

LAW AND THE CIVILIZING MISSION: THE EXPANSION OF THE WESTERN STATE MODEL

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ABSTRACT

The twentieth and nineteenth centuries were marked by an unprecedented process of westernization of the forms of political and legal organization of societies around the entire world, which resulted in the marked predominance that the Western State model -both in its Civil and Common Law manifestations- has in the contemporary international State system. The present essay intends to delve into the roots of this expansion of the Western State model over non-Western societies, arguing that what has been termed the “civilizing mission” of the West: a complex interaction between imperialism and ethnocentrism that motivates intervention upon the political, legal and social systems of non-Western societies, has played a definitive role in this process, which should not be overlooked.

Key words: state model, civilizing mission, imperialism, ethnocentrism, colonialism, neo-colonialism, League of Nations Mandate System, United Nations Trusteeship System, International Financial Institutions.

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LA LEY Y LA MISIÓN CIVILIZADORA: LA EXPANSIÓN DEL MODELO DE ESTADO OCCIDENTAL

RESUMEN

Los siglos XIX y XX estuvieron marcados por un proceso sin precedentes de occidentalización de las formas de organización política y jurídica de sociedades alrededor del mundo entero, que llevó a la marcada predominancia del modelo Estatal occidental –tanto en su manifestaciones de derecho civil como de common law– en el sistema interestatal contemporáneo. El presente ensayo busca estudiar las raíces de esta expansión del modelo estatal occidental sobre sociedades no-occidentales, argumentando que lo que ha sido denominado como “la misión civilizadora” de Occidente: una compleja interacción entre imperialismo y etnocentrismo que motiva la intervención sobre los sistemas políticos, jurídicos y sociales de las sociedades no-occidentales, ha jugado un rol definitivo en este proceso que no debe ser pasado por alto.

Palabras clave: *modelo estatal, misión civilizadora, imperialismo, etnocentrismo, colonialismo, neocolonialismo, Sistema de Mandatos de la Sociedad de Naciones, Sistema de Administración Fiduciaria de las Naciones Unidas, instituciones financieras internacionales.*

1. INTRODUCTION

“Our refined society attaches to human life –and with reason– a value unknown to barbarous communities. When our directing will is implanted among them, its aim is to triumph over all obstacles, and results which could not be attained by lengthy speeches may follow philanthropic influence. But if, in view of this desirable spread of civilization, we count upon the means of action which confer upon us dominion and the sanction of right, it is not less true that our ultimate end is a work of peace. (...) I am pleased to think that our agents, nearly all of whom are volunteers drawn from the ranks of the Belgian army, have always present in their minds a strong sense of the career of honour in which they are engaged,

and are animated with a pure feeling of patriotism; not sparing their own blood, they will the more spare the blood of the natives, who will see in them the all-powerful protectors of their lives and their property, benevolent teachers of whom they have so great a need”¹.

King Leopold II of the Belgians, cited on *Heart of Darkness* by Joseph Conrad.

The “Independent State of the Congo” was created in 1884-1885 by the concerted action of the European powers and the private activity of King Léopold II of the Belgians. By the closing of the Berlin Conference in February 1885 -by which the European Powers had intended to resolve the tensions arising between them in the colonial scramble for Africa- the *Association Internationale du Congo* led by King Léopold had been recognized by all European powers and the United States as the sovereign Independent State of the Congo, with the king as its head of State². The justification for the creation and recognition of the Independent State of the Congo under the personal sovereignty of King Leopold was a humanitarian rhetoric which called for the expansion of “civilization” over the “backward natives” of the Congo basin, by educating them and rescuing them from barbarism, ensuring their “moral and material” well being, stamping out the slave trade and opening the region to international commerce as an indispensable means of bringing civilization³. In practice, however, the Independent State of the Congo was constructed by King Leopold as an unprecedented administrative system of wealth-extraction and servitude under which all forms of horrifying atrocities were committed and the exploitation of the natives for the extraction of rubber, ivory and minerals converted much of the population into full-time slave labourers, while no efforts whatsoever were made to enhance the wellbeing, health or education of the Congolese⁴. As Koskenniemi notes, Leopold’s administration of the State was ruthless: “*Frequent uprisings were suppressed by Leopold’s Force Publique, whose methods of warfare included massacres of the populations of whole villages, the notorious severing of the hands of killed or sometimes simply recalcitrant natives, and the destruction of native cattle and*

1. CONRAD, J. & KIMBROUGH, R. (2006). *Heart of darkness: an authoritative text, backgrounds and sources, criticism* (4th ed., pág. 119). New York: Norton.
2. KOSKENNIEMI, M. (2001). *The gentle civilizer of nations: the rise and fall of international law, 1870-1960*. New York: Cambridge University Press, 5th ed., págs. 155-156.
3. ANGHIE, A. (2007). *Imperialism, sovereignty, and the making of international law* (Paperback first edition, págs. 96-97). New York: Cambridge University Press.
4. KOSKENNIEMI, M. (2001). *The gentle civilizer of nations: the rise and fall of international law, 1870-1960*. New York: Cambridge University Press, 5th ed., pág. 158.

crops”⁵. Though statistics of the period are somewhat unreliable, Hochschild has estimated that just during the twenty-three years of official Leopoldian rule over the Congo, approximately ten million Congolese died of unnatural causes related to the atrocities of the Independent State’s administration, meaning that the population of the Congo basin was cut by at least a half⁶.

The case of King Leopold’s reign over the Independent State of the Congo is brought up as an introduction to this essay because it results striking, and it adequately exemplifies the paradoxes of the alleged “civilizing mission” by which Western States have justified their economic, political and cultural intervention over the non-Western world. It evidences how the mission to civilize the “other” has always been defended on the grounds of it being in the best interests of non-Western societies. However, Western interests have always prevailed on its development and these usually run contrary to those of the non-Westerners’ it proclaims to benefit. Further, it reveals the ethnocentric convictions of Western superiority that have animated civilizing enterprises and the imperialist character of their methods. Finally, it sheds light on the tremendous importance that administration and legal institutions have had for the civilizing mission; for it is by means of the State and its dominium over the territory and its people that the reshaping of the non-Western world has been carried out.

As said, the example of King Léopold’s brutal administration of the Independent State of the Congo results striking, and the shameless imperial character of the entire enterprise is far too evident to conceal. However, one should be warned that frequently, the imperialist and ethnocentric considerations that set the civilizing mission in motion and determine its global impact are not so evident and its mechanisms are far more subtle than those used under the reign of King Leopold. As Foucault argued⁷, “... *power is tolerable only on the condition of it masking an important part of itself. Its success lies in direct proportion with what it achieves to hide of its mechanisms. (...) For power, secret does not belong to the order of abuse; it’s indispensable for its functioning*”⁸. Hence, a study of the civilizing mission, its impact and its success

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5. KOSKENNIEMI, M (2001). *The gentle civilizer of nations: the rise and fall of international law, 1870-1960*. New York: Cambridge University Press, 5th ed., pág. 158.
 6. HOCHSCHILD, A. (1998). *King Leopold’s ghost: a story of greed, terror, and heroism in Colonial Africa*. Boston: Houghton Mifflin, pág. 233.
 7. All translations of quotations from their original languages to English have been done by the author.
 8. FOUCAULT, M. (1987). *Historia de la sexualidad*, vol. Uno. México: Siglo Veintiuno Editores, pág. 105.

must necessarily be cautious of superficial appearances and justifications, as usually, ethnocentric and imperialist dynamics operate behind the surface. The rather extreme nature of the example should nonetheless serve as an eye-opener and as a call for reflection on the motives that impulse the West to intervene upon the political, social and legal systems of the non-Western world.

The twentieth and nineteenth centuries were marked by an unprecedented process of westernization of the forms of political and legal organization of societies around the entire world, which resulted in the marked predominance that the Western State model -both in its Civil and Common Law manifestations- has in the contemporary international State system. As will be argued, the Western civilizing mission played a vital and central role in this process, and the objective of this essay will be to study the mechanisms by which the civilizing mission made this culturally-specific State model pre-eminent over all alternative forms of political and legal organization in the world. The expansion of the Western State model has had a long history, but two historical periods of particularly pervasive influence will be considered in the following analysis: the process of Western colonization from the late eighteenth century onwards, and the post-colonial era initiating in the late twentieth century, about which emphasis will be made on the role that international institutions have played on the administration of post-colonial States.

2. THE CONCEPT OF THE “CIVILIZING MISSION”

Considering the importance of the concept of “civilizing mission” for the present essay, further development of this notion results necessary in order to guide an analysis of the mechanisms by which it operates. Anghie defines the concept as “*the grand project that has justified colonialism as a means of redeeming the backward, aberrant, violent, oppressed, undeveloped people of the non-European world by incorporating them into the universal civilization of Europe*”⁹. Anghie further describes how the civilizing mission was and still is animated by the question of “cultural difference”, meaning “[*t*]he imperial idea that fundamental cultural differences divided the European and non-European worlds”¹⁰; differences that from a Western perspective establish a basic dichotomy between a civilized West and an uncivilized “Other”. This idea that fundamental differences separate the West and the non-Western worlds is

9. ANGHIE, A. (2007). *Imperialism, sovereignty, and the making of international law* (Paperback first edition). New York: Cambridge University Press, pág. 3.

10. *Ibid.*

central to the civilizing mission in the sense that “... *the characterization of non-European societies as backwards and primitive legitimized European conquest of these societies and justified the measures colonial powers used to control and transform them*”¹¹. Over the centuries, Western lawyers have always maintained this dichotomy between the civilized and the uncivilized “... *even while refining their understanding of each of these terms*”. Günter Frankenberg exemplifies the use of dichotomies such as “mature/immature”¹², “*modern/primitive*”, “*parent/derivative*”, and “*developed/developing*” as over-simplifications of complexity, that “[...] *almost invariably put the Western legal culture at the top of some implicit normative scale*”¹³ and which could be understood as examples of the refining over time of the terms of “civilized” and “uncivilized” to which reference is made.

Then, as can be inferred from the previous considerations, the civilizing mission is a complex interaction between Western imperialism and ethnocentrism that motivates intervention upon the political, legal, and social systems of non-Western societies. It’s important to note that though the notion of a civilizing mission was originally developed during the colonial encounter and was proclaimed as a justification for colonialism, its drive and dynamics did not extinguish with the end of formal colonialism. Rather, they have remained as a constant throughout the history of Western/non-Western relations that continued after the decolonization process and up to our days.

It is noteworthy that the very definition of “civilization” on the part of Westerners has no fixed content and is completely dependent on the question of cultural difference. As Koskeniemi points out, for Westerners

[t]hat civilization was not defined beyond impressionistic characterizations was an important aspect of its value. It was not part of some rigid classification but a shorthand for the qualities that international lawyers valued in their own societies, playing upon its opposites: the uncivilized, barbarian, and the savage. This provided a language for attitudes about social difference and for constructing one’s own identity through what the historian Hayden White has called “ostensive self-definition by negation”

11. *Ibíd.*, pág. 4.

12. *Ibíd.*

13. FRANKENBERG, G. (1985). Critical comparisons: Re-thinking Comparative Law. *Harvard International Law Journal*, 26 (2), 422.

– a reflex action pointing towards the practices of others and affirming that whatever we as Europeans are, at least we are not “like that”¹⁴.

In relation with the definition of the Western “self”, the definition of the non-Western “Other” operates by the same dynamic of cultural difference. As Mudimbe explains, “[t]hese bodies [that of the “Other”: Africa, Asia, America and the Pacific] can be defined through a cutting away, or separation, or even rejection, through that which expresses a gap, as from the norm [Europe]. Thus, marginality is, all at the same time, (historic) accident, (religious) malediction, and fortunately also (eschatological) promise of a possible reconciliation with the center norm”¹⁵.

As an observation to Mudimbe’s explanation, it could be argued that it is precisely by means of the civilizing mission that the reconciliation of the “Other” with the “center norm” of the West is carried out, for “[h]aving established this dichotomy, furthermore, jurists continually developed techniques for overcoming it by formulating legal doctrines directed towards civilizing the uncivilized world”¹⁶.

The civilizing mission further relies on a linear conception of history and progress which conceives the Western world as the most advanced society along the evolutionary process of societies. As Osborne explains,

[o]ur characterization of other societies as “backwards”, “retrograde” or “underdeveloped” has been a Western constant from the XVI century onwards. Once established, the idea of a linear progression of history resulted impossible to get rid of (...) We don’t have any conceptual apparatus that allows us to confront a society whose development does not adjust to this model, so we force the others to adjust to ours¹⁷.

14. KOSKENNIEMI, M (2001). *The gentle civilizer of nations: the rise and fall of international law, 1870-1960*. New York: Cambridge University Press, 5th ed., pág. 103.
15. MUDIMBE, v.Y. (1994). *The idea of Africa*. Bloomington: Indiana University Press, pág. 10.
16. NGHIE, A. (2007). *Imperialism, sovereignty, and the making of international law* (Paperback first edition). New York: Cambridge University Press, pág. 4.
17. OSBORNE, R. (2007). *Civilización: una historia crítica del mundo occidental*. Barcelona: Crítica, pág. 308.

No elaboration on the concept of the civilizing mission could be complete without making reference to its impact in global terms. As Bush notes,

[t]rough imperial expansion, modern Western concepts of progress and linear time, capitalist modes of production, liberal democracy, and nationalism were spread globally, demonstrating the triumph of civilization over barbarity. The impact of this modernity on the rest of the world was profound and had far-reaching transformative influences on the economies, social relations and cultures of colonized peoples¹⁸.

The question still remains: was the impact of the civilizing mission truly “global”? Have no non-Western societies survived up to our days without Western interference transforming them? The answer is not encouraging. As Osborne notes,

[o]ur [Western] subsequent history appears to prove that the only non-Western cultures that have survived have been, either those that were physically too distant from us so as to worry too much about them (the Inuit of northern Canada, the Indians of the Amazon basin or the Papuans of the mountains of New Guinea), or those whose military power resulted too strong so as to intent to conquer them (China)¹⁹.

Having developed the previous notions of the concept of “civilizing mission”, it’s important to establish some prior considerations and delimitations before proceeding to analyze the mechanisms by which it has contributed to the expansion of the Western State model. Such a process has been a long, complex and far-ranging one, which has never been uniformly carried out in all instances and whose specific mechanisms vary from case to case. Being this so, this essay will seek to identify only the general trends and mechanisms with incidence over the broad generality of cases (without prejudice to occasional concrete examples, for the sake of illustration). Furthermore, spatial and temporal limitations of the field of study are in order so as to avoid dispersion of the analysis. Hence, the study of the expansion of the Western State model will focus on the transformation of societies in Africa, Asia and the Pacific

18. BUSH, B. (2006). *Imperialism and postcolonialism*. Harlow, England: Pearson Longman, pág. 78.

19. OSBORNE, R. (2007). *Civilización: una historia crítica del mundo occidental*. Barcelona: Crítica, pág. 307.

that were submitted to colonial administration from the late eighteenth century onwards²⁰. In consideration of the amplitude of the category “State model” which will guide this essay, the analysis will focus exclusively on what could be termed administrative law, with occasional references to international law as means by which the civilizing mission is carried out. Finally, it’s very relevant to note that even though this essay will study the ethnocentric and imperialist considerations that guide the civilizing mission separately for the sake of deeper analysis, in reality both elements are profoundly interrelated and operate in conjunction, so that in practice, a distinction between them results artificial and both types of considerations must be understood as dependent and mutually reinforcing.

3. IMPERIALIST CONSIDERATIONS OF THE CIVILIZING MISSION IN THE PROCESS OF EXPANSION OF THE WESTERN STATE MODEL

“Most modern commentators such as David and Brierly refer to the widespread utilization of the two major European families of law as part of a “received” tradition - a designation which suggests willing acceptance of an external legal culture. The historic record of colonial expansion contradicts such benign explanations despite the tendency of most conventional law commentators to treat families of law such as the British common law or continental civil law as objective conflict resolution systems rather than manifestations of the cultural imperialism of powerful colonial nations^{21”}.

As Schmidhauser points out in the previous extract, the history of the expansion of the Western State model finds its roots in the process of Western colonial expansion. Hence, at least in its origins, it was not a process of voluntary reception or “spontaneous Westernization” as many textbooks on the matter seem to imply, but rather a process of external imposition and “State engineering” carried out by Western Powers in which the colonized people had

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20. Latin America is expressly excluded from this analysis on consideration of its prolonged colonial period of over four hundred years and its early independence process during the nineteenth century, which made the process of expansion of the western State model in Latin America quite distinct from that experienced in other continents, thus not allowing a unified general study.
21. SCHMIDHAUSER, J.R. Legal Imperialism: Its Enduring Impact on Colonial and Post-Colonial Judicial Systems. *JSTOR Database*, pág. 321. Retrieved October 3, 2010, from <http://www.jstor.org/stable/1601479>.

little or no voice. The case of the Berlin Conference of 1884-1885 mentioned previously results an adequate and authoritative example of this dynamic. The Berlin Conference was held by the major European powers of the time –with the participation of the United States of America and the Ottoman Empire– to try to resolve the problems arising between them in the “colonial scramble” for Africa. The General Act that emerged as a result of the negotiations was immersed by the humanitarian rhetoric of the civilizing mission, which gave legitimacy to the western colonial enterprise²². As it has been exemplified by reference to the case of King Leopold’s rule over the Congo, the humanitarian rhetoric of the Berlin Conference was not translated into real humanitarian action during the colonial annexation of Africa. Still, it is surprising that even though the General Act of the conference took notice of the African people and decided upon their future, no African representative whatsoever played a part in these deliberations. As U. O. Umozurike (cited by Anghie) points out,

“The most irrelevant factor in deciding the fate of the continent was the Africans themselves who were neither consulted nor apprised of the conference”, a conference which determined in important ways the future of the continent and which continues to have a profound influence on the politics of contemporary Africa²³.

With regards to this issue, Cox, Dunne and Booth have referred to the process of State formation in Africa by stating how,

[e]arly [S]tate formation in Africa had very little to do with endogenous factors. This obvious point leads to the observation that the dominant European powers which controlled Africa after the Berlin Conference (1884-5) were empires as well as [S]tates. In relations with other European powers they recognized equality of rights and duties, while relations with the non-European world were conducted on the basis of exclusion and dispossession. Colonial

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22. The General Act of the Berlin Conference on West Africa, article 6 read: “All the Powers exercising sovereign rights or influence in the aforesaid territories bind themselves to watch over the preservation of the native tribes, and to care for the improvement of the conditions of their moral and material well-being, and to help in suppressing slavery, and especially the slave trade. They shall, without distinction of creed or nation, protect and favour all religious, scientific or charitable institutions and undertakings created and organized for the above ends, or which aim at instructing the natives and bringing home to them the blessings of civilization.”
23. ANGHIE, A. (2007). *Imperialism, sovereignty, and the making of international law* (Paperback first edition). New York: Cambridge University Press, pág. 91.

*rule (...) had the effect of stunting the growth of African economies and enacting closure upon indigenous ideas about community*²⁴.

As seen, the expansion of the Western State model was a process which began with colonial expansion and took little or no regard of the peoples over which this model was imposed. As Glenn points out, “[t]he age of [W]estern imperialism coincided with that of the emergence of the nation-[S]tate, and it has been said that the “building of nations was seen inevitably as a process of expansion”²⁵. Colonialism carved up the frontiers of what would later become formally independent States, set up legal systems which post-colonial States would later inherit, and laid the groundwork upon which posterior expansions of the Western State model in the post-colonial era would continue. It is evident that the pervasive legal effects of colonial expansion continue up to our days, for “... even after the long era of conventional colonialism ended, the only major changes and modifications seriously influencing post-World War II families of law orientations have come as a result of (1) military conquest (...) (2) violent revolutions (...) and (3) military defeat and temporary occupation”²⁶; situation that evidences the great transcendence and pervading influence that the imposition of Western legal systems during the colonial era has had over non-Western societies.

Why was administrative law of such a vital importance for Western colonial enterprises? As Glenn puts it, “[a] country can be conquered militarily but should not be governed militarily”²⁷, and bearing that in mind, it must be said that “[n]o successful empires could have survived after conquest without sophisticated technologies of colonial governance that facilitated smooth administration with the minimum physical force and coercion”²⁸. Further, administrative law was seen as the means by which Western Powers could ensure the success of the civilizing mission; for this required direct rule and the effective sovereignty of the European colonizer. As Westlake (quoted by Koskenniemi) stated:

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24. COX, M.; DUNNE T. & BOOTH, K. (2001). *Empires, systems and states: great transformations in international politics*. Dorchester: Cambridge University Press, pág. 7.
 25. GLENN, H.P. (2000). *Legal traditions of the world: Sustainable diversity in law*. New York: Oxford University Press, pág. 242.
 26. SCHMIDHAUSER, J.R. Legal Imperialism: Its Enduring Impact on Colonial and Post-Colonial Judicial Systems. *JSTOR Database*, pág. 328. Retrieved October 3, 2010, from <http://www.jstor.org/stable/1601479>.
 27. GLENN, H.P. (2000). *Legal traditions of the world: Sustainable diversity in law*. New York: Oxford University Press, pág. 215.
 28. BUSH, B. (2006). *Imperialism and postcolonialism*. Harlow, England: Pearson Longman, pág. 33.

[b]ecoming subjects of the power which possesses the international title to the country in which they live, natives have on their governors more than the common claim of the governed, they have the claim of the ignorant and helpless on the enlightened and strong; and that claim is the more likely to receive justice, the freer is the position of the governors from insecurity and vexation²⁹.

This sought position could only be attained by uncontested domination of the colonizer over the territory in question. It becomes evident then, that administrative law was essential to ensure an adequate management of colonized territories and their peoples, for the alleged furthering of the civilizing mission. However, other imperialist considerations which motivated the abolition of indigenous law to replace it by the conqueror's law, were also at stake in the process. Schmidhauser recalls these reasons by stating how,

[L]egal imperialism universally imposed law where civil stability and order were at stake, where economic penetration -whether land tenure or modern trade and commercial development- was at issue, and, most crucial, where the authority and power of the conqueror might be threatened by invocation of indigenous law. With imposition of conqueror's law inevitably came replacement of indigenous legal and judicial elites by those of the conqueror, at least until a subservient indigenous elite was trained and screened³⁰.

Certainly, this process supposed great afflictions for the peoples of the non-Western world: Such a radical restructuring of the political, social and legal systems by which a particular society lives can only lead to a loss of identity, which dissolves in the midst of the foreign impositions. Von Laue has characterized these negative effects over non-Western peoples in the following manner:

... [They] were subjected to infinite humiliation, their autonomy destroyed, their customary ways of life undermined, their authorities discredited, their command over their future enfeebled or abrogated - a fate never experienced in the West. Short of outright annihilation, could there have been greater calamity? (...)

29. KOSKENNIEMI, M. (2001). *The gentle civilizer of nations: the rise and fall of international law, 1870-1960*. New York: Cambridge University Press, 5th ed., pág. 143.

30. SCHMIDHAUSER, J.R. Legal Imperialism: Its Enduring Impact on Colonial and Post-Colonial Judicial Systems. *JSTOR Database*, pág. 328. Retrieved October 3, 2010, from <http://www.jstor.org/stable/1601479>.

Having subverted and disestablished all non-[W]estern cultures, the [W]estern imperialists subsequently forced the others in their disorientation and humiliation to reculture themselves according to the always rapidly advancing western model, no matter what the human price or how great the resistance³¹.

Once again, the horrifying death toll and unspeakable atrocities committed against the natives under the reign of King Leopold's Independent State of the Congo jump to mind.

As a final note on the colonial dimension of the imperialist considerations that animate the civilizing mission, it must be recognized that "westernization" of legal systems and societies has not always been the direct result of Western imperial policies, for such an affirmation would be an excessive generalization. As Schmidhauser states it, "[e]xpansions or contractions of particular [legal] families are not entirely determined by power, military or otherwise"³². The revolutionary process of legal and social westernization of Turkey carried out by Kemal Ataturk after World War I and other instances of "internal westernization" carried out by Westernized patriots in diverse countries around the world undermine the thesis that Western power and external imposition have been the sole determinants in the expansion of the Western State model. However, "... such contradictions are considerably less numerous than the affirmations"³³, and as a general trend, "[i]n most instances, imposition rather than voluntary reception was the rule"³⁴.

The colonial period of the late eighteenth century onwards was certainly the foundational moment for the expansion of the Western State model, and its influence pervades up to our days. Nonetheless, one would be in error to think that with the end of official empire in the twentieth century and the process of decolonization, imperialism came to an end. As Barbara Bush duly notes,

... we may be in a postcolonial, but not a post-imperial era and thus imperialism as a concept remains relevant. Wider global struggles,

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31. VON LAUE, T.H. The World Revolution of Westernization. *JSTOR Database*, págs. 265-266. Retrieved October 3, 2010, from <http://www.jstor.org/stable/493032>.
 32. SCHMIDHAUSER, J.R. Legal Imperialism: Its Enduring Impact on Colonial and Post-Colonial Judicial Systems. *JSTOR Database*, pág. 333. Retrieved October 3, 2010, from <http://www.jstor.org/stable/1601479>.
 33. *Ibid.*
 34. *Ibid.*, pág. 332.

*centred on religious, political, economic and cultural problems rooted in the imperial era, have persisted. Continuing echoes of empire – cultural oppression, economic exploitation, genocides, racial exclusions and inequalities – disrupt visions of a postcolonial world and lend support to arguments that globalization is simply a new stage in Western imperialism*³⁵.

In order to understand this new stage of Western imperialism in the age of post-colonial States, also known as “neo-colonialism”, reference must necessarily be made to the process by which former colonies became independent and formally sovereign States. As Von Laue indicates after the end of World War II, the decolonization process and the establishment of independent states in Asia, Africa, and the Pacific, “the third world,” was subject to the revolutionary triumph of western outreach: “*Westernization became universalized; it is now simply called modernization divorced from all historic links with western culture*”³⁶. As a result

*[...] the Western nation-state was transplanted into parts of the world hitherto unfamiliar with it. It introduced finite borders, armed forces, bureaucracies, all under constitutions copied at the outset from the most illustrious western models. It also entrenched a westernized elite determined to raise their countries to western standards, thus pressing the westernizing revolution still further into indigenous society*³⁷.

The process of decolonization was certainly transcendental for non-Western peoples all around the globe, for it represented the final attainment of freedom and a vindication of their struggle for a position of equality with the Western world. As Hardt and Negri have pointed out,

[d]uring the period of decolonization and ever since, the nation presented itself as the necessary vehicle for political modernization, and thus, as the inevitable road to freedom and self-determination.

35. BUSH, B. (2006). *Imperialism and postcolonialism*. Harlow, England: Pearson Longman, pág. 189.

36. VON LAUE, T.H. The World Revolution of Westernization. *JSTOR Database*, pág. 276. Retrieved October 3, 2010, from <http://www.jstor.org/stable/493032>.

37. VON LAUE, T.H. The World Revolution of Westernization. *JSTOR Database*, pág. 276. Retrieved October 3, 2010, from <http://www.jstor.org/stable/493032>.

The promise of a global democracy between nations, which included the formal equality and sovereignty of such nations, was inscribed in the original Charter of the United Nations: “The organization and its members (...) shall act in accordance to (...) the principle of the sovereign equality of all its Members”. National sovereignty means liberation from foreign domination and the self-determination of the peoples, and as such, signals the definitive defeat of colonialism”³⁸.

Despite the aspirations of non-Western peoples of upholding their newfound sovereignty as a means to attain equality and buffer foreign interference after decolonization, these ambitions were not fulfilled by the formal recognition of sovereignty, and their subordination to the Western Powers persisted.

The reasons for this can be best understood by noting how the transition from political dependency to independence of former colonial territories and the recognition of their sovereignty was not a process undertaken autonomously by the colonized peoples. Rather, it was meticulously administered by Western powers, who –while engineering Westernized States in former colonies- sought to ensure the furtherance of their imperial interests in the process.

Two particular systems designed for the administration of former colonial territories in order to allegedly “facilitate” the transition of these into fully sovereign States call for our attention: The Mandate system of the League of Nations; intended to administer the territories in the Middle East, Africa, and the Pacific that had been previously under the control of the defeated and dismembered German and Ottoman empires, and the Trusteeship System of the United Nations; which extended the logic of the Mandate System to former colonial territories worldwide. As Koskenniemi notes, by the time that the Mandate System was being set up,

... the doctrine of the “sacred trust of civilization” had replaced formal European imperialism as the perspective from which international law perceived Europe’s outside. In a few years it was transformed into the notion of trusteeship under the United Nations Charter that, for its part, became only an interim status leading to political sovereignty for non-European territories³⁹.

38. HARDT, M. & NEGRI, A. (2002). *Imperio*. Buenos Aires: Paidós, págs. 123-124.

39. KOSKENNIEMI, M. (2001). *The gentle civilizer of nations: the rise and fall of international law, 1870-1960*. New York: Cambridge University Press, 5th ed., pág. 171.

Both systems prescribed the administration of former colonial territories by developed Western States who would do so in order to prepare the territories for the assumption of political independence and sovereignty, by means of the establishment of administrative legal and political institutions to serve this purpose. Despite of their mission to act as impartial administrators seeking only the wellbeing of the administered territories and their peoples, the Mandatory States and the Trustees who would later succeed them took advantage of their privileged position to indulge in imperialist practices of exploitation of the territories for their own advantage and to design mechanisms that would allow exploitation to continue after formal independence, was attained. This suggests that “... *the mechanisms used by international law to achieve decolonization were also the mechanisms that created neo-colonialism; and that, furthermore, the legal structures, ideologies and jurisprudential techniques for furthering neo-colonialism largely were in place before Third World States actually attained independence*”⁴⁰.

Numerous examples of imperial exploitation undertaken by Mandatory and Trustee States in the territories, subjected to their administration, could be cited such as those of France and Great Britain; intent on gaining control over the oil fields of Palestine, Mesopotamia and Syria, or the abusive exploitation of the phosphate deposits in Nauru by Australia and New Zealand⁴¹. In any case, what’s truly relevant about these systems of territorial administration for the purposes of this essay is the development of what Anghie terms a “science of colonial administration”. Originally by the Mandate System and later by the Trusteeship System who succeeded it. This science of colonial administration “*had a long-lasting effect by distinguishing political sovereignty from the widespread net of economic dependencies into which the colonial territory was integrated as a source of raw materials and a market for metropolitan products*”⁴².

In order to ensure the furtherance of Western economic interests within administered territories, the Mandate and Trusteeship Systems became a form of colonial administration carried out in the name of the “international community” instead of by single colonial sovereigns⁴³, and it was regarded as a form of

40. ANGHIE, A. (2007). *Imperialism, sovereignty, and the making of international law* (Paperback first edition). New York: Cambridge University Press, pág. 192.

41. *Ibíd.*, pág. 144.

42. KOSKENNIEMI, M. (2001). *The gentle civilizer of nations: the rise and fall of international law, 1870-1960*. New York: Cambridge University Press, 5th ed., pág. 174.

43. *Ibíd.*, pág. 173.

“good”, “progressive” or “enlightened” colonialism⁴⁴, which in turn served as justification and façade for the colonial aggrandizement of the administering States. As Anghie puts it,

In these terms, the Mandate System [and later the Trusteeship System] transferred only sovereignty to mandate peoples, not the powers associated with “government” in the form of control over the political economy. Paradoxically, this denial of power took place even as the promotion of “self-government” was officially proclaimed as the central goal of the Mandate System [and the Trusteeship System as well]. Rather, for Mandate [and Trust] peoples, the acquisition of sovereignty, of political powers, was accompanied by the simultaneous withdrawal and transference of economic power to external forces”⁴⁵.

With regards to these systems of administration of former colonies, Koskenniemi has pointed out how

[t]he internationalization of colonialism under the [M]andates and [T]rusteeship systems was part of the civilizing mission in the precise sense that it reinstated Europe’s role as the gatekeeper for the benefits of public diplomacy for the colonial world. It restated the logic of exclusion-inclusion that played upon a Eurocentric view about the degrees of civilization and legal status. Decolonization effectively universalized the European State as the only form of government that would provide equal status in the organized international community”⁴⁶.

Even after the official end of the Mandate and Trusteeship Systems and the recognition of formal sovereign statehood of former colonial territories, Western imperialism over such territories has remained a constant. As Hardt and Negri argue,

[t]he position of the new sovereign nation-State cannot be comprehended from the perspective of the United Nations’ alluring

44. ANGHIE, A. (2007). *Imperialism, sovereignty, and the making of international law* (Paperback first edition). New York: Cambridge University Press, pág. 157.

45. *Ibíd.*, pág. 180.

46. KOSKENNIEMI, M. (2001). *The gentle civilizer of nations: the rise and fall of international law, 1870-1960*. New York: Cambridge University Press, 5th ed., pág. 175.

imaginary, of a harmonious concert of equal and independent national subjects. The post-colonial nation-State works as an essential and subordinate element of the global organization of the capitalist market. (...) [N]ational liberation and national sovereignty are not only impotent against that global capitalist hierarchy, but they also involuntarily contribute to supporting its organization and functioning”⁴⁷.

After the end of official empire, this withholding of economic power from post-colonial States -which in turn subjects them to the economic policies of Western States and undermines their effective autonomy and sovereignty- has been enforced and perpetuated by the International Financial Institutions (henceforth, IFIs) which “... *like the Mandate system seek to ensure the “well being and development” of Third World countries, and attempt to do so by integrating their economies into the international economic system in ways which are often disadvantageous to Third World peoples*⁴⁸” and generate benefits -almost exclusively- for Western developed States. Indeed, “*US-dominated international organizations such as the International Monetary Fund (IMF) and the World Bank [the predominant IFIs] restructured the world economy to ensure a continued flow of wealth to the West, creating debt and dependency in the Third World*”⁴⁹; hence widening inequalities between Western States and former colonies. As Bush has argued, “[w]ith the imposition of neo-liberal economic policies that arguably reflected a “new” imperialism, (...) *global inequalities deepened*”⁵⁰. These Western neo-liberal policies -that generally involve profound transformations of the political, legal, and administrative systems of receptor States- are virtually forced upon these States, since the provision of aid to them is made conditional on their restructuring according to the IFIs’ requirements⁵¹. In this sense, even while promoting policies which can be regarded as imperial in character, IFIs - “*hijacked by their major shareholders (Western developed States) for overtly political ends*⁵²”- continue to exert tremendous power over non-Western States and their institutions, generally to their disadvantage. As Anghie has argued, “[t]he governance structure of the IFIs ensures that it is the rich industrialized countries which control them and

47. HARDT, M. & NEGRI, A. (2002). 1. *Imperio*. Buenos Aires: Paidós, pág. 124.

48. ANGHIE, A. (2007). *Imperialism, sovereignty, and the making of international law* (Paperback first edition). New York: Cambridge University Press, págs. 263-264.

49. BUSH, B. (2006). *Imperialism and postcolonialism*. Harlow, England: Pearson Longman, pág. 189.

50. *Ibíd.*, pág. 95.

51. *Ibíd.*

52. Sick Patient, Warring Doctors. (1999, September 18). *The Economist*, 81.

which use this control to pursue their own interests while ostensibly promoting development⁵³". Further,

[t]he IFIs understand poverty and underdevelopment to arise from factors which are purely endogenous to developing societies, as a consequence of which all their initiatives and programmes (...) are directed towards reforming the backward developing country. The IFIs' make no effort to reform the fundamental structures of the international economy itself - structures which operate largely to the disadvantage of developing countries. Nor, unsurprisingly, do the IFIs choose to recognize the crucial role they play in maintaining these structures⁵⁴.

If indeed the causes for poverty in the non-Western world are to a certain extent located in the international sphere, then it is likely that the reforms imposed upon non-Western States will fail to achieve development, but that failure may serve to legitimize the imposition of ever new initiatives by the IFIs "which further their reach and their powers of intervention into the deepest recesses of the supposedly sovereign Third World [S]tate"⁵⁵.

As a final reflection for this section, it is noteworthy to reproduce an extract of Koskenniemi's analysis of the post-colonial era and the position of post-colonial States within it.

The demise of official imperialism has modified little of the exclusion-inclusion logic. Inclusion in the world of public diplomacy co-exists peacefully with exclusion from the spheres of spiritual and material well-being whose management lies beyond international public policy. The acceptance of the State form and the diplomatic protocol, like Christianity five centuries ago, may have disciplined the non-European world, but has done little to liberate it⁵⁶.

53. ANGHIE, A. (2007). *Imperialism, sovereignty, and the making of international law* (Paperback first edition ed., pág. 261). New York: Cambridge University Press.

54. *Ibíd.*, pág. 268.

55. *Ibíd.*

56. KOSKENNIEMI, M. (2001). *The gentle civilizer of nations: the rise and fall of international law, 1870-1960*. New York: Cambridge University Press, 5th ed., pág. 175.

4. ETHNOCENTRIC CONSIDERATIONS OF THE CIVILIZING MISSION IN THE PROCESS OF EXPANSION OF THE WESTERN STATE MODEL

[P]ower rarely presents itself simply as brute force, as shock and awe. Rather, it presents its violence in terms of an overarching narrative, and there are few more compelling stories that power can relate about itself when expanding than the great imperial narrative in which “we” are civilized, peace-loving, democratic, humanitarian, virtuous, benevolent, and “they” are uncivilized, violent, irrational, backwards, dangerous, oppressed, and must therefore be sanctioned, rescued and transformed by a violence that is simultaneously, defensive, overwhelming, humanitarian and benevolent. The furtherance of justice, the promotion of humanitarianism; these are the great goals that imperialism has traditionally set itself⁵⁷.

The prior appreciation by Anghie, which regards the elaboration of doctrines of Western superiority as a mere façade to yield legitimacy to imperialist policies, must be juxtaposed with an alternative appreciation of Koskenniemi, who considers that the history of imperialism, though one of arrogance, misplaced ambition and sheer cruelty is nonetheless “*indissociable from the wider narrative of a liberal internationalism that thinks of itself as the “legal conscience of the civilized world” and whose humanitarian aspirations cannot be dismissed as a set of bad-faith justifications for Western domination*⁵⁸”. There is probably some truth in both of these affirmations, but regardless of the true intentions behind the claims of Western superiority that have inspired the civilizing mission, the fact remains that these doctrines –elaborate and deep rooted as they are- have exerted a tremendous influence over Western lawyers and decision-makers throughout history, and their effects over non-Western peoples have been too profound and far-reaching to dismiss as irrelevant. Indeed, doctrines of Western superiority have always accompanied and served as a justification for imperial practices, and as such call for deeper study. As Schmidhauser points out,

... the key theoretical and behavioral elements of the legal imperialism of western Europeans have remained consistent from

57. ANGHIE, A. (2007). *Imperialism, sovereignty, and the making of international law* (Paperback first edition). New York: Cambridge University Press, pág. 317.

58. KOSKENNIEMI, M. (2001). *The gentle civilizer of nations: the rise and fall of international law, 1870-1960*. New York: Cambridge University Press, 5th ed., pág. 176.

*the post-medieval era to modern times. In each major colonial conquest, military power created the opportunity for imposition of the law of the conqueror. Each major colonial nation developed a legal rationalization for the replacement of indigenous law with the conqueror's law and each embraced another rationalization for the imposition of law – one form or another of a doctrine of conqueror's superiority and the alleged inferiority of the conquered*⁵⁹.

Regarding the historical period of Western colonization that interests this essay, it must be stated that the legal rationalization of Western superiority that certainly exerted greatest influence throughout the modern age of empire was positivism. As Anghie shows,

*[t]he violence of positivist language in relation to colonialism is hard to overlook. Positivists developed an elaborate language for denigrating non-European people, presenting them as suitable objects for conquest, and legitimizing the most extreme violence against them, all in the furtherance of the civilizing mission, the discharge of the white man's burden*⁶⁰.

Positivists defended the notion that “*law was the creation of unique, civilized and social institutions and that only [S]tates possessing such institutions could be members of international society*⁶¹”. Needless to say, these institutions were characteristic of the Western State model and therefore were only found in the Western world. The logical conclusion of this argument was that only the West could be regarded as civilized and only Western or -at most- Westernized States could be members of international society with the rights and privileges that such a position implied. All others were excluded from international society and as a result, held no rights or status in the international sphere.

As Koskenniemi has underlined, “[*n*]o stable standard of civilization emerged to govern entry into the “community of international law”⁶²;

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59. SCHMIDHAUSER, J.R. Legal Imperialism: Its Enduring Impact on Colonial and Post-Colonial Judicial Systems. *JSTOR Database*, pág. 331. Retrieved October 3, 2010, from <http://www.jstor.org/stable/1601479>.
60. ANGHIE, A. (2007). *Imperialism, sovereignty, and the making of international law* (Paperback first edition). New York: Cambridge University Press, pág. 38.
61. *Ibíd.*, pág. 56.
62. KOSKENNIEMI, M. (2001). *The gentle civilizer of nations: the rise and fall of international law, 1870-1960*. New York: Cambridge University Press, 5th ed., pág. 134.

understanding by this “community” the same concept of “international society of civilized States” to which reference has been made before. However,

[d]espite their doubts about the possibility or the need to define “civilization”, international lawyers were still deeply embedded in the language of the standard. Without such language, it would have been impossible to rationally explain, let alone justify, why non-European communities could be subjected to massive colonization⁶³.

Colonization then was regarded as a means of bridging the chasm between the civilized and the uncivilized by transforming the “Other” according to the allegedly superior model of Western civilization. Put in other terms, “[b]ecause the European States and their modes of communication were by definition civilized, the whole issue was reduced in practice to the question as to when outside communities would have started to resemble the Europeans to the extent that they could be smoothly integrated into the European system”⁶⁴; integration which in most instances could only be achieved by means of direct Western domination and enforced mimesis of the model of Western society. “[B]ecoming civilized meant becoming like the Europeans’ image of themselves⁶⁵”.

As a synthesis and further elaboration of the preceding arguments relating to the Western ethnocentric rationale of the colonial period, Anghie’s evaluation of the epoch results enlightening.

Simplifying considerably, the nineteenth century could be said to embody a particular set of attitudes and methods. It posits an essentialist dichotomy between the non-European and the European; it characterizes relations between these entities to be inherently antagonistic; it establishes a hierarchy between these entities, suggesting that one is advanced, just and authoritative while the other is backward, violent and barbaric; it asserts that the only history which may be written of the backward is in terms of its progress towards the advanced; it silences the backward and denies it any subjectivity or autonomy; it assumes and promotes the

63. *Ibid.*, pág. 135.

64. *Ibid.*

65. *Ibid.*

*centrality of the civilized; and it contemplates no other approaches to the problems of society than those which have been formulated by the civilized*⁶⁶.

Legal institutions were central to the idea of civilizing the non-European world. International lawyers attempting to solve the problems posed by colonialism as a means of promoting civilization, saw it as their role to do so “*through the export of rational public law-based administrative structures to manage the colonial encounter*⁶⁷”; institutions which were clearly of Western origin and as such were regarded as inherently superior to any alternative forms of organization native societies had to offer. The fact that most of these institutions have remained in place even after the process of decolonization, sheds light on the pervasive impact colonialism still has over non-Western societies.

In the same sense that Western imperialist practices have continued after the recognition of formal sovereignty and independence of the non-Western world, the ethnocentric rationalizations that accompany these practices have not only survived the official end of the age of empire, but they have thrived. As Bush dully notes in her historical analysis of Westernization,

*[a]fter the collapse of communism in the 1980s, the postcolonial world and the underdeveloped parts of the ex-USSR were expected to follow in the footsteps of the West in terms of economic organization (capitalism and integration into the global markets); individualism and enterprise; moral and political values (Christianity and liberal democracy) and popular culture (mass consumerism, music, films, food). Western ideas of modernity, democracy and human rights were presented to the non-West as universal although Asian critics pointed out that these were (and remain) culturally specific. Such “universal” values were promoted through powerful government aid agencies and the US-dominated IMF and the World Bank. Aid was made conditional on democratization, improved human rights and “structural adjustment”, privatization and integration into global markets*⁶⁸.

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66. ANGHIE, A. (2007). *Imperialism, sovereignty, and the making of international law* (Paperback first edition). New York: Cambridge University Press, pág. 113.
67. KOSKENNIEMI, M. (2001). *The gentle civilizer of nations: the rise and fall of international law, 1870-1960*. New York: Cambridge University Press, 5th ed., pág. 109.
68. BUSH, B. (2006). *Imperialism and postcolonialism*. Harlow, England: Pearson Longman, pág. 193.

Needless to say, all of the previously cited demands implied the obligation of Third World countries to make profound changes to their economic, political, and financial systems⁶⁹.

It must not be forgotten that human rights, though claiming universal validity, are certainly not universal. They

... are inextricably bound up with the Western legal tradition and exist as such only within it⁷⁰, and as Glenn has pointed out, “[i]nsisting on the necessarily universal character of rights (...) is seen and will continue to be seen as a modern form of imperialism (...). Universal rights are simply another form of universalizing the truths of a particular tradition⁷¹.”

The IFIs have assumed the task of transforming the non-Western world according to Western parameters and the model of Western society and civilization; all of which can be seen as a clear continuation of the civilizing mission based on ethnocentric prejudices. It is of fundamental importance to highlight that the rhetoric of the civilizing mission has transformed and refined itself according to contemporary standards of what results “acceptable”. Indeed, there is a shift from a discourse based on race or “degrees of civilization” to one based on economics, but the underlying dynamic of the civilizing mission remains unchanged.

The characterization of non-Europeans as inferior based on racial categories is regarded as unacceptable and unscientific. But the civilizing mission of the BWI [Bretton Woods Institutions –the World Bank and the International Monetary Fund–] and the interventions such a mission requires can be justified on the basis that they are necessary in order to transform and improve the welfare of an economically deprived group of people. The neutral, scientific discourse of economics justifies these expanding and increasingly sophisticated forms of intervention. Race is distanced from international law in this way, even as an alternative

69. ANGHIE, A. (2007). *Imperialism, sovereignty, and the making of international law* (Paperback first edition). New York: Cambridge University Press, pág. 258.

70. GLENN, H.P. (2000). *Legal traditions of the world: Sustainable diversity in law*. New York: Oxford University Press, pág. 244.

71. *Ibid.*, pág. 245.

vocabulary with which to characterize and reform the uncivilized as “developing” emerges⁷².

Such increasingly sophisticated forms of intervention have been premised primarily on the concept of “good governance” developed by the IFIs. In broad terms, the concept of good governance

... involves the creation of a government which is, among other things, democratic, open, accountable and transparent, and which respects and fosters human rights and the rule of law. Thus good governance is linked very prominently with international human rights law and, more specifically, with particular understandings of human rights law that emerged at the end of the Cold War, an event which heralded arguments that extended and particularised human rights law to support initiatives relating to democratic governance and legitimate governance⁷³.

It might appear strange that an international institution constituted to regulate financial and economic issues has the authority and power to enforce transformations upon the political and legal systems of its member States, by justifying them on a concept such as that of “good governance” which -prima facie- appears to have very little to do with the economy. This result, even more perplexing in light of the fact that Article 10 of the World Bank’s Articles of Agreement, explicitly forbids the Bank from doing so by stating that “*the Bank shall not interfere in the political affairs of any member*”. Despite this, the tremendous expansion of its own prerogatives has been achieved by the Bank by “... asserting that economic development depends on good governance, on the political system of a country⁷⁴”, and this in turn allows the Bank to “... justify formulating an entirely new set of initiatives that seeks explicitly to reform the political institutions of a recipient [S]tate, on the basis that such reform is necessary to achieve development, the central concern of the Bank⁷⁵”. In this sense, the Bank has focused on reforming judiciaries, enhancing participation in decision making, formulating environmental policy, restructuring public service and the effectiveness of the press⁷⁶, amongst many other areas. The

72. ANGHIE, A. (2007). *Imperialism, sovereignty, and the making of international law* (Paperback first edition). New York: Cambridge University Press, pág. 193.

73. *Ibíd.*, pág. 248.

74. *Ibíd.*, pág. 261.

75. *Ibíd.*

76. *Ibíd.*, pág. 262.

Bank knows no limitations on the scope of its reformatory policies and ambitions, for, if as it claims “... *it may exercise its powers over any aspect of a country’s policies and practices which impinge on “development”, then there is virtually no aspect of a country’s affairs that will remain outside the Bank’s scrutiny*”⁷⁷. As Wickremasinghe has argued in reference to the Bank’s approach on good governance, “[i]n this new approach the aim is nothing less than to change the world-system by reforming the fundamental institutions of the recipient [S]tate”⁷⁸.

On a superficial appreciation, the concept of good governance might seem to be a neutral concept that is potentially applicable to all States⁷⁹, but the truth is that it is a concept that is rarely used in reference to rich and developed countries. “*In practice, then, good governance is a concept that has developed, at the international level, principally in relation to the Third World [S]tates, for [in the Bank’s appreciation] these are the countries that lack governance*”⁸⁰; even if they have achieved significant levels of economic development as in the case of East and South-East Asian countries⁸¹. As Anghie has shown, “*Western [S]tates are immune from the operations of the IFIs although they engage in forms of protectionism, for example, that have been targeted by the IFIs when present in Third World societies*”⁸².

The concept of good governance provides the Western powers with the moral and intellectual justifications for the development and enforcement of an entirely new set of doctrines, principles and policies which aim to manage the non-Western States and their peoples⁸³. All of the far reaching transformations exerted over the non-Western world are hence “... *directed at reproducing in the Third World a set of principles and institutions which are seen as having been perfected in the West, and which the non-European world must adopt if it is to make progress and achieve stability*”⁸⁴. The ethnocentric nature of this discourse and its dismissive appreciation of non-Western societies results evident.

77. Ibid.

78. WICKRAMASINGHE, N. (1996). *From human rights to good governance: the aid regime in the 1990s*. Oxford: Berg Publishers, pág. 306.

79. ANGHIE, A. (2007). *Imperialism, sovereignty, and the making of international law* (Paperback first edition). New York: Cambridge University Press, pág. 248.

80. Ibid., pág. 249.

81. Ibid.

82. Ibid., pág. 269.

83. Ibid., pág. 249.

84. Ibid.

Although Third World countries have attained the recognition of their formal sovereignty, the great power and domination exerted over them by the Western States and the international institutions. This immense control make Third World sovereignty distinctive from that enjoyed by the First World. Indeed, “*Western sovereignty was [and is] protected against the intrusion of international law, whereas non-European societies have invariably been subject to international law*”⁸⁵. As a result of this, it is understandable that -given the “*porous character*”⁸⁶ of non-Western sovereignty- “*... the powerful set of ideas developed over the centuries as to how international law can bring about “good government” have been conceptualised and elaborated in relation to the alleged absence of good government in non-European societies*”⁸⁷.

As a final annotation to this section, it must be remembered that the emergence of sovereign independent States in the non-Western world was simultaneous with the creation of international human rights law; a law of Western nature and creation claiming universal validity which, when enforced by the IFIs as an essential core of the good governance project, has significantly conditioned the character and prerogatives of non-Western sovereignty⁸⁸. In that sense, “*... to the extent that international human rights law and nationalism represent Western ideas of the individual, [S]tate and society they both create the paradox that Third World sovereignty was exercised through, and shaped by, Western structures*”⁸⁹.

5. CONCLUSION

As has been exposed, the basic dynamics that animate the civilizing mission have remained a constant throughout the history of the relations between the Western powers and the non-Western world. Imperialism and ethnocentrism fuelled the age of Western expansionism that led to the massive colonization of the non-European world and implanted Western law and institutions across the entire globe. Further, in the post-colonial era, the promise of equality and vindication of the non-Western world was betrayed by the legal perpetuation of imperialism and ethnocentrism, albeit in a more refined and subtle form, which achieves to conceal its ambitions of dominion and prejudices behind a rhetoric

85. *Ibíd.*, pág. 269.

86. *Ibíd.*

87. *Ibíd.*

88. *Ibíd.*, pág. 254.

89. *Ibíd.*

of progress, enlightenment and the defence of human rights. As seen, “... *empire comes under many disguises. While we often associate it with formal colonies, in fact the more efficient form of hegemony may be invisible, or indirect; the use of freedom to create constraint*⁹⁰”.

The Western State model has effectively become universalised, but even if the State form of the non-Western world resembles that of the West and it has been integrated within the Western families of law, there is no semblance of equality between the Western and the non-Western worlds, and the State form can certainly not be expected to provide that. As Koskenniemi notes, “[t]here is nothing determined about the State form. It can be used for freedom and for constraint, and history is full of examples of both⁹¹”. There is nothing inherently positive or liberating in the State form; for legal administrative structures and institutions can only marginally determine the politics for which they are used⁹², and the determination of those politics –in the case of the non-Western world– lies beyond the control of the peoples over which the State exerts its sovereignty, and subject to the dynamics and operations of a wider international arena in which Western dominion still remains uncontested. Westernized institutions have universally displaced and undermined alternative systems and means of social and political organization, but the alleged suitability or superiority of such institutions calls for a reevaluation, and for the reconsideration of alternative solutions to the problems faced by different societies around the world. But, as Koskenniemi has argued, “... *whatever the choice of institution, it should be a matter of debate and evidence, and not of the application of universal principles about “civilization”, “democracy” or “rule of law”*”⁹³.

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90. KOSKENNIEMI, M. (2001). *The gentle civilizer of nations: the rise and fall of international law, 1870-1960*. New York: Cambridge University Press, 5th ed., pág. 177.
 91. KOSKENNIEMI, M. (2001). *The gentle civilizer of nations: the rise and fall of international law, 1870-1960*. New York: Cambridge University Press, 5th ed., pág. 177.
 92. KOSKENNIEMI, M. (2001). *The gentle civilizer of nations: the rise and fall of international law, 1870-1960*. New York: Cambridge University Press, 5th ed., pág. 177.
 93. KOSKENNIEMI, M. (2001). *The gentle civilizer of nations: the rise and fall of international law, 1870-1960*. New York: Cambridge University Press, 5th ed., pág. 178.

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