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CIVILIZATION AND COMMERCE:  
THE CONCEPT OF GOVERNANCE IN HISTORICAL PERSPECTIVE  
ANTONY ANGHIÉ*

I. INTRODUCTION: RACE, HISTORY AND INTERNATIONAL LAW

The broad topic of this conference, the relationship between international law, race and colonialism, raises questions of the first importance to the discipline of international law, and I am very honored to be a part of this event.

Perhaps one of the most notable aspects of the complex relationship between race and international law is the extent to which the character of that relationship has apparently changed over the past one hundred years. In short, at the beginning of the twentieth century, international law explicitly furthered racism, whereas now, at the turn of the new millennium, international law appears forcefully committed to the eradication of racism.

The historical centrality of race for the discipline of international law is clearly revealed by a study of nineteenth century jurists. These jurists were preoccupied with the question of the limits of international law, with the issue of whether international law was capable of encompassing governing and accommodating peoples belonging to very different societies. Race is perhaps the most powerful and obvious marker of difference, the apparently stable and self-evident foundation on which further and more elaborate ideas of difference—focusing on culture, on “civilization,” on economic backwardness—may be constructed. Race, transmuted into the more comprehensive notion of “civilization,” is central to the very definition of international law. Thus, even in 1928, international law was defined as “the name for the body of customary and conventional rules which are considered legally binding by civilised States in their intercourse with each other.”

Race served a very important function, for it determined the issue of membership within the family of nations. Furthermore, it usually signified not merely difference, but inferiority—the characteristics of which were

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This work draws upon my chapter, Universality and the Concept of Governance in International Law, in Legitimate Governance in Africa (E.K. Quashigah & O.C. Okafor eds., Kluwer Law Int'l 1999).

comprehensively elaborated by the writers of that time when they detailed the nature of African or Asian societies. This was important because the characterization of non-European societies as backward and inferior played a large role in justifying both the conquest of these peoples and the civilizing missions undertaken by European powers—quite often acting in the name of the “international community”—to remedy backwardness and barbarity. Race, at the most basic level, signified a difference that had to be overcome by the assimilative powers of international law, if international law was to become truly universal. In this way, the whole concept of race is inextricably connected with one of the defining characteristics of international law—its universality.

An examination of the brief histories presented at the beginning of some of the major textbooks of international law suggests how the relationship between international law and race, established so powerfully in the nineteenth century, has shifted in the intervening years. Whereas previously international law was exclusively European, it is now most prominent for its open and cosmopolitan nature, including within its ranks all sovereign states, regardless of their cultures and social structures. Indeed, instead of promoting conquest and domination, international law and institutions, beginning with the League of Nations and continuing in an even more forceful form within the United Nations (“U.N.”), have sought to promote decolonization—the acquisition of sovereign statehood by entities that have previously been denied this by international law. In this way, international law dissociated itself from the colonial past. Certainly, there were occasions when the newly independent states invoked the colonial past when protesting against certain norms—such as the law of state responsibility. Further, the question of the universality of international law has been raised in different forms from time to time. One recent and prominent example of this being the “Asian values debate.”

Overall, however, developing states that protested against certain rules, which, they claimed, furthered colonialism, have accepted in large part

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3. See Michael Banton, International Action Against Racial Discrimination 249 (1996) (noting United Nation’s involvement in promoting de-colonizing within African states); see also Furedi, supra note 2, at 46-78, 193-221 (discussing importance of Western culture in development of racial discrimination).


5. Here, Asian states did not so much question the “universality” of international law as raise questions regarding the application of these norms; international human rights law was universal, but required different applications in different social and political contexts if they were to be effective.
the basic principles of international law. Thus, international law appears to have overcome its racist origins.

The rejection by international law of the racism that it had previously propagated, and indeed, which established the very foundation of the discipline, was further articulated, most particularly, in the field of human rights. It is not easy to identify any area of international law where racial distinctions are still maintained. Rather, a study of international instruments suggests that racism now is a phenomenon that exists principally within states. Indeed, the norm against racism appears to be one of the most established and uncontroversial of the many internationally recognized human rights; it is noteworthy, for example, that the International Convention on the Elimination of All Forms of Racial Discrimination was adopted by the U.N. in 1965, preceding by almost a year the International Covenant on Civil and Political Rights. The importance and character of the norms against racism have been eloquently and powerfully articulated by judges Tanaka and Jessup in their dissenting judgments in the South West Africa case.

Furthermore, race does not feature prominently as an analytic tool, or even as an important sociological phenomenon in much contemporary theorizing about international law—if we take as an example of such theorizing the recent symposium of method in the American Journal of International Law. The paradox is that the deployment of the language of the uncivilized, the barbarian, the backward, enabled the construction of contemporary international law—both by justifying the practices of colonialism, and, further, by ostensibly providing some measure of theoretical coherence to the events that occurred in the nineteenth century. The vocabulary having served its function, international law then, beginning in the inter-war period, devised a series of doctrines and institutions which appear anti-racist. In other words, international law changes its character

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6. See AKEHURST'S MODERN INTRODUCTION TO INTERNATIONAL LAW 29 (Peter Malanczuk ed., 7th ed. 1997) ("Developing states have never dreamt of rejecting all rules of international law which were laid down before they became independent; to do so would mean rejecting many rules which operate to their advantage. The necessity of international law itself as a legal system regulating intercourse between states was accepted.").


10. See Symposium on Method in International Law, 93 AM. J. INT'L. L. 291 (1999). Notably, another version of the symposium will include a contribution focusing on race, colonialism and international law.
and extends its reach and its operation by adopting, first, a racist position, and then, an anti-racist position. A singular transformation was thus effected: whereas previously the whole concept of race and its cognates, the concepts of the uncivilized and non-European, had been explicitly constitutive for the whole discipline of international law, it was now characterized as an aberration, as external to the discipline.  

Indeed, the discipline was now committed to eradicating racism, which was now understood as existing at the local and national level, as opposed to existing in the international realm. It is against this background, where race appears to have been repudiated by international law, that a growing number of scholars have explored the enduring role that race plays in shaping the character of contemporary international relations and international law. One of the principal concerns that unites these scholars—and we do not seek in any way to create an artificial unity among them—is their attempt, in fields as diverse as international economic law and immigration law, to uncover “the ongoing dynamics of racialized power and its embeddedness in prac-


tices and values which have been shorn of any explicit, formal manifestations of racism."\textsuperscript{14}

In this Article, I attempt to explore how the study of history may contribute towards the project of identifying the "ongoing dynamics of racialized power." The study of history offers one means of understanding why people of color continue to be, on the whole, the most disadvantaged and marginalized. The study of history then, is in many respects a practical exercise, a means of facilitating and furthering the reconstructive project which a number of scholars, whether they belong to the movement of Critical Race Theory, Lat-Crit Theory or Third World Approaches to International Law, have in common.\textsuperscript{15}

In attempting to engage in this study of history, however, what is required is a critical engagement with existing histories of international law, the histories which suggest that racism is a problem which has now been successfully overcome. Such an inquiry suggests a series of questions: what are the concerns of conventional histories,\textsuperscript{16} what place is occupied by people of color within these histories, how are non-Western people characterized in these histories and what function do they serve within these histories in explaining the progress and development of international law?

Against these conventional histories, what may be required is the telling of alternative histories—histories of resistance to colonial power, histories from the vantage point of the people who were subjected to international law, and which are sensitive to the tendencies within such conventional histories to assimilate the specific, unique histories of non-European peoples within the broader concepts and controlling structures of such conventional histories. The work of post-colonial scholars has played a major role in examining how conventional histories have addressed the phenomenon of colonialism.\textsuperscript{17} These scholars have attempted to show the tragedies and violence inherent in the colonial

\textsuperscript{14} \textit{Introduction to Critical Race Theory: The Key Writings That Formed the Movement at xxix (Kimberlé Crenshaw et al. eds., 1995).}

\textsuperscript{15} See Antonia Castaneda, \textit{Language and Other Lethal Weapons—Cultural Politics and the Rites of Children as Translators of Culture}, 19 Chicano-Latino L. Rev. 229, 234-35 (1998) (stating that substantial resistance to Latino immigration efforts are illustrated through history of restrictive anti-immigration legislature and media manipulation); Iglesias, supra note 13, at 568-69 (explaining historical significance of conquistador's influence in designation of "Latino/a" label); see also Mickelson, supra note 13, at 374-75.


\textsuperscript{17} See Ranajit Guha, \textit{Introduction to A Subaltern Studies Reader: 1986-1995}, at xiv-xv (Ranajit Guha ed., 1997) (discussing implications of "colonial elitism" on Indian history); Ranajit Guha, \textit{On Some Aspects of the Historiography of Colonial India, in Selected Subaltern Studies} 37, 37-40 (Ranajit Guha & Gayatri Chakravorty Spivak eds., 1988); Gordon, supra note 4, at 932 ("The heart of this colonialization justification for empire, however, was European racism, which expanded to include a paternalistic civilizing mission . . . .")
encounter, and how the very methodology of history suggests progress and improvement.\textsuperscript{18} The task of formulating alternative approaches remains daunting, however, for the reasons outlined by Dipesh Chakrabarty, who argues that:

Insofar as the academic discourse of history—that is, “history” as a discourse produced at the institutional site of the university—is concerned, “Europe” remains the sovereign, theoretical subject of all histories, including the ones we call “Indian,” “Chinese,” “Kenyan” and so on. There is a peculiar way in which all these other histories tend to become variations on a master narrative that could be called “the history of Europe.”\textsuperscript{19}

The suggestion here is that the discipline of history is so powerfully structured by concepts which derive from European thought and experience that, in attempting to present an alternative and distinctive history of non-European societies, the employment of the very categories of historical inquiry has the effect of affirming that Europe remains the “sovereign subject” of all histories.\textsuperscript{20}

While recognizing some of the problems inherent in the study of history, this paper attempts to sketch a critical and historically based analysis of a specific initiative that is being enthusiastically embraced by the international community, the project of “good governance.” In adopting a historical approach to this issue, I seek to address a series of questions. First, what are the underlying structures of conventional history, which in a complex way, affirm and explain the initiatives undertaken? Second, how does our understanding of the project of good governance differ if we examine it from the vantage point of the lived experiences of non-European peoples? My broad interest lies in attempting, first, to excavate the connections of the good governance initiative with earlier, colonial enterprises, and second, to illustrate how the use of the concept may serve to further what may be, in essence, colonial relations.

Through the study of history, then, it may be possible to examine the colonial past and attempt to identify the underlying dynamic of racialized power, of colonialism—rather than to associate colonialism with a specific vocabulary and set of practices in a particular period.\textsuperscript{21} Once this is achieved, it may be possible to examine how this dynamic is reproduced

\textsuperscript{18} See Dipesh Chakrabarty, \textit{Postcoloniality and the Artifice of History: Who Speaks for “Indian Pasts”}, in \textit{A SUBALTERN STUDIES READER} 263-65; see also Gordon, \textit{supra} note 4, at 937 (recognizing international law as supporting non-European exclusion).

\textsuperscript{19} Chakrabarty, \textit{supra} note 18, at 263.

\textsuperscript{20} As post-colonial scholars have argued, to the extent that the discipline of modern history is concerned with telling the history of the modern nation-state, then the telling of Indian or Kenyan history does involve the telling of European history as the modern nation-state is a quintessentially Western artifact.

\textsuperscript{21} For an overview of the relevant histories and insight into Western domination over Third World entities, see \textit{supra} note 13 and accompanying text.
and re-enacted in a language which lacks any "formal manifestations of race," and which, furthermore, is animated, as colonialism always has been, by the irreproachable ambition to better human well-being.

II. Governance in Historical Perspective

A. Introduction: Governance in Contemporary Setting

"Good governance" is, like "development" before it, a capacious term which has a number of meanings.\(^{22}\) Furthermore, like development, good governance has a very powerful and apparently universal appeal: all peoples and societies would surely seek good governance—in much the same way that all peoples and societies were seen as desiring development. Although good governance may be seen, then, as an "essentially contested term," which could justify a whole series of very different, and perhaps inconsistent projects and initiatives, there is a very powerful strand in the whole system of ideas related to governance, which, when scrutinized closely, suggests that good governance has a particular significance for developing countries, for these are the countries which lack governance.\(^{23}\) The concept of good governance, particularly because of its reliance on universal international human rights norms, may appear to be a neutral concept that is potentially applicable to all states.\(^{24}\) However, the political crises and corruption that afflict advanced industrial states, are rarely if ever discussed in terms of internationally articulated norms of good governance. In practice, then, good governance is a concept which is largely developed in relation to, and is principally applied to, Third World states. Good governance, in short, provides the moral and intellectual founda-

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22. See, e.g., Ernst-Otto Czempiel, Governance and Democratization, in Governance Without Government: Order and Change in World Politics 250, 250 (James N. Rosenau & Ernst-Otto Czempiel eds., 1992) [hereinafter Governance Without Government] (stating governance constitutes "the capacity to get things done without the legal competence to command that they be done"); Falk, supra note 4, at 12-37 (advocating humane governance that promotes non-violent solutions and human rights); Our Global Neighborhood: The Report of the Commission on Global Governance 46-63 (1995); James Rosenau, Governance, Order, and Change in World Politics, in Governance Without Government, supra, at 1, 4 (suggesting that governance "is ... a system of rule that is as dependent on intersubjective meanings as on formally sanctioned constitutions and charters"); see also, e.g., Antony Anghie, Universality and the Concept of Good Governance in International Law, in Legitimate Governance in Africa: International and Domestic Legal Perspectives 38 (Edward Kofi Quashigah & Obiora Chinedu Okafor eds., 1999) [hereinafter Legitimate Governance in Africa].

23. See Thomas J. Biersteker, The "Triumph" of Neoclassical Economics in the Developing World: Policy Convergence and Bases of Governance in the International Economic Order, in Governance Without Government, supra, note 22, at 102, 119 (stating Asia's integration into global economy signaled a release from rest of Third World); see also Frank Furedi, The Silent War: Imperialism and the Changing Perceptions of Race 239-40 (1998) (noting societies of South, such as Rwanda, are "represented as devoid of moral qualities").

24. For a discussion of various applications of governance, see supra note 22 and accompanying text.
tion for the development of a set of doctrines, policies and principles, formulated and implemented by various international actors to manage, specifically, the Third World state and Third World peoples. Attempts by Western states to promote good governance in the non-European world are simply one example of a much broader set of initiatives relating to the promotion of democracy, free markets, and the rule of law. These initiatives have a basic structure in common: in all cases, the basic task is that of reproducing in the non-Western world a set of principles and institutions which are seen as having been perfected in the Western world and which the non-Western world must adopt if it is to make progress and achieve stability.

The idea that the major problems confronting developing country peoples may be attributed to the absence of good governance is now both powerful and commonplace. Consequently, important international actors—international human rights groups and international financial institutions ("IFIs"), such as the World Bank ("Bank") and the International Monetary Fund ("IMF"), have, within their own spheres of competence, sought to promote good governance. In very broad terms, good governance involves the creation of a government that is, among other things, democratic, open, accountable and transparent, and which respects and fosters human rights. Thus good governance is linked, in international

25. For a different and important conceptualization, see FALK, supra note 4, at 12-37 (advocating a humane governance that promotes non-violent solutions and human rights); and FALK, supra note 22, at 46-63 (specifying need for global governance and need for "courageous leadership infused with that ethic at all levels of society").

26. See William P. Alford, Exporting the Pursuit of Happiness, 113 HARV. L. REV. 1677, 1678-79 (2000) (reviewing Thomas Carothers, AIDING DEMOCRACY ABROAD: THE LEARNING CURVE (1999)) (attributing book's popularity to willingness that America exhibits in exporting western civilization ideas to foreign cultures); see also FUKUYAMA, THE END OF HISTORY AND THE LAST MAN 45 (1992) (stating that although "different types of regimes that have emerged in the course of human history, from monarchies and aristocracies, to religious theocracies, to the fascist and communist dictatorships of this century, the only form of government that has survived intact to the end of the twentieth century has been liberal democracy").


29. See id. at 16 (listing aspects of good governance).
human rights law, with ideas relating to democratic governance and legitimate governance. Further, human rights lawyers focus on the ways in which human rights norms regarding political participation, free speech, and so forth, may be used to achieve the overarching goal of good governance.

B. Good Governance and Human Rights

Good governance exerts an extraordinarily powerful influence on the thinking of the international community in part because it is connected with human rights, the universal language in this "age of rights." This link between governance and human rights suggests, furthermore, that the Third World state is the focus of concern: it is the aberrant Third World state which both violates rights and engages in bad governance. This in turn suggests that the problems of the Third World lie within the Third World itself. Beginning with these propositions, it follows that the problem of addressing international justice can be largely achieved through the project of good governance which would reform the Third World state. For many scholars, however, the project of good governance which is justified as liberating the oppressed peoples of the Third World from local dictators, raises serious concerns. As Wickremasinghe said, "In this new approach [the project of good governance] the aim is nothing less than to change the world-system by reforming the fundamental institutions of the recipient state."

Because of its affinity with human rights, the project of bringing about good governance suggests that this is a modern project which may trace its origins in international human rights law. Under classic nineteenth century international law, respect for the sovereignty of a country

30. See id. at 30 (giving example of recent study on relationship between human rights and good governance).
35. For a discussion of how the concept of "good governance" purports to be universally valid, see supra note 32 and accompanying text.
prevented international law from scrutinizing or legally assessing the character of government of a state.\textsuperscript{37} How the government of a state was conducted, particularly in terms of the relationship between government and its citizens, was a matter entirely outside the proper scope of international law.\textsuperscript{38} As Gregory Fox argues in his important work on the right to political participation:

States in the nineteenth century, caught increasingly in the throes of aggressive nationalism, saw their domestic political institutions as essential components of a unique national culture. In order to protect these institutions from external pressures, the dominant states of Europe shaped an international law that carved out an exclusive sphere of domestic jurisdiction. A fortress-like conception of state sovereignty endowed governments with "a monopoly over fundamental political decisions, as well as over legislative, executive and judicial power."\textsuperscript{39}

Seen in this way, doctrines of good governance, or "the right to political participation," which intervene in what has been regarded as within the domestic jurisdiction of a state, represent a fundamental departure from classic international law. My argument, by contrast, is that the project of governance, which has been heralded as a new advance in the development of international law, has a very old lineage. Since the beginnings of the modern discipline of international law in the sixteenth century, international law has devised a number of doctrines and technologies directed at shaping and reforming the government of the non-European state.\textsuperscript{40} Most typically, this project of reform involves two elements that are often characterized as inseparable: the furtherance of commerce and the advancement of civilization.\textsuperscript{41} In short, international law has sought to create non-European governments which facilitate European commercial expansion into the colonies and, in so doing, civilize and develop the backward natives. Trade and civilization have been the principal justifications for the colonial project through the centuries.\textsuperscript{42} My argu-


\textsuperscript{38} However, international law did, on certain limited occasions, concern itself with the character of the government of a state when examining, for example, whether a particular entity was the proper government of a country for the purpose of conducting international relations.

\textsuperscript{39} Fox, supra note 34, at 545 (citations omitted).


\textsuperscript{41} See Anghie, supra note 37, at 275-76 (noting civilizing mission invoked by European international law).

\textsuperscript{42} See Anghie, supra note 22, at 25-26 (noting humanitarian and economic concerns motivated Spanish during their colonial dealings with Indians).
ment is that one version of the contemporary project of governance, particularly as it is promoted by powerful international financial institutions such as the World Bank and the IMF, replicates in significant ways the civilizing mission that has given colonialism its impetus, and that has continued to be an important aspect of contemporary relations between the developed and the developing world. It is through an examination of the history of the non-European world that some of these continuities may become clearer.

III. Governance and Colonialism

A. The Concept of Government in Sixteenth-Century Law

Governance may be seen, then, as a relatively new international initiative which is intimately connected with the developments in international human rights law in the UN period. If we examine the concept of good governance from the perspective of the experiences of non-European states, however, an entirely different genealogy emerges of the relationship between governance and international law. First, it is clear that international lawyers have been concerned about the proper function of government in non-European societies since at least the modern beginnings of the discipline in the sixteenth century. Francisco de Vitoria was a Spanish priest whose work, De Indis, is regarded as one of the earliest and most important works of the modern discipline of international law. Vitoria's work, On the Indians Lately Discovered, focused on the numerous legal issues generated by Columbus' unprecedented voyage and discoveries and, in particular, on the question of the legal basis of Spanish rule over the Indians of America.

Governance, the manner in which the Indian rulers governed their people, is a matter which features prominently in Vitoria's deliberations. While Vitoria asserted that the Indians were human beings who were bound by universal natural law, he is equally emphatic in claiming that they were not of the same stature as the Spanish themselves. The Indians were children who required the guidance and protection of the Spanish. Vitoria makes this assessment focusing, quite explicitly, on governance to demonstrate the inferiority and inadequacy of the Indians:

Although the aborigines in question are (as has been said above) not wholly unintelligent, yet they are little short of that condi-

43. See Nussbaum, supra note 16, for a discussion of sixteen-century international law.
44. Franciscus de Victoria, The First Relectio on the Indians Lately Discovered, in De Indis Et Viri Belli Relectiones (Ernest Nys ed. & John Pawley Bate trans., 1917). I have adopted the spelling of "Vitoria," which is most commonly used.
45. See generally id. para. 303-409, at 115-62 (analyzing Spanish/Native American relationship).
46. See id. para. 407, at 161 (noting that Indians required administration by Spanish).
tion, and so are unfit to found or administer a lawful State up to the standard required by human and civil claims. Accordingly they have no proper laws nor magistrates, and are not even capable of controlling their family affairs . . . 47

While the Indians may have established their own forms of government, 48 these are found wanting the "standard required by human and civil claims." As such, the Spanish, in the interests of the Indians themselves, "might undertake the administration of their [the Indians'] country, providing them with prefects and governors for their towns and may even give them new lords." 49 The Indians are now characterized as infants or wild beasts and, for Vitoria, it follows that "their governance should in the same way be entrusted to people of intelligence." 50 Vitoria stressed that Spanish rule over the Indians was to take place in the interests of the Indians, and the Spanish could not profit from it. 51

Importantly, it is the test of government deployed in completely different ways that is crucial to Vitoria's overall argument. On the one hand, the existence of some form of government suggests that the Indians possess reason; on the other, Indian government is inferior, and its failure to comply with universal standards suggests the need to develop an entirely new set of technologies by which this inadequacy may be remedied. Unsurprisingly, the "universal" standard is revealed, upon further scrutiny, to be an idealized European standard. Once characterized as aberrant, however, Indian society becomes a legitimate subject for reform by the agency of universal natural law, the Spanish. In the case of the Indians, then, government was a construction of the Spanish acting in the name of enforcing international norms. It is this same natural law, furthermore, which justifies the Spanish intervening on behalf of the Indians to rescue them from their tyrannical rulers. 52

For Vitoria, however, governance is not merely about reforming the primitive or rescuing the innocent. 53 Accompanying these arguments,

47. Id.
48. Vitoria recognizes that the Indians "have polities which are orderly arranged and they have definite marriage and magistrates, overlords, laws and workshops . . . ." Id. para. 333, at 127.
49. Id. para. 407, at 161.
50. Id.
51. This idea became the basis of the League of Nations mandate system and its successor, the UN trusteeship system. Vitoria is mentioned in virtually all books dealing with these subjects. Interestingly, Vitoria himself did not regard this argument of guardianship as his most powerful legal vindication of Spanish conquest, stating more tentatively that "[t]here is another title which can indeed not be asserted, but brought up for discussion, and some think it a lawful one." Id. para. 406, at 160.
52. See id. para. 403, at 159 (explaining that Indians may be freed from tyranny and oppression).
53. See id. para. 315, at 120 (exploring issues concerning ownership of property).
which rely heavily on images of backwardness and barbarity, are an equally, if not more, compelling set of ideas that focus on property, trade and commerce. Several of Vitoria’s most important arguments are based on the notion of property, which, among other things, is closely connected in his thought with legal personality and sovereignty.\textsuperscript{54} Thus, the crucial consequence of being recognized as a legal person, as possessing reason, is the acquisition of the right to own property.\textsuperscript{55} With regard to commerce more broadly, Vitoria argues that the right to travel in Indian lands, and the right to trade,\textsuperscript{56} are fundamental principles of natural law to which the Indians must adhere.\textsuperscript{57} Vitoria makes such rights apply completely equitably, asserting that “it is certain that the aborigines can no more keep off the Spaniards from trade than Christians can keep off other Christians.”\textsuperscript{58} Any Indian action that amounts to hindering such trade and commerce, however, is treated as a violation of the \textit{jus gentium}, which could amount to the ultimate sanction of war.\textsuperscript{59} Governance, as Vitoria suggests earlier, includes the creation of a system of administration that protects and upholds these sacrosanct rights.\textsuperscript{60} Apart from this, any Indian opposition to the violent Spanish incursions into their territories was treated as an act of war by the Spanish, which would justify retaliation—the commencement of a just war by the Spanish, which in turn legitimized the complete dispossession of Indian lands. It is through the waging of such a just war that, Vitoria concludes, the Spanish legally acquired sovereignty over the Indians.\textsuperscript{61}

This brief examination of Vitoria’s work suggests that the system of governance embodied in the \textit{jus gentium} of Vitoria’s universe—and admin-

\textsuperscript{54} See id. para. 335, at 128 (concluding that Aborigines had true dominion in both public and private matters).

\textsuperscript{55} This is reflected in Vitoria’s extensively argued position that since the Indians possess reason, they were “true owners alike in public and private law before the advent of the Spaniards among them.” \textit{Id.} para. 303, at 115.

\textsuperscript{56} See \textit{id.} para. 389, at 152 (“[I]t is an apparent law of the \textit{jus gentium} that foreigners may carry on trade, provided they do no hurt to citizens.”).

\textsuperscript{57} Vitoria asserts the proposition that “the Spaniards have a right to travel to the lands of the Indians and to sojourn there so long as they do no harm, and they can not be prevented by the Indians.” \textit{Id.} para. 383, at 150. Also, as a further example, Vitoria argues that, “it was permissible from the beginning of the world (when everything was in common) for any one to set forth and travel wheresoever he would.” \textit{Id.} para. 386, at 151.

\textsuperscript{58} \textit{Id.} para. 389, at 153.

\textsuperscript{59} Vitoria asserts that, “to keep certain people out of the city or province as being enemies or to expel them when already there, are acts of war.” \textit{Id.} para. 387, at 151.

\textsuperscript{60} Vitoria does impose some limits on the right to trade, suggesting it was Spain alone that discovered the New World, and hence, Spain alone could trade with it. \textit{Id.} para. 398, at 157.

\textsuperscript{61} \textit{Id.} para 395, at 155 (explaining that it is universal law that what is captured in war becomes property of conqueror).
istered through the Spanish—consisted of several elements. The maneuvers that Vitoria effects in his argument may be generally described: non-European government is inadequate or inferior, and this in itself would justify the intervention by Western states, attempting to remedy this inferiority and implement universal standards. Furthermore, governance prescribed certain universal standards which could be used to depose indigenous tyranny. Additionally, governance involved adhering to a particular regime of property and commerce, which required protecting the rights of foreigners to trade and enter the land. In the final analysis, the failure of non-European government to comply with European standards and to enable the furtherance of European interests, would lead to annexation by civilized European powers.

B. Government in Nineteenth-Century International Law

Vitoria’s views on how international law might promote proper government in non-European states, and the proper role of such government, persisted in international relations over the centuries, particularly the nineteenth century when colonial expansion was at its height. Many of the maneuvers evident in Vitoria’s work, authored within a naturalist jurisprudence, are enacted by means of the very different lexicon of nineteenth century positivist international law. Natural law broadly prescribed that all states and entities were subject to an overarching system of law which emanated from reason, and which transcended state will. As such, in the Vitorian universe, the Spanish, no less than the Indians, were subject to the overarching law of jus gentium. Under the positivist philosophy which emerged and prevailed by the end of the nineteenth century, when colonialism approached its apogee and European states competed among themselves to amass the largest Empires, international law was created by the will and actions of states or, more particularly, civilized states. The state was no longer subject to a higher, transcendent authority. It was in this phase that, with respect to Western states, the positivist emphasis on the primacy of sovereignty established that the manner in which a sovereign behaved within its own territory was entirely outside the scope of international scrutiny.

62. For a discussion of Vitoria’s work, see supra notes 43-61 and accompanying text.
63. For a good overview of the relationship between race and international law in the nineteenth century, see generally Gerritt W. Gong, THE STANDARD OF “CIVILIZATION” IN INTERNATIONAL SOCIETY (1984).
64. See id. at 36 (stating that law of nations is either natural law or derived therefrom).
65. It was only when an entity sought recognition as a state that international law might have subjected that entity’s mode of governance to any sort of scrutiny. In this age of empire and absolute monarchy, however, the only question that the international community would have posed was one of control: did the entity control the territory and population over which it claimed to be sovereign.
The experience of the non-European world was completely different. As the discussion of Vitoria suggests, the governance of non-European states would be subjected to a special scrutiny, resulting in interventions endorsed by international law, once those states had been rendered different or inferior by the concepts and categories that prevailed at the time.66 In the late nineteenth century, this maneuver was effected by a distinction that positivist jurisprudence made between civilized and non-civilized states.67 The non-European states were excluded from the realm of international law, which now made a distinction between civilized states, which were sovereign and possessed full personality, and non-civilized states, which were not properly members of the "family of nations" and hence lacked complete legal personality.68 Given that, under positivist jurisprudence, only sovereign states were the authors of international law, this meant that the non-sovereign, non-European states existed within the system largely as objects; as these states were not fully sovereign,69 they were legally disempowered from opposing the actions taken by European states who embodied international law.70 In effect, then, European states could play an enormously important role, in a manner sanctioned by international law, in shaping the character of non-European states, even in those circumstances where those states were not simply absorbed into colonial Empires. Thus, international law once again developed a series of doctrines focusing on governance, and its lack, in non-European states.71

The concept of government, played a crucial role in nineteenth-century jurisprudence since government was the crucial test of whether a state was indeed civilized.72 Even those states recognized as possessing an ancient civilization, such as China, did not necessarily meet the test of government, because this test essentially required states to create conditions in which Europeans could feel both familiar and secure. States were civilized only when Europeans encountered within them a government

66. See GONG, supra note 63, at 5 (stating these standards as "law of Christian nations" or "public law of Europe").
67. See id. (stating that standard of "civilization" became an integral factor in the changing domain and rules of international law).
68. See id. at 30 (specifying three conditions for country to be recognized as legal member of family of nations).
69. The issue of whether these entities enjoyed any sort of legal personality is a very complex issue which will not be analyzed here.
70. The non-European states could not, of course, be ignored, particularly because interactions had taken place between European and non-European states. European states had to observe various legal doctrines in their dealings with non-European states; however, these doctrines were directed more towards preventing intra-European rivalries than out of a concern to protect the rights of non-Europeans.
71. See GONG, supra note 63, at 54-93 (tracing standard of "civilization" through history of international law).
72. See John Westlake, Q.C., LL.D., Chapters on the Principles of International Law 141 (1894) (entitling section of Chapter IX, "Government the International Test of Civilisation").
"under the protection of which . . . the former [Europeans] may carry on the complex life to which they have been accustomed in their homes." 73
No pretense was made that both European and non-European states were governed by an overarching and universal set of norms; rather, it was explicitly asserted that non-European polities had to transform themselves, radically, into the image of Europe if they were to be legally recognized.74

One of the central tests used to assess the status of native governance was its capacity to tolerate, protect and facilitate European trade. Native government was legally required, in essence, to be the instrument that enabled Europeans to engage in the commerce that was such an imperative of the European presence there. No attempt was made to separate commerce from governance, as it was understood that the whole purpose of governance was to facilitate the inexhaustible expansion of European commerce. "The inflow of the white race cannot be stopped where there is land to cultivate, ore to be mined, commerce to be developed, sport to enjoy, curiosity to be satisfied." 75

The intimate and inextricable links between commerce and governance was such that European trading companies controlled and governed territories.76 Native peoples, being uncivilized, lacked sovereignty; but the East India Company, Dutch East Indies Company, Imperial East Africa Company and British South Africa Company—corporations which basically sought to make profits from the exploitation of native peoples and their territories—could be vested with important sovereign rights, including the right to acquire territory.77 The East India Company was essentially an extension of the British Crown, for whom "the company is as much an organ as the department of its government ostensibly entrusted with the conduct of its foreign affairs." 78 The East India Company pioneered the British presence in India; it entered into treaties with local rulers, and took possession of and administered Indian states such as Bengal, Bihar and Orissa.79 Here, commerce and governance are not merely complementary, but identical; a company exercises the rights of government. Proper government was essential to the protection and propagation of commerce, and where native governments were incapable of creating and maintaining the conditions which supported the inevitable European annexation of their own territories, Westlake argued, "government should

73. Id.

74. Japan succeeded in clearing this formidable threshold, principally as a consequence of defeating a major European power, Russia, in the battle of Tsushima in 1905. See Gong, supra note 63, at 199 (attempting to pinpoint Japan's entry into international law).
75. Westlake, supra note 72, at 142-43.
76. See id. at 190-211 (discussing intertwined role of state and commerce British India).
77. See id. at 191-92 (explaining relation of corporations to uncivilized states).
78. Id. at 191.
79. See id. at 194-95 (detailing role of company in India).
be furnished." Wars of colonial conquest followed, and conquest and annexation were recognized as legitimate bases for title. But where this was not possible, a number of other techniques were devised to enable European powers to exercise a massively intrusive control over the ways in which non-European states were governed. Even in those circumstances where the non-European state nominally retained its autonomy, the manner in which it was governed was determined more by external pressures exerted by European powers than by local needs and will. Thus, for example, European powers used their military might to compel non-European states to enter into humiliating extraterritorial treaties which resulted in the setting up of a parallel court system, within these territories, for the purpose of trying Europeans.

C. Governance and Humanitarianism

In time, rather than focusing explicitly on commercial gain, the European powers formulated a more nuanced and morally acceptable basis for colonialism. The essential purpose of the Berlin Conference of 1884-85 was to divide the continent among competing European powers in such a way as to prevent the escalation of inter-European rivalries. Therefore, the Conference, was centrally preoccupied by commercial considerations. Nevertheless, the participants at the Conference were careful to assert that the promotion of such commerce served a far greater purpose than the mere maximization of profits. Thus, Bismarck stated, "The Imperial Government was guided by the conviction that all the Governments invited share the wish to bring the natives of Africa within the pale of civilization by opening up the interior of that continent to commerce."

Importantly, slavery was abolished, and the Berlin Treaty included provisions relating to native welfare. Nevertheless, there was no inconsistency between these apparent changes in policy and the furthering of commerce. As Lord Lugard noted, condemning the institution of slavery because of its commercial effects, "It is economically bad, for the freeman

80. Id. at 142.
81. See GONG, supra note 63, at 43-44 (tracing increasing use of force by Europeans against non-European countries).
82. This is known as capitulation, which was an enduring humiliation to the non-European states which had to succumb to them. Protectorate agreements were another mechanism by which European powers could exercise a massive influence over the government of ostensibly sovereign states. See id. (describing second mechanism to ensure "standard of civilization" would be met).
83. See id. at 76-77 ("[B]ehind-the-scenes claims and counterclaims regarding territorial questions . . . were regarded as more important than the official business.").
85. Id. at 332 (citing Prince Bismarck at Berlin conference).
86. See id. at 333 (abolishing slavery in Article of General Act of Conference).
does more work than the slave, who, moreover, is indifferent to the productivity of the soil and careless of posterity."87

With the Berlin Conference, a new rationale for colonialism was developed, comprising of the twin themes of commerce and civilization—the policy of the "Dual Mandate," which was magisterially and comprehensively elaborated by Lord Lugard, its foremost exponent.88 The expansion of European commerce was no longer simply a mechanism for the economic exploitation and subordination of non-European peoples; rather, it was a means of effecting the entry of the backward peoples into the world of civilization. As the comments of Bismarck suggest, these humanitarian goals were to be furthered by the expansion of commerce.89 Lord Lugard makes clear the reasons underlying the scramble for Africa: "The vital importance of the control of the tropics for their economic value had, however, already begun to be realized by the nations of Europe, and France, Germany, and Italy, laying aside their ambitions in Europe, emerged as claimants for large 'colonies' in Africa."90 Even though driven by commerce, the humanitarian aspect of the rhetoric of governance developed an extraordinarily complex and resilient character, such that, in the new framework of the "Dual Mandate," all manner of economic policies could now be justified and refined as advancing humanitarian causes.

It is precisely through this affiliation between economic and humanitarian concerns that various policies, which would have appeared nakedly exploitative, could now be presented as appropriate, and even desirable. For example, essential aspects of the dual mandate policy, pithily summarized by Joseph Chamberlain, were cited by Lugard in an epigraph to his book: "We develop new territory as Trustees of Civilisation for the Commerce of the World."91 Importantly, Chamberlain presented colonial policy as deriving its authority from the international community and directed towards benefitting that entire community.92 The resources of

87. SIR F.D. LUGARD, THE DUAL MANDATE IN BRITISH TROPICAL AFRICA 364 (William Blackwood et al. eds., 1922). A very complex relationship exists between these humanitarian practices and economic consequences. I do not mean to suggest that the abolition of slavery was a subtle conspiracy which was intended always to further economic exploitation under a new and apparently benevolent guise; rather, my argument is that the abolition of slavery in itself did not prevent—indeed, it sometimes furthered—the type of trade and commerce which the European powers sought to promote. It is significant that one of the central actors of this period—Lugard is regarded as the preeminent colonial administrator of his time—recognized the possible economic benefits resulting from the promotion of these humanitarian policies.

88. See id. at 617-18 (discussing how dual mandate benefits both Europe and Africa).

89. See LINDELL, supra note 84, at 332 (stating commercial interests should not be looked at purely in economic terms).

90. LUGARD, supra note 87, at 10 (noting that European expansion also strengthened countries).


92. See LUGARD, supra note 87, at 60.
non-European peoples were characterized as belonging to the international community, with Britain acting on behalf of that community through their exploitation.\textsuperscript{93} The immutable, immemorial "right to trade" was cited by European powers to justify, in legal terms, their entry into non-European societies, as indicated by the British in China, the French in Africa, and the Spanish in the Americas.\textsuperscript{94} Non-European sovereigns were required, by force, if necessary, to comply with this right.\textsuperscript{95} Once European powers acquired control and sovereignty over these same African and Asian territories, however, the right ceased to exist, and intra-European rivalries developed precisely because, for example, England would deny access to French traders in African colonies.\textsuperscript{96}

Whatever the rhetoric, commerce was the controlling preoccupation of colonial governance. This resulted, on the one hand, in the disintegration of native institutions and ways of life and, with this, the social formations that had offered people protection and meaning. This phenomenon was noted and commented on by experts on colonial policy even prior to the whole process of decolonization.\textsuperscript{97} Secondly, the government of the colony operated in accordance with the needs of the metropolis. The economy of the colony was integrated, therefore, into the overall structure of the economy of the metropolis. Furthermore, the institutions and government established in the colonies were directed, essentially, at furthering this commerce.\textsuperscript{98} Thus, for example, as Furnivall asserts, the rule of law in the colonies was essentially oriented towards the purpose of promoting commerce.\textsuperscript{99}

My overall argument, then, is that the non-European world is different; that the governance of these societies has been intimately shaped by international actors—imperial European states—whose actions have been sanctioned and enabled by international law. Over the centuries, international law developed a sophisticated series of technologies, doctrines and disciplines, which borrowed in important ways from the broader justifications of colonialism, to address the problem of the governance of non-European peoples. It is hardly surprising, then, that this was a subject of considerable scholarship, such as that of M.F. Lindley, who compiled, described and analyzed these techniques in a book revealingly entitled, \textit{The

\textsuperscript{93} See id. (noting Britain's policy of developing global markets).
\textsuperscript{94} See id. at 3 (suggesting that global need for resources led to exploration).
\textsuperscript{95} See id. at 203 (noting employment of force to control natives).
\textsuperscript{96} See id. at 10-11 (noting that France offered no resistance until pride became an issue).
\textsuperscript{98} As Furnivall pithily states; "The main object of colonial policy during the Liberal experiment was the promotion of commerce. This required direct administration on Western principles, allowing free play within the law to economic force." \textit{Id.} at 21.
\textsuperscript{99} Id. at 23.
Acquisition and Government of Backward Territories in International Law, in 1926. At a time when government within European states was entirely immune to regulation by international law, government in non-European states was a matter which international law could dictate. It must be noted that the purpose of this exercise was often to grant the indigenous peoples some measure of protection. But the fundamental purposes animating governance continued to be the same. As classically formulated by Joseph Chamberlain, the governance of native peoples consisted of the dual mandate: commerce and civilization. A study of much earlier works, such as those of Vitoria and Westlake, suggest that this has been a consistent theme—trade and civilization; it is a theme which finds its contemporary expression in a variety of forms in this era of globalization, which ostensibly provides freedom in the market. A modern version of this same dual mandate has been recently articulated by the President of the World Bank, James Wolfensohn, who speaks, not of advancing “civilization and commerce” but of protecting “human rights and property.”

D. Towards the Present: Good Governance and International Financial Institutions

The current involvement of the World Bank and IMF in projects of governance may be historically understood, then, within the context of the larger project of the governance of the non-European world as it has emerged over the last several centuries. The Mandate System of the League of Nations, which embodied the international community’s response to colonial problems in the inter-war period, was the first international institution to be given the responsibility of protecting the well being of native peoples. In particular, it represents the first occasion on which an international institution played a virtually direct and unimpeded role in shaping the government, the political institutions, and the economy of a nascent state. The work of the World Bank may be understood, in many respects, as continuing the intrusive practices of the

100. See generally CHARLES G. FENWICK, INTERNATIONAL LAW (D. Appleton Century Co. ed. 1934); LINDLEY, supra note 84; ALPHEUS HENRY SNOW, THE QUESTION OF ABORIGINES (G.P. Putnam’s et al. Eds., 1921).

101. See LUGARD, supra note 87 at 60 (noting importance for civilization of natural resources).


103. See generally QUINCY WRIGHT, MANDATES UNDER THE LEAGUE OF NATIONS (1930) (classic work on mandate system).

104. See Ibrahim F.I. Shihata, Democracy and Development, 46 INT’L & COMP. L.Q. 635, 640-42 (indicating role of Bank in diverse governance issues of member countries.)
Mandate system precisely through the deployment of the concept of governance.105

The Bank is supposed to be a development agency which is prohibited from interfering in the political affairs of a state.106 Recently, however, by linking governance with development, the Bank has sought to shape and reform the political and economic institutions of member countries, arguing that such reform promotes the system of good governance essential for the success of the economic programs prescribed by the IFIs.107 Thus, the Bank asserts that “at least as important as the policies and the resources for development are the efficiency and transparency of the institutions that carry out the policies.”108 Consequently, the Bank has now become involved in a whole range of issues including legal reform, judicial reform, environmental policy, government auditing functions, and strengthening the role of the press.

Significantly, the World Bank and the IMF are in a powerful position to implement their concepts of good governance, as a consequence of the fact that the vast majority of Third World countries depend on the IFIs for financial assistance.109 Consequently, it is possible for the Bank to make the financial assistance they provide conditional upon those countries reforming their governmental structures and political institutions.110 Similarly, in the case of the IMF, far-reaching changes must be adopted by countries wishing to receive assistance.111 For example, in the case of Indonesia, the IMF required the country to pass a large number of regulations before it could receive assistance.112

105. For a discussion of the World Bank’s policies, see infra notes 106-51 and accompanying text.

106. The Bank’s involvement in these types of issues raises complex questions as to how this may be justified in terms of the Bank’s Articles of Agreement. The Bank’s Articles of Agreement explicitly assert that “the Bank and its officers shall not interfere in the political affairs of any member.” Articles of Agreement of the International Bank for Reconstruction and Development, Art. IV § 10 (last visited 1/11/01) <http://www.worldbank.org/html/extdr/backgrd/ibrd/>. For a detailed study of the Bank’s recent initiatives see Balakrishnan Rajagopal, From Resistance to Renewal: The Third World, Social Movements, and the Expansion of International Institutions, 41 HARV. INT’L L.J. 529 (2000).

107. See Shihata, supra note 104, at 640 (noting that world Bank is assisting countries in various ways that impact economic development.)


110. See id. at 642 (discussing Bank’s role in monitoring and promoting political reform.)

111. See Martin Feldstein, at 22-26; Refocusing the IMF, 77 FOREIGN AFF. Mar./ Apr. 1998, at 22-26 (detailing imposed programs in exchange for credit).

112. See id. at 22-24 (stating that, in exchange for $40 billion package, IMF insisted on long list of reforms).
Importantly, the World Bank claims to be engaged in a common task with human rights institutions in promoting its particular version of good governance. The Bank powerfully suggests that its good governance agenda complements, supports and furthers the good governance agenda formulated by human rights scholars and activists who focus on the importance, for example, of democratic governance. In asserting this link, the Bank claims:

The World Bank helps its client countries build better governance. This assistance in improving the efficiency and integrity of public sector institutions—from banking regulation to government auditing functions to the court system—has a singularly important, although indirect, impact on creating the structural environment in which citizens can pursue and continue to strengthen all areas of human rights.

The IFI concern for good governance must be seen, however, in the context of their principal preoccupation, the furtherance of neo-liberal economic policies which are achieved through structural adjustment programs involving privatization, trade liberalization and currency devaluation. The IFIs, in short, play a major role in furthering globalization. The IMF, for example, has been recently exerting considerable pressure on developing countries far more vulnerable to volatility and economic instability. Further, the IFIs have been using their considerable financial power to compel countries to open their financial sectors to foreign investors. Thus, Korea was required to open its financial and automobile sectors to foreign investors, and Thailand was required to open its banking sectors in return for loans from the IFIs.

Broadly, then, good governance, dubiously claiming affinities with international human rights law, is a means of promoting a number of controversial economic policies, which essentially seek to expand the market in ways which often disadvantage the inhabitants of Third World countries.

113. See World Bank Report, supra note 108.
114. See Shihata, supra note 104, at 641 (explaining Bank’s “promotion of good governance”).
115. Id.
118. See id. (stating that IMF “pressed” countries to make it easier for foreign money to “move in and out”).
who are continuously postulated to be the beneficiaries of this process.\textsuperscript{120} While both the Bank and the IMF are vigorously promoting globalization, the overwhelming evidence suggests that globalization is intensifying inequalities both within and among states.\textsuperscript{121} There is a possibility, then, that governance is the rhetoric used by these institutions to create the political and economic conditions that further globalization and that, far from promoting human rights, could instead undermine them.\textsuperscript{122} In using the language to human rights to justify and extend their economic policies, then, we may see the IFIs reproducing the basic theme of “civilization and commerce” in a contemporary setting.

IV. Conclusion

Given this brief historical survey of the different ways in which a concept has acquired great significance in contemporary international relations, what are some of the observations which might be made regarding the broader issue that initiated this inquiry: the question of the relationship between history, race, colonialism and international law?

First, it is evident that the civilizing mission is a fundamental aspect of international law; it continues in a number of different ways, despite radical changes in jurisprudence—the changes from naturalism in the time of Vitoria, to positivism in the time of Westlake, to pragmatism in the League of Nations era. What is remarkable is that despite these changes, which, in conventional histories of international law, mark important disruptions in the discipline, the basic structure of the civilizing mission is reproduced: government in non-European states is wanting; the essential characteristic of good government is government that furthers trade and civilization, where trade is understood to mean the trade conducted by Europeans seeking to advance their commercial interests in the non-European territory; and appropriate and detailed ‘international’ standards must be developed to ensure that good government is achieved.

The second major point is that virtually all these initiatives—whether they be “development,” “good governance,” “democracy,” or the “rule of law”—or indeed, the earlier initiatives of “sovereignty” and the very foundation of international law, the nation-state—represent a basic movement from West to East. The initiatives involve the transference of a set of institutions and practices which have ostensibly been perfected in the European world and which must now be adopted in the non-European world if it is to make any progress. As this discussion on governance attempts to

\textsuperscript{120} See generally James Thuo Gathii, Good Governance As a Counter Insurgency Agenda to Oppositional and Transformative Social Projects in International Law, 5 BUFF. HUM. RTS. L. REV. 107 (1999).

\textsuperscript{121} See Nancy Birdsall, Life is Unfair: Inequality in the World, 111 FOREIGN POL’Y 76, 78 (1998) (noting that spread of capitalism has reinforced, and possibly, exacerbated high inequality).

\textsuperscript{122} See Gathii, supra note 47, at 121 (noting that conception of good governance “gives preference to economic policy over human rights”).
suggestion, however, the liberatory potential of such initiatives must be viewed with skepticism, given that they are inevitably mired in a complex and ongoing set of power relations between the European and none-European worlds. At the very least, these initiatives suggest, often with an insidious and patronizing benevolence, that peoples in the non-European worlds are lacking in their own ideas as to how their societies should be structured, and what values they should prescribe and adopt.

Thirdly, we may note that a focus on the specific histories of non-European states, and the way in which international law has attempted to establish their status and place them within the overall system of international law, reveals that many of the doctrines and practices now regarded as recent developments of a new and progressive international law have a very old and perhaps more dubious lineage. The non-European world has, on the whole, been rendered non-sovereign by international law over the course of the last five centuries. It is precisely in the non-European world, therefore, that international law can, as in the case of doctrine of government, extend and expand its reach, and develop and refine a series of technologies directed towards creating good government. The domestic sphere, which is entirely immune to international law in the case of European states, is entirely vulnerable to international law in the case of non-European states. It is thus in the non-European world that these technologies and doctrines have been developed over the past five centuries; and it is once again in the Third World that the technologies are being deployed for basically the same purpose. It is noteworthy that the nineteenth century literature, for instance, speaks of ‘government’ rather than ‘governance’; arguably, however, governance deals with a much broader range of relations affecting the economy of a state, and any agency asserting responsibility over ‘governance’ issues acquires a correspondingly larger jurisdiction.

Finally, the vocabulary of race is no longer required in its explicit form, largely because international law has developed an extraordinarily rich and complex vocabulary to represent non-European peoples in terms which appear natural and uncontroversial. The most notable example of this is the representation of non-European peoples as “undeveloped.” This terminology is supported by a comprehensive set of theories involving an inter-related set of concepts which complement each other: development as something requiring the free market, civil society, and good governance—all of which are lacking in the non-European world. Indeed, just as the concept of ‘development’ has enabled extensive international involvement in the economic affairs of Third World states, the concept of ‘governance,’ has achieved a similar result in the political realm. The two

123. It is precisely for this reason, the historical vulnerability of the non-European state, that many of the antecedents of contemporary human rights doctrines may be traced to non-European states. Thus, the mandate system and the law of state responsibility are both presented, in histories of international human rights law, as antecedents of human rights doctrines.
concepts finally, are brought together as mutually supportive, good governance being posited as necessary for effective development. Further, a humanitarian and universal element is infused into the whole system through the invocation of international human rights law.

As a consequence of these developments, international law—and the initiatives it creates—are not in themselves seen as racist or discriminatory. Rather, international law and institutions are presented as responding to the realities of Third World poverty, violence and lack of resources. It is unquestionable that Third World peoples suffer enormous hardships and difficulties, as a result, very often, of the corrupt and oppressive Third World state. But what must be questioned in the narratives that support international initiatives such as good governance is the world view that suggests, for example, that the causes of poverty are entirely indigenous; that poverty may be alleviated by the redeeming and neutral mechanism of the market; and that political failure is entirely due to local corruption. It is through the historical study of the complex relationship between race and international law that it may be possible to identify how these initiatives may simply serve to replicate colonial structures. The task confronting Third World lawyers, then, is to find a middle path between the authoritarian political systems, often espouse by third world states on the one hand, and potentially harmful international initiatives such as good governance, when it is narrowly focused on Third World states, on the other.