

The Time of Revolution: Decolonisation, Heterodox International Legal

Historiography and the Problem of the Contemporary

‘Change is the law of life. That is the obvious truth of history. The current age is particularly an age of unprecedented speed and dynamism. The world has changed more in our time than throughout the whole of previous recorded history. The rate of change is still accelerating and its scope ever widening.’

Ram Prakash Anand, *New States and International Law* (Delhi: Vikas Publishing House, 1972), 1.

Introduction

‘Change’, ‘speed’, ‘dynamism’, and ‘acceleration’. This, for Ram Prakash Anand, was the language by which one could describe the global political landscape of decolonisation. It was a landscape inflected by a particular temporality – a world shrinking through the experience of an accelerating rate of social and political change – in which the natural rhythm of time appeared to be ever shortening. For Anand, time was not simply a chronometric measure of change, but rather a form of (social or political) experience, the characteristics of which would be specific to their own historical moment (‘our time’). By contrasting the experience of acceleration associated with the temporality of his own era, with the more sedate rate of change of yesteryear, Anand draws attention not only to the significance of temporality to our experience and understanding of social and political life, but also to temporality’s transitional character (giving double inflection to the adage that ‘time doesn’t stand still’).

In recent years a range of scholars have drawn attention to the apparently disjunctive temporalities of contemporary political life.¹ They point amongst other things, to the collapse of a stabilising faith in the ideas of progress, development or modernisation

¹ David Scott, *Omens of Adversity: Tragedy, Time, Memory, Justice* (Durham, North Carolina: Duke University Press, 2014), 5; François Hartog, *Regimes of Historicity: Presentism and Experiences of Time*, tr. Saskia Brown (New York, Columbia University Press, 2015).

to which Anand, alongside many others, was visibly drawn.² But my concern here is not so much to pass comment upon the political temporalities of the present day, as to work through the linkages that were at play in the work of those such as Anand – between a practice of decolonisation, a demand for the reconfiguration of international law, and a latent sensitivity to the question of time or temporality. My concern is to bring to an account of international law during the period of decolonisation, an appreciation of the idea that the central problematic was not simply one of international law’s spatial ambit, but of its temporal structure. My medium for bringing these ideas together will be through the articulation of a specifiable problem: the problem of ‘contemporaneity’.

In its everyday sense, the ‘contemporary’ stands as a kind of shorthand for the ‘present’, for the ‘hereabouts’ of the now, or perhaps as that odd in-between period, as Arendt would put it, between past and future.³ The contemporary in that sense, is that which is made intelligible by way of its contrast between a determined past, and an uncertain or unknowable future. Rather than work directly within this vein, however, I want to explore a more literal or etymological theme that is opened out by the idea of the contemporary. These themes resonate not only in terms of understanding the configurative significance of thinking in terms of the ‘contemporary’, but can also help us to see the place of the ‘contemporary’ in the legal discourses surrounding decolonisation. My interest is to think through the idea that the ‘contemporary’, as an experiential condition, carries with it two discrete connotations: that of living ‘with time’ (*con tempus*), and of living ‘at the same time as others’ (*contemporaneus*). Although these characteristics emerged as part of a particular European historical formation in late 18th Century, they became a theoretical problematic in the middle of the 20th Century when scholars of the ‘Third

² See, Zygmunt Baumann, *Retrotopia* (Cambridge: Polity Press, 2017); Enzo Traverso, *Left Wing Melancholia: Marxism, History, and Memory* (New York: Columbia University Press, 2016), 1–21; Berber Bevernage, *History, Memory, and State-Sponsored Violence: Time and Justice* (New York: Routledge, 2012); John Torpey, *Making Whole What Has been Smashed: On Reparations Politics* (Cambridge, Massachusetts: Harvard University Press, 2006).

³ Hannah Arendt, *Between Past and Future: Eight Exercises in Political Thought* (New York: Penguin Books, 2006).

World' sought to ground the terms of their engagement with international law, and to account for its relationship to a specifically colonial past.

Put simply, my argument is as follows. The 1950s and 60s was a time in which mainstream, orthodox (for which read European/Northern) international legal thought and practice was largely forward-looking: directed towards building a new global order configured around the institutions of the United Nations and its specialized agencies, forging, in Jenks' language, a new 'common law' for humankind. At the same time, an emergent generation of scholars from Asia and Africa were actively engaged in (re)describing the discipline's past - renarrating the history of international law so as to relocate the Third World within it.⁴ Central to that 'heterodox' historical practice, I argue, was the problem of the contemporary - or, more specifically, the apparent 'non-contemporary contemporaneity' of the non-European world.⁵ This 'allochronic' experience – of the sense that even if we live *at* the same time we may not all live *in* the same time - was central to the analytics of savagery and civilisation that underpinned colonial legalities in the 19th Century. It also, however, became a central pre-occupation for Third World scholars writing about international law in the era of decolonisation. The question I want to sneak up on, is how we might understand that allochronic sensibility today in light of what David

⁴ A very selective array of this scholarship includes: J. J. G. Syatauw, *Some Newly Established Asian States and the Development of International Law* (The Hague: Martinus Nijhoff, 1961); Nagendra Singh, *India and International Law* (Delhi: S. Chand, 1969); Ram Prakash Anand, *New States and International Law* (Delhi: Vikas Publishing House, 1972); Ram Prakash Anand, ed., *Asian States in the Development of Universal International Law* (Delhi: Vikas Publishing House, 1972); S. Prakash Sinha, *New Nations and the Law of Nations* (Leiden: A.W. Sijthoff, 1967); T. O. Elias, *Africa and the Development of International Law* (Dordrecht: Martinus Nijhoff, 1988); U. Oji Umzurike, *International Law and Colonialism in Africa* (Enugu: Nwamife Publishers, 1979).

⁵ Reinhart Koselleck, *The Practice of Conceptual History: Timing History, Spacing Concepts*, tr. Todd Samuel Presner and Others (Stanford: Stanford University Press, 2002), 166, where he speaks of 'the nonsimultaneity of diverse but, in a chronological sense, simultaneous histories' that resulted from the 'opening up of the world'. Koselleck's formulation appears to be borrowed from W. Pinder, *Das Problem der Generationen in der Kunstgeschichte Europas* (Munich: Bruckmann, 1961, first published 1926) 21, and Ernst Bloch, *Heritage of our Times*, tr. Neville Plaice and Stephen Plaice (Cambridge, Polity Press, 1991, first published 1935) who speaks of the 'simultaneity of the nonsimultaneous' and the 'synchronicity of the nonsynchronous'.

Scott calls 'the collapse and seeming dead-end of the projects of political sovereignty and anti-imperialist self-determination'.⁶

CH Alexandrowicz and Universal International Law

I want to take as my unlikely starting point on this journey the work of an equally unlikely, but nonetheless influential figure, in the heterodox tradition I seek to describe, namely, Charles Henry Alexandrowicz.⁷ Alexandrowicz may be something of an odd choice here as a representative of what I otherwise speak of as an Asian and African tradition, but my reasons for looking at his work (or at least pieces of it) are twofold. In the first place his work was a key resource for later authors in the tradition, often being the primary point of reference for subsequent analyses of European-Asian legal relations in the 17th and 18th Centuries.⁸ In the second place, Alexandrowicz's analysis may usefully be contrasted with that of later authors so as to allow us to understand the configurative significance of the 'contemporary'.

Alexandrowicz was to become best known for a series of major works written in the 1950s and 1960s⁹ on the history of international law and what he called the 'Afro-Asian world'.¹⁰ But it is in a formative article written in the *British Yearbook of*

⁶ David Scott, "The Temporality of Generations: Dialogue, Tradition, Criticism," *New Literary History* 45, no. 2 (Spring 2014): 158.

⁷ See generally, David Armitage and Jennifer Potts, "'This Modern Grotius' An Introduction to the Life and Thought of C.H. Alexandrowicz" in David Armitage and Jennifer Potts (eds), *The Law of Nations in Global History* (Oxford: Oxford University Press, 2017) 1; Carl Landauer, "The Polish Rider: CH Alexandrowicz and the Reorientation of International Law, Part I: Madras Studies" *7 London Review of International Law* (2019) 321.

⁸ Armitage and Potts, "This Modern Grotius", 3

⁹ For an account of his life and work see *ibid*, 3-15. Alexandrowicz's earlier work at the University of Madras includes: "India and the Tibetan Tragedy," *Foreign Affairs* 31, no. 2 (1953): 495-500; "The Quasi-Judicial Function in Recognition of States and Governments," *American Journal of International Law*, 46, no. 4 (1952): 631-40; *International Economic Organisations* (New York: Frederick A. Praeger, 1953); "Is India a Federation?," *International and Comparative Law Quarterly* 3, no. 3 (1954): 393-403; "The Legal Position of Tibet," *American Journal of International Law* 48, no. 2 (1954): 265-74; "Grotius and India," *Indian Year Book of International Affairs* 3 (1954): 357-67; "Mogul Sovereignty and the Law of Nations," *Indian Year Book of International Affairs* 4 (1955) 316-24; *Constitutional Development in India* (Bombay: Oxford University Press, 1957).

¹⁰ Charles Henry Alexandrowicz, *Treaty and Diplomatic Relations between European and South Asian Powers in the Seventeenth and Eighteenth Centuries* (Leiden: A.W. Sijthoff, 1961), *An Introduction to the History of the Law of Nations in the East Indies: (16th, 17th and*

International Law in 1961 that he sets out the central framework for his subsequent work – namely, a thoroughgoing critique of what he saw to be traditional, ‘positivist’, accounts of international law that had been generated during the course of the 19th Century. The article was entitled, perchance to obscure its own radical agenda, ‘Doctrinal Aspects of the Universality of the Law of Nations’.¹¹

Alexandrowicz begins the article somewhat obscurely by speaking of the ‘process of European consolidation’ that had been gathering momentum since 1945, and how that process had its apparent origins in the work of ‘positivist’ writers of the 18th Century who had identified the existence of a European law of nations based on treaties and custom. He proceeds, however, to note that this ‘regional conception’ was juxtaposed against, and conflicted with, an earlier ‘universal and natural conception of the law of nations’, giving rise to the question of ‘whether the positivist European reality was reconcilable with the idea of universalism of the law of nations which drew its legal source from the declining concept of natural law but had a reality of its own’.¹²

To answer that question, Alexandrowicz turns back to the work of a little known author – DHL Ompteda – who had written a survey of writers and treatises on the natural and positive law of nations in Regensburg in 1785.¹³ Ompteda, as

18th Centuries) (Oxford: Clarendon Press, 1967), *The Afro-Asian World and the Law of Nations* (Leiden: A.W. Sijthoff, 1968), *Studies in the History of the Law of Nations* (The Hague: Martinus Nijhoff, 1972) and *The European-African Confrontation: A Study in Treaty Making* (Leiden: A. W. Sijthoff, 1973). See also, Charles Henry Alexandrowicz, “The Discriminatory Clause in South East Asian Treaties in Seventeenth and Eighteenth Centuries,” *Indian Yearbook of International Affairs* 6 (1957): 126–42; “Freitas versus Grotius,” *British Yearbook of International Law* 35 (1959): 162–82; “Paulus Vladimiri and the Development of the Doctrine of Coexistence of Christian and Non-Christian Countries,” *British Yearbook of International Law* 39 (1963) 441–8; “Kautilyan Principles and the Law of Nations,” *British Yearbook of International Law* 41 (1965–66) 301–20; “Pufendorf-Crull and the Afro-Asian World,” *British Yearbook of International Law* 43 (1968–9) 205–8; *The Law Making Functions of the Specialised Agencies of the United Nations* (Sydney: Angus and Robertson, 1973).

¹¹ Charles Henry Alexandrowicz, “Doctrinal Aspects of the Universality of the Law of Nations,” *British Yearbook of International Law* 37 (1961): 506–15.

¹² *Ibid*, 506.

¹³ Dietrich Heinrich Ludwig von Ompteda, *Literatur des gesamtentnürlichen und positive Völkerrechts* (Aalen: Scientia Verlag 1785).

Alexandrowicz was to suggest, had sought to reconcile the two fields of thought – defending the universalist natural law tradition against the particularising influence of a voluntarist account of the law of nations that, in the hands of those such as Moser,¹⁴ had apparently shrunk its spatial parameters to Europe alone. This shift from the universal to the particular, and from natural law to positive law, Alexandrowicz perceived to be both perplexing and problematic in equal measure: how was it, at a time at which the world was experiencing an expansion of world commercial relations, ‘the positive law of nations was shrunk to the European area’?¹⁵ Was this not to create a legal vacuum? How, furthermore, might one conceive of the continuity of the law of nations when faced with the postulated break between tradition and modernity?

For Alexandrowicz, following in the steps of Ompteda, the answer was not so much a thoroughgoing critique of positivism *per se* – although, at the time at which he was writing, that was a sentiment widely shared¹⁶ – but an attempt to combine the natural and positivist law traditions by displacing a variant of the latter which he was to refer to as ‘doctrinal positivism’.¹⁷ His point, in essence, was that the 19th Century jurists who had taken their cue from the likes of Moser and de Martens in describing international law as being, in its essence, European, had failed to take account of the empirical realities of the many, and varied, treaties and other arrangements that had been concluded between European powers and non-European sovereigns (Siam, China, Japan, India and the Ottoman Empire) over the course of earlier centuries.¹⁸ They were, in a sense, not ‘positive’ enough in their method, supplanting a properly empirical account of the workings of international law, with an ideologically laden doctrine that operated on the back of an implicit distinction (which he attributes to Ranke) between those who had history and those who did not.¹⁹ In the process, they

¹⁴ F. C. von Moser, *Beyträge zu dem Staats und Völker-Recht und der Geschichte* (Frankfurt: JC Gebhard, 1764).

¹⁵ Alexandrowicz, “Doctrinal Aspects,” 515.

¹⁶ See David Kennedy, “International Law and the Nineteenth Century: History of an Illusion,” *Quinnipiac Law Review* 17, no. 1 (Spring 1997): 120.

¹⁷ See Charles Henry Alexandrowicz, “Empirical and Doctrinal Positivism in International Law,” *British Yearbook of International Law* 47 (1974–5): 286–89.

¹⁸ See also Alexandrowicz, “Freitas versus Grotius,” 166–167; “Kautilyan Principles,” 301–2.

¹⁹ Alexandrowicz, “Empirical and Doctrinal Positivism,” 289: ‘positivism, in its endeavor to be empirical and in its determination to do away with doctrinal international law (based on the

were to compound error upon error – speaking, as a consequence, of the apparent ‘admission’ of Turkey to the European concert in 1856, of the subsequent ‘enlargement’ of the family of nations beyond Europe, and putting into practice a technology of ‘recognition’ as a process by which states are fictitiously endowed *de novo* with legal capacity. The family of nations could not, he suggests, ‘have been reduced from universality to a regional framework’ purely by means of ‘a change of doctrine’,²⁰ and to argue as much was effectively to either lapse into anachronism, or create a legal vacuum where none, in reality, existed.

As Anghie has subsequently observed, for all of his desire to recuperate the history of the non-European world within the discourse of international law, Alexandrowicz was nevertheless forced into the position of regarding the practice of colonialism itself as either essentially marginal to the formation of the discipline, or perhaps entirely extraneous to the proper articulation or understanding of the rules of international law.²¹ Thus, in one direction, Alexandrowicz had to distance himself from the received tenets of 19th Century practice. The purported ‘admission’ of Turkey to the family of nations in 1856 was, in his view, ‘meaningless’, just as it was to suggest, as Oppenheim had done, that Persia, Siam and China were admitted at a later date than Haiti or Liberia. The ‘expansion thesis’ later popularised by Bull and Weston,²² in other words, was simply wrong. In another direction, Alexandrowicz was also forced to immunise the operations of ‘proper’ international law from any responsibility for the establishment of colonial rule in the 19th Century – which he did through the medium of associating imperial expansion with its violation.²³ For, if international law was

law of nature and nations) became itself doctrinal, adopting as much of the factual historical material as it wished to, and rejecting the remainder’.

²⁰ Alexandrowicz, “Doctrinal Aspects,” 515.

²¹ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, Cambridge University Press, 2004), 36.

²² Hedley Bull and Adam Watson, eds., *The Expansion of International Society* (New York: Oxford University Press, 1984). For earlier versions see B. V. A. Röling, *International Law in an Expanded World* (Amsterdam: Djambatan N.V., 1960); J. L. Brierly, *The Law of Nations* (Oxford: Clarendon Press 1963, 6th ed.); Josef Laurenz Kunz, *The Changing Law of Nations* (Columbus: Ohio State University Press, 1968).

²³ As Armitage and Potts point out, Alexandrowicz took the view that the exclusion of Asian states from the family of nations ‘was illegitimate in legal as well as moral terms, because the Europeans did not possess the legal capacity unilaterally to expel states whose legal

universal and not merely European, its facilitation of the partition of the non-European world would have been unthinkable. Thus, on his account, African partition at the time of the Berlin Conference of 1884–5 was not conditioned by the language of international law (*terra nullius*, occupation), but rather occurred as a consequence of the violation of the various treaties of protection that had been signed with native agencies.²⁴

Anand's New States

If Alexandrowicz's critique was to be influential in the development of the heterodox Third World historiographical tradition, it was not because the latter scholars all shared his analysis. Some certainly worked in the same analytical register, and sought, like Alexandrowicz,²⁵ to (re)discover and elaborate upon the lost traditions – detailing the regional Asian or African systems of international law that pre-existed colonial rule and interacted with it.²⁶ For others, however, Alexandrowicz's dismissal of 19th Century positivism as simply an erroneous ideology could not be sustained. For them, a critique of the ideology of 19th Century colonial international law was to be overcome not by insisting upon its 'unreality' but by admitting its historical purchase, and then positing the existence of a fundamental break between the 'colonial' and 'modern' eras brought about by the struggle for Third World sovereignty.²⁷ Where these latter responses parted company with Alexandrowicz was, as we shall see, on the question of how to account for the (apparent) universality of international law in

status they had once recognized in theory and in practice'. Armitage and Potts, "This Modern Grotius", 18.

²⁴ Alexandrowicz, "The European-African Confrontation," 117, 127, in which he describes the process of the consolidation of European titles in Africa as one in which '[i]nternational law disappears from the scene' and in which African rulers were to 'forfeit one by one the benefits and advantages stipulated... in treaties.'

²⁵ See especially, Alexandrowicz, "Kautilyan Principles."

²⁶ See e.g. Syatauw, *Some Newly Established Asian States*; Elias, *Africa and the Development of International Law*. For a much earlier account of this kind see Pramathanath Bandyopadhyaya, *International Law and Custom in Ancient India* (Calcutta: Calcutta University Press, 1920). See generally Arnulf Becker-Lorca, *Mestizo International Law: A Global Intellectual History 1842-1933* (Cambridge: Cambridge University Press, 2015).

²⁷ See e.g. Georges Abi Saab, "The Newly Independent States and the Rules of International Law: An Outline," *Howard Law Journal* 8, no. 2 (Spring 1962): 97–121; Mohammed Bedjaoui, *Towards a New International Economic Order* (Paris: United Nations Educational, Scientific and Cultural Organisation, 1979) 11.

the mid 20th Century, and how to engage the received vestiges of the colonial (legal) inheritance.

A useful contrast here is found in the work of another, somewhat younger, scholar similarly working in the Indian sub-continent – Ram Prakash Anand. Anand, whilst clearly appreciative of Alexandrowicz’s work, was somewhat less concerned with writing about history in the way in which Alexandrowicz had essayed, than attempting to grapple with what he saw to be the contemporary problematics of ‘newness’. For him the problem was how international law might be developed or changed to take into account the interests of the newly independent states in Asia and Africa. There was a range of questions here, which included, for Anand, the conditions of international adjudication,²⁸ law of the sea,²⁹ and sovereign equality.³⁰ But in order to engage with any of these, Anand recognised that he had, first of all, to account for history.

His approach to the question of history was outlined most clearly in *New States and International Law*, written in 1972. In that work, Anand begins with the observation that ‘traditional international law’ was largely a law ‘developed among the Western European countries’.³¹ ‘Even a cursory look at the history of international law’, he suggests, ‘leaves no doubt about the Eurocentric nature of the law developed by and for the benefit of the rich, industrial, and powerful states of Western Europe’.³² ‘In the escort of the capital that travelled from Europe’, he explained, ‘went the European business practices, European civilisation, and European law’.³³ Yet, at the same time,

²⁸ See eg. Ram Prakash Anand, *Compulsory Jurisdiction of the International Court of Justice* (London: Asia Publishing House, 1961); *Studies in International Adjudication* (Dehli: Vikas Publications, 1969); *International Courts and Contemporary Conflicts* (New York: Asia Publishing House, 1974).

²⁹ Ram Prakash Anand, *Legal Regime of the Sea-Bed and the Developing Countries* (Delhi: Thomson Press, 1975); *Origin and Development of the Law of the Sea, History of International Law Revisited* (The Hague: Martinus Nijhoff, 1983); ed., *Law of the Sea: Caracas and Beyond* (New Delhi, Radiant Publishers, 1978).

³⁰ Ram Prakash Anand, *Sovereign Equality of States and International Law* (Delhi: Hope India Publications, 2008).

³¹ Anand, *New States*, 6.

³² *Ibid*, 45.

³³ *Ibid*.

he observes that the 'sudden expansion of the international society has upset the whole equilibrium'.³⁴ The alteration of what he identified as the 'sociological structure' of international society had to be accompanied by an alteration in its law. 'Law', he affirmed, 'is not a constant in society, but is a function' and hence 'ought to change with changes in views, powers and interests in the community'.³⁵ It was on the grounds of the functional needs of this new international society, in other words, that a universal international law could and should be built.

Whilst both Alexandrowicz and Anand thus shared a common starting point – how to reconcile their commitment to international law with an understanding of the exclusionary practices of the 19th Century tradition – their answers to it were radically different. For Alexandrowicz it was a question reaching back to the universal aspirations of the natural law tradition and subjecting, at the same time, 19th Century 'doctrinal' positivism to a form of immanent critique ('real' international law, in its empirical variety, was always universal). For Anand it was a question of affirming the Eurocentric origins of 'traditional' international law, but advocating its subversion by reference to a functionalist analytics that demanded law to be adjusted so as to bring it into line with the demands of the prevailing political or social order. 'We are', as he put it, 'entering upon a new age in the history of man, an age which has no precedent in human experience.'³⁶

The Stakes of History

The difference between these two standpoints was, as both were no doubt aware, of considerable significance at the time. Throughout the period of decolonisation, what were referred to as the 'new states' all had to negotiate the conditions of their formal 'entry' into international society, and the extent of their freedom in respect of inherited legal arrangements – whether that be colonial borders, concession agreements, public debts, or treaties governing the presence of foreign military

³⁴ Ibid, 46.

³⁵ Ibid.

³⁶ Ibid, 2.

bases.³⁷ They were also concerned about the constraints imposed by the rules of state responsibility governing foreign investment and the associated practice of diplomatic protection,³⁸ and about the conditions under which unequal treaties might be challenged.³⁹ They were similarly aware of the way in which ‘the same body of international law that they are now asked to abide by, sanctioned their previous subjugation and exploitation and stood as a bar to their emancipation’.⁴⁰

The routine response from the imperial Metropole on many such questions was to insist, not only that the field of established customary international law was non-negotiable,⁴¹ but that legal continuity was a priority – insisting, for example, upon the permanence of territorial arrangements, the protection of vested or acquired rights, the localisation of debt, and the internationally protected character of concession agreements.⁴² By contrast, the response from scholars in the Third World was frequently to insist upon the radical character of the legal change effected by decolonisation and the need for ‘new states’ to re-evaluate the legal relations that appear to impinge upon the terms of their independence. Bedjaoui, for example, argued that such states were presented with a double mission: on the one hand, to establish their sovereignty and political independence; on the other, to seek to

³⁷ See generally Matthew Craven, *The Decolonisation of International Law: State Succession and the Law of Treaties* (Oxford: Oxford University Press, 2007); Okon Udokang, *Succession of New States to International Treaties* (Dobbs Ferry: Oceana Publications, Inc., 1972); Yilma Makonnen, *International Law and the New States of Africa* (Addis Ababa; New York: United Nations Educational, Scientific and Cultural Organisation, 1983).

³⁸ See e.g., A. A. Fatouros, “International Law and the Third World,” *Virginia Law Review* 50, no. 5 (June 1964): 783–823.

³⁹ See e.g., Lung-Fong Chen, *State Succession Relating to Unequal Treaties* (Hamden: Archon Books, 1974).

⁴⁰ Abi Saab, “The Newly Independent States,” 100.

⁴¹ See e.g. Lassa Francis Lawrence Oppenheim, *International Law: A Treatise* (London, Longmans, Green, 1905, 1st ed.), 17–18: ‘No single State can say on its admittance into the Family of Nations that it desires to be subjected to such and such a rule of International Law, and not to others. The admittance includes the duty to submit to all the existing rules...’. D. P. O’Connell, “Independence and Problems of State Succession,” in *The New Nations in International Law and Diplomacy*, ed., William V. O’Brien (New York and Washington: Frederick A. Praeger, 1965), 12: ‘it is necessary to point out that a new state is born into a world of law... in asserting the faculties of statehood, the new state is accepting the structure and the system of Western International law.... [I]t may not,... pick and choose.’

⁴² See e.g. O’Connell D. P., *The Law of State Succession* (Cambridge: Cambridge University Press, 1956).

eliminate the political and economic relations of domination and exploitation that had been put in place during colonial rule. Sovereign equality demanded that the new state be free to exercise its sovereignty without being burdened by the obligations of the predecessor, and, as such, there were no 'inviolable acquired rights which can be enforced against the new sovereignty state, but only pre-existing situations which that state is prepared to take into consideration for its good reasons and not for any reason imposed upon it by some unidentified rule of international law and state succession'.⁴³

At this point, it is possible to discern the critical edge to the historical revisionism practiced by Alexandrowicz and Anand. Alexandrowicz's position, ironically enough, was one that would very much align with that of the imperial Metropole – legal continuity would be a basic condition underpinned by the 'discovery' that international law was already universal. The excision of colonial rule from the story of international law's history was to suggest that there was nothing to be reformed, no necessity of radical change in its local or universal content.⁴⁴ Only aberrant 'doctrine' could be impugned (and that went as much, one would suppose, to the 'doctrine' of unequal treaties as that of *terra nullius*). Anand's position, by contrast, was one in which the provincialisation of the tradition opened up a space for new states to gain for themselves a greater freedom of action in respect of the future organisation of their political or economic affairs. For Anand, thus, the narration of history went hand in hand with a desire to free the Third World from the burdens of colonialism,⁴⁵ a desire, perhaps, to overcome the infantilising condition of 'newness'.

⁴³ Mohammed Bedjaoui, *Second Report on Succession in Respect of Matters other than Treaties, Economic and Financial Acquired Rights and State Succession*, UN Doc. A/CN.4/216 (1969), 78, para 35.

⁴⁴ Charles Henry Alexandrowicz, "New and Original States: The Issue of Reversion to Sovereignty," *International Affairs* 45 (1969): 474–5, where he notes that in case of a 'reversion to sovereignty' – such as that of Ceylon – that 'does not affect the acts of the colonial Power resulting from the legitimate exercise of its rights of sovereignty in the intervening period'.

⁴⁵ Anand, *New States*, 53–60. He quotes in that context Bedjaoui's remark that the payment of compensation for property and rights acquired during colonial rule 'would almost be tantamount to repurchasing the whole country'. Bedjaoui, *Second Report*, 68.

That the same question or problem might have offered such different responses is clearly, in some respects, a function of a different understanding of how to respond to it, and what role might be assumed by international law in the process. Alexandrowicz was responding, at a very basic level, to the Eurocentrism of the received tradition by way of a straightforward denial; Anand, by a concern that denial alone was not enough, and that what was needed was struggle. Alexandrowicz was similarly concerned with conceptualising international law as being aligned with timeless principles of universal justice against which was to be counterpoised a politics of parochial interest – whereas Anand, like Bedjaoui, was inclined to think of it as a domain of social and political action. For all these differences, my suggestion is that underlying them was a more fundamental difference between Alexandrowicz and Anand. This had to do with how they conceptualised the problem itself: whereas for Alexandrowicz it appeared to be a problem associated with the putative universality of international law, for Anand it was a problem of time or, more specifically, of contemporaneity.

The problem space of history

To explain the underlying conditions of the difference, it is helpful to turn back to the subject of Alexandrowicz's article – Dietrich Heinrich Ludwig von Ompteda. As Alexandrowicz read him, Ompteda's history merely represented an attempt to reconcile an enduring dualism within the literature of the law of nations that sought to organise the relationship between principles of natural law, on the one hand, and the *jus voluntarium*, on the other.⁴⁶ In some instances, as he was to discover, the voluntary law was thought to sit alongside natural law, and in other instances, embraced within. But what was of more significance was the fact that Ompteda sought to review the literature *as history*, and in so doing marked a decisive change in orientation, not only in respect of the aesthetics by which the law of nations would come to be represented (ie, historically), or indeed in terms of its method of law-finding (ie, empirical/rational), but its temporal and spatial organisation.

⁴⁶ Alexandrowicz, "Doctrinal Aspects," 507.

The historical consciousness that marks out the emergent practice of international legal history from the 1780s onwards was largely configured around one principle idea – that all law would have a time and place of production, and that claims to legal authority would thereby be conditioned by the social, cultural or environmental milieu in which they were forged.⁴⁷ Not only would this direct attention to concrete historical practices as a ground of law and require the organisation of sources by reference to their temporal proximity to the present, but it would also problematise precisely that which Alexandrowicz sought to overcome: for the *place* of Moser’s, de Martens or Ompteda’s law of nations could not be the world on that account, but only some segment of it. And that segment for them, of course, was to be found in the emergence of Europe as a geographical domain. Thus, from the late 18th Century, the law of nations would, in various quarters, acquire a new designation – that of the public law of Europe⁴⁸ – and would acquire at the same time a history appropriate to that formation, the origins of which would be traced from this time onwards back to Westphalia or perhaps to Rome.

If the discovery of a history proper to the European law of nations, however, was to rest upon a chronology that demarcated the past from the future, it was a chronology that not only opened out the space of the present, but also gave meaning to the ‘contemporary’. To live ‘with time’ was to live in a world in which, as Koselleck put it, the past was a space of experience that bore upon the present and the future a horizon of expectation that offered out the possibility of unrepeatable newness.⁴⁹ If the field of experience of a contemporary international law was Europe, however, then the non-European world could only exist in a condition of non-contemporary contemporaneity. It shared, in that sense, the ‘natural’ geological time of the modern world, but in ‘human time’ could only be identified as subsisting in Europe’s pre-

⁴⁷ See generally, Matthew Craven, “Theorising the Turn to History in International Law,” in *The Oxford Handbook of the Theory of International Law*, eds. Anne Orford and Florian Hoffmann (Oxford: Oxford University Press, 2016), 21–37.

⁴⁸ A. G. Heffter, *Le droit international publique de l’Europe* (Paris: Cotillon, 1857); G de, Martens, *Précis du droit des gens modern de l’Europe* (Paris: Guillaumin et Cie, 1864, 2nd ed); Johann Ludwig Klüber, *Europäisches Völkerrecht* (Schaffhausen: Hurter, 1851).

⁴⁹ Reinhart Koselleck, *Futures Past: On the Semantics of Historical Time*, tr. Keith Tribe (New York: Columbia University Press, 2004), 241.

modern past. The formation of the disciplinary knowledge of what was to become known as ‘international law’ was thus cut through by a simultaneous process of spatial disaggregation (as seemed appropriate to the human sciences), and a temporal re-integration mediated ultimately by the language of progress, evolution and civilisation. The subsequent ‘expansion’ of international law was thus to take place hand in hand with the universalisation of what Mannheim called a ‘mechanistic, externalised concept of time’⁵⁰ – facilitated, amongst other things, by the export of Western technologies of time-keeping (‘denaturalising’, as Koselleck puts it, the experience of time),⁵¹ the establishment of the prime meridian and the 24 hour day in 1884, and the later adoption of a singular chronometric measure in the form of UTC (Universal Time, Coordinated).⁵² Time, thus, was not just the meter by which experience in the world might be brought together, but a homogenising technology that itself needed to be universalised as part of that same process.

If the practice of history set the spatial and temporal conditions for the workings of international law in the 19th Century – providing, in the process, a frame of reference for colonial expansion throughout that period – it also regulated its content. For the task of the international legal historian was not just to recount the past, but rather to recount the past of international law as a distinct disciplinary formation to be contrasted with other forms of history – whether that be diplomatic history, political history, economic history and social and cultural history. Each had their own story and their own moment of origins. However – and here was the real problem – the analytic by which one could interpret or describe the past of international law was one that could only be revealed historically. One needed to go back to locate the origins, or foundational moments, of international law in order to understand the discipline as an identifiable field of knowledge and practice. It was its origins that described its character – setting out its exact essence, or immobile form, as it moved through time. But the question left open here is whether the *res gestae* of that historiographical

⁵⁰ Karl Mannheim, “The Problem of Generations,” in *Karl Mannheim: Essays*, ed. Paul Kecskemeti (London: Routledge, 1952) 281.

⁵¹ Koselleck, *The Practice of Conceptual History*, 104.

⁵² See generally Vanessa Ogle, *The Global Transformation of Time: 1870-1950* (Cambridge, Massachusetts: Harvard University Press, 2015).

practice was to be the literary tradition outlined by Ompteda, or the tradition of diplomatic intercourse preferred by Moser? Was it disclosed in the writings of Grotius, or in the annals of treaty-making? Was it evidence of spirit or of experience? An ethics of diplomacy or a field of argument? The universe of reason and experience that had hitherto been held together in the natural law tradition was thus to be exploded by an historical knowledge that demanded that it locate its disciplinary identity somewhere, in some time, and in some thing, but without a means to determine how that location might be found.

The Problematics of Heterodox Historiography: Space and Time

The heterodox international legal historiography of the 1950s and 1960s was by no means concerned with discarding all elements of this received historical formation.⁵³ Indeed, to the extent that it was still concerned with articulating accounts of the past of international law understood as a unitary phenomenon or practice (as opposed to a plurality of practices and traditions),⁵⁴ it necessarily situated itself within that tradition. Alexandrowicz's work, for example, had much in common with Lauterpacht's account of the Grotian tradition,⁵⁵ and in Anand's case, considerable reliance was placed upon the sociology of Stone⁵⁶ and Friedman⁵⁷ and upon Yale school analytics.⁵⁸ It was, as I have already suggested, the particular problem that they sought to address that delineated the heterodox tradition from mainstream, orthodox legal historiography. And this itself did not require the formation of an entirely new method for understanding the temporal or spatial organisation of the discipline. That

⁵³ Anand, *New States*, 52.

⁵⁴ See Yasuaki Ōnuma, "When was the Law of International Society Born? An Inquiry of the History of International Law from an Intercivilizational Perspective," *Journal of the History of International Law* 2, no. 1 (2000): 62.

⁵⁵ See Hirsch Lauterpacht, "The Grotian Tradition in International Law," *British Yearbook of International Law* 23 (1946): 1–53.

⁵⁶ Julius Stone, *The Province and Function of Law, Law as Logic, Justice and Social Control: A Study in Jurisprudence* (Sydney: Associated General Publications, 1946).

⁵⁷ Wolfgang Friedmann, "National Sovereignty, International Cooperation, and the Reality of International Law," *University of California Los Angeles Law Review* 10 (May 1963): 739–53; and "Half a Century of International Law," *Virginia Law Review* 50, no. 8 (Dec 1964): 1334.

⁵⁸ Myres McDougal, "International Law, Power and Policy: A Contemporary Conception," *Hague Recueil des Cours* 82 (1953): 156; Myres McDougal and Associates, *Studies in World Public Order* (New Haven: Yale University Press, 1960).

being said, within the same general framework of enquiry, one may identify in the work of Alexandrowicz and Anand two different methodological challenges with which they sought to grapple – one being the problem of universality, the other the problem of contemporaneity.

For Alexandrowicz, as we have seen, the problem that he identified was essentially that of the universality of international law, a universality that was sustained in practice but denied in doctrine. And hence his task was the historical one of rectifying that account: bringing history back to those whose history was occluded; handing back the law, so to speak, to those from whom it had been taken. In method, however, as Onuma has observed, Alexandrowicz began with the tradition he sought to critique. Whilst he claimed to overcome Eurocentrism, ‘he was fundamentally concerned with how Europeans perceived and understood the world, and not otherwise’.⁵⁹ He failed to see, in the process, ‘how the treaty practice was perceived, understood and explained by Asians or Africans during those periods.’⁶⁰ Indeed one may take this further: in taking treaties and diplomatic practice as his *res gestae*, Alexandrowicz was, in method at least, to adopt much of the positivist tradition that he sought to critique. If the empirical field with which Moser engaged was unaccountably narrow when compared to the universal formations that were the subject of Ompteda’s analysis, it was to Moser that Alexandrowicz looked for the method by which he would evidence what he saw to be missing. What Alexandrowicz did not appear to recognise was that the empirical, positivist, methodology that he deployed was one possessed of specific content and frequently freighted with the doctrine he sought to dismiss.

If for Alexandrowicz the problem was how to shore-up the universality of international law (believing, perhaps, that it was imminently endangered), then for Anand, the

⁵⁹ Onuma, “When was the Law of International Society Born?”, 61.

⁶⁰ Ibid. Cf, however, Anand’s disagreement with Onuma on this point: Ram Prakash Anand, “Onuma Yasuaki’s ‘When was the Law of International Society Born? – An Inquiry of the History of International Law from an Intercivilizational Perspective’ JHIL, Vol. 2 (2000) 1-66,” *Journal of the History of International Law* 6 (2004): 7–9.

problem was not a spatial one at all,⁶¹ but a temporal one – one concerned with the challenge of living contemporaneously. In speaking of the predominant agenda of the ‘new states’ Anand speaks first of their ‘obsession’ with ‘development’. The principal concern of such states, he suggests, was ‘the economic continuation of the political struggle for independence, as an important means of creating a new national identity or of breaking old and restrictive ties’.⁶² Despite the achievement of political independence, however, the gulf between rich and poor countries had been widening, not narrowing: ‘the economic development of the Western industrialized countries... has been proceeding faster and more steadily than it ever did... [whilst] developing countries are not developing fast enough’.⁶³ Anand’s immediate experience was one of a two-track world moving according to different temporal rhythms. It was also, and paradoxically, a world undergoing a spatial contraction as a consequence of innovations in travel and communication. The temporal conjuncture of his time was thus one marked by two simultaneous processes: on the one hand, an experience of acceleration and shrinkage as a consequence of technological innovation, travel and communications; and, on the other, a spatial differentiation in which the asymmetrical horizons of expectation and experience were weighted differently in different parts of the world. The non-European world appeared bogged down in history, whilst the European world accelerated into the future: ‘the richer you are the faster you grow’, as Anand was to put it.⁶⁴

The Time of Decolonisation

There is, evidently enough, the remainder of a 19th Century historicist account of progress in Anand’s argument here – no longer articulated, for obvious reasons, in the culturally-laden terms of savagery and civilisation, but rather in terms of a political-economy of development, industrialisation and capital accumulation. Modernisation

⁶¹ Abi Saab had already made the observation that decolonisation did not involve the ‘expansion’ of international law so much as the ‘transformation of very large parts of the globe, mostly in Africa and Asia, from objects to subjects of international law,’ Abi Saab, “The Newly Independent States,” 98.

⁶² Anand, *New States*, 86.

⁶³ *Ibid*, p. 87

⁶⁴ *Ibid*.

and development thus appeared to provide the substantive content, as Fabian observes, for the same global chronology that structured colonial thought in the 19th Century in which the present of the West was to be the future of the rest ('evolutionary Time').⁶⁵ Even if, for Anand, his concern in highlighting the allochronic condition of the developing world was largely for critical rather than descriptive purposes, his work may still be contrasted with the more radical, 'untimely' interventions of those such as Caisaire and Senghor who resisted a straightforward conflation of decolonisation with national self-determination, and sought the articulation of alternative postcolonial futures to be brought within the political imagination.⁶⁶

But there is a good deal more to the complex temporalities that Anand brings into play here than mere deference to the unilinear timeframe of modernity. Indeed one might say that his book *New States* is infused with a radically different conception of time than that which structures Fabian's critique. In the first place, the temporal calculus in operation in Anand's account was not so much an external linear temporality by which the world could be represented in terms of a sequence of instances in chronometric succession, but rather an experiential temporality – a kind of 'lived time' as Mannheim put it⁶⁷ – that placed emphasis upon the historical forces and contradictions that had shaped, and continue to shape, consciousness of social and political life. The allochronic experience of the developing world, for Anand, had thus more to do with the legacies of imperialism – the residues of practices of subjugation and exploitation – than any promise as to what the future might hold. Indeed, just as the past was hard to shake off, the future was as much a place of danger as of respite:

⁶⁵ Johannes Fabian, *Time and the Other: How Anthropology Makes its Object* (New York: Columbia University Press, 1983), 17.

⁶⁶ See Gary Wilder, *Freedom Time: Negritude, Decolonization, and the Future of the World* (Durham, North Carolina: Duke University Press, 2015).

⁶⁷ Mannheim, "The Problem of Generations," 281–2. For a discussion see Scott, "The Temporality of Generations," 162–3, in explaining Mannheim and Dilthey's conception of time here he remarks: 'We do not merely live *in* history, in the commonplace sense that we inhabit a social and political environment *conditioned* by historical forces; rather, as historical subjects our consciousness is *saturated* with time. Or, to put it another way, history is not merely an *object* of consciousness, *there* to be apprehended by a timeless subject; rather, temporality itself is the object content-of-the-form of experience'.

only by reversing ‘the present trends’, he cautioned, would the dangerous frustrations of the developing world be fended off;⁶⁸ and only by focusing hard upon the ‘problems of the present’ might the world escape the imminent threat of ‘endemic chaos, and the prospect of annihilation’.⁶⁹

In the second place, the temporality of Anand’s account was also far more complex, evoking a plurality of ‘layers of time’ or ‘hybrid rhythms’ that, as Buck-Morss was to observe, typically constituted the ‘complex force field’ of social revolution.⁷⁰ For even the objects of his title – the ‘New States’ – were to carry with them a dual temporality that threatened to collapse the divide between past and present. They were, at once, ‘new’ in the sense that they had recently acquired the ‘attributes of national sovereignty’ that enabled them to enjoy the full privileges of membership in the family of nations, but also ‘ancient’ in the sense that many ‘existed long before the so-called “older” states of Europe or America were ever founded’.⁷¹ And so far as such states were both new and old, both emerging afresh from the experience of colonial rule, yet possessing themselves a rich legal heritage,⁷² so also did that condition their approach to ‘traditional’ international law – broadly accepting, on the one hand, the principles of sovereignty, recognition, territorial integrity, non-aggression, non-intervention, sovereign equality, reciprocity, etc, yet demanding change in relation to those elements of that tradition that were associated with the perpetuation of colonial domination (eg, state responsibility, the international minimum standard and the protection of aliens).

The problem here, as Anand perceived it, was the potentially asymmetrical temporalities of law and social/ political life. International law, so far as it had been

⁶⁸ Anand, *New States*, 95. He emphasises this point by quoting Tagore: ‘[t]he weak are as great a danger for the strong as the quicksand for the elephant. They do not assist progress because they do not resist, they only drag down’, 94.

⁶⁹ *Ibid*, 116. He does, however, speak ultimately about the ‘boundless promise of the future’, but that was a future available only if ‘we survive the challenge of the present.’

⁷⁰ Susan Buck-Morss, *Dreamworld and Catastrophe: The Passing of Mass Utopia in East and West* (Cambridge, Massachusetts: MIT Press, 2002), 67.

⁷¹ Anand, *New States*, 3.

⁷² *Ibid*, 13.

developed 'in a different age, under different circumstances', threatened to operate as a stultifying influence 'lag[g]ing behind life' and producing conditions of tension and violence.⁷³ Whilst law undoubtedly 'mirrored' the past, it also served to 'project the future' and had to readjust itself to the needs of a changing international society.⁷⁴ And the costs of not doing so were equally clear:

Even a static law cannot stop the historical development in a world governed by the supreme rule of change. But this dynamic development will be brought by the violation of the static law by violent methods. If peace has to be preserved the change must be brought about by an evolution within the juridical order itself. This dynamic law should strike a balance between static rules making for security, and dynamic rules providing for the necessary change by peaceful methods in conformity with the law which is to be changed.⁷⁵

The temporal dynamism that Anand was urging upon the law necessitated the identification of new methods and new procedures for the revision and creation of international law. Customary international law and multilateral treaty making were, for their part, far too slow and piecemeal modes of change. Recognition had to be given to the 'law-creating role of consensus of the international community' as expressed, for example, in the form of the 'quasi-legislative' character of General Assembly resolution,⁷⁶ or in the production of 'instant customary international law'.⁷⁷ In an accelerating world, international law itself had to adapt itself to the new pace of change.

If Anand was concerned both with the complex temporalities of 'newness' and the potentially disjunctive rhythms of social and legal life, it was informed also by a

⁷³ Ibid, 83-4.

⁷⁴ Ibid, 84.

⁷⁵ Ibid, 83.

⁷⁶ Ibid, 78-83.

⁷⁷ See Bin Cheng, "United Nations Resolutions on Outer Space: "Instant" International Customary Law," *Indian Journal of International Law* 5 (1965): 35.

sensitivity to the multiplicity of social time that had been identified and developed by members of the Annales School,⁷⁸ such as Le Goff,⁷⁹ and Braudel.⁸⁰ For Braudel, history in general was to be broken down into successive levels marked by distinct temporalities: an almost changeless ‘geographical time’ concerned with the ‘history of man in relation to his surroundings’; a ‘social time’ concerned with the ‘history of gentle rhythms, of groups and groupings’ of states, economies and societies; and, finally, an ‘individual time’ associated with the traditional history of events (which he described as ‘surface disturbances’ or ‘waves stirred up by powerful movement of tides’).⁸¹ History had to be told, in his view, in a way that was attentive to the multiple temporalities of the social world – to the deep structures of the *longue durée* as well as to the ‘microtime’ of the event – and one can sense the same concerns animating Anand’s account of the moment of decolonisation.⁸²

Anand saw decolonisation as having ushered in a new age or epoch⁸³ – one most visibly marked by the changing social and political forces in international life. ‘Never before’, he remarks, ‘did man have so many resources at his disposal to transform life of all mankind in a single generation.’⁸⁴ Yet, ‘never before’ (he continues) ‘did man have power to destroy in a few minutes all that he has inherited from the past generations’.⁸⁵ Accompanying, then, the ‘generational’ temporalities of the creative tasks that confronted humankind, was an apocalyptic threat whose time-scale was to be measured in the microtime of the event. The work of world-making thus assumed the rhythms of social and geographical time, but was confronted simultaneously by a

⁷⁸ See generally, André Burguière, *The Annales School: An Intellectual History*, tr. J. M. Todd (Ithaca, Cornell University Press, 2009).

⁷⁹ Jacques Le Goff, *Time, Work and Culture in the Middle Ages* Tr A Goldhammer (Chicago: University of Chicago Press, 1980).

⁸⁰ Fernand Braudel, *On History*, tr. S. Matthews (Chicago: University of Chicago Press, 1982).

⁸¹ *Ibid.*, 3.

⁸² Koselleck notes, however, that whilst ‘[w]e might speak, not of one historical time, but of many that overlie one another’ they nevertheless depend upon ‘the measures of time that derive from the mathematical physical understanding of nature’, *The Practice of Conceptual History*, 110.

⁸³ Anand, *New States*, 2: ‘We are living today through the birthpangs of this wholly new world’.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

scientific/military/political technology whose temporal structure took the form of the near instantaneous. And here one finds a paradoxical inversion – the stultifying slowness of the developing world was yet the site of creativity and human labour, whereas the accelerated modernity of the West was the locale of its imminent destruction.

But whilst, at this moment, Anand seemed content with suggesting that the West and the Third World were moving at different speeds, he used the same analytic to destabilise those same spatial/temporal formations. For the time of the ‘new states’ was itself split between fields of activity. The State itself as a juridical-political entity was to be instantaneously inaugurated – the moment of independence specifying with astonishing precision the point of time in which ‘emancipation’ was to occur. New states were ‘born’ – either through the formal relinquishing of colonial (maternal) authority, or by wrestling themselves out of its embrace – yet the moment of birth was also accompanied by an overhang in the form of continued economic domination and inequality.⁸⁶ The developing state was thus shot through, in Anand’s account, with two initial disjunctive temporalities – one of which imagined the state as a political entity suddenly emerging into the world in ‘homogenous empty time’,⁸⁷ the other which imagined it to be a project of painstaking labour and concerted action, in which the state would be worked upon, forged and fabricated, through industrialisation and production.⁸⁸ ‘Development’, as he put it, ‘is a long-term process’.⁸⁹ On top of this was a third, challenging form of acceleration associated with the phenomenon of rapid population growth – a ‘demographic revolution’, as he put it, ‘the pace and dimensions of which are without precedent’, which threatened to ‘gobble up everything that could be saved by increased production’.⁹⁰

⁸⁶ Ibid, 86: ‘Political independence has brought in its train a desire for freedom from foreign economic domination.’

⁸⁷ Benedict Anderson, *Imagined Communities* (London: Verso, 2006, revised ed.) 22–4.

⁸⁸ Anand, *New States*, 90.

⁸⁹ Ibid, 105

⁹⁰ Ibid, 91.

One can conceive Anand's work here as being concerned with the construction of the problem-space of the 'contemporary' by way of taking what Althusser referred to as an 'essential-section'⁹¹ – the drawing of an imaginary (vertical) line through the chronology of various fields of social, cultural, political and economic activity, and observing in the process the appearance of an historical present. Whilst Althusser was to point out that such an operation was problematic (essentially 'ideological') insofar as it relied upon an abstract chronology (clock time) that lacked explication,⁹² it nevertheless allowed Anand to engage in a broader critical analysis of the relationship between different fields of endeavour. For Anand it was important to recognise the inter-dependencies not only between past and present – specifically the way in which colonial rule had come to structure the economies of the developing world⁹³ – but also between the demand for economic progress and the maintenance of peace,⁹⁴ between the demographics of population growth and the accumulation of capital,⁹⁵ and between the emergent structures of international society and the substantive rules of the international legal order,⁹⁶ to name but a few. For him the interdependencies were such that concerted cooperative action was both vital and urgent:

A world still half-hungry is an appalling fact, an intolerable truth, a shocking commentary on the human condition, and a political danger of the first order. ... Unless the international legal order is modernized by voluntary and evolutionary procedures into a welfare system it will be 'thrown aside by bloody revolution'.⁹⁷

⁹¹ Louis Althusser and Etienne Balibar, *Reading Capital*, tr. Ben Brewster (London: Verso, 2009, first published 1968) 105, 115. For a scathing critique see E. P. Thompson, *The Poverty of Theory and Other Essays* (London, Merlin 1978), 123–38.

⁹² *Ibid*, 118.

⁹³ Anand, *New States*, 90.

⁹⁴ *Ibid*, 94–7.

⁹⁵ *Ibid*, 91.

⁹⁶ *Ibid*, 110.

⁹⁷ *Ibid*, 115.

Here, finally, was the central trope that appeared to hold together the complex temporal conjunctions in Anand's *New States*.⁹⁸ His was a time of revolution(s):⁹⁹ a time in which the steady rhythms of an orderly social world, of custom and tradition, had been disrupted and pulled apart, a time in which new political agendas were being framed, new technologies were emerging, new threats and opportunities identified, and in which the entry into history of the non-European world brought into juxtaposition, rival or incommensurable fields of experience and expectation. In that context, the complex temporalities he was to evoke in his account operated in almost metaphorical guise – being both conditioned upon, but also appearing to resist, the homogenising force of a universal temporal calculus. The 'contemporary' in that sense came to operate, less as an epistemological or ontological category, than as a speculative framework of enquiry – a way of looking at the world – that brought into view, and animated, various sites of political struggle.

Conclusion

In *Imagined Communities*, Benedict Anderson notes that one of the fundamental conditions of possibility for 'imagining the nation' in Western modernity was the emergence of a new temporal calculus. What he called 'homogenous empty time' enabled a necessarily disparate, heterogenous, population to think of itself as somehow bound together, moving in synchronous manner calendrically through time. Central to that formation was the idea that people's experiences of the world could be linked together through the medium of abstract time, such that they might imagine themselves occupying the same chronological space. The idea of simultaneity, however, was one that could only ultimately be imagined, not experienced, and hence depended for its socialising effects upon the productive mediation of print capitalism.¹⁰⁰ Chatterjee takes this argument one stage further, suggesting that homogenous empty time was not merely an enabling time for nationalism, but was the 'utopian time of capitalism'. This is the temporal imaginary which enables us 'to

⁹⁸ It may not be entirely irrelevant to note that the word 'revolution' or 'revolutionary' appears 36 times in the text.

⁹⁹ Anand, *New States*, 113: 'Man has lived through great changes and great upheavals. But now the revolutions are multiple and simultaneous.'

¹⁰⁰ Anderson, *Imagined Communities*, 22–36.

speak of the reality of such categories of political economy as prices, wages, markets, and so on', and which, when it encounters an impediment, 'thinks it has encountered another time'.¹⁰¹

At first glance, Anand might be thought to have broadly aligned himself with both the project of nation state formation and that of the expansion of global capitalism. But as we have seen, the temporal disjunctions that appeared to structure his account of 'contemporary' international law was to foreground the limits of both. For just as each depended upon putting into operation a temporal technology – engendering a 'fictional presentness'¹⁰² by the measuring of life against the clock – so also did that technology both reveal the asymmetrical conditions of life in the world, and the scale of the challenge placed before the world by the utopia of 'presentness'. Whether or not Anand ever believed that utopia to be realisable, he did at least recognise that the promise of 'co-existence' was dependent upon bringing the world closer together in time.

¹⁰¹ Partha Chatterjee, *The Politics of the Governed* (New York: Columbia University Press, 2004), 5.

¹⁰² Peter Osborne, "Global Modernity and the Contemporary: Two Categories of the Philosophy of Historical Time," in *Breaking Up Time*, eds. Chris Lorenz and Berber Bevernage (Göttingen: Vandenhoeck and Ruprecht, 2013), 80.