

Reclaiming Revolution

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ABSTRACT: With the events of the Arab Spring the language of revolution has suffused public and academic discourse. In light of this it seems timely to open discussion on how the concept of revolution functions in international legal discourse. This paper argues that the content specific to the modern concept of revolution involves a necessary connection between structural analysis and social agents of change, but that within critical international legal scholarship the organised and disciplined elements of that agency have been elided. This paper argues that this elision is indicative of a broader rejection of modernist elements within critical discourse in international law, stemming from a traumatic relationship to twentieth century history informed by pervasive liberal narratives. This aversion to one side of the concept of revolution severely limits the concepts potential utility in opening up horizons of possibility within international legal discourse. This paper makes a call for the reclamation of revolution's analytical and political content, through an engagement with its conceptual history, and an examination of revolution's contemporary theoretical alternatives, such as the Badiouian 'event'. It concludes that the planning, organisation and discipline associated with early modern concepts of socialist revolution are necessary components of a meaningfully progressive international legal discourse.

KEYWORDS: law, revolution, emancipation, event, conceptual history

1. Introduction

The popular uprisings that spread across the Middle East and North Africa region in 2011 resulted in headlines bursting with exuberant references to revolution.¹ Since then, the language of revolution has suffused public discourse, from bookstores organising titles under its banner, to renewed interest in Gene Sharp's 'handbook' for instigating radical political change.² When coupled with

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1. As an example, see the BBC's 'revolution' timeline, Mark Almond, 'Egypt Unrest' *BBC News* <www.bbc.co.uk/news/world-middle-east-12431231> (visited 10 October 2011).
2. Ruairidh Arrow, 'Gene Sharp: Author of the nonviolent revolution rulebook' *BBC News* <www.bbc.co.uk/news/world-middle-east-12522848> (visited 03 September 2011), referencing

the global reverberations of the latest financial crisis, it might seem that we live in 'revolutionary' times. Certainly, if we consider the number of events that have attracted the label in only the past two decades, it would seem revolutionary potential abounds.

But although such nomenclature certainly captures something about the nature of crisis that pervades contemporary life, it is not clear whether (and if so how), the common label of revolution is intended to link events. Public discourse often slips into almost synonymous usage over a whole host of terms to describe political or social instability, from revolution to unrest, revolt or instability. The term 'revolution', however, was used recurrently in relation to media reports on the 'Arab Spring', but rarely in reference to the social and political upheaval occurring in Greece as a result of the current financial crisis. Yet protestors in Greece have gathered around the banner of revolution, and during the prefigurative financial collapse in Iceland, workers united to sing *The International*, making a clear connection between their struggle and socialist revolutionary ideals.³

The selectivity at work highlights the fact that only thirty years earlier the label of revolution would have invoked very different content. And whilst there are common strands between Iceland, Greece, parts of the Arab Spring, and social movements that are in fact drawing on some kind of socialist political heritage, this is not what is being referenced in mainstream media. In common parlance, revolution is invoked in a sense that has broken free of its own conceptual history.⁴ It is invoked as a label for an event, resisting comparative placement alongside the transformations of the industrial or French Revolutions, or location within the revolutionary ideology of nineteenth and twentieth century socialism.

Against this backdrop, this paper sets out to explore the effect of the concept of revolution upon recent international legal discourse. In its most immediate sense, the concept of revolution encompasses processes of change, and in its most progressive self image international law is about the fostering of a better tomor-

Gene Sharp, *From Dictatorship to Democracy – A Conceptual Framework for Liberation* (first published in Bangkok in 1993) (The Albert Einstein Institution: Boston, 2002).

3. See Helena Smith, 'Greek protestors storm the Acropolis', *The Guardian*, May 4, 2010 <www.guardian.co.uk/business/2010/may/04/greek-protesters-storm-acropolis> (visited 10 October, 2011), and Reuters footage of Icelandic protestors available at <www.youtube.com/watch?v=6MYH2tSpMYI> (visited 10 October, 2011). The media language in relation to Greece includes some that buck the trend, see Gavin Hewitt's 'Greece crises: Revolution in the offing?' (June, 2011), but the revolutionary 'example' referenced in the piece is that of the Arab Spring. Available at <www.bbc.co.uk/news/world-europe-13830466> (visited 10 October, 2011).
4. The practice of conceptual history (*Begriffsgeschichte*) refers to the analysis of the historical semantics of terms, developed by, among others, Reinhart Koselleck in *The Practice of Conceptual History – Timing History, Spacing Concepts* (Stanford University Press, 2002), translated by Todd Samuel Presner and Others. For a similar type of project, see Raymond Williams, *Keywords – A Vocabulary of Culture and Society* (Oxford University Press, 1976).

row through the form of law.⁵ The concept of revolution draws attention to the goal, the present situation, and the methods by which transformation might be achieved. Therefore, examining how the concept of revolution is treated within international legal discourse presents a method of assessing the plausibility of claims for the redemptive promise of international law.

Specifically, the immediate concern of this paper is critical international legal theory. The adherents of this particular strand of contemporary international legal theory profess to concern themselves explicitly with the struggles of oppressed peoples and seek to examine the ways in which international law is complicit in their oppression.⁶ Critical international law scholars consider a variety of elements of the current international order to be unjust, and seek to challenge and transform that order. Many of their critical insights, however, point towards the necessity of the transcendence rather than the reformist reconfiguration of the present order. It is in this way that the theory of revolution becomes most relevant. In other words, along with an account of the current order's injustices, one would expect methods by which one might achieve a deeply radical transformation.

What is of interest here are the ways in which some of these accounts privilege international law as a locus of engagement, and further privilege a very particular typology of accompanying action, which will be addressed below. These accounts share some elements of the contemporary shift in revolution's content described at the opening of this paper, but in general are highly selective in their appropriation of revolutionary theory. Rather than rejecting all of revolution's conceptual history, they elide those components most closely associated with modernism (the content of which will be elaborated below).⁷ Interestingly, this elision enables

5. See, for example, Martti Koskenniemi's discussion, 'Between Commitment and Cynicism: Outline for a Theory of International Law as Practice' in Office of Legal Affairs, *Collection of Essays* (United Nations Press, 1999) at 495.
6. There is a variety of material that comes under such a description, including the selection taken up for closer examination in this paper. Third World Approaches to International Law (TWAAIL) can generally be seen to fall within the description used here, although there are a variety of ways of conceptualising the affiliation that links scholarship under this umbrella. See Makau Mutua, 'What is TWAAIL?', 94 *Proceedings of the Annual Meeting (American Society of International Law)* (2000) 31-40; B. S. Chimni, 'Third World Approaches to International Law: A Manifesto', 8 *International Community Law Review* (2006) 3-27; and Obiora Okafor, 'Critical Third World Approaches to International Law (TWAAIL: Theory, Methodology, or Both?)', 10 *International Community Law Review* (2008) 371-378.
7. For broader discussion of the modernism see Richard Ellmann and Charles Feidelson (eds.), *The Modern Tradition* (Oxford University Press: New York, 1965); on the issues involved in defining modernism see Mary Gluck, 'Toward a Historical Definition of Modernism: Georg Lukacs and the Avant-Garde', 58 *The Journal of Modern History* (1986) 845-882; Nathaniel Berman has done extensive work on modernism and international law, in particular see 'Modernism, Nationalism, and the Rhetoric of Reconstruction', 4 *Yale Journal of Law and the Humanities* (1992) 351-380.

this body of scholarship to maintain a greater attachment to the liberal promise of international law than is explicit in its own self-perception.

This task cannot be conducted in a straightforward manner, however. As will be made clear below, the direct relationship between international law and revolution can seem rather doctrinaire – a discussion of revolutionary events to which international law may have some kind of relationship. In this vein international law acts upon the revolution in one direction – the revolution has no formative influence on international law. Similarly, in academic discourse, the concept of revolution is equally inhibited from providing critical reflection on the structures of international law. It is for this reason that this paper does not concern itself directly with doctrinal State Succession for example, although the implications of the theoretical analysis conducted in this paper do apply to doctrinal issues. Instead, this paper aims to draw out the function of revolution's theoretical components. In referencing political and social change, discussions of revolution involve a narrative of the (often explosive) interaction between social groups and their broader political environment; in theoretical terms, the interaction between the categories of 'agency' and 'structure'. The premise of this paper is that through analysing the role of the concepts of structure and agency within international legal discourse one can infer a theory of revolution where it may otherwise be implicit, and then align this with those rare moments in the discourse where revolution is discussed more openly.

This paper begins with a brief sketch of the conceptual history of revolution; fleshing out Reinhart Koselleck's description of revolution as a 'linguistic product of our modernity'.⁸ This will be supplemented by a terminological discussion of revolution, in order to demonstrate the need for the above methodology of inference. The paper will then consider how the concept of revolution is deployed in contemporary international legal discourse, outlining the kind of content that accompanies discussion of revolution through theories of structure and agency. Latter sections will explore the theoretical function of alternative concepts substituted for revolution, such as that of the 'event', and proffer possible reasons for this switch. The paper will then conclude by examining the consequences of the concept of revolution considered as separable from its modernist components.

The over-arching argument is that an underlying aversion to modernism lies behind the treatment of the concept of revolution assessed in this paper. It would seem that the concept of revolution as relating to the disciplined, and often party-based, organisation of 'revolutionaries' is associated with a defunct Cold War politics and a redundant political struggle of socialism against the forces of capital. The concept in this light is then also linked with all the worst percep-

8. Reinhart Koselleck, *Futures Past – On the Semantics of Historical Time* (The MIT Press: Cambridge, MA., 1979) at 40 (translated by Keith Tribe).

tions of that movement.⁹ As a result, conceiving of revolution as relating to the opposites of these ‘modernist’ characteristics – spontaneity, mass participation without organisation, non-party forms, and non-violent methods – is seen to offer a morally superior and historically sanitised conception of political change. However, as will be argued here, this perspective rests on a false division within the characteristics of revolution, is based on a strained historiography, and suffers from the incorporation of problematic historical narratives. It is also a position that lends itself to the perception of the current moment as novel, both in terms of the world and its social groups, in order to enable a fresh kind of revolutionary possibility, thereby eliding structural continuity. Overall, such a position is both theoretically and practically disabling, and indeed contains elements of a retrograde conception of revolution draped in religious mysticism.

2. The Conceptual History of Revolution

Before we open discussion on the contemporary function of revolution, however, it is necessary to briefly explore its conceptual history, in order to understand how ideas about what revolution meant changed from the limited to the transcendental. Revolution has aptly been described as ‘one of the looser words’.¹⁰ Studies can range from the highly inclusive, to the highly exclusive. But in this sense we are encountering revolution as a descriptive term, the criteria of which are then the point of debate. Commentators would almost universally agree that events such as the French, Russian and Chinese revolutions qualify as such, but beyond these major three it becomes less certain.¹¹ The point here is not to become immersed in a debate about who has the most accurate definition of a revolutionary event. Its invocation in this debate is simply intended to identify a moment of particularly rapid and extensive political change, generally with the involvement of a large portion of the population, and generally involving change in leadership. What this fails to engage with are those elements that set revolution apart; those elements linked to the conceptual development of revolution. These are the ways in which revolution has become a politically mobilizing concept, one linked to the creation of a progressive future, brought about by human agency. How revolution has come to reference human freedom and emancipation, and be intimately linked to the conceptualisation of history as human progress.

9. As an example see Stephane Courtois (ed.), *The Black Book of Communism: Crimes, Terror, Repression* (Harvard University Press, 1999), also Francois Furet, *The Passing of an Illusion* (University of Chicago Press, 1995). For how this trend incorporated the rehabilitation of Ernst Nolte, see Enzo Traverso, “The New Anti-Communism: Re-reading the Twentieth Century” in Haynes and Wolfreys, *History and Revolution* (Verso: London, 2007).

10. Crane Brinton, *The Anatomy of Revolution* (Vintage: New York, 1938) at 3.

11. See the discussion in Jack A. Goldstone, “Theories of Revolution: The Third Generation”, 32 *World Politics* (1980) 425-453.

Before the shift in the use and referent of the concept, revolution was not conceived of as a transcendental process. When contemporary commentary is restricted to what qualifies as revolution by extremity of political upheaval, then there is little to distinguish the term from its antecedents. Revolution underwent near synonymous usage alongside revolt or rebellion (if used at all) in fifteenth century England, often intended to insinuate a process of cyclic restoration, linked to the revolution of heavenly bodies and the wheel of fate.¹² In this vein the English Civil War was seen through the lens of revolt, and the restitution of the monarchy then witnessed the first real contemporaneous use of the term in the 'Glorious Revolution' of 1688.¹³ We can even trace the usage of revolution back to the writings of Aristotle, used to refer to cyclic change between the known ways of organising the political life of city-state communities.¹⁴ Describing the Arab Spring as a revolution in this sense is accurate, yet it misses something in the later history of thought on revolution.

The marked transformation mentioned in the introduction of this paper comes with the French Revolution.¹⁵ It is alongside the explosion of universal democratic ideals, the participation of previously excluded groups in political life, and the materialisation of these ideas in constitutional documents, that much of the groundwork for the emancipatory content of revolution is laid. The historical events themselves have been extensively examined,¹⁶ but the focus here is on the shifting content and meaning of the term revolution. These changes occur alongside, and in partnership with, shifts in the conceptualisation of history itself.¹⁷ The term 'revolution' becomes meta-historical, applicable to all times and places, used to refer to a kind of 'great leap' forward along the progressive line of human development. In some senses it represents the transposition of religious salvation to the human realm, the partial secularization of eschatological vision.¹⁸

This can be read almost as an accident of history, as de Tocqueville chose to understand the abstract, generalised nature of the directives of the revolution, at the hand of inexperienced political actors. 'Thus instead of attacking only such laws as seemed objectionable, the idea developed that all laws, indiscriminately must be abolished and a wholly new system of government... should replace the

12. Williams, *Keywords*, *supra* note 4, at 271.

13. *Ibid.*

14. Aristotle, *The Politics*, Vol. I (Clarendon Press: Oxford, 1885) at 145 (translated by B. Jowett).

15. It would be worth qualifying this with the inclusion of the industrial revolution in England as the foundations of much of the changes to come in France, see Eric Hobsbawm, *The Age of Revolution* (Abacus: London, 2003).

16. See William Doyle, *The Oxford History of the French Revolution* (2nd edn, Oxford University Press, 2002) for one example of many; for a recent and concise account see Sylvia Neely, *A concise history of the French Revolution* (Rowman & Littlefield: Plymouth, 2008).

17. Koselleck, *Futures Past*, *supra* note 8, part I in general.

18. *Ibid.*, at 46-54.

French constitution.¹⁹ But it would seem, rather than some accident, to be a necessary corollary of the kind of paradigm shift involved.²⁰ The Declaration of the Rights of Man, as Mirabeau said, was ‘applicable to all times, all places and all climes.’²¹ It is in this sense that Koselleck can note the shift in revolutionary rhetoric to target all mankind, at all times; a general creed of emancipation.²² Combined with nineteenth century theories of evolution, the narrative of the progress of both the human species and human civilisation entwined presented a powerful component of the dawn of modernist thought and scientific progress. The combination of the radical shift in social forces involved in these political developments and industrial progress allows one far greater insight into the contemporary impact of the evocative image of revolution as the locomotive of history.

It is in part the legacy of such a powerful and all-encompassing shift that historical work on the subject could take on something of a lyrical note. Discussing sixteenth century England, Perez Zagorin opens with the claim that ‘it is no exaggeration to call revolution the master theme in the history of the present age. A will to transformation self-conscious, planned and guided by doctrine, has come to dominate human affairs.’²³ Part of the current distaste with the modernist elements of revolution that this paper argues as pervasive in critical international legal discourse may be read as a reaction to this romanticised engagement with revolution.

Clearly, there are a variety of ways in which the transformation of ideas and practice mentioned above could be (and were) harnessed to serve narratives of racial or cultural superiority, and to support new forms of exploitation, exclusion and oppression. Even the emancipatory elements of revolutionary socialism, that stressed the common cause of oppressed people of all backgrounds and aspired to the liberation of humanity from the trials of both subsistence living and capitalist oppression, could serve to justify new forms of oppressive rule. Acknowledging this is nothing new. However, it is clear that in the contemporary era, where revolution is no longer used in clear connection with its socialist heritage, over emphasis on these potential dangers is serving to ‘stunt the political imagination’ in certain circles.²⁴ In the face of this, it is difficult to deny the impact that the politics of the concept of revolution had on the 20th century.

19. Alexis de Tocqueville, *Alexis de Tocqueville on democracy, revolution, and society: selected writings* (University of Chicago Press, 1980) at 236.

20. In this vein it is worth linking de Tocqueville’s interpretive lens to his opinion of socialists as ‘rabble’, *Ibid.*

21. Cited in Haynes and Wolfreys, *History and Revolution*, *supra* note 9, at 3.

22. Koselleck, *Futures Past*, *supra* note 8, at 46-54.

23. Perez Zagorin, ‘The English Revolution’, cited in Haynes and Wolfreys, *History and Revolution*, *supra* note 9, at 15.

24. Anne Orford (Chair), Philip Allot, Nathaniel Berman, Ruth Buchanan, B. S. Chimni, China Miéville, and Vasuki Nesiiah, ‘Roundtable on Law, Force and Revolution’, 100 *American Society of International Law Proceedings* (2006) at 265.

2.1. Revolution and Political Semantics

The selective naming of some contemporary events as revolution and others as something else amply demonstrates the political stakes involved in the act of naming. Not only do certain events become divested of revolutionary identity, but that very historical identity is transformed through its application elsewhere, to different ends and in the service of an alternative historical narrative. To a certain extent the colonisation of terminology can limit imagination, and in this sense we could decry the lost content of revolution in the current political imagination of the industrialised world. But the effects are more pervasive than this. The conceptual history of revolution, closely entwined with a shift in the interpretation of history as part of the development of modernism,²⁵ opened up a particular way of understanding the interaction between competing social interests and the broader direction of historical movement. The combination of a modernist perception of history and the concept of revolution was integral to the rendering of the social world as knowable through scientific endeavour, upon which one could build a political program and mobilise social forces for change.²⁶ Losing this aspect of the terminology of revolution would not only leave an anaemic concept of political change, but cede this ground of knowledge and political strength to those forces which already occupy it.

The qualification between 'revolution' and its near synonyms can have further important ramifications, not only in terms of historical legacy but for the political situation in which they are invoked. Take Rochefoucauld's purported response to King Louis XVI overlooking the riots in Paris in 1789. When asked by the King 'is this a revolt?' the sardonic reply, 'no Sire, it is a revolution', encompasses a depth of meaning.²⁷ Any kind of change or event is accorded a significantly grander import when labelled as a revolution, whereas conservative or reactionary forces may desire (or only be able) to see a simple uprising. Equally if one thinks of revolution as a catastrophic destruction of a comforting social order, then a revolutionary label escalates the sense of threat and therefore possible response, just as combating the spread of 'revolution' was a central animating and enabling component of American foreign policy during the Cold War.

What makes the exchange between Louis XVI and Rochefoucauld meaningful is precisely the strength of possibility, and threat to the old conservative order, present in the concept of revolution. A riot will most likely pass and leave the old order intact. Revolution threatens to change everything. The symbolic importance of the execution that faced the French monarch, like that of Charles I in England

25. Koselleck, *Futures Past* *supra* note 8; and see chapter 10 in Koselleck, *The Practice of Conceptual History*, *supra* note 4.

26. This would be the basis of the programme contained in Karl Marx and Frederick Engels, *The Communist Manifesto* (International Publishers: New York, 1948, 2003).

27. Guy Chaussinand-Nogaret, *La Bastille est Prise* (Éditions Complexe: Paris, 1988) at 102.

over a century before, cannot be underappreciated for the context in which it occurred. But the intellectual milieu in which such a simple shift in terminology could encompass so much was indicative of a broader and more powerful shift. The industrial revolution, the French revolution, and the concurrent changes that form the basis of the modern era, form the crucible in which these concepts transformed meaning, and in which revolution in its radical sense is born. After this transition, the idea of revolution brings with it images of fundamental change; in the name of freedom, or emancipation, from conditions inimical to human life - a change that crucially involved large numbers of people consciously engaging in the historical process.²⁸ Be it liberation from the yoke of feudalism, hereditary privilege, colonial rule, or even wage labour, since the advent of the modern era revolution has pointed towards broad ideals for human emancipation.

2.2. Revolution and International Law

In the context of the preceding observations, and its radical heritage, the liberal usage of the term revolution in recent years may seem more politically charged. Attached to the events in the Middle East and North Africa, the label can have both progressive and reactionary overtones. Progressive in the sense that it may pay homage to the passionate nature of individual struggles, and the organisational effort involved; yet reactionary in that it serves to bound the limits of social struggle through closure – the ‘revolution’ shifts focus into the past tense; it has occurred, what now follows is reconstruction. In this sense it also serves to set limits on the goals of a social movement, especially when considered in relation to external interests. We can see this process exemplified in the context of Egypt, where the label of revolution (implying significant change) can elide the Egyptian military’s move to stress their adherence to existing international agreements, and with the backtracking forced on the Egyptian finance ministry

28. The extent to which one can attribute ‘consciousness’ to this kind of engagement has been contested, as part of a central debate over the criteria for revolution. As will become clear within this paper, precise criteria for the definition of an event as a revolution is a particularly uninteresting part of the discussion – what is of concern are the coordinates in which it takes place; the points drawn up by how revolution is conceived in the first instance. For the changing nature of the concept of revolution see Koselleck, *Futures Past supra* note 8. Also see Peter Calvert, *Revolution and Counter-Revolution* (Open University Press: 1990). For an account of revolutionary theory more generally, Goldstone, ‘Theories of Revolution’, *supra* note 11 and Jack A. Goldstone, ‘Toward a Fourth Generation of Revolutionary Theory’, *4 Annual Review of Political Science* (2001) 139-187; also see John Foran, ‘Theories of Revolution Revisited: Toward a Fourth Generation?’, *11 Sociological Theory* (1993) 1-20, and Randall Collins, ‘Maturation of the State-Centered Theory of Revolution and Ideology’, *11 Sociological Theory* (1993) 117-128.

around the acceptance of IMF loans.²⁹ In other words, the label serves to imply a form of radical change despite a series of structural continuities.³⁰

Many of these continuities are both comprised of, and underpinned by, international law. The Egyptian military were promising to adhere to pre-existing international agreements. Nearly all contemporary State economies are integrated into a broader network comprised of a net of both private and public international legal agreements. Discussions around the doctrine of succession in international law deal precisely with how continuity or change can be affirmed.³¹ It is in this rather formal sense that international law and revolution have their most immediate and close relationship. Historically, the notion of State transformation stretched beyond the formal discussion over the application of a particular treaty within changed circumstances into the very theoretical foundations of law and Statehood as a legal category. It became less about how to apply legal formulae, as much about the founding moments of law itself.

There is an immediate logical relationship between international law and revolution in this sense, something that took on a more explicit tone as revolutionary movements, in the Marxist vein, orientated themselves toward the international. The attempt to radically transform existing national and international relations rendered explicit the relationship between law and political power. In the example of the Bolshevik Revolution, the abolition of domestic law (putting to one side its subsequent re-establishment) stood alongside the continuity of Tsarist obligations under international law. Similarly, the process of Decolonization confronted the same issues of attempted transformation in an international milieu of preformed legal structures.³² Competing interests meant likely confrontation over the con-

29. See Anon., 'Egypt military authorities "to respect all treaties"', *BBC News* <www.bbc.co.uk/news/world-middle-east-12440138> (visited 10 October 2011). For the initial 'misrepresentation' of Fayza Abul Naga's comments in relation to IMF loans see Almasry Alyoum 'Egypt declines World Bank loan as incompatible with national interest' (June 2011) available at <www.almasryalyoum.com/en/node/469888> (visited 10 October 2011). The backtracking referred to the quick qualification of the prior statement; negotiations resumed, under more stringent loan conditions, and were underway as of October 2011.

30. Of course, revolution can only effectively be considered as closure by avoiding recognising it as a process of struggle. In other words, it is far easier for the label of revolution to serve its reactionary function when it is invoked in the absence of a concept of counter-revolution – a term which is entirely absent from the mainstream media, and is often neglected in critical narratives that invoke revolution divested of its modernist attributes.

31. Daniel O'Connell, *Law of State Succession* (Cambridge University Press, 1956) and Hersch Lauterpacht, *Private Sources and Analogies of Law* (Longmans: London, 1927) cited in Matthew Craven, *The Decolonization of International Law* (Oxford University Press, 2008) 23-24. Craven's analysis is particularly pertinent on how legal engagement would categorise an event in order to attribute certain consequences to it; if it is a case for the law of succession, then something radical has occurred, whereas simultaneously this process is normalised through the application of pre-existing legal doctrine, at 24-25

32. This is a work in progress but for some of the debates from the Soviet perspective see T. Tara-

tinuing application of treaties from pre-revolutionary times, and the terms on which the revolutionary state (or other entity) might interact with the 'existing community' of states. But the very terms of such battles were themselves necessarily contested as part of the revolutionary process. To have revolution appear as an issue of continuity between changes of government on the international plane in itself represented a victory over the aspirations of revolutionary states seeking a radical restructuring of their relationship with the outside world. Conversely, incorporating too fundamental a change into international legal argument presented the possibility of the benefits of international legal personality being deprived.³³

The nature of these practical struggles meant that their replication in academic discussion was inevitable, and across both these periods there were a variety of attempts to understand how revolutionary aspirations could mesh with the conservative nature of international law.³⁴ The focus of this paper, however, is

couzio *The Soviet Union and International Law* (Macmillan: New York, 1935), and Kazimierz Grzybowski *Soviet International Law and the World Economic Order* (Duke University Press: Durham, 1987). Discussion revolved around the compatibility between a 'world revolution' and international law, or whether there would be a qualitatively different 'international law' between socialist states, although all of this imagery has to be contextualised and understood in the contested sense to which the concept of revolution draws attention. Taracouzio's work should be read alongside the critical reviews of E.A Korovin, 49 (8) *Harvard Law Review* (1936) 1392-1395, and Philip Jessup, 9 *Pacific Affairs* (1936) 127-130. The most prominent example of sustained engagement with International Law from the Third World Perspective with a revolutionary mindset would be Mohammed Bedjaoui, *Towards a New International Economic Order* (Holmes and Meier: New York and London, 1979), but the same language pervaded the international dialogue from Bandung through to the latter 1970s. The International Law Commission's investigations into State Succession form the doctrinal side of this coin; for a comprehensive analysis of this in relation to treaties see Craven, *The Decolonization of International Law*, *supra* note 31.

33. Revolution in its contemporary sense always had an internationalist element, but this often merged with nationalism in complex ways. For example, see Hobsbawm, *The Age of Revolution*, *supra* note 15. Alistair Bonnett discusses some of the ways in which African Socialism incorporated nationalist historiographies, locating communist precursors in pre-colonial pasts: Alastair Bonnett, *Left in the Past – Radicalism and the Politics of Nostalgia* (Continuum: New York, 2010) chapter 3; also see Julius K. Nyerere, *Ujamaa – Essays on Socialism* (OUP: London, 1968) and William H. Friedland and Carl G. Rosberg Jr., (eds.), *African Socialism* (Stanford University Press: Stanford, 1964).
34. Again, this is a work in progress. Within the Soviet context these debates focused on the very nature of the law itself, see P.I. Stuchka, *Selected Writings on Soviet Law and Marxism* (M.E. Sharpe: New York, 1988) (translated by Piers Beirne, Peter Maggs and Robert Sharlet); and E.B. Pashukanis, *A General Theory of Law and Marxism* in Maggs, Piers Beirne and Robert Sharlet (eds.) *Selected Writings on Marxism and Law* (Academic Press: London, 1980); for decolonisation and the Third World movement, the best example of the attempt to harness revolutionary change to the chariot of law remains Bedjaoui, *New International Economic Order*, *supra* note 32. However this topic covers a vast selection of material. For a non-legal focus see Herb Addo *Transforming the World Economy – Nine Critical Essays on the International Economic Order* (Hodder and Stoughton: London, 1984). Gamani Corea's *Need for Change* (Pergamon Press: Oxford,

less this broader historical relationship (the breadth of which stretches beyond the ambit of a single article) but the ways in which the academic side of this discussion manifests itself today, most especially in critical engagements with international law.

In much of this critical international legal scholarship, we witness an attempt to engage productively with the various struggles of oppressed peoples through the lens of international law. Their discussion favours concepts of resistance and general political change, yet as explained above the concept of revolution can be inferred to useful effect, as will be clear below. The centennial American Society of International Law (ASIL) did however host a roundtable at which a small number of scholars discussed the relationship between law, force and revolution.³⁵ In much of this scholarship, and particularly at the roundtable, it is clear that many of the same concerns of the prior era of Russian socialism and decolonisation continue to dominate, and yet in contemporary discussion there appears to be less certainty about what the concept of revolution itself entails.

Perhaps more than an uncertainty we can note a schism; a rift between those invoking revolution as having some determinate heritage in the sense described above, and those for whom the concept is more amorphous. At the ASIL discussion Vasuki Nesiiah demonstrated the latter in describing revolution as both 'nostalgic' and 'utopian'. The nostalgic vision is one that 'laments the passing' of earlier revolutionary movements, whereas the utopian vision examines the 'roads not taken' in those previous instances.³⁶ It is this utopian vision that has revolutionary potential, focusing on the 'contingency of the present'.³⁷ In contrast, China Mieville's invocations of Leninist 'restraint' and the 'right of the oppressed to realpolitik, just like the ruling class', make clear reference to socialist revolutionary theory.³⁸

As will be discussed below, those who embrace revolution in the new, amorphous light mentioned above tend to reject those elements of the 'old' concept of revolution (as a political objective requiring coordination, organisation and discipline), instead favouring the characteristics of spontaneity, of a more primal and instinctual action, and an environment in which the causes of revolution (and therefore the potential for future revolution) are unperceivable and therefore limitless. This manifests itself as a tendency towards opposition to contemporary modes of power (definite forms, certainty of action, discipline and organisation), and the location of revolution and its emancipatory potential outside of these

1980) covers the close relationship between the function of the United Nations Conference on Trade and Development (UNCTAD) and the New International Economic Order (NIEO).

35. Anne Orford (Chair), 'Roundtable on Law, Force and Revolution', *supra* note 24.

36. *Ibid.*, at 264.

37. *Ibid.*, at 265.

38. *Ibid.*, at 270.

coordinates.³⁹ Unfortunately, this is also a position that holds common ground with the contemporary media invocations of revolution that turn a blind eye to its conceptual history.

3. Unpacking Revolution - Structure and Agency

As mentioned above, the modern concept of revolution took shape as part of a shift in the understanding and use of history as part of the development of modernism. Among the epistemological consequences of this changing concept was a conceptual separation between the 'structures' that define social life, and the 'agency' of humanity to conduct its own activities within.⁴⁰ The 'structure' could contain conditions conducive to revolutionary change, and within that structure, social groups would have the agency to participate in such a process. Politically, the separation of these factors gave rise to the need to analyse the social world in order to recognise the structure within which one could act politically, with a concurrent impetus to mobilise agents to act on that knowledge. Different kinds of action could be effective depending on the structural conditions pertaining at any given time.

Although this may seem something of an artificial separation, it was significant for a host of reasons. Firstly it was very much a product of the confidence of modernist thinkers and Enlightenment philosophers – the external world was considered *knowable*; it was possible through sustained and careful analysis to pick out trends in historical trajectories, and to build up a complex understanding of the social world in which humanity existed. More importantly, those with the political inclination could mobilise groups of people to intervene in this structure in order to transform it. It is this potentially emancipatory element that was the central shift in the conceptual history of revolution. It is also a central component of class analysis, situating agency within a particular set of structural conditions and determining how the direction and intent of that agency correlated to particular groups with particular relationships to their social structure.⁴¹

But it is also important in challenging unsubstantiated assertions about the freedom to act, or the efficacy of challenges to a social order. Combining understandings of agency with explicit theories of structural conditions meant that

39. Which has its historical antecedents, against which Jo Freeman called for caution, see Jo Freeman, 'The Tyranny of Structurelessness', 17 *Berkeley Journal of Sociology* (1972-3) 151-164.

40. See the introduction in Anthony Giddens, *The Constitution of Society* (University of California Press: Berkeley and Los Angeles, 1984), in which the critical history of field of sociology indirectly elaborates this point.

41. See Akbar Rasulov, "'The Nameless Rapture of the Struggle': Towards a Marxist Class-Theoretic Approach to International Law", 19 *Finnish Yearbook of International Law* (2008) 243-294. Also see B. S. Chimni, 'Prolegomena to a Class Approach to International Law', 21 (1) *European Journal of International Law* (2010) 57-82.

connections *had* to be made between them. It opened up possibilities of radical social change brought about through concerted action, but it also tied those radical possibilities to analysis of why or how they would be effective. Perhaps most importantly, and this is also at the heart of class-based analysis, it demands close attention to the ways in which differing social aspirations of different groups clashed, and therefore forced the activity of opposing social forces to be taken into consideration. In revolutionary parlance, revolution was always accompanied by counter-revolution.

3.1. Structure in Critical International Legal Discourse

The structural dimension of revolution in some contemporary international legal scholarship has much in common with that in public discourse discussed at the beginning of this paper. According to Philip Allott we are ‘living in revolutionary times.’⁴² For Allott these are times in which ‘[t]he internal and the external, the national and the international, are now completely flowing into each other’.⁴³ Allott is far from alone in the use of evocative language to describe the ‘structure’ in which we might consider revolution. This new world is one in which, for Balakrishnan Rajagopal, ‘[t]he Third World has burst out of the seams of the Westphalian structure.’⁴⁴ B.S. Chimni has argued that these changing structures are representative of the nascent development of a form of ‘global state’⁴⁵, in which a transnational capitalist class jet-sets across (to it) increasingly obsolete national boundaries. A consequence of the amorphous nature of this new and complex structure is that, for Vasuki Nesiah, ‘resistance [occurs] in an abyss’⁴⁶. Coupled with these descriptions, we are also faced with what Ruth Buchanan describes as a powerful imperial international order that demonstrates a ‘remarkable capacity to adopt and continue to contain violent challenges that would otherwise disrupt it.’⁴⁷

We can see from these snapshots that the ‘revolutionary times’ in which we may or may not be living are both thought to embody some kind of collapse of power (everything flowing into everything else, or Westphalian structures

42. Philip Allott, ‘Review Essay Symposium: Philip Allot’s *Eunomia* and *The Health of Nations* - Thinking Another World: “This Cannot Be How the World Was Meant to Be”’, 16 *European Journal of International Law* (2005) 255-297 at 257; it is interesting to note that such a claim continues to be echoed today, reinforced by the Arab Spring but no different in formulation, see Jacqueline Rose, ‘What more could we want of ourselves!’, 33 (12) *London Review of Books* (2011) 5-12.

43. Orford et al., ‘Roundtable’ *supra* note 24, at 263.

44. Balakrishnan Rajagopal, ‘Counter-hegemonic International Law: rethinking human rights and development as a Third World Strategy’, 27 (5) *Third World Quarterly* (2006) 767-783 at 768.

45. B. S. Chimni, ‘International Institutions Today: An Imperial Global State in the Making’, 15 (1) *European Journal of International Law* (2004) 1-37.

46. Vasuki Nesiah, ‘Resistance in the Ages of Empire: Occupied Discourse Pending Investigation’, 27 (5) *Third World Quarterly* (2006) 903-922 at 918.

47. Orford et al., ‘Roundtable’ *supra* note 24, at 268.

overcome) juxtaposed against a vision of the isolation, enervation or inefficacy of agency within this (it is disconnected, co-opted and contained). This presents a structure both open and closed to potential agency. In common, there is something particular about the kind of structure we are faced with today that differentiates it from prior forms. In terms of the discussion at hand, linking structure and agency, the presupposition of these authors is such that 'new' structures may engender 'new' agency.

3.2. Agency in Critical International Legal Discourse

Descriptions of agency in this moment are less uniform than the depictions of structure, although a tendency toward idealism seems prominent. For example, for Allott agency consists of the ability to actively choose to perceive a moment in time as revolutionary.⁴⁸ It is through the alteration of consciousness that realms of possibility are opened up – either to defend the status quo, or to re-imagine the future and shape it in that image.⁴⁹ In this vein revolutionary agency (perhaps of enlightened academics) arises in the capacity to alter the consciousness of the middle class. Stepping outside of the cerebral however, we can see agency located in new social movements that are themselves part of the new structures visible to the analytic eye.⁵⁰ For Rajagopal, these movements operate in opposition to dominant modes of power and organisation, transgressing and crossing boundaries. Yet, and here Rajagopal takes a position similar to Allott, their revolutionary potential is, in part, realised through redefinition. These new social movements 'seek to define the political in non-institutional, non-party, cultural terms. They seek to redefine the economy in place-based, rather than space-based, terms. And they seek to redefine law in radically pluralistic terms.'⁵¹

This implies that political and economic forces have their particular characteristics due to definition, rather than material function, and that they are in turn open to re-conceptualisation as an act of will. Furthermore, it implies that somehow the oppressive function of law stems from its definition as something monolithic, and that radical legal pluralism contains the seeds of emancipation. Even without unpacking the precise transformative vision behind these attempts at redefinition, it is clear that the agency envisaged is tied to a particular structural understanding – one that sees material conditions as the result of interpretative or definitional agency, not concrete social relations. 'Law' in this line of argument becomes something abstract that can be forced into plural forms, while

48. In this sense Allott himself is acting out his own vision of revolutionary agency.

49. This position usefully privileges 'committed intellectuals', in Allott's words, who can use their imagination to attempt to convert potential revolutionaries to the cause.

50. Allott's intended proto-revolutionary audience, the middle class, obviously has a longer pedigree.

51. Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge University Press, 2003) at 293.

the content of the legal form lies unaddressed.⁵² The result is that the necessary connection between agency and structure is rendered meaningless, as the latter is collapsed into a subjective 'act' of altered perception. Any kind of agency is possible, as the 'structure' is entirely contingent.

Chimni's description of agency also tends to fall foul of a similar drift into idealism. This is surprising considering that the bulk of his various analyses utilise the tools of the 'old' revolutionary tradition noted above, and thus should be placed on that side of the aforementioned rift. But although Chimni's structural accounts locate themselves in close proximity to the Marxist tradition, his descriptions of agency falter somewhat. In addition to a wealth of analysis addressing more 'traditional' forms of revolutionary agency, and its weakness in the face of contemporary changes, Chimni finds potential new resistance in the 'imaginative use of literature, theatre and the arts', to provide a possible way of affecting the consciousness of city dwellers within the nascent global state.⁵³ Furthermore Chimni posits the explicit and unqualified disavowal of violent means, in line with Gandhian philosophy.⁵⁴ He does not, however, provide a structural link as to *why* a non-violent approach is appropriate, how it may prove effective, or even *how* it is to be embraced in the face of the systematic presence of violence within capitalism.⁵⁵ It becomes impossible to contextualise Gandhi's message as one which had a particular efficacy in achieving a particular kind of political objective within British controlled India. Instead Chimni takes the tactics of a particular movement to embody the essence of progressive change, irrespective of different contexts. The agency he describes is therefore predominantly hopeful – one that trusts that moral appeals may turn the tide of oppression or that embracing ethical non-violence will secure an (at least) spiritual victory.

Interestingly, and surely not coincidentally, this privileging of abstract agency also reflects the trend in American Sociology from the latter half of the twentieth century that decentres issues of agency within revolutionary theory, embodied in the much quoted phrase 'revolutions are not made; they come.'⁵⁶ The con-

52. For discussion on this function of the legal form see China Miéville, 'The Commodity-Form Theory of International Law: An Introduction', 17 *Leiden Journal of International Law* (2004) 271-302.

53. Chimni, 'International Institutions' *supra* note 45, at 37.

54. *Ibid.* This brief and concluding paragraph sits uncomfortably as the final word on the preceding analysis which shows admirable attention to the wealth of problems that confront resistance to the components of the 'global state' thesis.

55. Without stepping into the strange liberal myopia of individual 'action' (and thus violence) being entirely distinct from 'inaction' (to prevent violence) – a liberal myopia that, it is worth noting, is entirely embedded within law. For a critical analysis of unequivocal Gandhian non-violence, see Domenico Losurdo, 'Moral Dilemmas and Broken Promises: A Historical-Philosophical Overview of the Nonviolent Movement' 18 *Historical Materialism* (2010) 85-134.

56. See Theda Skocpol, *States and Social Revolutions: A Comparative Analysis of France, Russia, and China* (Cambridge University Press 1979) at 17.

temporary political impact is to suggest either passivity in anticipation of future, structurally induced change, or complete freedom of action in acknowledgement that any number of spontaneous acts may be retrospectively understood as compromising the structural conditions for revolution. If a revolution ‘cannot be timed’ as Nesiah claims,⁵⁷ then it cannot be planned, or instigated. Nesiah invokes Deleuze and Guattari’s image of a network structure, with ‘overlapping, intersecting and competing networks that constitute our “new global reality”’, as a way of furthering a project of pluralising historical and temporal narratives.⁵⁸ Agency becomes a process of unveiling, of revealing contradiction and possibility; whereas it is from within the contradictions of the new network structure that our existence is defined and that an emancipatory trajectory may emerge – ‘fir[ing] the arrow’ that carries us into a new future.⁵⁹

3.3. Agency and Structure combined – revolution or resistance?

The reference to Deleuze and Guattari, and Hardt and Negri’s use of them, is telling, as it opens up the ways in which this scholarship tends towards a dependency on new technological developments for the location of revolutionary potential, structural or otherwise. People’s ability to organise outside of the constrictions of state power, to communicate across borders and to send messages instantaneously to one another across riot-filled streets, presents a heady concoction for the theorist searching for novel revolutionary agency. In this sense, opposition to power, even when momentary, or even worse simple acts of transgression, become somehow fundamentally challenging in and of themselves, as they occur within a moment already rife with potential – any act among the myriad acts of resistance may be the first spark of a chain reaction that could grow to unimaginable proportions.

However, the emphasis in such a note should be on the ‘could’. It is this same novel moment in which Buchanan notes we perceive a form of order remarkably capable of adaptation and absorption. The same technological change that enables rapid communication and the instant creation of virtual communities can serve to alienate and isolate those same individuals. They also enable greater surveillance, and create dependence on network infrastructure and forms of personal finance and contract. We can see that the same developments Allott sees breaking down state power and forcing everything to flow into a ‘discombobulated morass’,⁶⁰ also form the foundation of Chimni’s analysis of a transnational capitalist class, enabling their lifestyle and empowering their exploitation. There

57. Nesiah, ‘Resistance’ *supra* note 46, at 918.

58. *Ibid.*

59. The archery metaphor is taken from Michael Hardt and Antonio Negri, *Multitude – War and Democracy in the Age of Empire*, (Penguin: New York, 2004) at 29 - following Nesiah’s example.

60. Thanks to Miéville for this alluring turn of phrase; ‘The Commodity-Form Theory’ *supra* note 52, at 276

is no inherent reason in any of the foregoing descriptions as to why the novel structure should serve the needs of the global oppressed, or why novel forms of agency should be particularly successful. Especially when it would appear that those new developments serve as crucial enabling components for new kinds (or levels) of exploitation.⁶¹

It is also imperative to avoid entering a descriptive mode which focuses on the novelty of the present moment to the exclusion of other perspectives. It is essential not to overlook the fact that the changes pointed out in arguments like those above operate within a broader continuity - especially if we consider this as part of a broader integration within an economic system *defined* by continual processes of change and innovation. Recognising these systemic continuities also enables critical reflection on the locus of agency within any appeal to moral consciousness, either through communicating our own re-imagined future, or through 'challenging' artistic productions. Part of the novelty of the present moment would surely include the recognition of the use of such emotional connections as commodities and advertising gimmicks in themselves.

There are tensions within the scholarship briefly surveyed here, between those analyses that stress the dramatic nature of contemporary change, and those like Chimni's and Buchanan's that note elements of continuity within the novelty of the present moment; those for whom the structures perhaps offer a little less by the way of hope for revolutionary change. Those tensions tend to resolve themselves around a unity in support for the *ideal* of revolution, whilst suspending the uncertainty that surrounds its material content. It is in this sense that Chimni's structural analysis can be placed alongside its decoupled agency, or critical projects find themselves able to settle with the 'illumination' provided by the occupation of precisely such incompatible elements.⁶²

Such positions also stray from the conceptual history of revolution, and make it increasingly possible for the concept of 'revolution' to be substituted by 'resistance', or other near synonyms, because of their common aspiration of emancipation.⁶³ This terminological shift becomes important, because to focus

61. Thus new social media can 'enable' the Egyptian revolution. (<www.nytimes.com/2012/02/19/books/review/how-an-egyptian-revolution-began-on-facebook.html?pagewanted=all&_r=0>), and yet provide the basis for charging rioters in England with criminal offences (<www.guardian.co.uk/uk/2011/aug/16/facebook-riot-calls-men-jailed>). The two kinds of activity do not have to be considered equivalent for the point to stand. In both instances the opportunities for social media sites to serve as nodes for information accumulation and marketing purposes give them direct exploitative potential.

62. See Buchanan's concluding statements in Ruth Buchanan, 'Writing Resistance into International Law', 10 *International Community Law Review* (2008) at 454; equally see Nesiiah's summary, focusing on a process of 'unveiling', Nesiiah, 'Resistance' *supra* note 46, at 920.

63. We can see the same process at work in Laclau's choice of terminology in 'Emancipations'. See the first chapter where, in many senses, he describes processes of revolution, but opts for 'emancipation'. Ernesto Laclau, *Emancipation(s)* (Verso: London, 1996).

on issues of resistance alone can excuse one from focusing on the consequences of that resistance, or the ways in which those acts form part of a complex whole that incorporates them. It becomes possible to write optimistically about situations that may, in the light of a different kind of structure-and-agency based analysis, be devoid of hope.

4. From Revolution to Resistance and the 'Event'

In part, the above analysis reflects on the broader critical project in international law. The most immediate task of this scholarship is to challenge the self-aggrandizing narrative of mainstream liberal international legal theory: that international law is a bulwark against power and represents the best aspirations of a global community. This is a promise rooted in the idea that rule by law is more favourable to its supposed only alternative, rule by force (and the idea that there is a significant distinction between the two); a positive legal narrative born of liberal political philosophy, that power tempered by the limits of law and judicial review is the most favourable balance between effective and accountable government.⁶⁴ Within this perspective, international legal institutions lack only the effective capacities of enforcement and review to circumvent the political machinations of the international arena and the victory of politics over law.⁶⁵ Strengthening these institutions, and rendering them open to some form of review, then becomes the goal of liberally minded scholars.⁶⁶

Against this unproblematic vision of law's promise, many critical narratives incorporate the discomfiting idea that 'these very same liberal commitments also lead international lawyers to adhere to ideas and practices that function to reproduce the very hierarchies and exclusions that they ostensibly stand against.'⁶⁷ In this vein, many authors writing within the Third World Approaches to International Law (TWAAIL) school of thought 'seek to disenchant international law by revealing its imperialist, gendered and racist underpinnings.'⁶⁸ Often this critique is rooted historically, most powerfully through the close relationship between colonialism, imperialism and international law.⁶⁹

64. Charles de Secondat Montesquieu, *The Spirit of Laws* (first published 1750) (Franklin Library: Franklin Center, Pa, 1984).

65. This is the basic argument put forward in Philippe Sands, *Lawless World: Making and Breaking Global Rules* (Penguin: London, 2006).

66. *Ibid.* This is the form of international law depicted for popular consumption – see China Miéville, 'Multilateralism as Terror', 18 *Finnish Yearbook of International Law* (2007) 63-92, for an excellent summary of this position.

67. Buchanan, 'Writing Resistance', *supra* note 62, at 446.

68. *Ibid.*

69. See Anthony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press, 2005).

It is when it comes to an analysis of contemporary resistance, however, and especially when concepts of revolution are introduced, that this scholarship enters a paradox. Despite a wealth of critical analysis that aligns international law with an oppressive function, hope for resistance is still located in the liberal promise of international law;⁷⁰ that same form of law that ‘serve[s] primarily the interests of the powerful’⁷¹ is to be turned into a bulwark against that same imbalance of power.

Perhaps this is a concession to the inevitability of international law;⁷² a move made to avoid the perceived legal nihilism associated with more ‘radical’ accounts.⁷³ But irrespective of the inevitability or otherwise of law,⁷⁴ the position described above requires a particular kind of disjuncture between ‘structure’ and ‘agency’. If the law is criticised as being structurally hostile to (or even incompatible with) a particular objective, it requires a certain theoretical flexibility to then recommend one achieve that objective through legal means. This does not mean that, at very particular conjunctures, it would be impossible to use existing legal mechanisms to aid the achievement of objectives hostile to the interests the law protects. But it does mean that strengthening the legal system itself is unlikely to be the best use of the resources of resistance. Not only this, but it also sets the limits of any particular struggle as ‘resistance’, as opposed to anything more substantive.

70. An example of this would be Chimni’s call to hold Transnational Corporations to account in the international sphere, a position which disavows the complicity of law in their immunity, and implies it is simply a lack of will that stands in opposition, see Chimni, ‘International Institutions’, *supra* note 45.

71. B. V. A. Röling, *International Law in an Expanded World* (Djambatan: Amsterdam, 1960) at 15.

72. There have been a variety of other attempts to understand this commitment to law. For recent examples see Knox, ‘Strategy and Tactics’, 21 *Finnish Yearbook of International Law* (2010), and Paavo Kotiaho ‘A Return to Koskenniemi; or the Disconcerting Co-Optation of Rupture’, 13 *German Law Review* (2012)

73. See China Miéville, *Between Equal Rights* (Brill: Leiden) at 319, poetically describing the ‘chaotic and bloody world around us’ as the rule of law. Aversions to Miéville’s provocative statement could be usefully compared to the charges of legal nihilism levelled at the Soviet Union during the period of Pashukanis’s writings (from which Miéville takes his theoretical starting point). But understanding such charges as politically (and legally) charged, and recognising that the Soviet Union operated in a relatively unexceptional way in its legal activities, it would seem unlikely that Miéville’s account is, in a theoretical sense, *necessarily* legally-nihilistic. Perhaps we should rather consider this in the light that Pashukanis himself describes, in which law is stripped of the ideological trappings in which liberal theory finds it necessary to dress it. For an excellent critical account of this aspect of Miéville’s work, see Rob Knox, ‘Marxism, International Law, and Political Strategy’, 22 *Leiden Journal of International Law* (2009) 413-436.

74. Which one could rephrase as the horizons of our political imagination – see Miéville, ‘Roundtable’, *supra* note 24, at 265.

4.1. Event and Reality

The theoretical move that enables both the contradiction and supports the terminological shift most effectively seems to locate itself in the transition to an alternative framework – that of the ‘event’, as opposed to that of revolution.⁷⁵ ‘Event’ serves as a surrogate for revolution most commonly through the theoretical incorporation of Badiou’s *Being and Event* into international legal discourse, for example in the work of Bill Bowring.⁷⁶ It is presumably what lies behind Buchanan’s notion that some of the contradictions within critical international legal discourse lead to the necessity of theorizing ‘the event’.⁷⁷ However this transposition of a philosophical treatise to the realm of critical international law is problematic. Badiou described ‘the event’ as a ‘rupture which opens up truths’⁷⁸. Although this is not the place to enter into discussion on the nature of truth, the use of Badiou’s conceptual framework, in relation to radical change, is revealing in the following sense. For Badiou ‘[a] truth is solely constituted by rupturing with the order which supports it, never as an effect of that order.’⁷⁹ This has to be appreciated within the context of Badiou’s attack on relativism, such that in the construction of truth one has to turn toward something external to a ‘realist examination of the becoming of things’.⁸⁰ In the context of *Being and Event*, this takes mathematical linguistic form, in that the dominating influence on any conception is its own defining criteria (the property of being ‘one’ is dominated by being ‘not-one’). It is only the ‘subject’ that is able to make this distinction, and therefore Badiou is often read as reasserting subjectivity as a political (among other categories) act.⁸¹

75. Buchanan, ‘Writing Resistance’, *supra* note 62, at 454.

76. See Bill Bowring, *The Degradation of International Law?* (Routledge-Cavendish: Oxford, 2008); Badiou has noted the increasing use of the ‘event’ by philosophers following Sartre, the political component of which being ‘revolution’, see Badiou, ‘The Event In Deleuze’, in *Parrhesia* (Winter 2007) – available at <www.egs.edu/faculty/alain-badiou/articles/the-event-in-deleuze/> (visited 10 October 2011). It is in this sense that we find the term and its connotative elements replacing ‘revolution’ and its conceptual history. As Badiou’s disagreements with Deleuze’s conception of the event demonstrate, there is more to the concept of the event than its political dimension. In many senses, it does severe damage to the very concept to attempt to reduce it in this manner – but as surrogate for revolution within international legal discourse it automatically takes on this reductive form (see the subsequent arguments in the main text above).

77. Buchanan, ‘Writing Resistance’, *supra* note 62, at 454.

78. Alain Badiou, *Being and Event* (Continuum: New York, 2005) see the introduction to the English translation, at xii.

79. *Ibid.*

80. *Ibid.*

81. See Alain Badiou, ‘One Divides Itself into Two’, in Sébastien Budgen, Stathis Kouvelakis and Slavoj Žižek (eds.) *Lenin Reloaded: Toward a Politics of Truth* (Duke University Press: Durham NC, 2007); Bowring, *The Degradation* (2008) at 120; and Jason Barker, *Alain Badiou: a Critical Introduction* (Pluto Press: London, 2002).

However, irrespective of the no doubt immensely complex, nuanced and esoteric meanings that attach to the technical usage of both 'Being' and 'Event', when taken out of their specific context such terms take on more metaphorical connotations. It is then the case that opting for the language of the 'event' becomes an attempt to tap the potential of some unbounded sphere of possibility that surrounds the contemporary engagement with revolution discussed above. As a metaphor for the freedom of the individual, it comes perilously close to either a platitudinous libertarianism or a strained idealism. However, it would seem reasonable to give the theory sufficient credit as to be considered unsupportive of the kind of liberal mantra that claims individual circumstance as solely the product of some idealised conception of free choice. But then, without the internal meaning within its own particular discourse, the adoption of this position becomes a form of idealism. Structurally, this theoretical position supports the location of revolutionary potential outside of observable phenomena, and thus conceptions of action or agency are shifted away from materialist engagement. Its adoption can also be seen to serve the needs of a scholarship desiring an alternative route to that of 'classical revolution'. However, the reference points for *Being and Event* are in no way commensurable with the political projects involved in the concept of revolution from which a turn is being made, yet the forum in which the engagement occurs remains the same. Only now instead of a particular engagement with historical knowledge and political experience, the coordinates for achieving emancipatory change are abstract and philosophical.

In a sufficiently sympathetic light, the above theory could be seen to structure action, incorporating a 'fidelity to the event' into ones political outlook. The idea here would presumably be that a vision beyond the horizons of seeming possibility must frame political engagement, and it is *this* that enables the concept of revolution. Without this, political activity would be doomed to the replication of existing forms. Badiou's televised appearances tend to back up this aspect, articulated as a call for new ways of thinking.⁸² This is also a position that has acquired a certain popular following; a feeling that is succinctly captured by Slavoj Žižek's observation that it is easier to imagine the end of the world than the end of capitalism.⁸³ And yet the adoption of the event into the kind of structure-agency based analysis covered in the preceding half of this paper, tends to overemphasize cerebral efforts (the opening up of new ideas), obscuring the material basis for our current condition, and the material obstacles to ideas of radical transformation. Although it is possible for this kind of idealism to be incorporated into an active

82. BBC interview with Alain Badiou by Stephen Sackur, *HARDTalk*, broadcast 24 March, 2009, available at <www.youtube.com/watch?v=NPCCNmE7b9g> (visited 10 October, 2011).

83. Slavoj Žižek 'Don't fall in love with yourselves', transcript by Sarahana, *Impose Magazine* (October, 2011), available at <www.imposemagazine.com/bytes/slavoj-zizek-at-occupy-wall-street-transcript> (visited 30 October, 2011).

political engagement, it is not a *necessary* product of the theory that underlies it; it is possible to assert some kind of fidelity to the 'event', yet theorising the event provides no necessary connection between itself and any material component. It is complete as a statement in itself, but one that on its own terms is more or less disabling. It is a theory that could possibly produce hope, as under its aegis something can at any moment spring from nothing. But it is a rather barren hope, as it also incorporates a vision of reality in which nothing resembling 'the event' can spring from anything open to observation and informed action.

Considering Buchanan's suggestion that the dilemmas of critical engagement have something to do with the theorisation of the event, we can then trace its effect upon legal discourse. In light of the preceding reflections, we might see many of the dilemmas of critical discourse as *inherent* in theorising the 'event'. Whilst operating within a theory of the 'event' as outlined above, it becomes plausible to produce a theoretical critique of international law, which on conclusion places faith in that same oppressive regime. At any moment those oppressive structures may be destabilised, overthrown or entirely transformed by some unperceivable event. In fact, critiquing those structures, and yet maintaining some kind of faith in their redemptive transformation, could be read precisely as acting with 'fidelity to the event' – fidelity to the eventual victory of some transcendental truth. Perhaps then, theories of the event are themselves the problem. It is not the theory of the event that needs reworking, but a turn away from that conceptual framework to another.

These issues become clearer as we understand the kind of consequences that stem from the use of particular terminology and conceptual frameworks to critique international law. Using 'revolution', 'resistance' or 'event' interchangeably fails to distinguish their differing content. As revolution is collapsed into a kind of resistance, and also infected with theories of 'events' over the conceptual history of revolution itself, any of the insights provided by that historical development are obscured.

5. Rejection of Modernism

The use of this different terminology does enable the painting of a somewhat positive sheen onto an otherwise bleak analytical picture. But it would be disingenuous to claim that this shift in conceptual and theoretical framework simply serves a desire to discover some sliver of hope when immersed in studying the misery of the oppressed. Importantly, this scholarship rarely rests of the laurels of its suggested agency, or turns a blind eye to the contradictions and oppositions that haunt its conclusions. Perhaps one of its most unifying features would be precisely this occupation of an uncertain space. In this sense it is not so much a shift designed to overcome a contradiction, or to provide a new convincing para-

digm from which to consider radical political change, but one that attempts to occupy those spaces of contradiction and resist any conclusion or incorporation.

However, this shift in direction is not just about enabling the more comfortable occupation of paradoxical spaces. Rather, it seems to relate to a broader rejection of modernist ideals as somehow inherently corrupting; from the incorporation of a series of pervasive liberal accounts of the history of the twentieth century that link socialist aspirations and modernist methods with stifling authoritarian state rule.⁸⁴ It is a narrative bolstered, no doubt, by the complex and at times apologetic relationship between socialist organisations in the industrialised West and ‘real existing socialism’, which oscillated between apology and condemnation.⁸⁵ The effect is such that, in this light, attempts to create a body of knowledge, to create a disciplined and coherent position, are representative of the violation of free choice and thought.

In this sense, the shift in meaning associated with revolution reflects the conditions of the contemporary historical moment, defined by a particular set of historical narratives that inform it. But it also stems from a particular set of methodological assumptions and particular relationship between critique and historiography. This takes shape in scepticism about the accuracy of modernist analytical descriptions in the current ‘post-modern’ environment. As the modern ‘globalised’ world is understood to become increasingly complex, plural and unknowable, classical analyses of structure and agency are seen to become outdated.⁸⁶ Those modes of thinking are also the subject of criticism for eliding discontinuities and ruptures within their constructed narratives, such that the ‘critical’ engagement with history becomes one determined to avoid the same processes of ‘grand-narrative’ creation.⁸⁷

5.1. Traumatic history and anti-modernism

We can see this dual function in both the descriptions of the contemporary moment within critical scholarship, and the vision of the function of history that it adopts. Nesiah captures the first aspect by quoting David Scott’s description of the contemporary moment as haunted by the failures of socialist projects of the past.⁸⁸ The present is seen as ‘post-Bandung’ (the first Asian-African international

84. Haynes and Wolfreys, *History and Revolution*, *supra* note 9, at 5, and see Ernst Nolte in the same volume.

85. *Ibid.*, at 6-7.

86. Consider the shift to ‘biolife’, and the necessary changes in agency engendered by new structures in Michael Hardt and Antonio Negri, *Empire* (Harvard University Press: Cambridge, 2001).

87. As examples, see Upendra Baxi, ‘What May the “Third World” Expect from International Law?’, 27 (5) *Third World Quarterly* (2006) 713-725, and Karen Knop, *Diversity and self-determination in international law* (Cambridge University Press: Cambridge, 2002).

88. Nesiah, ‘Resistance’ *supra* note 46, at 920, referencing David Scott, *Conscripts of Modernity - the Tragedy of Colonial Enlightenment* (Duke University Press, 2004).

conference held in 1955, and considered by many to be a key moment in the construction of Third World solidarity), defined by the spectres of attempts to instigate a more egalitarian world economic system through the auspices of the New International Economic Order (NIEO), or the United Nations Conference on Trade and Development (UNCTAD) which became the focal point for development issues in the wake of formal decolonisation. This is a present further defined by the collapse of the Soviet Union, or the actualised socialist alternative to capitalism as a mode of production.⁸⁹ It becomes a present moment that is, in many senses, defined by a sense that somehow the 'end of history' thesis, despite being rejected in a straightforward sense, nevertheless captured something profound about the condition of left-orientated intellectuals.

Coupled with this effect of a history read as demonstrating 'classical' forms of revolution as being responsible for both the perceived failure of the socialist project, and for its authoritarian manifestations, we have a historiographical stance that is deeply hostile to the idea that broad-sweeping historical narratives carry interpretative weight. Indeed, much critical theory that attempts to challenge the confidence of the discipline does so by posing a direct challenge to the mainstream history of international law. As mentioned, this is the critical insight of much of TWAIL scholarship, but it is representative of a broader attempt to reverse the 'turn to history' within international law as being a method of developing the 'science' of the discipline itself.⁹⁰

One aspect of such scholarship is to make a straightforward critique of the historical narrative itself, challenging disciplinary milestones like 1648, or the Euro-centric nature of its discourse. But more fundamentally this project confronts the idea of the 'grand-narrative' of international law itself. The critique starts from the insight that a history of international law, 'if written in singular terms', would have to make assumptions about the identity of participants, the aims of international law, and the ways in which such a narrative is expected to inform the present.⁹¹ Karen Knop notes that 'no single grand narrative engages the range of identities visible in local women's communications of concern'⁹², whilst Upendra Baxi notes that the Third World contribution to international law, including the vital addition of 'peoples', can only come about through pluralising and correcting a Western historical 'grand' narrative.⁹³ In the construction of the

89. This is not, by any means, to endorse the Soviet Union as the embodiment of socialist ideals.

90. See L. F. L. Oppenheim, 'The Science of International Law: Its Task and Method', 2 (2) *The American Journal of International Law* (April, 1908) 313-356, also cited in Matt Craven, *Introduction: International Law and Its Histories* in Matthew Craven, Malgosia Fitzmaurice and Maria Bogiatzi (eds.), *Time, History and International Law* (Martinus Nijhoff: Leiden, 2007) at 1.

91. Craven, *International Law and Its Histories*, *supra* note 90, at 8.

92. Knop, *Diversity and self-determination*, *supra* note 87, at 328.

93. Baxi, 'What May the 'Third World' Expect?' *supra* note 87.

old, stable identity of international law, in defining the subject and the discipline, 'varied and opposing voices are, for the purposes of the narrative itself, silenced or pushed to one side.'⁹⁴

This rejection of the grand-narrative as a corollary of critique combines with a broader theoretical position that reads the culture that comes with post-industrial society (suspending for a moment the question of whether or not this represents an extension of traditional conceptions of capitalism, or a new form of technocracy or bureaucracy) as involving a crisis of legitimation; a component of which is the collapse of the meta-narrative, although at the same time we encounter the multiplication of micro-narrative engagements.⁹⁵ Within such a theoretical frame, history 'appears to be no more than a random succession of chance events'.⁹⁶

5.2. Empty Revolution and Modernism

These factors combine to offer one explanation of why we encounter the particular engagement with structure and agency discussed in this paper, which as we can see is one that has a particularly problematic relationship to the concept of revolution. We can think about this critically in a series of ways. Firstly, we have the rather banal acknowledgement that a universal rejection of 'grand-narrative' history is in itself a meta-narrative *par excellence*. At the very least this involves the relegation of theory to the background of an otherwise esoteric selection of micro-historical narratives. The theory then rendered implicit is one which holds that these micro-narratives are un-connected; that to draw inferences, comparisons and conclusions between them is to do irrevocable damage to the individual narratives themselves, and furthermore to erect a false narrative of coherency – a narrative that either serves the purposes of the previous mainstream narrative (the grand-narrative of international law under criticism), or else attempts to switch one form of power and domination for another.

The context for such a move, however, is a broader moment in which certainties (and narrative interpretations) continue to operate.⁹⁷ Most especially within liberal political structures, which take as their defining elements the incorporation of plurality within a broader system of continuity. In this context, the favoured critical move of pluralising narratives does little to address the systematic nature of

94. Craven, *International Law and Its Histories*, *supra* note 90, at 8.

95. Francois Lyotard, *The Postmodern Condition: A Report on Knowledge* (University of Minnesota Press: Minneapolis, 1984).

96. Haynes and Wolfreys, *History and Revolution*, *supra* note 9, at 15.

97. Frederick Jameson's reading of Lyotard is relevant in this respect, describing the same crisis of legitimation as the passage underground of the meta-narrative, its relocation within the social and individual subconscious, see Jameson's introduction in Lyotard, *The Post Modern Condition*, *supra* note 95, at xii. In this context however, it would seem that the prevalence of very visible meta-narratives has to qualify Jameson's formulation. The result being that the theoretical lenses of revolution and class offer greater insight.

the repression or exclusion of such positions.⁹⁸ It can also serve to overemphasize the contingency of the present.⁹⁹ But in addition it serves to bolster the formal equality of individual-narrative expression within a regime that maintains the 'material' (in an admittedly abstract sense) inequality of both their penetration into and acceptance within mainstream accounts. Simply by rejecting such explanatory frameworks, the existing narratives do not vanish or lose their purchase. Ironically, the step away from 'grand-narratives' then concedes explanatory ground to an alternative account, one that renders contemporary models of liberal democracy as the culmination of a socio-political evolutionary process.

The result is calamitous. The characterisation of the present moment as in the wake of a series of failed attempts to create various forms of actually existing socialism buys into a broader liberal narrative about the interpretation and meaning of the twentieth century. Hostility to 'grand-narrative' history in this way often prevents itself from providing effective counter-narratives. But it also fails to reflect the complexity of modernist thought more generally, and overemphasizes the extent to which the failure of these movements could be laid at the door of such modes of thought. Associating discipline and organisation with repression also enters the double-bind of locating abstract liberty within a set of conditions supposedly ruled only by 'natural' events, coupled with no persuasive account of the natural. Finally, in ruling out modernist methods as a necessary component of agency for change, we are left with a concept of revolution strangely emptied of its emancipatory content.

6. Revolution and Modernism

The point is not to decide who has the most accurate reading of an historical epoch. It is to note that, on all sides of political and historical debate, revolution became a crucial concept, the content of which took on the particular flavour noted above. This is important in order to understand what characteristics are highlighted in critical discourse today, and their effect on such scholarship. As has already been noted, in such scholarship we find an emphasis on the spontaneous and almost primal nature of revolution as a powerful force that lurks beneath the surface. At times it may erupt through the chaotic and largely incomprehensible skin of the world and provide a challenge to power and oppression. The lodestone at the heart of the concept is still some kind of emancipatory promise. But among the crucial shifts in revolution noted above, in its role as a locomotive of history,

98. See Outi Korhonen's general point that 'the fact that there are more "players" on the entwined legal, political, economic and other fields does not mean that new "itineraries" are on the table.' Outi Korhonen, *International Law Situated: an analysis of the lawyer's stance towards culture, history and community* (Kluwer Law International: The Hague, 2000) at 279.

99. Susan Marks, 'False Contingency', 62 (1) *Current Legal Problems* (2009) 1-21.

as a dominant theme of an historical age, and as a force at times to be combated with all the resources of a powerful military state, there is more than a recognition of spontaneous rupture. More than anything the concept calls up images of revolutionary parties organising and mobilizing for change. We find intellectual groups producing pamphlets and communicating ideas to a broader audience, attempting to form a body capable of challenging the forces they find oppressive. It is following the French Revolution that we encounter a wave of revolutionary events throughout Europe, and those same ideas that animate European Socialists before the First World War, and that contribute to the Bolshevik rise to power in Russia. It is not only in such a prominent event as the October Revolution, but in the Paris Commune and the defeats of 1848 that the concept and reality of revolution take shape. And in this sense we are not witnessing some abstract and mystical force, but the organisation of groups of people in pursuit of a political ideal, and in many instances their crushing defeat.

These latter characteristics of revolution this paper argues as intimately connected to modernism. They depend on a faith in scientific knowledge and method, and in the ability to understand society and organise around that knowledge to effect change. Just as modernism represents a secularising force, so too revolution took what were often religious or transcendental ideals and transposed them to the world of human action and achievability. If we step back from the caricatured narrative of historical necessity and economic determinism often associated with Marxism, and instead place this work within the context of its time and in the light of the developing idea of revolution, we are presented precisely with the confluence of these ideas. Putting aside the reading of a path to socialism as mechanical or inevitable, we can understand this as a process of the analysis of a given structure (capitalism); the location of trends, and systematic function (of capital); and the situation of agency for revolutionary change *within* that system - the proletariat of the *Communist Manifesto*.¹⁰⁰ In this sense, and as a political project, it was this secularisation of eschatological and utopian socialism that defined the Marxist shift. How this worked out in practice, and at different points at different times, was nevertheless a complex process, without easy doctrinaire answers - the stylised 'blueprint' of revolution (raise the proletariat, capture the state, smash the state, transit to socialism) was always a contextual one.¹⁰¹

In a sense the caricature serves an important purpose, one closely linked to that of a historiography averse to its own vision of 'grand narratives'. Within the context of a political struggle, the process of denying intelligibility, or of focusing on the minutiae of historical study *in order* to refute broader interpretative

100. Karl Marx and Frederick Engels, *The Communist Manifesto*, *supra* note 26.

101. Marx's own views on this kind of dogmatic theoretical approach are made explicit in his *Critique of the Gotha Programme*, see Karl Marx, *Marx/Engels Selected Works, Volume Three* (Progress Publishers: Moscow, 1970) at 13-30.

work, has much in common with caricaturing opposing scholarship as something wooden, overly simplistic, and blind to detailed reality. Perhaps then we should read this aversion to grand narratives, or to one aspect of the concept of revolution, as stemming rather from the consequences of such a position. Most especially for those scholars who feel an attachment to the political left, it is the uncomfortable relationship between precisely the above legacy of revolution and the various tyrannies associated with ‘actually existing socialism’, that underpins an aversion both to the ideas, and to scholarship associated with them. This is not to say that no scholars on either side of the debate made themselves easy targets through over-enthusiasm, but it is an important element in characterising a world as ‘post-Bandung’ and in which resistance occurs in an abyss. This is a world scarred by the notion that the one inevitably led to the other. ‘Organisation’ becomes associated with lack of individual expression; the process of coalescing around a single idea to achieve an aim becomes repression of free thought; and the idea that dissent may be unproductive at various junctures, automatically results in secret police and the silent disappearance of the opposition in the dark of night. Whether or not a liberal democracy riven with social inequality, poverty, and the massive (if subconscious) coercion of the population around various ideas represents any closer of an approximation to these ideals of freedom is beside the point. What is worthy of note is the aversion to these attributes of revolution, and the consequences.

6.1. Artificial oppositions: spontaneity and organisation

One way in which this aversion manifests itself is through the proposed opposition between Lenin and Luxemburg.¹⁰² Many of Luxemburg’s disagreements with Lenin centred on how the principles of organisation were to manifest within the party structures. In ‘Organisational Questions of the Russian Social Democracy’, Luxemburg was writing against Lenin’s call for greater centralisation of party control for the Russian Social Democracy.¹⁰³ She focused on the unique nature of social democracy as stemming from the dialectic of class struggle, stressing the autonomy of social action, the spontaneity of events and the gradual construction of class consciousness. For Luxemburg, Lenin’s vision was drawn from an understanding of factory organisation and discipline, whereas she felt it was essential that the class struggle produced an autonomous will in contrast to this – avoiding recreating the subordinate position (and the division between manual, creative and intellectual production) of the oppressed worker. It is relatively easy

102. For an exploration of this, see Paul Mattick, *Anti-Bolshevik Communism* (Merlin Press, 1978), available online at <www.marxists.org/archive/mattick-paul/1935/luxemburg-lenin.htm> (visited 10 October 2011).

103. Printed as ‘Marxism or Leninism’ in Rosa Luxemburg, *Reform or Revolution and Other Writings* (Dover Publications, 2006).

to read Luxemburg as the proponent of a freer, more spontaneous socialist party, attempting to stress a democratic, bottom-up approach against Lenin's harsher party discipline.¹⁰⁴

This is certainly James Scott's interpretation, describing that, under Lenin, the role of the workers was to 'follow that part of the blueprint allotted to them in the confidence that the architects of revolution know what they are doing.'¹⁰⁵ Scott goes on to state that

[i]t is surely a great paradox of 'where to begin?' that Lenin takes a subject – promoting revolution – that is inseparable from popular anger, violence, and the determination of new political ends and transforms it into a discourse on technical specialization, hierarchy, and the efficient and predictable organization of means. Politics miraculously disappears from within the revolutionary ranks and is left to the elite of the vanguard party, much as industrial engineers might discuss, among themselves, how to lay out a factory floor.¹⁰⁶

Scott's interpretation is clearly that, for Lenin, the spontaneous forces of mass action, or proletarian struggle, will never succeed against the force of capital and bourgeois ideology without the strict guidance and knowledge of the vanguard party – the danger always being that, without iron control, the great 'force' of the masses may at any moment disband and wander off. We can see in this, in part, an allegiance to a notion of freedom and spontaneity. Scott juxtaposes Lenin with Luxemburg to stress her faith 'in the autonomous creativity of the working class'.¹⁰⁷ But the broader structure of Scott's argument is one pitted against the certainties of modernist knowledge. Lenin's planning and organisation is aligned with a whole set of modernist projects that involve the attempt to study a situation and provide some form of scientifically rigorous solution to it, a solution which, in the process, kills any of the natural and spontaneous growth that is essential to the vibrancy of social life.

In challenging this opposition, the point is not to claim that there have been no wrongheaded attempts to analyse a situation and provide a remedy that proves damaging in the end. Scott's analysis contains a host of persuasive arguments in relation to the confidence and blindness involved in large scale agricultural projects in both the Soviet Union and the United States in the nineteen twenties and thirties. He goes on to draw our attention to the recurrence of this in colonial agriculture, where metropolitan ideas of horticulture were forcibly applied to local conditions irrespective of indigenous knowledge, to disastrous effect. But

104. Or to go further and read Luxemburg as tapping into the feminine nature of things, as opposed to Lenin's sterile and constricted masculinity, Rose, 'What more could we want' *supra* note 42.

105. James Scott, *Seeing Like a State - How Certain Schemes to Improve the Human Condition Have Failed* (Yale University Press, 1999) at 152.

106. *Ibid.*

107. *Ibid.*, at 168.

the acquisition of knowledge is not the immediate *cause* of such activity. And in the realm of revolutionary politics, to swing too far away from Lenin's principles of organisation and planning, of a certain level of centralised discipline and purpose, and embrace a faith in spontaneity and impulse, fails to understand the context in which Lenin was operating – and indeed the context that the concept of revolution forces to the forefront.

This context is a simple one. Revolutions involve the overthrow of whatever the current order may be. And many of them fail. Some then drift (or are brushed) into the annals of history without the label of revolution precisely because of that fact. The crux of Luxemburg's own argument against Lenin in the piece cited above rests on an analysis of the concrete historical circumstances facing the socialist movement in Russia (and the broader international) at the time. The autonomous creative process (the historical trajectory described by Marx) was not underway in Russia at the time in which Luxemburg was writing. Socialist 'agitation' in this regard (consciousness building, shaping the revolutionary proletariat) was bound to be an artificial process. But this of course speaks to the heart of historical materialism as a methodology, and the heart of scientific socialism. Understanding an inherent, trajectory generating, logic of capital that will bring about certain conditions places one into an awkward relationship with regards human agency, most especially 'counter-revolutionary' agency. But it is not a relationship that forces a rigid dichotomy between the causes of a revolution on the one hand, and the preparatory work an organised section of the population may do on the other. Luxemburg and Lenin's positions are in fact far closer than such comparative work as Scott's implies, and this is precisely operative in the ability of the two scholars to engage in productive debate within the grounds of a shared socialist project. Lenin concludes 'where to begin?' with the following statement, intended to avoid 'possible misunderstanding'.

We have spoken continuously of systematic, planned preparation, yet it is by no means our intention to imply that the autocracy can be overthrown only by a regular siege or by organised assault. Such a view would be absurd and doctrinaire. On the contrary, it is quite possible, and historically much more probable, that the autocracy will collapse under the impact of one of the spontaneous outbursts or unforeseen political complications which constantly threaten it from all sides. But no political party that wishes to avoid adventurous gambles can base its activities on the anticipation of such outbursts and complications. We must go our own way, and we must steadfastly carry on our regular work, and the less our reliance on the unexpected, the less the chance of our being caught unawares by any "historic turns".¹⁰⁸

108. Lenin, "Where to Begin" (1901) at 24, in V. I. Lenin, *Collected Works* (4th English Edition, Foreign Languages Publishing House: Moscow, 1961). I am indebted to Rob Knox for drawing my attention to this quote.

Lenin was doing more than giving a nod to the proponents of spontaneity. The point is that as a basis for political action, for organisation and mobilization, a hope for some mystical confluence of spontaneous factors is not an appropriate or realistic banner around which to rally. Moreover, it is a recipe for failure. The 'historic turns' referenced in the passage above, although just as much a part of the stream of history as a spontaneous revolutionary upsurge may be, take the form of concrete manifestations. Raymond Williams puts this most succinctly. His point is simple: that the 'transformation of society has an enemy. Not just an electoral enemy or traditional enemy, but a hostile and organised social formation which is actively trying to defeat and destroy you.'¹⁰⁹

7. Conclusion

William's point may seem overly dramatic. But really it is at the heart of the concept of revolution; the corollary of every aspiration invoked by that word. This is something that occurs both structurally, within the 'mechanics' of social transformation, and actively, within the acts and intentions of individuals. The opposition of a social formation is of a different order to meeting an army on the battlefield. But in as much as any army is constituted of individuals, social forces also take their material shape. The awareness of this position haunts those analyses like Scott's, which take issue with what can be a caricature of Lenin. Fully comprehending the stakes of revolution, especially the kind socialists fought for following the French Revolution, does not bolster faith in the ultimate success of spontaneous forces of mass action or proletarian struggle. And *even in the event* that it is precisely this which prevails in the end, it is not a principle around which politics can be conducted. Certainly not in the face of the 'hostile social formation' that confronts the movement. That formation has no qualms about seeing the world as 'comprehensible' in certain ways, and acting accordingly. In as much as a 'globalizing' world may present a confusing and amorphous mass to certain types of analysis, in as much as this may seem to undermine 'old' structures of power like the state, even so far as 'market forces' can themselves begin to seem somewhat chaotic and unmanageable, these continue to remain operative principles on which substantive political organisation is based.

This is perhaps the most debilitating aspect of the retreat into mysticism that comes with adopting conceptual frameworks like that of the 'event'. In some ways it can be read as a reversal of the secular turn of the modern era, relocating the emancipatory ideals taken from religious eschatology back into their idealist context.¹¹⁰ It is not simply a reversal, or a rejection, of modernism. It is reversal

109. Raymond Williams, *Resources of Hope* (Verso: London, 1989) at 71.

110. For the relationship between religious sentimentality and revolution's secularisation of its ide-

and rejection of modernism in the face of the dominant influence of the modern era; of late capitalism in all its most virulent forms. In this sense it is a capitulation to that material reality, and abdication of responsibility on a vast scale. It is vastly easier to hope for an event. It is far less so to recognise the complexity of the structures that require analysis, and the frustration of developing organised opposition in pursuit of an alternative. All of this is confronted with both the structural dynamic of capital and its socially invested agents on a vast scale – an opposition that is very far from its own retreat into mysticism. It is worth noting that we could qualify this by reading the supplication before the vagaries of ‘market forces’ as a form of idolatry itself. But to do so fails to account for the level of agency assumed in the engagement with the market, and the linkages between the social groups that benefit whichever way the economic pendulum swings. It also would serve to help alleviate some of the discomfort that *should* be present in the shift toward a mystical mindset involved in some contemporary scholarship, and would therefore be counter-productive.

The link between structure and agency that has come adrift in the loss of revolution’s conceptual history was essential in both grounding critique, but also in forcing comparative analysis between the forces in favour of one historical trajectory, and those in favour of another. In terms of the Arab Spring, such analysis cautions us against the use of the language of revolution when we consider the kinds of structural continuity present in the international system, and especially the position of international law within that. Engagement in support of revolutionary aspirations has to connect the analysis of agency with structural analysis that incorporates international law. It is only in the absence of this that the unqualified advocacies of non-violent means, or non-party-based, non-hierarchical forms, become plausible suggestions. It is also only really in recognising the absence of this link that we can align Allott’s kind of revolutionary agency with that of TWAIL scholars. Although the kind of idealism present in Allott’s suggestion that the mental capacities of the middle class present revolutionary capacity is more extreme than Chimni’s suggestion of tactical intervention into city life, through the lens put forward here they share common ground. It is precisely that commonality that should push for a reassessment of critical scholarship in international law.

To reiterate, the point here is not to berate the kind of international legal scholarship discussed earlier. But to stress that, in as much as such scholarship pertains to speak to the causes of the oppressed, the conceptual history of revolution offers important lessons. Most importantly, that contemporary engagement with the concept of revolution tends to embrace only a part of its complete meaning, and that in doing so the emancipatory potential contained within is

als, see Daniel Bensaïd, *Revolutions: Great and Still and Silent* in Haynes and Wolfreys (eds.) *History and Revolution*, *supra* note 9.

lost. It is clear that the many defeats and setbacks of the twentieth century leave much left-orientated academia with a complex relationship to some of the guiding principles of the revolutionary movements of this period. To then occupy a 'post-Bandung abyss' as a result, is not a productive position. Furthermore, to conceive of the potential for radical change (or revolution), as being located purely in either spontaneous outbreaks, or anything that happens to constitute itself as the antithesis to 'modes of power', in an attempt to avoid the pitfalls of either modernist certainty or the corruption of power, does no justice to the concept of revolution. It reverts to a prior utopian and idealist concept of political change that, confronted with the message of revolution so well encapsulated by Williams, looks sadly, overly, optimistic.