CULTURE, SOVEREIGNTY AND THE CREATION OF NATION-STATES

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1. Introduction:

The concept of self-determination became especially prominent in international law during the inter-war years, this principally as a consequence of President Woodrow Wilson's articulation of the idea in the deliberations leading to the creation of the League of Nations. The concept of self-determination had, of course, an extremely powerful resonance because it suggested a mechanism by which a particular group of people could acquire sovereignty, become nation-states in the international system. In this paper I seek to trace out the different models of the nation-state that were developed by the League of Nations. And further, in keeping with the themes of this conference, I will focus in this analysis on the relationship between the problem of 'cultural difference' and the creation of the nation-state. First, the lawyers of the League had to address the problem of nationalism in the new states of Eastern Europe. Here the problem of cultural difference assumed the form of the problem of how international law and institutions could ensure that different ethnic groups within the one territory could live in peace. Second, the League had to confront 'colonial problems', which involved managing relations between two disparate cultural groupings understood as being the 'civilized' Europeans and the uncivilized 'non-Europeans'; this had to be achieved in the context of all the changes that had occurred in international thinking and relations following the First World War. The problems of cultural difference acquired a particular significance because, as the following discussion attempts to suggest, issues of culture were intimately connected with issues of sovereignty.

In attempting to resolve these two major problems the League lawyers created two different regimes which embodied two different understandings of the character of the nation-state. The problem of nationalism and minorities was to be addressed by the Minority Treaty System of the League. Colonial problems were to be addressed by the Mandate System of the League of Nations. My interest here lies in sketching the connections between the League’s understanding of the particular character of the problem of difference in each of these regimes, and the technologies developed by international law and institutions for addressing that problem, and how these regimes conceptualized the relationship between culture and sovereignty.

2. The Minority Treaty System

The broad claim of nationalism, that every distinct nation-distinct because of religion, history, language- should strive towards achieving sovereign statehood has generated considerable tension in multi-national states. While nationalism emerged prominently in the nineteenth century, the religious and racial conflicts which were the cause of most nationalist struggles occurred, of course, in much earlier times. Religious and cultural tensions had led to many of the most devastating wars experienced by Europe in the sixteenth and seventeenth centuries. The Thirty Years War, fought along religious lines, extended throughout much of Western Europe. The Peace of Westphalia, which brought this war to an end, is heralded by virtually all international lawyers as signifying the birth of international law and the modern state system.\(^1\) Sovereign, secular states became the primary unit of international relations as a result of the Peace. Thus, arguably, even the most traditional and orthodox versions of sovereignty doctrine characterize it as having emerged as a means of mediating in

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conflicts between groups belonging to different cultural entities. Nevertheless, the significance of this theme has not been sufficiently developed. This is in part, perhaps, because the purpose of the scheme was, precisely, to banish religious difference as an important conceptual tool with which to view international relations.

Nationalist violence resulting from the attempts of peoples in Eastern European claiming to belong to distinct cultures to free themselves of foreign, imperial domination, had been a significant cause of the Great War of 1914-1918. Thus the League of Nations, regarded the resolution of the problem of nationalist conflict to be among its primary tasks. The League sought to accommodate the nationalist claim—which, in its simplest form, argued for one nation, one state—by creating a number of new states in Eastern Europe and ensuring, as far as possible, that state boundaries corresponded with national groups. This initiative was largely dictated by the views of President Wilson of the United States who asserted the principle of self-determination as a means of achieving this, and who declared that `Self-determination is not a mere phrase, it is an imperative principle of action which statesmen will henceforth ignore at their peril'.

The intricately multicultural nature of a number of states such as Poland defied any attempts to encapsulate distinct peoples in separate territorial units. As a consequence, the League subjected these states to the minority treaty system by which cultural minorities within a state were provided with a system of internationally administered protection.

The broad idea animating the League, both in the creation of the new states of Eastern Europe, and the minority treaty system was that the cultural identity of particular peoples had to be protected and respected in order to prevent a repeat of the tragic events which led to the World War. Within the treaty states, then, international lawyers had to devise a means of reconciling the claims made by different national groups within the one territorial state, each of which claimed to be culturally distinctive and therefore entitled to be sovereign. The problem of cultural difference, as it emerged in the context of the minority treaty system, took the form of the problem of how international law was to manage the rival nationalisms of the majority culture (which was understood by the League to control the state) and the minority cultures within these new states.

The minority protection regime was created by specific treaties between the ‘new states’ which emerged from the First World War, and the ‘Principal Allied and Associated Powers’ which consisted of the victorious powers. The Polish treaty was the first to be formulated; it was concluded on June 28, 1919. This became the model for all subsequent minority treaties, although modifications were made in many cases.

The treaties embodied three basic sets of rights, all of which can be seen as attempting, in different ways, to mediate within and resolve the problem of cultural difference. The first set of rights focused on questions of nationality. These were necessitated by the fact that Poland, with its newly established

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8 Macartney, at 190.


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boundaries, now contained German, Austrian, Russian and Hungarian nationals. Article 3 of the Treaty outlined the options available to these nationals; they could either choose to become Polish or adopt any other nationality available to them in accordance with the terms of the treaty. Complex issues arose as to who could exercise these options and in what circumstances. The second set of rights could be termed ‘equality rights’, the basic civil and political rights embodied in liberal democratic constitutions. Hence Article 2 of the Treaty stated that

Poland undertakes to assure full and complete protection of life and liberty to all inhabitants of Poland without distinction of birth, nationality, language, race or religion.\(^5\)

Equality before the law regardless of race, language or religion was provided for by Article 7. Article 8 stated in part that

Polish nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Polish nationals.

While this appears to be orthodox enough, the statement ‘in law and in fact’ became extremely problematic in subsequent cases. Finally, special provisions were made for minorities. Article 9 basically provided that in towns where ‘a considerable proportion of Polish nationals are of other than Polish speech’, the public education system was to provide instruction in the language of the minority. Similarly, such minorities were to be given a proportion of the public funds made available for ‘educational, religious or charitable purposes’. These regime thus created represents a radical departure from classic ideas of sovereignty and an important step in the evolution of international human rights law, as these sovereign states subjected to the regime were now exposed to international scrutiny with regard to their treatment of minorities.

These provisions embodied a number of tensions and competing views on the character of minority protection, the significance of cultural identity and, in the final analysis, the purpose of the Minority Treaty regime. Many of the drafters-English and American lawyers and jurists were prominent in the drafting process- acted on liberal assumptions and were of the view that minorities were seeking equality, a goal which could be essentially achieved through the provisions ensuring the civil and political rights of minorities including, most prominently, the norm against discrimination. Seen in this way, the problem of difference could be resolved by norms prohibiting discrimination. As a further concession to the peculiarities of the multi-national state, however, the drafters included the provisions on culture-relating to education and the maintenance of cultural institutions. This measure, however, fell short of providing minorities with any rights to political autonomy, as it was feared that this would promote the emergence of a group identity which would eventually demand secession.

The vague provisions of the minority treaty system raised complex issues as to when it could be said that a state had fulfilled its obligations under the treaty. For example, when a state undertook to provide a minority with ‘the same treatment and security in law and in fact’ as it offered to the majority population, did this mean that the state was required to take special measures, something akin to affirmative action, to ensure this equality? What was the standard by which equality could be assessed?\(^6\)

These questions inevitably impinged on the larger issue. What was the ultimate purpose of the minority treaty system? What was the relationship it envisaged between the majority and minority cultures? Here, there were at least three major frameworks suggested. 1. Interpreting the minority rights provisions in their most expansive terms, it was argued that, by enabling the preservation of

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5 Article 2, Polish Minorities Treaty

11 See Advisory Opinion, Minority Schools in Albania Case, 1935 PCIJ (ser A/B) April 6, 1935.
minority cultures, they were in effect creating a ‘state within a state’. This argument was put most forcefully by the states which were required to establish the regimes in their territory, and which protested that their sovereignty was profoundly impaired as a result. 2. The Assimilationist thesis, by contrast, saw the regime as being a transitory measure designed to enable their gradual assimilation into the larger community—thus resolving the problem of ethnic conflict. 3. The ‘Communities living in Harmony’ thesis represented the intermediate position, which was espoused by the League Council, which argued that if minority rights were effectively protected, then minorities would live in harmony with the majority without being driven to seek their own state.

The problem of cultural difference threatened to destroy the multicultural state and thereby, undermine international stability. Despite all the new technologies applied to it and despite the extensive deliberations of the PCIJ which gave a number of Advisory Opinions on the meaning and effect of the minority treaties, however, the problem of cultural difference, as it manifested itself in the minority treaty system, defied easy resolution, not least because no clear agreement existed as to what the relationship between majority and minority cultures should be.

3. The Mandate System of the League of Nations

The Mandate System was devised in order to provide internationally supervised protection for the peoples of the Middle East, Africa and the Pacific who had previously been under the control of Germany or the Ottoman Empire, the powers defeated in the First World War. President Wilson opposed the attempts to make these territories the colonies of the victorious Allied Powers. Instead, he proposed the creation of the Mandate System, whose essential purpose was to protect the interests of ‘backward peoples’. This was to be achieved by appointing certain states, officially designated as mandatories, as administrators of these territories on behalf of the League, and subjecting these mandatories to the League’s supervision.

The primary and general substantive obligation undertaken by the mandatory power is stated in sub-section 1 of Article 22 of the League Covenant, which enunciates the concept of a ‘sacred trust for civilization’:

1. To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples 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 civilization and that securities for the performance of this trust should be embodied in this Covenant. 8

The phrase ‘people not yet able to stand by themselves’ suggested that this arrangement was temporary, and it was generally understood that Mandatory powers were required, to promote both the welfare and self-government of mandate peoples. 9 Indeed, it was contemplated that certain Mandate territories, such as those of the Middle East, would become independent sovereign states.

7 On these different understandings of the minority treaty system, see Macartney, 270 ff and Robinson, 25 ff.
8 LEAGUE OF NATIONS COVENANT art.22 para. 1-2.
9 Thus Hall asserts that ‘self-government is the central positive conception set out in Article 22 of the League Covenant’. H. Duncan Hall, Mandates, Dependencies and Trusteeship (1945). The classic, most comprehensive work on the mandate system is Quincy Wright, Mandates Under the League of Nations (1930)
The Mandate Article provided for a three-tiered system of administration as Mandate territories were classified according to their degree of advancement. The non-European territories of the former Turkish Empire were classified as ‘A’ mandates whose ‘existence as independent nations can be provisionally recognized’; German territories in Central Africa were placed within the ‘B’ regime, and South-West Africa and the Pacific territories under the ‘C’ regime.

The Mandate System, like so many innovations of the inter-war period, was seen as a departure from the evils of the nineteenth century system of international law and relations. Whereas nineteenth century positivist international law had legitimized colonialism and the exploitation of the natives, the new international law sought to protect them through appropriately designed international institutions. A further subtle, but significant shift occurred in the way in which non-European states and peoples were characterized. Whereas the nineteenth century jurists had established an explicitly cultural division between civilized and uncivilized states which they deployed for the purpose of excluding non-European states and rendering them non-sovereign, the Mandate System formulated the relationship as being, broadly, between the ‘advanced’ (European) and ‘backward’ (non-European) peoples who were ‘not yet able to stand by themselves’. The broad duties articulated by Article 22 of the League Covenant were interpreted in the context of the more refined ideas of the proper duties of any colonial power—of discharging the dual mandate of ensuring both the material progress of the peoples of the mandated territories, and their moral and political development. These more liberal-humanist conceptions of the civilizing mission which were articulated in their fullest form after the war, represented a new way of conceptualizing the difference between Europeans and non-Europeans, and we see in the Mandate System the gradual emergence of a distinction based not only on ‘civilizations’, but on economic factors. The mandate peoples and territories were thus seen in economic terms, and the technologies developed by the League were directed towards alleviating that condition of economic backwardness. It was understood, furthermore, that the mandate experiment could in time extend beyond the mandate territories alone, and could provide important guidance for the management of relations between European and non-European states in general.

The fundamental paradox, however, was that even while the mandate system proclaimed that it was inaugurating a new relationship between advanced and backward states, the assumption remained that mandate territories would play the same economic role as colonial territories. Thus Lord Lugard, who became a prominent member of the PMC, had asserted that ‘the democracies of today claim the right to work, and the satisfaction of that claim is impossible without the raw materials of the tropics on the one hand and their markets on the other’. Thus, it could be argued, when seen in economic terms, the purpose of the mandate system was not so much to dismantle colonialism, as to reproduce it with a new set of ideological justifications which derived from the liberal-humanist sentiment of the time, and a new set of legal techniques created by international institutions.

Unlike the minority treaty system which ostensibly aspired to protect and strengthen the cultural identity of various nationalist groups, the mandate system essentially sought to transform, to civilize the backward peoples of the mandate territories. The universalizing mission of nineteenth century, positivist international law had been completed to the extent that the status of virtually all peoples and territories, was now determined in accordance with that European international law. The mandate system represented a further and more intrusive stage of the universalizing mission as it legitimized international law’s presence within the dependent territory itself. As a consequence, a European/Western based international law regulated not only the relations between states, but, in the case of the mandate territories, relations within those societies.

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10 The concept of the dual mandate had been magisterially elaborated by Sir Frederick Lugard, in his classic work, THE DUAL MANDATE (1922).
11 Lugard, The Dual Mandate, p. 61.
Equally significantly, the mandate system, was based on the premise that it was possible to formulate and realize a universal model of self-government and the nation state. This followed from the League's assumption that all the disparate mandate territories, spreading from the Middle East, to Africa and the Pacific, were to be directed towards the broad ideal self-government. At a more practical level, the validity or otherwise of mandatory policies could not be assessed by the League without the formulation of such a model. Given this constellation of ideas, the mandate system problematized, in an unprecedented way, a series of questions: what is the universal nation-state that the mandate territories were to become? What should be the political, economic and social structure of such a state?

The League created a number of new techniques in an effort to fulfil its ambitions and resolve these problems. First the League-acting through the PMC- developed a complex system of information gathering in order to ascertain the economic, social and political characteristics of a territory; essentially, the League attempted to render these territories completely transparent and visible to international scrutiny and management. Secondly, the League developed a set of standards against which the information it had gathered could be interpreted and assessed. These standards were used to determine the economic and social progress of a territory and, further, to formulate regulations for the governance of those territories. As a consequence of this, the nation-state that the mandate system was striving to create was understood, not merely as a juridical status, but as a massive complex of standards and regulations which represented the sociological, economic and political criteria that a territory had to satisfy in order to become a functioning, independent, nation-state.

Most significantly, every aspect of the social, economic and political life of the mandate territory became subject to the scrutiny of the PMC, ranging from the labor practices of the natives to their customs and their political institutions, to land tenure systems, external revenues, order and justice. Consequently, precisely because the PMC had access to the interior social life of the mandate territory and, further, the new technology of standards, it was possible to apply the categories of ‘advanced’ and ‘backward’ to every aspect of the social life of the mandate territory, this with the purpose of transforming the ‘backward’ into the ‘advanced’. Crucially, however, this project operated with the overall purpose of furthering the particular type of economic development which the League envisaged for the mandate territories, economic development which was essentially a reproduction of colonial economic relations. Thus extensive labor regulations were promulgated to attempt to make the native more productive, and the entire character of the self-government which the Mandate System ostensibly promoted was shaped by this powerful imperative of economic development.

Further, the officials of the Mandate System, precisely because they were monitoring and gathering so much information from so many different territories in different continents, could aspire to create a new universal science, a universal science of colonial administration that could transcend the peculiarities of any colonial power, and which could be used to create a ‘universal’ nation state. Crucially, in this context, cultural identity was understood, not so much as something that was to be preserved, but rather, as something to be appropriately transformed to further the greater task of bringing about economic development. Indeed, some members of the PMC asserted that whether a particular cultural practice or indeed, even tribe should survive or not was best assessed by whether it or they could survive the rigors of the new economic system that the Mandate System was intent on instantiating.

4. Conclusion: the Legacies of the League Experiment

The problems that the League attempted to address with such innovative techniques continue to play a prominent part in contemporary international relations. These problems are especially acute in the
many post-colonial states in Africa and Asia which have been overwhelmed by the challenges of achieving national unity in the midst of ongoing ethnic conflict, on the one hand, and development on the other.

One way of appreciating the significance of the problem of cultural difference is by noting the different doctrines and technologies that international law develops in an attempt to deal with the problem of nationalities. In doctrinal terms, the problem of nationalities has resulted in the formulation of a concept of self-determination which is still being debated and challenged. Crucially, however, something like a switch has taken place between the League period and the UN period. Whereas self-determination was initially understood as each nation should enjoy its own state, now it is the 'Mandate System' model of what might be termed the nation-state that prevails. That is, a system in which territorial boundaries are fixed, and all the inhabitants of the territory, while they may be members of distinctive cultural groupings, are united together as citizens of the modern, development state. Modernization and development, it was hoped, would create new identities that would enable and support this modern, development state. To the extent that 'cultural identity' in itself had any enduring significance in international law, this was to be found in human rights provisions, such as Article 27 of the International Covenant on Civil and Political Rights which was devised for the protection of minorities. Such provisions have provide far less protection than existed in the minority treaty system which appear to have been perceived as encouraging a cultural autonomy which could have resulted in promoting intense nationalisms.

Subsequent realities, of course, have proved these initially optimistic assessments of the new model of self-determination to be unfounded. Ethnic conflict remains one of the major problems confronting the international system. Far from undermining traditional cultural identities, the development state-and perhaps globalization itself-has intensified them. The question then remains of what sorts of protections international law should provide to cultural minorities within the context of the sovereign nation-state. Emerging norms of democratic governance and autonomy rights could be seen as attempts to address these problems: thus for example, it could be argued that if democracy became a reality in many countries, this would ensure the participation of minorities in the political process, and hence diminish ethnic tensions. But these norms leave unresolved the issue of whether, for example, minorities should be given special political rights, such as the right to autonomy, to make such participation effective. In the final analysis, perhaps, it is only through political negotiation together with adherence to the basic principles of human rights that some sort of settlement may be reached. Despite all these efforts, tragically, ethnic conflict is a powerful presence in much of contemporary Asia, Africa and Eastern-Europe. International law continues, then, to struggle with the problem of how to deal with cultural differences within states, how to mediate and settle the conflicts between different national groups within the one state making competing claims to territory and sovereignty.

The two great experiments in nation-building undertaken by the League suggest two ways of understanding the relationship between the problem of cultural difference and the emergence of sovereignty. In the case of the minority treaty system, sovereignty was intended to embody a distinct culture: and the existence of different cultures within the one territory required the formulation of a minority protection regime which was at least nominally intended to preserve the identity of that minority. In the mandate system, by contrast, sovereignty was based, not on the principle of cultural distinctiveness itself--although many nationalist groups in Africa and Asia seized on Wilson's statements to assert their own claims to statehood--but on achieving, basically, a particular type of culture, modernity or 'civilization'. In more recent times, the whole problem of cultural difference has assumed a new form whereby certain states have used the vehicle of sovereignty to express their own
cultural identities—the cultural relativism debate has been the most notable expression of this trend. The problem of cultural difference, then, in all these different manifestations, continues to present itself in both old and new versions, and poses formidable challenges to the development of international law and institutions.

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