

# Foreword

## ***In the Shadow of Empires—Latin American Perceptions of Development and International Law.***

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*Proceedings Contribution*

*Panel — Diverse Perspectives on the Impact of Colonialism on International Law*

*American Society of International Law*

*April 2019*

This presentation considered the legacy of the Spanish colonial and the U.S. commercial empires on the development of contemporary Latin American approaches to international law, development, and regionalism. These two imperial systems have provided a master narrative from out of which Latin American states have sought to develop a common approach to international law, to development, and to their own regional integration. On the one side is a narrative of vertically arranged and centrally planned organization; on the other side is a loosely organized aggregation of arrangements bound together by regulatory effects of markets and organized according to relative market power. Within this spectrum, Latin American states oscillate between Western liberalism, indigeneity, and variations of Caribbean Marxism. They swing between rigid hierarchies of centrally planned control and technocratic managerialism of markets that look inward to the organization of the state for the satisfaction of the needs of superior powers, and outward toward the building of sites of resistance from out of old colonial institutions.

The baseline of Latin American sensibilities was built into the ideologies and structures of the Spanish imperial system. That system was built on an integrated legal-political and economic structure. At the heart of the legal-political system was the Spanish Crown, whose authority was exercised through the Council of the Indies. This served as the supreme legal, administrative, military trade, and financial authority. It ordered all activities within the colonial system. It also asserted a substantial authority of the cultural colonialism undertaken by the Roman Catholic Church, through the practice of patronage by the Crown and Council on which the Church developed some dependence. The hierarchical structure of the central imperial authority was then replicated within the colonial vice-royalties, each presided over by the Viceroy and administered through his council (ardencies) and for indigenous affairs, the General Courts of the Indians. Imperial law and edicts were supreme but generally vague; they were filled by vice-regal rules and then local custom and practice.

But the heart of the Spanish Imperial system was embedded in its economic organization. The core of that system was the *encomienda*, a practice of land ownership and economic exploitation that was perfected during the centuries of the *Reconquista*, the reconquest of lands seized from the old Visigoth Kingdom during the course of the Arab invasions. The *encomienda* served as a system of social control, of economic exploitation, and of replication of the system of obligation and responsibility that marked the Spanish governmental system as it developed through the early modern period. The system was based on the grant of a large tract of land (and everything on it) by the monarch to a designated individual (*repartimiento*) who held the land in trust but could exploit it and its inhabitants. At the same time the individual was obliged to do service for the monarch and to protect and oversee (according to law and custom) the welfare and lives of the inhabitants (with spiritual matters reserved to the Church). As adapted for the colonial system, the *repartimiento* was initially granted to a resident of Spain (*ultramar*) or a person who could trace origins there. Locals were to work the land and pay tribute; the *encomendero* was responsible for the well-being of the inhabitants and their conversion to the Catholic faith.

All economic activity, then, was directed outward, after satisfaction of local needs — from the inhabitants to the *encomendero*, the viceregal apparatus and finally to transport to Spain. The effect was a form of a “Silk Road” with all roads leading up to Madrid. And this “Belt and Road Initiative”, *macro-encomendismo*, ordered the economic activities of the colonies. Legal as well as political structures ensured the functioning of this system grounded on principles of strict central planning and control. In lieu of markets there was law and the administrative practices (implemented through discretionary decision-making by the official ultimately in Madrid, Seville or Cadiz) of the *Casa de las Indias*, with authority to tax, license, and manage the availability of technology and knowledge. Combined with direct ownership and taxes, the system operated for the benefit of the Crown at the apex of a centrally controlled global production chain in which those in control at each level could extract some value but where the bulk of the value added was meant to be directed toward the Crown. It was a system of order, hierarchy, and control.

The Spanish Imperial system generated its own counter narrative. That counter narrative, of resistance and avoidance, erupted almost from the beginning of the organization of the system in the 16<sup>th</sup> century. A part of that resistance was marked by an adherence to the basic system and its ideology but conflict over the allocation of material benefits among the elites along the wealth production chain. Thus, the Conquistador rebellion in Perú produced *encomienda* reforms and the New Laws of 1542. Similarly, nascent Latin American solidarity with the wars of independence and the regionalism of Bolívar, rearranged the path of production but not its methods or ideologies. The Church sought to protect its own prerogatives both by serving the interests of the elites and by protecting those at the bottom. Others sought to carve out a greater space for autonomy, including a long pattern of indigenous subversions in Central and South America that continue to this day. The African slave trade changed the complexion of hierarchy but not its forms. And all of this was complicated by the raiding of competing Empires.

Onto this system was superimposed the American imperial system of the 19<sup>th</sup> and early 20<sup>th</sup> Centuries. Its symbol was the Monroe Doctrine (evoked as recently as April 2019 with the reimposition of sanctions on Cuba and the extension of sanctions to other Caribbean states). That provides the principles through which the empire could be protected against internal challenges within Latin America and external challenges by other empires (European, and now Chinese). Unlike its Spanish predecessor, the American Empire was a distracted empire. It did not seek to rule land but rather to control markets. It was uninterested in the control of populations, but rather in their management for enhanced production. It sought control productive forces and the autonomous power to develop and exploit them as the Americans liked. This was a privatized empire — driven by great economic actors, protected by American public power, but constrained by markets. In the place of rigid and centralized control was the operation of markets and the control of capital. What the Americans offered was independence from colonial masters and a degree of local autonomy in matters of customs and traditions (preserving the Spanish imperial structures of power to an extent not inconsistent with American corporate aims) but at the price of deference to American (markets based) needs. While all roads would lead to Washington (or better, New York), there was a substantial space for local elites to order things as they liked.

This system also produced its own resistance. Its principal effect might be understood as reactionary — in the sense of solidifying a Latin American consciousness (around religion and language) premised on the structures and forms of the Spanish colonial legacy (but without the bother of the old imperial master). Into this tradition one finds José Martí and Caribbean regionalism, the outlawry of Pancho Villa and the rise of political indigeneity.

But its greatest effects have been on Latin American approaches to the shaping of the normative content of international law and policy. On the one hand one sees the shadow of Spanish centralized authoritarianism and the obligations of the *encomienda* system in the push for a “New International Economic Order”,<sup>1</sup> and the policies of import substitution and legal nationalism of the Calvo Doctrine. On the other hand, one sees the shadow of American privatized empire in the development of multiple forms of free trade arrangements, and in the privatization of the state (through sovereign wealth funds). But it is in the organization and operation of the Organization of American States, and its Inter-American human rights system that one sees both the promise and perils of these two conflicting imperial visions.

To conclude, Latin America was formed in the shadow of Empires. The first was public and hierarchical; with the state/Church at the apex of everything. The second was private and markets oriented, made of businesses serving markets and the state. Both sparked strong cultural adherence and equally strong resistance, shaping Latin America’s internal organization and external relations. They defined the master narrative of the region; and structured the way the region saw itself and the world around it. Latin American internationalism mirrors the contradictions of empire and resistance. These are reflected in the strength and challenges of Latin American regionalism at the core of its engagement with international law and policy. These are evident in notions of sovereignty and non-

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1 G.A. Res. 3201 (S-VI), U.N. Doc. A/RES/S-6/3201 (May 1, 1974)

interference; unless there is a reason to pressure. They are visible as well in ethno-nationalist regionalism around an imperial language; yet one not immune from racial and ethnic stratification. They are seen in the simultaneous rejection of markets while building economies and cultures around them. In Latin America the state is conceptualized as both the best friend and worst enemy of people and of rights —fostering a broad legalized internationalism that predated the establishment of the U.N. system. That legalized internationalism induced the reconstruction of an imperial center not in Washington or Madrid, but in New York and Geneva as capitals of global public institutions and international organizations; the organization of powerful blocs; global human rights sometimes with a hole in the center, and resistance to all of this. Given this structure the question for Latin America going forward is the way that these engagements with older empires has prepared Latin America to face the rising empires of China (with its Belt and Road Initiative — the next generation American form of Empire), and the more traditionally “Spanish Empire” of a rising Russia. Will Latin America resist or succumb?

## From Latin America to China

The tides of world development roll on. The Belt and Road Initiative mirrors the general trend of history. The values and development concepts manifested in the initiative fulfill the demands of human society to form a global community of shared future.<sup>2</sup>

[世界潮流浩浩荡荡。共建“一带一路”倡议顺应历史大潮，所体现的价值观和发展观符合全球构建人类命运共同体的内在要求，也符合沿线国家人民渴望共享发展机遇、创造美好生活的强烈愿望和热切期待]

The previous section suggested how the international system of law, governance, trade, human rights, and development, has been shaped in key regions by two distinct forms of empire. One ordering empire is grounded in the ideological orientation of the United States and its markets regulatory mechanisms, the other is grounded in the ideological orientation of China and its state directed management of social progress.

These two imperial systems have provided a master narrative from out of which states have sought to develop a common approach to international law, to development, and to their own regional integration. On the one side is a narrative of vertically arranged and centrally planned organization. on the other side is a loosely organized aggregation of arrangements bound together by regulatory effects of markets and organized according to relative market power.<sup>3</sup>

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2 THE BELT AND ROAD INITIATIVE: PROGRESS CONTRIBUTIONS, AND PROSPECTS [共建“一带一路”倡议 进展、贡献与展望] (April 22, 2019), available at <https://eng.yidaiyilu.gov.cn/zchj/qwfb/86739.htm>

3 See Prelude. In the Shadow of Empires.

Shorn of judgments about their respective failures in light of modern normative sensibilities (e.g., here from the left), these two distinct forms, epitomized by the Spanish Colonial system in Latin America and the American Commercial system, provided coherent visions of the way in which society, the state and the international system could be organized around the exploitation of productive forces. Indeed, the forms of contemporary globalization before 2016 might well be understood as the effort to internationalize the American system of commercial empire, and better align it to changing baseline international societal norms.

The study of Empire re-emerging in the 21<sup>st</sup> Century and the subject of the essays included in this Volume 14 Issue 1, is part of a larger project undertaken by the Working Group on Empire of the Coalition for Peace and Ethics. The aim of the Working Group on Empire (CPE-WGE) is to study and theorize the construction of systems of management and control of human activities, that is of empire in the 21<sup>st</sup> century. A caveat: Do not mistake analysis for criticism. That one calls these projects imperial is not meant to suggest that all of the negative baggage of imperialism ought to be imported into the conversation. One goes back here to much older notions of empire that focuses on the organization and management of human activity among autonomous but dependent communities and the allocation of authority, responsibility and rights among them.

China now offers us a glimpse at the possibilities of a new and distinct form of empire. This new era approach is already quite visible in Chinese self-descriptions of its "Belt and Road Initiative." On April 22, the Office of the Leading Group for Promoting the Belt and Road Initiative [推进“一带一路”建设工作领导小组办公室] issued its 2019 Report: The Belt and Road Initiative: Progress Contributions, and Prospects [共建“一带一路”倡议 进展、贡献与展望]. To cite the Report:

We believe that with the passing of time and the synergy of all parties, Belt and Road cooperation will definitely become deep and concrete, steady and extensive. The Belt and Road will become a road of peace, prosperity, opening up, green development, innovation, connected civilizations, and clean government. It will make economic globalization become more open, inclusive, balanced and beneficial to all.<sup>4</sup>

[我们相信，随着 时间的推移和各方共同努力，共建“一带一路”一定会走深走实，行稳致远，成为和平之路、繁荣之路、开放之路、绿色之路、创新之路、文明之路、廉洁之路，推动经济全球化朝着更 加开放、包容、普惠、平衡、共赢的方向发展]

In this new era of global historical development, China appears to be offering a means of combining key elements of the command and control features of the traditional colonial models with the allocation and self-regulatory features of the markets based commercial

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4 *Ibid*, Part III, Prospects.

empire model. It seeks to develop an "all around" approach to the construction of highly managed flows of human activity around trade but affecting all of the key societally normative elements that might be turned to align social, religious, and cultural flows with those of trade and commerce. In the Reports' own words:

The Belt and Road Initiative originated in China, but it belongs to the world. It is rooted in history, but oriented toward the future. It focuses on Asia, Europe and Africa, but is open to all partners. It spans different countries and regions, different stages of development, different historical traditions, different cultures and religions, and different customs and lifestyles. It is an initiative for peaceful development and economic cooperation, rather than a geopolitical or military alliance. It is a process of open, inclusive and common development, not an exclusionary bloc or a "China club". It neither differentiates between countries by ideology nor plays the zero-sum game. Countries are welcome to join in the initiative if they so will.<sup>5</sup>

[共建“一带一路”倡议源自中国，更属于世界；根植于历史，更面向未来；重点面向亚欧非大陆，更向所有伙伴开放。共建“一带一路”跨越不同国家地域、不同发展阶段、不同历史传统、不同文化宗教、不同风俗习惯，是和平发展、经济合作倡议，不是搞地缘政治联盟或军事同盟；是开放包容、共同发展进程，不是要关起门来搞小圈子或者“中国俱乐部”；不以意识形态划界，不搞零和游戏，只要各国有意愿，都欢迎参与]

This Issue includes a number of essays produced by members of the CPE-WGE. In this series of essays, we consider the re-construction of Empire shorn of its old glosses (which elites everywhere have been taught to conflate with the form and thus to amalgamate a normative judgment about technique with an evaluation of the form of empire) in the context of the now heated contest for the control of the structures of global economic trade within which these new forms of empire might be developed.

The specific focus is on the construction of new global trade regimes. In that context, CPE-WGE has been considering the bilateral trade talks between the United States and China in the larger context of Chinese (and American) ambitions to drive the structures and directions of global trade in ways that put them at the center (or in the Chinese English language vernacular — as the core) of dependent amalgamations of actors around which trade regimes may be built and directed. More specifically, The Working Group on Empire of the Coalition for Peace and Ethics has been considering the Chinese Belt and Road Initiative generally, and more recently, the Chinese Office of the Leading Group for Promoting the Belt and Road Initiative's Report, *The Belt and Road Initiative: Progress, Contributions, and Prospects*.

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5 *Ibid*, Preface.