The State and International Law: A Reading from the Global South

Introduction

> A State is not a fact in the sense that a chair is a fact; it is a fact in the sense in which it may be said that a treaty is a fact: that is, a legal status attaching to a certain state of affairs by virtue of certain rules or practices.
>
> —Crawford, *The Creation of States*[1]

International interventions of all kinds—humanitarian, military, developmental, and financial—are usually predicated on the idea that a state, which has emerged endogenously from "the people" "within," is being "assisted" from "outside"—to develop, to overcome civil war, to govern itself better. Such interventions are neither imagined nor constructed in law as actions that impose and stabilize a legal form, "the nation-state," from "outside," disciplining it from "within," to actualize and maintain that particular form. Indeed, the authority of international law as well as the operation of the international legal order relies on the twin myths that ground this reading: first, that states are independent juridical-institutional formations that come into being once they are formed in "fact" and which are only later "recognized" as a matter of international law; and second, that sovereign states come before a law that they have consensually created.[2] A classic textbook statement reflecting this mythic grounding might be, "In international law . . . it is the states themselves that create the law and obey or disobey it."[3] And yet this predicate is not only mythic but fictional: a fiction that conceals the world-making—via state-making—work of international law and institutions. This work is now intensifying in both scope and violence.[4]

In this essay, we redescribe the relationship between international law and the state, reversing the imagined directionality of the flow that sequences nation-states coming first and international law second.[5] At its most provocative, our argument is that, rather than international law being a creation of the state, making and remaking the state is a project of international law. We pay particular attention here to the institutionalized project of development in order to illuminate the ways in which international law creates and maintains nation-states, and then recirculates from a multiplicity of points "within" them.[6] Understanding this process is particularly important when trying to make sense of the pasts and presents of the Global South, but is increasingly relevant to understanding reconfigurations of states in the north, too.

We begin in Part I with a brief, necessarily gestural, outline of the way international legal relations took shape through the constitution of first colonial, and then postcolonial, states. In Part II, we describe how these postcolonial states became "developmental states" through, and in tandem with, the emergence of the international development project after World War II (WWII).[7] In Part III, we describe the transitional moment of the 1980s and early 1990s, during which these original, or "old" developmental, states were transformed into "new developmental states." This transformation took shape in response to the respective demands of, first, what we know now as the Washington Consensus, and then of its successor, the Post-Washington Consensus. In Part IV, we describe the shape and shaping of the new developmental state itself. In this section, we pay particular attention to how the making and re-making of these new developmental states is an ongoing project that shapes everyday life in the Global South. In the concluding section, we restate the argument, but gesture, too, toward further shifts in practices of state-making, and the increasing developmentalization of the Global North.

Although the histories of the state, of international law, and of the development project that we offer here are, for the most part, well known, our aim in this article is to read them together in order to show how the state has become the legal form through which the promises of international law—including the promise of development—ground themselves in the human and natural fabric of the world. In offering this re-description, we hope to draw out the practices and technologies of state-making, which both shape and pathologize the state in the Global South—and increasingly in the Global North, too. Our final and larger invitation, as the reader will see, is to reflect on alternative ways of thinking about the study and the political practice of both statecraft and international law.

International Law and the (Post)colonial State

Since its relative triumph over rival forms of political association in seventeenth-century Europe, one of the main features of the nation-state has been bringing together, and giving jurisdictional coherence to, diverse geographical spaces and population groups.[8] These efforts have facilitated productive relations and the extraction of value from both humans in the form of labor and the natural environment in the form of resources.[9] And yet this exercise of authority over "national" territories and populations has always been relational. For, although the idea of an "international" order, as such, was consolidated only toward the end of the eighteenth century, from their inception, nation-states worked not only to discipline the multiplicity of social groups and economic and legal understandings that existed "within" their boundaries, but also to generate a supra-national landscape—an international legal order—in which conflicts, trade, and overseas expansion could be negotiated and effected.[10] As Anne Orford argues, "constituting order" has been a central preoccupation of both nation-states and international lawyers from the seventeenth century to the present day.[11]

Within the European context, the *ius publicum Europaeum* provided the framework for the emergence of states and the elements of proper international behavior for the new nations.[12] As offspring of both the Enlightenment and European colonial expansion, the *ius publicum Europaeum,* and what later became the nation-state, reflected the prevailing social transformations and Eurocentric cultural understandings.[13] These states were, for example, the sites where old monarchies and an expanding bourgeoisie managed to

accommodate and multiply their interests under a new institutional logic and in new patterns of world making.[14] The principles of rational administration of social and economic affairs that came to symbolize Europe's idea of civilization were also first put into practice within the context of European polities.[15] When the *ius publicum Europaeum* travelled with European powers to the periphery (so becoming our current "international law," instead of being just the "public" law or the law of encounter between European nations), it "universalized," or generalized in spatial terms with itself, the jurisdictional practices by which the colonies could be ordered according to a Eurocentric national logic.

To alight upon just one illustration of the point, nineteenth-century Swiss jurist Johann Kaspar Bluntschli (1808–1881) exemplifies this universalizing Eurocentric impulse in his work *The Theory of the State*.[16] According to Bluntschli: "The highest idea of the State is beheld when the tendency of human nature to political society is considered, and the highest conceivable and possible development of this tendency is regarded as the political end of mankind."[17] For Bluntschli, the state was both a natural expression of the way political communities were organized, and the means through which these communities achieved their highest degree of material and spiritual perfection. According to his narrative, "whilst history explains the organic quality of the State," we learn from it too "that the State does not stand on the same grade with the lower organisms of plants and animals, but is of a higher kind."[18] As Bluntschli puts it, the state "is a moral and spiritual organism, a great body which is capable of taking up into itself the feelings and thoughts of the nation, of uttering them in laws, and realising them in acts."[19] He continues, "The glory and honour of the State have always elevated the heart of its sons, and animated them to sacrifices."[20]

Notwithstanding the elevation of the state by Bluntschli and many of his contemporaries—including, famously, Hegel, European expansion to the rest of the world was not accompanied by immediate recognition of a right of non-European populations to organize themselves into independent nation-states.[21] Colonial expansion operated, instead, through differential modes of rule, in which Europe persistently claimed predominance for itself vis-à-vis peripheral peoples and the "colonial" states that it created.[22] The duty to Christianize, the "standard of civilization," and the "white man's burden," accompanied by concepts such as *terra nullius*, and the rights of passage, of self-defense, to trade, and to settle, together exemplify the jurisdictional constructions that brought colonial subjects and territories under the realm of European empires.[23] These discursive and legal constructions established concatenated hierarchies between central and peripheral subjects, and between modern and backward states. And so, by the end of the nineteenth century, after three centuries of intense colonial expansion across Africa, Asia, the Americas, and the Pacific, it was no longer possible for non-European peoples, including for large and "modern" polities like the Ottoman Empire, to relate to Europe outside Europe's own parameters and categorizations.[24] As Mark Mazower puts it, even though the Ottomans "had in fact modernized rather quickly . . . European attitudes toward them had hardened faster still."[25]

International law and international lawyers—which were coalescing as a field and a profession, respectively, in the nineteenth century—were instrumental in Europe's reorganization of the world. Again as Mazower has shown, during this period, international lawyers "created a new language for European states . . . to assess each other's claims to

colonial territories" and for "rescuing the mission of empire from its darker, dirtier side."[26] Based on their belief in the superiority of European civilization and their recognition of the existence of very different cultures and societies around the world (most of them considered to be "barbaric" or even "savage" by European standards), international lawyers concluded that European states had not only an inherent right, but also an historic responsibility "to lead the world on the basis of a set of supposedly universal rules."[27] The expansion of (European) economic interests, (European) culture, and (European) statehood formed the core of these "universal" rules, rules that international lawyers in the south also began, or were forced, to embrace and adapt as their nations gained independence.[28] Encapsulating this deployment of justifications and moral commitments within a landscape still plagued by imperial ambitions, the international law that emerged at this time was putatively a "gentle civilizer of nations," as Martti Koskenniemi has critically described it.[29]

As many critical international legal scholars have argued in recent years, this international ordering based on a "dynamic of difference"—between the apparent superiority of Europe and the partial or total inferiority of its others—was neither "merely" a discursive construction nor a "gentle" arrangement.[30] This international order structured the way peripheral territories were administered and economically exploited, and how they were later integrated, for example, into the international institutional realm of the twentieth century, beginning with the League of Nations' Mandate System, and later the United Nations's Trusteeship Council.[31] Through these international institutional frames, colonial possessions were understood according to a global ranking system—a "universal standard of progress"—in which their level of subordination depended on how distant they were understood to be from the ideal embodied in the "core" nations.[32] In this context, statehood—recognition as an independent, self-determined nation-state—became the formal benchmark for assessing the moment when a colonial population moved from the condition of savagery or barbarism, to membership in the international family of nations.

The outcome of colonial subjects' struggles against their respective metropoles was, therefore, not the right to decide for themselves the mode in which they could organize their political communities and economic relations after independence.[33] Instead of a right to "self-definition," the outcome of the process of decolonization was the principle of "self-determination," which could be practiced only within the confines of the nation-state form, and often according to pre-established colonial boundaries that enclosed in single national formations highly disparate ethnic groups and incongruous geographical spaces.[34]

At the same time, the doctrine of self-determination brought postcolonial nation-states into being within the context of an already highly elaborated global political economy. From their inception then, postcolonial nation-states were not only forced to fit their social and physical realities within a foreign institutional and administrative frame, the European nation-state; they also had to perform within a particular international economic system.[35] This system was one in which they had already been conditioned to the position of producers of primary commodities, dependent on the industrial production of center-nations, and in which they were already highly indebted to the global financial system that had lent them the resources to fight their wars of independence, set up new national bureaucracies, and establish their armies.[36]

The Old Developmental State

Although "conscripted" to the nation-state form, postcolonial and peripheral states were determined to refuse the predicament of their own history.[37] So, when a "promise" was issued in 1949 by United States President Truman, and the highly novel post-WWII international institutional apparatus began to embrace the idea of development, national leaders across the south took up the challenge to "develop" their territories and populations.[38]

Leaders in the south were operating here in full cognizance of the dangers of the "durability" of empire.[39] For, although it was in some respects novel, the "development project" was of course not discontinuous with colonial practices of ordering and administration as well as practices of scientific knowledge production and its "application."[40] As Hodge and Hödl put it with respect to Africa, the postwar development project "represent[ed] the culmination of a much deeper history of concepts, practices and debates about the prospects and setbacks of developing Africa . . . [stretching] back to the *mission civilisatrice* and constructive imperialism doctrines of the late nineteenth century."[41] And whether the intimacy of relations between the ostensibly new development project and the more familiar "civilising mission" were fully apparent at the time, the ambition of Third World leaders to board the train of modernity carried with it a determination to demonstrate that their apparent inferiority vis-à-vis northern nations was not related to their essential culture or race. Typically, this meant that "backwardness" was explained either to be an expression of their incipient economies (i.e., poor infrastructure, low productivity, lack of industries, and insufficient human capital), or related to the "backward elements" within the state, such as indigenous and rural people, or some combination of both.[42]

At the same time as "development" emerged, the international order became both highly nationalistic and state-centric, features that gave legal form to the ambitions of leaders in the south.[43] The understanding operative since the emergence of the state form—that states could always disappear entirely through invasion, war, or treaty—changed drastically in 1945 with the UN Charter,[44] which accorded to statehood "a protected status under international law."[45] This new international legal order made clear that, at least in formal terms, once nations achieved statehood, national leaders had enduring authority and a wide scope of action.[46] "International law" was confirmed, in turn, as the legal regime governing the relationships between states that were equal in law (*de jure*). Hence, within this framework, international law underpinned a nation-state's own "sovereign" law, operating as what we could think of as a state's base law. This "jurisdictional" grounding carried with it, however, significant limitations for any substantive redistribution of resources across nations.[47] Its state-centrism also put paid to any serious contemplation regarding international law's potential to become the law of a world government—an idea that was present in many fora at the end of the nineteenth and beginning of the twentieth century.[48]

Acting on the basis of nation-states' newfound protections under international law after WWII as well as their desire to develop and catch up with their "modern" northern peers, postcolonial national leaders began to launch National Development Plans, nation-wide education and health programs, and massive infrastructure and industrial projects.[49]

Large irrigation schemes, dams, refineries, bridges, and power plants as well as state-backed industrial initiatives began to appear in countries as diverse as Kenya, India, South Korea, the Philippines, Peru, Egypt, and Singapore. These infrastructure schemes became emblems of the emergence of what we now identify as the "developmental state."[50] The repeal of old statutes from the colonial era; new national legislation in the areas of banking, administrative, labor, and commercial law; and reforms to the judiciary and to legal education also became fundamental instruments in the construction of nation-states dedicated to the enterprise of development.[51]

Although the concept of the developmental state is today often associated only with the success stories of East and Southeast Asian countries (for example, South Korea and Thailand), the union between the idea of development and strong nation-states was as intense in most other southern states from the 1950s onwards as it was in these emblematic places. Even many Latin American states, which had already accumulated a century or so of independent republican history, were in many ways reborn at this point, based on the idea of development and their own vision of how best to board the train of modernity.[52] Key examples here include the Import Substitution Industrialization strategies of the 1950s, and later, from the mid-1960s, the dependency theory of development.[53]

However, the emergence of these developmental states was not only shaped by the difficulties of actualizing a general European nation-state form in the economically constrained and culturally diverse south. They also came to amalgamate in their operation the sometimes conflicting, ideological and institutional trends that had marked the evolution of European nation-states over the previous three centuries.[54] Thus developmental states took shape as commanding, highly centralized, and reformist institutions. These impulses reflected something like a Hobbesian call for strong sovereign governmental power in order to overcome the south's "state of nature."[55] W.W. Rostow's re-reading of global history through his famous "stages of economic growth" came to offer a compelling technical map for achieving this task, in particular for those states under the (Cold War) sphere of influence of the United States. Rostow's "stages" theory offered a formula by which "traditional societies," now called "developing countries," could achieve "modernization" via economic specialization, capitalist accumulation, and sustained consumption.[56] In this way, for southern states, development became a fitting framework of operation. It granted them the ability, in principle, to organize and, most importantly, to present themselves as unitary entities within the international order that had emerged from WWII. The result of this process was that all public actions eventually became associated with the idea of development, fusing international aspirations and domestic actions.[57] For international institutions, and more particularly for the U.S. government, the project of modernization from "within" was linked to an ambition to expand liberal elites and build national institutions—including the military—to pacify an agitated and rapidly decolonizing Global South.[58]

From the 1950s to the mid-1980s, this marriage between the state and development acquired a particularly important function in global affairs. During this time, UN membership grew from fifty-one to 159 members, most of whom were understood to be "underdeveloped."[59] The global polarization generated by the Cold War neither threatened the role assigned to the state in what was now more clearly identified as the Third World, nor negated the call for the modernization of Third World subjects. On the contrary, in

both its capitalist and communist variants (although with different horizons in mind), the idea of development remained intimately linked to the figure of the nation-state and the need to culturally reshuffle Third World national citizenries.[60] Leaders from across the Global South and from across the political spectrum supported the linkage between state and development, a position made clear at the 1955 Bandung Conference.[61] And so, in the Cold War–charged environment and in an increasingly debt-laden international economic order, the Eurocentric, mythically Westphalian sovereign-state was consolidated as "the agent of development" across the postcolonial world.[62]

As the second half of the twentieth century progressed, however, a generalized anxiety over the need to control territories and populations that had characterized the developmental state since its emergence contributed to the rise of an infamous wave of dictatorships and authoritarian governments in the Americas, Africa, the Subcontinent, and Southeast Asia, often with the support of northern powers.[63] This anxiety was an expression and reflection of both the confluence of a systematic "expansion" of international development norms and institutional practices around the building of modern and developed nation-states as well as the surfacing of intense internal resistance to development programs.[64] National governments, staffed by increasingly heavy-handed figures, became even more fixated on centrally generated, top-down development projects and on the extension of "national" logics and interests over the existing spatial and human landscape of their nations. India's forced sterilization program conducted during the state of emergency in the 1970s is a telling example. The disastrous financial, social, and natural consequences that flowed from many of these heavy-handed initiatives were to act as triggers for even stronger resistance to the idea of development, by this point identified in many corners of the south as an expression of what Kwame Nkrumah had come to call "neo-colonialism."[65]

A Moment of Transition

Although the interventionist policies operative until the early 1970s were generating high rates of private and public capital accumulation in most of the advanced capitalist countries and, to a lesser degree, across the Global South, "the debt crisis" of the 1970s and 1980s severely undermined both the effectiveness of this model, and the esteem in which it was held in institutional terms.[66] Responding to the crisis, governments began to retreat from direct participation in the economy, shifting their energies to calibrated administrative actions and regulatory interventions.[67]

By the mid 1980s, just a decade after the south had initiated the call for a New International Economic Order, the strong relationship between nation building and the development project entered a crisis phase.[68] Around this time, both the international commitment to the idea of Third World development and the enthusiasm for lending resources to states in the south receded and were replaced by a series of strong criticisms and disciplinary measures directed toward them. National governments in the south were denounced by international institutions as well as by new local elites as being unrepresentative of nation-wide interests.[69] They were urged to attend to the massively "uneven" development within their national territories, a phenomenon that in many instances had been created by earlier developmental interventions.[70] This included important disparities between urban and rural populations, men and women, and between

ethnic groups. Centrally planned development programs and public industries and private industries supported via public funds were also now denounced as economically inefficient, fiscally irresponsible, and incapable of generating the resources to service the accumulated foreign debt. In tandem with these accusations, governments in the Global South began to be accused of poor human rights records and "democratic deficits."[71]

In this context, policies based on state "contraction" and market-based approaches gained pre-eminence, particularly within the programs of structural adjustment imposed throughout the south by international institutions. These infamous reforms began with the International Monetary Fund (IMF) interventions throughout Latin America during the debt crisis of the 1980s.[72] As a result of these interventions, governments from Argentina to Mexico—to be followed by many other countries across the south who hosted similar visits by international institutions—had to agree to a systematic program of privatization, reduction in public services, trade liberalization, and the shrinking of social programs.[73] These policies, ideationally underpinned by neoclassical economics, were dictated by international institutions largely via conditionality agreements, and implemented by national elites.[74] They aimed to overcome the assumed deficiencies associated with state economic and social interventionism, and to remake the conception of citizenship according to new principles of individual productivity and consumer satisfaction. These approaches were encapsulated in a series of doctrines that, in retrospect, became known as the "Washington Consensus."[75] Such policies aimed to reshape state administration, reconfigure the relationship between state and market, and promote a vision of citizens as economic agents with commercial initiative, economic judgment, and a duty of self-preservation.

The shift toward a more "fluid" understanding of the role of states and their populations in relation to "market forces" was accompanied by the dismissal of the central function that had been assigned to national governments in the development project. The dismantling of the USSR and the fall of the Berlin Wall were understood to confirm this need to move away from state-based development. This critical view of the state was epitomized in the World Bank's *World Development Report: The Challenge of Development*, published in 1991.[76] The initial lines of the report encapsulate the ideational drift away from the state (as classically defined) as the main force behind the idea of development:

> The 1990s began with dramatic changes. . . . Against the backdrop of these transitions, this . . . . Report links the historical debates that counseled policymakers in their past decisions, the lessons of experience, and the evolving thought on how best to proceed. One of the most valuable lessons relates to the interaction between the state and the market in fostering development. Experience shows that success in promoting economic growth and poverty reduction is most likely when governments complement markets; dramatic failures result when they conflict.[77]

As we can see from this excerpt, the World Bank began during this period to support a "market-friendly approach" to development—one in which "governments allow markets to function well, and in which governments concentrate their interventions on areas in which markets prove inadequate."[78] This new paradigm dramatically reshaped the landscape of development and quickly became a new orthodoxy in the field. In the early 1990s, a constrained view of the state and strong support for market-based solutions was

embraced by international institutions and policy circles, and confirmed by sweeping governmental reforms and constitutional amendments in many countries in the south.[79] In these new constitutions, trade liberalization, privatization, and strong support for private property were enshrined alongside national commitments to protect human rights and foster democracy.[80] This new approach to development also underpinned the emergence of new institutions and international discourses that further consolidated the idea of development through market-based solutions. The apparently axiomatic link between "free trade" and "development," for example, was mobilized in this period in the "constitution" of the World Trade Organization (WTO).[81]

But by 1997, and responding to the apparent realization that the market economy—like any other market—needs state support, the World Bank began to reconsider its position with respect to the role of the state in the development project. By this point, it was starting to step back from the radically constrained view of the state it had embraced just a few years before. In its 1997 *World Development Report*, aptly titled *The State in a Changing World*, the World Bank explored "what the state should do, how it should do it, and how it can do it better in a rapidly changing world."[82] The minimalist state position, it now argued, was

> at odds with the evidence of the world's development success stories, be it the development of today's industrial economies in the nineteenth century or the postwar growth "miracles" of East Asia. Far from supporting a minimalist approach to the state, these examples have shown that development requires an effective state, one that plays a catalytic, facilitating role, encouraging and complementing the activities of private businesses and individuals.[83]

Based on this revised assessment, the World Bank suggested that (southern) states still had a role to play in "reducing poverty and fostering sustainable development."[84] However, this new role was to be fulfilled by a "new development state," a state that looked and behaved rather differently from the "old developmental state," with its commanding, centralized, and reformist impulses.

The New Developmental State

After a long decade of structural reform policies, widespread social unrest, and the evident failures of many of the reforms, a new series of principles began to surface in national and international institutions and policy circles about the proper role of the state in the project of development.[85] The consensus that emerged during the mid-1990s suggested a more malleable view of the state. Instead of the state being imagined as an entity with a defined character and a pre-established role in the development process, the "Post-Washington Consensus" recommended a more flexible relationship between the public and private sectors and the decentralization of state development programs. Both reorientations were accompanied by a greater use of law in development initiatives. These two new axioms and the instrumental use of law became the bedrock of the model that emerged in the late 1990s and still largely defines governmental action in the south today.

The reimagined relationship between the state and private sector in this "new developmental state" is reflected in the key technology of the "public-private partnership."

Instead of an unconditional retreat from the economy, or the wholesale privatization of public industries—strategies that are still being implemented in many places—the new approach is to set up legal frameworks, guiding principles, and ownership arrangements that bring private capital and its imperatives to the terrain of public action. Such arrangements are common in the context of large infrastructure projects. In order to secure such deals, states in the developing world are newly attentive to being perceived as providing a "good business climate" in which private capital can "safely" flourish both independently and through its partnerships with a welcoming state.[86]

The reconfigured relationship between the state and private capital is also reflected in the creation of prescribed areas or "zones" in which tax concessions, relaxed laws, and special infrastructure are provided to investors to create local employment opportunities and expand the market for national products.[87] At the same time, global corporations are being rehabilitated as developmental actors through new requirements that seek to address the significant impacts of their activities; mechanisms like community consultations are used in an attempt to ensure that private capital brings at least some benefits to local communities.[88] The discourse of Corporate Social Responsibility and the vocabulary of Corporate Citizenship also aim to recognize and expand the developmental impact of corporations.[89] These vernaculars provide global corporations with legitimacy as "development actors" as well as modalities through which corporations may take an active role in shaping communities' present and futures.[90]

Woven together with this reconfigured relation between the state and private actors is the emergence of what has been called "the entrepreneurial state."[91] These are states that reassert their role in the economy, but do so operationally according to private managerial logics.[92] This arrangement is increasingly common within the resource sector and in the provision of public services such as electricity, water, and sanitation. In the case of public utilities, this has had harsh effects, almost invariably increasing the cost of accessing public services, and embodying a stricter approach to the provision of services to informal settlements.[93] In the particular case of extractive industries, governments in the south are now becoming less tolerant of resistance by local communities and indigenous groups protesting the penetration of their territories.[94]

More recently still, the reconfigured relationship between private and public interests has found an additional expression in the citizenry of the new developmental state, now themselves imagined to be the agents of their own development. Abandoning the collective ideals that underpinned developmental thinking in the era of modernization and the old developmental state, today, governments address citizens *as if* individuals were sovereign over their own destinies. And if this is demonstrably not the case, because of low income, lack of education, or a marginal legal position, subjects are expected to acquire that sovereignty—the ability to stand on their own feet—with minimal amounts of state support. Examples include micro-credit schemes, cash-transfer, "entrepreneurship" training, land titling programs, and neighborhood legalization schemes as well as the move to formalize informal vendors.[95] All of these strategies have been widely implemented across the south in recent years, aiming in many instances to "empower the poor."[96]

Behind these technocratic new developmental strategies lies an understanding of individual agency as existing beyond structural conditions. This view springs from several decades of constructing an image of individuals as both oppressed by heavy national

bureaucratic machineries and able to interact productively with market forces once they are provided with the necessary educational and institutional endowments.[97] Amartya Sen's "capabilities approach" to development has been influential in this regard.[98] His view of individuals rests upon an understanding of equality as equality of opportunity. Such an understanding is grounded in an image of society "organized as a competitive game," taking place on a level playing field characterized by "fair rules."[99] And if these fair rules do not exist, it is assumed that they can be created, at least to a satisfactory level. This ideal level is, of course, a constantly shifting ground, raised or lowered according to the structural conditions dominating the economic possibilities of individual states. As a result, in a highly competitive global political economy that is constantly readjusting chains of production to the cheapest sources of labor, and where any progression in terms of poverty alleviation is outpaced by growing wealth disparity, the myth of a level playing field underpinned by fair rules becomes both a virtual policy goal and a disempowering political strategy.[100]

The second operational imperative of the new developmental state, which feeds and supports the first, is the decentralization of the state in territorial, fiscal, administrative, and political terms. Often ignored by analysts, decentralization has become an important force behind the restructuring of Third World states, and the wider global order, for the last two decades.[101] Again reflecting an increased deployment of law as instrument, this has been accompanied by a plethora of legal reforms that reallocate responsibilities between central governments and new developmental actors. These reforms include national constitutional amendments and policy "experiments" that have been transferring responsibilities away from national agencies, and toward local governments, nongovernmental organizations, religious groups, private actors, and individuals themselves.

This recalibration has seen cities and municipalities throughout the south join the cast of new developmental actors, often bypassing national governments altogether and entering into direct partnerships with other entities, both international and national. Ileana Porras has called this process the "internationalization of cities" to describe the shift toward reallocating responsibilities previously understood as national and international to local administrations, and the generation of new imaginaries about cities on both the national and international plane.[102] These shifts have been cast by both international institutions and associations of local governments as emancipatory, because they move away from the highly centralized old developmental state and are responsive to new models of capital accumulation that have rejected state-based patterns and connect local markets and consumers directly to the routines of transnational capital.

In this reconfiguration of the state, decentralization has come to operate as a powerful political ideal. Within national and local governments, regional organizations, and at the highest levels of international institutions, there are mounting expectations about the potential of cities to operate as sites in which fairer, more economically intelligent, and more humane models of development can be implemented.[103] However, a focus on the putatively emancipatory dimension of decentralization can serve to draw attention away from the more conservative frameworks that are shaping the actual functioning of local administrations. These frameworks, developed by international and national institutions and often keenly implemented by local elites, are exemplified by the World Bank's urban

policy *Cities in Transition*, which identifies the challenges the Bank understands to be facing Third World cities, and sets out the principles by which interactions between the Bank and local administrations should be governed.[104] Although the principles strive for more amenable cities, all actions should be consistently determined by the expectation that cities remain financially sustainable on the one hand and, on the other, that all cities enter into a constant competition with both neighboring cities and cities globally, in order to become socially and economically attractive to investment. The expansion of "neo-punitive developmental" programs for social integration and the securitization of cities by new community police forces, new surveillance technologies, and private security companies are but some of the outcomes of this new reality.[105]

As a result, local administrations in the Third World now have the constant anxiety of striking a balance between conflicting imperatives. So, for example, cities must provide universal access to drinking water within their jurisdictions at a time when water companies have been privatized, and when many residents cannot afford to pay their water bills.[106] Such scenarios have become the day-to-day reality of local municipalities that face the widening set of responsibilities imposed upon them by their national administrations, international institutions, and the fluctuations of the international economic and financial order. Although powerful, the discourse of human rights, in this context, can only ameliorate the most extreme cases and is hardly ever able to ignite long-lasting change.

Thus the operative paradigm of decentralization has come to replicate in the local context, the scenario previously played out at the national level. However, this new process of "disciplining through decentralization" unfolds in a setting marked by multiplying levels of governance and a proliferation of cross-enforcing legal regimes, where there is a tight interaction between international norms, national administrative and fiscal laws, transnational private regulations, and urban and local development norms. These levels of governance and cross-enforcing legal regimes come to shape local populations and spaces directly. Understood in these terms, the operation of the international development project at a "local" scale has not inaugurated a postnational moment. Instead, decentralization has provided an opportunity to recalibrate the operation of a project of state-making through a more refined, but at the same time more expansive, approach to population and territory.[107]

Similarly, the new attention to the local does not imply that the international development project is finally making good its promises of world prosperity. Instead, what we often see is an intensification of the contradictions that have accompanied the development enterprise since its inception. Residents may have benefitted from local administrations being more involved in providing services, and at least in theory, from the contraction of the democratic distance to service providers. But as localized social life becomes more determined by international obligations and the economic order, poor rural areas, low-income municipalities, and informal urban settlements and their residents are being subjected to increasing pressure to reshape themselves according to the parameters of the new developmental state and, perhaps most importantly, to a world economic order that increasingly treats them as surplus populations, largely irrelevant to the market.[108]

For all of these reasons, decentralization has had critical impacts on both popular politics and on citizens' everyday relation with the state. With local administrations and many other actors more actively involved in local life—but lacking enough resources or

interest—the process of decentralization has often reorganized established political and social networks into a new mesh of official or quasi-official politics and procedures and agencies. But this shift has not necessarily translated into more effective forms of social empowerment and welfare.[109] Instead, and running alongside this, "citizenship"—a longstanding category of national unification—is now under siege as decentralization makes it difficult for people marginal to the official legal and economic order to find their place, or even a space for their claims to be heard. For many occupying the margins of the new geographies brought about by decentralization, the new global attention to the local has meant unrolling what we might call "a pedagogy of disenchantment," resulting from current forms of local planning and fiscal disciplining; disaggregated lines of responsibility among local, national, and international levels of governance; the proliferation of authorities representing such levels; and shrinking spaces for any meaningful contestation.[110]

The new developmental state thus functions as a molecular and multiscalar structure, one that actualizes the expansion of the market and the flow of international capital across national and local boundaries. In this arrangement, international norms and aspirations, and the tensions that they embody and transmit, have become thoroughly entangled with the everyday of the south. It is from this tight entanglement between international law and everyday life that the state is made and remade.

Conclusions and Further Transitions?

In the disciplinary mythology of international law, the "modern" nation-state (understood as both sovereign and self-grounding) was born with the Peace of Westphalia in 1648, spread during the time of colonial expansion, and through the march of history, came to take proper shape in the independence of the Americas and the decolonization of the rest of the Global South after World War II.[111] In this mythology, "international law" comes into being through inter-state practices that happen during norm-producing or norm-enforcing moments. The "historical" trajectory of international law "itself" is also a story of progressive modernization: its foundations shifting from Christianity to secularity, its modality from comity to committee, and its ethos from European to "Universal." Once "born" both into and apart from law, the story goes, all states may "join," or "enter into" this system, catch up with their peers, and eventually participate in law's creation and practice.

But as we have tried to show in this essay, it is possible to understand the relationship between states and international law differently, particularly if we concentrate on how that dynamic has played out in the Global South from colonial times to today. In this essay, we have suggested that, in order to reorient our understanding, we need to see nation-states as social, cultural, and legal formations that are constantly engaged in reshaping disparate spaces and people into one—national—jurisdiction through administrative procedures; official imaginaries; and shared legal, financial, and affective economies. These are processes underwritten by international law. In other words, the state and its subjects, and the relations between them and the non-human world are, as Rose Parfitt puts it, engaged in an ongoing process of "international legal reproduction."[112] Re-described in this way, the ostensibly "historical" processes that both deliver nation-states into the world and ground the authority of international law in their will, can be seen instead as ceaseless

practices of what we might think of as world-making via state-making. These are practices that are inter-national in both nature and orientation. The proliferation of states across the south with decolonization allowed, in this sense, a reconfigured model of international order to emerge. This new order operates via a "formal" parity among states, and a technicized developmental discourse in which formerly imperial relations were transformed into a renovated vision of global multilateralism and cooperation. From this perspective, states became the vehicles of emancipation and the attainment of well-being *and* containers of "intractable" social, political, or economic problems, themselves often generated by the colonial project.

So, allocating the responsibility and challenge of development to southern states has not only delineated the human and geographical spaces in which the development project must be carried out. It has also allowed a clear separation of the realities of Third World nation-states from the larger international and historical context. Social, political, environmental, and financial crises stemming from colonial pasts, failed development policies, and debt accumulation can, in this way, be cast as technical problems belonging to individual nation-states and their national and now also local administrations. Importantly, this occurs while the promise of global development continues to enable international interventions that encourage a particular kind of global integration, one in which states are reshaped in ways that promote and protect the gains of the (transnational) few. International law supports this process by facilitating, among other processes, "the adoption of international economic laws which facilitate the globalization of production and finance through creating and protecting global property rights, codifying the rights of transnational corporations, and limiting the economic autonomy of sovereign states."[113] All of this occurs as spaces and groups that resist the idea of development are suppressed and recast as against "national" interests or outside the inevitable laws of (capitalist) modernity.

But although these are practices usually now associated primarily with the idea of "development," and particularly with the remediation of "developing," "failed," "fragile," or "transitional" states, state-making through international law is an ongoing activity for all states. States in the north are increasingly seeing themselves transformed into developmental states of sorts too.[114] At the same time, the global extension of the state-making project has taken place alongside further shifts in the character of the states being made. Both the new developmental state, and the post–Washington Consensus in which it is grounded, are being reshaped by policies increasingly being reformulated by the new developmental powers and both traditional and new donors, from philanthropic capitalists to new evangelical churches.[115] New "consensus" policies have also emerged, expressed, for example, as the Beijing Consensus of 2004 and the Seoul Development Consensus of 2010. These shifts came in tandem with the lead up to the Global Financial Crisis (GFC) of 2008. Putatively "sudden," but longer in the making, the GFC brought the state "back in" in order to bear the regulatory and financial costs of the policies implemented over the preceding decades, which had given explicit support to the expansion of private interests. The GFC also propelled large amounts of capital from the economically deteriorated north to southern nations—which, after years of structural adjustment reform, were now well disciplined and open to market forces.[116]

The even newer developmental state that has resulted from this process is still geared

toward market solutions, but also bears an even larger responsibility in terms of sponsoring private initiatives, while offering further security through legal instruments and a regulatory environment characterized by "law and order" measures. Importantly, the global extension of this state-making project has had particularly (in)famous—and negative—consequences for those located in the south of the south as well as in the southern parts of the north, geographically and metaphorically speaking. Greece, Portugal, Spain, and all of the poor, de-industrialized, and often racialized and undocumented communities in the United Kingdom, the United States, and France, for example, today all bear the burden of technologies of state-making that were once reserved for the Global South.[117] With that have come equally multiple and amplifying processes of resistance, increasingly connected across such places. Working-class neighborhoods in southern cities, scattered rural communities, and indigenous peoples in every nation-state are ever more vocally speaking out about the particular world that international law has helped to create, and actively seeking ways to transform it into something else.[118]

NOTES

We would like to thank Mimi Oorloff and Jasmine Pinaz Ali for their excellent research assistance and the reviewers for their invaluable comments and suggestions.

1. James Crawford, *The Creation of States in International Law*, 2nd ed. (Oxford: Oxford University Press, 2006), 5.

2. For further discussion of the operation of recognition, in particular the declaratory theory of recognition, see Montevideo Convention on the Rights and Duties of States, Article 3, December 26, 1933, U.N.T.S, vol. 165, No. 3801–3824, 12. For discussion of the declaratory theory of recognition being an expression of modern international law, see Arnulf Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842–1933* (Cambridge: Cambridge University Press, 2014), 305–52; Charter of the Organization of American States, Article 13, U.N.T.S, Dec. 13, 1951, vol. 119, No. 1609, p.56. For discussion on consent in international law, see Malcolm Shaw, *International Law* (Cambridge: Cambridge University Press, 2014), 9.

3. Shaw, *International Law*, 5. Lassa Oppenheim, Ian Brownlie, and Louis Henkin define international law in a similar way. According to Oppenheim, "Since the Law of Nations is based on the common consent of individual States, and not of individual human beings, States solely and exclusively are the subjects of International Law." *International Law: A Treatise Vol. 1 Peace* (London: Longmans, Green and Co, 1905), 18. For Brownlie, "The general consent of states creates rules of general application." *Principles of Public International Law*, 5th ed. (Oxford: Oxford University Press, 1998), 2; and, according to Henkin, "State consent is the foundation of international law. The principle that law is binding on a State only by its consent remains an axiom of the political system, an implication of State autonomy" in "International Law: Politics, Values and Functions: General Course on Public International Law," *General Courses of the Hague Academy of International Law* 216 (1989): 46.

4. Explicit calls for a return to some form of imperial governance—or at least an "empirical" reassessment of their benefits and costs—are an example of this return. For an example of the former, see Bruce Gilley, "The Case for Colonialism," originally published in *Third World Quarterly* but subsequently withdrawn (2017), on the latter, see the project *Ethics and Empire* being run by Nigel Biggar at Oxford, http://www.mcdonald centre.org.uk/ethics-and-empire (accessed June 17, 2019).

5. For further discussion on the practice of re-description, see Sundhya Pahuja, "Laws of Encounter: A Jurisdictional Account of International Law," *London Review of International Law* 1, no.1 (September 2013): 65. For an example of a consonant project on the importance of state conceptualisation for the thinking and making of international law, see Nehal Bhuta, "State Theory, State Order, State System: *Jus Gentium* and the Constitution of Public Power," in *System, Order and International Law: The Early History of International Legal Thought from Machiavelli to Hegel*, ed. Stefan Kadelbach and Thomas Kleinlein (Oxford: Oxford University Press, 2017).

6. Other examples could include "humanitarian" intervention or "transitional" justice.

7. For a detailed description of this period, see Luis Eslava, "The Developmental State: Independence, Dependency and the History of the South," in *The Battle for International Law in the Decolonization Era*, ed. Jochen von Bernstorff and Philip Dann (Oxford: Oxford University Press, 2019).

8. Hendrik Spruyt, *The Sovereign State and Its Competitors: An Analysis of Systems Change* (Princeton, NJ: Princeton University Press, 1994), 153–80; and Michael Braddick, *State Formation in Early Modern England, c.1150–1700* (Cambridge: Cambridge University Press, 2000).

9. Bob Jessop, *The State: Past, Present, Future* (Cambridge: Polity Press, 2016), 1–91. Jessop offers an important conceptualisation of the state along these lines as a "social relation" grounded in Marx as well as later thinkers including Antonio Gramsci, Nicos Poulantzas, Michel Foucault, and Timothy Mitchell.

10. It is accepted that Jeremy Bentham was the first to use the concept of "international law," though what he meant is more controversial. For an account of the controversy, see Hidemi Suganami, "A Note on the Origin of the Word International," *British Journal of International Studies* 4, no. 3 (October 1978): 226–32. See also, H. B. Jacobini, "Some Observations Concerning Jeremy Bentham's Concepts of International Law," *American Journal of International Law* 42, no. 2 (April 1948): 415–17. The original reference comes from Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, in *The Works of Jeremy Bentham* (Edinburgh: William Tait, 1838), 149.

11. Anne Orford, "Constituting Order," in *The Cambridge Companion to International Law*, ed. James Crawford and Martti Koskenniemi (Cambridge: Cambridge University Press, 2012), 272.

12. For this line of argumentation, see Brett Bowden, "The Colonial Origins of International Law: European Expansion and the Classical Standard of Civilization," *Journal of the History of International Law* 7, no. 1 (2005): 13–20. Carl Schmitt, "popularised" the term *jus publicum europaeum*, see *The Nomos of the Earth in the International Law of Jus Publicum Europaeum* (New York: Telos Press, 2003 [1950]). However, as Armin von Bogdandy has clarified, the term can rightfully be freed from its association with Schmitt. Bogdandy cites as roots of the term *cf.* Joachimi Hagemeier, *Juris Publici Europaei* [European Public Law]: *De trium Regnorum septentrion-alium Daniae, Norwegiae et Sveciae statu,* vol. 1 (Beyer, 1677); *De statu Galliae,* vol. 2 (Beyer, 1678); *De statu An- gliae, Scotiae et Hiberniae,* vol. 3 (Beyer, 1678); *De statu Imperii Germanici,* vol. 4 (Beyer, 1678); *De statu proviniciarum Belgicarum,* vol. 5 (Beyer, 1679); *De statu Italiae,* vol. 6 (Beyer, 1680); *De statu regnorum Hungariae et Bohemiae,* vol. 7 (Beyer, 1680); *De statu regni Poloniae et imperii Moscovitici,* vol. 8 (Beyer, 1680). Arming von Bogdandy, "The Past and Promise of Doctrinal Constructivism: A Strategy for Responding to the Challenges Facing Constitutional Scholarship in Europe," *International Journal of Constitutional Law* 7, no. 3 (July 2009): 364, 398.

13. Schmitt, *Nomos of the Earth.*

14. Hannah Arendt, "The Political Emancipation of the Bourgeoisie," in *The Origins of Totalitarianism* (London: George Allens & Unwin, 1958), 124–34.

15. For further discussion, see Michel Foucault, "The Birth of Biopolitics," in *Ethics, Subjectivity and Truth. Vol. 1 of The Essential Works of Michel Foucault 1954–1984,* ed. Paul Rabinow (New York: The New Press, 1997), 73–80. See also, Foucault, "Sovereignty, Territory, and Population," in *Ethics*, 68–69.

16. Johan Kaspar Bluntschli, *The Theory of the State* (Kitchener, Ontario: Batoche, 2000).

17. Ibid., 22.

18. Ibid., 27.

19. Ibid.

20. Ibid.

21. On Hegel, international law, and the state, see Rose Parfitt, "Theorizing Recognition and International Personality," in *Oxford Handbook of the Theory of International Law*, ed. Anne Orford and Florian Hoffman (Oxford: Oxford University Press, 2016), 583–600.

22. Crawford Young, *The African Colonial State in Comparative Perspective* (New Haven, CT: Yale University Press, 1994), 44.

23. See Antony Anghie, "Finding the Peripheries: Colonialism in Nineteenth-Century International Law," in *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2005); Liliana Obregón Tarazona, "The Civilized and the Uncivilized," in *The Oxford Handbook of the History of International Law*, ed. Bardo Fassbender and Anne Peters (Oxford: Oxford University Press, 2012); Matt Craven, "Colonialism and Domination," in *The Oxford Handbook of the History of International Law*, ed. Bardo Fassbender and Anne Peters (Oxford: Oxford University Press, 2012).

24. Mark Mazower, *Governing the World: The History of an Idea, 1815 to the Present* (New York: The Penguin Press, 2012), 71–72.

25. Ibid.

26. Ibid., 73.

27. Ibid., 71.

28. See Liliana Obregón, "Between Civilisation and Barbarism: Creole Interventions in International Law," *Third World Quarterly* 27, no. 5 (2006): 815–32; Becker Lorca, *Mestizo International Law*; Rose Parfitt, "*Empire des Nègres Blancs*: The Hybridity of International Personality and Abyssinia Crisis of 1935–1936," *Leiden Journal of International Law* 24, no. 4 (December 2011): 849–72; and Juan Pablo Scarfi, *The Hidden History of International Law in the Americas: Empire and Legal Networks* (New York: Oxford University Press, 2017).

29. Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge: Cambridge University Press, 2001). Koskenniemi borrows the idea of international law as a "gentle civilizer" from George Kennan, *American Diplomacy 1990–1950* (Chicago: University of Chicago Press, 1984), 53–54.

30. Anghie, *Imperialism, Sovereignty*, 4. See Cheryl McEwan, *Postcolonialism and Development* (Hoboken, NJ: Taylor and Francis, 2008); Arturo Escobar, *Encountering Development*: *The Making and Unmaking of the*

Third World (Princeton, NJ: Princeton University Press, 1995); and Jennifer Beard, *The Political Economy of Desire*: *International Law, Development and the Nation State* (Hoboken, NJ: Taylor and Francis, 2007).

31. On the mechanics and (increasingly indirect) forms of rule underpinning this integration, see Luis Eslava, "The Moving Location of Empire: Indirect Rule, International Law, and the Bantu Educational Kinema Experiment," *Leiden Journal of International Law* 31, no. 3 (September 2018): 539–67.

32. Partha Chatterjee, *Nationalist Thought and the Colonial World: A Derivative Discourse* (London: Zed Books, 1993), 1–35.

33. Gary Wilder, *Freedom Time: Negritude, Decolonisation, and the Future of the World* (Durham, NC: Duke University Press, 2015), 241–59; and Sundhya Pahuja and Shaun McVeigh, "Rival Jurisdictions: The Promise and Loss of Sovereignty," in *After Sovereignty: On the Question of Political Beginnings*, ed. Charles Barbour and George Pavlich (Oxon: Routledge, 2011), 104–6.

34. On the loss of the right to self-definition, see Gilbert Rist, *The History of Development: From Western Origins to Global Faith* (London: Zed Books, 2014), 79. The conservation of the old colonial boundaries was supported by the principle of *utis possidetis iure*, which was first implemented during the independence of Latin American states. See especially Jörg Fisch, *The Right to Self-Determination* (New York: Cambridge University Press, 2015), 69–81, 206–7. See, on colonial borders, Makau Mutua, "Why Redraw the Map of Africa: A Moral and Legal Inquiry," *Michigan Journal of International Law* 16 (1995): 1113–76. See, on the question of ethnicity and international law, Mohammad Shahabuddin, *Ethnicity and International Law: Histories, Politics and Practices* (Cambridge: Cambridge University Press, 2016).

35. See Michael Fakhri, *Sugar and the Making of International Law* (Cambridge: Cambridge University Press, 2014); Rose Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance* (Cambridge: Cambridge University Press, 2018).

36. See, in the case of Latin America, Luis Bértola and José Antonio Ocampo, *The Economic Development of Latin America since Independence* (Oxford: Oxford University Press, 2013), 48–80. See also on how many postcolonial states inherited debts acquired by the coloniser "on behalf of" the colony, Matthew Craven, *The Decolonization of International Law: State Succession and the Law of Treaties* (Oxford: Oxford University Press, 2007).

37. On conscription and modernity, with all of its associated constructions, in the south, see David Scott, *Conscripts of Modernity*: *The Tragedy of Colonial Enlightenment* (Durham, NC: Duke University Press, 2004).

38. Beard, *Political Economy of Desire*. Partha Chatterjee, "Whose Imagined Community?" and "Development Planning and the Indian State," in *Empire and Nation: Selected Essays* (New York: Columbia University Press, 2010), 23–36, 241–66.

39. Ann Laura Stoler, *Duress: Imperial Durabilities in our Times* (Durham, NC: Duke University Press, 2016); Nkrumah, Kwame, *Neo-Colonialism: The Last Stage of Imperialism* (New York: International Publishers, 1965), 239–354.

40. Helen Tilley, *Africa as a Living Laboratory: Empire, Development and the Problem of Scientific Knowledge 1870–1950* (Chicago: University of Chicago Press, 2011).

41. Joseph Hodge and Gerald Hödl, introduction to *Developing Africa: Concepts and Practices in Twentieth-Century Colonialism*, ed. Joseph Hodge, Gerald Hödl, and Martina Kopf (Manchester: Manchester University Press, 2014), 2.

42. Sundhya Pahuja, *Decolonizing International Law: Development, Economic Growth and the Politics of Universality* (Cambridge: Cambridge University Press, 2011), 54–59; Eslava, "Developmental State."

43. See Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton, NJ: Princeton University Press, 2009), 145–46.

44. James Crawford, "Sovereignty as a Legal Value," in *The Cambridge Companion to International Law*, ed. James Crawford and Martti Koskenniemi (Cambridge: Cambridge University Press, 2012), 119–20.

45. Ibid., 120.

46. See especially, Charter of the United Nations, article 2(4), article 2(7), October 24, 1945, U.N.T.S, vol XVI, 3.

47. Pahuja and McVeigh, "Rival Jurisdictions."

48. On world government, see Daniel Gorman, *The Emergence of International Society in the 1920s* (Cambridge: Cambridge University Press, 2012), 10–18, 309–20. This idea continues to surface in the present day in the form of the need to create a new "Global Law," a proposal that nonetheless struggles to shake off its imperial undertones. See, for example, Rafael Domingo, *The New Global Law* (Cambridge: Cambridge University Press). For a critical analysis of these calls, see B. S. Chimni, "Third World Approaches to International Law: A Manifesto," *International Community Law Review* 8, no. 1 (2006): 3–27.

49. Chatterjee, "Development Planning."

50. Eslava, "Developmental State." For some similarly expansive and critical readings of the "developmental state," see, for example, Escobar, *Encountering Development*; Tania Murray Li, *The Will to Improve: Governmentality, Development, and the Practice of Politics* (Durham, NC: Duke University Press, 2007); James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven, CT: Yale University Press, 1998). The classic approach to the developmental state limits its scope to the successful economies of Asia and Southeast Asia. See especially, Chalmers Johnson, *MITI and the Japanese Miracle*

(Stanford, CA: Stanford University Press, 1982). See also, Meredith Woo-Cumings, ed., *The Developmental State* (Ithaca, NY: Cornell University Press, 1999).

51. On the emergence and evolution of the Law and Development movement during this time, see David Trubek, "The 'Rule of Law' in Development Assistance: Past, Present, and Future," in *The New Law and Economic Development: A Critical Appraisal*, ed. David Trubek and Álvaro Santos (Cambridge: Cambridge University Press, 2006), 74–94.

52. Eslava, "Developmental State."

53. Key works on dependency theory and import substitution strategies include Andre Gunder Frank, "The Development of Underdevelopment," in *Dependence and Underdevelopment: Latin America's Political Economy*, ed. James D. Cockcroft, André Gunder Frank, and Dale L. Johnson (Garden City, NY: Anchor Books, 1972), 3–18; and Fernando Cardoso and Enzo Faletto, *Dependency and Development in Latin América* (Berkeley: University of California Press, 1979).

54. See especially, Bertrand Badie, *The Imported State: The Westernization of the Political Order* (Stanford: Stanford University Press, 2000), 91.

55. Thomas Hobbes, *The Leviathan* (Project Gutenberg, 2002).

56. W. W Rostow, *The Stages of Economic Growth: A Non-Communist Manifesto* (Cambridge: Cambridge University Press, 1990), 17–35.

57. See Luis Eslava, *Local Space, Global Life: The Everyday Operation of International Law and Development* (Cambridge: Cambridge University Press, 2015). See also, Luis Eslava, "Istanbul Vignettes: Observing the Everyday Operation of International Law," *London Review of International Law* 2, no. 1 (2014): 3–47.

58. See especially, Michael E. Latham, *The Right Kind of Revolution: Modernization, Development, and U.S. Foreign Policy from the Cold War to the Present* (Ithaca, NY: Cornell University Press, 2010); David Ekbladh, *The Great American Mission: Modernization and the Construction of an American World Order* (Princeton, NJ: Princeton University Press, 2011).

59. For a subtle account of the relationship between the growth of international organizations and the process or state formation as one of "co-constitution," see Guy Fiti Sinclair, "State Formation, Liberal Reform and the Growth of International Organizations," *European Journal of International Law* 26, no. 2 (2015): 445–69.

60. See generally Jeremy Friedman, *Shadow Cold War: The Sino-Soviet Competition for the Third World* (Durham, NC: University of North Carolina Press, 2015), 60–100.

61. On the key function played by the idea of development within the Bandung Conference and its aftermath, see Luis Eslava, Michael Fakhri, and Vasuki Nesiah, "The Spirit of Bandung," in *Bandung, Global History and International Law: Critical Pasts and Pending Futures*, ed. Luis Eslava, Michael Fakhri, and Vasuki Nesiah (Cambridge: Cambridge University Press, 2017), 3–32.

62. See Anghie, *Imperialism, Sovereignty*, 205. This consolidation is illustrated by a series of international normative commitments that extoll the nation-state as the most well-protected entity in international law, while endowing it with the authority to control the sources and direction of the development process within each nation. Examples of these international norms include the UN Charter (1945), articles 2(4), 2 (7); Universal Declaration of Human Rights, Gen. Ass. Res. 217 A, December 10, 1948, Article 15; Resolution on Permanent Sovereignty over Natural Resources, Gen. Ass. Res. A/RES/37/135, December 14, 1962, articles 5, 7; Declaration on the Establishment of a New International Economic Order, Gen. Ass. Res. A/RES/S-6/320, May 1, 1974), articles 4(a), 4(e), 4(h); Charter of Economic Rights and Duties of States, Gen. Ass. Res. A/RES/29/3281, December 12, 1975, chapter 1(a)–(d), articles 1, 2, 7; Declaration on the Right to Development, Gen. Ass. Res. A/RES/41/128, December 4, 1986, article 2(3), 3(1), 4(1).

63. See generally Odd Arne Westad, *The Global Cold War: Third World Interventions and the Making of Our Times* (Cambridge: Cambridge University Press, 2005).

64. On the "expansion" of international organizations and their mandates, see, especially, Guy Fiti Sinclair, *To Reform the World: International Organizations and the Making of Modern States* (Oxford: Oxford University Press, 2017). On internal resistance, see Latham, *Right Kind of Revolution*; and Ekbladh, *Great American Mission.*

65. Nkrumah, *Neo-Colonialism,* 239–354.

66. Richard Peet, *Unholy Trinity: The IMF, World and WTO* (New York: Zed Books, 2009), 78–123.

67. See David Harvey, *Spaces of Global Capitalism: Towards a Theory of Uneven Geographical Development* (London: Verso, 2006), 11–25.

68. Declaration on the Establishment of a New International Economic Order, Gen. Ass. Res. 3201 (S-6), May 1, 1974. See especially, Special Issue: Toward a History of the New International Economic Order, *Humanity* 5, no. 1 (Spring 2015).

69. These debates about uneven national development reflected and built on earlier discussions at the UN level on the importance of moving away from centralized models of statecraft. See, for example, *Decentralization for National and Local Development* (United Nations, Division for Public Administration, 1962); *Local Participation in Development Planning: A Preliminary Study of the Relationship of Community Development to National Planning* (United Nations, Social Development Division, 1967).

70. Samir Amin, *Accumulation on a World Scale: Critique of the Theory of Underdevelopment* (New York: Monthly Review Press, 1974).

71. Sarah Snyder, *Human Rights Activism and the End of the Cold War* (New York: Cambridge University Press, 2011).

72. For an institutional review of this period, see James Boughton, *Silent Revolution: The International Monetary Fund 1979–1989* (Washington, DC: International Monetary Fund, 2001). For a critical review of this period, see especially, Peet, *Unholy Trinity*, 85–87.

73. Peet, *Unholy Trinity*, 112.

74. Sundhya Pahuja, "Technologies of Empire: IMF Conditionality and the Reinscription of the North/South Divide," *Leiden Journal of International Law* 13, no. 4 (2000): 749–813; Johnathan Fisher, "'Does it Work?'—Work for Whom? Britain and Political Conditionality since the Cold War," *World Development* 75 (November 2015): 13–25; and Jesse Griffiths and Konstantinos Todoulos, "Conditionally Yours: An Analysis of the Policy Conditions Attached to IMF Loans," European Network on Debt and Development, 2014.

75. The term "Washington Consensus" was first coined by economist John Williamson in 1989. John Williamson, "What Washington Means by Policy Reform," in *Latin American Adjustment: How Much Has Happened?* (Washington, DC: Institute for International Economics, 1990), chap. 2.

76. See also World Bank, *World Development Report 1996: From Plan to Market* (Oxford: Oxford University Press, 1996).

77. World Bank, *World Development Report 1991: The Challenge of Development* (Oxford: Oxford University Press, 1991), iii.

78. Ibid.

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