

Globalisation and the shifting 'Standard of Civilization' in international society

Brett Bowden

Political Science Program, Research School of Social Sciences
Australian National University

Refereed paper presented to the
Jubilee conference of the Australasian Political Studies Association
Australian National University, October 2002

Abstract

Not so long ago anthropologists drew a clear distinction between what were thought to be 'savage', 'barbarian', and 'civilized' peoples. A similar distinction was also made in the realm of international law to determine 'whether a State was civilised and, thus, entitled to full recognition as an international personality'. This long-held distinction came to a rather abrupt end with the onset of WWII and the subsequent demise of the colonial era.

Recently there has been a revival in both implicit and explicit calls for the return of a 'standard of civilization' in international society. The human rights theorist Jack Donnelly argues that 'human rights have become very much like a new international standard of civilization'. John Rawls makes a similar argument in his *Law of Peoples* in dividing the world into a hierarchy of five distinct groups within two sub-sets, the 'well-ordered peoples' and the 'not well-ordered'. While Thomas Pogge and a number of noted jurists including W. Michael Reisman and Thomas Franck insist that an inherent 'democratic entitlement' determine 'the right of each state to be represented in international organs...'

Putting theory into practice the US House of Representatives is presently considering a Bill before it titled the 'Responsible Debt Relief and Democracy Reform Act' which ties the cancellation or reduction of debts owed to the US by foreign countries to democratic reforms. Likewise the EU seeks to encourage transitions to democracy via the 'European Initiative for Democracy and Human Rights'. A range of other international regimes and intergovernmental organisations such as the Commonwealth and the Organisation of American States are also seeking to enforce their stated democratic membership criteria by expelling or suspending non-conformers like Zimbabwe.

Out of these lines of argument this paper will argue that the post-Cold War era has witnessed the gradual emergence of something akin to a democratic 'standard of civilization' in international society.

Introduction

Not so long ago it was thought that our world was reasonably neatly divided between 'savage', 'barbarian', and 'civilized' peoples. For instance, in 1877 in the opening pages of his book *Ancient Society*, the lawyer-cum-anthropologist Lewis Henry Morgan wrote, 'It can now be asserted upon convincing evidence that savagery preceded barbarism in all tribes of mankind, as barbarism is known to have preceded civilization'.¹ And that the 'three distinct conditions are connected with each other in a natural as well as necessary sequence of progress'.² Morgan also maintained that 'The idea of property has undergone a similar growth and development. Commencing at zero in savagery, the passion for the possession of property, as the representative of accumulated subsistence, has now become dominant over the human mind in civilized races'.³ He warned, however, that a 'mere property career is not the final destiny of mankind... because such a career contains the elements of self-destruction'. In its stead he argued that 'Democracy in government, brotherhood in society, equality in rights and privileges, and universal education, foreshadow the next higher plane of society to which experience, intelligence and knowledge are steadily tending. It will be a revival, in a higher form, of the liberty, equality and fraternity of the ancient gentes'.⁴

The ideas presented by Morgan and others held much appeal beyond the disciplines of anthropology and ethnology. For instance, Marx and Engels were so impressed by Morgan's conclusions that Engels was to state that 'Morgan rediscovered in America... the materialist conception of history that had been discovered by Marx forty years ago, and in his comparison of barbarism and civilization was led by this conception to the same conclusions, in the main points, as Marx had arrived at'.⁵ Similarly, the distinction between 'savages', 'barbarians', and the 'civilized' was extended to, and found expression in law and legal philosophy. A no lesser authority than Montesquieu stated in *The Spirit of the Laws* that the 'difference between savage peoples and barbarian peoples is that the former are small scattered nations which, for certain particular reasons, cannot unite, whereas barbarians are ordinarily small nations that can unite together. The former', he adds, 'are usually hunting peoples; the latter, pastoral peoples'.⁶ Also greatly influenced by the work of anthropologists and ethnologists, the nineteenth century jurist James Lorimer stated: 'No modern contribution to science seems destined to influence international politics and jurisprudence to so great an extent as that which is known as ethnology, or the science of races'.⁷ The influences of ethnology led him to conclude: 'As a

political phenomenon, humanity, in its present condition, divides itself into three concentric zones or spheres – that of civilised humanity, that of barbarous humanity, and that of savage humanity'.⁸ To which he added that 'Even now [1883] the same rights and duties do not belong to savages and civilised men'.⁹ He was also of the belief that 'Savages are incapable of municipal organisation beyond its most rudimentary stages; and yet it is by means of municipal organisation that men cease to be savages'.¹⁰ Such a belief led Lorimer to argue, 'Grotius lays it down that a band of robbers is not a State. On this ground the Barbary States were never recognised by European nations; and the conquest of Algeria by France was not regarded as a violation of international law'.¹¹ Lorimer, in fact, goes so far as to declare, 'To talk of the recognition of Mahometan States as a question of time, is to talk nonsense'.¹² Why? Because 'in order to be entitled to recognition, a State must... possess' both 'the will... [and] the power to reciprocate the recognition which it demands'.¹³

The legal distinction drawn between 'civilized' and 'barbarous' states led to what became known as the system of capitulations or the right of extraterritoriality. As the Italian jurist Pasquale Fiore pointed out: 'The object of the Capitulations is to determine and to regulate the relations between civilized and uncivilized states, as regards the exercise of their respective sovereign rights with respect to the citizens of civilized states who reside in the countries where Capitulations are in force'.¹⁴ That is, Europeans residing in the so-called 'uncivilized' states.

The 'classical' 'standard of civilization'

Another consequence of, or perhaps more accurately a major component of the legal distinction between 'civilized' and 'uncivilized' peoples is what Georg Schwarzenberger termed the 'standard of civilization in international law', or what Gerrit Gong would later call the 'the standard of "civilization" in international society'. Operating primarily during the European colonial period the 'standard of civilization' was a legal mechanism designed to set the benchmark for the ascent of non-European states to the ranks of the 'civilized' 'Family of Nations' and with it, their full recognition under international law. Schwarzenberger neatly summarises the legal standard as follows:

The test whether a State was civilised and, thus, entitled to full recognition as an international personality was, as a rule, merely whether its government was sufficiently stable to undertake binding commitments under international law and whether it was able and willing to protect adequately the *life, liberty and property of foreigners*.¹⁵

Of course, the protection afforded to the foreigners Schwarzenberger refers to was strictly limited to those foreigners who were citizens of 'civilized' states – that is, Europeans.

In his extensive study on the 'standard of civilization' Gong expounds a somewhat more extensive set of criteria for determining whether a state is 'civilized' or not. In order to be deemed 'civilized' a state had to conform to the following requirements:

1. a "civilized" state guarantees basic rights (i.e., life, dignity, and property; freedom of travel, commerce, and religion), especially those of foreign nationals;
2. a "civilized" state exists as an organized political bureaucracy with some efficiency in running the state machinery, and with some capacity to organize for self-defense;
3. a "civilized" state adheres to generally accepted international law, including the laws of war; it also maintains a domestic system of courts, codes, and published laws which guarantee legal justice for all within its jurisdiction, foreigners and native citizens alike;
4. a "civilized state" fulfills the obligations of the international systems by maintaining adequate and permanent avenues for diplomatic interchange and communication.

The standard of "civilization" also included a more subjective requirement:

5. a "civilized" state by and large conforms to the accepted norms and practices of the "civilized" international society, e.g., suttee, polygamy, and slavery were considered "uncivilized" and therefore unacceptable.¹⁶

In using the concept of 'international society' in his account of the 'standard of civilization', Gong is following the definition of Hedley Bull who argued a '*society of states* (or international society) exists when a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions'.¹⁷

Despite this legal standard lingering on for longer than many of the colonial states and jurists of the day would have liked, the standard was eventually formally made redundant upon the settlement of World War Two. For the total abrogation of the laws of war as witnessed by the nature of the totalitarian aggression perpetrated by members of the

thought to be 'civilized' world, effectively put paid to any idea of maintaining a legal standard of civilization. A principle that was further undermined by the subsequent evolution of nuclear weapons and the concept of mutually assured destruction.¹⁸

Even prior to World War Two, however, a number of leading jurists of the time recognised that adhering to a standard of civilization was 'considered anachronistic and insulting by the growing number of non-European countries which were becoming for both political and legal reasons full International Persons and members of the Family of Nations'.¹⁹ For example, Hersch Lauterpacht was highly critical of Lorimer's distinction between civilized, barbarous, and savage societies, declaring, 'Modern international law knows of no distinction, for the purposes of recognition, between civilized and uncivilized States or between States within and outside the international community of civilized States'.²⁰ Commenting on this juncture in the debate Schwarzenegger appears to miss the irony in his statement that, 'At this point doctrine reaches the other extreme. The standard of civilisation has vanished, and States are supposed to be under a legal duty to recognise even non-civilised States and their governments'.²¹ According to R.G. Collingwood's comments, the standard was not only inappropriate and redundant, but had long been so. When speaking of the 'dichotomy of civilized and barbarous societies' in a lecture delivered in 1940, he emphatically exclaimed, 'There are still people who accept it; but to accept it in the middle of the twentieth century is a sure sign of retarded development: of being a century and a half behind the times in your habits of thought'.²²

While it might well be accurate to state that the legal standard of civilization in the form by which it had been known was superseded in the annals of international law, that is not to say that something similar did not continue to serve a similar purpose in practice. For as Martin Wight has noted, during the Cold War the states-system remained 'divided still concentrically between the world city and the world rural district'. And out of this two tiered states-system came '[o]ne of the unwritten understandings of the Cold War... that the peace of Europe shall be warily preserved while the struggle is pursued for influence and position throughout the Third World'.²³

Reinvigorating the 'standard of civilization'

Since Wight made these observations the collapse of Communism, and with it the end Cold War, has yet again altered the environment in which international politics and relations between states are conducted. The post-Cold War ascendancy of the liberal

democratic ideal has made for a climate in which it is possible to float ideas that would have been met with far greater opposition a decade or so earlier. One of these ideas concerns explicit calls for the reintroduction of a legal/political 'standard of civilization' that would effectively divide the world between spheres of 'civilized' and 'uncivilized' peoples once again. A notable example of this is Jack Donnelly's recent John Vincent memorial lecture in which he argues that despite 'still common scepticism towards international human rights... internationally recognized human rights have become very much like a new international "standard of civilization"'.²⁴ He then goes on to plead that 'a standard of civilization is needed to save us from the barbarism of a pristine sovereignty that would consign countless millions of individuals and entire peoples to international neglect.' And at this 'present historical juncture', so far as Donnelly can see, only the ideals and principles contained in 'the *Universal Declaration of Human Rights* and the international human rights covenants, seems capable of playing such a role'.²⁵ His intent is most clearly expressed in the statement that 'human rights represent a progressive late twentieth-century expression of the important idea that international legitimacy and full membership in international society must rest in part on standards of just, humane or civilized behaviour'.²⁶ This is despite Donnelly's acknowledgment that the 'language of "civilization"' carries the 'fatal tainting' of 'abuses carried out under (and by the exponents) of the classic standard of civilization', and his admission that 'internationally recognized human rights share a similar legitimating logic'.²⁷

Recognising the limits to his claim Donnelly acknowledges that at present it is 'Genocide [that] is at the core of an emerging post-Cold War minimum standard of civilization'.²⁸ For Donnelly, however, '[p]rohibiting genocide... represents a very minimal standard of civilized behaviour', thus he goes on to hint at his desire that the standard was closer to the more extensive set of rights outlined in the *Universal Declaration of Human Rights* and its accompanying *Covenants*.²⁹ In fact, he begins to take a tentative step further by alluding to the possibility of an even higher 'standard of civilization' under the sub-heading, 'A right to democratic government?'³⁰ Although he laments that 'the emerging norm of electoral legitimacy is unlikely to displace power, interest and sovereign equality', he does point out that 'states today face political costs for [undemocratic] practices that just two decades ago were standard'. Adding that 'the dramatic upsurge in international election monitoring indicates growing acceptance of an active international interest in national electoral democracy'.³¹

Donnelly's is not a lone voice in seeking the return of a 'standard of civilization'. For John Rawls, one of the twentieth century's most noted philosophers, suggests something similar in a lecture titled 'The Law of Peoples'.³² In Rawls's case however, he makes no explicit reference to a 'standard of civilization', but it is very much implied in his attempt

to outline a legal scheme of interaction between what he calls 'liberal' and 'hierarchical' societies. That is, he outlines what he sees as the minimum requirements that states must fulfill in order to gain full membership in international society, or in his words, membership in a just and fair 'Society of peoples'. He states:

They [human rights] are a special class of rights of universal application and hardly controversial in their general intention. They are part of a reasonable law of peoples and specify limits on the domestic institutions required of all peoples by that law. In this sense they specify the outer boundary of admissible domestic law of societies in good standing in a just society of peoples.³³

Like Donnelly, at the time Rawls apparently thought it necessary to err on the side of conservatism when setting a baseline for his standard, which meant adhering to a more compact set of individual rights, or what he calls 'human rights proper'. As can be discerned in a footnote to the above passage in which he adds:

This fact about human rights can be clarified by distinguishing among the rights that have been listed as human rights in... the Universal Declaration of Human Rights of 1948. First, there are human rights proper, illustrated by Article 3: "Everyone has a right to life, liberty and security of person"; and Article 5: "No one shall be subjected to torture or to cruel, degrading treatment or punishment." ... [S]ome seem more aptly described as stating liberal aspirations,... Others appear to presuppose specific kinds of [social] institutions,...³⁴

Since his original lecture, however, Rawls has expanded his ideas into a book in which he goes much further in constructing a standard of civilization and dividing the world into spheres. In the Rawlsian world these spheres are not explicitly labelled civilized or uncivilized; rather the world is divided into a hierarchy of five distinct groups within two sub-sets, the 'well-ordered peoples' and the 'not well-ordered'. And it is only the 'well-ordered' who are 'worthy of membership' in a 'Society of Peoples'.³⁵ In using the term 'well-ordered' Rawls is following the sixteenth century French political and legal theorist Jean Bodin, who sets out the parameters of what constitutes a 'well ordered Commonweale'. Bodin states, that a 'wise and well ordered... Commonweale ought to be a lawfull or rightful government: for that name of a Commonweale is holy, as also to put a difference betwixt the same, and the great assemblies of robbers and pirats, with whome we ought not to have any part, commercement, societie, or alliance, but utter enmitie'.³⁶ For Rawls then, within the 'well-ordered' sub-set of peoples of the world are what he calls '*reasonable liberal peoples*', that is liberal democratic societies, and '*decent peoples*', or what he refers to as 'decent constitutional hierarch[ies]'. Similar to Bodin, within the sub-set of 'not well-ordered peoples' are '*outlaw states*', '*societies burdened by unfavorable conditions*', and '*benevolent absolutisms*', who, despite recognising human rights are not deemed to be well-ordered because their members play no 'meaningful role' in political decision making.³⁷

Looking at Rawls's schema in a little more detail we see that in speaking of a 'Law of Peoples' he is explicitly referring to 'a particular political conception of right and justice that applies to the principles and norms of international law and practice'.³⁸ Arising out of the administering of this just and fair Law of Peoples is what Rawls calls a 'Society of Peoples'. Whereby the 'Society of Peoples' could be said to approximate or broadly follow Bull's definition of 'international society' in that Rawls is describing 'those peoples who follow the ideals of and principles of the Law of Peoples in their mutual relations'.³⁹ This society is said to be just in that it allows for 'reasonable pluralism' among the diversity of 'reasonable peoples' that make up the society 'with their different cultures and traditions of thought, both religious and nonreligious'.⁴⁰ Moreover, as far as Rawls is concerned the 'Law of Peoples' that regulates interactions within the 'Society of Peoples' is so right and so just that his 'Law of Peoples fulfills certain conditions, which justify calling the Society of Peoples a *realistic utopia*'.⁴¹

The jurist Thomas M Franck extends a similar line of argument even more forcefully, arguing that states must have some form of democratic government in order to secure full membership in international society. Explicitly following Kant who is said to have 'discerned a three-way link between democracy, peace, and human rights', Franck maintains 'that compliance with the norms prohibiting war-making is inextricably linked to observance of human rights and the democratic entitlement'.⁴² He continues,:

The democratic entitlement is welcomed from Malagache to Mongolia, in the streets, the universities, and the legislatures, not only for its promise of a new global political culture..., but also because it opens up the stagnant politics, economies, and culture of states to development.... [T]he problems of underdevelopment can only be addressed successfully in a world of stable, peaceable nations, which in turn presupposes a world of open democracies.⁴³

Franck follows this by explicitly outlining what effectively amounts to a legal and political 'standard of civilization' in insisting that 'the right of each state to be represented in international organs, and to share in the benefits of international fiscal, trade, development, and security programs should be dependent upon its government satisfying the system's standard for democratic validation'.⁴⁴ In fact he is even prepared to go so far as to consider the idea of 'limit[ing] collective security measures to cases of attack against democratic states'. Asking: 'Would it help Kuwait to establish democratic internal order if its future protection by UN-authorized collective measures depended upon such a transformation?', he acknowledges that it 'is a change in the system's rules which is unlikely to come about in the near future'. But he thinks 'it is worth contemplating'.⁴⁵

Clearly then, Franck is of the opinion that some form of democratic government should be a prerequisite for full admission into international society and its accompanying regimes. In fact, he goes so far as to state that the human rights-cum-democracy-cum-peace entitlement already 'appears with increasing clarity in both normative texts and practice'.⁴⁶ As to whether this has been established as formally or as forcefully as Franck would like us to believe is open to debate. Nevertheless, some notable figures have added their intellectual weight to the case for the affirmative. For instance, Amartya Sen has stated that in the twentieth century 'the idea of democracy became established as the "normal" form of government to which any nation is entitled – whether in Europe, America Asia, or Africa'.⁴⁷

At this point it is worth looking at some of the arenas of practice Franck alludes to in which some form of democratic governance is held up as the norm or standard to which contracting parties must at least pledge, if not fully comply. One of the significant transnational gatherings of recent times is the 1993 Vienna World Conference on Human Rights. Article 1.8 of the Declaration and Programme of Action that emerged from the conference states the following:

Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives.... The international community should support the strengthening and promoting of democracy, development and respect for human rights and fundamental freedoms in the entire world.⁴⁸

Three years prior to the Vienna Conference, the members of the European Community sat down to draw up a new charter that would herald 'a new era of democracy, peace and unity in Europe.' The Charter of Paris for a New Europe explicitly states:

We undertake to build, consolidate and strengthen democracy as the only system of government of our nations. In this endeavour, we will abide by the following: Human rights and fundamental freedoms are the birthright of all human beings, are inalienable and are guaranteed by law. Their protection and promotion is the first responsibility of government. Respect for them is an essential safeguard against an over-mighty State. Their observance and full exercise are the foundation of freedom, justice and peace. Democratic government is based on the will of the people, expressed regularly through free and fair elections. Democracy has as its foundation respect for the human person and the rule of law. Democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person. Democracy, with its representative and pluralist character, entails accountability to the electorate, the obligation of public authorities to comply with the law and justice administered impartially. No one will be above the law.⁴⁹

On a similar note, not satisfied with entrenching democracy at home the European Community has sought to promote democracy abroad by attaching conditions to its development assistance aid. For instance, Article 181A of the European Community's Treaty of Nice states that its development assistance aid should 'contribute to the general objective of the consolidation of democracy and the rule of law, as well as human rights'.⁵⁰ One of the ways it pursues this end is through the Commission funded EuropeAid Co-operation Office's European Initiative for Democracy and Human Rights program. In large part because of instruments like these, Roland Rich has stated that the 'EU has... armed itself, at the level of international law, with the power to suspend or terminate bilateral aid agreements in the event of an extra-constitutional attack on democratic government'.⁵¹ To which he adds, we 'can look forward to a time in the near future when the universal applicability of the right to democratic governance will be as broadly accepted internationally as other human rights'.⁵²

Like Europe, the United States is preparing to put itself in a similar position so that it can formally and legally adopt a similar stance with the recipients of its development assistance program, although it likely does so already on an informal level. The legislation that would allow it to do so was brought before the 107th Congress when Frank Wolf of Virginia introduced into the House of Representatives on 31st January 2001, the 'Responsible Debt Relief and Democracy Reform Act'. The Bill proposes the following:

A foreign country shall be eligible for cancellation or reduction of debt... only if the government of the country -

- ensure freedom the press;
- ensures freedom of association;
- has established an independent and non-discriminatory judiciary;
- provides for the reduction or elimination of corruption relating to public officials...;
- is elected through free and fair elections;
- does not engage in a consistent pattern of gross violations of internationally recognized human rights; and
- does not repeatedly provided (sic) support for acts of international terrorism....'⁵³

One of the intergovernmental collectives that has recently moved to reassert and strengthen the commitment to human rights and democracy by its member states is the Commonwealth. Its Harare Declaration of 1991 states the commitment thus:

Having reaffirmed the principles to which the Commonwealth is committed, and reviewed the problems and challenges which the world, and the Commonwealth as part of it, face, we pledge the Commonwealth and our countries to work with renewed vigour, concentrating especially in the following areas: the protection and promotion of the fundamental political values of the Commonwealth: democracy, democratic processes and institutions which reflect national circumstances, the rule of law and the independence of the judiciary, just and honest government; fundamental human rights, including equal rights and opportunities for all citizens regardless of race, colour, creed or political belief.

This commitment has been both put to the test and put into practice a number of times in recent years. One was on the occasion of Nigeria's suspension from the Commonwealth in 1995 following the then military dictatorship's execution of the environmental and Ogoni rights activist, Ken Saro-Wiwa and nine of his supporters. Following military coups that overthrew elected governments in 1987 and 2000 Fiji has twice been suspended from the Commonwealth for its indiscretions. Likewise, following the military coup led by General Pervez Musharraf in October 1999, Pakistan was also suspended from the councils of the Commonwealth. On a similar note, the Commonwealth leadership saw fit to suspend Zimbabwe in 2002 after Commonwealth election observers found that the country's most recent attempt at the pretence of democracy, the 2002 presidential poll, fell well short of measuring up as 'free and fair'.

Is the human rights and democratic conditionality being exercised in Europe and the Commonwealth, albeit somewhat selectively depending upon circumstances of time and place, gathering pace elsewhere, or are these isolated and ad hoc practices? Given the events that have taken place in the America's over past decades one would hardly point to the region as a beacon of enlightenment or shining example. Nonetheless, perhaps more so than at any other time in its history, the Charter of the Organization of American States is at risk of being taken literally, perhaps even seriously. Originally coming into force in 1948 the signatories to the Charter were apparently 'Convinced that representative democracy is an indispensable condition for the stability, peace and development of the region'. They were also 'Confident that the true significance of American solidarity and good neighborliness can only mean the consolidation on this continent, within the framework of democratic institutions, of a system of individual liberty and social justice based on respect for the essential rights of man'. That being the case they were 'Persuaded that their welfare and their contribution to the progress and the civilization of the world will increasingly require intensive continental cooperation'.⁵⁴ As yet it would be fair to say that the region has failed to reach such ambitious or dizzy heights, but as Franck alludes to, the intent is there for all to see in black and white.

At the same time one could point to the Association of South East Asian Nations as a possible counter example. The organisation's willingness to admit Myanmar to the group in 1997 despite the poor human rights record of its repressive ruling military regime would suggest that ASEAN does not hold member states to the same high standards. Likewise, no country in Africa is in danger of being ejected from the Organisation of African Unity for failing to uphold human rights or overlooking the principles of representative democracy.

Nevertheless, one of the more significant indicators that human rights and democracy are gradually making their way into 'both normative texts and practice', albeit more tentatively than Franck asserts, is their increasingly common appearance in the business of multilateral intergovernmental organisations like the United Nations. By way of example, on 21 October 1997 the UN General Assembly passed Resolution A/52/513 titled 'Support by the United Nations system of the efforts of Governments to promote and consolidate new or restored democracies'. It is only in the past decade that the passing of such a resolution has been made possible by the easing of the air of tension that hung over the assembly during the Cold War era. No matter how hard one searches one will not find explicit reference to democracy in either the Charter of the United Nations, or the Universal Declaration of Human Rights, both drafted in the aftermath of World War two, but just as significantly, the birth of the Cold War.

Beyond a democratic 'standard of civilization'

Taking the call for the return of a standard of civilization further again, David Fidler sees the standard as heading toward, if not already at, what he calls a 'standard of liberal, globalized civilization'.⁵⁵ Reflecting the impact of globalization, this standard comes about by what he identifies as parallel or concurrent 'standards of civilization and globalization'. While the 'historical contexts' of the classical standard of civilization and the new standard of globalization might be 'dramatically different, the substance of the two standards is not'. Just as the classical 'standard of civilization required the creation and maintenance of certain conditions that would allow Westerners to conduct commerce and trade safely and effectively in non-Western countries', so too does the standard of globalization. For the 'standards of civilization and globalization share the central objective of improving the conditions of economic interaction between the West and the rest'.⁵⁶ Furthermore, he sees the classical standard and the standard of globalization as sharing the same origins. The former reflecting the norms of European civilization of an earlier era, the latter, reflecting

'the norms of the same civilization now expanded beyond the confines of Europe and North America'.⁵⁷

Stating his case explicitly and precisely, Fidler contends that the 'confluence of the standards of civilization and globalization at the end of the twentieth century produces the composite *standard of liberal, globalized, civilization*'. Reflecting many of the ideas found in Donnelly, Rawls, and Franck, the defining characteristics of this 'new standard of civilization includes the following principles':

- (1) respect for basic civil and political human rights; (2) respect for the importance of civil society in domestic and international politics; (3) commitment to democratic governance; (4) commitment to the "rule of law" domestically and internationally; (5) commitment to free market economics domestically and free trade and investment internationally; and (6) commitment to developing and applying science and technology to political, legal, economic, and social challenges.⁵⁸

On a similar note to Fidler and using similar language, Mehdi Mozaffari argues that 'the rise of a "global standard of civilization" reflects the transformation of the world' that is currently taking place as part of the 'ongoing process of globalization'.⁵⁹ While he acknowledges that not all 'countries share the same ideas and values', nor 'do they have similar approaches to human rights, democracy and liberalism', he insists 'it is undeniable that the gap between different world visions is now as narrow as it has ever been historically'. Given this, he concludes that the '[t]wo pillars of our current mega-civilization remain unchallenged... adherence to liberalism and capitalism (in all their variety and nuance)... are on the increase.' In short, he asserts that 'globalization has considerably reduced the differences between various [competing] world visions',⁶⁰ which represents a 'Groatian moment', or an historical point of rupture in history that denotes a 'shift from a world with multiple civilizations to a single global civilization'.⁶¹

Putting a slightly different slant on things, Robert Cooper is adamant that '[w]e live now in a divided world', but it is one 'divided quite differently from the days of the' Cold War and the 'East-West confrontation'.⁶² Reminiscent of the manner in which commentators of an earlier era divided the world into three spheres; that of 'savage', 'barbarous', and 'civilized' peoples, Cooper likewise divides today's world into three spheres. The first is what he calls the 'pre-modern world'; it is a world of failed or failing states trapped in the mire of a 'post-imperial chaos'. The collapsing states of the 'pre-modern world' no longer conform to Weber's criteria of exercising a monopoly on the legitimate use of force,⁶³ and what is left of the apparatus of the state is ineffective or corrupt. Filling the void left by the state are a host of non-state actors engaged in organised and unorganised crime, the illicit drug and arms trades, and terrorism. The 'pre-modern world' is a world which, according

to Cooper, 'belongs... in a different time zone'.⁶⁴ Some classic examples of 'pre-modern' states are Somalia, Afghanistan, and Liberia, but there are, Cooper suggests, many more scattered around the globe.

The second sphere of today's world is what Cooper describes as the 'modern' world; it is "'modern" not because it is new – it is in fact very old fashioned – but because it is linked to that great engine of modernisation, the Nation State'. In the 'modern world' the 'classical state system remains in tact' and states continue to exercise Weber's monopoly on the legitimate use of force, and they remain willing and prepared to deploy that force against one another. If there is any semblance of order within the state system of the 'modern world', it is either because of a balance-of-power arrangement or the presence of a hegemonic state or states which have an interest in preserving the *status quo*. In terms of international relations within the 'modern world' they are conducted in accordance with 'the calculus of interests and forces describe by Machiavelli and by Clausewitz'. Cooper's prime examples of 'modern states' are India, China, and Brazil.⁶⁵

The third and final part of Cooper's 'international system' is what he refers to as its 'post-modern element'. As with the chaos of the 'pre-modern world' here too 'the state system of the modern world is also collapsing; but unlike the pre-modern [world] it is collapsing into greater order than into disorder'.⁶⁶ In the 'post-modern world' the 'legitimate monopoly on force, which is the essence of statehood, is... subject to international – but self-imposed – constraints', which in effect means that 'state sovereignty is no longer seen as absolute'.⁶⁷ Citing member states of the European Union, the states of Western Europe in particular as 'the most developed example of a post-modern system', Cooper states that the key 'characteristic of this world are: the breaking down of the distinction between domestic and foreign affairs; mutual interference in (traditional) domestic affairs and mutual surveillance; the rejection of force for resolving disputes and the consequent codification of rules of behaviour....; the growing irrelevance of borders... [and]; security is based on transparency, mutual openness, interdependence and mutual vulnerability'.⁶⁸

Clearly Cooper's division of the world into three coexistent spheres represents a configuration that might be comparable to the 'standard of civilization' in the conduct of international affairs between 'savage', 'barbarous', and 'civilized' societies of a bygone era. He pointedly refers to the 'creat[ion of] an international society' of the 'post-modern' states of Europe in which the 'international socialisation' provided by the 'Brussels institutions' is 'one of the important functions' in serving this end.⁶⁹ Moreover, Cooper makes a more explicit pointer to a 'standard of civilization' in highlighting the 'need' in the 'post-Cold War, post-modern environment' for 'post-modern state[s]... to get used to

the idea of double standards' when dealing with the 'pre-modern' and 'modern' worlds. In relations among themselves, 'post-modern' states can afford to 'operate on the basis of laws and open co-operative security'. But when dealing with 'pre-modern' and 'modern' states they 'need to revert to the rougher methods of an earlier era – force, preemptive attack, deception, whatever is necessary for those who still live in the nineteenth century world of every state for itself'. His final piece of '[a]dvice for post-modern states' in this divided world: 'those who have friendly, law-abiding neighbours should not forget that in other parts of the world the law of the jungle reigns. Among ourselves, we keep the law but when we are operating in the jungle, we also must use the laws of the jungle'.⁷⁰

Post-September 11 'standard of civilization'

The characterisation of the terrorist attacks of September 11 as an 'attack on civilization' by 'barbarians', and the subsequent casting of the 'war on terrorism' as a war between the 'civilized' and 'uncivilized' worlds, is yet another step in the direction towards a reinvigorated or resurrected 'standard of civilization' for the twenty-first century. Larry Diamond takes further steps in this direction in his post-September 11 articulation of the 'civilized' – 'uncivilized' dichotomy, undertaken as part of a project outlining the criteria a state must meet in order to be considered a legitimate member of the 'civilized' community of states. According to Diamond, '[a]ll countries or societies of the world... can be located on a continuum in terms of their quantity of social capital and the quality of public institutions and public life that results from this capital'.⁷¹ At opposing ends of the continuum he identifies two models or 'ideal types' of society: at the 'good' end of the scale is what he calls, following Robert Putnam, the 'civic community'; at the other extreme, the 'bad' end, is what he describes as a 'predatory society'.⁷²

For Diamond, the fully civilized world is made up of those states or 'good societies' in which 'civic virtue' overwhelmingly dominates the predatory elements. 'Civic communities' are those societies that have 'strong, effective institutions of governance to enforce and reproduce civic behaviour'. They are societies said to be based on a 'culture of trust, cooperation, reciprocity, respect, restraint, tolerance and compromise' which is sustained by 'supportive political institutions'.⁷³ Finally, citizens of these 'good societies' abide by 'the law, pay their taxes, observe' community ethical and moral standards, answer calls to jury duty and generally 'serve the public good' not simply because of their civic-mindedness, but because they expect and believe others will do likewise, and because they know there are consequences for failing to do so.

The 'uncivilized' world on the other hand is comprised of 'predatory societies' in which the civic minded elements are in the minority, or virtually absent. They are societies that are 'the inverse of the civic community'; no real sense of community exists, there is 'no shared commitment to any common vision of the public good, and no respect for law'. Relations amongst members of predatory societies are 'cynical and opportunistic' and function between parties on the 'patron-client' level in which there is no sense of trust, reciprocity, or obligation. The hallmarks of predatory societies are 'weak, porous states that are prone to [or on the verge of] complete collapse'. They exist 'from Nigeria to the Congo, from Colombia to Kosovo, from Serbia to Sudan', where it is 'no coincidence that... ethnic violence, nationalist bloodletting and civil war are tightly entwined with the corruption of cynical elites'. In short, in 'predatory societ[ies] the line between the police and the criminals is a thin one, and may not exist at all'.⁷⁴

Like the Rawlsian 'well-ordered' 'Society of peoples', the post-September 11 fully civilized world is a rather exclusive club. For Diamond's identifies only 'thirty countries in the world that are stable liberal advanced industrial democracies', or 'predominantly civic rather than predatory', (being the 24 countries of Western Europe, the USA, Canada, Australia, New Zealand, Israel, and Japan). Which effectively means that the vast majority of the world's population lives outside of the so-called 'fully civilized' sphere.⁷⁵

Conclusion

It would appear then at the start of the twenty-first century that to be anything other than a globalized, capitalist, liberal democracy is to be condemned as either 'not well-ordered', or 'pre-modern', or 'predatory', or some other such description. In short, to be anything else is to be thought of as being something other than 'civilized'. The logic underpinning this sometimes implied, sometimes explicit call for the reintroduction of a new 'standard of civilization' is not so far removed from the rationale behind the emergence of the classical 'standard of civilization', and its subsequent entrenchment in international law as related by Schwarzenberger in 1955. He states:

Once civilisation is related to the basic types of human association, it is no longer necessary to be content with the mere enumeration and description of a bewildering number of civilisations. It is then possible to evaluate and to measure individual civilisations in the light of a universally applicable test of the degree of civilisation which any such particular endeavour has attained. This criterion gives the key to understanding whether, and to what

extent, democratic States may claim to be more civilised than totalitarian or authoritarian systems.⁷⁶

For some the identification of different zones or levels of civilization is defended as nothing more than a description of existing or emerging political realities. But as Benedict Kingsbury notes, on another level 'its many normative advocates see the liberal West as the vanguard of a transformed global legal order'.⁷⁷ To which one should add the international political order. The notion that there exists different zones of civilization, however they may be drawn, 'proposes differential treatment where the boundaries of the liberal zone are crossed, conferring privileges based on membership in the liberal [or civilized] zone, and setting high barriers to entry'.⁷⁸ As can be seen, for instance, in Robert Cooper's endorsement and encouragement of 'double standards' when dealing with the 'inferior' or 'uncivilized' zones.⁷⁹ Kingsbury makes the further poignant point that the 'new standard of civilization is defended normatively as the means to promote the advancement of the backward'. Which in its self is nothing terribly new, for the idea of the 'civilizing mission' was all part and parcel of the 'classical standard of civilizational' of an earlier era. However, he correctly points out that 'it is not clear... why human flourishing is better promoted by the construction of an identifiable "other", and "us" and "them" from amongst the myriad ways of understanding and classifying the world'. Furthermore, the consequences of such constructions - or what I would call the division of the world into different shades of civilization - 'seems likely to be the maintenance of a classificatory system which is itself both an explanation and a justification for those at the margins remaining there for generations'.⁸⁰ As can be seen in the fact that the classification of which types of societies are thought to be 'civilized' or not has not progressed very far since Lorimer's declarations of more than a century ago.

Endnotes

- ¹ Lewis H Morgan, *Ancient Society* [1877], The Belknap Press of Harvard UP, Cambridge MA, 1964, p. 5.
- ² Morgan, p. 11.
- ³ Morgan, p. 6.
- ⁴ Morgan, p. 467.
- ⁵ F Engels, *The Origin of Family, Private Property and the State* [1884], Progress Publishers, Moscow, 1948, p. 5.
- ⁶ Montesquieu, *The Spirit of the Laws* [1748], Anne M Cohler, Basia Carolyn Miller, and Harold Samuel Stone (eds and trans.), Cambridge University Press, Cambridge, 1989, Book 18, Chapter 11, p. 290.
- ⁷ James Lorimer, *The Institutes of the Law of Nations*, II Vols., William Blackwood and Sons, Edinburgh and London, 1883, Vol. I, p. 93.
- ⁸ Lorimer, Vol. I, p. 101.
- ⁹ Lorimer, Vol. I, p. 13.
- ¹⁰ Lorimer, Vol. II, p. 191.
- ¹¹ Lorimer, Vol. I, pp. 160-161.
- ¹² Lorimer, Vol. I, p. 123.
- ¹³ Lorimer, Vol. I, p. 109.
- ¹⁴ Pasquale Fiore, *International Law Codified and its Legal Sanction*, Baker, Voorhis and Company, New York, 1918, p. 362.
- ¹⁵ Georg Schwarzenberger, 'The Standard of Civilisation in International Law' in *Current Legal Problems*, George W Keeton and Georg Schwarzenberger (eds.), Stevens & Sons Ltd., London, 1955, p. 220. Emphasis added.
- ¹⁶ Gerrit W Gong, *The Standard of 'Civilization' in International Society*, Oxford University Press, Oxford, 1984, pp. 14-15.
- ¹⁷ Hedley Bull, *The Anarchical Society: A Study of Order in World Politics*, 2nd edn., MacMillan, London, 1995, p. 13. Emphasis in original.
- ¹⁸ Schwarzenberger, pp. 229-234.
- ¹⁹ Gong, p. 84.
- ²⁰ H Lauterpacht, *Recognition in International Law*, Cambridge University Press, Cambridge, 1947, p. 31, note 1.
- ²¹ Schwarzenberger, p. 227.
- ²² R G Collingwood, 'Appendix 2: What 'Civilization' Means' in *The New Leviathan*, David Boucher (ed.), Clarendon Press, Oxford, 1992, p. 486.
- ²³ Martin Wight, *Systems of States*, Hedley Bull (ed.), Leicester University Press, Leicester, 1977, p. 125
- ²⁴ Jack Donnelly, 'Human rights: a new standard of civilization', *International Affairs*, Vol. 74, No. 1, 1998, p. 1.
- ²⁵ Donnelly, pp. 15-16.
- ²⁶ Donnelly, p. 21.
- ²⁷ Donnelly, p. 15-16.

²⁸ Donnelly, p. 16.

²⁹ Donnelly, p. 17.

³⁰ Donnelly, p. 18.

³¹ Donnelly, p. 19.

³² John Rawls, 'The Law of Peoples' in *On Human Rights: The Oxford Amnesty Lectures*, Stephen Shute and Susan Hurley (eds.), Basic Books, New York, 1993, pp. 41-82.

³³ Rawls, pp. 70-71.

³⁴ Rawls, footnote 46, pp. 227-228.

³⁵ Rawls, *The Law of Peoples*, p. 4.

³⁶ Jean Bodin, *The Six Bookes of a Commonweale* [1576], Kenneth Douglas McRae (ed.), Richard Knolles (trans.), Harvard University Press, Cambridge, MA, 1962, reprint of 1606 edition, p. 1.

³⁷ John Rawls, *The Law of Peoples*, Harvard University Press, Cambridge MA, 1999, p. 4. Emphasis in original.

³⁸ Rawls, *The Law of Peoples*, p. 3.

³⁹ Rawls, *The Law of Peoples*, p. 3.

⁴⁰ Rawls, *The Law of Peoples*, p. 11.

⁴¹ Rawls, *The Law of Peoples*, p. 4. Emphasis in original.

⁴² Thomas M Franck, *Fairness in International Law and Institutions*, Clarendon Press, Oxford, 1995, pp. 136-137. See also Thomas M Franck, 'The Emerging Right to Democratic Governance', *American Journal of International Law*, No. 86, January 1992, pp. 46-91.

⁴³ Franck, p. 138.

⁴⁴ Franck, p. 139.

⁴⁵ Franck, note 253, p. 139.

⁴⁶ Franck, p. 137.

⁴⁷ Amartya Sen, 'Democracy as Universal Value', *Journal of Democracy*, Vol. 10, No. 3, July 1999, p. 4 (pp. 3-17)

⁴⁸ World Conference on Human Rights, Vienna, 14-25 June 1993, Vienna Declaration & Programme of Action.

⁴⁹ Conference on Security and Co-operation in Europe, Charter of Paris for a New Europe, Paris 19-21 November 1990.

⁵⁰ European Commission, *Synthesis Report on EC Activities in the Field of Human Rights, Democracy and Good Governance*, European Commission, Brussels, 10 August 2001, p. 7.

⁵¹ Roland Rich, 'Bringing Democracy into International Law', *Journal of Democracy*, Vol. 12, No. 3, 2001, p. 29.

⁵² Rich, p. 33.

⁵³ 107th United States Congress 1st Session, 'H.R. 391: To require foreign countries to meet certain requirements relating to political freedom, transparency, accountability, and good governance in order to be eligible to receive cancellation or reduction of debt owed to the United States'.

⁵⁴ Charter of the Organization of American States, signed in Bogotá in 1948 and amended by the Protocol of Buenos Aires in 1967, by the Protocol of Cartagena de Indias in 1985, by the Protocol of Washington in 1992, and by the Protocol of Managua in 1993.

⁵⁵ David P Fidler, 'A Kinder, Gentler System of Capitulation? International Law, Structural Adjustment Policies, and the Standard of Liberal, Globalized Civilization', *Texas International Law Journal*, Vol., 35, No. 3, 2000, p. 389.

⁵⁶ Fidler, p. 400.

⁵⁷ Fidler, p. 401.

⁵⁸ Fidler, p. 409. Emphasis in original.

⁵⁹ Mehdi Mozaffari, 'The transformationalist perspective and the rise of a global standard of civilization', *International Relations of the Asia-Pacific*, Vol. 1, No. 2, 2001, p. 247.

⁶⁰ Mozaffari, pp. 250-251.

⁶¹ Mozaffari, pp. 251. The 'Grotian moment' term comes from Richard Falk, *Law in an Emerging Global Village: A Post-Westphalian Perspective*, Transnational, New York, 1998, p. 3.

⁶² Robert Cooper, *The Post-Modern State and the World Order*, DEMOS, London, 1996, p. 17.

⁶³ See, Max Weber, *Essays in Sociology*, H H Gerth and C Wright Mills (trans., ed. and intro.), Routledge & Kegan Paul, London, 1948, p. 78. Where he states... 'monopoly of the legitimate use of physical force'. Emphasis in original.

⁶⁴ Cooper, p. 18.

⁶⁵ Cooper, pp. 19-20.

⁶⁶ Cooper, p. 22.

⁶⁷ Cooper, pp. 23-25.

⁶⁸ Cooper, pp. 25-26 and 30.

⁶⁹ Cooper, pp. 29-30.

⁷⁰ Cooper, pp. 42-43.

⁷¹ Larry Diamond, 'Winning the New Cold War on Terrorism: The Democratic-Governance Imperative', Institute for Global Democracy, Policy Paper No. 1, March 2002, p. 6. At <<http://www.globaldem.org/>> 15th April, 2002.

⁷² Diamond, p. 6. The term 'predatory states' has also been used by Cooper to describe similarly defined societies. See Cooper, p. 31.

⁷³ Diamond, pp. 6-7.

⁷⁴ Diamond, pp. 7-8.

⁷⁵ Diamond, pp. 9-10.

⁷⁶ Schwarzenberger, pp. 218-219.

⁷⁷ Benedict Kingsbury, 'Sovereignty and Inequality' in Andrew Hurrell and Ngaire Woods (eds), *Inequality, Globalization, and World Politics*, Oxford University Press, Oxford, 1999, p. 90.

⁷⁸ Kingsbury, p. 90.

⁷⁹ Cooper, p. 42.

⁸⁰ Kingsbury, p. 91.