ARTICLES

Technologies of Empire: IMF Conditionality and the Reinscription of the North/South Divide

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Abstract: This article seeks to complicate conventional understandings of the way in which IMF conditionality operates in relation to North/South relations. It begins with a genealogy of how the Fund became involved in lending to the South and argues that the Fund was transformed from an essentially monetary institution concerned with the industrialised states to a surveillance organisation directed at providing information about the South to the North. The article then explores what discursive functions the Fund might be performing in the context of the relationship between North and South. In this regard the author identifies two major themes underlying IMF discourse, both of which suggest that an underlying sense of danger of the South is felt by the North, and that this sense of danger replicates older fears. The author then argues that the discursive practices employed to address these fears resonate with older discursive strategies and considers why the reoccurrence of these "technologies of empire" might be problematic. It concludes with some (tentative) suggestions about how we might productively disrupt the colonial continuum of which these discursive practices seem to form part.

> There is a disturbing tendency in the Western Academy today to divorce the study of discursive forms from the study of other institutional forms, and the study of literary discourses from the mundane discourses of bureaucracies, armies, private corporations, and nonstate social organizations. [...] [I]f the postcolony is in part a discursive formation, it is also true that discursivity has become too exclusively the sign and space of the colony and the postcolony in contemporary cultural studies. To widen the sense of what counts as discourse demands a corresponding widening of the sphere of the postcolony, to

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extend it beyond the geographical spaces of the former colonial world.[1]

1. Introduction

The appropriate role of the International Monetary Fund is a subject around which there is a mælstrom of controversy. The axis around which the controversy turns can, with varying degrees of accuracy, variously be described as South/North, Third World/First World, developing states/developed states, poor countries/rich countries, debtor nations/creditor nations, industrializing states/ industrialized states. Each pair of descriptors is imbued with its own assumptions about the nature of the states on each side of the divide. None of the descriptors can encompass the whole of the matrix of inequalities, political divisions, economic disparities and cultural chasms which divide those we characterise as being on one side of the line or the other. However they each draw imaginary lines in similar, though not identical, geographical locations.[2]

In the context of IMF conditionality,[3] the divide is as important as it is difficult to define. Many roles are proposed for the Fund and many charges are leveled at it, almost all in relation to the South/developing states/debtor nations. Some argue that the Fund's conditionality is nothing more than a cynical attempt to "soften up" the developing countries to ready them for their incorporation into the "global" market.[4] Others argue that conditionality should be expanded to include concerns such as human rights standards[5] and environmental standards[6] on the basis that conditionality will provide an enforcement mechanism for these norms.

1. A. Appadurai, Modernity at Large: The Cultural Dimensions of Globalization 159 (1996).
2. I hesitate to use these terms, not the least because of their geographical inaccuracy. By using them here I do not wish to endorse the construct, however they do capture some sense of where the 'divide' falls. Using this binary conveys some sense, not only of the wealth and poverty on each respective side of the slash, but of the specific American/British/European-ness of the putative 'North'. *See, generally,* I. Head, On A Hinge of History: The Mutual Vulnerability of South and North (1992). Each of these binaries has its inadequacies, however, for the purposes of this essay, I will not engage with the problematics of the various constructs and will use the various terms largely interchangeably.
3. "Conditionality is a portmanteau word that encompasses all the policies that the Fund wishes a member to follow so that it can resolve its problems consistently with the articles." J. Gold, Conditionality (1979).
4. *Washington Shatters Asia's Dreams,* The Guardian, Week Ending 25 January 1998, at 1.
5. *See, for example,* B. Rajgopal, *Crossing the Rubicon: Synthesising the Soft International Law of the IMF with Human Rights,* 11 Boston U. Int'l L.J. 81 (1993).
6. *See, for example,* Symposium, *Social Justice and Development: Critical Issues facing the Bretton Woods System,* 6 Transnational L. & Contemporary Problems 1 (1996).

Even in the context of conventional understandings about globalization as a sort of symphony of trade liberalization or variations on a free market theme,[7] the question of what role the Fund plays is a vexed one. To those on the left, the symphony sounds more like a cacophony over which the IMF presides as a sort of demonic *chef d'orchestre*, feverishly conducting to a score written by the rich industrialized nations. To hard-line economists, the Fund seems more akin to an indulgent music teacher, pushing his developing country pupils into playing complicated pieces when they have not yet mastered their scales. These contradictory views have been well captured in recent press about the Fund:

> In its crudest form the debate over the IMF divides into two camps. Free-market fundamentalists argue that countries, like individuals, must pay the full price of their mistakes. Had the IMF not bailed out Mexico, they believe, Asia would have realised the folly of bingeing on cheap credit. The most extreme version of this view is that of Milton Friedman, who wants the IMF shut down. At the other end are those who see the IMF as little more than an instrument to soften up Asian economies for US domination. "What the rich couldn't do through bilateral or multilateral pressures, they are now extracting by using the IMF loans as leverage," complained Martin Khor, head of the Third World Network in Malaysia.[8]

What is interesting to me about these conventional readings of the Fund is not their disparities but their congruencies. In both camps, the IMF is depicted as some how mediating between the North and the South. In the first camp its involvement is seen as pro South, providing "bail outs" at the expense of the North. In the second it is portrayed as pro North, readying the South for an econvasion by the US hegemon. These views are contradictory, but represent two poles of the same axis. The axis assumes a rapidly globalizing capitalist system in which states are co-extensive with their economies,[9] which economies are competing with each other for primacy in the global economy. In the Friedman view, the South is receiving unwarranted assistance. In the view of Martin Khor, the financial assistance is legitimate but the conditions attached are not. The views are opposite, but in their opposition, are mutually defining, thus informed by the same rationality.[10] Put simply, they are in the same conceptual "box".

7. On an implicit acceptance of the view that globalization is a process of trade liberalization, *see, for example*, P. Krugman, Pop Internationalism (1997).
8. The Guardian, *supra* note 4.
9. The conflation of a state with its economy was apparent during the APEC conference held in Vancouver, Canada in November 1997. Both APEC official literature and dialogue used the terms "member state" and "member economy" interchangeably. *See, for example*, a letter dated 16 May 1997, sent by the Secretariat for the Seoul APEC Meeting to all APEC members in which the addressees are referred to as "member economies". The letter is unpublished, but copies were made available during the APEC people's forum held concurrently in Vancouver with the APEC meeting in November 1997.
10. On the notion of dualistic thinking and its pitfalls, *see, generally*, A.L. Jennings, *Public or Private: Institutional Economics and Feminism*, *in* M. A. Ferber & J. A. Nelson (Eds.), Beyond Economic Man: Feminist Theory and Economics (1993), at 111.

That this paradigm imposes a potent constraint is frequently illustrated in representations in the press of the IMF and its role in economic globalization. In a recent article entitled "The money pit and the pendulum",[11] the "global" economy is represented as being subject to two opposing forces depicted as the end points of the trajectory of a swinging pendulum. The forces defining the pendulum's path are the economic ideas which largely coincide with the two "camps" defined in the extract above. In the article, the IMF is presented as effectively riding the pendulum as it swings slowly from left to right. Essentially, the author is suggesting that we may be about to see a swing away from the Friedman style free market to a Keynesian style capitalism. However, what is revealing is the particular rhetorical strategy employed to make the point; "[t]rends," writes the author, "are hard to identify at the start, but unless the law of gravity has been repealed, pendulums still swing."[12] In allowing the metaphorical tail (tale?) to wag the reality dog, the author provides an apt illustration of the discursive constraints attending conventional understandings of the IMF's role.

It was partly out of a sense that such analyses focus on producing "answers" to a very restricted range of questions that I began to look for ways to complicate my understandings of the role/s that the IMF plays in the contemporary international order. But where to start?

Because current controversies revolve around a North/South axis, one possible starting point seemed to lie in exploring why the IMF became involved in the business of lending to the South, or in compiling a sort of historical genealogy of IMF conditionality. This genealogy is designed to address what I perceive to be a gap in the legal literature on the topic of Fund conditionality in relation to the evolution of the Fund's conditionality as it applies to the Third World. This seemed a particularly pertinent task given that the Fund began its life as something quite different, that is as a monetary institution, largely governing relations between the industrialised states.

Most legal commentators focus on the Mexican debt crisis of 1982 as the crystallizing moment at which the IMF became involved in the business of providing finance to developing countries.[13] Beginning the story at the moment of the debt crisis tends to disregard the political and economic conditions which gave rise to the Fund's involvement and the extent to which the use of IMF conditionality assumed its early importance in relation to sovereign, rather than IMF, lending. Additionally, the prevailing version of the story pays insufficient

11. G. Dwyer, *The Money Pit and the Pendulum*, The (Toronto) Globe and Mail, 17 January 1998, A17.
12. *Id.*
13. *See, for example*, C. Lichtenstein, *Aiding the Transformation of Economies: Is the Fund's Conditionality Appropriate to the Task?*, 62 Fordham Law Review 1943 (1994); M. Malloy, *Shifting Paradigms: Institutional Roles in a Changing World*, 62 Fordham Law Review 1911 (1994); D. Carreau, *Why not Merge the International Monetary Fund (IMF) with the International Bank for Reconstruction and Development (World Bank)?*, 62 Fordham Law Review 1989 (1994); E.W. Robichek, *The International Monetary Fund: An Arbiter in the Debt Restructuring Process*, 23 Columbia Journal of Transnational Law 143 (1984).

attention to the shift, which occurred at around the same time, in IMF policy towards the enforcement of conditionality from an emphasis on strict compliance to consultation and surveillance.[14]

Also absent from both the legal literature and the economic and political economic literature is any consideration of the connection between the emergence of the Fund's role in the area and the fundamental changes to the legal powers of the Fund in relation to exchange arrangements. In the conventional story, this change is seen to have little bearing on the relationship between the Fund and the Third World. However, if we begin to tell the story of the IMF's involvement with the South at an earlier point than the debt crisis of 1982, we can see that what is perceived simply as a general diminution in the Fund's powers can be shown, in the context of conditionality, to have had an asymmetrical juridical effect on South and North. The juridical effect of the new norms which caused the Fund's powers to be diminished in relation to the North, was paradoxically the cause of a simultaneous expansion of those powers in relation to the South.[15]

The consequence of the assumptions made in the literature is to dehistoricise a process which began much earlier than is commonly suggested, and a grasp of which alters our understandings of conditionality. In my view, it is useful to step back for a moment from the highly charged debates to consider the evolution of the Fund's role in relation to developing countries and the origins and legal basis of IMF conditionality. Re-historicising our readings of that genesis, or starting to compile an historical genealogy, has implications for our understandings of conditionality; its nature, purposes and legitimacy.

In Paragraph 3, I will argue that from the time of its inception to the onset of the debt crisis in 1982, the Fund underwent a series of transformations which impacted upon its role in the provision of finance to the Third World. These early developments created the necessary conditions for the subsequent involvement of the Fund in managing the Mexican (and subsequent) debt crises. Gradually, the Fund has shifted from being an organization concerned primarily with maintaining stable exchange rates between industrialized countries to one which is associated now, at least in the general perception, with development financing,[16] and, most recently, as a *tabula in naufraggio* for countries in financial crisis[17] (or perhaps for creditors in crisis?). Some of the transformations were caused by Fund practice, some by an amendment to the Fund's Articles of Agreement,[18] and some by the responsive actions of other institutions. The transformations have both expanded the regulatory and financial functions of the

14. *See, infra,* paragraph 3.2.
15. *See, infra,* paragraph 3.3.3.
16. *See, for example,* Carreau, *supra* note 13, at 1990.
17. *See, for example, Kill or Cure,* The Economist, 10 January 1998, at 13.
18. Articles of Agreement of the International Monetary Fund, 22 July 1944, 60 Stat. 1401, TIAS No. 1501, 2 UNTS 39 (entered into force 27 December 1945) [hereinafter *Articles of Agreement*].

Fund and have gradually increased its role in the business of providing finance for the Third World.

Considering the juridical transformations outlined in Paragraph 3 gives us some clues about the "why" of IMF involvement in Third World lending. It is the nature of the transformations which raises questions about the "how" of that involvement. The nature of the transformations emphasised the role of the IMF as a gatherer and disseminator of information, and as a surveillance organization. However, because of which states' borrowing is subject to IMF conditionality,[19] the objects of the information systems are predominantly states in the South and the receivers of the information are largely those in the North. Thus, it is an information system which seems in some way to be mediating an encounter between North and South.

Therefore, in Paragraph 4, I consider the ways in which important questions related to the "how" of Fund involvement in Third World lending can be posed by adopting a method of critical enquiry related to the construction of information or knowledge.[20] What I wish to do in Paragraph 4, is explore questions of representation and to begin to tease out and problematize some of the naturalisations in the background of IMF information gathering or knowledge production. I will situate this enquiry and examination in the broader context of the comparatively small body of critical work in international relations and international law,[21] in which questions of representation in the North/South context are considered, and in the work of post-colonial scholars who consider, *inter alia,* questions of representation of the Third World in the context of historical and cultural studies.[22]

The focus of my enquiry is the inscribed products of the Fund into which are written the subject identities of the states and people in the South. The narratives I have chosen to explore include some inscribed products of the Fund itself, such

19. *See, generally,* M. Chossudovsky, The Globalisation of Poverty: Impacts of IMF and World Bank Reforms (1997).

20. Some theorists have drawn a distinction between information and knowledge, as though information is something which comes before knowledge. 'Information', according to such theorists, is what we get *before* we contextualize, interpret, conceptualize and argue about something. (An example of this is D. Bell, *Gutenberg and the Computer,* May Encounter 15, at 17 (1985) as referred to in R. Ericson & K. Haggerty, Policing the Risk Society (1997), at 84). However, more persuasive to my mind, is the argument that there is no such distinction possible between information and knowledge. Things designated as information have already been interpreted in context, even though their first appearance (as, for example, news), may form the basis of many subsequent interpretations in context. The point is that even the initial appearance (or creation) of that information is a form of knowledge. This is true of the information produced by the IMF. *See, generally,* Ericson & Haggerty, *Id.,* at 84.

21. Including R.L. Doty, Imperial Encounters: The Politics of Representation in North-South Relations (1996) and D. Tarullo, *Logic, Myth and the International Economic Order,* 26 Harvard International Law Journal 533 (1985). On this point, *see, generally,* Doty, *id.,* at 5.

22. *See, for example,* Appadurai, *supra* note 1. G.Ch. Spivak, The Post-Colonial Critic: Interviews, Strategies, Dialogues (1990).

as IMF country reports and the IMF's own report about its actions during what has come to be known as the "Asian debt crisis". I will also consider other narratives emanating from the North about the IMF and the South, such as media reports on the Asian debt crisis and some academic writings about both the IMF and the relationship between North and South generally.

In analyzing these texts, I am not trying to reveal or unmask what I perceive somehow to be the true intentions of the authors. I am not attributing to the IMF any bad faith. Rather, what I am suggesting is that the texts produced by the IMF and commentators on the IMF are part of a network of texts linked with a broad range of discourses and representational practices. The production of these texts is not an autonomous or neutral endeavour, rather it is a process of generating information, or knowledge which belongs to language, not to the generating author.[23] The narrative which the language speaks is that by which the South is represented, known and translated by the North.

Obviously, this exploration will be partial and incomplete, not the least because I have chosen to focus on representations of "the South" as a whole, rather than on the representations of particular countries, which do differ quite markedly.[24] The value in this type of enquiry is as a thematic study which is looking for commonalities in the way in which the countries of the South are represented, and to begin to consider what practices and policies such representation might permit and produce.

2. THE ORIGINS OF THE FUND: THE BACKGROUND TO IMF CONDITIONALITY

The International Monetary Fund was created alongside the World Bank in 1944 at the Bretton Woods conference. It was at that conference that the Articles of Agreement were drawn up,[25] though in fact the United States and Great Britain had already spent some considerable time negotiating the structure and powers of what was to be one of the institutional foundations of international economic law.[26]

The context in which the IMF was set up was the massive reconstruction of post-war Europe and was at a time when grand plans were being laid for creating the structures of a new international governance system. The World Bank was supposed to aid postwar construction and the IMF was designed to maintain

23. G.Ch. Spivak, *Preface*, *in* J. Derrida, Of Grammatology (1976), at xxv.
24. I wish to thank Professor Jane Kelsey for having reminded me of these differences during discussions on the IMF, at the Australian Law and Society Conference, La Trobe University, Melbourne, November 1998.
25. The main legal instrument of the Fund is its Articles of Agreement. The Articles of Agreement set up the functions of the Fund, the size of its membership and the volume of its financial resources. *Articles of Agreement*, *supra* note 18.
26. *See, generally,* J.K Horsefield, (Ed.), The International Monetary Fund 1945-1965: Twenty Years Of International Monetary Cooperation 3-118 (1969).

an orderly system of receipts and payments between nations.[27] Together, it was thought that the two would "constitute two pillars to support the edifice of world peace and prosperity."[28] At Dumbarton Oaks, the rest of the edifice was being constructed in the shape of the United Nations. Just as the Bretton Woods institutions would manage the world economic system, the United Nations would look after the political aspects of world problems.[29]

The other dominant feature of the international political context in which the IMF was being constructed was the decolonization process. As Dianne Otto points out, one of the features of the global order envisaged by the United Nations was the end of all forms of colonial domination.[30] This was reflected in the UN Charter by the emphasis on the rights of all peoples to equal rights and the understanding of the right of self-determination as the foundation of other rights.[31] However, as Otto demonstrates, the European epistemology which informed the ideals set out in the UN Charter meant that self determination could only be exercised within a certain paradigm. That paradigm included an obligation to adopt a state structure, and more particularly, a state structure which conformed to pre-existing international legal understandings of statehood.[32]

Like the forces that shaped the creation of the United Nations, the forces behind the creation of the Bretton Woods institutions were largely reactive. Just as the events of the period leading up to the Second World War had a strong influence on understandings at that time of human rights and the consequent framework of the mechanisms for their protection,[33] so did the experiences during and after the depression of the 1930s have a great impact on the shape of the international economic institutions.[34]

During the 1930s, for reasons which are widely said to include the abandonment of the gold exchange and the onset of the Depression,[35] trade restrictions and competitive exchange controls were introduced by the industrialized coun-

27. J. Gold, *The Relationship Between the International Monetary Fund and the World Bank*, 15 Creighton L. Rev. 499, at 501-502 (1981-82).

28. *Bretton Woods Agreements Acts: Hearings on H.R. 2211 Before the House Comm. on Banking and Currency*, 79th Cong., 1st Sess. 106 (1945) (Statement of H.D. White, US Treasury Department), quoted in Rajgopal, *supra* note 5, at 87.

29. Rajgopal, *supra* note 5, at 87.

30. D. Otto, *Subalternity and International Law: The Problems of Global Community and the Incommensurability of Difference*, 5:3 Social and Legal Studies: An International Journal 337, at 339 (1996).

31. *Id.*

32. *Id.*, at 341 citing the 1934 Montevideo Convention on the Rights and Duties of States, 164 LNTS 19; USTS 881.

33. An example of this is the Refugee Convention which was designed to cope mostly with the flows of Jewish refugees from Europe and in which the definitions of "refugee" and so forth are clearly related to its origins. *See, generally*, G.S. Goodwin-Gill, The Refugee in International Law (1988).

34. *See, generally*, J.K. Galbraith, The World Economy Since the Wars: A Personal View (1994).

35. J. Asherman, *The International Monetary Fund: A History of Compromise*, 16 NYUJ of Int'l L & Politics 235, at 238 (1984); S. Horie, The International Monetary Fund 32-36 (1964).

tries. Nations began to devalue their currencies to make their exports more competitive in an effort to stimulate employment,[36] and to impose import restrictions to prevent loss of foreign exchange and to protect domestic industries.[37] Caused to no small degree by these measures, the value of international trade was halved. Some commentators suggest that these competitive measures also contributed to the rise of fascism.[38]

In order to avoid a repeat of these policies and in the belief that economic welfare was necessary for world peace,[39] the IMF was designed to promote international financial cooperation and to establish a stable international monetary system which would prevent the "beggar-thy-neighbour" policies of the 1930s. The purposes written into the IMF's constitution thus reflected the dual concerns of avoiding a repetition of the competitive currency depreciations and extensive dislocations to multilateral trade and payments which had occurred during and after the Depression. It can be seen from the purposes set out in the Fund's Articles of Agreement that the Fund was originally designed with the dual role of trying to ensure that its members observed an international code of monetary behaviour and providing financial assistance to those of its members experiencing balance of payments difficulties.[40]

It is worth noting that at the time of the conference, the United States was the only country with the financial resources to make the organization work. Thus, the system adopted at Bretton Woods reflected what the United States perceived to be its economic self interest, modified slightly by the British view rather than the view of all forty-four conferees[41] on the best method of achieving international stability and economic growth.[42]

As a reflection of this, the voting system of the IMF is a weighted system which is quota based and effectively allows a much larger say in the affairs of

36. D. Salvatore, International Economics 509 (1983).
37. For example, the United States introduced the Smoot Hawley Tariff Act in 1930 which raised the average import duty to the all time high of 59% in 1932 and provoked foreign retaliation. *Id.*, at 215.
38. A. Lowenfield, The International Monetary System 14 (1977). Compare Galbraith, *supra* note 34, at 34-37.
39. US Department of State, Proceedings and Documents of United Nations Monetary and Financial Conference, Bretton Woods, New Hampshire 81 (1944), cited in Asherman, *supra* note 35, at 240.
40. Article I, Articles of Agreement, *supra* note 18.
41. Although there were 44 conferees, only 30 nations became signatories to the Articles of Agreement when they became effective in December 1945. By 1960, the membership of the Fund was still only 68. By 1971, it had risen to 120. Of these, 30 were original members; 19 had joined in the Fund's first 5 years of existence, and 19, including FRD, Argentina and Japan joined between 1951 and 1958. Poland had left and Czechoslovakia had been expelled; the former Soviet Union had never joined (though it was present, at Bretton Woods). China's seat was held by Taiwan and Switzerland and New Zealand were two other absentees. By 1960, two thirds of the Fund members were developing countries (referred to in the IMF annual report of 1960 as "less industrialized countries") and the proportion was to increase. *See* Asherman, *supra* note 35. S.Strange (Ed.), International Monetary Relations of the Western World 1959-1971 (1976), at 32.
42. R. Gardner, *The Political Setting*, *in* A.L.K. Acheson, S.F. Chant & M.F.J. Prachowny (Eds.), Bretton Woods Revisited 20 (1972).

the Fund for the wealthiest nations.[43] Extraordinary, in Strange's view, was the fact that the weighted voting system was not contested at its inception:

> Compare the fuss at San Francisco over the special powers and privileges taken by the permanent members of the Security Council. Australia, which was in the forefront of that peasants' revolt, sought no such role in the Fund; the unprotesting populist majority stayed on the whole silent and apparently compliant.[44]

The IMF passed largely unnoticed in the earliest years of its activity. Europe was undergoing a reconstruction process and was receiving funding under the Marshall Plan which precluded drawing on the resources of the Fund.[45] The European currencies returned to convertibility in 1958 and soon after accepted the convertibility obligations in Article VIII. By the end of the 1950s, the post-war transition phase for the Fund, during which time its rules had been put on ice and most of its activities restricted, was over. Drawings were in steady demand and quotas had been increased, both marks of confidence in the future of the Fund.[46]

In accordance with the primary role ascribed to it of maintaining an orderly system of receipts and payments between nations, the Fund's role as a provider of finance is derived from the purpose ascribed to it in Article I (v) of its Articles of Agreement

> [t]o give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards, thus providing them with the opportunity to correct maladjustments in their balance of payments without resorting to measures destructive to national or international prosperity.[47]

This Article is also the source of the Fund's power to impose conditions on those states which borrow from it. Conditionality is a "portmanteau word that encompasses all the policies that the Fund wishes a member to follow so that the member can resolve its problems consistently with the articles."[48] The particular type of conditionality known as "Structural Adjustment" is the name given to

43. The formation of the "Paris Club" further increased the power of the richest member states. This club was created, at a time when the Fund needed to borrow money as its resources were dwindling. The General Agreement to Borrow was set up and this formed the "Paris Club" of the ten most industrialized nations. This created a divide into rich and poor countries which emphasised the North/South split but shored up the Fund so that it could live to see another day. It also meant that increased collaboration took place between the central banks of the industrialized nations and the Fund, maintaining, at least some relevance for the Fund in the international monetary arena. *See, generally,* A. Rieffel, *The Paris Club, 1978-1983,* 23 Columbia Journal of Transnational Law 83 (1984). *See also* Strange, *supra* note 41, at 111-117.
44. Strange, *id.*, at 33.
45. Carreau, *supra* note 13, at 1993.
46. Strange, *supra* note 41, at 34.
47. Articles of Agreement, *supra* note 18.
48. Gold, *supra* note 3.

the range of conditions attached to two types of relatively new IMF lending facility, the Structural Adjustment Facility and the Enhanced Structural Adjustment Facility.[49]

3. Why the Fund Became Involved in Lending to the South: Three Historical Developments to Consider

In considering one possible, and partial, genealogy of Fund conditionality, in the section which follows I will bring together three main historical developments: first, how the Fund became involved in lending to the South; second, the shift in the enforcement of conditionality; and third, the shift in the juridical nature of the Fund's monetary powers. The union of this trio forms the basis of an historical genealogy, which though undoubtedly partial, is, I believe, crucial to reaching a critical understanding of what the contemporary role of Fund conditionality might be. In addition, I believe we can draw out certain themes in these three developments. These themes coalesce around what I have called the "informational turn" taken by the Fund. The teasing out of these themes is what leads to the second part of the study; a consideration of the discursive functions of Fund conditionality in the mediation of the relationship between South and North.

3.1. The evolution of the Fund's involvement in sovereign lending to the South

The first thread in the triptych is the fact that the earliest uses of the Fund's conditionality in the provision of any substantial amounts of finance to developing countries did not relate to the provision of the Fund's own resources but to loans provided to those countries by other sovereign lenders.[50]

On one level, the significance of this genesis has two aspects. The first relates to the question of the legitimacy of using a universal international organization to impose and enforce conditions which are largely insisted upon by state actors. The second relates to the purpose of the Fund's role in imposing the conditions. The manner in which the Fund was cast into its role raises questions about the extent to which conditionality is used as an end in itself, designed partly to give confidence to lenders, rather than in order to improve the economic situation in the state upon which it is imposed. It is this second aspect, the

49. In 1986, continuing its involvement with the low-income developing countries that had come with participation in the multi-lateral solutions to the debt crisis, the IMF established a new structural adjustment facility to make concessional loans, at 0.5% interest with repayments beginning 5 years and ending 10 years after each disbursement. In December 1987, the IMF established an additional fund, the Enhanced Structural Adjustment Facility. In March 1994 an enlarged ESAF was put into place. Lichtenstein, *supra* note 13, at 1950.

50. For example, this is implicit in the argument made in C. Payer, Lent and Lost: Foreign Credit and Third World Development (1991).

idea that Fund conditionality might have a purpose *per se,* and one unrelated to achieving particular economic outcomes, which begins to suggest that the Fund is serving some sort of mediating or translational role between North and South. However, before we can consider that discursive role, we need to turn our attention to compiling our genealogy.

The involvement of the Fund in the economies of developing nations has evolved over time and has taken place alongside the diminution of the Fund's normative role in the economies of its industrialized members. The accepted view is that during the period from the 1950s to the 1970s, the Fund had little involvement in the economies of developing countries. It is true that during this period, most development financing was carried out bilaterally, multilaterally or through multilateral aid agencies such as the International Development Association at the World Bank and the African Development Bank.[51] During the 1970s, the World Bank dramatically increased the level of its lending to developing countries, but according to conventional wisdom, the IMF's role remained minimal. Nicolás Ardito-Barletta, a past Vice-President of the World Bank, states that up until the mid-1970s, most countries had very little use for macroeconomic policy instruments, minimizing the role for the IMF. He describes the setting thus:

> Exchange rates were fixed relative to several of the main hard currencies. Import controls were part of the import substitution policies. Reserves were kept low and were not built up with favorable movements in the terms of trade. Fiscal policy consisted in deciding how much of the government deficit would be financed domestically because this would determine the increase in the quantity of money and inflation. Monetary policy was used mainly to keep interest rates low. When a balance of payments crisis ensued, the IMF was called in at the last minute, and short term policy corrections, including devaluations, were agreed upon in exchange for temporary financial support from the Fund.[52]

However, it is my argument that it was during this period that the seeds were sown for an ever increasing role for the IMF in designing, implementing and monitoring adjustment and stabilization programs in developing countries. Facilitating this involvement was the general transformation which the Fund itself was undergoing. With a particular focus on the creation of new credit facilities, Susan Strange argues that a process could be seen to have begun, perhaps as early as the 1950s in which the Fund, originally conceived as a rather rigid, almost mechanistic body, and one with limited resources and restrictively defined functions,

51. N. Ardito-Barletta, *Managing Development and Transition, in* P.B. Kenan, (Ed.), *Managing the World Economy* 173, at 183 (1994).
52. *Id.*, at 183-184.

> [...] began slowly to unbend, to become more flexible, and to expand, both in terms of the resources it could make available to its members and in terms of the circumstances in which it was prepared to assume responsibility to assist them financially. This process of adaptation, the moulding of a written constitution to the exigencies of the real world, was one which greatly accelerated in the course of the 1960s to the point where the Fund underwent very substantial changes in its *modus operandi* and came to occupy a more central role in international relations.[53]

I will argue that one particular aspect of the Fund's metamorphosis was the way in which the Fund was drawn away from the facilitation of international monetary relations (largely between the industrialised countries) and drawn into Third World lending. Further, as we shall see in Paragraph 4, this drawing in meant in turn, that the Fund was well placed to play an important discursive function in mediating the relationship between North and South.

3.1.1. The shift from bilateral to multi-lateral finance for developing countries

In my view, the first historical development relevant to the way in which the Fund was drawn into its broad involvement in the provision of finance to developing countries is the more general shift from bilateral to multilateral lending. Before the 1960s, financing economic development was a largely bilateral affair. Indeed, in a report published in 1969 by the Commission on International Development, it is stated that bilateral aid was the dominant means by which resources flowed into developing countries, and that even in 1967, bilateral aid "accounted for almost 90% of the official development assistance."[54] The reasons for this are various and have been said to include issues of control over funds, the necessity to marshal domestic opinion in favour of such financing and the desire of governments to be fully associated with the programs they sponsored.[55] Additionally, the second wave of decolonization was taking place and the majority of the ex-colonies of both Great Britain and France were receiving aid and/or loans directly from their ex-colonizers.[56]

The move from bilateral to more coordinated strategies was, no doubt in part due to American external policy in relation to the Cold War. In the early 1950s, the American bilateral aid program dominated the scene.[57] Because, during the 1950s, many nations were being created and/or released from their colonial strictures, American foreign policy targeted those nations as the recipients of aid on the basis that contributing to the social and economic development of what it perceived to be politically uncommitted nations would encourage those societies

53. Strange, *supra* note 41, at 92.
54. L.B. Pearson, Partners in Development: Report of The Commission on International Development 209 (1969).
55. C. Prout, *Finance for Developing Countries: an Essay*, *in* Strange (Ed.), *supra* note 41, at 361.
56. Pearson, *supra* note 54, at 134, 209; Strange, *supra* note 41, at 56.
57. Pearson, *supra* note 54, at 208.

to be sympathetic to the American way of life.[58] The United States advocated a multilateral approach on the basis that such assistance would further the aims of the alliance system. Additionally, having provided such extensive economic support to its allies through the Marshall Plan, America undoubtedly felt little compunction in asking its allies now to make substantial contributions to the aid drive.[59]

In brief, the United States first tried to use the North Atlantic Treaty Organization (NATO) as a forum in which to develop a coordinated program (which demonstrates how closely the subject of aid was tied to the alliance system).[60] This forum proved to be inappropriate for the purposes of developing a coordinated aid strategy,[61] so the U.S. urged for the creation of a development assistance group within the Organization for European Economic Co-operation (OEEC).[62] Largely in response to US pressure, this organization became the Organization for Economic Cooperation and Development (OECD) in 1961, the United States joined the membership and a formal group was established called the Development Assistance Committee (DAC).[63]

However, by the end of the 1960s the influence of the United States in the arena of aid was declining. It is thought that the US Congress was becoming increasingly disenchanted with aid as an effective foreign policy weapon.[64] In 1964, the United Nations Conference on Trade and Development (UNCTAD) had criticized US policy strongly and the outbreak of the war between India and Pakistan in 1965 confirmed many of the criticisms raised.[65] Soon after, the Vietnam war began and non-military spending abroad by the US was minimized. However, it seems that the DAC had taken on a certain institutional momentum which was increased when the US began to exercise less control over it, and aid over the period to the 1970s continued to be monitored, and to some extent coordinated, by the DAC.[66]

Despite the steps toward multilateral coordination aid which were taken, cooperation was relatively weak between the developed countries until they were faced with a potential crisis in the form of default.[67] As Christopher Prout argues, it was in the face of this crisis that cooperative measures started to appear,

58. J. White, The Politics of Foreign Aid 209 (1974); Payer, *supra* note 50, at 42; Pearson, *supra* note 54, at 134. *See also* M. Millikan & D. Blackmer (Eds.), The Emerging Nations: Their Growth and United States Policy (1961).
59. White, *supra* note 58, at 215; Prout, *supra* note 55, at 362.
60. White, *id.*, at 216; Prout, *id.*
61. White, *id.*
62. White, *id.*; Prout, *supra* note 55, at 362.
63. For a discussion of the Development Assistance Committee, *see* Prout, *id.*; White, *id.*
64. White, *id.*, at 208.
65. *Id.*, at 365.
66. Pearson, *supra* note 54, at 208. This is a very brief sketch indeed and is included by way of background to suggest that multilateral approaches to aid were increasing. For a more fulsome account of the evolving role of the DAC, see Prout, *supra* note 55, at 367-370.
67. *Id.*, at 389.

and creditor countries began to organise coordinated responses which, in Prout's words, "add[s] some weight to the contention that whereas nation states are weak at contingency planning, they are rather effective at crisis management."[68] However, what I want to tease out from Prout's discussion is the way in which the IMF was drawn into those more coordinated approaches, and the role it played.

3.1.2. Responding to uncoordinated lending: the formation of "debt-clubs"

The roots of the crisis can be seen partly as having been caused by the transfer of resources to the developing world during the 1960s in the form of export credits.[69] Such credits did involve the transfer of real resources from developed to developing countries but were a relatively high cost form of financing and were granted for the purchase of equipment at sometimes inflated prices.[70] Because of a lack of cooperation and concern amongst lenders for the foreign exchange earning/saving potential of the projects for which the credits were granted, debts were being accumulated without a corresponding accumulation of foreign exchange earnings.[71] Certain borrowers in particular were accruing an inordinate amount of debt from guaranteed export credits.[72] The developed countries began to worry as it seemed as though a debt crisis might ensue.[73] When countries who were heavily in debt began to falter, the response of the creditor nations was more unified than *ex ante* the borrowing. The creditor nations got together to form "debt clubs" in order to devise a program of debt rescheduling, much like modern day arrangements between creditors in corporate insolvencies, in which the creditors gather together and exercise a certain forbearance towards the debtor and each sacrifice some of their contractual rights.

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68. *Id.*, at 360.
69. International Monetary Fund, Staff Papers Vol. XVII, at 89-90 (1970). For a detailed argument about the factors which precipitated the crisis of the 1970s, *see* Payer, *supra* note 50, in particular 57-59.
70. Prout, *supra* note 55, at 385. The fact that export credits were problematic is evidenced by the United Nations' Conference on Trade and Development's (UNCTAD) request to the IMF that it, in consultation with the IBRD (World Bank) & the Secretariat of UNCTAD, *inter alia*, prepare a report on export credits. Clause 8 of UNCTAD's decision reads: "The Conference endorses the judgement (sic.) in the Agreed Statement that commercial credits add to the flow of resources and can play a useful role, within limits, in promoting development. They are, however, no real substitute for long-term development aid." *Improving the Terms and Conditions of Aid and Alleviating the Problems of External Indebtedness*, UNCTAD Decision 29(II), Proceedings of the United Nations Conference on Trade and Development, Vol. 1: Reports and Annexes, 2nd Sess., New Delhi, Feb 1-Mar 29, 1968, paras. 9 & 10, at 41.
71. International Monetary Fund, *The Use of Commercial Credits by Developing Countries for Financing Imports of Capital Goods*, Staff Papers Vol. XVII, at 33-35 (1970).
72. In 1969, a World Bank Study found that of the 39 countries surveyed, six of them accounted for more than 80 percent of the total outstanding debt from export credits. Prout, *supra* note 55, at 386.
73. IMF, *supra* note 71, at 35.

Such "clubs" began in the early 1950s for the debts of Argentina and Brazil[74] and became a common multilateral financing technique during the 1960s to assist, *inter alia,* Chile, Turkey, Indonesia, India, Ghana and Peru.[75] Legally, the arrangements arrived at between the "club" and the debtor took the form of "General Agreements" between the debtor government and each of the creditor governments.

3.1.3. Drawing in the IMF

The interesting thing about the General Agreements was that they usually contained an "IMF clause."[76] This clause required that the IMF monitor a stabilization programme in the debtor country.[77] Legally speaking, this introduced a new role for the IMF, for although the debtor countries invariably drew on the IMF's resources, the Fund now was essentially being called upon to monitor stabilization programmes for reasons other than the provision of its own financial services.[78] To that extent, the conditionality devised and monitored by the Fund in these instances was not specifically linked only to drawings from its holdings. This extension of conditionality beyond the putatively coextensive lending capacity of the IMF is an indication of the extent of the power of the Fund but one which seems to receive little attention in legal analyses of Fund conditionality.

Additionally, at around the same time as the "debt clubs" came into use, the idea of establishing an early warning system for potential debt crises was being mooted by the developed world. Ultimately, such a system remained moot,[79] but

74. In fact, the first "Paris Club" (as it is known) took place in relation to Argentina in 1956 when Argentina agreed to meet in Paris with its official creditors to find a mutually acceptable basis for rescheduling payments due on officially supported export credits. A. Reiffel, The Role of The Paris Club in Managing Debt Problems 3 (1985).

75. Payer, *supra* note 50, at 47; Reiffel, *supra* note 74, at 5; Prout, *supra* note 55, at 391.

76. Indeed, that the IMF's involvement was crucial to Paris Club rescheduling is implicit in Reiffel's description of the rescheduling of two loans made to India and Pakistan respectively being "an aberration" and that those loans were not considered Paris Club agreements because, *inter alia,* the granting of debt relief was not tied to IMF conditionality. Reiffel, *supra* note 74, at 47.

77. This took the form of the creditor government insisting that the debtor country enter into an IMF standby agreement as a condition of rescheduling. Payer, *supra* note 50, at 47, 76; Reiffel *supra* note 74, at 4.

78. In addition, by 1975, commercial banks also insisted on IMF involvement with debtor nations, eventually providing in their loan contracts that the termination of a standby or extended arrangment with the Fund would constitute an event of default. R. Bernal, *Transnational Banks, The International Monetary Fund and External Debt of Developing Countries,* 31:4 Social and Economic Studies 71, at 85, 86 (1982); Payer, *supra* note 50, at 76.

79. It would be an interesting question, the scope of which unfortunately is beyond this paper, to consider whether one of the reasons why the early warning system remained moot (or more specifically why such a role was not given to the IMF) was because of the ambivalence which such a role would introduce into the position of the IMF. What I mean by that is that if part of the role of the Fund is to inspire the confidence of creditors in the debtor country, then actually putting into place an early warning system would contradict that role as it would require an emphasis on possible indicators of potential default, rather than indicators from which lenders can draw confidence.

the developed countries encouraged the use of the IMF as a forum in which to provide a continuous dialogue between debtors and creditors.[80] The choice of the IMF, a universal institution, and one which tended to place responsibility squarely on the debtor, was contested by the developing countries, but the criticism had little impact.[81] Indeed, it seems the Fund, which saw itself as a monetary institution, was not entirely happy with being cast into the role of *chef d'orchestre* of the cacophony of Third World debt. This is evidenced by the Fund's response to a plea by Ghana to organize a meeting of potential donors. The Fund reluctantly did organize the first such meeting in Paris in 1967, but soon after handed over the chair to the World Bank which it saw as more appropriately involved with such matters.[82]

If the mechanism for drawing the Fund into multilateral financing was consistent, it seems that the motivations were severalfold and it is perhaps not a surprise that the IMF gradually came to play a more prominent role in organizing finance for developing countries and indeed in surveillance measures of the conditions to be attached to such loans. From its inception, the Fund was an informationally privileged institution, not the least because of its consultative role. During the 1970s, most developing states maintained restrictions on the convertibility of their currencies pursuant to Article XIV of the Fund's Articles of Agreement, and were thus obliged annually to consult with the Fund on appropriate measures to reduce and eliminate these restrictions.[83]

In addition to its value as an information gatherer, requiring that debtors accept conditions imposed by the Fund was politically more feasible than imagining that they would accept conditions imposed by any creditor government. This is because of the legitimacy, deserved or undeserved, with which a universal organization is clothed (at least in comparison to a "club" of creditors). As Alexis Reiffel points out,

> [c]reditors could negotiate with a debtor country to obtain the required policy reforms, but they [...] found a much simpler and politically safer device. As a precondition to Paris Club negotiations, the creditors insist that the debtor country conclude a standby arrangement with the International Monetary Fund.[84]

However, when combined with the imbalance of power in the Fund in favour of the developed countries,[85] this fact raises issues about the extent to which the powerful states used a putatively universal organization to cloak with legitimacy

80. Continuous dialogue would be facilitated because all member countries with currency restrictions were already consulting with the Fund each year pursuant to Article XIV. Articles of Agreement, *supra* note 18. *See, infra*.
81. Prout, *supra* note 55, at 387.
82. *Id.*, at 393.
83. Articles of Agreement, *supra* note 18; Strange, *supra* note 41, at 32.
84. Reiffel, *supra* note 74, at 8.
85. *See* text accompanying notes 41-43 above.

their own goals in relation to the types of conditions to be imposed on the debtor nations. For example, that the IMF's view of appropriate conditionality would coalesce with that of the United States is implicit in the observation of Douglas Dillon before the US House of Representatives Banking and Currency Committee on March 4 1959. He said of the IMF:

> As an international organization it is better able to advise sovereign governments on sensitive matters of financial policy, or to insist on appropriate corrective measures in return for credits, than are other sovereign governments[...] In the delicate area of fiscal and monetary policy, governments find it much easier to accept the counsel of an objective, impartial and highly competent international organization than the advice of other governments, no matter how good or well intentioned.[86]

Combined with the fact that the Fund had a ready made surveillance and monitoring structure in place, it seemed ideal. The exigencies of politics were also no doubt served by the fact that placing the burden on the Fund of imposing conditions meant that any criticism and ill will flowing from the conditions was directed at the Fund, rather than at the creditors at whose insistence the conditionality was in place.

From the point of view of the creditors, the Fund was also symbolically the appropriate body to draw into the debt rescheduling. The reason for this is that developed countries wanted to prevent debtors from connecting default with increased aid.[87] By drawing the Fund in rather than the World Bank, creditor countries perceived that they would be better able to keep their roles as donors and lenders distinct.[88] Whether this distinction was realistic or not is another question, but the perception itself seems to have been a motivating factor behind drawing in the Fund.[89]

In addition to what one might call the pragmatic reasons outlined above, it seems that one of the roles of the Fund in mediating between debtor and creditor nations was to make sure that the debtor countries did not "stray from the fold", in what appears to be an ideological sense. This was undoubtedly influenced by the context of the cold war. Indeed one may speculate as to whether it was in fact part of the purpose of the western allies in making debt rescheduling conditional upon an IMF stabilization programme that the debtor should continue simply to be involved with the Fund, as distinct from actually adopting the par-

86. Quoted in C. Payer, The Debt Trap: The IMF and the Third World 31 (1976).
87. Similar reasoning seems also to be behind the strict prohibition on the provision of new credit in Paris Club rescheduling, *See, for example,* Reiffel *supra* note 74, at 12.
88. Prout, *supra* note 55, at 393.
89. The respective roles of the Fund and the Bank were not always clear. When short term balance of payments problems were involved, it was the Fund who was drawn in, when it was long term development problems, it was the Bank. However, when the problems of the developing country fell into neither camp very clearly, it was difficult to define their roles. An example of this was the Ghanaian situation; after Nkrumah was deposed in the coup in February 1966, a team from both the Fund and the Bank went to Accra. See Prout, *supra* note 55, at 393.

ticular conditionality imposed. The IMF's treatment of Egypt lends some weight to this speculation as the Fund preferred to continue to negotiate with Nasser even though he refused to implement most of their suggestions and it turned a blind eye when he refused its advice to devalue.[90] Of course, another factor which may have motivated the Fund's tolerance in that case is the danger of a sovereign nation simply repudiating its debt, which may have been specially acute in the case of Egypt given Nasser's previous disregard for Egypt's western creditors and his poor relationship with the Fund.[91]

However, the idea of at least one objective being ongoing involvement with the Fund for its own sake is also supported by the fact that Cuba, because it was not a member of the IMF,

> [stood] out as the case in which the good faith of the debtor [...] has been in most doubt, *in spite of its good performance in meeting its revised debt service schedule.*[92]

Cheryl Payer puts it even more strongly:

> Good performance in meeting rescheduled debts was not valued as highly as faithful submission to IMF demands which actually worsened future debt service capabilities.[93]

Indeed, Alexis Reiffel, who was the senior staff economist responsible for Paris Club negotiations in the U.S Treasury Department from 1978 to 1984, makes a rather telling observation in this regard. At one point, Reiffel is discussing the novelty of the multi-year agreement granted to Ecuador in the 1985 Paris Club rescheduling, pointing out that prior reschedulings had been for a single year only. In designing this multi-year agreement, the state creditors drew on a precedent set by the commercial banks who had entered into one such agreement with Mexico. To facilitate the agreement and provide assurance to the banks that Mexico would follow sound policies, the IMF developed the concept of "enhanced surveillance". The Paris club then adopted this idea in relation to the multi-year agreement, and a new form of conditionality was born. It consisted of two years of normal stand-by arrangements with the IMF and a third year of Fund involvement with no stand-by and attendant conditionality, but instead, simply with "enhanced surveillance". Rather presciently, despite the novelty of, and the scope offered by, the multi-year agreement itself, Reiffel writes:

> [I]n all likelihood, this so-called "enhanced surveillance" by the IMF will be a more significant innovation than the multi-year feature itself.[94]

90. *Id.*, at 395.
91. *Id.*, at 386.
92. Reiffel, *supra* note 74, at 10.
93. Payer, *supra* note 50, at 55.

In my view, this objective of involvement for the sake of involvement of the Fund in lending to the South, as well as the perceived danger of sovereign default, are particularly revealing in considering the discursive functions performed by the IMF. The significance beyond the cold war context of these two reasons for Fund involvement in Third World lending will be considered in Paragraph 4 below. But for now, let us continue to trace our historical genealogy.

3.2. The shift in IMF policy in the enforcement of the conditions attached to its finance facilities

The second development which took place during the period between the inception of the Fund and the repudiation by Mexico of its external debt which I wish to consider is the gradual shift in the way in which the Fund chose to enforce the conditionality attached to its finance facilities. The Fund's role as a provider of finance is derived from the purpose ascribed to it in Article I(v) of its Articles of Agreement, "[t]o give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards, thus providing them with the opportunity to correct maladjustments in their balance of payments without resorting to measures destructive to national or international prosperity."[95]

3.2.1. The available finance facilities: standby arrangements and extended arrangements

During the period to 1982, the Fund offered two types of financing.[96] Up until 1974, the Fund offered only short term financing in the form of IMF stand-by

94. Reiffel, *supra* note 74, at 36.
95. Article I(v), Articles of Agreement, *supra* note 18.
96. During the late 1950s the developing countries asked the Fund for help with their financial problems. These problems were apt to arise because of the imbalance in favour of the developed countries in the terms of trade with the developing world. On the terms of trade, *See, generally,* B.S. Brown, *Developing Countries in the International Trade Order*, 14 Northern Illinois University Law Review 347 (1994). The dependence of the developing world on commodity prices made it very vulnerable to recessions in the North. In response to this concern,, at the annual meeting of the Fund in 1958, the developing countries, led by the Governors of India and Pakistan requested the provision of short term assistance for financial stabilization to compensate for the instability of world commodity prices. After the meeting, country quotas were increased, but this did not meet the concerns of the developing countries. In 1963, the Fund eventually agreed to provide limited assistance. However the facility fashioned to assist added little to the assistance the Fund could provide under the ordinary rules. For a description of the facility *see* IMF, Compensatory Financing Of Export Fluctuations (1966). This finance was provided only if the Fund could be satisfied (a) that the shortfalls experienced by the developing country were of a short-term character, largely,attributable to circumstances beyond the control of the member state, and (b) that the member would co-operate with the Fund in an effort to find, where required, appropriate solutions for its balance of payments difficulties. It is not clear whether the Fund was cognisant of the paradox of these requirements, for

arrangements. In 1974, the Fund began to offer "extended arrangements" which were usually larger in relation to quota size than stand-by arrangements and the repurchase time could run up to ten years.[97] These arrangements were designed to provide assurances to a state, in advance of any request, that it could make drawings on the Fund's General Resources Account up to the amount of the arrangement for a predefined period of time provided that it met the conditions set out in the Fund's decision relating to that particular arrangement.[98]

3.2.2. Development of standby arrangements

Standby arrangements were initiated as early as 1952. [99] Essentially, they were a combination of a declaration by a Fund member of the fiscal and monetary policies it intended to pursue, and a promise by the IMF to grant drawings to the member up to a fixed amount promptly and without further question for one year.[100] The standby arrangement was a confirmed line of credit, conditioned upon the member carrying out the policies in its letter of intent and which acted as a confidence building measure in the member's economic policies. The standby was not designed to meet the member's balance of payments needs as such.[101]

After the first standby, granted to Belgium in 1952, the Fund laid down the general principles governing standby arrangements.[102] Like the ordinary drawings, the standbys would be subject to a review of the member's payments position and prospects. However, in contrast to ordinary drawings, the standby would only be given on the understanding that a member would pursue particular economic policies aimed at addressing certain economic problems within a defined period.[103] Such strategies were to include controlling inflation, maintaining or increasing current foreign exchange reserves, preventing an increase in debt service and were said to be laying the foundations for sustained growth.[104] Whereas the conditions applied to ordinary drawings were generally

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if the causes of a shortfall are beyond a member's control, it is difficult to see what measures the member can subsequently adopt to address those causes. In any event, the use of the facility was slight. On this point, *see, in general,* Strange, *supra* note 41, at 100-101.

97. Note that legally speaking, drawings from the IMF's General Resources Account are not loans but rather agreements pursuant to which the drawer "purchases" currency and/or Special Drawing Rights (SDR's) in exchange for its own currency which it is then required to repurchase. *See, generally,* R. Edwards, International Monetary Collaboration 248-276 (1985).
98. R. Edwards, Jr., *Is an IMF Stand-by Arrangement a "Seal of Approval" on Which Other Creditors Can Rely?*, 17 NYU. Int'l L. & P. 573, at 575 (1985).
99. The first stand-by arrangement was approved for Belgium in June 1952. *Id.*, at 575.
100. International Monetary Fund, Annual Report 95 (1953).
101. J. Gold, The Stand-by arrangements of the International Monetary Fund (1970); IMF, *supra* note 100, at 95.
102. IMF, *supra* note 100, at 95.
103. *See, for example,* IMF, *supra* note 100, Appendix 1, Decision on Stand-by Credit Arrangements.
104. For a critical analysis of the conditions themselves, *see* Payer, *supra* note 86, at 32-38.

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applied, the standby conditions were more flexible and could be individually tailored.[105]

Standby rules started to develop in 1956-1957 and were further refined in 1958-1959. Broadly, there were three types of standby. The first type had no special conditions. For example, the stand-by arrangements made for the United Kingdom in December 1957 and December 1958 had no conditions attached to them by the Fund.[106] The second required more definite policy statements by the drawer, for example the stand-by arrangement with France in early 1958 had been conditional on economic commitments in relation to public expenditure and budget deficit.[107] The third type required substantially more conditions in both number and detail. The drawers of the third type of standby were mainly Latin American Countries.[108]

3.2.3. Letters of intent and enforcement of the conditions

In 1958, the standby arrangement with Peru inaugurated the practice of the Letter of Intent.[109] The letter was an explicit statement of the policies the Peruvian Government intended to adopt as part of its stabilization programme and formally accepted that the standby arrangement was conditional on the adoption by the government of those policies. It also provided that the drawer was regularly to "consult" with the Fund.[110]

The consultation clause was by way of enforcement mechanism of the conditions and replaced the more heavy handed "prior notice" clause. The prior notice clause allowed the Fund to suspend the member's right to draw further standby credit so long as the Fund gave the member prior notice.[111] This mechanism was used only once when the Bolivian government informed the Fund in 1958 that it was unable to carry out the stabilization program in support of which the standby had been granted. In response, the Fund gave notice that no further drawings should be made until new terms had been agreed between the Bolivian government and the Fund.[112] However, according to Sir Joseph Gold, the Fund never again invoked this right because the directors considered that it would be "too severe an international reproof to administer to a member."[113]

From this time on, the Fund adopted a less confrontational approach and by 1961, came to the conclusion that it would be impropitious to include prior no-

105. Strange, *supra* note 41, at 93.
106. *Id.*, at 54
107. *Id.*
108. *Id.*, at 93.
109. *Id.*
110. *Id.*, at 94.
111. *Id.*
112. *Id.*
113. Gold, *supra* note 101, at 166.

tice clauses in its standby agreements.[114] Instead, it adopted "consultation and agreement" clauses which called for precisely that on new terms. The first example of a clause made pursuant to the new policy was in the standby arrangement with Peru in 1961 in which Peru gave an undertaking to consult with the Fund before it made any fresh drawings if the government had departed from the stabilization programme outlined in the letter of intent.[115] The emphasis on consultation gradually came to replace any overt threats of withdrawal or withholding of funds and in 1964, the Fund conceded that even a restriction on the amount which could be drawn before consultation was not "standard practice."[116]

Another technique used by the Fund as a quasi enforcement mechanism, and one which was also more politically acceptable than threats of withholding drawings, was the declaration of largely quantitative performance criteria, such as limiting domestic credit to a fixed amount.[117] From 1959 onwards, performance criteria were usually included in the standby arrangements. When drawings were made in the higher tranches, members were required to make a specific commitment to pursue a "stabilization programme."[118] The range and number of commitments encompassed by this requirement varied, as did whether or not quantitative indicators[119] were included in the commitment.[120] In some arrangements, a requirement to consult was included when certain of the indicators was not met, but by 1965, this clause was little used and was in the process of being replaced by a different clause which called merely for consultations when any of the programme's objectives were not being achieved.[121]

Foreshadowing many of the accusations made today,[122] the charge was leveled at the Fund that the procedures relating to standby agreements used "an international organization to provide a nicely deodorized velvet glove within which the iron fist of the United States could assure American capitalism of the continued economic stability and "good behaviour" of the Western hemisphere."[123] What is interesting, however, is that the juridical result of this charge, and related charges that the Fund placed too great an emphasis on orthodox balance-of-payments considerations and not enough on growth, was that during the period of evolution of the standby arrangements, the Fund changed in direction

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114. Strange, *supra* note 41, at 94.
115. *Id.*
116. *Id.*
117. The first standby agreement with specific commitments to performance criteria was with Paraguay in 1957, the second to Haiti in 1958. *Id.*, at 95.
118. *Id.*
119. An example of such an indicator might be the maintenance of a certain exchange rate, or the amount of domestic assets held by a central bank.
120. Strange, *supra* note 41, at 95.
121. *Id.*
122. *See, for example*, *Washington Shatters Asia's Dreams*, *supra* note 4.
123. Strange, *supra* note 41, at 95.

to a more "softly-softly" approach, moving away from the legally more definite "prior notice" clause to clauses which contained no more legally binding obligation than to "consult" with the Fund about government policies. The strength in the consultation provisions lay in their linkage to quantitative performance criteria which activated the obligation. However, even when the criteria were not met, the Fund was still ready to regard such criteria as targets, not conditions. The reason for this is that the Fund believed that, as is often the case in the international legal system, persuasion can often achieve more than coercion, and the Fund put stock in the idea that the performance criteria:

> [...] contribute[d] to the adjustment process by encouraging members to pursue programmes that w[ould] assist them to overcome their problems, and they assure members of support by the Fund, while at the same time helping to protect the Fund's resources against improper use with a minimum of formality and publicity.[124]

The argument that from its inception to the 1960s, the Fund was gradually resiling from any open displays of toughness is drawn largely from Susan Strange's account.[125] However, the object of Strange's enquiry is the overt political motivation for such a change. What Strange is interested in are the intricacies of the diplomatic dance in which the Fund engaged to avoid giving offence to its debtors.[126] In the story Strange tells, such a dance was in fact more necessary in relation to preserving the delicate sensibilities of the First World than the Third. Her argument is not about the impact of this shift on the South, nor on the relationship between North and South. In a way, she is concerned with the problem of compliance at international law, and the political reality of the need for the Fund not to be seen to be too harsh, or to be delivering rebukes which were too stern, hence the shift in enforcement measures.

In contrast, what I am interested in is not the diminution *per se* in the Fund's choice of enforcement measures, but rather in the particular form the new measures took. My argument is that this shift had a particular character, one related to the role which I am seeking to trace which the Fund came increasingly to occupy *vis-à-vis* the South. That role was of information provider and surveillance organisation. The shift in enforcement measures was not simply from aggressive to weak, but from pre-emptive measures to measures which centred on sustained information gathering and surveillance. This informational turn is an important element to note in our genealogy before considering the discursive functions of the Fund in Paragraph 4.

Additionally, the low profile position taken by the fund was reinforced by the legal character of the standby arrangements, which were specifically said by the

124. Gold, *supra* note 101, at 153.
125. Strange, *supra* note 41, at 91-119.
126. *Id.*, at 94.

Fund not to be "international legal agreements."[127] Instead, they were characterised as a unilateral act by the member state to follow a certain set of economic policies, made contemporaneously with a unilateral declaration of the Fund to provide the member in question with a line of credit. By enacting this legal fiction, the executive branch of the government of the member state usually had greater legal leeway to enter into the arrangement without parliamentary approval to enter into the standby and could enter into it as a matter of executive power.[128] On one level one can critique this on the basis that, given the reach of the policies which may be included in the letter of intent, its characterisation as an executive act has considerable implications for the impact of conditionality on the democratic processes of the state concerned.[129]

On another level, beside the problematic relationship between democracy and the legal character of the Letter of Intent, the lower profile taken by the Fund also had an information gathering and surveillance oriented result. According to Strange, the low profile taken by the Fund in relation to its standby arrangements had the effect of greatly increasing the Fund's influence in member states through the relationships forged and consequent informational exchange between the international staff of the Fund and the national officials of the Finance Ministries.[130] Thus the increased emphasis on the obligation to consult can be seen as a politically acceptable of way of creating an effective quasi-enforcement mechanism, and as a way of increasing the influence of the Fund in member states. The Fund managed to legitimize even further, the need to consult with it by its emphasis on the "technical facilities and advice" [131] it offered. It is perhaps evidence of the extent to which the consultation process achieved legitimacy in the eyes of the members of the Fund that voluntary consultations were maintained by many states even when their currencies became convertible in 1958 and they were legally no longer obliged to consult with the Fund.[132] I

127. Edwards, *supra* note 97, at 585.
128. *Id.*, at 586.
129. This is reinforced by the discussion below about the way in which focussing on the subject identities of those in the South permits, attention to be drawn away from a focus on democratic practices. *See, infra,* paragraph 4.4.2. For a discussion of how Letters of Intent are drafted and the extent to which IMF officials are involved in that process, *see* Payer, *supra* note 86, at 32.
130. Strange, *supra* note 41, at 97.
131. *Id.*, at 97. It is highly likely that the characterisation of IMF advice as technical advice plays a part in the extent to which the IMF itself feels justified in conceptually quarantining its recommendations relating to economic policy from the political and social ramifications of those recommendations. Indeed, one could argue that this technocratisation is an element of the whole of economic discourse itself which operates to render "technical", hence apolitical, its tenets, values and assumptions. I have not the space to discuss this here, but *See, generally,* Jennings, *supra* note 10. L. Phillips, *Discursive Deficits: A Feminist Perspective on the Power of Technical Knowledge in Fiscal Law and Policy*, 11 Canadian Journal of Law and Society 141 (1996).
132. This obligation on non-borrower states arose under Article XIV which required that states which had not yet made their currency convertible (as required by Article VIII) had periodically to consult with the Fund; Strange, *supra* note 41, at 97; Articles of Agreement, *supra* note 18.

would argue that on another level, such consultations serve a particular informational role in terms of helping to create in a State a particular knowledge of *itself.* I will explore and elaborate on this idea in Paragraph 4.

Thus, it can be seen that both the legal form which the Fund's conditionality took, and the evolution of the methods by which it chose to enforce those conditions parallel some of the reasons considered above for which the Fund was drawn in to multilateral lending. In our story so far, the legal character of the Fund was being shaped by different sets of forces, both internal and external, which were emphasising the surveillance and information gathering functions of the Fund and which created the implication that at least part of the Fund's importance was based on the sensation of security which Fund involvement gave to creditor countries faced with dealing with both the South, and with the unique dilemmas of a sovereign debtor.

3.3. The shift in the juridical nature of the Fund's monetary powers

The third development which it is important to include in an historical genealogy of Fund conditionality and the provision of finance to developing countries is the shift in the juridical nature of the Fund's monetary powers. This development has seldom been considered in the context of North and South, nor more particularly has the differential effect of the amendments on the South versus the North. In my view, this shift facilitated and legitimised a much greater scrutiny by the Fund of domestic policy in the South than had previously been considered legitimate or indeed, legal.

The shift occurred after the breakdown of the par value system when the Fund's role in the international monetary system was radically altered. As Joseph Gold has suggested, the law governing exchange arrangements can be seen as having been transformed in normative character from "hard" to "soft" international law.[133] However, in my view, the amendment was not simply a case of the Fund "losing its teeth" in relation to exchange arrangements, for whilst the change to "soft" law can be seen as a diminution of the Fund's power in relation to developed countries, the shift in the paradigm had different consequences for the developing world. The very characteristics which marked the new exchange arrangements as "soft" for the North, such as their "intended vagueness"[134] and

133. J. Gold, *Strengthening the Soft International Law of Exchange Agreements,* 77 AJIL 443 (1983). There is no difference in the normative quality of "soft" as opposed to "hard" international law as such. The central character of "soft" law is the intended vagueness of the obligations it imposes or the weakness of its commands. As a result, either failure to observe it or observing it cannot, by itself, be dispositive of the legal effects. *Id.* For an argument that this is a confusion between legal norms and ethical values or political principles and goals, *see* N. Horn, *Normative Problems of a New International Economic Order,* 16 J. World Trade L. 338 (1982). For a discussion about the difference between "hard" and "soft" norms and the idea of varying degrees of normativity, *see* P. Weil, *Towards Relative Normativity in International Law,* 77 AJIL 413 (1983).

134. Gold, *id.,* at 443.

lack of fixed indicators, represented an expansion of the powers of the IMF in relation to countries of the South. This expansion of powers was made possible because of the fact that conditionality was applied disproportionately to the South, and that in the terms of that conditionality, provisions were included which related to exchange arrangements, based on these "soft" norms.[135] The "soft" norms are qualitatively different legal creatures when associated with the availability of credit. The reach of this asymmetry in the application of the Fund's regulatory powers is extended by the insistence on IMF conditionality by state lenders and commercial lenders.[136] Not only does this extension exacerbate the asymmetry between South and North as subjects of IMF law and raise further concerns about the legitimacy of conditionality, but the consequences of the shift have a bearing on the information gathering and surveillance role which I have sought to trace which the Fund has taken in relation to the South.

3.3.1. The hard international law of the par value system

The regulatory authority of the Fund is derived from its administration of its Articles of Agreement which could be characterised as a code of conduct. As an international legal treaty, the rules contained within the Articles are binding on all state members of the Fund.[137] Under the Articles of Agreement, members of the IMF were required to peg their currencies to gold or to the dollar (which was pegged to gold at a fixed rate). The Fund had to approve both the initial exchange rate at which the member's currency was pegged and most changes thereafter. When it was called upon to approve such changes, the Fund would only do so if there was evidence that a country faced a "fundamental disequilibrium" in its balance of payments.[138] The United States was at the centre of this

135. Legally, the purpose of conditionality is to ensure that the state drawing on the Fund's resources does so in the furtherance of the aims of the Fund and so that in can resolve its problems consistently with the Articles. Therefore, the policies which the Fund wishes a member to follow are based on the Articles. *See* Gold, *supra* note 3, at 30-31, 34.

136. *See* above, paragraph 3.1.3. And *see, generally,* Edwards, *supra* note 97; Payer, *supra* note 86, at x.

137. The extraordinary nature of giving the Fund jurisdiction in this area and the scope of its powers should not be underestimated. Until the creation of the Fund, determining the external value of one's currency was considered to be an integral and inviolable part of a nation's sovereignty. In the *Serbian and Brazilian Loans Cases,* the Permanent Court of International Justice asserted that "[i]t is indeed a generally accepted principle that a state is entitled to regulate its own currency." Serbian Loans (France *v.* Serbia), Judgment of 12 July 1929 PCIJ (Ser. A/B) Nos 14/15, at 44 as cited in Carreau, *supra* note 13, at 1991. *See also* J. Gold, *Transformations of the International Monetary Fund,* 20 Columbia Journal of Transnational Law 227, at 228 (1981). Indeed, it has been said that "the Fund was[...]a great deal more sophisticated and powerful a piece of international regulatory and mediatory machinery than the world had ever known, both in terms of its legal authority and of the financial resources, at its disposal." Strange, *supra* note 41, at 33.

138. B. Eichengreen & P.B. Kenan, *Managing the World Economy under the Bretton Woods System: An Overview, in* P.B. Kenan, (Ed.), Managing the World Economy 3, at 13 (1994).

system as it was the only country which agreed freely to buy and sell its currency for gold.

In a juridical sense, the law according to the original Articles was quite clear.[139] Each state established a par value for its currency in agreement with the Fund.[140] In approving the prospective par value, the Fund took into account whether that value could be maintained without the state in question having to engage in undesirable exchange practices and without excessive reliance on the resources of the Fund.[141] A member could change the par value of its currency only after consulting with the Fund[142] and normally could only change the value if the Fund concurred with the value the member proposed.[143] The Fund would approve the change only if it was satisfied that it was "necessary" to "correct" a "fundamental disequilibrium". Under the Articles, no member was permitted to float its currency, even if only to facilitate its transition to a new and sustainable par value. Only an immediate change to a new par value was permissible. The idea behind these restrictions was the promotion of stability of exchange rates. The possibility of change *per se* was supposed to prevent rigidity, which flexibility was offset by the strong words in Article IV which were seen as a measure against changes in response only to transitory conditions, or which would be excessive.[144] The obligations of member states were equally clearly defined with respect to exchange transactions taking place within a member's own territories and involving that member's own currency.[145]

Whilst member states had certain obligations with respect to exchange rates, they had a choice of measures by which they could make good those obligations, as long as those measures were consistent with the Fund's Articles. The United States was in a slightly different position to the other member states and envisaged that it would always have a balance of payments surplus. Accordingly, it voluntarily undertook to settle international transactions by freely buying and selling gold for dollars when requested to do so by other members, at a value which did not differ from the par value of the dollar by more than a prescribed percentage. This practice was deemed to be the equivalent to the performance of the exchange rate obligations imposed on other members.[146]

Whilst it is true that there were some ambiguities in the laws governing exchange rates, in the main it was a firm, clearly defined legal system.[147] Exchange

139. The following description of the law under the original articles is based on that set out in Gold, *supra* note 133, at 445-447.
140. *Id.*
141. *Id.*
142. *Id.*
143. *Id.*
144. *Id.*
145. *Id.*
146. *Id.*
147. Sir Joseph Gold points to one of these ambiguities being the meaning of the term "fundamental disequilibrium" which was never defined by the Fund, It was perhaps a lacunae in the powers of the

rates were subject to international scrutiny and endorsement. Breaches of the obligation to adhere to the system were clearly defined and obvious. The most serious breach of the system was the floating of currency which was both a clearly visible breach and did not require any subjective judgment on the part of the Fund to be characterised as such. This meant that a finding of breach was a non-controversial finding, an important consideration in international law. Because of the inconcealability of the breach, states were dissuaded from floating their currencies and hence persuaded to comply with their obligations under the Fund's rules because international and domestic censure would likely follow any such move and the Fund seldom found it necessary to employ any of its sanctions.[148] Thus, in the first 15 years or so of the system, IMF law was firm, clear and, in the main, well observed.

3.3.2. The breakdown of the par value system

Many have suggested that failure of the par value system can be attributed to the fact that "the objective of stability without rigidity that inspired the system was transmuted in practice into the paradox of rigidity without stability."[149] The par value system broke down on 15 August 1971 when the United States announced that it would no longer convert dollars into gold or other currencies.[150] Ironically, this action was not a breach of the Articles even though this undertaking had effectively become the lynchpin of the system, as the undertaking had always been voluntary. The actual breach of the Articles occurred in the United States' refusal to take other appropriate measures to confine exchange transactions involving dollars within defined margins.[151] The United States also breached the more limited obligation in the Articles of official convertibility.[152]

The reasons for the United States' repudiation of its international obligations have been discussed at length elsewhere,[153] however, it is important to note that even as it repudiated its international obligations, it was "among the first and most insistent in urging, after the breakdown of the par value system, that the

Fund that it was not able to recommend to a member that it was judged to be in "fundamental disequilibrium" hence should change its par value. *Id.*, at 446.

148. *Id.*, at 447.

149. Gold, *supra* note 137, at 229.

150. *Id.*, at 447. There were some exceptions to this refusal but they are not relevant here.

151. *Id.*

152. *Id.*

153. The reasons for this are multiple and consideration of them is well represented in the literature on the subject. *See, for example,* R. Marston, American Monetary Policy and the Eurodollar Market, (1974). The United States made known the economic, political and even military considerations which had impelled it to its actions in 1971 and published some of its criticisms of the par value system in *The US Proposals for Using Reserves as an Indicator of the Need for Balance-of-Payments Adjustment, Economic Report of the President, Transmitted to the Congress January 1973*, at 160-174 as cited in Gold, *supra* note 133, at 448.

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Articles should be revised and that members should return to legality."[154] Commentators have speculated as to why the "return to legality" was important to the United States,[155] and the reasons could be said to coalesce with many of the reasons why international law as a system without significant enforcement measures continues to influence the behaviour of nations, particularly those which are most powerful.[156] The point is that at this moment, the legal regime dealing with exchange rates was about to undergo a significant change, not just in the substance of the obligations, but in juridical quality. The normative quality of IMF monetary law was to change from "hard" to "soft" international law and the focus of the system was to shift from the relatively mechanistic system of par values to an increased attention to the domestic economic policies of member states. Arguably, both the substance and form of the shift has had and continues to have a significant effect on the Third World.

3.3.3. The shift to "soft" international law and the expansion of the Fund's powers in relation to developing states

Paradoxically, the very characteristics which diminished the Fund's powers in relation to developed states were those which increased its powers in relation to developing states. The difference in the effect lies in the fact that the exchange rate policies advocated by the new rules form one of the bases of the conditionality imposed by the IMF.[157]

The provisions of the Second Amendment on exchange arrangements moved away from an emphasis on stability based on a certain rigidity of exchange rate and placed much greater importance on the soundness of domestic policies. The Articles as amended by the Second Amendment reflect the view that the internal policies of a nation influence the international position of a country, which in turn affects the exchange rate for its currency.[158] Exchange rates which float were (and are) thought to allow prompt adjustments of a currency in response to changes in fundamental economic conditions. The normal effect of such a policy would be to increase a state's autonomy in the conduct of its domestic monetary policy, and this is largely what did happen in relation to the North. It was thought that the countries concerned would apply their monetary policies as they saw fit, leaving little role for the international body but to monitor the exchange rates which result from those policies.[159] In effect, the members of the Fund, by

154. Gold, *supra* note 133, at 447.
155. *Id.*, at 450.
156. L. Henkin, How Nations Behave: Law and Foreign Policy 62, 64-66 (1979).
157. *See, generally,* Gold, *supra* note 3.
158. Gold, *supra* note 133, at 443.
159. In effect, the new exchange provisions legalized the prevailing monetary situation. Carreau, *supra* note 13, at 1995.

the Second Amendment regained the sovereignty over exchange rates that they had given up under the original Articles of Agreement.[160]

However, I would argue that the fact of conditionality transformed what was thought to be a general resumption of monetary sovereignty by sovereign states into just the opposite for the South, giving the Fund more control over the domestic policies of the South than ever before. The reason is, that when the Fund has an input into the monetary policies of a state, as is the case of states upon which conditionality is imposed, redirecting the focus of enquiry to domestic policies means that the range of factors in which the Fund can legitimately interest itself is greatly increased.

The argument may be summarised thus: under the par value system, states were required to fix their exchange rates in the manner directed by the Fund. After the Second Amendment, it was decided that accurate exchange rates were reflective of the *internal* policies of a state and would be better allowed to float in accordance with the nature of a state's domestic policy. Thus at that point, the Fund's role seemed to have been reduced to a kind of exchange rate monitor. However, if a state is subject to Fund conditionality, the Fund may legitimately direct a state to implement policies which affect its exchange rate.[161] If the factors which are held, by the (amended) Articles, to be relevant to the exchange rate are altered from being external factors, to factors largely relating to the domestic policies of the member state, then the potential for the Fund to make legitimate directions about those domestic policies must be enhanced.

In my view, a similar phenomenon takes place by virtue of the changed juridical character of the norms. Coming with the shift from fixed par values to floating exchange rates was a shift in the juridical nature of the norms governing exchange rates. Joseph Gold mounts a persuasive argument that the new obligations were "soft" international law.[162] In his view, this softness is characterised by several factors including, for example, that the "character of an obligation may make it impossible to recognize by means of objective criteria that a breach of the obligation is occurring."[163] Normally, this would mean that, in order to determine whether a breach has occurred or not, the Fund would be required to make a subjective judgment.[164] Because of the political nature of the Fund as an organization, such a judgment is unlikely to be forthcoming.[165]

However, I would argue again that the fact of conditionality (which is disproportionately applied to the South) alters the real effect of this change just as it

160. *Id.*
161. *See, generally,* Gold, *supra* note 3.
162. Gold, *supra* note 133.
163. *Id.*, at 456.
164. This is in contrast to breaches under the original system which were apparent immediately a currency left the approved range of values without the prior consent of the Fund. *See* text accompanying note 147 above.
165. For a more detailed discussion of this phenomenon, *see* Gold, *supra* note 133, at 456.

altered the previous change. The change in juridical character in the Fund's norms is transformed by conditionality into a very different beast for the South compared to the North. This is because when an obligation is based on subjective criteria, as is the case with monetary obligations since the Second Amendment, and has less clearly defined parameters, and that obligation can be the basis of one or more conditions imposed on a debtor state by the Fund, the potential breadth of that or those conditions is increased. Thus where the Fund's powers are narrowed *vis-à-vis* the developed states by an increased "vagueness" in the norms, that same vagueness increases the range of concerns in which the Fund has a legitimate interest in states subject to IMF conditionality.

The third characteristic which Gold points to about the way in which the law of exchange arrangements was rendered "soft" is that "the fund can make recommendations to its members but without the power to insist that the recommendations are binding."[166] Once again, I would argue that because of the way conditionality works, this shift offers very different results for the North compared to the South. That the Fund could no longer make binding recommendations to its member states is clearly a weakness in relation to the enforcement of those recommendations with respect to developed states. However, the asymmetry of the nature of North and South as subjects of IMF law is enhanced by such weakness as it is obvious that conditionality works as an enforcement mechanism with selective effect. Put another way, because the Fund's general powers of enforcement were lessened by the shift to soft law after the Second Amendment, then only those states subject to Fund conditionality are left under Fund control. This is implicit in Sir Joseph Gold's regret that the *sine qua non* of conditionality is that it be conditional:

> Conditionality cannot ensure the firm administration of law in relation to all members [...] because numerous members, including major industrialised countries, are not making use, or seeking to make use, of the Fund's resources.[167]

Thus it can be seen that on one level, the alteration to the Fund's Articles by the Second Amendment raises implications for the legitimacy of conditionality, both because what is perceived as a "weakening" of the Fund's powers was in fact both a weakening and a strengthening, depending on which side of the South/North divide one positions oneself, and because the asymmetry of legal application to the South and North was exacerbated by the "softening" of the norms.

On another level, each aspect of the shift in the juridical nature of the Fund's monetary powers has a bearing on that which I seek to trace; the role of the Fund as information gatherer and surveillance organisation in the mediation of the relationship between South and North. The first aspect of the shift from "hard" to

166. *Id.*, at 454.
167. *Id.*, at 482.

"soft" international law in the monetary powers of the Fund was to label the internal domestic policies of a state the best determinant of a state's exchange rate. The effect of this on the South was to bring the gamut of its internal policies into the legitimate purview of the Fund when determining the relevant conditionality. The second aspect of the change was to "soften" the norms and make them more vague, less definite; more difficult to declare as having been breached. Again, because of the connection between the scope of the Fund's monetary powers and the scope of its conditionality, the effect of this change on the South was to make it more difficult for the South to delimit the acceptable criteria of measurement, again extending the scope of what types of information the Fund could legitimately gather. Both of these effects are exacerbated by the third aspect of the change which was to reduce the Fund's *general* powers of enforcement, drawing once and for all, the boundaries around the area of conditionality as the site in which the Fund plays out its informational role, as opposed to a site defined by any broader, more global monetary regulatory capacity.

Thus, in the drawing together of the triptych of threads in this historical genealogy, it seems that each of the transformations of the Fund's role considered above served to emphasise the role of the IMF as a gatherer and disseminator of information. The function of the Fund as a surveillance organization can be seen to be closely tied to the purposes of conditionality, for it was mostly on the basis of the Fund's access to information that it was drawn in by the North to Sovereign lending to the South.[168] Additionally, the transformations included a shift in enforcement procedures to a surveillance based system. The shift to soft international law brought a broad range of factors, which would previously have been considered matters of domestic concern, within the legitimate purview of the Fund. So, the combined effect of each of the transformations; the nature of the juridical shift, the shift in enforcement, and as a preliminary to both of those, the drawing in of the Fund to sovereign lending; was to make the IMF into an organisation which could legitimately survey Third World states, and which could examine and shape broad areas of domestic policy of those states. What I wish to do next is to consider what discursive purpose the informational nature of the Fund's role, as traced above, might serve in (re)inscribing relationship between the North and the South.

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168. *See* above, paragraph 3.1.3.

4. The Discursive Functions of IMF Conditionality[169]

4.1. The uses of surveillance

It can be seen from the historical genealogy of Fund conditionality traced above, that it came to pass that the International Monetary Fund has evolved into a body which now undertakes extensive surveillance of all Third World countries to whom credit is extended.[170] Additionally, because of the shift in understandings about the best determinant of exchange rates (that is from external factors to a state's internal or domestic policies) the range of matters now subject to this surveillance is extensive.[171]

On at least one level, the Fund itself is aware of the importance of its role as a surveillance body. Indeed, on the IMF homepage[172] there is an entire section dedicated to Fund surveillance.[173] The Fund describes its activities in that area as

> [...] the process by which the IMF appraises its members' exchange rate policies within the framework of a comprehensive analysis of the general economic situation and the policy strategy of each member. The IMF fulfills its surveillance responsibilities through annual bilateral Article IV consultations with individual countries; multilateral surveillance twice a year in the context of its World Economic Outlook exercise; and precautionary arrangements, enhanced surveillance, and program monitoring, which provide a member with close monitoring from the IMF in the absence of the use of IMF resources. (Precautionary arrangements serve to boost international confidence in a member's policies. Program monitoring may include the setting of benchmarks under a shadow program, but it does not constitute formal IMF endorsement).[174]

It seems from this extract, that an increased emphasis on surveillance has given an ironic twist to one of the Fund's original purposes. According to its Articles, the Fund is mandated to provide balance of payments assistance to a state in order to give confidence to the member state *borrowing*.[175] However in the passage extracted above, the Fund itself acknowledges that its reports boost "interna-

169. Parts of this analysis are based on ideas outlined in: S. Pahuja, *Normalizing Pathologies of Difference: The Discursive Functions of IMF Conditionality*, *in* L. Campbell *et al.*, (Eds.), Inter/national Intersections: Law's Changing Territories The Collected Proceedings 181 (1998); and S. Pahuja, *Post-Colonial Approaches to the Conditionality of the International Monetary Fund*, *in* Proceedings of a joint workshop of the Centre for European Law, at Harvard University and the Association of the Alumni of the Hague Academy of International Law, Hague Yearbook of International Law (forthcoming).
170. *See, generally*, Chossudovsky, *supra* note 19.
171. *See* above, paragraph 3.3.3.
172. http://www.imf.org
173. http://www.imf.org/external/np/ext/facts/surv.htm
174. International Monetary Fund, The IMF, at a Glance: Areas of Activity (1997), http://www.imf.org/xr/facts/glance.html [hereinafter *The IMF at a Glance*].
175. Articles of Agreement, *supra* note 18.

tional confidence" in the policies of the member state the subject of any given reports.[176] Indeed in order to access the most recently created of the Fund's lending facilities, the Systemic Transformation Facility, offered to former members of the Soviet Republic, the state member must convince the Fund that "it will move as soon as possible towards policies that the IMF could support under [a Structural Adjustment Facility or Extended Structural Adjustment Facility] arrangement."[177]

On one level, the relative importance of this function heralds a worrying trend. The limited legitimacy in conventional legal terms which conditionality has is conferred by its character as the means to an improved economic situation, not as an end in itself. If the means of conditionality become the end in the form of creditor "confidence", it has strong implications for the legitimacy of a mechanism which imposes such weighty strictures and suffering on the debtor country.[178]

However in addition to critiques such as the foregoing, which suggest there may be problems with the legitimacy of treating the creation of confidence in the international community as an end in itself, in my view it is also useful to explore the question in a different way. I would argue that it is in the stated objective of fostering the confidence of the international community in the particular (Third World) country surveyed, that we see adumbrated a different, more discursive, function of such surveillance. In my view, part of the function of such reports may be to mediate, translate and normalize difference through the use of technologies which resonate with those employed by the former colonial powers to govern the "oriental" colonies.

First, it is important to note that the surveillance activities of the Fund are very much centred on the South. Article IV consultations take place only with those states which have drawn past a certain amount on the Fund's resources,[179] namely the Third World.[180] The results of such consultations frequently form the basis for individual country reports which are published by the Fund and widely disseminated. We can also draw from the historical genealogy traced above, the understanding that the shift in the character of the Fund from monetary body to surveillance organisation coincided with a diminution of the Fund's powers in relation to the North and an increase in the role of the Fund in relation to the South. So the surveillance functions performed by the Fund seem to have the Third World as their object.

176. The IMF at a Glance , *supra* note 174.
177. IMF, Special Facilities: Financing Helps Members Adjust to Special Balance of Payments Problems, IMF Survey Supplement 18, 20 (1993), as cited in Lichtenstein, *supra* note 13, at 1951.
178. There is a vast literature on the implications of the policies and programs of the IMF and World Bank on human rights. *See, generally,* G. Cornia *et al.*, (Eds.), Adjustment With a Human Face (1987); R. Broad, Unequal Alliance: The World Bank, The International Monetary Fund and the Philippines (1988); Payer, *supra* note 86.
179. Strange, *supra* note 41, at 94.
180. *Id.*

Surveillance is important because of the crucial role it plays in the way in which subjects are managed by institutions. Surveillance is the first step in a series of processes by which people are transformed into information. Or, to put it another way, surveillance facilitates the production of knowledge. It is through the production of such knowledge that the populations which are the subjects of that knowledge are administered, or managed.[181] That knowledge is institutionally constructed in particular ways. The particular ways in which that knowledge is constructed can be called a discourse.[182] The particular discourse operating in any given context includes "representational frameworks [which] provide the basis for shared understanding, including an understanding of what knowledge is required to enhance, modify, or deny the representation."[183] Thus attention to discourse is an attention to power. In particular, it is an attention to that kind of power which "produces meanings, subject identities, their interrelationships, and a range of imaginable conduct."[184]

But every institution produces and is produced by discourse. All institutions must transform their subjects into information in order that those subjects are able to be literally represented in the place where decisions are made. In my view then, what is useful about exploring a given discourse is to consider the ways in which the particular discursive power is being exercised. In other words, what is the subject of control? How is that subject represented? What are the background assumptions about the subject? What mechanisms are being put into play to control the subject? What ends do those mechanisms effect? It is by asking these questions that we can begin to challenge the field of possibility, or extend the range of outcomes which are possible in a given context, and which are delimited by the institutional discourse in operation.

More specifically, I would argue that when we examine those questions in the context of IMF discourse, what we see is that both the representation of the subjects of control and the discursive mechanisms used, resonate very strongly with certain of the corresponding representations and mechanisms identified by post-colonial scholars as in existence during moments of imperialism of North over South, such as the period of the British colonisation of India. In my view, underlying both sets of discourses are two fears in relation to the Third World. These fears may be characterised respectively as the "fear of entry", and the "fear of exit". Both these fears hinge on the fear of difference. The existence of those fears generates particular discursive mechanisms, or technologies, which are directed at allaying the fears. In turn, the discursive structures in place are shaped by the existence of the fears. Thus arises the highly problematic situation

181. Ericson & Haggerty, *supra* note 20, at 55.
182. *Id.*, at 83.
183. *Id.*
184. Doty, *supra* note 21, at 4.

in which the range of any outcomes which might be possible as a result of IMF intervention in the Third World is shaped largely by anxieties about that world.

In addition to the problematic extension of the colonial continuum into the post-colonial era, the discursive strategies used by the Fund also reveal two other features of the Third World which are perceived as problematic by the First World. Because these features are perceived to be problematic, they also require discursive strategies to accommodate them. Paradoxically, it appears that both of these problems arise from what might be termed the "post" in post-colonial. The two problems are the problem of sovereign equality and the problem of democracy. But even though these problems are new, the technologies used to manage them are again highly resonant with those used in the colonial era.

Thus my main project in the remainder of this paper is to reveal the fears of the Third World mentioned above which play beneath the surface of IMF discourse and to demonstrate the extent to which these fears resonate with older fears. I will also highlight some of the discursive strategies used to manage both these fears and the two problems arising from the "post" in post-colonial inherent in the Third World and explore the ways in which those strategies mimic particular discursive mechanisms used during moments of overt imperialism of North over South. I have called these strategies "technologies of colonial governance". Because these strategies are responding to a fear of difference, and are attempting to normalize that difference, I will suggest that the consequence of using these technologies of colonial governance to manage the Third World, must be to preclude the possibility of real difference, and limit the range of possible outcomes of IMF intervention in the Third World.

4.2. Domesticating disruption: dealing with the fear of entry

The first of the two fears detectable in IMF narratives about the South which I wish to explore is the fear of entry, or a fear of the inclusion of the Third World into the international society of states. This fear is based on underlying assumptions about the implicit primordialism of the Third World and replicates a fear detectable in other instances of North/South discourse. One instance in which such fears come to the surface, is the way in which both commentators on the IMF and the Fund itself perceive the inherently problematic nature of the sovereign debtor.

A sovereign debtor plays particular havoc with the conventions surrounding borrowing and lending. In a conventional debtor/creditor relationship, the debtor is aware that, in the event of default, the creditor will have certain legal rights against his or her property and that borrowing more money than one can afford can lead to bankruptcy and the unpleasant legal consequences which ensue. However, in the case of a sovereign debtor, lenders are in a more difficult situation. Creditors cannot simply obtain an order to seize assets,[185] and, in the case of sovereign lenders, trying to do as much can have severe political ramifications.

The sovereign debtor is in a paradoxically powerful relationship with a sovereign lender, for the more money the debtor owes, the more powerful the debtor becomes.[186] An example of the paradoxical power of the heavily indebted state was demonstrated during the Mexican debt crisis of 1982 when Mexico simply stopped servicing its external debt.[187] Preventing a recurrence of such an event seems to inform responses to what has popularly become known as the Asian debt crisis. The representations in the media relate the "crisis" to the potential domino effect which could be created by a large bankruptcy in one Asian state:

> Invoking the risk of "systemic" breakdown is the most obvious way to justify the IMF's intervention [in the Asian debt crisis]. Without an emergency injection of dollars, it is argued, companies in South Korea and the rest would default on their debts. This would cause distress elsewhere, particularly in Japan, where stagnation could turn into outright depression. From there the crisis could spread to the United States, Europe and the rest of the World, as banks fail, credit disappears, stock markets crash and economies collapse. This is the nightmare that has driven governments, notably America's, to support and indeed insist upon the Fund's course of action.[188]

Thus the inclusion of "Third World" states, in this case in the international financial system, always contains within it the seeds of a "systemic breakdown."

Informing these fears of entry seem to be assumptions about the implicit primordialism of the South. Indeed, such assumptions go part of the way in explaining the increasingly developmental thrust of IMF conditionality,[189] which seems to rest on the understanding that

> [...] those countries that have had time to work out the enlightenment project of political participation – based on the idea of an educated, postethnic, calculating indi-

185. Cynthia Lichtenstein suggests that commercial banks suffered during the Eurodollar crisis because without IMF involvement, banks had no way of enforcing the loans against the state borrowers; *supra* note 13, at 1948.
186. C. Bogdanowicz-Bindert, *The Debt Crisis: The Case of Small and Medium Sized Debtors*, 17 NYUJ of Int'l L & Politics 527, at 529 (1985).
187. There is a vast amount of literature on the Mexican debt crisis. For an example of legal literature on point *see* S. Amaral, *The Debt Crisis from the Point of View of a Debtor Country*, 17 NYUJ of Int'l Law and Politics 633 (1985). For an example (though perhaps not typical) from the economic literature, *see* S. Strange, States and Markets 108-109 (1988).
188. *Kill or Cure*, *supra* note 17.
189. On this point, *see, generally,* Carreau, *supra* note 13; M. Malloy, *Shifting Paradigms: Institutional Roles in a Changing World*, 62 Fordham Law Review 1911 (1994).

> vidual, subsisting on the workings of the free market and participating in a genuine civil society – are indeed able to stave off the disorders of primordialism.[190]

That this potential is based on the implicit primordialism of the South is evidenced in the opening paragraphs of the IMF's own report on the actions it took during the Asian debt crisis. The report, entitled *IMF Supported Programs in Indonesia, Korea and Thailand: A Preliminary Assessment* [191] was produced as the result of an internal investigation into the actions taken by the IMF in response to the Asian debt crisis. One commentator has likened the report to,

> [...] a police investigation into allegations of police misconduct, [in which] the International Monetary Fund has investigated itself over charges that it bungled the Asian Crisis.[192]

Predictably, I am not concerned here with making an enquiry into whether or not the IMF "bungled" its intervention in the Asian debt crisis. That is to say, questions such as whether the Fund intervened at the right time and insisted on policies which were likely to improve the economic situation in the various countries are not my focus. What I am interested in for present purposes are the discursive practices employed. Because it is examining the success (or failure) of its own programs, it is particularly interesting to consider to what factors the IMF attributes the causes of the crisis. In my view, these causes are attributed to the Third World's implicit primordialism, or ongoing failure to make the transition from traditional to modern society.

In the introductory section, the report reads:

> [t]he Asian crisis differs from previous crises in key respects, and it may indicate fault lines in an increasingly integrated global economic and financial system. Unlike the typical case in which the Fund's assistance is requested, these crises did not result mainly from the monetization of fiscal imbalances...Instead they were rooted in financial sector fragilities, stemming in part from weaknesses in governance in the corporate, financial, and government sectors, which made these economies increasingly vulnerable to changes in market sentiment, a deteriorating external situation, and contagion.[193]

The implication is that the crisis was not caused by temporary problems, such as temporary fiscal imbalances. Instead, the causes of the problems are "fault lines", or permanent flaws, which the crisis has simply revealed. The imagery

190. Appadurai, *supra* note 1, at 142.
191. International Monetary Fund, IMF supported Programs in Indonesia, Korea and Thailand: A Preliminary Assessment 6 (Preliminary Version released January 1999) [unpublished but available from IMF Website, www.imf.org] [hereinafter *A Preliminary Assessment*].
192. P. Hartcher, *World's Fiscal Police Play Down Errors*, The Australian Financial Review, 20 January 1999, 8.
193. A Preliminary Assessment, *supra* note 191, at 6.

used suggests that there is an assumption operating to the effect that the crisis was brought on by problems endemic to the countries in question, rather than having been caused by the operating circumstances.[194] In the report, the particular nature of the "fault lines" seems to be attributed to perceived "weaknesses in governance at a ... general and fundamental level",[195] which were "seen to be at the root of the crisis."[196] These "weaknesses in governance" are said to have resulted in "weak institutions."[197] Thus the cause of the crisis is attributed to weaknesses in the states' institutions which institutions render the relevant states vulnerable due to an inability to cope with rapid change. As we shall see below, this perception that the crisis is precipitated by the inability of the Third World to adjust to external shocks (or "rapid change") is grounded in the opposition between traditional and modern societies. This opposition is imbricated with assumptions about the implicit primordialism of the South.

This fear of entry and assumptions about the implicit primordialism of the South replicate earlier instances in North/South discourse where the fear of entry is manifest and is also implicitly attributed to primordialism of South. In an enquiry in a similar vein to this project, Roxanne Doty examined two sets of texts in the field of international relations which deal with issues of central importance to North-South discourse.[198] The two sets of texts she examined are; texts which relate to the topic of sovereignty and statehood in the Third World, and texts which respond to the demands articulated by Third World states in the shape of calls for a New International Economic Order ("NIEO") and which demands "run counter to the global liberal doctrines institutionalized in international regimes."[199] One of the themes identified by Doty as underlying those texts is the one I have identified above as implicit in contemporary narratives produced by the IMF about the Third World. This theme is characterised by Doty as "a fear or sense of danger regarding the entry of the "Third World" into the international society of states...."[200]

For example, the sense of danger and its basis in the lack of modernity of the Third World implicit in contemporary IMF narratives about the South recalls quite dramatically, the traditional/modern opposition which Doty identifies as having met Third World demands for a more equitable distribution of economic wealth. These demands found voice primarily in the call in the 1970s for a New

194. By "operating circumstances" I mean such factors as huge speculative investments and currency flows which factors are not generated by the domestic economy. *See, generally,* Chossudovsky, *supra* note 19.
195. A Preliminary Assessment, *supra* note 191, at 17.
196. *Id.*, at 32.
197. *Id.*
198. *Id.*, at 145 *et seq.*
199. *Id.*, at 146.
200. Doty, *supra* note 21, at 147.

International Economic Order.[201] Whilst this call for economic equality had its own limitations,[202] what is instructive for the present purpose of considering the assumptions which underlie First World understandings of the Third World is to use the NIEO

> as a site that elicited from North American social scientists narratives that participated in the production and legitimation of world ordering possibilities, specifically possibilities for relations between the North and the South.[203]

Doty argues persuasively that these narratives are backgrounded by the discourse of development,[204] which according to Edward Said, deployed "a truly amazing conceptual arsenal" that captured the attention of international policy experts and strategic planners.[205] While the discourse of development is not a major element of international relations as a discipline,[206] it has, together with other narratives in the textual network between North and South, constituted a background of given assumptions, or what are understood to be facts about societies, individuals, cultures and progress.

Central to that which is backgrounded is the traditional/modern opposition[207] which, in this context, implicitly attributes the inability of the South to achieve economic "progress" to the South's own incompetence and lack of modern attitudes.[208] This "failure" to progress from traditional to modern, means that access to international institutions (or "entry" in the above terms), can only bring demands from the "Third World" for change, as indeed it did, as evidenced by the NIEO.[209] Such change results generally in what is defined in the dominant paradigm as "instability."[210]

In the earlier case, the lack of wealth of the Third World was attributed to its own inability to cope with change, rather than any systemic inequities in international economic practices. In describing that call for equity, or what was driving the attempt by Third World states "to alter regimes fundamentally"[211] Krasner writes:

201. One of the cornerstone documents of the call for a New International Economic Order was the Charter of Economic Rights and Duties of States, UN Doc. A/Res/3281/XXIX (1974).
202. *See, generally,* Otto, *supra* note 30.
203. Doty, *supra* note 21, at 157.
204. For a useful interdisciplinary study of the discourses of development, *See, generally,* J. Crush, (Ed.), Power of Development (1995).
205. E. Said, Orientalism 290 (1979).
206. Doty, *supra* note 21, at 157.
207. *See, generally,* Appadurai, *supra* note 1, at 139-144; Crush, *supra* note 204.
208. S. Krasner , *Transforming International Regimes: What the Third World Wants and Why,* 25:1 International Studies Quarterly 119, at 140 (1982); C. Murphy, *What the Third World Wants: An Interpretation of the Development and Meaning of the New International Economic Order Ideology,* 27:1 International Studies Quarterly 55, at 56 (1983).
209. Krasner, *id.,* at 130.
210. *Id.*
211. *Id.,* at 138.

> The ability to cope with environmental disturbances depends on the mobility, flexibility, and diversity of a country's resources. A country with highly mobile, flexible, and diverse factors can absorb shocks emanating from the international system. It can reallocate its factors of production when environmental conditions change.[212]

The argument was that less developed countries cannot adjust to external shocks because of their political weakness and social and economic rigidity. As Roxanne Doty points out, "the latter factors are captured in the distinction between traditional and modern societies."[213] In such texts, the opposition is not problematised, but is taken as a given, forming part of the background of facts.[214] These background facts indicate that one of the fears associated with the entry of the Third World into the international society of states can therefore be articulated as an apprehension of the disruptive effects which may be caused by the lack of development in the Third World.

The other site which Doty identifies in North/South discourse in which it is evident that the traditional/modern opposition and its attendant fear of entry is at play is in particular writings on the topic of sovereignty. This set of texts represents an attempt to "come to grips" with sovereignty and statehood in the "Third World."[215] This "coming to grips" was (and continues to be) necessitated by the fact that sovereignty in many "Third World" countries looks like what in a liberal conception of sovereignty would be defined as sovereignty's direct opposite – anarchy. According to Richard Ashley:

> Sovereignty signifies a homogeneous and well-bounded rational order of politics finding its focus in a hierarchical center of decision to which all questions of interpretation can be referred; and anarchy is then defined residually, as an opposed domain of practice which, for lack of a center, involves the undecideable interaction of plural interpretations and practices.[216]

This causes a representational crisis in which the foundational meaning of sovereignty is shaken. How can sovereignty denote both what it "is" and its opposite?

Texts which tried to deal with this question seemed to be engaging with the problematics of sovereignty as a signifier, [217] or how to deal the fact that "what sovereignty demarcates is reversed when it comes to black Africa and much of

212. *Id.*, at 139.
213. Doty, *supra* note 21, at 158.
214. *Id.*, at 159.
215. *See, for example,* R. Jackson, Quasi-States: Sovereignty, International Relations and the Third World (1990); R. Jackson & C. Rosberg, *Why Africa's Weak States Persist: The Empirical and the Juridical in Statehood,* 35:1 World Politics (1982).
216. R. Ashley, *Untying the Sovereign State: A Double Reading of the Anarchy Problematique*, 17:2 Millennium: Journal of International Studies 227, at 238 (1988).
217. Jackson & Rosberg, *supra* note 215; Doty, *supra* note 21; Ashley, *supra* note 216.

the 'Third World'."[218] However this crisis of meaning did not seem to produce new, more complicated, understandings of sovereignty.[219] Instead, the response involved a discursive dance in which the "real" and "true" foundations of sovereignty were preserved. The mechanism by which this was done entailed "the garnering of conceptual resources whereby the idea of a normal and authentic sovereign state is reproduced and juxtaposed to a different and inferior kind of state."[220] It is these "conceptual resources" which bring into play the representational practices by which international identities have been produced and reproduced, and in which we can discern the fear or sense of danger immanent in discourses about the entry of the Third World into the international "community".

According to Doty, these representational practices can be readily situated in a sort of colonial continuum. Central to the preservation of the sovereignty/anarchy opposition is the characterisation of Third World states as "quasi" states possessed of "negative" sovereignty. Instead of problematising the constructedness of sovereignty, it is split into two halves, positive and negative. Each side of the list is imbued with certain essential characteristics which posit identities which resonate with those constructed along older, imperial, lines.[221] The relevance to us of this conceptual paradigm is that

> [l]ike the earlier representations, the concepts of juridical statehood, and negative sovereignty move insistently toward a questioning of the capacity of states so labeled and those who inhabit them.[222]

Quasi states are possessed of "sovereignty", so the story goes, only because of the "courtesy" of "international society."[223] However this creates a problem in the terms of that narrative, as "[b]y enforcing juridical statehood, international society is in some cases also sustaining and perpetuating incompetent and corrupt governments."[224] Inherent in this notion is the idea that "incompetence, corruption and injustice are seen as arising from the new norms that characterize the principle of international recognition."[225] Thus the entry of quasi-states into the international society of states is seen as dangerous; their very existence is antithetical to understandings of "progress."[226]

In other words, both the very notion of Third World sovereignty and demands by the South for a new international economic order, are understood as

218. Doty, *supra* note 21, at 148.
219. *Id.*, at 149.
220. *Id.*
221. For the construction of the identities, *see* Jackson, *supra* note 215. For a consideration of the binary list of attributes, *see* Doty, supra note 21, at 151.
222. Doty, *supra* note 21, at 152.
223. *See* Doty, *supra* note 21, at 154 for her critique of Jackson and Rosberg, *supra* note 215.
224. Jackson & Rosberg , *supra* note 215, at 22.
225. Doty, *supra* note 21, at 154.
226. *Id.*

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potentially destabilising. Implicit in the characterisation of both events is the assumption that in the absence of having "worked it out", the "quasi-state", possessed of "negative sovereignty" (which concept defines only by lack), makes demands caused by its own lack of modernity. Therefore the inclusion of such states in international fora poses a threat to international society. This older fear of the incommensurability of the quasi-state with progress, and the threat which "negative sovereignty" poses to international order is recalled in contemporary narratives generated by the Fund about the problematic nature of the Third World debtor which are outlined above.

But, if we assume that entry is inevitable, or indeed a fait accompli, the question then becomes how might the North deal with the threat posed by the lack of development of the South? The answer is by narrating the lack of development into something safe and containable. Paradoxically, however, the strength of the discursive technology used to perform this narrative task is that it relies on the very opposition which underlies the sense of danger; the traditional/modern opposition.

The particular discursive strategy at work is what Daniel Tarullo has called the "Myth of Normalcy" which he considers to be one of international economic law's most potent narratives.[227] In Tarullo's argument, the myth of normalcy is useful to understand as it has an heuristic value in exploring international economic law. This is for two reasons. The first is because the myth of normalcy goes part of the way in explaining what gives normative force to the international economic order in the absence of traditionally conceived enforcement mechanisms.[228] The second is because it shows how a particular world view has become naturalised through the recurrent imagery of sickness and health. It helps to "explain" why, in the international legal order states may be attributed with sovereign equality, yet be treated differently. This second aspect of the myth of normalcy is something to which I will return in relation to the dilemma of sovereign equality. However, at this point, I would argue that the myth of normalcy also performs a function related but additional to those discussed by Tarullo. In my view, the myth also works in response to the sense of danger felt by the First World regarding the entry of the Third World into the international society of states by operating as a normalizing framework through which the lack of development can be narrated into something containable and safe.

According to Tarullo, the way the myth works is best understood by starting with the modernist insight that we cannot know anything except by active organisation of the data we receive. The categories of thinking into which we organise information are always contingent rather than necessary.[229] A myth creates a story, or constructs a dominant set of norms which creates concepts of

227. Tarullo, *supra* note 21.
228. *Id.*, at 533-536.
229. *Id.*, at 541.

what is "normal", so we organise our categories of thought around those concepts. Departure from the norm, or what we can call difference, does not then create understandings of its own. It is understood only as a variation of the norm.[230] When a particular myth is institutionalised by law, as Tarullo argues of international economic law and the myth of nomalcy, a particular way of knowing the world, or a particular set of categories is sanctified and participation in those categories is perpetuated.[231]

The way this particular myth works to create something safe and containable out of the lack of development of the "Third World" is by deploying a recurring imagery of sickness and health, or adolescence and adulthood to "explain" the condition of the "Third World". Through such imagery, the threat posed by the lack of development is reduced because both sickness and adolescence are temporary states of being which can respectively be "cured", or will pass with time.

For example, the ostensible objective of the IMF is to provide members with temporary financial assistance in order that they can eliminate their balance of payments problems. Tarullo argues that the need for IMF assistance in this manner is part of a broader system of international economic law in which "we are driven to the idea that balanced payments is a normal condition for nations."[232] In Tarullo's view, the "myth" informing the IMF's role in this instance is one of sickness and health in which Structural Adjustment (implemented via conditionality) is a bad tasting medicine administered to ailing nations in order that they should get well and be "normal" members of the international community. Through a process of normalization in which difference is explained as a stage in a developmental process (adolescence), or as a deviation from the norm (sickness), the myth of normalcy operates to contain and domesticate the potential for disruption inherent in allowing the entry of the "Third World" into the international society of states.

However, inherent in this "myth" are naturalised conceptions of progress and modern statehood, demonstrating once again the given-ness of the modern/traditional opposition in international law and the implicit primordialism by which the Third World is characterised. Thus whilst the myth may operate to contain and domesticate the sense of danger felt by the First World about the entry of the Third World into the international arena, it does so by relying on, hence perpetuating, the opposition at the root of the fear. Additionally, because the fear is contained by a normalizing myth, as alluded to above, difference is then not permitted to generate understandings or knowledges of its own, but instead, may be understood only as a departure from the norm, precluding possibilities not drawn from the dominant epistemology.

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230. *Id.*, at 546.
231. *Id.*, at 547.
232. *Id.*, at 547.

Thus we can see that one of the themes informing the encounter between the IMF and the Third World is the fear of entry, or a fear of the inclusion of the Third World into the international society of states. This fear is based on underlying assumptions about the implicit primordialism of the Third World and replicates similar fears detectable in older moments of encounter between North and South. However, the discursive strategies, or technologies engaged in to allay the fears are problematic for two reasons. The first reason is that the normalizing myth used to address the sense of danger may contribute to the preclusion of real difference in the international community. I will come back to this theme below as it is my argument that all the discursive strategies highlighted by this paper have a similar chilling effect on the possibility of real difference. However, the myth of normalcy is problematic even on its own terms, as it relies on the very opposition which generates the fear of the Third World and that which it would contain, that is the traditional/modern opposition. Thus the myth is not sufficient to contain all threat, and, paradoxically, the fear of entry exists contemporaneously with a fear of exit.

4.3. Maintaining the hyphen – containing unruly populations; or addressing the fear of exit

As discussed in the preceding section, one of the potential dangers which it is perceived may result from the entry of the Third World in the international society of states is the idea of instability, or systemic breakdown. To draw a very simple analogy, consider the idea of a game being played according to established rules. When new players are admitted and then begin to challenge those rules, such as the Third World did when it challenged the equity of the prevailing economic order, the fear is that there exists the possibility that the game will no longer be sustainable on its old terms. As mentioned earlier, because of the paradoxical power which lies in substantial indebtedness, the existence of a "Third World" sovereign debtor may also be seen as inherently problematic.[233] Immanent in the very existence of the sovereign debtor is the potential (through default on its debts) for it to cause systemic breakdown.[234]

However, the way the fear is contained, or narrated into something safe through the myth of normalcy does not overcome the basic opposition between traditional and modern society which underlies the fear of entry. Even as the myth of normalcy explains lack of development as simply a phase or aberration, the traditional/modern opposition provides the logic of the myth. Thus, in a sense, whilst the opposition giving rise to the sense of danger is to some extent contained, or domesticated by the myth, it is also rendered ever present. The effect of the eternal presence of the spectre of the Third World's primordialism

233. *See* above, paragraph 4.2.
234. *Id.*

means that implicit in the articulation of the fear of entry and the risk of systemic breakdown immanent in that entry, is the fear of exit, or the desire to prevent nations in financial difficulties from dropping out of the international system altogether.

This latter fear has deep roots. Very early in the involvement of the IMF in the economies of the South, Andrew Schonfield observed that in the "forbearance" of the creditor states to the debtor states, "[t]he evidence suggests that it is the symbolic effect of debt repudiation which is most feared."[235] In Schonfield's view, the symbolic effect of the repudiation

> [...] tends to have reverberations elsewhere, and perhaps to put dangerous thoughts into the minds of people who now patiently accept the uncomfortable constraints on their economic activity imposed by the requirements of debt servicing [...][T]here is often a deeper anxiety [...] that the drop-out nation, having engaged in financial hostilities with its creditors, is likely to proceed to establish a siege economy at home, place its citizens under severe controls, and try to sever its relationships with the rest of the world.[236]

The fear that the heavily indebted state will exit from the "system" is one which plays relatively close to the surface of international economic discourse[237] and this fear has its basis in a darker anxiety. The passage from Schonfield hints at this anxiety when he states that the repudiation "will put darker thoughts into the minds of people." Implicit in this anxiety is the possibility that "the people" will somehow interfere with the proper role of the state, and that in this interference, the international legal fiction of the state is at danger.

The state form is crucial to the modern international legal order. As mentioned above, one of the tenets of the new international legal order established after the Second World War was the principle of self determination.[238] However, as Dianne Otto has argued, the right of self determination was conceived such that it could be exercised only as statehood on European terms.[239] These terms included the four criteria set out in the *Montevideo Convention on the Rights and Duties of States*: a permanent population, a defined territory, a government and independence in the form of the capacity to enter into legal relations with other states. [240] These last two, according to Otto,

> [...] were also understood in the European sense as based on centrally organized systems and institutions backing up the ultimate authority of the state and achieving a

235. A. Shonfield, *Intoduction: Past Trends and New Factors, in* Strange, *supra* note 41, at 13.
236. *Id.*
237. Another example of this fear as a motivating factor was the haste with which the OPEC countries were drawn into playing an active role in the IMF and the World Bank. *Id.*, at 17.
238. Otto, *supra* note 30, at 339- 344.
239. *Id.*, at 341.
240. *Id.*

> shift in citizens' primary loyalty from family, religious or community association to the imagined nation-state.[241]

Thus, comprising the imagined nation-state is the only way "the people" can figure in the international legal order. The fear of the people implicit in the fear of the exit of the state thus hinges on a sort of epistemological escape by the people from the categories, strictures and disciplines imposed on them which categories culminate in their existence as the constituents of a modern "nation-state".

In other words, in this anxiety of exit, we see the imagined community[242] of nation, breaking apart from the international legal notion of "state" with which it is conflated in international law.[243] Or, in Appadurai's terms, we see articulated in the fear of exit, the dissolution of the hyphen between "nation" and "state".[244] Given this fear, the question then becomes, how does the North manage this most disruptive possibility? The answer lies in the technologies of colonial governance. In particular, there are three technologies at play in quieting the fear of exit which resonate with three technologies of colonial governance each themselves directed at managing the fear of the people. Whilst in the colonial setting it was not so much a question of the maintenance of the hyphen between nation and state, for the colonial boundaries themselves were backed up by the use of force, the need discursively to manage the indigenous populations was apparent, for the scale of people to be managed was so vast that force alone would never have been enough. The three technologies I wish to highlight are: the prose of counter-insurgency, the culture of number and the creation in the subjects of governance of a self knowledge in the terms of the governing system. I will discuss each of these in turn.

The fear of the people resonates with the observations of Subaltern Studies scholars whose project was concerned with reclaiming, or re-writing a history of India to which the colonial historiography of both the British and the indigenous elite had been blind.[245] Significantly, the project, which was aimed initially at writing out the silences in that elite historiography, came to be at least as concerned again with analysing the discursive practices by which those silences

241. *Id.*
242. *See, generally,* B. Anderson, Imagined Communities: Reflections on the Origin and Spread of Nationalism (1983) as cited in Appadurai, *supra* note 1, at 21.
243. This idea is evidenced by the frequent instances in which self determination is understood to have reached its full potential in international law only when it is expressed in terms of statehood. *See, for example,* R. M. Wallace, International Law 87 (1986).
244. Appadurai, *supra* note 1, at 55. Note however that Appadurai, attributes the respective "exits" of Burma and Albania to a "long supressed desire for exit" from the international community. This notion of the "exit" of states with repressive regimes hints at the complexity of inclusion in the international community which may, on occasion, carry with it some liberating or democratising potential, limited and constrained though it may be.
245. R. Guha, *Introduction, in* R. Guha, (Ed.), A Subaltern Studies Reader 1986-1995, ix, at xv (1997).

came to exist in the first place.[246] The significance for the current project of the shift in focus of the earlier project lies in the understanding it brings about the way in which difference may be written out of the picture. In other words, one of the consequences of the particular discursive technologies used to still fears held by their colonial rulers of the Indian masses was to write the masses out of the history of India. This write-out precluded the possibility of creative difference generated by the masses from existing in the dominant epistemology in any form except as a problem. After considering the particular technologies mentioned and the ways in which they are replicated in Fund discourse about the Third World, I will suggest that difference is similarly precluded in contemporary relations between the First and Third Worlds by the re-occurrence of these mechanisms.

4.3.1. The prose of counter-insurgency

The fear of the people underlying IMF discourse about the Third World resonates particularly with the fear in the older setting which generated what Ranajit Guha has called the "prose of counter-insurgency."[247] This term is used to denote the techniques by which elite discourses around the anticolonial struggle in India were able to depict the activities of non-dominant, non-elite, or "subaltern"[248] people as in "terrible" opposition to the "fine" leadership of the indigenous elite.[249] Such subaltern opposition needed to be suppressed and normalized if the "civilizing mission" of the colonial power was to succeed.[250] As subaltern scholars have demonstrated, this "civilizing mission" was the establishment of institutions of modern government. As Otto explains:

> In this view, the Indian nation goes through a kind of re-education which enables a nationalist elite to come to desire the introduced systems and eventually take responsibility for maintaining and perpetuating them in the indigenous setting.[251]

This re-education went hand in hand with the representation of nationalists as "an Indian elite, closely allied to the British colonialists, rather than the mass of the Indian people."[252] These "masses" are then "[understood] and assessed [...][either] negatively, as a law and order problem, [or] positively, if at all, either as a response to the charisma of certain elite leaders or [...] in terms of ver-

246. Otto, *supra* note 30, at 349.
247. R. Guha, *The Prose of Counter-Insurgency*, *in* R. Guha & G. Chravorty Spivak, (Eds.), Selected Subaltern Studies 45 (1988).
248. E. Said, *Foreword*, *in* Guha & Spivak, *supra* note 247, at ix.
249. Otto, *supra* note 30, at 352.
250. *Id.*, at 349.
251. *Id.*
252. Said, *supra* note 248, as cited in Otto, *supra* note 30, at 348.

tical mobilization by the manipulation of factions."[253] In other words, the representational practices at work here ensured that the agency of the masses was not allowed to figure constructively in the depiction of the anticolonial struggle as this would have involved a critique of the dominant (European) epistemology. In particular, it might have involved a critique of the idea of the modern nation state which, as we know, is the only foundational unit permitted by the state-based structure of the international community.

Something similar seems to be happening in the contemporary setting in the Fund's report into the Asian debt crisis mentioned earlier. Resonating with the prose of counter-insurgency, "the people" are depicted as interfering with the process of structural adjustment, as though structural adjustment has no effect on the people as people, but only on the "structures" of the state. Like the non-dominant, non-elite, subaltern people who were portrayed as being in opposition to the "fine" leadership of the indigenous elite in the struggle for Indian independence,[254] the people of the Asian states subject to the adjustment measures, if politically active, are portrayed as a disruptive force, steering off course the imperative reform measures.[255] This is particularly true in the way that the popular political activity in Indonesia contemporaneous with the IMF intervention, is represented as "severe civil unrest" which "cast [the program] off track."[256]

In the older setting, the representational practices employed permitted the exclusion of the subaltern from narratives of independence.[257] This representation in part helped to narrow the scope of possible results of the struggle for independence. By delegitimising the voices of those people other than the indigenous elite who had largely adopted the epistemology of the coloniser,[258] the potential for disruption, even in the context of the independence struggle was reduced. This was combined with background assumptions explored above about the supremacy of modern European institutional forms. Thus, even if the faces were to change, the institutional structure would remain the same as during the period of colonisation. In the contemporary context, the IMF's delegitimisation of popular protests about the impact of structural adjustment packages is replicating this process of excluding the masses, or the subaltern, in crucial issues of governance. The representation of the "root cause" of the crisis residing in a fundamental weaknesses of governance and a consequent need for externally imposed institutional reform bears a remarkable resemblance to the "civilizing

253. R. Guha, *On Some Aspects of the Colonialist Historiography of Colonial India*, *in* Guha & Spivak, *supra* note 247, at 43.
254. Otto, *supra* note 30, at 352.
255. *See, for example*, A Preliminary Assessment, *supra* note 191, at 11; and *Summing Up by the Chairman: Fund Supported Programs in the Asian Crisis, Executive Board Meeting, December 21, 1998*, *in* A Preliminary Assessment, *supra* note 191, at 143 [hereinafter *Chairman's Summary*].
256. A Preliminary Assessment, *supra* note 191, at 11.
257. Guha, *supra* note 253.
258. *Id.*

mission" of the colonial power, which, was the establishment of institutions of modern government.[259]

4.3.2. The culture of number

Similarly, in another of the discursive strategies used by the IMF to quell the fear of the potentially unruly populations, we again see resonances with a technology of colonial governance, this time with those strategies employed in the colonial project of "normalizing the pathologies of difference"[260] depicted in ethnographic accounts of the colonised.[261] Certain theorists have suggested that numerical representation was a key to this process of normalization. Something similar seems to be happening in IMF reports, though rather than numerical representation, we read a kind of economic representation.

An example of this can be found in a country report recently written and published by the Fund entitled *Nigeria: Experience with Structural Adjustment.*[262] This report is a typical example of an IMF publication based on information gathered during an Article IV consultation pursuant to the Fund's surveillance powers[263] and in it we can see a wave of anxiety about the durability of the procrustean bed of epistemological categories and institutional structures in which the people of the Third World have been placed.

Let me take a moment to describe how the report is structured. The report is divided into two parts of roughly equal size. The first half is narrative, the second a series of Appendices gathering various statistics about Nigeria. The narrative section begins with a map setting out the "Administrative Divisions" of which Nigeria is composed. Inset into the map is a smaller map depicting the section of Africa in which Nigeria is situate.

That the report begins with a map is curious. The map is largely superfluous to the report as it is not referred to either in the body of the text, nor in the Appendices. It has no legal value, as it is specifically accompanied by a disclaimer which says as much.[264] It is not depicted in such a way as to draw attention to

259. *See* footnotes 247- 253 above and accompanying text.

260. Appadurai, *supra* note 1, at 130.

261. To some extent, the colonialism / conditionality continuum, exists not only discursively, but also on a more prosaic, though no less important, level. This continuum includes the terms on which the former imperial powers trade with the former colonies and the dependence of the North on primary resources and commodities coming from the South which continues today. On the colonial roots of the unequal terms of trade, *See, generally,* Brown, *supra* note 96, at 347.

262. International Monetary Fund, Nigeria: Experience with Structural Adjustment (1997) [hereinafter *The Report*]. Whilst I am not dealing, at all with the World Bank in this paper, it is an interesting question about the extent to which World Bank reports in a similar vein perform similar discursive functions. An example of one such report is World Bank, El Salvador: Meeting the Challenge of Globalization (1996).

263. Articles of Agreement, *supra* note 18.

264. The disclaimer states, "The boundaries, colors, denominations and any other information shown on this map do not imply, on the part of The World Bank Group, any judgment on the legal status of

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contested boundaries, as the borders are depicted as unproblematically drawn and again, accompanied by a disclaimer. The impression the map creates, besides an odd, school-project sort of feel, is one of trying to emphasize the state as an entity. This strategy is consistent with the narrative representations in the text. Throughout the report, Nigeria is equated with the government of Nigeria. The people of Nigeria are represented as the homogenous subjects of a coherent entity.

On one level, the map seems to remind us that statehood is a pre-requisite to participation in the international community.[265] On another level, the map seems symbolic of a sustained stand-off (if unconscious) with an engagement with the problematics of the constitutive function played by the people of a state in the imagined idea of nation. Or, to use Appadurai's terms, the map seems symbolic of a non-engagement with the problematics of the hyphen in the middle of "nation-state."[266] It also seems determined not to engage with any sort of problematised notion of the extent of the power of the state. Whilst this may not be entirely surprising given the international legal discourse in which IMF law is situate and the relatively unproblematised and coherent notion of statehood which that discourse espouses,[267] it does seem related to the project of containing the potentially unruly populations of the Third World.

The emphasis on the entity of state is combined with the strategy of enumeration.[268] Even in the most narrative and ostensibly "scene setting" parts of the report, we are presented with a picture of the Nigerian state as synonymous with the Nigerian economy. In the nature and extent of the statistical appendices, which occupy about half the report, we see shadows of the colonial archive in its obsession with quantification and its reliance on

> the culture of number in which statistics became the authorizing discourse of the appendix (giving indirect weight to the verbal portion of the text).[269]

Through the means of the Fund report, economic discourse becomes the medium through which North communicates with South, for as described above, even the Fund has acknowledged that such reports are designed to give confidence to the international community.[270] In the process of creating such confidence, economic indicators, as expressed by the Fund, are used to translate the perceived

any territory, or any endorsement or acceptance of such boundaries. The Report, *supra* note 262, at viii.

265. Otto, *supra* note 30, at 341.
266. Appadurai, *supra* note 1, at 158.
267. *See, generally*, H. Charlesworth, *The Sex of the State in International Law*, *in* N. Naffine & R.J. Owens, (Eds.), Sexing the Subject of Law 251 (1997).
268. Said, *supra*, note 205, at 72.
269. Appadurai, *supra* note 1, at 115.
270. The IMF at Glance, *supra* note 174.

differences between North and South and to diminish the fears engendered by the implicit primordialism by which the South is characterised.[271]

Just as in the colonial setting numbers became a sort of metalanguage through which the colonial bureaucracy could read the colonies, conditionality becomes the medium through which such difference is "economised". Economics in modern relations between the First and Third Worlds is akin to number in the colonial setting which

> played a critical role in such dynamic nominalism [...], partly because it provided a shared language for information transfer, disputation and linguistic commensuration between center and periphery, and for debates among a huge army of mediating bureaucrats in India. Number was thus part of the enterprise of *translating* the colonial experience into terms graspable in the metropolis, terms that could encompass the ethnological peculiarities that various orientalist discourses provided.[272]

In the language of the report, we also see overtones of the pedagogical and disciplinary role of the "culture of number"[273] in the older setting. The document reads strangely like a school report, sometimes encouraging, sometimes chastising, emphasising reform and offering praise when the pupil has followed instructions. In instances where the instructions have been followed but the results not positive, extraneous circumstances are cited as the cause.[274] In this case, the statistical appendices provide a "normalizing frame, balancing the contestatory and polyphonic aspects of the narrative portions of the report."[275]

4.3.3. The creation of self knowledge

In addition to technologies which echo the prose of counter-insurgency and those techniques which resonate with the discursive technologies evident in ethonographic accounts of the colonised, there is another discursive practice taking place. The third technology at play in quieting the fear of the people which recalls the colonial setting, is the facilitation of self governance through the creation of self knowledge in terms of the relevant institutional categories.

271. Appadurai, *supra* note 1, at 142. It may also be that the perceived need for ever increasing markets and ever cheaper labour is one of the forces which compels the "expansion" of the "international community" and necessitates the presence of the mediating power of such bodies as the IMF. This is partly evidence by the link between the IMF and the abortive International Trade Organisation – one of the key goals in achieving international monetary stability was to facilitate international trade. On this link *See, generally,* Horsefield, *supra* note 26. It also seems likely that the force of migratory flows and fear of the physical effects of an unincluded state influence the shape of international institutions, including the IMF. *See, generally,* S. Sassen, Losing Control: Sovereignty in an Age of Globalization (1997). Unfortunately, I have not the space to consider this question here.
272. Appadurai, *supra* note 1, at 125-6.
273. *Id.*, at 115.
274. *See, for example,* the passage in the Report on the inflationary problems experienced by Nigeria. The Report, *supra* note 262, at 1.
275. Appadurai, *supra* note 1, at 126.

Self governance is achieved, according to Ericson and Haggerty, when "people accept the models and categories for action constructed by [...] institutions and use them to facilitate their activities."[276]

The production of a report in which the state which is subject to the report is legally bound to participate (such as the report on Nigeria produced as a result of a Part IV consultation) also creates a knowledge in the state of itself in the terms of what I call the logi-nomics[277] of the Fund.[278] The potential for the creation of such a self knowledge was enhanced when the Fund shifted to a much lower profile role in relation to its standby arrangements than it had previously taken. As discussed above, certain commentators have suggested this had the effect of greatly increasing the Fund's influence in member states through the relationships forged and consequent informational exchange between the international staff of the Fund and the national officials of the Finance Ministries.[279]

The creation in the state concerned of this knowledge of itself in the logi-nomics of the Fund may provide IMF functionaries and the North with the perception that economic discourse provides control not only over the state but also over the (governmental) narrative functionaries of the state through which control must be effected. The role in which the state is cast in this economic tragi-comedy is reminiscent of the role played by the indigenous bureaucracies of colonised states. Indeed, this relates to the argument made by subaltern scholars[280] that the elite indigenous leaders in the post-colonial era (or, at the end of overt colonial governance) embraced a nationalism shaped by the epistemology of the coloniser.[281] In a sense, it seems that in its emphasis on a particular kind of reporting, the IMF is trying to re-create that embrace. Though where that episteme centred on the post-enlightenment project of the calculating individual,[282] this time the set piece is more ideological.[283] Free-markets, minimal intervention

276. Ericson & Haggerty, *supra* note 20, at 95.

277. In creating the term "logi-nomics" I am trying to encapsulate some sense of the discursive use of economics to create an explanatory narrative. The "Logi" in the term is intended to denote both Logic and Logos.

278. Indeed, despite the optimism of those theorists such as Appadurai, *supra* note 1, who seem to suggest that there is some emancipatory potential in the indigenization of cultural forms in what might be termed a process of cultural homogenization, it may be that the logic of economics inhibits a concommitant indigenization in what seems to be a process of institutional homgenization. It would be interesting to consider this question further taking as a starting point the notion that markets are a cultural form, and as such, prone to the emancipatory potential described by Appadurai.

279. Strange, *supra* note 187, at 97.

280. *See* notes 247- 254 and accompanying text.

281. Otto, *supra* note 30, at 352.

282. Appadurai, *supra* note 1, at 142.

283. *See, for example,* British Prime Minister Tony Blair's New Labor & its adoption of "Third Way" policy, http://www.labour.org.uk/search/index.html; *The 'Third Way': A New Framework in Dispute*, The Korea Times, 13 October 1998.

and privatisation, whether depicted as favourable or unfavourable, are frequently portrayed as inevitable in the sweeping global economy.[284]

Thus the creation of particular kinds of self knowledge in the Third World works together with the prose of counter-insurgency and the culture of number to manage the fear of exit. This fear that the state will somehow drop out of the international system altogether is the second theme which I consider informs the encounter between the IMF and the Third World. This fear is based on anxieties about the interference of the people causing a rupture between the imagined community of nation and the international legal notion of state, and replicates fears detectable in older moments of encounter between North and South. Again, the discursive strategies, or technologies employed to allay the fears are problematic.

In my view, the reasons why the contemporary use of old strategies is problematic are similar to the reasons why the original strategies themselves were problematic. Recall that the project of the subaltern studies scholars began with the desire to include narratives of the oppressed in the dominant, elite narratives about Indian history, but that the project shifted to include a significant degree of analysis of the discursive practices which excluded those narratives in the first place.[285] The subaltern studies scholars gave us the insight that it was not simply an omission or oversight which lead to the exclusion of certain types of stories from Indian histories, but that the very possibility of difference itself was precluded from entering into those narratives because of the particular discursive strategies at work.[286] Similarly, I would suggest that the deployment in the contemporary context of those older technologies must have a chilling effect on the possibility of real difference existing in international economic law and institutions.

4.4. Managing the "post" in post-colonial

The elusive possibility of recognizing difference seems to recede even further when we extend our examination of those themes which underlie IMF discourse. For on further exploration, it seems that the two characteristics of many Third World states which might hold the promise of bringing difference into the international economic system are minimised through further discursive technologies in operation in IMF discourse about the Third World.

The two characteristics which may hold some potential for bringing difference into the international economic system are both made possible by the end of colonial rule. They are; the sovereign equality of Third World states with

284. *See, for example,* P. Hirst & G. Thompson, Globalization in Question (1996), and J.K Gibson-Graham, The End of Capitalism (as we knew it): A Feminist Critique of Political Economy (1996).
285. *See* note 247 and accompanying text.
286. Guha, *supra* note 245.

First World states and the democratic participation of the people in many Third World states. The two practices which I would suggest might negate whatever potential may lie in these two post colonial features of the Third World are; first the differential treatment of ostensibly equal sovereign states and, second, the disregard for democratic processes in the implementation of structural adjustment programs in the states of the "Third World". I wish to consider each of these practices in turn.

4.4.1. The differential treatment of sovereign states

In the both the country report on Nigeria, and in the report on the actions the Fund took during the Asian debt crisis, the state is seen as mediating between the Fund and the "people" in the implementation of necessary policy "adjustment." This function of mediation, as well as the pedagogical aspect of conditionality is evident in the following passage, taken from a chapter written by a past president of the World Bank:

> [I]t is crucial that external finance, technical assistance, and policy guidance be channeled in such a way as to be "owned" in the country [...]The local government may also need help in "selling" the program to local interest groups. This dialogue is both an exercise in persuasion and in helping participants track results and is especially critical at the beginning of a new government [...] Commitments have to be made in ways that do not preempt the governments in the eyes of its public before it is ready to tackle particular constituencies affected by each policy adjustment [...] The [international financial institutions] should coordinate amongst themselves [...] the approach to be followed during the life of the administration [...] The [international financial institutions] must consider [...] the "continuity" factors that go from one administration to the other [...] The IFI's should be prepared with a medium term package of investment projects, potential sector and adjustment programs, technical assistance and training, development strategy and policy analysis. Slices of that package should be introduced at the beginning of each new government and during the execution of the jointly defined cooperation program.[287]

One aspect of this mediation, as discussed earlier, is the creation of self knowledge in the state which is the subject of whatever report is being prepared. As explained above, this self knowledge is created in the terms of dominant institutional structure and facilitates ongoing self governance. However, despite the resonances in the role of the state with the role of indigenous bureaucracies in the colonial era in the mediation of the implementation of adjustment programs devised by the Fund, there are consequences in the fact of its statehood.

287. Ardito-Barletta, *supra* note 51, at 193.

Because international law is based on a paradigm of sovereign equality,[288] the contradictory roles of the state as both subject and object of economic adjustment must discursively be accommodated. In the instance of the report on Nigeria mentioned earlier, beginning the report with the symbol of the map, which emphasises a classical notion of Nigeria's territorial sovereignty, seems partly directed at such a notion. However, negotiating the contradiction in a state's ostensible equality with its different treatment requires further discursive work. Such work is partly performed by the "myth of normalcy" discussed above. For as well as containing the fear of entry by narrating the implicit primordialism of the South into something safe and containable, the myth of normalcy performs other discursive work.

As mentioned above, it is Tarullo's own thesis that the myth is one of the representational practices which permits the differential treatment of ostensibly equal sovereign states. Through a focus on the lack of political maturity and absence of economic health, the differential treatment of states becomes permissible, despite the conflicting rhetoric of sovereign equality. As mentioned above, according to Tarullo, IMF assistance to developing nations is part of a broader system of international economic law in which Third World nations are depicted as "ailing". Bad tasting medicine in the form of structural adjustment is then able to be administered to these ailing nations in order that they should get well and be "normal" members of the international community. The myth helps to naturalise a particular world view through the recurrent imagery of sickness and health and childhood, adolescence and adulthood. It helps to "explain" why, in the international legal order states may be attributed with sovereign equality, yet be treated differently.

Tarullo's purpose in exposing the myth of normalcy is largely as an heuristic device. However, it is important to note that the myth of normalcy has different effects depending on where one positions oneself. Tarullo is value neutral about the particular world view which characterises some nations as "sick" and others as well, his only concern is that one view is naturalised "of the many (perhaps endless) ways of Knowing the world, a single way is made Natural."[289]

This value neutrality is important for Tarullo's heuristic purposes, however, in this context, we should not avoid engaging in an important critique discussed earlier of the traditional/modern opposition which must be at work in the background of this worldview which is itself in the background of international economic law, and the implicit primordialism mentioned earlier on which such assumptions rest.[290]

288. For example, UN Charter Art 2(1) "The [United Nations] is based on the principle of the sovereign equality of all its members." The Charter of the United Nations, 26 June 1945 ATS-CD 1945 No 1.

289. Tarullo, *supra* note 21, at 548.

290. The other aspect of Tarullo's interpretation which is troubling is that in attributing the "order" in the international economic order to a conception of normalcy which he considers simply to be one of a myriad ways of understanding the world, he glosses over the problematics of the unequal enforce-

Again, this myth by which the problem of sovereign equality is discursively accommodated is likely to diminish the possibility of difference, this time because of the effect that the naturalization of a particular worldview has. As discussed in the methodology section, an important aspect of a discourse is its capacity to naturalize.[291] When ideas are naturalized, they are effectively rendered into background facts, and are taken as simply being true. Because these background facts are non-ideas, they are not called into question, even though already implicit in this knowledge is a particular theorization about how the world works and the nature of the people in it. The dominant myth or story which, in this case, characterises certain states as sick, and others as healthy, or certain states as adolescent and others as adult, is the foundation of institutional structures which in turn reproduce the myth and so limit possibilities for challenging that myth. [292]

4.4.2. Disregard for democratic process

The Fund itself is aware of the need to create the perception that the policies implemented at its demand are "owned" by the government of the state which shall be subject to the conditions. This is evident in the extract above in which international economic institutions are urged to

> consider the "continuity" factors that go from one administration to the other [...] The IFI's [International Financial Institutions] should be prepared with a medium term package of investment projects, potential sector and adjustment programs, technical assistance and training, development strategy and policy analysis. Slices of that package should be introduced at the beginning of each new government and during the execution of the jointly defined cooperation program.[293]

This "continuity" is aimed at ensuring that "external finance, technical assistance, and policy guidance be channeled in such a way as to be "owned" in the country...." This is explicitly directed at helping the "local government" to "sell [...] the program to local interest groups."[294] The extract goes on further to acknowledge the "problem" of democratic participation by citizens of the Third World:

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ment of international economic norms and the systematicity in that inequality. What may be "soft" international law for developed countries takes on a very different character when embodied in real conditions, attached to the provision of needed finance. Indeed, as I have argued above, in the context of IMF conditionality, the characteristics which make IMF exchange arrangements "soft" vis à vis the North are the very characteristics which legitimise the extension of the Fund's powers in relation to the South. *See* above, paragraph 3.3.3.

291. Doty, *supra* note 21, at 10; Tarullo, *supra* note 21, at 549. And *see, generally,* Gibson-Graham, *supra* note 284.

292. Tarullo, *supra* note 21.

293. Ardito-Barletta, *supra* note 51, at 193.

294. *Id.*

> Commitments have to be made in ways that do not preempt the governments in the eyes of its public before it is ready to tackle particular constituencies affected by each policy adjustment [...].[295]

The discursive technology employed to navigate this treacherous sea of democratic participation is a focus on subject identities. According to Roxanne Doty, a focus on subject identities is a discursive practice which permits the focus to be drawn away from talk about democratic processes.[296] The context in which Doty examines this question is the management of Third World poverty through the provision of foreign aid.[297] Doty draws a parallel between the management of the poor in the industrialised welfare state and the management of the Third World through foreign aid. I would suggest that similar technologies to those employed in those settings are employed by the Fund to manage the democratic thorn in conditionality's side.

Doty's argument is that foreign aid, like welfare institutions at a domestic level, enables "the administration of poverty, the surveillance and management of the poor."[298] As Giovanna Procacci has observed:

> Assisting the poor is a means of government, a potent way of containing the most difficult section of the population and improving all other sections.[299]

Indeed, as many scholars have noted, poverty is linked with danger both at a domestic and international level.[300] At the latter level, "failure to achieve practical improvements in the lives of people throughout the world would provoke unrest and bring political extremists to power."[301] However, as Doty points out, although fear was generated by widespread poverty in Europe after the Second World War, it was of an essentially different nature to the fear generated by the poverty in the Third World:

> In the case of Europe, poverty itself was the object of the concern, the thing to be eliminated. In the case of the "Third World", the subjects who personified poverty were the objects of concern. Eliminating poverty was secondary to "knowing" the mentality, the behaviours, the tendencies of those who were impoverished.[302]

Doty traces US policy on foreign aid to the Third World during the 1960s and finds implicit in those policies, fears of the "Third World" which are not dis-

295. *Id.*
296. Doty, *supra* note 21, Chapter 6.
297. *Id.*
298. *Id.*, at 129.
299. G. Procacci, *Social Economy and the Government of Poverty, in* G. Burchell, C. Gordon & P. Miller, (Eds.), The Foucault Effect: Studies in Governmentality 151 (1991).
300. Doty, *supra* note 21, at 129.
301. *Id.*
302. *Id.*, at 130.

similar to those fears articulated above, just visible under the surface of IMF discourse about the South. Foreign aid, she says:

> was not just for the purpose of alleviating poverty, but also for dealing with an international social danger. This was not a danger solely in the sense of the possibility that communism would provide an attractive alternative to capitalism for poverty-stricken countries, but something more profound that required the transformation of populations into certain kinds of subjects.[303]

Indeed, we have seen above, that the cold war aims of US foreign aid were barely concealed.[304] However, the fear implicit in the discourses surrounding foreign aid suggests that the danger was "not in poverty itself, but in the identities of those who were impoverished, those who could not take a long-range view of their situations."[305] Doty traces the way in which a focus on these subject identities enabled the US to ignore democratic processes in all sorts of ways in the implementation of US policy objectives in the Third World.[306]

Interestingly, and again hingeing on the capacity of a discourse to naturalise, part of this paternalism was made possible by the naturalisation of a sort of parent/child relationship between the First and Third Worlds. This occurred largely through a process by which one term in a pair of binary oppositions habitually merges in dominant understandings with its counterpart in another pair of oppositions.[307] In the case of US foreign aid, the merging of binaries matched "emerging peoples" with "children".[308]

Similarly, in my view, even though the IMF does not deal specifically with the problem of poverty,[309] it also explains many of the problems in the Third World by reference, if implicit, to the subject identities of the Third World. As I have described above, these subject identities are still depicted as unruly, unmodern, inflexible and, because of all of these things, disruptive and dangerous.[310] In my view, it is partly due to such depiction that the IMF is able, even in its own terms, to impose such strictures as it does impose on Third World states with little or no consultation with the state concerned. Consultation with the people (as opposed to the government) of the states the subject of the adjustment

303. *Id.*
304. *See* above, notes 90- 94 and accompanying text.
305. Doty, *supra* note 21, at 131.
306. *Id.*, Chapter 6.
307. Doty, *supra* note 21, at 10. And *see, generally,* Said, *supra* note 205. Additionally, many feminist theorists have pointed out the ways in which dualistic webs of understanding operate. Much work has been done in this vein by feminist approaches to the public/private divide and the way in which various descriptors, matched to the "public" in the public/private dualism, are valorised and merged together to devalorise those descriptors associated with the "private" (the domain of the woman). *See, for example,* Jennings, *supra* note 10.
308. Doty, *supra* note 21, at 134.
309. *See, for example,* A Preliminary Assessment, *supra* note 191, at 6, 7.
310. *Supra* paras. 4.2. and 4.3.

measures is simply excluded from the paradigm of IMF intervention. Evidence of this exclusion can be found in *A Preliminary Assessment*, the report discussed above on IMF intervention during the Asian debt crisis.

In that report, it repeatedly becomes clear that no consultation is involved in the implementation of what are far reaching, broad ranging policies with both social and economic ramifications.[311] Indeed, this is so, even though as we have already seen, by its own admission, the Fund's measures were directed at broad "weaknesses in governance."[312] The remarkable thing is not that consultation or ongoing self determination, or any other democratic processes are considered and then rationalised away, but that the possibility is not even within the paradigm of what the Fund is doing. I am drawn to the speculation that this would be considered unthinkable in conditions imposed on a First World country. Even if democracy were substantively ignored, in that context it would at least be dealt with formally (or cynically), if only to explain why it need not be respected.[313] In contrast, in imposing such a broad array of economic and social policies (which social policies are largely curtailments in social spending) on the Asian states the subject of the report, the issue is not considered problematic.

The people, and indeed the governments themselves, are repeatedly assumed to have no right to participate in these widespread changes to the political, social and economic landscape of their state. Discontent with the programs leading to civil unrest is attributed to a failure by the Fund and the state authorities effectively to communicate the benefits of the program:

> The communication of the rationale and substance of the programs may also have influenced the reaction to the programs, by both market participants and the general public. Several weaknesses in communication were apparent in the initial Asian crisis programs. One shortcoming in all three countries at the outset was the absence of an effective government economic spokesperson, available to explain the program to the public, underscore the government's support for it and respond to public concerns as events unfolded.[314]

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311. *See, for example*, Dwyer, *supra* note 11.
312. A Preliminary Assessment, *supra* note 191, at 6.
313. It is beyond the scope of this paper to consider the extent to which democratic processes are also being given short shrift in the first world. This claim has been the thrust of, at least part of the grass roots movements against such proposed instruments as the Multi-lateral Agreement on Investment ("MAI"). However, my point is that it would be interesting to compare the ways in which the "problem" of democracy is managed differently in the North compared to the South. My impression is that whereas in the South, a focus on subject identities permits the exclusion of democratic processes, in the North such exclusion is achieved through the use of technocratic discourse and what might be called the technicalization of the political sphere. I believe this technicalization is achieved largely through the use of economics. This question certainly merits further consideration. *See, generally*, Phillips, *supra* note 131.
314. A Preliminary Assessment, *supra* note 209, at 44.

Once again, the people are represented as having posed a threat to the success of "the programs"; political processes disrupting the smooth implementation of the Fund's objectives:

> The positive impact of the announcement of the program [in Korea] on exchange and stock markets was small and short lived....Confidence was undermined by doubts about the commitment to the program as the leading candidates for the December 18 presidential election hesitated to publicly endorse it.[315]

Indeed, even debate about the programs is depicted as unhelpful, and as somehow partly responsible for the limited success (in the Fund's terms) of the measures taken. In the summing up of the report by the Chairman, it is noted that:

> [...] [d]irectors discussed the several factors that had contributed to the protracted process of restoring confidence. Political uncertainties, and in some instances, early hesitations on the part of the authorities in implementing policies in line with the programs, had undermined confidence by casting doubt on the authorities' commitment to, and ownership of, the programs [...] Also, the debate that arose over the efficacy of the initial policy packages had exacerbated uncertainties.[316]

In my view, this complete exclusion of democratic processes as irrelevant to the implementation of what are essentially complete sets of governmental policies is permitted by the practices explored above. The practices being, in particular, those in which the subject identities of the relevant states (rather than the operating circumstances) become the focus of concern and which identities are constructed in the manner outlined above, as unruly, unmodern and incapable of self government.

Thus we can see again, that another possible opportunity for difference to enter into international economic discourse may be lost. In other words, whatever possibilities for difference the existence of democratic systems in countries the subject of conditionality might bring to the international economic system, that potential, or those possibilities are restricted. The restriction in this case occurs through the use of discursive mechanisms directed at facilitating a disregard for democratic processes and replicates processes used in earlier colonial encounters between North and South and also replicates processes used in a domestic setting to manage those at the margins of society.

5. CONCLUSIONS

Intuitively, the roles of states, international institutions, corporations, communities and individuals all seem to be less defined than they used to be, constantly

315. *Id.*, at 13.
316. Chairman's Summary, *supra* note 255 *in* A Preliminary Assessment, *supra* note 191, at 143.

in a process of transformation by global flows. Certain theorists have pointed to what they see as the emancipatory potential in such flows.[317]

However, it seems that when we tease out some of the processes encapsulated in the idea of globalization with the aim of studying discursive forms, the emancipatory potential said to exist in such flows becomes somewhat more elusive. For instance, as we can see from the foregoing, when we begin to study the discursive functions of the IMF, we discover that the world is perhaps less global than divided and that certain economic processes are not so much "now" as part of a colonial continuum in which rich and powerful nations still try to control and exploit those less powerful than themselves.

An analysis of the discursive practices engaged in by the Fund reveals the translational or (re)inscriptive role which the Fund plays in the relationship between North and South. That which is being mediated is a series of anxieties about the Third World which resonate with older fears. The apprehension hinges on difference, and in particular on the implicit primordialism of the South which is simultaneously manifested by the representation of the people of the Third World as unruly, disruptive and dangerous, and fuelled by that characterisation. The practices used to manage the fears both belie their colonial roots and replicate colonial relationships. In particular, the discursive practices used to manage the fears replicate colonial technologies aimed at normalizing what are perceived as "pathologies of difference."[318]

The International Monetary Fund participates in those representational practices and has increasingly taken a legal institutional form influenced by the perceived need for such practices. Such representational practices facilitate economic and political policies in which equal sovereignty (in its broadest sense) is denied to the states of the South, and democratic processes are excluded from the paradigm of North-South relations.

Most significantly, however, this process of normalization precludes the possibility of difference. This is where the real power of discourse lies, because within a particular discursive framework, the tools available to challenge a representation can themselves be drawn only from that framework.[319] Additionally, in the context of the relationship between South and North, challenges which do not disrupt the dominant paradigm established in the colonial era may prevent the promotion of substantive equality. This is because such challenges are

317. This potential has variously been said to lie in the creative process of indigenization of cultural forms or institutions (*see, for example,* Appadurai, *supra* note 1, Chapter 5), a counter-point to what some claim to be the "McDonaldization" of global culture. Others point to the possibilities which may lie the emergence of new cultural and social forms which arise as local articulations of global processes. *See, for example,* R. Buchanan, *Border Crossings: NAFTA, Regulatory Restructuring and the Politics of Place*, 2 Indiana Journal of Global Legal Studies 371 (1995); R. Coombe, *The Cultural Life of Things: Anthropological Approaches to Law and Society in Conditions of Globalization*, 10 American University Journal of Int'l Law and Policy 791 (1995); Sassen, *supra* note 271.

318. Appadurai, *supra* note 1, at 130.

319. Ericson & Haggerty, *supra* note 20, at 83.

working within, and are constrained by, the epistemology of the system which permitted the inequalities to exist in the first place.[320]

So, as the emancipatory potential in global flows becomes more illusory, and contemporary relationships between North and South are being played out along older, imperial lines, the question becomes: how do we disrupt what increasingly appears to be the colonial continuum?

The first thing we can do is answer what I refer to as the 'call to texts' with which I began this paper[321] and which urges us to study the discursive forms of institutions. In particular, we must extend the sphere of analysis of the post-colony to include what are often presented as 'new' or 'globalizing' flows. That is what this paper has sought to do. It has sought to unpack one of the multitude of processes stuffed into the suitcase we call globalization and to pay particular attention to the discursive forms of one institution of international economic law. And, as a result, in the promise of globalization, we have seen lurking the spectre of imperialism.

The dilemma of how to exorcise the spectre must become a question for another study and it is beyond the scope of this paper to engage with this question. However, as a starting point, one possibility may lie in locating sites in international economic discourse which have inherently disruptive potential, and tapping into that disruptive potential. One such site may exist in the powerful binary opposition between normalcy and difference through which international economic discourse performs part of its normalizing function.

The disruptive potential may lie in the very "oppositionality" contained in that opposition.[322] In directing our attention to oppositionality, we are recognising that what lies outside the boundaries of representation still exists, even though it may not be admissible on its own terms.[323] Armed with that recognition, we can then look for the presence of difference, or what is non-commensurable with the dominant narrative. The presence of difference "is marked by moments of disruption and discontinuity that are discernible at the periphery of mainstream historiography."[324] These moments of disruption always leave a "trace" of something "that cannot be completely erased by [...] assertions of universality."[325]

Thus after extending the sphere of analysis of the post-colony to reveal the spectre of imperialism, one way to begin to exorcise the phantom, may be to map the traces of difference which the homogenizing tendencies of globalization

320. *See, generally,* Otto, *supra* note 30.
321. Appadurai, *supra* note 1.
322. *See, generally,* J. Derrida, *Force of Law: 'The Mystical Foundation of Authority,* 11 Cardozo Law Review 420 (1990).
323. D. Chakrabarty, *Marx After Marxism,* Meanjin 421, at 426 (1993), as cited in Otto, *supra* note 30, at 344.
324. Otto, *supra* note 30, at 354.
325. Chakrabaty, *supra* note 323.

have not quite erased. Perhaps after such a project we may be able to grasp some of the elusive emancipatory potential conjured up by the multitude of flows we picture when we say globalization.