

Globalization and its Discontents

International Institutions and the Colonial Origins of Law and Development¹

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What is wanted here is law, good faith, order, security. Anyone can declaim about these things, but I pin my faith to material interests. Only let the material interests once get a firm footing and they are bound to impose the conditions on which alone they can continue to exist.

Joseph Conrad, *Nostramo* (1904)

Introduction

Given that this is one of the first sessions in this seminar on 'Globalization and its Discontents', I thought I would sketch out a set of themes and perspectives relating in fairly broad terms to the relationship between globalization and imperialism. The question of whether globalization is 'old' or 'new' appears to have attracted a great deal of debate. Much, of course, depends on our definition of 'globalization', but those who argue for the former position assert that the international economy of the late nineteenth century, the height of the age of Empire, was at least as 'global' as the present economy². To many scholars who have focused on the non-European world, globalization appears to be as another form of imperialism³. Indeed, even scholars who are supportive of imperialism see it as essential for globalization: the argument they make, broadly, is that only an imperial power can ensure the international stability that is indispensable for the continuation of globalization and all the benefits it is supposed to bestow. This role was played in earlier times by the Great Powers of Europe, particularly England; and these scholars argue that it is incumbent, now, for the United States to explicitly embrace this imperial role if peace and prosperity are to be achieved. Whatever our particular views on imperialism, it is hard to deny that imperialism was essential to the universalization of what could be called 'European international law'; and that, in turn, this international law played some role in shaping the global economy. And even if we are skeptical of the argument that globalization is yet another form of imperialism, we might ask the question of what relationship

1 This paper is adapted in part from Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (2005).

2 See David Held and Anthony McGrew, 'The Global Transformations Reader' pp.4-5. See also, Paul Hirst and Grahame Thompson, 'Globalization and the History of the International Economy' in the *Globalization Reader*, pp. 274 ff.

3 For a persuasive argument to this effect, See eg. B.S.Chimni, 'Third World Approaches to International Law: A Manifesto' in Antony Anghie, Bhupinder Chimni, Karin Mickelson and Obiora Okaford (eds.) *The Third World and International Order: Law, Politics and Globalization* (2003) at pp. 47-75.

exists between that earlier age of globalization that was so intimately connected with imperialism, and the current era of globalization.

We might, then, examine 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, I submit, 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 utilized⁴. 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.

As the above would suggest, international law and institutions, because of the colonial encounter, have played a particular and unique role in shaping the economic and political structures of the developing world. And in an effort to illustrate the ways in which this has occurred-and also to suggest some of the links between that past and this present, and the relationship between the legal and the political-I have focused here on an examination of the Mandate System of the League of Nations and the role this system played in shaping the political-economy of the Mandate territories.

The Mandate System of the League of Nations

⁴ In this respect we might even inquire into what could be provisionally termed the 'colonial origins of the WTO'.

International institutions, most prominently the World Bank, play a major role in formulating theories of development, establishing development policy for the Third World and, more recently, promoting legal reform in developing countries. The World Bank is one of the major promoters of globalization. This paper seeks to explore some of the historical aspects of this relationship between international institutions, development and globalization. It argues that international institutions, from their very beginning, were preoccupied with the problem of bringing about 'development' in backward non-European societies, and that, further, this task was inseparably connected with the great project of transforming these societies into sovereign, independent states through the promotion of self-government. This radical project was to be undertaken by the Mandate System of the League of Nations, the first universal international institution. My specific interest, then, lies in examining the relationship between two unprecedented developments in international law, the project of *creating* sovereignty out of colonial territories, and the establishment of the international institutions entrusted to bring about this transformation. It was during this same period, furthermore, that the jurisprudence of pragmatism emerged as a challenge to the positivist system established in the nineteenth century which was condemned as amoral and defective by the lawyers of the inter-war period. How then, does this new jurisprudence of pragmatism, which manifested itself in part through the establishment and operation of international institutions, address colonial problems? My broad argument is that an examination of the Mandate System reveals issues of enduring theoretical and practical significance about sovereignty, international institutions, and the management of relations between European and non-European peoples. In particular, an examination of the Mandate System reveals the formulation of new technologies used for the purpose of shaping the economic and political structures of non-European territories in ways that had enduring and perhaps disadvantageous consequences. The relationship between sovereignty and development is a major preoccupation, then, of this paper. My hope then, is that an examination of the Mandate System, its conceptualization of the relationship between self-government and economic development, and the technologies it created to further its goals, illuminates the complex links among international law, international institutions, and development.

The Creation and Structure of the Mandate System:

The Mandate System was devised in order to provide internationally supervised protection for the peoples of the Middle East, Africa and the Pacific who had previously been under the control of Germany or the Ottoman Empire, the powers defeated in the First World War. Many of the victorious powers were intent on annexing these territories themselves, but these ambitions were vehemently opposed by President Wilson of the United States, who argued that such actions would have been contrary to the principles of freedom and democracy for which the war had been ostensibly fought. Wilson instead proposed the application of the Mandate System to these non-European peoples and territories. The essential purpose of the system was to protect the interests of backward peoples, to promote their welfare and development and to guide them towards self-government and, in certain cases, independence. This was to be achieved by appointing certain states, officially designated as mandatories, as administrators of these territories on behalf of the League, and subjecting these mandatories to the League's supervision.

The Mandate System embodied two broad sets of obligations: first, the substantive obligations according to which the mandatory undertook to protect the natives and advance their welfare; and secondly, the procedural obligations relating to the system of supervision designed to ensure that the mandatory power was properly administering the mandate territory. The primary and general substantive obligation undertaken by the mandatory power is stated in subsection 1 of Article 22 of the League Covenant, which enunciates the concept of a 'sacred trust for civilization':

1. To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.
2. The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who, by reason of their resources, their experience or their geographical position, can best undertake this responsibility and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.⁵

The broad goal of the Mandate System was, first, to prevent the exploitation of native peoples and second, to promote their well being and development. The term 'not yet able to stand by themselves' suggested that the system was a temporary arrangement until such time as the peoples were capable of becoming independent, as a result of which the article was described as meaning 'trusteeship with independence as the goal of the trust.'⁶ While it was explicitly provided that the Middle Eastern mandates were to become sovereign states, the status of the mandate peoples in Africa and the Pacific was more uncertain. The article was then generally interpreted as requiring mandatories to promote 'self-government'- a term capacious enough to suggest progress towards full sovereign statehood, while not explicitly making this the ultimate and inevitable goal. Thus Hall asserts that 'self-government is the central positive conception set out in Article 22 of the League Covenant'. In addition, as discussed in detail below, the term 'well being and development' was interpreted as requiring the mandate power to promote the economic development of the territory.

The Mandate system provided for a three tiered system of administration as Mandate territories were classified according to their degree of advancement. The non-European territories of the former Ottoman Empire-such as Iraq- were classified as 'A' mandates whose 'existence as independent nations can be provisionally recognized'; German territories in Central Africa were

⁵ LEAGUE OF NATIONS COVENANT art.22 para. 1-2.

⁶ H. Duncan Hall, *Mandates, Dependencies and Trusteeships* (1945) at 94.

placed within the 'B' regime, and South-West Africa and the Pacific territories under the 'C' regime. Mandatories over the most backward territories, the 'C' mandates, were given especially extensive powers, as such territories were regarded as 'best administered under the laws of the Mandatory as integral portions of its territory', subject to the safeguards provided for on behalf of the inhabitants by the mandate system.⁷ Apart from the broad stipulation contained in Article 22 of the Covenant regarding the 'sacred trust for civilization', the mandatory and the Council of the League of Nations entered into separate mandate agreements which elaborated in more detail the protection to be provided to the mandate peoples.

A proper mechanism for supervising the actions of the mandatory was essential for the efficient and effective functioning of the system. In order to achieve this, mandatories were obliged to submit an annual report to the League Council.⁸ These were submitted in practice to the Permanent Mandates Commission (PMC), the monitoring organ established to "receive and examine the annual reports of the Mandatories, and to advise the Council on all matters relating to the observance of the mandates".⁹ The PMC was essentially composed of experts in colonial administration who examined the annual reports presented by the mandatory powers and advised the League Council on developments within the territories. Crucially, furthermore, President Wilson, who had fought for the creation of the Mandate System, insisted on the application of the 'open door' policy in all Mandate territories. In theory, then, all states engage in commerce, on equal terms, in Mandate territories. It was in this way that American companies acquired interests in the oilfields of Iraq. In practice, however, the open door policy was not always observed, particularly in the 'C' mandates.

The League of Nations and the New International Law

Commencing a project which seems to follow each major war, international lawyers of the League period set about the task of creating a new international order based on respect for the international rule of law. This task was inevitably accompanied by the attempt to create a new jurisprudence, a new international law to replace the positivist law of the nineteenth century whose inadequacies were made tragically evident by the Great War. The formulation of such a new jurisprudence involved a fundamental rethinking of the functions, methods and goals of international law, and the concept of sovereignty which was central to the discipline itself.

Positivism was attacked by inter-war jurists from a number of perspectives. In vehemently asserting the autonomy of international law properly so called, positivists had

⁷ LEAGUE OF NATIONS COVENANT art. 22(6).

⁸ LEAGUE OF NATIONS COVENANT, art. 22(7).

⁹ *Id.* at para. 9. For analyses of the relationship between the Council and Commission, see QUINCY WRIGHT, MANDATES UNDER THE LEAGUE OF NATIONS (1930) at 128-30, 146-55. These debates included issues as to the competence of the Commission and the extent of its powers to direct the administration of the territories.

created a law which had appeared entirely removed from questions of social purpose. To many inter-war jurists this positivist preoccupation with legal materials to the exclusion of all other materials dealing with the political life of nations was intellectually flawed and morally dangerous. It was a common theme among eminent jurists on both sides of the Atlantic that the deficiencies and dangers of this approach had been revealed by the war.¹⁰ Thus the new international law by contrast had to devote itself to furthering social goals. This did not mean, however, an international law which returned to the ethical system prescribed by naturalism, but an international law based on the social sciences-political science, sociology, international relations. It was only by furthering social goals and developing a law which, far from being autonomous, was, informed and shaped by social developments and reflected the realities revealed by sociology and political science that international law could operate effectively and ethically.

In these different ways, what was required was a sociological jurisprudence¹¹. American scholars were forceful in making these claims and in developing this alternative jurisprudence which might be termed 'pragmatism'. The foremost American thinker on this subject in the domestic sphere was Roscoe Pound, who argued that the same approach was required in the international realm. Indeed, according to Pound, Grotius himself understood the need to synthesise law with politics, and his achievement lay in doing this effectively, for Grotius's jurisprudence 'grew out of and grew up with the political facts of the time and its fundamental conception was an accurate reflection of an existing political system which was developing as the law was doing and at the same time'.¹² For Pound, the 'basis for a new philosophical theory of international law' could only be achieved by 'thinking of a great task of social engineering'.¹³ This required a 'legal philosophy which shall take account of the social psychology, the economics, the sociology, as well as the law and politics of today',¹⁴ for only such a philosophy shall give us a 'functional critique of international law in terms of social ends'. The theory of international law was to focus, then, not on whether it conformed to a formalist idea of 'science', but whether it was embedded within society and furthered social objectives¹⁵.

¹⁰ See, e.g., Manley Hudson, *The Prospect for International Law in the Twentieth Century*, X(4) CORNELL L.Q. 419 (1925).

¹¹ I have relied on Samuel Astorino's important discussion of the relationship between American sociological jurisprudence and international law in this period, see Samuel J. Astorino, 34(2) DUQUESNE L. REV. 277 (1996).

¹² Roscoe Pound, *Philosophical Theory and International Law*, 1 BIBLIOTECA VISSERIANA 73, 76 (1923).

¹³ *Id.* at 89.

¹⁴ *Id.*

¹⁵ Like positivism, then, realist jurisprudence made claims to be scientific-but in the superior sense that it allied itself with the insights and discipline of the social sciences.

These ideas were elaborated in the international sphere by a number of jurists, including Pound's colleague at Harvard, Manley Hudson, who argued that 'the future law of nations must seek contributions from history, from political science, from economics, from sociology and from social psychology if it would keep pace with the society it serves'¹⁶. The same themes were sounded by a number of other scholars, including Alejandro Alvarez, the brilliant Chilean jurist, later to become an outstanding judge of the International Court of Justice, who asserted that 'Upto the present day, International Law has been considered an exclusively juridical science'.¹⁷ Alvarez, framing his argument as belonging to the school of 'American International Law' asserted that it was necessary to change this and to adapt 'principles and rules and standards more directly to the service of the live, current needs of our present -day society'.¹⁸

In addition to attempting to formulate a new jurisprudence, scholars of the period were, inevitably, preoccupied with the question of formulating a theory of sovereignty which departed from the positivist idea of an absolute sovereign which possessed the ultimate right to go to war. Inter-war jurists were acutely aware that internal sovereignty and external sovereignty were intimately connected and that the specific form of government within a state had a decisive impact on its international behavior and hence was an important issue for international law. Thus, one of the morals McNair deduces from the History of the Law of Nations is that 'the progress of International Law is intimately connected with the victory everywhere of constitutional government over autocratic government, or what is the same thing, of democracy over autocracy'.¹⁹ The fundamental difficulty confronting the inter-war jurists, however, was that the internal political character, the interior of the state, now recognized to be of such importance for the larger goals of international law, was not a subject they could address. Nineteenth century international law prescribed that even in its dealings with other states, a sovereign state could only be required to adhere to those obligations to which it had consented. The internal realm of a state was entirely outside the scope of international law.²⁰ This classic principle, which endured

¹⁶ Hudson, at 434-435. As Astorino notes, Hudson's critique of positivist jurisprudence followed very closely Pound's critique of Langdell's legal science. Astorino, at 286. Hudson, of course, had a brilliant career in international law and became a member of the Permanent Court of International Justice .

¹⁷ Alejandro Alvarez, *The New International Law*, GROTIUS SOCIETY PROCEEDINGS at 35.

¹⁸ Alvarez, *The New International Law*, GROTIUS SOCIETY PROCEEDINGS at 35.

¹⁸ Hudson, at 435.

¹⁹ OPPENHEIM, INTERNATIONAL LAW (Sir Arnold McNair, ed., 4th ed. 1928) at 100-01. For a discussion of this theme, see Benedict Kingsbury, Sovereignty and Inequality, 9 EUROPEAN JOURNAL OF INTERNATIONAL LAW 599, 608 (1998)

²⁰ There were, of course, notable exceptions to this powerful principle; thus a state had to comply with certain international rules in its treatment of foreign diplomats and foreign nationals

in the inter-war period, is stated by McNair

In consequence of its internal independence and territorial supremacy, a State can adopt any constitution it likes, arrange its administration in a way it thinks fit, enact such laws as it pleases...²¹

This presented a fundamental and insuperable dilemma to the jurists of the inter-war period, who were now crucially aware, both at the theoretical and practical level, of the intimate connection between internal and external sovereignty, but who could not proceed any further to manage this internal realm.

Whereas the internal character of the sovereign European state was immune from scrutiny, however, in the inter-war period, it was precisely through the Mandate System that international law and institutions had complete access to the interior of a society. The Mandate System made it possible for international law not merely to enter the interior realm, but to create the social and political infrastructure necessary to support a functioning sovereign state. Here, then, sovereignty was to be studied, not in the context of the problem of war and of collective security, but in a very different constellation of relationships that are central to the understanding of sovereignty in the non-European world. Within the mandate system, sovereignty is shaped by and connected with issues of economic relations between the colonizer and colonized on the one hand, and comprehensively developed notions of the cultural difference between advanced Western states and backward mandate peoples on the other. It was in the Mandate System, furthermore, that many of the interests of jurists such as Pound, Alvarez and Hudson could find expression. This was because the task confronting the Mandate System involved far more than the granting of a simple juridical status. Rather, international law and institutions were required to create the economic, political and social conditions under which a sovereign state could come into being. In this sense, law had to be combined with sociology, with political science and economics, in order to achieve the goals of the mandate system. It was through international institutions that such a task of synthesis could be addressed. The establishment of *institutions* gave international law a reach, and range of technologies which had never previously been available to international law in its attempts to organize the international community. Precisely because of this, the aspirations of pragmatic jurists to make law more socially oriented could be given effect; international institutions made pragmatic jurisprudence a possibility in the field of international relations. Further, it was in the Mandate System, then that international law and institutions could conduct experiments and develop technologies which were hardly possible in the sovereign Western world. It is, then, by studying how this occurred that we may gain an

within its territory.

²¹ Oppenheim, at 250.

understanding both of the unique character of non-European sovereignty and conversely, of the identities that international institutions developed in the course of bringing such sovereignty into being.

Colonial Problems in the Inter-War Period

Although the Mandate System applied, in strictly legal terms, only to the territories formerly annexed to Germany and the Ottoman Empire, inter-war lawyers and scholars understood that it had a far broader significance. It represented the international community's aspiration, through the League, to address colonial problems in general in a systematic, coordinated and ethical manner. At its highest, then, it embodied 'the ideal policy of European civilization towards the cultures of Asia, Africa and the Pacific'.²² We may see the System, then, as an attempt to respond to 'colonial problems' as they were perceived to exist in the inter-war period.

By the end of the Great War if not earlier, it was clear that many non-Western states would become sovereign states²³. This point was most dramatically illustrated by Japan which was accepted into the 'family of nations' in 1905. Equally importantly, Abyssinia Siam and China were signatories at the Peace Conference.²⁴ Most significantly, furthermore, nationalist movements were developing in colonial societies throughout the globe, and imperial powers, intent on maintaining their empires despite the War and its toll on their credibility and strength, had to now confront these movements whose ambitions were rapidly expanding from requests for more participation in government, to demands for outright independence, this as a result principally of broken promises and authoritarianism by those imperial powers. The War, of course, had a profound effect on the issue of colonial relations at a number of different levels. It had not merely devastated Europe, but severely weakened its claims to moral superiority and indeed, to being 'civilized'.

Even as the colonies were demanding self-government and increased political freedoms, Imperial powers were becoming acutely aware of the economic importance of their colonial territories. Imperialism had always been motivated by economic gain. But whereas 'in 1880 a conscious policy of economic imperialism hardly existed',²⁵ by the end of the century this situation had changed dramatically, and imperialism acquired a new and singular form, because it was in this period that the formidable powers of the European state, with its massive military and

²² Wright, at vii.

²³ For an account of the non-European states which had been accepted, even if only partially, into the Family of Nations, see Benedict Kingsbury, *Sovereignty and Inequality* EUROPEAN J.I.L (2000). at 607-08.

²⁴ Oppenheim at 316.

²⁵ Leonard Woolf, *Empire and Commerce in Africa* (1920) 150 at 37.

economic resources, were systematically committed to the task of making profit out of their colonies. The commercial well being of the European state, its *national* economy, was perceived as being intimately connected with its overseas possessions and its ability to protect and expand its overseas markets. By the beginning of the war, then, the central importance of colonial possessions for the economic well being of the metropolitan power was widely proclaimed and acted upon. The War itself further demonstrated how important colonies were for the home state. Not only did the colonies provide soldiers to fight on the Western front; they also provided cotton, rubber, tin, leather and jute.²⁶ All this suggested that 'Colonies could be even more valuable in the future, so the thinking went, if their economic potential were realized'. The importance of this economic development was emphasized by the most eminent colonial administrators, Albert Sarraut of France and Frederick Lugard, who further, and importantly, distinguished between economic 'development' and what could be termed economic 'exploitation'.²⁷ The latter policy would simply exhaust the colony, whereas development would produce ongoing benefits to the metropolis.

The paradox, then, was that colonial peoples were striving towards the ever more real goal of independence at precisely the time when their economic value and their significance for the metropolis was becoming increasingly evident. This, then, was one of the fundamental tensions confronting the mandate system which had to simultaneously promote the self-government and political advancement of the mandate territory on the one hand, *and* economic integration of the mandate territory into the global economy on the other.

The Mandate System and the Problem of Sovereignty

The primary novelty of the mandate system for many jurists of the inter war period, was its puzzling relationship to traditional sovereignty doctrine. For inter-war scholars, the central dilemma was that of determining who had sovereignty over mandate territories. The Axis powers lost their titles to their colonial possessions as a result of the Peace settlement. While this much was agreed upon, the issue of where sovereignty over the mandates was vested was never resolved although the subject of exhaustive debate and analysis among various jurists such as McNair²⁸, Corbett and Wright.²⁹ Possible candidates considered included the League, the

²⁶ David Abernethy, *The Dynamics of Global Dominance: European Overseas Empires 1415-1980* (2000) at 112

²⁷ Lugard's views are discussed below. Sarraut argued that 'It is not by wearing out its colonies that a nation acquires power, wealth and influence; the past has already shown that development, prosperity, consistent growth and vitality in the colonies are the prime conditions for the economic power and external influence of a colonial metropolis'. Abernethy, *supra* note at 112.

²⁸ OPPENHEIM, , at 213-215.

²⁹ WRIGHT, at 319-338, provides a customarily thorough analysis which reviews all the

mandatory power, and the mandated territory-postulated here as possessing 'latent sovereignty' which would emerge in its actualized form upon the termination of the mandate. This last position, argued in the 1930s, was also articulated by Sir Arnold McNair, this time in his capacity as a Judge of the International Court of Justice. McNair asserted that

The doctrine of sovereignty has no application to this new system. Sovereignty over a Mandates Territory is in abeyance; if and when the inhabitants of the Territory obtain recognition as an independent State...sovereignty will revive and vest in the new State.³⁰

The inability of the jurists to resolve this question--despite which the Mandate System itself continued to function--justifies McNair's claim that the mandate was unique, as a result of which 'very little practical help is obtainable by attempting to apply existing concepts of sovereignty to such a novel state of affairs as the mandate system presents'³¹. But this was not the only reason why the Mandate System raised a unique set of problems regarding the character of sovereignty. Under the classic positivist international law, states came into being when they possessed certain attributes: territory, people, government and independence, and were recognized as an independent state by other states³². Within this framework, international law, played only a relatively passive role, merely outlining the characteristics of a state--and leaving the matter to be decided by the states which proffered or withheld recognition. By contrast, in the Mandate System, international law and institutions actively engaged in the process of creating sovereignty as conceptualized by pragmatist jurisprudence, by establishing the social foundation, the underlying sociological structure, the political, social and economic substance of the juridical state. This project supported the idea that sovereignty could be graded--as implied by the classification of mandates into 'A', 'B' and 'C' mandates, this based on their state of political and economic advancement. This in turn assumed that sovereignty existed in something like a linear continuum, and every society could be placed at some point along this continuum based on its approximation to the ideal of the European nation-state. This model implicitly repudiated the idea that different societies had devised different forms of political organization which should command some degree of respect and valence in international law.³³ Further, as a consequence of this postulation of one model of sovereignty, the Mandate System acquired the form of a

relevant literature of the period.

³⁰ *Opinion of 11 July 1950 (Separate Opinion)*, in SIR ARNOLD MCNAIR, INTERNATIONAL STATUS OF SOUTH WEST AFRICA I.C.J., 150 (1950).

³¹ OPPENHEIM,, at 214.

³² In the case of the non-European states, of course, a further and more complex requirement, that of possessing 'civilization', was required.

³³ Under the traditional doctrine of sovereignty, it was precisely the purpose of sovereignty to protect the cultural distinctiveness, the unique political and social institutions of a state; however, in the case of the non-European world, the acquisition of sovereignty had the reverse effect as it required profound transformations in the internal operations of a state.

fantastic universalizing apparatus which, when applied to any mandate territory--whatever its peculiarities and complexities--could ensure that such territories, whether the Cameroons in Africa, Papua New Guinea in the Pacific, Iraq in the Middle East--would be directed to the same ideal of self-government, and in some cases, transformed sufficiently to ensure the emergence of a sovereign state.

How was this task, of creating the sociological foundation of the sovereign state to be achieved? What were the legal and institutional techniques to be used for this purpose? The Mandate System has generated an extremely rich jurisprudence.³⁴ For the purposes of my argument, however, this analysis focuses on the administrative facet of the system: my argument is that the unique character of the Mandate System and the principles the League formulated to guide its operations,³⁵ were developed largely through the work of the Permanent Mandate Commission (PMC) which had principal responsibility for supervising the operation of the system. Once the basic framework of the Mandate System had been established, it was the PMC which had the task of ensuring the progress of the mandate territories and monitoring the everyday workings of the system.

For this purpose, it was essential for the PMC to develop the standards which they could use to assess the progress of mandate territories. Two different members of the PMC outlined very different approaches to the question of formulating standards. One member of the Commission, M. Van Rees, believed this could be achieved by addressing a series of essentially legal questions such as:

What are the obligations which result from the principle that the mandatory powers, having been made trustees by the League of Nations, shall derive no profit from this trusteeship?

Is it allowable to give the territory a political organization which would make it practically independent of the mandatory state

M. Yanghita, however, raised an entirely different set of questions which focused more on developments taking place in the mandates themselves, on the administrative, fact finding function of the PMC. He sought information on matters such as:

³⁴ Issues relating to the mandate system have been extensively litigated before the International Court of Justice. *See, e.g.*, International Status of South-West Africa, 1950 I.C.J. 128 (July 11); South West Africa Cases (Eth. v. S.Afr.; Liber. v. S.Afr.), 1962 I.C.J. 319 (Dec. 21) (Preliminary Objections Judgment); South West Africa Cases (Eth. v. S.Afr.; Liber. v. S.Afr.) 1966 I.C.J. 6 (Jul. 18) (Second Phase Judgment); Certain Phosphate Lands in Nauru (Nauru v. Australia) 1992 I.C.J. 240 (June 26) (Preliminary Objections, Judgment).

³⁵ The extent to which the mandatory powers actually complied with these principles is, of course, an entirely distinct question.

Enumeration of population according to tribal divisions, or to the stage of development attained by the various tribes.

Progress of the development of the land, shown in reference to localities or native groups

Program of general native education³⁶

The PMC responded by combining these two approaches, thus creating a law incorporating *both* elements: first, the collection and systematization of information called for by Yanaghita and secondly the use of this information for the purposes of creating a set of standards which in turn are notionally linked to a broader legal framework.³⁷

This synthesis of law and administration is illustrated by the by the list of questions which the PMC presented to the Mandatory Powers. Part N focuses on questions regarding labor. On the one hand, mandatories were required to provide detailed information as to the laws and regulations governing labor issues. On the other, the PMC sought an immense amount of information about the adequacy of available labor for economic development, processes of recruitment, the nature of the work for which recruiting has occurred, whether private organisations were allowed to recruit, and whether local demand for labor was sufficient-among a series of other questions. The list of questions embodies the synthesis of the approaches suggested by Van Rees and Yanaghita. This is, moreover, exactly the sort of exercise called for by political scientists and pragmatic jurists intent on adjusting the law in the light of realities disclosed by empirical study.³⁸ Further, this new jurisprudence, as developed through the mandate system, was extraordinarily self-generating precisely because it was based on acquiring increasing volumes of information on an expanding range of issues, a process which in turn led to demands for more information on further issues and the formulation of further standards.

We may see this system, then, as an embodiment of the new international law called for by Alvarez and Hudson. This is the system which addresses Alvarez's concern to develop a link

³⁶P.M.C., MIN., III, 286, *in* WRIGHT, *supra* at 228.

³⁷It was important for 'law' and 'administration' to become fused in this way because, as Wright points out: 'It is true the general principles of the Covenant and mandate may furnish guides, but clearly the main source for such formulations is not the documents, but the data, not deduction, but induction. WRIGHT, *supra* at 227.

³⁸This is the sort of science called for by Potter, who rejects a science of government based on abstract reasoning concerning the nature of man and of liberty, and instead calls for "efforts to collect as much data as possible concerning actual forms of state organization and governmental methods, and efforts to analyze that data and discover therein the main lines of causation and the fundamental principles of politics." Pitman Potter, *Political Science in the International Field*, XVIII(3) A.P.S.R. 381, (August 1923).

between social reality and international law, between 'what is' and 'what must be',³⁹ a project which fuses law with the social sciences, with the empirical study of the phenomenon to be regulated⁴⁰. Instead of abstract juridical rules which are 'exact, definite and rigid', the shift to standards creates the flexibility which enables this fusion between law and politics. This is the law which is governed, then, by 'new conceptions of economic, social and general utility'.⁴¹ And it was because of the formidable adaptability of this new jurisprudence, its ability to continuously adjust to social realities as they became better disclosed through empirical study, that Hudson's vision of international law which was in turn based on Pound's view of international law as a mechanism of social engineering, could move towards realization, an international law, based on 'a conscious process of adapting our rules and principles and standards more directly to the service of the live needs of our present day society'.⁴²

The technologies of pragmatism, then, acquired an extraordinary power, range and penetration through the jurisprudence of 'standards', which were developed, not for the purpose of attempting to outlaw aggression, to establish collective security and to control the nationalist passions of Eastern Europe ; but rather, for the less spectacular but relentlessly effective project of acquiring more data on backward native peoples and their societies in order to further the extraordinary project of creating government and sovereignty in these territories and this, even while ensuring that these territories continued to serve their traditional purpose in the larger global economic system..

Government, Sovereignty and Economic Development

The New International Law was concerned, not only to develop a new set of legal technologies, but to apply them to the furtherance of specific social goals, the 'live needs of our present day society'. In the context of the Mandate System, this required the PMC to develop a vision of the economic, political and social structure of the mandate territories, this in order to formulate a set of policies that would advance the 'well being and development' of mandate peoples, protect the natives and promote self-government'. My argument is that the broad phrase 'well being and development' was interpreted principally in economic terms, and that a form of

³⁹Alvarez, *supra*, at 42.

⁴⁰Alvarez thus claims that "[t]he establishment of this harmony between politics and legal rules is the greatest step which can be accomplished in International Law." *Id.* at 47. We might see here the beginnings of the attempt to link international relations with international law.

⁴¹*Id.* at 48. Alvarez makes his argument in the context of his larger project, which is "above all, to 'Americanise' these sciences [of international relations and international law], that is to say, take into account the doctrines, the practices and problems of the New World," *Id.* at 38. It is clearly the American jurists who are most forceful in presenting a pragmatic international law. See Astorino, *supra* .

⁴²Hudson, *supra* at 434-435.

economic development which was disadvantageous to the mandate territories was instituted by the system as a result. Although the PMC was concerned to protect native welfare, this preoccupation with economic development dominated all other aspects of social policy in the mandate territories including, most significantly, the character of the `government' created in mandate societies. Thus even M. Orts, who had drawn the attention of the PMC to the suffering endured by the native populations, finally concluded:

The present question was to ensure in the general interest, not the preservation of this natural wealth-which happily was not at issue-but the development of the incomparable resources presented by the population of the countries with which the Commission was concerned.⁴³

The `development of the incomparable resources' of the mandate territories was then, the governing and unquestionable principle of the Mandate System. Most significantly the resources of non-European territories were invariably and conveniently characterized by European statesmen and colonial administrators as belonging, not only to the peoples of those territories, but also to the larger `international community'. The Mandate System's preoccupation with the problem of economic development is reflected by the fact that, as early as 1921, Lord Lugard, the doyen of colonial administrators, wrote a report to the PMC on the subject `Economic Development of Mandated Territories in Its Relation to the Well-Being of the Natives'.

In addition, the discipline of economics itself became all pervasive, and represented a new and powerful way of conceptualizing and managing the mandate territories and their peoples. Given that the ultimate goal of the mandate system was to promote self- government and even creation of sovereign states out of the mandate territories, this domination of economics resulted in what may be provisionally termed the `economization of government' or the `economization of sovereignty'.

This focus on economic development and efficiency had a radical effect on colonial policies in general; more particularly, it led colonial powers to view natives in terms of the labor, the economic wealth they represented. Simply put, the native was no longer to be merely conquered and dispossessed; he was, rather, to be made more productive. The link between the mandate provisions and this larger goal is made clear by Wright in his clear sighted discussion of the link between humanitarianism and new perceptions of economic efficiency.

⁴³PMC. VI TH SESSION, p. 49.

...it began to be seen that the native was an important economic asset. Without his labor the territory could not produce. Thus the ablest administrators like Sir Frederick Lugard in Nigeria began to study the native and cater not only to his material but to his psychological welfare with highly gratifying economic results. Everywhere the devastating and uneconomic effects of trade spirits and firearms among the natives came to be recognized and their importation controlled. In some part of Africa, especially the west coast, the more fundamental problems of an equitable land system and a liberal and humane labor policy were studied and in a measure solved.⁴⁴

This preoccupation with labour gave rise to a whole series of related issues which the League explored in detail. Complicated questions emerged, for example, as to whether natives in fact were capable of work and whether the reduction in native populations was due to disease or work. Other issues included the question of the sacrifices required of natives in order to promote essential economic growth for the private sector.⁴⁵ However, it was precisely these studies which gave the pragmatist project, which called for empirical and inter-disciplinary studies, a special significance here. Once the broad goal of native productivity had been identified, these technologies could be employed to achieve the desired results. The PMC projects of monitoring the progress of labor policies in different mandate territories were used to develop and adjust appropriate standards which would be all the more effective precisely because they were empirical, and because they could take into so many different aspects of the problem, the physical capacity of the natives, their moral well being, their psychology, their vulnerability to disease, all this to devise legislation directed at making the native more productive.

The same preoccupation with economic development also had a profound effect on the PMC's approach to promoting self-government. Native institutions and customs, more particularly, hindered the project of economic development. But because the PMC recognized that it was hardly possible to radically and immediately restructure these institutions, they sought instead to advance the market precisely *through* the partial adoption of existing native customs. Once again, the PMC drew upon colonial experience in formulating an approach. The concept of 'indirect rule', which essentially called for the retention of native political systems providing that such systems served the overall purpose of the colonial power, was famously elaborated by Lugard. Yanaghita, a member of the PMC, suggested a solution whereby the native chieftains were allowed to perform certain lesser functions in ways which furthered economic development: 'Scarcely aware of the fact that their little sovereignty has been transferred to a higher group, they will assist in the work of the mandatory government and will be content with the empty title and the modest stipend'.⁴⁶

⁴⁴WRIGHT, *supra* at 10.

⁴⁵ PMC, VIth Session, 47 ff (1925)

⁴⁶*Id.* at 283. This echoes Lugard: "Develop resources through the agency of the natives under European guidance, and not by direct ownership of those tropical lands which are unsuited for European settlement." LUGARD THE DUAL MANDATE (1920) at 506.

This strategy of indirect rule was intended to achieve both native quiescence and the progress of the mandatory policy. The basic tactic involved here, then, was the familiar one of shifting the framework in which native society operated, as a consequence of which native procedures and practices became either purely ceremonial and ritualistic, or else a means by which they undermined the native's own interests. The detailed mechanisms by which native authority was transformed and integrated into the larger political structures created through the mandate system are revealed in the prosaic reports to the PMC by the mandatory for Tanganyika.

The Commission notes with satisfaction that the mandatory Power, with the agreement of the chiefs as well as of their tribesmen, has abolished the tribute and the compulsory labour which were formerly exacted by the chiefs, replacing them by a poll tax, part of the proceeds of which is paid into the Native Treasuries, from which the chiefs receive a salary, and that the Administration proposes to make it a legal offence for a chief to exact or attempt to exact taxes other than those legally authorised.

The new regimes of taxation were supposed to serve the dual purpose of raising revenues and undermining native political institutions *even while* using those native institutions for collections. The chiefs now become part of the administrative structure of the system created to further economic progress; rather than relying exclusively on traditional authority, they now become something akin to 'salaried officials'. In addition, the undermining of these traditional structures made 'free labor' available, as natives had previously seen their occupations as intimately connected with the traditional structures. This disconnection was crucial because it helped meet the needs of the large infrastructure projects being undertaken at the time.

An examination of PMC debates gives some idea of the logic and implications of the system of political-economy which emerged in mandate territories as a result of the policies sketched in the previous section. The infrastructure projects begun in the colonies and mandate territories during this period were basically financed by the colonies/mandates themselves. Thus, for example, the people and territory of Ruanda-Urundi paid for the large projects which were essentially designed to extract the country's resources for the principal benefit of Belgium itself.

While this was a commonplace colonial practice⁴⁷ and would not in and of itself have been objectionable to the PMC, some members of the PMC were perceptive enough to raise questions about the *extent* of the debt allocated to the territory: The Belgian representative was adamant, however, that 'the loans made by the territory [Ruanda-Urundi] were not beyond its

⁴⁷As Rodney notes, the infrastructure projects that were paid for by this extraction were not designed to meet the needs of the African peoples themselves. Rather, "[a]ll roads and railways led down to the sea. They were built to extract gold or manganese or coffee or cotton. They were built to make business possible for the timber companies, trading companies, and agricultural concession firms...." WALTER RODNEY, *HOW EUROPE UNDERDEVELOPED AFRICA* (1972) at 209.

means, as the country's resources, principally its mineral wealth, would provide for the service and redemption of the public debt.⁴⁸ This meant, however, that more mining, more extraction had to take place;⁴⁹ this in turn, of course, required more labor; and in order to get more labor, it was necessary to undermine the native political institutions and structures, as labor had traditionally been attached to functions served within those institutions, a point which Lugard makes explicit.⁵⁰ A cycle now becomes apparent: the native becomes the agent of his own exploitation, constructing the infrastructure which was designed to extract his own resources. Furthermore, the greater the imperative to extract these resources, the more demands were made on the natives, and the greater the imperative to destroy the traditional authority structures in order to create the liberated native who could then proceed to celebrate his new found independence in the gold mines of Ruanda.

All these developments had profoundly damaging effects on the mandate populations. As colonial experts at the time noted, the market, as it was constructed in colonial societies, became the central, dominant institution within those societies, distorting and undermining all other social institutions. Thus Furnivall endorsed the view of another colonial expert, J.H.Boeke, that in tropical economies the impact of capitalist development was far more profound than in Western societies where such development was relatively endogenous and gradual; in the tropical economies by contrast, where capitalism was imposed from above,

there is materialism, rationalism, individualism, and a concentration on economic ends far more complete and absolute than in homogeneous western lands; a total absorption in the exchange and market; a capitalist structure, with the business concern as subject, far more typical of capitalism than one can imagine in the so-called "capitalist" countries...⁵¹

Economic development was the supreme system to which all other social institutions were subordinated and which all other institutions had to serve. As Furnivall powerfully argues, once established within a colony economic forces had a profound impact on native society that could hardly be reversed by the actions of the colonial government, no matter how solicitous and well intended. Social relations were transformed purely into economic relations, political

⁴⁸PMC, 28TH SESSION, pp. 15-17 (1935).

⁴⁹Thus the Belgian representative noted that between 1933 and 1934, the mining for gold and cassiterite had doubled. PMC 28th Session, 15 (1935).

⁵⁰Lugard saw this point clearly; he noted, in relation to Ruanda, that "if the prestige of the chiefs and sub-chiefs were not to be destroyed, the system of forced tribute, in the provisions of labour, could not be touched except with the greatest circumspection." PMC, 28TH SESSION, 28 (1935). Belgium changed the traditional authority structures in order to achieve this.

⁵¹J.H.BOEKE, THE STRUCTURE OF NETHERLANDS INDIAN ECONOMY 412, *in* FURNIVALL, *supra* at 312.

authority became a means by which the market could be furthered; and with the dissolution of the traditional checks on behaviour, 'there remains no embodiment of social will or representative of public welfare to control the economic forces which the impact of the West releases'. Political advancement and independence could hardly take place, argued Furnivall, as political entities which had been held together by traditional authority structures were now broken up into economic units bound to each other purely by economic ties which, in any event, were controlled by external forces.

The Uniqueness of non-European Sovereignty

Sovereignty, in its most basic sense, is associated with power. The burden of my argument, however, is that the transference of sovereignty to non-European peoples, as that project was undertaken by the Mandate System, was simultaneous with and indeed inseparable from the creation of new systems of subordination and control administered by international institutions which diminished the powers that could be exercised by the ostensibly sovereign non-European state. The relationship between 'sovereignty' and 'government' is key to understanding how this subordination was effected.

Formal sovereignty is based on the existence of effective government; and government, as conceptualized with regard to the mandate territories was created principally for the purpose of furthering a particular system of political economy which integrated the mandate territory to the metropolitan power to the disadvantage of the former. This was achieved by a technique of rendering the whole of mandate society in economic terms, by a process which might be called the 'economization' of government. These developments correspond closely with what Foucault, to whose work my discussion is indebted, analyses as a new and specific form of government which is based, not on the institutions of 'sovereignty', but on economy:

...the very essence of government-that is the art of exercising power in the form of economy-is to have as its main objective that which we are today accustomed to call 'the economy'.⁵²

In these terms, the Mandate System transferred sovereignty, to mandate peoples but not the powers associated with 'government', that is control over political-economy-and this paradoxically, even while the promotion of 'self-government' was officially proclaimed to be a central goal of the Mandate System. Rather, for mandate peoples, the acquisition of sovereignty, of political powers, is accompanied by the simultaneous withdrawal, transference, of economic power to external forces.. The Mandate System, attempted to transformed the native and her

⁵²Michel Foucault, *Governmentality*, in THE FOUCAULT EFFECT 92 (Graham Burchill, Colin Gordon & Peter Miller eds.) (1991).

territory into an economic entity, and then proceeded to establish an intricate and far-reaching network of economic relationships that connected native labor in a mandate territory to a much broader network of economic activities which extended from the native's village to the territory as a whole, to the metropolis and finally, to the international economy. Integrated in this way into a dense and comprehensive network of economic power, the native, and indeed, the entire mandate society, became vulnerable to the specific dynamics of the network. Given that the mandate territory was inserted into this system in a subordinate role, its operation inevitably undermined the interests of mandate peoples.

Pragmatic international law played a crucial role in establishing and sustaining this system. The complex economic network established by the Mandate System, which linked the natives of the mandate territories with the international economy was supported and enabled by a comprehensive and flexible legal/administrative system, which corresponded with and undergirded the economic links; a legal system, a new international law now expanded to comprise of norms, policies, standards, regulations and treaty provisions; a system which extended from the mundane, minor procedures of collecting information for the drafting of labor legislation in specific mandate territories, to the great proclamations regarding the sacred trust of civilization made in Article 22, the foundation of the entire Mandate System itself.

Nor was the distinction between formal sovereignty and economic power lost to international lawyers of the inter-war period. As the Permanent Court of International Justice itself asserted in the *Austria-Germany Customs Case* when elaborating on the concept of sovereign independence:

The independence of Austria, according to Article 88 of the Treaty of St. Germain, must be understood to mean the continued existence of Austria with her present frontiers as an independent State with sole right of decision in all matters *economic*, political, *financial* or other, with the result that the independence is violated as soon as there is any violation thereof, either in the *economic*, political or any other field, these different aspects of independence being one and indivisible⁵³.

Similarly, in the *Lighthouses in Crete and Samos Case* the distinction between sovereignty and government, is elaborated:

sovereignty presupposes not an abstract right, devoid of any concrete manifestation, but on the contrary, the continuous and pacific exercise of the governmental functions and activities which *are its constituent and essential element*.⁵⁴

⁵³ PCIJ Ser. A/B No. 41. (emphasis added). For a discussion of the meaning of economic independence in the inter-war period, see C.G. Weeramantry, *Nauru: Environmental Damage Under International Trusteeship* (1992) at 323.

⁵⁴ Separate Opinion of Judge *ad hoc* Seferiades, *Lighthouses in Crete and Samos*, PCIJ Series A/B 71 at p. 136 (1937) (emphasis in original) Notably, Seferiades was paraphrasing Max

It is in the Mandate System, then, that we see international law developing a formidable set of institutions and legal techniques for addressing the issue of government, and, thereby, the political economy of a non-sovereign entity. The specific system of political economy which directs and shapes the government in these territories is a colonial political economy—as is evident from a study of the operation of the Mandate System and the writings of Lugard and other colonial administrators. The Mandate System demonstrated, then, how colonial territories could be made politically independent, sovereign states, while continuing to perform their traditional role of supplying markets and raw materials to the metropolis.

The Legacies of the Mandate System

It is clear that the Mandate System was an extraordinary innovation in the field of international law, and that it furthered the cause of international justice in extremely significant ways. The System played a profoundly important role in enabling the emergence of Namibia and Nauru, to name but two examples of former mandate territories, as sovereign, independent states.

Equally, however, the processes by which this transformation from colony to sovereign state occurred had important and enduring consequences for the non-European state, and it is misleading to focus simply on the outcome, on the achievement of sovereign statehood, rather than on the unique character of that statehood which stems in part from the mechanisms which created it. It would be gravely misleading to think that all the great ambitions of the Mandate System were realized, this notwithstanding the new technologies that I have attempted to outline here. Iraq was not transformed into the liberal state that the League intended to emerge from the ruins of the War.⁵⁵ And, as law and development practitioners and scholars have discovered, time and time again, the reforming legal and institutional regimes rarely produce the intended effects.⁵⁶ Nevertheless, the technologies devised in the Mandate System to manage relations between colonizer and colonized continue to play a profoundly important role in managing relations between their successors, the developed and undeveloped/developing. In strictly legal terms, the Mandate System was succeeded by the Trusteeship System. But in terms of technologies of management, it is the Bretton Woods Institutions, the World Bank and the International Monetary Fund which are the contemporary successors of the Mandate System. Indeed, whereas the Mandate System was confined in its application to the few specified territories, the Bretton Woods institutions (BWI) have in effect universalized the Mandate System to virtually all developing states, as all these states are in one respect or another subject to

Huber in making this argument for his own purposes.

⁵⁵ See for a notable and haunting instance of such a failure, TOBY DODGE, *INVENTING IRAQ: THE FAILURE OF NATION BUILDING AND A HISTORY DENIED* (2003)

⁵⁶ For a superb recent study of the unintended effects of law reform, see Joel Ngugi, *Re-examining the Role of Private Property in Market Democracies: Problematic Ideological Issues Raised by Land Registration*, 25(2) MICHIGAN JOURNAL OF INTERNATIONAL LAW, 467 (2004)

policies prescribed by these institutions. The fact that the Mandate System devised these new technologies of management is not to say that these technologies were successful in achieving their goals: the complexities of mandate territories, and the different ways in which the mandate peoples responded to the system prevented this from happening. It is clear, furthermore, especially in the period of trusteeship, that dependent peoples used the system, with increasing sophistication, to further their own interests. The story of the effects of the Mandate System on dependent peoples is, then, a very complex one.

It is the Mandate System, I would argue, that formulated a set of technologies that were refined further by the BWI, and it is the Mandate System that suggested a model for the transformation of the non-European state that continues in important respects to animate the efforts of institutions such as the BWI. The BWI, like the mandate system, in seeking to ensure the 'well being and development' of third world countries are seeking to do so by integrating third world economies into the international economic system in ways which are arguably disadvantageous to third world peoples⁵⁷. The techniques, justifications and legitimating devices they use for these purposes derive in fundamental ways from the Mandate System. We might see the Mandate system as effecting a crucial transition. The Mandate system relied on many of the techniques of traditional colonialism-such as the idea of 'indirect rule' as articulated by Lugard. In addition, the systematic accumulation of knowledge about colonial societies was a crucial aspect of traditional colonial rule; as Toby Dodge, for example, argues, 'British colonial rule had traditionally been heavily dependent on scientific quantification to understand the societies they sought to dominate'⁵⁸. What is important about the Mandate System, however, was that these disciplines were refined and reproduced by *international institutions* with all the claims they could make to being objective, neutral and authoritative-as opposed to the self-interested colonial power. The ability of the PMC, which was composed of the world's foremost colonial authorities, to gather information from so many different localities-from Papua New Guinea, from the Cameroons, from Iraq-and to assimilate it in such a way that Wright concluded:

Nothing less than a science of colonial administration based on a deductive and experimental method was here contemplated. The discovery by such a method and verification by practical application of useful principles and standards is probably the most important contribution that the mandate system could make.⁵⁹

The new 'science of colonial administration' that the Mandate System brought into being is, in many important ways, the new 'science of development' which provides the legitimating foundation of contemporary development institutions such as the World Bank. It is the Mandate System which created an ostensibly universal science by which all societies may be assessed and advised on how to achieve the goal of economic well being and development. The technologies and techniques of the Mandate System, now refined and elaborated, are used, for

⁵⁷The negative impact of BWI policies on third world countries has been extensively documented: *see, e.g.* MICHEL CHOSSUDOVSKY, *THE GLOBALISATION OF POVERTY* (1997).

⁵⁸DODGE, *INVENTING IRAQ*, p. xi.

⁵⁹WRIGHT, *MANDATES UNDER THE LEAGUE OF NATIONS*, p. 229

example, by the World Bank to legitimize its activities and expand the range of issues it deals with. The basic intellectual division of labor instantiated by the Mandate System persists in the operations of institutions such as the Bank and the IMF. The developing countries provide raw materials, not only in the form of primary commodities, but in the form of information, which is then processed by the Bank into knowledge, theories of development, of best practices, which are then promoted as scientific, authoritative truths. Thus it is hardly surprising that one of the Bank's Reports is entitled 'Knowledge for Development'.

My broader point is that there is a unique relationship between international institutions and the non-European world—a uniqueness which was evident when the League was first established, and which continues today. It remains the case that it is only in the non-European/undeveloped world that these technologies are applied in their extraordinarily intrusive form—for it is the condition of backwardness which requires the application of these technologies. Further, as in the case of the Mandate System, the people who are the objects of this system, the peoples of the third world, are denied any effective decision making power. The governance structure of the BWIs ensures that it is the rich industrialized countries which control the BWIs, and which use this control to pursue their own interests while ostensibly promoting development. Further, the current World Bank concern to promote 'good governance' and 'democratization' resembles in important respects the Mandate preoccupation with promoting 'self-government'; in each case, the character of the government being promoted is shaped by economic considerations, by an interest in furthering economic development policies which are often in the interests of the developed states rather than the citizens of the developing country itself.

There is a further complication. The term 'development', of course, is notoriously contested. But development, as promoted by the Mandate system suggested not merely economic growth, but also, in very broad terms, all the changes that could be associated with the transition from tradition to modernity and all this implies in terms of social organization, science, rationality, indeed, the nation-state itself. These aspects of development were embraced by the nationalist leaders of the newly independent states, who made the achievement of 'development' and, even more crudely, economic development, one of their central preoccupations. The difficulty these new states most immediately confronted, however, was that of furthering this goal in the context of the economic and legal structures that had been established by the colonial powers and that operated largely in the interests of these powers. These structures have an enduring force in the contemporary international system. And it is in the Mandate system that we might see how innovative legal techniques, international institutions, and particular economic and political views combined to help create the structures that Third World governments and peoples seek in various ways to contest.

But these conclusions, perhaps, makes the connections between the colonial past and the globalized present too crudely. The links between past and present, and the lingering influence of origins are suggested more subtly in the work from which the title of this seminar derives:

But have we a right to assume the survival of something that was originally there, alongside of what was later derived from it? Undoubtedly. There is nothing strange in

such a phenomenon, whether in the mental field or elsewhere. In the animal kingdom we hold to the view that the most highly developed species we have proceeded from the lowest; and yet we find all the simple forms still in existence today⁶⁰.

⁶⁰ SIGMUND FREUD, CIVILIZATION AND ITS DISCONTENTS, James Strachey ed. and trans, W.W. Norton 1961 p. 15