

【論文】

Kumazawa Agonistes: The Right of Conquest and the Rise of Democratic Ideology (Part Two)

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The Right of Conquest during the American Civil War and Subsequent American Empire

Not every encounter was as lopsided as the Trail of Tears. The most formidable resistance that the Americans encountered in their ideological crusade came from the several states of the Confederacy. In July of 1863, after the corner of conflict had been turned and the Republican ideological juggernaut saw clear to dispensing with the anti-ideologues of the South, the Marxian president of the conquering Union pointedly remarked that he was simply realizing the project begun eighty-seven years before: “a new nation, conceived in liberty” had been nascent then, Abraham Lincoln declared, a nation “dedicated to [a] proposition.” The South was not a place being conquered, he meant to say. No, the war was not conquest, but the labor pangs of an idea being born, and born for the sake of another idea.²⁷ Like the formulators of the original break with England, the new conquerors claimed innocence as mere midwives to the inexorable advance of “Enlightenment” principles. The burgeoning federal-imperialist power eventually quashed serious organized opposition to expansionism at the Appomattox courthouse in April of 1865. There followed a “war guilt information program” in which the captive population was indoctrinated

into a narrative of aggression and war crimes.²⁸ Propaganda, it turned out, was the only real weapon in the war of ideas. And it was always the same theme: war for peace, “of the people, by the people, and for the people.”

The Plains Indians fell next to the Washingtonian onslaught, each defeat duly dressed in treaty law as vanquished populations were herded into concentration camps and prohibited from speaking their native languages, performing their native rituals, or wearing their native dress.²⁹ The Indians were not the only targets, to be sure. Manifest Destiny, the *mission civilisatrice* of North American WASPs, was formulated just one year before the federal government invaded and occupied Mexico, which had only recently declared its independence from another empire, Spain, but had been unable to prevent a breakaway constitutional republic, Texas, from annexing itself to the new imperium on the Potomac.³⁰ But neither Mexico, nor Spain, nor Texas, nor the Americans seriously considered First Peoples as candidates for self-rule. Likewise, Liliuokalani, the queen of Hawai‘i, was forced to acquiesce to a “bayonet constitution” in 1887 in a coup organized by imperialists from New England and underwritten by a detachment of United States Marines.³¹ Eleven years later, the Americans manufactured a *casus belli* by sinking their own battleship, the USS *Maine*, at anchor in Havana Bay. In the

²⁷ See Jeffrey Rogers Hummel, *Emancipating Slaves, Enslaving Free Men* (Chicago: Open Court Publishing, 1996), cited in James Ronald and Walter Donald Kennedy, *Yankee Empire: Aggressive Abroad and Despotism at Home* (Columbia, SC: Shotwell Publishing, 2018).

²⁸ Walter Cisco, *War Crimes against Southern Civilians* (Gretna, Louisiana: Pelican, 2007).

²⁹ On the importance of treaties as finalizing conquest, see, e.g., *United States v. Hayward* (1815) and *The American Insurance Company v. Canter* (1828), both cited in Korman, 114.

³⁰ On Manifest Destiny, see John L. O’Sullivan, *United States Magazine and Democratic Review*, July 1845, and Julius W. Pratt, “The Origin of ‘Manifest Destiny,’” *American Historical Review*, 32 (1927), both cited in Korman, 58.

³¹ Kennedy and Kennedy, *Yankee Empire*, op. cit. See also “The Failed Annexation of Hawaii,” in Kees van Dijk, *Pacific Strife: The Great Powers and their Political and Economic Rivalries in Asia and the Western Pacific, 1870-1914* (Amsterdam: Amsterdam University Press, 2015).

short war that followed, the United States wrested control of Cuba, Puerto Rico, and the Philippines, again from Spain. The American subduing of Cuba and the Philippines, a project taken over from the Spanish colonial forces long at war there, saw the continuation of the use of concentration camps—a practice the Spanish had also employed, but at which the Americans excelled thanks to their decades of experience in effecting Native American genocide—and the development of the idea that an entire population could, and should, be held hostage in order to suppress resistance by “rebels” and “terrorists”.

While these exercises were preliminary ventures into the transformation of the United States from a constitutional republic into an empire, World War I marked the true turning point in the re-founding of America as an imperial power. World War I was also a turning point in the development of international law, for it was in the context of this war that President Woodrow Wilson, acting as mouthpiece for technosocialist Col. Edward Mandell House, formally enshrined the right of conquest as a principle of internationalism, and no longer just as a conquest between and among states.³²

After securing the defeat of Germany in co-operation with the Allies, [Wilson] intended to exploit the latter's dependence in order to carry through his grand design for the reform of the international order, the principal ingredient of which was a post-war association of democratic nations that would punish violations of territorial integrity.³³

Wilson framed this “new international order”³⁴ in the context of “the self-determination of peoples,” declaring as much in a speech to Congress on April 2, 1917—just four days before declaring war on Germany in direct contravention of his promise to keep the United States out of the Great War. The plea of the American imperialists was thoroughly Rousseauian:

what the United States wanted from war was not war but peace, not conquest but democracy (even though a majority of American voters had cast their ballots for the anti-war platform of which Wilson had been the erstwhile representative).³⁵ With the United States now in control of the narrative³⁶ and financially sapping Great Britain of its wealth of gold, the stage was set for the re-conquest of a resurgent Germany and the elimination of the United States' most formidable anti-liberal rival in the Pacific, the Empire of Japan.

The Japanese “Exception”

Japan is particularly instructive by way of contrast with the American way of war. Japan had had no empire until contact with the post-French Revolution West, and even then her empire was premised upon the ideals that the Westerners themselves espoused, but never seriously considered honoring.³⁷ It was Japan, after all, that insisted on adding a clause of racial equality during the Paris Peace Conference of 1919—a proposal that was swiftly dismantled by Woodrow Wilson using an ad hoc procedural technicality, again despite a majority having voted in its favor. Undaunted, Japan attempted to put this ideal into practice in Manchuria. Racial equality was one of the fundamental tenets of the Manchurian experiment, and the Manchurian flag is an expression of the harmony of five different races coexisting in pursuit of a common goal. Manchuria is most instructive of all, because it is here that we can see the different strains of conquest and the ideological frameworks used to clothe them with legitimacy. For the Japanese, racial harmony was not merely the mouthing of sonorous platitudes, as it was for the European and American powers. Racial equality, largely window-dressing for the West, was a matter of life and death for Japan. If Japan could not hold Manchuria, a territory whose existence was rooted in racial co-existence, then Japan stood defenseless before the Bolshevik onslaught—a fact given very little weight by the

³² See G. Edward White, *Law in American History, Vol. II: From Reconstruction through the 1920s* (Oxford: Oxford University Press, 2016), esp. Ch. 3, “Foreign Relations Law and Policy from the Civil War through the 1920s,” 89-117.

³³ Korman, 137

³⁴ “What we are striving for is a new international order based upon broad and universal principles of right and justice—no mere peace of shreds and patches.” Woodrow Wilson, speech of Feb. 11, 1918, in Harold William Vazeille Temperley, *A History of the Peace Conference of Paris* (London: H. Frowde: Hodder & Stoughton, 1920-24), 259, cited in Korman, 155.

³⁵ Ray Stannard Baker and William E. Dodd, eds., *The Public Papers of Woodrow Wilson* (New York: Harper, 1926), 407-14, cited in Korman, 136.

³⁶ “Self-determination [of peoples]” was repeated, for example, by British prime minister David Lloyd George. See David Lloyd George, *The Truth about the Peace Treaties* (London: Gollancz, 1938), 59, cited in Korman, 138.

³⁷ See Masaharu Yanagihara, “Japan,” in Fassbender and Peters, *The Oxford Handbook of the History of International Law*, op. cit., esp. sec. four, “Pseudo-Equality and the New Order in East Asia,” 493-97.

³⁸ See Harry Wray and Seishiro Sugihara, *Bridging the Atomic Divide: Debating Japan-US Attitudes on Hiroshima and Nagasaki* (Lanham, MD: Lexington Books, 2019).

Europeans and Americans.³⁸

Indeed, although Japan's interest in Manchuria was clearly a defensive one on the whole (her quest for resources being a function of the necessity of self-defense), she was denounced by the League of Nations in 1932 for having abrogated her accession to the Kellogg-Briand Pact of 1928—even though the Pact allowed for self-defense.³⁹ This broad exception, notably *not* granted to Japan in the instance, was widely used by other powers:

The United States claimed that self-defence covered the Monroe Doctrine; Britain, that it covered 'interference' in the Suez Canal; and Japan later claimed that it undertook the conquest of Manchuria in self-defence, pointing out that Manchuria was no less vital to Japan's self-defence than the Panama Canal to the United States or the Suez Canal to Britain. [...] However, [...] the verdict of the Lytton Commission Report, adopted by the Special Assembly of the League of Nations on 24 February 1933,⁴⁰ was that Japanese operations in Manchuria were not measures of legitimate self-defence; and in 1934 the British and United States governments denied that Japan had the right to take action in China by virtue of its special interests in the area—thereby defeating their own earlier claims that defence of vital interests was a legitimate ground for resort to war.⁴¹

Here we see a rent in the ideological fabric that is supposed to have covered over aggression since the French Revolution. Self-defense is a paradigm not equally accessible by all. It is worth recalling that Lincoln proclaimed all men created equal only after it had been determined that his government possessed more guns. Likewise, the definition and application of the doctrine of self-defense in the Kellogg-Briand Pact was determined by a calculus rather removed from any notion of equality. The League of Nations surmised that Japan was not able to defy the "general will" on its own, and therefore acted with impunity against the new island empire.

There was never any real question about the meaning

of the the Kellogg-Briand Pact. Japan's only fault lay in not having had privileged access to the circle of decisionmakers whose word, and will, were the ultimate arbiters of geopolitical reality. As Francis Paul Waters remarks, the Kellogg-Briand Pact:

forb[ade] war [only] as an 'instrument of national policy', [but ...] did not forbid recourse to war as an instrument of international policy, as in collective action under the Covenant [of the League of Nations], or collective action not authorized by a competent international organ as in a war of sanction against an aggressor.⁴²

For the Americans, who were best poised to extend their empire outward into hegemony over all other powers, the Kellogg-Briand Pact was an instrument to paralyze potential rivals until they could be maneuvered into launching attacks at inopportune times. The ultimate goal was the instantiation of globalist ideology—the natural outgrowth of the Rousseauism of the Treaty of Vienna—and the creation of a world body (to be puppeteered by Washington) to oversee the Rousseauian doctrine of perpetual war for perpetual peace, the price the collective will must pay for forcing non-liberal states to be free.

As Japan had rightly feared, the United States was soon joined in its internationalism by the Soviet Union.⁴³ Indeed, this was the real nature of the Americans' partnership with the Russians. Franklin Delano Roosevelt was not a communist—he was, like Stalin and like Lenin before him, a globalist.⁴⁴ All wanted the same thing, namely, the postwar construction of a truly globalized League of Nations. This was the project on which one of the most prominent Soviet spies (among very, very many) in the Roosevelt administration, Alger Hiss, was most feverishly at work. Hiss was secretary-general of the United Nations Conference on International Organization at San Francisco in April of 1945, and had been the lead negotiator with Stalin during the Dumbarton Oaks Conference the year before. These were all designed to put into effect the Moscow Declaration of 1943, which called for the creation

³⁹ See George Hubbard Blakeslee and Nathaniel Peffer, *The Lytton Report* (New York: Foreign Policy Association, 1932).

⁴⁰ The Report itself was issued in 1932.

⁴¹ Korman, 193-94, citing *League of Nations Official Journal* (1933), spec. suppl. no. 112, 22, 71, 72, and *Documents on International Affairs* (1934), 476, 477.

⁴² Korman, 194, citing Francis Paul Walters, *A History of the League of Nations* (London: Oxford University Press, 1952), Martin Wright, Hedley Bull, and Carsten Holbraad, eds., *Power Politics*, 2nd ed. (Harmondsworth: Penguin Books, 1986), 111, and Ian Brownlie, *International Law and the Use of Force by States* (Oxford: Clarendon Press, 1963), 332-3.

⁴³ Korman, 137. See also Ezaki Michio, *Kominterun no bōryaku to Nihon no haisen* (Tokyo: PHP Shinsho, 2017).

⁴⁴ It is unclear whether Roosevelt—who, according to his closest aide, Morgenthau, was never seen to be reading a book and who appeared to lack even a basic understanding of history—truly understood what communism was in the first place. See, e.g., Watanabe Sōki, *Dai ni ji sekai taisen Amerika no haiboku: Beikoku wo ayatsutta Sobieto supai* (Tokyo: Bunshun Shinsho, 2018).

of just such an international body as President Harry Truman addressed when he visited the first UN Conference in June, 1945—one month after he had ordered the incineration of Tokyo in order that Japan might be forced to be free. With this new supranational structure in place, the United States and the Soviet Union, allies in the war against national sovereignty, were able to endure their aggressive actions with a justificatory sheen in perpetuity.

Although the name had changed, this arrangement was little more than a recapitulation of the interwar system of Mandates, overseen by the fledgling League of Nations, which represented a first step toward the globalist new world order which Wilson and his Bolshevik counterparts envisioned. As Korman observes:

The concept of the League of Nations Mandates provided a means whereby it could be claimed that it was not *conquest* that had conferred upon the victors the right to rule over the inhabitants of the conquered territories, but rather the *League of Nations* itself—that is, a legally constituted international body which had taken upon itself (amongst other matters of international concern) the guardianship of the welfare and interests of those peoples who were not yet ready to govern themselves.⁴⁵

Or, as Inis L. Claude points out:

[the victors in WWI] distributed [...] confiscated possessions among themselves, substantially in accordance with the pattern which they had agreed upon in secret treaties during the war and with the realities of military occupation which prevailed at the end of the war; they gave to the League the shadow of supervisory authority over their administration of the newly-acquired colonies while retaining for themselves the substance of

sovereign control; they ostensibly became agents of the League, albeit self-appointed agents, but in fact they created the League as an instrument of their purposes and, in particular, designed it to serve as an agency for bestowing ideological legitimacy upon their colonial conquests.⁴⁶

The right of conquest, dislodged by the American and French revolutions from a focus on outright domination of territory and reframed as an ideological pursuit, thus moved at first through a slalom of treaties before finally breaching the walls of the nation-state and metastasizing into a new internationalism, a phase change which opened up fresh ideological vistas in which sovereigns could conquer at will. Rule of law, then, became the new watchword for the right of conquest. In the United Nations, the Americans, especially, had finally achieved the cutting of the Gordian knot between *ex injuria jus non oritur* and *ex injuria jus oritur*. Rights could arise from wrongs—so long as the United Nations said so, and so long as the United States, which eventually came to control the “international” body, agreed.

The Right of Conquest in Postwar Japan

All in all, the United States imperial government showed great legalistic dexterity in leapfrogging over the putative internationalism of the Wilson years and thereafter in reasserting its own national control over previously international arrangements. For example, the Pacific Islands Mandate, which had been granted to Japan after World War I, was appropriated by the US after World War II as a “strategic trust territory,” according to which Japan was divested of her possessions (in direct violation of the Atlantic Charter, which the Americans had spearheaded and whose first point was “[our] countries seek no aggrandizement, territorial or other”⁴⁷)

⁴⁵ Korman, 142. Much of this hinges on the interpretation of Article 10 of the Covenant of the League of Nations. See, generally, Korman, ch. 6, “Legal Developments Regarding the Acquisition of Territory by Conquest,” and also Alfred Zimmermann, *The League of Nations and the Rule of Law, 1918-1935* (London: Macmillan, 1936), cited in Korman, 182.

⁴⁶ *Swords into Plowshares: The Problems and Progress of International Organization*, 3rd ed. (London: University of London Press, 1964), 323, cited in Korman, 143. For the position of the United States government, stated frankly, see a note from August 24, 1921: “The Government of the United States adheres to the position ... that the right to dispose of the overseas possessions of Germany was acquired only through the victory of the allied and associated powers. [...] With respect to mandates other than those which were formerly possessions of Germany, [...] the opportunity of the Allied powers to secure the allocation of mandates and the administration of territories formerly under Turkish rule was made possible only through victory over Germany.” *Mandates under the League of Nations* (Chicago: University of Chicago Press, 1930), 502, cited in Korman, 159. Or, as a jurist summed up American Secretary of State Charles Evans Hughes’ April 5, 1921 communique to the Japanese Foreign Ministry, “To the victors belong the spoils.” Charles Noble Gregory, Editorial Comment (“The Mandate over Yap”), *American Journal of International Law* 15 (1921), 424, cited in Korman, 159-160.

⁴⁷ Quoted in Korman, 162. For a complete text of the Atlantic Charter, see Yale Law School’s *The Avalon Project: Documents in Law, History and Diplomacy*: <http://avalon.law.yale.edu/wwii/atlantic.asp>. The acquisition of Japanese Pacific mandates was also in direct violation of “the Stimson Doctrine (1932) on the non-recognition of the results of conquest.” Korman, 234.

in the name of the United Nations Security Council. But, as Korman points out, “the concept of strategic trusteeship was an American concept invented by and for the United States, which coveted Japan’s former holdings for building bases and detonating atomic and hydrogen bombs.⁴⁸ It remains an open question whether there is any law big enough, or strong enough, to counter and contain the explosion of a thermonuclear device. In any event, and in a decisive testimony to the power of the postwar “international” order, the United States government has never been successfully prosecuted for war crimes, or for similar actions carried out in the absence of a formal declaration of war.

However, the United Nations, the creature of the “Enlightenment” United States and the heir to the legacy of the French Revolution, was by itself not enough to keep Japan permanently hobbled and incapable of regrouping and rechallenging the American hegemon. What was needed, as with the defeated South after 1865, was a program of reindoctrination of the populace and weakening of the body politic. The Japanese constitution, hastily written in English by low-level American government clerks, has proven to be the main instrument by which the Americans’ potential Pacific rival (akin to the worrisome ongoing existence of the legitimate line of Go-Daigo in Japan) is kept at bay. In many ways, the Japanese constitution is the most curious iteration of the newfangled, ideological right-of-conquest doctrine of all, because of the way it echoes legalistic prescriptions of the past which were used to justify conquest by imbuing aggression with the coloring of order and law.⁴⁹

The constitution is also an echo of an older legalistic technique for evading responsibility for conquest. By order of the Pope and the Spanish Crown, for example, Spaniards conquering what were determined to be *territoria nullius* (due to those territories being either uninhabited, lawless,

or under the jurisdiction of a pagan prince⁵⁰) had to read, before embarking on subjugation at swordpoint, to any native populations in the area a document known as the *Requerimiento* (1513). This document:

asserted [...] Papal and Spanish claims to the New World; declared that in view of these claims resistance to the Spaniards was unlawful and war on the part of the Spaniards just; and left the Indians with one of two alternatives—they had either to acknowledge the supremacy of the Pope and the Spanish Crown, or else suffer enslavement and confiscation of their property as a punishment for making unjust war. Once the [*Requerimiento*-reading] ceremony was completed, if the Indians still proved recalcitrant, the Spaniards considered that the way was open to war and annexation.⁵¹

Here, a further distinction germane to the Second World War should be made, between just war and holy war. Under just war doctrine—developed first by St. Augustine in response to the need for the unraveling Roman Empire, swiftly transitioning from pagan to Christian control, to defend itself against barbarian invasions—defensive war could be licit. Holy war, by contrast, is waged in defense of the Christian Faith. It is therefore licit to go on the offensive in a holy war. As Europe shifted after the French Revolution, from Christianity to Enlightenment ideology, wars in defense of the Faith waned, while wars in defense of ideology grew more frequent and more violent. As Martin Wright points out:

In the notion of the Just War, the premise is that all parties *have* their due rights, and war is the means of penalizing violation of right and ensuring restoration and restitution. It is a juridical conception, of war as the instrument of

⁴⁸ Korman, 162-63, quoting Charmian Edwards Toussaint, *The Trusteeship System of the United Nations* (New York: Praeger, 1956), 120. “A straightforward illustration of the continuing assumption of a right of conquest may be found in the statement made by the American Secretary of the Navy, Frank Knox, to the House Foreign Affairs Committee on 9 March 1944, regarding the claim of the United States to retain the Pacific Islands of Micronesia (i.e. the Marshall, Caroline, and Mariana Islands), which had been mandated to Japan after the First World War: ‘those mandated islands have become Japanese territory and as we capture them they are ours’. [...] ‘This thesis has been supported by Senator [Albert “Happy”] Chandler, by various publicists, and by certain correspondents with our forces in the Pacific. It represents the easiest and most convenient solution. We can claim the islands by right of conquest.’” Korman, 163-64, quoting, both times, from Huntington Gilchrist, “The Japanese Islands: Annexation or Trusteeship,” *Foreign Affairs*, 22 (1944), 641.

⁴⁹ See Charles L. Kades, “The American Role in Revising Japan’s Imperial Constitution,” *Political Science Quarterly*, vol. 104, no. 2 (Summer, 1989), 215-47.

⁵⁰ See, generally, Korman, Ch. 2 “The Right of Conquest in Relations between European States and ‘Barbarian’ Political Communities,” citing also inter alia Quincy Wright, “The Goa Incident,” *American Journal of International Law* 56 (1962), the *Western Sahara Case (ICJ Pleadings)* (1982), *Western Sahara*, 1975, iv, 452-94, Sir Mark Frank (M.F.) Lindley, *The Acquisition and Government of Backward Territory in International Law* (New York: Negro Universities Press, 1969), and William H. Prescott, *History of the Conquest of Mexico* (London: Sonnenschein, Lowrey, 1888). See also the papal bulls *Dum diversas* (1452) and *Inter coetera* (1493).

⁵¹ Korman, 50, citing Georg Schwarzenberger, *The Frontiers of International Law* (London: Stevens, 1962), 53.

law. In the notion of the Holy War, the premise is that the true believers *are* right, and that infidels are to be converted or exterminated. ... It is a religious conception, of war as the instrument of God's will, or of history.⁵²

The conquering Americans, no longer Christian, were still trapped in the forms of the past. They dressed their aggression in law and painted it over with ideology, but the objective reality beneath remained the same. Just as with Ashikaga Takauji imposing his will upon the Imperial Household by force, the Americans, too, conquered Japan and proceeded to arrange the realm to suit their own contemporary prerogatives.

It is therefore entirely fitting that Kumazawa Hiromichi should have sent his petition for recognition of imperial legitimacy to Gen. Douglas MacArthur, who had slogged his way across the Pacific one hand grenade, landmine, flamethrower, and atom bomb at a time, and under whose direction hundreds of thousands of innocent noncombatants ("collateral damage," the Americans would soon learn to say) had been napalmed, machine-gunned, or starved. No one understood better than MacArthur that the right of conquest was not an academic exercise of balancing the theories of Hugo de Grotius against those of Samuel von Pufendorf. Kumazawa rightly intuited that the person who could decide the direction of the imperial line was not the Japanese themselves—weakened as they were by the "unconditional surrender" imposed on them by pupils of the "Enlightenment"—but the new sovereign, Gen. Douglas MacArthur.

The letter that Mr. Izumo sent to the *Jiji Shimpō*, mocking Kumazawa for his "audacious" pretensions to the Chrysanthemum Throne, is thus far more insightful than its writer knew. In taunting Kumazawa for having been rejected by "the people," Mr. Izumo was acknowledging that an entirely new paradigm had come to the Japanese archipelago with the landing of the US Navy somewhere between the former capitals of the Ashikaga and Edo shogunates. Before the war, Kumazawa's father had petitioned the Meiji Emperor directly for recognition of his claims. This sort of gentlemanly negotiation was ended with the arrival of the heirs of Rousseau in August of 1945. In many other ways, however, nothing substantial had changed at all. As was the case six hundred years before, the final word on imperial succession belonged to the commander of whichever military force had prevailed in pitched battle. In sending a letter of his own, to Gen. MacArthur in August of 1947, Kumazawa Hiromichi, possible heir to the Southern Line of the Chrysanthemum Throne, was acknowledging the new—and old—reality, too.

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⁵² Martin Wright, in Hedley Bull, ed., *Systems of States* (Leicester: Leicester University Press, 1977), 34-5, cited in Korman, 51. Emphasis in original.

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