CHEAPER THAN A SLAVE: INDENTURED LABOR, COLONIALISM AND CAPITALISM

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> 'Do you mean slaves, sir?' Mr. Burnham winced. 'Why no, Reid. Not slaves –
> coolies. Have you not heard it said that when God closes one door he opens
> another? When the doors of freedom were closed to the African, the Lord opened
> them to a tribe that was yet more needful of it – the Asiatick.'[1]

I.   Introduction:

This essay takes up the charge of this conference is to expand critical spaces of international

law discourse by locating international law in a spatial and temporal context at a remove from its

ubiquitous mappings, and by interrogating the insistent claims of international law of its fidelity

to global justice. An enduring issue in evaluating claims of global justice is the question of

universality – the recognition of humanity and equal treatment in assignment and security of

rights of all human beings. By this essential measure, international law's claimed congruence

with the project of global justice remains an ideal rather than a reality. Central to this gulf

between promise and actuality is the enduring grammar of modernity's engagement with alterity -

[1] AMITAV GHOSH, SEA OF POPPIES 74 (2008).

a grammar that is not one of exclusion.[2] The "other" does not exist prior to engagement by circuits of power; to be "discovered," and then left out or left alone, excluded from operations of power. The subject does not exist prior to subjection. The "other" was and is produced by and the through engagement. This engagement forms a three-pronged matrix: engulfment/exception/subordination. The "other" is engulfed in operations of modernity, located in zones of exception, and positioned in states of subordination. It is through such engulfment that bodies and spaces are placed on the other side of universality, beyond the scope of global justice. Perhaps no other phenomenon evidences this phenomenon than the forms of un-free labor that unfolded concomitant to the rise and consolidation of capitalism. In this context, the deployment of indentured labor from colonial India in plantation colonies across the globe is a particularly evocative story. This story locates modern international law within the spatial and temporal matrix of colonialism and empire. It also finds international law unavoidably entangled with hierarchical positionings of bodies and spaces by global operations of capitalism. Finally, this story centers the relationship between terms of labor under capitalism with questions of global justice.

The construct of free wage-labor, envisaged as consensual sale of labor-power by an autonomous and unencumbered individual in a market of juridical equals governed strictly by economic laws of supply and demand, is the bedrock of the purportedly universal category of labor under capitalism. However, this is an instance, yet again, of the particular masquerading as the universal - the hallmark of modernity. It also underscores the divergence between the

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[2] For a critique of the "exclusion" thesis, particularly as it animates conventional analyses of modern construction of race, see DENISE FERREIRA DA SILVA, TOWARDS A GLOBAL IDEA OF RACE (2007).

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mythologies and historical operations of capitalism. Marx famously claimed that "the tendency to create the *world market* is directly given in the concept of capital itself," and that it was "the universalizing tendency of capital, which distinguishes it from all previous stages of production."[3] However, after positing that capital tears down "all the barriers which hem in the development of the forces of production," he recognized that capital's getting "*ideally* beyond" limits, does not mean that it "*really* overcome[s]" and "since every barrier contradicts its character, its production moves in contradictions which are constantly overcome but just as constantly posited."[4] Indeed, in the face of "barriers in its own nature," capital's tendency towards universality "will drive towards its own suspension."[5] Nowhere is such suspension more clear than in the enduring coexistence of multiple forms of un-free labor with wage-labor under capitalism. This article aims to explore this coexistence by training on the intersection of colonialism, capitalism and indentured servitude. It does so by looking at the relationship between capitalism and un-free labor through the prism of indentured labor from colonial India deployed throughout plantation colonies of the Caribbean, East and Southern Africa, and the South Pacific between 1834 and 1920. This saga unfolded within the matrix of empire and imperialism.

II. Structural Scaffolding of Colonial Indentured Labor:

The structural scaffoldings of the age of colonial expansion of Europe made the phenomenon of colonial indentured labor possible. These include accumulation by dispossession that is an

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[3] KARL MARX, GRUNRISSE 408, 540 (1973).
[4] *Id*., at 410
[5] *Id*.

endemic feature of capitalism, incipient modern international law that institutionalized a system of differential sovereignty, the structure of colonial legal regimes that disciplined colonized bodies and made those available for deployment in global labor markets, and restructuring of the economy of the colony that rendered it subservient to circuits of global accumulation.

A. Capitalism and Accumulation by Dispossession

Foundational to the relationship of un-free labor with capitalism is the process of accumulation by dispossession - the enduring reliance of capitalism on non-market legal and extra-legal coercive forces to facilitate accumulation of value and asymmetrical distribution of economic gain and pain.[6] The construct of accumulation by dispossession builds on the classic category of primitive accumulation - appropriation of value by force at the stage of incipient capitalism and critical to the emergence of "free" labor and "free" markets. As a prerequisite to the desired positioning of bodies and spaces, legal and extra-legal coercion made capital accumulation possible. Coercion triggered the genesis of capitalism – availability of "free" labor with no other means of livelihood except their labor to be sold in a nascent "free" labor market, and the availability of capital to be deployed in the incipient manufacturing industries. Contrary to mythologies of classical economics, this is a realm outside the market governed by "pure" economic laws - a zone where this separation is effectuated through direct extra-economic force

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[6] This section draws from Tayyab Mahmud, *"Surplus Humanity" and Margins of Legality: Slums, Slumdogs and Accumulation by Dispossession*, 14 CHAPMAN L. REV. 1 (2010). For detailed analyses of accumulation by dispossession, *see* MICHAEL PERELMAN, THE INVENTION OF CAPITALISM: CLASSICAL POLITICAL ECONOMY AND THE SECRET HISTORY OF PRIMITIVE ACCUMULATION (2000); Jim Glassman, *Primitive Accumulation, Accumulation by Dispossession, Accumulation by 'Extra-Economic' Means*, 30:5 PROGRESS IN HUMAN GEOGRAPHY 608 (2006); DAVIS HARVEY, THE NEW IMPERIALISM 137-182 (2003); Michael Perelman*, Primitive Accumulation from Feudalism to Neoliberalism*, 18 (2) CAPITALISM NATURE SOCIALISM 44 (2007).

residing in the coercive power of the state and the law. Two domains of extra-economic power were critical to this process – coercive laws that forced subsistence producers into the "free" wage labor market, and colonial plunder that made capital available for investment. Colonialism, facilitated by an elaborate reordering of international law, filled the coffers of the fledgling mercantile class of Europe and generated the financial resources to engage the "freed" labor in production governed by profit maximization.

The genesis of capitalism in un-free labor is reflected in the fact that the use of the word *capital,* to signify capitalism as a new mode of production, first came into vogue in the era of capital-intensive but slave-hungry Antillean sugar plantations. Enclosure Acts and Game Laws of England are early examples of coercive uses of law to dispossess rural farmers, hunters, and other subsistence producers, forcing them to seek a livelihood in the "free" wage market. Later evolution of capitalism demonstrates that primitive accumulation is an ontological condition of capitalism, rather than just its historical precondition. Since its origin, capitalism has been a global phenomenon that co-opts rather than displaces non-capitalist modes of production, and results in uneven development of different geographical zones within its ambit. The enduring nature of accumulation by dispossession can be seen in the various forms of social capital that are required by capital but not paid by it. Recent examples include publically funded education and infrastructure, gendered and often racialized household and reproductive labor, instrumental use of race, class, and nationality in immigration and land-ownership laws that consolidated agro-capital in California, and ever new appropriations of the commons for private accumulation. In sum, neither capitalism as a whole nor the capital-labor relationship on which it depends can be reproduced purely through market relations. Both require supplementary modes of reproduction, regulation and governance—including those provided by coercive power of the

state. Deployment of indentured labor from colonial India substantiates this proposition.

Accumulation by dispossession also produces a reserve army of labor. While the canonical "creative destruction" [7] of capitalism destroys traditional entitlements and subsistence economies, and estranges direct producers from their means of labor, all those dislocated are not absorbed in the new production process. This unabsorbed labor is the so-called "surplus humanity"[8] - populations separated from their non-capitalist means of subsistence but not integrated into the productive circuits of wage labor on a stable basis. This unabsorbed labor may be "free," but is suspended between the shrinking subsistence economy and the volatile formal markets. Colonial restructuring of the Indian economy created such a surplus humanity, thus furnishing a push factor for the deployment of indentured labor. Besides a push factor, however, such a deployment also needed an attendant global legal frame. Modern international law and its turn to positivism in the nineteenth century furnished the enabling frame.

B. Colonialism and Modern International Law

The project of global justice has had to unavoidably contend with parameters of global engagement laid out by international law. Colonialism and its aftermath demarcate the field of interface between this project and its parameters because the emergence of modern international law is intimately braided with the rise and consolidation of modern colonialism.[9]

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[7] *See* JOSEPH A. SCHUMPETER, CAPITALISM, SOCIALISM AND DEMOCRACY, 81-86 (1950) (1942).

[8] Mike Davis, *Planet of Slums: Urban Involution and the Informal Proletariat*, 26 NEW LEFT REV. 5, 23 (2004).For a detailed discussion, see Mahmud, *"Surplus Humanity", supra* note *6, at* 16-19.

[9] This section draws from Tayyab Mahmud, *Colonial Cartographies, Postcolonial Borders, and Enduring Failures of International Law: The Unending Wars Along the Afghanistan-Pakistan Frontier*, 36 BROOKLYN J. INT'L L. 1, 8-

Expansion of colonialism triggered a search for a legal framework that could legitimize the securing of a range of rights and privileges from colonized polities. Recognition of some measure of sovereignty of the colonized was warranted by the need to ensure that the terms of colonial treaties would be honored, even though the terms of these treaties betrayed a lack of sovereignty and equality. This tension raised anew the question of what entities were eligible to be regarded as proper subjects of international law. In response, international law jettisoned classical natural law constructs of sovereign equality, and turned to positivism based on actual practice of states. Frames of *jus gentium*, or principles of law common to all peoples, yielded to positivist ontology of law and sovereignty. This sharp turn yielded quick results. By the mid-nineteenth century, a new construct of differential sovereignty was entrenched in international law – sovereigns and international subjects were not alike in terms of rights, eligibilities, and competencies. Several classes of sovereign states were constituted—some fully sovereign, others partly so; some part of the "family of nations," some outside it; some entitled to domination, others with minimal legal competence. A sliding-scale of sovereignty emerged, stretching from "Great Powers" to colonies, with suzerains, protected states, and protectorates positioned in between. The differential sovereignties and the attending sliding scale of legal eligibility and personality of territories were legitimized by the infamous discourse of civilization.[10] Sanctioned by international law that privileged European practices and interests, Europe made demands upon non-European formations and enforced upon non-European territories the laws and practices by which they were

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17 (2010). For detailed analyses of the colonial roots of modern international law, *see* Antony Anghie, *Francisco de Votoria and the Colonial Origins of International Law*, *in* LAWS OF THE POSTCOLONIAL (E. Darian-Smith & Peter Fitzpatrick eds., 1999); MARTTI KOSKENNIEMI, THE GENTLE CIVILIZER OF NATIONS: THE RISE & FALL OF INTERNATIONAL LAW (2001); Peter Fitzpatrick, *Latin Roots: The Force of International Law as Event*, in EVENTS: THE FORCE OF INTERNATIONAL LAW (Fleur Johns, Richard Joyce & Sundhya Pahuja eds., 2010); Antony Anghie, *Finding the Peripheries: Sovereignty and Colonialism in the Nineteenth-Century International Law*, 40 HARV. INT'L L.J. 1 (1999); ANTONY ANGHIE, IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW (2004).

henceforth to be governed. These coordinates of sovereignty complemented the hierarchical structure of the global political economy of the colonial era. The colonies were thus engulfed by the new global order on exceptional terms of differential sovereignty and thus positioned in a state of subordination.

These constructs of modern international law, assembled against the backdrop of colonialism, sutured the colonized world with the capitalist world economy on terms that facilitated deployment of un-free labor from the colonies. Where international law furnished the enabling global frame, colonial law within the colonies secured the subordination locally.

B. Colonial Legality and Subordination

The engulfment of colonized spaces and bodies by the laws of the colonizer scripted the terms of incorporation of the colonized into modernity. Indeed, the primary constitutive ground of modern law is Europe's colonial encounter with its racialized "other."[11] In the colony, law congealed epistemic, structural, and physical violence. The colonial regimes of engulfment of the other aim to render the subjected body "more obedient as it becomes more useful."[12] Here the role of law becomes critical. Recognition of the centrality of law to the colonizing process stands

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[10] For details, *see* GERRIT W. GONG, THE STANDARD OF 'CIVILIZATION' IN INTERNATIONAL SOCIETY (1984); SIBA N. GROVOGUI, SOVEREIGNS, QUASI-SOVEREIGNS, AND AFRICANS: RACE AND SELF-DETERMINATION IN INTERNATIONAL LAW (1996).

[11] This section draws upon Tayyab Mahmud, *Law of Geography and the Geography of Law: A Post-Colonial Mapping*, 3 WASH. U. JURIS. REV. 64, 79-81 (2010). For detailed analyses of the relationship between colonialism and modern law, *see* PETER FITZPATRICK, THE MYTHOLOGY OF MODERN LAW (1992); PETER FITZPATRICK, MODERNISM AND THE GROUNDS OF LAW (2001); PETER FITZPATRICK, LAW AS RESISTANCE: MODERNISM, IMPERIALISM, LEGALISM 23 (2008); DOMENICO LOSURDO, LIBERALISM: A COUNTER HISTORY (2011).

[12] MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON 137-38 (Alan Sheridan trans., 2d ed. 1979).

widely acknowledged.[13] Law in the colony aimed to "reduce . . . to civility" those who had "no skill of submission."[14] Violence was deemed a vital instrument of colonial progress,[15] with law furnishing "the cutting edge of colonialism."[16] Violence in general, and the violence of law in particular, were seen as playing "the leading part in the creation of civilization."[17] Colonial rule deemed "[o]ur law . . . a compulsory gospel which admits of no dissent and no disobedience."[18] This overt concert of law and violence has been aptly characterized "*lawfare*, the effort to conquer and control indigenous peoples by the coercive use of legal means."[19] The geo-legal space of colonialism brings into sharp relief "the blood that has dried on the codes of law."[20]

The colonized other, deemed an error of arrested evolution, was prescribed corrective norms of a purportedly higher rational order. This "soul-making"[21]colonial project entailed, among other things, the entrenchment of a layered legal order. First, the colony was inserted into the global legal system of hierarchically differentiated sovereignties. Second, metropolitan law was transplanted to the colony, supplemented by exceptions that ensured that coercion displaced hegemony as its animating force. Third, through selective recognition, malleable norms of the colonized were truncated and reconstituted as fixed "customary law."

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[13] *See* Sally Engle Merry, *From Law and Colonialism to Law and Globalization*, 28 LAW & SOC. INQUIRY 269-90 (2003); NATHAN J. BROWN, THE RULE OF LAW IN THE ARAB WORLD: COURTS IN EGYPT AND THE GULF (1997); CONTESTED STATES: LAW, HEGEMONY, AND RESISTANCE, (Mindie Lazarus-Black & Susan Hirsch eds., 1994); RONEN SHAMIR, THE COLONIES OF LAW: COLONIALISM, ZIONISM, AND LAW IN EARLY MANDATE PALESTINE (2000).

[14] J. AXTELL, THE INVASION WITHIN: THE CONTEST OF CULTURES IN COLONIAL NORTH AMERICA 131, 271 (1985).

[15] ASHIS NANDY, THE INTIMATE ENEMY: LOSS AND RECOVERY OF SELF UNDER COLONIALISM 69 (1983).

[16] MARTIN CHANOCK, LAW, CUSTOM, AND SOCIAL ORDER: THE COLONIAL EXPERIENCE IN MALAWI AND ZAMBIA 4 (1998).

[17] ERIC STOKES, THE ENGLISH UTILITARIANS AND INDIA 294 (1959).

[18] R. C. J. COCKS, SIR HENRY MAINE: A STUDY IN VICTORIAN JURISPRUDENCE 87 (1988). *See also* RADHIKA SINGHA, A DESPOTISM OF LAW: CRIME AND JUSTICE IN EARLY COLONIAL INDIA (1998).

[19] J. L. Comaroff, *Colonialism, Culture, and the Law: A Foreword*, 26 LAW & SOC. INQUIRY 306 (2001).

[20] JAMES MILLER, THE PASSION OF MICHEL FOUCAULT 289 (1993) (quoting Michel Foucault).

[21] Benita Perry, *Problems in Current Theories of Colonial Discourse*, *in* THE POST-COLONIAL STUDIES READER 39 (Bill Ashcroft et. al., eds., 1995).

Attempts to modernize the colony while keeping its imagined traditional lineaments in place produced a geo-legal space that rather than being a homogenous whole, was fractured—multiple normative orders laid claim over the same space. This fracture complemented uneven development and the asymmetries that inevitably arise out of spatial exchange relation orchestrated by global capital accumulation.[22] While the phenomenon of unevenness, and synchronicity of the non-synchronous, is intrinsic to capitalism, this assumed an exaggerated form in colonial contexts where diverse modes of production were harnessed in the service of global accumulation. One particular result was the accelerated dislocation of subordinated bodies across spaces and identities. Legal orchestration and regulation of the creation and deployment of different forms of labor in and between colonies formed the essence of this phenomenon.

Colonial India furnished a fecund site the Benthamite project of reform, rationalization and codification of common law.[23] In the process laws of the colonizer adapted to imperatives of colonial domination with the balance of law and order yielding to priority of order. The resulting materiality of colonial legality shaped both its norms and institutions. If land-tenure systems and varieties of un-free labor formed part of the normative apparatus, police and prisons evidenced the institutional apparatus. The management of forced labor formed part of the concern for Order. Pre-colonial modes of forced labor far from being abolished, were reinforced. Drafting forced labor for public works soon graduated to mobilization of labor for plantations owned by

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[22] For detailed analyses of uneven development, see NEIL SMITH, UNEVEN DEVELOPMENT: NATURE, CAPITAL AND THE PRODUCTION OF SPACE (1984); DAVID HARVEY, THE LIMITS TO CAPITAL (1982).

[23] For detailed analyses of the colonial project to reshape colonial India, see KARUNA MANTENA, ALIBIS OF EMPIRE: HENRY MAINE AND THE ENDS OF LIBERAL IMPERIALISM (2010).

Europeans. Indeed, in colonial India, indentured labor was first introduced in the tea plantations within the colony itself.[24]

Categories and constructs of modern law were deployed differentially in the colonies. While categories of contract and property were being refashioned in core economies to constitute free-labor, concurrent practices of forced inter-colony deployment of indentured labor also employed common law doctrines of property and contract in modified forms. Modern law refracted by exigencies of colonial rule, thus, was a critical facilitator of production and deployment of indentured labor from colonial India, and, generally of the coexistence of capitalism and un-free labor. Elaborate administrative and regulatory regimes were fashioned to manage every aspect of the phenomenon. These regimes lent the color of law to the indentured labor system. But this was a legality bearing colonial exceptions that braided subordination with incorporation.

C. Colonial Reconstruction of Indian Economy

The global operation of capitalism since its inception created the field of possibility for overseas deployment of indentured labor from colonial India. The intersection of colonialism and global capitalism radically transformed India's relationship with the world.[25] For India, engagement with the "beyond" was not new. Intercontinental migrations, conflicts, and trade across the Indian Ocean and the Mediterranean and South China Sea zones were centuries old

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[24] For details, see Ranajit Das Gupta, *Structure of the Labor Market in Colonial India*, 16 ECON. & POL. WEEKLY 1781 (Nov. 1981); Ranajit Das Gupta, *From Peasants and Tribesmen to Plantation Workers: Colonial Capitalism, Reproduction of Labor Power and Proletarianisation in North East India, 1850s to 1947*, 21 ECON. & POL. WEEKLY, 2 (Jan. 1986); J. C. JHA, ASPECTS OF INDENTURED INLAND EMIGRATION TO NORTH-EAST INDIA, 1858-1918 (1996).

before Vasco de Gama landed in Calicut. Colonialism and its aftermath did not change the fact of engagement with the "beyond," but rather the terms of this engagement. People had traded and interacted, prompted by needs and desires dictated by their respective grounded contexts. Those situated "beyond" were alternatively deemed equal, lesser, strange or perhaps even savage. But no one claimed the mandate to change the other; there was no burden to rescue, reform, and civilize. Insertion of the colony in global capitalism transformed the terms of engagement in foundational ways. Henceforth, interactions with the "beyond" were mandated and orchestrated by needs and desires emanating from oceans away. Who will interact with whom, when, and how became the project of elaborate legal regimes designed and enforced by colonial powers. Now any gains from the interactions were not to accrue to the colony but were to be siphoned off. Systems of production and attendant social relations were transformed. Global accumulation coordinated different modes of production to make extraction "efficient." Commoditization of goods and labor was grafted onto non-capitalist modes and relations of production. What was to be produced, by whom, and under what regime of ownership were regulated in great detail.

The British East India Company secured concessions to trade with India in 1617, established political control over the fertile Delta of Bengal in 1757, and began the process of colonizing India.[26] Over the next century, colonial rule in India expanded westward, reached its western reaches by 1850, and ended in 1947. Over the intervening two hundred years, colonial rule

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[25] This section draws upon, Mahmud, *Law of Geography*, *supra* note _ at 84-86.

[26] For detailed studies of the East India Company and colonial restructuring of Indian economy, see NICK ROBINS, THE CORPORATION THAT CHANGED THE WORLD: HOW THE EAST INDIA COMPANY SHAPED THE MODERN MULTINATIONAL (2006); H. V. BOWEN, THE BUSINESS OF EMPIRE: THE EAST INDIA COMPANY AND IMPERIAL BRITAIN, 1956 -1833 (2008); SUDIPTA SEN, EMPIRE OF FREE TRADE: THE EAST INDIA COMPANY AND MAKING OF THE MAKING OF THE COLONIAL MARKETPLACE (1998); SUDIPTA SEN, EMPIRE OF FREE TRADE: THE EAST INDIA

transformed the agricultural and manufacturing economies of India to serve the interests of the colonizers. In order to suture Indian economy with global circuits, first foundational restructuring of property regimes was undertaken. Existing system of landholding was transformed by turning pre-colonial revenue collectors into landowners, and by disarticulating landownership from group claims and community rights. Revenue was henceforth collected in cash rather than in kind. Commodification of agriculture and use of credit by farmers ensued. Rather quickly, cash crops displaced staples and many lands passed into the hands of creditors, forcing dispossessed peasants to become available as a reserve army of labor. It was from this dispossessed multitude that indentured servants were recruited.

The ruination of indigenous manufacturing precluded domestic productive absorption of the dispossessed within India. The story of cotton, a major component of India's pre-colonial agriculture and manufacturing, illustrates this impact of colonialism evocatively.[27] India, historically a major producer and exporter of textile, exported over 100 million yards annually in 1700, and seventy-eight percent of all Asian imports to Britain—primarily textiles—came from India. Following colonial restructuring that included a ban on import of Indian white calico. Indian textile exports fell rapidly. From being a textile exporter, India was turned into an exporter of raw cotton, and British exports of textiles to India grew. As a result of these dramatic changes

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COMPANY AND THE MAKING OF THE COLONIAL MARKETPLACE (1998); C.A. BAYLY, INDIAN SOCIETY AND THE MAKING OF THE BRITISH EMPIRE (1988).

[27] This section draws upon Mahmud, *Law of Geography*, supra note _, at 88-90. For detailed studies of the role of cotton in colonial economies, *see* THE FIBRE THAT CHANGED THE WORLD: THE COTTON INDUSTRY IN INTERNATIONAL PERSPECTIVE, 1600-1990S (D. A. Farnie & D. J. Jeremy eds., 2004); ANDREW HEROD, GEOGRAPHIES OF GLOBALIZATION: A CRITICAL INTRODUCTION 70 (2009); D. A. FARNIE, THE ENGLISH COTTON INDUSTRY AND THE WORLD MARKET, 1815-1896 (1979); PAUL BAIROCH, ECONOMICS AND WORLD HISTORY: MYTHS AND PARADOXES (1993).

in trade patterns, millions of jobs were lost in the Indian handloom sector, and by 1896 India produced only eight percent of cloth consumed internally.

This record shows that the role of colonialism in accumulation by dispossession was a direct one. As cotton and other commercial crops gained ascendency, farmers switched from producing subsistence crops to cash crops, grain output declined steadily, life expectancy fell and population growth turned negative in many regions. As a result of the disarticulation between domestic production and distribution, there was no increase in India's per capita income from 1757 to 1947. The colonial restructuring of the Indian economy, particularly the subordination of every aspect of the colony's economy to the needs of the colonizers, produced the dispossessed farmers and workers that became available for induction into the global circuit of indentured labor.

III. Indentured Labor from Colonial India:

Between 1834 and 1937, 30 million Indians left India as part of the global division of labor, and just under 24 million returned.[28] The indenture system formed part of the "unfree" labor systems that is deemed "an anomalous necessity" of the early stage of global expansion of

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[28] KINGSLEY DAVIS, THE POPULATION OF INDIA AND PAKISTAN 99 tbl.35 (1951). This section draws upon Tayyab Mahmud, *Migration, Identity, and the Colonial Encounter*, 76 OREGON L. REV. 633, 639-656 (1997); Tayyab Mahmud, *Colonial Migrations and Post-Colonial Identities in South Asia*, 23 J. OF SOUTH ASIAN STUD. 87 (2000). For detailed studies of the colonial indenture system, see DAVID NORTHRUP, INDENTURED LABOR IN THE AGE OF IMPERIALISM, 1834-1922 (1995); COLONIALISM AND MIGRATION: INDENTURED LABOR BEFORE AND AFTER SLAVERY (P. C. Emmer, ed., 1986); BRIJ V. LAL, GIRMITIYAS: THE ORIGINS OF THE FIJI INDIANS (1983); WALTON LOOK LAI,

capitalist production and the resulting articulation of different modes of production.[29] Viewed on

a global scale, "unfree" labor was the predominant form of labor control until much later than

might be supposed.[30] The European mercantile powers underwrote their trading empires by the

production of tropical commodities and precious metals, and introduced mass slavery and

coerced labor to the Americas to sustain this production. The triangular trade between Europe,

Africa, and the Americas was the precursor of modern global capitalism. The main successor to

modern slavery was the institution of indentured labor, which is often portrayed as a bridge

between slavery and modern forms of contract labor.   This switch in the form of labor also

involved a switch in the source of the labor supply from Africa to Asia. With this switch in

location, another continent, previously linked only by trade, was more firmly integrated into the

modern world system.

The abolition of slavery and the emancipation of the slave population marked a turning point

in the history of the colonial plantations in the West Indies. The British government passed the

Act of Emancipation in 1833, freeing a slave population of around 665,000 in the British

Caribbean.[31]   In the following years, slavery was similarly abolished in the French (1848),

Danish (1848), and Dutch (1863) Caribbean. The regional plantation economy, which held a key

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INTENTURED LABOR, CARIBBEAN SUGAR: CHINESE AND INDIAN MIGRANTS TO THE BRITISH WEST INDIES, 1838-1918
(1993); INDENTURED LABOR IN THE BRITISH EMPIRE, 1834-1920 (Kay Saunders, ed., 1984).

[29] See generally ROBERT MILES, CAPITALISM AND UNFREE LABOUR: ANOMALY OR NECESSITY (1987).

[30] Even in Europe, "free" labor (conceived in the sense of the freedom to choose one's employer) did not become a
dominant legal ideal until the late eighteenth century and not the dominant paradigm until the nineteenth century. See
generally ROBERT J. STEINFELD, THE INVENTION OF FREE LABOR (1991); PHILIP D. CURTIN, THE RISE AND FALL OF
THE PLANTATION COMPLEX: ESSAYS IN ATLANTIC HISTORY, (1990); ORLANDO PATTERSON, SLAVERY AND SOCIAL
DEATH: A COMPARATIVE STUDY (1982).

[31] For details, see ROBIN BLACKBURN, THE OVERTHROW OF COLONIAL SLAVERY, 1776-1848 (1988); ERIC FONER,
NOTHING BUT FREEDOM: EMANCIPATION AND ITS LEGACY (1983); WILLIAM A. GREEN, BRITISH SLAVE
EMANCIPATION: THE SUGAR COLONIES AND THE GREAT EXPERIMENT 1830- 1865 (1976); B.W. HIGMAN, SLAVE
POPULATIONS OF THE BRITISH CARIBBEAN 1807-1834 (1984).

position in each respective imperial political economy, centered on labor-intensive plantation agriculture, especially sugar production.[32] Emancipation caused an immediate crisis for the planters, who perceived their success as being founded upon a critical ratio between abundant land and cheap labor--a ratio which slavery had served well and which after abolition needed to be replaced by "a new system of slavery."[33] Initially, the planters secured the right to the labor of ex-slaves for twelve years, who would be bound in forms of mandated apprenticeship.[34] Then planters attempted to employ ex-slaves as formal wage labor. Planters' unchanged attitudes towards ex-slaves, however, ensured a rapid post-emancipation movement of ex-slaves away from estates. After abolition, sugar production dramatically decreased and the market value of Caribbean estates declined. Planters saw the labor shortage as the heart of the problem, and soon initiated various immigration schemes, including the introduction of Africans "liberated" from other nations' slave ships and brought directly from other Caribbean islands or Africa. For various reasons, the planters found none of these groups suitable. The planters demanded, instead, a wholly controllable, extremely cheap workforce that was accustomed to agricultural labor. Enter colonial India. Following the Battle of Plassy in 1757, the British East India Company gained control of Bengal, which was progressively expanded towards Central and Southern India. By the end of the eighteenth century, the East India Company was deploying Indian labor outside India. It was in this context that in the 1820s sugar planters in Reunion and Mauritius experienced some success in importing laborers from India whose "cost [was] not

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[32] For detailed accounts of sugar plantations, see J. H. GALLOWAY, THE SUGAR CANE INDUSTRY: AN HISTORICAL GEOGRAPHY FROM ITS ORIGINS TO 1914 (1989); MATTHEW PARKER, THE SUGAR BARONS: FAMILY, CORRUPTION, EMPIRE, AND WAR IN THE WEST INDIES (2011); KAY DIAN KRIZ, SLAVERY, SUGAR AND THE CULTURE OF REFINEMENT (2008); SIDNEY W. MINTZ, SWEETNESS AND POWER: THE PLACE OF SUGAR IN MODERN HISTORY (1985).

[33] I adopt the phrase from the title of HUGH TINKER, A NEW SYSTEM OF SLAVERY: THE EXPORT OF INDIAN LABOUR OVERSEAS 1830-1920 (1974).

one-half that of a slave."[35] Learning of such success, John Gladstone, representing Caribbean planters, contacted an English recruiting firm with a presence in Calcutta regarding the possibility of similarly obtaining Indian labor for the Caribbean.[36] The response of the firm was encouraging: "We are not aware that any greater difficulty would present itself in sending men to the West Indies . . ., the natives being perfectly ignorant of the place they go to or the length of voyage they are undertaking."[37] Thus started the systematic introduction of Indian indentured labor to the plantation colonies of the Caribbean, and later to East Africa, South Africa, and the South Pacific.

Contingent constructions of subjects and identities were pivotal to this changing pattern of labor migration within the increasingly global division of labor. Besides providing cheap labor, the Indian workers were to be the medium through which planters would reassert control and discipline over Afro-Caribbean workers. The unfolding of this stratagem was accompanied by enabling constructions of identities of both African and Indian labor. Planters' claims that the

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[34] TINKER, *supra* note_ at 2.

[35] S.G. CHECKLAND, THE GLADSTONES: A FAMILY BIOGRAPHY 1764-1851, at 318 (1971).

[36] The text of the January 1836 letter read:

> You will probably be aware that we are very particularly situated with our Negro apprentices in the West Indies ... and that it is a matter of doubt and uncertainty how they may be induced to continue their services on the plantations after their apprenticeship expires in 1840.... It is of great importance to us to endeavor to provide a portion of other laborers, whom we might use ... [to] make us, as far as it is possible, independent of our negro population; and it has occurred to us that a moderate number of Bengalees, such as you were sending to the Isle of France [Mauritius], might be very suitable for our purpose.

Quoted in Madhavi Kale, *Projecting Identities: Empire and Indentured Labor Migration from India to Trinidad and British Guyana, 1836-1885*," in NATION AND MIGRATION: THE POLITICS OF SPACE IN THE SOUTH ASIAN DIASPORA 73, 74-75 (Peter van der Veer ed., 1995). Gladstone also informed the Calcutta company that several similar importations had taken place from other places "and so far with good effects on the minds of the blacks." *Id*. _ at 74-75. For details of Gladstone's efforts, see MADHAVI KALE, FRAGMENTS OF EMPIRE: CAPITAL, SLAVERY, AND INDIAN INDENTURED LABOR MIGRATION IN THE BRITISH CARIBBEAN 13-37 (1998).

[37] TINKER, supra note _, at 63.

Afro-Caribbean labor available to them was inadequate numerically and morally became orthodoxy: African workers were portrayed as lazy, unreliable, untruthful, and unable or unwilling to understand or honor a contract.[38] The reports of parliamentary and royal commissions appointed to investigate the condition of the sugar colonies, in almost every decade into the twentieth century, reproduced and sanctified these portrayals. The significance of the genealogy of these unfavorable representations of African labor, both for the introduction of indentured labor from India and for the subsequent emergence of distinctive communities and strained relations among them, is considerable.[39]

The direct linkage between constructions of identities with the exigencies of plantation economies, and the interconnection of unstable and shifting identities of different labor groups, are central to this story of migration. Disparaging characterizations of Afro-Caribbean labor were critical to constructing the identity of Indian labor in the plantation colonies. The Indian workers were extolled for their docility, industriousness, familiarity with agriculture, strong family ties, respect for authority, and respect for the sanctity of contracts. These constructions, however, did not last very long. Once Indians were on the plantations and had adopted strategies of self-preservation and resistance, planters' praises were leavened with distaste and dissatisfaction. Indians, they now observed, were steadier workers than those of Afro-Caribbean descent, but

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[38] For myths about the work ethic of "natives" generated under colonial rule, see generally SYED HUSSEIN ALATAS, THE MYTH OF THE LAZY NATIVE: A STUDY OF THE IMAGE OF THE MALAYS, FILIPINOS AND JAVANESE FROM THE 16TH TO THE 20TH CENTURY AND ITS FUNCTION IN THE IDEOLOGY OF COLONIAL CAPITALISM (1977).

[39] Ethnic tensions and political conflicts between indigenous communities and descendants of Indian labor continue to animate the social and political landscape of many postcolonial societies in the Caribbean, East Africa, South Africa, and Fiji. See generally EXPULSION OF A MINORITY: ESSAYS ON UGANDAN ASIANS (Michael Twaddle ed., 1975); MODERN CARIBBEAN POLITICS (Anthony Payne & Paul Sutton eds., 1993); DONALD ROTHCHILD, RACIAL BARGAINING IN INDEPENDENT KENYA: A STUDY OF MINORITIES AND DECOLONIZATION (1973); SELWYN D. RYAN, RACE AND NATIONALISM IN TRINIDAD AND TOBAGO: A STUDY OF DECOLONIZATION IN A MULTIRACIAL SOCIETY (1972); SOUTH ASIANS OVERSEAS: MIGRATION AND ETHNICITY (Colin Clarke et al. eds., 1990).

they were also avaricious, jealous, and less robust, not to mention dishonest, idolatrous, and filthy.[40] As the catchment area of Indian labor expanded, corresponding with the territorial expansion of colonial rule in India, planters began to distinguish among labor from different parts of India.[41] As dissatisfaction with Indians spread among the planters, and as they began looking into opportunities to recruit workers from China, the Indians came to be increasingly and unfavorably compared with the Chinese.[42]

Characterizations of Indian labor were directly linked to the role they were to play in the sugar colonies, in relation primarily to Afro- Caribbean workers over whom planters were determined to reassert authority. The early consensus was that the planter had "found in the meek Hindu a ready substitution for the Negro slave he had lost."[43] If India became the primary recruiting ground for sugar colony planters, it was not because Indians' characters, as laborers or otherwise, made them ideal immigrants; rather, it was because Indian workers were, for political reasons, more readily accessible than workers from other parts of the world. The claims that Indians were innately suited to agricultural labor, to taking directions, and to working hard for low wages were justifications for seeking and securing Indian indentured workers, especially once other areas proved inaccessible and importation of labor from India had become a permanent strategy for sugar production on plantations.

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[40] A leading member of Trinidad's elite noted that, "The Hindoos ... are a mild and timid race, obsequious, wanting in firmness and perseverance, more prudent and wily than energetic and straightforward. They are intelligent, rather industrious and saving." Kale, *supra* note _, at 77-78.

[41] One observer in Trinidad noted that indentured workers from Calcutta proved to be "valuable, steady labourers, while those from Madras are for the most part useless ... the scum and refuse of the city of Madras--stray waifs who have sunk very low in their lives before they find their way into the hands of the shipping agent." *Id.* at 78.

[42] Chinese labor was portrayed as "'fully alive to the necessity of authority for their regulation and control ... generally tractable and manageable,' strong, tough, 'not averse to foreigners' ... 'highly intelligent and discerning, steady laborers, and well versed in the tillage of the soil.'" *Id.*

[43] P.C. Emmer, *The Meek Hindu; The Recruitment of Indian Labourers for Service Overseas, 1870-1916*, in

In 1838, British Guyana was the first Caribbean territory to receive indentured Indians; several other Caribbean colonies began importing Indian labor in succeeding years. Between 1838 and 1917, more than half a million Indians went to the Caribbean as indentured labor. Though it started with the Caribbean sugar plantations, the Indian indentured labor system was soon extended to Africa and the South Pacific. The considerable expense of recruiting and shipping laborers from India to the West Indies was originally met in its entirety by local colonial governments; over subsequent years, however, planters were required to pay an increasing share of these costs. Initially, recruiting and transportation of such labor were unregulated. In 1837, however, the colonial government of India, under Act V of 1837, laid down specific conditions and an accompanying administrative framework.[44] This legislation, while institutionalizing the system of indentured labor and bringing it under political supervision, took pains to ensure that, pro forma, the system was one of "free" labor based on contract.[45] The difference between indentured and "free" labor, however, was quite clear to planters, one of whom stated, "'We want Indians as indentured laborers but not as free men.'"[46] Indenture was akin to a standard form contract - the rights and duties embodied in it were not negotiated or negotiable by the migrant. The sanctions for breach of terms by the migrant were penal, not civil, contradicting the form of his contractual engagement. An extensive set of regulations defined the terms of engagement

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COLONIALISM AND MIGRATION: INDENTURED LABOUR BEFORE AND AFTER SLAVERY 187 (P.C. Emmer ed., 1986).

[44] The intending emigrant was to appear before a designee of the colonial government, along with the emigration agent, who was required to produce a written statement of the terms of the contract. The length of service was to be five years, renewable for another five. The emigrant was to be returned to the port of departure at the end of his service. Vessels taking the emigrants were required to conform to specified standards of space, diet, and health. The superintendent of police was charged with carrying out the duties under the Act. TINKER, *supra* note _, at 64.

[45] For a comparative study of legal frameworks that accompanied migrations of slave labor, indentured labor, and free labor, see Yash Ghai, *Migrant Workers, Markets, and the Law*, in GLOBAL HISTORY AND MIGRATIONS (Wang Gungwu ed., 1997).

[46] Kondapi, *supra* note _, at 7.

and tied those under indenture to a particular employer and a particular residence. The extensive regulation and the lack of legal capacity of the migrant to change employment meant that this form of labor, like slavery, was not driven by market rationality and did not fulfill the classic liberal criteria of free alienation of labor power.

Under license from the Protector of Emigrants[47] in Calcutta and Madras, emigration agencies sought recruits throughout the Indian countryside. The colonial encounter furnished both the "pull" and "push" factors for labor migration. A historical assessment of the conditions prevailing in India during British rule reveals a crucial connection between colonial entrenchment and the international commodification of Indian labor. The transportation en masse of Indians through the indenture system was a direct consequence of British penetration into the entire economic and social fabric of Indian society. So- called "push factors" probably had more to do with migrants' decisions to indenture themselves abroad than did "pull factors" of promised opportunities. In the second half of the nineteenth century, peasants throughout India faced privations due to colonial emphasis on export-oriented agriculture and massive disruption of livelihoods with the demise of traditional industries, relocated local economies, new demands of cash payments for upwardly spiraling rents, a high incidence of evictions, and widespread unemployment.

Rather than being an avenue of opportunity, for the majority of Indians indenture was an "exile into bondage" as "many found they had exchanged one form of poverty and servitude for

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[47] This office was created by the Indian colonial authorities to administer the indentured labor system. The counterpart in the plantation colonies was named Protector of Immigrants. The latter position replaced the Protector of Slaves. See TINKER, *supra* note _, at 18, 105.

another, and many more found only death and disease."[48] Indigenous people of the plantation

colonies had little say in the induction of Indian labor, a fact that was to have a profound effect

on future inter-ethnic relations. The colonial authorities regulated the recruitment, importation,

allocation, and employment of labor; control over the repressive apparatus, such as the courts,

police, and prisons, all of which acted to repress workers, was also in their hands. Despite

regional variation, it is possible to paint a general picture of plantation life that remained

unchanged from the days of slavery.

Indenture, like slavery, was premised on an elaborate system of coercion that restricted the

free movement of laborers outside the estates; it not only regulated their labor power but also

isolated them on plantations. Planters deployed many formal and informal systems of control not

only to confine workers on the estates but also to keep them under indenture. In Natal and

Mauritius, for example, an annual tax was introduced to force workers to reindenture; vagrancy

laws and licenses were imposed to restrict worker mobility outside the plantation and to reduce

the alternatives available upon termination of contract. While the stipulated conditions of work,

pay, housing, and medical facilities were similar for all the colonies, in reality their interpretation

was left to the discretion of employers, overseers, and managers. The everyday reality for

workers was marked by grinding overwork, low wages, malnutrition, persistent illness, and poor

housing, as well as a range of punitive measures that included beatings, fines, and imprisonment.

The colonial administrations functioned in the interests of the employers rather than to protect

workers. In Mauritius between 1849 and 1862, for example, the administration acted on the

planters' behalf by arbitrarily reducing wages and lengthening indenture contracts from one to

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[48] TINKER, *supra* note _, at 60.

three and then to five years. Conditions of contracts were enforced harshly through labor-coercive techniques, such as those in Mauritius, where workers could be imprisoned for up to six months for desertion, neglect of work or indolence, and where refusal to obey an order could result in the loss of two weeks' pay or imprisonment with hard labor. Legislation introduced to improve the workers' conditions was often ineffectual and commissions investigating worker abuse rarely made recommendations detrimental to planters. The Protectors of Immigrants were frequently friends of the planters and shared their class background and interests. The harshness of conditions for the indentured Indians is evidenced by a very high rate of suicide, a third of which took place in the first year of indenture.

The structural conditions of indenture, adverse working conditions, and persistent abuse frequently led to worker action, which manifested itself in a variety of passive and active ways through formal and informal acts.[49] Most protest was expressed through day-to-day actions. In Fiji, for instance, Indians acquired a reputation for their "murderous intent:" thirty-two charges of assault on overseers were brought against workers in 1900, resulting in eleven convictions; in 1902, there were thirty-five charges with twenty-eight convictions. Mass worker protests took place in Mauritius in 1872. There was a strike and protest march in Fiji in 1886 and a general strike in Natal in 1913. Indentured laborers developed an array of forms of everyday resistance and avoidance protest.[50] These included absenteeism, idleness, petty larceny, destruction of

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[49] On resistance by indentured labor, see Maureen Swan, *Indentured Indians: Accommodation and Resistance, 1890-1913*," in ESSAYS ON INDENTURED INDIANS IN NATAL (Surendra Bhana ed., 1990); Kusha Haraksingh, *Control and Resistance among Indian Workers: A Study of Labour on the Sugar Plantations of Trinidad, 1875-1917*," in INDIA IN THE CARIBBEAN (David Dabydeen & Brinsley Samaroo eds., 1987).

[50] For detailed studies of everyday resistance and avoidance protest, *see* JAMES C. SCOTT, WEAPONS OF THE WEAK: EVERYDAY FORMS OF PEASANT RESISTANCE (1985); Michael Adas, *From Avoidance to Confrontation: Peasant Protest in Precolonial and Colonial Southeast Asia*, 23 COMP. STUD. IN SOC. AND HIST. 217, (1981); Michael Adas,

employers' property and tools, desertion, and drunkenness. Workers also established a system of self-help by setting up funds based on voluntary subscriptions that were used to pay fines. Free Indians frequently harbored deserters. Resistance by the indentured labor was often met with stringent legislation aimed at deterring collective action, and those perceived as protest leaders were invariably criminalized and banished.[51] Nevertheless, labor resistance, however expressed, persisted and grew stronger as laborers became more accustomed to their new environment.

Resistance by indentured labor was not the only factor that injected instability into the system. The history of indentured migration from India is complex because the British government, the colonial governments of India and plantation colonies, and the plantation owners were all involved and had fluctuating and often conflicting demands. Although the state organized the system on behalf of the plantation owners' interests, these were not the only interests to which the state responded. The Colonial Office in London was sensitive to continuing agitation by the anti-slavery movement.[52] Colonial authorities in India had to contend

South Asian Resistance in Comparative Perspective, in CONTESTING POWER: RESISTANCE AND EVERYDAY SOCIAL RELATIONS IN SOUTH ASIA (Douglas Haynes & Gyan Prakash eds., 1992).

[51] Defending a repressive 1867 ordinance, the Procureur-General of Mauritius stated: "The Indians require to be protected against themselves." TINKER, *supra* note _, at 242.

[52] While rejecting an 1835 draft of a Mauritius ordinance defining the terms of indenture upon which Indian labor was to be imported, the Secretary for the Colonies, stated:

> The design of the law might more accurately have been described as the substitution of some new coercion for that state of slavery which had been abolished; the effect of it, at least, is to establish a compulsory system   scarcely less rigid, and in some material respects even less equitable than that of slavery itself.

TINKER, *supra* note _, at 17 (*quoting* EMIGRATION FROM INDIA; THE EXPORT OF COOLIES AND OTHER LABOURERS, TO MAURITIUS 29 (1842)). The Aborigines Protection Society was established in 1837 and in 1839 the British and Foreign Anti-Slavery Society was founded. Both groups drew upon the support of old abolitionists and emancipators. The Order in Council of July 12, 1837, that legalized the venture proposed by Gladstone was first published in the anti- slavery journal British Emancipator. This prompted questions in the Parliament, and a Natives of India Protection Bill was placed before Parliament. Another Order in Council of 1938 limited the duration of the labor contract to one year and required the contract to be executed within the colony where the indentured person would serve his time. See TINKER, *supra* note _, at 64.

with groups of local reformers, belonging to both the Indian and British communities, who became involved with the indenture migration from its very inception. In response to their demands, they convened a "Committee appointed to inquire respecting the exportation of Hill Coolies" in 1838. In light of the committee's report, the Governor-General's council passed Act XIV of 29 May 1839, whereby overseas emigration for manual labor was prohibited and any person effecting such an emigration became liable to a fine of two hundred rupees or three months of imprisonment. Within two years of its initiation, the indenture system came to a sudden halt. In the following years, the planting interests and the anti-slavery groups vied intensely for the hearts and minds of the British public and legislators. The planters' first success came in 1842 when the colonial government repealed the prohibition on emigration to Mauritius, followed by legalization of emigration to the Caribbean in 1844. This concession to the planters was balanced by limiting the indenture period to one year. A struggle over the time limit of indenture ensued, and in 1862 the British Government accepted five-year contracts, extendible by another five years, for all sugar colonies. Emigration to Mauritius was again suspended in 1856 following eighty-one deaths among a shipload of Indians abandoned on an island off the north coast of Mauritius. A by-product of this incident was the Indian Act XIX of 1856, empowering the Governor-General to suspend emigration to any territory where he had cause to believe that conditions for the Indians were unsatisfactory. For the next sixty years, the system continued to operate with only minor modifications. But during this time it remained a system criticized by a host of forces. Anti- slavery societies, some colonial administrators, and the developing Indian nationalist movement all kept the indentured system in public view.

The crucial role of the indenture system in the forging of an Indian identity and the

development of Indian nationalism has remained largely unexamined. Empire and imperialism are not only territorial and economic but inevitably also a subject-constituting project. Indentured labor transported from the Indian subcontinent became "Indian" in the context of its sandwiched placement with regards to both its European employers and indigenous populations. Identity is always related to what one is not--the other; identity is conceivable only in and through difference. Spatial identities are powerfully shaped by the accompanying processes of deterritorialization and displacement. In pre-colonial India, identities coalesced around religious, caste, ethnic, linguistic, and regional differences. In the indenture system the diverse and heterogeneous labor drawn from India found itself similarly positioned by this regime of colonial economy. Institutional and discursive practices accompanying indenture constituted this heterogeneity as a singularity. Religious, ethnic, linguistic and regional differences were also downplayed by the indentured as they forged a collective identity in resistance to a shared experience of a singular form of colonial oppression. Indian identity, thus, became a field of possibility through suppression of internal difference, at least temporarily, occasioned by similarities of conditions created by the colonial regime of indentured labor. The construction of an Indian identity in the terrain of the indenture system, in turn, had two direct impacts on the evolution of a nationalist movement in India: one, the indenture system furnished the first sustained target for the nationalist movement during its embryonic phase, and, two, Mohandas K. Gandhi, the leading Indian nationalist leader, developed his political philosophy and political tactics in the context of his direct involvement with the Indian indentured labor in South Africa.[53] The dispersal of indentured labor across the globe also gave the incipient nationalism in colonial India an acute awareness of the national connection between those at home and those in the

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[53] For details, see JOSEPH LELYVELD, GREAT SOUL: MAHATMA GANDHI AND HIS STRUGGLE WITH INDIA (2011).

diaspora. Indeed, it contributed to the pronounced anti-colonial cosmopolitanism, transgression of boundaries, and deterritorial anti-colonial networks that marked Indian nationalist movement since its inception.[54] An evocative example of this world-historical development is the political journal named the *Hindustani* that was launched in Mauritius in 1909, with the motto: "Liberty of Individuals! Fraternity of Men!! Equality of Races!!!"[55]

In the early twentieth century, the nascent nationalist movement in India initiated a direct assault on the system. This phase of resistance was partly prompted by moves of the white settlers in Natal to redesign the indenture system. The demographic distribution was of concern to the white settlers; while they wanted continued access to indentured Indian labor, they wanted to ensure that it did not exceed the white population.[56] Natal wanted the Indian colonial government to restructure the indenture system so that reindenture for five years would be compulsory, at the end of which the indentured must accept return passage. The colonial government in India capitulated to the South African settlers' views. In 1895, the Natal legislature went further and imposed a special tax on local Indians after their period of indenture ended. This is what prompted widespread agitation spearheaded by Gandhi, who had recently settled in South Africa. The British government, however, chose to accept the actions of the Natal legislature and formally declared that white settler colonies had a right to control migration

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[54] For detailed studies of intersections between Indian nationalism and liberation movements across the globe, see KRIS MANJAPARA, M. N. ROY: MARXISM AND COLONIAL COSMOPOLITANISM (2010); SOHAN SINGH JOSH, HINDUSTAN GADAR PARTY (1978); A. C. BOSE, INDIAN REVOLUTIONARIES ABROAD (2002).

[55] TINKER, *supra* note_ at 307. For a perceptive account of resistance to British colonialism, see RICHARD GOTT, BRITAIN'S EMPIRE: RESISTANCE, REPRESSION AND REVOLT (2011).

[56] It was claimed by the white settlers that in 1894 the population of Natal included 470,000 Africans, 45,000 whites, and 46,000 Indians. TINKER, *supra* note _, at 281.

of Indians and Chinese.[57]   On the other hand, the colonial government of India, alarmed by the increasingly restive public opinion in India, started to take public notice of concerns of indentured labor regarding conditions of work, special taxes, right to return, and civil rights. In 1905, the Indian National Congress adopted a formal resolution protesting the treatment of Indians in South Africa and "called for retaliatory measures by 'the Government of India and His Majesty's Government . . . by prohibiting, if necessary, the emigration of indentured labour.'"[58] A commission to investigate the indenture system set up by the Natal government declared that Indians were "undesirable in this colony other than as labor" and recommended termination of all future indentures.[59] The colonial Legislative Council of India, prompted by the Indian members, banned emigration to Natal in 1910. In 1915, Gandhi moved back to India and the anti-indenture movement gained further momentum. In 1916, Indian members moved the Legislative Council to abolish the indenture system completely. The colonial government agreed to the abolition in principle, on the condition that "'the existing system . . . be maintained . . . until proper safeguards in the Colonies should have been provided and until they should have had reasonable time to adjust themselves to the change.'"[60] Continued migration of indentured labor forced Indian nationalists to step up their anti- indenture campaign. The continuing war in Europe added pressure on the system, including the question of safe passage. The Indian colonial government formally declared the indenture labor system abolished in 1920. It is claimed that the

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[57] Joseph Chamberlain announced at the 1897 Imperial Conference:

> We quite sympathize with the determination of the white inhabitants of these Colonies which are in comparatively close proximity to millions and hundreds of millions of Asiatics that there should not be an influx of people alien in civilization, alien in religion, alien in customs, whose influx moreover would most seriously interfere with the legitimate rights of the existing [European] labour population ....

TINKER, *supra* note _, at 285.
[58] TINKER, *supra* note _, at 300.
[59] *Id*., at 313.

phasing out of indenture had more to do with the internal dissolution of the system in the context of a crisis in the world sugar economy than to the opposition of pressure groups, whether located within the colonies or outside them. While there is some merit to the claim, the volte-face of the colonial authorities in India was mainly caused by the new weight which the Indian nationalists carried during the First World War. The rising power of the Indian land-owners and industrialists also clashed with the system of overseas indentured emigration, which reduced the competition on the supply side of the Indian labor market both in agriculture and in the newly developing industrial sector.

The rise and fall of migration of indentured labor in colonial India suggest some broad conclusions. The increasing commodification of Indian labor and its injection into the global division of labor was a result of the incorporation of colonial India into the capitalist world economy. Colonial penetration and distortion of India's socio-economic structures, as well as the establishment of tropical plantation colonies, accounted for both the "push" and "pull" factors in this migration. The ebb and flow of this migration was facilitated by enabling constructions of varied, and even contradictory, identities of Indian labor. Emigration policy-making to manage indentured labor flow was a contested field, and the resulting legal frameworks remained contingent and unstable. While imperatives of the global division of labor furnished the primary context for this migration and attendant legal regimes, the political, cultural, and moral interests of concerned parties had to be continually addressed. Labor-demand exigencies guided shifting constructions of identities of different groups. These constructions, while serving the needs of the plantation owners, created division and conflict between different ethnic and racial groups

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[60] *Id.*, at 344.

among the workers. A legacy of these divisions is the myriad continuing political conflicts between indigenous populations and Indian settlers in Africa, the Caribbean, and the South Pacific. At the level of global capitalism, the experience of indentured labor demonstrated that "free" and "unfree" forms of labor could be successfully and profitably combined in the global capitalist system. This could be done only be embedding denial of universality at the heart of accompanying normative orders.

IV. <u>Conclusion:</u>

The project of global justice holds the promise of universality of recognition and treatment of all humanity. This post-Enlightenment project had to unavoidably contend with the field of possibilities marked by global power arrangements that animated the rise of modernity and modern international law. Emergence and consolidation of two coterminous and mutually constitutive phenomena, capitalism and colonialism, underwrote these power arrangements. While capitalism and colonialism brought spaces and bodies across the globe within the ambit of Eurocentric modernity, the logic of both precluded such incorporation from being a horizontal one. The colonized were sutured with circuits of global accumulation but positioned in enduring states of subordination. A racial exception to universality, often packaged as civilizational difference, was embedded in modern constructs of law to facilitate and legitimize hierarchical positioning of bodies spread across the globe. Global labor regimes procreated by capitalism betray this phenomenon sharply. Un-free labor coexisted with free wage-labor, and formed part of the process of accumulation by dispossession, an endemic feature of capitalism. Slaves from African and indentured labor from colonial India were the mainstay of global accumulation

during the phase of emergence and consolidation of capitalism as a mode of production. This history must be accounted for as we theorize global justice and contemplate its futures.

Today, in the age of post-colonial globalization attendant to the hegemony of finance capital, ever-increasing spaces and bodies are incorporated in global circuits of production, exchange and accumulation. This incorporation, like the indentured labor of the colonial era, is overdetermined by the global distribution of political and economic power and the logic of accumulation by dispossession. The resulting hierarchical global labor markets remain the most entrenched hurdle in the road to attainment of universality of rights. This story unavoidably leads to the conclusion that the triumph of global justice will have to await the exhaustion and demise of capitalism as the global mode of production. The project to expand critical spaces of international law must address the relationship of modern law with capitalism and the global distribution of bodies and spaces that this relationship has engendered.