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Peacebuilding as a New Form of Colonialism: A Case Study of Liberia and Sierra Leone

Ahan Mohit Gadkari*
Jindal Global Law School, O.P. Jindal Global University, India

ABSTRACT: Around two decades ago, legal anthropologist Merry posed the question, "what can we learn about law and globalization today from revisiting the law and colonization literature?" She emphasized how colonial arrangements transformed and affected the fundamental character of contemporary and international law. While peacebuilders, development experts, and human rights activists embrace law as a tool for social change, others have looked back on the history of legal development in the Global South to warn that the rule of law served as a framework for social control. It preserved authority and punished rebellious acts that threatened order while promoting development and social progress. As a result of this reminder, the critical peacebuilding literature has begun to pay attention to how the rule of law and transitional justice frameworks may serve as conceptual, lexical, and discursive foundations for post/neo-colonial control. This article used a historical, empirical, and comparative study of post-war Sierra Leone and Liberia to argue that the transplantation of legal norms and technologies has become more professionalized. In contrast, international efforts to rebuild the rule of law have reinforced social domination by legitimizing external actors as peacebuilders and reconstituting the relationship between the domestic political class and global capital. Social domination refers to the attempt to build an unequal playing field, wherein the country's political and economic elites can leverage and reproduce earlier forms of power relations and domination to consolidate their security within the state apparatus and benefit disproportionately from the security created by a large external presence.

KEYWORDS: Liberia, Neo-colonialism, Peacebuilding, Sierra Leone.

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* Corresponding author's e-mail: 18jgls-ahan.mg@jgu.edu.in

I. INTRODUCTION

Not only have post-colonial theorists and critical socio-legal academics exposed the paradoxes inherent in contemporary law, but they have also drawn strong similarities between legal colonialism and legal globalization.[1] Around two decades ago, legal anthropologist Merry posed the question, "what can we learn about law and globalization today from revisiting the law and colonization literature?" She emphasized how colonial arrangements transformed the fundamental character of contemporary and international law.[2] Peacebuilders, development experts, and human rights activists embrace the law as a tool for social change. Other commentators have looked back on the history of legal development in the Global South to warn that the rule of law served as a framework for social control. In contrast, it preserved authority and punished rebellious acts that threatened order while promoting development and social progress.[3] As a result of this reminder, the critical peacebuilding literature has begun to pay attention to how the rule of law and transitional justice frameworks may serve as conceptual, lexical, and discursive foundations for post/neo-colonial control. According to critics, 'efforts to disentangle the concept of transition from worries about past injustices' amount to a type of ideological obfuscation designed to obscure the structural disparities present in contemporary society.[4]

As a departure from problem-solving concerns about how to improve the efficacy of foreign interventions, the critical peacebuilding literature has

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1 Sally E Merry, "From Law and Colonialism to Law and Globalization" (2003) 28:2 Law & Social Inquiry 569–590; Patrick McAuslan, "Property and Empire" (2015) 24:3 Social & Legal Studies 339–357; Bonny Ibhawoh, "Historical globalization and colonial legal culture: African assessors, customary law, and criminal justice in British Africa" (2009) 4:3 Journal of Global History 429–451; Richard Waller, "Legal History and Historiography in Colonial Sub-Saharan Africa" (2018) 20 Oxford Research Encyclopedia of African History; Sarah Maddison & Laura J Shepherd, "Peacebuilding and the post-colonial politics of transitional justice" (2014) 2:3 Peacebuilding 253–269; Deval Desai, Deborah Isser, & Michael Woolcock, "Rethinking Justice Reform in Fragile and Conflict-Affected States: Lessons for Enhancing the Capacity of Development Agencies" (2012) 4:1 Hague Journal on the Rule of Law 54–75.

2 Sally E. Merry, *supra* note 1.

3 Richard Waller, *supra* note 1.

4 Sarah Maddison & Laura J. Shepherd, *supra* note 1.

also focused on the unintended and negative consequences of transplanting liberal norms and institutions into conflict-affected societies, including the ability of dominant actors to hijack these institutions in order to reinforce unequal privileges and power.[5] However, as a result of the continuing disciplinary divide of socio-legal studies, international relations (IR), and peacebuilding, we still know very little about how the legitimizing narratives of the colonial past that emphasized ideas of civilization, evolution, and race have been reproduced in the contexts of international security and post-conflict peacebuilding.[6] While international law is frequently equated with colonial law reflecting dominant power structures and ideologies, the relationship between historical and contemporary legal development is less clear. In particular, it deals with the contemporary rule of law programs implemented under the legal tutelage of Western powers that presided over the establishment of settler-colonial states nearly a century ago. In this process of legal reconstruction, the rule of law programs place a premium on re-establishing and strengthening the post-conflict state, another reconstitution of social dominance. This aspect, primarily accomplished through legal reform and justice sector development initiatives, entails recasting the relationship between powerful domestic actors and global capital –the two primary sources of social misery in post-colonial societies such as Sierra Leone and Liberia.[7]

This post-colonial rule of law critique aims to identify and reveal mechanisms of rule, influence, control, exploitation, exclusion, inequality, and brutality that disguise colonial institutions while simultaneously facilitating their continued spread and consolidation.[8] As Maddison and Shepherd correctly observe, Western powers' discourses and practices are unlikely to have any transformational ability if their conceptual and

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5 Deval Desai, Deborah Isser, & Michael Woolcock, *supra* note 1.

6 Sally E. Merry, *supra* note 1 at page 589.

7 Jimmy Kandeh, "Intervention and Peace-Building in Sierra Leone: A Critical Perspective" in T Zack-Williams, ed, *When the State Fails Studies on Intervention in the Sierra Leone Civil War* (London: Pluto Press, 2015); Mohamed Sesay, "Hijacking the rule of law in post-conflict environments" (2018) 4:1 European Journal of International Security 41–60.

8 Luis Eslava & Sundhya Pahuja, "Beyond the (Post)Colonial: TWAIL and the Everyday Life of International Law" (2012) 45:2 Journal of Law and Politics in Africa, Asia and Latin America - Verfassung und Recht in Übersee (VRÜ) 195–221.

ideological foundations are taken for granted.[9] The true change of international law, which is still firmly entrenched in colonialism, demands abandoning the neoliberal agenda in favor of political battles for social justice and equality. Furthermore, as currently envisioned and operationalized, the rule of law promotion initiative obstructs the achievement of these socially-oriented aims in post-colonial societies. Inspired by studies of law and colonization, this article does not only build on the critical rule of law scholarship examining the negative consequences of legal globalization in post-conflict environments. Instead, it also attempts to interpret those results as the result of a post/neo-colonial peacebuilding strategy rather than as unintended consequences.

This paper looks into how peacebuilding missions constate what can be called *neo-colonialism*. It argues that while the transplantation of legal norms and technologies has become more professionalized, international efforts to rebuild the rule of law continue to reinforce social domination by legitimizing external actors as peacebuilders and reconstituting the relationship between the domestic political class and global capital. Social domination refers to the attempt to build an unequal playing field, wherein the country's political and economic elites could leverage and reproduce earlier forms of power relations and domination to consolidate their security within the state apparatus and benefit disproportionately from the security created by a large external presence.

This paper has five parts of discussion. The first part provides an overview of the nexus between law and colonialization. The second part discusses the rule of law in peacebuilding and development. The third part examines the rule of law in Sierra Leone and Liberia. The fourth part revisits the discourse centered on 'state failure,' a once-functioning post-colonial state no longer obtains support from or exerts control over its people. The fifth part analyzes the post-conflict state of the states and law as it refers to the major corporate players dominating nations against indigenous people in both countries.

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[9] Sarah Maddison & Laura J. Shepherd, *supra* note 1 at 255.

II. METHODS

This study was prepared by critically analyzing various hard and soft copy documents, and it used a historical, empirical, and comparative study of post-war Sierra Leone and Liberia as the basis for the conclusion. It drew upon case study evidence from the case of situations in Liberia and Sierra Leone. The author took into account given by various eminent personalities and their works and also relied on empirical information as far as possible. The sources of the information were a combination of primary and secondary sources depending upon availability and accessibility. For this purpose, theoretical analysis that combined descriptive and analytical approaches based on the available primary and secondary sources was best suited to current research. Theoretical analysis that combined descriptive and analytical approaches based on the available primary and secondary sources best suited to current research has been utilized. The data was collected through an extensive literature survey, library research, and internet search. In so doing, one aspect of this process was identity reconstruction, in which dominant liberal and neoliberal actors (e.g., former colonial powers, international financial institutions, transnational corporations, and international non-governmental organizations) adopt the persona of contemporary peacebuilders intervening to resolve purely post-colonial problems. To represent and legitimize these interveners, the promotion of the rule of law emphasizes logico-legislative concepts that de-historicize and internalize political disputes in ways that exonerate big powers of responsibility for the structural circumstances that (re)produce violence. By beginning with the collapse of the post-colonial state and focusing on problem-solving policy solutions that do not question historical relations with Euro-American powers or call into question the structural foundations of the modern state, rebuilding the rule of law re-creates a colonial relations project that obscures the imperial past.[10]

[10] Cristopher B Dyck, *States of Unrest: Critiquing Liberal Peacebuilding and Security Sector Reform in Post-Conflict Sierra Leone (2001-2012) and Liberia (2003-2013)* (PhD Thesis, University of Albert, 2013).

III. THE NEXUS BETWEEN LAW AND COLONIZATION

The literature on the nexus between law and colonialism views legal cultures as instruments of imperial rule and 'constitutive of colonialism' in practically every instance. [11]This section aims to depict how the rule of law is used as a means of modern colonialism. Comaroff, for example, argues that colonial legal cultures were concurrently languages of practices, symbolic and ritual systems, abstract principles for the production of social orders, citizenship, and subjection, and immanent material realities precisely because they defined the colonial world as a whole.[12] According to this argument, imperial Europe's 'civilizing mission' was justified in the name of 'humane and enlightened universalism.' In contrast, colonization legally justified itself 'by sustaining the pre-modernity of overseas subjects' whom it constantly tribalized, ethnicized, and racialized.[13] This criticism parallels Chanock's observation that 'the development of the South African legal system in the early twentieth century was critical to constructing and preserving the racist state's structures.[14] According to Benton, jurisdictional conflicts were a distinguishing characteristic of the colonial legal system because they intertwined with and shaped the evolving debate about cultural, ethnic, and racial divisions in the Americas.[15] In examining colonial regulation of Indian hemp in twentieth-century India, Shamir and Hacker concur with Comaroff, Chanock, and others in concluding:

> "the civilizing process made headway by introducing routinized and bureaucratized forms of organizing social life in a way that simultaneously worked to restructure native consciousness and to ensure an effective command and control colonial apparatus."[16]

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[11] John L Comaroff, "Colonialism, Culture, and the Law: A Foreword" (2001) 26:02 Law & Social Inquiry 305–314 at 309.

[12] *Ibid* at 310.

[13] *Ibid* at 307.

[14] Martin Chanock, *The making of South African legal culture, 1902-1936: fear, favour, and prejudice* (Cambridge: Cambridge University Press, 2001) at 1.

[15] Lauren A Benton, "Making Order Out of Trouble: Jurisdictional Politics in the Spanish Colonial Borderlands" (2001) 26:02 Law & Social Inquiry 373–401 at 376.

[16] Ronen Shamir & Daphna Hacker, "Colonialism's Civilizing Mission: The Case of the Indian Hemp Drug Commission" (2001) 26:02 Law & Social Inquiry 435–461 at 436.

Although these criticisms are directed at colonial empire-building, the author believes they are useful for understanding the concept of legal science, with its doctrines of logical rationality, system construction, and formal legality, as well as abstract principles of scientism, conceptualism, and purism.[17] This doctrine, which underpins the construction of dominant legal cultures, has long been predicated on the premise that the materials of law (statutes, regulations, and customary rules) can be viewed as naturally occurring phenomena or from the norms of custom and society, and that legal scientists can discover inherent principles and relationships in the same way that physical scientists discover natural laws.[18] Legal professionals in North America and Western Europe have interpreted this premise to suggest that they may transmit legal institutions and technology internationally to law schools, courts, justice departments, judicial institutes, and government offices. Nonetheless, opponents claim that legal professionals are ideological slaves of their times because prevailing views are concealed under a veneer of ideological neutrality.[19] It is in this manner that in this way, "European systematic jurisprudence embodies and perpetuates nineteenth-century liberalism, locking in a selected set of assumptions and values and locking out all others."[20]

To be sure, legal colonization studies see lawfare as a space for contestation, subversion, and resistance rather than as a site of control. Indeed, the second wave of law and colonialism studies focuses on the counter-hegemonic potential inherent in the most repressive colonial legalities, with academics emphasizing subaltern people's agency in mobilizing legal instruments and cultures to advance their interests.[21] Benton argues that colonial administrations maintained or reinvented pre-existing legal institutions to preserve social order while conquered and colonized groups sought, in turn, to respond to the imposition of law through

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[17] John Henry Merryman & Rogelio Pérez-Perdomo, *The civil law tradition: an introduction to the legal systems of Europe and Latin America* (California: Stanford University Press, Cop, 2019) at 68.

[18] *Ibid* at 64.

[19] *Ibid* at 67.

[20] *Ibid*.

[21] John L. Comaroff, *supra* note 11.

accommodation, advocacy, subtle delegitimization, and outright rebellion.[22] However, as Comaroff and Merry emphasized, the law as a vehicle for colonial governmentality and sovereignty cannot be equated with the law as a subversive instrument. This study is particularly sensitive to the current guises in which key components of colonial legal discourses and institutions have outlived the official end of colonial control and continue to exercise significant influence in politics, culture, and economy.[23] Merry points out as follows:

> "understanding the complicated role law played in colonialism – as a mode of coercion, a form of social transformation, and discourse of power developed by dominant groups but also open to seizure by subordinates – helps make sense of the dynamics of globalization and the expansion of the rule of law taking place today."[24]

As Merry observes, although legal globalization has moved away from racial and civilizational discourses, the legacy of law and colonialism persists in the following ways. Initially, the law is neither external nor incidental to the colonial project's creation. As with other forms of foreign involvement, legal colonialism must be defined in terms of structural relations of colonial difference that influence its conception, operation, and consequences intimately, as is emphasized by Sabaratnam.[25] This indicates that legal discourses are not only narrative accompaniments to dominance but are mutually constitutive parts of contemporary law and hierarchical institutions.[26] Additionally, the establishment of hegemonic legal cultures does not prevent the employment of law for anti-hegemonic purposes altogether. Indeed, if legislation is manifestly partial and unfair, it will conceal nothing, legitimize nothing, and contribute nothing to any class's

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[22] Lauren A Benton, *Law and colonial cultures: legal regimes in world history, 1400-1900* (Cambridge: Cambridge University Press, 2002) at 3.

[23] Philipp Dann & Felix Hanschmann, "Post-colonial Theories and Law" (2012) 45:2 Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America 123–127 at 124.

[24] Sally E. Merry, *supra* note 1.

[25] Meera Sabaratnam, *Decolonising intervention: international state-building in Mozambique* (London: Rowman & Littlefield International, 2017) at 4.

[26] Sally E. Merry, *supra* note 1 at 578.

hegemony, implying that its results will be manifestly unproductive.[27] The argument remains that whatever virtue is connected with this questionable altruism, there is either proportional damage, or it is deliberately permitted to legitimize an unacceptable objective.[28] Finally, it is critical to remember that when legal development prioritizes scientific technocracy, it diverts attention away from persistent efforts for equity and social justice that require a cultural, if not a political, revolution at the center and periphery.[29] In response to these criticisms, the remainder of this paper argues that the promotion of the post-conflict rule of law fosters social control by obscuring the modern state's settler-colonial origins to re-establish the ruling class' link with global capital.

IV. THE RULE OF LAW IN PEACEBUILDING AND DEVELOPMENT

The rule of law has become a *sine qua non* in current peacebuilding and development processes, providing the framework for addressing several rebuilding difficulties. This section aims to serve as a quick dive into the doctrinal use of peacebuilding and the rule of law for pushing colonist agendas. Development experts worldwide advocate for the rule of law as the surest path to market-led growth. Human rights organizations promote it as the best safeguard against human rights violations. In peace and security, the rule of law is viewed as the surest safeguard against the re-emergence of conflicts and the foundation for rebuilding post-conflict societies.[30]

Carothers argues that "one cannot get through a foreign policy debate these days without someone proposing the rule of law as a solution to the world's troubles."[31] The rule of law is often endowed with the following

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[27] Edward Palmer Thomson, *Whigs and hunters: the origin of the Black Act* (Penguin Books, 1990) at 263.

[28] Meera Sabaratnam, *supra* note 25.

[29] Ugo Mattei & Laura Nader, *Plunder: when the rule of law is illegal* (Blackwell Pub, 2008) at 202.

[30] Balakrishnan Rajagopal, "Invoking the Rule of Law in Post-Conflict Rebuilding: A Critical Examination" (2008) 49:4 Willian and Mary Law Review.

[31] Thomas Carothers, "The Rule of Law Revival" (1998) 77:2 Foreign Affairs at 95.

characteristics, which some think are necessary for validating and preserving the post-conflict social contract: (i) establishes the stable social order essential for democracy, (ii) sufficiently and consistently defends property rights, and (iii) ensures the expression of collective will via respect for power organization and fundamental human and civil rights.[32]

Numerous organizations, including the United Nations, define the rule of law as having two components: (i) a procedural component that emphasizes law publicity, equal application, and independent adjudication; and (ii) a substantive component that gives substance to the formal requirements of international human rights standards and standards of fairness.[33] However, when it comes to operationalizing the idea, the rule of law programs emphasize the establishment of formalistic-legal principles to resemble Weberian concepts of rational authority and legitimacy.[34] In contrast to the traditional authority of the ruling regime, which is justified by tradition and custom, rational authority derives its legitimacy from the institutions established by widely applicable legislation.[35] This rising importance of institutions—game rules and the organizations that create and enforce them—as a critical component of peacebuilding is reflected in the 2011 World Development Report on conflict, security, and development.[36] This paper ties the persistence of violent conflict in developing countries to a lack of governmental capability and lawful institutions. Similarly, while conceding that institutions alone cannot ensure peace, Paris and Sisk believe that without enough attention to state-building, war-torn governments would be less likely to escape the many and mutually reinforcing "traps" of violence and underdevelopment.[37] As a result, the United Nations (UN) Peacebuilding Commission was founded with a

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[32] US Agency for International Development, *Guide to Rule of Law Country Analysis: The Rule of Law Strategic Framework: A Guide for USAID Democracy and Governance Officers* (CreateSpace Independent Publishing Platform, 2013).

[33] Sriram Chandra Lekha, Olga Martin-Ortega, & Johanna Herman, eds, *Peacebuilding and Rule of Law in Africa: Just Peace?* (Routledge, 2010).

[34] Max Weber, "The Three Types of Legitimate Rule" (1958) 4:1 Berkeley Publications in Society and Institutions.

[35] *Ibid*.

[36] World Bank, World Development Report (2011).

[37] Roland Paris, *The dilemmas of statebuilding: confronting the contradictions of postwar peace operations* (Routledge, 2010) at 3.

focus on the security-development nexus to bring together key players and mobilize resources from inside and beyond the UN system to re-establish the rule of law in war-torn communities.

As with neoliberal policymakers, many international relations researchers have invested in the rule of law internationalization with great redemptive potential. According to Fukuyama, liberal democracy requires the rule of law institutions and democratic institutions that hold rulers responsible for public choice.[38] In portraying legal globalization as a 'new world order,' Slaughter emphasizes the most successful style of post-conflict reconstruction as a 'dense mesh of horizontal and vertical networks of professionals working in fields such as regulation, justice, and law-making.[39] Asserting that democracy and the rule of law remain the characteristics of modernity and the universal norms for legitimate government, Ikenberry concludes that liberal internationalism is without a genuine adversary.[40] What Acharya refers to as the "*moral cosmopolitan view [of] norm diffusion*," this literature often distinguishes the globalization of legal institutions and ideas from Western colonialism or imperial progressivism.[41] Nevertheless, Merry refers to the British empire as one of these networks and bodies of knowledge in which administrators went from place to place within a framework of common cultural understandings about race and power. The same hegemonic socialization exists today in redemptive garb.[42]

Additionally, the rising post-colonial criticism of law, informed by legal colonization studies, serves as a reminder of these troublesome features of the modern rule of law advocacy. To begin, imposing legal standards and institutions on non-Western cultures are tantamount to 'new

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[38] Francis Fukuyama, "Transitions to the Rule of Law" (2009) 21:1 Journal of Democracy 33–44.

[39] Anne-Marie Slaughter, *A new world order* (Princeton University Press, 2004) at 166.

[40] G John Ikenberry, "The Future of the Liberal World Order: Internationalism After America" (2011) 90:3 Foreign Affairs 56–68 at 62.

[41] Amitav Acharya, *Whose Ideas Matter? Agency and Power in Asian Regionalism* (Cornell University Press, 2009) at 10.

[42] Sally E. Merry, *supra* note 1 at 580.

imperialism.'[43] Brooks expresses this issue by insisting that war-torn societies must accept some of imperialism's worst elements (culturally insensitive invading forces that drive up prices distort local economies, and impose ham-handed "reforms") in exchange for a few of imperialism's advantages.[44] Second, contrary to reformers' aspirations, the new rule of law is prone to capture by powerful parties engaged in power consolidation.[45] For example, Sitze argues that transitional justice mechanisms like truth commissions fail to produce miracles and often end up reiterating the kinds of colonial sovereignty and governmentality whose excesses the institutions exposed and critiqued.[46] He repeats political theorists who warn that by expanding laws, you inevitably generate more government agents and consequently provide a greater number of persons with authority over their fellows.[47] These same characteristics, Sharon asserts, may become an accelerant of dominance rather than an antidote.[48] Finally, these criticisms expose the concept of apolitical neutrality as a smokescreen for an inherently ideological project, with Sitze asserting that the language of transitional justice is a new name for the old colonial theory and practices of humanitarian experts claiming to speak for and thus save otherwise helpless, powerless, and voiceless non-Western victims.[49]

Apart from casting doubt on the legitimacy and moral basis for the rule of law advocacy, these considerations point to a clear link between legal colonialism, legal globalization, and post-conflict rebuilding. By incorporating ideas from legal colonization studies and critical peacebuilding scholarship, this paper situates international attempts to

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[43] Jane Stromseth, David Wippman, & Rosa Brooks, *Can Might Make Rights?: Building the Rule of Law after Military Interventions* (Cambridge University Press, 2006).

[44] Rosa Brooks, "The New Imperialism: Violence, Norms, and the "Rule of Law" (2003) 101:7 Georgetown Law Faculty Publications and Other Works, online: <https://doi.org/10.1017/CBO9780511803086> at 2283.

[45] Akinbode Fasakin, "The coloniality of power in post-colonial Africa: experiences from Nigeria" (2021) 42:5 Third World Quarterly 1–20.

[46] Adam Sitze, *The impossible machine a genealogy of South Africa's Truth and Reconciliation Commission* (Ann Arbor University of Michigan Press, 2016) at 251.

[47] Benjamin Constant & Etienne Hoffmann, *Principles of politics applicable to all governments* (Liberty Fund, 2003) at 65.

[48] Assaf Sharon, "Domination and the Rule of Law" (2016) 2 Oxford Studies in Political Philosophy 128–155 at 153.

[49] Adam Sitze, *supra* note 46 at 3.

reconstruct the rule of law in Liberia and Sierra Leone within a post-colonial framework. These instances were picked using a purposive sampling strategy that seeks to define traits and locate venues that exhibit various aspects of those qualities.[50] In both nations, post-war legal reconstruction is substantially influenced by the same Western powers that founded the dominant contemporary state system—the UK in Sierra Leone and the US in Liberia—and have traditionally favored governing elites. To enhance the critical rule of law literature, I argue that the harmful effects of legal globalization in these nations are often constitutive of social dominance rather than pathological or unexpected outcomes of well-intentioned programs. While I acknowledge that transitional justice mechanisms (e.g., war crimes tribunals and truth commissions) have frequently been used to institutionalize the rule of law, the emphasis here is primarily on interventions aimed at reconstructing the post-conflict state, i.e., legal reform and justice sector development.[51] Besides being critical for re-establishing the economy, legal and judicial reforms are unambiguously about reinforcing ties with past settler-colonial powers.

V. THE RULE OF LAW IN SIERRA LEONE AND LIBERIA

Sierra Leone and Liberia started (re)building the rule of law after the civil war's conclusion in the early 2000s, with financing and technical assistance from the international community. The UK, Sierra Leone's former colonial power and long-standing bilateral partner, spearheaded donor support for establishing a wide justice system reform agenda. British engagement occurred concurrently with the establishment of the United Kingdom's new Africa Conflict Prevention Pool, established in April 2001, a coordinated method to manage the United Kingdom's foreign commitment to preventing and reducing violent conflict. While the International Military Advisory and Training Team (IMATT) oversaw military reforms, the Commonwealth Community Safety and Security Project (CCSSP) was

[50] John W Creswell & Timothy C Guetterman, *Educational research: planning, conducting, and evaluating quantitative and qualitative research* (Pearson, 2019).

[51] Douglas Cassel, "Transitional Justice and the Rule of Law in New Democracies" (1998) 92:3 American Journal of International Law 601–604.

established to strengthen the Sierra Leone Police's professional capacity, with British-born Keith Biddle appointed as the country's first post-war Inspector-General. Aimed at re-establishing and strengthening the rule of law, the CCSSP resulted in the training of approximately 9000 police officers, the establishment of cadet courses at the Bramshill Police Training College in England, and the (re)construction of police stations.[52]

To transition from a post-war emergency to a coherent and integrated justice sector-wide strategy, the UK Department for International Development (DFID) launched the Justice Sector Development Programme (JSP), which incorporated elements of the CCSSP and an earlier Law development program in Sierra Leone. Between July 2005 and December 2011, JSdP was a £28 million initiative to establish an effective and responsible judicial system capable of fulfilling the needs and interests of poor, marginalized, and vulnerable people.[53] The Access to Security and Justice Programme (ASJP) succeeded the JSdP as a five-year initiative (2011–2016) aligned with the government's Justice Sector Reform Strategy and Investment Plans (2008–2018).

In recognition of America's long-standing relationship with Liberia, the parties to the comprehensive peace agreement (CPA) recommended that the US take the lead in reorganizing Liberia's post-conflict state. This proposal coincided with an increasing American interest under the Bush administration in dealing with failing nations in Africa to prevent the spread of terrorism and other transnational organized crime.[54] Following President Ellen Johnson-election Sirleaf's victory election victory in Liberia in 2005, the US government started a broad-based, the multi-faceted rule of law initiative aimed at laying the groundwork for reconstructing Liberia's destroyed judicial and economic systems.[55] Justice sector

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[52] Michael Kargbo, "International Peacebuilding in Sierra Leone" in Tunde Zack-Williams, ed, *When the State Fails* (Pluto Press, 2012) 65.

[53] DFID Department for International Development, *The Africa Conflict Prevention Pool – An Information Document: A Joint UK Government Approach to Preventing and Reducing Conflict in Sub-Saharan Africa* (DFID, 2004).

[54] Bureau of International Narcotics and Law Enforcement Affairs, *INL Guide to Justice Sector Assistance* (INL, 2019).

[55] Neal P Cohen et al., *Final Evaluation of USAID GEMAP Activities (Governance and Economic Management Assistance Program* (USAID, 2010).

development was included in Liberia's post-war Governance and Economic Management Assistance Program (GEMAP) rather than a distinct sector-focused plan established in Sierra Leone. American-backed reconstruction operations aimed to re-establish political stability in the West African sub-region and improve national institutions responsible for maintaining internal law and order. US funding was channeled through the Department of Justice (which placed a Resident Legal Advisor within the US Embassy), the Pacific Architects and Engineers (PAE, for a team of on-the-ground legal advisors assisting various government institutions), the American Bar Association (ABA, in collaboration with the Liberian Judicial Institute), and the Carter Center (focussed on traditional justice and mediation systems).[56]Overall, support for Liberia's rule of law sector was anticipated to cost around $13 million annually, with the US government contributing almost half of this total.[57]Other US-based organizations that have shown interest in Liberia include the Millennium Challenge Corporation, which supports the rule of law via its governance scorecard, which includes six indicators related to governing justly and eight indicators related to 'economic freedom.

Post-conflict corporate governance in both nations was inextricably tied to legal and judicial changes. Liberia's initial post-war rebuilding plan will be undertaken under the leadership of President Johnson-Sirleaf, a Harvard-educated economist, and former UN and World Bank official who returned to the country with enormous international support. Liberia's Pillar 2 of the Poverty Reduction Strategy (also referred to as LIFT Liberia) was focused on revitalizing the economy via reopening the forestry and mining industries, which had been closed owing to the war and subsequent UN sanctions. The JSP in Sierra Leone was founded on the concept that states with poorly functioning legal systems and lax criminal control are unappealing to investors, affecting economic development.[58] Establishing a

[56] Stefania Galli & Klas Rönnbäck, "Colonialism and rural inequality in Sierra Leone: an egalitarian experiment" (2019) 24:3 European Review of Economic History 468–501.

[57] Swati Parashar & Michael Schulz, "Colonial legacies, post-colonial 'selfhood' and the (un)doing of Africa" (2021) 42:5 Third World Quarterly 867–881.

[58] DFID Department for International Development, *Safety, Security and Accessible Justice: Putting Policy Into Practice* (London: Putting Policy Into Practice, 2002).

connection between justice sector reform and economic success, DFID's director Mark Lowcock emphasized the need for investors and companies to have confidence in a stable and predictable environment for property rights, contracts, and restitution.[59]

The judgment is yet out on whether Sierra Leone and Liberia's efforts to re-establish the rule of law have succeeded in professionalizing their legal systems and justice sectors. According to recent research conducted in Liberia, although the rule of law training programs improved the protection of property rights and decreased the occurrence of some forms of crime, they did not increase faith in the police, courts, or government more broadly.[60] According to a 2014 report by the Open Society Initiative of West Africa (OSIWA), while post-conflict reforms have advanced the criminal justice system beyond its pre-conflict capacity for crime prevention, the Sierra Leone Police (SLP) continues to fall short of maintaining transparency and requires increased civilian input in local policing activities.[61] Ironically, after over two decades of re-establishing the rule of law, Sierra Leone's current administration, elected in 2018, views an overhaul of the nation's judicial and justice delivery system as an extreme urgency.[62] Despite these setbacks, reconstructing the rule of law in both nations has primarily succeeded in restoring the post-colonial state and neoliberal economy, which disproportionately favor the ruling political and economic elite. This will be discussed in detail in the next section.

VI. COLONIALISM TAKES OVER (AGAIN)

While Sierra Leone and Liberia were at a crossroads in terms of examining the historical and social structures that gave rise to decade-long armed conflicts, the flurry of post-conflict international activism (some of which

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[59] Mohamed Sema, *Sierra Leone - Justice Sector and the Rule of Law* (Johannesburg: Open Society Foundations, 2014).

[60] Robert A Blair, Sabrina M Karim, & Benjamin S Morse, "Establishing the Rule of Law in Weak and War-torn States: Evidence from a Field Experiment with the Liberian National Police" (2019) 113:3 American Political Science Review 641–657.

[61] Mohamed Sema, *supra* note 59 at 82.

[62] Presidential Address on the Occasion of the State Opening of Parliament by His Excellency Dr. Julius Maada Bio, President of the Republic of Sierra Leone, Parliament Building.

was documented above) pushed for a positivist/scientific approach consistent with the dominant global discourse on civil wars at the time.[63] This discourse centered on 'state failure,' the notion that a once-functioning post-colonial state no longer obtains support from or exerts control over its people. It is no longer even the object of demand since its people recognize its inability to provide supplies.[64] Additionally, the narrative emphasized objective metrics of statehood – political stability, government efficiency, and regulatory quality – before concluding that African nations have weak states and subpar governance.[65] In terms of 'failed states' political economy, the rhetoric focused on conflict resources, notably diamonds.[66]

How is the concept of 'state failure' viable when states in Africa have never reached or resembled Weberian ideals, much less European approximations to that intellectual construct?[67] True! However, as Wai argues, the term 'state failure' in Africa obscures an understanding of statehood as an unfinished political project with issues of citizenship and political membership arising from colonial masters' attempt to hurriedly and arbitrarily force multi-ethnic societies into states that were intended to serve the colonial masters' interests.[68] While positivist epistemology hid the past, legal experts (local and foreign) presided over the reconstruction of the new state structure. Fixated on problem-solving policy frameworks, these legal professionals began rebuilding work without conducting a detailed examination of each country's history of state creation and power. In Liberia, this silence meant disregarding the reality that the contemporary Liberian state is a descendant of slavery and the anti-slave trade campaign of the nineteenth century, which culminated in the

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63 Jimmy Kandeh, *supra* note 7 at 90.

64 William Zartman, ed, *Collapsed states: the disintegration and restoration of legitimate authority, Lynne Rienner* (Lynne Rienner, 2007) at 5.

65 Michael Bratton & Eric Chang, "State Building and Democratization in Sub-Saharan Africa" (2006) 39:9 Comparative Political Studies 1059–1083 at 9.

66 William Reno, *Warlord politics and African states* (Lynne Rienner Publishers, 1999).

67 Denis M Tull, "A Reconfiguration of Political Order? The State of the State in North Kivu (DR Congo" (2003) 102:408 African Affairs 429–446 at 430.

68 Zubairu Wai, "Neo-patrimonialism and the discourse of state failure in Africa" (2012) 39:131 Review of African Political Economy 27–43 at 34.

emergence of pro-American colonial interests in researching back-to-Africa ideas.[69] It downplayed the role of the American Colonisation Society (ACS), which was created to establish "a colony in Africa to take free people of color…residing in the United States…to Africa or such other places as Congress may deem expedient."[70] Additionally, the framework overlooked the reality that Americo-Liberian rule, which lasted from 1822, when the first deported Africans landed in Monrovia, until 1980, was backed by the Euro-American legal system and civilization.[71] The historical irony that the 1847 national constitution, drafted by a Harvard professor named Simon Greenleaf, degraded and alienated indigenous Liberians from their homeland while extolling the American concept of liberty for mulatto immigrants is omitted from the reform narrative.[72]

In neighboring Sierra Leone, the restoration plan omitted the history of the current state as a result of the anti-slavery campaign and British colonialism. Sierra Leone's capital, Freetown, was 'bought' from indigenous rulers in 1787 to resettle slaves exiled from North America or recaptured on the high seas after the cessation of the Trans-Atlantic Slave Trade. Following a short period of private administration by the Sierra Leone Company (a subsidiary of the St. George's Bay Company), the settlement was transformed into a colonial property in 1808 and designated a British Crown colony. While the Krios were a minority descendant of 'liberated' Africans throughout this time of colonial authority, their close affiliation with the colonial government enabled them to get a formal education and embrace Western ideals. Kandeh observes that education and Christianization, particularly Anglicization, were considered vital to Krios' identity and the creolization of protectorate Africans.[73] As a result of their early education and colonial position, the Krios were deemed British subjects capable of utilizing contemporary institutions under English law,

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[69] *Volume II Consolidated Final Report*, by Liberia Truth and Reconciliation Commission (TRC) (Liberia: Truth and Reconciliation Commission, 2009) at 98.

[70] *Ibid* at 100.

[71] Amos Sawyer, *The emergence of autocracy in Liberia: tragedy and challenge* (Institute For Contemporary Studies, 1992).

[72] Shane Chalmers, *Liberia and the Dialectic of Law: critical theory, pluralism, and the rule of law* (Routledge, 2019) at 6.

[73] *Ibid* at 6.

in contrast to their counterparts in the interior, who were designated 'protected people' under indigenous law.[74]

The relationship between settler-colonial control and ongoing political violence has been established. According to the Liberian TRC report, central to understanding the socio-political conflict and its degeneration into armed conflict throughout Liberia's evolving history is the choice made by Liberia's early leadership to impose Euro-American civilization on the indigenous population.[75] Similarly, Sierra Leone's TRC report cites the colonial establishment of a two-nation state with distinct development programs and legal systems as a root cause of the violent conflict.[76] The link between the World Bank and the International Monetary Fund's structural adjustment programs in the 1980s and the ensuing human suffering and violence in both nations is widely established.[77] As a result, disregarding this past cannot be a coincidental result of apolitical technocracy. Consideration of settler-colonial history would likely have implicated the ACS and the US government, both of which were participants in Americo-Liberian political power in Liberia for more than a century. Any attempt to examine the country's colonial past in Sierra Leone would have positioned the UK as a dubious external moral guarantor of the former colony's peace process. It is worth noting that Prime Minister Tony Blair's decision to act in Sierra Leone coincided with the launch of his new 'ethical foreign policy' in Africa, which included the African Conflict Prevention Pool, the Commission for Africa, and the New African Initiative. It was also an opportunity for Americans to display moral leadership in Africa, as Rev. Jesse Jackson was appointed US Special Envoy for the Promotion of Democracy in Africa.

Restoring external actors' integrity is identical to Western governments' desire, as Jung puts it, to employ transitional justice to draw a line through

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[74] Akintola J G Wyse, *The Krio of Sierra Leone: An Interpretive History* (Washington DC: Howard University Press, 1989).

[75] Liberia Truth and Reconciliation Commission (TRC), *supra* note 69 at 99.

[76] *Ibid*.

[77] William Reno, *Humanitarian Emergencies and Warlord Economies in Liberia and Sierra Leone* (World Institute for Development Economics Research, 1997).

history and legitimize current policies.[78] Not only were the Special Court for Sierra Leone and the TRCs in both countries temporally separated, but they were also required to produce an internal narrative of atrocity crimes unique to Sierra Leone and Liberia as if their warlords and autocrats emerged exclusively in post-settler/colonial times. External players such as Western governments, international financial institutions, and businesses are completely exonerated of blame for political violence in these nations, regardless of their dubious background. However, whereas indigenous peoples in white-settler colonies such as Canada may attempt to exploit the past to attack current policies and circumstances, post-conflict policies like Sierra Leone and Liberia are often the result of a realignment of interests between global (external actors) and local elites.[79] Indeed, as Hanlon says, some of "the same old men who were responsible for the war are still in power, both in government and in a reinstated chieftaincy system."[80]

Elite restoration post-conflict is not about restoring the Krios or Americo-Liberians to power. Sierra Leone's educated protectorate elite seized political authority over the Krios at independence in April 1961, much as Liberia's 1980 military coup ended Americo-Liberian political leadership. Rather than that, it is about re-establishing the settler-colonial state as the dominant mode of economic accumulation and power.[81] It is the restoration of the colonial rule of law's most prized legacy, namely the state's capacity to control, examine, monitor, discipline, and punish subjects' behavior in a sphere brought under the scope of the law.[82] This re-establishment of hegemonic authority is unavoidable since legal reconstruction succeeded in re-coupling state and government and narrowing the divide between public power and private wealth, rather than disconnecting them, as Kandeh strongly recommends.[83] As the Liberian

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78 Courtney Jung, *Canada and the Legacy of the Indian Residential Schools: Transitional Justice for Indigenous Peoples in a Non-Transitional Society* (Aboriginal Policy Research Consortium International, 2009) at 218.

79 *Ibid*.

80 Joseph Hanlon, "Is the international community helping to recreate the preconditions for war in Sierra Leone?" (2005) 94:381 The Round Table 459–472.

81 Jimmy Kandeh, *supra* note 7 at 81.

82 Assaf Sharon, *supra* note 48 at 131.

83 Jimmy Kandeh, *supra* note 7.

town of Butaw and Sierra Leone's Kono area demonstrate, this reconfiguration of law, power, and capital is most visible in local economies, which host the resources and labor required by global capital.

VII. POST-CONFLICT STATE OF THE STATES AND LAW

Butaw is one of the local villages in Sinoe County in south-eastern Liberia. It is one of the localities where Golden Veroleum Liberia (GVL) has taken up 16,758 hectares of farmland for oil palm cultivation and associated infrastructure. Among the company's eight fundamental principles is a commitment to protect community self-determination, land rights, sovereignty, culture, indigenous traditions, and holy places, all achieved via the communities' free, prior, and informed consent.[84] Residents of Butaw, however, protested GVL's actions in a letter sent on 1 October 2012 and addressed to the Roundtable on Sustainable Palm Oil (RSPO) in Malaysia, portraying the corporation as a global palm oil company that has taken over their lands. Among the grievances raised in the letter was the legality of the concession agreement; the absence of free, prior, and informed community consent; damage to farmlands; insufficient compensation and community development fund; disrespect for sacred lands and the old town; insufficient job opportunities; and harassment and intimidation by company-funded police.[85] Disturbed by the company's tardy response and the government's complicity, Butaw organized a demonstration against GVL on 26 May 2015, after another letter from the Butaw Youth Association threatened the company's Chief Executive Officer with 'consequences' if he refused to meet with them.[86]

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[84] James Otto, "Golden Veroleum Liberia Comes under Spotlight Again for not Living Up to MOU," *LandPortal* (12 August 2021), online: <https://landportal.org/news/2021/09/golden-veroleum-liberia-comes-under-spotlight-again-not-living-mou>.).

[85] Forest People, "Letter of complaint to RSPO from communities within proposed oil palm concession in Liberia," *Forest People Programme* (29 October 2012), online: <https://www.forestpeoples.org/en/topics/palm-oil-rspo/news/2012/10/letter-complaint-round-table-sustainable-palm-oil-rspo-indigenous>.

[86] Elaisha Stokes, "Riot on the Plantation," *Al Jazeera* (4 October 2015), online: <http://projects.aljazeera.com/2015/10/liberia-palm-oil/>.

Ignited by around 40 young men who attempted to prevent employees from visiting the plantation, the disturbance drew hundreds of young people who looted and assaulted GVL's complex. Due to the inability of the Sinoe local police force to maintain control, the United Nations Mission in Liberia (UNMIL) forces were summoned to disperse the demonstrators and remove international workers.[87] Following an order from the Greenville City Magistrate Court, Liberia's elite Police Support Unit (PSU) executed a search and seizure warrant while wearing full body armor and armed with semi-automatic weapons. The warrant included economic sabotage, terroristic threat, criminal mischief, and rioting as among the offenses.[88] Then, 17 young males with bodily injuries were incarcerated in a crammed Greenville cell. Among them was Fred Thompson, who died of an unexplained reason and was buried without an examination after 49 days in prison.[89] When asked what GVL is doing to eliminate imprisonment, the director of Corporate Communications said that the firm would want incarcerated individuals to be handled according to the law.[90]

To address these issues, Justice Minister Benedict Sannoh released a statement in February 2015 urging local populations to avoid concessionaires, as the government would not tolerate any action that obstructs or otherwise disrupts the smooth functioning of concessionaires operating inside.[91] Previously, in June 2011, President Sirleaf cautioned the inhabitants of Sinoe County against unpatriotic and anti-nationalistic behavior that would jeopardize GVL operations and deter possible investors.[92] In December, the president issued another warning in response to local protests against another concessionaire, as revealed in this statement:

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87 *Ibid.*

88 *Ibid.*

89 *Ibid.*

90 *Ibid.*

91 UNDP & OECD, *Assessment of Development Results: Liberia* (United Nations Publications, 2012).

92 AllAfrica, "Liberia: President Sirleaf, On Tour of Sinoe County, Visits Golden Veroleum Oil Palm Nursery, Urges Citizens to Cooperate With Investors," *AllAfrica* (1 June 2011), online: <https://allafrica.com/stories/201106090476.html>.

> "When your government and the representatives sign any paper with a foreign country, the communities can't change it …. You are trying to undermine your government. You can't do that. If you do so, all the foreign investors coming to Liberia will close their businesses and leave, then Liberia will go back to the old days."[93]

Although the Kono area was largely destroyed during Sierra Leone's civil war, the resurgence of diamond mining in the 2000s increased the number of mining chiefdoms from six to ten, accommodating 18 mining corporations, the majority of which are foreign-owned.[94] OCTEA Mining (previously Koidu Holdings Ltd.) is one of these enterprises. It operates the Koidu Kimberlite Project inside Tankoro Chiefdom, which covers an area of roughly 4.9 km square and has two kimberlite pipelines.[95] The corporation inherited a 25-year lease arrangement, which President Koroma's government renegotiated, resulting in a new contract signed in September 2010 that extended the concession until July 2030, extendable for another 15 years. The first lease is connected to the South African mercenary group Executive Outcome, in which President Kabbah's previous government offered a concession in exchange for their involvement in reclaiming the diamond area of Kono and bringing an end to the civil war. Tiffany & Co. and Beny Steinmetz, an Israeli billionaire, are two other worldwide corporate players related to OCTEA. OCTEA Mining was the largest diamond mining enterprise in post-war Sierra Leone, employing 983 people and an additional 468 short-term contractors.[96] During the mining boom, the Paramount Chief of Tankoro Chiefdom served on the company's board of directors.

However, Kono remains one of Sierra Leone's most impoverished districts, with the Koidu capital town missing essential public facilities like paved roads, electricity, water supply, and adequate schools. To serve a population of around 400,000 lives, the district has just one barely functional hospital,

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[93] Center for International Conflict Resolution, *Smell-No-Taste: The Social Impact of Foreign Direct Investment in India* (New York: Center for International Conflict Resolution, 2012) at 1.

[94] Prince T Mabey et al., "Environmental Impacts: Local Perspectives of Selected Mining Edge Communities in Sierra Leone" (2020) 12:14 Sustainability 5525.

[95] Koidu Limited, "Koidu Kimberlite Project – Koidu Limited," *Koidu Limited*.

[96] Prince T. Mabey et al., *supra* note 94.

57 underequipped peripheral health centers, two physicians, and eight community health officers.[97] Apart from an increase in crime (including robbery, murder, and rape), Koidu has become a flashpoint for violent riots against corporate development, frequently resulting in the declaration of a state of emergency, with central authorities invoking Military Assistance to Civil Power (MACP) for extended periods. In December 2007, police officers stationed at Koidu holdings fatally shot two demonstrators, prompting the business's suspension and the creation of the Jenkins–Johnston Commission of Inquiry, which issued a scathing report against the corporation. Five years later, in December 2012, police murdered two more people during a strike by miners seeking better pay and working conditions. Along with the promised Christmas bonus, 'the miners demanded a change in what they characterized as horrible working conditions and an end to suspected racism' in the mines.[98]

These relationships between indigenous peoples, the state, and corporate actors show an uncanny similarity to the settler-colonial economy of around a half-century ago. Although legality is often challenged, as Chalmers argues in her study of Liberia's Central Prison system, it stands at the epicenter of a colonizing force that converts individuals into living dead via acts of sovereign expression.[99] These people are experiencing capitalism law 'with a repertory of language, legal forms, and institutional practices' that places a premium on the market and contract as the foundations of a stable socioeconomic order.[100] In Liberia, one research highlighted that concession talks often prioritize the government's claim to land ownership above indigenous groups' traditional land tenure.[101] These concession agreements are inaccessible to community members not just because copies are lacking but also because they are written in extremely legalistic and technical language that is unintelligible to the rural population's majority of illiterates. According to corporate lawyers, these

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97 *Ibid*.

98 BBC, "Sierra Leone Koidu mine: Foreigners 'holed up' after clashes," *BBC News* (19 December 2012), online: <https://www.bbc.com/news/world-africa-20781940>.

99 Shane Chalmers, *supra* note 72 at 6.

100 Martin Chanock, *supra* note 14 at 23.

101 Center for International Conflict Resolution, *supra* note 93 at 7.

agreements often incorporate escape provisions that allow firms to dodge corporate social responsibility and accountability for community project financing. Rachael Knight of NAMATI Liberia writes about contracts that include ambiguous language like as to the best of the firm's ability, in the way the company considers suitable, and the company will make a reasonable effort to, which guarantee that corporate representatives are not obligated to meet community standards.[102]

This legal authority serves as a reminder of 'how legality became the preeminent signifier of state legitimacy and "civilization"' during the period when Europeans lacked permission via an election process to govern over non-white people, as Hussain analyses.[103] Hussain discusses the rule of law, which he defines as a "government bound by fixed rules applicable to all." Once "law" is conceptualized as a "process" rather than an immutable system of justice comprised of a set of normative rules derived from either a rational social contract or an unwritten constitution predating conquest, the stage was set for periodic interruptions of this process to attend to a competing but equally vital tutelary obligation: ensuring the "safety of the people."[104] Hussain states that the instance of martial law, the blatant display of military might, was seen as edifying in and of itself. It aided in the inculcation of a "habit of obedience," a consciousness of the state as a sovereign power, an essential prerequisite for subjects to obtain before being pronounced suitable for political activity. Hussain explains that martial law in colonial India served as the common-law counterpart of a continental proclamation of the state of siege, a royal edict authorizing the army to assume the jurisdiction of civil courts.[105] However, martial law was theoretically constructed within the language and logic of common law. It enabled propagandists and apologists to claim legitimately or fraudulently that extending the rule of law to the colonies was a good thing.

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[102] Rachael Knight, "Bad-Faith Contracts & Unjust Investments – How can communities protect their interests?", *Namati* (18 September 2018), online: <https://namati.org/news-stories/bad-faith-contracts-unjust-investments-how-can-communities-protect-their-interests/>.

[103] Nasser Husain, *The jurisprudence of emergency: Colonialism and the Rule of Law*, Law, Meaning, And Violence (University of Michigan Press, 2003).

[104] *Ibid.*

[105] *Ibid.*

Additionally, this legislation was utilized to resolve Mamdani's 'native issue,' which concerned how a small settler-colonial minority could govern over an indigenous majority.[106] Nonetheless, this imposition is the reimagining of customary law by settler-colonial control.

While Sierra Leone and Liberia have a dual land tenure system, contemporary elites are delighted to support paramount chiefs who act as caretakers of common land, especially in chiefdoms representing what Mamdani refers to as decentralized despots.[107] As was the case in Tankoro Chiefdom, where the paramount chief was on the board of directors of the main mining corporation, it makes strategic sense for the state and global capital to bargain with strong land custodians rather than an entire community. Similarly, DFID's backing for President Kabbah's Paramount Chief Restoration Programme (PCRP) paralleled the British-pioneered tactics of indirect colonial authority in Africa. The UK was even ready to construct residences for returning paramount chiefs, spending around $2,277,442 over two years, rescinding the plan only when public concern over supporting a traditional domination style seemed to contradict Blair's ethical foreign policy image.[108] As was the case during colonial times, this elite alliance has been maintained as central administrations have concentrated on integrating the dual land tenure system into a single neoliberal framework, as Sierra Leone's 2017 Land Policy indicates. Additionally, both nations' settler-colonial laws traditionally recognized customary land tenure exclusively in surface acreage, sometimes awarding the state exclusive rights to resources lying six feet under the soil.

The reconfiguration of this relationship demonstrates unequivocally that when major corporate players dominate nations or become inextricably linked to them, legislation becomes a product of the economy, and what was previously "Western" rule has become global corporate capitalism. However, as a political scholar, Fitzjames Stephen famously observed, the law regulates the most significant aspects of people's everyday lives' and

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[106] Mahmood Mandani, *Citizen and subject: contemporary Africa and the legacy of late colonialism*, Princeton Studies in Culture/Power/History (Princeton University Press, 2018).

[107] *Ibid.*

[108] Richard E Akhaze, *A Comparative Analysis of Post-Conflict Peace-building in Liberia and Sierra Leone* (Doctor of Philosophy, University of Lagos, 2015).

constitutes a moral victory that is more dramatic, more enduring, and more substantial than physical conquest.[109] There is trust in the law's strength, even among those oppressed by it. For example, in March 2016, Sierra Leone's high court ruled that a Chinese company, Orient Agriculture Ltd., must pay $52,300 in compensation to families displaced from their farmland in Nimiyama Chiefdom, one of those rare cases intended to demonstrate that the system is not entirely unjust, as Thompson would argue.[110] Following the judgment, one of the locals credited the legislation, stating that before, we were amputees, but today we have two complete hands because the law is on our side.[111] According to Sonkita Conteh, director of NAMATI Sierra Leone, the judgment demonstrates a way to wring justice out of a dysfunctional system.[112] While NAMATI's efforts are to be appreciated, the study of law and colonialism is necessary to remind attorneys that the legal system may be functioning as intended and that even tiny victories may serve just to legitimize the present system. When individuals seek salvation via the same legal system, it makes perfect sense that law was the 'sum and substance' of what settler-colonial governments desired to educate the indigenous population.[113] While Butaw and Kono's stories demonstrate the pervasive link between the judicial system and past injustices, any attempt to undermine the established order must occur within the system. Within the system, the order must exist—as theorized by Dugard, this implies that the legal system works to institutionalize control while also impeding radical social reform.[114] The profits from Sierra Leone's and Liberia's post-war economic boom did little to improve the living conditions of the overwhelming majority of ordinary citizens are no longer surprising, as this neoliberal reality is all too prevalent throughout post-colonial Africa, according to the 2012 Africa Progress

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[109] Nasser Husain, *supra* note 103 at 4.

[110] Edward Palmer Thomson, *supra* note 27.

[111] James Courtright, "Sierra Leone's Small Towns Learn to Fight Against Land Grabs," *OZY* (7 May 2018), online: <https://www.ozy.com/around-the-world/sierra-leones-small-towns-learn-to-fight-against-land-grabs/86220/>.

[112] *Ibid*.

[113] Nasser Husain, *supra* note 103 at 4.

[114] John Dugard, *Human rights and the south African legal order* (New Jersey: Princeton University Press, 2016).

Panel report.[115] Kofi Annan, the former United Nations Secretary-General, was spot on when he observed that these reforms have concentrated "too much of Africa's enormous resource wealth … in the hands of narrow elites and, increasingly, foreign investors without being turned into tangible benefits for its people."[116] It may be novel that when marginalized populations seek to protest these social injustices, they often face the violence of law enforcement agents trained and equipped by the international community.

VIII. CONCLUSION

As with Sitze's examination of post-apartheid South Africa's rule of law reform, I have used a post-colonial lens to argue that post-war legal reconstruction in Sierra Leone and Liberia not only failed to deliver on emancipatory promises but was also downright obstructive by reinforcing socio-legal domination at the expense of historical struggles for social equality. Apart from obscuring the settler-colonial roots of political violence, international efforts to rebuild the rule of law have been preoccupied with re-establishing the post-colonial state and transitioning to a functioning market economy, processes that have historically resulted in structural injustices in both countries. However, past battles for social justice have been repressed, not erased, by neoliberal peace—as shown by the people of Butaw and Kono—indicating the continuance of popular dissatisfaction with the 'post-conflict' state and corporate world. These social concerns have endured because coloniality is inextricably linked to transitional justice and the rule of law reform initiatives, often heralded as emancipatory endeavors. This analysis, like the scholarship on legal colonization to which I am indebted, poses a more serious challenge to rule of law reformers: until the history of legal development in post-colonial societies is rigorously interrogated and deconstructed, (re)building the rule of law will end up reinstating the structural injustices that precipitated social and political conflicts in the first place. Taking settler-colonial

[115] *Africa Progress Report 2012: Jobs, Justice and Equity: Seizing Opportunities in Times of Global Change*, by Africa Progress Panel (Geneva: Africa Progress Panel, 2012).
[116] *Ibid* at 6.

history seriously is the first step toward decolonizing the post-conflict rule of law project. This process requires the law to be grounded in a social sense of justice and responsibility less influenced by the modern state and corporate capitalist interests disguised as efficiency. Political consciousness and examining the material reality are required in decolonizing foreign intervention.

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The author declared that he has no competing interests.

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