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Making the New Developmental State: International Law and Neoliberal State Formation in India[1]

*S. Ali Malik**

Abstract

International law is largely assumed to be the product of sovereign states who freely create, join, and adhere to international treaties and other international legal instruments. Recent TWAIL scholarship, however, suggests that it is international law that creates, modifies, and legitimates states. In this paper, I advance this provocation through a case study of the neoliberalization of the Indian state and, specifically, that of Indian agrobiodiversity. I argue that the neoliberal transformation of the Indian state was a result of dialogic and multiscalar processes in which the neoliberal Indian state was constructed as a legitimate actor by international institutions and through the disciplinary power of international law. It further shows how evolving modes of capital accumulation are mutually constitutive of changes in international law, which ultimately rely on novel but nonunique technologies of government. Interrogating the ensemble of technologies, discourses, and institutions within this recent history illuminates the overlapping complexities structured by the productive power of international law.

[1] I extend my sincere thanks to Rosemary Coombe for commenting on early versions of this paper, and to Dawson Urquidez for excellent research assistance throughout its development. An early draft was presented to the University of Iowa's South Asian Studies Program and then productively workshopped at the 2023 TWAILR Academy, Universidad de los Andes, Bogotá. Further thanks to the anonymous reviewers and journal editors for their constructive comments, which were crucial in streamlining and clarifying my key arguments. All errors of style and substance are mine alone.

* Assistant Professor of Global Political Economy, Department of Global Studies, University of Oregon.

1. Introduction

Recent TWAIL scholarship work argues that it is international law that makes states, not least by determining which states are legitimate and allowing legitimate states to discipline or even take over illegitimate states. In essence, this work argues that rather than international law being a product of the actions of consenting states, making and remaking the state is a project of international law/institutions.[2] This counter-intuitive and provocative re-theorizing of the relationship between states and international law can potentially reform prevailing modes of conceptualizing the relationship between international law and its subject states.[3]

This essay attempts to respond to this critical provocation by providing a distinct case study that illustrates how international law and institutions have shaped the formation of the postcolonial Indian state as both an object and subject of neoliberal governmentality while further investigating the fluid relations between international law, evolving forms of capital accumulation, and postcolonial state formation. In so doing, it also serves as a mode of theory testing by empirically historicizing the formation of what Eslava & Pahuja designate as 'the new developmental state.' I ask: how did international law and its institutions contribute to the neoliberal restructuring of the postcolonial Indian state in the context of the broader institutionalization of the global knowledge economy?

To answer this question, the paper attempts to show the formation of a transnational neoliberal governmentality assemblage in the context of the broader institutionalization of the global knowledge economy (as an element of information capitalism) and the restructuring of Indian state powers, which formally commenced in 1991. In so doing, this paper adds to existing TWAIL scholarship that illustrates the process by which various modes of governmentality are incumbent upon the accumulation of information in advancing the logic of civilization and how international institutions have been and continue to be integral to that process.[4] It

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[2] Luis Eslava & Sundhya Pahuja, 'The State and International Law: A Reading from the Global South' in *Humanity: An International Journal of Human Rights, Humanitarianism and Development* (University of Pennsylvania Press, 2020) 11:1, at 118-138. This work forcefully pushes back against mainstream claims that international law is the product of sovereign states who freely create, join, and adhere to international treaties and other international legal instruments. The rules of international law come from two main sources: treaties and customary international law, both of which are created by states as material and formal sources, and through general practice. States are bound by the rules with which they have chosen to bind themselves—rules to which they have consented.

[3] Samantha Besson & Jean d'Aspremont, 'The Sources of International Law: An Introduction' in Samantha Besson & Jean d'Aspremont (eds.), *The Oxford Handbook of the Sources of International Law* (Oxford University Press, 2018), at 5-8; *See also* Gerry Simpson, 'On the Magic Mountain: Teaching Public International Law' (1999) 10:1 *European Journal of International Law*, at 70-92.

[4] B.S. Chimni, 'International Institutions Today: An Imperial Global State in the Making' (2004) 15:1 *European Journal of International Law,* at 1-37; *See also* Sundhya Pahuja, 'Technologies of Empire: IMF Conditionality and the Reinscription of the North/South Divide' (2004) 13:4 *Leiden Journal of International Law*, at 749-813.

simultaneously attempts to extend established TWAIL and other recent critical intellectual histories of neoliberalism and its leading thinkers[5] by utilizing a methodology of 'actually existing neoliberalism',[6] whereby neoliberalism is conceptualized as not smooth functioning, nor is it a predetermined monolithic structure. Rather, it is a malleable assembly of 'calculative notions, strategies and techniques aimed at fashioning populations and peoples'[7] and states. However, this is not to say that each geographically specific manifestation of neoliberalism is merely a singular event lacking broadly recognizable historical conditions. Neoliberalism's 'long arc' beginning in the 1940s[8] and then the 1970s first generally entailed the entrenchment of market-oriented norms of governance followed by 'rule regimes' beginning in the 1980s and intensifying in the 1990s.[9] These rule regimes involved the ascension of international treaties, accords, standards, and traveling policy regimes accompanied by financialization in various sectors.[10]

Yet, neoliberal formations are always 'partial, polycentric, and plural' as they form 'in dialectical tension with inherited social and institutional landscapes and political struggles.'[11] While neoliberalism attempts to restructure social realities through various technologies, calculations, and strategies, it is also mutually constituted with and through the social fabric integral to the particular spaces in which it is forged.[12] While recent critical intellectual histories of neoliberalism and its founding thinkers[13] are useful, this paper instead attempts to study the historical formation of actually existing neoliberalism in India with a focus on the particularities

[5] Jessica Whyte, *The Morals of the Market: Human Rights and the Rise of Neoliberalism* (Verso, 2019).

[6] Jamie Peck, Neil Brenner, & Nik Theodore, 'Actually Existing Neoliberalism' in Damien Cahill, Melinda Cooper, Martjin Konings, & David Primrose (eds.), *The SAGE Handbook of Neoliberalism* (SAGE Publications, 2018), at 2-15.

[7] Loïc Wacquant, 'Three Steps to a Historical Anthropology of Actually Existing Neoliberalism' (2012) 20:1 *Anthropologie Sociale* 66-79, at 69.

[8] Whyte (2019).

[9] Peck, Brenner, & Theodore (2018), at 11.

[10] Stephen Gill & A. Claire Cutler (eds.), *New Constitutionalism and World Order* (Cambridge University Press, 2014); Jamie Peck & Nik Theodore, *Fast Policy: Experimental Statecraft at the Thresholds of Neoliberalism* (University of Minnesota Press, 2015).

[11] Peck, Brenner, & Theodore (2018), at 2.

[12] Mark Goodale & Nancy Postero (eds.), *Neoliberalism, Interrupted: Social Change and Contested Governance in Contemporary Latin America* (Stanford University Press, 2013); Rosemary Coombe, 'The Knowledge Economy and Its Cultures' (2016) 6:3 *HAU: Journal of Ethnographic Theory,* at 247-275; Karen Allen, 'Why Exchange Values are Not Environmental Values: Explaining the Problem with Neoliberal Conservation' (2018) 16:3 *Conservation & Society*, at 243-256; Xiaobei Chen, 'Governing Cultures, Making Multicultural Subjects' in Deborah Brock (ed.), *Governing the Social in Neoliberal Times*, at 84-108.

[13] Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (Harvard University Press, 2018); Whyte (2019).

of a historical constellation of international law and its technologies and practices in the formation of the postcolonial Indian state. I take my point of departure from the considerable body of literature devoted to exploring actually existing neoliberalism, which is, at its core, a contradictory and uneven formation to be understood in the context of evolving political conditions and struggles. It 'cannot be reduced to a question weighing the size of the state or the extent of the market, as if the two spheres existed in a zero-sum relationship.'[14]

International institutions, such as the World Bank, are often perceived as 'above' the state in their authority to alter state sovereignty by imposing condition-based, disciplinary reforms.[15] On the other hand, civil society, transnational social movements, and sympathetic NGOs are thought to assert their influence from 'below'.[16] This spatial formation, typically associated with neoliberal globalization, assumes cleanly demarcated, nested scales which naturalize a supposed distinction between the state and society and reify the state as a unified, homogenous entity.[17] As a consequence, there is a tendency to conceive civil society and nonstate actors in opposition to the political power of the state, which, as Jessica Whyte shows, fails to consider how they are instead conduits through which power operates in settings of postcolonial state-making.[18]

I attempt to delineate a neoliberal governmentality assemblage in India by illustrating multiple flows, technologies, and connections to illustrate how the neoliberal transformation of the Indian state was not only a result of intersecting multiscalar processes but a dialogic one in which the neoliberal Indian state was constructed as a 'macro subject' by global neoliberal institutions and the disciplinary power of international law.[19] I first examine the conditions under which 'the new developmental state' was constructed in India. The origins of the new developmental state emerged within a knowledge economy forged in the Global North and then globalized through distinct mechanisms of accumulation by dispossession.[20] This

[14] Peck, Brenner, & Theodore (2018), at 5.

[15] Shalini Randeria, 'Cunning States and Unaccountable International Institutions: Legal Plurality, Social Movements and Rights of Local Communities to Common Property Resources' (2003) 44(1) *European Journal of Sociology,* at 27-60.

[16] James Ferguson & Akhil Gupta, 'Spatializing states: Toward an ethnography of neoliberal governmentality' (2002) 29:4 *American Ethnologist,* at 981-1002.

[17] Timothy Mitchell, 'The Limits of the State: Beyond Statist Approaches and Their Critics' (1991) 85:1 *The American Political Science Review,* at 77-96.

[18] Whyte (2019).

[19] Wendy Larner & William Walters, 'Globalization as Governmentality' (2004) 29 *Alternatives: Global, Local, Political* 495-514, at 509.

[20] David Harvey, 'The New Imperialism: Accumulation by Dispossession' (2004) 40 *Socialist Register,* at 62-87.

instantiated shifting modes of capital accumulation under what Chimni has deemed as 'a new imperial economic, legal, and political formation',[21] characterized by a series of international legal agreements that linked agricultural and environmental governance to 'informationalize' and commodify nature and traditional agroecological knowledge through biotechnologies protected by international intellectual property rights (IPRs). Next, I foreground the work of international institutions, specifically the International Monetary Fund (IMF) and the World Bank. I show how the conditionalities accompanying the IMF's loan to India in 1991 not only spurred the liberalization of India's domestic seed industry but also how the loan itself facilitated the broader neoliberalization of the Indian state. I further explore the role of the World Bank as a key producer of evaluation measures of productivity, matrices of comparison, and global economic indicators conceptualized as technologies of incorporation into the global knowledge economy. The interplay of these distinct neoliberal technologies unfolded alongside practices of state formation within India, predicated on increasing the state's capacity to engage with international law and, more specifically, that of international intellectual property.

In sum, I argue that the neoliberal transformation of the Indian state was a result of interactive and multifaceted processes in which the neoliberal Indian state was constructed as a legitimate actor by global institutions and through the disciplinary power of international law. In conjunction with the broader imperatives of the knowledge economy and neoliberal globalization, international law constituted the Indian state as both an object and agent of neoliberal governance or a 'macro subject' of transnational governmentality. Neoliberal regulatory restructuring at the global, national, and local levels enabled India to selectively implement global legal frameworks regulating agriculture and environmental governance. At the same time, it facilitated the emergence of a pluralistic legal terrain characterized by policy spaces for the Indian state to perform a particular kind of postcolonial sovereignty, one that continues to carry traces of an imperial ethic. This work aims to supplement existing critical approaches to studying the relations between international law and postcolonial states with an analysis of the various technologies, discourses, and practices through which the imperatives of a mutually constitutive international law/global capitalism are internalized and embedded in state structures in the Global South. In bringing together the work of international institutions in constructing and deploying technologies such as the uses and politics of knowledge indicators and benchmarks under neoliberal governmentality and the political economy of international

[21] B.S. Chimni, 'Capitalism, Imperialism, and International Law in the Twenty-First Century' (2012) 14:1 *Oregon Review of International Law,* at 17-45.

intellectual property rights in food and agriculture, this work aims to show how international law makes and remakes the new developmental state through multidirectional and productive forms of power.

2. The 'New Developmental State' and Intellectual Property in the Global Knowledge Economy

The shift towards what Eslava & Pahuja designate as 'the new developmental state'[22] in India can be traced to the beginnings of the agricultural biotechnology sector in the 1980s, unfolding alongside structural changes in the global economy. The 'old' developmental state that preceded it was born and baptized with the imperative of modernization through state-led development in the context of the geopolitics of the Cold War and the emergence of newly minted postcolonial states. These states required structural transformations to join the international order, and law was the central tool used to catalyze these changes.[23] The old developmental state mobilized law to establish and expand the reach of the state, produce legible populations, induce changes in economic behavior such as the transition from subsistence to commercial farming, and remove what was considered as traditional barriers to modernization such as local and indigenous social systems and institutions based upon stigmatized social collectivism and extended kinship ties.[24]

In the new developmental state, we see a reconfiguration of public and private sector relations underpinned by 'legal frameworks, guiding principles and ownership arrangements that bring private capital and its imperatives to the terrain of public action.'[25] Within this model, the law was put into action to establish the conditions thought to be conducive to market-led capitalist growth. This also indicated a shift in how subjects of the new developmental state were imagined. No longer was this subject in need of wholesale re-programming and transformation. Developmental subjects now needed formal, liberalized legal and institutional frameworks in place to unchain the already existing entrepreneurial energies assumed to be latent within them; as Pahuja argues,

> instead of effecting a long process of civilizing the savage or modernizing the backward, in this version of the story universal economic man is discovered to exist

[22] Eslava & Pahuja (2020), at 136.

[23] David Trubek & Alvaro Santos, 'Introduction: the Third Moment in Law and Development Theory and the Emergence of a New Critical Practice' in David Trubek & Alvaro Santos (eds.), *The New Law and Economic Development: A Critical Appraisal* (Cambridge University Press, 2010) 1-18, at 5.

[24] Talcott Parsons, *Social Structure and Personality* (Free Press of Glencoe, 1964).

[25] Eslava & Pahuja (2020), at 127.

> already in the Third World and already to be a proto-capitalist with proto-capitalist laws.[26]

The Third World proto-capitalist in question, for example, held collectively produced local and indigenous knowledge over generations in the fields of agricultural biodiversity and traditional medicines. Yet, such knowledge would go untapped without a liberalized IPR regime that would not only privatize and circulate knowledge-based goods for the purposes of capitalist exchange but also promote innovation, stimulate trade, and boost investment towards economic transformation in the new developmental state.

By the 1980s/90s, policymakers understood the knowledge economy to encapsulate an empirical trend in which advanced states accumulated a significant portion of their economic wealth from the production and dispersal of knowledge. IPRs are a key legal mechanism through which such knowledge is enclosed, rendered excludable, and commodified. IPRs, then, constitute a fundamental component in the legal infrastructure that underpins capital accumulation in the knowledge economy.

The extension of the knowledge economy into the Global South neatly fit the general imperatives of economic neoliberalism, which included the growing importance of mobile international finance capital de-linked from industrial production, the internationalization of property rights in informational goods, the growing economic power of multinational corporations, and novel forms of regulatory authority vested in international institutions such as the WTO, World Bank, and the IMF.[27] New forms of capital accumulation, conceptualized as examples of accumulation by dispossession,[28] were typified in the exploitation of biodiversity in the Global South.[29] Numerous high-profile instances of biopiracy, or bio imperialism, became known wherein the internationalization of IPRs enabled Northern actors to legally capture and transfer what was historically understood to be commonly-held, public-domain plant and genetic resources in Southern regions. In India, activists mobilized around practices of the patenting of genetic material well-known to the

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[26] Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth, and the Politics of Universality* (Cambridge University Press, 2011) 220.

[27] Chimni (2012) 17-45, at 28-31.

[28] David Harvey, 'Primitive Accumulation, Accumulation by Dispossession, Accumulation by 'Extra-Economic' Means' (2006) 30:5 *Progress in Human Geography,* at 608-625.

[29] The US Supreme Court extended the scope of patentability to genetically modified life forms in the Diamond v. Chakrabarty (1980) case, which was widely seen as a regulatory boon to the nascent biotechnology industry and private plant breeding, while also prompting a severe decline in traditional seed saving practices among farmers. *See* 447 U.S. 303, *Diamond v. Chakrabarty* (1980); Calestous Juma, *The Gene Hunters: Biotechnology and the Scramble for Seeds* (Princeton University Press, 1989).

Indian public, such as Basmati rice, turmeric, and neem,[30] as well as the introduction and spread of genetically modified seeds, leading to indebtedness and farmer suicides.[31]

Agricultural biotechnology relies on patents as well as plant breeders' rights as its primary arrangements for legal protection. IP protection over plant varieties emerged at the beginning of the 20th century when plant breeding began shifting from the domain of farmers' knowledge and practices to private nurseries and commercialized breeding. These new protections for plant varieties provided exclusive IPRs to mostly private companies and large-scale commercial plant breeders developing new plant varieties while neglecting the role of farmers in saving, replanting and exchanging seeds on which these new varieties are based, as well as facilitating the enclosure of genetic commons. Plant breeders' rights legitimate a narrow view of authorship and innovation. As Borowiak notes, the expansion of genetic knowledge and technologies gradually enabled the displacement of plant breeding from farmers in fields to scientists in laboratories so that plants came to 'resemble inventions.'[32] Gene editing, in particular, allowed for modifications in existing plant varieties that contained a history of accumulated scientific and traditional knowledge (TK) so that they might produce novel varieties fitting the desired parameters of novelty and innovation, which render them protectable as IP-protected products., This is predicated on a Eurocentric notion of the genius individual author, in that plant breeders are understood as adding an original or innovative element (genetic modification) to a formally public good historically understood as the 'common heritage of mankind'[33], to produce an IP-protected product that circulates in markets and collects rents for the breeder.[34] Scientific plant breeders are recognized as innovators because their innovations contribute to scientific progress and capital accumulation, whereas the contributions of small farmers and indigenous communities in the form of seed exchanges and informal breeding techniques, at best, contribute to an exploitable public domain. Plant breeders' rights incorporated into recent national seed laws have placed limits on the production, sale and exchange of

[30] Vandana Shiva, *Biopiracy: The Plunder of Nature and Knowledge*, (Penguin Random House, 2016).

[31] David Meek & Ashlesha Khadse, 'Food sovereignty and farmer suicides: Bridging political ecologies of health and education' (2020) 49:3 *The Journal of Peasant Studies*, at 1-21.

[32] Craig Borowiak, 'Farmers' Rights: Intellectual Property Regimes and the Struggle Over Seeds' (2004) 32:4 *Politics and Society* at 511-543.

[33] Ikechi Mgbeoji, 'Beyond Rhetoric: State Sovereignty, Common Concern, and the Inapplicability of the Common Heritage Concept to Plant Genetic Resources' (2003) 16:4 *Leiden Journal of International Law* at 821-837.

[34] Thom Van Dooren, 'Inventing Seed: The Nature(s) of Intellectual Property in Plants' (2008) 26:4 *Environment and Planning D: Society and Space* at 676-697

seeds, as well as criminalization and steep penalties for unauthorized use of 'protected' varieties.

Shortly after the peak of the Indian Green Revolution, the World Bank helped establish the National Seed Project in 1976 to support the centralization of the national seed industry.[35] By 1985, representatives of medium to large domestic and foreign seed companies formed the Seed Association of India, the first known organization to advocate for plant breeders' rights in India,[36] promoting a shift in policy that would open the seed sector to foreign investment in hybrid seeds and agricultural biotechnology.[37] Their lobbying coincided with a USD 150 million loan from the World Bank to India's seed sector because, according to the loan memorandum:

> There is significant potential for private sector involvement in the industry on a larger scale in an operating environment which has become increasingly favorable for private initiative in recent years. [For] the industry to perform more effectively, there is a clear need for a realignment in its structural and institutional framework aimed at creating financially strong, independent and business-oriented public seed corporations and encouraging an expanded role for the private sector.[38]

A year later, the Indian state and domestic seed companies began establishing the conditions for domestic agricultural biotechnology research and the expansion of IPRs in agriculture, in the form of plant breeders' rights. State-sponsored research into agricultural biotechnology in India began when the national Ministry of Science and Technology created the Department of Biotechnology.[39] The establishment of this department signified the opening of India's national agricultural research and plant breeding practices to its domestic private sector, as the public seed sector began providing seed germplasm to Indian seed companies, which later created the genetic foundation for private germplasm pools.[40] These combined efforts led to the 1988 'New Policy on Seed Development', with the objective of 'providing to the farmer the best planting materials available in the world to increase productivity and thereby

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[35] Satya Deva, 'The National Seed Project in India' (1980) 19:4 *Public Administration and Development* at 262-269.

[36] Anitha Ramanna, 'IPRs and Agriculture: South Asian Concerns' (2003) 4:1 *South Asia Economic Journal* at 55-71.

[37] Anitha Ramanna & Melinda Smale, 'Rights and Access to Plant Genetic Resources under India's New Law' (2004) 22:4 *Development Policy Review* at 423-442.

[38] World Bank, 'Memorandum and Recommendation of the President of the international Development Association to the Executive Directors on a Proposed Credit of SDR 108.7 Million (US$150 Million Equivalent) to India for a Third National Seeds Project' (1988) *Report No. P-4856-IN* 1-2.

[39] P. Raju, 'World History of Modern Biotechnology and Its Applications' (2016) 12:11 *Biotechnology: an Indian Journal* at 107.

[40] Vandana Shiva & Tom Crompton, 'Monopoly and Monoculture: Trends in Indian Seed Industry' (1998) 33:39 *Economic and Political Weekly* A-137-A141+A144-A151.

increasing farm income and export earnings.'[41] Hybrid high-yielding seeds could be imported under the condition that the foreign exporting company 'agree to supply parental lines/nucleus or breeder seed technology to the Indian firm within two years of the first shipment of commercial consignment,'[42] meaning that multinational seed companies had to share hybrid seed technology with domestic seed firms. Similar to its domestic development strategy during the Green Revolution, India opened itself to foreign actors in a careful manner to spur the growth of its domestic agricultural industries while avoiding foreign dependence. This time, however, the strategy was a boon more for domestic private actors than for the public sector or Indian farmers at large.

In 1989, the Seed Association organized a two-day conference titled 'Plant Variety Protection: Pros and Cons', comprised of a coalition of plant breeders' rights advocates ranging from domestic private seed industry representatives, government officials from the Ministry of Agriculture, and the American multinational seed industry.[43] As environmental anthropologist Seshia points out, the key issue at hand was not the desirability of plant variety protection in India but whether such protection should unfold through patents or plant breeders' rights.[44] In the same year, India appointed the UN Food and Agricultural Organization (FAO) to produce a study on the viability of introducing plant breeders' rights, leading to FAO-led technical missions around the country.[45] Between 1991-1993, India requested a $2.2 billion loan from the IMF amid domestic economic turmoil, largely due to its dependence on oil imports and the first Gulf War.[46] The loan was accompanied by conditionalities, including an undertaking to continue reforming domestic policy by opening the national economy to liberalization, privatization, and increased foreign trade.[47] These

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[41] India Ministry of Agriculture, 'New Policy On Seed Development' (1988) *No. 11-71/88.SD.I* 1.

[42] Ibid.

[43] Shaila Seshia, 'Plant Variety Protection and Farmers' Rights: Law-Making and Cultivation of Varietal Control' (2002) 37:27 *Economic and Political Weekly* at 2741-2747.

[44] Ibid, 2744.

[45] Dwijen Rangnekar, 'The Cunning State of Farmer's Rights in India: Aligning with Global Law or Emancipating Farmers?' Conference paper for discussion at: *Food Sovereignty: A Critical Dialogue International Conference,* Yale University: 14-15, September 2013.

[46] V Srinivas , *India's Relations With The International Monetary Fund (IMF): 25 Years In Perspective 1991-2016* (Vij Books India Pvt Ltd., 2019). Indian Council of World Affairs.

[47] Mitu Sengupta, 'Making the State Change Its Mind – the IMF, the World Bank and the Politics of India's Market Reforms' (2009) 14:2 *New Political Economy*, at 181–210.

In a speech made in New Delhi reflecting on the effects of the 1991 reforms, the IMF's first deputy managing director (1994-2001), Stanley Fischer, commented: 'The crisis was a painful but valuable wake-up call. The reform program that followed marked a new willingness to allow market forces the freedom to work. It included significant industrial and trade liberalization, financial deregulation, improvements to supervisory and regulatory systems, and policies more conducive to privatization and foreign direct investment. These changes reawakened what Keynes

reforms were incorporated into The New Industrial Policy of 1991, which further liberalized India's seed industry by permitting foreign direct investment and technology transfers.[48] This put PM Narasimha Rao in a difficult position between meeting the demands of India's international creditors and managing continued domestic resistance to global economic integration. Accepting the loan led to rivalrous positions between the Ministry of Finance, which supported the reforms, and the Ministry of Commerce, dominated by entrenched business interests resistant to abandoning India's protectionist policies favoring local industries. Nonetheless, as Shaffer, Sinha, & Nedumpara illustrate in an interview with a former high-level member of the Indian Administrative Services, the IMF conditionality provided the cover needed by Indian leadership to make domestically unpopular reforms. Specifically, 'the IMF and international institutions helped to provide an excuse to do what otherwise was more difficult to do politically.'[49] This was not a novel imperative but one rooted in the postcolonial state's historical inclination to utilize political crises to authorize expansions of the developmental state into rural agriculture, as Khan explains in the context of the Green Revolution.[50] As will be shown later, this type of authorization of state-building unfolded in the aftermath of the Uruguay Round negotiations. India's ruling elite, therefore, received a political gift in the disciplinary measures imposed through India's agreement with the IMF, providing the state with the political cover needed to begin liberalizing at home in the face of resistance from civil society groups and some parts of the business elite.[51]

3.1 Neoliberal technologies of incorporation in the global knowledge economy

The deployment of government technologies was integral in fostering governable subjects (both macro, such as states, and micro, such as individuals and communities) in the construction of the knowledge economy assemblage. Such technologies are often subtle, taken for granted as sets of practices and discourses which carry the

called the 'animal spirits' of India's entrepreneurs, and gave a sharp boost to growth.' *See* Stanley Fischer, 'Breaking Out of the Third World: India's Economic Imperative' (January 2002) available at: https://www.imf.org/en/News/Articles/2015/09/28/04/53/sp012202.

[48] Rakesh Mohan, 'The Road to the 1991 Industrial Policy Reforms and Beyond: A Personalized Narrative from the Trenches' in Rakesh Mohan (ed.), *India Transformed: Twenty-Five Years of Economic Reforms* (Brookings Institution Press, 2018) 3-44.

[49] Gregory Shaffer, James Nedumpara, & Aseema Sinha, 'State Transformation and the Role of Lawyers: The WTO, India, and Transnational Legal Ordering' (2015) 49:3 *Law & Society Review* 595-629, at 604.

[50] Adil Khan, 'The 'Bihar Famine' and the Authorisation of the Green Revolution in India: Developmental Futures and Disaster Imaginaries' in Matthew Craven, Sundhya Pahuja, & Gerry Simpson (eds.), *International Law and the Cold War* (Cambridge University Press, 2019) 414-446.

[51] Rahul Mukherji, *Globalization and Deregulation: Ideas, Interests, and Institutional Change in India* (Oxford Academic, 2014).

aspirations of the ruling authorities while attempting to produce the subjects of government. While the Uruguay Round negotiations that led to The Marrakesh Agreement[52] have largely been documented as imperial and disciplinary exercises intended to incorporate the Global South into the global knowledge economy,[53] more subtle forms of 'inclusion' emerged in the governmental activities and technologies of international neoliberal institutions. Before the globalization of the knowledge economy, much of the Global South was still primarily reliant upon industrial production and protectionist, nationally oriented agriculture in the 1980s/90s. The deployment of knowledge economy indicators[54] as neoliberal technologies of evaluation and comparison were central in steering the Global South towards neoliberal restructuring deemed necessary for the incorporation of the South into the global knowledge economy;[55] 'embeddedness in the global order is not imposed from above but is to be sought voluntarily. Both people and places are encouraged to apply financial disciplines, demonstrate entrepreneurial capacities, and seek out new opportunities.'[56] Even without the cloak of obvious coercion, such technologies are inexorably linked to the production of discursive representations of the Global South within the process of information production.[57] For instance, disciplinary mechanisms intended to induce regulatory restructuring and enhanced surveillance, such as the IMF's Structural Adjustment Programs, did so by attaching conditionalities that had to be carried out by the recipient state in order to receive financial assistance.[58] Disciplinary conditionalities should be read not in contrast to the more subtle work of indicators but understood as differing technologies within a singular rationality or within the same 'conceptual box.'[59]

International organizations, such as the IMF, United Nations and World Bank, actively generated global statistics and indicators for the purposes of conducting

[52]Uruguay Round, *Marrakesh Agreement Establishing the World Trade Organization*, 15 April 1994.

[53] Susan Sell, 'Industry Strategies for Intellectual Property and Trade: The Quest for TRIPS and Post-TRIPS Strategies' (2002) 10 *Cardozo Journal of International and Comparative Law,* at79-108.

[54] According to the World Bank, common knowledge economy indicators include the number of patents granted each year by the United States Patent and Trademark Office (USPTO) each year, education and literacy rates, the number of researchers involved in R&D, national internet and mobile phone service coverage (i.e., accessibility of ICTs), soundness of national banks, levels of local competition among business, reduction in tariff and non-tariff barriers, and exports of goods and services.

[55] Diego Giannone, 'Neoliberalization by Evaluation: Explaining the Making of Neoliberal Evaluative State' (2016) 9:2 *Partecipazione e conflitto,* at 495-516; Diego Giannone, 'The Politics of Global Indicators in Designing, Promoting and Legitimating the Competition State (2017) 10:2 *Partecipazione e conflitto,* at 472-491.

[56] Larner & Walters (2004) 495-514, at 509.

[57] Pahuja (2004) 749-813, at 755.

[58] James Petras & Henry Veltmeyer, *Globalization Unmasked: Imperialism in the Twenty-First Century* (Zed Books, 2001).

[59] Pahuja (2004) 749-813, at 751.

economic comparison between states in the 20th century,[60] aspiring to 'overtly and purposively…engage actors at the highest levels of government and influence their policies and governance practices.'[61] Though indicators are integral technologies in neoliberal governmentality, the production and deployment of statistics as governmental technologies have a long history in modern European statecraft.[62] Quantification was a critically important technology of liberal government. Liberalism historically necessitated the discovery of the 'population', constructed through macro political-statistical phenomena such as birth and mortality rates, which came to comprise the 'social' and required constant maintenance and optimization.[63] Individuals are the objects of liberal government, not through their domination, but through their interpellation as voluntarily compliant subjects whose rational self-interests converge with governmental activities oriented towards market-based governance.[64]

An overwhelming majority of contemporary global indices (composite indicators) were produced between 1991-2006, with a significant boom between 2001-2006.[65] Pointing to their central role in neoliberal governmentality, indicators are:

> …a named collection of rank-ordered data that purports to represent the past or projected performance of different units. The data are generated through a process that simplifies raw data about a complex social phenomenon. The data, in this simplified and processed form, are capable of being used to compare particular units of analysis (such as countries, institutions, or corporations), synchronically or over time, and to evaluate their performance by reference to one or more standards.[66]

Indicators are one component involved in benchmarking, or the creation and deployment of comparative metrics of performance. Benchmarking is indicative of 'governing at a distance', marked by their power to shape standards through applied

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[60]Michael Ward, *Quantifying the World: UN Ideas and Statistics* (Indiana University Press, 2004).

[61] Judith Kelley & Beth Simmons, 'Introduction: The Power of Global Performance Indicators (2019) 19-06 *International Organization, Forthcoming, U of Penn Law School, Public Law Research Paper,* at 1-27.

[62] Mary Poovey, *A History of the Modern Fact: Problems of Knowledge in the Sciences of Wealth and Society* (University of Chicago Press, 1998).

[63] Mitchell Dean, *Governmentality: Power and Rule in Modern Society* (Sage, 2010).

[64] Distinct modes of governmentality, however, utilize different modes of quantification. As political anthropologist David Scott influentially argued (*See* David Scott, 'Colonial Governmentality' (1995) 43 *Social Text,* at 191-220.), colonial governmentality sought to impose modern forms of political rationality by displacing pre-colonial forms of rule so as to compel 'new forms of life to come into being.'

[65] Oded Löwenheim, 'Examining the State: A Foucauldian Perspective on International 'Governance Indicators'' (2008) 29:2 *Third World Quarterly,* at 255-274.

[66] Kevin Davis, Benedict Kingsbury, & Sally Merry, 'Indicators as a Technology of Global Governance' (2012) 46:1 *Law and Society Review* 71-104, at 73-74.

expertise indirectly; '…benchmarking functions to make diverse forms of behaviour legible and amenable to intervention', as they 'contribute to the diffusion of normative visions and agendas regarding what transnational actors should look like, what they should value, and how they should behave.[67] Indicators are not simply positivistic representations of pre-existing phenomena in the world or neutral sources of knowledge. They often create the activities they seek to measure and, as an assertion of power, actively work to make the world they claim to represent.[68] In constructing the world they seek to describe, indicators simplify the messiness of complex activities without coercion but as a form of productive power that subtly sets and arranges the conditions of possibility in state-making, producing, at times, dire policy consequences.[69] They are further conducive to examining, ranking, evaluating, and establishing hierarchies among states within seemingly neutral, stable, and universal categories as part of a broader historical trajectory of essentializing racialized identities between 'advanced' and 'backward' societies.[70] As Pahuja notes in relation to the IMF, economic indicators 'are used to translate the perceived differences between North and South and to diminish the fears engendered by the implicit primordialism by which the South is characterised.'[71] In so doing, indicators and practices of benchmarking act as neoliberal technologies within the broader apparatus of transnational governmentality that aims to constitute states in the Global South as competitive market subjects capable of incorporating themselves into the global knowledge economy[72] while implicitly reinscribing the discursive logic of civilization.[73]

Neoliberal rationality aims to instill and expand the marketization of social relations and institutions by cultivating prerequisite political, legal, and social conditions, namely those of competition and entrepreneurialism.[74] This extends

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[67] André Broome & Joel Quirk, 'Governing the World at a Distance: The Practice of Global Benchmarking' (2015) 41:5 *Review of International Studies,* at 819-841.

[68] Sally Merry, *The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking* (University of Chicago Press, 2016); Davis et al. (2012) 71-104.

[69] Shubhangi Agarwalla, TWAIL Review, 'India's Environmental Impact Assessment: How Development Indicators Govern the Global South' (Reflections #25, 8 November 2020) https://twailr.com/indias-environmental-impact-assessment-how-development-indicators-govern-the-global-south/ (Accessed 26 May 2023).

[70] Steven Ratuva, 'Social Indexology, Neoliberalism and Racialised Metrics: Legitimising the 'Inferiority' of Global South Indicators' (2021) 42:9 *Third World Quarterly*, at 2096-2114.

[71] Pahuja (2004) 749-813, at 800-801.

[72] Tore Fougner, 'Neoliberal Governance of States: The Role of Competitiveness, Indexing and Country Benchmarking' (2008) 37:2 *Millennium: Journal of International Studies,* at 303-326.

[73] Jacqueline Best, 'Civilizing through Transparency: The International Monetary Fund' in Leonard Seabrooke and Brett Bowden (eds.), *The Global Standards of Market Civilization* (London: Routledge/RIPE series, 2006) 134-145.

[74] Graham Burchell, 'Liberal Government and Techniques of the Self' (1993) 22:3 *Economy and Society,* at 267-282.

beyond individual subjects or populations to 'macro subjects' such as states. Further, the sustained use of neoliberal indicators and similar tools of quantification produces a discursive field in which standards of normalcy are enacted and determined.[75] Competition, for instance, is not only valued neoliberal behavior in the global knowledge economy but is a constitutive discourse encompassing 'the set of institutions, policies and factors that determine the level of productivity of a country.'[76] The World Economic Forum, one of the most influential global economic organizations and the source of the authoritative annual *Global Competitiveness Report* that measures states in the global knowledge economy:

> We break down countries' competitiveness into 12 distinct areas, or pillars, which we group into three sub-indexes. These are 'basic requirements', which comprise institutions, infrastructure, macroeconomic environment and health and primary education. We call these 'basic' as these pillars tend to be those that countries at earlier stages of development tackle first.
>
> Next comes our 'efficiency enhancers' sub-index. Essentially, we're looking at markets – whether it is the functioning of goods, labour or financial markets – but we also consider higher education and training, and technological readiness, which measures how well economies are prepared for the transition into more advanced, knowledge-based economies.
>
> …These are more complex areas of competitiveness that require an economy to be able to draw on world-class businesses and research establishments, as well as an innovative, supportive government. Countries that score highly in these pillars tend to be advanced economies with high gross domestic product per capita.[77]

The above quote underscores the discourse of competition in relation to a state's incorporation and advancement in the global knowledge economy, which echoes the evolutionary telos of modernization theory. Twentieth-century international development, underpinned by modernization theory and the colonial ideology of progress, was based on the replication of modern, Western standards of living achievable through capitalist industrialization. Knowledge, expertise, and new agricultural technologies were exported to the Third World in a one-way flow, based on modernization norms in which the advanced centers of science and technology in

[75] Löwenheim (2008) 255-274, at 2`62.

[76] Oliver Cann, World Economic Forum, 'What Exactly Is Economic Competitiveness?' (27 September 2017) https://www.weforum.org/agenda/2017/09/what-is-economic-competitiveness/ (Accessed 31 May 2023).

[77] Ibid.

the modern West provide the tools of civilisation and progress to the traditional, culturally-bound non-Western world.

To achieve and maintain a high degree of economic productivity, states must continuously enhance their capacity for domestic innovation by constructing a national environment for the protection of IPRs in the global knowledge economy. Through the deployment of neoliberal technologies of incorporation, Global South states are governed to work on their polities and economies by establishing the proper legal and institutional conditions to attract mobile capital and technology, while investing in their citizenry to cultivate a domestic labor force of high-skilled knowledge workers. In essence, states in the Global South are guided towards working on themselves, a hallmark of transnational governmentality.[78] The 1991 *World Competitiveness Report*, for example, evaluated state competitiveness based on how attractive the state was for business investment by understanding 'the quality of resources available in a country from the point of view of an entrepreneur', as well as the existing state of domestic firms imbued with 'competence in transforming the available resources into value-added products and services.'[79] Updated and vigorously enforced IPRs 'signal to prospective investors that a country respects their intellectual property and is 'open for business' according to accepted international norms.'[80] IPRs were considered necessary to induce competition in trade. Further, the World Bank's seminal 1998/99 *World Development Report*, which established the pillars of the Bank's 2004 'Knowledge for Development' program, comments:

> Countries now in the earlier stages of development have much to learn from the successes and failures of today's industrializers, for they, too, were on the lower rungs of the development ladder not so very long ago. Knowledge also flows from developing to industrial countries. These include not only indigenous knowledge—for example, about the curative properties of certain indigenous plants, the fruit of some developing countries' biodiversity—but also some modern technological innovations. All these flows—among developing countries and between developing and industrial countries—can be expected to increase.[81]

[78] Jan Busse & Scott Hamilton, 'Introduction: the Globality of Governmentality' in Jane Busse (ed.), *The Globality of Governmentality: Governing an Entangled World* (Routledge, 2021) 1-25.

[79] L Välikangas, 'The 1991 World Competitiveness Report, Eleventh Edition' in IMD and WEF (eds.) *The World Competitiveness Report 1991* (Lausanne and Geneva: IMD & WEF, 1991) 8-10.

[80] World Bank, *Annual World Development Report* (World Bank, 1999) 31.

[81] Carl Dahlman, Auguste Kouame, & Tara Vishwanath, *World Development Report 1998/99: Knowledge for Development* (World Bank, 1998) 31.

This shift coincided with the World Bank's turn from a loan provider to a development hub for knowledge production and dissemination,[82] where the commodification of knowledge became a building block of economic growth: '…to build up a knowledge base, the Bank recommends that developing countries open up to trade, encourage foreign direct investing, get access to technology licensing, and establish and endorse intellectual property rights standards.'[83] Indeed, as of 2013, the World Bank began developing a new set of indicators titled *Enabling the Business of Agriculture* (EBA), specifically geared towards assessing 'whether governments make it easier or harder for farmers to operate their businesses'.[84] The indicators convey the legal and regulatory obstacles to facilitating market-oriented, corporate-led food production. The EBA broadly calls for the public sector to provide local seed varieties and germplasm to private breeders, as well as their access to national genebanks, stating that 'these practices help private breeders acquire varieties developed or conserved by the public sector and benefit from greater resources for their breeding activities.'[85] This exemplifies how the core logic of plant breeders' rights and that of IPRs in food and agriculture more generally complement the public-private partnerships that Eslava & Pahuja characterize as a key technology of the new developmental state. Collectively developed plant genetic resources, which are commonly held in the public domain and available for use, circulation, and exchange by smallholders, are freely available for appropriation by private actors, who then 'improve' local varieties often through the application of biotechnologies eligible for IP-protection. This ultimately prohibits the source communities from using, storing, and exchanging the very seed that they contributed to in the first place. Eurocentric understandings of invention and innovation underpinning IPRs in food and agriculture thus authorize an extractivist logic that transforms seeds into capital, while simultaneously enacting dispossession and erasure by expunging the contributions of

[82] Lyla Mehta, 'The World Bank and Its Emerging Knowledge Empire' (2001) 60:2 *Human Organization,* at 189-196.

[83] Dahlman, Kouame, & Vishwanath (1998) 145.

[84] World Bank Group, About Enabling the Business of Agriculture, 2024, The World Bank, https://eba.worldbank.org/en/about-us. As Canfield notes, the EBA was developed as part of a broader apparatus of the 'new Green Revolution', a vehicle for the corporate reform of agricultural food systems in the Global South led by the World Bank, the G8's New Alliance for Food Security and Nutrition, The Gates Foundation, and The Alliance for a Green Revolution in Africa. *See* Matt Canfield, Why Do the World Bank's New Indicators, 'Enabling the Business of Agriculture' Pose a Threat to African Agriculture?, 19 January 2017, Community Alliance for Global Justice, https://cagj.org/2017/01/why-do-the-world-banks-new-indicators-enabling-the-business-of-agriculture-pose-a-threat-to-african-agriculture/.

[85]The World Bank, *Enabling the Business of Agriculture 2016: Comparing Regulatory Good Practices*, 2016, p. 16, https://thedocs.worldbank.org/en/doc/574871534213082636-0050022018/original/EBA16FullReport.pdf.

smallholders and indigenous cultivators whose labor and stewardship is integral to the cultivation of the socio-natures.[86]

Thus, we see how private property rights and the enforcement of contracts assume the mantle of development's guiding model to fully harness the power of science and technology in economic development to achieve agricultural productivity. In the neoliberal imaginary, Third World failures to develop economically are no longer rooted in the overt culturalist framing, in which the non-West is inherently deficient due to its bonds to culture and tradition. Neoliberal development in the global knowledge economy suggests that the potential for economic growth within Third World states and subjects is inherent but must be unlocked and tapped into through proper legal and institutional arrangements. IPRs and their connection to liberalized trade in services, agriculture, and plant genetic resources were deemed critically important in establishing such arrangements, understood within the logic of civilization.[87]

3.2 Legal Capacity Building in State Formation

From the post-Green Revolution period into the late 1980s, Indian industries were unable to compete in international markets and were uninterested in it. The Indian state curtailed international trade by heavily regulating the domestic private sector while promoting small and local industries in conjunction with heavily protected import policies. Indian reluctance to engage in international economic activity manifested in the state's disastrous performance during the Uruguay Round (1986-1993), the 8th round of multilateral trade negotiations conducted within the framework of the General Agreement on Tariffs and Trade (GATT). Indian negotiators were unprepared and made very few legal commitments. Indian industry was similarly impassive. The Confederation of Indian Industry, an expansive business association, later acknowledged in a reflective 1999 report that it was 'not so much concerned with what was happening in the Uruguay Round. It was not even fully aware of the items on the agenda that were being negotiated.'[88] A.V. Ganesan, one of the state's negotiators, argues that domestic policies and politics dominated India's approach to the Uruguay Round and its attitude towards the appropriateness of IPRs

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[86] S. Ali Malik, 'SDG 2: Zero Hunger, Food and Plant-Related Intellectual Property, and Access to Plant Genetic Resources' in Bita Amani, Caroline Ncube, & Matthew Rimmer (eds.), *The Elgar Companion to Intellectual Property and the Sustainable Development Goals* (Edward Elgar Publishing Limited, 2024), at 50-73.

[87] Ntina Tzouvala, *Capitalism as Civilisation: A History of International Law* (Cambridge University Press, 2020).

[88] Aseema Sinha, *Globalizing India: How Global Rules and Markets are Shaping India's Rise to Power* (Cambridge University Press, 2016).

more generally.[89] India had little choice but to accept its position as passively receiving and complying with the demands of the industrialized North in these agreements, in part because the state lacked the technical expertise in IPRs to assert a coherent position.[90] Jayashree Watal, another negotiator in the Indian delegation, explained that: 'Local expertise in IP policy… was also rare in developing country capitals. Domestic interests typically wanted the government to resist all demands but offered no realistic compromise solutions. Such expertise was practically absent in the Geneva missions of developing countries, especially in the area of patents.'[91] Consequently, the country made heavy investments in developing new transnational capacities and forging new state agencies.[92]

Efforts to increase state capacity as part of the apparatus of transnational governmentality unfolded in the name of encouraging the development of greater international legal expertise and involved the establishment of domestic IP agencies. From 2003-2010, India began a capacity-building project titled 'Strategies and Preparedness for Trade and Globalization in India', led by the United Nations Conference on Trade and Development (UNCTAD).[93] While the project advanced direct engagement with the WTO, as evidenced by the increase in high-level Indian civil servants obtaining positions at the WTO Secretariat and appellate bodies, it also began a process of inducing and incorporating civil society participation in the state's newly liberalized trade policymaking:

> Aiming to strengthen institutional trade capacity, the UNCTAD project organized a series of broad-based and sector specific stakeholder consultations around India. It hoped to mobilize organizations representing farmers, fishermen, and small producers to articulate their interests and concerns and inform the government's approach to WTO and new free trade agreement negotiations for the first time.[94]

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[89] A.V. Ganesan, 'Negotiating for India' in Jayashree Watal & Antony Taubman (eds.), *The Making of the TRIPS Agreement: Personal Insights from the Uruguay Round Negotiations* (World Trade Organization, 2015) 211-238.

[90] Ibid., 214.

[91] Jayashree Watal, 'Patents: An Indian Perspective' in Jayashree Watal & Antony Taubman (eds.), *The Making of the TRIPS Agreement: Personal Insights from the Uruguay Round Negotiations* (World Trade Organization, 2015) 295-320, at 302.

[92] Gregory Shaffer, James Nedumpara, & Aseema Sinha, 'State Transformation and the Role of Lawyers: The WTO, India, and Transnational Legal Ordering' (2015) 49:3 *Law & Society Review,* at 595-629.

[93] Gregory Shaffer, James Nedumpara & Aseema Sinha, 'India: An Emerging Giant's Transformation and its Implications' in Gregory Shaffer, *Emerging Powers and the World Trading System: The Past and Future of International Economic Law* (Cambridge University Press, 2021) 128-173.

[94] Shaffer et al. (2015), 609.

As May argues, 'capacity building programmes socialize policymakers, practitioners and others into a specific way of dealing with, and regulating, IPRs.'[95] When India's grace period from TRIPs implementation concluded in 2004, the state established four new patent offices in high-density metropolitan areas and established an IP Training Institute. The World Intellectual Property Organization's (WIPO) turn in the mid-2000s from a purely administrative body to one explicitly concerned with sustainable development after the passage of the CBD[96] was accomplished through the agencies of states such as India who actively pressured WIPO to adopt a development agenda to counter the WTO's exclusive emphasis on commercial transactions. Another state initiative involved providing consultation to African states to help them block TRIPs-plus IP agreements. The assessment that 'India has implemented TRIPs commitments while doing so in a more development-friendly manner that other countries can adopt'[97] suggests that India implemented international legal demands incumbent upon its integration into the global knowledge economy but did so selectively by retaining its status as a continuing model for and champion of the Global South while creating new markets for its policy models and expertise in 'less-developed' states. The sum of these projects was an inculcation of a juridical mentality in both India and the South at large, while effectively maneuvering the globalization of harmonized IPRs as a matter of building technical expertise while sidelining the politics underpinning such radical changes to national legal systems and local cultures.

4. Conclusion

Following the premise that making the state is an ongoing project of international law, this paper asked: how did international law and institutions contribute to the neoliberal restructuring of the postcolonial Indian state in the context of the broader institutionalization of the global knowledge economy? This analysis further sought to foreground the role of international law in governing the Global South 'at a distance' through technologies of incorporation into the global knowledge economy and in processes of on-the-ground state formation through legal capacity-building efforts pertaining to IPRs. The article foregrounds a historical conjuncture of international law's technologies, discourses, and institutions that aided in the formation of neoliberal India by showing changing modes of capital accumulation are mutually constitutive of

[95] Christopher May, 'Capacity Building and the (Re)production of Intellectual Property Rights' (2004) 25:5 *Third World Quarterly* 821-837, at 824.

[96] Rayyar Farhat, 'Neotribal Entrepreneurialism and the Commodification of Biodiversity: WIPO's Displacement of Development for Private Property Rights' (2008) 15:2 *Review of International Political Economy,* at 206-233.

[97] Shaffer, Nedumpara, & Sinha (2015) 595-629, at 623.

shifts in international law and changing conceptions of developmentalism, which ultimately rely on novel but nonunique technologies of government. Interrogating the ensemble of technologies, discourses, and institutions within this recent history illuminates the complexities embedded in the multiscalar, productive power of international law. An existing neoliberalism framework brings out the various ways in which the Indian state was subjected to neoliberal government by international institutions. At the same time, the state actively and agentically responded to and embedded the imperatives of neoliberal development as processes of state formation. This series of dialogic interactions demonstrates how 'all actually existing neoliberalisms strongly bear the imprint of past regulatory struggles, which recursively shape political capacities and orientations, as well as future pathways of (neoliberal) restructuring."[98] In this understanding, we might more clearly see the subtle ways in which a recent past of international law birthed the present, increasingly characterized by governance through data[99] within a political economy of information capitalism[100] that is simultaneously generating novel forms of dispossession[101] and new avenues for resistance.[102]

[98] Peck, Brenner, & Theodore (2018) 3-15, at 7.

[99] Fleur Johns, 'Governance by Data' (2021) 17:1 *Annual Review of Law and Social Science,* at 53-71.

[100] Julie Cohen, *Between Truth and Power: The Legal Constructions of Informational Capitalism* (Oxford University Press, 2019).

[101] S. Ali Malik, 'Linking Climate-Smart Agriculture to Farming as a Service: Mapping an Emergent Paradigm of Datafied Dispossession in India' (2023) 50:6 *The Journal of Peasant Studies*, at 2187-2209.

[102] Ettlinger, 'Algorithmic Affordances for Productive Resistance' (2018) 5:1 *Big Data & Society*.

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