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Law from a Colonized Past to Globalized Present

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ABSTRACT

Based on the history of the British Empire, this present paper investigates the role of law in colonial regime, how their premise have evolved with time and new course that might be pursued in future. It reviews how scholars have viewed law in colonized World as force, violence, and command. It examines how law was reconceptualized as a site of struggle, resistance, and subversion. A recent comparative and transnational scholarship on legal mobility and migration has been conceptualized. It seeks to go beyond the ambits of colonizer/colonized, domination/resistance, and metropolis/colony that have been the characteristic features of postcolonial studies and have shaped and informed studies of law and colonialism. India has migrated & deviated up to great extent from colonized law and raised important substantive, conceptual, and methodological questions regarding the form, content, and force of law.

Keywords: *Law, globalization, colonization, International Law, India*

I. INTRODUCTION

Over the past two decades, it has become increasingly clear that, in order to understand the cross-border development of legal norms, we need to move beyond the limiting framework of international law and law in general. In an earlier generation, scholars seeking to study law on the world stage focused primarily on only two types of normative systems: those promulgated by nation-states and those promulgated among nation-states.[2] With nation-states as the only relevant players, the law governing the global system was, of necessity, exclusively international. And international law, not surprisingly, emphasized bilateral and multilateral treaties between and among states, the activities of the United Nations, the pronouncements of international tribunals, and the norms that states had obeyed for long enough that such norms could be deemed customary.[3] This was a legal universe with two guiding principles. First, law was deemed to reside only in the acts of official, state-sanctioned entities. Second, law was

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[2] See, e.g., RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 102 (1987)

[3] See, e.g., Statute of the International Court of Justice, June 26, 1945, art. 38(1), 59 Stat. 1055, T.S. No. 993 (stating that the primary sources of international law are international treaties and conventions, customary practices of states accepted as law, and general principles of law common to most legal systems).

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seen as an exclusive function of state sovereignty. Both principles, however, have eroded over time. The rise of a conception of international human rights in the post-World War II era transformed individuals into international law stakeholders, possessing their own entitlements against the state.[4] But even apart from individual empowerment, scholars have more recently come to recognize the myriad ways in which the prerogatives of nation-states are cabined by transnational and international actors. Whereas F.A. Mann could confidently state in 1984 that "laws extend so far as, but no further than the sovereignty of the State which puts them into force,"[5] many international law scholars have, at least since the end of the Cold War, argued that such a narrow view of how law operates transnational is inadequate. Thus, the past fifteen years have seen increasing attention to the important—though sometimes inchoate— processes of international norm development. Some scholars have sought to define and understand "transnational legal process," the ways in which nation-states over time come to internalize international or transnational norms.[6] Others have studied non-traditional legal actors such as non-governmental organizations (NGOs) and their role in defining (and sometimes enforcing) legal standards.[7] And even with regard to classic legal actors such as courts, scholars have noted the increasing willingness of judges to apply international norms transnational,[8] to engage in a transnational judicial dialogue,[9] and even to adopt conceptions of universal jurisdiction.[10]

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[4] See, e.g., W. MICHAEL REISMAN, Introduction to JURISDICTION IN INTERNATIONAL LAW, at xi, xii (W. Michael Reisman ed., 1999) (noting that "since the Second World War, an increasing number of international norms of both customary and conventional provenance . . . now restrict or displace specific law-making and applying competences of states"); Louis Henkin, Human Rights and State "Sovereignty," 25 GA. J. INT'L & COMP. L. 31, 33 (1995– 1996) ("At mid-century, the international system began a slow, hesitant move from state values towards human values."). But see MARK JANIS, AN INTRODUCTION TO INTERNATIONAL LAW 5–6 (1999); GEORG SCHWARZENBERGER, INTERNATIONAL LAW 34–36 (1957) (both noting that even after Nuremberg, international law derived primarily from state practice).

[5] F.A. MANN, THE DOCTRINE OF INTERNATIONAL JURISDICTION REVISITED AFTER TWENTY YEARS 20 (1984)

[6] See, e.g., Harold Hongju Koh, Transnational Legal Process, 75 NEB. L. REV. 181

[7] See, e.g., Joel R. Paul, Holding Multinational Corporations Responsible Under International Law, 24 HASTINGS INT'L & COMP. L. REV. 285, 285–86 (2001) (observing that "private individuals and non-governmental organizations acting both internationally and domestically are contributing to the emergence of new international norms. These new international norms confer greater rights and obligations on private individuals and firms, shifting the focus of international law.").

[8] See, e.g., Philippe Sands, Turtles and Torturers, The Transformation of International Law, 33 N.Y.U. J. INT'L L. & POL. 527 (2001); David Sugarman, From Unimaginable to Possible: Spain, Pinochet, and the Judicialization of Power, 3 J. SPANISH CULTURAL STUDS. 107 (2002).

[9] See, e.g., Anne-Marie Slaughter, Judicial Globalization, 40 VA. J. INT'L L. 1103 (2000); Melissa Waters, Mediating Norms and Identity: The Role of Transnational Judicial Dialogue in Creating and Enforcing International Law, 93 GEO. L.J. (forthcoming 2005). See also Janet Koven Levit, Going Public With Transnational Law: The 2002–2003 Supreme Court Term, 39 TULSA L. REV. 155 (2003).

[10] See, e.g., M. Cherif Bassiouni, Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice, 42 VA. J. INT'L L. 81 (2001); Leila Nadya Sadat, Redefining Universal Jurisdiction, 35 NEW. ENG. L. REV. 241–63 (2001); Henry J. Steiner, Three Cheers for Universal Jurisdiction—Or Is It Only Two?, 5 THEORETICAL INQUIRIES IN L. 199 (2004). For an exhaustive discussion of universal jurisdiction, including legislative (as well as judicial) enactments, see LUC REYDAMS, SEARCH TERM END UNIVERSAL

We might, then, examine that many of the institutions and policies that we associate with contemporary globalization and consider their colonial antecedents. For example, a great deal of contemporary law reform takes place in the mode of `law and development'; a proper legal system is indispensable for the achievement of development, and aid agencies and international institutions approach law reform from this perspective. `Law and development' of course, particularly in its more recent American manifestation, has given rise to an enormous if inconclusive literature. But it can hardly be doubted that the roots of the contemporary law and development movement can be traced back to the efforts made by colonial administrators to introduce a European set of laws in a non-European territory. In addition, of course, it was through colonialism that, despite various restrictions, something like a global economy emerged, and European states acquired access to various raw materials. Many trade regimes have been devised with the implicit or explicit understanding that trade is crucially related to the existence of natural resources in the developing world, thus raising the issue of how these resources can be best mined and utilized. In the nineteenth century, this problem involved the question of how competing European powers could establish a set of rules that would enable the orderly exploitation of Africa. Thus, we could study the Berlin Conference of 1884/1885, not simply in terms of the role it played in the partition of Africa, but as an early example of a Free Trade Agreement. Trade was the major concern of the conference: Article 1 of the General Act states that "the commerce of all nations shall enjoy complete liberty". The same problem of somehow incorporating the non-European world into the global economy is understood in a different way, in the very different political context that existed in the League of Nations period, and a different set of legal techniques are used for the purpose of addressing it. But in some ways the issue remains the same- acquiring access to the raw materials located in the developing world. In each of these cases, complex questions arise as to the relationships between the economic, political and legal realms. The statesmen gathered in Berlin-no African states were included in the meeting-while preoccupied with the question of commerce, also asserted that it was through commerce that civilization could be brought to the backward peoples of Africa. Mercantilism inspired Europeans to play a catalytic role in breaking down the Ottoman Empire. When Ottoman Empire was broken down it opened doors especially for the British, French, and Dutch to get resources from around the world and support industrialization at home. The landscape was about to change after the Second World War as the Atlantic Charter had acknowledged the independence of colonized countries. Along with the end of the Second World War, and the independence of formerly colonized countries, three

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compelling issues – financial stability, development support, and resources management – were expected to be addressed for restructuring the globe.

Thus, the International Monetary Fund (IMF) was created to address the problem of financial instability. The World Bank (WB) was created to support developmental needs. And, the General Agreement on Tariffs and Trade (GATT) was created to manage resources and facilitate trading relationship. The end of the Second World War started the process of ending colonialism politically, though its culmination took place when Macau was handed to China in 1999 by Portugal. Yet, making rules in the GATT had still full of colonial reminiscent even after the Second World War. As a result, rules that provide colonial exceptions and especial trading relationship with former colonies are legalized in the GATT.

Colonialism with the ideology of mercantilism had taken root on two major concepts: first, to import raw materials at cheap price from colonized countries to manufacture goods at home; second, to export goods manufactured at home around the world including the colonized countries and restrain any importation of manufactured goods from colonial countries. GATT was supposed to end these two mercantilist concepts but unfortunately in its many provisions it sustains both concepts to serve protectionism, the new form of mercantilism.[11]

II. COLONISATION AND LAW

The reason almost all legal systems of the world belong to either the common or the civil law family is that the European powers imposed their legal system on their colonies. Consequently, "legal origin" is almost perfectly congruent with "colonial history" understood as the identity of the dominant colonizing power. Nevertheless, the legal regime was just one of many differences between the various colonial powers. Colonizing powers differed in their policies relating to education, public health, infrastructure, European immigration, and local governance. In addition, colonizing powers did not choose their colonies randomly, so colonies may differ in characteristics such as climate and natural resources. Disentangling these factors is not merely of historic interest. To the extent that policy lessons can be learned from the legal origin literature, they depend critically on identifying the causes of the observed effects. The focus on colonies is an important aspect of our analysis. Only former colonies received their legal system exogenously (from their colonizer). By contrast, in the origin countries, such as England, France, and Germany, the legal system developed endogenously. Hence in the origin countries, legal "origin" was itself influenced by each country's economic and political

[11] Bhandari, Surendra, From the Era of Colonialism to Globalization: Making Rules in the GATT/WTO (2010). Available at SSRN: https://ssrn.com/abstract=1657724 or http://dx.doi.org/10.2139/ssrn.1657724

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structure, and correlations between economic outcomes and legal system may reflect unobserved country characteristics or a causal effect from economic structure to legal system, rather than the other way around. Countries that voluntarily adopted foreign legal systems—such as Japan, Thailand, and Turkey—present similar issues. Drawing selectively on histories of the British Empire, this is how scholars have conceived of law's role in colonial pursuits, how these themes have changed, and new directions that might be pursued further. It considers the ways in which studies of law and colonialism have characterized law as force, violence, and command. Law as a site of struggle, resistance, and subversion. It focuses on recent comparative and transnational scholarship on legal mobility and migration, a literature that seeks to transcend the binaries of colonizer/colonized, domination/resistance, and metropole/colony that have been the hallmark of postcolonial studies and have shaped and informed studies of law and colonialism. Legal migrations, from India via the Indian Penal Code, raise important substantive, conceptual, and methodological questions regarding the form, content, and force of law and the shared repertoires of colonial rule that its movements engendered. Christina Brauner (Berlin) dealt with conceptual questions on legal diversity in cultural contact. During European expansion in the early modern period, colonizers with their European legal concepts encountered local practices based on other legal norms. The beginnings of the colonization of South India and West Africa in the 17th century show that with the arrival of Europeans in the global South, different legal systems met – and sometimes clashed. The paper referred to major hubs of colonisation in the Global South as cultural contact zones "in which two or more legal systems were practiced simultaneously and often mixed, creating a state of "multi-normativity".

Anna Dönecke (Bielefeld) presented an example for this multi-normativity with a case study from Pondicherry, a South Indian commercial settlement: an inheritance dispute from the 17th century in which the parties in court invoked both Malabar and French law, depending on which promised to benefit them more. Historical actors have taken advantage of the context of legal diversity and, where possible, exploited the room for manoeuvre opened up by institutional heterogeneity – a strategy often referred to as "forum shopping". In a further step it was pointed out that by doing so, actors were not only actively navigating through the state of legal, multi-normativity", but were actively changing it by mixing and entangling different legal systems.

Ulrike Schaper (Berlin) used the complex legal system in Cameroon between 1884 and the First World War under European rule to explain how law was used not only as means of exercising power, but also to generate order in the colonial apparatus. She described the numerous administrative guidelines and adherence to the formality of legal procedures as an

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attempt of the colonial state to stage and perform statehood to legitimate itself. As Dönnecke before her, Schaper stressed the impact of acquiring knowledge about legal institutions and legal rights, as well as the possibility of "forum-shopping". She therefore called for more research focussing on dynamics of negotiation.

Richard Dören (Heidelberg) finally gave insight into today's treatment of colonialism from a legal point of view. In particular, he analysed articles in national and international law such as statutes of limitations or problems of the burden of proof, which he called legal, hurdles" to dealing with colonialism and current questions of restitution. He also talked about the legal difficulties regarding protection treaties, in which legal documents exist yet are disputed as the signees might have had different interpretations of the transactions – or might not have been in a position to sign it in the first place.[12]

The presentations served as a departure point for a joint discussion about the entanglements of legal history and colonialism. Special attention was paid to the topic of the normativity of the law itself as a concept: The concept of the legal system is shaped by normative European ideas. Through the processes of European expansion, the colonizers came across cultures with different practices and criteria for settling disputes. The European conception of "law" sometimes reached its limits – and thus also called into question the self-imagination of European modernity, which was constructed as universal and incomparable.

III. EFFECTS OF BRITISH COLONIAL RULE – INDIAN CONTEXT

Given the long years spent under the thumb of the erstwhile British Empire, it is not surprising that the effects of colonial rule continue to persist in India in various ways to present day also. Though 1200 archaic laws were scrapped in bulk, Indians are still following many obsolete laws that have been prevalent from the time of British colonial rule. A majority of the laws over which the Indian judiciary relies upon are derived from colonial times. Here are some areas which, for better or worse, continue to bear the mark of the English colonial legacy.

Unnatural Sex

The Indian Penal Code (IPC), 1860 was introduced during English colonial rule on the recommendations of a Law Commission headed by Thomas Babbington Macaulay. Although the Code has undergone several changes over the years, a provision which stands out for controversy is Section 377, which penalizes unnatural sex or sexual activities against the order

[12] https://exilegov.hypotheses.org/1442

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of nature. The term "unnatural sex" itself has not been defined in Indian law. However, given that the provision was modeled on the English Buggery Act of 1553, the provision has been understood to penalize sodomy and any form of sexual activity which would not ordinarily result in procreation. This is because the Buggery Act penalized unnatural sex against the will of God and man, at a time when Christian teachings dictated the norm. In effect, homosexual acts, bestiality and any other form of non-vaginal-penal intercourse are weighed on the same criminal pedestal. If found guilty, the offender can be punished with life imprisonment or imprisonment extending to ten years, in addition to a fine. Recently the Supreme Court of India unanimously held that Section 377 of the Indian Penal Code, 1860, which criminalized 'carnal intercourse against the order of nature', was unconstitutional in so far as it criminalized consensual sexual conduct between adults of the same sex. The petition, filed by dancer Navtej Singh Johar know as Navtej Singh Johar's case[13], challenged Section 377 of the Penal Code on the ground that it violated the constitutional rights to privacy, freedom of expression, equality, human dignity and protection from discrimination. The Court reasoned that discrimination on the basis of sexual orientation was violative of the right to equality, that criminalizing consensual sex between adults in private was violative of the right to privacy, that sexual orientation forms an inherent part of self-identity and denying the same would be violative of the right to life, and that fundamental rights cannot be denied on the ground that they only affect a minuscule section of the population.

Rationalising Obscenity Law

Sections 294-296 of the IPC penalize *obscene* words or acts done in public. As per these provisions, words or acts would be *obscene* if it is *lascivious,* or *appeals to the prurient interest* or *tends to deprave or corrupt* a person encountering such words or acts. However, the debate concerning what would be *lascivious* etc. still finds its way into Courts. Over the years, the Court has laid down various tests to rationalize the meaning of offensive *obscenity* with evolving societal standards – from the *Hicklin test* (now redundant) to the *contemporary standards test*. Nevertheless, it cannot be said that the ambiguity in interpreting criminal obscenity has been resolved, and the Court's interpretation of this grey area has not always been without criticism. The 2015 judgment in *Devidas Ramachandra Tuljapurkar v State of Maharashtra*[14], in this case, the Supreme Court culled out a special status for "historically respected figures" such as Mahatma Gandhi, in respect of whom it was held that the community standards test for obscenity applied to a *greater degree*. This judgment does not define

[13] (2018) 10 SCC 1
[14] (2015) 6 SCC 1

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"historically respected figures", nor does it furnish any Constitutional basis for introducing this new classification. On the other hand, the case raises concerns that such a vague standard may serve as a gateway for innumerable future claims made on behalf of other "historically respected figures."

Judge Centric Death Penalty

The death penalty is yet another concept which found its way to the formal Indian legal system by way of the British-drafted IPC and as such, with homosexuality, England has since changed its stance on the issue. In 1998, the United Kingdom passed a law abolishing the death penalty, except during wartime. In 2003, it acceded to the 13th protocol of the European Convention on Human Rights to abolish the death penalty in toto. In India, the jurisprudence on the death penalty has expanded considerably over the years through judicial interpretation. Following Supreme Court precedent, the death penalty is awarded for serious criminal offences only in the rarest of rare cases. What amounts to "rarest of rare" has not been objectively defined. Instead, the Supreme Court has laid down factors to be considered by a judge in deciding whether an offender deserves the death penalty on a *case to case basis.* Thereby, whether or not the death sentence is imposed is ultimately left to the wisdom of the presiding judge. In 2007, India voted in United Nations (UN) resolution calling for a moratorium on the death penalty. This stance was reiterated in 2012 when India voted against a UN draft resolution seeking to end the death penalty. However, in 2015, the Indian Law Commission recommended that the death penalty be abolished for all offences except for those related to terrorism. The recommendation was made citing various reasons including the apparent arbitrariness in its application and the lack of deterrent effect.

Sedition Law

War against the King, compelling him to amend his policies or to intimidate the Parliament was considered an offence in England under the Treason Act, 1795. During the lifetime of King Charles II, sedition had its genesis under the Treason Act. In the context of colonial India, sedition was first introduced in 1835 and was legally made into a criminal offence in 1870. Nationalist leader Bal Gangadhar Tilak was among the first few to face the brunt of the British law. According to the Bombay High Court archive, two British soldiers were murdered in Pune by some Brahmin youths who were allegedly instigated by Tilak's public speeches. Charged with sedition twice, Tilak was released after completing a sentence of 18 months for the first trial and was sentenced six years for an editorial published in his newspaper, Kesari. Terming sedition as the "prince among the political sections," M K Gandhi considered sedition designed

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to suppress the liberty of citizens when he was brought in court for his articles in Young India magazine in 1922. An amendment was made to the law and the word 'sedition' was dropped from the statute on December 2, 1948 when senior Congress leader, Seth Govind Das spoke in the house, "I believe they (British government) remember that this section was specially framed for securing the conviction of Lokamanya Bal Gangadhar Tilak. Since then, many of us have been convicted under this section." Although the term sedition vanished constitutionally, but it remained under IPC as Section 124A.

Colonial Psyche and Indian Legal System

From the Common Law system to official dress codes – it is not disputed that the British Colonial rule has shaped the contemporary Indian Court system. However, over the years, there has been some debate as to whether it is time to move away from some colonial origin conventions in Court practice. The mandatory coat-and-gown dress code for lawyers has come under some criticism, given its unsuitability in Indian weather conditions. The practice of having mace-bearers marching ahead of judges in some Courts has prompted interesting debate. However, there is a larger issue beyond such external manifestations that merits attention. It is important to mention that a colonial psyche persists in the administration of justice throughout the Indian Court System. Based on Thomas Hobbes' philosophy of sovereign absolutism, the British Colonial Empire protected its subjects only on the surrender of their rights to their rulers. In other words, justice could not be demanded, but rather it was allowed by the state as a matter of concession. This is in contrast to ancient Indian systems, where justice could be demanded, being a concept that was inbuilt. Instead of this approach, the colonial mindset left behind by British Imperial rule is apparent from the manner in which pleadings are drafted in Court, the way in which the Court is addressed and, most importantly, accessibility to the Court itself. Justice is not demanded but prayed for in the humblest terms. Judges continue to be addressed as Lordships and Ladyships. The ordinary litigant is often unable to bear the expenses of pursuing litigation in distant Higher Courts, as was the case with the Privy Council during British colonial rule. Further, the mounting backlog of cases means that judges are rendered helpless, even if they want to help the ordinary litigant. The huge case pendency means that it is the degree of injustice rather than the injustice itself which determines whether relief is granted by Courts. That the law disregards trivial cases is also a part of the persisting colonial mindset. The eradication of such a colonial mindset may take time but it is required to get out of the Colonial pattern at the earliest for better system which is evolving continuously in our legal system.

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IV. GLOBALISATION AND LAW

Globalization of law may be defined as the worldwide progression of transnational legal structures and discourses along the dimensions of extensity, intensity, velocity, and impact. We propose that a theory of the global penetration of law will require at least four elements—actors, mechanisms, power, and structures and arenas. A comparison of four approaches to globalization and law—world polity, world systems, postcolonial globalism, and law and economic development—indicates considerable variation in perceived outcomes and gaps in explanation, but with possible complementarities in both outcomes and explanatory factors. Research demonstrates that globalization is variably contested in several domains of research on law: (a) the construction and regulation of global markets, (b) crimes against humanity and genocide, (c) the diffusion of political liberalism and constitutionalism, and (d) the institutionalization of women's rights. Farther globalizing legal norms and practices are located from core local cultural institutions and beliefs, the less likely global norms will provoke explicit contestation and confrontation. Future research will be productively directed to where and how global law originates, how and when global norms and law are transmitted and enforced and how global-local settlements are negotiated. By globalization of law, we might refer to the degree to which the whole world lives under a single set of legal rules. Such a single set of rules might be imposed by a single coercive actor, adopted by global consensus, or arrived at by parallel development in all parts of the globe. Although the end of bipolarity and the cold war brings some comfort, surely we have not moved very far toward a regime of international law either through the establishment of a single global law giver and enforcer or through a strong nation-state consensus. If we had, we would be speaking of international law, not the globalization of law. Nor can we even confidently claim that law has become global or universal in the sense that everyone on the planet can be sure that wherever he or she goes on the planet, human relationships will be governed by some law, even if not by a law that is everywhere the same. Indeed, unless we move very far toward an anthropological merging of law and custom, we would probably conclude that a smaller proportion of the world's population enjoys legally defined relationships today than it did one hundred years ago. This retreat would have occurred on the basis of one great historical fact alone: the enormous population of China has moved from a regime of Imperial however thin and corrupted, to a Leninist regime of non-law. Moreover, in much of the post-colonial third world, the legal regimes of the colonial occupiers have been thrown out, but it has been impossible to replace them with new legal regimes or restore the pre-colonial legal regimes that the European imperialists disrupted. Indeed, if the Indian subcontinent and Indonesia could not be counted

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as having maintained some kind of rule of law, we would confront a world in which the relative number of persons living under regimes of law had declined so precipitously as to render talk of the globalization of law entirely misleading. When we speak of the globalization of law, we must be conscious that we are speaking of an extremely narrow, limited, and specialized set of legal phenomena set into a globe in which it is not at all clear whether the total quantum of human relationships governed by law has increased or decreased over the last century.[15]

V. COLONISATION AND GLOBALISATION

Globalization is a form of colonialism that prevents the development of third world countries. During the 17th century, powerful countries invented the basic framework of colonialism, which is free trade. Oppressed countries were forced to consume goods that were brought by their colonialists; in return they gave up their own productivity, this lead to high revenues for the colonialists and exploitation for their colonies. Today, globalization is criticized for preventing local development in poor countries.

Firstly Monsanto has been a good example in explaining how globalization prevents local farmers´ productivity through genetically modified seeds. The Monsanto Company is a controversial multinational agricultural biotechnology corporation. It is the world's leading producer of the herbicide glyphosate, marketed as "Roundup". Monsanto is also the leading producer of genetically engineered (GE) seed; it provides the technology in 90% of the world's genetically engineered seeds.[16] Secondly, Wal-Mart is one of the unethical global businesses that violate human rights during their manufacturing process. The strategy, to give jobs to employees, warranty low prices to consumers and increase shareholders revenues has high costs and needs aggressive practices by the CEO, such as violating a vast array of human rights and exploiting labor.

Colonialism refers to a historical phenomenon in which people conquer people from another territory in order to expand. In this process of sovereignty over the colony, the colonialists changed the social structure, government and the economy. As a result, colonialism generated an unequal relationship between the homeland and the colony. The sovereignty is mostly referred to as an expansion of political influence and control over colonies which are located in Asia, the Middle East, Africa and Latin America. This expansion took place between the 16th and middle of the 20th century. The beginning was marked by Crusaders, such as Christopher Columbus and Amerigo Vespucci who first discovered new territories. At the

[15]https://www.repository.law.indiana.edu/ijgls/vol1/iss1/3?utm_source=www.repository.law.indiana.edu%2Fijgls%2Fvol1%2Fiss1%2F3&utm_medium=PDF&utm_campaign=PDFCoverPages

[16] The World According to Monsanto, 11 March 2008, "New movie damns Monsanto's deadly sins"

second stage, the conquistadores Pizarro and Cortes had forced the local community to slavery. This military relation evolved into economic and military control of these regions by the colonialists.

The similar phenomenon nowadays is called neo-colonialism; it represents imperialism in its final stage. Today it isn't possible to turn a country into a colony by imposing colonialist rules. Most of the colonialist countries attained their independence after world war II. Only a few regions, such as Puerto Rico, Gibraltar or The Falkland Islands are still considered colonial. The essence of neo-colonialism is that the State which is subject to it is, in theory, independent and has all the outward trappings of international sovereignty. In reality its economic system and thus its political policy is directed from outside.[17]

On the other hand, we have another historical phenomenon called Globalization. Globalization describes the process by which regional economies, societies, and cultures have become integrated through a global network of political ideas through communication, transportation, and trade.[18] This integration of regional economies into the international economy is reached by trade, foreign capital investment, and technology. Globalization is also related to economy, technology, socio-cultural factors and politics. The term can also be integrated as the transnational circulation of ideas, languages, or popular culture through cultural diffusion. An aspect of the world which has gone through the process can be said to be globalized. Globalization has various aspects that affect the world in several different ways. The most important dimensions that have been influenced are: industry, finance and the global economy. We can define globalization as an advance towards the "end state" of a fully integrated world market, the creation of a borderless world.

Although there are benefits, a lot of negative consequences occur as a result of globalization. Countries have to reduce their company's taxes to entice multinational companies to do business in their country. A reduction of tax revenues is followed by a reduction of welfare and public services. Furthermore, most of the developed countries don't take the environmental costs into consideration. The boom of the oil industry and the demand of cheap energy make countries like Canada dependent on oil revenues to provide a high standard of living for their population. Issues of global warming are getting more and more important in today's society and the agreements between countries, such as the Kyoto Protocol, are not taken seriously and are proving to be ineffective. Another cost of globalization is ever rising wage inequalities. The gap between skilled and unskilled workers is increasing and the fear of an extinction of the

[17] http://www.marxists.org/subject/africa/nkrumah/neo-colonialism/introduction.htm
[18] Bhagwati, Jagdish (2004). *In Defense of Globalization*. Oxford, New York: Oxford University Press.

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middle class is growing. The strategy of Western governments is to push for more trade, more connectivity, more markets and more openness, because they benefit from globalization more than other countries. Essentially they don't consider the dark sides of globalization and the negative aspects that don't impact them directly.

As seen in the definitions, we notice that colonialism and globalization have some very similar ideologies, specifically how the rich countries are trying to expand their power and to exploit other countries in order to get major benefits. But isn't globalization using structuralism to reach colonialism? For mercantilists, the international economy is an arena of conflict involving opposing national interests, rather than an area of cooperation and mutual gain. The economic competition between states is thus regarded as a 'zero sum game'; one state's gain is another's loss. Additionally, states are wary of other state's relative economic gain as the material wealth accumulated could be used for establishing military political power to defend other states. Even if we consider the large amount of advantages which the globalization has brought to all of us, the negative aspects of this phenomenon have resembled aspects of colonialism, which we observed during the 16th-19th century.

Countries such as Great Britain wanted to give wealth to their inhabitants; free trade was one of the means they used to reach that goal. "The end justifies the means", this Machiavellian quote reflects the imperialist policy of most European countries during the 19th century. Colonialists tried to globalize the world on a unipolar way, taking all the gain of this zero-sum game, exploiting and suppressing their colonies with their military and political power. Nowadays, we can observe a similar incident in African and Asian countries. These countries, mostly governed by dictatorships and indirectly by big western multinationals, exploit recourses and cheap labor of the poorer countries to gain wealth through low production costs.

VI. CONCLUSION AND SUGGESTIONS

The global distrust of hierarchical authority and concentrated public and private power generates growth in administrative law, constitutional, and other rights law, and in legal regulation of economic enterprise. The global desire to protect the individual generates growth in personal injury, consumer protection, environmental law, and even family law. The globalization of markets and business enterprise generates the growth of a worldwide law of business transactions. The global multiplication of exterior business relationships and the growth of arms-length regulatory styles fuel a growing demand for lawyers and their involvement in more and more social, economic, and political relationships. Thus in light of all the above, it may be inferred that there is an increasing need for a global mechanism of legal

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education, law enforcement and also harmonization of most of the transnational laws. Having stressed on the need for globalization, we need to adopt our domestic structure to be able to keep pace with the movement of globalization both in terms of legislation and in terms of legal education and practice.

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