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LEOPOLD & MOREL: A STORY OF "FREE TRADE" AND "NATIVE RIGHTS" IN THE CONGO FREE STATE

PADIDEH ALA'I*

I. Introduction

In this article, I explore the role of the doctrine of free trade in the creation of the Congo State in 1885[1] and the relationship between free trade and native rights with respect to the subsequent campaign to reform the colonial administration of the Congo State.[2] On one hand, King Leopold II of Belgium successfully used the *rhetoric* of free trade and native rights to camouflage his personal ambitions in Africa. By setting up international associations with the stated aim of "exploring and civilizing Africa" through "legitimate trade" and "suppression of the slave trade," Leopold convinced the major European powers and the United States of his commitment to promote free trade and protect the rights of the natives of the Congo basin.[3] On the other hand, E.D. Morel, a turn of the century supporter of free trade and native rights activist, led a successful campaign against Leopold by arguing that that the monopolist, discriminatory and protectionist trade policies of the Congo Government had led to exploitation and enslavement of the natives.[4] This article looks at Morel's use of the ideal of free trade to distinguish between legitimate and illegitimate trade.

The story of Leopold and Morel demonstrates how the rhetoric and ideal of free trade and native rights were used by individuals, world leaders, international associations, and governments to pursue contradictory and inconsistent goals, such as to promote or oppose free trade; protect or enslave the native population; and advance the cause of peace or set the stage for future conflicts. It is also a story about the presumed correlation between free trade and protection of native rights in the context of world peace. Today, as advocates of the doctrine of free trade and the multilateral trading system face mounting criticism, it is useful to look at a historical episode where the doctrine of free trade has left a paradoxical legacy. This paradox may, in some measure, help us understand both the continued skepticism towards the doctrine of free trade *and* the ongoing attraction of free trade.

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I begin the story of Leopold and Morel by looking at how Leopold successfully convinced the other European colonial powers of his commitment to protecting free trade and combating slavery in the Congo region. I then briefly discuss how Leopold's actions immediately after gaining control of the Congo contradicted his rhetoric, as he established a brutal concessionaire system that neither respected native rights nor free trade. Finally, I look at how Morel, a fervent supporter of free trade, fought against Leopold's concessionaire system for its failure to respect free trade or native rights.

II. King Leopold II and Rhetoric of Free Trade and Native Rights: The Creation of the International African Association (IAA) and the International Congo Association (ICA).

Given that the details of King Leopold's rule in the Congo have been extensively and ably addressed elsewhere, I do not find it necessary to dwell here on the horrific details of that regime.[5] Instead, I will limit my discussion to the important role that the free trade and native rights rhetoric played in the creation of the "Congo Free State."[6]

From the outset, as a constitutional monarch[7] Leopold recognized that he could not openly express his personal ambitions, and thus sought to cloak his pursuits in philanthropic garb and create international associations with ostensibly charitable goals.[8] On September 12, 1876, Leopold, in his personal capacity, convened a conference in Brussels of "great explorers and men of science."[9] At this meeting, Leopold created the International African Association ("IAA").[10] The IAA aimed to coordinate the "exploration *and* civilization of Central Africa."[11] It performed its work through national committees, which in turn sent delegates to serve on an international commission in Brussels.[12] Great Britain refused to participate in the IAA.[13] The IAA did, however, set up national committees in Germany, France, Austro-Hungary, Spain, Italy, Holland, Russia, Switzerland, and of course Belgium.[14] Leopold provided most of the funds for the IAA and chaired the executive committee that oversaw the work of all the national committees.[15]

Two years later, in 1878, Leopold convened another meeting, this time of financiers and merchants, leading to the formation of the Comité d'Etudes du Haut Congo (the 'Comité'), which later became the International Congo Association ("ICA") after Leopold dissolved the Comitë and took total control of the ICA.[16] The aim of the ICA was to "establish a powerful Negro state"[17] by "suppressing slave trade and introducing *legitimate* commerce into the Congo Basin, while strongly supporting the principles of free trade."[18] By discreetly transitioning from the IAA

to the ICA Leopold astutely created the appearance that he was *above* those national interests who were vying for control of Africa.[19]

As Leopold played up his free trade and philanthropic rhetoric on the international stage,[20] he discretely took steps to monopolize trade in the Congo. One such step was engaging the services of the famous explorer, Sir Henry Morton Stanley, who had in 1877 first discovered the "valuable districts watered by Niari Kwilu"[21] on the great northward bend of the Congo.[22] In 1879, Leopold commissioned Stanley to negotiate with individual tribal leaders for the sale of their land on behalf of the ICA. Stanley ultimately succeeded in acquiring vast lands in the name of ICA for King Leopold.[23]

The United States was the first country to recognize the ICA's sovereignty over the Congo.[24] On April 22, 1884, Leopold's agents in the United States successfully convinced the U.S. government that the ICA was imbued with the same ideals as those who founded Liberia.[25] In recognizing the sovereignty of the ICA, the U.S. Secretary of State demonstrated both the success of Leopold's philanthropic rhetoric and the confusion that existed between the IAA and the ICA:

> The Government of the United States announces its sympathy with and approval of the humane and benevolent purposes of the International Association of the Congo [ICA], administering as it does, the interest of the Free States there established, and will order the officers of the United States. . .to recognize the flag of the International African Association [IAA] as the flag of a friendly Government.[26]

Leopold then capitalized on the public recognition of the United States to negotiate with other European powers.[27] Great Britain signed a declaration in December 1884 recognizing that the ICA had been "founded by His Majesty, the King of Belgians, for the purpose of *promoting the civilization and commerce of Africa, and for other human and benevolent purposes.*"[28]

On November 15, 1884, the Berlin Conference was convened at the invitation of Prince Bismarck of Germany. The conference lasted until February 26, 1885.[29] One of the primary goals of the conference was to create a free trade area around the Congo basin that would also remain neutral in times of war. It also imposed an obligation on all the colonial powers in Africa to protect rights of African natives, particularly in the proposed free trade region around the Congo basin.[30] Since by the end of the Berlin Conference, the sovereignty of the ICA over the Congo had been recognized by all of the states at the Conference, the final text of the Berlin Act addressed the "special position" of the ICA and its provisions were deemed to be binding on Leopold and the ICA[31]

The provisions of the Berlin Act generally address two issues: free trade and native rights. The most prominent issue was the freedom of trade in the Congo Basin, addressed in Chapter I of the Act.[32] Article I of Chapter I provides that "[t]rade of all nations shall enjoy complete freedom . . . in all regions forming the basin of the Congo."[33] Articles II-IV enforce the doctrine of free trade through guaranteed freedom of navigation on the Congo River,[34] the imposition of non-discrimination requirements on imports from all nations,[35] and the prohibition of import and transit duties.[36] Article V of the Act prohibits the granting of monopolies in trade matters, assures protection of person and property irrespective of nationality.[37] Finally, the provisions of Article VI of Chapter I address the natives of the Congo Basin, providing that:

> All the Powers exercising sovereign rights or influence in . . . said territories bind themselves to watch over the preservation of the native tribes, and to care for the improvement of their moral and material well-being and to help in suppressing slavery, and especially the Slave Trade.[38]

The other provisions of the Act relevant to the Congo State prohibit slavery in the Congo[39] and require the Congo to be neutral at times of war.[40] At the end of the Berlin Conference, by agreeing to implement and safeguard the aforementioned provisions of the Berlin Act, Leopold became the absolute sovereign of the Congo Free State,[41] which consisted of an area "seventy-six times the size of Belgium."[42]

Having used the rhetoric of free trade and anti-slavery to gain access to a rich African colony, Leopold immediately set out to ignore the provisions of the Berlin Act by monopolizing trade and enslaving the peoples of the Congo.[43] In July 1885, Leopold issued a decree asserting the rights of the Congo State over all "vacant lands."[44] This decree interpreted "vacant lands" very broadly as "lands not actually occupied by the natives."[45] This meant that all lands upon which the natives did not in fact reside on were taken away from them and given to the State. In subsequent decrees issued in 1886, 1887, and 1888 Leopold further reduced native rights so that all work done by the natives was deemed to have been done on State territory and all profits and trade flowing from that territory through the work of the natives belonged to the State.[46] As a result of these decrees, natives could not work or trade on their own account.

In addition, through these decrees, Leopold imposed large export duties on trade *from* the Congo. It was argued that export duties did not violate the provisions of the Berlin Act since only import duties were expressly prohibited.[47] Soon, however, Leopold also requested permission from

the signatories to the Berlin Act to impose import duties.[48] He argued that he needed the extra money to pay for the expenses he incurred fighting the Arabs in the Upper Congo and developing roads and infrastructure.[49] In 1890–91, Leopold forbade the natives from collecting ivory or rubber (two major exports), unless they then handed over the items to the State offices.[50] Leopold also forbade any "white man" from purchasing ivory or rubber from the natives. Europeans were told that if they bought items from the natives they would be "denounced" as trading in "stolen goods."[51]

By 1892, the Congo trading practices had clearly violated many of the provisions of the Berlin Act. The human cost of such a monopoly and the rampant greed of the ICA for rubber and ivory cost many natives their lives.[52] In less than a decade since its inception, the State that was founded on the basis of humanitarian and free trade rhetoric had instituted a system that was, even by colonial standards, excessively cruel and inhumane.[53]

Leopold's violations of the Berlin Act were not immediately or directly challenged by Governments. The appalling situation was thus left to individuals and civil society groups devoted to the protection of aboriginal rights to take the lead and criticize Leopold for violations of the Act.[54] The most successful campaign against Leopold's propaganda machine was led by E.D. Morel, a British citizen, who approached the problem of the Congo in economic terms. Although Morel was a strong advocate for native rights he saw free trade as an essential prerequisite to the achievement of such rights.[55]

III. E.D. Morel and the Congo Reform Association

Edmund Dene Morel was born of a French father and an English mother in Paris on July 10, 1873.[56] In 1890, at the age of 17, Morel started working as a clerk at the shipping company of Elder Dempster & Co in Liverpool, England.[57] He quickly became a successful journalist and specialist in West African affairs, advocating free trade at every opportunity.[58] Even prior to his involvement with the Congo Reform Movement, Morel expressed the view that free trade would help bind nations together and remove one of the causes of war.[59] He also believed early on that "legitimate" commercial relations would help bring prosperity to Africa, while exploitation would only lead to future conflict[60] and it was this belief that caused him to organize the campaign to reform Leopold's administration of the Congo.[61]

As a clerk at the Liverpool shipping office, Morel noticed inconsistencies with respect to the trade statistics of the Congo. Morel noted that

usually ''undeveloped'' colonies show an excess of imports over exports, largely due to necessity of providing the needs of administrative staff, military forces and the building of public infrastructure.[62] He also noted that at the turn of the century there were 20,000 troops in the Congo and that the roads, railways and steamboats that were being constructed and maintained in the Congo territory needed imported parts and supplies.[63] Yet, the official rate of exports as reported by the Government of Congo showed that exports were 80% larger than imports.[64] Moreover, this official trade statistic did not reflect all the trade from the Congo, including the large amount of rubber and ivory that was on the Elder Dempster Liners.[65] This meant only one thing: the natives were being robbed and enslaved as the Congo was exporting vast quantities of ivory and rubber and getting ''nothing'' in return.[66] In 1901, having realized the true extent of the evil that had been perpetrated in the name of free trade and native rights in the Congo, Morel left Elder Dempster and fully devoted himself to reforming the Congo administration through a campaign that was conducted largely through correspondence and pamphleteering.

Morel was not the first to point out the cruelty and excesses of the Leopold regime in the Congo.[67] For example, in 1896, the British Aborigines Protection Society made an appeal to the British Government on behalf of the natives of the Congo.[68] However, all such humanitarian appeals largely ''fell on deaf ears.''[69] In contrast, Morel approached the problem of the Congo as both a supporter of free trade and a businessman. Morel immediately courted the support of merchants and members of the Chambers of Commerce throughout Great Britain who had been shut off from trade with the Congo.[70] In 1901, relying on the Free Trade provisions of the Berlin Act, Morel convinced the Chambers of Commerce of London, Glasgow, Liverpool, Manchester, Birmingham, Cardiff and Bristol to sign a letter to the British Secretary of State for Foreign Affairs about the violations of the Act by Leopold's Government in the Congo.[71]

In 1904, Morel created the Congo Reform Association (''CRA''), an organization ''devoted to the cause of administrative reform in the Congo.''[72] Notably, the CRA was not established to oppose colonialism *per se*, but colonialism as practiced by Leopold who had been put into his sovereign position as a guardian for values of free trade and native rights as expressed by the provisions of the Berlin Act.[73] Morel created the CRA to capitalize on the public outrage that stemmed from the publication of the Casement Report. This official report prepared by Roger Casement, the British Consul to the Congo, confirmed Morel's

earlier arguments that the State had set up an abusive monopoly on land and resources and used forced labor to enhance its profits.[74] The Casement Report recommended that free trade be reinstated and justice be restored to Africa.[75]

Fundamental to Morel's campaign against Leopold was the distinction he made between legitimate commerce and capitalistic exploitation.[76] The former he argued is based on consent, while the latter is based on denial of basic liberties.[77] In the context of colonial Africa and the Congo, Morel wrote:

> One [Commerce] recognizes that the Negro is (1) a man, and (2) a landowner, whether as unit in a tribal community or family organization, or as an individual. The other [exploitation] looks upon the Negro as (1) a brute; and (2) denies his rights as a landowner; (3) claims that the mountains, valleys, forests and plains and everything of economic value that they contain . . . except the actual spot which the native has built a hut, or where he cultivates his patch of maize . . . belongs . . . to the white man.[78]

Morel proceeded to warn the Europeans that a failure to remedy the situation in the Congo would ultimately lead to the black man's retribution against the white man.[79] In this regard, Morel writes early in his life that if slavery is allowed to continue "the great black wave—inscrutable, mysterious, enduring—will once more roll suddenly forward even unto the ocean, obliterating every trace of civilization."[80] In his many pamphlets and books, Morel repeatedly set forth the thesis that "salvation" of the black man is linked to his ability to own land and to engage freely in trade.[81]

According to the liberal foreign policy advocated by Morel, the economic object of normal European rule was the development of commercial relations between Europe and Africa. Such an object could only develop if Africans are free to own land and the products upon it. The term "Morelism" was even used by his contemporaries to refer to an enlightened colonial policy that recognized and gave deference to the native system of land tenure and disagreed with the perception that African natives were "lazy and incompetent".[82] Morelism assumed that Africans would, if given the opportunity, act as economic actors and engage in profitable trade.[83] Morel, however, did not adequately address the notion that Africans might not want to engage in commerce with the white man or that the line between legitimate commerce and illegitimate commerce may be, at times, a difficult one to draw.[84]

From the creation of the CRA in 1904 until its dissolution in 1913, Morel used the organization as a platform not only to attack Leopold's

personal rule in the Congo, but also to contrast the situation in the Congo with his enlightened vision of colonial rule that linked free trade with native rights and peaceful international relations.[85] On behalf of the CRA, Morel met with, among others, the President of the United States, Theodore Roosevelt in 1904, and the Prime Minister of France, M. Georges Clemenceau, on February 25, 1909.[86] Morel was also in constant contact with the British Foreign Office, members of the British Parliament, and prominent writers and thinkers of the time.[87]

Morel's close relationship with the British Chambers of Commerce allowed Leopold's allies to dismiss him as a mere agent of British business interests.[88] A closer look at Morel's life and work, however, shows that his interest in the issue surpassed merely facilitating British business interests in the Congo. Prior to his involvement with the Congo, Morel was critical of French protectionism in West Africa and long after the CRA had dissolved and Leopold had died, Morel continued to fight against protectionist trade policies, including advocating against discriminatory treatment of Germany in the aftermath of World War I.[89] This is because Morel believed that protectionist and discriminatory trade policies only lead to war, while peaceful relations are better facilitated by free trade. In the context of Africa, Morel saw *legitimate* commerce as an essential prerequisite for the protection and development of native rights, which in turn helped secure peaceful relations between the African and the white man.

IV. Conclusion

Leopold was able to acquire control of the Congo in his capacity as the head of an ostensibly "international" association devoted to promoting legitimate trade and protecting native rights. For Leopold, free trade and native rights were mere rhetorical devices, but for the peoples of the Congo the promise of free trade and their native rights had in fact resulted in loss of their most basic human rights. Morel devoted his life to proving that trade is the guarantor of peace, liberty and security. As a true believer in free trade, he passionately objected to Leopold's free trade propaganda, and thus took every opportunity to point out the inconsistencies between Leopold's words and actions. Morel argued that Leopold's government in the Congo Free State had violated the ideal of free trade and the Berlin Act by divesting natives of their lands and transferring ownership to the state. By labeling Leopold's administration of the Congo as "capitalistic exploitation," Morel contrasted it with his enlightened vision of colonial rule that, according to Morel, was based on the real, and not merely rhetorical, values of free trade including the native's right to

own land. For Morel, the crusade against Leopold was aimed not only at saving the millions of Africans who were suffering, but also to save the doctrine of free trade and its promise of global harmony by distinguishing between legitimate trade and capitalistic exploitation. Morel also feared that pure exploitation, as practiced by the colonial administration in the Congo, was likely to lead to economic and political retaliation by the native population.

The story of Leopold, Morel, and the Congo gives texture to the current situation facing the multilateral trading system, and particularly the continued skepticism towards free trade in the developing world. The legitimate versus illegitimate trade distinction remains a concern for the current global trading system that seeks to distinguish between "fair" and "unfair" trade practices. WTO rules are aimed at supporting legitimate trade and ensuring that the rhetoric of free trade is not used to hide discriminatory and protectionist policies. Furthermore, to the extent that the topic of human rights is deemed to be outside of the mandate of the WTO, it is helpful to remember that in Morel's work the two were inextricably linked. As advocates of a multilateral trading system attempt to convince the world of the benefits of the doctrine of free trade many in the anti-globalization movement argue that free trade has only facilitated capitalistic exploitation.

NOTES

[1] *See* RUTH SLADE, KING LEOPOLD'S CONGO: ASPECTS OF THE DEVELOPMENT OF RACE RELATIONS IN THE CONGO INDEPENDENT STATE 43 (Oxford University Press 1962) (noting that Leopold was proclaimed "Sovereign of the Congo Independent State" in this year); *see also infra* Part I for discussion of the International Congo Association ("ICA").

[2] *See infra* Parts II & III; *see also* James Thuo Gathii, HOW AMERICAN SUPPORT FOR FREEDOM OF COMMERCE LEGITIMIZED KING LEOPOLD'S TERRITORIAL AMBITIONS IN THE CONGO, published in this volume (addressing how the U.S. adherence to freedom of commerce "unfettered by territorial, sovereign or other claims of control" helped legitimize Leopold's designs for the Congo).

[3] *See generally* ADAM HOCHSCHILD, KING LEOPOLD'S GHOST 43 (First Mariner Books 1999) (1998) ("[Leopold] recognized that a colonial push of his own would require a strong humanitarian veneer. He would talk about curbing the slave trade, moral uplift, and the advancement of science and not profits.") The major European powers of the time interested in Africa were: Germany, France, Great Britain, and Portugal. In addition, however, the following countries also recognized the sovereignty of Leopold over the Congo: Italy, the Netherlands, Austria-Hungary, Russia, Spain, Sweden-Norway, and Turkey. *See infra* Part I.

[4] *See* E.D. Morel, E.D. MOREL'S HISTORY OF THE CONGO REFORM MOVEMENT (William Roger Louis & Jean Stengers eds., Clarendon Press 1968) (this book was based on Morel's unpublished writings from 1873–1924); E.D. MOREL, THE BLACK MAN'S BURDEN 170–71 (Monthly Review Press 1969) (1920) (arguing that dispossessing Central Africans of the right to free trade and to own land would result in a "denial of human rights"); E.D. MOREL, RED RUBBER 165 (B.W. Huebsch, Inc. 1919) (1906) (discussing the importance of allowing

host countries to benefit financially from free trade so as to form them into more peaceful societies).

[5] The details of King Leopold's horrific rule over the Congo have been extensively and ably addressed. *See generally* Hochschild, *supra* note 3 (recounting the story of King Leopold as a non-fictional novel). Information may also be found in contemporaneous accounts. *See* Morel, RED RUBBER, *supra* note 4, at 39–71 (detailing the torturous conditions in which the Africans worked, including physical abuse, malnutrition, and disease); Morel, THE BLACK MAN'S BURDEN, *supra* note 4, at 109 (estimating that millions died at the hands of the Congo Free State); *see also* Ralph Waldo Emerson, EMERSON'S ANTISLAVERY WRITINGS (Len Gougeon & Len Myerson eds., 1995) (presenting a historical account of the motivations behind Leopold's pursuit of the Congo).

[6] I recognize that free trade and native rights are two distinct concepts and each merit special attention, in this article, I address both at time together because they were used simultaneously by both Morel and Leopold to pursue their goals and both were stated goals of the Berlin Conference.

[7] *See* Slade, *supra* note 1, at 43 (stating that "at home the King of the Belgians was a constitutional ruler, but in the Congo he was an absolute sovereign").

[8] *See* ARTHUR BERRIEDALE KEITH, BELGIAN CONGO AND THE BERLIN ACT 32 (1919) (denying that Leopold's original motives were philanthropic in nature and that over time they "decayed amid temptation to personal ends"); *see also* S.E. Crowe, THE BERLIN WEST AFRICAN CONFERENCE 142–144 (1970) (1942) (claiming that Leopold intended to use the International Associations as a shield for his personal motives from the outset).

[9] *See* Keith *supra* note 8, at 33 (stating that those in attendance included representatives from Great Britain, Germany, Belgium, Austria-Hungary, France, Italy, and Russia); *see also* Hochschild, *supra* note 3, at 43–44 (acknowledging that representatives included French explorer Marquis de Compiëgne; German explorer Gerhard Rohlfs; President of the Berlin Geographical Society, Baron Ferdinand von Richthofen; President of Britain's Anti-Slavery Society, Sir Thomas Fowell Buxton; President of the Church Missionary Society, Sir John Kennaway; business executive William Mackinnon of the British India Line; and military men, such as Rear Admiral Sir Leopold Heath of England, and Vice President Baron de la Ronciere-le-Noury, President of the Paris Geographical Society).

[10] Keith, *supra* note 8, at 33.

[11] *Id.* (emphasis added).

[12] *Id.*

[13] See id.; see also Crowe, *supra* note 8, at 14 (noting that Great Britain refused to join the others in setting up national committees for the purpose of exploring Africa).

[14] *See* Crowe, *supra* note 8, at 14 (noting that the committees provoked an intense rivalry amongst the powers who were vying for the resources in Africa).

[15] *Id.*

[16] *See id.* at 15 (discussing the gradual change of the Comitë into the International Congo Association); *see also* Slade, *supra* note 1, at 38 (describing the emergence of the *Association Internationale du Congo*).

[17] Keith, *supra* note 8, at 40.

[18] *See* Slade, *supra* note 1, at 39 (emphasis added).

[19] Through the IAA, King Leopold created a special body titled the *Comitë d'Etudes du Haut Congo*, which he then used to commission Stanley. Then, on November 17, 1879, unbeknownst to Stanley, Leopold dissolved the special body for financial reasons, but gradually turned it into the IAC. Notably, this was a reaction against the French government's move to severe its national committee from the IAA, sending De Brazza out to explore the Congo on behalf of France. Crowe, *supra* note 8, at 15.

[20] *See* Slade, *supra* note 1, at 39 ("[B]y talking about free trade in the Congo and insisting upon his philanthropic intentions there, Leopold won. . .both the British trading interests and the English Protestant missionaries in the Congo.").

[21] Crowe, *supra* note 8, at 14.

[22] Keith, *supra* note 8, at 36.

[23] *See* Slade, *supra* note 1, at 24–9 (delineating Stanley's travels through the Congo

and the opposition he faced).

[24] *See* Gathii, *supra* note 2 (discussing the United States' relationship with Leopold and the role of the United States at the Berlin Conference).

[25] Keith, *supra* note 8, at 54. *See* Crowe, *supra* note 8, at 80 (indicating that Leopold was able to attract U.S. support through his connection to Stanley, and his articulated promotion of free trade and slavery suppression). In addition, Leopold, during 1883, referred to the territories outlined in the Congo treaties as "free states", but later referred to the land as comprising a "new state" in order to further articulate to world leaders the benefits of a unified area. For example, Leopold argued that the ICA should take over provinces in Central Africa where the slave trade flourished so that, by incorporation into a new State, the abuse would cease. Barbara Emerson, LEOPOLD II OF THE BELGIANS 107–08 (1979).

[26] Hochschild, *supra* note 3, at 80–81.

[27] Leopold received France's recognition by promising to provide the French with "droit de preference" or "right of first refusal" over the Congo. Bismarck ultimately recognized the ICA as sovereign of Congo on the basis that King of a "weak little Belgium" was better for German traders than the "protection minded" French or Portuguese or the "powerful" English. Hochschild, *supra* note 3, at 82–84.

[28] *See* F. SEYMOUR COCKS, E.D. MOREL: THE MAN AND HIS WORK, 61–62 (1920) (internal citations omitted) (emphasis added).

[29] *Id.* at 60.

[30] Keith, *supra* note 8, at 57. Specifically, Germany and France issued formal invitations to leading powers to come to Berlin to discuss: "(1) freedom of commerce on the basin and the mouths of the Congo; (2) application to the Congo and the Niger of the principles of . . .freedom of navigation on certain international waters, and (3) a definition of the formalities necessary to be observed so that the new occupations on the African coast should be deemed effective". *Id.* at 55. *See also* Renee Colette Redman, *The League of Nations and the Right to be Free From Enslavement: The First Human Right to be Recognized as Customary International Law*, 70 CHI.-KENT L. REV. 759, 775 (1994).

[31] Keith, *supra* note 9, at 144 (acknowledging that Leopold received much assistance from Bismarck of Germany, who championed the ICA as a result of his personal desire to freeze out both England and France from exerting power in the region). At the close of the conference, the signatory states were notified that they had all recognized the sovereignty of the ICA. Slade, *supra* note 1, at 42–43. Therefore, the juristic existence of the Congo State was due to separate recognition accorded individually by the Powers, starting with the United States, April 22, 1884, and ending with Turkey, June 25, 1885. The United States never did ratify the Berlin Act. Crowe, *supra* note 8, at 79, 150.

[32] Chapter I of the Berlin Act is entitled: "Declaration relative to Freedom of Trade in the Basin of the Congo, its Mouths and circumjacent Regions, with other Provisions connected therewith". 2 MAJOR PEACE TREATIES OF MODERN HISTORY 1648–1967, 1081, 1084 (Fred Israel, ed.) (1967).

[33] *Id.* (Article I).

[34] *Id.* at 1085 (Chapter I, Art. II).

[35] *Id.* at 1086 (Chapter. I, Art. III).

[36] *Id.* (Chapter I, Art. IV).

[37] *See id.* (Chapter I, Art. V). (stating, in part: "No Power which exercises . . .sovereign rights in the above-mentioned regions shall be allowed to grant therein a monopoly or favour of any kind in matters of trade. Foreigners, without distinction, shall enjoy protection of their persons and property, as well as the right of acquiring and transferring movable and immovable possessions; and national rights and treatment in exercise of their professions").

[38] *Id.* at 1086–87 (Chapter I, Art. VI).

[39] *Id.* at 1087–1088 (Chapter II).

[40] *See id.* at 1088 (Chapter III) (stating, in part: "In order to guarantee the security of trade and industry, and to encourage. . .the development of civilization in the [Congo], and based under the free trade system, the High Signatory Parties. . .bind themselves to respect the neutrality of the territories. . .").

[41] *See* Crowe, *supra* note 8, at 103 (highlighting Bismarck's role in using the "Congo Free State" name); *see also* Slade, *supra* note 1, at 43 (indicating that Leopold subsequently got permission from the Belgium Parliament to be the sovereign of those territories).

[42] *See* Hochschild, *supra* note 3, at 87 (stating that the Congo territory was bigger than England, France, Germany, Spain and Italy combined).

[43] The atrocities perpetrated by Leopold's concessionaire system have been detailed elsewhere. *See* Hochschild, *supra* note 3, at 117; Morel, RED RUBBER, *supra* note 4, at 39; Morel, HISTORY OF THE CONGO REFORM MOVEMENT, *supra* 4, at 52.

[44] Cocks, *supra* note 28, at 62.

[45] *Id.*

[46] *Id.*

[47] 2 MAJOR PEACE TREATIES OF MODERN HISTORY 1648–1967, 1081, 1086 (Fred Israel, ed.) (1967) (Article III).

[48] *See* Cocks, *supra* note 28, at 62 (noting that Leopold sought permission on this issue so as to receive international consensus).

[49] *Id. See also* Slade, *supra* note 1, at 104–5 (indicating that Leopold was able to convince the other countries to approve import duties at the Brussels Conference in 1889).

[50] *See* Cocks, *supra* note 28, at 63 (highlighting that Leopold took action by issuing a series of decrees once he obtained full power over the Congo).

[51] *Id.* An article entitled, *The Belgian Curse in Africa*, appeared in the *Contemporary Review* and told the story of an Austrian trader in the Congo who had paid fair price for his exported goods, and as a result was arrested by the Congo government and after a summary trial, convicted and died under harsh conditions shortly after conviction. This story helped Morel mobilize public opinion against Leopold and his government in the Congo. Morel, HISTORY OF THE CONGO REFORM MOVEMENT, *supra* note 4, at 86–87.

[52] *See generally* Hochschild, *supra* note 3.

[53] *Id. See generally* Morel, RED RUBBER, *supra* note 4; Morel, HISTORY OF THE CONGO REFORM MOVEMENT, *supra* note 4; Morel, THE BLACK MAN, *supra* note 4.

[54] Slade, *supra* note 1, at 40–41.

[55] Morel was attacked as acting for Great Britain who was kept out of the trade in the Congo region by Leopold. However, Morel's true commitment to the ideology of free trade is evidenced by his subsequent fall from favor in Great Britain during World War I when he argued that Germany should not be subjected to discriminatory or punitive economic sanctions after the War because such restrictions and distortions of free trade will only lead to future wars. Cocks, *supra* note 28, at 230–232.

[56] *See* Cocks, supra note 28, at 15–16.

[57] *Id.* at 23.

[58] *See id.* at 31–34 (discussing Morel's founding of the *African Mail* in 1903, a weekly journal devoted to the administrative and economic development of British West Africa). Morel continued to serve as the editor of *African Mail* until the end of 1915. *Id.*at 31. From 1904–1912, Morel edited the "Official Organ" of the Congo Reform Association, while publishing a number of other articles, books, and pamphlets. *Id.*

[59] *Id.* at 36.

[60] *See* Morel, THE BLACK MAN, *supra* note 4, at 170 (indicating that the operation of trade needs "constant regulation and supervision" when civilized and developing countries engage for economic purposes so that basic human rights are not exploited).

[61] *See* Morel, HISTORY OF THE CONGO REFORM MOVEMENT, *supra* note 4, at 269 (highlighting Morel's continued concern that Leopold was taking personal profits from the slave trade in the Congo).

[62] Cocks, supra note 28, at 72.

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] *Id.* at 36.

[67] *See* Morel, HISTORY OF THE CONGO REFORM MOVEMENT, *supra* note 4, at 271–2 (discussing Morel's disappointment in the local missionaries, who looked to further their

own personal interest without taking a hard stance against the Congolese government).

[68] *See* Cocks, *supra* note 28, at 66 (noting that other Englishmen and foreign missionaries had also made "startling accusations against the Congolese officials", although the Congo Government "vehemently denied" that there was any truth to the accusations).

[69] *Id.*

[70] Morel argued that Leopold was tampering with the open markets, and consequently also sought out Germany as an ally. Morel wrote to the German Emperor and published an article entitled, *Trading Monopolies in West Africa*, which brought considerable focus on the trade being conducted in the region. Morel, HISTORY OF THE CONGO REFORM MOVEMENT, *supra* note 4, at 28–9.

[71] Cocks, *supra* note 28, at 81.

[72] *See* Slade, *supra* note 1, at 182–86 (highlighting that it was not until 1904 that Morel founded the CRA, and through the organization continued to argue against Leopold's practices). As the CRA became internationally known, missionaries stationed in the Congo joined the awareness campaign as well as business interests that had been excluded from the Congo trade.

[73] In fact, CRA declared its mission accomplished in 1913 even though the Congo was still under Belgian rule after Leopold had transferred his personal sovereignty over the region to the Government of Belgium. Cocks, *supra* note 28, at 165–69.

[74] In response to the Casement Report, Leopold rushed to set up a Committee to suggest reforms in order to sway the public that he intended to eradicate the abuse. *See generally* Slade *supra* note 1, at 158.

[75] Casement, an Irishman, was eventually executed for treason because of his involvement in the Irish underground movement. Casement is reported to have said that his work on the Congo demonstrated him at his best. For more information on Roger Casement, *see* Hochschild, *supra* note 3, at 284–287.

[76] Cocks, *supra* note 28, at 93–94. *See* E.D. Morel, THE BLACK MAN, supra note 4, at 170 (highlighting the exploitation of the black people in Africa based on European capitalistic pursuits).

[77] *See* Morel, THE BLACK MAN, *supra* note 4, at 171 (noting the exploitation in the relationship between white man, who receives profits, and black man, who provides labor and receives nothing).

[78] *See* Cocks, *supra* note 28, at 93 (writing that Morel became known as "the man who put an end to the Congo atrocities" by championing "native rights" over "capitalistic exploitation").

[79] *See id.* at 104–05 (stating that slavery is not only immoral but in the long run economically and politically disastrous).

[80] Cocks, *supra* note 28, at 93 (*citing* E.D. Morel: King Leopold's Rule in Africa (Heinemann, 1920)).

[81] *See* Morel, THE BLACK MAN, *supra* note 4, at 170–72 (expressing the importance of securing free trade so that Africa may develop as a peaceful nation, while arguing that Leopold had stripped the natives of all property rights by exploiting their labor for his own profit). Trade, he noted, as an exchange for goods and cash was not occurring between the Europeans and the Africans. *Id.*

[82] *See* Cocks *supra* note 28, at 42–43 (referring to Sir Harry Johnston coining the phrase "Morelism" to refer to an enlightened policy towards tropical Africa).

[83] *See, e.g.*, Morel, HISTORY OF THE CONGO REFORM MOVEMENT, *supra* note 4, at 211–12 (urging the British to react against Leopold because it was hurting their trade policy, impressing upon the clergy that they had a Christian responsibility to prevent the cruelty taking place in the Congo, insisting that the campaign for reform "was a movement which will leave abiding traces in the history of the negro Africa").

[84] *See* Emerson, *supra* note 25, at 247 (reinforcing Morel's dedication to promoting Africa's engagement in international affairs by highlighting Morel's founding publication, the *West African Mail*, a weekly publication that acknowledged the benefits of a European-African relationship).

[85] *See* Morel, HISTORY OF THE CONGO REFORM MOVEMENT, *supra* note 4, at 212 (demanding that all members of the CRA use an intellectual consistency that would link freedom to economic and political thought).

[86] Morel went to America on September 21, 1904 and presented President Roosevelt with a memorandum on the abuses taking place in the Congo. Morel, HISTORY OF THE CONGO REFORM MOVEMENT, *supra* note 4, at 182–83. Public opinion in America sided with Morel, despite Leopold's efforts to form the American Congo Company in October 1906, as well as a secret American Congo lobby that used the media to further promote Leopold as a capable ruler. Emerson, *supra* note 25, at 257.

[87] *See* Cocks, *supra* note 28, at 107 (observing that he came to know Mark Twain during his visit to the United States).

[88] Morel was accused of being the agent of France and then during WWI of Germany. *See generally* Cocks, *supra* note 28, at 244.

[89] Morel's deep antipathy towards protectionism made him criticize any nation that chose to pursue such policies. He was persecuted and labeled "pro-German" when during WWI he argued for non-discriminatory treatment of post-War Germany, arguing that such discrimination would only sow the seeds for future wars. *See generally* Cocks, *supra* note 28, at 244.