

THE LEGACY OF ENGLISH COLONIZATION ON LAW AND PUBLIC PERCEPTION

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I. INTRODUCTION

The death of Queen Elizabeth II unburied animus towards Great Britain’s history of colonization. While many people mourned her death, others expressed their anger toward her and her former empire.¹ This bifurcated response calls to light important questions about the history and enduring impacts of colonization. Specifically, how Britain’s colonization continues to influence both how people view Britain and the Queen and foreign relations and the national legal systems of former colonies. This annotation will begin with a brief historical account of colonization and decolonization and will then explore the international political impacts of the oppressive colonial system. Next, it will examine the influence of colonization on various state legal systems. Finally, this annotation will survey the lasting impression colonization has left on global public perceptions of Great Britain and the Queen.

II. HISTORY OF ENGLISH COLONIZATION

In the late 1600s, England began its history of colonization in North America, India, and Africa.² From there, Britain’s colonies

1. Maya Jasanoff, *Mourn the Queen, Not her Empire*, N.Y. TIMES (Sept. 8, 2022), <https://www.nytimes.com/2022/09/08/opinion/queen-empire-decolonization.html>.

2. *See generally* JOHN MERRIMAN, A HISTORY OF MODERN EUROPE: FROM THE RENAISSANCE TO THE PRESENT 242 (2004) (presenting an overview of English colonization).

expanded to include South India and Bengal in the eighteenth century³ and Hong Kong and Jamaica in the nineteenth century.⁴ By 1900, the British Empire included one-quarter of the global population, amounting to over sixty-six million people⁵ and making the British Empire the largest in global history.⁶ Throughout the expansion of its empire, Britain used force and violence “to overcome resistance to its presence.”⁷ Specifically, it used “advanced military techniques” to promote and ensure its colonies.⁸ This violence had a lasting impact on foreign relations and global public perceptions, which will be explored later in this annotation.⁹

In the aftermath of World War II, wars of independence broke out in many colonies as the nations demanded their freedom.¹⁰ But the fight for freedom, just like the struggle to establish the colonies, was met with resistance and violence by Britain.¹¹ Thus, there were two eras of violence perpetuated by Britain against its colonies. In this struggle, some states fought and won their independence, while others were granted it.¹² Nevertheless, some of those states chose to maintain political ties and joined the British Commonwealth.¹³ These lasting ties to Britain, and more specifically the Queen’s role as the continued head of these states through the Commonwealth and as a public figure, help to explain why she remains a predominant figure in the conversation around colonialism and its lasting effects. During her reign, the Queen took many official trips abroad to Commonwealth states that were

3. *Id.* at 420.

4. Jasanoff, *supra* note 1.

5. MERRIMAN, *supra* note 2, at 939.

6. *See generally* WILLIAM CRYER, BRITISH EMPIRE: LARGEST EMPIRE IN HISTORY (2022) (presenting a history of the British empire).

7. MERRIMAN, *supra* note 2, at 911.

8. *Id.* at 924.

9. Edwin Rios, *Queen’s Death Intensifies Criticism of British Empire’s Violent Atrocities*, THE GUARDIAN (Sept. 10, 2022), <https://www.theguardian.com/us-news/2022/sep/10/queen-death-colonies-atrocities-british-empire>.

10. MERRIMAN, *supra* note 2, at 1210, 1251, 1255.

11. Jasanoff, *supra* note 1 (“In 1952 the governor of Kenya imposed a state of emergency to suppress an anticolonial movement known as Mau Mau, under which the British rounded up tens of thousands of Kenyans into detention camps and subjected them to brutal, systematized torture.”).

12. MERRIMAN, *supra* note 2, at 1210, 1251, 1255.

13. *Commonwealth: Association of States*, BRITANNICA, <https://www.britannica.com/topic/Commonwealth-association-of-states> (last visited Sept. 25, 2022).

former colonies.¹⁴ Many of the crown jewels she wore throughout her time as Queen were also taken from those colonies.¹⁵ Nevertheless, as a figurehead playing a largely ceremonial role, there is no explicit evidence that the Queen played a role in the evils of colonization and decolonization, especially considering she began her rule during the sun set of the British Empire.¹⁶ However, the public and symbolic display of her connection to the colonies helps to explain her lasting connection to colonization.

III. THE IMPACTS OF COLONIZATION ON INTERNATIONAL LAW

After World War I, when the League of Nations was created, states used colonization as a determiner of status on the international stage.¹⁷ Article 22 of the Covenant of the League created a system of greater and lesser states, or a system of states with more and less political power and status, based on colonization.¹⁸ Specifically, “‘advanced nations’ were entrusted with the task of exercising ‘tutelage’ on behalf of the League over those colonies and territories described as ‘inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world.’”¹⁹ This highlights how colonized states were not only oppressed at home but were treated as inferior in the international sphere and systematically excluded from international politics. Indeed, some have argued that this classification system “‘came very close to being a mechanism for the continuation of colonialism ‘by other means.’”²⁰

14. Nora McGreevy, *Elizabeth II Was An Enduring Emblem of the Waning British Empire*, SMITHSONIAN MAGAZINE (Sept. 8, 2022), <https://www.smithsonianmag.com/history/elizabeth-ii-was-an-enduring-emblem-of-the-waning-british-empire-180979613/>.

15. *The Diamonds That Have Seen Queen Elizabeth Through the Longest Reign*, CAPE TOWN DIAMOND MUSEUM, <https://www.capetowndiamondmuseum.org/blog/2015/09/the-diamonds-that-have-seen-queen-elizabeth-through-the-longest-reign/> (last visited Nov. 7, 2022).

16. Jasanoff, *supra* note 1.

17. Matthew Craven & Rose Parfitt, *Statehood, Self-Determination, and Recognition*, in INTERNATIONAL LAW 177-226, 187 (Malcolm D. Evans ed., 2018).

18. *Id.* (explaining that the League developed a classification system for countries based on what “‘advanced nations” termed other states’ current “‘stage of development,” based on past colonization history, and used what they saw as the state’s lesser status to institute administrative control of those states).

19. *Id.*

20. *Id.*

This ideology, based on superiority, continued after colonization officially ended.²¹ Indeed, a change in law alone cannot at once undo centuries of oppression and discriminatory beliefs.²² As such, it is not surprising that people continued to subscribe to colonial ideologies long after the letter of the law changed, including theories of inferiority in both inherent intelligence and ability,²³ and that this had lasting effects on the evolution of international law.

A key example of this occurred during the establishment of new states in the postcolonial era. An important component of setting up the system of international law was defining what or who would be considered a state.²⁴ States who were already ‘established,’ or whose existence was not being questioned, had great power in setting the parameters of statehood for former colonies, thus influencing how they were able to participate in international law.²⁵ Ideas of statehood were heavily based on former colonizer states’ own Western conceptions of proper government, law, and “civilized” nations.²⁶ As such, “the right to self-determination, understood as a right to opt for independent statehood, was not allocated on the basis of ethnic or linguistic homogeneity, but rather on the basis of pre-existing—that is, colonial—administrative boundaries.”²⁷ For example, the boundaries delineating many African states, which were drawn by Great Britain, France, Belgium, and Germany as they established their empires, did not take into account ethnographic factors of the populations residing within them.²⁸ These boundaries were kept when these states were admitted to the international community, without reconsideration of rational boundaries based on common people, traditions, or languages.²⁹

Post-colonial states also experienced lasting political inferiority. For instance, power in the United Nations continues to be

21. John Quintero, *Residual Colonialism in the 21st Century*, UNITED NATIONS UNIVERSITY (May 29, 2012), <https://unu.edu/publications/articles/residual-colonialism-in-the-21st-century.html>.

22. *Id.*

23. Uma Narayan, *Colonialism and Its Others: Considerations On Rights and Care Discourses*, 10 *HYPATIA* 133, 133 (1995); John Quintero, *Residual Colonialism in the 21st Century*, UNITED NATIONS UNIVERSITY (May 29, 2012), <https://unu.edu/publications/articles/residual-colonialism-in-the-21st-century.html>.

24. Craven & Parfitt, *supra* note 17, at 190.

25. *Id.*

26. *Id.*

27. *Id.* at 211.

28. Jeffrey Herbst, *The Creation and Maintenance of National Boundaries in Africa*, 43 *INTERNATIONAL ORGANIZATION* 673, 674-75 (1989).

29. *Id.* at 677.

concentrated in states who formerly had the greatest colonial empires.³⁰ For example, the United Nations Security Council has five permanent members, four of which are previous colonial powers, including Britain as the United Kingdom, and these members have veto power over U.N. decisions.³¹ Despite the idea that all nations are equal within the United Nations, the permanent members of the Security Council have greater power and significance within the system than other states and, owing to their veto power, can overrule decisions of the majority, including on issues of how to maintain peace on the international stage and on authorizations of force.³² Furthermore, the structures of international human rights law and national securities law within the United Nations continue to be shaped around Western ideals, with Western states playing a powerful controlling role over former colonies.³³ Specifically, the standards used to determine violations of international law are seen by many as tools of control used to push Western ideals onto former colonies.³⁴ Thus, the influence and ideologies of colonialism created international power dynamics with lasting effects on the international stage even after formerly colonized states achieved independence.

IV. THE IMPACTS OF COLONIZATION ON NATIONAL LAW SYSTEMS

Colonization also impacted the national legal systems of post-colonial states. The creation of a legal system is often a historical process, whereby “the law of a particular civilization is a compound of past as well as present forces.”³⁵ As Daniel Klerman, professor of law at USC Gould School of law, explained, “the reason almost all legal systems of the world belong to either the common or the civil law family is that

30. Craven & Parfitt, *supra* note 17, at 210.

31. David Small, *The Continued Influence of Colonialism in International Law*, QUEENS UNIVERSITY, BELFAST (March 29, 2019), <https://blogs.qub.ac.uk/studentlawjournal/2019/03/29/the-continued-influence-of-colonialism-in-international-law/>.

32. *Id.*

33. Antony Anghie, *The Evolution of International Law: Colonial and Postcolonial Realities*, 27 *THIRD WORLD QUARTERLY*, 739, 749 (2006); *see generally* Morten Bergsmo, *Myanmar, Colonial Aftermath, and Access to International Law*, in *COLONIAL WRONGS ACCESS TO INTERNATIONAL LAW* 229 (Morten Bergsmo, et. al, ed., 2020) (detailing how colonization affected the composition of international law).

34. Anghie, *supra* note 34, at 749; *see generally* Bergsmo, *supra* note 34 (discussing how colonization negatively affected former colonies’ access to international law).

35. GEORGE LEE HASKINS, *LAW AND AUTHORITY IN EARLY MASSACHUSETTS* 4 (1960).

the European powers imposed their legal system on their colonies.”³⁶ Thus, formerly colonized states inherited aspects of legal tradition from their former colonizer states. Specifically, Britain brought the English common law system to its colonies, and many of those states maintain features of that system today, including “high creditor and investor rights, effective legal systems, and low regulation of the economy.”³⁷ In addition to this, places that were formerly colonized by more than one state inherited aspects of both of those states’ legal systems.³⁸ For example, South Africa was first colonized by the Netherlands and later colonized by Britain and has aspects of both legal systems in its own.³⁹

In some instances, Britain did leave room for its colonies to maintain some of their existing legal norms.⁴⁰ The extent to which this occurred depended on factors such as local climate, population density, disease conditions, and existing native legal structures.⁴¹ Thus, British imposition of the common law on its colonies was, in some ways, flexible to local conditions. For example, Britain left many native African rulers in place and supplemented their rule with English common law, allowing their ideas to work in tandem with the common law system.⁴² However, in some instances, such as in Nigeria, this left confusion in the legal system and created inconsistencies between what England had implemented and what remained from the state’s native legal system.⁴³

Today, many states still maintain features of the English common law system, including some of the Caribbean Islands formerly colonized by Britain still.⁴⁴ The English court structure is mimicked in several of these states.⁴⁵ For example, many still appeal their cases to the

36. Daniel M. Klerman et al., *Legal Origin or Colonial History?*, 3 J. LEGAL ANALYSIS 379, 380 (2011).

37. Daniel Oto-Peralias et al., *The Distribution of Legal Traditions Around the World: A Contribution to the Legal-Origins Theory*, 57 J. L. & ECON. 561, 565 (2014).

38. Klerman, *supra* note 37, at 381 (2011) (“Some former English colonies, such as South Africa and Sri Lanka, maintained legal elements from a previous colonizer and are therefore more properly considered ‘mixed’ legal systems.”).

39. *Id.*

40. David A. Thompson, 1 *Thompson on Real Property*, § 7.02, Reception of the English Common Law of Property in the American States and the District of Columbia (presenting a detailed overview of states’ adoption of the English common law).

41. Oto-Peralias et al., *supra* note 38, at 571.

42. *Id.*

43. *Id.* at 572.

44. Desiree P Bernard, *The Impact of the English Common Law on Caribbean Society*, 97 AMICUS CURIAE 19, 19 (2014).

45. *Id.*

Privy Council in England, after reaching the highest court.⁴⁶ Additionally, procedural laws are still commonly followed.⁴⁷ However, over-time, these have been adapted to fit local conditions.⁴⁸

V. PUBLIC PERCEPTION

This history of imposition and oppression has lasting impacts on how others view Great Britain.⁴⁹ Specifically, a lot of the anger towards the island as a whole has been directed towards the Queen.⁵⁰ As Janet McLean, Professor of Law at The University of Auckland, explains: “it is the Crown that becomes the placeholder for the wrongdoer reflecting the centuries-old common law idea that the Crown personifies and represents the general polity.”⁵¹ As such, while the Queen played a largely ceremonial role as leader and cannot with any certainty be held responsible for the acts Britain perpetrated towards its colonies, she nevertheless receives much of the public blame. Much of this can be attributed to the high visibility of her role and the continued reminder of Britain’s history in her wearing of the Crown Jewels.⁵² Moreover, the Queen took many tours during her reign, both to Britain’s colonies in her earlier years and to former colonies now part of the Commonwealth in her latter. These trips served to further intensify the connection people drew between the Queen and the British Empire, facilitating the blame felt towards her for Britain’s colonization.⁵³

News of the Queen’s death sparked renewed important conversations about her role in Britain’s colonial past, even among those who

46. *Id.*

47. *Id.* at 20.

48. *See generally Id.* (discussing the inheritance and adaptation of English common law in the Caribbean and its impacts today).

49. *See generally* Jasanoff, *supra* note 1 (discussing the response to the Queen’s death, which started conversations around colonization).

50. Janet McLean, *Crown, Empire and Redressing the Historical Wrongs of Colonisation in New Zealand*, 2015 N.Z. L. REV.187, 206 (2015); Juliana Kim, *Not Everyone Mourns the Queen. For Many, She Can’t be Separated From Colonial Rule*, NPR (Sept. 12, 2022), <https://www.npr.org/2022/09/12/1122238140/queen-elizabeth-ii-death-commonwealth-countries-colonial-history>.

51. McLean, *supra* note 50.

52. McGreevy, *supra* note 14; CAPE TOWN DIAMOND MUSEUM, *supra* note 15.

53. Jasanoff, *supra* note 1 (describing then Princess Elizabeth’s much-quoted speech delivered on her 21st birthday in 1947 on a royal tour in South Africa, where she promised: “my whole life, whether it be long or short, shall be devoted to your service and the service of our great imperial family to which we all belong.”); Kim, *supra* note 50.

mourn her.⁵⁴ For example, Melissa Murray, Fredrick I. and Grace Stokes Professor of Law at NYU School of Law, emphasized that “even for those who respect and revere the Queen, the residue of colonialism shadows day to day life in Jamaica and other parts of the Caribbean.”⁵⁵ Similarly, another article spoke to the experience in Nigeria, juxtaposing associations of the Queen with “prestige and grandeur” against the fact that “many are still haunted by Britain’s role in their civil war, when the global power secretly tried to prevent the Republic of Biafra’s secession efforts.”⁵⁶ Indeed, as Murray went on to emphasize, “We are likely overdue for the difficult conversation that will inevitable [sic] come from reckoning with our past.”⁵⁷

VI. CONCLUSION

Britain’s vast colonial empire has an enduring impact on foreign relations and on the composition of different legal systems around the world.⁵⁸ Moreover, the violence used during colonization and in efforts to prevent decolonization heavily influences people’s perceptions of Britain today.⁵⁹ The Queen featured prominently in this narrative as the symbolic head of the Commonwealth.⁶⁰ Thus, while many mourn Queen Elizabeth’s death, it is important to remember the lasting role she plays in Britain’s colonial history. As Britain inaugurates King Charles III to the throne, there is renewed opportunity for the monarchy to acknowledge and take accountability for their part in this oppressive history.

54. Kim, *supra* note 50 (“But coupled with that nostalgia is “residual anger” over the brutal price paid for many countries’ independence.”)

55. Melissa Murray (@ProfMMurray), TWITTER (Sept. 8, 2022, 3:52 PM), <https://twitter.com/ProfMMurray/status/1567964098272399362>.

56. Kim, *supra* note 50.

57. Melissa Murray (@ProfMMurray), TWITTER (Sept. 8, 2022, 3:52 PM), <https://twitter.com/ProfMMurray/status/1567964098272399362>.

58. Oto-Peralias et al., *supra* note 38, at 565; Anghie, *supra* note 34, 749.

59. Jassanof *supra* note 1; Kim *supra* note 50.

60. McLean, *supra* note 51, at 206.