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HARRY POTTER AND THE GLUTTONOUS MACHINE:
REFLECTIONS ON INTERNATIONAL LAW, POVERTY, AND
THE SECRET SUCCESS OF FAILURE

JASON BECKETT*

“I continue to hope . . . that international law can be transformed into a means by which the marginalized may be empowered. In short, that law can play its ideal role in limiting and resisting power.”
(Antony Anghie)¹

“Like the slow peeling of gilt from an idol, Anghie strips back layer after layer from . . . something he cherishes – international law.”
(Sundhya Pahuja)²

International law is a colonial and anti-developmental machine, which has managed to represent itself as an anti-colonial, pro-development project over the course of a few short decades. Many progressive lawyers, and other people of good will, have bought into that image created by international law in the period from 1950 to 1980, where it served ambivalent and occasionally pro-developmental functions. This era was a blip in the five-hundred-year history of public international law (PIL), and it has ended. PIL has resumed its colonising mission, but quietly and invisibly. Remarkably, it has done so while maintaining the myth of its own anti-colonialism.

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¹ ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* 318 (2005) [hereinafter ANGHIE].

² Sundhya Pahuja, *Reviewed Work(s): Imperialism, Sovereignty and the Making of International Law by Antony Anghie*, 69(3) *MODERN L. REV.* 486, 487 (2006) [hereinafter Pahuja].

In this paper, I outline the colonial structure of international law, and examine the short decline or suppression of its coloniality in the so-called 'era of decolonisation', then illustrate its resurgence in the modern neo-colonial order. PIL has split into two separate systems. One includes, and is justified by, the heroic tales of human rights and 'Humanity's Law'. The other is the actualised system of International Economic Law (IEL), an order driven by the need of the over-developed states to plunder the under-developed states' resources and labour, to subsidise the luxury to which we have grown accustomed. One purports to be noble and just, but is ostentatiously weak; the other is ignoble and exploitative, but quietly powerful. They work in tandem with one another; the first functions by appearing to fail, the second operates so quietly that its very functioning is overlooked — hidden behind the spectacular failure of its partner. These are usually analysed as PIL and IEL, respectively. I call them Harry Potter and the Gluttonous Machine.

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I. INTRODUCTION: INTERNATIONAL LAW AND COLONIAL AMBIVALENCE

The dark history of PIL provides an explanation for how its colonial past gradually metastasised into its neo-colonial present. PIL was created through, and for, colonial encounters, and that coloniality is baked into its structure. Antony Anghie has shown

how PIL emerged from the colonial encounter between the conquistadors and the First Nations of (what would become) the Americas.³ It is said that “international law did not precede the encounter between the Spaniards and the Indians, but was rather a product of it.”⁴

PIL materialises the Spanish reconstruction of that encounter and the justifications developed for Spanish claims to the newly ‘discovered’ lands and their resources. For much of international law’s lifetime, that claim would have been relatively unproblematic, yet by the time Anghie made it, it was controversial, even “pathbreaking”.⁵ From the open colonial hubris in James Lorimer’s 1883 ‘classic’, *The Institutes of the Law of Nations*,⁶ to a more modest defence of the various protectorates’ restricted inclusion in the “Family of Nations” in the 1921 edition of L. F. L. Oppenheim’s *Treatise on International Law*,⁷ international lawyers have moved to a circumspect silence over PIL’s relationship to colonialism.

At best, the colonial encounter is presented as marginal to the development of PIL, just as it is presented as marginal to the development of the Euro-American states. At worst, PIL is presented as proudly anti-colonial, as the over-developed states are presented as the paragons of rights and development. Mainly, however, there is simply no discussion of PIL’s colonial roots, roles, or influences. Colonialism is presented as a (terrible) thing of the past, and PIL as the transition to a (more) just future. In this representation, PIL embodies an ideal of justice in a world of *realpolitik*: the conscience of the international community embodied in treaties and customs. Relatively determinate, systematic, and tolerably fair, but unrealised and notoriously difficult to enforce.⁸ Ruti Teitel has offered a compelling analysis of the evolving justice she perceives in PIL. In this narrative, PIL finally realises its moral mission, its inner truth,⁹ which she designates as ‘Humanity’s Law’:

³ Antony Anghie, *Francisco de Vitoria and the Colonial Origins of International Law*, in LAWS OF THE POSTCOLONIAL 89–90 (Eve Darian-Smith & Peter Fitzpatrick eds., 1999).

⁴ Sara Kendall, *Review: Antony Anghie, Imperialism, Sovereignty and the Making of International Law*, 4(1) J. L. CULTURE & HUMAN. 119, 119 (2008).

⁵ Susan Marks, *International Judicial Activism and the Commodity Form Theory of Law*, 18(1) EUR. J. INT’L L. 199, 206 (2007).

⁶ See JAMES LORIMER, *THE INSTITUTES OF THE LAW OF NATIONS: A TREATISE OF THE JURAL RELATIONS OF SEPARATE POLITICAL COMMUNITIES* (1883); see also JOHN RAWLS, *THE LAW OF PEOPLES* (1993), which has curiously replicated Lorimer’s work in spirit and structure 110 years later.

⁷ L. OPPENHEIM, *INTERNATIONAL LAW: A TREATISE* (Ronald F. Roxburgh ed., 3rd ed. 1921).

⁸ VAUGHAN LOWE, *INTERNATIONAL LAW* (2007).

⁹ Robert Howse, *The World Trade Organization 20 Years On: Global Governance by Judiciary*, 27(1) EUR. J. INT’L L. 9, 9 (2016).

The normative foundations of the international legal order have been shifting their emphasis from state security to human security: the security of persons and peoples. . . . The result of this shift is the law of humanity — a framework that spans the law of war, international human-rights law, and international criminal justice.¹⁰

This is, however, predictably being inadequately implemented or enforced. Harry Potter is perfecting his spell book but has not yet mastered his magic outside the normative world of texts and proceedings. Law's justice is being thwarted by politics, but its promise is nonetheless solidifying. Martti Koskenniemi notes that those who wish to see humanity in PIL will celebrate her 'novel humanity discourses' "as proof of the positive development of humanity law."¹¹ However, the coherence and morality of Teitel's analysis are achieved through a very selective process of abstraction — from context, from choices, and from reality. It is a beautifully constructed novel, with a well-developed and supported narrative, but a work of fiction, nonetheless.

Teitel's book is a masterpiece in the genre — an ideal fantasy of the magical powers of good words and intentions. It is not a mapping of the field, but a collage constructed from carefully chosen examples, presented as data.¹² States continue to ignore their own alleged 'ethical principles'; poverty, exploitation, and human suffering continue to increase. Teitel ignores this and focuses on humanity's increasing appearances in the discourses on international law and politics.¹³ This is a symptomatic and structural problem in the genre, deriving from the (general) absence of authoritative international legal institutions. All that can be written about are reports, general comments by committees, treaty texts, and speculations over customary international law — narrative built on narrative alone, self-replicating fantasy novels.

Of course, many of these contain strong and noble humanitarian sentiments, but not all. Alternative narratives can be constructed from the same materials, and their almost infinite expansions and refutations. Moreover, PIL's affection for 'humanity' runs deep into its colonial past, and structures its neo-colonial present. It has supported "political projects ranging from the civilizing mission to free trade, from modernization to globalization, and from human rights to the 'fight against impunity.'"¹⁴ Humanity's law, alongside other Potteresque productions, manifests

¹⁰ RUTI TEITEL, *HUMANITY'S LAW* 4 (2013).

¹¹ Martti Koskenniemi, *Humanity's Law by Ruti G. Teitel*, 26(3) *ETHICS & INT'L AFF.* 395, 396 (2012).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

the contemporary iteration of the colonial civilising mission; it makes the contemporary coloniality of PIL invisible.

PIL is structured around a distinction between the ‘civilised’ European states and their various — subservient, colonised — ‘others’, which Anghie terms “‘the dynamic of difference’ . . . the endless process of creating a gap between two cultures, demarcating one as ‘universal’ and civilized and the other as ‘particular’ and uncivilized, and seeking to bridge the gap by developing techniques to normalize the aberrant society.”¹⁵

It is important to understand the two, apparently contradictory, movements at work in this dynamic. First, the ‘other’ is posited as different and inferior. Second, it is also presented as capable of becoming the same. These are united in a synthesis of eternal difference: “[t]he dynamic is self-sustaining as each act of bridging difference reveals yet further difference which international law must overcome in order to ensure the proper emergence of its subjects, civilised nation states. This dynamic . . . is variously reiterated in each phase of international law.”¹⁶

The dynamic traces back to the arguments of (proto-)PIL’s first ambivalent humanitarian, Bartolome de las Casas, in the famous Valladolid Debate of 1550.¹⁷ This debate pitted Las Casas against Juan Ginés de Sepúlveda, a scholar of ancient Greece and hawk of the nascent Spanish Empire. Relying on Aristotle as an authority, Sepúlveda argued that “the Indians were irrational beings whose inherently inferior condition immediately made them slaves by nature.”¹⁸ Las Casas countered that the Indians — although inferior, as heathens, to the Spanish Christians — were nonetheless fully human, possessing souls, and capable of accepting the word of God. But, he argued, because they were capable of conversion, they were obliged to convert, and the Spanish were thus entitled to proselytise, occupy land and commandeer resources to do so.

Las Casas’ arguments prevailed, giving birth to the Salamanca School — of which Francisco de Vitoria would become an exemplar — and to the ambivalent ‘dynamic of difference’, which structures PIL to this day. It established the structure which drove the colonial projects — the right to invade, occupy, annex, and plunder land with the justification that this was being done altruistically, for the native inhabitants’ own good. “The first seeds of international law were thus planted during a violent

¹⁵ ANGHIE, *supra* note 1, at 4.

¹⁶ Pahuja, *supra* note 2, at 486.

¹⁷ Bonar Ludwig Hernandez, *The Las Casas-Sepúlveda Controversy: 1550-1551*, 10 EX POST FACTO 95, 95–104 (2001).

¹⁸ *Id.* at 98.

conquest to afford that conquest a veneer of objective legality.”¹⁹ Other European colonial powers adopted this structure. PIL was developed and deployed as a dual movement of plunder and justification, exploitation and tutelage.

In *De Iure Belli ac Pacis*,²⁰ Hugo Grotius secularised this argument. Re-founding it on the ideas of ‘waste’ and ‘improvement’, he argued that those who waste their land by not improving it, have no valid claim to that land or its resources.²¹ John Locke developed the theme: “Land that is left wholly to Nature, that hath no improvement of Pasturage, Tillage, or Planting, is called, as indeed it is, *wast*.”²² In specific reference to the Americas, he continues: “there are still *great Tracts of Ground* to be found, which (the Inhabitants thereof not having joined with the rest of Mankind, in the consent of the Use of their common Money) *lie waste*”.²³ In his view, waste land can be validly accumulated by anyone willing to work it. The dispossessed have no counterclaim, as the appropriation was justified by their own (assumed) idleness. By 1758, Emer de Vattel had perfected this line of justification:

It is asked whether a nation may lawfully take possession of some part of a vast country, in which there are none but erratic nations whose scanty population is incapable of occupying the whole? We have already observed, in establishing the obligation to cultivate the earth, that those nations cannot exclusively appropriate to themselves more land than they have occasion for, or more than they are able to settle and cultivate; and the people of Europe, too closely pent up at home, finding land of which the savages stood in no particular need, and of which they made no actual and constant use, were lawfully entitled to take possession of it, and settle it with colonies.²⁴

It is but a short step from improvement to civilisation. In his “classic text on native rule”, written and widely used as “a guide to colonial officials”,²⁵ Lord Frederick Lugard identified this as the ‘dual mandate’ of colonialism.²⁶ For Lugard, the colonial

¹⁹ NOURA ERAKAT, JUSTICE FOR SOME: LAW AND THE QUESTION OF PALESTINE 6 (2019) [hereinafter ERAKAT].

²⁰ HUGO GROTIUS ON THE LAW OF WAR AND PEACE (Stephen C. Neff ed., 2012).

²¹ Mark Neocleous, *International Law as Primitive Accumulation; Or, the Secret of Systematic Colonization*, 23(4) EUR. J. INT’L L. 941, 956 (2012) [hereinafter Neocleous].

²² *Id.* at 955.

²³ *Id.*

²⁴ EMER DE VATTEL, THE LAW OF NATIONS: OR PRINCIPLES OF THE LAW OF NATURE, APPLIED TO THE CONDUCT AND AFFAIRS OF NATIONS AND SOVEREIGNS 100 (Joseph Chitty ed., 7th ed. 1849).

²⁵ TIMOTHY MITCHELL, CARBON DEMOCRACY: POLITICAL POWER IN THE AGE OF OIL 100 (2011) [hereinafter MITCHELL].

²⁶ FREDERICK LUGARD, THE DUAL MANDATE IN BRITISH TROPICAL AFRICA 58–59 (1922).

powers had both, “moral obligations to the subject races” and “material obligations ... to ensure the development of natural resources for the mutual benefit of the people and of mankind in general.”²⁷ The imperial power was thus the “trustee, on the one hand, for the advancement of the subject races, and on the other hand, for the development of its material resources for the benefit of mankind.”²⁸ The acquisition and exploitation of the resources of the colonised world were thus a ‘moral duty’ the colonisers owed to civilisation itself!

“International lawyers over the centuries maintained this basic dichotomy between the civilized and the uncivilized . . . continually . . . formulating legal doctrines directed towards civilizing the uncivilized world.”²⁹ It is important to emphasise that these doctrines never ‘succeeded’. The civilisational gap was never closed, and any difference overcome was replaced by another, equally important, difference. But this ‘failure’ was, in reality, their success; for as long as the civilising mission went unrealised, the colonial project could continue removing wealth and resources from the colonised world and concentrating them in the hands of the colonisers.

This is how the Gluttonous Machine functions today. The discourses and critiques of humanity’s law offer only symbolic resistance, unenforced and lacking authority. They are exposed as idiosyncratic complaints dressed in pseudo-authoritative legalese. Analogous to Harry Potter, the demands of the humanity’s law are a badly written and childish fantasy; yet, also like Harry Potter, they enjoy inexplicable global popularity. And like the civilizing mission, they also legitimate the processes of exploitation, distract attention, and exculpate the present through the promise of a brighter future: “In the present, we the participants in international law refer back to past failures for the latent correction that they ultimately will have activated. Failure never undermines the system. To the contrary, failure always reinforces the importance of the system, and the importance of sustaining its ethical promise.”³⁰

Both sides of the dynamic were necessary for colonial PIL to function, and both remain equally necessary for contemporary neo-colonial PIL. “[T]he dynamic is not only recurrent, but constitutive, for it ‘shaped the character of sovereignty – and, more broadly, of international law and institutions.’”³¹

²⁷ *Id.* at 58.

²⁸ *Id.* at 101.

²⁹ ANGHIE, *supra* note 1, at 4.

³⁰ Geoff Gordon, *The Time of Contingency in International Law*, in CONTINGENCY IN INTERNATIONAL LAW ON THE POSSIBILITY OF DIFFERENT LEGAL HISTORIES 174 (Ingo Venzke & Kevin Jon Heller eds., 2021).

³¹ Pahuja, *supra* note 2, at 487 (quoting ANGHIE, *supra* note 1, at 311).

To demonstrate this, I will first analyse the colonial context in which the United Nations (UN) was formed in 1945. With this established, I discuss the formation of the State of Israel and the Universal Declaration of Human Rights (UDHR), which, like *apartheid* in South Africa, appeared in 1948. Simultaneously, we witnessed a resurgence of development as a discourse, which prioritised the developed states. All were attempts to shield and promote a colonial enterprise. So next, I turn to colonialism itself. With a focus on British Imperialism in India and China, I outline both the mechanisms of colonial governance, the sheer scale of the plunder involved, and how the enterprise was justified through PIL.

Colonial plunder shaped the world as we know it today, but I wish to challenge the naturalisation of European wealth and others' poverty; to make this familiar backdrop look strange — unnatural. To do so, I turn to the anti-colonial struggles and the legal battles which followed formal independence. Despite simultaneous struggles on the legal, political, and economic fields, the formerly colonised states enjoyed a period of genuine development from the 1950s to 70s. This occurred despite a fraught background of interventions, coups and assassinations.

This era of development was brought to an end by the debt crisis of the early 1980s, and the enforced rollout of neoliberal economic policies across the under-developed states. Accordingly, I examine the mechanisms of this re-colonisation: debt and 'free trade', exposing the colonial nature of the new project. This neocolonialism is legitimated under the fig leaves of consent and technocratic expertise, which amount to the simple denial of ongoing plunder by the former colonising states. It is no longer in need of justification by PIL, and PIL itself has become unmoored from reality. It has been reimagined as a noble, even anti-colonial practice, but it lacks referent and effect in the physical world; a world that I argue resembles a global settler colony more closely than ever. This reality is hidden behind the myths of noble PIL, and the Potterverse they produce.

II. CONTINUITIES AND RUPTURES: COLONIALISM, THE UN, AND NEOCOLONIAL GOVERNANCE

The dynamic of difference is exemplified in the creation of the State of Israel, which represented neither a rupture in PIL, nor an aberration in its time. More importantly, the contemporary State of Israel, although anachronistic in form, is no anomaly in the global neo-colonial order that we call international law. To put my argument bluntly: Israel is a settler colony, located within another *global* settler colony — the contemporary world is a global settler colony. Israel's conduct is not exceptional when viewed through the lens of the ongoing coloniality of international law. In fact, Israel's anachronistic form and apparently aberrant conduct, provide a blueprint for understanding the rest of the neo-colonial present.

Israel and Canada provide the archetypes of contemporary colonial governance. Israeli regimes and forces exercise their colonial violence directly, close to home, and visibly. Canada represents the opposite end of the spectrum of colonial violence — discrete, outsourced and hidden. Justin Trudeau (a real-life grown-up Harry Potter) is the perfect metaphor for this form of colonialism: suave, caring, and cosmopolitan, yet presiding over a regime that is settler-colonial at home and neo-colonial abroad. Israeli violence and exploitation are more blatant, and carried out closer to home; but those differences are not morally significant. The world is a settler colony, Israel is its transparent microcosm. Every developed state is an ongoing colonial enterprise — hence the fascination/repulsion dialectic of our engagement with Israel; it is ourselves viewed through a glass, darkly. The Israeli ambition to “acquire the land without the people”³² is dwarfed by the Euro-American endeavour to acquire the resources of the under-developed states — *without the people*. These contemporary colonial projects have deep roots in the history of PIL.

A. *The Formation of the UN*

One of the key institutions shaped by the dynamics of colonialism is the UN. Although I will argue that the UN was designed as, and remains, a colonial enterprise, I also believe that among the myriad continuities of exploitation, there was a small but important rupture in the practice and self-description of PIL during the denouement of the formal colonial era. The systems of plunder and justification were disentangled, and each took on a life of its own: the Gluttonous Machine with the boy wizard as its apparent master.

The dynamic of difference survived through various iterations of formal colonialism. However, the conclusion of World War II (WWII), with the victory of the ‘good guys’, and the advent of the UN, altered global perceptions of world governance. A new story emerged, of universal justice through PIL: “1945 signalled the promise of a better world under a better law. International law’s duty ever since has been to make good on that promise.”³³ This marked the inception of the idea of universality, and started the process of estranging the Machine from its chroniclers. It gave the chroniclers a new subject to write about — ‘universal PIL’. However, the “higher human rights moved up the agenda, the greater the pressure for a further limitation

³² EREKAT, *supra* note 19, at 71.

³³ NATHANIEL BERMAN, PASSION AND AMBIVALENCE: COLONIALISM, NATIONALISM, AND INTERNATIONAL LAW 66 (2012) [hereinafter BERMAN].

on the new organization's ability to intervene in the domestic affairs of member states."³⁴ The seeds of the Harry Potter myths to come were sown here.

Although this "astonishingly jejune"³⁵ historical understanding offers "very little acknowledgement of the mixed motives that accompanied" the UN's creation,³⁶ its noble, but counterfactual, history would be cemented by the "UN's later embrace of anticolonialism".³⁷ This evolved into our contemporary narrative, which focuses on texts and institutions, imbuing them with magical qualities, and mythologising their universality, progress, and powers. These fantastical stories of Harry Potter and his legal-magical powers have "tended to obscure the awkward fact that ... the United Nations was a product of empire and indeed ... regarded by those with colonies to keep as a more than adequate mechanism for its defence."³⁸

The UN is a colonial artefact, created in a decolonial moment, by and for those who wished to defy history and preserve the colonial system. This ambivalence is encapsulated in the extraordinary figure of Jan Smuts, and "his salience as an international statesman in the area of human rights and institution building."³⁹ Smuts understood that the UN was a colonial project, a governance mechanism to allow the nascent Soviet and American empires to co-exist with the fading European empires. He expressed the UN to be "a post-war international body to supervise world order and to cement the alliance between Britain and the United States."⁴⁰ But he was also fully cognizant of the charges of bad faith being levelled against the proposed new UN,⁴¹ that it was "shot through with hypocrisy ... its universalizing rhetoric of freedom and rights ... all too partial — a veil masking the consolidation of a great power directorate [with an] imperious attitude to how the world's weak and poor should be governed."⁴²

"Smuts argued strongly that the draft of the Charter needed to be prefaced by something capable of attracting public support."⁴³ He provided this, drafting the famous preamble to the United Nations Charter. Probably the most inspiring Harry

³⁴ Mark Mazower, *The Strange Triumph of Human Rights, 1933–1950*, 47(2) HIST. J. 379, 393 (2004) [hereinafter Mazower].

³⁵ MARK MAZOWER, NO ENCHANTED PALACE: THE END OF EMPIRE AND THE IDEOLOGICAL ORIGINS OF THE UNITED NATIONS 5 (2009).

³⁶ *Id.*

³⁷ *Id.* at 17.

³⁸ *Id.*

³⁹ Saul Dubow, *Smuts, the United Nations and the Rhetoric of Race and Rights*, 43(1) J. CONTEMP. HIST. 45, 47 (2008) [hereinafter Dubow].

⁴⁰ *Id.* at 34.

⁴¹ *Id.* at 15.

⁴² *Id.*

⁴³ *Id.* at 51.

Potter excerpt in the history of international law, the preamble can be seen as the prelude to today's Potteresque incantations of PIL. Jan Smuts is also the premier who introduced apartheid into South African law.⁴⁴ He saw no contradiction among the universalism of the UN, the imposition of apartheid, and the ongoing colonial project. These were all aspects of the same project. "This was ... an approach that took the moral mission of empire for granted".⁴⁵ "A democratic imperial order had been preserved, thanks to the formation of the UN, ... [t]he work of civilizing inferior races, and keeping them in order, could continue."⁴⁶

The ambivalences of the colonial law which formed it were reproduced within the UN itself. As the great figures of empire sought to entrench their gains and maintain their grasp on what they had retained, the great figures of anti-colonial struggle fought to tip the balance in favour of the globally colonised, the exploited natives.⁴⁷ This febrile concoction of continuity, rupture, struggle, and repression, gave birth in 1948 to two of the most extraordinary artefacts of modern international law — the UDHR, and the State of Israel. 1948 was also the year apartheid was first legislatively codified in South Africa, another anomaly or anachronism: "[j]ust as the rest of the world renounced colonialism and racism, South Africa tightened its segregationist strictures under the new banner of apartheid."⁴⁸ Israel claimed sovereignty over half of the land of Palestine. Throughout the 1940s, Smuts had been "fulsome in his support of a Jewish homeland in Palestine."⁴⁹

B. *The Creation of the State of Israel*

The creation of the State of Israel manifests a colonial reflex in a decolonial moment — an anachronistic embodiment of pure colonial thought. Here, the interwar legal sensibilities of Versailles were distilled into "that moment in international legal history when the problem of nationalism came to be perceived as a primal 'clamoring' to which one should respond with a sophisticated and heterogeneously composed 'Plan.'"⁵⁰ As early as 1919, it was argued that "[i]n this age of 'internationalism', ... there could hardly be found a more suitable spot for the practical application of the idea of internationalization than Palestine."⁵¹ This would form part of a technocratic system of management through international law and

⁴⁴ *Id.* at 16.

⁴⁵ *Id.* at 51.

⁴⁶ *Id.* at 24.

⁴⁷ VIJAY PRASHAD, *THE DARKER NATIONS: A PEOPLE'S HISTORY OF THE THIRD WORLD* (2008) [hereinafter PRASHAD].

⁴⁸ Dubow, *supra* note 39, at 46.

⁴⁹ *Id.* at 53.

⁵⁰ BERMAN, *supra* note 33, at 125.

⁵¹ *Id.* at 120.

institutions, where “the new international law would be a ‘double law’, a juxtaposition of a new status for nations and a new autonomy for the international community: in short, a double restriction for the authority of the state.”⁵² As such:

law’s ability to meet the nationalist challenge would not ultimately be overpowered even by ‘Jewish nationalism’ – already in 1919 considered the ‘most baffling of the many nationalistic claims’ ... The ‘unique’ difficulty presented by this ‘baffling’ nationalism called for the deployment of the most advanced products of the legal imagination.⁵³

These “most advanced products” would not, in fact, be deployed until almost three decades later. The Machine would be introduced to Palestine, which became a mandate before it became a settler colony. Its chroniclers set to work long before Harry Potter entered the scene to beautify PIL. Legalised Palestinian suffering manifested in two distinct ways: the British encouragement and strategic utilisation of Zionist immigration to its Mandate of Palestine in the 1920s and 30s, and the decision to repay European guilt in non-European lands by converting this immigration into a Jewish *state* in 1948.

The nascent development of a Jewish homeland in Palestine predated both WWII and the conception of the UN. It can be traced to three documents, the Hussein-McMahon Correspondence (Correspondence), the Sykes-Picot Agreement (Agreement), and the Balfour Declaration (Declaration). Although Britain promised some degree of Arab independence in the Correspondence, the Agreement and the Declaration exposed this as a sham. In the Agreement, concluded in 1916, Britain and France divided between themselves the soon-to-be dismembered Ottoman Empire in the Middle East; Britain was allocated the territory of Palestine.

In 1917, the British Foreign Secretary, Arthur Balfour, wrote his (in)famous Declaration in a letter to Lord Rothschild:

His Majesty’s Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object.⁵⁴

After the military defeat of the Ottoman Empire, the new League of Nations rubber-stamped the Sykes-Picot Agreement, giving the Middle East to France and Britain in the new legal form of ‘Mandates’. These were granted in the names of civilisation

⁵² *Id.* at 132.

⁵³ *Id.* at 120.

⁵⁴ Balfour Declaration 1917, THE AVALON PROJECT, http://avalon.law.yale.edu/20th_century/balfour.asp.

and self-determination, anticipating (or perhaps initiating) the Harry Potter form PIL would subsequently adopt.⁵⁵ In fact, Mandate was a euphemism for ‘colony’. Balfour made the cynicism of the whole affair clear in a confidential memo to Lord Curzon:

[I]n Palestine we do not propose even to go through the form of consulting the wishes of the present inhabitants of the country ... Zionism, be it right or wrong, good or bad, is rooted in age-long traditions, in present needs, in future hopes, of far profounder import than the desires and prejudices of the 700,000 Arabs who now inhabit that ancient land.⁵⁶

The Mandate was awarded to Britain in 1920, coming into formal legal effect in 1923. Britain actively promoted Zionist immigration “as a means of creating a European settler population through whom it might retain a territorial hold.”⁵⁷ “Its military occupation ... [was] justified as necessary to support the self-determination of the European settlers.”⁵⁸ That is, to prevent the Palestinians *wasting* their own land, and facilitate the settlers’ and the Machine’s accumulation and *improvement* of that land.

Nonetheless, it was not inevitable (even in the early 1940s) that any proposed Jewish homeland would become a nation state, let alone the State of Israel as known today. This changed as the facts of the Holocaust, the first modern genocide on strictly European territory,⁵⁹ emerged. European guilt — over those European actions and inactions which resulted in the slaughter of six million Jews — was the catalyst that made a Jewish nation state inevitable. But it is the specific, contingent manifestation of the State of Israel which betrays the coloniality of the moment, the colonial mindset of its chief protagonists.

The creation of a Jewish nation state can be understood as a form of just compensation for the suffering and violence imposed on European Jews. But what I find telling is the currency in which this compensation was paid. Several territories were proposed for construction of the new state,⁶⁰ *none* of which were in Europe. Consequently, the two most obvious locations, Austria or some part of Germany,

⁵⁵ MITCHELL, *supra* note 25, at 80.

⁵⁶ Rashid Khalidi, *The Neocolonial Arrogance of the Kushner Plan*, N.Y. REV. (June 12, 2019), <https://www.nybooks.com/daily/2019/06/12/the-neocolonial-arrogance-of-the-kushner-plan/>.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ This assumes that we see the British genocide in Ireland as pre-modern (or as not *really* a genocide), and the Armenian genocide as Asian.

⁶⁰ ADAM ROVNER, *IN THE SHADOW OF ZION: PROMISED LANDS BEFORE ISRAEL* (2014).

were not even considered as possibilities. In the colonial mindset of the time, it was inconceivable that European guilt should be paid for with European land. The idea of displacing (i.e., ethnically cleansing) European peoples, even those subject to the ire and hostility of their fellow Europeans, was unthinkable.

Instead, it seemed only natural and obvious to the enlightened and victorious European states — as well as their erstwhile allies, the United States of America (USA) and the Union of Soviet Socialist Republics — that European guilt should be compensated for through the transfer of colonised lands and paid for by already subjugated peoples. This was perceived as a technical exercise, a set of processes and products through which not one, but two nationalisms could be managed. So began the last settler-colonial enterprise, the imposition of the State of Israel upon the lands and peoples of Palestine. The “United Nations General Assembly’s ‘Plan of Partition with Economic Union,’ ... may be viewed as a variation on the most complex products of the Versailles system.”⁶¹

“In adopting the Palestine Plan, the international community thus carried forward a program whose detail and whose confidence in a comprehensive international legal and practical response to nationalist strife were inaugurated in 1919”⁶² — a magical plan, which would, of course, fail to replicate confidence in reality. Israel is a manifestation of the same ambivalences of coloniality that produced the UN; it embodies the dynamic of difference that structures international law. “The Palestine Plan ... reaffirmed the international community’s faith in the underlying assumptions and the programmatic detail of the interwar effort to resolve nationalist conflict.”⁶³ This embodied such a ‘common sense’ that “[t]he committee that presented the 1947 Plan to the U.N. took the legitimacy of the international policy proposal so much for granted that it did not even think it necessary to present the legal arguments justifying the competence of the U.N. to legislate such a solution.”⁶⁴ As the Palestinian people were being brutalised, dispossessed, slaughtered, and ethnically cleansed, the UN was finalising the first great monument to universal equality and global justice — the UDHR. This marked Harry Potter’s emergence in PIL, struggling free of the burden of justifying colonialism through civilisation. Emancipated from chronicling the machine, PIL’s aspiring novelists were freed to write their own adventures.

C. The Creation of the UDHR

⁶¹ BERMAN, *supra* note 33, at 121.

⁶² *Id.* at 122.

⁶³ *Id.* at 123.

⁶⁴ *Id.*

The UDHR is also a colonial artefact, the then contemporary iteration of the dynamic of difference. It marked a new, ostensibly more inclusive chapter in the chronicles of PIL, and remains key to many of the Potteresque writings. The UDHR was negotiated and drafted almost exclusively by the imperial powers, at a time when they were already engaged in protracted and vicious wars to suppress nascent independence movements in their colonies. They did not want their actions scrutinised as they might have been under a proposed expansion of the League of Nations' minority rights system. It was expressed that "the acceptance of [a proposal to generalize the minority rights system] by His Majesty's Government would be entirely impossible in view of [their] colonial empire."⁶⁵ However, "having nothing to put in place of minorities treaties if they are terminated would ... not look good'. Luckily human rights were there to fill the gap."⁶⁶ It is not hard to see the colonial reality behind the mystique of the founding document of 'universal human rights'.

Before Eleanor Roosevelt was ushering in the UDHR's creation, her husband and then President Franklin D. Roosevelt's USA administration (and succeeding administrations) were actively excluding African Americans from the economic advances of the 'New Deal'.⁶⁷ When engaging a caucus of Southern senators known as 'Dixiecrats', Ms. Roosevelt "assured the Dixiecrats that the sacred troika of lynching, Southern Justice, and Jim Crow schools would remain untouched, even with an international treaty to safeguard human rights."⁶⁸ Universal human rights were, therefore, compatible with the economic exclusion, inferior education, biased trials, and extrajudicial murders, of African Americans.

The American, Canadian, and Australian, genocides of their indigenous populations continued. South African apartheid also appeared consistent with universal human rights.⁶⁹ Nor were the racial segregations, oppressions, or exploitations of the remaining European colonial empires understood as incompatible with universal human rights. "None of this had been accident ... [it] reflected the Great Powers' keen interest in preserving their sovereignty intact ... human rights rhetoric was deliberately bereft of mechanisms that might have made it enforceable."⁷⁰ Roosevelt "used her chairmanship and influence to manipulate the human rights treaties in

⁶⁵ Mazower, *supra* note 34, at 389.

⁶⁶ *Id.*

⁶⁷ IBRAM KENDI, *STAMPED FROM THE BEGINNING* 337–338 (2016). The New Deal was a policy of economic redistribution designed to elevate working people to better jobs, home ownership, and entry into the middle classes. For a full and critical appraisal, see IRA KATZNELSON, *FEAR ITSELF: THE NEW DEAL AND THE ORIGINS OF OUR TIME* (2013).

⁶⁸ CAROL ANDERSON, *EYES OFF THE PRIZE: THE UNITED NATIONS AND THE AFRICAN AMERICAN STRUGGLE FOR HUMAN RIGHTS, 1944–1955*, 4 (2003) [hereinafter ANDERSON].

⁶⁹ Gay McDougall, *Shame in Our Own House*, *AMERICAN PROSPECT* (Sept. 20, 2004), <https://prospect.org/special-report/shame-house/>.

⁷⁰ Mazower, *supra* note 34, at 395.

ways that would shield the United States from UN scrutiny.”⁷¹ And “even the liberals, steadfastly refused to make human rights a viable force in the United States or in international practice.”⁷²

Berman captures this apparent ambivalence clearly:

For many Europeans, especially European leaders, defense of empire and resistance to Nazism were indissoluble. The ... Gaullist imperial fantasy throughout the war, a time when ‘the soul of occupied France seemed to have taken refuge in Africa,’ when the ‘French Empire provided a body’ for the ‘heart and soul’ of Free France.⁷³

It is particularly chastening to realise that the final quote above was written by Rene Cassin, the lead drafter of the UDHR, in 1941. Jan Smuts’s words sit alongside Cassin’s in the final text of the UDHR,⁷⁴ encapsulating the “spread of western civilization as the driving logic or spirit.”⁷⁵

Human rights were never meant to be applied for the colonised only, if at all, against them:

The severely formalist approach taken, in different ways, by both Kelsen and Lauterpacht – namely, that without the precise definition of rights and the establishment of enforcement mechanisms the UN’s real usefulness in defending rights was minimal – was replaced by an approach ... that ... hoped that essentially moral aspirations might come themselves to be regarded as a source of law.⁷⁶

But these moral aspirations are fantasy stories, visions of ideal societies, to be realised only when Harry can extend his magic beyond the page. In the interim, “[t]he United States has renewed and revitalized the Age of Europe. ... A global policeman, the United States now plays the central ‘civilizing’ role through the export of markets, culture, and human rights.”⁷⁷ This colonial renewal entails “the inevitable conclusion that there is a hierarchy of cultures” which provides “the rationale for various forms of intervention.”⁷⁸ In this “hierarchized, binary view of the world ...

⁷¹ ANDERSON, *supra* note 68, at 2.

⁷² *Id.*

⁷³ BERMAN, *supra* note 33, at 47.

⁷⁴ Dubow, *supra* note 39, at 55.

⁷⁵ *Id.* at 60.

⁷⁶ Mazower, *supra* note 34, at 397.

⁷⁷ MAKAU MUTUA, HUMAN RIGHTS: A POLITICAL AND CULTURAL CRITIQUE 6 (2008).

⁷⁸ *Id.*

the European West leads the way and the rest of the globe follows in a structure that resembles a child–parent relationship.”⁷⁹ But we are not benevolent parents; we may read Harry Potter to our children, but we do not wish to see them move toward independence.

Alongside the births of Israel and international human rights law (IHRL), an older project was revisited — development. All were manifestations and re-presentations of the global colonial order. Israel and South African apartheid represented the final act of the old colonial order. Human rights and development emerged as the justificatory structures of its new, neo-colonial form. The contemporary iteration of the civilising mission takes the form of these Potteresque fantasies; behind them, the Machine remains rapacious.

D. *The Resurgence of Development*

The concept of development was first deployed in the 1910s as a solution to the “problem of non-European claims” to rights, land, and resources.⁸⁰ This was done by crafting a narrative which ensured that these “claims were deferred into the future, by designating them as populations whose rights were suspended because they were in need of ‘development’.”⁸¹ To this day, its role in deferral remains unaltered: “[p]opulations were designated as undeveloped in relation to the European races ... and were ... denied the ... rights enjoyed by ‘developed’ peoples, a denial explained by their need for development.”⁸²

The development narrative, as a surrogate for actual development, culminated in the USA President Truman’s refusal to extend the material benefits of the Marshall Plan⁸³ to the world’s “underdeveloped areas”, offering instead the “know-how” of “development”, to allow them to develop themselves.⁸⁴ Development’s “subsidiary but important role in US relations with the non-West ... would be to manage the difference between extraordinary levels of affluence for some and modest levels of living for the vast majority of the world, rather than to offer effective means of addressing those differences.”⁸⁵ As Pahuja observes, development “replaced race as

⁷⁹ *Id.* at 8–9.

⁸⁰ MITCHELL, *supra* note 25, at 82.

⁸¹ *Id.*

⁸² *Id.* at 82–83.

⁸³ This was an American stimulus plan, granting aid to help European economic recovery after the Second World War.

⁸⁴ MITCHELL, *supra* note 25, at 120.

⁸⁵ MITCHELL, *supra* note 25, at 121.

the measure of superiority between peoples”.⁸⁶ The justificatory narrative modulated over time. In the chronicles of PIL, the dynamic of difference manifested in religion, race, improvement, civilisation, and now, development into rights respecting neoliberal states. However, its function — to explain, justify, and perpetuate global poverty and the deferral of development — never changed: “[t]he main difference between Truman’s development programme and the nineteenth-century ‘civilizing mission’ or the early twentieth-century ‘dual mandate’ was that access to Southern resources would now be formally consented to by ‘sovereign’ nation-states as a necessary precondition to their ‘growth’.”⁸⁷

Human rights law and ‘law and development’ are simply the latest iterations of this colonial divide. The world is divided between those who have rights and development and those who do not have rights and development. Here, Harry’s chroniclers perpetuate a peculiar discourse that says: in order to have development, you must have human rights, but you can’t expect to have human rights if you are not already developed.⁸⁸

What is really required is magic: well-crafted incantations (*Progressum Occurus?*); followed by intervention, tutelage, and correction. Once again, those who ‘have’ must intervene for the benefit of those who ‘have not’; we must cast our lawyerly spells. We must, magically, bring them to our standard, boost their development through investment and growth. “And if this also increases the size of the rich countries’ slice of the pie ... well, it’s just a *collateral benefit* ... of doing good for the poor.”⁸⁹ In the Potterverse, everyone could be contented, happy even. The new Ministry of Magic would rule fairly for all — if only we could wish it into existence. Instead, we continue to craft it, drafting new spells, imagining authoritative committees and tribunals, perfecting the narrative while ignoring reality.

III. FROM JUSTIFICATION TO DENIAL: THE INVISIBILISATION OF PLUNDER

A. *Colonial Plunder Revisited*

⁸⁶ Sundhya Pahuja, *The Poverty of Development and the Development of Poverty*, in SELECT PROCEEDINGS OF THE EUROPEAN SOCIETY OF INTERNATIONAL LAW 365, 370 (James Crawford & Sarah Nouwen eds., 2010) [hereinafter Pahuja (2010)].

⁸⁷ Luis Eslava, *The Developmental State*, in THE BATTLE FOR INTERNATIONAL LAW 71, 83 (Jochen von Bernstorff & Philipp Dann eds., 2019) [hereinafter Eslava].

⁸⁸ NTINA TZOUVALA, CAPITALISM AS CIVILISATION 33 (2020); Jason Beckett, *Creating Poverty*, in THE OXFORD HANDBOOK OF THE THEORY OF INTERNATIONAL LAW 985 (Florian Hoffmann & Anne Orford eds., 2016) [hereinafter TZOUVALA].

⁸⁹ Pahuja (2010), *supra* note 86, at 371.

Colonialism shaped not only PIL, but the international order: economically, politically, culturally, as a civilisation, developmentally, and racially. There is no plausible history of the present which does not have the Gluttonous Machine of colonialism at its heart. It matched and managed its environment, creating space for plunder, normalising that plunder, and thus creating possibilities and desires which became expectations that metastasised into needs — rights even. Free access to cheap markets is the unstated assumption of the lives, morality, politics, and PIL, of the over-developed world.

Throughout the colonial period, it was openly admitted and widely approved that the colonists were taking resources from their colonies. The key strategy was explaining and justifying this — maintaining the charade that it was for the benefit of the colonised native peoples. The Gluttonous Machine was at work, but its rapacity was concealed; its chroniclers normalised its functions and entrenched its myths. Thus, any resources it diverted to the metropolises were fair payment for the colonists' labour, ingenuity, and mercantile skills; for their improvement of 'waste' lands and (their) peoples; for the stories they told, and others chronicled.

European development is not a history of genius and self-sufficiency; it is a story of theft and plunder on an almost unimaginable scale. It starts with the Spanish discovery of the Americas, and the subsequent genocidal pillaging of that continent. Between 1503 and 1660, the Spanish conquerors looted 185,000 kilogrammes of gold, using the native population as slave labour, and shipped it back to Europe.⁹⁰ From 1503 to 1800, they looted almost 100,000,000 kilogrammes of silver in the same fashion. This had devastating, genocidal effects in the Americas, where as much as 95% of the indigenous population was ultimately wiped out.⁹¹ It also had transformational effects in Europe, with the plundered silver *alone* "worth \$165 trillion today, more than double the world's total GDP in 2015."⁹²

The plundered wealth quickly leaked out of Spain to repay debts and purchase goods.⁹³ It allowed other European states both, to finance new militaries, and to trade with India and China, which at that time commanded 65% of global gross domestic product (GDP) cumulatively.⁹⁴ This facilitated the import of "land intensive goods and resources" like grain and cotton, which in turn allowed Europe

⁹⁰ JASON HICKEL, *THE DIVIDE: A BRIEF GUIDE TO GLOBAL INEQUALITY AND ITS SOLUTIONS* 71 (2017) [hereinafter HICKEL].

⁹¹ ERIN MCKENNA & SCOTT PRATT, *AMERICAN PHILOSOPHY: FROM WOUNDED KNEE TO THE PRESENT* 375 (2015).

⁹² HICKEL, *supra* note 90.

⁹³ EDUARDO GALEANO, *THE OPEN VEINS OF LATIN AMERICA* 23 (1971) [hereinafter GALEANO].

⁹⁴ HICKEL, *supra* note 90, at 67.

to reallocate her own labour forces into “capital intensive industries” — whose capital was also provided by the surplus of looted gold and silver — and thus created the conditions for the industrial revolution.⁹⁵ European industrialisation and development were made possible *only* by the Gluttonous Machine looting the Americas.⁹⁶

However, as the American genocide continued, European eyes turned greedily to Africa, and the Machine began a second period of looting: plundering African bodies for the transatlantic slave trade. Through this combination of slavery, genocide, and plunder, the Gluttonous Machine drove European development. Chroniclers developed stories, myths, and common sense to justify this: the necessary cost of civilisation. But those writers, and their stories, remained tied to the reality of colonial plunder. They were the Machine’s chroniclers — “international lawyers [who] sought to justify and legitimise a hierarchical international legal order and a wide range of oppressive practices.”⁹⁷ This combination of plunder and mythology further fuelled European greed and hubris, driving greater colonial expansion.

India was the first victim of this reinvigorated plunder.⁹⁸ The operation was surprisingly simple. First, Britain in the form of the East India Company, subjugated India, displaying the more spectacular rapacity of the Machine. Then the logics of ‘waste’ and ‘improvement’ were deployed to justify enclosure and dispossession, creating landless, food-insecure workers. Community grain reserves were sold off because, to hold them was “inefficient”.⁹⁹ Forests were subject to direct enclosure, with Indians “banned from utilising reserved forests in the old ways”, because “the British and princely rulers had classed [these] as reserved for the sole use of the state”.¹⁰⁰ These logics combined with taxation, compelled farmers to switch from subsistence farming to the production of cash crops for sale and export. This bankrupted most, and “reduced them to landless agricultural labourers.”¹⁰¹

The key is to note, as in Ira Klein’s memorable understatement, that “deviations from stated objectives characterized British agrarian policies in India.”¹⁰² That is, we must separate the Gluttonous Machine from its civilising myths:

⁹⁵ *Id.* at 72.

⁹⁶ GALEANO, *supra* note 93, at 28.

⁹⁷ TZOUVALA, *supra* note 88, at 72.

⁹⁸ MIKE DAVIS, LATE VICTORIAN HOLOCAUSTS 49 (2001) [hereinafter DAVIS].

⁹⁹ *Id.* at 25–27.

¹⁰⁰ Bhangya Bhukya, *Enclosing Land, Enclosing Adivasis: Colonial Agriculture and Adivasis in Central India, 1853–1948*, 40(1) INDIAN HIST. REV. 93, 95 (2013).

¹⁰¹ *Id.*

¹⁰² Ira Klein, *British Reforms, Commercial Agriculture, and Agrarian Distress in India*, 70(4) HISTORIAN 732, 732 (2008).

Agricultural development represented a major justification for British occupation of India, and ideals of agrarian plenty promoted progressive ideas and theories of growth. Notably, utilitarians hoped to create thriving, progress-oriented peasant communities, and advocated establishing secure, individual, ryotwari (peasant-based) land tenures across the subcontinent. Advancement would be attained, these reformers believed, through moderate, skilled assessments, objective laws, and sufficient education.¹⁰³

It is worth noting the whimsical-fantastical quality which unites the ideas of the 19th century utilitarians and 21st century chroniclers to the Harry Potter version of this fantasy. It is also worth noting the characteristic brutality of the Gluttonous Machine. At the same time that Britain was enclosing Indian land, expropriating Indian resources, and carrying out its genocidal policies on Indian bodies, it also set its sights on destroying India's manufacturing base. This was achieved in part by denying Indians the right to train as artisans; in part by favouring British companies in government procurement policies and; in part through direct violence:

In the mid-18th Century this was played out explicitly when the East India Company subordinated a flourishing international trade in handicrafts and textiles by Indian merchants by cutting off the thumbs of 200 highly skilled, local textile weavers. It ruined the indigenous industry and served the interests of British mercantile community.¹⁰⁴

However, Britain's most effective technique was the imposition of a "discriminatory colonial policy which kept the Indian market completely open to dumping for over a century while protecting the British market."¹⁰⁵ This kept India "compulsorily open to imports of manufactures" causing "domestic deindustrialization".¹⁰⁶ India was de-developed and turned into an exporter of raw materials. Yet, she remained a prodigious exporter, even as she fell deeper into debt with her coloniser.

Drawing on R.C. Dutt's analysis of British wealth extraction from its Indian colony,¹⁰⁷ Utsa Patnaik describes Imperial Britain's "clever system of getting goods

¹⁰³ *Id.*

¹⁰⁴ Ratna Kapur, *Human Rights in the 21st Century: Take a Walk on the Dark Side*, 28(4) SYDNEY L. REV. 665, 685 (2006).

¹⁰⁵ Utsa Patnaik, *Revisiting the 'Drain', or Transfers from India to Britain in the Context of Global Diffusion of Capitalism*, in *AGRARIAN AND OTHER HISTORIES: ESSAYS FOR BINAY BHUSHAN CHAUDHURI* 276, 296 (Shubhra Chakrabarti & Utsa Patnaik eds., 2018) [hereinafter Patnaik].

¹⁰⁶ *Id.*

¹⁰⁷ ROMESH CHUNDER DUTT, *THE ECONOMIC HISTORY OF INDIA* (1893).

free” as “the drain”.¹⁰⁸ Once in place, it seems unobtrusive, innocuous — the Gluttonous Machine in its discrete guise. The existing taxation system was implemented and reformed. This taxation was treated as government revenue, divvied up in standard budgetary form. However, two budget lines stand out: ‘internal expenditure’ and ‘external expenditure’. Both lines were denominated in rupees (Rs.). When the British State imports from India, the internal expenditure account is used to pay. If anyone else wants to import from India, they must use rupee denominated bills of exchange — which can only be purchased in London, from the Secretary of State for India, using silver, gold, or hard currency. However:

These Council Bills could be cashed only in rupees and the exporters in India who received the Bills (by post or by telegraph), on submitting them through the exchange banks, were paid by the Indian Treasury out of the rupee budgetary funds already set aside for the purpose as expenditure incurred abroad.¹⁰⁹

This exposes “the essential feature of ... the drain”: producers are “not actually paid for their export surplus, because the payment continued to come out of taxes raised from the very same producers.”¹¹⁰ Refuting Sunanda Sen’s critique of Naoroji and Dutt, Patnaik concludes that “the overwhelming bulk of the rest of the world’s payments for India’s commodity export surplus was successfully intercepted and appropriated by the metropolis”.¹¹¹ Worse still, “India’s rising external earnings not only magically disappeared into the yawning maw of the Secretary of State’s account in London, but she was shown to be in perpetual deficit”.¹¹² In combination, these techniques decimated the Indian economy. Its share of global GDP fell from 27% to 3% under the British rule. “India, once self-sufficient and famous for its exports, was remade into ‘the greatest captive market in world history’.”¹¹³ Colonial enclosure processes developed Britain,¹¹⁴ and had the opposite effect in India:

India, the country with the second largest global export surplus for decades, had more than its entire forex earnings taken away and was reduced to enforced borrowing. With its iron grip over Indian internal and external finances, the metropolis kept an entire colonized people ... ‘perpetually indebted’ to it ... Conversely, the metropolis, though it incurred the largest trade deficits globally, through such appropriation of

¹⁰⁸ Patnaik, *supra* note 105.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.* at 290.

¹¹² *Id.* at 292.

¹¹³ DAVIS, *supra* note 98, at 298.

¹¹⁴ Neocleous, *supra* note 21.

its colonies' earnings, could become nonetheless the world's largest capital exporter.¹¹⁵

Historians estimate that British rule in India caused at least *thirty million* human deaths, as the region experienced mass starvation for the first time, in what Davis calls "late Victorian Holocausts".¹¹⁶ Under British rule, following its logic of "markets",¹¹⁷ India's role as a net exporter of grain *increased*, even as millions of Indians were *starved* to death. In fact, "[b]etween 1875 and 1900, years that included the worst famines in Indian history, annual grain exports increased from 3 million to 10 million tons: a quantity that, as Romesh Dutt pointed out, was equivalent to the annual nutrition of 25 million people."¹¹⁸

This brutal exploitation was highly profitable. Amidst the suffering, Britain bled the Indian economy dry. "Between 1765 and 1938, the drain amounted to 9.2 trillion pounds," equivalent today to \$45 trillion.¹¹⁹ These were good times for the Gluttonous Machine, as even this did not sate British greed.

The Machine was directed toward the then biggest economy in the world — China, which accounted for 35% of global GDP. The attention of the Machine's chroniclers was attuned to this shift, and new narratives were formed in the prelude to imperial intervention. The British were desperate for Chinese tea and silk, but China had no interest in importing British goods — only Spanish silver.¹²⁰ As terms of trade worsened, and British silver reserves ran low, their access to tea was threatened. Between 1710 and 1759, Britain paid 17,000,000 Spanish silver dollars (SSD) net to China.¹²¹ Seeking a commodity for which the Chinese would pay, Britain turned to exporting Indian opium to China. Britain's addiction to tea, the violence they would inflict to secure it, and the stories they would construct to justify that violence, provide the perfect metaphor for the European addiction to normalised luxury.

Opium addiction had risen in China across the 18th century, and "in 1796, the Jiaqing emperor outlawed opium importation and cultivation. In spite of such decrees,

¹¹⁵ Patnaik, *supra* note 105, at 293.

¹¹⁶ DAVIS, *supra* note 98, at 290–299.

¹¹⁷ HICKEL, *supra* note 90, at 87.

¹¹⁸ DAVIS, *supra* note 98, at 299.

¹¹⁹ DISPOSSESSION, DEPRIVATION, AND DEVELOPMENT: ESSAYS FOR UTSA PATNAIK (Arindam Banerjee & C.P. Chandrasekhar eds., 2019).

¹²⁰ *Id.*

¹²¹ W. TRAVIS HANES & FRANK SANELLO, THE OPIUM WARS: THE ADDICTION OF ONE EMPIRE AND THE CORRUPTION OF ANOTHER 19 (2004) [hereinafter HANES & SANELLO]; see also HICKEL, *supra* note 90, at 20.

however, the opium trade continued to flourish.”¹²² Although nominally illegal, by 1797, the British were exporting four-thousand chests per year to China.¹²³ The exports rose rapidly to: “10,000 per year between 1820 and 1830 ... By 1838 the amount had grown to some 40,000 chests imported into China annually. The balance of payments for the first time began to run against China and in favour of Britain.”¹²⁴ However, Parliament abolished the East India Company’s monopoly on the China trade in 1834,¹²⁵ and Britain’s imports of tea quadrupled within a year, once again threatening national silver reserves.¹²⁶ Britain responded by ratcheting up opium exports, pushing vast quantities of Indian opium onto China’s black market.¹²⁷ These sales were in danger of bankrupting the Chinese state. By 1837, the Imperial Treasury reserves of Spanish silver had fallen from 105 million to 15 million SSD,¹²⁸ and an estimated 12 million Chinese were addicted to opium.¹²⁹ China had no option but to strictly enforce the prohibition.

The British merchants were appalled at this affront to their commercial freedom. They began to deploy new myths to represent the situation as a problem of unjustified constraints on both free trade and the spread of civilisation, into ‘insular China’. The needs of the Gluttonous Machine forced its chroniclers into action: “[b]efore the 1830s, the British acquired their conceptual framework of China mainly through the writings of Jesuit missionaries from continental Europe, which depicted China as a peaceable country to be admired and imitated.”¹³⁰

The chroniclers set to work, at the bequest of the Canton British private merchants’ community. Their arguments “resulted in a paradigm shift in British perceptions”.¹³¹ In “direct competition with the image of a ‘peaceable China’ fashioned by the Jesuits”, they established “the image of an ‘insular China’ that needed to be opened up ... by the British through war.” But, “behind their rhetoric of national honour and national interest was ... the desire to trade in conditions under which the

¹²² The Editors of the Encyclopaedia Britannica, *Opium Trade (British and Chinese History)*, BRITANNICA, <https://britannica.com/topic/opium-trade> [hereinafter BRITANNICA].

¹²³ HANES & SANELLO, *supra* note 121, at 20.

¹²⁴ BRITANNICA, *supra* note 122.

¹²⁵ Glenn Melancon, *Peaceful Intentions: The First British Trade Commission in China, 1833-5*, 73(180) HIS. RES. 33, 33 (2000) [hereinafter Melancon].

¹²⁶ HANES & SANELLO, *supra* note 121, at 24.

¹²⁷ DAVIS, *supra* note 98, at 299.

¹²⁸ HANES & SANELLO, *supra* note 121, at 25.

¹²⁹ *Id.*

¹³⁰ SONG-CHUAN CHEN, MERCHANTS OF WAR AND PEACE: BRITISH KNOWLEDGE OF CHINA IN THE MAKING OF THE OPIUM WAR 3 (2017) [hereinafter SONG-CHUAN CHEN].

¹³¹ *Id.*

merchants believed themselves entitled by right of being British.”¹³² These shifts laid the legitimate foundations for the looming Opium Wars.

The theory of improvement was spun into “a new ‘forward policy’ in regard to China ... the [British] government needed to protect the ‘new individual system of enterprise’” in the face of the “Chinese government’s ‘imbecility, avarice, conceit and obstinacy’.”¹³³ This was supported in “an essay secretly commissioned by the Foreign Office [which] stated that the Chinese “government ... will grow bolder, glory in the impunity with which it can carry its measures into effect and become more troublesome than it was before.” The overall narrative “present[ed] China as a weak and wicked empire”.¹³⁴ In this fantasy, it is China that has heinously started the war yet to come; and it is Britain, through her strength and honour, who will bring it to its just conclusion. The Chinese officials “had insulted the dignity of Britain, and that insult demanded retribution”, “defending British honour against the barbarous actions of the Chinese.”¹³⁵

Eventually, the need for plunder and the narrative of justification coalesced, to provoke the Parliament to defend the merchants’ ‘rights’ and British national honour.¹³⁶ Although conceding that it “may sound like a disguise rather than a motive”, Melancon insists that, “[h]onour, not trade and finance, obliged Britain to go to war ... The ministry was required by honour to act with integrity to protect the national interest.” Consequently, “it sent a military force to the Far East not only to obtain guarantees of Britain’s right to trade but also to demand redress from China for the ‘Insult to the British Flag’.” “A variety of motives thus converged” to provide “a reason to act against China while sidestepping the moral questions involved in the sale of opium.”¹³⁷ The Machine and its chroniclers continued to wreak and justify havoc together.

War was authorised, not to protect the opium trade (driven by the Gluttonous Machine), but British honour and the safety of its newly acquired colony in Hong Kong (crafted by the chroniclers).¹³⁸ That opium was the only commodity through which trade with China could continue may have contributed to the bellicosity, but, the chroniclers would insist, the “windfall of tax revenue” it would continue to

¹³² *Id.*

¹³³ *Id.* at 118.

¹³⁴ Melancon, *supra* note 125.

¹³⁵ *Id.*

¹³⁶ SONG-CHUAN CHEN, *supra* note 130.

¹³⁷ Glenn Melancon, *Honour in Opium? The British Declaration of War on China, 1839-1840*, 21(4) INT’L HIST. REV. 855, 855–874 (1999).

¹³⁸ See Treaty of Nanking, Great Britain–China, art. 3, Aug. 29, 1842 [hereinafter Treaty of Nanking], by which sovereignty over Hong Kong was formally ceded.

supply “would only be a natural offshoot, not its cause.”¹³⁹ So, justified in her righteousness, Britain turned to violence, and the Opium Wars were initiated.

The first Opium War was a one-sided affair, with China completely unprepared for modern warfare. “China turned its back on the world economy in the early fifteenth century, when its maritime technology was superior to that of Europe. Thereafter it was left without naval defences.”¹⁴⁰ China was forced to accept defeat with “the Medieval Era fighting the Industrial Age.”¹⁴¹ This was codified in the Treaty of Nanking, an unequal treaty in which Britain was granted 21 million SSD in “reparations”,¹⁴² and access to ten new “Free Ports” with extraterritorial jurisdiction,¹⁴³ while China got only to see the British leave.¹⁴⁴ The opium trade resumed, accounting, within a year, for 10% of the British Exchequer revenue.¹⁴⁵ But the Treaty of Nanking was always more of a truce than a lasting peace. Its terms humiliated China, yet failed to satisfy British greed.

In the decade after the First Opium War, Britain used her newly acquired free port of Shanghai to push opium from the coast to inland China.¹⁴⁶ Moreover, a new trade emerged in which Chinese “coolies” were kidnapped — or “shanghaiied” — to be pressed into indentured servitude across the British Empire.¹⁴⁷ This practice was formally legalised in British law in 1855,¹⁴⁸ with the Second Opium War beginning the following year. By May 1858, the Chinese were forced to agree to the further humiliation of the Treaty of Tianjin.

The invaders returned once again in 1860, this time besieging Peking itself. The Chinese were forced back to the negotiating table, and the conditions imposed under the new Convention of Peking, were even more punitive than before. Tianjin would remain under allied occupation,¹⁴⁹ which gave them the capacity to block the flow of the Yangtze river granting “the Europeans ... the power to create artificial famine if the Chinese reneged on the new agreement.”¹⁵⁰ The formalities of defeat were

¹³⁹ HANES & SANELLO, *supra* note 121, at 73–75.

¹⁴⁰ ANGUS MADDISON, *THE WORLD ECONOMY: A MILLENNIAL PERSPECTIVE* 176 (2001).

¹⁴¹ HANES & SANELLO, *supra* note 121, at 65.

¹⁴² Treaty of Nanking, *supra* note 138, arts. 4, 5 & 6.

¹⁴³ *Id.* art. 8.

¹⁴⁴ *Id.* art. 12.

¹⁴⁵ HANES & SANELLO, *supra* note 121, at 157.

¹⁴⁶ *Id.* at 163.

¹⁴⁷ *Id.* at 164.

¹⁴⁸ Chinese Passenger Act 1855, 18 & 19 Vict., c. 104, §2 (H.K.); *see generally* KAY SAUNDERS, *INDENTURED LABOUR IN THE BRITISH EMPIRE, 1834-1920* (1984).

¹⁴⁹ Convention of Peking, China–Great Britain, art. 9, Nov. 2, 1860, 186 CTS 310 [hereinafter *Convention of Peking*].

¹⁵⁰ HANES & SANELLO, *supra* note 121, at 256–257.

concluded, legalising both, opium and kidnapping for indentured servitude.¹⁵¹ In all, the treaties of Nanking, Tianjin, and Peking, extracted 59 million SSD (approximately \$20 billion today) — in addition to all of the lootings and expropriations.

More importantly, the Europeans gained control over China's ports, her import and export regulations, taxes, and even her farming policies.¹⁵² China was destroyed, but Britain benefitted handsomely. By 1860, "opium imports to China had reached 50,000 to 60,000 chests a year, and they continued to increase for the next three decades."¹⁵³ Through these unequal treaties, drugs were inflicted on China in the name of free-trade, and another vast market was opened to European exploitation. Another Victorian genocide ensued, with thirty million dead Chinese matching their Indian counterparts, murdered by European colonial policies.¹⁵⁴ Another great Asian economy was destroyed, as the Chinese share of the global GDP fell from 35% to 7%.¹⁵⁵

Even this was not the end of the story of Europe's violent subjugation and dispossession of the rest of the world. As inter-state rivalry and intra-state social unrest grew in Europe, governing elites saw another way to maintain their privileges while defusing the pressure. European eyes returned, avariciously, to Africa. Cecil Rhodes captured the prevailing sentiment perfectly: "[t]he Empire, as I have always said, is a bread-and-butter question. If you want to avoid civil war, you must become imperialists."¹⁵⁶ The initially disorderly 'scramble' for Africa risked sparking inter-European strife, so the European states sought rules to minimise misunderstandings as to who could accumulate which parts of Africa. These were formalised at the Berlin Conference, and Africa was formally divvied up among the colonial powers. Europe went from controlling 10% of Africa in 1870 to 90% by 1913. "At the end of this period, Europe owned somewhere between one-third and one-half of the domestic capital of Asia and Africa, and more than three-quarters of their industrial capital."¹⁵⁷

The plunder of India and China financed the colonisation and plunder of Africa, even as the plunder of the Americas had financed the colonisation of Asia. This

¹⁵¹ Convention of Peking, *supra* note 149, art. 5; see also Kenneth Pletcher, *Opium Wars (Chinese History)*, BRITANNICA, <https://www.britannica.com/topic/Opium-Wars#ref227496>.

¹⁵² DAVIS, *supra* note 98, at 300–301.

¹⁵³ BRITANNICA, *supra* note 122.

¹⁵⁴ DAVIS, *supra* note 98, at 6–7.

¹⁵⁵ HICKEL, *supra* note 90, at 92.

¹⁵⁶ V.I. LENIN, *IMPERIALISM: THE HIGHEST STAGE OF CAPITALISM* 79 (N.Y. Int'l Publishers 1939) (1916).

¹⁵⁷ HICKEL, *supra* note 90, at 99.

cumulative plunder was, of course, regulated and justified by PIL; the Machine and its chroniclers still in tandem. The global colonial economy “was built in terms of – and at the service of – the European market.”¹⁵⁸ This continues today. The current vast inequalities of wealth, power, and living standards are not natural. Despite stories to the contrary, they are the product of centuries of direct European intervention, exploitation, and destruction. The income and wealth gaps that we see globally today are the product of colonialism. “The wealth that might have provided the capital for development . . . was effectively stolen . . . and harnessed to the service of Europe’s own development.”¹⁵⁹

In the mid-18th century, Asia was more developed than Europe. Her people had higher incomes, better education, more nutritious food, and longer lives.¹⁶⁰ Her economies accounted for 65% of the global GDP. Europe, by comparison, was a cold, isolated backwater. But a century and a half of colonial violence, murder, exploitation, and plunder, reversed this. As the Asian economies were destroyed, Europe’s share of the global GDP rose from 20% to 60%.¹⁶¹ And so, with the help of their chroniclers, the plunderers became the developed, and their victims the under-developed. “Euro-American development ‘was based on external destruction rather than internal innovation — brutal conquest, colonial control, stripping non-Western societies of their people, resources, and surpluses rather than single-mindedly undertaking . . . rational modernization.’”¹⁶² But that does not fit with the chroniclers’ tales.

In 1820, the income gap between the richest country and the poorest country was only 3 to 1.¹⁶³ By the 1950s, “the gap was 35 to 1.”¹⁶⁴ Yet, the plunder persisted, and the developed countries continued to gorge themselves on the resources of the rest: “[i]n 1947, for example, Malayan rubber was the British Empire’s biggest dollar earner, bringing in \$200 million, compared with the \$180 million earned by British manufacturing industry. By 1950, Malayan tin and rubber were earning \$350 million out of the sterling area’s total dollar earnings of \$2,385 million.”¹⁶⁵

¹⁵⁸ GALEANO, *supra* note 93, at 29.

¹⁵⁹ HICKEL, *supra* note 90, at 75.

¹⁶⁰ DAVIS, *supra* note 98, at 292.

¹⁶¹ *Id.* at 93.

¹⁶² RICHARD PEET & ELAINE HARTWICK, THEORIES OF DEVELOPMENT: CONTENTIONS, ARGUMENTS, ALTERNATIVES 188 (2015); Eslava, *supra* note 87, at 95.

¹⁶³ HICKEL, *supra* note 90, at 102.

¹⁶⁴ *Id.*

¹⁶⁵ JOHN NEWSINGER, THE BLOOD NEVER DRIED: A PEOPLE’S HISTORY OF THE BRITISH EMPIRE 207 (2000) [hereinafter NEWSINGER].

This was a global system of plunder, constitutive of, and presided over by the Gluttonous Machine. But its chroniclers strove to develop and disseminate its stories of freedom, civilisation, and progress. These myths have metastasised over time into common-sense and knowledge, histories of Europeans discovering new lands and improving them;¹⁶⁶ encountering and civilising backward peoples.¹⁶⁷ A grand myth of overcoming the deficiencies of nature and culture to improve the living conditions of all. Harry Potter's incantations in action: *developmentus occurium* and *barbarism extinctus*. Human progress conjured up through the magic of PIL: "[t]owards the beginning of *The Bottom Billion*, Collier remarks that 'all societies used to be poor'. Asking his readers to imagine the situation of the bottom billion, he continues: 'You don't have to try that hard to imagine this condition – our ancestors lived this way.'¹⁶⁸

But, Susan Marks notes that our ancestors were never poor in the way the bottom billion are immiserated today. The magic works differently, altering primarily the worldviews of the developed peoples. In fact, "poverty of the kind experienced today is not a token of backwardness, but a modern phenomenon".¹⁶⁹ Neither poverty nor inequality are natural or background conditions. Our ancestors never experienced them,¹⁷⁰ and had no need to escape them — and neither did pre-colonial societies.¹⁷¹ They were created by European colonial violence, legitimised through PIL. But they were also successfully naturalised by European colonial mythologies, including the stories of a benevolent, progressive PIL — stories we reiterate in our Potteresque writings today.

B. *Decolonial Struggles, Victories and Defeats*

The colonial world order came under pressure from the end of WWII. India wrenched her independence from Britain in 1947, becoming a beacon of hope and a strong voice for the growing independence movements across the European Empires. The struggles for independence, peaceful and violent, spread across Asia and Africa. These could not be suppressed militarily, and the UN failed in its task of managing the colonial order. However, the struggle for independence and formal political freedom coincided with two other conflicts: a declared legal battle over the rules of state succession (in particular the bindingness of colonial era treaties, concessions, and debts) and an undeclared dirty war of coups and assassinations waged by the former colonial powers (including the USA) against any newly

¹⁶⁶ Neocleous, *supra* note 21.

¹⁶⁷ RAYMOND F. BETTS, *DECOLONIZATION* 12 (1998).

¹⁶⁸ Susan Marks, *Human Rights and the Bottom Billion*, 1 *EUR. HUM. RTS. L. REV.* 37, 46 (2009).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

independent state which pursued policies that might actually lead to substantive independence.

C. *Wars of National Liberation*

The colonised peoples understood that the system of benign colonialism under the UN's supervision was a charade. Their resistance at the symbolic and physical levels was unending. Over the course of the 1950s, 60s, and 70s, colonised peoples around the world fought their way out of colonial subjugation. These wars for independence were brutal, cruel, and bloody. The colonial powers used every weapon at their disposal to retain control, from carpet bombing and starvation to systematic torture and ethnic cleansing. And yet, the colonised peoples prevailed.

It is telling that the historiography of contemporary PIL elides these struggles, and instead develops a fantastical story which credits the magic of PIL itself with freeing these nations. Harry Potter's spells were powerful here, drawing as they could from the *ius cogens* right to self-determination. As the International Court of Justice recently ruled:

General Assembly Resolution 1514 (XV) clarifies the content and scope of the right to self-determination. The Court notes that the decolonization process accelerated ... during the 1960s ... In the Court's view, there is a clear relationship between resolution 1514 (XV) and the process of decolonization following its adoption.¹⁷²

Moves like this are characteristic of Potteresque PIL; and have the collateral benefit of bolstering the twin myths of PIL's righteousness and (potential) strength. However, this comforting story is historically untrue and politically misleading. It was neither the force of PIL (*independium occurus*) nor the benevolence of the imperial powers which led to decolonisation. It was the struggle, strength, and sacrifice of the colonised people themselves. PIL's actual role was very different; it restricted and undermined the freedom fighters' hard-won gains.

As a prerequisite for entry into the international legal system, newly independent nations and peoples were forced to adopt the state form and retain their colonisers' arbitrary territorial borders.¹⁷³ However, they wanted to challenge that legal system, "burdened by a disciplinary history of active involvement in the encouragement,

¹⁷² Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1956, Advisory Opinion, 2019 I.C.J. 95, ¶ 150 (Feb. 25).

¹⁷³ Pahuja (2010), *supra* note 86, at 370.

fostering or promotion of colonization.”¹⁷⁴ From decolonising themselves, they wanted to also decolonise PIL. Their former colonial masters were not supportive of this venture, and resisted the attempts of the newly independent states to pursue substantive political and economic independence, let alone equality.¹⁷⁵ “The world-historical transformation known as ‘decolonization’ was simultaneously an emancipatory awakening of peoples [and] a heteronomous process of imperial restructuring.”¹⁷⁶

D. Struggles over State Succession to Colonial Treaties and Concessions

The ‘standard accounts’ of decolonisation in PIL are always progressive, concluding that the UN’s processes of decolonisation “brought colonialism as a practice to an end”.¹⁷⁷ The reality is somewhat more complex and ambivalent. Certainly, direct territorial possession and formal control were lost to the imperial powers, but they fought to maintain “imperial relations beyond the moment of decolonization.”¹⁷⁸ This manifested as a struggle over the rules of state succession and how they might apply in the context of decolonisation. “Whether the ‘newly independent’ States ... were entitled to overseas assets or liable for public debt, [and] whether they had an obligation to respect contracts or concessionary agreements relating to that territory”.¹⁷⁹ These arguments were actually critical engagements with the very nature of PIL itself. Was decolonisation a fundamental change in the international legal order, or “a largely ephemeral or transitional problem”?¹⁸⁰

At issue was control over the resources and wealth of the decolonised world, the extent of substantive freedom which would accompany formal political independence. Each side perceived the other as cynical, even immoral. For Bedjaoui, leading the anti-colonial charge, “traditional international law” was but a “dubious neo-colonialist ideology”, aimed at keeping newly independent states “in a condition of continued bondage.”¹⁸¹ Opposing him, O’Connell presented the situation in much less dramatised form: it was a simple question of legal continuity. As legal continuity was necessary to the basic functioning of PIL, almost all rights and

¹⁷⁴ MATTHEW CRAVEN, *THE DECOLONISATION OF INTERNATIONAL LAW* 5–6 (2007) [hereinafter CRAVEN].

¹⁷⁵ JESSICA WHYTE, *THE MORALS OF THE MARKET: HUMAN RIGHTS AND THE RISE OF NEOLIBERALISM* (2019) [hereinafter WHYTE]; JOHN LINARELLI ET AL., *THE MISERY OF INTERNATIONAL LAW* (2018).

¹⁷⁶ Eslava, *supra* note 87, at 72; GARY WILDER, *FREEDOM TIME: NEGRITUDE, DECOLONIZATION, AND THE FUTURE OF THE WORLD* 241 (2015).

¹⁷⁷ CRAVEN, *supra* note 174, at 19.

¹⁷⁸ *Id.* at 20.

¹⁷⁹ *Id.* at 21.

¹⁸⁰ *Id.* at 84.

¹⁸¹ *Id.*

obligations, municipal or international, would transfer to and bind the newly independent states.¹⁸² This conflict was never truly resolved.

The newly independent states ‘won’ in the arena of the United Nations General Assembly (UNGA), using their recently acquired numerical advantages to pass resolutions 1514 Granting Independence to Colonial Countries and Peoples, 1803 on Permanent Sovereignty over Natural Resources, and even 3201 on the Declaration for the Establishment of a New International Economic Order (NIEO). “The Assembly and other UN organizations thus provided the arena in which disputes over aid, trade, foreign investment, and the structural imbalances in the world economy took place.”¹⁸³ Here, “a more organized and outspoken South was ready to challenge the biases of international structures more directly, and to anchor the source of their problems in the global maldistribution of resources.”¹⁸⁴ This was an attempt to wrest both, the law *and the dominant narrative* from the Gluttonous Machine and its chroniclers — to write new stories and create a better world.

The “future G77 demanded not only ‘constructive international action’ to support their development, but also a new international framework ‘wholly consistent with the needs of accelerated development’ in the South.”¹⁸⁵ The imperial powers responded, forming the G7 in 1975, “to counter the rise of developmentalism and the NIEO, and to prevent global South countries from working together to increase the prices of raw materials.”¹⁸⁶ They shifted the locus of global decision-making from the UNGA to the United Nations Security Council, and then on to the World Bank, the International Monetary Fund (IMF), and the World Trade Organization (WTO), all institutions in which they continue to dominate.¹⁸⁷ This struggle would rend PIL in two, independently legitimating the Gluttonous Machine, and freeing the chroniclers from its constraints. This created the space for truly Pottesque productions — the stories improved, but the world did not.

E. Developmentalism in the Era of the Coup

The developmentalist hiatus was important, and briefly quite successful. It culminated in the call for an NIEO. The emerging leaders of the nascent Third

¹⁸² *Id.* at 85.

¹⁸³ Vanessa Ogle, *State Rights Against Private Capital: The “New International Economic Order” and the Struggle over Aid, Trade, and Foreign Investment, 1962-1981*, 5(2) HUMAN. J. 211, 215 (2014) [hereinafter Ogle].

¹⁸⁴ Eslava, *supra* note 87, at 89.

¹⁸⁵ U.N. Conference on Trade & Development (UNCTAD), *Joint Declaration of the Seventy-Seven Countries*, ¶ 2 (June 15, 1964).

¹⁸⁶ HICKEL, *supra* note 90, at 147.

¹⁸⁷ *Id.* at 165.

World “pointed out that underdevelopment in the global South was ... a consequence of the way Western powers had organised the world system over hundreds of years.”¹⁸⁸ They saw in the new international institutions a chance to change this, “they wanted justice – and they saw this as a basic precondition for development.”¹⁸⁹ The goals of the NIEO were ambitious. They provided that developing countries should have the rights to regulate multinational corporations; protect their economies with tariffs; nationalise foreign-owned assets; cooperate with each other to maintain reasonable prices for raw materials¹⁹⁰ — “and, most importantly, the freedom to do these things without fear of retaliation or invasion by Western powers.”¹⁹¹ But these rights would not be realised.

In fact, the era of developmentalism could also be accurately described as the era of the coup. This was imperial history redux. The Latin American states gained their independence between 1812 and 1815. By 1823, the USA instituted the ‘Monroe Doctrine’, declaring Latin America under its exclusive influence, and setting off an era of coups and armed interventions. “Latin America ... led the way towards colonial emancipation, but also prefigured, at every step, each forthcoming agony for the Third World as a whole.”¹⁹² This process would be repeated across Africa, Asia, and the Middle East during the decolonisation period. Mosaddegh was overthrown in a Central Intelligence Agency backed coup in 1953, Lumumba in 1961, Sukarno in 1965, Allende in 1973, Sankara in 1987, and Aristide experienced this *twice*, in 1990 and 2004. Thus, Iran, the Congo, Indonesia, Chile, Burkina Faso, and Haiti were deprived of leaders who sought to make positive changes for their own populations at the expense of the interests of the developed states.¹⁹³

Despite all of this, the formerly colonised peoples tasted some success. The international financial institutions (IFIs) established to facilitate colonial reconstruction after WWII were initially ill-prepared to further colonial oppression.¹⁹⁴ The divide between the colonising peoples (who should be aided by this machinery) and the colonised (who should not) was presupposed, not incorporated into their mandates. Taking advantage of this loophole in the faux-

¹⁸⁸ *Id.* at 20.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 146.

¹⁹¹ *Id.*

¹⁹² Eslava, *supra* note 87, at 99.

¹⁹³ See, e.g., 22 *African Presidents Have Been Assassinated by France Since 1963*, AFRICAN GLOBE (May 25, 2019), <https://www/africanglobe.net/africa/22-african-presidents-assassinated-france-1963/>.

¹⁹⁴ Philipp Dann, *The World Bank in the Battles of the ‘Decolonization Era’*, in *THE BATTLE FOR INTERNATIONAL LAW 278* (Jochen von Bernstorff & Philipp Dann eds., 2019) [hereinafter Dann].

universal order, and their own extensive natural resources, the Third World states were able to engineer a period of genuine development.¹⁹⁵

This gave rise to the (brief) period of ‘developmentalism’, where the former colonies mimicked the domestic economic policies of their colonisers: state-led development, nationalising key resources and industries, industrialisation under protectionism, import substitution, and tight controls on foreign capital flows.¹⁹⁶ These policies were supported by the IFIs, which were at the time, still under the grip of Keynesian thinking and committed to the formal equality of all of their members, even the new, underdeveloped ones. And it worked.¹⁹⁷ Income and wealth gaps between the developed and undeveloped states fell for the first, and only time, in modern history. The South “experienced during this period ‘the fastest economic and productivity growth rates in history’”.¹⁹⁸

Development of the South, however, runs counter to the interests of the North, whose states and corporations rely on cheap labour and resources from the former colonies.¹⁹⁹ The “developmentalist revolution – and the South’s growing political power – was eroding the foundations of the world system that Europe and the United States had come to rely on”,²⁰⁰ and it could not go unchallenged.

Third World political unity and the bipolarity of the Cold War allowed the developmentalist states to stand firm for a while.²⁰¹ But the former colonial powers launched an assault as unrelenting as the colonial greed for resources and luxuries which drove it. The Gluttonous Machine was “designed so that ... Europe and the US could siphon cheap raw materials from the periphery”,²⁰² and they had become addicted to these. They would not give up that system, and fought hard to restart the Machine; to undermine developmentalism. Their “strategy of resisting the rise of the South with coups had worked well enough for a time”, but it was beginning to fail.²⁰³ The imperial powers needed a new strategy to reassert control over their former colonies, which was gifted to them by the debt crises of the early 1980s.

IV. RE-COLONISATION THROUGH DEBT AND FREE TRADE

¹⁹⁵ HICKEL, *supra* note 90, at 111; Eslava, *supra* note 87, at 85.

¹⁹⁶ HICKEL, *supra* note 90, at 111–115.

¹⁹⁷ *Id.* at 112.

¹⁹⁸ Eslava, *supra* note 87, at 87.

¹⁹⁹ HICKEL, *supra* note 90, at 114.

²⁰⁰ *Id.* at 114–115.

²⁰¹ *Id.* at 113; *see also* PRASHAD, *supra* note 47; Eslava, *supra* note 87, at 86.

²⁰² HICKEL, *supra* note 90, at 101.

²⁰³ *Id.* at 146.

The oil embargo imposed by the Organization of the Petroleum Exporting Countries in the early 1970s was intended to pressure the US into ending Israel's (then recent) occupation of the West Bank and Gaza Strip. It did not succeed in improving the lot of the Palestinian people, but it did dump a huge surplus of petrodollars into the Wall Street banks.²⁰⁴ This massive injection of capital was recycled through targeted loans, into the economies of the developing world.²⁰⁵ The under-developed states were desperate for capital injections to build their economies and finance import substitution policies; also to cope with spiralling fuel prices.²⁰⁶ Holding to the mantra that "states don't default",²⁰⁷ the banks began aggressively pushing the loans — even onto states who could never repay them, and to corrupt dictators who siphoned the money off into their own accounts.

The Iranian Revolution of 1979 caused another spike in oil prices, and developing states had to borrow more to cover the rising fuel costs. 'Third World' debt rose from \$400 billion in 1970 to \$1.6 trillion in 1982.²⁰⁸ The terms of trade worsened as the market price of raw materials fell relative to the cost of manufactured goods that developing nations still had to import. Rising USA interest rates completed this perfect storm. The loans were denominated in USD and subject to variable interest rates. When the USA Federal Reserve raised rates to 21%, the developing states had no option but to default. Yet they were denied that option.²⁰⁹ Foreshadowing the financial crisis of 2008, the banks simply refused to shoulder the losses that default (of their own irresponsible loans) would cause. They turned to the USA government for support, and that government was only too happy to help — denying the developing states the right or capacity to default; insisting that they refinance the loans. "They did this by repurposing the IMF," effectively into a global debt collector.²¹⁰

The leaders of the developing states could, in theory, have refused to refinance the loans and insisted on their right to default. But in practice, they could not. It is important to emphasise that the 'era of coups' and the 'era of loans' were not separate points in a linear progression, they overlapped and intertwined; the narrative is always complex, despite the chroniclers' desires. Any Third World leader who stood against the interests of global finance was likely to find themselves deposed. The era of the coup must also be contextualised into a very long, very

²⁰⁴ *Id.* at 148.

²⁰⁵ Ogle, *supra* note 183, at 222.

²⁰⁶ HICKEL, *supra* note 90, at 149–150.

²⁰⁷ *Id.* at 150.

²⁰⁸ PATRICK BOND, *ELITE TRANSITION: FROM APARTHEID TO NEOLIBERALISM IN SOUTH AFRICA* 188 (2000).

²⁰⁹ *Id.* at 152.

²¹⁰ *Id.*

violent, history of ‘debt enforcement’ by the Euro-American states.²¹¹ This history is exemplified by the Anglo-French takeover of Egypt from 1876–1882 when Alexandria was bombarded and thousands of Egyptians killed to suppress resistance to European control and ensure debt repayment.²¹² Prefiguring contemporary neocolonialism, “the British government realised that only a despotism under European control could safely protect the bondholders’ interests.”²¹³

Nor was this merely a question of history. In 1987, Thomas Sankara, the young, charismatic, and progressive President of Burkina Faso gave a remarkable speech to the delegates of the Organization of African Unity. In it he declared that “[d]ebt is neocolonialism. It is a cleverly managed reconquest of Africa. The debt cannot be repaid.”²¹⁴ He was, of course, correct. Three months later, he was also dead — murdered in a coup engineered by France.²¹⁵ This history of Euro-American violence was salutary. Loans were refinanced, with conditionalities attached. “The crisis was simply an excuse for rolling out an economic agenda that Washington had long been seeking to impose.”²¹⁶ But in the hands of the chroniclers, even this intervention was benign, a renewed effort to drag states into development, a revitalised dynamic of difference. It was the return of the saviour.

The imposition of these ‘agreed’ loan conditionalities makes all of this appear voluntary — the states consented to take the loan, on the terms on offer, and they ‘voluntarily’ adopted the advice of the technocrats. This is the independent justification for the Machine, as those conditionalities transfer “de facto control over economic policy in developing countries ... to technocrats in Washington, and bankers in New York and London.”²¹⁷ Although justified by the chroniclers through the myths of development, this government by remote control was never in the interests of those governed, and did extensive damage to their lives and well-being.²¹⁸ “In the early 1980s, the G7’s goal was to use the World Bank and the IMF to cripple the South’s economic revolution and re-establish Western access to its resources and markets. On this point, they certainly didn’t fail.”²¹⁹

²¹¹ *Id.* at 178–180.

²¹² NEWSINGER, *supra* note 165, at 84–126.

²¹³ *Id.* at 90.

²¹⁴ HICKEL, *supra* note 90.

²¹⁵ *French MP Demands Inquiry into Murder of Burkina Faso President Sankara*, RFI (Feb. 13, 2013), <https://www.rfi.fr/en/africa/20130213-french-mp-demands-inquiry-murder-burkina-faso-president-sankara>.

²¹⁶ HICKEL, *supra* note 90, at 155.

²¹⁷ *Id.*

²¹⁸ *Id.* at 160–162.

²¹⁹ *Id.* at 167.

This coerced consent facilitated the fundamental divorce of idealistic and extractive PIL. The chroniclers lost sight of the Gluttonous Machine, which would rarely appear in subsequent tales of PIL's (imminent) glory. They reported on abuses, but "detached violations of human rights from the political, economic and social causes which make them possible and even rational."²²⁰ The legal imagination was emancipated, enabling idealistic PIL to present itself as fundamentally just, anti-colonialist, and pro-development. It is in this moment that Harry Potteresque fantasies begin to consolidate and develop into the dominant genre of PIL scholarship. The myth took on a life of its own; but the Gluttonous Machine was not vanquished or banished, merely ignored. Its work now enabled by the effective shift in decision-making power. Its imperial order re-established after the brief developmentalist hiatus. The incantations of *ius cogens* notwithstanding, formal independence "was merely a contingent variable ... imperial relations [continued] beyond the moment of decolonization itself."²²¹

The loans were refinanced through the IMF and the World Bank (the IFIs), which had, not coincidentally, been purged of their Keynesian officials and captured by neoliberal technocrats.²²² The IFIs imposed their infamous structural adjustment policies (SAPs) onto the new loans. These SAPs embodied neoliberal economic ideology, and forced the under-developed states to reverse the policies that had been driving their development. The new loan conditionalities enforced three basic demands:²²³

1. Cut public spending and redirect all cashflows and assets to debt repayment. This includes the removal of subsidies, cuts in public services, laying off public workers, and privatising public assets.
2. Deregulate the economy, remove tariff and non-tariff protections, cut labour rights and minimum wages; reorient the economy towards exports to raise hard currency.
3. Prioritise debt repayment over all other governmental expenditure.

The SAP programme destroyed the economies of formerly developing countries,²²⁴ and the gains of the developmentalist phase were wiped out.²²⁵ Average GDP among the developing states shrank by 10% per year, and the rate of extreme poverty

²²⁰ Susan Marks, *Human Rights and Root Causes*, 74(1) MODERN L. REV. 57, 59 (2011).

²²¹ CRAVEN, *supra* note 174, at 20.

²²² Betul Sari-Aksakal, *World Bank and Keynesian Economics*, 10(1) BUS. & ECON. RES. J. 81 (2009).

²²³ HICKEL, *supra* note 90, at 153.

²²⁴ HA-JOON CHANG, *BAD SAMARITANS: THE MYTH OF FREE TRADE AND THE SECRET HISTORY OF CAPITALISM* 15–18 (2007).

²²⁵ *Id.*

doubled.²²⁶ The IFIs had moved from neutrality to siding completely with the developed states. Taking on their project to re-assert imperial control, this time legitimated by the ‘consent’ of the (formerly) colonised.²²⁷ The developmentalist project was killed off, “the oil shock and the vortex of debt, dependency, and loans with strings attached ultimately removed any leverage the NIEO might have previously had.”²²⁸ The wealth gap between the rich and the poor states began to widen once more.

The WTO completes the unholy trinity of the global economic order; the contemporary triad operating the Machine. Joining the WTO is technically optional, but in fact obligatory for economies SAP-ped into a total dependency on exports and foreign investment.²²⁹ Its rules entrench and expand the logic of the SAP policies which have destroyed many economies and lives.²³⁰ This coercively-imposed policy package becomes self-sustaining, destroying the economies of ‘developing states’ (a term made meaningless to the point of insult), and rendering them totally dependent on foreign investment and loans. This combination of violence, debt, and loan conditionalities paved the way for the contemporary neo-colonial global order. The struggle for economic control over the formerly colonised states had been won by the colonists.²³¹ Between them, the three institutions administered the transition to neo-colonial rule, imposed by co-opted local elites: “The essence of neo-colonialism is that the State which is subject to it is, in theory, independent and has all the outward trappings of international sovereignty. In reality, its economic system and thus its political policy is directed from outside.”²³²

Neocolonialism is, at its most basic, colonialism by remote control, re-presented as independent governance. It reproduces the structures of colonialism behind a façade of consent. It forms the unacknowledged backdrop to the current tales of Harry Potter’s incantations, and their failures (i.e., human rights breaches). No longer having to justify colonial plunder and its effects, the chroniclers learned to ignore, or even deny it; to focus on Harry instead, on the texts presumed to codify his incantations.

²²⁶ *Id.*

²²⁷ Dann, *supra* note 194; Alexander E. Kentikelenis et al., *IMF Conditionality and Development Policy Space, 1985-2014*, 23(4) REV. INT’L POL. ECON. 543 (2016).

²²⁸ Ogle, *supra* note 183, at 211.

²²⁹ Lisa Toohey, *Accession as Dialogue: Epistemic Communities and the World Trade Organization*, 27(2) LEIDEN J. INT’L L. 397, 407 (2014).

²³⁰ *Id.*

²³¹ Ogle, *supra* note 183, at 225.

²³² KWAME NKRUMAH, *NEO-COLONIALISM: THE LAST STAGE OF IMPERIALISM* 9 (1965).

The colonial governance system itself was fairly simple. The local elite had to maintain order while extracting the maximum possible resources to be exported cheaply to the coloniser. In return, the coloniser provided the local elite with military protection, political patronage, and the right to enrich itself by retaining a small share of the extracted wealth. In the transition to a neo-colonial order, little changes. The local elite is nominally independent, but continues to serve at the pleasure, and in the interests, of the former coloniser. Their role is unchanged — to maintain order, while extracting the maximum possible resources to be exported cheaply to the coloniser. The benefits package is pretty much the same too. Military protection is transformed into arms supplies and training, and the laws on intervention by invitation also facilitate direct military protection. Political patronage and the right of self-enrichment by skimming the profits of plunder remain unchanged. As Luis Eslava notes:

European colonial powers had slowly begun to reread claims for independence not as a threat but as an opportunity for local elites to discipline their own populations and economies. The idea of indirect rule ... became the model of this new form of control. ... Achieving self-government began to be imagined, in this context, as a neat incremental transition, to be executed with the help, and according to the interests, of colonial powers and the international community as a whole.²³³

This is hard-wired into the structure of PIL through the definition of statehood, developed by the colonisers and imposed on the colonised at the moment of their independence. The state in PIL is a defined territory whose population is subject to the effective control of its government.²³⁴ Reversing this equation, whichever group can impose its will on the population of a defined state territory becomes its legal government. Those governments are granted certain formal privileges by PIL: the right to dispose of the state's resources; the right to borrow in the state's name; the right to buy arms and deploy violence in that territory; and the right to bind the state to international treaties and conventions.

These rights work together to allow the government to retain control and fulfil its neo-colonial functions: to operate its part of the Gluttonous Machine. The resources of the state are transferred to the colonisers at prices (essentially) of their choosing. The proceeds are used by the ruling elites to buy the arms necessary to retain effective control. If those proceeds are insufficient, loans can be acquired, using the state as collateral. Control is maintained through force, and legitimated by the political patronage of the coloniser, and cynical ratifications of the Potteresque major

²³³ Eslava, *supra* note 87, at 81; see also MITCHELL, *supra* note 25, at 80.

²³⁴ Montevideo Convention on Rights and Duties of States, art. 1, Dec. 26, 1933, 165 L.N.T.S. 19.

human rights treaties. Profits are skimmed, the Machine feeds, rights abuses entail, Harry Potter utters incantations, and the cycle repeats. The treaty privilege lubricates this machine. The unequal treaties of the colonial era are repackaged as the neutral expertise of the WTO and the IFIs. The Gluttonous Machine continues funnelling resources from the poor to the rich, maintaining Euro-American development by impoverishing the rest of the world. Harry's chroniclers focus on the entailed rights abuses, deracinated from their colonial soils.

A. Ambivalent Victory, the Creation of a New Form/Image of PIL as De-colonial

Proponents of the NIEO took "the job of universalizing international law seriously," trying to ensure that PIL was "definitively set against colonial ambition or imperial control".²³⁵ Sovereignty and the formal equality of states were cornerstones of traditional PIL, but at no point in the discipline's history have they been universalised in the manner pursued then. Sovereignty has always been differential, with some states more sovereign than others,²³⁶ and non- or sub-state entities granted varying forms of limited personality and decision-making power.²³⁷ To push for 'substantive equality' for the newly independent states was radical indeed. "Decolonization [put] in question the very basis upon which the law itself had been constructed."²³⁸

However, "the prerogatives of sovereignty ... were already substantially under attack in mainstream discourse [which opposed] ... the return of a discredited tradition that reified sovereignty and paid insufficient attention to ... human rights".²³⁹ New myths were being woven, with the Potteresque demands of IHRL at their core. Thus, even as the sovereignty of the decolonised states was reluctantly recognised, efforts were already under way to restrict and undermine it. These reduced the potential emancipation of the decolonised states to a simulacrum: "the decolonization of the legal imagination".²⁴⁰ Consequently, "[t]he human rights agenda pursued by major human rights NGOs such as Amnesty International or Human Rights Watch ... depicted Third World suffering as an internal problem caused by the failure of post-colonial states to comply with human rights norms."²⁴¹ In the absence of formal colonial rule, Harry's chroniclers and hagiographers could perceive and present a world of equals, sovereign states, with sovereign rights and

²³⁵ CRAVEN, *supra* note 174, at 87.

²³⁶ GERRY SIMPSON, GREAT POWERS AND OUTLAW STATES 57 (2004).

²³⁷ Natasha Wheatley, *Spectral Legal Personality in Interwar International Law: On New Ways of Not Being a State*, 35(3) L. & HIST. REV. 753, 753 (2017).

²³⁸ CRAVEN, *supra* note 174, at 6.

²³⁹ *Id.* at 21.

²⁴⁰ *Id.* at 5.

²⁴¹ Jessica Whyte, *Powerless Companions or Fellow Travellers?*, 2(2) RADICAL PHIL. 13, 20 (2018).

responsibilities. Those states, of course, rarely became sovereign in any meaningful sense; but the fantasy tales of PIL were emancipated to pursue their own evolution and detachment from reality. In order to maintain narratives of Harry's quest for anti-colonial justice in a world of equal sovereign states, these have had to omit neo-colonialism:

Whereas the Third World sought to further the cause of global equity and, more ambitiously, global justice by changing the character of international relations and global economic structures (seeing these as being a cause for immiseration and enduring poverty), human rights ... suggested that the cause of injustice was purely endogenous. Justice could be achieved by demanding that states comply with human rights. As such, no need existed to change international economic structures.²⁴²

This curious de-colonial/neo-colonial moment comprised of two movements: the codification (though not solidification) of *de jure* sovereignty and the total loss of *de facto* sovereignty. The developing states became politically free and economically dominated almost simultaneously. This enabled the synchronised formation of PIL's anti-colonial self-image and the contemporary neo-colonial global order. Traditionally, the role of PIL was to legitimate the activities of the Gluttonous Machine. However, in that dichotomous moment, the Machine escaped the last tendrils of PIL's embrace. It was now self-legitimated, concealed behind the veneer of consent, technocratic, and insulated: autonomous.²⁴³

And thus, the chroniclers of PIL were *also* untethered from the Gluttonous Machine and its devastating effects. Unmoored from the concrete reality the Machine produces and provides, their fantasies were free to grow and fragment exponentially. This detachment from the concrete reality of the Machine was supplemented by the widespread internalisation of the myth that under-development was a result of IHRL violations and poor economic choices. This set the scene in which the chroniclers would develop stories about their hero, Harry Potter: his power, his goodness, his omnipresence, the magic of his commands; and of course, the malice of his adversaries, including his nemesis — *realpolitik*. Harry's imaginary quests are retold in splendid detail; his ultimate triumph over his nemesis foretold; and the glories to come predicted, analysed, and refined. These enable ever more marvellous tales of Harry's powers and ambitions, culminating in the extravagant fantasy novellas of the 'Sustainable Development Goals', and the Human Rights Committee's baroquely

²⁴² Antony Anghie, *Whose Utopia? Human Rights, Development, and the Third World*, 22(1) QUI PARLE 63, 74 (2013).

²⁴³ JOHN LINARELLI ET AL., THE MISERY OF INTERNATIONAL LAW: CONFRONTATIONS WITH INJUSTICE IN THE GLOBAL ECONOMY 18–22 (2018).

detailed right to be kept alive in even the most trying circumstances, ‘General Comment 36’.²⁴⁴

B. Continuity After Rupture: The Contemporary Neo-Colonial Global Order

In our neo-colonial world order, the Gluttonous Machine extracts resources from the under-developed states, concentrating them in the over-developed states. This practice is legitimated by a combination of (coerced) state consent and (alleged) technocratic expertise. The IFI’s loans and conditionalities were voluntarily undertaken, as was membership of the WTO, and are thus binding. Moreover, the interventions made through these conditions and the WTO rules, represent an a-political exercise in development economics which requires no further justification. They seek to ‘improve’ on the conditions of ‘waste’ they encounter.

The actual functioning of the Machine is rarely analysed; but it creates a condition of perpetual deferral, unveiling ‘development’ as a project of maintaining the inequality of the colonial *status quo*, while presenting this as progress.²⁴⁵ The old processes of plunder, ameliorated for two decades, have resumed with vigour. All gains of the developmentalist era have already been undone, and under-developed states have been returned to their colonial function — repositories of cheap labour and resources. As these are now accessible to the over-developed states through debt-induced ‘consent’ and WTO enforced ‘free trade’, there is no apparent colonial exploitation to justify. Just debt, voluntarily assumed, and awaiting repayment.

This creates a perpetual debt peonage which is ruinous for the South,²⁴⁶ but provides a steady source of income for the North. “Altogether, during the whole period since 1980, the South has made debt service payments totalling \$13 trillion.”²⁴⁷ While development expertise and debt conditionalities lay the foundations for contemporary systems of plunder, it is in the final member of this unholy trinity, global trade, that the extractive processes really function. “Whoever controls the rules of international trade controls the flow of our planet’s vast wealth and resources.”²⁴⁸

WTO rules have an authoritative status, and a fairly determinate content, because they are enforced. However, because “the power of enforcement is distributed asymmetrically according to market size, there is little reason for rich countries to

²⁴⁴ U.N. Human Rights Committee (HRC), *General Comment No. 36, Article 6 (Right to Life)*, CCPR/C/GC/35 (Sept. 3, 2019).

²⁴⁵ Pahuja (2010), *supra* note 86, at 366.

²⁴⁶ HICKEL, *supra* note 90, at 178.

²⁴⁷ *Id.* at 176.

²⁴⁸ *Id.* at 184.

play by the WTO's rules. ... But poor countries have no choice."²⁴⁹ Because of this asymmetry, the rules themselves are clear and authoritatively determined, but they are also heavily biased against the under-developed states, adding the final layer to the modern system of 'voluntary' neo-colonial plunder. The cumulative effects are staggering. "At the end of 2016 ... [r]esearch[ers] ... found that ... developing countries received a little over \$2 trillion, including all aid, investment and income from abroad. But ... \$5 trillion flowed out of them in the same year."²⁵⁰ On top of all of this:

[T]here is a yawning gap between the 'real value' of the labour and goods that poor countries sell and the prices they are actually paid for them. This is what economists call 'unequal exchange'. In the mid-1990s, at the height of the structural adjustment era, the South was losing as much as \$2.66 trillion in unequal exchange each year (in 2015 dollars).²⁵¹

In other words, even failing to account for land grabs and the costs of climate change, the under-developed world is *subsidising* the developed world by approximately \$5.5 *trillion* annually.

It is this self-reproducing backdrop which renders even the most potent of the Potteresque incantations of PIL powerless. The 'post-colonial' world imagined in this fantasy literature bears little resemblance to the real world, where magic spells serially fail. There is very little structural difference between the colonial and neo-colonial world orders, though settler-colonies like Israel became more conspicuous amidst the ideological repackaging which accompanied the transition. Israel remains an anachronism, but it is far from an anomaly. Laura Ribeiro draws on Harry's nemesis, *realpolitik* to refuse the colonial structure of PIL: "[t]he case of Palestine marks a duplicitous break in international law. Post-WWII international law became the dominant language and institutional means through which de-colonization was articulated, while in Palestine, it reproduced colonial structures and legitimized a new colonial outpost."²⁵²

The creation of Israel was a moment of uncharacteristic honesty, exposing the duplicity of PIL itself. The Gluttonous Machine reproduces (neo-)colonial structures of exploitation, behind the screen of decolonisation and equality that Harry's chroniclers provide. This system is far more efficient than formal colonialism ever was. "In 1960, at the end of colonialism, per capita income in the richest country

²⁴⁹ *Id.* at 194.

²⁵⁰ *Id.* at 25–26.

²⁵¹ *Id.* at 28.

²⁵² Laura Ribeiro, *International Law, Sovereignty and the Last Colonial Encounter: Palestine and the New Technologies of Quasi-Sovereignty*, 15 *PALESTINE Y.B. INT'L.L.* 67, 68 (2009).

was thirty-two times higher than in the poorest country ... by 2000, the ratio was 134 to 1.”²⁵³ The ratio is now 439 to 1,²⁵⁴ and “there live on this earth both the poorest and the richest people who *have ever lived*.”²⁵⁵

C. *Rupture after Continuity: Harry Potter and the Conscience of the International Community*

Fortunately for those who place their faith in Harry, all of this plunder and exploitation, and the brutality and oppression it produces, take place quietly, unseen, unheard, in the darker parts of the world.²⁵⁶ At least that is the design, though it may be fraying at the edges.²⁵⁷ In 2000, the Gluttonous Machine was estimated to hasten the demise of fifty thousand human beings *daily*,²⁵⁸ and as many as thirty-four thousand of its daily victims were children under five years old,²⁵⁹ sacrificed on the altar of Euro-American greed.²⁶⁰ It imposed untold suffering on billions more; yet the Euro-American world, in a spectacular display of denial and wilful ignorance, chose to *unsee* all of this.²⁶¹

Instead, statistics were produced to show that poverty, and poverty-related deaths, are going down; but these are often self-referential ‘indirect estimates’, and hard to verify, or believe. Even using these statistics, at any level above \$1.90 per day (purchasing power parity to 2011 USD), global poverty is *higher* now than it was in 2000.²⁶² Globally, more people die each year than did in the previous year.²⁶³ Child

²⁵³ HICKEL, *supra* note 90, at 16.

²⁵⁴ See *GDP Per Capita (Current US\$)*, WORLD BANK, https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?end=2019&most_recent_value_desc=false&start=2019&view=bar.

²⁵⁵ Pahuja (2010), *supra* note 86, at 366.

²⁵⁶ Neocleous, *supra* note 21.

²⁵⁷ See *Migrant Deaths in the Mediterranean Exceed 20,000 Since 2014*, MIGRANT PROJECT (Mar. 9, 2020), <https://www.themigrantproject.org/mediterranean-deaths-2/>.

²⁵⁸ UNITED NATIONS CHILDREN’S FUND, *THE PROGRESS OF NATIONS 20* (2000) [hereinafter UNICEF, *PROGRESS OF NATIONS*].

²⁵⁹ See WORLD HEALTH ORGANISATION, *THE WORLD HEALTH REPORT: MAKE EVERY MOTHER AND CHILD COUNT*, xi (2005), wherein the Director-General stated, “we still allow well over 10 million children and half a million mothers to die each year, although most of these deaths can be avoided.”

²⁶⁰ Anne Orford, *Beyond Harmonization: Trade, Human Rights and the Economy of Sacrifice*, 18(2) LEIDEN J. INT’L L. 179, 179–213 (2005).

²⁶¹ CHINA MIEVILLE, *THE CITY & THE CITY* (2018).

²⁶² See *Regional Aggregation Using 2011 PPP and \$1.9/Day Poverty Line*, WORLD BANK, <http://iresearch.worldbank.org/PovcalNet/povDuplicateWB.aspx>; see also UNITED NATIONS CHILDREN’S FUND ET AL., *LEVELS & TRENDS IN CHILD MORTALITY* (2020) [hereinafter *CHILD MORTALITY REPORT*].

²⁶³ Hannah Ritchie, *How Many People Die and How Many Are Born Each Year?*, OUR WORLD IN DATA (Sept. 11, 2019), <https://ourworldindata.org/births-and-deaths>.

mortality is purported to be declining, but still represents around seven million deaths per year.²⁶⁴ Food insecurity and conflict are increasing, exacerbated by the effects of climate change. It seems counterintuitive to assume poverty-related deaths are falling in this context. And even if it were true, the response would amount, at best, to a *Blairesque*. I think you'll find it's closer to nine million people the Machine kills annually.²⁶⁵

When analysing the international community in action, many of Harry's chroniclers simply ignore the existence, functioning, and effects of the Gluttonous Machine. Others accept these unfortunate facts, but, *in spite of them being produced and regulated by PIL*, deem them either unlawful or extra-legal.²⁶⁶ Harry's followers are "able simply to ignore the catastrophe, to fail to see poverty, exploitation, degradation, human suffering and death on this massive scale; because these things are *too unlawful to exist*."²⁶⁷ Evading this world of suffering, exploitation, and death, these believers focus on the 'actual practice' of PIL, and on Harry's noble humanity.²⁶⁸ They hone spells and incantations in the soft glow of sacred texts: treaties and treatises; the proceedings and reports of toothless committees; the International Law Commission and other international 'norm producers'; non-governmental organisation (NGO) reports and practitioners' claims and demands; academic debates and expert panels.

Lacking both referent and effect in the real world, these texts are constructed to embody idiosyncratic political fantasies; literary works which are then *presented as* law, or objective legal analyses. PIL is framed as a repository of moral, political, and economic desires — reimaged as a neutral vantage point from which the world may be judged. The chroniclers now write nicer works, Harry Potter novellas, but their spells fail:

Whatever victory IL has won in framing terms of political debate is Pyrrhic: IL enters dominant discourse as and indeed because ... recent actions are seen to undermine it. IL has, in this version of events, become

²⁶⁴ CHILD MORTALITY REPORT, *supra* note 262.

²⁶⁵ SCOTT VEITCH, LAW AND IRRESPONSIBILITY (2007) [hereinafter VEITCH].

²⁶⁶ Jason Beckett, *Faith and Resignation: A Journey Through International Law*, in NEW CRITICAL LEGAL THINKING: LAW AND THE POLITICAL 155–176 (Matthew Stone et al. eds., 2012).

²⁶⁷ *Id.*

²⁶⁸ See, e.g., Samantha Besson, *Theorizing the Sources of International Law*, in THE PHILOSOPHY OF INTERNATIONAL LAW 180 (Samantha Besson & John Tasioulas eds., 2010); Basak Cali, *On Interpretivism and International Law*, 20(3) EUR. J. INT'L L. 805, 805 (2009); Mehrdad Payandeh, *The Concept of International Law in the Jurisprudence of H.L.A. Hart*, 21(4) EUR. J. INT'L L. 967, 967 (2010).

mainstream *because* it is in crisis. The more it ails, the more visible it becomes.²⁶⁹

The boy wizard's spells become important only when they fail, i.e., when PIL is spectacularly breached. However, this whimsical PIL actually works precisely by 'failing'. As Hilary Charlesworth notes: "[i]nternational lawyers revel in a good crisis. A crisis provides a focus for the development of the discipline."²⁷⁰ This is the classic understanding of PIL as noble but weak, at a hazardous point in its quest, judging a world it cannot — for lack of enforcement and the inefficacy of its spells — affect.

However, what 'humanitarians' perceive as a breach of the law is merely an occasion where events in the world differed spectacularly from their ethical and geopolitical desires, usually as a result of the Gluttonous Machine. Harry's incantations *do not identify*, let alone resolve, these breaches. He simply provides a language — which is often assumed to be authoritative, magical even²⁷¹ — to criticise international conduct we strongly disapprove of. Two things follow from this:

1. Harry's spells can be reversed, as PIL also provides the resources to articulate the opposite point, to defend the conduct in question.
2. There is no authoritative arbiter (no Ministry of Magic) to decide between the spells: both are technically competent.

In the Potterverse, PIL's radical indeterminacy is presented as a problem of implementation; the law becomes visible only on its spectacular breach. The incantation was clear, the spell properly chosen and performed. The lack of effect is due to the lack of enforcement; magic does not yet work in this world. But the magic itself remains pure. This, paradoxically, also shields legal analysis from its own indeterminacy and contingency by deflecting attention from the fact that although apparently ignored, the law (in a different interpretation) was also applied.²⁷²

The Potterverse appears more stable and visible in the terrain of humanity's law. Here, there is an apparently developed institutional order of pseudo-courts, toothless watchdogs, and faux-legislators, all of which generate perceptions of hierarchy, centrality, and authority. This faux institutional order leads to magical thinking, belief in determinacy, and an authority that does not actually exist or

²⁶⁹ China Mieville, *Multilateralism as Terror: International Law, Haiti and Imperialism*, 19 FINNISH Y.B. INT'L L. 63, 65 (2008).

²⁷⁰ Hilary Charlesworth, *International Law: A Discipline of Crisis*, 65(3) MODERN L. REV. 377, 377 (2002).

²⁷¹ JOAN DIDION, *THE YEAR OF MAGICAL THINKING* (2005).

²⁷² Jason Beckett, *The Deceptive Dyad: How Falseness Structures International Law*, INDON. J. INT'L & COMP. L. (forthcoming 2021).

function. Magic may work within those hallowed halls, but its effects do not permeate beyond them.²⁷³ Presumed important by its proponents, its writs, decisions, and demands bear a fictional or fantastical quality, radically misdiagnosed as objectivity, authority, and power — as magic. And while the chroniclers craft new myths, the Gluttonous Machine quietly consumes lives and resources.

V. LIFE IN THE GLOBAL SETTLER COLONY

Once we look beyond the fantastical beasts crafted by the chroniclers, the distinction between the settler colonies and the neo-colonies lacks moral salience. We *all* live in a global settler colony, where (we) the settlers inhabit the “world’s biggest gated community”,²⁷⁴ and siphon resources through the very walls we have built to keep the natives out and enclosed. The key is to understand that although the ‘settlers’ neither own nor claim the land, or the natives, they *do own and claim* the resources of that land, including the natives’ labour power. These are enabled to flow freely through walls of the settlers’ world; the natives are not, they may enter only as they are desired, at the whim of the settlers.

Neocolonialism is an efficient, decentralised, imperial relationship, that leaves the settlement and the colony entirely separate(d). In this form, the Machine ensures the flow of tribute to the imperial centre, the world of the settler; and prevents the natives making the same journey. Indifferent to the land, it functions to acquire the resources without the people. Indifferent to the resource transfers, Harry’s chroniclers observe and document the human rights abuses entailed by the Machine’s extractive governance of the under-developed states. Their descriptive analyses inevitably locate the roots of these pathologies locally, not globally — the responsibility of the native, not the settler. The world is a settler colony, Israel is its transparent microcosm. Israel and Canada provide the two archetypes of contemporary colonial governance.

The Potteresque discourse of humanity’s law allows us to create a distinction between Israel and ‘us’. But ‘we’ (us and them) both rely on colonial violence to finance and protect our lifestyles. Luxury is a drug; the colonial system is our dealer. Even when we try to be good, we do bad. Take the recently proposed ‘Green New Deal’, as part of which the USA (and Europe) will transition to renewable energy. This will require a new influx of resources, which happen to sit in the under-developed world. In order to extract and (re)claim those resources, the Gluttonous Machine will compel local elites and masses to further despoil their own lands; so

²⁷³ See, e.g., Human Rights Council, Philip Alston (Special Rapporteur), Rep. on Extreme Poverty & Human Rights on its Forty-Fourth Session, A/HRC/44/40 (2020).

²⁷⁴ Frank Jacobs, ‘The West’ Is, in Fact, the World’s Biggest Gated Community, BIG THINK (Oct. 12, 2019), <https://bigthink.com/the-present/walled-world/>.

that the over-developed can continue to enjoy their current lifestyles with less ecological guilt. But the chroniclers will expound the glory of Harry's work in IHRL and environmental law.

Yes, Israeli regime and forces often exercise their colonial violence more directly and more blatantly. But how many people have they killed, as a percentage of, say, those killed by the North Atlantic Treaty Organization or ad hoc coalitions or UN facilitated invasions/coups like Haiti, or sanctioned regimes like Iraq, where the US regime felt 1,500,000 Iraqi deaths were "a price worth paying"?²⁷⁵ Or by the poverty inflicted by contemporary PIL? Israeli violence is more blatant, more anachronistically colonial, more openly racist, and covetous, and carried out closer to home; but those are the only real differences, and they are not morally significant. Canada represents the opposite end of the spectrum of colonial violence: discrete, outsourced, hidden. Justin Trudeau is the perfect metaphor for this form of colonialism; Harry Potter all grown up. He is suave, caring, and cosmopolitan, yet presides over a regime that is settler-colonial at home and neocolonial abroad. He will wear native costumes on the correct occasions and attend smudge ceremonies; he will even retrospectively 'pardon' First Nations' diplomats and heroes for their colonially constructed crimes.²⁷⁶ But he will *not* stop the state-sponsored exploitation of treaty lands — nor the accompanying destruction of First Nations' lands, cultures, and lives — for their oil and gas resources.²⁷⁷ "Trudeau has gone to the United Nations to shed tears about the history of Canada's relationship with indigenous people, ... [a]nd on the other hand, he's essentially authorizing the use of force against our unarmed people for upholding our rights."²⁷⁸

His foreign minister, Chrystia Freeland, is happy to 'categorically' condemn Saudi Arabia for jailing female human rights activists,²⁷⁹ but at the same time refuses even

²⁷⁵ VEITCH, *supra* note 265.

²⁷⁶ Rachel Gilmore, *Trudeau Pardons Six Tsilhqot'in Chiefs Hanged in Chilcotin War*, IPOLITICS (Mar. 26, 2018), <https://ipolitics.ca/2018/03/26/trudeau-pardons-six-tsilhqotin-chiefs-hanged-in-chilcotin-war/>.

²⁷⁷ Bill McKibben, *When It Comes to Climate Hypocrisy, Canada's Leaders Have Reached a New Low*, GUARDIAN (Feb. 5, 2020), <https://www.theguardian.com/commentisfree/2020/feb/05/when-it-comes-to-climate-hypocrisy-canadas-leaders-have-reached-a-new-low>.

²⁷⁸ Amber Bracken, *Canada: Protests Go Mainstream as Support for Wet'suwet'en Pipeline Fight Widens*, GUARDIAN (Feb. 14, 2020), https://www.theguardian.com/world/2020/feb/14/wetsuweten-coastal-gaslink-pipeline-allies?fbclid=IwAR0GmVFfBoJF49ZnPtszeQKNagR6WW1Ic3Izn8bqCRoiHKIpfj_v0q1RNE.

²⁷⁹ Steven Chase, *Canada Criticizes Saudi Arabia over Another Jailed Female Activist*, GLOBE & MAIL (Aug. 21, 2018), <https://www.theglobeandmail.com/politics/article-canada-criticizes-saudi-arabia-over-another-jailed-female-activist/>.

to discuss the fifteen billion-dollar arms deal through which Canada profits from Saudi Arabia's genocidal violence in Yemen.²⁸⁰

The hypocrisy of the developed nations — embodied in Trudeau's suave indifference to suffering — can also be explained as the manifestation of colonial contradictions between the need to plunder and the urge to civilise. Compare this with the Israeli occupation, its colonisation of Palestine. Although generally condemned by proponents of humanity's law, it can also be defended in its terms.²⁸¹ More importantly, whatever stance we take in the fantasy of humanity's law, the occupation is also, always already, a product of that other, *actualised*, international law. Legal or illegal, the occupation is a manifestation of the Gluttonous Machine; sustained and protected by international law.

European States may claim to oppose the occupation, even to recognise Palestine. Yet, they continue to trade with Israel, to facilitate the purchase of resources plundered from Palestine. Defending a recent 'controversial' decision by the European Court of Justice to demand that goods produced in the occupied territories be labelled as such, "a spokeswoman for the European Commission, the EU's executive arm, insisted the ruling 'does not concern products from Israel itself.' It would not affect the privileged trading status the Jewish state has under its association agreement with the bloc", she added, before concluding that "[t]he EU does not support any form of boycott or sanctions against Israel and the EU rejects attempts by the campaigns of the so-called Boycott, Divestment, Sanctions (BDS) movement to isolate Israel."²⁸²

Likewise, American aid and global arms sales fund, fuel, and entrench the occupation. Global treaties allow multinational companies to operate in Israel and in its settlements. The same treaties allow them to export their products and expatriate their profits. The occupation could not exist without international law. It is, like poverty, a product of the interlocking forces we call international law. The Gluttonous Machine in action, but ignored by chroniclers enthralled with Harry Potter's nobility and potential power.

Palestinian collective identity is founded, in part, on a particular benign understanding of PIL: as a source of support and strength, as a manifestation of

²⁸⁰ *Freeland Defends Canada's Stance on Saudi Arabia Amid Sanctions*, CBC (Aug. 6, 2018), <https://www.cbc.ca/news/politics/canada-saudi-diplomacy-reaction-1.4775545>.

²⁸¹ Michael G. Kearney, *Lawfare, Legitimacy, and Resistance: The Weak and the Law*, 16(1) PALESTINE Y.B. INT'L L. 79, 79 (2010); Markus Gunneflo, *Settler-colonial and Anti-colonial Legacies in Palestine*, 20(1) PALESTINE Y.B. INT'L L. 171, 171–188 (2019).

²⁸² *EU Court Says Israel Settlement Goods Must Carry Label*, DAWN (Nov. 13, 2019), <https://www.dawn.com/news/1516368>.

pure but worldly justice.²⁸³ It was with this understanding of, and infatuation with, the mythical powers of their hero, Harry Potter, and his incantations on ‘Universal Human Rights’ that Palestinian ‘human rights defenders’ took the battle to the Israeli courts. They were out-flanked, out-manoeuvred, and suffered catastrophic defeat. The story is recounted in grisly detail by Aeyal Gross.²⁸⁴ The moral is clear: absent authority, missing magic in the real world, Harry is powerless, unable to explain or prevent atrocity, let alone force progressive political change.

Meanwhile, Europe is, and always has been, a racist and colonial endeavour. But recently, it has lost its capacity to silence and make invisible the suffering, oppression, and misery it outsources to the ‘brown’ parts of the world. So, we see its (our) racist inhumanity clearly and immediately. Europe has lost its ability to extract foreign resources without attracting unwanted immigrants and refugees, and has always driven the Gluttonous Machine and concentrated its lethal effects elsewhere. According to the United Nations Children’s Fund, these people traditionally, “die quietly in some of the poorest villages on earth, far removed from the scrutiny and the conscience of the world. Being meek and weak in life makes these dying multitudes even more invisible in death.”²⁸⁵ But now, rather than having the good grace to ‘die quietly’ in their own countries, Africans and Arabs insist on dying in the Mediterranean, dying in ways that make Europeans look and feel bad. What we see at present is not an aberration in European history. It is the norm of European history, simply brought closer to home.

And Europe pushes back in a classically European way, by trying to outsource the suffering on which it depends. By making deals with the governments and warlords of North Africa to keep the wretched penned in and unable to reach Europe — ideally unable even to die in the Mediterranean. To keep those who are fleeing to Europe away from Europe. To pen them in Algeria, to pen them in Libya, to pen them in Morocco. To keep them out of sight, quiet and invisible; or, at least, someone else’s ‘human rights crisis’. Another site of Potteresque fantasy, awaiting redemption.

VI. CONCLUDING THOUGHTS

²⁸³ John Reynolds, *Anti-Colonial Legalities: Paradigms, Tactics and Strategy*, 18 PALESTINE Y.B. INT’L L. 8, 9 (2015).

²⁸⁴ Aeyal Gross, *Human Proportions: Are Human Rights the Emperor’s New Clothes of the International Law of Occupation*, 18(1) EUR. J. INT’L L. 1, 1–35 (2007); Aeyal Gross, *Righting of the Law of Occupation*, in THE FRONTIERS OF HUMAN RIGHTS: EXTRATERRITORIALITY AND ITS CHALLENGES 21 (Nehal Bhuta ed., 2016); Aeyal Gross, *THE WRITING ON THE WALL: RETHINKING THE INTERNATIONAL LAW OF OCCUPATION* 191 (2017).

²⁸⁵ UNICEF, PROGRESS OF NATIONS, *supra* note 258, at 20.

It is important to highlight the hypocrisy of the European Union, and the hypocrisy of the international community: Israel's vocal critics and quiet enablers. It is equally important to understand the systemic imperatives driving that hypocrisy, driving the Gluttonous Machine of actualised PIL. The problem with this machine is very simple: it is rapacious. The Euro-American world (including Israel) accounts for roughly 20% of the global population and roughly 85% of global consumption.²⁸⁶ The lifestyle that we call modern and developed, implementing human rights, is an incredibly expensive lifestyle; it is only available to those who plunder from others. The dream of a universal human rights is unavailable. We cannot create a world where everyone is the thief, and no one is the victim. Hence, the attraction of Potteresque fantasy, unconstrained by politics or fact. So, we have two choices: either we accept the world where the thieves preach to the victims about their backwardness and barbarity, or we have a world where the thieves — the civilised, the modern, the rights bearers — are challenged. But that cannot occur through PIL or IHRL. Human rights were not designed, and will not function, to aid the oppressed:

While the human rights advocates ... mobilised neoliberal economic analyses to challenge Third Worldism and the NIEO, the neoliberal economists embraced the language of human rights. They soon saw that this new language, and the organisations that mobilised it to curtail the range of feasible political options and to licence interventions into post-colonial societies, could bolster their own agenda of imposing market discipline on former colonies.²⁸⁷

The reason that I don't like humanity's law, and the Potteresque incantations of human rights, is that I think that they are working. While the Gluttonous Machine goes on gorging and impoverishing, *I think human rights are doing exactly what they are meant to do*. They perform a functional continuation of the rhetoric of 'civilisation', disguising neocolonial extractive practices. Firstly, they deflect attention away from the reality and causes of extreme poverty, presenting the over-developed states not as exploitative oppressors but as benevolent patrons and role models for the under-developed — as bearers of human rights. In a similar vein, these incantations localise the search for causes of human rights violations; blame is pinned on the pathologies of state governance. The global system which largely determines governance decisions in under-developed state is left discretely out of the picture; as are its beneficiaries, the citizens of the over-developed states.

²⁸⁶ JOHN LINARELLI ET AL., THE MISERY OF INTERNATIONAL LAW: CONFRONTATIONS WITH INJUSTICE IN THE GLOBAL ECONOMY 13 (2018).

²⁸⁷ WHYTE, *supra* note 175, at 226.

Harry's real function lies in justifying and naturalising the wealth and the privilege of those who have wealth and privilege, while justifying and naturalising the suffering and exploitation of the rest. His true magic lies in persuading the victims of the benevolence of their oppressors. I echo Yash Tandon's bemusement: "I came to the conclusion that the reason Africa trusts Europe is, above all, the naïve belief that the Europeans have seen the error of their past sins and can now be trusted to deal with Africa ... with fairness and justice. This is what puzzled me most."²⁸⁸

Harry Potter stories serve to dissipate politics, to misdirect the energy and attention of resistance. They infantilise the oppressed, forcing them to turn to the superior civilisation of their oppressors — whether manifested as advocates, judges, or the ever-elusive 'international community'. Within the global settler colony these pleas cannot avail, because the underlying machine of which they form part is not challenged. Harry and his chroniclers are not fighting a rearguard action against politics — they offer only symbolic solidarity, a simulacrum of resistance against international law itself; with which they remain deeply complicit.

²⁸⁸ YASH TANDON, *TRADE IS WAR: THE WEST'S WAR AGAINST THE WORLD* 3 (2015).