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## British colonial power and universalism of law

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### Abstract

This study explores the imposition and implications of British legal frameworks in their colonies, with a focus on the tension between universal legal principles and local customs. The study examines how British colonial authorities endeavored to create a unified legal system that claimed to uphold universal principles of justice, equality, and order. However, this imposition often clashed with indigenous legal traditions and societal norms. By analyzing legal documents, colonial administrative records, and case studies from various British colonies, the paper highlights the complexities and contradictions of implementing a supposedly universal legal system in diverse cultural contexts. The research also explores the impact of colonial legal practices on post-colonial legal systems and the enduring legacies of these colonial interventions. The findings provide a nuanced understanding of how British colonial power utilized the concept of legal universalism as a tool for control and governance, while also revealing the resistance and adaptations of colonized societies.

**Keywords:** British colonial power, universalism of law, colonial legal systems, indigenous legal traditions, legal imposition, justice and equality

### Introduction

While attempting to delve into the questions of colonialism, universalism and the law, this article focuses on the theoretical underpinnings of the question and thus deals with the themes involved in the conceptual foundations of the colonial legal regime. Two caveats are required here, the first is that the conceptual arguments, while applicable to the broader colonial period, stem from the breaks in the 19<sup>th</sup> century, while the second is that the paper would also attempt to answer the question by linking the peculiarity of colonial law to the author's own research, in the sphere of labour law.

The fundamental question which emerges at the outset is of the question of Universality itself.

Therefore, can the idea of Universalism exist in the understanding of modern or indeed pre-modern law? One allusion to this emerges from the writings of David Scott who decisively links the project of the law, through a conception of governmentality to the idea of the modernity. This dichotomy then, wherein questions of power, agency and especially the nature of the state are questions which believe the theoretical foundations of this idea.

Partha Chatterjee's work approaches the question of Universality and colonialism's subversion of it by looking at the nature of the state. The colonial state therefore, uses the idiom of race to theoretically sustain the difference in law. Alluding to the reactions against the Ilbert bill from the European residents as well as the post 1857 authoritarian scenario, Chatterjee argues that race becomes the medium for the exclusion of colonial subjects from the Universalism of law. Race as ideology therefore, maintained as rule is a crucial signifier of colonialist discourse which highlights this distinction. By making this argument, Chatterjee is making the dual assertion that the colonial state is fundamentally different from the modern state, in its character, as well as suggesting that the method used by colonialism is one of exclusion<sup>1</sup>.

Chatterjee's arguments about the rule of race as one embodying colonial particularity in law has come under some critique, for its lack of heterogeneity and more importantly, its lack of historicity by David Scott.<sup>2</sup> Scott enters this debate from a dual position. The first, as mentioned earlier is to question the Universality of the law itself by tracing how it emerged

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1 David Scott, "Colonial Governmentality". *Social Text*. No 43. Duke University Press, 1995, 96.

from varying political rationalities. While the second is the position which asserts that instead of a focus on exclusion, the dynamics of colonial dominance must be assessed and in order to do so the 'political rationalities' of colonial power are explored. Importantly however, Scott argues that the modern, colonial state of the late 18<sup>th</sup> and early 19<sup>th</sup> century marked a break from the past. This break was a 'fundamental' one since it transformed the domain of possibilities. Therefore, through the point of rule of law as a political rationality, the colonial state in the late 18<sup>th</sup> and early 19<sup>th</sup> Century was able to accord the law a profoundly ideological position. This ideological position, according to Scott can be understood through the thematic guide of governmentality where the domain of the law emerges as all encompassing, and even modes of resistance are mediated through it.

Similarly traversing the domain of law, colonialism and the question of Universality is Nasser Hussain's work, the *Jurisprudence of Emergency*. Hussain's work uses the prism of colonial law and its conceptualisation of universality and difference to offer a critique of modern law, and legal systems. Using the broader Foucauldian categories of governmentality, while also adding historical specificity and heterogeneity, Hussain inverts the question. For him, the importance of colonialism, and colonial law, both through the idea of norm (rule of law) while also exception (emergency and martial law) are fundamental in making of the modern state<sup>2</sup>. This process, is once again rooted in the 19<sup>th</sup> century, where the transition from a sovereignty of a 'pre-modern' as defined by the colonial state to a modern transposition of governmentality occurs. This process however, is importantly mediated and contradictory. Hussain however, does assert the peculiarity of the colonial in this process. The colonial rule of law therefore, according to Hussain is characteristic around the discourse of Oriental Despotism during the 19<sup>th</sup> century Codification, with the establishment of the idea of procedure. For Hussain however, colonialism is able to undermine universalism because it is fundamentally serves as a limit to modernity while also playing a restrictive role. This constant tussle between exception and norm is what is exemplified in questions of rule of law, emergency and violence.

Therefore, while there are several theoretical perspectives as to how colonialism was able to undermine the Universalism of law, I would try and suggest that one possibility in examining this is the question of juridification. In particular, I would allude to the juridification of labour law and through this, the question of industrial relations. Social Insurance legislation for example, marked by the Workmen's Compensation Act (1923), was not only the first Welfare legislation in colonial India, but also marked the formation of the formal sector. However, unlike the British Act (1897), the colonial acts not only covered less workers (agricultural, transport, plantation workers were exempted) but it also was solely employment based. This was particularly important since the discourses around Welfarism, in Britain and in India, were both largely Universal. Social Insurance legislation therefore could point to an importance site, through the lens of juridification, one can examine and situate how colonial power could situate and subvert itself from the apparent Universality of the law.

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<sup>2</sup> Nasser Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of law*, University of Michigan Press, 2009, 32.