India Company prefigures the emergence of trusteeship as a recognised and accepted practice in international society.

Chapter Three

The Internationalisation of Trusteeship

The partition, occupation, and colonisation of Africa is one of the most noteworthy, and perhaps misunderstood, events of nineteenth century international history. This period of history is most commonly identified with the machinations of power politics, the search for imperial glory, the pursuit of private and national wealth, and the odious traffic in human beings. But Africa’s encounter with European international society consists in something more than a story of domination and exploitation; for this encounter also established that the conditions of the weak and disadvantaged constituted a legitimate subject of international scrutiny. In other words, the members of nineteenth century international society internationalised the obligations of trusteeship by enshrining in international law moral principles that repudiated relations based on domination and exploitation. The purpose of this chapter is to examine the idea of trusteeship in the context of British colonial administration in Africa, the Berlin and Brussels Conferences, and the experience of the Congo Free State. Out of these events that the idea of trusteeship emerged as a recognised and accepted practice of international society.

Attitudes toward Africa

British attitudes toward Africa at the turn of the nineteenth century were shaped to a significant extent by an earnest desire to atone for their role in purchasing and transporting slaves to work the sugar and indigo plantations of the New World. William Pitt expressed this sentiment before the House of Commons in 1792: ‘how shall we hope to obtain, if it be possible, forgiveness from Heaven for the enormous evils we have committed, if we refuse to make use of those means which the mercy of Providence has still reserved for us for wiping away the shame and guilt with which we are now
covered?  

This shame and guilt resulted in the establishment of settlements along the west African coast for sole purpose of combating the slave trade; and in 1807 the Crown assumed direct responsibility for Sierra Leone, a colony founded by British philanthropists for the purpose of settling liberated slaves.  

The British government also wished to hasten the end of slavery and the slave trade by impressing upon the native rulers of Africa the advantages of a free and unencumbered trade, or what they referred to as a legitimate and peaceful commerce. Agents were dispatched to tell native rulers of the advantages of lawful trade and to convince them that innocent commerce would be most productive of industry, virtue, and well-ordered society. Native rulers who failed to heed this advice with sufficient vigour often found themselves to be the subjects of intimidation, blockade, and bombardment; for Lord Palmerston wrote in 1851 that the ‘the Friendship of Gt. B[ritain] is to be obtained by the Chiefs of Africa only on the condition that they abandon Slave Trade and expel the Slave Traders, and that those Chiefs who may refuse to do these things, will surely incur the Displeasure of the British Govt.’  

But atoning for past sins imposed for the most ardent abolitionists a responsibility far greater than prohibiting slavery within the British Empire and putting down the traffic in human beings on the high seas. Indeed, Thomas Fowell Buxton insisted that ‘[o]ne part of our national debt to Africa has already been acknowledged by the emancipation of our colonial slaves. There remains yet, however, a larger debt uncancelled,—that of restitution of Africa itself.’  

The burden of this responsibility weighed most heavily on Christian missionaries who set out, armed with the promise of salvation, to deliver

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Africa from the oppressive burden of slavery and to inculcate in its people the perfection of a higher morality. While most of these missionaries toiled in obscurity, braving endemic war, political disorder, disease, and enormous personal hardship, the travels of David Livingstone awakened the British public to the evils of slavery and, thereby, exerted immense influence on British attitudes toward Africa.\(^5\) In Livingstone’s theories of social change it is possible to detect a lucid distillation of major currents of Victorian thought and, in particular, the beliefs and assumptions that underpinned the missionary purpose in Africa. The salvation of Africa, he argued, rested not only in the communication of Christian truth, but in the ‘application of the best of British culture to lift the African from superstition, poverty, and all the evils which beset him in his tribal condition.’\(^6\) Thus, the introduction of European settlers would set an example of industry and Christian virtue for all Africans to imitate. Free trade, in conjunction with the Christian message of fraternity and universal brotherhood would pacify isolated and warring tribes, create bonds of interdependence, and join them together in a condition of mutual amity, peace, and prosperity. Livingstone believed that, together, these great engines of civilisation, Christianity, colonisation, and commerce, would ameliorate the barbarism of tribal life and, more importantly, destroy the odious traffic in human beings.\(^7\)

Perhaps Livingstone’s greatest achievement is the fact that he engaged the imagination of a nation by skilfully combining Christian respect for individual personality with Adam Smith’s idea of economic individualism. However, against missionary wishes for greater spiritual and political involvement in Africa, adherents of the so-called Manchester School invoked principles of Smith’s political economy in support of liquidating existing imperial commitments in Africa. Richard Cobden

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\(^7\) Cairns, *Prelude to Imperialism*, 139, 192-98.
and John Bright rarely tired of extolling the virtues of private enterprise and restricted government because they believed that markets were productive not only of material wealth, but of great social energy and individual improvement. Markets, they argued, cultivate a sense of responsibility, discipline, industry, and all that is required of the virtuous citizen. Thus, material prosperity, intellectual enlightenment, and moral refinement would naturally arise in creative and inventive human beings who were free to think, speak, worship, and work without interference from the heavy hand of the state.\(^8\) In contrast to the presumed benefits of market economy, proponents of Manchester style economics viewed the maintenance of empire as an impediment to the achievement of moral and material progress. Empire necessarily entailed a pattern of relations that deviated from the natural equality of all men and consequently imposed an unnatural state of dependence that could not be sustained, as the American Revolution amply demonstrated. And they also regarded the possession of vast colonial holdings as an unnecessary financial and military burden that constituted an imprudent interference with the laws of economy. It is in this spirit that Bright proclaimed: ‘I am inclined to think that, with the exception of Australia, there is not a single dependency of the Crown which, if we come to reckon what it has cost in war and protection, would not be found to be a positive loss to the people of this country.’\(^9\)

Out of these ideas grew the general belief that colonial possessions ought to be emancipated and that the assumption of new political, financial, and military responsibilities ought to be avoided.\(^10\) British officials were in the mid-nineteenth century less concerned with ruling distant lands than with expanding the nation’s commerce. Indeed, free commerce, rather than the controlling interests of the flag, would see to the prosperity of Britain and, by extension, carry to Africa the benefits of civilisation.

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Thus, Colonial questions were accordingly settled with an eye to retrenchment; and colonies were themselves generally regarded as temporary possessions that were to be self-supporting and self-governing at the earliest opportunity. That the colonies would progressively seek greater autonomy and, eventually, demand independence represented nothing more than the natural maturation of empire. It is in this context that British officials remained decidedly indifferent to African affairs; for Africa afforded little in the way of interest or value—apart from an abiding interest in suppressing the slave trade—that joined it to Britain in common cause. British trade with Africa compared rather poorly with the commercial ties that linked Britain to India and to the Americas; and official opinion believed that the constant threat of war, an inhospitable climate, and the financial responsibilities of empire outweighed any possible advantage obtained by securing territory in Africa. James Stephen expressed this view, which dominated Colonial Office thinking right up to the eve of partition, with unmistakable clarity: ‘[i]f we could acquire the Dominion of the whole of that Continent it would be but a worthless possession.’ Even Benjamin Disraeli, a man acutely attuned to the prestige afforded by empire, tended to regard colonies in Africa as millstones rather than sources of imperial power. And parliament resolved in 1865 that the assumption of new responsibilities in Africa would be ‘inexpedient’ and that the administration of all colonial governments, excepting only Sierra Leone, should be transferred to the natives.12

The sudden abandonment of this policy has long been the subject of speculation. J.A. Hobson argued in his celebrated volume, Imperialism, that political, racial, and cultural accounts of expansion in Africa were less important than tightly organised economic interests that wished to dispose ‘of their surplus wealth by seeking foreign markets and foreign investments to take off the goods and capital they

12 Coupland, The British Anti-Slavery Movement, 240.
cannot sell or use at home.' And, of course, no account would be complete without mentioning French, German, and Italian hopes for a place in the sun in tropical Africa. Still, Alan Cairns insists that ‘the basic fact remains that cruelty and suffering were undoubtedly the most important factors in producing a British reaction against the status quo in the pre-imperial period [emphasis in original].’ Sir Andrew Cohen similarly argues that ‘[t]he abolition of slavery and, in revulsion form the slave trade, the sense of mission toward the people of Africa were the first motives in time in the British penetration of both West and East Africa.’ Indeed, to the distant European, life in much of Africa was a story of anarchy, constant war, and brutality. The character and effects of inter-tribal warfare and certain native customs struck the British public as being utterly repugnant: it could not possibly reconcile witchcraft, mutilation, trial by ordeal, human sacrifice, and especially the torture and murder of women and children, with any known standard of justice or reason. To the British mind, savage customs and the noxious effects of cattle and slave raiding so profoundly disrupted the course of ordinary life that humanity and decency dictated intervention. Not surprisingly, the most enthusiastic advocates of expansion were missionaries, who believed, as did Lord Wellesley in India, that the most effective way to suppress the slave trade and to communicate Christian truth would be extend British rule to territories not yet under European dominion. And, indeed, pervasive lawlessness and disorder left no less a lasting impression on European traders. Those who were foolhardy enough to venture into the African interior often lived a precarious existence, their lives always under constant threat of warring tribes. They too began to demand the protection afforded by the flag in contravention of accepted Manchester sensibilities.

14 Cairns, Prelude to Imperialism, 125.
It is this concern for egregious human suffering and conditions of pervasive insecurity that is at least partially responsible for inducing the British government to abandon its policy of retrenchment. Respect for human dignity obliged the Crown to declare protectorates over territories—many of which held little strategic or obvious commercial value—that were believed to be incapable of maintaining law and order, dispensing justice, and protecting persons and property. In these territories, as John Stuart Mill said of savage life, there is an absence of commerce, agriculture, and manufactures; and interests are satisfied by asserting strength and cunning rather than by resorting to settled social arrangements—the collective strength of society. Thus, in order to ameliorate this unhappy state of affairs, Buxton and others who laboured to make amends for the past avowed that the people of Africa must be taught to abandon their affection for cruelty and love of warfare; and they must be instructed that these practices are forbidden by the law of God and that the happiest persons are those who conscientiously keep God's commandments. Securing the savage masses of Africa in the pax Britannica held out the best hope of fastening them to a mild and benevolent government of the sort enjoyed by the people of India. Only then would the people of Africa come to enjoy the advantages of civilisation.

The Dual Mandate

If the claim of humanity compelled British intervention in order to establish the requisite conditions of civilisation, the conditions required of a peaceful commerce and the dissemination of God's law, then British colonial administrators were compelled to devise methods by which to rule the savage African. The most important and influential understanding of trusteeship in British Africa is expressed in Lord Lugard's notion of the 'dual mandate,' an idea that imposed upon British administrators a very simple, yet extraordinarily powerful principle: the exploitation of African wealth

ought to benefit the industrial classes of Europe and reciprocally contribute to the moral and material improvement of the natives.\textsuperscript{18} The principal assumptions and justifications of the dual mandate are rooted deeply in prevailing nineteenth century European beliefs about the conditions of order, the requirements of justice, and the achievement of prosperity.

The claims of the dual mandate are most clearly intelligible in the context of indirect rule, a form of political association which supposed that vast differences in native custom, tradition, and level of improvement, necessarily entailed the rejection of universally applicable rules and administrative forms. Indeed, Lugard submitted that the 'slavish adherence to any particular type, however successful it may have proved elsewhere, may, if unadapted to the local environment, be as ill-suited and as foreign to its conceptions as direct British rule would be.'\textsuperscript{19} Rather, prosperity, welfare and improvement depend on the recognition of difference. The dispensation of justice, the framing of law, the delivery of health and educational services, attitudes toward race relations, and agricultural, religious, and labour policies must all be fitted to the particular circumstances and sensibilities of particular communities. Native Africans, Lugard argued, must have a stake in their government; they must be sufficiently free to direct their own affairs through their own leaders and their own institutions, albeit under the supervision of British officials. Thus, the central feature of indirect rule consisted in constituting native leaders as integral parts of government—leaders endowed with clearly defined duties that were assigned in accordance with a community's capacity for self-government. However, in an obvious affirmation of the justification of political power laid down by Edmund Burke nearly a century


\textsuperscript{19} Lugard, \textit{The Dual Mandate of Africa}, 104, 211.
earlier, these leaders were made to understand that all derivative rights and powers were justified solely by service rendered to the state.20

Lugard’s affection for native practices and institutions did not, however, extend so far as to accord them recognition as fully legitimate ways of organising and conducting human relations. Lugard believed that, whereas custom and tradition varied in proportion to a society’s level of improvement, the ends of political life did not. Thus, the district officer must be well-acquainted with local customs and social organisation; and he must adapt principles of administration to native life so that they are productive of ends common to all. The folly of imprudently interfering in native practices, or of introducing the ways of civilisation too rapidly, did not escape Lugard and other colonial administrators.21 The Indian Mutiny of 1857 provided an ever present reminder of the dangers presented by overly ambitious schemes of assimilation and Anglicisation. Lugard believed that education would help bring the natives into sympathy with British authority; however, he also recognised that the implementation of a thoroughly Anglicised curriculum risked great danger and perhaps disaster. Thus, when placed in the context of Africa, the gradualist approach preferred by John Malcolm won out over the revolutionary approach favoured by T.B. Macaulay. Lugard realised also that that the destruction of native authority and institutions would leave a very small cadre of British administrators to govern the African masses, who, in the absence of moderation, discipline, self-control, and other virtues disclosed by civilised peoples, were a danger to themselves and to society itself. He accordingly counselled that administrative officers must ‘make it apparent alike to the educated native, the conservative Moslem,
and the primitive pagan, each to his own degree, that the policy of the Government is not antagonistic but progressive—sympathetic to his aspirations and the guardian of his natural rights.22

That expediency shaped the policies of British colonial administrators is universally admitted; however, the character of indirect rule is not fully intelligible without taking account of a moral quality that, at least formally, underpinned the dual mandate and British dominion in Africa generally. The reciprocal relationship expressed by the dual mandate is best understood in the context of an acknowledged duty to the weak and disadvantaged, rather than as a manifestation of greed, avarice, rapacity, ambition, or rivalry. Indeed, few people would hold that British rule in Africa was without defect, but it would be a gross exaggeration to say that British officials devised the methods of indirect rule for the sole purpose of conquest, domination, and exploitation. The methods of indirect rule, Lugard argued, were intended to instil in the natives a sense of responsibility, initiative, fair-play, discipline, and justice—the moral qualities required of a people fit for self-direction. Thus, he submitted in defence of the principle of supervised self-government:

[to abandon the policy of ruling [the natives] through their own chiefs, and to substitute the direct rule of the British officer, is to forego the high ideal of leading the backward races, by their own efforts, in their own way, to raise themselves to a higher plane of social organisation, and tends to perpetuate and stereotype existing conditions.23

It must be conceded that not all accepted the value that Lugard ascribed to the practices of indirect rule. Bishop Tugwell, for example, claimed that indirect rule robbed the native of desire for progress of any sort and therefore amounted to little more than ‘direct rule by indirect means.’24 But criticism of this sort did not question the professed end of indirect rule, nor did it allege that indirect rule was directed toward an end less worthy than ensuring the happiness and well-being of Africa’s native inhabitants.

This criticism did not question the ends of British rule in Africa, it merely probed the means by which the trusteeship of its people might be achieved.

In spite of repeated professions of solicitude for the well-being of Africa’s native inhabitants, accounts of economic exploitation provided a seductive explanation for Britain’s purpose in establishing and maintaining an empire in Africa. When confronted with this theory of imperial expansion, Lugard did not disclaim all pretence of self-interest; for he freely admitted:

Let it be admitted at the outset that European brains, capital, and energy have not been, and never will be, expended in developing the resources of Africa from motives of pure philanthropy; that Europe is in Africa for the mutual benefit of her own industrial classes, and of the native races in their progress to a higher plane; that the benefit can be made reciprocal, and that it is the aim and desire of civilised administration to fulfil this dual mandate.25

Lugard seems to justify the dual mandate by appealing to the Kantian idea of a universal right of mankind—*jus cosmopoliticum*. On this view, the wealth of the earth is by natural right the common inheritance of all men; and the fact that groups of human beings hold a juridically determined proprietary right to a portion of the earth’s surface in no way restrains the exercise of this right. All men, as citizens of the world, are endowed with the right to settle in distant territories so long as they do not injure others in the use of the soil. For this reason, Kant asserts that ‘the possession of the soil upon which an inhabitant of the earth may live can only be regarded as possession of a part of a limited whole and, consequently, as a part to which every one has originally a right.’26 Thus, rather than clothing naked ambition in the garb of humanitarian platitude, Lugard argues that Europeans have a right to a fair share of Africa’s natural wealth, an endowment wasted by the natives on account of their inability to comprehend its value or proper use. Indeed, he asks: ‘[w]ho can deny the right of the hungry people

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of Europe to utilise the wasted bounties of nature, or that the task of developing these resources was...a "trust for civilisation" and for the benefit of mankind?27 And it is in the context of this right of mankind that we are able to discern the moral character of the dual mandate: Europeans are entitled to a share of Africa’s wealth provided that they exploit it for the benefit of Europeans and Africans alike.

The claims and the obligations of the dual mandate inform the understanding of trusteeship that prevailed throughout most of British Africa, including territories that were not administered according to the principles of indirect rule. Experience in India certainly influenced the interpretation and implementation of trusteeship in Africa; however, the practice of trusteeship in Africa marks a clear break with the Anglicist experiments of the East India Company. The Indian Mutiny and the ascendance of race thinking ruled out any attempt at creating a class of Africans who were in every respect English except in blood and colour. In Africa, as in India, rights of dominion were justified by the benefit they conferred on native subjects, but in method trusteeship in Africa more closely approximately the gradualist approach championed by Mountstuart Elphinstone, John Malcolm, and Thomas Munro. And like trusteeship in India, the condition of native subjects in Africa remained a concern of paramount importance. This central and indeed essential tenet of trusteeship eventually obtained a formal recognition within the British Empire, in part to be sure, because the events of the first world war subjected colonial administration to considerable scrutiny. In the famous Kenya White Paper of 1923 the Crown declared that as a matter of official British policy:

27 Lugard, The Dual Mandate of Africa, 615.
His Majesty's Government regard themselves as exercising a trust on behalf of the African population, and they are unable to delegate or share this trust, the object of which may be defined as the protection and advancement of the native races. It is not necessary to attempt to elaborate this position; the lines of development are as yet in certain directions undetermined, and many difficult problems arise which require time for their solution. But there can be no room for doubt that it is the mission of Great Britain to work continuously for the training and education of the Africans towards a higher intellectual, moral, and economic level than that which they had reached when the Crown assumed the responsibility for the administration of this territory.  

This declaration of trusteeship does not specify a practice of a peculiar sort; nor does it propose a particular administrative type or specify to a particular political form. Rather, trusteeship in this context refers to a moral standard, as opposed to a substantive empirical condition, which accommodates a multitude of principles and methods with which to raise the natives of Africa in the standard of civilisation. And the ultimate test of these principles and methods is such that ‘the interests of the African natives must be paramount, and that if, and when, those interests and the interests of the immigrant races should conflict, the former should prevail.’

The internationalisation of trusteeship

The principal claims of the dual mandate are fully intelligible in the proceedings of the Berlin Conference of 1885. Although the Conference is notoriously associated with the partition of Africa, in the literal sense, the continent’s population did not find itself suddenly divided by arbitrarily drawn boundaries as a result of agreements reached at Berlin. Rather, Prince Bismarck opened the Berlin Conference in a discourse that is more suggestive of trusteeship than territorial aggrandisement:

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[In] convoking the Conference, the Imperial Government was guided by the conviction that all the Governments invited share the wish to bring the native of Africa within the pale of civilization by opening up the interior of that continent to commerce, by giving its inhabitants the means of instructing themselves, by encouraging missions and enterprises calculated to spread useful knowledge, and by preparing the way for the suppression of slavery, and especially of the over-sea Traffic in blacks.\textsuperscript{30}

But these words should not be misinterpreted to mean that Bismarck, or the Berlin Conference generally, stood for a single-minded devotion to the cause of philanthropy. Instead, the deliberations at Berlin reveal a commonly held belief that is intelligible in terms of Lugard's dual mandate. The interests of Europe and those of Africa would be served best by the interrelated and reciprocal benefits of tutelage, free commerce, and security from war.

It is hardly possible to speak of the European encounter with Africa without making some reference to the all-important issue of slavery. By the close of the eighteenth century, abolitionists, especially those in Britain, brought the full weight of religious and secular opinion to bear against the practice of slavery. Abolitionists equated slavery with an offence against humanity, a cruel, barbarous, and incurable injustice that amounted to an irreparable offence against the sanctity of human personality. Necessity in no way lessened the burden imposed on all civilised members of the family of nations to destroy such evil: slavery, as William Wilberforce repeatedly explained, constituted an abomination whose perpetuation was not essential to the welfare of slave-holding interests in the Americas.\textsuperscript{31} Widespread acceptance of Adam Smith's theories of economy also dealt a blow to the argument of necessity. Smith argued to great effect that the liberal reward of labour encouraged industry, wealth, a growing population, and supplied all the necessities and conveniences of life. Thus, 'the work done by freedmen,' he asserted, 'comes cheaper in the end than that performed by slaves.'\textsuperscript{32}


\textsuperscript{31} Coupland, \textit{Wilberforce}, 162.

But in spite of the signal importance that abolitionists and liberal economists attached to the complete eradication of slavery, the issue of slavery enjoyed a rather reserved place in the Berlin Act. Article IX of the Act simply states: "each of the powers binds itself to employ all the means at its disposal for putting an end to [the slave trade] and for punishing those who engage in it."\(^{33}\)

In order to grasp the full significance of Article IX it must be placed in the context of Article VI, which obliged signatory powers to "watch over the preservation of the native tribes, and to care for the improvement of the conditions of their moral and material well-being, and to help in suppressing slavery, and especially the Slave Trade."\(^{34}\) Article VI presupposed the assumption that, more than anything else, slavery and the slave trade had paralysed the development of Africa's people and natural wealth. Thus, all hopes of economic and political progress, and indeed the very future of Africa itself, depended upon the destruction of the vulgar and illegitimate commerce in human beings. Indeed, a report submitted to the Conference equated the slave trade with the denial of every law and of social order itself: "[m]an-hunting constitutes a crime of high treason against humanity."\(^{35}\) But the obligations imposed by Article VI consisted in something more than the duty of destroying the institution of slavery in all of its manifestations. Article VI also assumed the inability of Africa's native population to direct their own affairs; and on account of some manner of incompetence, they were regarded as being unable to understand their true interests or to defend them even if they were made known. Signatory powers were therefore obliged to act on behalf of the natives, to assume guardianship over their rights, security, and property, and to confer upon them the advantages of civilisation. And toward this end, they pledged to protect without distinction, all religious, scientific, and charitable institutions which aimed at


\(^{34}\) General Act of the Conference of Berlin, 14.

imparting to the natives the benefits of civilisation; for '[t]he necessity of insuring the preservation of
the natives, the duty of assisting them to attain a more elevated political and social state, the obligation
of instructing them and of initiating them in the advantages of civilization, are unanimously
recognized.'³⁶

Although the star of free trade had dimmed somewhat toward the end of the nineteenth century,
the negotiations at Berlin reveal the firmly held belief that the depressed state of the African would be
served best by the extension of complete and perfect commercial freedom. The British representative,
Sir Edward Malet, expressed this sentiment when he impressed upon his colleagues that '[t]he principle
which will command the sympathy and support of Her Majesty’s Government will be that of the
advancement of legitimate commerce, with security for the equality of treatment of all nations, and for
the well-being of the native races.'³⁷ The claims of the dual mandate are at once recognisable in this
statement of principle: free trade must not advance national economic interests at the expense of the
well-being of Africa’s native population. In that respect, it is worth noting that the declaration on free
commerce also imposed the duty to ‘assist and aid the labours of the missions and all institutions having
for their object the instruction of the natives, and making them understand and appreciate the
advantages of civilization.’³⁸ It is in this spirit that adherents to the Berlin Act accepted the principle of
the Open Door and resolved that no nation shall enjoy the privilege of monopoly. Moreover, they
accepted the principle that perfect freedom in commerce would advance the economic interests of

³⁶ Annex 1 to Protocol No. 4, 80.
³⁷ Protocol No. 1—Meeting of November 15, 1884, 11.
³⁸ Annex to Protocol No. 1, Protocols and the General Act of the West African Conference, Parliamentary Papers, 1885 LV
  mf. 91.436, 13.

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European powers and would aid the ‘cause of humanity, of civilisation, of science, and religious feeling.’

To ensure that the advantages of unrestricted commerce would be enjoyed to the fullest extent possible, the conference felt it necessary to adopt uniform rules for the recognition of future occupations and to establish a system of neutrality in tropical Africa. Only these steps, the parties agreed, would relieve the continent of Africa from the intrigues, rivalries, and passions that all too easily lead to war. Thus, a report commissioned to study the prevention of war in tropical Africa concluded:

after having surrounded freedom of commerce and navigation in the centre of Africa with guarantees, and after having shown your solicitude for the moral and material welfare of the populations which inhabit it, you are about to introduce rules into positive international law which are destined to remove all causes of disagreement and strife from international relations.

The underlying justification of this decision is also intelligible in the reciprocal relation that underpins the dual mandate. John Kasson, the representative of the United States, argued that it is not enough to safeguard European interests and property from the threat of war; to do so would be to transform tropical Africa into an estate in the service of the productive forces of Europe and America. Rather, as trustees of civilisation, Europeans must introduce science, literature, the arts, and all other forms of useful knowledge; they must encourage the formation of productive labour; and they must assist the natives of Africa in adapting their lives to the customs and usages of civilisation. This enterprise, he reminded fellow delegates, is fundamentally dependent on a condition of peace that must be enjoyed by trustee and ward alike; for ‘war quickly lets loose every barbarous passion and destroys the progress of


many years of civilisation.\textsuperscript{41} Thus, Article X stipulates that contracting parties agree to respect the neutrality of territories placed under the system of free trade in order to give a new guarantee of security to trade and industry, and to encourage, by the maintenance of peace, the development of civilisation.\textsuperscript{42}

Many of the principles that were adopted at Berlin, especially those related to Articles VI and IX, received more elaborate treatment at the Brussels Conference of 1890. Members of international society assembled in Brussels for the ostensible purpose of strengthening existing obligations pertaining to the suppression of the slave trade; however, the decisions taken there amounted to nothing short of a revolution in Europe's dealings with Africa. Signatories to the Brussels Act declared their 'firm intention of putting an end to the crimes and devastations engendered by the Traffic in African Slaves, protecting effectively the aboriginal populations of Africa, and insuring for that vast continent the benefits of peace and civilization.'\textsuperscript{43} Thus, they committed themselves to constructing roads and railways, restricting the importation and sale of fire-arms, powder, and ammunition, regulating the sale of liquor, and, perhaps most ominously, establishing fortified posts in the African interior. However, the most effective way of combating the slave trade, they agreed, involved the '[p]rogressive organization of the administrative, judicial, religious, and military services in the African territories placed under the sovereignty or protectorate of civilized nations.'\textsuperscript{44} It is hardly possible to overstate the profound implications that this obligation carried; for it collapsed the distinction between the juridical status of a colony and that of a protectorate, the latter being a dependency that ceded control of its


\textsuperscript{42} General Act of the Conference of Berlin, 15.


\textsuperscript{44} General Act of the Brussels Conference, 20.
foreign relations but retained control over its domestic affairs.\textsuperscript{45} For Lugard, the implications were both obvious and profound: ‘[t]he moment at which the civilised Powers of the world have asserted the unequivocal right and obligation of the more advanced races to assume responsibility for the backward races seems an appropriate one to brush aside these archaic and anomalous distinctions, and to abandon the farce of “acquiring” jurisdiction by treaties not understood by their signatories and foreign to their modes of thought.’\textsuperscript{46} Indeed, the obligation to undertake the domestic organisation of African societies implied nothing less than the extension of European dominion over the entire continent of Africa.

In order to appreciate the underlying moral justification of the Berlin and Brussels Acts, it is necessary, at least momentarily, to suspend judgement of the consequences that by all accounts proved to be detrimental to native interests and welfare. It is no doubt true that the representatives who were present in Berlin worked to increase the wealth of their own countries and they conceal their efforts to obtain greater access to the natural wealth of Africa for their traders and investors. However, they also went to great lengths to protect Africa’s native inhabitants from the ravages of slavery and war, and to promote their advancement in the standard of civilisation. For example, Malet reminded his fellow delegates in Berlin that native Africans were not represented in the negotiations and that the decisions of the Conference would be of supreme importance to them; and, in an illuminating moment, he wished to impress upon them that ‘[w]hile the opening of the Congo markets is to be desired, the welfare of the natives should not be neglected; to them it would be no benefit, but the reverse, if freedom of commerce, unchecked by reasonable control, should degenerate into licence.’\textsuperscript{47} They believed that the nexus of commerce, civilisation, and peace would destroy the institution of slavery, an institution which kept Africa in a retarded state of development, and would impart knowledge of science, Christian

\textsuperscript{46} Lugard, \textit{The Dual Mandate of Africa}, 38.
\textsuperscript{47} Protocol No. 1—Meeting of November 15, 1884, 11.
morality, and the virtues necessary to emancipate Africa from conditions of ignorance and darkness. However, the great achievement of the Berlin and Brussels Conferences is that they internationalised the idea of trusteeship by enshrining in instruments of international law principles that repudiated naked exploitation and domination, and which established that the condition of Africa’s native inhabitants constituted a legitimate subject of international scrutiny.

**Trusteeship and the Congo Free State**

Whereas the deliberations of the Berlin Conference provide insight into the type of moral argument that underpinned the internationalisation of trusteeship, the character of political rule that was justified by the practice of trusteeship provides insight into the type of moral argument that is related to the consequences of internationalisation. Before the Berlin Conference concluded its work, what is surely the most ambitious humanitarian enterprise of nineteenth century came into being. This enterprise owes its existence to King Leopold II of Belgium who, in 1876, founded the International Association of the Congo, a society ‘whose exclusive mission is to introduce civilisation and trade into the centre of Africa.’ Members of the Conference agreed without controversy that the Association embodied principles that were the subject of their work. Mr. Busch of Germany expressed his satisfaction by saying: ‘we all pray that the most complete success may crown an enterprise which may so practically assist the views which directed the Conference.’ To this sentiment the Italian delegate, Count de Launay, added: ‘[t]he whole world cannot fail to exhibit its sympathy and encouragement on

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49 Protocol No. 9—Meeting of February 23, 1885, 254.
behalf of this civilizing and humane work which does honour to the nineteenth century, from which the
genral interests of humanity profit, and will always continue to derive further advantage.\textsuperscript{50}

In spite of the optimism that greeted the Association’s entry into international life, the newly
formed Congo Free State proved to be grossly ill-prepared to undertake its self-proclaimed mission of
spreading civilisation in the heart of Africa. Some authors, such as L.H. Gann and Peter Duignan,
attribute the extent of this failure to Leopold’s overriding interest in profit rather than philanthropy.\textsuperscript{51}
That this assessment bears an element of truth is certainly correct; but in all fairness, the problems of
creating a functioning civil society, not to mention the difficulties in imparting the advantages of
civilisation, were so daunting that today it is hardly conceivable that a private association would attempt
such an undertaking. The fact that many tribes in the Congo had scarcely heard of the Association and
that large tracts of territory to which Leopold laid claim remained under the control of Arab slave
traders only intensified these problems. And in a rather perverse way, the Berlin Act only exaggerated
the difficulties in establishing an effective administration. At once, the government was financially
crippled by a free trade system that severely curtailed its ability to raise revenue. Thus, the task of
establishing a competent and recognised authority in the Congo and the duty to eradicate the slave trade
engaged Leopold in a series of ongoing wars that he could ill-afford to fight.\textsuperscript{52}

But the most troubling failure of the Congo State, one that dishonours its humanitarian
justification, involves the reckless and malevolent treatment of the native population. Leopold quickly
transformed the Congo into a private commercial estate supported by a system of compulsory labour.
The totality of this transformation hastened Sir Constantine Phipps to report: ‘the State has

\textsuperscript{50} Protocol No. 9—Meeting of February 23, 1885, 255.
\textsuperscript{51} Gann and Duignan, \textit{Burden of Empire}, 197.
monopolized the entire fruits of the soil, and has interfered with the whole evolution of native existence.\textsuperscript{53} To exploit this estate, the government elevated the provision of labour into a public duty. Able-bodied males were compelled to work on behalf of the State, for a period not to exceed forty hours per month, by the imposition of excessive taxation and by the use of arbitrary force. In a report documenting the consequences of this system, Sir Roger Casement records that throughout the country, natives were inadequately remunerated for their labour, they were forced to supply food to government posts, and they were afforded no protection for their property. District officers enforced compliance, he observed, with illegally imposed fines and summary imprisonment.\textsuperscript{54} However, the most grievous instances of abuse were perpetrated by armed sentinels that concessionary companies employed to supervise the gathering of rubber. These ‘forest guards’ extracted industry, demanded obedience, and inflicted punishment with floggings, imprisonment, mutilation, and murder. Moreover, families were held hostage, village chiefs were imprisoned to induce greater productivity, and labourers were retained against their will even after completing their term of service. Subjects of such abuse possessed no means of redressing their complaints, as the courts were reluctant to punish agents of the state, even those involved in serious criminal matters. The pernicious effects of this system of taxation and forced labour led Casement to conclude that the deplorable conditions in which the natives lived ‘were to be attributed above all else to the continued effort made during many years to compel the natives to work india-rubber.’\textsuperscript{55}


\textsuperscript{54} Mr. Casement to the Marquess of Lansdowne, December 12, 1903, \textit{Parliamentary Papers}, Cmd. 1933 lxii (1904), 25-41.

Missionaries performed an invaluable role of criticising and drawing attention to a state badly disfigured by rapacity, corruption, and misrule. For example, one missionary wrote to the Governor-General of the Congo State: "[m]ay I be permitted to seize the present opportunity of respectfully pleading on behalf of this people that their rights be respected, and that the attention as of a father to his children be sympathetically shown them?" The Congo Reform Association similarly petitioned the British government, recalling that "[e]ver since Sir E. Malet defined at Berlin in 1884 the part Her Majesty's Government took at the conference held to settle the affairs of the Congo, as being that of trustees for the absent native population, the Government of this country have played the leading part in a wholly unselfish effort to obtain for those unrepresented African peoples the rights the British people believed at the time had been not only morally but materially secured to them." The British government eventually internationalised the matter, at the urging of the Congo Reform Association and other societies, such as the Free Church Council, the Baptist Union, and the London Chamber of Commerce, by transmitting to the signatories of the Berlin Act a note which called attention to the mistreatment of natives in the Congo State. The Congo State parried these complaints, saying that the administration of the Congo was not unlike the administration of British and other European possessions. Moreover, it repudiated the right of the Hague Tribunal to adjudicate disputes, as stipulated in Article XII of the Berlin Act, relating to the internal administration of the State. Still, Leopold undertook a program of reform that stripped concessionary companies of their rights to collect taxes and to employ sentinels, and which granted to the natives extended land rights. But (well-founded) scepticism of the government's ability and willingness to reform itself persisted and the

56 The Rev. J. Whitehead to Governor-General of the Congo State, July 28, 1903, 65.
57 Congo Reform Association, Memorial, June 7, 1912, Correspondence Respecting the Affairs of the Congo, February 1913, Parliamentary Papers, Cmd., 6606 lix (1912-12), 23.
preponderance of public and official opinion came to the consensus that the situation required a more radical remedy.\textsuperscript{58}

Belgium’s annexation of the Congo State in 1908, which Britain belatedly recognised five years later, finally put to rest the great philanthropic experiment that Leopold initiated. However, it is in the debates that transpired in the intervening years that we are able to discern in full relief the moral authority of trusteeship. Opponents of the Congo regime generally believed that redressing mistreatment of the natives required nothing less than a change in administration; and yet, they also understood that administrative change would not result in the desired effect unless the principles of administration were changed as well. The British government hoped to induce reforms that would, once and for all, destroy a system of taxation and forced labour that kept the natives in a state of poverty and which denied them a fair share in the natural wealth of the land. Thus, the British government announced that ‘the Belgian Government are under treaty obligations in regard to their treatment of the natives of the Congo, and that...His Majesty’s Government will not recognise the annexation until they are satisfied that these obligations are in a fair way to be fulfilled.’\textsuperscript{59} Of these obligations, the government indicated that the most urgent consisted in granting the natives relief from the system of taxation that supported the rubber monopolies. Indeed, the government decided that ‘[t]he first and foremost subject of complaint under Article VI of the Berlin Act are the abuses resulting from the system of labour.’\textsuperscript{60}

It is an event of signal importance that the British government pressed its claims by appealing to the Berlin Act and to the declarations that bestowed an international legal personality upon the

\textsuperscript{58} Keith, \textit{The Belgian Congo and the Berlin Act}, 131-35.

\textsuperscript{59} Foreign Office to Mr. Lamont, May 29, 1912, Correspondence Respecting the Affairs of the Congo, February 1913, \textit{Parliamentary Papers}, Cmd. 6606 lix (1912-13), 22.
International Association of the Congo. The British side recalled the Association’s declaration at Berlin that it had been founded ‘for the purpose of promoting the civilization and commerce of Africa, and for other humane and benevolent purposes’; in response, Her Majesty’s Government declared its ‘sympathy with, and approval of, the humane and benevolent purposes of the Association, and hereby recognize the flag of the Association...as the flag of a friendly Government.’ It is on the basis of this exchange that the British asserted its entitlement to ensure that the conditions on which they originally recognised the creation of the Congo State were properly fulfilled. Therefore, just two days after the Belgian Parliament approved the annexation of the Congo State, the British proposed that reforms ought to: (1) provide to the natives relief from excessive taxation; (2) grant to the natives land sufficient to ensure, not only a life of subsistence, but sufficient produce to enable them to engage in trading activities; and (3) permit traders of all nationalities to acquire land sufficient to establish factories so that they may establish direct trade relations with the natives. It was believed that, implemented together, these changes would re-establish the system of free trade established by the Berlin Act, remedy injustices arising from excessive taxation and compulsory labour, and destroy the power of the concessionary companies and the privilege of their rubber monopolies. Indeed, Sir Edward Grey confidently predicted that ‘[t]he joint effect of these three reforms would go far to ameliorate the condition of the natives in the Congo.’ The British government also expressed apprehension that the exclusive rights possessed by concessionary companies might go unmolested; for it could not imagine how the maintenance of monopolistic privilege would not continue to debar the natives from a fair share in the fruits of the land.

60 Memorandum Respecting Taxation and Currency in the Congo Free State, Correspondence Respecting the Taxation of Natives, and Other Questions, in the Congo State, June 1908, Parliamentary Papers, Cmd. 4135 lxxi (1908), 4.
61 Annex 1 to Protocol No. 9, Protocols and the General Act of the West African Conference, Parliamentary Papers, 1885 LV mf. 91.438, 264; and Memorandum, Respecting the Taxation of Natives, and Other Questions, in the Congo State, November 1908, Parliamentary Papers, Cmd. 4178 (1908), 3.
62 See Memorandum, Respecting the Taxation of Natives, and Other Questions, in the Congo State, 3; and Sir Edward Grey to Sir A. Hardinge, March 27, 1908, Correspondence Respecting the Taxation of Natives, and Other Questions, in the Congo State, June 1908, Parliamentary Papers, Cmd. 4135 lxxi (1908), 2.
Lord Grey wrote that support of these conditions "fail[s] to meet the requirements of Article VI of the Berlin Act, under which the Signatory Powers pledge themselves to provide for the improvement of the natives' moral and material well-being."^64

Not surprisingly, British criticism was received as an unwanted and unwarranted intrusion. In 1906 British overtures were rebuffed on the ground that no foreign power had the right to interfere in matters pertaining to the internal administration of the Congo State. Moreover, authorities in the Congo expressly denied that the Berlin Act provided any right or pretext of interference; for Mr. de Cuvelier claimed that the obligations enumerated in Article VI "were a declaration of general principles and intentions as regarded the treatment of the native populations rather than a binding obligation which the remaining Signatories, or any one of them, had a right to enforce."^65 The juridical status of the Congo State is of some consequence when considering the validity of this response. The Congo State is sometimes, and mistakenly, conceived as an international philanthropic enterprise; however, the independence of the Congo State was confirmed in a series of separate agreements between the International Association of the Congo and the various European powers, rather than by the Berlin Act. But the British government maintained that the Association assumed in its exchange of declarations with Britain and other European powers, obligations pertaining to the freedom of commerce and navigation, and the duty to suppress slavery, and "thus both legally and morally became subject to the full rigour of the provisions of the Act."^66

^63 Sir Edward Grey to Sir A. Hardinge, March 27, 1908, 4.
^64 Sir Edward Grey to Sir A. Hardinge, March 27, 1908, 3.
The British government pursued its claims against the Congo State while conceding that Article VI did not imply a right which permitted foreign powers to dictate the character of specific reforms. However, the British government held most strongly that 'no system can be allowed to operate so as to interfere with Treaty obligations to the prejudice of the moral and material well-being of the natives.' The Belgian government eventually abandoned its defence premised on the claim of non-interference and it offered assurances that the proposed colonial law would safeguard the rights and interests of the natives. Under this law, natives would no longer be forced to labour, either directly or indirectly; religious, charitable, and scientific institutions would enjoy equal protection; and that the system of free trade would be re-established in all of the territories comprising the Congo basin. The Belgian government also recognised obligations of international law pertaining to the welfare of the natives and it proclaimed that its rule in the Congo would be directed at achieving 'an immediate amelioration in the moral and material conditions of existence of the inhabitants of the Congo, and the extension, as rapidly as possible, of a system of economic freedom to the different regions of the vast country.'

British recognition of the annexation of the Congo State marked a major milestone in the development of the theory and practice of trusteeship in international society. There can be no question that the International Association failed absolutely in its humanitarian mission. At every opportunity the government of the Congo State vacated its obligation to watch over the natives as unselfish trustees of civilisation. It is also true that most of the signatory powers to the Berlin Act responded rather indifferently to mounting evidence of misrule in the Congo. Only the United States, Italy, and Turkey responded favourably to a British note that documented flagrant violations of the obligations set out in

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67 Memorandum Respecting Taxation and Currency in the Congo Free State, 5.
68 Memorandum Communicated by the Belgian Minister, April 25, 1908, Correspondence Respecting the Taxation of Natives, and Other Questions, in the Congo State, June 1908, Parliamentary Papers, Cmd. 4135 lxxi (1908), 37-39.
Article VI of the Berlin Act. But, for all this, the events that transpired between creation of the Congo State and its annexation did not discredit trusteeship or render it a platitudinous fiction. In particular, the British government’s repeated references to the obligations imposed by Article VI reaffirmed, and, indeed, vindicated, the moral legitimacy of the idea of trusteeship. That Belgium accepted the legitimacy of the British position, and that it consequently affirmed that ‘improving the lot of the natives is not less a matter of solicitude in Belgium than it is in England,’ gave practical effect to the authority of trusteeship. Thus, the eventual settlement of the Congo question signalled the emergence of trusteeship as an accepted practice and norm in the relations of states.

The ladder of civilisation

The administration of subject races in nineteenth century Africa and the subsequent internationalisation of trusteeship marked the triumph of a particular conception of the proper understanding and ordering of humanity. In Africa, a preference for deliberation, patience, and incrementalism displaced the belief that prevailed throughout much of the East India Company’s dominion in India, namely that the improvement of native subjects would come about rapidly and would result in institutional forms and practices that were not unlike those in Europe. An incrementalist approach to imparting the advantages of civilisation made it possible to think of societies and peoples as occupying different points along a progressive ladder of civilisation. For example, Lugard understood different modes of social organisation in Africa by distinguishing between primitive tribes and advanced communities. Whereas the former languished in a patriarchal stage of development in which crude social organisation and superstition prevailed, the latter moved along the road of progress on account of some form of enlightenment, such as the adoption of an alien monotheistic religion. Indeed, Lugard admitted that Muslim rule acted as a regenerative and creative force to the extent that it brought —

primitive Africa into contact with foreign culture, written language, a more perfect religion, and destroyed the most heinous habits and customs. However, he expressed doubt that Islam could carry African society beyond a stage of barbarism; for he understood Islam as merely a rung on a ladder that progressed onward to Christianity and European civilisation.\(^70\)

This idea that societies are differently placed along a progressive ladder of civilisation is also reflected in nineteenth century political theory and international law. For example, John Stuart Mill suggested that the institutions of government must be well suited to the moral qualities of the people that will operate them. Thus, civilised peoples are most suited for a popular constitution, which requires the surrender of a portion of personal freedom in order to secure public benefit, because they are able to act as interdependent parts of a complex whole. But representative institutions are inappropriate in savage societies in which each person acts for himself without regard for the interests of the whole. Savages disclose no concern for public benefit and are thus named because of their inability to cooperate in securing the advantages of society. The savage, Mill argues, must learn to obey before taking steps toward the ideal of popular government; and until such time, the only constitution suitable to savage life is nearly despotic.\(^71\) James Lorimer similarly reconciled the conventional differences that divide humanity, differences that precluded savage men from enjoying the same rights as civilised men, by combining what he called national and cosmopolitan international law. Human intercourse, he argued, is subject to a natural law that is indifferent to the condition of individual men.\(^72\) Lorimer accordingly proposed that humanity consisted in three concentric spheres: civilised humanity, barbarous humanity, and savage humanity. In that respect he argued:

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\(^70\) Lugard, *The Dual Mandate of Africa*, 75-8.

whether arising from peculiarities of race or from various stages of development in the same race, belong, of right, at the hands of civilised nations, three stages of recognition—plenary political recognition, partial political recognition, and natural or mere human recognition. Intensively, the first of these forms of recognition embraces the two latter; extensively, the third embraces the two former. [emphasis in original]73

Thus, the Christian nations of Europe were afforded formal political recognition on account of their ability to perform the duties of a civilised society, domestically and internationally. In contrast, he claimed that barbarians had not achieved political age; they were old children, but children nonetheless who could not be expected to reciprocate the duties of civilised society. And finally, savages were that portion of humanity that was afflicted with imbecility, disease, and decay; they were the undeveloped residue of humanity who were entitled to nothing more than guardianship and guidance 'in becoming' that of which they are capable.74 It is interesting to note that the League of Nations carried this division of humanity into the twentieth century inasmuch as the mandates system (which is the subject of the following chapter) was constituted by three classes of mandate, A, B, and C, that corresponded with Lorimer's distinctions.

The progressive interpretation of human relations laid the ground for the objective verification of African inferiority.75 The superiority ascribed to civilised man reduced savage man to an object of pity and contempt. Whereas civilised man is disciplined, guided by reason, and aware of a common good, savage man lacks self-control, acts on passion, and knows only the satisfaction of individual will.76 Thus, Lugard describes the African as being naturally happy and thriftless, and as an excitable person who is in want of self-control, foresight, and discipline. These traits, he argues, are those of the

75 See Cairns, Prelude to Imperialism, 120.
76 Mill, ‘Civilization,’ 48-49.
'child races of the world;' and 'the virtues and the defects of this race-type are those of attractive children, whose confidence when once it has been won is given ungrudgingly as to an older and wiser superior, without question and without envy.' J.C. Smuts offers a very similar assessment of savage man. The African, he suggests, is good-tempered, carefree, and is easily satisfied with wine, women, and song; and like a child, he is not burdened by past troubles and nor does he anticipate future problems. Thus, Smuts concludes that the African race 'has largely remained a child type, with a child psychology and outlook.' Trusteeship is the idea that ordered relations between this residue of humanity, to use Lorimer's words, and their civilised guardians and teachers; and it expressed the moral standard against which obligations owed to the ignorant, weak, and feeble-minded, were judged. In this respect, it is worth noting that some of the most strident critics of imperialism, including John Hobson, did not disavow the value of trusteeship. Hobson complained that the European trustees of civilisation failed to fulfil their obligations: 'chief indictment of Imperialism in relation to the lower races consists in this, that it does not even pretend to apply to them the principles of education and of progress it applies at home.' But he insisted nonetheless that trusteeship, understood as the progress of world-civilisation, constituted a valid moral reason for interfering in the lives of uncivilised peoples. Indeed, miscarriages of justice, racial and religious arrogance, and the horrors of the Congo State did not diminish the moral value that attached to the idea of trusteeship. Rather, the experience of Africa aided the development of trusteeship as a way of fulfilling the obligations of power and reconciling the degree of difference that distinguished Europeans from their African dependants.

79 Hobson, Imperialism, 237-43.
Chapter Four

Trusteeship as an Institution of International Society

If we understand the Berlin and Brussels Acts and the experience of the Congo Free State as representing the internationalisation of the idea of trusteeship, then we might understand the League of Nations mandates system as establishing the principle of trusteeship as an institutional form in international society. In this chapter I examine the current of ideas out of which the League of Nations arose, the debates concerning the disposal of German colonies conquered during the first world war, and the compromise that resulted in the mandates system. It will become evident that the mandates system stands as a response to the problem of ordering relations of Europeans and non-Europeans by reconciling the search for national security and obligations pertaining to the well-being of backward and underdeveloped peoples.

War and the old diplomacy

The creation of the League of Nations introduced into world affairs a new way of ordering the relations of states, or at least its founders believed that they had erected something that amounted to a definite break with the past. But critics of the League, such as E.H. Carr, denounced this claim of novelty as being a foolish, though well-meaning, delusion. In his seminal volume, The Twenty Years’ Crisis, Carr ridiculed the great aspiration of the League’s most ardent supporters: the attempt to realise perpetual peace by banishing power from the relations of states and substituting in its place the liberal virtues of discussion, persuasion, and consent. Power, he confidently wrote, would be neither absent nor incidental in a League of Nations, in spite of the newly enshrined principle of legal equality and guarantees pertaining to political independence and territorial integrity.¹ Notwithstanding the force of

Carr’s criticism, publicists who looked to the League with great hope certainly appreciated the centrality of power in the relations of states. Proponents of the League, such as G. Lowes Dickinson, were not so naïve as to believe that it would suddenly eradicate war and render all states absolutely secure. Rather Dickinson and his colleagues believed that power could be subjected to the rule of law and they regarded the League as a more hopeful alternative to an armed peace.² The extent to which the League marks an authentic break with the ‘old diplomacy’ of alliances, war, and the balance of power continues to attract scholarly attention. Indeed, the American historian William Keylor concludes in a recent reckoning of the League’s significance that historians of the Versailles settlement have vastly exaggerated its importance.³ What is sure though is that the League experiment did result in a truly novel approach to the administration of the so-called subject races of Africa and Asia. The mandate system, which arose mainly out of debates concerning the disposal of conquered German colonial possessions, reaffirmed the principle of trusteeship enshrined in the Berlin Act; and, it specified procedures of international supervision to ensure the mild treatment of subject races and to protect them against the sort of maltreatment and misrule that transpired in the Congo Free State.

Colonial questions were noticeably absent from the earliest declarations of Allied war aims. In the first major statement of British war aims Prime Minister Asquith spoke of the vindication of public right in Europe; that the independence and free development of small nationalities must be preserved; that militarism must be checked; and, in an allusion to some form of organised international co-operation, that competing ambitions, rival alliances, and the use of force must be discarded in favour of a ‘real European partnership based on the recognition of equal right, and established and enforced by a

common will. For Asquith and other Allied leaders, the defence of pubic right entailed the redemption of injury inflicted by German aggression. Indeed, Asquith's successor, David Lloyd George, recounted that the war was initially a struggle on behalf of weak and small nations against 'arrogant and aggressive militarism.' On this view, the burden of war guilt rested with Germany alone; for the pacific and defensive intentions of the Allied powers stood in stark contradistinction to the appetite of Prussian autocracy. The redress of this wrong, the vindication of public right, would be achieved as it has been in earlier European wars—through the maintenance of the balance of power, restoration of Belgian independence, and the preservation of British naval superiority. Thus, if the Allied powers were to restore the peace of Europe, it would be concluded by a victorious concert of powers rather than by a league of nations.

So long as the war remained primarily a European affair, colonial questions remained at the margins of the conflict. In fact, Lloyd George claimed that colonial questions did not attract much attention immediately following the commencement of hostilities. Only after Germany's overseas empire fell to advancing Allied armies, he contends, did the future of these colonies present a problem that could not be ignored, if only as a matter of practical necessity. But with the outcome of the war very much in doubt during these early months, Britain and its allies reached several understandings that contemplated colonial adjustments at Germany's expense. Most notably, Britain encouraged Italy to enter the war on the side of the Allies in exchange for a pledge to treat favourably Italian colonial claims.

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4 'Mr. Asquith (Prime Minister)—Speech, Dublin, September 25, 1914,' British Documents on Foreign Affairs: Reports and Papers From the Foreign Office Confidential Print, part II, series H, vol. 4, (Frederick, MD: University Press of America, 1989), 251.


upon at the conclusion of the war. And, predictably, the advantages of annexing German colonies did not escape the attention of important members of the Imperial government. The possession of German territory in Africa revived the long-held dream of an uninterrupted land route connecting Egypt with the Cape. On the importance of such a route, J.C. Smuts expressed the hope that on the occasion of a peace settlement, 'it will be borne in mind that East Africa gives us this through land communication from one end of the Continent to the other, but that East Africa also ensures to us the safety of the sea route around the Cape and the sea route through the Red Sea to the East.' The Secretary of State for Colonies, Mr. Long, also favoured annexation but on account of national honour. In assuring the British public that 'their struggles for these colonies had not been in vain' he proclaimed: '[I]et no man think that the colonies will ever return to German rule.'

But as the war ground into an appalling human tragedy, confidence in the trusted traditions of European diplomacy came under stress. Members of the British pacifist, socialist, and labour movements, and especially the dissenters who founded the Union for Democratic Control, brought enormous pressure to bear on what they considered to be the discredited practices of the old diplomacy. These voices of dissent introduced into the discourse of world affairs a very different way of thinking about international relations. They understood world affairs as consisting in something more than the practice of statecraft—an activity reserved to the privileged few. And collectively they demanded, not merely reform, but a total repudiation of the principles, practices, and institutions of traditional

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8 'Great Britain, France, Russia and Italy—Agreement, April 26, 1915,' British Documents on Foreign Affairs: Reports and Papers From the Foreign Office Confidential Print, part II, series H, vol. 4, (Frederick, MD: University Press of America, 1989), 95.


diplomacy; for they believed that nothing less than the survival of civilisation itself depended on a turning away from a precarious, and indeed dangerous, condition of armed peace. We must move toward a world, John Hobson insisted, in which the 'interests, capacities, and needs, not of sovereign states, but of peoples shall prevail.' Only then would it be possible to think, not in terms of independent states, each existing in splendid isolation from all others, but in terms of interdependent peoples who compose a society of states, an international community, or a commonwealth of nations. Hobson's colleagues, many of whom were fellow members of the UDC, all denounced the perils of secret diplomacy, armaments, alliances, competitive rivalries, economic privilege, and what he called that 'supreme engine of international mischief,' the balance of power. For example, Henry Brailsford condemned the rivalry in armaments and alliances as indicators of 'universal insecurity' and he likened the balance of power to a hypocritical disguise for the perennial struggle for power. E.D. Morel similarly attacked a philosophy of militarism which regarded states as 'antagonistic units,' and the ill-effects of secret diplomacy—the greatest obstacle to the unity of humanity.

However, it was probably Dickinson's thought which yielded the most penetrating and lucid insights into the causes of war. For Dickinson, the cause of all wars is to be found in the constitution of the international system itself. With the emergence of the sovereign state, he observed, arose an 'international anarchy' which knows neither common law nor common force. It is only in the political relations of states that anarchy endures, an anarchy nurtured by mutual fear and suspicion, and which sustains a precarious condition of armed peace. Peace in such a world is necessarily a condition of latent war; for the best intentions will be always be frustrated by an all-consuming insecurity that is

nurtured by fear. Thus, he concludes rather pessimistically, that "[m]utual fear and mutual suspicion, aggression masquerading as defence and defence masquerading as aggression, will be the protagonists in the bloody drama; and there will be, what Hobbes truly asserted to be the essence of such a situation, a chronic state of war, open or veiled."\textsuperscript{14} That the cause of war rested in the characteristics of international anarchy permitted Dickinson to assign war guilt more widely than restricting it to Germany’s culpability. He conceded that Germany was responsible for provoking the war in the immediate instance, but he asserted as well that ‘the main and permanent offence is common to all states. It is the anarchy for which they are all responsible for perpetuating.”\textsuperscript{15} This opinion was not that of a lone objector. Both Norman Angell and Morel concurred with Dickinson’s assessment. Angell argued that the popularity of Germany’s purported war guilt ‘obscured the view that an inherent defect in the political mechanism of the world’s life had produced the catastrophe, not merely some double dose of original sin on the part of one particular people.”\textsuperscript{16} Likewise, Morel denied that Germany should be burdened with sole responsibility for the war. The only difference between German militarism and British ‘navalism,’ he argued, is the superior organisation and efficiency of the former.\textsuperscript{17} On these accounts, the war could not in any case be one of self-defence; rather it was the inevitable consequence of a world composed of sovereign states who conducted their relations according to faulty, if not fraudulent, principles of diplomacy.

The administration of subject races

It is this universal attribution of guilt that led to a sweeping indictment of the old diplomacy, including how it impinged on colonial questions. Whereas Lloyd George claimed that colonial


\textsuperscript{15} Dickinson, \textit{The European Anarchy}, 10.

questions presented themselves only after the conquest of Germany's overseas empire, dissenters such as Brailsford identified the very workings of the international system, the balance of power, for example, with the sort of exploitation that cannot be considered apart from colonial questions. ‘The struggle for a balance of power,’ he wrote, ‘means to-day a struggle for liberty and opportunity to use “places in the sun” across the seas.’ Indeed, dissenting opinion held that the competition for colonies trampled on the rights of native peoples, extinguished their hope of development, and retarded their advancement on the road of civilisation, no less than it engendered the resort to war. However, these same dissenters doubted that the promise of nineteenth century liberalism, the individualist doctrines of Manchester economics, were suitable for engaging the problems of the twentieth century. According to Brailsford, the failure of Cobdenism followed the unwillingness of continental powers to compete on equal terms with ‘pioneering’ England and the moment at which the state assumed direction of its citizens’ economic interests. Hobson extended this criticism to argue generally that the social, political, and economic doctrines of nineteenth century liberalism were insufficiently responsive to the needs of ordinary human beings.

In place of Cobdenite orthodoxy, which prescribed a policy of reform at home and retrenchment abroad, the preponderance of dissenting opinion reconciled itself to the existence of empire and the subjection of backward races to alien rule. Morel, Hobson, and Brailsford did not delude themselves with the possibility that subject races were ready for self-government. Rather their objection to imperialism stemmed from a firm conviction that the economic exploitation of distant colonies was incompatible with the goal of perpetual peace. The motive of profit stood as one of the

18 Brailsford, The War of Steel and Gold, 32.
chief obstacles to peace. Thus, Morel argued that if the peoples of Europe were to live in peace, then
dependent territories must be neutralised from European wars and the principle of the open door must
be observed by all powers as contemplated by the Berlin and Brussels Acts. Short of fulfilling these
conditions, he was convinced that ‘so long as the European governments look upon these vast African
and Asiatic territories as areas for the pursuit of privileges and monopolies, carried on behind closed
doors, in favour of a microscopic fraction of their respective nationals, so long will these territories
continue to be one of the prime causes of European unrest and European armaments.’

But the object of Morel’s solicitude did not stop at the achievement of peace in Europe. He conceived of no separation
between the claims of the backward races and the peace of the world. Indeed, he wished to lift from the
shoulders of the black man the burden imposed by contact with the white man. Morel understood the
problem presented by dependent territories, and that of Africa in particular, as consisting in the
establishment of economic relations that are inevitable, but which do not ‘entail degradation and
destruction upon the African peoples, and disgrace to Europe.’

It is in this cardinal conviction that the idea of trusteeship took root as an alternative to annexation.

In putting forth the idea of trusteeship, Leonard Woolf declared that, ‘if anything is certain in
international politics, it is that you cannot base international relations in one quarter of the world upon
right and law and co-operation, and in another quarter upon economic hostility and force.’ He too
shared the radical belief that the gradual annexation of nearly the entire African continent had resulted
in wholly evil consequences. To reverse this evil, he asserted that Europeans must dispossess
themselves of the attitude that Africa is a great estate to be exploited for economic advantage. Indeed,

22 Leonard Woolf, Empire and Commerce in Africa: A Study in Economic Imperialism, (London: George Allen and Unwin,
1920), 356.
the singular pursuit of that cherished Manchester maxim, the right to sell in the dearest and to buy in the cheapest market, shattered any notion of responsibility for the rights and interests of the native races. The selfish motive of profit must be set aside in the interest of the common good and the interests of Europeans must give leave to the interests of Africans. Yet the interests of Africans could not be adequately addressed by making the black man the master of his own affairs. The native races, Woolf argued, would surely suffer a worse fate if they were left to themselves to deal with white traders and financiers. Rather the plight of the African depended upon determining ‘how the European State can be changed from an instrument of economic exploitation into an instrument of good government and progress, not for a few hundred white men, but for the millions of Africans.’

Like Dickinson, Woolf attributed the exploitation of the native races to an international system founded upon the principles of domination and aggression, and to European economic beliefs and desires. Redressing this exploitative pattern of relations required nothing less than a revolution in the social, political, and economic ideas that shaped European society. Indeed, the justification of European dominion in Africa required something more than the provision of law and order. It required the reservation of all lands for native use, the application of all revenue raised from the human and natural endowment of Africa to the advancement of the native races, the protection of the natives from the evil effects of alcohol and the ravages of European wars, and the education of the black man so that he may participate in, and one day direct, his own government. In sum, Woolf demanded that Europeans acts as trustees of African interests: ‘the belief that the State should use its power to promote the economic interests of Europeans would have to give place to the belief that its position was merely that of trustee

for the native population and that its only duty was to promote the interests, political, social, and economic, of the African.  

It is this concern for the welfare of the subject races of Africa, no less than a concern for the peace of Europe, which led to the popularity of the wartime slogan: 'no annexations.' Dissenting opinion viewed the annexation of occupied German colonies as being inconsistent with the proper end of an international community composed of peoples, as opposed to states, and, thereby, incompatible with the general peace of the world. But, in the end, their proposals regarding colonial questions appeared to be less revolutionary and more a demand for a more faithful implementation of the principles enshrined in the Berlin and Brussels Acts. For example, the UDC resolved that Britain should repudiate all claims of annexation and that 'tropical Africa should be neutralised under international guarantee, and absolute freedom of trade and enterprise established there.' And in a more elaborate and ambitious statement, the British Labour Party and the Trade Union Congress declared in a joint memorandum that the dependent territories of Africa should be administered as a single independent state according to the following principles:

(1) the open door and equal freedom of enterprise to the traders of all nations; (2) protection of the natives against exploitation and oppression, and the preservation of their tribal interests; (3) all revenue raised to be expended for the welfare and development of the African State itself; and (4) the permanent neutralisation of this African State and its abstention from participation in international rivalries or any future wars.

The substance of these ideas constituted an important part of a much larger agenda that would eventually destroy the legitimacy of the old diplomacy. Indeed, A.J.P. Taylor argues that dissenting

25 Woolf, Empire and Commerce in Africa, 362.
opinion would ultimately garner such broad acceptance that it ‘utterly discredited the “system of Versailles” and, with it, all traditional diplomacy—“power politics” as the contemporary term of abuse had it.’ In realising this achievement they also lent considerable moral weight to the idea of trusteeship as the principle for ordering the relations of Europeans and the subject races of Africa and Asia.

**From the new world**

The British and French governments continued to pursue a quiet policy of annexation in spite of the growing popularity of the ideas championed by the UDC and the British Labour movement. But if dissenting opinion changed the terms of debate concerning colonial questions, then the Russian revolution and the United States’ entry into the war altered them permanently. The Bolsheviks viewed the war as an undisguised imperialist contest. Lenin betrayed no doubt in his famous tract, *Imperialism, The Highest Stage of Capitalism*, that the Great War ‘was imperialist (that is, an annexationist, predatory war of plunder) on the part of the both sides; it was a war for the division of the world, for the partition and reparation of colonies and spheres of influence of finance capital, etc.’ After publishing the secret treaties and, thereby, exposing Allied territorial ambitions, the Bolsheviks proclaimed principles of foreign relations that denounced all annexations, new and old. Peace and democracy, they declared, required recognition that all peoples must be free in the pursuit of independent development. Leon Trotsky claimed that to deny the right of self-determination for all peoples, in Alsace Lorraine, Transylvania, and Bosnia and Hercegovina, as well as in, India, Egypt, and Ireland, is to sanction an ‘unprincipled compromise between the pretension of Imperialism and the opposition of the labouring

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Democracy. Members of the UDC and the British Labour movement greeted these proclamations with great enthusiasm and hope. Suggestive of these attitudes is Dickinson’s claim that the Russian revolution, along with America’s entry into the war, ‘[b]oth enhance, beyond all reckoning, the good prospects of civilisation.’

But it was the American president, Woodrow Wilson, who represented the greatest hope of realising a peace which repudiated the right of conquest. Morel openly appealed to Wilson, the only man whose stature, character, and sense of right, could ‘save the soul of the peoples and governments of Europe.’ Wilson championed a ‘new and more wholesome diplomacy’ that would help found a peace upon the collective strength of the international community—a community inclusive of all peoples in all places. For he could not reconcile a world of interdependent peoples, a world in which the interests of all nations are the interests of mankind, with secret counsels, antagonistic alliances, and an illusory peace afforded by the balance of power. On this view, the world had reached a point where peace depended, not on individual efforts, but on the efforts of all. No nation could contemplate a retreat into isolation: all nations were joined in one great human enterprise. Indeed, Wilson believed that ‘[w]e are participants, whether we would or not, in the life of the world. The interests of all nations are our own also. We are partners with the rest. What affects mankind is inevitably our affair as well as the affair of the nations of Europe and Asia.’ Wilson envisioned a universal world order established upon the principles of right and justice. The sanctity of public right must reign above the interests of individual nations and political independence and territorial integrity must be guaranteed and steps must be taken

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31 Dickinson, The Choice Before Us, ix.

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to safeguard general peace against threats of selfish aggression. But above all else, it was Wilson’s suggestion that all peoples possessed the right to choose their own government that exerted enormous pressure against schemes of annexation. Thus, the rights of states must bow to the rights of peoples.

Wilson advanced these ideas while constantly disclaiming all pretension of aggrandisement and advantage. Peace ought to avoid the vindictive treatment of the vanquished and, above all else, it should bear the hallmarks of justice and generosity. It is in this spirit that Wilson insisted that there must be peace without victory: there must be '[n]o annexations, no contributions, and no punitive indemnities.' Rather, he maintained throughout the war, and in its aftermath, that the United States did not aspire to revenge, 'but only the vindication of right, of human right, of which we are only a single champion.' Wilson presented his program of peace and his vision of the future world order in a celebrated speech which outlined the Fourteen Points before a joint session of Congress on January 8, 1917. In a brief but historic discourse he spoke for open diplomacy, freedom of the seas, the open door, disarmament, self-determination of peoples, the evacuation and restoration of all conquered territories, and the creation of a general organisation in order to guarantee the rights of political independence and territorial integrity of all states, great and small alike. With respect to colonial questions, Wilson proposed in point five, an 'absolutely impartial adjustment of colonial claims' according to the principle that in matters pertaining to sovereignty, 'the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.' In these fourteen points, Wilson articulated the principles of a 'new diplomacy' that would subject power to the strictures

34 Wilson, 'An Address in Washington to the League to Enforce Peace,' 114.


of justice and law. He believed that the faithful implementation of these principles would make the world 'safe for democracy.'

Although Taylor doubted that the Fourteen Points speech fully restored the moral high ground to the Allies, it caused a sensation among progressive groups who in increasing numbers distrusted the motives and aims of their governments. Thomas Knock describes the popular approval of the Fourteen Points as approaching 'phenomenal proportions'—even Lenin hailed them as a great advance toward peace. However, before Wilson delivered his famous address, the force and substance of his cherished principles exerted considerable pressure on leaders who were apprehensive of embracing the ideological commitments of the new diplomacy, but were also keen to demonstrate the righteousness of the Allied cause in order to revive flagging morale at home. For example, the cry of 'no annexations' achieved such support that Philip Kerr, Lloyd George’s private secretary, counselled Smuts on the signal importance of avoiding statements favouring annexation and the necessity of respecting the sensibilities of American opinion. Lloyd George himself came under such pressure that he felt compelled to deliver a major address in order to allay mounting distrust of the reasons for which so many lives had been sacrificed. Indeed, he records in his memoirs that the necessity of responding to pacifist propaganda dictated that '[i]t was essential to convince the nation that we were not continuing the war merely to gain vindictive or looting triumph, but that we had definite peace aims and that these were both just and attainable.' Thus, in an act which marked a break, at least publicly, with the traditional principles of European diplomacy, Lloyd George issued a peace declaration before a gathering of trade unions at

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Caxton Hall that paid ideological tribute to the progressive principles endorsed by the British labour movement several weeks earlier.\textsuperscript{40}

William Roger Louis suggests that, although Lloyd George delivered the Caxton Hall address three days prior to Wilson’s declaration of the Fourteen Points, the ideas he presented were more ‘Wilsonian’ than those presented Wilson himself.\textsuperscript{41} Lloyd George issued an unequivocal repudiation of the principles of the past. He denounced, each in its own turn, aggressive war, disregard of treaty obligations, privileged interests, the burden imposed by armaments, and all schemes of domination and conquest, which were by their nature repugnant to the interests and dignity of humanity. We are fighting, he insisted, for a ‘just and lasting peace,’ a peace that vindicates the sanctity of treaties and the right of self-determination, and which results in the creation of an international organisation which will spare future generations the ravages of war. ‘The days of the Treaty of Vienna,’ he said with an air of finality, ‘are long past.’\textsuperscript{42} Colonial questions occupied no small part of these remarks. For Lloyd George, the principles which were applicable to the peace of Europe were no less applicable in Africa and in Asia. He distanced himself, on account of ‘new circumstances,’ from the secret understandings concluded at the beginning of the war by asserting that the disposal of conquered German colonies must be a matter of a general conference ‘whose decision must have primary regard to the wishes and interests of the native inhabitants of such colonies.’\textsuperscript{43} He then alluded to the principle of trusteeship by saying: ‘[t]he governing consideration, therefore, in all these cases must be that the inhabitants should be placed under the control of an administration acceptable to themselves, one of whose main purposes


\textsuperscript{41} Louis, Great Britain and Germany's Lost Colonies, 97.


\textsuperscript{43} Lloyd George, 'The Peace Declaration,' 2524.
will be to prevent their exploitation for the benefit of European capitalists or Governments. This principle, it is worth noting, is far more exacting than Wilson's proposal for the settlement of colonial questions, a proposal that Lloyd George feared to be overly vague and susceptible to misinterpretation.

Although the importance of the Caxton Hall and the Fourteen Points speeches in advancing the League of Nations idea has always been recognised, the principles they embodied would prove to be enormously significant in shaping the deliberations that considered the disposal of the German colonies at the peace conference. Taken together, they signalled a reasonable degree of unity respecting Allied war aims, even if they sometimes proceeded from motives less virtuous than expedient. Wilson responded to Lloyd George's declaration by praising the British prime minister's candour and by affirming that 'There is no confusion of counsel among the adversaries of the Central Powers, no uncertainty of principle, no vagueness of detail.' Of the Fourteen Points, Lloyd George said that they contained nothing 'which is incompatible with the war aims already proclaimed by the British and French Governments,' excepting points pertaining to freedom of the seas and reparations.

The great significance of these professions of unity is that they publicly aligned Allied war aims with that segment of popular opinion which rejected the right of conquest, decried the exploitation and domination of the backward peoples of the world, and which favoured placing these peoples under some form of control that acknowledged their legitimate interests. And in doing so, Wilson and Lloyd George erected an imposing standard by which future deliberations regarding the disposal of German colonies would be judged.

44 Lloyd George, 'The Peace Declaration,' 2524.
45 Wilson, 'An Address to a Joint Session of Congress, January 8, 1918,' 535.
46 Lloyd George, The Truth About Peace Treaties, vol. 1, 73.
The peace settlement

While Wilson and Lloyd George gave positive effect to the principle that the control of backward peoples should take due account of their interests, the origin of this control, the source of its authority, and the principle of its administration were not at all settled or clear. Both Wilson and Lloyd George made much of the right of self-determination; and on the advice of Smuts, Lloyd George went so far as to assert that with the respect to the native inhabitants of Germany’s conquered colonies, ‘[t]he general principle of national self-determination is... as applicable in their cases as in those of occupied European territories.’ However, the right of self-determination, and the principle that government shall rule with the consent of the governed, did not necessarily imply political independence, representative institutions, or even organised elections. Rather than creating a raft of new states in Africa and in Asia, they contemplated the establishment of some form of control which would aid the advancement and safeguard the interests of the peoples inhabiting these territories.

The most important statements proposing such an idea did not, however, find their origin in Wilson’s or Lloyd George’s thought. Wilson’s first draft Covenant contained articles pertaining to the reduction of national armaments, the peaceful settlement of disputes, and the all important guarantees of political independence and territorial integrity; but significantly, for a man deeply impressed by the idea of popular sovereignty, it contained no reference to the future of those peoples who had recently fallen under Allied control as a result of the war. For his part, Lloyd George made no attempt to articulate definite ideas about the future of those peoples. Instead, it was Smuts, a man who openly advocated the annexation of at least a portion of Germany’s colonial empire, who would decisively shape the debate regarding the disposal of conquered territories and their inhabitants. Smuts, believing that the

47 Lloyd George, ‘The Peace Declaration,’ 2524; and Louis, Great Britain and Germany’s Lost Colonies, 6.
destruction of civilisation had been narrowly averted, laid out in a pamphlet entitled, *The League of Nations: A Practical Suggestion*, ideas for building a new world order. For Smuts, the principles of Vienna had outlived their usefulness: the future required an entirely new international system built upon a league of nations. But a properly constituted league, he argued, must be something more than a mechanism intended to prevent the outbreak of wars in the future. If a league of nations was to amount to anything, it must not be limited to dealing with the great calamities of international life, but must become an entrenched part of the ordinary relations of states in times of peace. Indeed, the sort of league Smuts had in mind ‘must become part and parcel of the common international life of states, it must be an ever visible living working organ of the polity of civilisation.’

Smuts believed that world peace depended on the political form that Europe and the world would assume in the aftermath of the war. The political landscape of Europe had undergone irreversible change with the collapse of the great multi-national empires ruled by Russia, Austria, and Turkey; and he feared that if the remnants of these empires were apportioned as spoils in a redivision of Europe, ‘in a return of the old policy of grab and greed and partitions,’ the future would be one filled with despair. But in rejecting the ‘madness’ of the old policies of partition, he did not consider the granting of independence as a viable alternative. The peoples who inhabited these empires, he argued, were not adequately prepared to assume the responsibilities of membership in the family of nations. Of their condition he wrote: ‘[t]he peoples left behind by the decomposition of Russia, Austria, and Turkey are mostly untrained politically; many of them are either incapable of or deficient in power of self-government; they are mostly destitute and will require much nursing towards economic and political


independence. For Smuts, a system of mandates represented a middle way between aggrandisement and an anarchy he believed would surely follow a premature granting of full political independence. Indeed, he claimed that ‘Europe is being liquidated and the league of nations must be the heir to this great estate.’ It is in this idea, the idea that responsibility for these peoples and territories shall be vested in the league of nations, that the mandates system owes its origin.

Since Smuts regarded the peoples of these defunct empires as being incapable of self-government, he recommended that the league of nations act as receiver of the shattered empires of Europe rather than treating them as spoils to be parcelled out among the victors. And in a gesture to the principles of the new diplomacy, he recommended further that the fate of these peoples and territories be decided according to the principles of no annexations and the self-determination of nations. However, Smuts did not believe that self-determination necessarily implied independent statehood. The peoples of collapsed empires must be guided along the path of progress and protected against exploitation so that they would one day join the family of nations. Smuts observed that not all these peoples required the same degree of guidance and protection. While they generally lacked the qualities required of statehood, some, he argued, were quite capable of autonomous development. Peoples that disclosed some capacity for the art of self-government would require only minimal guidance from an external authority. Others, on account of their heterogeneous population and their consequent incapacity of administrative co-operation, would require more extensive guidance. For these less developed peoples, substantive autonomy was out of the question and, hence, their administration would have to be directed to a very large extent by an external authority. That the conditions of life in these

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54 Smuts, 'The League of Nations,' 29.
territories varied considerably suggested to Smuts that the application of external guidance ‘must necessarily vary from cause to case, according to the development, administrative or police capacity and homogeneous character of the people concerned.’\textsuperscript{55} Thus, the self-determination of nations refers in this context to granting powers of self-government and autonomy in proportion to the demonstrated capacity of a people to direct their affairs according to the accepted principles of civilised societies.

But Smuts entertained no hope that a league of nations could by itself supply guidance to peoples in any state of development. He noted that, while joint international administration worked well in regulating postal matters and the use of international waterways, when applied to the administration of underdeveloped and backward peoples the results have been uniformly disappointing. The administration of these peoples, he argued, is a difficult and exacting enterprise; it requires a wealth of practical experience whereby only states especially fitted to the task have encountered any degree of success.\textsuperscript{56} Thus, he recommended that in cases where a people or territory required some form of external authority, the league of nations should ‘delegate its authority, control, or administration in respect of any people or territory to some other state whom it may appoint as its agent or mandatary.’\textsuperscript{57} Mandatory powers would be expected to establish conditions of equal economic opportunity for all states, limit military forces to those required for the maintenance of public order, and conduct their administration according to certain principles prescribed by the league. However, all rights of authority, control, and supervision would be ultimately reserved to the league of nations in order to ensure the faithful application of these principles.

\textsuperscript{55} Smuts, ‘The League of Nations,’ 32.
\textsuperscript{56} Smuts, ‘The League of Nations,’ 30.
\textsuperscript{57} Smuts, ‘The League of Nations,’ 32.
Smuts evinced great optimism, in a spirit suggestive of the aspirations of the Berlin Act thirty years earlier, that the implementation of the mandates system would remove from world affairs an important source of European rivalry. But unlike the provisions of the Berlin Act, the mandate system afforded much greater protection against the type of misrule and abuse that occurred in the Congo Free State. Indeed, the welfare of subject races was no less a concern than the establishment of world peace. Smuts conceived the mandate system, not as a means by which to secure national advantage, but as a trust in the strictest sense of the word. 'The mandatary state,' he writes, 'should look upon its position as a great trust and honor, not as an office of profit or a position of private advantage for it or its nationals.'\textsuperscript{58} Thus, Smuts recommended that peoples in need of guidance be consulted, fairly and reasonably, in the nomination of the mandatory power under whose administration they shall be placed, and that mandated peoples should be afforded the right to petition the league of nations to seek relief of grievances not satisfied or inflicted by that power. Moreover, he recommended that the league might seek periodic reports to ensure that the administration of mandated peoples is conducted according to accepted principles; and finally, that 'in case of any flagrant and prolonged abuse of this trust' the league of nations should 'assert its authority to the full, even to the extent of removing the mandate, and entrusting it to some other state, if necessary.'\textsuperscript{59}

It is perhaps surprising that throughout his brief, albeit farsighted, proposal that Smuts scarcely mentions the disposal of Germany's colonies. The mandates system was to be applied only to the Russian, Austrian, and Turkish empires. In contrast, he suggests that the territories of the German colonial empire 'are inhabited by barbarians, who not only cannot possibly govern themselves, but to whom it would be impracticable to apply any idea of political self-determination in the European

\textsuperscript{58} Smuts, 'The League of Nations,' 32.  
\textsuperscript{59} Smuts, 'The League of Nations,' 31-33.
Thus, after dismissing outright the possibility that these peoples might want to remain under German rule, he suggested that the future of these territories would be best decided in accordance with the fifth of Wilson's fourteen points. Despite being vague in respect of the fate of the German colonies, and his admitted haste in putting thoughts to paper, Smuts' mandates proposal proved to be enormously influential, especially with Wilson who incorporated the idea in his own proposal for a league of nations. Wilson borrowed liberally from the Smuts pamphlet as he appended to the end of his second draft covenant, and to all subsequent drafts, several 'supplementary agreements' which essentially reproduced the mandate idea. Wilson's secretary of state, Robert Lansing, recorded in a memorandum that this second draft represented an attempt to harmonise Wilson's ideas with those put forward by Smuts. Smuts' pamphlet, Lansing wrote, 'contained the rather novel thought that the League was to be "the heir of the Empires" since Imperialism was no more. This catchy phrase sank deep into the mind of the President and impressed him with the wisdom of Smuts.'

In a less flattering comment, Lord Robert Cecil wrote of Wilson's second draft: '[i]t is almost Smuts and Phillimore combined, with practically no new ideas in it.' But Wilson did not appropriate and reproduce Smuts' mandate proposal in its entirety, for his supplementary agreements differed in one very important respect: they contain no mention of Russia and they extended the applicability of the mandates system to the German colonies.

The Smuts proposal also appears to have been influential with at least a segment of British opinion, even if that opinion did not always sympathise with Wilson's rather stringent ideological

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60 Smuts, 'The League of Nations,' 28.

convictions. Most British supporters of the league of nations idea did not reject the legitimacy of empire nor did they tend to view the organisation as the successor to all the world’s empires. Rather, like Smuts, they viewed the British Empire and the proposed league of nations as resembling each other, both in principle and in purpose. Smuts drew this likeness so closely that he suggested ‘that where the British Empire has been so eminently successful as a political system, the league, working on somewhat similar lines, could not fail to achieve a reasonable measure of success.’ Thus, the principles embodied in the mandates system did not strike most British observers as differing in substance from those which guided British colonial administration. In spite of differences in ideological emphasis, the British draft covenant accepts the mandates idea, albeit in less elaborate and specific terms than its American counterpart. The cause of world peace, it recalled, imposes a ‘duty incumbent upon the more advanced members of the family of nations to render help and guidance, under sanction of the League, in the development of the administration of states and territories which have not yet attained to stable government.’ The fulfilment of this duty included annexing to the Covenant agreements defining the responsibilities of mandatory states, and in an apparent acknowledgement of the principles enshrined in the Berlin and Brussels Acts, conventions ‘dealing with arms traffic, liquor traffic, and other tutelage of backward races.’ The British draft covenant, and Wilson’s second and third drafts in particular, bestowed considerable legitimacy on Smuts’ proposed mandate system; and, together, they presented a formidable obstacle to those persons who held fast to the idea of annexing Germany’s colonial possessions. However, while both the British and American drafts indicated at least provisional acceptance of the mandates idea, they disclosed a crucial point of difference that foreshadowed a


63 Smuts, ‘The League of Nations,’ 37


65 ‘British Draft Convention,’ 114.

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rupture in negotiations at the Paris Peace Conference of 1919. This point of contention rested on the British draft’s conspicuous silence on which territories the mandates system would be applicable.

**Impasse at Versailles**

The Allied and Associated powers finally decided the future status of the conquered territories during the closing days of January 1919. However, in these meetings of the Council of Ten, Wilson’s ideological convictions and his profound distrust of imperialism collided with the aspirations of the British Empire’s southern dominions: Australia, New Zealand, and South Africa. Here, the interests and well-being of backward peoples, peoples who required guidance along the path of enlightenment and progress, came into conflict with the imperative of national security.

By the time the victorious powers gathered in Versailles to repair the peace of the world, there was little talk of leaving the Austrian, Turkish, and German empires in tact. The horrors of the war, the human sacrifice and material destruction, and the popularity of the idea of self-determination precluded any real possibility of returning to pre-war territorial arrangements. The fate of the Austrian Empire did not arouse great passions as it, perhaps not unexpectedly, disintegrated under the weight of its own decay. Likewise, the future of the Turkish Empire seemed to be relatively unproblematic as allegations of gross misrule, especially in Armenia, indicated convinced the peacemakers of the need to emancipate the Arab and Christian races who had suffered mightily under the Turkish boot. The crimes committed in Armenia struck Lord Cecil as being so barbaric that he claimed: ‘[a]ny change, even the most Imperialistic annexation, would be of benefit to the people who suffered such crimes as that.’ Lloyd George similarly denounced Turkish rule as an abuse of trust held on behalf of civilisation. The Turk, he declared, ‘has been false to his trust, and the trusteeship must be given over to more competent and
more equitable hands, chosen by the congress which will settle the affairs of the world.\textsuperscript{67} The character of Turkish rule in territories populated by Arab and Christian races appeared to Allied leaders as being so repugnant to the standards and values of European civilisation that alternatives to the dismemberment of the Turkish Empire were very few indeed. The Allies rejected without discussion a Turkish overture that sued for the maintenance of the territorial \textit{status quo ante bellum}. While admitting the commission of serious crimes, the Grand Vizier, Damad Ferid Pasha, argued that harmony and equilibrium in the east depended on the preservation of the Turkish Empire. Lord Balfour responded on behalf of the Allied governments by stating plainly that the Turkish people had shown themselves to be unfit to rule over alien races: "the experiment has been tried too long and too often for there to be the least doubt as to its result."\textsuperscript{68}

While attitudes regarding the fate of the Austrian and Turkish empires disclosed no fundamental divergence of opinion, the disposal of captured German colonies proved to be a far more contentious issue inasmuch as debate concerning their fate revealed a very deep rift among the peacemakers. The difficulty in obtaining consensus in respect of the disposal of German colonies followed from the long-standing British interest of imperial security and the need to reconcile that interest with the many declarations in favour of a new world order founded on principles of the new diplomacy. Thus, the main problem confronting the British Empire, as Louis observes, was finding a way of achieving imperial security without alienating Wilson or unduly impinging upon the idea of a 'Wilsonian' peace.\textsuperscript{69} Louis suggests that Britain worked toward this goal, in part, by casting


\textsuperscript{68} Quoted in Lloyd George, \textit{The Truth About Peace Treaties}, vol. 2, 1011.

\textsuperscript{69} Louis, \textit{Great Britain and Germany's Lost Colonies}, 7.
opprobrium on Germany’s fitness as a colonial master, even though most Englishmen approved of
German colonial administration prior to the outbreak of war. Germans were highly regarded for their
efficiency and industry with which they developed their overseas territories; and along with the British, they were looked upon as members of an ascendant Anglo-Teutonic race that was gradually taking the place of declining Latin races—the French, the Belgians, and particularly the Portuguese, who through misrule and cruelty had forfeited their claim to rule backward races.70

The sudden popularity of portraying German colonial administration in a bad light strengthened arguments in favour of stripping Germany of its colonial possessions. Early in the war, Evans Lewin alleged that Germany had failed both in its native policy and in the colonisation and exploitation of its African colonies. The German colonial administrator dispensed justice unevenly, encroached upon native lands, exhibited little sympathy for the needs of native subjects, and showed no ability or inclination to free himself from the inflexible methods and habits of Prussian bureaucracy from which many of these problems arose. In short, the German ‘lacked the broader instinct of compromise which has so frequently saved British administrators from errors that might have led to disastrous results.’71

Reports submitted to the British Parliament seemingly confirmed Lewin’s assessment as they recorded numerous examples of German administrators treating their native subjects quite harshly. For example, E.H.M Georges submitted a report on the state of affairs in German South West Africa which asserted:

70 Louis, Great Britain and Germany’s Lost Colonies, 35.
a large amount of evidence is presented which contains irrefutable proofs of the gross ineptitude with which Germany entered upon her scheme of colonising this territory, of the callous indifference with which she treated the guaranteed rights of the native peoples established here, and of the cruelties to which she subjected those peoples when the burden became too heavy and they attempted to assert their rights.  

Georges adds, in the same vein as Lewin, that the failure of this administration is attributable to something that Germans lack and Englishmen possess: a special understanding of native usages and customs that is required of the art of colonial administration. It is important to realise that these views were not restricted to ardent imperialists seeking to obtain advantage at Germany's expense; nor were they limited to persons driven by a deeply held humanitarian impulse or some purely altruistic motive. George Beer, an American colonial expert who was surely not possessed of an overriding imperial interest, contended that the character and magnitude of German misrule in Africa confirmed a 'total failure to appreciate the duties of colonial trusteeship;' and in a revealing remark, Lord Cecil confessed before Parliament: 'I do not say that we attacked the conquered German African colonies in order to rescue the native from misgovernment...but, having rescued them, are you to hand them back?'

Allegations of German misrule, even if it was at times disingenuous and self-serving, provided a powerful rejoinder to any suggestion of returning to Germany its lost colonies. Germany, this argument supposed, had regressed into barbarism and, therefore, could no longer be trusted in the supervision of underdeveloped and backward peoples. The earliest discussions concerning the disposal of the German colonies implied just that. The Germans, Lloyd George said, had been very harsh in their treatment of their native subjects and that they encouraged their native troops to act in ways that

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would even disgrace the Bolsheviks."75 After accepting this view without dissent, the delegates discharged the idea of direct, or what Smuts called joint international administration, in equally expeditious fashion. Delegates to the Conference spoke of the undesirability of such arrangements, saying that it could only lead to confusion of authority and the bad results experienced in the Congo and the New Hebrides.76 The Conference also accepted this view without dissent. The impossibility of restoration and the unsuitability of joint international control set the stage for an engaging and often acrimonious debate between Wilson, who strongly favoured some form of trusteeship, and the leaders of the southern dominions, who favoured just as strongly outright annexation.

Each of the dominions' representatives argued that the imperative of security dictated the annexation of German territory. W.F. Massey claimed Samoa, an island he described as being the 'key to the Pacific' and vital to New Zealand's security; and Smuts contended that German South West Africa should rightly pass to South African hands because of German intrigue in South African affairs and on account of the natural geographical unity exhibited by the two territories. It is particularly noteworthy that Smuts, a man who pleaded for a peace based upon the principles of self-determination and no annexations, justified this claim by suggesting: 'there might be a strong case for the administration of the other German possessions in Africa by a mandatory,' but that South West Africa did not represent such a case.77 However, it was the Australian Prime Minister, W.M. Hughes, who spoke most forcefully in support of annexation. In staking a claim to the largest of the Pacific islands, Hughes said that Australia could not be at peace so long as New Guinea was in the hands of a superior power, be it a European power or the League of Nations. The Pacific islands, he continued,
embraced Australia like a fortress' and were consequently 'as necessary to Australia as water to a city.'\textsuperscript{78} Hughes did not rest entirely on the simple argument of security; he also openly questioned the wisdom and desirability of the mandatory principle itself. Past experience convinced him of the superiority of direct rule. He dismissed popular opinion set against annexation as being misplaced. Australia, he countered, fought alongside the democracies of Europe and America in a crusade against militarism and for liberty; and like other responsible democracies, it would not tolerate the exploitation of underdeveloped peoples subject to its rule. Thus, Hughes summarised the Australian claim to New Guinea by asserting: 'Australia had governed New Guinea; New Guinea was essential to the safety of Australia; Australia was a democracy; the Australians were on the spot; Australia knew what New Guinea wanted far better than any League of Nations.'\textsuperscript{79}

The acceptance of the mandatory principle seemed to be very much in doubt when France indicated its support of the arguments articulated by Hughes and Massey, and its principal author, Smuts. Mr. Simon agreed that the disadvantages of the mandatory principle outweighed the disadvantages of annexation. Thus, he declared that he had come that day to speak in favour of annexation, the only policy he believed that would 'accomplish the double object of every colonial government worthy of the name, namely, the development of the country and the effective protection of the natives during the period required for their development toward a higher plane of civilization.'\textsuperscript{80}

The frankness with which Simon presented the French position provoked disappointment in Wilson, who observed that thus far the deliberations amounted to an unambiguous repudiation of the mandatory principle. The world, he reminded the Conference, would surely interpret the annexation of German

\textsuperscript{78} 'BC-10, 'The Paris Peace Conference, 720-21.


colonial possessions as a crude partition of the spoils of conquest. Partition would surely entail a denial of the new diplomacy and the hope of a new world order founded on principles of right and justice. And such a settlement, Wilson feared, would be disastrous; 'it would make the League of Nations impossible, and they would have to return to the system of competitive armaments with accumulating debts and the burden of great armies.'\textsuperscript{81} Indeed, Wilson would not accept a return to the practices of the past; for he understood the work of the Conference as charting a wholly new course, one devoid of historical precedent. He desired something entirely new, a system that in no way reflected the dubious principles of Vienna, and which accepted the principle of trusteeship, untainted by the interest of annexation.

In spite of Wilson’s insistence on what he understood as ‘the genuine idea of trusteeship,’ disagreement on the disposal of the German colonies centred on means rather than ends. For Wilson, trusteeship consisted in ‘the development of the country for the benefit of those already in it, and for the advantage of those who would live there later.’\textsuperscript{82} At no point, though, did any member of the Conference disavow this obligation. Hughes and Massey in particular declared themselves to be in favour of, and committed to, the obligations of trusteeship. Hughes did not equivocate when he said Australia would agree to requirements respecting the well-being of native peoples; for ‘[i]t was reasonable and fair that the rights of the natives should be insisted upon.’\textsuperscript{83} Likewise, Massey made every effort to assure the American president that New Zealand had ruled the Maoris and other subject peoples assigned to its jurisdiction in the spirit that Wilson advocated. New Zealand had erected schools and hospitals, provided agricultural training, and encouraged these peoples to lead industrious

\textsuperscript{81} ‘BC-14,’ The Paris Peace Conference, 766.

\textsuperscript{82} ‘BC-12,’ The Paris Peace Conference, 740.

and productive lives. Thus, Massey claimed that New Zealand had not performed less well that what would be expected of a mandatory; and he offered this success as proof that annexation would satisfy the obligations of trusteeship by aiding 'the education of the native races, not only in secular matters, but also in the principles of Christianity, which he believed were necessary for the welfare of all nations.'

The French were no less earnest in professing their commitment to the obligations of trusteeship. Simon noted that dependent peoples subject to French rule possessed the same rights as French citizens, they enjoyed representation in the French Chamber, and that their system of local government did not differ in principle from the French government. The world, then, need not fear that annexation might lead to exploitation and maltreatment of native peoples; for all great powers recognised that the obligations of trusteeship entailed nothing less than the maintenance of peace, the provision of education, and protection against the evils inflicted by alcohol and firearms. Indeed, Simon asserted that the time of rapacious exploitation had already passed and that all great powers 'considered their colonies as wards entrusted to them by the world.'

This impasse comes up against one of the classic questions of international political theory: how were the peacemakers to reconcile obligations pertaining to the security of the political community with obligations pertaining to the claims, interests, and well-being of persons who are not members of that community? Faced with Wilson's unyielding resistance, Lloyd George presented to the Conference a compromise that drew upon British colonial experience and which attempted to satisfy what were to this point, conflicting obligations. Great Britain had already indicated its acceptance of the mandatory principle, but Lloyd George regarded claims of the dominions as deserving of special consideration. An exception in their favour, he argued, would not discredit fatally the League of Nations. However, he also wished to impress upon the Conference that:

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there was no large difference between the mandatory principle and the principles laid down by the Berlin Conference, under which Great Britain, France, and Germany held many of their colonies. This Conference had framed conditions about the open door, the prohibition of the arms and liquor traffic, which resembled those President Wilson had in view in many respects, except that no external machinery had been provided for their enforcement.\footnote{BC-14, The Paris Peace Conference, 760-61.}

Thus, in accepting the mandatory principle, Lloyd George argued that Great Britain would not be deviating from the accepted and established practices of British colonial administration. Lloyd George proposed a resolution that hinged on the assumption that political dominion and the mandatory principle disclosed no necessary contradiction and that it was possible to satisfy the demands of security and the demands of trusteeship.

The delegates resolved that on account of misrule in German and Turkish territories, and in the interest of ensuring the freedom and security of all nations, the tutelage of the peoples residing in these territories should be ‘entrusted to advanced nations who by reason of their resources, their experience or their geographical position, can best undertake the responsibility, and that this tutelage should be exercised by them as mandatories on behalf of the League of Nations.’\footnote{Draft Resolutions in Reference to Mandatories, The Paris Peace Conference, 795.} And owing to different degrees of development, the responsibilities of these mandatories shall vary according to the conditions of the territories in question. Thus, the resolution contemplated three types of mandate: (1) territories formerly a part of the Turkish Empire that are deserving of provisional recognition of independence, subject to the receipt of administrative advice and assistance; (2) Central African territories whose administration must be directed by the mandatory power; and (3) territories whose sparse population, small size, distance from centres of civilisation, or geographical contiguity to the mandatory power would be most efficiently administered as an integral part of that supervising power.\footnote{Draft Resolutions in Reference to Mandatories, The Paris Peace Conference, 795-96.}

class of mandate that is of particular interest; for the C mandate, which applied to South West Africa and to the Pacific islands, granted to the dominions substantial control over the territories to which they laid claim. Indeed, Lord Milner, Britain’s Colonial Secretary, described these mandates as imposing very few obligations and differing from colonial possessions perhaps only in name. 89 The dominions seem to have shared a similar view. Hughes, satisfied by the degree of control granted by the C mandate, informed the Conference that, ‘he did not feel justified in opposing the views of President Wilson and those of Mr. Lloyd George, beyond the point which would reasonably safeguard the interests of Australia.’ 90

**Trusteeship or deception?**

Even though the dominions did not agree fully with the fundamental premise of Lloyd George’s compromise—they never disowned their preference for annexation—acceptance of the mandatory principle marked a definite triumph for Wilson and the idea of trusteeship. David Hunter Miller, a member of the American delegation, recorded in his diary that Wilson had hoped for a more ambitious resolution, but that the President nonetheless concurred with his view that the resolution represented a great achievement. 91 Indeed, the resolution formed the basis of what would become Article 22 of the League of Nations Covenant. Wilson said of a draft of this article that the peacemakers had put an end to the selfish practice of annexation and the exploitation of the disadvantaged peoples of the world. For we have come to recognise, he submitted to his fellow delegates,

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89 Louis, Great Britain and Germany’s Lost Colonies, 144.


in the most solemn manner that the helpless and undeveloped peoples of the world, being in that condition, put an obligation upon us to look after their interests primarily before we use them for our interest, and that in all cases of this sort hereafter it shall be the duty of the League to see that the nations which are assigned as the tutors and advisors and directors of those peoples, shall look to their interests and to their development before they look to the interest and material desires of the mandatory nation itself.92

It is in this spirit that Article 22 finds its authority and justification. Before specifying the three types of mandates, the text of that article reads:

To those colonies and territories...not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle 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.93

With these words the founders of the League of Nations took a momentous step beyond the idea of trusteeship that the European powers agreed to in the Berlin and Brussels Acts. Not only did they affirm that the well-being of subject peoples constituted a legitimate subject of international scrutiny, they also erected international machinery to ensure the faithful performance of duties pertaining to the well-being of subject peoples.

These obligations were enumerated in the mandate treaties and in several related international agreements. All mandated territories were to enjoy freedom of conscience and all forms of worship, subject to requirements of public order and morals, and the free operation of missionary societies without interference or discrimination on the basis of affiliation or nationality. Additional responsibilities were specified in accordance with a territory’s state of development, that is, in terms that corresponded roughly with James Lorimer’s division of humanity into civilised, barbarian, and savage


Mandatory powers were vested with few additional administrative duties in class A mandates, which were comprised of former Turkish territories, the notable exception being the control of foreign relations. In contrast, the rather extensive obligations imposed upon mandatory powers in class B mandates, the former German colonies in Central Africa, were noteworthy insofar as they very closely reflected the obligations enshrined in the Berlin and Brussels Acts. Mandatories were in these territories responsible for establishing freedom of commerce, preventing or regulating abuses such as, slavery and the slave trade, the arms and liquor traffic, forced and compulsory labour, and the military exploitation of the natives, and they were prohibited from constructing military fortifications.

Responsibilities in the controversial class C mandates, which included South West Africa, New Guinea, and Samoa, differed from the class B mandates only to the extent that mandatory powers were under no obligation to maintain the open door. In both the B and C mandates, supervising powers were obliged to 'promote to the utmost the material and moral well-being and the social progress of its inhabitants.'

Many of these responsibilities were clarified in general instruments of international law and were extended to apply to parts of Asia and to nearly the entire continent of Africa. But the extension of these responsibilities did not result in wholly new agreements; rather, at the first meeting of the Permanent Mandates Commission members set out to regulate the traffic in firearms and liquor, and to revise sections of the Berlin and Brussels Acts. They agreed to prohibit the export of arms and ammunition to parts of Asia, including Transcaucasia, Persia, and the Arabian peninsula, and to the entire continent of Africa, except for Algeria, Libya, and South Africa. They similarly agreed to

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prohibit the importation, distribution, sale, and possession of spirituous liquors in sub-Saharan Africa, again, except for South Africa. In revising the Berlin and Brussels Acts, contracting parties reaffirmed principles that included the establishment of complete economic equality in territories comprising the Congo basin and freedom of navigation on the Congo and Niger rivers, and on all of their tributary waterways. They also pledged that they would 'continue to watch over the preservation of the native populations and to supervise the improvement of the conditions of their moral and material well-being,' including the suppression of slavery, the promotion and protection of religious, scientific, and charitable institutions, and the guarantee of freedom of conscience and the free exercise of religious faith.

This rather elaborate codification of the obligations of trusteeship did not impress all that maintained an interest in such matters. Many newspaper editors, even those that had expressed sympathy and desire for a Wilsonian peace, interpreted the mandates system as a thinly disguised division of the spoils. Members of the Labour movement, the peace societies, and the UDC also greeted the mandates system with disappointment and suspicion. Brailsford asked why the mandatory principle, the idea that civilised nations ought to conduct themselves honourably toward backward peoples, should not be generalised and applied to all subject peoples of the world. Indeed, he could conceive of no reason for withholding a guarantee of benevolent rule from all colonial possessions. The only defence of white rule in Africa, he argued, consisted in a trust undertaken by the imperial powers 'on behalf of the whole civilised world, in the interests of the natives.' Lowes Dickinson regarded no section of the Covenant as more important than Article 22, but he complained bitterly about the

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99 Louis, *Great Britain and Germany’s Lost Colonies*, 139-42; and Walworth, *Wilson and His Peacemakers*, 78.

100 Brailsford, *Olives of an Endless Age*, 339.
disingenuous spirit with which the Allied governments implemented it. These governments, he asserted, are no less enamoured with the profit of crude economic exploitation than they were at the start of the war. Their real interests, he wrote, were guided by the lure of oil, phosphate, and other raw materials upon which their industrial economies depended; and so long as this was the case ‘the Covenant of the League can never be anything more than a piece of solemn hypocrisy.’ Some members of the peace delegation also meted out harsh criticism. Robert Lansing disparagingly attributed the creation of the mandates system to a fascination with inventing something new or with the novelty of articulating a new theory. Lansing doubted, as did Hughes and Massey, that the mandates system afforded any peculiar advantage over the traditional practice of annexation. This led him to the ‘almost irresistible conclusion that the protagonists of the theory saw in it a means of clothing the League of Nations with an apparent usefulness;’ yet Lansing disclosed no doubt that for all its novelty, ‘[i]n actual operation the apparent altruism of the mandatory system worked in favour of the selfish and material interests of the Powers which accepted the mandates.’

The implementation of the mandates system did not pass without controversy or defect. For example, the inhabitants of class A mandates were not consulted in the selection of supervising powers even though Article 22 stipulated that ‘the wishes of these communities must be a principal consideration in the selection of the Mandatory.’ Critics of the Palestine mandate argued that the establishment of a Jewish national home, as required in the mandate treaty, conflicted with the principle that the inhabitants’ interests must be the first and primary concern of mandatory rule. Likewise, the French were alleged to have made a mockery of the mandatory principle by reserving its right to press natives into military service. Other complaints centred on the fact that the mandates system did not

102 Lansing, The Peace Negotiations, 156-57.
103 Wright, Mandates Under the League of Nations, 62; and ‘Covenant Text in the Treaty of Versailles,’ 737.
always contribute to peaceful development. Armed rebellion erupted in Mesopotamia, Syria, and South West Africa; and due to disputes between Arab and Jewish communities over immigration policy, violence frequently disrupted life in Palestine. In more remote and undeveloped territories, the guarantees and protections afforded by the mandate system were poorly understood, if understood at all, by native peoples. They seldom made use of their right of petition and they seemed to make no distinction between the imperial authority under which they once lived and the League appointed authority that succeeded imperial control.  

These guarantees and protections did not render mandatories or the Mandates Commission immune from the same questions that beset colonial administrators. Should mandatory rule be direct or indirect? And to what extent should native customs and institutions be preserved? Or, should the traditions of native life be swept away in favour of the progressive enlightenment of civilised life? One member of the Commission, D.F.W. Van Rees, declared his preference for direct rule by saying: ‘the least perfect European administration was one hundred times better than a purely native administration.’  

Lord Lugard, who was also a member of the Commission, responded by saying that such a view was contrary to the idea that mandated peoples were to be prepared to stand alone. With respect to native customs, Kunio Yanaghita suggested that while mandatory governments agreed that repugnant native practices ought to be abolished without delay, those which were not impediments to progress should be left in undisturbed. However, Freire d’Andrade submitted that since the moral education and development of native peoples ‘must take scores of years, or even centuries,’ they should not be permitted to idle in the meantime. Similar debates took up questions concerning land use, health, labour, education, and language of instruction; and in each case we encounter the voices of

104 Wright, Mandates Under the League of Nations, 62, 72, 92-5, 578; and Dickinson, Causes of International War, 94.
105 Quoted in Wright, Mandates Under the League of Nations, 244.
106 Wright, Mandates Under the League of Nations, 242-54.
Charles Grant, James Mill, T.B. Macaulay, Thomas Munro, David Livingstone, and, of course, Lord Lugard.

Quincy Wright aptly described the creation and implementation of the mandates system as 'mutilated in details, sullied by the spirit of barter, delayed in confirmation, and minified by the mandatories.' But in spite of its obvious defects and shortcomings, the mandates system experienced a considerable degree of acceptance and success. Wright observed that with few exceptions the League Council implemented most of the Commission's recommendations and that it diligently scrutinised the confirmation of mandates in order to ensure their conformity with the intent of Article 22. To this evidence he added that mandatory powers were not negligent in forwarding petitions of complaint, answering questions about their administration, or rendering an annual report to the League as stipulated by the mandate treaties. Mandatories sometimes complained of the expense incurred in administering mandated territories, but they did not question the fundamental principle that the interests of native inhabitants were the foremost concern of their administration. Thus, it is no exaggeration to suggest that the mandatory powers, not to mention the League's general membership, regarded the mandates system as a reasonable success.

Novelty and tradition

In the mandates system, the peacemakers at Versailles invented a new way of ordering the relations of European and non-European peoples. Critics, of which there were many, derided the League experiment as a self-serving disguise which shrouded beneath a thin veneer the operation of the selfish, pernicious, and indeed dangerous principles of the old diplomacy. A despondent Smuts, fearing that the chance for a new world order had been lost, complained that instead of a Wilsonian peace, the

107 Wright, Mandates Under the League of Nations, 63.
108 Wright, Mandates Under the League of Nations, 98, 580.
world would be presented with a ‘reactionary Peace—the most reactionary since Scipio Africanus dealt
with Carthage.’ And in what is perhaps the most famous polemic attacking the Versailles settlement,
John Maynard Keynes suggested that an intellectually feeble Wilson had been hoodwinked by vastly
more skilled European statesmen into accepting a wholly inadequate peace. For Keynes, the stakes of
diplomacy were obvious:

[p]rudence required some measure of lip service to the “ideals” of foolish Americans and
hypocritical Englishmen; but it would be stupid to believe that there is much room in the world,
as it really is, for such affairs as the League of Nations, or any sense in the principle of self-
determination except as an ingenious formula for rearranging the balance of power in one’s
own interests.

But the League of Nations surely represented something more than a deceptive and ingenious formula
meant to obscure the practice of power politics. Alfred Zimmern described the League of Nations, not
inaccurately, as consisting in more than a convenient mechanism of power politics: ‘it represents a
great political ideal.’ The authors of the Versailles settlement certainly worked out that ideal in the
very imperfect world of human relations. But the fact that it became somewhat tarnished does not
detract from its authenticity.

The same may be said of the mandates system. Wright was not mistaken when he said that the
system was not a ‘product of disinterested juristic thought nor of detached scientific investigation but
was a compromise invented by the Versailles statesmen to meet an immediate political dilemma.’ In
reaching this compromise, it is true, most states remained fixed on the all important search for security.
The minutes of the deliberations definitely indicate that much. But in seeking security, the men who

109 J.C. Smuts, ‘To M.C. Gillett, 19 May 1919,’ Selections from the Smuts Papers, vol. IV, W.K. Hancock and Jean Van Der
112 Wright, Mandates Under the League of Nations, 3.
gathered at Versailles gave positive effect to the principle that the pursuit of national interests could not entail the exploitation or neglect of backward peoples. They were obliged as well to attend to their well-being so that they too might one day join the family of nations. Thus, above all else, the mandate system afforded these peoples protection from tyranny. The machinery and procedures that were created to ensure the orderly and just performance of these obligations represented a truly novel system which found its origin in international law rather than in national sovereignty. Under the mandates system backward and undeveloped peoples became subjects of international law; and because they were endowed with rights established in international law, they, or a third party, could appeal directly to the League for relief of grievances. Thus, Wright concluded:

While ordinarily rights under international law vest only in states, it appears that the mandated peoples have a status, withdrawing them from the sovereignty of any state and giving them the opportunity to invoke the direct protection of the League, which makes it not inappropriate to speak of them as enjoying rights under international law correlative to the duties imposed by the mandates upon the mandatories for their benefit.¹¹³

Although the mandates system marks a most important development in the administration of subject peoples, the principles in which it is grounded are anything but novel. Indeed, it is striking the extent to which the mandates system reflects the assumptions and principles of British colonial administration. The graduated understanding that emerged in nineteenth century British Africa lies at the very centre of Article 22 and the mandates system generally. But the fundamental moral claim of Article 22 reaches further back to the thought of Edmund Burke and the idea that political power ought to benefit those people that are subject to it. Thus, the mandates system discloses a lineage that runs from Burke, to the Berlin and Brussels Act, and the Kenya White Paper of 1923. Perhaps, then, it should come as no surprise since Smuts was fond of comparing the British Empire and the League of Nations. In proposing the mandates idea, Smuts suggested that ‘the British Empire was the nearest

¹¹³ Wright, Mandates Under the League of Nations, 457, 473-74.
approach to the league of nations." Alfred Zimmern did not mistake the continuity of these ideas; for he understood the mandates system as the constitutional form of earlier theories of colonial government which obtained their justification in the idea of trusteeship. 'This conception,' he wrote, 'has been implicitly in British colonial policy at least since the time of Burke's indictment of Warren Hastings; but its international consecration carries it a long stage further than that exemplified either in the Pronouncement of August 1917 or in the Kenya White Paper.'

114 Smuts, 'The League of Nations,' 35.
115 Zimmern, The Third British Empire, 22.
Chapter Five

The Destruction of the Legitimacy of Trusteeship

The place and purpose of trusteeship in the post-second world war global order aroused passions and suspicions that were no less pronounced than those which threatened to disrupt the peace negotiations at Versailles two decades earlier. This tension, which divided the United States and Great Britain in particular, resulted from a fundamental disagreement over the purpose of trusteeship and its relation to the future of empire in world affairs. British commentators on empire tended to interpret trusteeship in the context of an imperial tradition that dated back to Edmund Burke’s interest in the affairs of the East India Company. The idea of trusteeship invoked a principle against which to judge colonial administration and, therefore, consisted in a justification of empire. Americans, who were born of a very different colonial and political experience, were not inclined to accept trusteeship as a justification of empire. Rather, they regarded it as representing a clear and definite alternative to the perpetuation of empire. In this chapter I want to interrogate the ideas and principles that underpin the purpose of trusteeship as contemplated in the Charter of the United Nations and those ideas and principles upon which the anti-colonial movement seized to destroy the legitimacy of trusteeship in world affairs.

The Atlantic Charter and the future of empire

The divide that separated American and British attitudes toward trusteeship during the Second World War is most clearly evident in their respective responses to the Atlantic Charter. In this historic declaration, Winston Churchill and Franklin Roosevelt expressed their hope for a world in which all peoples would enjoy equal economic opportunity and access to raw materials, free and unhindered use of the seas, improved labour standards and social security, a more equitable distribution of wealth, and,
significantly, the right ‘to choose the government under which they will live.’\(^1\) In this better, more humane world, the use of force would give place to mutual co-operation and power would be subjected to principle. Only when right, justice, and the rule of law reign supreme, would all of humanity be able to live their lives in peace and in freedom from fear and want. Indeed, the peoples who aspired to this sort of world constituted, in Roosevelt’s words, ‘a great union of humanity’ whose collective hopes have been ‘given form and substance and power through a great gathering of peoples now known as the United Nations.’\(^2\) Although the Atlantic Charter came be recognised as a document of signal importance, the realisation of this great union of humanity did not pass without controversy. Churchill’s wartime memoirs indicate that the greatest difficulty in negotiating the Atlantic Charter had to do with the provisions related to freedom of trade and access to raw materials.\(^3\) But it appears as if no one anticipated how the right of self-determination, that is, the right of peoples to choose their own government, would ignite an impassioned debate about the future of empire in world affairs. It is in this debate that we encounter two contending ideas of trusteeship: one idea understands trusteeship as integral to the maintenance of empire while the other understands trusteeship as an alternative to empire.

That the Atlantic Charter might be interpreted as implying a general right of self-determination did not go unnoticed in Parliament, nor in the territories of the dependent empire. The implications of such a right did not elude the Governor of Burma, who observed that the people of Burma will ask if the Atlantic Charter is to apply equally to all nations; and if they are told that they are to be excluded from


this great charter of liberty because they are subjects of the British Empire, ‘they will have quite a lot to
say about British justice, and so forth.’ But the Colonial Office, which generally regarded any
endorsement of self-determination as being unnecessarily dangerous, maintained that the diversity of the
Empire simply precluded the establishment of self-governing institutions in most territories. In some of
these territories, considerations of imperial security rendered the idea of self-government unthinkable;
others were inhabited by people so primitive that the prospect of self-government remained a very
distant proposition; and in still others, administrator, trader, planter, missionary, and native had not yet
worked out satisfactory arrangements of public life. In short, the Colonial Office deemed most, if not
all, of these territories as being unfit ‘to stand by themselves under the strenuous conditions of the
modern world,’ to use the language of Article 22 of the League Covenant. The peoples inhabiting
these territories were not, however, barred entirely from participating in the political life of the Empire,
but they could hope for no more than some form of limited self-government under the watchful
supervision of imperial authority. And even then, political development must respect British principles
of good colonial government and must proceed in accordance with the situation of particular territories.

Most members of the British government, Churchill included, considered the constitutional
development of the British Empire as presenting a problem quite separate from that of restoring the
sovereign rights of conquered peoples in Europe. Thus, Churchill moved to dispel any confusion about
the right of self-determination and its application to British territories by stating: ‘At the Atlantic
Meeting, we had in mind, primarily, the restoration of the sovereignty, self-government and national life
of the States and nations of Europe now under the Nazi yoke, and the principles governing any

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alternations in the territorial boundaries which may have to be made. Indeed, Churchill rejected without hesitation the suggestion that the principle of self-determination could be applied indiscriminately to the dependent territories. These territories must be permitted to evolve gradually and according to established principles of British colonial administration. Adherence to the Atlantic Charter, he argued, did not alter the general course of political, economic, and social development in these territories. Thus, constitutional development would proceed in India, as promised in the Declaration of August 1940, just as it would, in time, proceed elsewhere in the Empire. In drawing this rather sharp distinction between the affairs of Europe and the affairs of the British Empire, Churchill did not repudiate the principles of the Atlantic Charter as being alien to the principles that guided British colonial administration. He understood both sets of principles as being born of the same high ideals of human freedom and justice. D.J. Morgan suggests that Churchill's attempt to ease confusion about the Atlantic Charter and its application to the British Empire amounted to a reaffirmation of a tradition of trusteeship that fixed the interests and well-being of dependent peoples as the principal aim of colonial administration. In acknowledging this end as the great object of British colonial administration, Churchill put forward the idea of trusteeship, and not economic enrichment or some other expedient consideration, as the ultimate justification of empire.

The American government understood the idea of trusteeship as disclosing a very different justification, in part, because of its historic mistrust of imperialism. Roosevelt made no secret of his dislike of imperialism, even the imperialism of allies united in the struggle against totalitarianism.

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8 Churchill, 'Atlantic Meeting with President Roosevelt,' 210-11.

Believing that corrupt and oppressive rule had done nothing to improve the lot of French colonial subjects, he found nothing to admire in the French Empire. At the Tehran Conference, Roosevelt suggested to Churchill and Stalin that as a consequence of French rule, the inhabitants of Indochina were worse off than they had been before. Even if this charge of misrule was not entirely true, Roosevelt made it known that he did not wish to see the French Empire restored to its former status. Indochina, he suggested, should be placed under a trusteeship system in order to prepare its people for independence within a definite period of time. While Roosevelt held the British Empire in higher esteem, the emergency in India in 1942 seemingly confirmed his view that British power presented a very real danger to achievement of general peace. Roosevelt’s fear of British power followed from an appraisal of imperialism that rather closely approximates the judgements of Woodrow Wilson and Leonard Woolf. The colonial system, he confided to his son Elliot, is not only a dangerous source of friction that might lead to war, but it also exploits the natural wealth of a territory without ever making a commensurate and reciprocal investment in the development of that territory’s inhabitants. This indictment of imperialism is no less stark in the attitudes of Roosevelt’s most important political rivals. Wendell Willkie, a prominent member of the Republican Party, openly rebuked ‘[t]hose who sneer when it is suggested that freedom and self-government can be brought to all men’ and who feel that underdeveloped and savage peoples ‘must be ruled perpetually by some nation’s colonial imperialism.’ The dependent peoples of the world, he proclaimed, are alive physically, intellectually, and spiritually; they have awakened to take their rightful place in the world; and they are ‘resolved, as


we must be, that there is no more place for imperialism within our own society than in the society of nations. The big house on the hill surrounded by mud huts has lost its awesome charm.\textsuperscript{13}

Margery Perham, one of the most thoughtful and informed commentators on the British Empire, attributed this profound and sometimes exaggerated suspicion of imperialism to the legacy of American revolutionary experience. On the character of this peculiarly American habit of thought she wrote: ‘[t]he British are guilty of a sin called Empire. They committed it against the American people until these broke clear of British control to become a nation. The Americans are innocent of such guilt. They thus are in a moral position to condemn Britain as they watch her continuing in her way of sin against other people.’\textsuperscript{14} If American critics of imperialism could be accused of exaggerating the danger posed by the existence of empire, they were no less sure about the remedy of this danger. For the American foreign policy establishment, the Atlantic Charter constituted a grand blueprint for a world based upon the values of liberty, justice, and fraternity. Indeed, Roosevelt’s Secretary of State, Cordell Hull, called the Charter a ‘statement of basic principles and fundamental ideas and policies that are universal in their practical application.’\textsuperscript{15} The character of this common enterprise is evident when it is illuminated against the criticism of Walter Lippmann, who denounced the Atlantic Charter as dangerously Wilsonian, both in style and in substance. Lippmann feared that the pursuit of the perfect moral order, the universal society, would end only in confusion, disorder, and paralysis; for he believed that in a world possessed of little universal wisdom:

\begin{itemize}
\item \textsuperscript{12} Wendell L. Willkie, ‘Republican Presidential Candidate, 1940: Report to the People (Broadcast) after Return from Middle East, Russia and China, New York, October 26, 1942,’ \textit{War and Peace Aims of the United Nations: September 1, 1939 - December 31, 1942}, Louise W. Holborn, ed., (Boston: World Peace Foundation, 1943), 657.
\item \textsuperscript{13} Willkie, ‘Report to the People,’ 653.
\end{itemize}
We shall collaborate best with other nations if we start with the homely fact that their families and their homes, their villages and lands, their countries and their own ways, their altars, their flags, and their hearths—not charters, covenants, blueprints, and generalities—are what men live for and will, if it is necessary, die for.16

It is true that neither Roosevelt nor Hull went so far as to suggest that implementing the Atlantic Charter would bring about a quick resolution of the world’s problems; and, as well, they did not harbour the illusion that, once the forces of totalitarianism had been defeated, a perfect world would be achieved in one easy step. But they did believe, as did most Americans, in the fundamental and universal truth of the principles enshrined in the Charter; and with sufficient determination and deliberate effort, a better world could be fashioned out of these principles. Indeed, Roosevelt believed that the Atlantic Charter expressed an ideal ‘so clear-cut that it is difficult to oppose in any major particular.’17

This belief in the universal applicability of the Atlantic Charter is especially pronounced in the American-inspired Draft Declaration by the United Nations on National Independence, which affirmed that the ‘Atlantic Charter sets forth certain fundamental principles and purposes, applicable to all nations and to all peoples.’18 Thus, the Draft Declaration proclaimed that it is the duty of all colonial powers to advance, in co-operation with the United Nations, the political, economic, social, and educational development of dependent peoples. And to those colonial peoples not yet able to stand by themselves, the Declaration contemplated granting ‘such measure of self-government as they are capable of maintaining in the light of the various stages of their development toward independence.’19 The ultimate end of this ambitious program of development was stated repeatedly and unequivocally: full and complete independence. Although the United Nations never adopted the Draft Declaration,

indeed, the British deplored the document as being wholly unacceptable, it highlighted the peculiarly
American attitude toward trusteeship. Hull proclaimed his fervent belief that "[t]he spirit of liberty, when deeply embedded in the minds and hearts of the people, is the most powerful remedy for racial animosities, religious intolerance, ignorance, and all the other evils which prevent men from uniting in a
brotherhood of truly civilized existence." The extension of liberty would remedy all evil; and
trusteeship would prepare dependent peoples for its responsibilities. It is in this context that Roosevelt
understands the idea of trusteeship as something more than the guardianship of colonial peoples; for he
regarded trusteeship as an integral part of a peaceful and just future world order. Thus, on the
American view, trusteeship would promote the universal enjoyment of liberty and bring about the
speedy end of empire.

The reform of empire

Harsh and none too diplomatic American criticism and shocking military setbacks did not deter
Churchill from stubbornly defending the integrity of the British Empire and its place in world affairs. In
one of his most memorable speeches of the war, he declared defiantly: "Let me...make this clear, in
case there should be any mistake about it in any quarter: we mean to hold our own. I have not become
the King’s First Minister in order to preside over the liquidation of the British Empire." But in being
determined to hold their own, British officials found themselves in the uncomfortable position of having
to subject their methods of colonial administration and their justification of empire to the scrutiny of
others.


21 Louis, Imperialism at Bay, 147.
Churchill complained bitterly that most Americans, including Roosevelt, failed to grasp the fundamental character of the British Empire and, consequently, that they engaged questions of empire 'in terms of the thirteen colonies fighting George III at the end of the eighteenth century.' But the litany of abuses recorded in Thomas Jefferson's Declaration of Independence did not register with Churchill, or with ordinary British citizens who were generally proud of an empire they viewed as being a great force in support of peace, freedom, justice, and tolerance. Rather, defenders of the British Empire imputed less virtuous motives to American criticism than a determined passion for liberty. Some protested that the Americans possessed little experience in colonial affairs; that they were intruding into matters they did not properly understand. Others alleged that the Americans wished to undermine the British Empire in order to establish for themselves an informal empire to pursue their economic interests. However, pride, misconception, and ambition notwithstanding, American criticism of imperialism rendered British officials acutely attuned to the way in which outsiders perceived the Empire, especially during the early years of the war. Conscious of the importance of American opinion, the Viceroy of India advised in early 1943: 'I agree that we must take account of misunderstandings, jealousies, and prejudices on the part of the United States of America, and that it would not be wise to leave our colonial record merely (to) (speak) for itself. We must (therefore) be prepared to cultivate it both by indirect propaganda and to some extent by endeavouring to establish a common front with the United States of America in regard to it.'

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But criticism of the British Empire did not always emanate from without; for British colonial traditions always disclosed a progressive element that equated the purpose of empire with the protection, improvement, and enlightenment of backward peoples. Evidence of this conception of empire might at times appear fleeting or uneven, but it is certainly an authentic part of British colonial experience. It is in this context that Margery Perham asked if the citizens of Great Britain could reasonably expect colonial subjects who had endured social and political segregation, poverty and ignorance, and personal humiliation and neglect, to stand alongside Europeans in common discipline, sacrifice, and purpose. The war had exposed the weakness of the colonial empire. But it would be some compensation, Perham suggested, if the harsh lessons of defeat ‘stirred us to read those passages in the writing on the wall which refer to our colonial empire, and which warn us to infuse a new energy into its administration and to achieve a new and more intimate and generous relationship with its peoples.’

The editors of The Times agreed. After the humiliating fall of Singapore in February 1942 they called for a sober reckoning of empire: ‘by common consent the old order in the colonial government has been exposed to a searching challenge.’ This challenge demanded an earnest, if not disconcerting and uneasy, examination of the limitations and failures of British colonial administration.

Out of this reckoning of empire emerged a rather different approach to colonial administration that redefined the relation of Britain and its colonial subjects. In this respect, the landmark Colonial Development and Welfare Act of 1940 assumes a still greater significance. In parliamentary debate, Malcolm MacDonald impressed upon his colleagues in the House of Commons that passage of the Act, in the darkest and most desperate of times, when the very fate of civilisation was being decided on the European continent, would signal Britain’s solemn promise to ‘promote the well-being of our fellow

subjects in the Empire overseas. Wise colonial administration could be credited with effecting improvements in education, health, agriculture, and commerce, but MacDonald refrained from describing these achievements as unqualified successes. Development in colonial territories, he observed, had been always handicapped for want of adequate revenue. The Act of 1940 would remedy this defect; and British officials would, then, be able to point to concrete and tangible evidence of their imperial commitments. They would no be longer open to charges of insincerity; that colonial administration involved anything more than uttering platitudes to obscure the pursuit of economic and strategic advantage. Thus, with the passage of the Act, the Crown assumed the role of chief agent of colonial development: ‘[i]t establishe[d] the duty of taxpayers in this country to contribute directly and for its own sake towards the development in the widest sense of the word of the colonial peoples for whose good government the taxpayers of this country are ultimately responsible.’

The emergence of a refined and elaborated idea of trusteeship called partnership, also helped re-shape Britain’s relationship with its dependent empire. The exact meaning of partnership is implied in Viscount Cranborne’s characterisation of the British Empire as a dynamic and ever changing association that knew no fixed limits. Cranborne perceived no reason why colonial development should not proceed as it did in Canada, Australia, New Zealand, and South Africa. Over time these former colonies progressed to take their place as self-governing nations, equal to Britain in status, and fully responsible for the direction of their affairs. The colonial empire might assume a different territorial configuration, its territories might be rearranged to form larger and more coherent units, but its many

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diverse peoples were ‘moving along the same road.’ Thus, partnership expressed a relationship less permanent than that implied in periodic affirmations of the idea of trusteeship. The word ‘trustee,’ as Colonial Secretary Oliver Stanley put it, ‘is rather too static in its connotation and that we should prefer to combine with the status of trustee the position also of partner.’ Partnership presupposed the assumption that the British Empire consisted in something more than a vast agglomeration of isolated peoples who were merely subjects of the same authority. Rather, it implied that the British Empire consisted in a great family of peoples, some less developed, others more so, that would eventually evolve into self-governing nations united in sympathy and common allegiance to the British Crown. Hence, partnership also suggested that colonial peoples should not expect to live out their lives as permanent wards under benevolent imperial guardianship and supervision; rather partnership proposed ‘the relationship which should exist between the United Kingdom and those dependent territories which were emerging to self-government.’

If this program of reform meant anything, it gave practical effect to L.S. Amery’s suggestion, made in the midst of the controversy regarding the interpretation of the Atlantic Charter, that the object of British colonial administration is the ‘development of self-governing institutions to the fullest practicable extent within the British Empire.’ Thus, it could be said that the American insistence on colonial independence rested upon a false premise. The Empire, as the British would have it, constituted a family of more or less developed peoples. But for Harold MacMillan, this familial


34 Quoted in Morgan, Guidance Towards Self-Government in British Colonies, 2.
analogy did not mean that colonial peoples were like fruit on a tree that would, when ripe, fall to the ground. Colonial peoples, he argued, might be child-like in their characteristics and development, but they should not be expected to 'necessarily grow up, wish to start upon their own, and separate themselves from their parents.' The chief distinction, then, between American and British attitudes toward colonial questions was one of the differences between independence on the one hand, and self-government on the other. Indeed, Lord Hailey identified an 'insistent repetition of the term “independence”' as the principal difficulty with Cordell Hull’s infamous Draft Declaration by the United Nations on National Independence. Even considered and persistent critics of empire, such as Norman Angell, objected to this insistence upon complete independence as a deceptive impossibility. He too believed the Americans had misinterpreted the lessons of their political history to mean that the extension of liberty to all peoples would sweep away evil in whatever form it may arise. Rather than seeking independence for their colonial peoples, he argued that the citizens of Great Britain must direct their energies toward effecting a political ideology more in tune with the facts of the modern world. He did not, however, think of independence, and slogans of nineteenth century liberalism, as being in consonance with these facts; for ‘[p]eaceable, everyday life in the modern world depends on co-operation; independence in any absolute sense makes co-operation impossible.’

Although Angell repeatedly referred to facts that are peculiar to the conditions of what he called the modern world, his allusion to the commonwealth idea, an idea premised, not on independence, but on interdependence and equality of right, is anything but a curiosity of his world. That some colonies


might one day direct their own affairs is certainly intelligible in T.B. Macaulay's hope for India. The public mind of India, he asserted, might be depressed by the effects of tyranny and by a baneful priestcraft, but with proper instruction in European knowledge and principles of good government, he believed that the people of India may one day demand European institutions for themselves and assume responsibility for the direction of their affairs. This day, Macaulay proclaimed, 'will be the proudest day in English history.'

The commonwealth idea is explicitly evident in J.C. Smuts' proposals relating to the establishment of the League of Nations. For Smuts, the British Empire, which he deemed to be 'the nearest approach to the league of nations,' expressed an ideal of association founded, not on subordination or compulsion from above, but on the consent of the governed. Macaulay and Smuts are each in his own way vague and incomplete in their views; for example, it is true that Smuts did not mean, nor did he intend, for native Africans to consent to their government. But two decades later the imperial ideal of which he spoke had been extended to cover the entire empire. Smuts shared the prevalent British belief that the day of the small independent state had passed and that the future would see larger groupings joined by a common history and shared experience. He could point to no better example of the future mode of world organisation than the British Commonwealth, an association he offered as 'a precedent and a prototype for the larger world association now in the process of formation.'

Indeed, within the framework of the Commonwealth, the backward, disadvantaged, and yet to be civilised peoples of the British Empire would enjoy, as they were capable, freedom, equality, justice, and all else for which the Commonwealth stood.

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It is with this idea of self-government that the defenders of the British Empire replied to the American demand for colonial independence. Through strident American criticism, and a no less strident British response, this debate about the future disposition of colonial peoples did not devalue the currency of the idea of trusteeship. The British would continue to be wary of unwarranted American interference in imperial affairs, but they did not rule out the possibility of international co-operation on colonial questions. A world made smaller by advances in transport and communications only sharpened the need for mutual co-operation; for many of the world's problems, as Stanley argued, those relating to questions of security, economics, transport, and health, 'transcend the boundaries of political units' and were therefore common to all.\textsuperscript{41} Thus, the British proposed establishing regional commissions, composed of colonial powers and other regional powers, to discuss common problems as they might arise. However, they were absolutely set against any alteration of the administrative arrangements for colonial territories: 'Mother countries should remain exclusively responsible for the administration of their colonies and interference by others should be avoided.'\textsuperscript{42} The Americans were not averse to the idea of regional commissions, but they contemplated a much more ambitious regimen of accountability and supervision. Both Hull's Draft Declaration and the American Draft Constitution of International Organisation recommended placing all colonial peoples and territories under a system of trusteeship in order to prepare them, politically, economically, socially, and morally, for independence. What the Americans had in mind is especially evident in Article 12 of the Draft Constitution:

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To those non-self-governing territories which are inhabited by peoples not yet able to stand by themselves, the principle of trusteeship shall be applied in their governance in accordance with which the welfare of the inhabitants and the general interests of other peoples shall be assured under the authority and supervision of the International Organization.43

While the British rejected out of hand the suggestion that an international organisation would possess supervisory powers over its dependent empire, it is important to note that this disagreement is one over matters of form, not of necessity. If anything, this disagreement placed the idea of trusteeship on more secure footing, but it was expressed in two contending forms: imperial trusteeship and international trusteeship.

For all of their differences, the two sides were not divided on the basic assumption of trusteeship: most colonial peoples were incapable of managing their own affairs and that their preparation for independence or self-government, whichever the case may be, would be a gradual and deliberate undertaking. In a telling remark regarding unrest in India, Amery said: 'Mr. Gandhi may view with complacency the prospect of the present government quitting India and leaving her to anarchy. But no responsible man who looks ahead, whether in India or here, or in America, would deliberately acquiesce in a course which would mean ruin to India.'44 British officials were united and firm in their belief, one which would become a familiar refrain during the decolonisation, that without sufficient development in all aspects of public life, the promise of self-government would be a meaningless gesture. Indeed, Harold Macmillan argued that the colonies are poor and backward, not because of misrule, exploitation, or neglect, but because they are just beginning their journey toward self-government. Stanley agreed by saying that development in the colonies must be expected to

proceed according to their specific conditions and not according to a fixed schedule or a universal blueprint.\textsuperscript{45}

This gradualist approach, for which British colonial administration is renowned, is no less pronounced in American trusteeship proposals. For example, Hull’s Draft Declaration supposed that while some colonial peoples are well advanced along the road leading to independent national status, ‘the development and resources of others are not yet such as to enable them to assume and discharge the responsibilities of government without danger to themselves and to others.’\textsuperscript{46} To these not yet capable peoples, it is the duty of controlling powers to tutor them in the arts and science of government, industry, and agriculture; to grant to them a share of government as they are capable; and to protect them from exploitation as they move onward to independence. Thus, in the end, both the Americans and the British accepted the fundamental incompetence of dependent peoples to direct their own affairs. Clement Attlee expressed this opinion by saying: ‘No doubt, the time may come when even the most backward of our Colonies [will] also become adult nations. But at present they are children and must be treated as such.’\textsuperscript{47} However, their war-time conversations on colonial questions yielded one very important innovation. Trusteeship not only involved protecting colonial peoples against exploitation and discharging certain specified obligations pertaining to their well-being, it also imposed a positive duty to prepare these peoples for independence or self-government.


\textsuperscript{46} ‘Declaration by the United Nations on National Independence,’ 471.

Trusteeship and the Charter of the United Nations

The Charter of the United Nations provides evidence of both the American and the British understandings of trusteeship. However, before delegates assembled in San Francisco in April 1945 to draft the Charter, the main outlines of post-war trusteeship arrangements began to take shape at the Yalta Conference two months earlier. At Yalta, Churchill, Roosevelt, and Stalin agreed that the territorial trusteeship will only apply to: (a) existing mandates of the League of Nations; (b) territories detached from the enemy as a result of the present war; (c) any other territory which might voluntarily be placed under trusteeship." But in order to convince Churchill to agree to further consultations on the subject, Edward Stettinius, Hull's successor as Secretary of State, assured the Prime Minister that his government did not wish to subject the territories of the British Empire to formal machinery of international supervision, but only those mandated territories for which Japan was responsible. Churchill made it clear that 'under no circumstances would he ever consent to forty or fifty nations thrusting their interfering fingers into the life's existence of the British Empire.' However, in agreeing to a formula that placed existing mandates under an international trusteeship system, Churchill, perhaps unwittingly, subjected territories under British authority, namely British mandates, to a system that would almost certainly entail some form of international supervision. For as innocuous as it may seem, the trusteeship formula agreed to at Yalta permitted the establishment in the Charter of both the American idea of international trusteeship and the British idea of imperial trusteeship. But more than that, William Roger Louis argues: '[i]n retrospect the Yalta endorsement of the American concept of

trusteeship helped to set the colonial world on a different course towards self-determination, independence, and fragmentation."^{50}

Principles of trusteeship are enshrined in Chapter XI and Chapter XII. Chapter XI, the Declaration Regarding Non-Self-Governing Territories, is itself an amalgamation of principles found in the Berlin and Brussels Acts, the Kenya White Paper, and Article 22 of the Covenant of the League of Nations. Thus, Article 73 of Chapter XI stipulates:

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories.\(^{51}\)

To this end, administering powers are charged with the duty of protecting these peoples against abuse, ensuring their political, economic, social, and educational advancement, and, after taking account of their political aspirations, assisting them in the development toward self-government, as the circumstances of each territory permit. Moreover, they are obliged to transmit regularly to the Secretary-General, 'for informational purposes,' technical information pertaining to economic, social, and educational conditions in the territories for which they are responsible.\(^{52}\) The intent of this Declaration conforms most closely to British proposals that professedly followed along the lines of Article 22: 'the primary objective of any trusteeship system is the well-being of the inhabitants of territories which are not yet able to stand by themselves.'\(^{53}\) In this respect, the British make no

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\(^{50}\) Louis, *Imperialism at Bay*, 464.


\(^{52}\) 'Charter of the United Nations,' 520.

distinction in application. Administrative status in no way determined the obligations of trusteeship and it had no bearing on the discharge of these obligations. Thus, a territory falling outside the trusteeship formula adopted at Yalta was no less deserving of an administration guided by the policy of trusteeship than one that did not. The Australian proposal accepted the substance of this position by declaring: ‘[a]ll members of the United Nations responsible for the administration of dependent territories recognise in relation to them the principle of trusteeship.’

While the colonial powers accepted the universality of trusteeship, they definitely did not mean to subject their own dependent territories to an international supervision. For example, the French deemed trusteeship as being applicable only to existing mandates and to territories detached from enemy states as a consequence of the war. In fact, the French delegate felt compelled to state that nothing under consideration by the Trusteeship Committee shall authorise the United Nations to ‘intervene in matters which are essentially within the domestic jurisdiction of any state.’ The British were also decidedly against any extension of international supervision to territory falling outside the Yalta formula. Principles of trusteeship, they argued, should be detailed in the Charter along the broadest lines possible. In contrast, the elaboration of rigid and exact obligations, applicable to all cases and in all circumstances, should be avoided in favour of flexibility; for, too often, the circumstances of particular situations frustrate even the most enlightened and well-intentioned policies. Surely the wisdom of this approach is no better confirmed than in the unhappy history of the Congo Free State.


56 ‘United Kingdom Draft of Chapter,’ 611.
But in admitting the universality of trusteeship, the British delegation drew a very clear
distinction between ‘the principle of trusteeship which should guide Colonial Powers in the
administration of their dependent territories (and should therefore be of universal application) and the
creation of a special system of international machinery, to apply to certain specified territories
[emphasis in original]. This crucial distinction illuminates the essential character of trusteeship that is
enshrined in Chapter XI. The Declaration Regarding Non-Self-Governing Territories is a statement of
general principles and purposes that are applicable to all dependent territories. Still, the Declaration
consists in something more than its name might imply. Chapter XI is not, as Hans Kelsen argues, a
unilateral declaration that depends on the conclusion of individual trusteeship agreements; it imposes
obligations of international law that are no less binding than other parts of the Charter. However,
provisions relating to international accountability and supervision are not included among the
obligations of the Declaration. Thus, Chapter XI is intelligible, not in terms of international trusteeship,
but in terms of the enlightened and progressive British traditions of imperial trusteeship. In that respect,
Chapter XI is not substantially unlike the Berlin Act.

Whereas Chapter XI expresses the idea of imperial trusteeship, Chapter XII, which establishes
the United Nations Trusteeship System, reflects more closely the American ideal of international
trusteeship in so far as it contemplates an ambitious system of international administration and
supervision. The Trusteeship System applies to those territories included in the Yalta formula and it is
directed, like Chapter XI, toward furthering international peace and security, promoting the political,
economic, social, and educational advancement of the inhabitants of trust territories, and ensuring equal
treatment in social, economic, and commercial matters for all members of the organisation. To these

57 ‘United Kingdom Draft of Chapter,’ 611.

objectives, Article 76 adds respect for human rights and fundamental freedoms, and, significantly, 'progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples [emphasis added].' Chapter XII also obliges administering authorities to make an annual report to the General Assembly; and it empowers the United Nations to receive petitions and to dispatch its own missions in order to observe, first-hand, conditions in trust territories. However, the most important innovation of the Trusteeship System is the distinction drawn between strategic and non-strategic trust territories. Article 82 states: 'There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory.' Strategic trust territories, as opposed to non-strategic trust territories, are not subject to the administrative and supervisory functions performed by the Trusteeship Council or the General Assembly. Article 83 places all of these functions at the disposal of the Security Council. But designating a territory as a strategic trust does not in any way relieve an administering authority from fulfilling obligations enumerated in Article 76. The framers of the Charter took care in stating in Article 83 that '[t]he basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.'

The stress that the Trusteeship System and, for that matter, the Declaration Regarding Non-Self-Governing Territories, place on furthering international peace and security warrants special attention. At first glance, it seems as if the emphasis placed on international peace and security represents a clear break with past practice. In one sense it does. Whereas the Berlin Act and the mandates system neutralised territories in order to remove them from the tensions and rivalries of the

59 ‘Charter of the United Nations,’ 520.
60 ‘Charter of the United Nations,’ 522. The Pacific islands mandate held by Japan was the only territory designated a strategic trust. The United States assumed administrative responsibility for these islands under the United Nations trusteeship system. See Charmian Edwards Toussaint, The Trusteeship System of the United Nations, (London: Stevens & Sons Limited, 1956), 71, 452.
great powers, Article 84 of the Charter stipulates that ‘[i]t shall be the duty of the administering
authority to ensure the trust territory shall play its part in the maintenance of international peace and
security.’ Thus, administering authorities are empowered to utilise the resources in a trust territory,
not only for local defence and the maintenance of law and order, but in discharging duties arising from
the decisions of the Security Council and those pertaining to the general purpose of the organisation.
Indeed, Duncan Hall argues that historians have exaggerated the extent to which humanitarianism and
liberal idealism account for the establishment of mandates and trust territories. They are, he argues,
‘largely by-products of the working of the state system of the world, of the political relations of the
powers, and thus factors in the balance of power.’ But the framers of the Charter were no more
concerned about security than the framers of the Berlin Act or the League Covenant. Rather, they
believed that the events of the war, and Japan’s violation of mandate agreements in particular, rendered
neutralisation less effective than integrating trust territories into a comprehensive system of international
peace and security.

We might expect something different of a world devoid of moral principle and one ruled by the
narrow dictates of realpolitik, but the principles of trusteeship were affirmed at every opportunity when
confronted by the imperatives of strategic necessity. But it is a mistake of some considerable proportion
to suggest that the Trusteeship System, and the Charter in general, subordinates the well-being of
dependent peoples to the argument of security. Indeed, a member of the American delegation to the San
Francisco Conference declared that ‘[i]t was his Government’s attitude that international peace and
security and the welfare of dependent peoples, constituted twin objectives which could not be

It is in this spirit that Roosevelt refused to yield to the argument of security when the War Department and United States Navy demanded the annexation of the Japanese mandated islands in the Pacific, just as Woodrow Wilson refused to bow to the argument of security when discussing the disposal of German colonies at Versailles. Roosevelt replied to the suggestion that the United States must exercise absolute power over the Pacific islands by saying: the Joint Chiefs of Staff must 'realize that we have agreed that we are seeking no additional territory as a result of this war.'

There is no evidence in the proceedings of the San Francisco Conference to suggest that the United States perceived a contradiction between the maintenance of international peace and security, and the well-being and advancement of dependent peoples. Indeed, the American delegation generally regarded the steady progression of dependent peoples toward self-government or independence as a requisite condition of a lasting world peace. Thus, a member of the delegation submitted: 'the objectives of the Organization with regard to the welfare of dependent peoples applied in strategic areas as well as in other areas under trust.'

The Trusteeship System should not be viewed as expressing a narrow set of interests related exclusively to either security or to welfare, nor should it be viewed as an isolated system, separate from other parts of the Charter. Rather the Trusteeship System is, as Roosevelt hoped, an integral part of the United Nations Organisation and it is closely related to the obligations enshrined in Chapter XI. The principles contained in Chapter XI apply equally to all non-self-governing territories and trust territories. Kelsen points out that where the obligations arising out of Chapter XI overlap with those contracted in Chapter XII, it is not necessary to enumerate them a second time in individual trusteeship
agreements. The Trusteeship System is not a separate set of arrangements but is rather a part of the existing international law of trusteeship. Thus, the creation of the United Nations and the Trusteeship System did not alter, diminish, or otherwise void the obligations enshrined in the Berlin and Brussels Acts in the territories for which they were intended, namely the Conventional Basin of the Congo River. And where these treaties were not in force, many, if not nearly all, of the obligations contained therein were incorporated in individual trusteeship agreements. Therefore, the Trusteeship Agreement of Somaliland stipulated in Article 3 that the administering authority, in this case Italy, shall:

- control the traffic in arms and ammunition, opium and other dangerous drugs, alcohol and other spirituous liquors; prohibit all forms of slavery, slave trade and child marriage; apply existing international conventions concerning prostitution; prohibit all forms of forced or compulsory labour, except for essential public works and services, and then only in time of public emergency with adequate remuneration and adequate protection of the welfare of the workers; and institute such other regulations as may be necessary to protect the inhabitants against any social abuses.

The heritage of these obligations are at once obvious and unmistakable.

In assessing the achievements of the United Nations Trusteeship System, Louis argues that the colonial settlement of 1945 represents a modest advance over that of 1919, even though Cordell Hull, one of the most fervent believers in the promise of trusteeship, describes it as constituting a ‘material improvement’ over the mandates system. Notwithstanding the respective defects and achievements of the Trusteeship System, and of the colonial settlement in general, the negotiations that resulted in the Trusteeship System and the Declaration Regarding Non-Self-Governing Territories provide the first glimpse of an ideological divide that would eventually destroy the legitimacy of trusteeship. At San

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Francisco, the United States abandoned its historic support of colonial independence and, to the delight of the colonial powers, placed the weight of its influence behind the principle of self-government. Harold Stassen explained this sudden reversal by accepting fully the position advanced by the colonial powers: self-government might lead to independence, though not necessarily so. Moreover, he praised the virtue of self-government, in a way that would have surely pleased Normal Angell, as being better suited to the interdependent world of the future than outdated ideas of nineteenth century national independence.71 To Charles Taussig, this qualified endorsement of independence amounted to nothing less than a total repudiation of the ideals of the late President Roosevelt. However, the force of Stassen’s arguments prevailed over what he dismissed as the philosophically perfect, but practically flawed, principle of independence that Taussig cherished. Staussen publicly defended American support of self-government, at the expense of independence, since it was the only principle that would gain the assent of all the great powers. Privately, he fretted that the universal application of independence would be productive of disorder. Ominously, he asked his colleagues if they were prepared to accept the full consequences of universal independence: did they mean to include Puerto Rico and Hawaii in their project of emancipation?72

A growing suspicion of the Soviet Union also induced a sense of caution in the American delegation. In particular, Soviet amendments to the American trusteeship proposals that included a reference to the self-determination of dependent peoples in order to ‘expedite the achievement by them of the full national independence’ evoked considerable alarm.73 Suddenly, the prospect of breaking up

70 Louis, Imperialism at Bay, 532; and Hull, The Memoirs of Cordell Hull, 1238.

71 Louis, Imperialism at Bay, 534-5.

72 Louis, Imperialism at Bay, 535-41.

the British Empire, for the cause of liberty, appeared to be less inviting. But a group of small states exposed the difficulty of the American position by siding, at least on the question of independence, with the Soviet Union. A member of the Mexican delegation conceded the desirability of self-government, but asserted that ‘independence should be conceded whenever a self-governing people had unmistakably expressed its wish for complete liberation.’ 74 The Philippine delegation concurred: ‘self-government might express the ultimate happiness for some peoples. Other peoples, however, might find the ultimate happiness in independence, and the Charter should not bar the avenue to happiness for such peoples.’ 75 With the unwillingness of small states to accept anything but independence, and the American abandonment of independence as the only goal of imperial trusteeship, passed the hope for an orderly liquidation of empire. However, the colonial powers confronted a dilemma of a different sort: ‘[w]ith the motley international assembly now becoming a reality, Stanley pointed out that this meddlesome band would “seek outlet for its energies in quite undesirable directions.”’ 76 And indeed they would.

The end of empire

Oliver Stanley’s anxiety proved to be well founded as anti-colonial powers directed their energies toward the destruction of empire, and with it, the legitimacy of trusteeship. The history of decolonisation, though well documented, is no less contested than the history of European expansion in Africa and Asia. Historians have variously stressed the importance of changes in the balance of power, the economic exhaustion induced by the war, and the role of national liberation movements as factors in

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hastening the end of empire. Others, mainly of the Marxist persuasion, assert that colonialism never ended and that colonial powers merely substituted economic dominion for political dominion. Our purpose is not to decide which of these accounts is most persuasive or to provide an alternative account of decolonisation; nor is it to provide a complete account of the history of decolonisation. The writing of history is best left to historians. But when the events of decolonisation are examined in the context of trusteeship, two arguments stand out as being especially noteworthy: the violation of trust and the right of self-determination. Together, these arguments destroyed the legitimacy of trusteeship as an accepted practice in international society.

Colonial peoples are apt to tell the story of decolonisation quite differently than the way in which the colonial administrator might tell it. Arnold Toynbee suggests that in order to appreciate the experience of the former, we must enter into the world of the Bengali in India, the Ashanti in Africa, and the Arab of the Levant. Their stories are likely to be punctuated by accounts of personal humiliation and degradation, and their history marked by acts of aggression, conquest, enslavement, deportation, and alien rule. For these peoples, the sacred trust, and the protections afforded in declarations of colonial policy and instruments of international law, too often resulted in maltreatment, forced labour, racial segregation, and loss of land, culture, and economic livelihood. Indeed, these peoples could only look on with cynicism as their colonial masters spoke of the white man’s burden. They are apt to remind all who ask, not of their advancement at the hand of benevolent, humane, and enlightened colonial rule, but of their encounter with the West, the ‘arch-aggressor of modern times.’

It is in this context that Jawaharlal Nehru denounced the (British) imperialist and authoritarian

76 Louis, Imperialism at Bay, 524.
government enfeebled the people of India by ignoring their interests and those of humanity. Above all else, he objected to the arrogance of a ruling caste enthroned by the supposed superiority of race. He wrote from a prison cell during the war that to endure the exclusionary policies of racialism ‘in one’s own country is a humiliating and exasperating reminder of our enslaved condition.’ Julius Nyerere, similarly regarded colonial policies as having excluded Tanzanians from the benefits of political, economic, and social intercourse; and he too denounced racialism, in even stronger terms, as constituting ‘an aggression against the human spirit, as colonialism is the result of a past aggression against a people and a territory.’

In characterising colonial rule in these terms, both Nehru and Nyerere advanced the claim that the European administrator, missionary, trader, planter, and soldier, had inadequately attended to the interests and well-being of backward peoples; that is to say, European colonial masters failed to fulfil their self-proclaimed obligations as trustees of civilisation. Kwame Nkrumah, whose unyielding indictment of empire best discloses the major moral premise of this argument, understood empire as the creature of selfish economic interest whereby the laws of economy, the discipline imposed by markets and the appetite of capital and finance, compelled the inevitable and necessary partition of Africa. Colonies existed to serve the narrow interests of their European masters. They supplied a boundless source of raw materials, furnished markets for European manufactures, and provided outlets for the disposal of surplus capital. Nkrumah argued that this unbridled pursuit of national economic advantage betrayed nothing but a brutal story of domination and exploitation. Africans were mere tools of European enrichment. They toiled in mines and on plantations while ‘progressive’ colonial

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administration kept the people of Africa in a depressed state of poverty, disease, and mass illiteracy. And when they dared to organise themselves, to assert their rights and to protest their mistreatment, they were persecuted and imprisoned as threats to peace and public order.  

For Nkumah, the ‘true’ character of colonialism exposed the complete and utter moral bankruptcy of trusteeship and all ideas related to it. He disparaged the many promises of protection and guardianship that were enshrined in the Berlin Act, the Covenant of the League of Nations, and the Charter of the United Nations, as platitudinous camouflage meant to disguise the exploitative nature of imperialism; for ‘[b]eneath the “humanitarian” and “appeasement” shibboleths of colonial governments, a proper scrutiny leads one to discover nothing but deception, hypocrisy, oppression, and exploitation.’  

Trusteeship was just another cruel and disingenuous device with which to oppress colonial peoples.

It might be tempting to dismiss Nkumah’s account of colonialism as empty rhetoric or as a gross distortion of the actual events that distinguished Africa’s encounter with the West. But even if his claims were shown to be factually untrue, the moral premise of Nkumah’s argument—the failure to fulfil the obligations of trusteeship rendered European colonial masters unfit to rule—is amply supported in both British imperial history and international history. In prosecuting the celebrated case against Warren Hastings, Edmund Burke argued that the East India Company’s claim to rule depended, not on the returns it generated for its shareholders, but on the fulfilment of obligations owed to the native inhabitants of India. However, instead of acting responsibly and in accordance with their obligations, Burke argued that the Company’s agents ruled like despots. They waged aggressive wars, they broke solemn promises, and they abused their power in order to enrich themselves while erecting nothing that might benefit the subjects for whom they were responsible. In short, Burke alleged that the Company had abused its trust and, hence, forfeited its right to rule; for ‘it is the very essence of every

trust to be rendered accountable,—and even totally to cease when it substantially varies from the purposes for which alone it could have a lawful existence [emphasis in original]."\(^{84}\) It is this principle that is registered in the India Act of 1784 and which subjected the Company’s affairs to the scrutiny of Parliament.

The British government invoked a similar argument in 1908 when it withheld recognition of Belgium’s annexation of the Congo Free State, which had been ostensibly founded and subsequently recognised for the purpose of promoting civilisation and other humane and benevolent ends. During the First World War, observers on both sides of the Atlantic agreed that evidence of gross misrule confirmed that the Germans were unfit to take on the obligations expected of a civilised powers. In place of rapacious German rule, the victorious powers accepted Smuts’ idea whereby cases of ‘flagrant and prolonged’ abuse of trust would oblige the proposed league to assert its authority to the full, ‘even to the extent of removing the mandate, and entrusting it to some other state, if necessary.’\(^{85}\) Twenty-five years later, the United States appealed to this principle as reason for placing the Japanese under the supervision of the Trusteeship System: ‘[i]n utter disregard of the mandate, Japan used the territories for aggressive warfare, in violation of the law of nations.... This, under international law, was a criminal act; it was an essential violation of the trust, and by it Japan forfeited the right and capacity to be the mandatory of the islands.’\(^{86}\)

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If it is the essence of every trust to be held accountable, and international practice seems to suggest that it is, then criticism of empire consists in something more than idle commentary. It provides evidence in an ongoing referendum on the justification of dominion. Indeed, the grievances about which Nehru, Nyerere, and Nkrumah complain, while often dismissed as being unrealistic, exaggerated, and self-serving, find at least implicit support in European criticism of empire, and especially in the writings of Richard Cobden, John Hobson, D. Lowes Dickinson, Leonard Woolf, and Margery Perham.

For example, Perham denied that Britain had plundered the continent of Africa and built a great empire on the backs of its people; and she understood the word 'trusteeship' as conveying a sincere aspiration and the word 'colonialism' as consisting in something more than a term of abuse. However, she also had the courage to admit that '[l]ike all other imperial powers we expanded by force and like them we have in the process committed our crimes.'

British colonial administrators, she observed, were sometimes slow, neglectful, and unimaginative, and the European money economy and Christian education frayed the fabric of indigenous society while leaving little in its place. Moreover, pernicious myths of racial superiority precluded the realisation of a common imperial citizenship and concomitantly sustained stratified societies based upon inequality. Thus, to be black was to be despised, pitied, and humiliated; for 'European rulers of Africa believed that Africans were not only almost immeasurably inferior to themselves in development but were inherently, permanently inferior as a race.' But when Africans and Asians demanded rectification of these grievances, when they expressed their wish to be treated no differently than civilised, white Europeans, they were branded as extremists. And yet, these African extremists demanded only what American extremists demanded at the end of the eighteenth century: equal rights of citizenship. A.W. Benn observed that an African extremist was 'a

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man who believes that the Africans are entitled to the same full social, political and economic rights as the white man. 89

For the African or Asian who wished to escape a condition of servitude and tutelage, the charge that European colonial rulers failed to fulfill the obligations of trusteeship provided a powerful argument in support of their claim of independence. But this argument did not discredit the idea of trusteeship itself, but rather, it undermined the justification of the means by which colonial powers attempted to carry out its obligations. The argument of self-determination achieved something quite different. Self-determination rendered trusteeship a morally unsustainable practice by definition. The chief moral supposition of this argument, the general belief that the ‘subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights...and is an impediment to the promotion of world peace and co-operation,’ is disclosed in the decisions of a succession of conferences, the most noteworthy being the Bandung Conference of 1955, and in the activities of the United Nations General Assembly. 90 Acceptance of this proposition irreversibly altered the terms of debate, for peace and prosperity no longer depended on the provision of a gradual political, economic, social, and moral education, but on the speedy granting of independence. Dependent peoples would, as a matter of right, no longer be forced to endure the opprobrium of racial segregation and discrimination; nor would they be consigned to a position of permanent inferiority in every aspect of public life. Instead, they would be free to choose their own government, empowered to seek their own livelihood, and at liberty to decide the ends of their collective lives. Indeed, the peoples of Africa and Asia would be able to reclaim their dignity as human beings: independence would bring salvation.


This claim of a right of self-determination is not without precedent: self-determination is implied in British declarations pertaining to colonies acceding to dominion status, Article 22 of the League Covenant, Articles 73 and 76 of the United Nations Charter, and self-determination is mentioned in the Charter as one of the purposes of the United Nations. The duties that attach to the right of self-determination, though not clearly stated in positive international law, are evident in the decisions of the General Assembly. In Resolution 421 (1950) the General Assembly charged the Commission on Human Rights with the task of studying the means by which all peoples would enjoy self-determination; and in Resolution 545 (1951) it resolved that any future covenant on human rights should be drafted so that ‘[a]ll peoples shall have the right of self-determination.’ Accordingly, Article 1 of the International Covenant on Civil and Political Rights of 1966 states: ‘[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.’ The right of self-determination is again affirmed in Resolution 637 A (1952), which declares what is also enshrined in the Final Communiqué of the Bandung Conference: ‘the right of peoples and nations to self-determination is a prerequisite to the full enjoyment of all fundamental human rights.’ And Resolution 2621 (1970) declares, in even stronger language, that colonialism is a crime and it reaffirms the right of all colonial peoples to self-determination and their ‘inherent right...to struggle by all necessary means’ to secure freedom and independence. The principles embodied in these resolutions form a law of decolonisation


whereby, as Robert Jackson argues, independence became an unqualified right and colonialism an absolute wrong.  

However, the most important and celebrated statement of this law of decolonisation is found in General Assembly Resolution 1514 (1960): The Declaration on the Granting Independence to Colonial Countries and Peoples. In affirming the right of self-determination, that all peoples are endowed with an inalienable right to complete freedom, this landmark resolution asserted that colonialism impedes the realisation of the ideal of universal peace and that the denial of independence hinders the full enjoyment of fundamental human rights. Thus, colonialism, by its nature, was contrary to the Charter of the United Nations and constitutes a grievous affront to human dignity. But the great achievement of Resolution 1514 was that it established the principle that all non-self-governing peoples were entitled to direct their own affairs, without preconditions and irrespective of the conditions of their situation. The resolution proclaims that colonialism in all its forms and manifestations must be brought to a ‘speedy and unconditional’ end, and that ‘[i]nadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.’ These principles delivered a devastating blow to the legitimacy of trusteeship inasmuch as they amounted to a complete repudiation of the underlying justification of trusteeship. In the General Assembly debate, Mr. Perera of Ceylon quoted with approval a document that suggested: ‘[t]he Trusteeship System has not justified itself anywhere and should be buried together with the entire colonial system, which is an anachronism.’ It no longer made any sense to speak of ‘fitness’ or ‘preparation’ to rule. The standard of civilisation and, indeed, the notion of barbarous and savage peoples, became archaic terms of the past; and the idea that a people

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could be deprived of their right of independence on account of inferior race, false religion, decaying culture, despotic government, and repulsive habits, customs, and traditions no longer had a place in world affairs. The right of self-determination transformed trusteeship from a benevolent practice of humanitarianism into a crime against humanity.

With the acceptance of Resolution 1514, by the astonishing vote of 89 to 0 with 7 abstentions, an entire approach to understanding and organising world affairs suddenly seemed hopelessly out of date. Jackson argues that decolonisation signalled a momentous change in moral criteria of membership in international society. Whereas participation in international society prior to decolonisation presupposed a notion of positive sovereignty that admitted the moral reasoning of trusteeship and James Lorimer’s legal doctrine of civilisation, the practice of negative sovereignty that followed decolonisation posited self-determination as a categorical right which excluded all standards of efficacy, utility, and ability. Thus, it became possible for dependent peoples to argue with great effect that ‘[a]lien rule, no matter how benevolent or paternalistic, inhibits the free development of peoples, saps their creative energies and deprives them of their national self-respect and dignity. Foreign domination can never be a substitute for independence.’\footnote{98 United Nations General Assembly, \textit{926th} Plenary Meeting, 28 November 1960, United Nations General Assembly Official Records, A/PV 926, 1000-1.} The moral force of this argument obtained a legal standing in Security Council Resolution 183, which accepts ‘the interpretation of self-determination laid down in General Assembly resolution 1514 (XV).’\footnote{99 United Nations Security Council, S/RES/183 (1963).} Thereafter, Portugal, the European power most determined to retain the trappings of empire, could no longer plead its case by invoking its centuries of colonial experience. Repeated General Assembly and the Security Council affirmations of the right of self-determination disallowed argument of experience and achievement. Champions of the British

Empire were likewise stripped of their most potent defence. W.M. Macmillan’s argument that African nationalists consistently under-rated the complexities of independence; that they confronted burdens imposed by adult responsibilities for which they were not prepared; and that they ‘demand, but have not yet learnt the full meaning of, equality’ no longer registered as an intelligible practice of international society. Rather, Africans and Asians proceeded in making a different argument, the moral premise of which Mr. Alemayehou of Ethiopia expressed to the General Assembly with unusual clarity:

But if, in spite of all, the question would be to choose between freedom with all its attendant economic difficulties and internal conflicts on the one hand, and the maintenance of colonial rule with all its attendant subjugation, exploitation, degradation and humiliation, and so on, on the other, I would right away and unequivocally say that the peoples, all peoples, under colonial rule prefer poverty in freedom to wealth in slavery, and they will definitely prefer fighting in freedom to peace in slavery.

On this view, virtue and good obtain in being the author of one’s own actions. Freedom is of supreme value, even more so than personal welfare, for it is better to place one’s self in danger for the sake of freedom than to suffer subjugation.

Evidence of the argument of self-determination, and that of violation of trust, is found throughout the history of decolonisation, even in the most difficult of all colonial questions, the Mandate of South West Africa. Anti-colonial powers mounted an assault on South Africa’s rights as a mandatory power by deploying both arguments. The General Assembly resisted South Africa’s attempt at total assimilation by reaffirming in Resolution 2145 (1971) that ‘the people of South West Africa have the inalienable right to self-determination, freedom, and independence’ and by declaring the revocation of its mandatory rights on account of a failure ‘to fulfil its obligations in respect of the

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administration of the Mandated Territory and to ensure the moral and material well-being and security of the indigenous inhabitants of South West Africa.102 Indeed, the power of these arguments removed the moral props that sustained the legitimacy of trusteeship in South West Africa and in nearly all of the world's non-self-governing territories; and from then on, trusteeship ceased to be an accepted and recognised practice in the relations of states.

Equality and the illegitimacy of trusteeship

On February 3, 1960, British Prime Minister Harold Macmillan submitted to the South African Parliament: ‘[t]he wind of change is blowing through this continent and, whether we like it or not, this growth of national consciousness is a political fact. We must all accept it as a fact, and our national policies must take account of it.’103 But what sort of idea did this wind of change carry? And why did it so effectively destroy the legitimacy of trusteeship? African and Asian nationalists seemed to object most strenuously to their status as political, economic, social, cultural, and racial unequals; and their subsequent estrangement culminated in an unrelenting and unequivocal demand for absolute equality with their European masters. They must have their own state in which to make their own decisions about their political, economic, and social future; that is, they must be free and independent. Thus, Africans and Asians objected to alien rule, not because it was alien, but because it was premised upon the principle of inequality.

In asserting their claim of equality, Africans and Asians certainly revolted against the West, but they did not reject the West. Rather, their encounter with the West, while being a story of aggression

and personal humiliation and degradation, is also an immensely successful story of making the ideas of the West their own. Hedley Bull describes this revolt against the West as having been:

conducted, as least ostensibly, in the name of ideas or values that are themselves Western, even if it is not clear in all cases that these ideas are exclusively or uniquely Western: the rights of states to sovereign equality, the rights of nations to self-determination, the rights of human beings to equal treatment irrespective of race, their rights to minimum standards of economic and social welfare.  

Africans and Asians succeeded in destroying empire by turning the ideas of the West against the West. And no idea is more important in this respect than being able, legally and morally, to make one’s own decisions and to direct one’s own affairs; that is, being recognised as an adult and not as a child. It is this idea that we find at the centre of the right of self-determination. Good and right are on this view related to the motives of human conduct and not its consequences. Morality is intelligible when actions are chosen freely in accordance with what human beings believe is their duty as opposed to the dictates of divine law or the necessities of the external world. Elie Kedourie understands this disposition as one of the great insights of Immanuel Kant’s thought: the ‘good will, which is the free will, is also the autonomous will.’  

But the justification of trusteeship rules out the autonomous will. On account of some defect, political, economic, religious, racial, or otherwise, Europeans were obliged, as civilised peoples, to act on behalf of those who were not. Hence, dependent peoples were not regarded as adults, but as children who were incapable of making their own decisions and setting before them the end for which they will strive. However, Michael Oakeshott argues that right of self-determination depends on reciprocal recognition: ‘[t]o deny the right of self-determination to others is to remove the foundation

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upon which a man claims it for himself." Self-determination, then, also requires recognition of equality between all parties that lay claim to it.

Armed with the ideas of the West, equality being foremost among them, the colonial peoples of Africa and Asia mounted a determined and ultimately successful assault on the legitimacy of trusteeship. In 1959, A.W. Benn reminded members of the House of Commons that the origin of African 'extremism' is found in British universities and in the British Parliament itself, for 'here in this Chamber is the greatest revolutionary inspiration of the lot. If we can do it, why cannot they do it?' Indeed, he continued, what impressed him most about the new leaders of Africa is what 'they had in common with everyone in this country and with the famous leaders of the last century who sought to bring equal political, economic and social rights to the working class in Britain.'

The claim of equality thus precluded the implementation of a proposal for establishing a 'second tier' membership for African colonies in the British Commonwealth because it would be rightly interpreted as sustaining relations of subordination. A 1954 report concluded that some territories, including Brunei, Fiji, Somaliland, Aden, Mauritius, and Gambia, 'are never likely to achieve full independence and cannot aspire to the status of full Commonwealth membership.' Subsequent events proved that all British colonies, no matter how small, poor, and otherwise marginal, were entitled, not only to full and equal membership in the Commonwealth, but to full and equal membership in the society of states as well.

In General Assembly debate, Africans and Asians asserted their claim of equality by holding colonial powers accountable to their own standards. They quoted Abraham Lincoln, Woodrow Wilson, the Atlantic Charter, and invoked the ideals of the French Revolution. They too claimed the rights of

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107 Benn, 'Speech on Colonial Policy in the House of Commons,' 516-7.
men. Speaking for the Egyptian delegation to the United Nations, Mr. Asha asked if the colonial powers had forgotten ‘that a great American said: “...that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness.”’ 109 Mr. Quaison-Sackey of Ghana similarly argued: ‘[t]he writings of Rousseau, Jefferson, Marx, Thomas Paine, Machiavelli and other political thinkers have had their influence. Thus, everywhere in Africa, Africans demand freedom, equality, and justice.’ 110 The principal justification of trusteeship, that colonial peoples were not competent to direct their own affairs, simply could not withstand the blows inflicted by these arguments. Indeed, Europeans found themselves unable to reply in any meaningful way; for they could not claim the rights of men for themselves while withholding them from the men of Africa and Asia. Instead, the legitimacy of trusteeship succumbed to the idea of universal human equality.

Chapter Six

The New Paternalism

On November 1, 1994, the United Nations Trusteeship Council voted to suspend operations after Palau, the last remaining trust territory, attained independence. Similarly, only a handful of non-self-governing territories, most of which are marginal in size, location, and importance, remain subject to the principles of trusteeship enshrined in Chapter XI of the United Nations Charter. Indeed, the sovereign state has emerged out of decolonisation as the supreme form of political organisation in international society; and in this post-colonial international society, dominions, colonies, protectorates, condominiums, mandates, trust territories, principalities, and free cities have all but vanished. To the person who is unacquainted with these historic forms of political association, trusteeship is likely to appear as a remote and obscure practice of the past. We now live in what is truly a universal society of states. And in that respect, the purpose of this chapter is quite different from preceding chapters. There are no declarations of colonial policy to interpret and the international law of trusteeship has for the most part fallen into disuse. But the character of trusteeship is brought into sharper focus when it is considered in the context of a post-colonial international society that affords little place for paternal practices such as trusteeship. Thus, I propose to ask: is there a place for trusteeship in contemporary international society? We will proceed by investigating the characteristics of failed and unjust states, an emerging notion of international legitimacy that is interpreted in relation to human rights, democracy, and free market economy, and the implications of legal and moral arguments that might justify forcible intervention in Kosovo. It will become evident that trusteeship is a justifiable practice in so far as states, and the people residing in them, regard themselves as being associated, not merely as a society of states, but as a universal society of peoples joined in the pursuit of shared and common ends.
The false promise of independence

Just before the Constituent Assembly of India adopted the state’s newly drafted constitution in 1949, B.R. Ambedkar reminded his colleagues of the implications of sovereign statehood: “[i]ndependence is no doubt a matter of joy. But let us not forget that this independence has thrown on us great responsibilities. By independence, we have lost the excuse of blaming the British for anything going wrong. If hereafter things go wrong, we will have nobody to blame except ourselves.”¹ In these brief and unusually insightful words we are able to detect the supreme dilemma of decolonisation: independence held out the promise of emancipation, but entailed a frightening risk of failure. This promise of emancipation, of deliverance from poverty, ignorance, and oppression, is intelligible in theories that regard states as public arrangements which afford groups of human beings an opportunity to pursue and, if they are successful, to live the good life. Independence endows a group of people with the right to build a state of their own, a state directed toward the realisation of ends that are of their own choosing and not those of their neighbours. Indeed, the history of our world is, in the main, a study in difference; for anyone who pays attention to what distinguishes human relations from events in the natural world will recognise the diversity of ideas and values that move human beings to action. Human beings make choices, which are usually flawed and imperfect in some way, in relation to widely divergent beliefs about what is thought to be right, good, and desirable; and the ends they cherish, those related to tradition, knowledge, religion, language, family, and their neighbours rarely, if ever, constitute a perfect and harmonious whole. Thus, what may be valuable, pleasurable, advantageous, sublime, or virtuous to one person may be anything but those to someone else. And it is independence, and all the responsibilities it entails, that permits human beings to strive for ends that are distinctly their own.

The events of decolonisation confirm that achievement of independence did not always result in emancipation. But in order to understand fully the false promise of independence, it is necessary to remind ourselves of the principal reason for withholding or delaying the granting of independence. The problem with independence, as Margery Perham understood it, was that most colonial territories lacked many of the attributes of coherent and viable communities, the most important being the existence of an idea of community—civic, natural, or otherwise. Colonial societies were typically politically weak, economically immature, socially divided, and their populations ignorant of the obligations of citizenship and unfamiliar with the workings of modern government. For Perham, this general condition of backwardness presented the greatest obstacle to the granting of independence. Thus, for those who wished for the orderly transformation of empire, the granting of independence could not be separated from an estimate of ability. Conducting the affairs of state, they argued, required a type of wisdom and experience that is acquired slowly and only in the practice of doing things. Even the most sympathetic voices in support of colonial independence maintained, as did Arthur Creech Jones, that the extension of political freedom is an indifferent objective if the economic basis for the operation of that freedom is not properly laid. This view assumed that for independence to mean anything, for it to contribute something valuable, it must be subjected to a test of ability. And to the incapable, incompetent, and immature, that is, those people who are not adequately prepared for the responsibilities of independence, the best for which they could hope was a graded status under the watchful eye of a supervising trustee. To proceed any other way would be to embark upon an uncertain journey fraught with danger; for if the

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colonies were 'cut loose,' Perham warned, 'they would presumably be set up as very weak units under an experimental world organization.'

The hazards of which Perham spoke did not fail to impress Ambedkar who proved to be prophetically correct when he warned his colleagues that with independence 'there is a great danger of things going wrong.' Indeed, one of the distinctive features of post-colonial international society is the problem of failed states, that is, states in which evidence of the good life is largely, if not totally, absent. However, it must be said that the category 'failed states' does not include all destitute states: poverty, disease, and lack of education are not by themselves sufficient to make a state a failed state. The poor, the ill, and the ignorant are not less responsible for acting civilly than the rich, the well, and the enlightened. Failed states disclose a particular mode of violence which, according to K.J. Holsti, is typically not initiated by formal declarations of belligerents, prosecuted according to established and accepted codes of international conduct, and concluded by negotiated settlements. These so-called wars of the third kind obliterate the distinction between civilian and soldier, and, consequently, visit disproportionate destruction upon the innocent and the unarmed. Wars of the third kind are predominantly an affair of attrition, terror, and psychological actions against civilians; for they 'involve civilians as both combatants and victims, [and] their main legacy after killing and maiming is the waves of refugees they create.' Thus, in failed states, authority, right, and law count for little as disputes are settled according to the dictates of necessity and the unbridled assertion of power. The activity of politics is an elusive and all too infrequent engagement in public life; and tolerance, compromise, and accommodation usually give place to absolutism, coercion, and violence. Failed states are, then, in

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5 Government of India, The Constituent Assembly Debates, 980.
Jackson’s words, states that ‘cannot or will not safeguard minimal civil conditions for their populations: domestic peace, law and order, and good governance.’ And in the absence of these conditions of civil association, daily life in failed states is frequently marked by gross human rights abuses, war crimes, genocide, civil war, mass starvation, mutilation, and slavery.

It is certainly true that Angola, Burma, Congo, Cambodia, East Timor, Liberia, Rwanda, Sierra Leone, Somalia, and the Sudan have been, in recent years, places of profound civil disorder and extraordinarily dangerous places in which to live. But conditions in these societies should not be confused with being peculiarly African or Asian. The atrocities committed in Bosnia-Hercegovina and Kosovo ought to dispel the idea that the moral and material achievements of Western civilisation have rendered Europe immune to this sort of wanton destruction. However, questions pertaining to the existence and survival of failed states are most clearly intelligible in a normative shift that precipitated decolonisation and, subsequently, became entrenched in international law. Failed states, and the patterns of violence to which they give rise, are sustained in a rather perverse way by the constitutive norms of international society. The rights of sovereign equality, political independence, territorial integrity, and non-interference help ensure the survival of what are otherwise unviable states. Prior to decolonisation, membership in international society depended upon a state’s ability and willingness to provide order and to dispense justice domestically, and to fulfil the obligations of statehood internationally. Only these so-called civilised states were entitled to membership in international society. Barbarians, who know nothing but passion and violence, were excluded from membership because they were regard as being incapable of respecting the law of nations. It is for this reason that

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John Stuart Mill asserted that barbarians are not entitled to the rights of nations: they are fit only to be conquered and to be subjugated to foreign rule.\(^{11}\) James Lorimer similarly argued that barbarian and savage societies, inasmuch as they are unable to perform the duties of statehood, are entitled only to partial or human recognition because they cannot be trusted to perform the duties of civilised nations. These societies, he argued, are populated by child-like races, and the relation between ‘inferior races and superior races, if such there be, is that of perpetual pupilarity and guardianship.’\(^{12}\)

This practice of the past is evident in the Charter of the United Nations: Article 4(1) stipulates that membership in the United Nations shall be comprised of states that are ‘able and willing’ to carry out the obligations of the Organisation.\(^{13}\) However, this criterion of membership is today little more than legal fiction: decolonisation rendered all tests of ability and competence morally unsustainable. The most important statement of this normative shift is found in United Nations General Assembly Resolution 1514 (XV), which proclaims that the subjection of people to alien rule constitutes an offence to fundamental human rights and that the denial of self-determination represents a serious impediment to the achievement of world peace. Thus, in an explicit rejection of the standard of ability, the resolution also declares: ‘inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.’\(^{14}\) International acceptance of this normative shift, Jackson argues, signalled the emergence of an international society that was highly tolerant of domestic disorder, injustice, misrule, and violence—what at one point in international history was referred to as


barbarism. Independence became a categorical right, a right that also resulted in the creation of a class of states that were entitled to full and unqualified membership in the society of states, but lacked working institutional arrangements, relied disproportionally upon international assistance, and whose existence was underwritten by the moral justification of self-determination. The triumph of self-determination also resulted in a curious inversion of the Hobbesian understanding of states. Failed states are not places of refuge and safety; rather, for the citizen of a failed state, 'the state of nature is domestic, and civil society is international.\textsuperscript{15}

That some states more closely resemble a state of nature, places that are oppressive and which are unable or unwilling to effect peaceful and just arrangements of social intercourse, raises important questions about how international society ought to be constituted. The law of contemporary international society is well equipped to deal with domestic disorder that threatens the general peace; but in lieu of a threat to international peace and security, a situation that would oblige the Security Council to act, international law is rather poorly equipped to respond to the problems presented by failed states. Mervyn Frost argues that the proper response to failed states is tied up in the conditions of recognition and its bearing on individual freedom. Human freedom, he argues, depends on recognition by similarly free human beings. The same can be said of states: '[a] self-respecting free state is one that is recognized as such by other such states.'\textsuperscript{16} Thus, failed states may not meet all the criteria of statehood, they may not be able to fulfil their domestic or international obligations, but they should be recognised as members of international society so that they may be guided in their development as 'fully competent' members. The activity of recognition consists in learning a practice; and in international society that practice is concerned with becoming an autonomous state, that is, a

\textsuperscript{15} Jackson, \textit{Quasi-States}, 169.

community that is fundamental to the well-being of its citizens. And if the autonomy of one state depends on the autonomy of all others, then international society cannot afford to be indifferent to the plight of failed states; its members cannot view the problems of failed states as being disconnected from their own; nor can failed states be left to sort out their problems on their own. Rather, Frost argues that steps must be taken so that failed states do not make mistakes in the future. Failed states must be educated, they must be tutored and guided in the aspects in which they are deficient, ‘[j]ust as social workers attempt to educate inadequate parents to the responsibilities of parenthood.’

While Frost edges toward the idea of trusteeship when he suggests that failed states should be educated in becoming legitimate members of international society, Peter Lyon goes one step further by declaring that pronouncements of the death of trusteeship may have been premature. The weak and disadvantaged peoples of the world, he observes, continue to be disproportionately affected by persistent disorder, warfare, human misery, and acute shortages of welfare. And while any attempt to resurrect the legitimacy of trusteeship is sure to evoke unhappy memories of colonialism, he maintains that ‘a UN trusteeship would almost certainly be an improvement on the anarchical condition of the several quasi-states the world has now.’ Indeed, the events of post-colonial international society seem to have vindicated the views of Margery Perham rather than those of Kwame Nkrumah. Ronald Robinson argued in 1965 that ‘[t]he problems of trusteeship were the problems of power, of the responsibilities of the strong toward the weak. The unequal distribution of political and economic power in the world, which was the fundamental basis of colonialism, has not been suddenly abolished

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by the accession of most colonies to political independence. This view is no less true today than it was at the onset of decolonisation. Independence, and its central assumption that self-determination is a fundamental prerequisite of peace, security, and welfare, has been for some people just as dangerous as Ambedkar feared. Thus, Lyon’s defence of trusteeship raises the obvious question: do conditions in contemporary international society call for the revival of trusteeship?

The new international legitimacy

Providing an answer to this question requires the examination of an emerging notion of international legitimacy—a development no less significant than the problem of failed states—that is interpreted in relation to standards pertaining to human rights, democracy, and free market economy. An account of this new standard of legitimacy is most ambitiously put forward by Francis Fukuyama in his provocative volume, The End of History and the Last Man. Fukuyama’s reading of history suggests that fascism, communism, and variants of neo-Marxism have been proven to be dead-ends and that capitalism and liberal democracy have prevailed in the global market place of ideas. Capitalism is now the world’s only viable mode of economic activity. And the victory of capitalism is made inevitable by its hand-maiden, modern natural science; for only capitalism is capable of producing the wealth, prosperity, and technological advances that are necessary to satisfy human desires. Indeed, Fukuyama contends, in a thought that is evocative of T.B. Macaulay’s famous deprecation of Hindu and Arabian knowledge, that ‘Islamic “science” was incapable of producing the F-4 fighter-bombers and Chieftain tanks required to defend Khomeini’s Iran from ambitious neighbours like Iraq. Modern natural science is also the ‘mechanism’ that ‘guides us to the gates of the Promised Land of liberal democracy,’


however, it is democracy's ability to satisfy man's yearning for recognition as a man, free and equal to all others, which establishes it as the 'only coherent political aspiration that spans different regions and cultures around the globe.'\textsuperscript{21} The liberal state is a universal association; and membership in this association is accorded on the basis of being recognised as a human being as opposed to a member of a particular group. And it is because the liberal state embodies values that not only recognise, but also protect the dignity of human personality, what we normally call human rights, Fukuyama argues that the 'modern liberal democratic world...is free of contradictions.'\textsuperscript{22}

This absence of contradiction confirms that capitalism, liberal democracy, and human rights have triumphed over all rival forms of political, economic, and social organisation. The implication of this triumph for world affairs is immediately apparent. Fukuyama argues that the same universal and homogeneous state, that is, the liberal state, which abolishes relations of inequality within societies, should abolish relations of inequality between them as well. Democracies, by their nature, are not inclined to question each other's legitimacy that is conferred in a mutual act of recognition not unlike what Frost describes. Moreover, they share in common a love of equality and fundamental rights, and, hence, they are not disposed toward domination and aggrandisement. Fukuyama summarises this characterisation of democratic societies by saying that it 'is not so much that liberal democracy constrains man's natural instincts for aggression and violence, but that it has fundamentally transformed the instincts themselves and eliminated the motive for imperialism.'\textsuperscript{23} In other words, the onward march of liberal democracy will ultimately see the end of imperialism, and all other forms of domination and exploitation, as a force in world affairs. And in a world in which democracy flourishes, human beings will be free to think, communicate, innovate, and create; they will be able to realise their

\textsuperscript{21} Fukuyama, \textit{The End of History and the Last Man}, xiii, xv.

\textsuperscript{22} Fukuyama, \textit{The End of History and the Last Man}, 139.

\textsuperscript{23} Fukuyama, \textit{The End of History and the Last Man}, 263.
material desires and to satisfy their need for recognition. Thus, Fukuyama concludes that '[t]he peaceful behavior of democracies further suggests that the United States and other democracies have a long-term interest in preserving the sphere of democracy in the world, and in expanding it where possible and prudent.'

The sort of world that Fukuyama anticipates is most firmly entrenched in Europe, that is, a new Europe that has moved beyond a dark past of totalitarianism and total war. The idea of the new Europe, the values, principles, and codes of conduct that order relations within the European family of nations, is evident in a series of agreements and declarations, the most important of which follow from the Helsinki Final Act of 1975. At Helsinki, the thirty-five states agreed to a set of principles related to questions of security, disarmament, and economic, scientific, environmental, and humanitarian co-operation, which included a re-statement of their respect for sovereign equality, the non-use of force, territorial integrity, and the peaceful settlement of disputes. Of particular significance, although not from the standpoint of innovation, is their pledge to promote and encourage human rights and fundamental freedoms, 'all of which,' they declared, 'derive from the inherent dignity of the human person and are essential for his free and full development.' The intent and meaning of this pledge is further elaborated in the Document of the Copenhagen Meeting of 1990, which proclaimed that 'pluralistic democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms, the development of human contacts and the resolution of other issues of a related humanitarian character.'

Indeed, the idea of the new Europe assumes, as does Fukuyama, that human rights and democracy are fundamental and necessary conditions of peace; for 'respect for human rights and fundamental freedoms

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24 Fukuyama, The End of History and the Last Man, 245, 280.
and the development of societies based on pluralistic democracy and the rule of law are prerequisites for progress in setting up the lasting order of peace, security, justice and cooperation that they seek to establish in Europe.\textsuperscript{27}

However, the idea of the new Europe is discerned in full relief in the Charter of Paris of 1990. In this declaration, signatories reaffirmed their commitment to the principles enshrined in the Helsinki Final Act and pledged to work toward realising a family of like-minded nations that share in common a fundamental respect for sanctity of human personality. They regard democracy, which is legitimised by the will and the consent of the people, as being founded on respect for the human person and the rule of law. Only democracy can be expected to safeguard freedom of expression, tolerance of minorities, and equality of person. Thus, states party to the Charter agreed to ‘build, consolidate and strengthen democracy as the only system of government of our nations.’\textsuperscript{28} Democracy is also a necessary condition of material prosperity and welfare. Economic progress is impossible where individual human beings are not free and autonomous. Thus, adherents to the Charter declared, in support of economic liberty, that ‘economic co-operation based on market economy constitutes an essential element of our relations and will be instrumental in the construction of a prosperous and united Europe.’\textsuperscript{29} The idea of the new Europe presupposes the assumption that in the absence of democratic institutions and free economic intercourse, social and economic progress remains a distant and remote aspiration. Indeed, the Charter of Paris is justified principally by the belief that a Europe built upon human rights, democracy, and economic liberty is destined to be a Europe whole, free, and prosperous.

\textsuperscript{27} ‘Document of the Copenhagen Meeting,’ 455.


\textsuperscript{29} ‘The Charter of Paris,’ 481.
Although Europe has moved furthest along the road of Fukuyama’s universal history, the principles that constitute the new Europe are in evidence elsewhere in international society. For example, both the Organization of American States and the Organization of African Unity have adopted regionally specific treaties pertaining to the promotion of human rights. Moreover, the OAS has resolved that any ‘irregular interruption of the democratic political institutional process or of the legitimate exercise of power by the democratically elected government in any of the Organization’s members states’ is to all members a matter of direct concern. This universalisation of the principles of the new Europe is an important element of the now fashionable theory of human security. The United Nations Human Development Report of 1994 first popularised the term human security by suggesting:

Human security is a child who did not die, a disease that did not spread, a job that was not cut, an ethnic tension that did not explode in violence, a dissident who was not silenced. Human security is not a concern with weapons—it is a concern with human life and dignity.

The Commission on Global Governance invoked this idea to suggest that “the international community needs to make the protection of people and their security an aim of global security policy.” On this view, a proper understanding of security should be founded on the sanctity of human dignity so that it refers to a people-centred approach that includes chronic threats such as hunger, disease, repression, and grave disruptions of ordinary life. The rights of states, then, are justified solely by the benefit they confer to the governed and by their continuing consent and democratic representation.”

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Commission seems to accept the central premise of the Charter of Paris: promoting and protecting human rights is the ‘first responsibility of government.’

Human security differs in several important ways from the theory of national security which, in the twentieth century, dominated both the theoretical and practical understanding of security in the relation of states. Human security entails a commitment to democratic development, and to ensuring quality of life and equity for all human beings; it also recognises the elementary importance of ‘human rights and fundamental freedoms, the right to live in dignity, with adequate food, shelter, health and education services, and under the rule of law and good governance.’ Thus, above all else, human security is concerned with the protection of the individual; for the ethics of human security do not allow us to remain detached from, or indifferent to, human suffering on account of deeply ingrained injunctions against interfering in the domestic affairs of sovereign states. The rights of states must not be permitted to impede action intended to secure safety of people; and the justification of national security must not be accepted, as it has been historically, as a reason for pre-empting human rights, fundamental freedoms, and the principles of democracy. Indeed, the moral claim of human security seeks to establish the principle that national security is not an end in itself.

The new international legitimacy, expressed either as the idea of Europe or as a universal theory of human security, assists the revival of trusteeship to the extent that it is expressive of an authentic and accepted standard in international society. In a world where membership and participation in international society is legitimised by the consent of the governed, respect for human personality, and economic liberty, states that offend these principles enjoy a rather tenuous status. Failed states, which

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33 ‘The Charter of Paris,’ 475.

34 Notes for an Address by the Honourable Lloyd Axworthy, Minister of Foreign Affairs, to the 51st General Assembly of the United Nations, New York, September 24, 1996, 3-7.
are typically bastions of misery, terror, and tyranny, cannot be regarded as moral communities that embody something worth preserving. They are not repositories of the good life and therefore cannot claim the rights of an autonomous community. Thus, failed states are in need of some form of remedial action: they are unfit to direct their own affairs and therefore require guidance and education in the habits of being a legitimate member of international society. But to reach this conclusion is not significant in itself. Diplomacy, sanctions, aid arrangements, and cultural exchanges may be all regarded as means with which to educate recalcitrant and destitute states. However, these practices are accommodated fully by contemporary international society in a way that the use of force is not. Indeed, the conditions under which force may be used as an instrument of remedial action remains to be answered.

Acting on behalf of the suffering

The legitimate use of force in contemporary international society is conventionally limited to two conditions: self-defence and collective action authorised by the Security Council in response to a threat to international peace and security. But the injunctions contained in Article 2 of the United Nations Charter, which strictly proscribe the use of force in the relations of states, have come up against efforts to expand these conditions to include humanitarian intervention. The justification of this proposed revision is readily intelligible in the principles of the new international legitimacy: the rights of states are justified by the benefit they confer on ordinary citizens as opposed to the advantages they

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confer on governments. It is in this context that Kofi Annan, the Secretary-General of the United Nations, cautions against interpreting restrictions on the legitimate use of force too narrowly:

The Charter, after all, was issued in the name of the “the peoples”, not the governments, of the United Nations. Its aim is not only to preserve international peace—vitally important though that is—but also “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person.” The Charter protects the sovereignty of peoples. It was never meant as a licence for governments to trample on human rights and human dignity. Sovereignty implies responsibility, not just power.\(^\text{37}\)

The substantive claim of this argument supposes that genocide, ethnic cleansing, and other crimes of humanity cannot be allowed to stand on account of deeply ingrained injunctions against interference and the use of force. Indeed, Annan argues that it is often the case that the most tragic humanitarian crisis cannot be remedied short of forcible intervention.\(^\text{38}\) This stark reality has fuelled an intense debate that centres on the question: in circumstances of grave humanitarian crisis is there a clear duty or obligation to act on behalf of human beings who are in danger? British Foreign Secretary Robin Cook answers this question in the affirmative by reverting to the paternal language of trusteeship: ‘when faced with an overwhelming humanitarian catastrophe, which a government has shown it is unwilling or unable to prevent or is actively promoting, the international community should intervene.’\(^\text{39}\)

In no other place has this proposition been put to a sterner test than in the context of NATO’s intervention in Kosovo. United Nations Security Council Resolution 1244 (1999) established an international presence in Kosovo, under the supervision of the United Nations, whose responsibilities include maintaining law and order, protecting human rights, performing basic administrative functions, and ‘[o]rganizing and overseeing the development of provisional institutions for democratic and


\(^{38}\) Annan, ‘Secretary-General Reflects on “Intervention”’, 5.

autonomous self-government. Thus, Resolution 1244 transfers supreme civil authority in Kosovo from the Federal Republic of Yugoslavia to a United Nations sanctioned international presence and, thereby, transforms Kosovo into an international protectorate. Indeed, Strobe Talbott, the American Deputy Secretary of State, describes Kosovo as a ‘ward of the international community’: ‘[i]t goes about the business of rebuilding itself under the day-in, day-out protection and supervision of a consortium of global and regional organizations.’ In other words, Kosovo is in all but name a trust territory. Our purpose in examining the case of Kosovo is not to comment on the desirability, prudence, efficacy, or likely consequences of humanitarian intervention; rather, the character of trusteeship is discernible in sharper focus when it is placed in the context of a post-colonial international society that affords little room for paternalism. We want to interrogate the moral dialogue of the event in an attempt to discern normative movement, if any, that may justify a revival of trusteeship and which is sufficiently persuasive that it alters or even overturns the post-colonial settlement that destroyed the legitimacy of trusteeship. Thus, we want to ask: is there a place for trusteeship in contemporary international society?

One way of investigating this question is in the tradition of legal positivism. Legal positivism regards international law as being ‘rooted in the practices of international society—in the customs and agreements acknowledged by states as governing their relations with one another—and that its rules can be determined by examining evidence of actual diplomatic practice and not by deduction from basic principles of natural law.’ International law is on this view the creation of state activity; it is the result of social practice and expression of consent. Justifying intervention in Kosovo in terms of positive

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international law is, at once, difficult because it did not satisfy conventionally accepted criteria for the lawful use of force. Intervention in Kosovo clearly did not satisfy the condition of self-defence; nor did NATO obtain the authorisation of the Security Council to act in defence of international peace and security. Indeed, the Independent International Commission on Kosovo (IICK) observed that '[t]here was no factual basis upon which NATO could claim a defensive use of force that could qualify as self-defense under international law. Not even an authorization by the United Nations could have persuasively converted the NATO use of force into an instance of self-defense.' Principles relating to the lawful use of force, which are found in Article 51 and Chapter VII of the Charter, represent what the IICK describes as a 'core commitment' of the United Nations membership when the organisation was founded in 1945. References to human rights, in contrast, were accorded secondary status; for they were not intended to provide any pretext for the use of force beyond what was permitted by the Charter. This traditional interpretation of the Charter, especially in respect of principles pertaining to the use of force in support of human rights, continues to enjoy considerable support in Russia, China, and large parts of the non-western world.

It would seem, then, that the use of force in Kosovo violates a traditional or restrictive interpretation of the Charter, particularly Article 2(4), which obliges all states to 'refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.' Indeed, NATO threatened to take 'whatever measures are necessary' if its demands were not met; and Javier Solana, the Secretary-General of NATO, presented the Yugoslav

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44 IICK, *Kosovo Report*, 166-68.

government with a ‘final warning’ urging Yugoslavia to heed the organisation’s demands. Yugoslavia protested to the Security Council, saying that these demands ‘represent an open and clear threat of aggression’ and ‘flagrantly [violate] the principles enshrined in the Charter of the United Nations, particularly Article 2, paragraph 4, thereof, and it undercuts the very foundations of the international legal order.’ These complaints were not entirely without merit as the Rambouillet Accords, which NATO insisted Yugoslavia accept without reservation, stipulated that a final settlement in Kosovo should proceed ‘on the basis of the will of the people.’ Even the most accommodating and conciliatory government would be at great pains to consent to such language. A final settlement decided by the will of the people, given the well-known political aspirations of the Kosovar Albanians, meant nothing less than the dissolution of the Yugoslav state.

Yugoslav complaints, though certainly not their conduct, did secure some support from members of the international community, not the least from Russia and China who precluded all hope of obtaining Security Council authorisation for military action. Russia regarded NATO’s action ‘as a challenge to the current system of international relations’ and called on the alliance ‘to take immediate action to halt military operations.’ Members of the Rio Group called attention to the fact that the use of force in Kosovo violated ‘provisions of Article 53, paragraph 1, and Article 54 of the Charter of the United Nations, which state “...no enforcement action shall be taken under regional arrangements or by

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regional agencies without the authorization of the Security Council.'” Likewise, the Movement of Non-Aligned Countries recalled the Security Council’s responsibility for the maintenance of international peace and security and ‘call[ed] for an immediate cessation of all hostilities.’ However, despite these condemnations, Adam Roberts argues that NATO’s conduct did not constitute an unambiguous violation of international law. Security Council Resolutions 1199 and 1203 may be read in such a way as to provide some legal support for intervention in Kosovo. The Security Council, acting under the authority granted in Chapter VII, demanded in Resolution 1199 that security forces cease all action directed again the civilian population in Kosovo and it alluded to ‘further action and additional measures’ should Yugoslavia fail to fulfil relevant international obligations. In Resolution 1203 the Security Council established NATO’s direct interest in the situation in Kosovo by recognising the NATO Air Verification Mission. Roberts adds that the Security Council’s rejection, by a vote of 12 to 3, of a Russian draft resolution demanding an immediate cessation of the use of force did not render NATO’s action plainly illegal. However, a failed draft resolution, he concedes, ‘is not a strong basis for arguing the legality of a military action.’

The use of force in Kosovo may also find legal support in principles of general international law. Roberts argues that developments in international humanitarian law, which have occurred since the adoption of the Charter in 1945, may provide a basis for military intervention. In this respect the Genocide Convention of 1948 is of particular interest since it establishes that genocide constitutes ‘a

crime under international law which [signatories] undertake to prevent and to punish. But the suggestion that violations of the Genocide Convention, and other instruments of international humanitarian law, provide sufficient justification for setting aside principles of the Charter pertaining to the use of force is not itself free of ambiguity. The Genocide Convention, and international humanitarian law generally, does not exist apart from other parts of international law and nor does it stand above the principles enshrined in the Charter. Indeed, any putative right of intervention derived from international humanitarian law must be considered in relation to Article 103 of the Charter, which states that in the event of a conflict between obligations of the Charter and other international agreements, the obligations of the former shall prevail. A proper reading of the Convention reveals that it is not at odds with the restrictions placed on the use of force that are contained in Article 2 of the Charter. It establishes conditions of individual criminal responsibility, not a right of intervention; for Article 8 of the Convention states that parties may call upon the 'competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide.' However, enforcement action authorised by the Security Council, the only such competent organ, must be based on a threat to, or breach of, the peace and not on the principle of individual responsibility.

While NATO's use of force in Kosovo may not stand as being categorically illegal, it does not seem as if positive international law is a promising place in which to pursue a revival of trusteeship. That two permanent members of the Security Council declined to support what resulted in the

54 'Charter of the United Nations,' 527.
establishment of an international protectorate in Kosovo suggests little change in a global normative order that has, since decolonisation, placed the value of self-determination above the value of providing good government. The same can be said of the mainly non-Western states that expressed considerable unease with the prospect of altering accepted conventions pertaining to the legitimate use of force. These states are deeply suspicious of any attempt to expand the criteria for the legitimate use of force to include the enforcement of human rights. It is also interesting to note that in bypassing a paralysed Security Council, NATO also declined to make use of the Uniting for Peace Resolution by consulting the General Assembly. Uniting for Peace establishes that:

if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security.\(^{57}\)

That the members of NATO were unwilling to subject their conduct to international scrutiny, in accordance with accepted procedural arrangements, speaks powerfully to the durability of the prohibition of the non-defensive use of force contained in Article 2. This conclusion is all the more significant, in light of Kosovo’s current status, when we recall the presumption against trusteeship that is implied in the Charter. Article 78 expressly forbids the application of the trusteeship system ‘to territories that have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.’\(^{58}\) The accession to sovereign statehood, then, proceeds through a one-way door that permits no return to dependence. Thus, all that can be said of a possible revival of trusteeship, in light of the current state of international law, is that is it tentative,

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\(^{57}\) Uniting for Peace, United Nations General Assembly, 302nd Plenary Meeting, 3 November 1950, A/RES/377 (V); and IICK, Kosovo Report, 166.

\(^{58}\) ‘Charter of the United Nations,’ 521.
deeply contested, and very much in doubt. Indeed, the conduct of states in respect of the situation in Kosovo is insufficiently consistent to suggest that a uniform and accepted practice has emerged to challenge the presumption against trusteeship in contemporary international society.

**The law of humanity**

This conclusion is rendered less certain when intervention in Kosovo is investigated in the context of the natural law tradition. Advocates of intervention are apt to take refuge in an idea similar to Michael Walzer’s notion of ‘supreme emergency’—a situation in which ordinary rights and duties may be overridden in response to an unusual or horrifying danger.\(^59\) This idea may justify the establishment of an international protectorate in Kosovo in so far as it appeals to an authentic higher law: the law of humanity. This law derives its moral claim from the Grotian dictum: ‘[t]he last and most far-reaching reason for going to war to help others is the common tie of humanity, which even alone may be sufficient.’\(^60\) For Grotius, a trait peculiar to all human beings is their desire for society, albeit society of a certain sort. Human beings strive for a peaceful and organised life; they seek arrangements that afford free use of life, limb, and liberty. And for these benefits, human beings are inclined—in a way that animals are not—to accept restraints on their desires, passions, and ambitions so that their fellow creatures may benefit equally from the arrangements of public life. Thus, for Grotius, society is properly understood as an association of human beings that is concerned with the realisation of common advantage: ‘the end of society is by a common and united effort to preserve to everyone his own.’\(^61\)

And preserving the value of this common enterprise is something for which it is right to wage war; for

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\(^{59}\) Walzer, *Just and Unjust Wars*, 251-68.


human beings that are subjected to oppression that is ‘odious to every just man’ cannot be denied the ‘right of all human society.’

The use of force in Kosovo is most convincingly justified in the context of this right of war. Indeed, the common tie of humanity appears to be far more important in accounting for NATO’s action than any question of territory or material wealth. Without exception, members of the alliance pleaded their case by arguing that the war in Kosovo constituted, first and foremost, a determined and principled defence of values that are sacred to all human beings. Vaclav Havel interprets this defence of values to mean that human beings cannot remain indifferent to the suffering of strangers. Human rights, he argues, must be defended before all other interests, for they consist in something more valuable than the rights that attach to states. Thus, we cannot pretend that the fate of others is unrelated to our own: the suffering of fellow human beings imposes an obligation to act, not as we are willing, but as we are able. The value of humanity is, in all cases, superior to the claims of states; and in this respect, NATO’s war in Kosovo may be regarded as unpopular, but it is manifestly just. Thus, in a telling remark, Havel abandons the law of nations for the law of humanity:

the Alliance has not acted out of licence, aggressiveness or disrespect for international law. On the contrary, it has acted out of respect for the law, for the law that ranks higher than the protection of the sovereignty of states. It has acted out of respect for the rights of humanity, as they are articulated by our conscience as well as by other instruments of international law.

It is in these words that we are able to detect the moral reasoning of the natural law tradition and, thereby, the fundamental character of the law of humanity. For Havel, right conduct in international society cannot rest solely on the obligations of positive law. The rightness of an act must be also judged

\[\text{\textsuperscript{62} Grotius,} \textit{De Jure Belli ac Pacis}, 263.\]

\[\text{\textsuperscript{63} Vaclav Havel, Address of His Excellency Vaclav Havel, President of the Czech Republic to both Houses of Parliament in the House of Commons Chamber, Ottawa, on Thursday, April 29, 1999, Government of Canada, Department of Foreign Affairs and International Trade, 11 August 1999, 4.}\]

\[\text{\textsuperscript{64} Havel, Address to both Houses of Parliament, 5.}\]
in relation to the dictates of human conscience. On this view, the law of humanity may enjoy
recognition in formal instruments of international law, but its ultimate authority is justified by
independent judgements that are subject to the test of reason. The person who acts in accordance with
the law of humanity proceeds on the conviction that his actions must be in harmony with their
conscience. In other words, the law of humanity 'identifies justice with moral standards that are
independent of the practices of actual communities, with the result that justice becomes an alternative to
law and subversive of it.'\(^{65}\)

Perhaps the most peculiar and advantageous quality of the law of humanity is that it justifies
actions that in a positive system of law would be illegal and, therefore, immoral. Thus, when
confronted with this form of moral argument, the Yugoslav claim that NATO's use of force in Kosovo
constitutes a 'flagrant violation' of the principles contained in Article 2 of the United Nations Charter
begins to lose coherence. Armed with the law of humanity, members of NATO were able to admit that
they had offended accepted standards of conduct in international society while at the same time
maintain the justice of their action. For example, when asked if the use of force in Kosovo required
authorisation the of Security Council, US Secretary of State Madeleine Albright replied: '[w]e do not
believe that we need Security Council authorization for this, and feel that NATO, which now has 19
countries, operates on a consensual basis. It has the responsibility of carrying out this kind of an attack
against somebody who has a record of doing ethnic cleansing and has specifically chosen people
because of their religion.'\(^{66}\) Likewise, Canadian Foreign Minister Lloyd Axworthy argued that the
decision to intervene was not motivated by any direct threat to a NATO member: systematic violence
directed against Serbia's Albanian minority and the threat this action presented to the values and beliefs
of the alliance justified the use of force. And while he concedes freely that Security Council

\(^{65}\) Nardin, 'Legal Positivism as a Theory of International Society,' 27.
authorisation would have been preferable to unilateral action, he maintains that the international community cannot acquiesce to human suffering and oppression because 'certain members of the Council could not reconcile yesterday's assumptions about sovereignty with today's imperatives of human emergency.' Rather, he submits that the use of force in Kosovo 'symbolizes how human security has become a focus of attention and concern for the international community.'

The law of humanity asserts the superiority of human rights and fundamental freedoms over the rights and duties that are associated with classical international society: sovereign equality, territorial integrity, non-interference, and the non-use of force. Indeed, the supreme value of humanity suggests to British Prime Minister Tony Blair that 'the principle of non-interference must be qualified in important respects. Acts of genocide can never be a purely internal matter.' Robin Cook is no less sure of the superiority of the law of humanity: 'the threat of veto by two of the Permanent Members made Security Council action [in Kosovo] impossible despite majority support for our cause. But, under these exceptional circumstances, we were still justified, in every respect, in intervening as we did through NATO.' However, the law of humanity consists in something more than an affirmation of human rights and fundamental freedoms that may, in circumstances of grave humanitarian emergency, justify derogation from accepted rules of conduct in international society. It speaks to a particular conception of community. Sir Henry Maine alluded to this idea of community at the end of the nineteenth century when he said that the law of nations, inasmuch as it is founded on principles of natural law, is binding

67 'Kosovo and the Human Security Agenda,' Notes for an Address by the Honourable Lloyd Axworthy, Minister of Foreign Affairs, to the Woodrow Wilson School of Public and International Relations, Princeton University, Princeton, New Jersey, April 7, 1999, 2.
68 'Kosovo and the Human Security Agenda,' 3.
70 Cook, 'Guiding Humanitarian Intervention,' 2.
on all men in all times. He also claimed that the relations of European international society were subject to a positive law in addition to this universal natural law. ‘The Christian nations of Europe,’ he argued, ‘by the vast superiority of their attainments in arts, and science, and commerce, as well as in policy and government; and, above all, by the brighter light, the more certain truths, and the more definite sanction which Christianity has communicated to the ethical jurisprudence of the ancients, have established a law of nations peculiar to themselves.’ At the beginning of the twenty-first century, this relation of natural law and positive law seems to be reversed. The public international law of Europe is now the universal law of international society. And the test of civilisation is no longer informed by membership in a society of states, but in a global human society in which the law of humanity reigns supreme. Thus, the law of humanity expresses a particular notion of the good society, a society that is founded upon respect for human rights, consent of the governed, and free market economy.

The law of humanity expresses the good society in the Grotian understanding of the term. Society is an unified enterprise that is concerned with securing common advantage. It is this idea of unity that prefigures Tony Blair’s claim: ‘[w]e are witnessing the beginnings of a new doctrine of international community.’ In this world, democracy is on the march; security is conceived in terms of the respect for liberty, the rule of law, and human rights; and prosperity is ensured by the expansion of free trade. These changes, he insists, are both far-reaching and fundamental. Indeed, he argues, in language that reminds us of Francis Fukuyama’s claims, that ‘[w]e cannot refuse to participate in global markets if we want to prosper. We cannot ignore new political ideas in other countries if we want to innovate. We cannot turn our backs on conflicts and the violation of human rights within other countries if we want still to be secure.’ The world is moving, perhaps irreversibly, toward a condition

of mutual dependence. States can no longer afford ‘go it alone,’ for isolation is sure to result in poverty and insecurity: ‘[w]e are all internationalists now, whether we like it or not.’ There is no real alternative in sight.

The voice of Fukuyama and the principles of the new international legitimacy are even more pronounced in the corresponding American idea of the good society, an idea that is premised on the grand Wilsonian aspiration of making the world safe for democracy. Strobe Talbott describes European political life in darker times as resembling a ‘musty, sprawling laboratory in the base of a gothic castle, where mad scientists were experimenting with competing yet similar political monstrosities—two in particular: fascism and communism.’ But out of these catastrophic experiments emerged a concert of European democracies which subscribes to a common creed that rests on the principles of tolerance, justice, and respect for human dignity. These are the values that the United States must defend against modern-day barbarism. Thus, Strobe Talbott proposes the American answer to the Balkan question and other problems of a similar sort:

A state should let its people choose their leaders through elections, it should derive strength and cohesion from the diversity of its population, and it should protect the rights of minorities, especially those of the ultimate minority—the individual citizen. In short, to be successful and strong, to survive and prosper, a state should be a liberal democracy.

Indeed, the value of democracy is founded on the belief that a society that respects the rights of minorities and the rule of law domestically will respect the rights of the weak and refrain from the illegitimate use of force internationally. Therefore, it seems as if this notion of the good society, as does the doctrine of international community, blurs the moral distinction between domestic and international...
society: we are truly a universal family of peoples joined in the pursuit of common and mutual advantage.

In this sort of world the revival of trusteeship is a distinct and, indeed, morally sustainable proposition. The law of humanity presupposes the assumption that the exercise of political power should benefit those persons who are subject to it. It assumes as well that in cases of egregious human suffering or abuse, the members of international society are entitled, individually and collectively, to intervene on behalf of humanity and against barbarism. Thus, a society that is paralysed by disorder or falls into a state of unconscionable tyranny shall be instructed in becoming a good society, one whose public arrangements correspond with the law of humanity. And in that respect, we have returned to where we began this investigation of trusteeship, namely, the thought of Edmund Burke. It is worth repeating that Burke believed that the possession of political power imposes a special type of obligation: 'all political power which is set over men, and that all privilege claimed or exercised in exclusion of them, being wholly artificial, and for so much a derogation from the natural equality of mankind at large, ought to be some way or other exercised ultimately for their benefit.'

For Burke, the East India Company's rights of political dominion and commercial monopoly were justified ultimately by the benefit they conferred on the native inhabitants of India; and in the absence of such a benefit he approved of parliamentary interference in the Company's affairs. The moral claim of Burke's indictment of the East India Company has been used historically to interfere in the affairs of people to put a stop to endemic warfare, chronic disorder, despotic government, slavery, mutilation, cannibalism, and religious and social customs that were repugnant to civilised life. In contemporary international society, interference in the affairs of others is increasingly justified as a response to modern day

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barbarism, that is, the failure to fulfil obligations pertaining to human rights, democracy, and economic liberty.

A revival of trusteeship?

The character of trusteeship is brought into full relief when we reflect on the sort of world that these two approaches to law imply. One way of thinking about this problem is to consider trusteeship in the context of two dispositions of association disclosed by the society of states: societas and universitas. Michael Oakeshott understands societas as an association of persons who conceive themselves as being ‘joined in the acknowledgement of the authority of a practice and not in respect of a common substantive purpose.’ In a societas of states it makes little sense to speak in terms of a common good: states are associated in recognition of the authority ascribed to law. And the quality of conduct is judged in relation to the fulfilment of obligations prescribed by law rather than the achievement of a particular end. Thus, this mode of association conveys the image:

not of pilgrims travelling to a common destination, but of adventurers each responding as best he can to the ordeal of consciousness in a world composed of others of his kind, each the inheritor of the imaginative achievements (moral and intellectual) of those who have gone before and some joined in a variety of prudential practices, but here partners in a practice of civility the rules of which are not devices for satisfying substantive wants and whose obligations create no symbiotic relationship.

The contrasting idea of universitas expresses a form of corporate association: ‘persons associated in respect of some identified common purpose, in the pursuit of some acknowledged substantive end, or in the promotion of some specified enduring interests.’ A society of states organised on these terms embraces all values, all peoples, and all jurisdictions. Law is endowed with purpose and its obligations are to be fulfilled only so long as they are instrumental to the realisation of this purpose. The members

79 Oakeshott, On Human Conduct, 243.
80 Oakeshott, On Human Conduct, 203.
of such an association are not concerned with the adventure of negotiating a world marked by difference, but with the workings of a shared enterprise that is directed toward the achievement of a unified purpose. Thus, an universitas of states discloses one or more true purposes and ends.

International society understood as a societas of states cannot accommodate the practice of trusteeship. The post-colonial societas of states is, against the claims of trusteeship, strictly anti-paternal. International society is a voluntary association constituted by legal equals and who conduct their relations according to the principle of consent; it is an association in which orderly and peaceful relations depend on the principle of pacta sunt servanda—promises must be kept. Thus, the procedural language of international society is not disclosed in the coercive vocabulary of trusteeship, but in a vocabulary that includes the words ‘compromise,’ ‘accommodation,’ ‘agreement,’ ‘negotiation,’ ‘persuasion,’ and ‘restraint.’ In this sort of world, a state, or portion thereof, cannot be subjected to a trustee and made a ward; for trusteeship, and its assumptions of inequality and interference, cannot be reconciled with a society of states that is founded upon the fundamental values of sovereign equality, political independence, territorial integrity, and non-interference. Indeed, the revival of trusteeship would necessarily entail the revival of a suzerain system of the sort that distinguished the hierarchical relations of empire; and the re-introduction into international society of a graded political status would be nothing short of revolutionary. Likewise, to suggest that a state can consent to being a ward is to confuse the character of trusteeship with that of sovereignty. A trustee is someone who acts on behalf of someone else who is thought to be incapable of navigating the choices, dilemmas, and responsibilities of ordinary life, just as a parent acts on behalf of a child who is not yet ready to take on responsibilities expected of adulthood. And on account of this incompetence or

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82 An extended discussion of this understanding of international society is found in Jackson, The Global Covenant.
immaturity a trustee must instruct a ward in the conditions of happiness, choose the means by which to realise it, and assume responsibility for its achievement. Thus, it makes no sense to speak of trusteeship if a state can consent to being a ward while at the same time it can terminate that status by exercising a right of choice.  

Trusteeship may, however, enjoy a rather secure place in an international society understood as an universitas of states. Vaclav Havel invokes this solidarist understanding of association when he declares: ‘our fates are merged together into one single destiny.’ Obstacles that render trusteeship morally dubious in a societas of states disclose a different disposition in a purpose directed association. The values of sovereign equality, political independence, territorial integrity, and non-interference cannot be regarded as expressing procedural rules of mutual accommodation; nor can they be regarded as authoritative injunctions against interference. In an universitas of states their value is derived from their instrumental relation to the realisation of ends that define the purpose of the association. Thus, relations based on inequality and intervention are accommodated in cases where members of the association deviate from its recognised ends. Societies that fall into a state of unconscionable tyranny shall be instructed and supervised in becoming a good society. A society of states founded upon this idea of association, an association that is directed toward the universal respect for human personality, affords a ready and able response to modern day barbarism: the claims of individual human beings are in all circumstances superior to the claims of the communities in which they live. And affirming the sanctity of this principle is something for which it is right to wage war; for it accepts the Grotian dictum that human beings cannot be denied the right and benefit of society. Indeed, it is this understanding of

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84 Havel, Address to both Houses of Parliament, 1.
85 Grotius, De Jure Belli ac Pacis, 263.
international society that underpins arguments used to justify the establishment of an international protectorate in Kosovo. This is a world that evokes, not the sense of adventure that is implied by the idea of societas, but rather the image of a great symphony of peoples all playing in unison from the same score.

But those who wish to revive trusteeship on these terms must be prepared to answer criticism from two sources. There is nothing incoherent, logically or morally, about constituting and justifying international society as an universitas of states. And there is no reason to believe that human beings are incapable of agreeing upon ends that would be, without qualification, universally valid for the entire human family. Indeed, it is hardly possible to deny that the development of human rights law and international humanitarian law, the criminal tribunals for Rwanda (ICTR) and Yugoslavia (ICTY), and the nascent International Criminal Court do not represent demonstrable movement in that direction. But the discourse and practice of contemporary international society suggest that in important respects the ends that human beings cherish remain unsettled. The IICK observes that circumstances related to the use of force in Kosovo reveal the inadequacy of international law in so far as it is not possible to reconcile the rights of sovereign statehood and the human rights that afford protection to persons residing within states. However, after recommending a change in the 'default setting' of sovereignty so that it is 'conditional on observance of certain minimal but universal and clear standards of behavior,' the Commission concedes that it 'fully appreciates that there is no international consensus among states on these issues.'

That there continues to be considerable debate and disagreement over the proper ends of world affairs seems to confirm that our world is still one distinguished by difference. And until such time that the members of international society agree to associate themselves in respect of substantive ends, in principle and in practice, any attempt to resurrect trusteeship in a societas of states

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86 IICK, Kosovo Report, 290-91.
is fraught with great danger. In other words, in a world where the fundamental ends of life remain unsettled, persons who are determined to act as if international society consists in a *universitas* of states are more likely to engender the disorder and conflict that usually accompanies moral crusading than to bring about a more peaceful and humane world.

The disposition of moral crusading is to engage the world without qualification and restraint; that is, to identify the aspirations of a particular community with those of the entire world. It is this disposition that we encounter in Madeleine Albright’s declaration on the eve of NATO’s intervention in Kosovo: ‘Now that the Cold War is over, we have the opportunity to extend those blessings to the rest of Europe, including the Balkans. And we have learned that we cannot hope to guarantee these benefits for ourselves if others do not have them as well.’\(^8\) The moral crusader seeks to repress difference, not because it contributes to disorder or insecurity, but because difference is identified with error. However, short of agreement on the ends of life, the values to which Albright ascribes supreme value more closely approximate a standard of civilisation, not unlike the standard which governed relations between Europeans and non-European during the age of empire, than a standard of international legitimacy that joins fully equal members in a society of sovereign states. The moral crusader has certainly left a lasting imprint on the history of international society; for that history is rife with people who are so impressed with their own achievements that they assume that their habits, customs, traditions, and values constitute the standard of perfection for all. There are times when human beings love some thing more than life itself; they love an idea too much, or they love a group of their own kind too exclusively, that they are willing to justify violence, cruelty, and oppression for the sake of their cause.\(^8\) But of all the justifications of a society of states, however it may be constituted, the preservation of peace

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probably stands as the most fundamental and enduring. Thus, we may be well advised to remind ourselves of the hazards that accompany all wars. 'The unleashing of armed force,' Robert Jackson writes, 'is the most perilous international activity that states or alliances or international society as a whole can engage in. It is obviously dangerous: there is always a very real possibility that it can make things worse.'

A world distinguished by different conceptions of the good life casts a rather long shadow on the practice of waging 'humanitarian war' in order to create additional international protectorates such as Kosovo. One of the more common justifications of intervention in Kosovo holds that the constitution of the Security Council, especially with respect to the permanent member veto, and the Charter framework generally are obsolete relics of the post-second world war settlement. The world is on this view fundamentally different from the one in which the Charter was adopted in 1945. Intrastate conflict, humanitarian emergency, and various transnational threats are the principal problems with which the world must grapple today; and failure to respond to these problems in an efficacious manner may risk undermining the authority of an already weakened United Nations system. Thus, in response to these problems, coalitions of 'enlightened' states, as the IICK calls them, must mobilise sufficient moral authority in the international community 'to justify bypassing a paralyzed UNSC when the circumstances demand it.' While it might be true that failure to act on behalf of the suffering may undermine the authority of the United Nations, taking action in contravention of settled norms and practices may discredit the United Nations system altogether. A large portion of the non-Western world, the IICK observes, is deeply suspicious of endowing 'coalitions of the willing' with a

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discretionary right to protect 'beleaguered people that cannot summon a response from the UN System.' Unease in this context does not reflect indifference to human suffering and nor does it represent contempt for certain standards of international conduct. The lack of political will that often paralyses the Security Council, or the outright opposition of one of the Council’s permanent members, is not sufficient reason to set aside some of the most important provisions of international law. Opposition of this sort represents a clear and present injunction that calls for caution, reflection, and further examination; it is an admonition that perhaps something ought not be done. Indeed, an intemperate crusade to revive trusteeship in the current conditions of international society may very well make for a more violent world, one in which war is a more common feature of international life. Thus, if we are to have any hope of achieving a world that is reasonably peaceful, secure, and prosperous, we must practice in our relations with others the virtues of moderation, compromise, and modesty, even when we confront people, ideas, and ways of life that we find detestable and quite alien to our own.

Advocates of trusteeship must also answer the charge that paternal conduct is destructive of freedom and is therefore incompatible with the ethics of contemporary international society. Immanuel Kant submits that human freedom consists in the idea that "[n]o-one can compel me to be happy in accordance with his conception of the welfare of others, for each may seek his happiness in whatever way he sees fit, so long as he does not infringe upon the freedom of others to pursue a similar end which can be reconciled with the freedom of everyone else within a workable law—i.e. he must accord to others the same right as he enjoys himself." For human beings who desire to be the author of their own actions, there is great value in experiencing the adventure of choosing, an adventure that fundamentally entails the risk of failure. This is the moral claim that underpinned decolonisation, an

91 IICK, Kosovo Report, 170.
idea that follows from the belief that moral goodness resides in the ability of 'each man to decide things for himself, to make his own choices, to determine the directions in which his own happiness lies and to move in those directions.'

In a world in which human beings aspire to be the author of their own actions, they must be permitted to succeed and to fail in their efforts. Without the possibility of failure the value and meaning of freedom loses coherence. Indeed, if the condition of freedom is to make one's own choices, then to manipulate someone toward ends they do not cherish is to 'deny their human essence, to treat them as subjects without wills of their own, and therefore to degrade them.'

But the paternalist proceeds on the belief that a ward or public charge does not understand the conditions of his own happiness. Thus, a trustee, by virtue of a claim to superior knowledge, insight, or reasoning, must secure their happiness for them. Kant denounced a government that treated its subjects as children, unable to distinguish from themselves what is good, right, and desirable, as the 'greatest conceivable despotism [emphasis in original].' It is on account of the injury that paternalism inflicts on human dignity that post-colonial international society has been highly tolerant of domestic failure and equally intolerant of coercion that might prevent a state from determining the conditions of their own happiness. And, thus, it may be impossible to re-introduce trusteeship into international society so long as the post-colonial settlement remains in tact. To resurrect trusteeship in current conditions would entail depriving one or more members of international society of their independence. The circumstances of the imperial era, in which trusteeship flourished, may be too different to make such a move today. Indeed, the ideas of freedom and self-determination still have a very strong hold on the minds of most human beings. But to say that international society exists as it does, is not to confer

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95 Kant, 'On the Common Saying,' 74.
legitimacy upon it. It may well be the case that personal security, basic sustenance, and material happiness are in certain circumstances more important than freedom and self-determination. However, it must also be recognised that international society is a contrivance of human wisdom; it is an arrangement created by many people over many generations that, for better or worse, affords its members the opportunity to strive for a good life that is distinctly of their own making. That is why the greatest burden of proof rests on those who wish to change it.
Chapter Seven

Unity, Progress, and the Perfection of Humankind

This chapter offers some concluding thoughts about the idea of trusteeship and its place in the history of international society. The first section understands trusteeship as an idea that responds to the diversity of human relations. Underlying assumptions of hierarchy, inequality, and subordination permits the reconciliation of the enlightened, progressive, and, therefore, civilised man of Europe with the ignorant, backward, and, therefore, savage man of tribal Africa within one great moral community of humankind. The second section suggests that trusteeship is a historic idea that is intelligible in relation to other ideas that are characteristically associated with the Western tradition of modernity. Thus, trusteeship discloses moral excellence, and indeed obtains powerful justification, when it contributes to the unity, progress, and perfection of the human family.

Trusteeship as a response to diversity

Robert Jackson argues in a recent study that, prior to the globalisation of international society which occurred during the second half of the twentieth century, there existed no universal dialogue which embraced all civilisations and cultures. There were no common values, codes, or laws with which to judge the conduct of others apart from standards that were internal to these civilisations and cultures. The absence of common standards rendered moral communication of the sort that is mutually intelligible all but impossible. Thus, the difference for which human life on this planet is conspicuous stood as a barrier to reciprocal judgement and communication. People of different civilisations and cultures met on terms of moral silence, if they met at all. But the emergence of a global international society overcomes the silence imposed by civilisational difference and provides the basis of a common

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political discourse called the global covenant. For Jackson, the global covenant is in the broadest terms an inclusive arrangement that is conducted according to the principles of state sovereignty, self-determination, and non-intervention. It is not subject to, or qualified by, the parochialism that often attaches to civilisation, culture, tribe, and family. Rather, it is an arrangement that recognises explicitly the value of diversity and accommodates it in the ethics of pluralism. The global covenant recognises states as territorial jurisdictions in which groups of human beings are entitled to decide, without interference from outsiders, what is valuable, sacred, and deserving of preservation and praise. Acceptance of this entitlement, the right to choose one’s own ends and the means by which to pursue them, is at the moral and legal centre of the global covenant. Indeed, bridging difference, and, therefore, achieving mutual coexistence in a society of independent states, a society in which each state pursues its own conception of the good life, freely and unfettered by external interference, is what justifies the global covenant. In that respect, the global covenant is fundamentally an arrangement of human freedom in so far as it seeks unity within the human family through recognition of its manifest diversity. Thus, Jackson asserts: ‘[t]he procedural and prudential norms of the global covenant are a response to the fact and implied value of political diversity on a global scale.’

Trusteeship is no less a way of accommodating the diversity of human relations, but its moral and legal foundations are different in nearly every respect from those of the global covenant. For Jackson, ‘the global covenant is horizontal rather than hierarchical, inclusive rather than exclusive, and is based expressly on the pluralist ethics of equal state sovereignty, self-determination, and non-intervention.’ The idea of trusteeship discloses none of these qualities. When the first European explorers set out to discover the New World, and when they circumnavigated the Cape of Good Hope to reach the shores of India and the islands of the Pacific, they came into contact with people who were

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different in every way imaginable. Pizarro, Cortes, de Gama, and those who followed, encountered people who held radically different beliefs about government, economy, morality, and all that is related to the organisation of public life. They understood notions of obligation, responsibility, right, and good in wholly different terms. They had their own standards of courage, beauty, honour, and prudence. And they approached questions of religion, community, marriage, and family in ways that repelled or frightened most Europeans. Instead of accepting the legitimacy of these practices, that is, granting them recognition as being fully rational and fully moral in spite of their difference, to use the pluralist language of the global covenant, Europeans responded to the difference of others with the monist ethics of solidarism. The European explorer, trader, missionary, soldier, and administrator was not prepared to accept that what may be pleasing to the man in Lisbon, London, or Paris may be anything but desirable to the man in Angola, Bihar, or Senegal. Thus, relations based on mutual recognition, legal equality, and non-intervention could not exist so long as some people were convinced of the superiority of their God, their science, and their virtue, and were endowed with the power to impose them on others.

Relations structured according to the idea of trusteeship proceeded according to a particular relationship of virtue, inequality, and tutelage.

It is in the context of this relationship that we best understand the key questions with which the idea of trusteeship is concerned. Under what conditions may one man rule another? What is the relation of ruler and subject? And toward what end should that rule be directed? The idea of trusteeship assumes that the claim to rule must be subject to a test of fitness, for it accepts the principle, expressed in Plato’s Republic, that each person is fitted by nature to perform a particular task. ‘Different people are inherently suitable for different activities,’ Socrates explains to Adeimantus, ‘since people are not

\[^{3}\] Jackson, The Global Covenant, 14.
particularly similar to one another, but have a wide variety of natures. Particular qualities of right conduct, that is, virtue, are what render some men fit to rule. Those men, Socrates continues, must possess a character that is moulded by the virtues of good memory, self-discipline, courage, morality, and a love of truth. Only men of this character are able to see the true nature of things, for it is they who are equipped with the wherewithal to distinguish true knowledge from mere belief and opinion. And it is to these men that the well-being of the republic should be entrusted: they are entitled, by virtue of their superior character, to command and all others are bound by duty to obey. In the well-founded republic, all that is good and desirable in life depends on the strict maintenance of class integrity. Socrates assures Glaucon that no great harm will follow when a shoemaker imitates a carpenter. However, he betrays no doubt that disaster awaits the entire community if the unqualified person attempts to enter the ruling class. Thus, the happy man and the good man is one who is true to his nature, just as ‘a community’s morality consists in each of its three classes doing its own job.

This dual conception of competence and station underpins the claim to rule that is expressed by the idea of trusteeship. Dominion is the result of excellence of some sort. Individual veracity, rather than strength, duplicity, or cunning, is the impulse of expansion and the fountain of empire. Thus, the British Empire owes its success, according to William Lecky, to the habits and talents of the men who built it, men who possessed the superior intellectual, industrial, and moral qualities upon which the well-being of all nations depend. P.H. Kerr believed that these same qualities rendered some people uniquely suited to rule others: ‘[t]here are peoples who by reason of their character, their truthfulness and integrity; their political institutions, their sense of public responsibility, their resourcefulness and

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5 Plato, Republic, 196-212.
6 Plato, Republic, 142, 153.
capacity progressively to improve the conditions under which they live, regard themselves as the leaders of mankind.\textsuperscript{8} Of course, these endowments were not enjoyed equally by all; for some people were regarded as lacking the patience, knowledge, skill, and self-discipline required to frame and operate government for themselves. Indeed, endemic warfare, despotic rule, slavery, alien customs, and an absence of science, commerce, and industry were taken as demonstrable evidence that non-European peoples were incapable of directing their own affairs. The peoples of Africa and Asia were typically derided as filled with pride, passion, and appetite. They were ridiculed for their seeming preference of superstition to rationality, magic to science, and violence to law. And they were pitied for an apparent lack of spirit that revealed an inability to effect coherent arrangements of public life and to fulfil its conditions. These peoples, as John Stuart Mill once put it, ‘have not got beyond the period during which it is likely to be for their benefit that they should be conquered and held in subjection by foreigners.’\textsuperscript{9}

The presumed superiority of European virtue, practice, and achievement did not in any way countenance the exploitation of the disadvantaged; rather, the excellence of European civilisation imposed a heavy burden on the strong to act on behalf of the weak. Just as the best people in Plato’s republic are obliged to rule, no matter how burdensome or arduous it may be, proponents of trusteeship believed that the advanced peoples of the world must assume responsibility for the government and well-being of backward peoples. This responsibility arises, not out of pride or avarice, but out of obligation; for those who are in possession of clear sight and true knowledge, and, on account of superior education, understand fully the concepts of fair-play, reciprocity, justice, and truthfulness, must guide those who are shrouded in darkness. Indeed, Kerr argued that the ‘decisive mark of a superior

\textsuperscript{8} P.H. Kerr, ‘Political Relations Between Advanced and Backward Peoples,’ An Introduction to the Study of International Relations, (London: Macmillan, 1916), 141.
civilisation is the readiness of its members to sacrifice themselves in order that their less fortunate fellows may learn how to share in their blessings." This claim does not embrace pure altruism while it disavows the pursuit of advantage. Instead it rests on the moral premise laid down by Edmund Burke: ‘all political power which is set over men…ought to be some way or other exercised ultimately for their benefit.’ The idea of trusteeship is unavoidably concerned with the justification of power; it supposes that dominion entails great responsibility, and, to that extent, it stands as an unequivocal repudiation of domination and exploitation. Trusteeship is an idea that sanctions the rule of one man over another, in lands that are not his own, so long as the power of dominion is directed toward the improvement of the incompetent and infirm. It is in this principle, as the Earl of Cromer argues, that imperial dominion finds a powerful defence: ‘the Anglo-Saxon in modern times comes, not to enslave, but to liberate from slavery. The fact that he does so is, indeed, one of his best title-deeds to Imperial dominion.’

The superior virtue that entitles one man to rule another, and therefore establishes a claim to rule, prefigures a relation of ruler and subject that is grounded in conditions of inequality. The nature of this inequality, which is, indeed, a fundamental assumption of the idea of trusteeship, is illuminated in John Locke’s idea that freedom and subjection are not necessarily contradictory conditions. While Locke recognised the ‘equal Right that every Man hath, to his Natural Freedom, without being subjected to the Will or Authority of any other Man [emphasis in original],’ he asserted that the exercise of that freedom, as well as the capacity for rational action with which all men are endowed, is

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10 Kerr, ‘Political Relations Between Advanced and Backward Peoples,’ 144.
something that comes with the maturity of age. A man who is free possesses full use of reason; he is, thus, capable of understanding the law and respecting its obligations. Conversely, the man who is, on account of some defect, incapable of knowing the law, is consigned to a life under the supervision of others. Thus, Locke argues that 'Madmen, which for the present cannot possibly have the use of right Reason to guide themselves, have their Guide, the Reason that guideth other Men which are Tutors over them, to seek and procure their good for them.' People who were made wards of some corporation, state, or international organisation were similarly deemed as being unable to know true law, and, accordingly, were regarded as being incapable of directing their individual and collective lives by their own will. Darkness prevented them from seeing the true nature of things. Ignorance and irrationality concealed from sight the conditions of their own well-being. Therefore, the condition of inequality that so prominently shapes the character of trusteeship is the consequence of defect.

In order to grasp the significance of this condition of inequality, it is necessary to consider the notion of defect in the context of what Herbert Butterfield calls the whig interpretation of history. The whig historian does not understand what is to some people, precious, meaningful, and sacred, on its own terms and for its own value, for these things are not the stuff of historical narrative. Rather, the activity of writing history consists in investigating, understanding, and judging the past with reference to the standards of the present. History is reduced to a ratification of the present. The whig historian 'stands on the summit of the 20th century, and organises his scheme of history from the point of view of his own day.' For James Mill, Thomas Fowell Buxton, Jan Smuts, and others like them, the present with which they were acquainted represented the highest state of achievement; and it was against this standard that they judged the non-European peoples with whom they came into contact. History, as

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they understood it, transformed the values, practices, institutions of others into models of defect. When considered from this vantage point, it can come as no surprise that Mill felt only contempt for the purportedly fantastic tales portrayed in the epics, poetry, and mythology he believed were responsible for leaving the Hindu mind in a shrunken and feeble state; nor is it possible to dismiss as mere mockery Smuts’ suggestion that wine, women, and song are for the African the greatest consolation in life. Both Mill and Smuts comprehended, as is typical of the whig historian, a relative Hindu or African past against the backdrop of an absolute European present. Only then was it possible to adjudicate authoritatively between different religions, philosophies, forms of government, and ways of life.¹⁶ In this way, the trustees of civilisation adopted a uniform and universal scale of (European) values against which non-European society could appear only as depraved, destitute, and defective. It is this notion of defect, something that is confirmed as deviance from European standards of perfection, which sustains and justifies the relations of inequality that are at the centre of the idea of trusteeship.

After establishing the imperfect state in which the peoples of the non-European world existed, their European masters were left with the task of determining the end toward which the tutelage of these peoples should be directed. Only then would they satisfy the very stringent justification of political power that Burke had laid down. The self-designated guardians of the backward and destitute believed that for some reason their wards did not understand their situation; and, in that respect, they were a danger to others and a danger to themselves. Thus, the first, and most important, end of trusteeship consists in promoting the welfare of people who were incapable of choosing for themselves the ends for which they should strive. Indeed, the act of choosing, and attending to the welfare of the incompetent, remained the sacred duty of the supervising trustee. For Charles Grant, the remedy of Indian depravity

depended on the communication of European knowledge and, especially, the excellence of Christian morality. The perfection of the Christian religion certainly impressed David Livingstone, but he believed that the salvation of Africa depended also on the introduction of commerce and colonisation. Lord Lugard assessed the alleged benefits of colonisation with less confidence, and instead recommended that the African be instructed in the qualities of responsibility, initiative, fair-play, discipline, and justice—the qualities that were required of a people who were fit to be self-governing. And, in the twentieth century, the architects of the United Nations Trusteeship System believed that the moral and material welfare of dependent peoples depended on the furtherance of international peace and security, promoting the political, economic, social, and educational advancement of the inhabitants of trust territories, and respect for human rights and fundamental freedoms.\(^{17}\) The many ends of trusteeship surely came into conflict from time to time. For example, acolytes of utilitarianism understood enlightenment quite differently than the apostles of Christianity. However, these differences notwithstanding, the schemes proffered by Charles Grant and James Mill, David Livingstone and Lord Lugard, and Cordell Hull and Oliver Stanley, were each in their own right directed toward lifting the ignorant and the infirm into the ranks of civilised life.

But the idea of trusteeship demanded something more than the promotion of welfare. Hence, the second end of trusteeship consists in protecting dependent peoples from the machinations and rapacity of outsiders. Not all who came into contact with peoples of the non-European world were moved by the same high-minded principles that guided the likes of Livingstone and Buxton. Rather the history of this encounter is often a sordid tale of unscrupulous traders, dealing in firearms, liquor, and

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slaves, who were driven by the impulse of personal enrichment. Of the less virtuous, Kerr writes: ‘[h]aving no defined responsibility for the welfare of the people with whom they are brought into contact, many of them succumb to the temptation to take full advantage of their own superior energy and knowledge, and of the weakness and vices of the backward peoples, to exploit them for their own profit.’

There were also those who were deemed to be less able trustees of civilisation. It is in this context that Cromer recalled Livingstone’s complaint that ‘in five hundred years the only thing the natives of Africa had learnt from the Portuguese was to distil bad spirits with the help of an old gun barrel.’ And, of course, there was Burke’s denunciation of Warren Hastings, a man he accused of using the troops of the East India Company to ‘make war in a barbarous and inhuman manner.’

While the ranks of the civilised were most definitely assured of their moral and material superiority, they were not indifferent to the exploitation and suffering of their fellow human beings, no matter how debased their lives might have been. Burke’s crusade against Hastings, though unsuccessful in the end, led to parliamentary supervision of the East India Company in order to curb abuses that threatened the happiness of the Company’s native subjects. At the Berlin Conference of 1885, which internationalised trusteeship by endowing it with a status in international law, signatory powers agreed to a regime of neutrality and adopted uniform rules for the recognition of future occupations in the Congo Basin that, together, were meant to spare the people of Africa the ravages of European war. The powers concurred that the progress of the native African could be realised only in a condition of peace.

Instances of gross neglect that followed in the wake of the Berlin Conference did not devalue the

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18 Kerr, 'Political Relations Between Advanced and Backward Peoples,' 145.
19 Cromer, 'The Government of Subject Races,' 11.
currency of the idea of trusteeship. The horror of Leopold's Congo Free State merely confirmed that the protections afforded by the Berlin Act were hopelessly deficient. The response to this failure resulted in the creation of elaborate machinery, first as part of the League of Nations, and later as part of the United Nations, to ensure the faithful performance of duties pertaining to the protection of dependent peoples. Both the mandates system and the trusteeship system incorporated nearly all the provisions of the Berlin Act, including the open door, the prohibition of the liquor, firearms, and slave trade, and, in the case of the mandates system, the system of African neutrality. It is indeed this duty to protect backward peoples from the exploitation of outsiders, combined with the duty to promote their welfare, which justified the many manifestations of tutelage that are associated with the idea of trusteeship.

Whereas the global covenant accommodates diversity in terms of equal state sovereignty, self-determination, and non-interference, the idea of trusteeship responds to that same diversity in terms of hierarchy, subordination, and interference. Indeed, the idea of trusteeship assumes that the fit, that is, the virtuous, shall rule in the interest the incapable. It assumes that some notion of defect joins ruler and subject in a hierarchical relationship, one based explicitly on a condition of inequality, whereby the enlightened instruct the ignorant and incompetent in the true nature of things. And it assumes that the ends toward which this tutelage is directed are concerned fundamentally with promoting the welfare of dependent peoples and protecting them from exploitation. Trusteeship accommodates diversity only so far as the beliefs, values, and practices of others are not at odds with what at least some people believed constituted the true way of life: European government, economy, morality, religion, knowledge, education, and social life.

Unity, progress, and perfection

It might be said that much of this study has been devoted to interrogating characteristics that are internal to the idea of trusteeship, and it has been suggested that the idea of trusteeship consists in
certain beliefs about virtue, inequality, and tutelage. But to leave it at that would be to bring our investigation to a premature close. The idea of trusteeship is, according to Giambiattista Vico’s understanding of history, a novelty that cannot be wholly disconnected from the past, and yet, it is at the same time an idea that is distinctly of a present—a here and now. Indeed, Vico believed that the reappearance over time of characteristics that distinguished one age from another enabled human beings to argue analogically between different periods of history. He did not, however, suppose that history repeated itself in the strictly cyclical fashion that attached to the Graeco-Roman conception of historical movement. Rather, he understood each period of history as disclosing a peculiar character that distinguished it from what had gone before, so much so, that ‘the Christian barbarism of the Middle Ages is differentiated from the pagan barbarism of the Homeric age by everything that makes it distinctively an expression of the Christian mind.’\(^{22}\) If Vico’s view is to be taken seriously, then the distinguishing characteristics of a particular period of history are at once old and new. Thus, the idea of trusteeship is as much a product of its time as the Greek polis or the medieval Christian Church. It is a response to a particular problem, in a particular place, involving particular people. And, indeed, the idea of trusteeship is intelligible in other ideas, that is, general ideas that are definitive of the context of life in a particular age, which say something about the nature of the human family, its relation to history, and the possibilities of its future.

The first of these ideas is concerned with the presumed fundamental equality of all human beings and the concomitant unity of the human family. Warren Hastings was alleged to have committed high crimes and misdemeanours by reducing, in contravention of the natural equality of mankind, the Rohilla nation to a condition of servitude. And Buxton refused to accept the proposition that Africans were not men in the ordinary sense of the term even though they were thought to suffer from a

multitude of defects. This presumption of unity finds its moral basis in the law of nature as it is set out by Cicero: 'there will not be different laws at Rome and at Athens, or different laws now and in the future, but one eternal unchangeable law will be valid for all nations and for all times, and there will be one master and one ruler, that is, God, over us all, for He is the author of this law, its promulgator, and its enforcing judge.' Substantially, humankind consists in a universal community, an all inclusive human family premised upon the fundamental equality of all human beings; and this equality is the direct consequence of what unites them: a law that is derived from their common nature. All human beings, in spite of the differences that surely divide them, are equipped by nature with the capacity to know and to understand this common law. It is this notion of fundamental human equality, what Christians call respect for human personality and secular traditions call universal human rights, that imposes a sacred duty on the strong and advanced to assist the weak and backward. Indeed, J.H. Oldham characteristically argues that beneath the apparent inequality of race lies a much deeper unity. All men are in possession of a personality that is intrinsically worthy of respect and 'they are equal in the right to the development of that personality, so far as may be compatible with the common good.'

But in order to appreciate the strength of Oldham’s claim, and the way in which it shapes the idea of trusteeship, it is worth considering the distinction that W.W. Tarn draws between the ‘irreconcilable opposition between Stoicism and the theory of kingship, between the belief that unity and concord existed and you must try and get men to see it, and the belief that unity and concord did not

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exist and that it was the business of the rulers of the earth to try and bring them to pass.\(^{26}\) The Stoic tradition assumes that the unity of the universe exists by an act of God; and it is through education, rather than remedying the consequences of bad actions, that the unity of the human family is realised. Thus, once men are taught to see and to think aright, all that is wrong in the world will vanish. But the unity to which trusteeship aspires is less intelligible in the Stoic tradition than in the thought of Alexander the Great, who sought to be the harmoniser of the world, at least the one known to him, in a mission he believed to be ordained by God. It is important to recognise, Tarn argues, that Alexander sought unity in a world divided between good men and bad men, a division not unlike Aristotle’s division of humanity between Greek and barbarian, but one which recognised good men as true Greeks and bad men as barbarians. Alexander understood it as the business of a king to promote fellowship among men, to reconcile all men to a unified brotherhood, even though God favoured the best men as peculiarly his own.\(^{27}\) Advocates of trusteeship believed, as did Cicero, that ‘if bad habits and false beliefs did not twist the weaker minds and turn them in whatever direction they are inclined, no one would be so like his own self as all men would be like all others.’\(^{28}\) However, in the tradition of Alexander, they saw as the duty of the corporate agent, colonial administrator, mandatory power, and international trustee to promote deliberately the unity of humankind by sweeping away all that prevented people from seeing it. They were not satisfied merely to educate, to do no more than impart knowledge so that all human beings might see clearly for themselves, as long as slavery and other abuses impeded the universal fellowship of all human beings. Thus, Alfred Zimmern declared that ‘[t]he process by which the Western peoples have risen to a sense of their duty towards their weaker and

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\(^{27}\) Tarn, ‘Alexander the Great and the Unity of Mankind,’ 136-37, 147.

more ignorant fellow citizens is indeed one of the chief stages in that progress of the common life of mankind with which we are concerned.\textsuperscript{29}

The claim that all human beings are fundamentally equal, and are therefore entitled to the development of their personality, immediately comes up against the reality that human beings are undeniably unequal in so many aspects of their common lives. Some people are stronger than their fellows, others more stupid, and a few more virtuous than the ordinary person. The idea of trusteeship is distorted beyond recognition when it is removed from a discourse of inequality, a discourse which makes it possible to speak of people being advanced and backward, strong and weak. However, Zimmern alluded to a second idea that overcomes this dilemma and which is crucial for any proper understanding of trusteeship: the idea of progress. The origins of this idea may be traced to the thought of Jean Bodin who, according to J.B. Bury, announced a rather optimistic vision of man’s career on earth. In the periodic ebbs and flows of history Bodin detected a regularity of motion that ruled out a past golden age that, since the splendour of Rome, had degenerated into a condition of superstition and prejudice. History was to be interpreted as a gradual ascent in which the politics, art, literature, law, knowledge, and custom of past ages could be usefully compared to the present. Thus, Bodin understood history in terms of a general progression, disclosing a definite direction, which revealed a past of some demonstrable value and a present of still greater value. Bury argues that Bodin anticipated the growth of an idea of progress, which established man’s emancipation from tradition and supremacy over nature, by issuing a decisive rejection of the theory of degeneration in so far as he regarded the achievements of his own age to be equal or superior to those of antiquity.\textsuperscript{30} It is in this approach to history that Bodin, perhaps unwittingly, overcame without the help of theology a seemingly impossible contradiction


between nature and convention. In other words, the idea of progress was one way of reconciling the moral equality that Christian thought and secular traditions of human rights attached to all human beings and the conventional inequality of the human condition.

With the invention of the idea of progress it became possible to address pressing social questions as problems of improvement, development, and, especially, evolution. The idea of progress assumes that human beings are differently placed along a cosmic ladder of development. However, it is not possible to identify one theory of progress with which the idea of trusteeship is most closely associated, but rather there are several contending theories that are intelligible in terms of assimilation, separation, and evolution. Assimilationist theories assume that, as Lord Hailey put it, the social and political institutions of the non-European world are destined to be similar to those of Europe. Champions of this theory rely heavily upon some notion of corruption that must be remedied by the application of the right principle. Improvement, then, can be achieved quite rapidly. The utilitarian version of this theory understands, as does Jeremy Bentham, the impediments to progress as the same in all places. The irrational organisation of society and the dogma of religion obstructed the attainment of good government in England and India alike. Eradicating ignorance and superstition is little more than a technical affair, for Bentham confidently proclaimed that "[g]overned in this manner by a principle that is recognized by all men, the same arrangement that would serve for the jurisprudence of any one country, would serve with little variation for that of any other." Although utilitarian thinking proved to be far more influential in India than in Africa, its form differs only slightly from the Christian theory that proved to be enormously influential in Africa. Like the utilitarian theory, backwardness is conceived as a problem of corruption. Savage custom obscures the self-evident truth of God's law and

therefore retards all hope of progress. However, the Christian theory substitutes divine law for the principle of utility so that God is Bentham’s first and supreme legislator. And man’s task on earth is to help the ignorant and blind along the road of enlightenment; for the Christian theory of progress is postulated on the belief that ‘[t]rue civilization and Christianity are inseparable; the former has never been found but as a fruit of the latter.’ Thus, the Christian and utilitarian theories of progress posit a universe resting upon an irreducible harmony of opinions, interests, and values which for some reason is concealed from sight. Progress, then, is achieved when human conduct is directed in such a way that it casts light on darkness and leads to the realisation of ends shared universally by all.

In contrast to assimilationist theories of progress, theories of separation presuppose a necessary division of political, economic, and social activity on the basis of race. The writings of Arthur de Gobineau, who claimed to have detected a law that accounted for the rise and fall of civilisations, provide the best example of this theory of progress. Gobineau understood progress and degeneration as connected in such a way that the achievement of progress depended on the separation of the races so that each could perform the function for which nature intended. Decline resulted from the adulteration of blood rather than from fanaticism, misrule, irreligion, or the corruption of morals. From this argument, Gobineau quite naturally concluded that some races were intrinsically suited to rule, while others lacked the inner impulse to take the first step toward civilisation. Evidence of racial genius informed a theory of progress that demanded the separation of forward and backward races. Allen Cairns argues that colonial arrangements which ensured the primacy of European civilisation were often predicated on what Europeans believed to be the natural racial distribution of power. The white race

formed the ruling caste that governed, instructed, and supplied intelligence; the Indian race, though incapable of governing itself, acted as a racial link between black and white; and the black race occupied positions of servitude. It is in this spirit that Charles Dilke proclaimed: ‘nature seems to intend the English for a race of officers, to direct and guide the cheap labour of the Eastern peoples.’

But against charges of repression, exploitation, and malice, Smuts replied that the essential difference of white and black dictated that the African should be preserved in his natural state. The hope of Africa depended on foundations that were distinctly African. Indeed, he believed that the intermingling of the races would lead to most unhappy consequences: racial antipathy, a decline in law and order, all types of social evil, and the ‘debasement of the higher race and culture.’ Thus, the race based account of progress assumes the possibility of limitless advancement so long as racial divisions remain intact. It is in that context that Lothrop Stoddard advises: ‘[w]hat we to-day need above all else is a changed attitude of mind—a recognition of the supreme importance of heredity, not merely in scientific treatises but in the practical ordering of the world’s affairs.’

Assimilationist and race-based theories of progress were no doubt important in shaping the idea of trusteeship, but the most influential and enduring were theories which disclosed a gradualist disposition that led to the classification of individuals, tribes, nations, and civilisations in degrees or stages of development. Theories of this sort began to take definite shape in the mid-nineteenth century when the Indian Mutiny of 1857 confirmed that T.B. Macaulay’s hope of creating a class of ‘English’

35 Charles Dilke, Greater Britain: A Record of Travel in English-Speaking Countries During 1866 and 1867, (New York: Harper, 1869), 192; and Cairns, Prelude to Imperialism, 207.
Indians remained a rather remote aspiration. And at a time when Europeans were busy conquering the natural world, gradualist theories of progress were invested with scientific basis once evolutionary concepts and the methods of modern natural science were applied to problems of the social world. In this respect, Herbert Spencer likened societies to organisms in the belief that the laws of the social world were analogous to those of the natural world. Evolution provided an explanation for the reasons why societies existed as they did. In a most primitive state, societies exhibit little specialisation and mutual dependence of its parts—each man subsists by his own effort. More advanced societies are formed by larger groups of savages who disclose some scant measure of social structure and governmental organisation. And as societies grow still further, he argues, they achieve a level of aggregation such that they constitute a nation. Thus, for Spencer, 'society is a growth and not a manufacture.'

Benjamin Kidd drew upon these ideas to argue that the most efficient people will lead the march of progress, a march in which 'the best organisations, the best methods, the best skill, the best government, and the best standards of action and of belief, shall have the right of universal opportunity.' Indeed, evolutionary concepts of development, competition, and gradation are at the centre of gradualist accounts of progress, even those that do not claim a pretension of scientific certainty with which evolutionary ideas are often clothed. For example, Lord Lugard ascribed value to the Islamic religion, a force responsible for destroying the most heinous native superstitions and customs, but he expressed grave doubt that it could carry people of Africa beyond a stage of barbarism. The Covenant of the League of Nations implies a competitive world whereby underdeveloped nations, those nations that could not 'stand by themselves under the strenuous conditions of the modern world,' to use

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the language of Article 22, should be guided in their development so that they too may join the family of nations. And on the eve of decolonisation, Lord Hailey saw fit to describe the colonial peoples of the British Empire as a 'procession of peoples in which great distances separate the van from the rear guard.' J.W. Burrow suggests that the great achievement of theories of social evolution is that they satisfied the need to accommodate new and diverse social facts into existing ways of thinking. This claim is true not only of evolutionary theories of progress, but of gradualist theories in general.

The idea of progress implies that the human condition, man's career on earth as Bodin put it, can somehow be made better by deliberate effort. But the word 'progress' is merely a name given to the direction of history. The end that is the concern of progress, the direction toward which history is moving, is better described by the word 'perfection.' Indeed, the claims and justifications of the idea of trusteeship are not fully coherent outside of a particular conception of perfection that began to take shape during the seventeenth century. Before then, John Passmore submits, thinking about perfection in Christian Europe fell generally into two categories: either human beings could perfect themselves by their own efforts or they could become perfect by the grace of God. However, the emergence of an understanding of perfection which assumed that 'men could be perfected not by God, not by the exercise of their own free will, not even by some combination of the two, but by the deliberate intervention of their fellow-men' laid the ground for the idea of trusteeship. Intimations of this mode of thinking are evident in the sixteenth century writings of Francisco de Vitoria, who included mental incapacity of barbarians among the just titles by which Spain may lay claim to dominions in the New World. However, he maintained the justice of intervention only if it conferred benefit and good on the

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Indians rather than amassed profit for the Spaniards. The theology that underpinned Vitoria’s thought gave way to a modern idea of perfection that, by the eighteenth century, interpreted the primary duties of life as being directed toward fellow human beings as opposed to God. Thus, Passmore argues that the modern idea of perfection supposes that individual human beings are to be perfected only as the entire human family is perfected as a whole. This understanding of perfection, he argues, required that the ideal of perfection to which human beings aspire should be attainable on earth in their present life; it is to recognise, as did James Lorimer, that the ‘right of undeveloped races, like the right of undeveloped individuals, is a right not to recognition as what they are not, but to guardianship—that is, to guidance—in becoming that of which they are capable, in realising their special ideals.’ The ideal of perfection, then, became something that could be achieved incrementally, that is, gradually, so that men could be improved little by little by their fellow-men. And with this objective set before them, Passmore argues that the moralists of the seventeenth and eighteenth century ‘set out to remake the world in the image of universal benevolence, to perfect it in secular charity.’ The idea of trusteeship is undoubtedly one way of answering the call.

Of course, the pursuit of perfection by intervening in the lives of others, caring for them so that they too might approach some ideal of perfection, runs a great risk of destroying much or all that is of value to them. Passmore warns that doctrines and schemes that are aimed at achieving the collective perfection of humanity aspire to total order and harmony, that is, ‘a kind of unity which is destructive of that diversity which is the glory of the world and the secret of all man’s achievements.’ The idea of trusteeship is indeed a historical response to the diversity of life on this planet, but rarely has it

46 Passmore, The Perfectibility of Man, 230-1, 239.
47 Passmore, The Perfectibility of Man, 511.
recognised diversity as disclosing ways of life that, while alien and perhaps detestable, are valuable to some people and therefore require no further justification. Rather the story of trusteeship in international society is unavoidably tied up in what Gerit Gong refers to as a confrontation of civilisations and cultures\(^{48}\) whereby members of civilised (European) international society endeavoured to substitute true religion, true science, true knowledge, true law, and true custom for what was regarded as the defective institutions, practices, and traditions of African and Asian societies. Thus, the idea of trusteeship in international history assumes that Europeans were the best judges of African and Asian welfare. But for all the deprecation of non-European government, economy, science, knowledge, and culture, it would be a mistake to dismiss the claims of trusteeship as manifestations of selfishness, greed, or malice. Lord Hailey was right when he suggested that 'the value of a doctrine such as that of trusteeship must be judged by the inspiration it brings to noble minds, rather than by the excuses it affords to the baser instincts of mankind.'\(^{49}\) The history of trusteeship may well be distinguished by proofs of kindness, heroism, and devotion to the cause of disadvantaged peoples; but if there is any one legacy of which to take notice, it is the consistency with which the subjects of trusteeship denounced the claims of tutelage and demanded the right to be masters of their own affairs.

Instead of interfering in the lives of others to ensure that they see and understand the self-evident truth of the Christian religion, utilitarian government, liberal education, modern natural science, free market economy, universal human rights, and democratic representation, loving and caring for our fellow human beings, Passmore argues, may well be better pursued by 'treating a neighbour as another human being, taking his interests into account, coming to his aid if he is in difficulties, admitting his right to live his own life in his own way.'\(^{50}\) Indeed, it is this notion of love and care that ushered in a


\(^{50}\) Passmore, *The Perfectibility of Man*, 509.
universal international society founded on the pluralist ethics of the global covenant and which
underpinned the still very powerful claim that destroyed the legitimacy of trusteeship. This belief is
expressed best in an unnamed African's protest to Margery Perham: 'We do not wish for any special
treatment. We do not wish to be protected; we want to be allowed to make our own mistakes, and to
work out our own salvation, as you did.'51

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